

Murdering Innocents: Responsibility and Response

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I: INTRODUCTION

“Homicide, like most behaviour, is learned [K]illings only occur when certain people with certain learning experiences find themselves in certain situations.”¹

In 1986, two young boys aged five and three were playing on a balcony; their parents were talking in another room. The older boy pushed the three year old who grabbed onto a ledge to stop himself from falling. The five year old pried loose the little boy’s fingers and he fell three storeys to his death.² In 1989, two brothers, aged four and six, attacked a 20 month old girl with a shovel, a screwdriver, a hammer and a brick because “she was ugly” and they “didn’t like her”.³ That same year, a nine year old boy shot his seven year old playmate in the back after she boasted that she was better at playing Nintendo than he was.⁴ In 1993, a thirteen year old boy lured a four year old boy into some woods where he choked him and pummelled his head in with a rock.⁵

Juvenile homicide is an extremely rare occurrence and “little empirical data is available about homicidal adolescents”.⁶ As a consequence, very little is known or written about the topic and, as with many subjects which come only sporadically to the public consciousness, is often met with hysteria, and such outpourings of disbelief and repulsion that the young murderer is treated more harshly than an adult equivalent. This reaction sees children as young as ten imprisoned at Her Majesty’s pleasure and their families subject to abuse and

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1 Ewing, *Kids Who Kill* (New York, Lexington Books, 1990) 162.

2 Ibid, 113.

3 Ibid, 122.

4 Ibid, 115.

5 Smith, “Inside the Mind of a Child Killer”, *Under Investigation* (TVNZ Broadcast) 6 October 1997.

6 Crespi and Rigazio-DiGilio, “Adolescent Homicide and Family Pathology: Implications for Research and Treatment with Adolescents” (1996) 31 *Adolescence* 353, 354.

contempt from a society which fails to see that it too might play some part in the drama. The comparative youth of the offender, and the seemingly senseless and usually brutal death of the victim combine to produce in the mind of the public a crime so heinous, and a killer so monstrous, that the law is obliged to react in an unforgiving manner. As a result, it fails to consider the reasons behind the behaviour. Instead the law responds to the community's desire to punish a "monster".

It is, however, important to look carefully at the elements of such a crime and the culpability of the child accused. The often shocking nature of the offence means that it is too easy to commit a young person to a lifetime of punishment without properly considering his or her "capacity" to commit murder as one would in the case of an adult offender. The law in most countries provides a deceptively simple test for determining the young murderer's "legal" guilt. As will be discussed later in this article, this test appears broader, and thus more harsh, than the adult test for murder. It also ignores issues of competence and accountability that must surely be of greater relevance with such young offenders. Children are, by and large, less emotionally mature than adults, and consequently have little appreciation for the long-term consequences of killing someone. Young murderers frequently act on impulse, with no intention to kill, but merely a desire to commit violence against someone who is usually smaller and weaker than themselves.

This article proposes to examine the treatment of juvenile murderers in the justice system, and whether they can really be held responsible for their crimes and sentenced as they are currently. It will be contended that the test used to determine a child's guilt is too simple, and that retribution in the hands of an unforgiving society is too harsh. Only certain types of juvenile murderers, and the particular circumstances in which they kill are considered. The focus is on children aged fourteen and under, with special interest given to the very young; those under ten. While there is some discussion of the many children who kill family members, the article will concentrate on children who kill acquaintances or strangers. There are three reasons for these choices. Firstly, it seems easier to accept that a youth of fifteen or older could commit murder, whereas a younger child's motivation is more perplexing. Second, one can probably appreciate the reason behind a son shooting his abusive father, whilst being baffled by a motiveless murderous attack on another child. Finally, it is questionable whether a child really has the developed understanding of a crime to warrant a charge which essentially requires intent.

Situations that will not be covered include infanticide committed by a young mother as the motive behind this crime is often evident. A thirteen year old girl too scared and immature to get help or to bring up the baby might understandably rid herself of the problem in the hope of moving on with her life. Similarly, homicides caused by firearms, be they accidental or impulsive, need considerably less explanation, owing to the ease with which these weapons are used and their

prevalence in many households.⁷ Nor will this article delve deeply into the increasing incidence of drug or gang-related killings in countries like the United States and Great Britain. All are in some way explicable and thus, in the public's mind, not especially remarkable.

Rather it is the cold-blooded, "senseless" murders committed by young children, often with disturbed childhoods, which fascinate the public and generally cause an uproar. Take, for example, the twelve year old girl who deliberately drowned an eight year old; holding the child's head under the water in a swimming pool while allegedly watching the clock.⁸ It is such seemingly inexplicable crimes, the offenders and their victims, which need analysis with a view to understanding and appropriately treating the young perpetrator.

In February 1993, in Liverpool, England, two ten year old boys kidnapped and brutally murdered a two year old. The crime shocked the country and much of the world, and as a result the murder of James Bulger is generally the first case which comes to people's minds when one mentions "juvenile homicide". This case will be used as the main case-study throughout this article. Much was written about the crime in its aftermath and, whilst many spectators hypothesised about the reasons for the killing, few conclusions were reached. This article will endeavour to present a comprehensive view of what could have caused the young perpetrators to behave as they did. The punishment given to the two boys will be scrutinised and it will be argued that it is unjust to subject such young offenders to a mandatory indeterminate custodial sentence. This is particularly so when their eventual release is likely to be a matter of political interest and concern.

II: JUVENILE HOMICIDE

Although it could be argued that most have the potential, obviously not every child becomes a killer. Most are brought up to value life so that they would never, upon a whim or impulse, fulfil this dreadful potential. Nevertheless, there are patterns amongst children who kill, and several studies have proved helpful in identifying common factors.

1. Who Kills?

The general consensus is that juvenile homicide is very rare, although boys are more likely to commit murder than girls.⁹ In many of the countries where data is collected the term "juvenile" encompasses youths aged up to eighteen -

7 Supra at note 1, at 172.

8 Ibid, 114.

9 Ibid, 6.

United States statistics for 1988 state that around 85 percent of juvenile killers were aged over fifteen to eighteen.¹⁰ This leaves only a small percentage in the under fourteen age group, and an even smaller one in the case of the very young. This lends support to the premise that the older a child is, the more likely he is to kill.¹¹ It is easy to see how society can view these rare, but highly publicised, instances of juvenile homicide as so horrific and incomprehensible.

2. How Do They Kill?

Most juveniles commit murder, whether intentionally or accidentally, using firearms, knives or their bare hands.¹² This is understandable considering the increasing prevalence of guns in households, particularly in the United States, and the extent to which this kind of violence is seen on television. Some research suggests a significant correlation between the weapon and the relationship with the victim. The use of a knife often indicates a more personal relationship with the victim. Of 72 adolescents charged with first or second degree murder in Michigan in 1987, familiar individuals were most often killed with a knife whereas strangers were murdered without any weapon.¹³

Firearms make up a large category of juvenile killings, whether because the gun is fired accidentally during play or because the offender impulsively shoots in a fit of rage. This is undoubtedly because a firearm is easy to use. Gang-related killings by youths also frequently result from gun-play. Although this type of murder will not be considered in detail, the recent outbreak of teenage "assassins" in the United States warrants some consideration. There seems to be a pattern emerging: an unpopular or disgruntled youth seeks attention, revenge, or both, and fulfils this desire in the most extreme way possible, indisputably achieving both ends. This also reinforces the theory that a killer is removed from the consequences of his or her actions by using a gun. Thus, the murderer is less likely to be as immediately affected by the criminal behaviour.

There is also an interesting propensity for young children to kill by either choking their victim or by repeatedly striking the victim's head with a rock or other heavy object. Cases show curious parallels in the ways in which children kill: a five year old boy choked his new baby sister to death because he was "bothered by her crying";¹⁴ Mary Bell choked her two young victims, and had reportedly tried to choke other children previously;¹⁵ thirteen year old Eric Smith choked his victim and fractured the child's head with a rock.¹⁶ Reports of children who kill infants show a tendency to beat or hit the baby. A 1972 article

10 Ibid, 5.

11 Ibid, 116.

12 Ibid, 11.

13 Supra at note 6, at 360.

14 Supra at note 1, at 119.

15 Jones, *Murderous Innocents* (London: Headline Book Publishing, 1994) 16.

16 Supra at note 5.

entitled “The Battering Child” established the existence of a pattern in which young children or infants are killed as a result of head trauma.¹⁷ The young killers of James Bulger bombarded the victim with bricks and stones, eventually piling bricks on his face as he lay dead on the railway track.¹⁸

There is also research which looks at how children kill - whether children act alone or in groups. Whilst adult offenders may work alone,¹⁹ many homicides by youths are committed by multiple perpetrators,²⁰ and it is easy to see how this might occur. The peer pressure element of gangs or groups of young people may often cause acts of violence to escalate, resulting in the victim’s ultimate death. This seems particularly the case in most youth sexual homicides. Again, there is evidence to indicate that the relationship between the victim and offender or offenders is relevant to the number of perpetrators. If the killer is related to the victim, he or she will probably act alone, but if the victim is an acquaintance or stranger there may be more than one offender acting together.²¹ Obviously this is a generalisation, but many cases will fit this stereotype. The Bulger case is a good example: two young killers encourage one another with suggestions such as “Let’s get a kid, I haven’t hit one for ages”,²² and “Chuck a brick at him”,²³ yet each blaming the other when interrogated by the police.²⁴

3. Who Do They Kill?

“Pre-teens who kill within the family are most likely to kill siblings; usually younger, especially infants and toddlers.”²⁵ When very young children kill, the victim is usually a younger child, which is understandable given the offender’s own size. Babies are perhaps the most tragic victims owing to their special vulnerabilities, including the fragility of the infant’s head.²⁶ However, according to one expert, fewer than 20 percent of victims of juvenile homicide are members of the immediate family.²⁷ This may perhaps be explained by the fact that girls are less likely to kill than boys and, whilst boys are more likely to kill acquaintances or strangers,²⁸ those girls who do kill almost always kill family members or acquaintances.

17 Supra at note 1, at 123.

18 Supra at note 15, at 6.

19 Ibid, 45.

20 Ibid, 12.

21 Ibid, 21. Many youth “sexual homicides” result from other crimes, as discussed *infra* at Part III.

22 Morrison, “Murderous Innocence”, *Guardian Weekly* (United Kingdom) 1 February 1997, 14.

23 Supra at note 15, at 6.

24 Thomas, *Every Mother's Nightmare* (London: Pan Macmillan, 1993) 244.

25 Ibid, 119.

26 Ibid, 123.

27 Ibid, 18.

28 Supra at note 1, at 7.

There are several recognised categories of juvenile murder which shed light on the profiles of victims involved. For the purposes of this article, these can be loosely divided into acquaintance and stranger murders, within which there are subsets pertaining to the circumstances of the particular crime. A closer study of these categories illuminates some of the reasons for the occurrence of the crime itself. There may be various motivations behind the murder or manslaughter of an acquaintance. Ewing proposes that it is most commonly related to some immediate interpersonal conflict, in which case the crime may simply be impulsive, or occur in connection with the commission of some other crime, for example burglary or rape.²⁹ Strangers may also be killed during the commission of another crime, as above, but often there is no prior offence and no apparent motive for the killing.³⁰ There are different sub-categories which cover both types of homicide:

(a) Unintentional Theft-Related Homicide

It is not inevitable that a robbery victim will subsequently be killed but in the case of a juvenile offender, there are reasons why it may occur. Usually the perpetrator sets out merely to steal but when the “plan” goes awry, he or she panics and overreacts. Twelve-year old James McClure entered the home of his elderly neighbour with the intention of robbing the man, but when unexpectedly confronted by him, the boy pulled a kitchen knife from his pocket and stabbed him fatally in the chest.³¹ Cases involving the use of a firearm to intimidate the victim often result in an accidental shooting, whilst the accidental overuse of physical force can also result in homicide,³² particularly if the offender misjudges the force needed to subdue a young, frail or elderly victim.

(b) Intentional Theft-Related Homicide

This category involves more brutal implications because the killing is simply gratuitous, occurring after the theft has been successfully accomplished. There are said to be three motivations:³³ sexual impulses; substance abuse; and peer influence during joint commission of the crime. With sexual impulses, a perpetrator may set out to rob or burglarise, and be confronted by a vulnerable, usually female, victim, whom he rapes and then kills to avoid being identified. This is more often the case with perpetrators who are older juveniles, or a child who is a member of an older gang. There are often two or more offenders, although occasionally just one. Substance abuse, because it alters the offender’s

29 Ibid, 13.

30 Ibid.

31 Supra at note 1, at 38.

32 Ibid.

33 Ibid, 39.

perception of the incident, may result in the commission of a homicide in an impulsive or panicked manner, similar to the unintentional theft-related cases. Finally, a group of killers will tend to encourage each others' participation in a crime:³⁴

In at least some of these cases, it seems clear that one juvenile's violence feeds upon - or is somehow stimulated by - that of the other youth until the attack escalates to the point of atrocity.

(c) *Sexual Homicide*

This category is not generally relevant to those aged fourteen and under. While it is apparent that many murders committed by even very young children have a sexual element, seldom is it the prevailing reason, although young offenders may well be involved in such crimes with other older perpetrators. The sexual factor, as a component rather than a motive, will be discussed in due course.

(d) *"Senseless" Killings*

The term "senseless" is not intended to imply that murder in the other categories makes sense, but rather that there are at least some homicides which have no apparent motive or explanation. Nevertheless, even supposedly "crazy" killings have some genesis, even if it is simply to be found through an examination of the young murderer. It is often presumed in these cases that the perpetrator must be crazy or psychotic, but this is seldom the case:³⁵

[M]any senseless, even brutal and bizarre, killings are committed by relatively normal juveniles acting on impulse Some of these youths are disturbed, some even appear to be sociopathic, but very few are psychotic, or even show signs of gross psychological or psychiatric disturbance.

In these cases, the victim may be either a stranger or an acquaintance, but is invariably in the wrong place at the wrong time. Thompson and Venables, the murderers of James Bulger, set out that day to "get a kid lost outside so when he goes in the road he'll get knocked over".³⁶ They had allegedly tried to abduct another child before they succeeded with James.³⁷ Although young James was technically a stranger to the boys, his relative passivity and initial willingness to go along with them gave him something of the mentality of a trusting acquaintance rather than a stranger. In any event, because it is doubtful whether

34 Ibid, 45.

35 Ibid, 65.

36 Supra at note 22.

37 Holden and Grant, "Two Boys and a Murder", *New Zealand Listener*, 18 December 1993, 35.

some young perpetrators have sufficient intent to commit murder, it is correspondingly unlikely that they plan a crime against a particular victim. Usually the crime is impulsive and the choice of victim opportunistic. Indeed, Ewing describes a combination of forces including “immaturity, impulsivity and infantile rage”.³⁸ A disturbed young person may suddenly feel a need to release his or her inner tension, and will vent it on whichever vulnerable victim is present at the time.

III: WHY CHILDREN KILL

What causes certain children to kill? What possesses someone so young and supposedly innocent to commit an act of “unparalleled evil and barbarity”.³⁹ It is often presumed that a child killer must be a “monster” or “born bad”, and is, therefore, psychotic or mentally ill. This, however, is too simplistic an analysis. Most offenders of this class are not strictly mentally ill, but some may suffer from a form of personality disorder, which is defined in the Diagnostic and Statistical Manual of the American Psychiatric Association [DSM III R]⁴⁰ as a host of maladaptive “patterns of perceiving, relating to, and thinking about the environment and oneself”.⁴¹ Nor are such children necessarily intellectually slow or retarded, although many exhibit learning difficulties and academic problems.⁴² While some studies have found relevant indications of head injury, many children showed no apparent neurological impairment.⁴³ Children who kill cannot simply be dismissed by maintaining that they are merely monsters from birth.

1. The Family Unit and Childhood in the Home Environment

There are several factors within a child’s upbringing which serve as likely indicators of the emotional instability that prompts that child to kill, in particular, violence surrounding the child and a lack of financial security, which usually affects the whole family. A parent may be directly responsible for the homicidal act. Ewing gives two examples: the case of a battered wife who incited her eight year old son to shoot and kill her abusive husband by repeatedly expressing her wish that the man die; and the mother of a fifteen year old boy

38 Supra at note 1, at 123.

39 Supra at note 15, at 6. These were the words of the trial judge in the Bulger case.

40 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, (3rd ed, 1987) cited supra at note 1.

41 Ibid, 8.

42 Lewis, Pincus, Bard, Richardson, Pritchep, Feldman, and Yeager, “Neuropsychiatric, psychoeducational and family characteristics of 14 juveniles condemned to death in the United States” (1988) 145 Am J Psychiatry 585.

43 Ibid. See also Bender, “Children and Adolescents Who Have Killed”, (1959) 116 Am J Psychiatry.

who was ultimately held responsible for the killing of her abusive husband. She reportedly handed her son a pistol saying “I know you’re big enough to protect me now”.⁴⁴ There are also cases where the youngster acts out the parent’s unconscious desire. Each of these reasons has tragic consequences for the young offender.

(a) The Broken Family and Family Violence

One important theme amongst child murderers is the broken family, and the absence of a parent may have profound repercussions for the child. This was seen in the case of England’s infamous Mary Bell who, at age eleven, killed two boys aged three and four with her bare hands. From a young age Mary’s family had been frequently abandoned by her mother. The effects of this were apparent when Mary said of one of her victims “Brian Howe had no mother so he won’t be missed.”⁴⁵ Also, there is often evidence of “absent, distant or passive”⁴⁶ fathers in the family history of young killers. “[P]arents of adolescent murderers have been noted to be psychologically impaired, oppressive, violent, and/or neglectful”.⁴⁷ In the Bulger case, both Thompson and Venables’ mothers were allegedly depressed and suicidal.⁴⁸

One of the most consistent findings among youngsters who murder, particularly amongst those who kill family members, is that they have either witnessed or been a direct victim of domestic violence.⁴⁹ Studies have found that “children witness approximately 80 percent of parental physical assaults”.⁵⁰ Whenever a child kills a family member, particularly a parent, the reason is often related to a desire for revenge, or to escape from actual or perceived violence at the parent’s hands.⁵¹ This violence may be directed at the young murderer or another family member whom the child acts to protect. This is evident in the case of the three year old who watched his drunken father beat up his mother, then reached for the father’s loaded gun and shot the man dead. “Exposure to anger causes negative emotional reactions in children - even when they are not directly involved in the conflict”.⁵²

Less obvious, but equally numerous, are the cases where a child subjects another to extreme violence resulting in death, repeating behaviour that occurs in the home. Where one or both parents is disturbed (either alcoholic or mentally ill), neglectful or abusive towards the child or other family members, the child

44 Supra at note 1, at 20.

45 Supra at note 15, at 30.

46 Supra at note 6, at 356.

47 Ibid, 355.

48 Supra at note 22, at 15.

49 Supra at note 1, at 9.

50 Supra at note 6, at 359.

51 Supra at note 1, at 13.

52 Supra at note 6, at 359.

learns from what he or she sees and experiences. This seems to be true in the case of Robert Thompson who killed James Bulger. Robert was the fifth of seven sons whose father left when he was six. The mother was apparently drunk and neglectful, and the oldest son would take charge by hitting the younger boys whenever they misbehaved.⁵³ By the time of the murder, four of the brothers were in care, one voluntarily. It seems “[t]he violence percolated down”,⁵⁴ with Robert in turn passing on this inter-familial bullying by forcing his younger brother to play truant. “The implications of continued exposure to family strife may be a key to unravelling adolescent psychopathology and homicidal acts.”⁵⁵

Violence directed at the young potential killer is not just physical but can also be sexual or emotional. Unsurprisingly, “children often evince significant adjustment problems when they are victims of abuse or neglect”.⁵⁶ Podolsky reasons that “children who commit murder describe their antisocial behaviour in terms of doing to someone else what they feel has been done to them.”⁵⁷

(b) Low Socio-Economic Status

Although stereotypical, there is still considerable truth to the assertion that lower socio-economic environments often generate juvenile, and other, crime. There will always be middle and upper class children who kill, particularly as family violence and bullying know no economic boundaries. In poor communities, however, such as those from which Thompson, Venables and Bell came, there is a greater prevalence of violent crime.

Poor education, lack of familial support and an inadequate parental stance on morals and values will all contribute to the way a child perceives his or her environment and its expectations. Concerns about financial hardship may mean that parenting skills are not developed. Farrington notes such “critical family factors ... as poor child rearing, criminal behaviour in parents and poor supervision by parents” can have a crucial influence upon a child’s behaviour.⁵⁸ Groups of youths with no better form of entertainment may begin with graffiti and petty theft, and progress to violent crimes. Whilst their community often expresses its disapproval, it has neither sufficient resources nor sufficient voice with which to affect change. Busch and others conclude that low socio-economic status is one of four common social factors in juvenile homicide, reinforcing research undertaken since 1940.⁵⁹ Clearly not all people in such circumstances commit crimes, just as not all the children are delinquent. “The mere presence of

53 *Supra* at note 24, at 37.

54 *Supra* at note 22, at 15.

55 *Supra* at note 6, at 355.

56 *Ibid*, 359.

57 Podolsky, “Children who kill” (1965) *General Practitioner* 5, 100.

58 As cited by Crespi and Rigazio-DiGilio, *supra* at note 6, at 355.

59 Busch, Zagar, Hughes, Arbit and Bussell, “Adolescents who kill” (1990) 4 *Journal of Clinical Psychiatry* 473.

specific family factors in adolescent killers does not imply a predictive relationship.”⁶⁰ Nevertheless, there is significant commonality amongst many juvenile criminals. As Morrison asks: “What effect does it have to grow up in such a place where the one thing promised you is failure?”⁶¹

(c) Direct Influence

As mentioned above, some children have killed a parent or family member out of desire to protect another. As noted earlier, the child may be interpreting the unspoken wishes of the parent or the influence may be more direct.⁶² Although those cases where the violence is intended to protect another are unusual, it is easier to explain the offender’s actions considering his or her perceived “good intentions” and the relative lack of gratuitous intent. Suffice to say these incidents usually result in the parent being charged with the murder even though the child was directly responsible for the crime.⁶³

2. Antisocial Behaviour and the Triad

In attempts to predict homicidal children, some studies have concluded that many, if not most, offenders have exhibited some form of “deviant” conduct prior to committing murder. This is usually mild antisocial behaviour such as substance abuse, truancy, running away from home and problems with their peers.⁶⁴ More serious conduct may bring the child to the attention of his or her teachers, the community and the authorities. This type of conduct includes “violent temper tantrums ... attacks on other children, biting or smashing things”.⁶⁵ Often the young offender’s neighbours and extended community describe instances of the child’s unruly behaviour. Jon Venables’ teacher kept a record of his extremely antisocial behaviour, notably an incident in which he held a 12 inch ruler to the throat of another pupil “throttling him before having to be dragged off”.⁶⁶ This reinforces the point that some juvenile killers attempt murderous attacks on occasions prior to actually committing homicide.

Ewing notes that “overall, the research suggests that kids who kill strangers are more likely to have histories of antisocial behaviour than those who kill family members and acquaintances.”⁶⁷ This behaviour can occur throughout childhood, culminating in homicide much later in life, as in the case of a youth

60 Supra at note 6, at 358.

61 Supra at note 22, at 14.

62 Supra at note 1, at 21.

63 Ibid.

64 Supra at note 1, at 9.

65 Supra at note 57, at 100.

66 Supra at note 22, at 15.

67 Supra at note 1, at 10.

who raped and stabbed a woman to death. His history was telling: at two he had choked a bird; at four he threw a dog out of a window; later he broke his sibling's arm; at sixteen he assaulted and raped a girl.⁶⁸ This extremely disturbing early behaviour seems, with hindsight, a highly reliable predictor of what was to come. In addition to the antisocial behaviour indicator is the so-called "triad" of enuresis (or bed-wetting), fire-setting and cruelty to animals.⁶⁹ These three factors frequently appear together in children who later commit violent acts on people.

Early studies have agreed that there is often a correlation between persistent bed-wetting and juvenile delinquency. One commentator believed that the bed-wetting was "probably associated with a high degree of irritability, explosiveness, impulsiveness and lack of inhibition which permeates the entire personality".⁷⁰ Notably, Mary Bell was concerned she might wet the bed in prison the night before her appearance in Court.⁷¹

Many murderous children begin by torturing and killing animals. Sally Carr, who was twelve when she brutally and sadistically killed an eighteen-year old girl, had previously decapitated the neighbour's dog and allegedly fried live hamsters.⁷² Pyromania is also frequently reported in juvenile killers, including those for whom fire is the cause of death. Eric Smith's pre-homicidal behaviour demonstrated all three triad symptoms.⁷³ It is fascinating that such child-like conduct as bed-wetting, and the curiosity which accompanies pyromania and animal cruelty, appears repeatedly in cases of child murderers, who are inadvertently fitting a stereotype.

3. Television Violence, Videos and Films

Communities are conditioned to find blame everywhere but in themselves. Thus whenever a child commits an inexplicably heinous act, the public cries out for a scapegoat. Most of society settles for blaming the parents of the killer; more pragmatic community members may recognise that their wider environment is as much to blame. Today there is inevitably an outcry directed at "entertainment", if it may be called that: television programmes and videos which portray violence in such a shocking, yet acceptable, manner that young peoples' minds may well be influenced by it.

This appeared to be the case in the Bulger murder. One of the boys, Jon

68 Lewis, Moy, Jackson, Aaronson, Restifo, Serra and Simos, "Biopsychosocial Characteristics of Children who Later Murder" (1985) 10 *Am J Psychiatry* 1163; also Sendi and Blomgren, "A Comparative Study of Predictive Criteria in the Predisposition of Homicidal Adolescents" (1975) 4 *Am J Psychiatry* 424.

69 *Supra* at note 1, at 10.

70 *Supra* at note 57, at 99.

71 *Supra* at note 15, at 24.

72 "A natural born killer", *Sunday Star Times*, 6 April 1997, section C7.

73 *Supra* at note 5.

Venables, had recently seen *Child's Play 3*, a horror film about murderous doll.⁷⁴ Apparently he had also seen *Hallowe'en* and had done a drawing of the film which was taken to indicate how the film had affected his perceptions.⁷⁵

This "film-culpability" concept was raised in a New Zealand case by the relative of a youth convicted of the murder of an Auckland dairy owner. The group of three youths had planned to rob the dairy at closing time, render the owner unconscious with a baseball bat and flee. Unfortunately their "plan" went awry and they ultimately beat the man to death. The relative was quoted as saying, "I blame TV - they see people get knocked down and then get up again. They don't know enough to know what can happen."⁷⁶

There may be some validity in such claims. The behaviour depicted in films is frequently unrealistic, with characters withstanding immense violence before serious injury is evident. A child might indeed believe that he or she could inflict severe violence and not kill. Perhaps of greater concern is the level of violence in cartoons which are specifically made for children. Roadrunner is constantly evading Coyote who suffers remarkable head injury and physical trauma in every episode, yet always survives for the next. In other cartoons animated birds and mice are eaten whole and still manage to walk out of their captor's mouth in triumph. Violence and cruelty are not only portrayed, but are portrayed unrealistically. Yet this type of entertainment is often uncritically condoned by society as suitable for children.

The argument that children imitate this violence, however, apparently always fails on one salient point: many people watch this same level of television violence and yet do not commit murder or, indeed, any other violent crime. In the same way that not all abused children grow up to abuse, neither do all products of violent or unhappy homes act out their rage on others. Whilst it may be fair to say that this entertainment might add to a suggestible child's influences, the desire to imitate this behaviour cannot be the definitive, nor even the predominant, reason for the behaviour.

4. Children and Curiosity

One factor which seems to have been overlooked in favour of psychological hypothesising and "knee-jerk" reactions is that young children are naturally curious. Those of us honest enough to look deep inside ourselves may acknowledge that many of us could have committed a violent act against another child had it not been for some overriding element in either our own personality or wider socialisation. There may be fear of punishment, a greater value placed on human life or simply a more developed understanding of harm.

Coupled with the theory that we are all inherently capable of inflicting

74 Supra at note 22, at 16.

75 Ibid.

76 Legat, "Murder Continued", *Metro*, October 1994, 68.

physical harm on others is the fact that children are often capable of being both physically and emotionally cruel. Thus it is not surprising that a child could lure a toddler away from his mother merely out of curiosity about his or her new power over the more vulnerable human. It is the writer's view that such curiosity in part motivated Thompson and Venables to kidnap James Bulger. One of the boys maintained that the other had suggested they get a child lost on the road so it would get run over.⁷⁷ This may derive from a perverse, though perhaps unsurprising, interest in the result of such an accident. Having killed James, they laid his corpse across a railway track. Although it has been claimed they did this to make his death look like an accident,⁷⁸ it could also indicate other morbid interests. Curiosity is supposedly a natural part of growing up, until it goes this far.

It is not just pain which may be inflicted; sexual experimentation can occur through curiosity. When viewed in the context of the many taboos surrounding sex, it is perhaps not unnatural that many young murderers include sex-play, or attempts at it, in the eventual homicide. Depending on the child's experience of sex, whether he or she has been abused or simply has no experience, the child may "act out" on the live victim or experiment with the corpse.

This element of many murders of children by children is what repulses the public and creates the notion of a "monster", yet research has shown that pre-adolescents aged seven to eleven account for the second largest group of sexual abusers against children.⁷⁹ It also causes the offender to be alienated from community concern. The community does not want to believe a child could be capable of such actions, and therefore the child may be spurned and renounced. Having killed four year old Derek Roby, Eric Smith sodomised him with a stick.⁸⁰ This fact no doubt increased the antipathy towards him at trial, and would probably have been a contributing factor in his parents' decision to move from the area. The same research states, however, that there need not necessarily be direct evidence of the assault. In the Bulger case, speculation about sexual assault arose as it appeared that James' trousers had been removed at some stage.⁸¹

In this respect, a child may sexually assault the victim with no intention initially of causing harm resulting in death. However, as soon as the victim becomes difficult to control - crying, trying to get away, calling for mummy - the offender panics and realises he or she has gone too far. Then the decision arises of either leaving the victim alive (and suffering the consequences) or killing the victim and trying to make it appear accidental. Anne Burgess explains: "[t]he murder sometimes occurs to silence the victim."⁸² Alternatively,

77 *Supra* at note 22, at 14.

78 *Ibid*, 16.

79 *Supra* at note 24, at 174.

80 *Supra* at note 5.

81 *Supra* at note 22, at 16.

82 *Ibid*, 177.

the child victim has simply exhausted any perceived use or interest value. Commenting on the Bulger case, Morrison contended:⁸³

The mischief of the abduction had turned sour. The kid was a pain, and - like young parents exhausted by a crying baby - the boys felt aggressive towards him.

IV: PIECING IT TOGETHER

The crucial question is how these factors combine to prompt a child to commit such a crime. Experts have searched for decades for the answer. Podolsky maintains that a "certain combination of environmental factors is required",⁸⁴ while Lewis and others write about family violence as a precipitator, from which one can "view much of the adolescent's assaultative and homicidal behaviour as an attempt to master the trauma he has experienced by controlling and victimising others".⁸⁵ This certainly reflects the nature of the Bulger murder. Both offenders had troubled backgrounds, Thompson in particular, and both seemed to need to vent their rage at the hopelessness of their situations on an innocent and vulnerable victim. "James became a surrogate for their loathing of their siblings."⁸⁶

Similarly, Eric Smith spoke of having uncontrollable rages, brought on at least in part by the cruel treatment he suffered at the hands of his older sister and his school peers. Mercilessly bullied every day at school, Eric's reaction was to kill a much younger child whom he hardly knew.⁸⁷ As already noted, a child may be susceptible to a kind of "infantile rage" which, if the child is brought up to view violence as a viable answer, will manifest itself in the commission of extreme harm against another.

Podolsky considers that "the child must be extremely impulsive and have poor inhibitory control of his aggressions".⁸⁸ He claims that "the impulse-ridden character disorder is often soil in which murder may flourish".⁸⁹ A child with a traumatic background may experience extreme anxiety and, to lessen this, begin to "act out".⁹⁰ The effects of childhood bullying are also traumatic. In 1987 an overweight and often teased twelve year old took his father's gun to school. Whilst threatening his class with it, another child made the mistake of teasing him that the gun was plastic. The boy promptly shot him and then turned the

83 *Supra* at note 22, at 14.

84 *Supra* at note 56, at 98.

85 *Supra* at note 68, at 1162.

86 *Supra* at note 22, at 18.

87 *Supra* at note 5.

88 *Supra* at note 56, at 98.

89 *Ibid.*

90 *Ibid.*, 101.

gun on himself. He had previously warned another classmate not to come to school as he was going to “shoot everyone”.⁹¹

It must always be stressed that not all children who are bullied or unloved will grow up to be murderers, and experiences of violence alone are not enough. It is claimed that there must be “an inherited predisposition to maladaptive antisocial behaviour” such as psychosis or neurological dysfunction, which, in the context of a violent household, manifests itself in uncontrolled violence.⁹² Therefore, the underlying physiological nature of the homicidal child, coupled with an abusive upbringing may, as with adults, result in murder. When you add to this an immature and impulsive disposition, the behaviour of children such as Thompson and Venables seems more explicable: “they were scared of getting into trouble, and silencing James looked like the best way around it”.⁹³

V: CULPABILITY AND DETERMINATION OF GUILT

In the United States, each jurisdiction has a different threshold for holding a child accountable for his or her actions, based on age and the type of crime. Some States have the option of prosecuting a child as young as ten as either a child or an adult, subject to the discretion of the district attorney.⁹⁴ In 1978, the State of New York enacted the Juvenile Offender Law which provides that a youth aged thirteen, fourteen or fifteen if charged with murder, or fourteen or fifteen if charged with some other violent felony, may be tried as an adult in a criminal court and, if convicted, subjected to lengthy imprisonment. Previously, an offender aged under sixteen would have been dealt with in the Family Court and, if found guilty, sent to a State reform school for no more than five years.⁹⁵

When, in 1993, thirteen year old Eric Smith killed a four year old boy, his parents naturally hoped he would be tried as a child. Instead, Eric was charged and convicted as an adult of second degree murder by a jury who believed he should be punished as a murderer and not, as the defence had contended, a psychiatric patient.⁹⁶ Although fourteen by the time of trial, Eric may have been little better equipped to understand the proceedings than the two eleven year olds who went on trial for James Bulger’s murder in Liverpool later that year. It seems ironic that, whilst the dock had to be specially raised so the two young boys could see, they too were tried as adults.⁹⁷ In the aftermath of their trial, there was concern about the boys being too young for the adult judicial system,

91 *Supra* at note 1, at 124.

92 *Supra* at note 68, at 1166.

93 *Supra* at note 22, at 18.

94 *Supra* at note 1, at 140.

95 *Ibid*, 138.

96 *Supra* at note 5.

97 *Supra* at note 22, at 12.

and there was criticism of the way in which the case was handled in this respect. Apart from general questions of accountability, the boys' fair trial rights were also queried. Had they understood the trial proceedings? Had they been able to convey instructions to their lawyers? Why had they not had a lawyer present during the initial police questioning? Was it fair that the judge revealed their identities at the conclusion of the case? If the answers to these questions are ultimately "No", then how could the law justify treating the boys as adults in an adult system?

1. Elements Required For a Murder Charge Against a Juvenile

(a) *Doli Incapax*

In England and Wales, the age of criminal responsibility is ten years of age,⁹⁸ so children under ten may escape prosecution as they are too young to be held accountable for their actions. A child is defined as a youth aged ten to fourteen years old, and a young person is anyone fourteen to eighteen years old. There is no defence of youth, so a child aged ten or older cannot avoid a criminal trial, but until age fourteen he or she has the limited protection of *doli incapax*, that is, a presumption that the child is incapable of doing wrong or appreciating or understanding the seriousness of his or her actions. In order to convict, the prosecution has to rebut this presumption. Having established that the child committed the offence, the prosecution must prove that he or she would have known that the actions were seriously wrong and not merely mischievous or naughty. The younger the child, the stronger the presumption of *doli incapax*. At the trial of Thompson and Venables, in order to rebut the presumption the prosecution asked four pertinent questions. On the day of the killing, did they know the difference between right and wrong? Would they have known that taking a child away from its mother was wrong? Did they know that causing injury to a child was wrong? Did they realise that leaving an injured child on a railway line was also wrong? For each the answer was Yes.⁹⁹

In New Zealand, s 21 of the Crimes Act 1961 prevents a child under ten from being convicted of an offence. Section 22(1) deals with children aged ten to fourteen and provides:

No person shall be convicted of an offence by reason of any act done or omitted by him when of the age of ten but under the age of fourteen years, unless he knew either that the act or omission was wrong or that it was contrary to law.

Adams states that the practical importance of this section is qualified by a provision in the Children, Young Persons and Their Families Act 1989 which

⁹⁸ In Scotland the age of responsibility is eight.

⁹⁹ *Supra* at note 22, at 14.

prevents the criminal prosecution of a child aged under fourteen except in the cases of murder and manslaughter.¹⁰⁰ Notwithstanding this point, s 22 makes clear that the same rebuttable presumption of *doli incapax* applies in New Zealand, with the slight difference that the child is culpable if aware his or her actions were wrong or contrary to law. Thus, were a child in New Zealand to commit homicide, prosecution could still occur. Section 274 of this Act deals with such instances of juvenile homicide. The young person is subject to proceedings in the Youth Court which has all the powers of the District Court.

In *R v Brooks*,¹⁰¹ decided under the Crimes Act 1908, a thirteen year old boy, who had shot and killed his mother and younger brother, put forward a defence of incapacity or irresponsibility. Section 41 of that Act provided for an absolute presumption that a child under seven years could not be criminally responsible, and s 42 stated that children aged seven to fourteen had the benefit of a rebuttable presumption, the onus being on the Crown to prove that the child knew that the act or omission was wrong. The current principle is still the same except for the increase in the age of responsibility to ten years.

2. Critique of the Current Test

There are two concerns arising out of this test for culpability of children. Firstly, it is a broader and thus harsher test than the adult equivalent of murder as defined in s 167 of the Crimes Act 1961. Secondly, it seems to ignore the inherent naiveté of children and their lack of ability to foresee harm and its far-reaching consequences. In particular, to be able to recognise his or her actions as wrong, the second limb of the test presumes that a child knows something about the law. Whilst this is a doubtful premise in the case of any juvenile offender, in the case of a very young child, for example four or five years old, this presumption is simply unrealistic.

(a) Section 167 Murder: The Adult Test For Murder

This section provides that culpable homicide by an adult is murder in any of four cases. The relevant two cases are if the offender:

- (i) means to cause the death of the person; or
- (ii) means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death and is reckless whether death ensues or not.

This appears to be a narrower test than that used for children. To meet that

100 Children, Young Persons, and Their Families Act 1989, section 272(1), discussed in Robertson (ed), *Adams on Criminal Law* (Brookers: Auckland, 1996).

101 [1945] NZLR 584 (CA).

test, a child need only know that his or her action is wrong, whereas an adult, although knowing the action to be wrong, must further realise that the act could cause death. It is thus easier for a child to be prosecuted for murder, yet it is generally accepted that an adult has a greater awareness of socially acceptable behaviour and norms, as well as a more sophisticated understanding of foreseeability of harm. How can a child be expected to know an assault may result in death if an adult in a similar situation would not? The two tests involve markedly different standards and the juvenile standard would appear to be considerably easier for the prosecution to satisfy. In the Bulger case, the offenders were held to this higher standard of knowledge, with no reference being made to any actual knowledge on their part or expectation that death would result from their actions.

(b) Immaturity and Inability to Foresee Harm and Consequences

It is possible that legislators intended to establish the basic test in language with which a child would be familiar; if the child knows his or her actions were wrong, he or she is culpable. Nevertheless, the punishment which results can often outweigh the child's understanding of the situation, which may be limited at best. What kind of "wrong" does the child understand? What is "against the law"? Is it just "naughty" or "seriously criminal"? Does it mean "a policeman will tell me off" or that "I may go to prison for a long time"?

Having little insight into the potential harms and consequences of their conduct, children often do things they regret later. Defence barrister Marie Dhyrberg has been quoted as saying that "[m]ost young offenders don't appreciate their freedom - don't understand the risk they run of having it taken away for ten or twelve years."¹⁰² This could equally be said for the consequences of their behaviour; young children in particular have a limited concept of death and its finality, and may not comprehend the damage they do. A child's psychological and social growth continues through childhood and well into teenage years, so the prosecution as an adult of a child as young as eleven seems to contradict common sense.

The United Kingdom Justice Society Report on *Children and Homicide* (1996) describes the changes which occur throughout adolescence:¹⁰³

(i) Childhood: As mental capacity increases, (ability to remember events; recall the timing of happenings; understand interrogation) so the child's susceptibility to adult suggestiveness and influence decreases. A child's ability to express guilt also increases with age. A young child may be aware he or she has done wrong but tends to be more governed by a fear of

¹⁰² Supra at note 75.

¹⁰³ Report of the Justice Society, *Children and Homicide: appropriate procedures for juveniles in murder and manslaughter cases*. (London, 1996) 13 (emphasis added).

punishment after detection.

(ii) *Early Adolescence*: A child's thinking is more abstract and multi-dimensional; he or she is increasingly self-reflective and self-aware. The child has a better understanding of relative concepts, can hold several dimensions of a topic in his or her mind at one time, and thus generates more alternatives in decision-making. The older child feels guilt based on internal justice principles and has concern for his or her victim.

(iii) *Teenage Years*: There is continuing brain development well into the teenage years. Greater intellectual sophistication comes with related developments in how the young person thinks about him or herself. There is increased emotional introspection, a greater tendency to look back with regret and forward with apprehension and to consider long-term consequences of actions. There is a greater regard for his or her own sense of responsibility and a better awareness of the effects of actions on others. Obviously this is also the time of puberty and its associated hormonal changes which have implications for behaviour and feelings.

The Report concludes that a child's capacity to have criminal intent in the adult sense is consequently limited.¹⁰⁴ How, therefore, can the law justify judging a child so unrealistically? Once questioned by parents and the authorities, a child will begin to realise the enormity of the crime, as evidenced by the disgust and despair of adults. It is natural, then, that he or she will recognise the wrong in such conduct, and pass the test, albeit after the fact. Yet is the distinction between realising the seriousness of the situation at the police station and realising the act was wrong at the time of commission noted in the mind of the interrogator? Alternatively, the child may admit that at the time of commission he or she knew that the act was wrong. In either case, this does not sufficiently suggest that the child intended to cause death, or that, knowing his or her actions were likely to cause death, carried on regardless, which is the apparently narrower test for adults. It is easy to see that violence committed against a weaker child may spiral out of control and result in death, yet the perpetrator may not necessarily have appreciated that this would happen, nor have intended that it should. Morrison asks:¹⁰⁵

Do [children] grasp that badly hurting someone is much more wrong than stealing and truanting? Do they have a sense of the awful irreversibility of battering a child to death with bricks? Can death have the same meaning for them as for us?

Here the answer must be "No". This would suggest that the test for a child's

104 Ibid, 13.

105 Supra at note 22, at 15.

culpability is too broad and, as a consequence, unjustly harsh. The effect of this simplistic test is to treat, and hence punish, a child more severely than one would an adult.

3. Society's Reaction

Why does society react with such horror and disbelief? One study notes that "society is frightened and frustrated by the dangerous types of behaviour demonstrated by young people".¹⁰⁶ Moreover, each community tends to exhibit an "it couldn't happen here" attitude, in part because no parent wants to believe that their child might also be capable of such a thing. In order to explain why it could have happened to someone else, society labels the child killer a "monster", or blames the parents for being cold or brutal. Childhood is supposed to be a time of innocence, so when this is shattered by abhorrent and essentially adult behaviour, society is overwhelmed with disgust. But as Eric Smith's mother said, "He's my son, and it could have been anybody's son".¹⁰⁷ Yet, as the television documentary which presented his story stated, the community "had its monster and it felt right to hate him". The victim's parents spoke of Eric Smith as "it", saying "this thing has to pay". "People don't want to feel that Eric Smith is one of their children ... [it is] far more comfortable to feel that Eric Smith is a weird kid with terrible parents."¹⁰⁸ In the wake of the Bulger trial, "neighbours could be found everywhere to confide in the *Sun* newspaper that the mother of the Thompson children is 'a horrible cow- always on the bevy'", while others claimed to have forbidden their children to play with the boys.¹⁰⁹ As Seabrook has noted:¹¹⁰

How sad that an angry crowd can take to the streets so readily against an individual wrongdoer, ... a child, when all the other socially produced wrongs - unemployment, poverty, crime, breakdown of community - lead only to resigned acquiescence.

VI: TREATMENT AND SENTENCING

Current attitudes towards the sentencing and treatment of juvenile offenders are dictated largely by political opinion, albeit within the statutory guidelines. Whenever a particularly violent crime has been committed by a young person the State, via the judiciary, invariably responds harshly to subsequent juvenile

106 Supra at note 6, at 354.

107 Ibid.

108 Supra at note 5.

109 Seabrook, "Root of all evil", *New Statesman & Society*, 26 February 1993, 13.

110 Ibid, 12.

criminals. Consequently, guilty verdicts from disgusted juries may see the child imprisoned for lengthy, and often indefinite, periods. Even though juries are inclined to treat some adult offenders in a similar way, dependent upon the circumstances of the crime, an adult has at least had a chance to make something of his or her life. The child is effectively discarded as “broken” or “damaged”. In this respect the young murderer fulfils the traditional role of “scapegoat” for a society which may itself be partially culpable for the child’s actions.

1. Attitudes and Responses

From as early as 1642, adolescents have been committed to death in the United States for extreme acts of violence.¹¹¹ At the time of a 1990 study, there were thirty juvenile killers on “Death Row” in the United States.¹¹² These inmates are a special breed - they are to pay the ultimate price for their immaturity. Studies show most have been abused, often sexually and physically, and there is the additional correlation, noted earlier, between head injury, learning difficulties and violent childhoods. Yet these vital mitigating factors were kept from the courts, often at the request of the defendant, because “the subjects were ashamed of their parents’ brutality and had tried to minimise or conceal this information”.¹¹³ Although they would likely benefit from the provision of psychiatric treatment or counselling, either during or instead of imprisonment, this option is frequently overlooked during their sentencing. Tragically, this is the situation for Thompson and Venables, and for Eric Smith. Had the defence been able to present factors in mitigation concerning the boys’ upbringing and personal circumstances, each of these young murderers may have received treatment. Instead, the Bulger trial saw no such defence and, although Eric Smith’s lawyer put forward a defence of “intermittent explosive disorder”, the jury rejected the insanity plea and convicted Smith to serve a minimum sentence of nine years.¹¹⁴ For Thompson and Venables, “despite the fact that there was evidence that both boys could be rehabilitated, the effect of [their] sentence will probably be that neither boy will be released for at least 20 years”.¹¹⁵

This appears to be an unsatisfactory way of dealing with such an important issue. The system seems intent on imprisoning such children, without looking at the reasons behind such behaviour and how they can be rehabilitated in readiness for their eventual release. Also ignored, yet of equal importance, is the opportunity to learn from their tragedy in an effort to prevent such events recurring.

111 *Supra* at note 6, at 353.

112 *Ibid.*

113 *Ibid.*, 357.

114 *Supra* at note 5.

115 Turner, “The James Bulger Case, A Challenge To Juvenile Justice Theories” (1994) August, *Law Institute Journal*, Victoria, 735.

2. Current Issues Regarding Sentencing

In sentencing a juvenile criminal, judges face a predicament. Society demands retribution and a firm stance on crime, yet they also have a duty to consider the individual's requirements. Unfortunately the latter often gets lost in the emotion which frequently accompanies the types of crimes under consideration here. In this respect, it is particularly relevant to discuss the British situation as there are many more cases of juvenile homicide in the United Kingdom than in New Zealand, and the British procedures warrant criticism.

(a) *The Home Secretary*

When a juvenile murderer is convicted, he or she is subject to a mandatory indeterminate custodial sentence, that is detention during Her Majesty's pleasure. In England and Wales, these indeterminate sentences are without subsequent judicial control. The minimum period of detention and the actual release date are at the discretion of the Home Secretary, rather than the Courts.¹¹⁶ It must be of some concern that a non-legal figure should be responsible for the future of a young offender. Politically, it is too easy to overlook the welfare of the prisoner in favour of meeting the public's desire to see the criminal punished. In January 1997, four years after the crime had been committed, the Home Secretary, "taking into account public concern", appealed to the House of Lords to *increase* the sentences of Thompson and Venables.¹¹⁷ The trial judge had sentenced the boys to a minimum of eight years, the Lord Chief Justice had increased this to ten years and the Home Secretary seeks a fifteen year minimum.

It is unacceptable that the person who decides a young offender's fate knows little of the child's personal situation, legal history or mitigating circumstances. Instead it seems that the public, which probably only knows what it may have read in sensationalist tabloid exposés, is effectively given the right to determine how the young offender should be punished. It is equally unacceptable that:¹¹⁸

[H]igh profile inmates...[will] be kept in prison long past the time when they are ready for release simply because the authorities fear the panic headlines that may result.

(b) *Political Concerns and the Media*

This overall situation is influenced by several factors, one of which is the media's capacity to provoke hysteria. Another is the political pressure on figures, such as the Home Secretary, who decide the child's fate. These factors

116 Supra at note 100.

117 Supra at note 22, at 12.

118 Supra at note 15, at 39.

can result in tragic outcomes for young offenders. Imprisoning such offenders for Her Majesty's pleasure means, in effect, until the Home Secretary is politically able to release them.

If the crimes of Ian Brady and Myra Hindley are anything to go by, the young murderers in the Bulger case could spend the rest of their lives in prison. Although these two were young adults when they tortured and killed their victims, and are thus outside the scope of this article, the manner in which their cases have been treated is significant. After three decades, the "Moors Murderers" are still notorious in Britain. Unlike Brady, who does not wish to be released, Hindley continues to petition for her release. At each attempt the public outcry is such that her request is promptly declined. Similarly, it will doubtless be a long time before the name James Bulger fails to stir up emotion in the public arena, and so probably an equally long time before Thompson and Venables are released.

Mary Bell was released in 1980 at the age of twenty-three. She changed her name and won a court injunction barring the media from ever revealing her new identity.¹¹⁹ However, in the last year, she too has been pursued by the media, after she was discovered living under an assumed name with her fourteen year old daughter, who had been oblivious to her mother's past until the newspapers publicised the story. After thirty years, Britain is still angered by Mary Bell's actions as a very young, extremely troubled, child and even now there are people in her village who think she should never have been released.¹²⁰ Yet at the time of Mary Bell's crime, the media was not as big an influence as it is now, and nor did the rest of the world follow the case with as much disgust and disbelief, as it did in the Bulger case.

On this basis the future does not look bright for the killers of James Bulger. They are by far the most notorious child-killers of our time. In recent coverage regarding the increased sentence, the *Sun* newspaper supplied readers with a coupon which read: "Dear Home Secretary, I agree with Ralph and Denise Bulger that the boys who killed their son James should stay in jail for LIFE". A petition with 300,000 signatures urged the same harsh penalty.¹²¹ It is little wonder that the Home Secretary feels he cannot go against this tidal wave of public opinion. Yet the situation is unfair for the children who are the subject of all this hatred and revenge that they should not be treated according to the standards of less notorious inmates. "Their moral development was retarded, although there is still time for it to develop."¹²² If this is true, is the law pandering to a society which does not want to understand, only to condemn?

119 Ibid.

120 Ibid.

121 *Supra* at note 22, at 18.

122 Masters, "Murder in Mind", *Sunday Times*, 30 March 1997, 5.6.

3. A Better Approach

The Justice Society Report states that the purpose of detention is to protect society and rehabilitate the child.¹²³ Yet in the United Kingdom the objectives are manifested more as deterrence and retribution. The Report maintains that there needs to be more consideration given to the insights of developmental psychology. These include recognising that a child who commits homicide is likely to be seriously disturbed, such a child is different from an adult in his or her ability to foresee harm and predict consequences, and is further subject to maturation and significant changes such that he or she should not be punished for life for a crime committed in immaturity. Furthermore, the Beijing Rules recommend.¹²⁴

The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding can be held responsible for essentially anti-social behaviour

This certainly shows a more enlightened attitude towards the very special circumstances involved in juvenile murder. The authorities need to acknowledge that these children are not monsters, but human beings who will grow into adults with similar problems if not rehabilitated. Whilst a failure to take action on the part of the authorities does not necessarily mean that young offenders will re-offend, it virtually guarantees they will not grow into mature, emotionally well-adjusted, adults. This is not to say the young offenders should not be detained, but rather that they should be treated with more understanding, as well as undergoing rehabilitation programmes. Detention should always provide the services necessary for repairing the damage done by earlier factors, teaching the lessons not yet learnt. In other words, it is necessary to re-form these future citizens. In particular, a child should never be punished for his or her entire life, no matter how heinous the crime. Everyone has the capacity to change, and if the youngster has acted at a very young age, without true knowledge of his or her conduct, there are grounds for a second chance.

VII: CONCLUSION

This article does not seek to provide solutions to the problems presented, only to develop awareness about the unfairness of the current system for children who kill. There will always be cases where the perpetrator's crime is horrific, or

123 *Supra* at note 102, at 2.

124 *The UN Standard Minimum Rules for the Administration of Juvenile Justice*, *supra* at note 102, at 7.

where no remorse is shown. These offenders will consequently be more difficult to treat with compassion and understanding. Even the boys who killed James Bulger showed remorse, and not just, as the cynic might choose to believe, because they were scared. Jon Venables reportedly said to police, "What about his mum? Will you tell her I'm sorry?"¹²⁵ This could be viewed as an attempt to make himself look good, behaviour typical of a naughty child who has been caught and is facing punishment. While Robert staunchly denied his involvement, Jon burst into tears whenever the crime was mentioned.¹²⁶ Each reaction is natural for a child in such circumstances. They further indicate the childish nature of the offenders, elements the public too often fails to recognise.

Given time a child could eventually be brought to recognise the enormity and finality of his behaviour. Eric Smith, currently serving a minimum of nine years in a juvenile facility which apparently provides the best available psychiatric care, is fully aware of his problem with anger. When asked whether he was scared that, untreated, he might kill again, he replied: "If I don't get the right help, [I] could".¹²⁷ He was not speaking as a monster, but as a fourteen year old boy who has deep problems, a fear of discovering his own true nature and an awareness of his potential should he fail.

With a deeper understanding of what makes a child commit murder, it should be apparent that the present way of dealing with such offenders is inappropriate. Children are different from adults in virtually every way, and yet because of society's repulsion when they commit murder, they are often judged far more severely than adult offenders who commit similar crimes. This is unjust, and a wider acknowledgement of the factors contributing to their actions, and the role those factors occupy in the crimes themselves, could help alleviate this injustice so that young murderers can eventually return to the community, reformed and finally able to begin their lives.

125 *Supra* at note 24, at 145.

126 *Ibid.*

127 *Supra* at note 5.