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**THE TREATMENT BY THE CRIMINAL
JUSTICE SYSTEM THE PRESS,
POLITICIANS AND THE PUBLIC OF
CHILDREN WHO KILL IN ENGLAND:
THE ROLE OF DIFFERING CONCEPTS
OF CHILDHOOD,
1800-2000**

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degree of Doctor of Philosophy**

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Abstract

The thesis investigates whether the treatment by the criminal justice system of children who kill in England, starting with the commencement of the police investigation into their crime and ending with the completion of their trial and sentencing processes, has differed over time and if so, the reasons for these differences. It does so by placing a special focus on the adoption of four different concepts of the child, which it develops using the extensive literature available. It carries out its analysis through the exploration of five case studies of children who killed between 1800 and 2000, including the notorious 1993 case of the killing of James Bulger. The thesis draws associations between the approach of different elements of the criminal justice system towards these children and the four concepts of the child and examines their movement over time. It also conducts a comparative analysis with the approaches of the press, public reaction and politicians towards these children, by drawing equivalent associations and observing how they evolve over time. Simultaneously, it observes particular features of the different fields in order to determine their influence over those associations. The thesis concludes that the treatment of these children by the criminal justice system was associated with the various concepts of the child to different degrees over time, though the changes and movements have been to a large extent gradual, unemotional and informed. It also argues that during the late 20th century the approaches of the press, politicians and the public became more erratic and emotional and hence came to deviate substantially from the approach of the criminal justice system. The politicisation of crime, the intense competitiveness of the press and the growing involvement and reactions of the public in matters of juvenile crime, which constituted changes in the three fields during the 1990s, are believed to be instrumental in this divergence. Its findings constitute a platform on which a framework for reform of the treatment within the criminal justice system of children who kill can be founded in the future.

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Like my grandfather dedicated his very first book to my grandmother and me 28 years ago, I now dedicate this thesis to their memory.

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Introduction

Outrage, fury, disbelief, fear, panic, sadness, compassion are only a few of the emotions related to cases of children killing other children. Innocence, vulnerability, protection, savagery, evil, immaturity, incapacity are all words associated with children and childhood over the years, some being more prominent than others at different time periods. The thesis makes an attempt to disentangle the array of feelings expressed and treatment accorded towards particular children who killed, primarily within the criminal justice system, starting from the commencement of the police investigation and finishing with the completion of the trial and sentencing process. Its aim is to determine how these sections of the criminal justice system treated these children, and the extent to which this treatment is associated with different concepts of childhood. Specifically, the thesis observes the treatment of selected children who killed during the 19th and 20th centuries by the criminal justice system and connects that treatment to various concepts of the child. Moreover, it compares the concepts of the child evident within the parts of the criminal justice system examined with those evident within the press, public reaction and politics at the time of the relevant cases, detecting the differences and similarities between the treatment of children within each field.

Originally, my interest in the topic of children who kill was sparked by the notoriety of the case of Thompson and Venables, two ten-year-old boys who killed the two-and-a-half year old James Bulger in 1993. The extent of publicity and reactions to that case created the impression that there was something unique about it. The initial thought was that the events of the case were so gruesome, the exhibition of such violence by children so young so out of the ordinary, that the case was exceptional. Following some preliminary research, however, it was discovered that despite cases like the Bulger case not being frequent or ordinary, they are not factually unique either. Children who killed brutally and violently existed throughout English history. Accordingly, the question became whether there was indeed anything different about the 1993 case, since it was made to appear so unprecedented. A possible explanation for the difference between perception and reality is that even though the facts of the Bulger case did not differ much from the cases preceding it, it was treated differently by the criminal justice system, the press, the public and

politicians due to the adoption of different concepts of childhood from previous cases. Accordingly, the topic of the thesis is chosen because of a fundamental, challenging question, namely whether the police investigation and trial and sentencing processes within the criminal justice system, the press, politicians and the public treated children who killed differently over the years and if so, to what extent the differences are related to different concepts of childhood. It is believed that at each particular time period, children are associated with particular characteristics subconsciously. The association of particular characteristics with children, however, is not so straightforward, since different characteristics have been associated with children during different time periods. Unravelling these associations and the extent of their impact on the approaches of the four fields towards children who kill is important because it might explain any changes in their approaches towards these children over time. Understanding the reasons guiding these approaches, and especially the approach of various elements of the criminal justice system towards children who kill, specified below, is of academic interest. Beyond that, however, it is also of practical interest because it can benefit the general understanding of and potential evolution in the complicated area of criminal justice that is involved with children who killed. Namely, the analysis of the thesis helps to detangle complicated perceptions and sentiments, eliminate confusion and clarify past and existing approaches of the portion of the criminal justice system that starts with the police investigation and ends with the trial and sentencing process. Similarly, it unravels the approaches of the press, politicians and the public and illuminates how they have reacted towards children who killed over the years, in comparison to each other and most importantly the segments of the criminal justice system under investigation, leading to the exposure of the complex relations between the approaches of each field. Accordingly, the thesis provides a historical analysis, which clarifies and explains the approaches of the four fields, with a focus on the criminal justice system, towards children who killed and their evolution. The main practical importance of such analysis, which sheds light and explains the past, lies in the fact that it can potentially provide a platform on which future frameworks for reform may be founded.

Children who killed other children have been chosen as the subject of the thesis, rather than children committing any other offences, because killing is arguably the most violent, serious crime a person can commit, a crime with the direst consequences

of all. Accordingly, in considering these cases we place ourselves at the very edge of the spectrum of offences, in the worst possible scenarios, where leniency and compassion for the offender are most controversial. This is even more true in cases where children kill other children, especially when a high degree of physical violence is involved. Reconciling this type of offending with notions of children and childhood, such as innocence and vulnerability, is thus at its most challenging. Furthermore, the thesis chooses to analyse cases of children who committed the act of killing between the ages of ten and 14 years old because that is the age the law in England and Wales, until 1998, set as the age of discretion. In other words, children under the age of ten were irrebuttably presumed by the law to lack the capacity to commit a criminal offence and hence their actions were outside the jurisdiction of the criminal justice system. Children aged ten to 14 were subject to the same presumption, but in their case the presumption was rebuttable, meaning that such children were within the jurisdiction of the criminal justice system and could be found guilty of the offence they were being charged of, as long as the prosecution proved that they had the capacity to do so on the facts of the case. The thesis makes one exception to this selection of cases of young offenders being between the ages of ten to 14, since the young offender in the first case study that took place 1831, was very slightly above the age of 14. The particular exception is made because the case was the only one that occurred close to the beginning of the 19th century and it was the last case in which a child was executed in Britain. Moreover, his age did not significantly depart from the age of discretion.

The main analysis of the thesis revolves around the treatment by the criminal justice system of these children who kill. The criminal justice system has a range of functions starting with the police investigation of a case, moving into the trial process, the sentencing of the convicted offender, the execution of the sentence and finally, the release of the detainee. In the current thesis, only the segments of the criminal justice system starting with the police investigation and ending with the trial and sentencing processes of the young offenders are taken into consideration. The reason for this selection is that the approach of the criminal justice system towards children who killed, at a given point in time, is the substance of the investigation. Accordingly, the duration of the sentence and the release of the detainees diverge from its goal in two ways. The first is that they gradually become chronologically removed from the time

period examined each time, since the detention periods involved are lengthy. The second is that the children involved gradually become teenagers and young adults by the time of their release and the attitudes towards these young adults are not of any concern for the current examination, only the attitudes towards them as children of 14 years and younger are. In addition, when referring to the criminal justice system, the thesis is in fact primarily considering the actions and words of the people who work within this field and are responsible for carrying out the process under examination. References to the legal framework that guides the actions of these actors are also included, since they are critical to the composition of a complete picture of the approach of the criminal justice system, however, these are secondary and lead only to limited inferences and conclusions because they are more general aspects of the legislation that are not specific to the case studies analysed. The issue of the particular elements of the criminal justice system explored in the thesis is revisited and further expanded below, when reference is made to the case study chapters of the thesis in the chapter outline and methodology section.

Moreover, the analysis of the approaches of the public, the press and politicians towards children who kill also constitute a significant part of the thesis. These approaches are examined because a comparison between them and the approach of the criminal justice system has the potential to provide valuable insights and explanations as to why these children were treated differently over time. The nature of these three fields, especially the fact that they are not bound by any legal rules and regulations and are freer to react emotionally than the criminal justice system, makes comparisons between them informative and often provides explanations for some of the mistaken perceptions and opinions that developed over the years in relation to the reactions towards children who kill. Factors relevant to each field in particular, such as changing features of the press and politics, as well as gender inequalities, are also examined because they may have influenced how children who kill were perceived. It should be noted that when the reactions of the public are discussed, this is not identical to public opinion, but it is only a part of it, the part that is at the most intense end of its range of emotions and that results in actual, physical reactions that can be reported by the press, as is described and explained below.

The selected period for study starts in the 19th century because prior to that century the press, which constitutes a main source of information in the thesis, was

not yet adequately developed for the purposes of the current research. Daily newspapers were scarce and undependable, since they were neither regularly published nor widely or evenly distributed, mostly due to the existence of stamp duties making them too expensive for purchase by most of the public, first reduced in 1836 and finally abolished in 1855.¹ This would make useful comparisons with case studies that took place prior to the 19th century very problematic and possibly inaccurate. The selected end of the period for study is the late 20th century, following the Thompson and Venables case and its aftermath, since it is the most recent case to date in which children under the age of 14 have been convicted of murder in England, as well as a landmark case due to the intensity and extent of the reactions to it.

Four questions are posed and addressed throughout the thesis. The first is: how can the treatment by the criminal justice system of children who kill, starting with the police investigation and ending with the trial and sentencing processes, be associated with particular concepts of the child? The second is: what patterns or movements over time, if any, do these associations reveal? The third is: how do these associations and their movements compare with equivalent associations in the press, politics and public reaction? The fourth is: how do other factors, such as gender issues, changing features of the British press and British politics and features of public reaction, affect these associations? Answers to these questions facilitate the clarification and explanation of the approaches of the four fields towards children who kill, providing a clear picture of the past that may, in turn, provide a stepping-stone for future reform within the criminal justice system in relation to the treatment of children who kill.

Chapter Outline and methodology

To discuss and answer the four research questions there were two potential routes to follow. The first was the analysis of the relevant legislation and the second was the analysis of particular case studies. An analysis of both within the limitations of the current thesis would result in insufficient depth and hence the former was only briefly explored as background information, whereas the latter constitutes the focal analysis of the thesis. This selection is based on two fundamental considerations. Firstly, it

¹'1815 Stamp Act' <<http://www.spartacus.schoolnet.co.uk/Lstamp.htm>> accessed 04/05/2012; '30 June 1855: Newspaper stamp duty abolished' (London, 30 June 1855) *The Guardian* <<http://www.guardian.co.uk/theguardian/from-the-archive-blog/2011/may/10/guardian190-newspaper-duty-cut>> accessed 04/05/2012.

was believed that the study of actual cases involving tangible young people as victims and killers enables the observation of raw emotions and genuine reactions of the people involved within all the fields under discussion. This allows the thesis to address the four questions posed to a deeper level of analysis, especially since the thesis engages in the analysis of the reactions of the press, the public and politicians, in addition to the reactions of the criminal justice system. Secondly, following extensive preliminary research, it was discovered that analyses of the legislation in the field already exist to a substantial extent,² whereas no equivalent, in depth, case study analysis was ever made from a legal perspective. Accordingly, it was believed that such an analysis, which combines the examination of the approach of the aforementioned sections of the criminal justice system and its comparison with the fields of the press, politicians and the public, while having the concepts of childhood as its focal point, fills up a gap in the research and provides a more valuable contribution to the existing knowledge and literature than an analysis of the legislation. It completes the overall picture in the field of dealing with children who killed, by providing an analysis of how the legislation was implemented in practice over time and explains the meanings and implications of this application, while linking it to the practice of other relevant fields.

The first chapter sets the stage for the detailed case-study analysis that follows in the subsequent chapters. It focuses on the existence of various concepts of childhood and establishes four concepts of the child, based on characteristics popularly attributed to children during different time periods. It also provides a brief historical analysis of the approach of the criminal justice system towards child offenders, as well as of the evolution of the rules on the age of criminal responsibility and the *doli incapax presumption* and the rationale behind it. The chapter also discusses relevant features of the British press during the 19th and 20th centuries, the relationship between crime and British politics during that period, and gender related issues, as factors that

² For example, Nicholas R. Fyfe, 'Law and order policy and spaces of citizenship in Contemporary Britain' (1995) 14(2) Political Geography 177; Bottoms, Anthony Bottoms and James Dignan, 'Youth Justice in Great Britain' (2004) 31 Crime and Justice 21; Laura Kelly, 'Representing and Preventing Youth Crime and Disorder: Intended and Unintended Consequences of Targeted Youth Programmes in England', (2012) 12 (2) Youth Justice 101; Ministry of Justice, 'Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System' (July 2012) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217328/swift-and-sure-justice.pdf> accessed 12/11/16

potentially influence the relationships between the treatment by the criminal justice system, the press, the public and politicians of children who kill and the concepts of childhood. One aim of the chapter is to establish whether the various concepts of childhood popular during different time periods are chronologically correlated to the approaches of the criminal justice system towards children, hence beginning to answer the first and second questions. Another aim of the chapter is to establish the existence of other possible factors that might be influencing the treatment of children who kill, thus starting to address the fourth question.

The second, third and fourth chapters contain in depth examinations of five case studies of children who killed other children in the 19th and 20th centuries. The first three occurred during the 19th century and are explored in the second chapter. These are the case studies of John Any Bird Bell (1831), Peter Barratt and James Bradley (1861) and Margaret Messenger (1881). The fourth case study is the case of Mary Bell and the fifth of Robert Thomson and Jon Venables, both 20th century cases analysed in the third and fourth chapters respectively. There is no provision of one single statistic in England and Wales for the number of children killed by another person, similarly, there is no official record of children convicted for the murder or manslaughter of another child.³ Accordingly, newspaper databases were extensively searched for the mention of such cases, as well as books and academic articles. The research revealed that seven such cases existed throughout the 19th century and another three in the 20th century, though it must be acknowledged that the list cannot be 100% exhaustive.⁴ From the seven cases found throughout the 19th century, a selection of three cases was made because it was believed that they were sufficient for providing a representative sample in order to observe any associations with the concepts of the child and their movement over time. They were appropriately chronologically distributed over the 19th century and specific characteristics of each made them more appropriate for the discussion at hand. More specifically, the 1831 case of John Any Bird Bell was chosen over another case of a 14-year-old boy, William Wild, who was sentenced to death for murder in 1835, because it was a slightly earlier in the century and because the accused was actually executed, whereas

³ Child Killings in England and Wales, Explaining the statistics (March 2014) NSPCC
<<https://www.nspcc.org.uk/globalassets/documents/information-service/factsheet-child-killings-england-wales-homicide-statistics.pdf>> accessed 25/8/16

⁴ *The Times* between 01/01/1800 and 20/11/2016; *The (Manchester) Guardian* between 05/05/1821 and 20/11/2016; *The (Daily) Mirror* between 02/11/1903 and 20/11/2016; *The Observer* between 01/01/1900 and 20/11/2016, *The Daily Telegraph* between 29/06/1855 and 20/11/2016, *The Sun* between 01/02/1964 and 20/11/ 2016; Loretta Loach, *The Devil's Children: A History of Childhood and Murder* (Icon Books 2009)

William Wild was eventually pardoned.⁵ Moreover, in 1855, two boys, Frits and Brien, aged nine and 10 respectively, were convicted of manslaughter, however, the case occurred soon before the 1861 case study of Barratt and Bradley, which was eventually chosen due to its close factual similarity to the 1993 case study of Thompson and Venables.⁶ During the 20th century, the choice made was for the 1968 case study of Mary Bell rather than the 1958 case of Doreen Bird, because it was much more notorious and often cited during the Thompson and Venables case for comparison.⁷ The case studies selected constitute a sample indicative of the approaches of the relevant segments of the criminal justice system, the press, the public and politicians towards children who killed during the time periods in question, as appropriate for a qualitative study. They are sufficient to establish some patterns of movement of the associations of these approaches with the concepts of the child over the time period examine, since they constitute a large enough sample size in relation to the total number of cases with their particular characteristics. However, it should be noted that the movements determined can only be confined to the cases of children under 14, killing other children, as discussed below in the limitations of the thesis.

These three chapters primarily examine the treatment of the children in question by the criminal justice system from their arrest to their conviction and sentencing, with a focus on their court trial, as was also mentioned above. The reason for this focus is due to the fact that the aim of the thesis is to disentangle the associations made in particular points in time between the treatment of the children in question in relation to their offence of killing another child and the concepts of childhood. This requires chronological proximity to this treatment and their crime. Accordingly, if the analysis expanded to the duration of the sentence of these children the findings would be distorted, since there would no longer be any chronological proximity. For instance, it is the reactions associated with the 11 year old Mary Bell during the late 1960s that are of interest to the discussion and not the reactions towards a teenage and adult Mary Bell throughout the 1970s and 1980s, which was when she was serving her sentence and subsequently released. Moreover, as mentioned above, when referring to the criminal justice system, the thesis primarily focuses on the behaviour of particular actors operating within the system, for example, police investigators, coroners,

⁵ 'Midland Circuit', *The Times* (London, 01 August 1935) 7.

⁶ 'Summer Assizes', *The Times* (London, 23 August 1855) 9.

⁷ 'Alleged Murder By Baby Sitter', *The Times* (London, 5 November 1958) 3.

judges, lawyers. This focus is because it is the actions and words of these people that compose the practical approach of the criminal justice system at a given point in time and hence are the subject matter of investigation. The legal framework is also taken into consideration as part of the criminal justice system, but only to a much lesser extent. Legal rules often significantly pre-date the events of the case studies examined and accordingly their existence cannot constitute evidence of the particular approach of the criminal justice system at the time periods discussed. Accordingly, only the way in which these rules are applied, especially if there is discretion involved, is taken into consideration on most instances. Nevertheless, there are some exceptions throughout the thesis, when the rules themselves and the fact that they are applied in one of the case studies are taken into consideration, despite their application being mandatory. Being the backbone that defines the operation of the various agents acting within each case study, sometimes makes them too relevant and important not to be taken into account. However, these occasions are rare and thoroughly explained. Moreover, to account for the fact that these rules pre-date the events in question, as well as the fact that they are not specific to a particular case study the inferences and conclusions drawn from them are significantly discounted.

The treatment of these children who killed by the press, the public and politicians is also examined in comparison to their treatment by the criminal justice system. Possible associations with different concepts of the child are explored and compared across the four fields, also taking into account the aforementioned surrounding factors that might influence them. The goal of all three chapters is to address the four questions posed above through the analysis of particular case studies and, by extension, to achieve the fundamental aim of the thesis to provide a comprehensive account, analysis and explanation of the differences in the treatment within the criminal justice system of children who killed in England during the 19th and 20th centuries, with a special focus on the concepts of the child.

Finally, the last chapter is made up of three parts. The first one makes a summary of the conclusions drawn in each of the previous chapters and combines them together to create a comprehensive final conclusion. Specifically, it discusses the evolution of the associations between the treatment by the segments of the criminal justice system examined, the press, politicians and the public of children who kill in the 19th and 20th centuries and the four concepts of the child, their interrelations and potential

explanations. The second briefly examines events occurring after the 1993 Thompson and Venables case study and explores what they might signify in terms of advancement in the field since the early 1990s. The third offers some thoughts for the future and briefly talks about potential reform to which the current thesis and its findings can constitute a preliminary platform, a stepping-stone.

Sources

The first chapter begins with an analysis of the concepts of childhood. An examination of the writings of influential writers on the topic of childhood is conducted and different characteristics attributed to children during different time periods are identified and grouped together in a manner that eventually leads to the formation of four concepts of the child. Gender differences relevant to these four concepts of the child are also discussed because they impact on the analysis in subsequent chapters. Philippe Aries and his book *Centuries of Childhood*,⁸ is the central writer examined at the commencement of this section, because he was probably most instrumental in the development of the notion of childhood as a social construct. Other writers who referred to childhood as a social construct are also mentioned more briefly, since each provides a different approach to the issue. These include Hugh Cunningham,⁹ Chris Jenks,¹⁰ Linda Pollock,¹¹ Lloyd De Mause,¹² Edward Shorter,¹³ Lawrence Stone¹⁴ and Alan Macfarlane.¹⁵ In the discussion on specific conceptions of childhood and the gender issues related to them, some of the most influential writers include St Augustine,¹⁶ Jean-Jacques Rousseau,¹⁷ Mary Wollstonecraft,¹⁸ John Locke,¹⁹ Jean Piaget,²⁰ Lawrence Kohlberg,²¹ Albert Bandura²²

⁸ Philippe Ariès, *Centuries of Childhood* (Pimlico edn, Pimlico, 1996).

⁹ Hugh Cunningham, *Children and Childhood in Western Society since 1500* (2nd edn, Pearson Longman, 2005).

¹⁰ Chris Jenks, *Childhood* (2nd edition, Routledge, New York, 2005); Alison James and Chris Jenks, 'Public perceptions of childhood criminality' (1996) 47(2) *The British Journal of Sociology* 315.

¹¹ Lorraine Abernethie, 'Child labour in contemporary society: why do we care?' (1998) 6 *The International Journal of Children's Rights* 81.

¹² Cunningham (n 9) 11.

¹³ Ibid 11.

¹⁴ Ibid 11.

¹⁵ Ibid 125.

¹⁶ Saint Augustine, *Edwarda; The Confessions of St Augustine* (first published 397 AD, Bouverie Pusey tr, Arc Manor 2008).

¹⁷ Jean-Jacques Rousseau, *Émile* (First published 1762, Barbara Foxley tr, The Kindle Edition).

¹⁸ Mary Wollstonecraft, *Vindication of the Rights of Woman* (A Public Domain Book, 1792).

¹⁹ James and Chris Jenks (n 10) 319; Abernethie (n 11) 87; Jenks (n 10) 124; Cunningham (n 9) 43-45.

²⁰ Jean Piaget, *The Moral Judgment of the Child* (Routledge and Kegan Paul 1932); Jean Piaget, *The Moral Judgment of the Child* (first published 1932, Marjorie Gabain tr, Free Press Paperbacks 1997).

²¹ Lawrence Kohlberg, *The Philosophy of Moral Development: Moral Stages and the Idea of Justice* (Harper and Row Publishers 1981)

²² Albert Bandura, 'Social Cognitive Theory of Moral Thought and Action' in W.M. Kurtines and J.L. Gewirtz (eds), *Handbook of Moral Behaviour and Development* (Laurence Erlbaum Associates Publishers 1991).

and Carol Gilligan.²³ St Augustine was the first to have written a religious autobiography and his writings provide some of the earliest references to the way in which children were perceived either as adults or as savage beings. Other religious writers like Thomas Bacon²⁴ and Jonathan Edwards²⁵ are also briefly cited in order to expand on some of the arguments made, since they were also influential religious writers. Jean-Jacques Rousseau is extensively cited because he was the first writer to engage in the portrayal of children as innocent, vulnerable and valuable and Mary Wollstonecraft is mentioned because she was influential in analysing Rousseau's conclusions and pointing out the significant gender distinctions present in his work. John Locke, Jean Piaget, Lawrence Kohlberg, Albert Bandura and Carol Gilligan are all associated with the concept that children are born neutral and develop their morality gradually as they grow older. Locke was the first to engage with this concept to a significant extent in the 17th century, even though Desiderius Erasmus had also hinted at the concept about a century earlier. Piaget's work is examined because he was the first to carry out scientific studies in relation to the moral development of children and his work has been vastly influential over the years. Similarly, Kohlberg's work considerably developed Piaget's and has also been quite influential. Bandura and Gilligan also carried out studies on the moral development of children, concluding that it occurs in different ways than the structural manner suggested by Piaget and Kohlberg. The former followed a behaviourist approach, whereas the latter focused on gender differences. Both are cited in order to provide a comprehensive account of the topic.

The first chapter also briefly describes the history of the relationship of the criminal justice system to juvenile offenders, using the work of Julia Fionda,²⁶ David Garland,²⁷ Andrew Rutherford,²⁸ Tim Newburn,²⁹ Norman Tutt,³⁰ and Anthony Bottoms and James Dignan,³¹ which together provides a comprehensive account of the developments within the field. A discussion of the gender inequalities that arise within the criminal justice system is predominantly founded upon the work of Hilary

²³ Carol Gilligan, *In a Different Voice* (Harvard University Press 1982).

²⁴ Cunningham (n 9) 47.

²⁵ Cunningham (n 9) 52-53.

²⁶ Julia Fionda, *Devils and Angels: Youth Policy and Crime* (Hart Publishing 2005).

²⁷ David Garland, 'Limits of the Sovereign state- Strategies of Crime Control in Contemporary Society' (1996) 36 *British Journal of Criminology* 445; David Garland, *The Culture of Control* (Oxford University Press 2001).

²⁸ Andrew Rutherford, *Growing out of crime* (2nd edition, Waterside Press 1992).

²⁹ Tim Newburn, *Crime and Criminal Justice Policy* (2nd edn, Pearson Longman 2003); Tim Newburn, '“Tough on Crime”': Penal Policy in England and Wales', (2007) 36 *Crime and Justice* 425.

³⁰ Norman Tutt, 'A decade of policy' (1981) 21 *British Journal of Criminology* 246.

³¹ Anthony Bottoms and James Dignan, 'Youth Justice in Great Britain' (2004) 31 *Crime and Justice* 21.

Allen in her book *Justice Imbalanced*³² and a chapter in *Gender, Crime and Justice*,³³ which provides very detailed and convincing research and analysis of the issue. *The Female Offender* edited by Meda Chesney-Lind and Lisa J Pasko,³⁴ *Women and Crime* by Frances Heidensohn³⁵ and *Offending Women* by Anne Worrall³⁶ are also used to complete the discussion, since they provide further insight, including detailed descriptions of specific case studies of female offenders. To complete the discussion, Lisa Appignanesi's *Mad, Bad and Sad*³⁷ and Elaine Showalter's *The Female Malady*³⁸ are used, because they provide comprehensive accounts of how and why women have historically been viewed as pathologically more prone to psychological illness than men.

The evolution of the rules on the age of criminal responsibility and the *doli incapax* presumption are also examined in the first chapter because they are considered as representative of the general approach of the law towards child offenders. St Augustine,³⁹ Sir Edward Coke,⁴⁰ Sir Matthew Hale⁴¹ and 14th century case law⁴² are referenced in the discussion, because they provide evidence of the origins of the rules on the age of criminal responsibility. Case law from the 19th century follows,⁴³ because it shows the progress of the rules during the time material to the thesis. The discussion proceeds to consider the Children and Young Persons Act 1933, Children and Young Persons Act 1963 and Crime and Disorder Act 1998, and the rationales of key political and government figures regarding their implementation. These Acts are instrumental to the evolution of the rules on the age of criminal responsibility and the discussion reveals what guided them and whether and to what extent they were related to the concepts of childhood. In particular, parliamentary debates and government papers are used, since they provide valuable sources of information regarding the genesis and guiding philosophies of the Acts.

³² Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Open University Press 1987).

³³ Pat Carlen (ed) and Anne Worrall (ed), *Gender, Crime and Justice* (Open University Press 1987).

³⁴ Meda Chesney-Lind (ed) and Lisa Pasko (ed), *The female offender: Girls, women and crime* (3rd edition, Sage Publications 2013).

³⁵ Frances Heidensohn, *Women and Crime* (2nd edition, Macmillan Press 1985),

³⁶ Annie Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice System* (Routledge 1990).

³⁷ Lisa Appignanesi, *Mad, Bad and Sad: A History of Women and the Mind Doctors from 1800 to the Present* (Hachette Digital 2008).

³⁸ Elaine Showalter, *The Female Malady: Women, madness and English Culture 1830-1980* (Virago 1987).

³⁹ St. Augustine (n 13); Anthony Platt and Bernard L. Diamond, The Origins of the Right and Wrong Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey, 54(3) California Law Review 1227 (1966) Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol54/iss3/3>, 1232; Cunningham (n 9) 26.

⁴⁰ Platt and Diamond (n 39) 1234.

⁴¹ *ibid* 1235.

⁴² *ibid* 1233.

⁴³ *Rex v. Owen* (1830) 172 E.R. 685; *Reg. v. Smith (Sidney)* (1845) 1 Cox C.C. 260; *Reg. v. Vamplew* (1862) 176 E.R. 234.

Finally, the first chapter deals with the changing features of the press, crime reporting trends and the relationship between politics and crime, because these are all factors that are partially responsible for the way in which children who killed were treated. The Leveson Inquiry⁴⁴ and the Communications Select Committee report on *The Ownership of the News*⁴⁵ are the main sources used to discuss the changing nature of the press, as well as the work of David A. Green⁴⁶ and Kevin G. Barnhurst and John C. Nerone,⁴⁷ since together they offer an informative account of press developments over the years. A survey of the time period between 1970 and 2007, conducted by Jessica Pollak and Charis Kubrin also provides valuable insights on crime reporting and its features,⁴⁸ while Peter King's work on the relationship between the press and public opinion has been influential.⁴⁹ In the discussion of politics and crime and the politicisation of crime in the late 20th century, a number of writers have been cited, including Norman Tutt,⁵⁰ Richard J. Terrill,⁵¹ Tim Newburn⁵² and Stephen Farrall and Will Jennings.⁵³ The selection was made primarily due to the relevance of their work to the issue at hand.

As regards the second, third and fourth chapters that analyse the case studies, the press constitutes a fundamental source. Press reports are not only being used to analyse the response of the media towards these children who killed, but they are also used to determine, to a significant extent, the development of events during the investigation and trial processes and the reactions of the various actors within the criminal justice system, the public and politicians. They constitute a fundamental source for documenting the responses within the criminal justice system because of their immediacy to them, meaning that they are in the unique position of providing daily reports of the evolution of the court trials, given the absence of trial transcripts, which are only available for five years after the conclusion of trials, as explained below in the section on limitations. This immediacy facilitates the most accurate observation of the relevant responses. Moreover, as mentioned both above and below,

⁴⁴ Lord Justice Leveson, *The Leveson Inquiry: An Inquiry into the Culture Practices and Ethics of the Press, Executive Summary* (The Stationery Office 2012).

⁴⁵ Communications Select Committee, *The Ownership of the News* (HL 2007-08, 122-1) 222.

⁴⁶ David A. Green, *When Children Kill* (Oxford University Press 2008).

⁴⁷ Kevin G. Barnhurst and John Nerone, *The Form of News: A History* (The Guilford Press 2001).

⁴⁸ Jessica M. Pollak, Charis E. Kubrin, 'Crime in the News: How Crimes, Offenders and Victims are portrayed in the media' (2007) 14(1) *The Journal of criminal justice and popular culture* 59.

⁴⁹ Peter King, 'Newspaper reporting and attitudes to crime and justice in late-18th and early-19th century London' (2007) 22(1) *Continuity and Change* 73.

⁵⁰ Tutt (n 30)

⁵¹ Richard J. Terrill, 'Margaret Thatcher's Law and Order Agenda', (1989) 37 *The American Journal of Comparative Law* 429.

⁵² Newburn (n 29)

⁵³ Stephen Farrall and Will Jennings, 'Policy Feedback and the Criminal Justice Agenda: An Analysis of the Economy, Crime Rates, Politics and Public Opinion', (2012) 26(4) *Contemporary British History* 467

press reports, despite their variations over time, constitute a source of information that is present throughout the entire time period covered by the thesis, enabling consistency in the form of analysis. However, it is also true that press reporting and criminal justice are two different disciplines and hence there might be discrepancies between the realities of the two, which might translate into inaccuracies in the representation of the responses of the criminal justice system in the press. This potential limitation was addressed by cross-referencing reports from different newspapers and discussing their different approaches, for instance broadsheets and tabloids. In addition, cross-referencing with other sources was also performed. Such resources included academic articles, books and reports of the appeal courts in the Bulger case, since it was the only case study in which they were available.

Moreover, press reports are the sole vehicle for acquiring information on the approach of the public, again because of the immediacy and consistency they offer. However, this limits the range of public opinions that can be examined, to public reactions. More specifically, a comprehensive view of public opinion can only be provided by a combination of reports of public reactions that can be found in the press and opinion polls, since it is the latter that reveal what people are thinking when it is still subtle and unemotional enough not to have caused a public reaction. However, in the earlier years discussed in the thesis there were no public opinion polls or any other research revealing public opinion on different matters. Hence, press reports were the only source offering a glimpse into what the public was thinking, albeit only when it was strong enough to be manifested into public reaction. In fact, it was not until the late 1930s and the invention of the Gallup polls in the United States, which were extended in the UK in 1945, that opinion polls became the useful, scientific and insightful tool that they are today.⁵⁴ Prior to 1936 public opinion polls were non-existent or very rare, random and untrustworthy.⁵⁵ Accordingly, since the press is the only consistent source of information regarding the public throughout the entire period studied, the examination of public opinion is confined to the examination of public reactions. The fact that the press only reports the parts of public opinion that have escalated to the point of causing a public reaction, like for instance a gathering of a crowd outside the court or the execution site to mourn, express sympathy or

⁵⁴ Polling the nations: a brief history of polling <<http://poll.orpub.com/static.php?type=about&page=brieffhistory>> accessed 2/9/16, Early public opinion polling and research <<https://www.boundless.com/political-science/textbooks/boundless-political-science-textbook/public-opinion-6/measuring-public-opinion-46/early-public-opinion-research-and-polling-266-1855/>> accessed 2/9/16, History of opinion polling <<http://www.pbs.org/now/politics/polling.html>> accessed 2/9/16

⁵⁵ *ibid*

protest, and leaves the more subtle opinions of the public unmentioned, is recognised as a limitation and taken into consideration in the discussion throughout the relevant sections in the thesis. In other words, when the thesis refers to public opinion it means only the parts of it that were strong enough to cause an actual, collective, public, physical reaction and not the passive thoughts and opinions of individual members of the public. Moreover, it is notable that the relationship between the two fields has been complicated and multifaceted over the years, sometimes suggesting little and sometimes suggesting heavy influence of the press on the views of the public and vice versa.⁵⁶ This variability makes it unsafe to conclude that the viewpoints expressed in the press are the same as those followed by the majority of the public.⁵⁷ Accordingly, it is only when newspaper articles expressly state that they are describing the actions of the public that they are taken as evidence of public reactions.⁵⁸

Finally, press reports are a valuable source for discovering the responses of politicians because they constitute a way for them to communicate with the public. Accordingly, the way in which politicians express themselves in the press reveals crucial information regarding their overall approach, especially when cross-referenced with the comments and statements they make in Parliament, found on Hansard. It should be noted though, that such press reports only existed for the 20th century case studies, because politicians abstained from openly discussing juvenile crime matters in the earlier years examined.

The reason due to which the press, rather than the media as a whole, is chosen as a means of study is that the thesis deals with a time period that starts in the 19th century, and thus an era during which television and other forms of media were non-existent. Accordingly, only newspaper reports can be used to make direct comparisons between case studies. This might seem somewhat problematic given the general perception that most people by the mid to late 20th century received their news information mostly from television.⁵⁹ However, studies have shown this perception to be untrue. Even though the importance of television in news reporting has grown, the press in the late 20th century still had a significant role in the field.⁶⁰ In the 19th century, newspapers were the only source of information on news, including crime

⁵⁶ Barnhurst and Nerone (n 47) 211, 247; Green (n 46) 101, 105, 109, 118-120; Peter King (n 49) 104. Pollak and Kubrin (n 48) 60-61.

⁵⁷ Green (n 46) 247; Peter King (n 49) 104.

⁵⁸ *ibid.*

⁵⁹ Leo Bogart, 'The Public Use and Perception of Newspapers' (1982) 48 *Public Opinion Quarterly* 709

⁶⁰ *ibid* 719.

and justice.⁶¹ In the late 20th century, a survey conducted in the U.S. showed that 67 percent of the adult population watched some news on television on a daily basis and also read at least one newspaper, signifying that both newspapers and television were important sources of news information.⁶² According to the study, newspapers in the late 20th century came to constitute a significant source of news that was complementary to television, as opposed to being the sole news source as they were in the 19th century. The study suggested that the two sources were not in competition with each other, and hence the content and features of the news on television did not really influence the way in which the press reported the news; as people who read newspapers explained, that was because they did so as an additional, rather than as a substitute source of knowledge, since it gave them more in depth information and more time to process it than a five minute news slot on television.⁶³ An additional, relevant point that needs to be addressed specifically in relation to the Thompson and Venables case study was the use of footage from the CCTV cameras by news reports on television.⁶⁴ This was important because the public was being exposed to very powerful, direct imagery of a young victim being led to what they knew was to be his death by the young perpetrators. However, despite the potentially formidable effect of these images on public sentiments, they still did not affect the way in which newspaper reports were written, at least not to a significant extent. Newspaper reports already included visual aids in the form of photographs, as a way of making stories more direct, dramatic and appealing to the public.⁶⁵ Specifically in the said case, the relevant news reports included an array of images from the CCTV cameras of the young offenders leading their victim out of the mall.⁶⁶ Accordingly, the effect of television on the way in which the case was reported in the newspapers, if present, was not the cause of great diversion from the ordinary manner in which such reports were already being presented. Therefore, the press remained a significant source of news information despite the growing popularity of television, offering a different and deeper perspective to readers, as well as the ability to be more active and choose what

⁶¹ Peter King (n 49) 73, 74.

⁶² Bogart (n 59) 710.

⁶³ *ibid* 719.

⁶⁴ 'James Bulger Murder', *Chanel 4 News* (3 March 2010) < <http://www.chanel4.com/news/articles/uk/james+bulger+murder+timeline/3567882.html> > accessed 12/11/16; 'Every parent's nightmare' *BBC News* (26 October 2000) < <http://news.bbc.co.uk/2/hi/uk/991562.stm> > accessed 12/11/16.

⁶⁵ Barnhurst and Nerone (n 47) 137.

⁶⁶ 'Toddler Killer Hunt' *Daily Mirror* (London, 15 February 1993) 9; 'Mother's fears confirmed as video boy found dead' *The Times* (London, 15 February 1993) 3

areas to focus their attention on.⁶⁷ The study was conducted in the U.S., however, it still provides a good indication of what was happening in Western countries in general, since the development of television and its role was more or less similar, albeit some chronological variability.

In more detail, the study of the 19th century cases in the second chapter is predominantly founded upon information obtained from Loretta Loach's book, *The Devil's Children: A History of Childhood and Murder*,⁶⁸ which is meticulously cross-referenced with information from relevant newspaper articles. The book provides a very well researched account of children who killed over time by examining sources such as the work of other writers like *Rousseau, Locke, Hale* and *Hugh Cunningham*, some legal documents, such as appeal letters to the King and indictment documents as well as the press, including references to articles in *The Times, The Stockport Advertiser, The Standard* and *The Newgate Calendar*. It is nonetheless a secondary source of information and the majority of the sources cited were also examined themselves and crossed referenced. The newspapers existent at the time of each 19th century case study varied and accordingly the articles used are not from the same newspapers throughout the chapter. The selection used for each case study was found by observing online search results of newspaper data-systems for each time period, as well as searching the *Times* newspaper archives on the dates in question, since the *Times* was one of the few newspapers in existence throughout the whole time period covered in this chapter.

It is noteworthy that the newspaper articles used for the analysis of 19th century cases often did not specify the sources of information for their contents, which led to brief, non-analytical, inaccurate presentations of facts in dispute as established facts, often prejudicial to the young defendants.⁶⁹ In the 1831 case study, for example, John Any Bird Bell was reported as having unofficially confessed to the murder he was being accused of, without clarifying that the sole source of this information was the constable to whom he had supposedly confessed and who possessed no proof of the

⁶⁷ Pollak and Kubrin (n 48) 59, 63.

⁶⁸ Loretta Loach, *The Devil's Children: A History of Childhood and Murder* (Icon Books 2009)

⁶⁹ For example the *Times* reported that the witnesses testified at the trial of John Any Bird Bell that they had seen him with the victim on the 11th March, though it was the body of the victim that was found on the 11th of March and the date the witnesses testified about must have been the 4th March, the date on which the killing occurred, in - 'Summer Assizes', *The Times* (30 July 1831) 4.

fact.⁷⁰ Similarly, the unofficial admissions of Barratt and Bradley in the 1861 case study to police officer Morley, that they had committed the killing they were accused of, were reported as undisputed facts, without clarifying their source and unofficial standing.⁷¹ Moreover, the ability of the two defendants to distinguish right from wrong was reported as a fact, without mentioning that it was merely a claim made by the prosecutor at their trial.⁷² Margaret Messenger's confession of her crime in the 1881 case study to her neighbour, Mrs. Story, was similarly presented, since it was reported that she had confessed to the crime, without specifying that this confession had only occurred according to the neighbour in question.⁷³ This type of writing was particular to the 19th century, a form of pre-sensationalism, since stories were told as if the author was present, even if he or she were not, in order to make them sound more interesting, as if they were a novel.⁷⁴ Accordingly, when information is extracted from newspaper articles in the second chapter, attention is paid to what the source is and whether it was at the time a contestable or an undisputed fact. Moreover, cross-referencing is used between stories in different newspapers and Loach's book in order to eliminate any problems regarding precision and accuracy.

Furthermore, all sources used in the second chapter reveal that there were no public political discussions related to the 19th century case studies. Accordingly, despite the general research design of the thesis that requires analysis of the treatment by politicians of children who kill, this does not take place in the said chapter. In the cases of John Any Bird Bell in 1831 and of Barratt and Bradley in 1861, politicians were not mentioned at all in any of the sources. In the 1881 case of Margaret Messenger the Home Secretary was mentioned in some newspaper articles, but only in relation to his quasi-judicial role in commuting her death sentence to penal servitude for life. This is discussed in the section on the criminal justice system because it involves part of the criminal justice process rather than his political functions. This absence of political involvement is consistent with the findings of the

⁷⁰ 'Multiple News Items' *Hampshire Advertiser: Royal Yacht Club Gazette, Southampton Town & County Herald, Isle of Wight Journal, Winchester Chronicle, & General* (28 May 1831); 'Multiple News Items', *The Standard* (2 June 1831); 'The Editor of the Moring Chronicle', *The Morning Chronicle* (3 June 1831).

⁷¹ 'The murder by two children at Stockport', *The Bury and Norwich Post* (13 August 1861).

⁷² 'Summer Assizes', *The Times* (London, 10 August 1861) 11; 'The murder by two children at Stockport', *The Bury and Norwich Post* (n 71).

⁷³ 'Alleged murder near Carlisle', *The North-Eastern Daily Gazette* (5 July 1881); 'General home news', *Daily News* (6 July 1881); 'North Country News', *Northern Echo* (6 July 1881); 'General home news', *Daily News* (7 July 1881); 'The Assizes', *The Times* (3 November 1881) 9.

⁷⁴ Barnhurst and Nerone (n 47) 147-148.

first chapter that politics and crime did not really mix until much later, during the 20th century, when the issue of crime became politicised.

The examination of the case study of Mary Bell in the third chapter is founded upon a wide range of sources, with particular focus on information acquired from five out of the numerous newspapers reporting the trial and sentencing in 1968, and two books written by Gitta Sereny on the case of Mary Bell.⁷⁵ The two books by Sereny provide profound insight into the case, which constitutes their sole focus. *The Case of Mary Bell* is significant because it describes the developments in the case in great detail based on the personal observations of the writer at the time. *Cries Unheard* is equally valuable because it describes the thoughts and feelings of Mary Bell years after the commission of her crimes, from her own perspective, as interpreted by the writer. The potential biases of the books due to the proximity of the writer to the case and the perpetrator, especially in the latter book, is minimised via extensive cross-referencing with other sources, mainly relevant newspaper articles. The newspapers used for this cross-referencing in the third chapter are the *Times*, the *Guardian*, the *Daily Telegraph* and the *Daily Mirror*, which circulated daily, and the Sunday paper, *The Observer*. The main consideration in the selection is that these newspapers encompass a variety of reporting styles, hence covering, if not the entire, a great range of the population of readers. *The Times* during the 1960s held the image of the ‘prestigious’ newspaper that covered serious news with ‘independence’ and ‘truthfulness’ and was considered to be a ‘national institution’, the ‘paper of record’, more so than any other newspaper.⁷⁶ The *Daily Telegraph* was the most popular ‘upmarket daily’ newspaper, since it supported conservative politics and sold over five million copies daily.⁷⁷ *The Guardian* was known as an objective newspaper reporting serious news, which was not influenced by popular opinions, since it often adopted unpopular approaches.⁷⁸ *The Observer* was the oldest Sunday newspaper, which similarly to *The Guardian* that later acquired it, often adopted stances that were not always popular with the public and prided itself for being objective.⁷⁹ Finally, the *Daily Mirror* from the 1950s onwards was the newspaper that entered what was called the realm of tabloid journalism, since it focused on issues that were popular amongst

⁷⁵ Gitta Sereny, *The Case of Mary Bell* (Pimlico 1995); Gitta Sereny, *Cries Unheard, Why Children Kill: The story of Mary Bell* (Metropolitan Books 1998).

⁷⁶ Green (n 46) 43; <<http://www.pressreference.com/Sw-Ur/The-United-Kingdom.html>>, accessed 03/03/2012.

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ ‘The Observer Under Review’, *BBC News* (London, 4 August 2009)

<<http://news.bbc.co.uk/2/hi/programmes/newsnight/8184667.stm>>, accessed 01/03/2012.

readers, including show business, sports and human-interest stories, often engaging in sensationalistic journalism.⁸⁰ It devoted most of its space to news that would interest women and young readers and news of crime took up twice as much of its space as news of politics.⁸¹ However, it should be noted that tabloid journalism in the 1960s had yet to reach the adoption of the intensely competitive strategies witnessed in the following decades, which began with the advent of the *Daily Star* in 1978, and whose main selling points were ‘sex’ and ‘bigger and better boobs’.⁸² Hansard was also a source that was explored in an attempt to carry out some further cross-referencing, however, there was no mention of the case of Mary Bell in any of the Parliamentary discussions that took place in chronological proximity to it.

Lastly, the analysis in the fourth chapter of the thesis, on the case study of Thompson and Venables, takes into account a vast amount of sources associated with the case. Special focus, however, is placed on the judgments of the Court of Appeal,⁸³ the House of Lords,⁸⁴ the Tariff Recommendation Hearing⁸⁵ and the European Court of Human Rights,⁸⁶ as well as newspaper articles in the *Times*, the *Guardian*, the *Daily Telegraph*, the *Daily Mirror*, the *Sun*, the *Sunday Times* and the *Observer*. The various court decisions are essential to the analysis, especially regarding the approach of the criminal justice system, since they constitute a primary source of information on the events of the trial, as well as the approach of the court towards the young offenders expressed in the judgments, though not all of them are used in the same way. More specifically, the Court of Appeal and the House of Lords cases have a double function. One function was to add to the information on the events of the trial and the responses of the relevant sections of the criminal justice system towards the young defendants in 1993-94. Their other function was to be observed themselves and provide insights as to the approach of the criminal justice system through the appeal process, which can be different to the actual trial process, due to both chronological removal, as well as the differences in the composition of the courts and the fact that they work from transcripts rather than actual witnesses, both aspects to be discussed in the relevant chapter. The European Court of Human Rights case, however, was merely used to provide information on the original trial and the appeal cases and its

⁸⁰ <http://www.scribd.com/doc/26869993/History-of-Tabloid-Newspapers-in-England#>>, accessed 27/02/2012, page 16, 18.

⁸¹ *ibid* 16.

⁸² *ibid* 24.

⁸³ *R v Secretary of State for the Home Department, ex p Venables and Thompson* [1997] 2 WLR 67.

⁸⁴ *R v Secretary of State for the Home Department, ex p Venables and Thompson* [1997] 3 W.L.R. 23.

⁸⁵ *Re Thompson and Another (tariff recommendations)* [2001] 1 All ER 737 (CA).

⁸⁶ *V v United Kingdom* (2000) 30 EHRR 121.

own approach was not analysed to any depth. The reasons due to which the latter analysis was omitted was that the case was chronologically significantly removed from the original crime and trial, which was something that was to be avoided as aforementioned. Moreover, the case was outside the jurisdiction of England and Wales that is the subject matter of the thesis. The newspapers provide additional information on the events of the trial, as well as evidence on the approach of the press, politicians and public reaction. The particular mix of newspapers chosen for study includes the five newspapers examined in the previous chapter on Mary Bell, because similarly to that case, they provide a good range of reporting styles, as well as a basis for direct comparisons between the two case studies. In addition to the five newspapers examined in the previous chapter, the fourth chapter also examines the *Sun* and the *Sunday Times*, an additional tabloid and a Sunday newspaper respectively. The reason for their inclusion is that they were instrumental in the coverage of the 1993 case, in contrast to tabloids and Sunday papers in 1968, which largely avoided reporting the Mary Bell case. Additionally, the analysis of the Thompson and Venables case study also places some focus on the article ‘Condemn a Little More, Understand a Little Less’⁸⁷ by Deena Haydon and Phil Scraton, and the book *Sleep of Reason* by David James Smith.⁸⁸ The article provides a comprehensive account of the whole case, including the trial, the sentencing and the various appeals, as well as the political and practical implications of the case on the criminal justice system through new youth justice policy provisions. The book was one of the most widely referenced secondary sources on the case by the newspapers at the time of its publication.

General Limitations

Some limitations and problems that became apparent while researching, analysing and writing the thesis, specifically in relation to the sources used, have already been identified in the above section. Namely, the potential inaccuracies in the press reports regarding the reactions of the criminal justice system; as well as the limitation of the

⁸⁷ Deena Haydon and Phil Scraton, ‘“Condemn a little more, understand a little less”: The Political Context and Rights Implications of the Domestic and European Rulings in the Venables-Thompson Case’ (2000) 27(3) *Journal of Law and Society* 416.

⁸⁸ David James Smith, *The Sleep of Reason: The James Bulger Case* (Faber and Faber 1994).

press to reporting only public reactions rather than the public opinion as a whole, were mentioned.

To these aforementioned limitations can be added the occasional lack of information in particular fields during certain time periods. As noted above, no information is available on the treatment of the young perpetrators by politicians in the 19th century case studies.⁸⁹ Likewise, in the case study of Mary Bell, information on the approach of politicians towards Mary is scarce. However, this lack of information, especially when contrasted to the abundance of information available for the 1993 Thompson and Venables case, is valuable in itself, because it can lead to significant inferences and conclusions regarding the involvement of politicians in such matters. Furthermore, it proved to be impossible to obtain the trial transcripts of the case studies, since research revealed that transcripts are only available within five years from the conclusion of the trial. However, given the fact that the material on all case studies included a substantial number of newspaper articles, academic articles, books and subsequent appeal cases (depending on each case), the availability of information was more than sufficient to make up for the absence of a transcript.

Another potential limitation in the thesis is that a case study in which the young offender was just outside the age of discretion was selected because of its uniqueness in terms of its chronology and the fact that it was the last case in which a child was executed. John Any Bird Bell had just turned 14 years old when he killed his victim in 1831 and was deemed to be outside the age of discretion at his trial, which made him eligible to be tried without his capacity to commit a criminal offence being taken into consideration.⁹⁰ However, this difference from the other case studies and its effect on the approach of the segments of the criminal justice system examined towards the perpetrator are discussed in the chapter in question and taken into account in the conclusions.

Finally, there are limitations that emanate from the fact that the thesis and its conclusions are founded upon a case study approach that analyses five case studies. As aforementioned, cases of children under 14 years old killing other children and being held legally responsible for it are few, accordingly the five cases analysed constitute quite a representative sample. However, the very specific parameters set in the selection of the case studies lead to findings and conclusions that cannot be

⁸⁹ Julia Fionda (n 26) 35 –37, 53; Green (n 46) 35, 201.

⁹⁰ ‘Summer Assizes’, *The Times* (n 72); Loretta Loach (n 68) 131.

generalized without further research verifying whether they are applicable to different types of cases of children committing other offences. Accordingly, an important limitation of the thesis is that its findings and conclusions are specific to the situation in which children under the age of 14 kill other children and cannot be generalized. This, though, is intentional, since it is believed that to achieve the desired depth in the analysis of a single thesis, the topic needs to be narrowly defined. Other, separate theses would be required for extensions made to the type of cases discussed.

Chapter One: Setting the Stage

The current chapter provides background information that places the analysis of the case studies in the following three chapters in context. Primarily, the chapter refers to the varying concepts of childhood by forming four different concepts of the child that constitute the core of subsequent analysis. The chapter also examines other factors that might affect the treatment of the children in the case studies, such as gender inequalities, the changing features and nature of the British press over time and the developing relationship between politics and crime. Thirdly, the chapter contains a brief description of the general approach of the criminal justice system towards juvenile offenders and an examination of the evolution of the rule on the age of criminal responsibility and the *doli incapax* presumption. Finally, the chapter considers whether the concepts of childhood that existed over different time periods can be associated with the treatment by the criminal justice system of children.

The Concepts of Childhood

Childhood is a ‘social construct’, an institution that represents the ways in which people during the first few years of their lives have been understood in different time periods and cultures.¹ This was an idea originally suggested by Philippe Ariès in 1960, in his book *Centuries of Childhood*, and has since been the subject of a large amount of literature.² According to this idea the significantly different and often conflicting characteristics attributed to children are the result of influences from various cultures and historical periods³ and have little to do with either nature or ‘biological immaturity’.⁴ Accordingly, there exist a number of constructions or concepts of childhood, in order ‘to serve the different theoretical models of social life

¹ Jane Pilcher and Stephen Wagg, *Thatcher’s Children? Politics, Childhood and Society in the 1980s and 1990s* (RoutledgeFalmer 1996) 1.

² *ibid* 210; Alison James and Chris Jenks, ‘Public perceptions of childhood criminality’ (1996) 47(2) *The British Journal of Sociology* 315, 317.

³ James and Jenks (n 2) 317; Virginia Morrow, ‘“We are people too”: Children’s and young people’s perspectives on children’s rights and decision-making in England’ (1999) 7 *The International Journal of Children’s Rights* 149, 152; Michael King, ‘The Child, childhood and children’s rights within sociology’ (2004) 15 *K.C.L.J.* 273, 276.

⁴ John R. Morss, ‘The several social constructions of James, Jenks and Prout: A contribution to the sociological theorisation of childhood’ (2002) 10 *The International Journal of Children’s Rights* 39, 43; Chris Jenks, *Childhood* (2nd edition, Routledge, New York, 2005), 7, 30.

from which they spring',⁵ each of them built according to the experiences and understanding of children in their 'specific social context'.⁶

Various writers believe that childhood is a construction of society and that it is attributed different characteristics depending on when and where it was created. Cunningham and Jenks, for example, conclude that Ariès is correct in asserting that there were many significant differences in the way in which adults regarded children and childhood during different time periods⁷ and Linda Pollock accepts that the concepts of childhood changed over time and became more complex.⁸ Different approaches have even been followed in explaining different constructions of childhood. Ariès, Lloyd De Mause, Edward Shorter and Lawrence Stone during the 1970s adopted what was named the 'sentiments approach', since they explained variations in the constructions of childhood using the sentiments that existed towards children.⁹ Another approach adopted in the 1960s was the demographics approach, which dictated that the number of children within a family was a critical factor in the construction of childhood, since children were the focus of care and attention in small nuclear families as opposed to extended families, in which their primary purpose was to serve the economic interests of the household.¹⁰ Similarly, the household economics approach, adopted by Macfarlane in 1986, explained the constructions of childhood using the economic rather than the sentimental value attached to children during different time periods.¹¹ Furthermore, writers such as Cunningham focus their explanations of the different constructions of childhood on social factors, such as the introduction of compulsory schooling in the late 19th century, which separated children from the labour market and from adults, significantly increasing the 'emotional valuation' of children during the 20th century.¹²

The purpose here is to explore the different constructions of childhood that have arisen across time in Western cultures and to group together the characteristics ascribed to children to construct four different concepts of the child. It should be noted that there are fundamental disagreements between the various writers regarding

⁵Jenks (n 4) 27.

⁶Pilcher and Wagg (n 1) 1.

⁷Jenks (n 4) 55; Hugh Cunningham, *Children and Childhood in Western Society since 1500* (2nd edn, Pearson Longman, 2005) 36.

⁸ Lorraine Abernethie, 'Child labour in contemporary society: why do we care?' (1998) 6 *The International Journal of Children's Rights* 81, 85.

⁹ Cunningham (n 7) 11.

¹⁰ *ibid* 13.

¹¹ *ibid* 14.

¹² *ibid* 15.

the exact time each construction of childhood arose and became popular or dominant, the reasons behind their creation and growing popularity as well as their significance.¹³ These conflicts, however, are of little consequence for the purposes of this chapter, since the concern is the description of the different concepts of the child via the observation of the distinctive characteristics attributed to children within the ambit of each of the different constructions. Their historical development and chronology only need to be determined loosely.

The four concepts of the child identified for the purposes of the thesis are the Adult Child, the Savage Child, the Romantic Child and the Unformed Child. The characteristics attributed to children in each concept are derived directly from characterisations of children as well as indirectly from descriptions of what childhood was thought to be. The names given are labels considered to describe each concept and not established terms to which special significance has previously been attributed. These names and concepts are referred to regularly throughout the thesis, since the entire analysis is concerned with the possible associations that can be drawn between these concepts and the treatment of the children who killed in the case studies examined.

Despite the substantial differences between the four concepts, none of them are considered as being more advanced or as better describing childhood than the rest. Each merely focuses on different aspects of what being a child entails. The only argument that can be made in respect to the substance of the concepts is that the modern configuration of the concept of the Unformed Child is founded on scientific evidence and research to a greater extent than the other three, which are largely based on intuition. Nevertheless, the thesis does not attempt to evaluate the concepts, since such an evaluation would have little significance. It would mimic similar past attempts, usually concluding that the concept most popular at the time was in fact the most accurate description of childhood and children, only to be contradicted by the beliefs that replaced them. Instead, the thesis accepts that characteristics from one or various concepts of the child can be attributed to children at different times or simultaneously and attempts to explain what is the significance of that and how it might affect the approaches of the four fields examined towards children who kill. Moreover, towards the end, the thesis very briefly explores what each concept could

¹³ *ibid* 11.

signify within the broad field of the criminal justice system in relation to potential future reform and research.

The Adult Child:

One concept constructed out of the existing literature is that of the Adult Child. Philippe Ariès argues that up until the Middle Ages children were considered to be the same as adults as soon as they ceased being entirely dependent on their mothers.¹⁴ He refers to evidence indicating that children dressed¹⁵ and played¹⁶ like adults, were educated alongside adults,¹⁷ and were portrayed like ‘small adults’ in medieval art.¹⁸ In addition, he maintains that gestures and physical conduct with potentially sexual connotations were allowed from children because it was not feared that their innocence would be ruined as innocence was not a characteristic associated with children at the time.¹⁹ St Augustine, who wrote the ‘first modern autobiography’ as early as 397,²⁰ also provides evidence of the existence of the belief that children were the same as adults when he stated that they are complete and accordingly that their moral dilemmas must be taken equally seriously as those of adults.²¹

However, the actual existence of this concept of the child is controversial, since many writers argue that the concept of childhood, as a distinction between children and adults, always existed even if in very different forms.²² In some detail, Linda Pollock maintains, contrary to Ariès and Stone, that parents since the 16th century offered care to their children and adults always knew that children were different from themselves.²³ Furthermore, both Cunningham and Jenks conclude that the claim made by Ariès that the concept of childhood did not exist in the Middle Ages cannot be sustained and that childhood was always recognised as ‘a separate stage of human existence’.²⁴ Similarly, Shahar argues that during the Middle Ages the first seven years of a child’s life were recognised as a separate stage of development called *infantia* and were attributed much more importance than Ariès recognises, even

¹⁴ Philippe Ariès, *Centuries of Childhood* (Pimlico edn, Pimlico, 1996), 125; Arlene Stolnick, ‘The Limits of childhood: Conceptions of child development and social context’ (1975) 39 *Law and Contemporary Problems* 38, 64.

¹⁵ Ariès (n 14) 48.

¹⁶ *ibid* 70, 96.

¹⁷ *ibid* 148.

¹⁸ *ibid* 31.

¹⁹ *ibid* 103.

²⁰ Saint Augustine, *Edwarda; The Confessions of St Augustine* (first published 397 AD, Bouverie Pusey tr, Arc Manor 2008).

²¹ Cunningham (n 7) 26.

²² Morss (n 4) 43-44.

²³ Abernethie (n 8) 85.

²⁴ Jenks (n 4) 55; Cunningham (n 7) 35.

though she concedes that children were not physically separated from the adult world, since home living conditions did not allow for privacy and all ages mixed together within society.²⁵ These writers do generally refer to children being distinguished from adults at younger ages than the children who constitute the subject matter of the current thesis.²⁶ Nonetheless, the distinction is still relevant to the construction of the concept of the Adult Child, albeit indirectly, because it shows that children were considered as a separate entity at some point during their lifetimes, irrespective of the cut off point at which this happened during different time periods.

The evidence that the attribution of childhood to children did not occur equally for boys and girls further enhances controversy.²⁷ For instance, Ariès mentions that schooling for girls was not available until centuries after it became available for boys, which meant that girls were physically much less separated from adults than boys, a fact significantly shortening the period of their childhood.²⁸ Secondly, Ariès identifies the distinction between the way in which male and female children were attired during the 17th and 18th centuries, the time during which the clothes of children became important because they indicated their age and stage of growth and development.²⁹ He points out that it was only boys that had special clothing according to their ages, whereas girls were dressed like little women from the time they stopped being in swaddles.³⁰

Despite the controversy, evidence of this concept re-emerged in the modern era, especially in the 1980s and 1990s,³¹ when the worlds of adults and children were said to have re-merged³² in a form that was well expressed by the school of thought of the 'children's liberationists'.³³ This school of thought originated in the USA and advocated in favour of the independence of children, assuming that they obtained capacity to make their own decisions from a very young age.³⁴ Holt and Farson, who were two of the most popular child liberationists, maintained that children had an ability for self determination that was vastly underestimated³⁵ and they argued that

²⁵ Cunningham (n 7) 31-32.

²⁶ *ibid.*

²⁷ Ariès (n 14).

²⁸ *ibid* 318.

²⁹ *ibid* 50.

³⁰ *ibid* 51.

³¹ *ibid* 188.

³² Janet L. Dolgin, 'The fate of childhood: Legal Models of Children and the Parent- Child Relationship' (1997-1998) 61 *Alb. L. Rev* 345, 422.

³³ Abernethie (n 8) 107; Jane Fortin, *Children's Rights and the Developing Law* (3rd edn, Cambridge University Press 2009), 4

³⁴ Abernethie (n 8) 107; Fortin (n 33) 4.

³⁵ Fortin (n 33) 4.

childhood was a social construct that enabled the oppression of children and their ‘unwarranted discrimination’, by excluding them from the world of adults and the freedoms that participation in it entailed.³⁶ More specifically, Holt argued that children of all ages should have, amongst other things, ‘the right to vote, to work for money, to buy and sell property, to travel, to be paid a guaranteed minimum state income, to direct their own education, to use drugs and to control their own private sex lives’.³⁷

The expression of these views in Europe and specifically in England is evident from the approach of the press as well as legislation that appear both before, but also largely after, the time period examined by the case studies in the current thesis. This raises the question of whether the last case examined, the case of Thompson and Venables in 1993, had any bearing on the events that constitute evidence of the re-emergence of this concept. However, it is argued in the fourth chapter, that the opposite is actually true, meaning that it was the beginning of re-emergence of these concepts that resulted in the events of the case study as they unfolded. Furthermore, and most importantly, it was essentially the developments in the fields of the press and politics that led to the changes described below that further enhanced the popularity of the concept.

More specifically, for the purposes of the present section, in newspapers during the 1990s children were described as ‘small adults’³⁸ and domestic legislation granted them rights of autonomy and self determination, at least to some extent and in relation to some matters,³⁹ including the right to consent to surgical, medical or dental treatments,⁴⁰ to consent to sexual intercourse once they were above 16 years old⁴¹ and to instruct solicitors and initiate residence order proceedings against their parents.⁴² In addition, the Education Act 2002 provided that schools had a duty to consult their students in relation to decisions on how the school should be conducted⁴³ and on an international level, the United Nations Convention on the Rights of the Child in 1990

³⁶ *ibid* 4.

³⁷ *ibid* 4.

³⁸ ‘Killing the age of innocence’ *The Guardian* (London, 30 May 1994) 18.

³⁹ David Elkind, ‘The law and postmodern perceptions of children and youth’ (1992) 69 *Denv.U.L. Review* 575, 577-578; Berry Mayall, ‘The sociology of childhood in relation to children’s rights’ (2000) 8 *The International Journal of Children’s Rights* 243, 248.

⁴⁰ Family Law Reform Act 1969, s 8(1).

⁴¹ Sexual Offences (Amendment) Act 2000 reduced the age to which a person could consent to buggery and certain homosexual activities to sixteen.

⁴² Children Act 1989, s 8.

⁴³ Education Act 2002, s 29B.

granted children the freedom of expression,⁴⁴ religion⁴⁵ and association,⁴⁶ all traditionally adults rights.⁴⁷ These rights enabled children to ‘break out’ of their childhood⁴⁸ and gain their autonomy and independence,⁴⁹ becoming partners in their relationships with adults, with whom they were able to engage in relationships of trust and reciprocity rather than dependency.⁵⁰ Children had thus been empowered⁵¹ and recognised as ‘competent actors’⁵² and largely ‘autonomous individuals’ by the late 20th and early 21st century.⁵³

Alongside this rights acquisition, children also experienced the removal of a number of special privileges they had previously been entitled to due to their young age. This withdrawal helped to strengthen this construction of childhood, or rather the absence of a construction of childhood and hence reinforced the concept of the Adult Child. The abolition of the *doli incapax* presumption in March 1998 which is discussed below, was one such example and was described by Professor John Pearce as a sign of children losing their importance, since it was felt that there was no need to ‘make special provisions for them’ any more.⁵⁴ Furthermore, an article in the *Guardian* in 1993 claimed that the criminal law often equated children ‘with the fully responsible adult’, making childhood irrelevant.⁵⁵ In addition differences between children and adults in contemporary society in terms of how they dressed, entertained themselves, played and competed became fewer and fewer.⁵⁶ In particular, child specific games, food and clothes were no longer popular and children often showed lack of respect for their elders, committed crimes and lacked shame, especially in relation to sex, according to Cunningham.⁵⁷

Therefore, there is enough evidence to support the existence of the concept of the Adult Child, to an extent throughout the Middle Ages, more in respect to girls than boys, and with more certainty during the latter part of the 20th and beginning of the 21st centuries. Children within this concept have the characteristics of autonomy, competence and responsibility and require no special protection due to their special

⁴⁴ United Nations Convention on the Rights of the Child (1990), art 13.

⁴⁵ *ibid*, art 14 .

⁴⁶ *ibid*, art 15.

⁴⁷ Fortin (n 33) 39.

⁴⁸ Cunningham (n 7) 172, 202.

⁴⁹ Cunningham (n 7) 194.

⁵⁰ Jenks (n 4) 111, 115.

⁵¹ Jeroen J.H. Dekker, ‘The century of the child revisited’ (2000) 8 *The International Journal of Children’s Rights* 133, 143.

⁵² Mayall (n 38) 248.

⁵³ Dolgin (n 32) 422.

⁵⁴ ‘Killing the age of innocence (n 38).

⁵⁵ ‘The end of childhood’ *The Guardian* (London 29 November 1994) 12.

⁵⁶ Dolgin (n 32) 345, 349.

⁵⁷ Cunningham (n 7) 188.

nature, since they have none. This concept is founded on the absence of a construction of childhood rather than a particular construction of it.

The Savage Child:

The second concept to be discussed is that of the Savage Child, whose origins can be traced back to the church and the religious belief that children, both male and female, are born evil because they have been marked by 'original sin'.⁵⁸ St Augustine, for example, maintained that children inherit the original sin from Adam upon their birth and baptism removes this, though not the inherent tendency to do evil.⁵⁹ Similarly, Thomas Bacon, who was also expressing the ideas of Protestantism, stated in 1550 that children were as 'wicked' as a person who was 'ignorant and not exercised in godliness' and that they were born with 'evil lusts and appetites'.⁶⁰ Moreover, Jonathan Edwards, a famous Protestant preacher of the 18th century, expressed the view that children were 'infinitely more hateful than vipers'.⁶¹ The Calvinist theory, which was adopted by some Protestant sects, declared that children were inherently sinful and evil and hence had to be rigidly controlled by their parents in a way that would break their will,⁶² thus justifying intervention, discipline and punishment into the lives of children because they had to be reformed.⁶³ This approach was relevant towards both boys and girls, even though the methods suggested for controlling each gender and making them conform to social norms differed, since each was based on the different gender roles they were supposed to fulfill later on in their lives.⁶⁴ Advocates of this concept of the child became especially active during the early 19th century, which was when they attempted to educate and reform children through philanthropic work.⁶⁵ Evidence related to this concept of the child was also found in the 20th century following the killing of James Bulger, the case study of the fourth chapter. Similarly to above regarding the concept of the Adult Child, whether or not the case study itself led to the strengthening of the concept of the Savage Child is further examined in both the fourth and fifth chapters.

⁵⁸ Ariès (n 14) 129; Dekker (n 51) 140.

⁵⁹ Cunningham (n 7) 26.

⁶⁰ *ibid* 47.

⁶¹ *ibid* 52-53.

⁶² Stolnick (n 14) 44.

⁶³ Ariès (n 14) 129; Dekker (n 51) 140.

⁶⁴ Jean-Jaque Rousseau, *Émile* (First published 1762, Barbara Foxley tr, The Kindle Edition); Mary Wollstonecraft, *Vindication of the Rights of Woman* (A Public Domain Book), 1792.

⁶⁵ Dekker (n 51) 140.

More secular and extreme expressions of the concept also exist, though they are related more to boys than girls. These expressions of the concept are associated with the notion that the existence of evil in children turns them into untrustworthy beings, often feared and despised.⁶⁶ During the late 17th century in Bristol, for example, children were described as ‘lousing like swarms of locusts in every corner of the street’ and in Buckinghamshire the poet Thomas Cowper maintained that ‘children of seven years of age infest the streets every evening with curses and with songs’.⁶⁷ Keith Thomas, a British historian cited by Cunningham, also argued that children in early modern England had ‘a casual attitude to private property, an addiction to mischief and a predilection for what most adults regarded as noise and dirt’.⁶⁸ It was also said that children in some cases behaved like ‘tribes of lawless freebooters’ and made ‘the state of society more perilous than in any former day’ and they became known as ‘savages’ or ‘street arabs’.⁶⁹ Similarly, a writer in 1849 argued that in London there was ‘a class as wild, and perhaps even more incorrigible than those spawned forth by the dangerous classes in Paris’⁷⁰ and the media and the public during the second half of the 20th century expressed concern about juvenile crime and wondered how to protect society from the ominous threat of ‘troublesome children’,⁷¹ the ‘alien creatures’ who posed ‘a threat to civilisation’.⁷² Marina Warner argued in her 1994 Reith Lectures that children were regarded as ‘a menacing enemy’, who excited ‘repulsion – and even terror’.⁷³ Likewise, Beryl Bainbridge, a novelist returning to Liverpool at the start of the 21st century, commented that she saw children ‘so devoid of innocence’ and ‘undeniably corrupt’ that it frightened her and Lynda Lee Potter, a columnist, maintained that the world of children had become ‘nightmarish’, since children grew up ‘virtually as savages’.⁷⁴ Michael Howard, Britain’s Home Secretary between 1993 and 1997, stated that ‘we are sick and tired of these young hooligans (...) we must take the thugs off the streets’, referring to juvenile offenders.⁷⁵ However, these references to the dangerousness and violent nature of

⁶⁶ Ariès (n 14) 314.

⁶⁷ Cunningham (n 7) 98.

⁶⁸ *ibid* 98.

⁶⁹ *ibid* 147-148.

⁷⁰ *ibid* 147.

⁷¹ *ibid* 182-183.

⁷² *ibid* 187.

⁷³ Pilcher and Wagg (n 1) 134.

⁷⁴ Deena Haydon and Phil Scraton, ‘“Condemn a little more, understand a little less”: The Political Context and Rights Implications of the Domestic and European Rulings in the Venables-Thompson Case’ (2000) 27(3) *Journal of Law and Society* 416, 424-425.

⁷⁵ *ibid* 426.

children are mostly limited to boys, since there has traditionally been a general perception that deviant boys are violent and dangerous, whereas deviant girls are merely immoral.⁷⁶ The perception is statistically reinforced by the fact that the number of male offenders has always been much higher than the number of female offenders for all crimes, including violent ones, with the only exception being crimes involving sexual deviance, such as prostitution, the crime for which the majority of girls and women have been prosecuted.⁷⁷

Therefore, the Savage Child is predominantly the male child who is born evil and wicked, the child who is corrupt, savage and is to be mistrusted, feared and despised. Female children, although connected to the concept via the belief that all children are born evil due to original sin and have to be controlled, restrained and educated out of their evil lusts and appetites, tend to be excluded from the parts of the concept that prescribe that children are dangerous, wild and inherently violent. The concept is primarily based on emotional and religious grounds rather than any scientific discoveries or data. It stems from a construction of childhood that entails a period during which children have to be trained and prepared for adulthood by being restrained, punished and rigidly controlled, until their natural tendencies for evil are curbed and they are socialised out of violence and wickedness. The existence of the Savage Child can be dated as far back as St Augustine's work in 397 and traces of it can be found throughout the centuries. However, escalation in its popularity can be noticed in the late 17th century, throughout the 18th century and the early 19th century, when urbanisation and industrialisation led to a number of homeless children occupying the streets of cities, as well as during the 1990s, especially following the murder of James Bulger in 1993. As aforementioned, the effect of the 1993 case on the legislation introduced in the mid and late 1990s that shows strengthening of the concepts of the Savage Child is further discussed in the fourth and fifth chapters.

The Romantic Child:

The third concept is that of the Romantic Child, which was the subject of description and discussion by many writers starting with Jean-Jacques Rousseau in 1762.⁷⁸ Rousseau was the first to refer to children as innocent, valuable, vulnerable

⁷⁶ Meda Chesney-Lind (ed) and Lisa Pasko (ed), *The female offender: Girls, women and crime* (3rd edition, Sage Publications 2013) 59-63

⁷⁷ Frances Heidensohn, *Women and Crime* (2nd edition, Macmillan Press 1985) 32,38; Chesney-Lind and Pasko (n 76) 57, 59-63.

⁷⁸ Stolnick (n 14) 45.

and in need of protection.⁷⁹ More specifically, he argues in his book *Émile*, that God ‘makes all things good’, including newborn children, that there is no ‘original sin in the human heart’ and that the ‘first impulses of nature are always right’.⁸⁰ Children, he claims, are born uncorrupted,⁸¹ making childhood an era of ‘purity’,⁸² as well as ‘unmoral’ in their actions,⁸³ since they knew neither good nor evil and felt no guilt, modesty or shame.⁸⁴ Furthermore, he argues that children are naturally ‘helpless and in need of affection’⁸⁵ and are the ‘greatest asset of any civilisation’,⁸⁶ the ‘future of society’.⁸⁷ Rousseau states in *Émile* that up to the age of puberty boys and girls have little to distinguish them from each other.⁸⁸ He argues that ‘girls are children and boys are children; one name is enough for creatures so closely resembling one another’.⁸⁹ However, here is where the identical treatment between the sexes by Rousseau ends and gender distinctions begin. Not only is the whole book based on the observation of *Émile*, a boy,⁹⁰ but Rousseau also refers to the differences between boys and girls expressly.

The first major difference is in the proposed nature of the female and male Romantic Children. Rousseau explains that the desire often exhibited by young boys to engage in games that involve noise and movement and to destroy things and kill small animals or insects is natural because they are full of energy and activity and every ‘change involves actions’, with destruction involving more action than construction,⁹¹ an explanation that was in accordance with the 20th century belief that children engaged in ‘mischief, not evil.’⁹² In addition, boys by nature, Rousseau continues, care about their own amusement and pleasure and do not care what others think of them.⁹³ In contrast, the writer describes girls as naturally docile, instinctively preferring games that are nice to look at and caring about dressing, being viewed as pretty and what others think of their behaviour.⁹⁴

⁷⁹ Rousseau (n 64) 46, 57, 76; Stolnick (n 14) 45; Dekker (n 51) 139; Jenks (n 4) 124, 318; Cunningham (n 7) 63, 162; Abernethie (n 8) 88.

⁸⁰ Rousseau (n 64) 1, 62.

⁸¹ James and Jenks (n 2) 319.

⁸² Ibid 319; Abernethie (n 8) 87.

⁸³ Rousseau (n 64) 61.

⁸⁴ Ibid 401.

⁸⁵ Ibid 57; James and Jenks (n 2) 318; Abernethie (n 8) 88; Cunningham (n 7) 162

⁸⁶ Cunningham (n 7) 172.

⁸⁷ Jenks (n 4) 106.

⁸⁸ Rousseau (n 64) 202.

⁸⁹ Ibid 202.

⁹⁰ Ibid.

⁹¹ Ibid 35.

⁹² ‘Slaughter of innocence’ *The Sunday Times* (London, 28 November 1993).

⁹³ Wollstonecraft (n 64) 97.

⁹⁴ Rousseau (n 64) 390-393; Wollstonecraft (n 64) 97

These “naturally” occurring differences in the temperaments and characters of boys and girls, according to Rousseau, prescribe that the two sexes cannot be engaged in the same employments and by extension that they must be educated differently.⁹⁵ This leads to another crucial difference between the concepts of the female and male Romantic Children. Children, Rousseau claims, must ‘develop naturally towards virtue with minimum of adult training’,⁹⁶ since their ‘caprices’ are a result of bad discipline⁹⁷ and the vices of adults are a result of them being ‘perverted by society’ as children, by being taught ‘preconceived notions’.⁹⁸ Even though he refers to children, without defining their gender, it becomes evident that he is referring to male children, since he clarifies in another part of the book that when it comes to girls, their education must entail confinement from an early age in order for them to get used to it, so that it will not come as a shock to them that they will be subjected to the restraint that is decorum throughout the rest of their lives.⁹⁹ Moreover, Rousseau also distinguishes between the two different directions that education for boys and girls must take. He maintains that the education of boys must aim to develop their physical strength and morals like “truth and fortitude”.¹⁰⁰ Conversely, the education of girls must focus on giving them grace, subjecting them to authority,¹⁰¹ encouraging their obedience, making them pleasing, sweet and good natured rather than virtuous and teaching them manners rather than morals.¹⁰²

It follows that the concept of the Romantic Child for boys originates from a construction of childhood as the ‘best time of life’,¹⁰³ ‘the happy days’,¹⁰⁴ to be recalled with ‘nostalgia’,¹⁰⁵ the time when ‘laughter was ever on the lips and when the heart was (...) at peace’,¹⁰⁶ the time of ‘spontaneity (...) and joy’,¹⁰⁷ a ‘time of play (...) a time and experience different from the rest of our lives’,¹⁰⁸ and a time for children to be happy.¹⁰⁹ Rousseau in *Émile* argues that educators should focus on keeping the child happy in the present, recognising childhood as a state of being in its own right

⁹⁵ Wollstonecraft (n 64) 97

⁹⁶ Rousseau (n 64) 46, 76; Stolnick (n 14) 45; Dekker (n 51) 139; Jenks (n 4) 124; Cunningham (n 7) 63.

⁹⁷ Rousseau (n 64) 97.

⁹⁸ *ibid* 233.

⁹⁹ Wollstonecraft (n 64) 99

¹⁰⁰ Rousseau (n 64) 390-393; Wollstonecraft (n 64), 29, 32-33.

¹⁰¹ Rousseau (n 64) 390-393.

¹⁰² Wollstonecraft (n 64) 29, 32-33. 101.

¹⁰³ Cunningham (n 7) 63, 161.

¹⁰⁴ Rousseau (n 64) 115.

¹⁰⁵ Cunningham (n 7) 161.

¹⁰⁶ Rousseau (n 64) 46.

¹⁰⁷ Abernethie (n 8) 87.

¹⁰⁸ *ibid* 89-90.

¹⁰⁹ James and Jenks (n 2) 318.

and not merely as a training period for adulthood.¹¹⁰ He criticises those who desired to rob children of the fleeting joys that accompany their precious childhood,¹¹¹ by a ‘cruel education’, which ‘sacrifices the present to an uncertain future’.¹¹² This, however, is not the same for girls, who must learn restriction, obedience and authority from a young age.¹¹³

Many writers, poets and artists followed Rousseau in describing children along the lines of the concept of the Romantic child, though they did not follow his lead on drawing such sharp distinctions between the two genders. Romantic poets at the end of the 18th century, for instance, characterised childhood as ‘the spring which should nourish the whole life’.¹¹⁴ Reverend Brook in 1872, described children as ‘fresh from the hand of God, living blessings which have drifted down to us from the imperial palace of God’¹¹⁵ and children during the period of the Enlightenment were said to symbolise everything that was ‘decent and caring’ in society, its ‘very index of civilisation’.¹¹⁶ Philippe Ariès in his book *Centuries of Childhood* wrote that children during the 18th century were often compared to angels.¹¹⁷ Hugh Cunningham referred to the comparison of children to angels throughout the 18th and early 19th centuries, attributing it to the declining belief in original sin due to secularisation,¹¹⁸ and the painter Joshua Reynolds titled a painting of his young niece, in the 1780s, *The Age of Innocence*, suggesting that innocence was a fleeting characteristic possessed by children.¹¹⁹ In more recent times, newspaper reports in the 1990s referred to childhood as a ‘very heaven’, ‘a golden age’¹²⁰ a ‘once upon a time story with a happy and predictable ending’.¹²¹ The *Sunday Times* in 1993, described the deaths of James Bulger and of the three-year-old Jonathan Ball by an IRA bomb as the death of innocence¹²² and Ellen Key, in her book *The Century of the Child*, which was very influential in the education arena during the 20th century, mentioned innocence as one of the distinguishing characteristics of children.¹²³

¹¹⁰ Cunningham (n 7) 62-63.

¹¹¹ *ibid* 62-63.

¹¹² Rousseau (n 64) 46.

¹¹³ Rousseau (n 64) 390-393; Wollstonecraft (n 64) 99

¹¹⁴ Cunningham (n 7) 68.

¹¹⁵ Cunningham (n 7) 69.

¹¹⁶ Jenks (n 4) 59-60.

¹¹⁷ Ariès (n 14) 109.

¹¹⁸ Cunningham (n 7) 58-59.

¹¹⁹ *ibid* 66.

¹²⁰ ‘The death of childhood’ *The Times* (London, 1 August 1995) 13.

¹²¹ James and Jenks (n 2) 315.

¹²² ‘Tide that turned against evil’ *The Sunday Times* (London, 28 March 1993).

¹²³ Dekker (n 51) 135.

Policy reformers also allowed the concept of the male Romantic Child to guide numerous child related reforms. However, despite their reliance on the concept as developed by Rousseau, the legislative reforms applied equally to both genders. During the 19th century, for example, reformers attempted to protect vulnerable children through the introduction of the labour laws, which placed significant restrictions on child labour,¹²⁴ believing it unnatural for children to work¹²⁵ and considering childhood a right of children of all classes¹²⁶ which could only be preserved by only allowing play¹²⁷ or education.¹²⁸ 20th century reformers referred to childhood as ‘a garden of delight’, within which children are happy and well cared for¹²⁹ and developed a strand of rights founded upon the idea that children were ‘vulnerable and at risk’, requiring ‘nurturing and special protection from the adult world’.¹³⁰ In particular, case law provides that despite the right of children to determine their own medical treatment discussed within the concept of the Adult Child,¹³¹ their decisions can be overridden when they prove to be life threatening.¹³² The Education Act 2002 provides that teachers are not, under any circumstances, to use physical punishment against their pupils.¹³³ The Sexual Offences Act 2003 makes sexual intercourse with a child under 13 years old a crime irrespective of his or her consent¹³⁴ and the Convention on the Rights of the Child provides that children are entitled to the ‘highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health’.¹³⁵ Moreover, adult and child offenders are separated in terms of criminal punishment following The Children and Young Persons Act 1933¹³⁶ and The Children Act 1989 provides that the welfare of children should be the paramount consideration for the courts when they make decisions on the upbringing of children.¹³⁷ Finally, during the United Nations General Assembly

¹²⁴ James and Jenks (n 2) 319.

¹²⁵ Cunningham (n 7) 144.

¹²⁶ *ibid* 161.

¹²⁷ *ibid* 141.

¹²⁸ Abernethie (n 8) 100.

¹²⁹ Cunningham (n 7) 172.

¹³⁰ Abernethie (n 8) 104-105.

¹³¹ *Gillick Respondent v West Norfolk and Wisbech Area Health Authority and Department of Health and Social Security* [1986] AC 112; *R(Axon) v Secretary of State for Health and the Family Planning Association* [2006] EWHC 37.

¹³² *Re R (a minor) (wardship: consent to treatment)* [1992] Fam 11; *Re W (a minor) (medical treatment: court’s jurisdiction)* [1993] Fam 64.

¹³³ Education Act 1996, ss 548-549.

¹³⁴ Sexual Offences Act 2003, ss 5-8.

¹³⁵ United Nations Convention on the Rights of the Child, art 24(1).

¹³⁶ Children and Young Persons Act 1933, s.31; Pilcher and Wagg (n 1) 61-62; Dekker (n 51) 133.

¹³⁷ Children Act 1989, s 1.

Special Session on Children in 2002, it was said that children should be ‘loved, respected and cherished’.¹³⁸

Therefore, the Romantic Child is the male child born innocent, pure, vulnerable, happy, valuable and energetic to the point of being somewhat rough and mischievous. Simultaneously, there exists the innocent, pure, vulnerable, happy, valuable girl, who is docile, gentle, sweet and preoccupied with the opinions of others. It is the boy who can only be corrupted by the imposition of restrictions by adults and the girl who needs to be subjected to authority and obedience from an early age. It is a concept founded upon an emotional approach towards children. The Romantic Child developed amongst scholars, writers, artists and poets in the 18th century, but it was not until the 19th century, from the 1830s onwards, that evidence can be found of its existence amongst policy makers, politicians and the government. Remnants of it are still evident throughout the late 19th, 20th and 21st centuries, though it no longer occupies centre stage.

The Unformed Child:

The fourth and final concept of the child identified is that of the Unformed Child. This concept evolved over time and exists in two configurations. Both configurations entail that children are born neither evil nor innocent, that they develop gradually in terms of morality and that external influences determine in which direction they grow and whether their behaviour is good or bad. However, the explanations of and influences on each configuration differ.

The philosopher John Locke developed the earlier configuration of the concept during the 17th century. He maintained that children, without particular reference to male or female children, are *tabula rasa*, a ‘blank slate’ as far as ideas are concerned and that nine out of their 10 parts are moulded into being good or evil by the education they receive.¹³⁹ Locke argued that children are ‘undeveloped, unknowing and unwise’,¹⁴⁰ thus constituting unformed persons who require education and self-control before being converted into civilised adults.¹⁴¹ Within this configuration of the concept children are ‘beings who have the potential for being slowly brought into contact with human beings’ and not individuals who are able to engage in a ‘complex

¹³⁸ Fortin (n 33) 748.

¹³⁹ Stolnick, (n 14) 45; Dekker (n 51) 139; Cunningham (n 7) 60.

¹⁴⁰ Annette Ruth Appell, ‘The pre-political child of child-centred jurisprudence’ (2009-2010) 46 House of Lords Review 703, 739.

¹⁴¹ Abernethie (n 8) 87.

adult world'.¹⁴² They are not 'mature, rational and competent' as are adults, but are 'less than fully human, unfinished or incomplete'.¹⁴³ Similar arguments preceding John Locke's were made by Erasmus, who wrote various books and pamphlets during the 1520s on children's upbringing and education.¹⁴⁴ He describes children as 'shapeless lumps' who are 'capable of assuming any form' and that it is up to their educators whether they are reared to become animals or 'godlike creatures',¹⁴⁵ thus agreeing with Locke that adults are to blame for children's bad behaviour.¹⁴⁶

The modern configuration of the concept of the Unformed Child developed around the end of the 19th and beginning of the 20th centuries, and is scientifically oriented, in contrast to its predecessor. Within this configuration male and female children are described as individuals born with 'some constructive and some destructive capacities' and develop gradually.¹⁴⁷ Good parenting, education and surrounding circumstances are said to bring out their positive characteristics and contain their destructiveness.¹⁴⁸ Various psychologists helped in the concept's development and growing popularity, starting with Piaget in 1932, with some gender differences beginning to appear within specific scientific analyses.

Piaget concluded that morality in children develops gradually, depending on external influences.¹⁴⁹ This development, he maintains, can be separated into two stages.¹⁵⁰ In the first stage of moral development rules are respected by children due to the respect they have towards those setting them, but are not strictly followed because they are external to their conscience and not entirely understandable to them.¹⁵¹ Justice is simply something that rewards good behaviour and punishes bad behaviour, where good behaviour is adherence to adult rules and bad behaviour is disobedience of these rules.¹⁵² In contrast, in the second stage of moral development children are able to understand the spirit of the rules and evaluate them, a fact that makes them obey them more effectively.¹⁵³ They realise that the rules are necessary to regulate their behaviour and enable them to maintain relationships of trust, reciprocity and

¹⁴² Jenks (n 4) 19.

¹⁴³ *ibid* 19.

¹⁴⁴ Cunningham (n 7) 43.

¹⁴⁵ *ibid* 43.

¹⁴⁶ *ibid* 45.

¹⁴⁷ 'Encounter: Why little angels become monsters' *The Observer* (London, 8 March 1993) 55.

¹⁴⁸ Cunningham (n 7) 43

¹⁴⁹ Jean Piaget, *The Moral Judgment of the Child* (Routledge and Kegan Paul 1932) 395.

¹⁵⁰ *ibid* 395.

¹⁵¹ *ibid* 61.

¹⁵² *ibid* 199.

¹⁵³ Jean Piaget, *The Moral Judgment of the Child* (first published 1932, Marjorie Gabain tr, Free Press Paperbacks 1997) 65, 70-71.

cooperation.¹⁵⁴ The content and morality of rules are evaluated at this stage.¹⁵⁵ This passing from the first to the second stage according to Piaget's findings is age related and occurs approximately at the age of 10, though the particular age is not always the same and can vary considerably, depending on the child in question and his or her surrounding factors, education and influences.¹⁵⁶ His experiments were predominantly conducted on male subjects, but based on the few female subjects he examined, he concluded that girls' morality develops at a slower rate than the morality of boys, hence distinguishing between the two genders.¹⁵⁷

Another influential psychologist, Lawrence Kohlberg, expanded Piaget's work. Kohlberg's work supports the view that children are born as a blank canvas, that when they are younger they do not have their own morality and that as they grow older they go through various stages of developing their own morality, such as believing that moral actions are determined by what is approved by others significant to them and later by society as a whole. The only difference from Piaget is that Kohlberg arranges this process in three levels, each sub-divided into two stages, as opposed to the two-stage process described by Piaget.¹⁵⁸ Kohlberg's research was solely on male subjects, hence ignoring any possible differences between the two genders.¹⁵⁹ Carol Gilligan, who conducted similar research on female subjects and criticised both Piaget and Kohlberg for their male oriented approach, concluded that it is the type of morality adopted that is different between boys and girls, rather than the age at which it is achieved.¹⁶⁰ More specifically, she maintained that the morality of girls is centered on maintaining personal relationships, which she named the ethic of care, whereas the morality of boys focuses on justice and the adherence to rules, the ethic of justice, which is less personal.¹⁶¹ In other words, Piaget and Kohlberg saw the ethic of justice as a more advanced stage of morality than the ethic of care, whereas Gilligan argued that the latter was equally valuable and morally advanced.¹⁶²

Other psychologists further fortified the development of the concept of the Unformed Child through their work on the moral development of children, albeit via the use of alternative routes to the structural theories developed by Piaget and

¹⁵⁴ *ibid* 73.

¹⁵⁵ *ibid* 65, 70.

¹⁵⁶ *ibid* 123-124.

¹⁵⁷ Carol Gilligan, *In a Different Voice* (Harvard University Press 1982), 10.

¹⁵⁸ Hersh, Paolito and Reimer, *Promoting Moral Growth – From Piaget to Kohlberg* (Longman, New York, 1979) 62.

¹⁵⁹ Gilligan (n 156) 10.

¹⁶⁰ *ibid*, 18-19.

¹⁶¹ *ibid*, 30.

¹⁶² *ibid*, 10.

Kohlberg. For instance, during the 1990s Bandura's behaviourist theory claimed that child morality develops gradually as children grow older, via a process through which children are gradually more able to attach weight and importance to the moral considerations involved in making a decision based on the available information.¹⁶³ The process, though described as following erratic patterns, which do not fall into successive stages as maintained by structural theorists, is still gradual and age related, though no mention of gender is made.¹⁶⁴ In addition, the process is significantly influenced by external factors, such as the actions of people close to the children, especially their parents and peers whom they mimic.¹⁶⁵

Therefore, the concept of the Unformed Child was introduced in the 16th century and gained strength in the 17th century through the work of Locke. This earlier configuration did not become a highly popular concept, but persisted throughout the 18th and 19th centuries. It was not until the 20th century that it gained momentum in a different, scientifically orientated configuration, which was first introduced at the end of the 19th century. Some gender differences do exist within the concept, mostly prescribing that the rate of development of morality might be different between the two genders or that their type of morality might differ. However, these differences do not take away from either gender the basic characteristics of the concept, namely that children are born neither good nor evil and that they develop a sense of morality gradually with age, influenced to an extent by external factors. The concept is founded upon a construction of childhood that is a period of development, education, socialisation, civilisation and control, all of which are aimed at restricting bad tendencies being manifested in the behaviour of children and promoting good behaviour. However, in the modern configuration, unlike the earlier configuration, this gradual development and external influences are predominantly explained and exemplified through the scientific research and analysis of the discipline of psychology.

¹⁶³ Albert Bandura, 'Social Cognitive Theory of Moral Thought and Action' in W.M. Kurtines and J.L. Gewitz (eds), *Handbook of Moral Behaviour and Development* (Laurence Erlbaum Associates Publishers 1991) 65.

¹⁶⁴ *ibid* 65-66.

¹⁶⁵ *ibid* 54-55.

The Approach of the Criminal Justice System Towards Child Offenders

The treatment by the criminal justice system of children who kill, from the time of the commission of their crime until the conclusion of their trial and sentencing, alongside the concepts of childhood, are the two main areas of study of the current thesis. It is thus essential that a description be provided of the basic approach of the criminal justice system towards children and its evolution over the years. At this stage the description is merely given as background information that is used in the subsequent chapters to place the treatment of the children in the case studies by the criminal justice system in the context of general developments within that system. In the conclusion of this chapter, however, the information is also combined with the findings of the following section on the rules concerning the age of criminal responsibility and the *doli incapax* presumption in order to begin to address the first question of the thesis.

During the early 19th century juvenile offenders were treated very much in the same way as adults, since they were tried in adult courts and were eligible for all adult punishments.¹⁶⁶ Crime at the time was considered to be a sin and the dominant criminological idea was that it was the result of free will and calculated risk.¹⁶⁷ Accordingly, punishment was founded on religious grounds, as well as on the public policy objectives of retribution, deterrence by making the crime less attractive and the expression of societal disapproval.¹⁶⁸ Punishment was thus established based on the offence, whereas offenders and their characteristics constituted only a minor consideration.¹⁶⁹

This approach changed in theory by the mid to late 19th century, when the welfare model first emerged.¹⁷⁰ Fionda maintains that it had become accepted that youth crime was not the result of rational choice, but rather of bad parenting, inadequate education, unemployment and underprivileged living conditions, in other words, the circumstances of the offender.¹⁷¹ The focus of punishment as means of deterrence shifted away from blame, criminal responsibility and punishment and onto addressing the welfare needs and eliminating the disadvantages of young offenders, saving them

¹⁶⁶ Julia Fionda, *Devils and Angels: Youth Policy and Crime* (Hart Publishing 2005) 34.

¹⁶⁷ David Garland, 'Limits of the Sovereign state- Strategies of Crime Control in Contemporary Society' (1996) 36 *British Journal of Criminology* 445, 450-451; Fionda (n 166) 34.

¹⁶⁸ Fionda (n 166) 34.

¹⁶⁹ Fionda (n 166) 35.

¹⁷⁰ *ibid* 53.

¹⁷¹ *ibid* 35-36.

from their social circumstances and prison, hence helping them cease their offending behaviour.¹⁷² This shift coincided with the development of the positivist school of thought that maintained that human behaviour depended on ‘forces in the social world’, as well as with the new evolving concept of childhood that entailed that children should be ‘an object of concern with special needs’¹⁷³ and the new professions of paediatrics and child psychiatry.¹⁷⁴

At the very end of the 19th century, alongside the welfare model, the treatment model also emerged, which coincided with the development of psychiatry as well as ‘biological determinism’, a branch of positivist criminology that maintained that there was a physiological or genetic predisposition of offenders to commit crimes.¹⁷⁵ Accordingly, young offenders began to be viewed as people in need, whose offending behaviour was attributed to either physiological or psychological problems and the solution in either situation was said to be professional treatment.¹⁷⁶ This treatment was provided in the form of social services, either in the community or within punishment institutions like prison.¹⁷⁷

Welfare principles in the area of criminology in general and juvenile justice in particular became more pronounced at the beginning of the 20th century, albeit to a limited extent. In the field of criminology, the influence of psychology was increasingly evident, with scholars during the 1920s and 1930s believing that criminality was in fact a result of social deprivation, poor parenting and poverty.¹⁷⁸ This translated to actions in the field of juvenile justice, in which, amongst other developments, the Children Act 1908 created the Juvenile Court to deal exclusively with young offenders¹⁷⁹ and the Children and Young Persons Act 1933, s. 44(1), established the welfare principle in relation to children by stating that courts must always have regard to the welfare of the young person they are dealing with.¹⁸⁰ It should be noted, however, that s. 56 of the 1933 Act also provided that children accused of homicide were not to be referred to juvenile courts, a provision affirmed by s.24(1B) of the Magistrates Act 1980.

¹⁷²Andrew Rutherford, *Growing out of crime* (2nd edition, Waterside Press 1992) 32; Fionda (n 166) 35-37.

¹⁷³Fionda (n 166) 35.

¹⁷⁴Tim Newburn, *Crime and Criminal Justice Policy* (2nd edn, Pearson Longman 2003) 189.

¹⁷⁵Rutherford (n 172) 32; Fionda (n 166) 37.

¹⁷⁶Rutherford (n 172) 32; David Garland, *The Culture of Control* (Oxford University Press 2001) 39; Fionda (n 166) 37.

¹⁷⁷Rutherford (n 172) 32; Garland (n 175) 39; Fionda (n 166) 37.

¹⁷⁸Garland (n 175) 43.

¹⁷⁹Rutherford (n 172) 50; Anthony Bottoms and James Dignan, ‘Youth Justice in Great Britain’ (2004) 31 *Crime and Justice* 21, 23; Fionda (n 166) 118.

¹⁸⁰Rutherford (n 172) 53; Fionda (n 166) 150.

During the 1960s and 1970s juvenile justice witnessed a general trend in favour of the welfare system,¹⁸¹ essentially founded upon the philosophy that children eventually grow out of crime and that accordingly, minimal intervention and as little stigmatisation as possible should be used in the cases of young offenders to avoid the faltering of this growth.¹⁸² The division between ‘deprived and depraved’ children was being eroded, with the Department of Health and Social Security taking over responsibility from the Home Office for the child services, revealing a belief that child offenders were primarily children with needs identical to those of other children.¹⁸³ However, it has been argued that this movement of the 1960s towards welfarism was more about ideas and principles rather than actions and that the punishment approach was still alive and active in practice.¹⁸⁴

Through the 1980s and the leadership of a Conservative government, despite the fact that Conservative governments were traditionally in favour of the punishment model, the use of custody decreased significantly.¹⁸⁵ For instance, between 1980 and 1990 there was an 81 percent decrease in prison sentences imposed on boys aged 14 to 17, indicating a further move towards welfare principles for juvenile offenders.¹⁸⁶ The philosophy that teenagers would grow out of crime that was developed in the 1970s had by this time infiltrated through all levels of the relevant public sector employees and was adopted by ground level social workers, probation offices and magistrates,¹⁸⁷ a development that significantly helped in the decarceration trend of juveniles witnessed during the 1980s.¹⁸⁸

However, during the early and mid-1990s the policies of juvenile justice experienced a move back to the punitive model.¹⁸⁹ John Major had taken the place of Margaret Thatcher as Prime Minister in 1990 and was formally elected to the post in 1992.¹⁹⁰ His approach towards crime was called ‘Back to Basics’ and he and his Home Secretary, Michael Howard, maintained that they should ‘understand less and condemn more’, thus revisiting the 19th century approach that crime is the result of free will.¹⁹¹ The new Conservative government in 1992 applied the provision of the

¹⁸¹ Bottoms and Dignan, (n 179) 23.

¹⁸² Bottoms and Dignan (n 179) 35.

¹⁸³ Norman Tutt, ‘A decade of policy’ (1981) 21 *British Journal of Criminology* 246, 248.

¹⁸⁴ Rutherford (n 172) 60.

¹⁸⁵ Fionda (n 166) 38.

¹⁸⁶ Rutherford (n 172) 15.

¹⁸⁷ *ibid* 39-40, 165.

¹⁸⁸ *ibid* 44-45.

¹⁸⁹ Fionda (n 166) 166.

¹⁹⁰ *ibid* 43.

¹⁹¹ *ibid* 35, 43.

Children Act 1989 which separated the cases of children who needed care from the cases of children who had offended, providing that the former be dealt with in family courts that have the welfare of the child as their paramount concern and the latter by the newly named Youth Court, which has an additional penal function.¹⁹² A motion in the House of Commons in March 1993 addressing the rise in crime, suggested that ‘law and order should be a very high priority for government’, that ‘priority should be given to cutting crime among the young’ and that ‘the punishment should fit the crime, not just the criminal’.¹⁹³ The 1994 Crime and Disorder Act significantly strengthened the powers of the police regarding the detention of juveniles¹⁹⁴ and John Major’s government moved away from the goal of decarceration.¹⁹⁵

The Labour Government that won the 1997 election continued along this interventionist, punitive path. It adopted prevention of re-offending in a narrow form that meant stricter punishments and early criminal justice intervention, as the primary objective of its youth justice policy and entirely rejected the idea that children grow out of crime on their own.¹⁹⁶ It maintained that the interests of the victims and the community should not be compromised for the protection of young offenders,¹⁹⁷ who should be made to realise the extent of the harm they had caused and take responsibility for it, no longer being allowed to use their social circumstances as an excuse for their offending behaviour.¹⁹⁸ In addition, the Labour government, implemented the Crime and Disorder Act 1998 that overall followed an incarcerative, penal ideology and *inter alia* abolished the *doli incapax* presumption and merged together various custodial provisions, creating the Detention and Training Order, extending the availability of custodial sentences to children of 10 years and older.¹⁹⁹ It should be mentioned that the last case study of the current thesis, the Bulger case, took place in 1993-94 and hence at the early stages of this turn towards punitivism. There is of course an obvious argument that the case study itself contributed to the materialization of this policy turn towards punitivism by influencing the changes made in the legislation in the mid and late 1990s. However, as it becomes obvious in the fifth chapter of the thesis, the legislative reforms eventually materializing this

¹⁹²Bottoms and Dignan (n 179) 25-26, 40.

¹⁹³ HC Business Papers 9 March 1993, Early day motion 1555.

¹⁹⁴ Crime and Disorder Act 1994, s 1, s 17, s 23.s 24.

¹⁹⁵ Criminal Justice and Public Order Act 1994, s 16; Newburn (n 174) 204; Fionda (n 166) 66.

¹⁹⁶Crime and Disorder Act, s.37; Bottoms and Dignan (n 179) 36-37.

¹⁹⁷ Bottoms and Dignan (n 179), 52-53.

¹⁹⁸ *ibid* 41-43.

¹⁹⁹ Newburn (n 174) 210, 212; Fionda (n 166) 168.

punitive shift, in fact had little to do with the Thompson and Venables case, which was never referenced, not even once, in relation to them. Furthermore, it is contended that the role of the case was confined to being used by the press and the politicians in the press to enhance public fear of juvenile crime merely as means of gaining popularity.

In conclusion, a brief examination of the history of juvenile justice in England during the period under study reveals various shifts in approach. The system was predominantly punitive in the early 19th century, treating child offenders very similarly to adults and attributing the blame for their offending behaviour to their evil, savage natures. This approach changed by the late 19th century, becoming welfarist. At that time children were viewed as virtually blameless and factors exogenous to them, like their family circumstances and parenting, were said to be the reason for their corruption and hence offending behaviour. This approach continued throughout the rest of the 19th and most of the 20th centuries. Science was also introduced as means of studying childhood and problematic behaviour in children, starting at the end of the 19th century and intensifying gradually over the following decades. By the end of the 20th century though, a struggle developed between the punitive and welfarist approaches. Conflict was evident between the desire to protect vulnerable child offenders and the alleged need to punish and save society from savage child offenders, with the latter coming to prevail.

The Evolution of the Rule on the Age of Criminal Responsibility and the *Doli Incapax* Presumption

A deeper insight into the policy of the criminal justice system towards children who kill and the legislation that materialises from it is offered by the study of the evolution of the rules on the age of criminal responsibility and the *doli incapax* presumption, since these rules were the ones that prescribed that children were to be treated differently than adults. In the same way as the discussion on the general approach of the criminal justice system above, the information is provided as background at this stage and is to be discussed further at the conclusion of the chapter.

The age of criminal responsibility is the age prior to which children are ‘conclusively presumed’ not to be capable of responsibility for criminal offences.²⁰⁰ This age in England and Wales is set at 10 years by the Children and Young Persons Act 1933, s. 50, as amended by the Children and Young Persons Act 1963, s. 16(1). The *doli incapax* presumption is the rebuttable presumption that children cannot be responsible for a crime, unless the prosecution can present unequivocal evidence, unrelated to the offence, to prove that they knew that what they were doing was seriously wrong as opposed to merely naughty.²⁰¹ In England the presumption was applied to young offenders aged 10 to 14 until 1998, when it was abolished by s.34 of the Crime and Disorder Act.

The two rules essentially implement the idea that children must be treated differently than adults by the criminal justice system, whose origins can be traced back to religion and St. Augustine’s writings in 397 AD that maintained that children are not capable of pursuing sin voluntarily and freely.²⁰² The explanation given was that children are weak, ignorant, entirely unable to perceive the law, unable to reason or understand right from wrong and incapable of making moral judgments.²⁰³ In the English criminal justice system, the existence of an age of criminal responsibility below which a child could not be responsible for an offence because he or she was incapable of understanding ‘good and evil’, first appeared in a case report of the Eyre of Kent in 1313, in which a seven year old defendant was found guilty of a felony but judgment was not passed because he could not know good from evil.²⁰⁴ Other 14th century case law reveals that children over the age of seven and below the age of 12 were considered to be legally incapable of committing a crime, unless it could be proven that they had malice, hence the origins of the presumption of *doli incapax*.²⁰⁵ For example, in 1338 a 10 year old child who killed his companion and hid his body was held to be guilty of murder and hanged because hiding the body was considered to be sufficient evidence that he could distinguish between good and evil and accordingly that he had malice, which made up for his young age.²⁰⁶

²⁰⁰ Children and Young persons Act 1933, s 50.

²⁰¹ *C (a minor) v DPP* [1996] AC 1, 9.

²⁰² Anthony Platt and Bernard L. Diamond, The Origins of the Right and Wrong Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey, 54(3) California Law Review 1227 (1966) Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol54/iss3/3>, 1232

²⁰³ *ibid* 1232.

²⁰⁴ *ibid*, 1233

²⁰⁵ *ibid*, 1233

²⁰⁶ *ibid*, 1233

The two rules that first appeared during the 14th century and were founded upon the test of ‘good and evil’ remained constant in English law throughout the centuries and were regularly cited by commentators and judges.²⁰⁷ Sir Edward Coke, the first English jurist who attempted to codify the common law, wrote in the late 16th century that the age of criminal responsibility in England at the time was fourteen years.²⁰⁸ Sir Matthew Hale, another instrumental writer of English legal history, following Coke, mentioned the existence of a test of being able to distinguish between ‘good and evil’ for children aged 14 to 21, as well as the fact that the age of criminal responsibility was 14 years of age.²⁰⁹

In 1830, the judge in the case of *Rex v. Owen* directed the jury that when defendants are under 14 years old there is a legal presumption that they do not have sufficient capacity to know that their actions are wrong and hence they cannot be convicted unless there is evidence that they had a ‘guilty knowledge’ that what they were doing was wrong.²¹⁰ In the 1845 case of *Reg. v. Smith (Sidney)* involving a 10 year old boy charged with setting fire to a hayrick, Erie J directed the jury that children under seven years old had no criminal liability since they were presumed ‘incapable of committing a crime’.²¹¹ Children over 14, he continued, are as responsible for their criminal actions as adults and between seven and 14 it must be proven that the young defendant possessed the ‘malicious intent’ for the crime he was accused of in order for a guilty verdict to be returned.²¹² Furthermore, in the case of *Reg. v. Vamplew* in 1862, Morland J held that the guilty knowledge of a child that he or she was doing wrong must be proven by the particular evidence of the case, though the closer the child was to the age of 14, the weaker the presumption that such knowledge was lacking.²¹³ All three cases and others like them, offer evidence of the reliable implementation of both the rule on the age of criminal responsibility and the *doli incapax* presumption in the common law.

Statutory footing for the rule on the age of criminal responsibility was finally acquired during the 20th century, when s.50 of the Children and Young Persons Act 1933 raised the age of criminal responsibility from seven to eight years old. Mr. Oliver Stanley, the Under Secretary of State for the Home Office, explained the

²⁰⁷ *ibid*, 1234-235

²⁰⁸ *ibid*, 1234

²⁰⁹ *ibid*, 1235

²¹⁰ *Rex v. Owen* (1830) 172 E.R. 685.

²¹¹ *Reg. v. Smith (Sidney)* (1845) 1 Cox C.C. 260.

²¹² *ibid* 260.

²¹³ *Reg. v. Vamplew* (1862) 176 E.R. 234.

rationale behind the Bill in Parliament in 1932.²¹⁴ He mentioned a sentimental approach to the issue of the criminal justice system's dealing with children and argued that everyone viewed children as 'immature' and 'unformed'.²¹⁵ He maintained that nobody would expect from children standards of behaviour that equaled those applied to adults and that accordingly the punishments applied to them must differ.²¹⁶ He further claimed that offending behaviour is the result of life circumstances, comprising of the upbringing of children at home, the economic conditions they were exposed to and their peers, rather than inherent vices.²¹⁷ Accordingly, he emphasised the need to focus on the rehabilitation of young offenders that could make them 'decent citizens' once released.²¹⁸ Furthermore, he emphasised the need to eliminate the distinction between children who offended and children placed in Industrial and Reformatory Schools because they were in need of protection, since both types of children were neglected and were in need of support.²¹⁹ He expressed his support for the provision included in the Bill that all relevant schools become one and be renamed approved schools.²²⁰

In 1963, the Children and Young Persons Act, s. 16, raised the age of criminal responsibility from eight to 10 years old. Insights into the rationale of the government motivating this change are found in the speeches of government ministers in both House of Lords and House of Commons Parliamentary Debates. During a House of Lords Debate on 20th November 1962, Earl Jellicoe, The Minister of State for the Home Office, expressed the view that the Government must play an increasingly active role in the protection of children and the promotion of their welfare.²²¹ Similarly, in a House of Commons Debate, the Joint Under Secretary of State for the Home Department, Mr. C.M. Woodhouse, argued that the Children and Young Persons Bill was 'inspired by a single purpose and a single guiding principle', namely the introduction or improvement of measures promoting the 'general welfare of all young people'.²²² In relation to the age of criminal responsibility in particular, Earl Jellicoe argued that it must be raised in order to protect young children from having their 'childish misdeeds' follow them for the rest of their lives, possibly damaging

²¹⁴ HC Deb 12 February 1932, vol 261, cols 1167-1246, 1167-68.

²¹⁵ *ibid.*, 1167-68.

²¹⁶ *ibid.* 1167.

²¹⁷ *ibid.* 1168.

²¹⁸ *ibid.* 1179.

²¹⁹ *ibid.* 1179.

²²⁰ *ibid.* 1179-1180.

²²¹ HL Deb 20 November 1962, vol 244, cols 803-74, 803.

²²² HC Deb 27 February 1963, vol 672, cols 1265-379, 1266.

their future as adults.²²³ Likewise, the Lord Chancellor, Lord Dilhorne, maintained that the needs of the child were the primary consideration in setting of the age of criminal responsibility at the age of 10.²²⁴ The Lord Chancellor suggested that children under the age of 10 merely offended because they naturally had high levels of energy, without proper outlets for it.²²⁵ He expressed the view of the government that offending children up to the age of 10 should be dealt with by the educational system and social services, rather than by the criminal justice system.²²⁶ On the other hand, he argued that it would be in the best interests of children over the age of 10 to be brought before criminal courts because that would prevent their development into habitual delinquents, suggesting that by the age of 12 it might be too late to achieve this purpose.²²⁷ Furthermore, Earl Jellicoe praised the research conducted into the causes of delinquency and its positive influence in the field of the treatment of offenders.²²⁸ He mentioned that research was already being conducted on childcare, though it had still barely ‘begun to scratch the surface of possible research which can be undertaken’, urging that the good work should continue and that local authorities should use the powers of research given to them in the new Act.²²⁹

During the 1990s the discussions and the eventual abolition of the *doli incapax* presumption by s. 34 of the Crime and Disorder Act 1998 revealed a 180-degree turn in the approach towards young offenders. Both the Labour Government’s discussion Paper *Tackling Youth Crime*²³⁰ and the case of *C v DPP*²³¹ maintained that the *doli incapax* presumption must be abolished, since children aged 10 to 14 receive a compulsory education from the age of five and ‘seem to develop faster both mentally and physically’ than in the past, resulting in the fact that they are able to adequately distinguish between right and wrong and realise that their criminal actions are seriously wrong.²³² Furthermore, the Home Secretary, Jack Straw, argued in Parliament that 10 to 13 year old offenders have the capacity to realise when they commit a crime that their offending behaviour is wrong and that they ought to be punished for it.²³³ He acknowledged that children develop at different rates and that

²²³ HL Deb 20 November 1962, vol 244, cols 803-74, 810.

²²⁴ HL Deb 24 January 1963, vol 246, cols 174-238, 210.

²²⁵ *ibid* 212.

²²⁶ HL Deb 24 January 1963, vol 246, cols 174-238, 209, 212.

²²⁷ *ibid* 210, 234.

²²⁸ HL Deb 20 November 1962, vol 244, cols 803-74, 873-874.

²²⁹ *ibid* 873-874.

²³⁰ Home Office, *Tackling Youth Crime* (Green Paper, HO 421/2, 1996).

²³¹ *C (a minor) v DPP* [1994] 3 W.L.R. 888.

²³² Home Office, *Tackling Youth Crime* (n 227) 3, 8; *C (a minor) v DPP* (n 228), 892, 894; *C v DPP* (n 199) 20, 30.

²³³ HC Deb 08 April 1998, vol 310, cols 370-452, 371, 372.

there could be valid arguments for setting the age of criminal responsibility at various different ages, but considered the current age of criminal responsibility (10 years) as right, since above that age courts should consider the maturity and development of the specific child in question without having a particular rule governing the process.²³⁴

In addition to children aged 10 to 14 having the capacity to distinguish between right and wrong, the lack of need to protect children from the harsh punishments of the criminal law, was also cited as a factor for the abolition of the *doli incapax* presumption throughout the 1990s. The White Paper *Justice and Protecting the Public* in 1990, for example, argued that criminal sanctions for children were much more lenient than in the past and geared towards rehabilitation rather than retribution or punishment, meaning that no protection from them was required.²³⁵ Jack Straw followed this line of argument, in 1998, five years after the killing of James Bulger, and maintained that the sanctions of the criminal law were no longer as harsh as they were when the *doli incapax* presumption was introduced and hence children no longer required protection against them.²³⁶ Moreover, in the case of *C v DPP*, Lord Lowry claimed that the aim of the *doli incapax* presumption was and always had been to protect children from the full rigour of the criminal law up to the age of 14, but that current sanctions involved mostly educational treatment rather than punishment and hence the presumption was no longer required for their protection.²³⁷ These arguments, however, did come into conflict with the findings of the UN Committee on the Rights of the Child, which expressed a general concern about the way in which Great Britain enforced the provisions of the Convention on the Rights of the Child.²³⁸ More specifically, the Committee mentioned the Secure Training Orders to which children aged 12 to 14 could be subjected in England and Wales under the Criminal Justice and Public Order Act 1994 and their compatibility with the provisions of the Convention, since they ‘appear(ed) to lay emphasis on imprisonment and punishment’.²³⁹

The overall approach of the government towards the *doli incapax* presumption in the 1990s is revealed further by the words of Jack Straw in a House of Commons

²³⁴ Crime and Disorder Bill [Lords], SC Deb (B) 12 May 1998, part 6.

²³⁵ Home Office, *Crime, Justice and Protecting the Public* (White Paper, Cm 965, 1990) ch 8, para 9.

²³⁶ HC Deb 08 April 1998, vol 310, cols 370-452, 372.

²³⁷ *C v DPP* (n 199) 33.

²³⁸ UN Committee, *Rights of the Child, United Kingdom of Great Britain and Northern Ireland* (CRC/C/15/Add 34, January 1995) para 18.

²³⁹ *ibid* 18.

Debate on the Crime and Disorder Bill in 1998.²⁴⁰ He maintained that the presumption merely helped persistent young offenders become a ‘moving target’, escape conviction and be repeatedly excused for their bad behaviour.²⁴¹ Similarly, Lord Williams of Mostyn, maintained that the presumption prevented 10 to 13 year olds from becoming accountable and ‘answerable for their offences’, since it enabled them to escape the consequences of their offending behaviour.²⁴²

It should be further mentioned that, concurrently with the abolition of the *doli incapax* presumption, an overall penal and custodial approach was also being adopted during the 1990s towards young offenders, completing the picture of the change of attitude from previous decades that was mentioned above. For instance, the Labour Government’s White Paper *No More Excuses* proposed that young people should face progressively more serious sentences, including custody, if they re-offended.²⁴³ Moreover, Jack Straw expressed the opinion that child curfews and Child Safety Orders, measures physically restricting and controlling children introduced by the Crime and Disorder Bill, would prevent children from entering a criminal lifestyle.²⁴⁴ The Home Secretary specified that the ambition of the Bill was ‘to build a safer and more responsible society’, in which people would live ‘free from fear and free from crime’.²⁴⁵ He talked about how people complained to him about the trouble ‘caused by children and young people who were out of control’ and that his government ‘promised a new approach to law and order: tough on crime and tough on its causes’, which was ‘overwhelmingly backed by the British people’.²⁴⁶

Therefore, through the observation of the history of the two rules it is seen that the notion that children have less capacity than adults to understand their actions and distinguish between good and evil, is documented as early as the 14th century and continues to be regularly invoked throughout the centuries, including the entire time period studied. Alterations in the legal rules provide opportunities for more in depth observation of their rationales. This reveals a desire to rehabilitate child offenders, whose social circumstances are blamed for their criminal behaviour and who are believed to be children in need of protection, during the early 20th century, and an intense preoccupation with the welfare and protection of child offenders during the

²⁴⁰ HC Deb 08 April 1998, vol 310, cols 370-452, 373.

²⁴¹ *ibid* 373.

²⁴² HL Deb 27 November 1997, vol 583, cols 1121-32, 1123.

²⁴³ Home Office (n 232) para 5.1.

²⁴⁴ HL Deb 27 November 1997, vol 583, cols 1121-32, 1122; HC Deb 08 April 1998, vol 310, cols 370-452, 375.

²⁴⁵ *ibid* 370.

²⁴⁶ *ibid* 370, 371.

mid-20th century. Finally, it reveals an abrupt turn towards a desire to eliminate the protection of child offenders and to punish them severely in order to make them take responsibility for their criminal behaviour during the late 20th century. It is noteworthy that the origins of these developments are found prior to the James Bulger case in 1993, but they escalated and were largely concluded after. The interrelationship between them and the case study is examined in the fifth chapter.

Other Factors that Might Affect the Treatment of Children who Kill

The analysis in the thesis is focused on the relationship between the treatment by the criminal justice system of children who kill, through the processes starting with police investigation and ending with the trial and sentencing, and the above concepts of the child. The treatment by the press, the public and politicians of children who kill often defines or explains their treatment by the criminal justice system throughout these processes, and hence the relationships of these other fields with concepts of the child are also examined. However, the concepts of childhood adopted during different time periods are not the only factor that may affect the treatment of these children within the four fields examined. Accordingly, the existence, extent and operation of other factors influencing the treatment of children who kill are also examined. In the current section, these factors are introduced and described as background information, to be used later on in the analysis of the case studies. They constitute features and characteristics of each field during different time periods, as well as views of crime held within each field.

Gender Inequalities in the Criminal Justice System:

It is important to examine discrepancies between the treatment of male and female offenders by the criminal justice system because they might, in part, influence the treatment of the male and female offenders in the case studies in a way that affects the conclusions regarding the concepts of childhood. It is noteworthy that this examination is founded upon limited data, since information on crime committed by female offenders is scarce compared to information on crime committed by male offenders. This scarcity of information and the limited resources directed towards the study of female offending are a result of women's low crime rates and the minor

nature of the crimes committed, which reduce the urgency of female offending as a social problem that needs to be addressed.²⁴⁷ In addition, the overwhelming majority of male specialists in all the relevant fields, including criminology, the legal profession and psychiatry, who lack the desire, experience and interest to understand the phenomenon of female criminality and female madness, further limits the availability of relevant information.²⁴⁸ However, despite their limited nature, the data clearly suggest that when a female rather than a male defendant, including an underage one, appears before a court, it is far more likely that she will be referred for psychiatric assessment, that she will be diagnosed as being in need of psychiatric help, and that she will eventually be treated using psychiatric rather than penal means.²⁴⁹ The question that arises is: why is there such a discrepancy? The answer to this question is multi-dimensional and reveals the existence, extent and nature of different perceptions and attitudes towards male and female offenders of all ages, which must be taken into account in the analysis in the subsequent chapters of the thesis.

The first such perception is the existence and effect of gender roles, which begin from childhood as mentioned above. Simone de Beauvoir argued that definitions of madness are often associated with definitions of femininity and masculinity and if a person is deemed to be acting contrary to the norm there is a risk that he or she will be labeled as mad or deviant and be confined.²⁵⁰ It can be argued that this is one of the reasons why so many women offenders have been defined as mad or in need of psychiatric treatment. A 'normal' woman has traditionally been defined as one who is 'coping, caring, nurturing and sacrificing self interest to the needs of others', since the time she is a little girl.²⁵¹ For example, in America following the First World War, the image of the perfect woman was centered on domesticity, with women described as being 'naturally' maternal, having at least three or four children and living at home in marital bliss.²⁵² Similarly, the perfect woman around the same time period in England was described as being a stay at home mother, taking care of her house, husband and

²⁴⁷ Heidensohn (n 77) 142.

²⁴⁸ Heidensohn (n 77) 39, 136-137; Elaine Showalter, *The Female Malady: Women, madness and English Culture 1830-1980* (Virago 1987) 19; Chesney-Lind and Pasko (n 76) 4.

²⁴⁹ Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Open University Press 1987) 74, 75, xi-xii

²⁵⁰ Lisa Appignanesi, *Mad, Bad and Sad: A History of Women and the Mind Doctors from 1800 to the Present* (Hachette Digital 2008) 7.

²⁵¹ Annie Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice System* (Routledge 1990) 33.

²⁵² Appignanesi (n 250) 348

children.²⁵³ Accordingly, aggression exhibited by women is viewed as unfeminine behaviour, in which real women would not participate.²⁵⁴ The only way to reconcile such behaviour with the traditional views of femininity is to explain it as pathological, hence requiring psychiatric treatment rather than punishment.²⁵⁵ Violent behaviour by women is so unthinkable that the woman exhibiting it needs to be presented as unable to fully understand the consequences of her actions and as not being entirely responsible for them.²⁵⁶ Accordingly, magistrates welcome reports from psychiatrists, which explain violent behaviour by girls and women as the result of female biology, absolving 'normal' females from the responsibility and blame of having committed an aggressive crime.²⁵⁷

Another relevant perception is that girls and women are more likely to be mad than men. Data throughout history, starting as early as the 17th century, show that proportionally more females were labeled as mad, creating a pre-disposition for all disciplines, including the courts, to investigate their mental states to a much larger extent than they did for men.²⁵⁸ During the 18th century, madness was even symbolically transformed from being male to being female²⁵⁹ following actions such as the replacement of the male statues personifying it in front of the Bedlam Institution with female ones in 1815.²⁶⁰ This supposed higher incidence of madness amongst females has been explained throughout history by using characteristics of their biology. Starting from the 19th century onwards, female madness has been attributed to the female reproductive cycle and the hormonal changes that occur during puberty, pregnancy, childbirth and menopause, which supposedly cause weakening of the mind, enabling the manifestation of insanity that explains or even partially excuses criminality.²⁶¹ For instance, Jessica M. Pollack, a well-known psychiatrist, claimed that female criminals were not very blameworthy for their criminal behaviour, but were acting largely like 'automata', because of biological factors like hormonal imbalances.²⁶²

²⁵³ Appignanesi (n 250) 349

²⁵⁴ Worrall (n 251) 41

²⁵⁵ Worrall (n 251) 49

²⁵⁶ Worrall (n 251) 49

²⁵⁷ Worrall (n 251) 58

²⁵⁸ Showalter (n 248) 3-4

²⁵⁹ Showalter (n 248) 7-8, 17-18

²⁶⁰ Appignanesi (n 250) 50.

²⁶¹ Showalter (n 248) 55,73; Worrall (n 251) 63-64; Appignanesi (n 250) 61,110.

²⁶² Heidensohn (n 77) 121.

Moving from perceptions to attitudes, a significant one is the tendency of the criminal justice system to exhibit a chivalrous, protectionist and paternalistic disposition towards female offenders, using psychiatric factors as justifications.²⁶³ This has on occasion taken the form of more lenient treatment, shielding women from harsh penal measures and in other instances has involved the use of greater coercion to protect them even from themselves.²⁶⁴ Hilary Allen in her book *Justice Unbalanced*, argues that psychiatric factors are disproportionately invoked in the cases of female offenders in order to reduce their blameworthiness and facilitate their psychiatric treatment in society or medical institutions, avoiding harsh penal sentences.²⁶⁵ This trend has been traditionally attributed, according to the writer, to the chivalrous nature of the criminal justice system, or more recently by feminist writers, to the desire to conserve patriarchal interests by obscuring the potential power of women through trivialising the effect of any of their actions, including criminal ones, through the refusal to penalise them.²⁶⁶ Others have argued that female offenders are treated more coercively than males when they commit crimes that involve sexual deviancy, breach moral rather than legal rules or are outside the boundaries of what is defined as feminine behaviour, using psychiatric factors as justification.²⁶⁷ It was this rationale that was behind the 'child saving' movement of the early 20th century that resulted in the setting up of the juvenile delinquency system, since it originated due to concerns about the immoral conduct of girls.²⁶⁸ Similarly it was this rationale that led to a much larger number of girls than boys being institutionalised in the 19th century, largely due to sexual misconduct, and it was this rationale that led to the greater number of institutionalised girls for status offences during the 1950s and 1960s.²⁶⁹

Another attitude of the criminal justice system that contributes to differences in the treatment of male and female offenders is the attachment of less blameworthiness to the actions of the latter than of the former, and hence the perceived lesser need for retribution.²⁷⁰ This attitude is the cause of a greater number of psychiatric diagnoses and disposals for female offenders, since they enable the avoidance of penal

²⁶³ Heidensohn (n 77) 32.

²⁶⁴ Heidensohn (n 77) 32.

²⁶⁵ Allen (n 249) 7, 10, 73, 104.

²⁶⁶ Allen (n 249) 10; Pat Carlen (ed) and Anne Worrall (ed), *Gender, Crime and Justice* (Open University Press 1987) 93.

²⁶⁷ Heidensohn (n 77) 32, 38, 44-47.

²⁶⁸ Chesney-Lind and Pasko (n 76) 57.

²⁶⁹ Chesney-Lind and Pasko (n 76) 59-60, 63.

²⁷⁰ Allen (n 249) 100, 114; Carlen and Worrall (n 266) 82.

sanctions, especially in borderline cases.²⁷¹ Hillary Allen argues that documents on female offenders of all ages presented at trial are very different from the ones presented on male offenders, a situation that results in the conversion of the former from culpable offenders to victims, deserving pity and compensation from society.²⁷² Allen observes that documents regarding female offenders focus on information about their mental states, their thoughts and feelings as opposed to equivalent documents for male offenders, which largely ignore these aspects of the case.²⁷³ Female offenders are presented as passive, having things done to them rather than having done things themselves; they are portrayed as the victims of circumstances, with their criminal actions not being really theirs, thus diminishing their culpability.²⁷⁴ A technique often present in the psychological reports on women is the use of the passive voice, enhancing the impression of a lack of responsibility. In contrast, the active voice is almost always used to describe similar actions of male defendants.²⁷⁵ The explanation for the actions of women is often sought in the pathological, since social blame usually disappears when a condition is medicalised because it is implied that the actor was not acting with 'conscious volition'.²⁷⁶ Mary Wollstonecraft provided an accurate description of the attitude towards female offenders by using a quote from a poet: 'if weak women go astray, the stars are more at fault than they'.²⁷⁷

A further attitude of the criminal justice system towards male and female offenders is that irrespective of the crime she might have committed, a female offender is primarily viewed 'as a woman, as a mother and as a wife' with tenderness towards her family being the predominant emotion exhibited by her, making it difficult for anyone to see her as a dangerous criminal.²⁷⁸ As a consequence, female offenders are regarded as posing a lesser public danger in comparison to male offenders.²⁷⁹ This makes it easier to impose on female, as opposed to male, psychiatrically troubled offenders lenient therapeutic sentences without any need for justification for not imposing custody.²⁸⁰ Familial supervision of female offenders of different ages has been deemed on various occasions to be sufficient for the

²⁷¹ Allen (n 249) 100, 114; Carlen and Worrall (n 266) 82.

²⁷² Allen (n 249) 35; Carlen and Worrall (n 266) 81-82, 85.

²⁷³ Allen (n 249) 35; Carlen and Worrall (n 266) 83.

²⁷⁴ Allen (n 249) 40, 89; Carlen and Worrall (n 266) 83.

²⁷⁵ Carlen and Worrall (n 266) 90.

²⁷⁶ Allen (n 249) 42, 94; Carlen and Worrall (n 266) 84.

²⁷⁷ Wollstonecraft (n 64) 45.

²⁷⁸ Carlen and Worrall (n 266) 88-89.

²⁷⁹ Allen (n 249) 100-101.

²⁸⁰ Allen (n 249) 100-101; Carlen and Worrall (n 266) 86.

achievement of social protection, whereas this is rarely, if ever, the situation for male offenders.²⁸¹ Female offenders are generally believed to be more susceptible to low interference, minimal coercion, in community treatment, as opposed to male offenders.²⁸² The family of a female offender is considered to be an efficient alternative social control for her, which might render judicial sanctions entirely unnecessary.²⁸³

Therefore, significant differences exist in the perception and attitudes adopted towards female and male offenders of all ages. These differences include perceptions such as gender roles attributed from childhood and madness attributed to biological factors starting as early as puberty, as well as attitudes on protecting young girls and women from the criminal justice system and themselves, lower blameworthiness and dangerousness, less need for retribution, and the ability to benefit from less coercive treatment. These differences impact on the treatment of children who kill and are discussed in the subsequent chapters in terms of their influence on the particular case studies.

The Nature and Reporting Style of the British Press Over Time:

The features of the press underwent various changes throughout the 19th and 20th centuries which are noteworthy, since some changes over time in the treatment of the children who killed by the press in the case studies examined can be partly attributed to these features, rather than any differences in the general approach of the press towards children and the concepts of childhood.

In the 19th century and very early 20th century, news items in the press were told in the form of stories similar to the ones found in novels.²⁸⁴ They contained high amounts of drama and were told as if their authors were eyewitness narrators, even if they were not.²⁸⁵ These features changed during the 20th century, when news articles became more objective accounts of events and the sources of all information contained in them were meticulously specified.²⁸⁶

²⁸¹ Carlen and Worrall (n 266) 88.

²⁸² Allen (n 249) 100,104, 114.

²⁸³ Carlen and Worrall (n 266) 87.

²⁸⁴ Kevin G. Barnhurst and John Nerone, *The Form of News: A History* (The Guilford Press 2001) 147-148.

²⁸⁵ *ibid* 147-148 .

²⁸⁶ *ibid* 150.

As regards the use of images in news reporting, it was not until the early 19th century that newspapers in Britain began to use some illustrations.²⁸⁷ These illustrations originally represented true places, people and events, altered for the sake of telling a good story by the person creating them.²⁸⁸ In the 20th century though, along with the development of photography, sketches and drawings came to be viewed as art, not news, and were replaced in the press by photographs.²⁸⁹ Objectivity was the characteristic of photographs that earned them respect, since they were not allowed to be retouched²⁹⁰ and were believed to show a reality that the photographer could not control.²⁹¹ By the mid to late 20th century, photographs came to be considered as newsworthy themselves, even without being accompanied by written articles.²⁹²

The use of headlines in the press also changed during the period examined in the thesis. In the 18th century, headlines merely described what would follow in the article they headed, like a table of contents would do for a book.²⁹³ In contrast, during the 20th century, headlines gradually came to tell the meaning of the event the article was about, capturing the basic essence of the story²⁹⁴ and by extension making the newspaper, more attractive to readers. For similar considerations, front pages came to be the windows of newspapers, the space where they showed off their content.²⁹⁵ In practical terms, this meant that front pages became less crowded, contained titles that were more visible and eye-catching and only included stories believed to be the most popular and interesting to readers.²⁹⁶

Therefore, there were significant differences in the style of reporting and features of newspapers between the early 19th century and the end of the 20th century, the time period examined in the thesis. The effects of the changes outlined here on each of the case studies in particular are discussed in the subsequent chapters.

In addition to the changing reporting styles and features of the press over the time period examined, there was a very substantial shift in the nature of the press during the late 20th century. Specifically, the 1990s British press became substantially more sensationalist than it previously had been. This shift was the result of several factors

²⁸⁷ *ibid* 114.

²⁸⁸ *ibid* 116.

²⁸⁹ *ibid* 137.

²⁹⁰ *ibid* 141.

²⁹¹ *ibid* 138.

²⁹² *ibid* 141.

²⁹³ *ibid* 198.

²⁹⁴ *ibid* 198.

²⁹⁵ *ibid* 216.

²⁹⁶ *ibid* 190-191.

affecting the press at the time. The first such factor was its increasingly adversarial nature, since it had become one of the most competitive in the world.²⁹⁷ This made it essential that the stories told and the headlines used were striking enough to catch the attention of the passer by.²⁹⁸ The second was that politicians started using the press to pass their political messages and further their political agendas, which also made it essential for stories in the press to hold enough appeal to win over the reader.²⁹⁹

The third factor was that press ownership was very concentrated, with four companies owning 90 percent of all newspapers.³⁰⁰ Rupert Murdoch owned *The Times*, *The Sunday Times*, *The Sun* and the *News of the World*,³⁰¹ which constituted approximately one third of the newspaper market in the UK;³⁰² the Rothermere family, owned the *Daily Mail* and the *Mail on Sunday*; Richard Desmond, owned the *Daily Express* and the *Daily Star*;³⁰³ and Robert Maxwell the *Daily Mirror*, the *Sunday Mirror* and the Sunday tabloid the *People*.³⁰⁴ Given that the UK Press Complaints Commission was made up of representatives from each newspaper in proportion to their market share, the concentrated ownership meant that a very limited number of people were in charge of this Commission.³⁰⁵ This fact rendered the potential punishment of particular newspapers for breaches of its Code of Practice less likely, especially in the cases of newspapers whose owners commanded a large proportion of the market and hence had the greatest voting power within the Commission. Alastair Campbell, the former political editor of *The Daily Mirror*, Director of Communications and Strategy for Tony Blair and the Chief Press Secretary between 1997 and 2001, for example, characterised the Press Complaints Commission as being part of the ‘cozy media club’, a comment with which Lord Puttham agreed while expressing his lack of respect for it because he viewed it as a cartel.³⁰⁶ The Leveson Inquiry conducted in 2011 concluded that the Commission had failed and that it was ‘ineffective and lacking in rigour’,³⁰⁷ given that no disciplinary action was taken following many cases in which journalists and editors were criticised

²⁹⁷ David A. Green, *When Children Kill* (Oxford University Press 2008) 43.

²⁹⁸ *ibid* 19.

²⁹⁹ *ibid* 48.

³⁰⁰ *ibid* 48.

³⁰¹ The *News of the World* newspaper was involved in a phone hacking scandal starting in 2006, leading to its closure and the Leveson Enquiry in 2011, according to The Leveson Inquiry: *An Inquiry into the Culture Practices and Ethics of the Press, Executive Summary* (November 2012), paras 22-28.

³⁰² Green (n 297) 48.

³⁰³ *ibid* 48.

³⁰⁴ *ibid* 48.

³⁰⁵ *ibid* 50.

³⁰⁶ Communications Select Committee, *The Ownership of the News* (HL 2007-08, 122-1) 222 .

³⁰⁷ Lord Justice Leveson, *The Leveson Inquiry* (n 298) 41.

by it.³⁰⁸ This inability of the Commission to control the newspapers meant that they were not subject to any form of regulatory standards,³⁰⁹ a conclusion reached by the Leveson Inquiry, which stated that the press on numerous occasions ignored the responsibilities it owed the public according to its self-imposed standards stated in its Code of Practice.³¹⁰

The fourth and final factor which brought about a shift in the nature of the press was that the British public exhibited signs of preferring a press geared towards ‘sensationalism, conflict, anti-elite bias, common sense solutions and outrage’, since 77 percent of British newspaper readers read either a tabloid or a mid-market newspaper, as opposed to only 23 percent who read broadsheets.³¹¹

Therefore, due to its increased competitiveness, politicisation, lack of controls and the public’s desire for tabloid-type reading, the British press during the 1990s took an unprecedented turn towards sensationalism, which entailed eye catching stories and headlines, over-reporting of popular issues, a pro-active approach to stories, simplification of complicated problems and unrealistically clear resolutions.³¹² The effects of this shift are clear in the analysis of the 1993 Thompson and Venables case in the fourth chapter, especially in the treatment of the young perpetrators by the press.

The Press and Crime Reporting:

The presence of crime reporting in newspapers has been a constant over the centuries; however, the reporting itself has experienced significant variability.³¹³ Eighteenth and 19th century sample surveys show that news on crime and criminal justice processes featured regularly in newspapers, covering approximately 10 percent of their space not devoted to advertising.³¹⁴ During the early 19th century, this news was limited to successful resolutions of crime and its prosecution, usually using the police and the courts as a source.³¹⁵ Reports of unresolved crimes, descriptive details

³⁰⁸ *ibid* 44.

³⁰⁹ Green (n 297) 50.

³¹⁰ The Leveson Inquiry suggested that an independent body be put in its place (para 51) and legislation be altered to safeguard it. (para 72) In addition, to avoid the negative outcomes of concentrated ownership, the Inquiry suggested that the regulatory authorities are able to impose remedies that might be either structural or able to change the relevant behaviour and enforce journalistic standards and editorial independence. (para 142) Transparency in the decision making process of politicians related to media mergers was also highly recommended. (para 143) Lord Justice Leveson, *The Leveson Inquiry* (n 298) 6-7.

³¹¹ Green (n 297) 43- 44.

³¹² *ibid* 131.

³¹³ Peter King, ‘Newspaper reporting and attitudes to crime and justice in late-18th and early-19th century London’ (2007) 22(1) *Continuity and Change* 73, 101.

³¹⁴ *ibid* 80.

³¹⁵ *ibid* 102-103.

of violent crimes and victim-oriented perspectives were absent.³¹⁶ These patterns of reporting, according to King, show that the press had confidence in and admiration for the operation of the courts and was reluctant to criticise or challenge their decisions.³¹⁷ This was part of the expression of a wider primary objective adopted by the press, namely the expression of its support towards the ideology of the ruling elites and the status quo.³¹⁸

This desire of the press to support government institutions and not challenge their decisions gradually dissipated throughout the period studied in the thesis and by the late 20th century no signs of it were at all evident. As discussed above, enhancing competitiveness was the name of the game for the press by the end of the 20th century and crime reporting constituted one of the fundamental ways in which this was achieved. The result was of frequent misrepresentations in areas such as the image of offenders, the nature of crimes and the details of the victims, misrepresentations that become apparent when comparing crime reporting with data from official crime and victim surveys.³¹⁹ For example, two thirds of crime reports were about violent or sex offences, creating the perception that violent crimes occurred frequently, despite the fact that such offences constituted less than 10 percent of the crimes in police records.³²⁰ Juvenile crime involving violence was similarly over-represented, creating the impression that a ‘youth crime wave’ was in existence and that juvenile offenders were out of control, dangerous and remorseless.³²¹ The youthful aspects of the nature of offenders were often emphasised, since their crimes were predominantly presented as irrational and random, suggesting a rebelliousness, senselessness and impulsiveness better associated with youth, whereas references to aspects of their nature that revealed adulthood, such as careful consideration of their actions and meticulous calculation, were systematically avoided by the press.³²² In cases where children were the victims, various techniques were adopted to highlight their innocence and vulnerability, like focusing on their positive attributes and their injuries.³²³

³¹⁶ *ibid* 102-103.

³¹⁷ *ibid* 103.

³¹⁸ *ibid* 103.

³¹⁹ Jessica M. Pollak, Charis E. Kubrin, ‘Crime in the News: How Crimes, Offenders and Victims are portrayed in the media’ (2007) 14(1) *The Journal of criminal justice and popular culture* 59, 61.

³²⁰ *ibid* 62.

³²¹ *ibid* 72-73.

³²² *ibid* 72.

³²³ *ibid* 74-75.

Therefore, even though crime has been a main feature in newspaper reporting for centuries, the motivations behind it and consequently the ways in which it has been reported have undergone significant change. From having as its primary objective the verification and enhancement of government authority the press has moved to the aim of being competitive, which entails challenging governmental decisions related to crime and otherwise, as well as focusing on the popular stories, using sensationalism to portray them. These objectives of the press and the shift in its approach, especially towards juvenile crime, have an effect on the way it treated children who killed over time. This is examined in relation to the case studies in the subsequent chapters.

The Influence of the Press on Public Opinion:

In the 18th and 19th centuries, newspapers constituted a noteworthy influence on the way in which crime and possible solutions to it were considered, since they were the only medium through which people were informed of criminal activity.³²⁴ However, inferences cannot be drawn about the extent of the influence of newspapers on deeper criminal justice issues,³²⁵ since the accounts of crime given by newspapers were lacking in depth, leaving readers to form their own opinions on underlying issues.³²⁶

During the early 20th century it was believed that the press had great power in shaping public opinions.³²⁷ In contrast, in the mid-20th century empirical research challenged the assumptions about the power of the press to influence public opinions, suggesting that its influence on changes in the attitudes and beliefs of the public was only slight and that it only strengthened already existing beliefs.³²⁸ By the late 20th century, the dominant argument was that the press significantly affects the understanding and perceptions of the public and hence their way of constructing socio-political reality.³²⁹ More specifically, it was believed that the media in general, including the press, have a great effect on public opinion because they set an agenda regarding what people are to think about, since they can decide what to report as news, social problems and potential solutions and the more they report them the more people think about them, irrespective of what exactly they are thinking in relation to

³²⁴ Peter King (n 313) 104.

³²⁵ *ibid* 104.

³²⁶ *ibid* 74-77.

³²⁷ Green (n 297) 118.

³²⁸ *ibid* 119.

³²⁹ *ibid* 119.

them.³³⁰ Furthermore, newspapers affect the contextualisation³³¹ and hence ‘social interpretation’ of the stories they report by making choices as to what to report of the events related to a specific story, the language they decide to use and the commentary made on the story.³³² Empirical evidence of this influence is offered by a 1996 report on ABC News.³³³ The report stated that over 75 percent of the public said that their views on crime were the result of what they saw or read in the news, as opposed to a mere 22 percent whose views on crime were the result of primary information from being victims themselves.³³⁴

Therefore, the reporting of events by the press, including crimes, fundamentally influences the way in which they are understood within society, as well as how deeper values such as what is ‘good or bad (...) moral or evil’ are perceived.³³⁵ On the other hand, this influence of the press on public opinion should not be exaggerated. People tend to also exercise their own understanding and interpretation of what they read in the press in constructing social reality,³³⁶ an exercise that is often influenced by structural and cultural variables, such as the penal climate or the political culture of a given period.³³⁷

The Changing Nature of British Politics:

Changes in the nature of British politics and the evolution of the relationship between politics and crime, especially during the late 20th century, were extremely pronounced. These important variations in the field of politics have the potential to offer valuable insights in explaining the actions and reactions of politicians towards children who killed.

During the 19th and early 20th centuries there was party consensus regarding penal policy. Penal issues were seen as sensitive and volatile and to be tackled with care, away from glare of the public.³³⁸ As late as the 1960s and mid-1970s there was little public discussion amongst politicians on issues of crime and criminal justice.³³⁹ The Conservative Party in the 1964 election merely referred to its intention of getting

³³⁰ Barnhurst and Nerone (n 284) 211; Pollak and Kubrin (n 319) 60; Green (n 297) 120.

³³¹ Green (n 297) 101.

³³² *ibid* 105.

³³³ *ibid* 61.

³³⁴ *ibid* 61.

³³⁵ *ibid* 61.

³³⁶ Pollak and Kubrin (n 319) 60.

³³⁷ Green (n 297) 109.

³³⁸ Green (n 297) 201.

³³⁹ Stephen Farrall and Will Jennings, ‘Policy Feedback and the Criminal Justice Agenda: An Analysis of the Economy, Crime Rates, Politics and Public Opinion’, (2012) 26(4) *Contemporary British History* 467, 478

tough on hooliganism and in the 1970 election it promised to pay more attention to crime related issues.³⁴⁰ Similarly, the Queen's speeches to parliament at the beginning of all sessions prior to 1960 hardly mentioned any criminal justice issues, and they were only briefly mentioned in 1961 and 1978, when approximately eight percent of the Queen's speeches were dedicated to criminal justice.³⁴¹

The situation started changing in the 1979 election, during which crime became politicised for the first time, albeit to a very limited extent.³⁴² On the eve of the 1979 election, Margaret Thatcher declared that people should be 'feeling safe in the streets' and that the country needed 'less tax and more law and order'.³⁴³ The Conservatives established themselves as the party of law and order and obtained the reputation of being tough on crime.³⁴⁴ However, in practice the Conservatives did little prior to the 1990s to follow up on their declarations that they intended to introduce tough measures to combat crime.³⁴⁵ No legislation on crime was introduced during the first two sessions of Parliament following the 1979 election,³⁴⁶ and the prison population fell following the sentencing restrictions for young people implemented by the Criminal Justice Act 1982 and the strengthening of non-custodial sentencing by the Criminal Justice Act 1991.³⁴⁷ Decarceration and the promotion of community penalties were the result of vigilant pursuit of economic efficiency by the Conservative government, a public policy consideration that took precedence above all others at the time.³⁴⁸ Simultaneously, the Labour Party was following a penal-welfarist philosophy and criticised the government for not dealing with unemployment and inequality as the causes of crime, rather than their lack of aggressive, tough-on-crime policies.³⁴⁹

It was during the 1990s that a definitive change is observed in the arena of politics and crime, following the succession of Margaret Thatcher by John Major in 1990 and the appointments of Michael Howard as Home Secretary in 1993 and of Tony Blair as the Shadow Home Secretary in 1992.³⁵⁰ The Conservative government was facing a

³⁴⁰ *ibid* 478

³⁴¹ *ibid*, 476-477

³⁴² Tutt (n 183) 247; Richard J. Terrill, 'Margaret Thatcher's Law and Order Agenda', (1989) 37 *The American Journal of Comparative Law* 429, 433; Newburn (n 174) 425, 456-457; Farrall and Jennings (n 339) 468

³⁴³ Farrall and Jennings (n 339) 468.

³⁴⁴ *ibid* 478.

³⁴⁵ Farrall and Jennings (n 339) 468.

³⁴⁶ *ibid* 475.

³⁴⁷ *ibid* 476.

³⁴⁸ Fionda (n 166) 141.

³⁴⁹ Farrall and Jennings (n 339) 457.

³⁵⁰ Newburn (n 174) 454, 457-458; Farrall and Jennings (n 339) 468-469, 476.

crisis following Britain's economic collapse and its expulsion from the European Exchange Rate Mechanism.³⁵¹ An ICM poll revealed that only 11 percent of the voters trusted the Government and less than one in 10 believed it to be in touch with 'ordinary people'.³⁵² Simultaneously, the Labour Party under Tony Blair underwent a general re-orientation, including a shift towards being tough on law and order issues, territory previously owned by the Conservatives.³⁵³ Blair was voicing his aim of being 'tough on crime, tough on the causes of crime'.³⁵⁴ The Conservative Government reacted by increasing the attention paid to crime in their agenda in order to maintain their ground in this flaring competition between the two parties.³⁵⁵ Decarceration rapidly became a goal of the past, with Michael Howard, during a speech at a Conservative Party conference in October 1993, declaring that 'prison works'³⁵⁶ and more severe penalties and custody periods for young offenders were introduced by the Criminal Justice and Public Order Act 1994.³⁵⁷ The focus on crime and the trend towards punitivism continued after the election of Tony Blair as Prime Minister in the 1997 election, with measures such as the Crime (Sentences) Act 1997 introducing mandatory sentences and enhanced custodial measures against offenders.³⁵⁸ In other words, the political scene of the 1990s resulted in the intense politicisation of crime. Even the amount of the Queen's speech dedicated to criminal justice issues almost doubled in 1996, reaching 15 percent.³⁵⁹

This politicisation of crime was aided by the increased use of the press prior to, during and after the 1997 election. Tony Blair lobbied and obtained the support of the *Sun*, which belonged in a group traditionally supporting the Conservative Party.³⁶⁰ This strategic move substantially contributed to the victory of the Labour Party, partially through the intense coverage of its tough on crime agenda.³⁶¹ For example, according to Fionda, a headline in the *Sun* proved more influential in policy setting than the statistical findings of the Home Office, and recurring criticisms of confining young offenders to custody were ignored in favour of the policy's popular appeal.³⁶²

³⁵¹ Farrall and Jennings (n 339) 476.

³⁵² 'Untruthful Distrusted out of touch' *The Observer* (London, 19 December 1993) 1.

³⁵³ Newburn (n 174) 454-455, 458.

³⁵⁴ *ibid* 454-455.

³⁵⁵ Farrall and Jennings (n 339) 469, 478-479, 482.

³⁵⁶ Newburn (n 174) 454-455; Farrall and Jennings (n 339) 476.

³⁵⁷ Newburn (n 174) 426; Farrall and Jennings (n 339) 468, 476.

³⁵⁸ Newburn (n 174) 458; Farrall and Jennings (n 339) 476, 479.

³⁵⁹ Farrall and Jennings (n 339) 476-477

³⁶⁰ Green (n 297) 48.

³⁶¹ Green (n 297) 48.

³⁶² Fionda (n 166) 171, 173.

Such was the attention paid to crime by the media on behalf of politicians of both parties that crime came to challenge the economy as the number one problem facing the country in the perceptions of the public, even though rising crime rates were nothing new and crime had previously been viewed merely as a by-product of the problematic economy.³⁶³

Therefore, crime started becoming part of the political agenda in the 1980s, but it was not until the 1990s that it became intensely politicised, a development that meant that the public and the media started playing an important role in the reactions of politicians towards it. This is crucial in the analysis of how children who killed were regarded by politicians in different time periods, since differences in their approaches are likely to be at least partly the result of this politicisation. More specifically, the effect of this politicisation and the relevant changes in the nature and involvement of the press on the various developments related to the concepts of the child, as well as the interrelationships between them and the case study of Thompson and Venables are all examined in the fourth and fifth chapters.

Conclusion

This chapter has discussed the concepts of childhood, the approach of the criminal justice system towards child offenders and other factors, which might influence the treatment of children who kill. This information is used in the analysis of the case studies in the subsequent chapters, either as background to place events in context or to justify and explain them within a more general framework. The discussion in this chapter also facilitates the *prima facie* consideration of the first question of the thesis, namely whether the approach of the criminal justice system towards children, both in general and via the evolution of the rules on the age of criminal responsibility and the *doli incapax* presumption, is related to the concepts of the child and to what extent.

At the beginning of the 19th century the criminal justice system focused on retribution for the criminal actions of child offenders and adopted severe punishments as a way of subduing criminality. The measures adopted made no allowances in the severity of the punishments for the fact that the offenders were children and it was believed that their strictness would help reform children or restrain them from of their

³⁶³ Farrall and Jennings (n 339) 474, 477, 479.

bad behaviour, concepts pointing towards the existence of associations with the concepts of the Adult and Savage Child respectively.

By the middle of the 19th century there was a shift in the approach of the criminal justice system, which began to prioritize the welfare of child offenders and emphasised saving them rather than punishing them. Children were no longer blamed for their bad behaviour, but were largely regarded as victims of their circumstances, corrupted by their surroundings. These changes point towards the emergence of associations with the concept of the Romantic Child, which suggests that children are vulnerable, innocent and valuable and have to be protected and have their needs met. Simultaneously, the references to capacity in the case law when referring to the common law rules of the age of criminal responsibility and the *doli incapax* presumption, do suggest the existence of associations with the concept of the Unformed Child, though still with its pre-scientific configuration.

By the end of the 19th century these associations with the concept of the Unformed Child become more extensive and transform into its modern configuration, since the treatment model emerges in the field of the juvenile criminal justice system and there is an increasing use of the discipline of psychology in specific case law, albeit still of a limited extent. At the time there was a tendency within the criminal justice system to attribute the bad behaviour of children to pathology and a belief that young offenders had to be medically treated to prevent its recurrence. Concurrently, the feeling of protectionism towards child offenders and the desire to do what was in their best interests remained another priority, ensuring the continuation of associations with the concept of the Romantic Child.

At the beginning and up until the middle of the 20th century, the criminal justice system, continued to follow both a treatment and a welfare model of justice and distinctions between child offenders and children in need of care were almost completely eroded by the middle of the century, thus intensifying the pursuit of protectionism and welfarism within the criminal justice system towards child offenders. Within this climate, the age of criminal responsibility was raised from seven to eight and placed on a statutory footing and further raised to ten shortly after the middle of the century, with rationalisations behind the legislative changes focusing on the needs, protection and welfare of children. Moreover, the criminal justice system was pursuing the greater use of psychology and wider availability of

treatment options for child offenders and the assistance of psychological research in making decisions in these matters was praised and encouraged by government officials in the discussions regarding the statutory introduction and later reform of the rule on the age of criminal responsibility. Accordingly, both the associations with the concepts of the Romantic and the modern configuration of the Unformed Child continued to grow in the beginning and middle of the 20th century.

Finally, during the late 20th century, the criminal justice system moved back to a punitive approach and away from decarceration and striving for the protection of child offenders. New emphasis was placed on holding children, rather than their circumstances, entirely responsible for their criminal behaviour and the distinction between child offenders and children in need of care was re-instated. Furthermore, the *doli incapax* presumption, a measure geared towards the protection of children from the criminal law, was abolished, citing factors like children having capacity at an earlier age and no longer requiring the protection of such a rule. These developments clearly suggest a fundamental change in the existence of associations with the concepts of the child. Associations with the concepts of the Adult and Savage Child largely replaced associations with the concept of the Romantic Child. Associations with the concept of the Unformed Child did continue however, since references to capacity and the use of scientific concepts within the disciplines of psychology and professional education were still evident, even though discussed in a different light.

Therefore, there are associations between the approach of the criminal justice system towards child offenders and the concepts of the child, hence *prima facie* suggesting an affirmative answer to the first question of the thesis. Moreover, the current chapter also suggests that other factors, like the significant changes in the media, public involvement and reaction and politics during the 1990s, cannot be ignored in their impact on the various developments, especially those in the late 20th century, also hinting at a positive answer to the fourth question of the thesis.

The particular case studies of children who killed throughout the 19th and 20th centuries, studied in the subsequent chapters, further examine all four questions posed in much more depth and detail.

Chapter Two: 19th Century Case Studies

Introduction

This chapter examines three case studies of children who killed, chronologically spread throughout the 19th century. The aim is primarily to determine whether any associations can be drawn between their treatment by the criminal justice system, starting with the police investigation of their crimes and ending with their trial and sentencing, and the four concepts of the child described in the first chapter, the extent of those associations and their evolution over the 19th century. Moreover, the aim is to determine the interrelationships of these associations and their movement over time with equivalent ones in the fields of the press and public reactions. The field of politics is not examined due to the total absence of involvement of politicians in the cases examined, as explained in the introduction. The nature and features of the press and public reactions, as well as gender issues are also examined in order to determine their effects on the treatment of these children who killed.

The first case study is that of John Any Bird Bell, a 14-year-old boy convicted of the murder of another boy aged 13, sentenced to death and executed, which took place in 1831. It is noteworthy, as already mentioned in the introduction, that this case falls slightly outside the age parameters set for the thesis, since the young perpetrator was just over 14 years old. However, its inclusion is justified because of its uniqueness, being the last English case in which a child as young as 14 was executed. The second is the case of Peter Barratt and James Bradley, two eight year olds convicted of the manslaughter of a two year old toddler and sentenced to one month in prison and five years of reformatory school in 1861. The third is the case of Margaret Messenger, a 13-year-old girl convicted of the murder of a six-month-old baby and sentenced to death in 1881, though her sentence was commuted to penal servitude for life and she eventually remained in custody for 10 years.

Criminal Justice Procedure During the 19th Century

The criminal justice system dealing with murder cases during the 19th century was quite different from the one in place today. Accordingly, a brief summary of

differences significant in the understanding of how children accused of murder were treated during the 19th century is provided in this section of the chapter. These differences started with the fact that there was no professional police force in England in 1800 and that unpaid parish constables and local magistrates handled illegal behaviour.¹ It was not until 1856 when the County and Borough Police Act required all counties to set up a police force, that professional police forces were established all over England.²

Once a person was arrested for an indictable offence by a constable during the 19th century he or she would be subject to a preliminary examination by a magistrate and would be committed for trial if a *prima facie* case existed.³ Alternatively, the prosecutor could apply for a bill of indictment directly to the grand jury at the court where the accused would be tried and if granted, the accused would again be committed to trial.⁴ If the crime involved was homicide, as the cases studied in this thesis, then there was a third alternative, namely the coroner's inquest.⁵ The coroner's duties involved holding inquests into all suspicious deaths in his assigned area.⁶ These inquests entailed the coroner sitting with a jury made up of 12 to 23 jurors and hearing the evidence from witnesses thought to be of relevance to the case.⁷ The coroner made a summing up to the jury after all the evidence was heard and a verdict was recorded.⁸ When the verdict was either murder or manslaughter it was equivalent to an indictment and the coroner then had to commit the accused to trial by an Assize court and remand him or her to custody.⁹

The Assize courts and the Old Bailey in London were the courts that tried indictable offences in England during the 19th century; they were the predecessors of the Crown Court.¹⁰ Each Assize court had jurisdiction over particular geographical districts within the country, which was overall divided into six different Assize areas, called circuits.¹¹ They were composed of professional judges, who travelled around the circuit and sat usually twice a year in each area, trying the cases of serious crimes

¹ David Bentley, *English Criminal Justice in the 19th Century* (The Hambledon Press 1998) 4.

² *ibid* 5.

³ *ibid* 9.

⁴ *ibid* 9.

⁵ *ibid* 8; <<http://www.oldbaileyonline.org/static/Trial-procedures.jsp>>, accessed 23/05/2012;

<<http://www.britannica.com/EBchecked/topic/138341/coroners-jury>>, accessed 23/05/2012.

⁶ Bentley (n 1) 8; <<http://www.oldbaileyonline.org/static/Trial-procedures.jsp>>, accessed 23/05/2012;

<<http://www.britannica.com/EBchecked/topic/138341/coroners-jury>>, accessed 23/05/2012.

⁷ Bentley (n 1) 8.

⁸ *ibid* 8.

⁹ *ibid* 8; <<http://www.oldbaileyonline.org/static/Trial-procedures.jsp>>, accessed 23/05/2012;

<<http://www.britannica.com/EBchecked/topic/138341/coroners-jury>>, accessed 23/05/2012.

¹⁰ Bentley (n 1) 8; <<http://vcp.e2bn.org/justice/page11374-courts-of-justice.html>> accessed 23/05/2012.

¹¹ Bentley (n 1) 51; <<http://www.schools.bedfordshire.gov.uk/gaol/ccourts.htm>>, accessed 23/05/2012.

assigned to them by the officials of that area.¹² Once defendants were before the Assize court or the Old Bailey, the grand jury would decide whether there was a valid bill of indictment before the court, based on all the evidence presented by the prosecution.¹³ If the finding was that such a bill existed, defendants would be arraigned, meaning that they would be called to plead to the indictment.¹⁴ The trial would then begin similarly to today's trials, with an opening speech by the prosecutor, followed by the calling and examination of the prosecution witnesses.¹⁵ At the conclusion of the case for the prosecution, defendants were called upon to present their defence.¹⁶ They were allowed to make unsworn statements and to call upon witnesses in reference to facts of the case or their character.¹⁷ However, defendants were not allowed to give evidence on their own behalf during the trial.¹⁸ The presentation of evidence on the character of the defendant was common during the 19th century and failure to produce witnesses who would testify to their good character led to the inference that they were of bad character.¹⁹ Evidence of good character meant that it would be more likely for mercy to be shown to the defendant during sentencing and that the jury would be more likely to find them not guilty if the case against them was unclear.²⁰

Defendants found guilty during the 19th century had little opportunity for an appeal against their conviction or sentence.²¹ One possibility was that the judge might reserve the case, meaning that he put an issue of law on which he had doubts during the trial to all common law judges, on an unofficial basis.²² If the judges considered the decision made to be wrong, they recommended a pardon or an arrest of judgment.²³ It was not until 1848, however, that this procedure ceased being entirely at the discretion of trial judges and was put on a statutory footing, following the establishment of the Court for Crown Cases Reserved.²⁴ Alternatively, a conviction or sentence could be overturned using an extra-judicial route, namely a petition to the

¹² Bentley (n 1) 51; <<http://www.schools.bedfordshire.gov.uk/gaol/ccourts.htm>>, accessed 23/05/2012.

¹³ Bentley (n 1) 131.

¹⁴ *ibid* 9.

¹⁵ *ibid* 10.

¹⁶ *ibid* 10.

¹⁷ *ibid* 10.

¹⁸ *ibid* 10.

¹⁹ *ibid* 237.

²⁰ *ibid* 237.

²¹ *ibid* 10.

²² *ibid* 11.

²³ *ibid* 11.

²⁴ *ibid* 11; <http://www.peterellis.org.nz/docs/2003-0500_MinistryJustice_RoyalPrerogativeOfMercy-Review.htm#t6>, accessed 23/05/2012.

Home Office for a pardon.²⁵ All convicts could petition for a pardon from the Home Office and once such a petition was made the Home Office requested the notes of and a report from the trial judge.²⁶ The trial judge was required to consider and comment on any new evidence mentioned in the petition and the Home Office itself made appropriate enquiries of its own.²⁷

Finally, as regards specifically the prosecution of children during the 19th century, the age of criminal responsibility was seven years old and there was an age of discretion up to the age of 14, meaning that children between the ages of seven and 14 were only held responsible for a crime if they could be proven to be able to understand the difference between ‘good and evil’.²⁸ A notable difference between the law on the criminalisation of children during the 19th and the 20th centuries was that in the 19th century children had to be found guilty before the question of their discretion could be considered, as opposed to being acquitted because they lacked capacity to distinguish between good and evil.²⁹ Furthermore, if the young defendants in a murder trial in the 19th century were held to be incapable of distinguishing between good and evil, they would still be convicted of manslaughter, as opposed to the 20th century, when they would be acquitted.³⁰ It should be noted that throughout the 19th century the test of being able to distinguish between good and evil was used interchangeably with the test of being able to distinguish between right and wrong and the ability of the young defendants to understand the consequences of their criminal actions, albeit that they do not express strictly speaking the same thing.³¹

²⁵ Bentley (n 1) 11; <http://www.peterellis.org.nz/docs/2003-0500_MinistryJustice_RoyalPrerogativeOfMercy-Review.htm#t6>, accessed 23/05/2012.

²⁶ Bentley (n 1) 284.

²⁷ *ibid* 284.

²⁸ A.W.J Kean, ‘History of the Criminal Liability of Children’ (1937) 53 *The Law Quarterly Review* 364, 367, 369; Bentley (n 1) 15.

²⁹ *ibid* 366.

³⁰ ‘Summer Assizes’ *The Times* (London, 10 August 1861) 11; Matthew Johnston, ‘Summer Assizes’, *The Standard* (10 August 1861); ‘The Children’s Court of New South Wales : Children’s Law News: Doli Incapax – The Criminal Responsibility of Children’ <https://docs.google.com/viewer?a=v&q=cache:YPXsir3GyvEJ:www.lawlink.nsw.gov.au/lawlink/childrens_court/IL_cc.nsf/vwF>, accessed 29/05/2012.

³¹ ‘Summer Assizes’ *The Times* (n 30); ‘Summer Assizes’, *The Standard* (n 30); ‘The Children’s Court of New South Wales’ (n 30)

The Case Study of John Any Bird Bell (1831)

The Facts of the Case:

In 1831 a 14-year old boy, John Any Bird Bell, was hanged after being found guilty of the murder of Richard Taylor, a 13 year old, that took place in Chatham.³² His trial took place at the Maidstone Crown Court Summer Assizes before Lord Justice Gaselee on the 29th July 1831, with Mr Walsh as the prosecutor and Mr Clarkson, who had volunteered his services, as the defence lawyer.³³ He pleaded not guilty to ‘wilfully and with malice and aforethought’ murdering Richard Taylor.³⁴

The prosecution called various witnesses to testify in order to prove the guilt of the defendant, including the victim’s father and sister. The former, Robert Taylor, gave evidence that he often sent his son, usually with his younger daughter, to receive his weekly allowance from the parish and that on the day of the murder the victim had gone on this trip alone.³⁵ That morning, the witness continued, was the last time he had seen his son alive before he was called, days later, to identify his dead body.³⁶ The victim’s sister, seven year old Mary Ann Taylor, gave evidence that she and her brother had seen the defendant and his brother, James, on several occasions during their trips to fetch their father’s allowance and that John and James Bell had unsuccessfully tried to entice the victim to follow them into the woods on the last trip he had taken with her.³⁷ This evidence was corroborated by the confession of James Bell, the defendant’s brother, who had stated that he and the defendant had planned on killing the victim and stealing his money for some time, though he did give evidence that on the day of the killing it was the defendant alone who had completed the deed.³⁸

Two witnesses who had seen the victim and the defendant together on the afternoon of the murder were also called by the prosecution to testify to that fact, namely Henry Lewington, a warrant officer on the ‘Warrior’ ship at Chatham and

³² ‘Summer Assizes’, *The Times* (30 July 1831) 4; Summer Assizes’, *The Standard* (30 July 1831); ‘Trial of Murder’, *The Leicester Chronicle: or, Commercial and Agricultural Advertiser* (6 August 1831); Loretta Loach, *The Devil’s Children: A History of Childhood and Murder* (Icon Books 2009) 41, 63.

³³ Summer Assizes’, *The Times* (n 32).

³⁴ Loach (n 32) 51.

³⁵ ‘The Murder near Rochester’, *The Morning Post* (27 May 1831); ‘Murder Near Rochester’, *Jackson’s Oxford Journal* (28 May 1831); ‘Multiple News Items’, *Hampshire Advertiser: Royal Yacht Club Gazette, Southampton Town & County Herald, Isle of Wight Journal, Winchester Chronicle, & General* (28 May 1831); Summer Assizes’, *The Standard* (n 32); Summer Assizes’, *The Times* (n 32).

³⁶ ‘The Murder near Rochester’, *The Morning Post* (n 35); Murder Near Rochester’, *Jackson’s Oxford Journal* (n 35); ‘Multiple News Items’, *Hampshire Advertiser* (n 35); Summer Assizes’, *The Standard* (n 32); ‘Summer Assizes’, *The Times* (n 32)

³⁷ ‘Summer Assizes’, *The Times* (n 32).

³⁸ ‘Multiple News Items’, *The Standard* (2 June 1831); ‘The Editor of the Moring Chronicle’, *The Morning Chronicle* (3 June 1831); ‘Wednesday’s and Thursday’s Posts’, *Jackson’s Oxford Journal* (4 June 1831).

Mary Jones, who lived very close to the area in question.³⁹ In addition, another two witnesses were called to give evidence about the self-incriminating statements made by the defendant on two separate occasions.⁴⁰ The first of these witnesses was George Farrel, the clerk to the magistrates at Rochester, who had written down the defendant's confession on 21st May.⁴¹ The second was Charles Patterson, the constable who accompanied the defendant from Rochester to Maidstone gaol, to whom the defendant had made a verbal confession, which he recounted in his evidence.⁴² According to these witnesses, the defendant had confessed to having procured the victim to accompany him in the woods under the pretence that he was going to show him a short cut to his home and then told him that they were lost, at which point the victim sat on the ground and started crying, while the defendant 'jumped on' him and 'cut his throat', took the money in his possession and rushed away.⁴³ The defendant had said, according to the witnesses, that he had 'no great difficulty to cut his throat',⁴⁴ that he had cut him twice though he 'squeaked' only once 'as a rabbit squeaks'⁴⁵ and that following the killing he washed his hands and knife in a pond, which he pointed out to the second witness.⁴⁶ The second witness also testified that the defendant had asked him whether he thought that the dead victim was in fact 'better off' than he himself was and told him that he knew that he should be hung and that he would not try to escape, hoping that this would be a lesson to his brother to start behaving better in the future.⁴⁷ Finally, another two important witnesses for the prosecution were Dr Edward Seaton and Dr Jacob George Bryant, the surgeons who examined the body and gave evidence that in their opinion the

³⁹ It was reported that this occurred on the 11th March, which was presumed to be an error of the newspaper, since the body was found on the 11th but the boy's disappearance and the killing occurred on the 4th according to other data; 'Murder Near Rochester', *Jackson's Oxford Journal* (n 35); 'Summer Assizes', *The Times* (n 32); 'Summer Assizes', *The Standard* (n 32).

⁴⁰ 'Murder Near Rochester', *Jackson's Oxford Journal* (n 35); 'Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32).

⁴¹ 'Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32).

⁴² 'Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32).

⁴³ 'Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32); 'Trial of Murder', *The Leicester Chronicle* (n 32); 'Domestic Miscellany', *Preston Chronicle* (6 August 1831); Loach (n 32) 60.

⁴⁴ Anonymous, *Trial 1600-1926, A Narrative of the Facts Relative to the Murder of Richard Faulkner Taylor, in the Woods Between Rochester and Maidstone, On Friday the 4th of March, 1831* (Gale MOML Print Editions 1831) 31.

⁴⁵ 'Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32); 'Trial of Murder', *The Leicester Chronicle* (n 32).

⁴⁶ 'The Murder near Rochester' *The Morning Post* (n 35); 'Wednesday's and Thursday's Posts', *Jackson's Oxford Journal* (n 38); 'Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32); 'Trial of Murder', *The Leicester Chronicle* (n 32); 'Domestic Miscellany', *Preston Chronicle* (n 43); 'John Any Bird Bell,' *The Newgate Calendar, Part III* (1800 to 1841) <<http://www.exclassics.com/newgate/newgate3.txt>>, accessed 29/05/2012.

⁴⁷ 'Wednesday's and Thursday's Posts', *Jackson's Oxford Journal* (n 38); 'Summer Assizes', *The Standard* (n 32); 'Trial of Murder', *The Leicester Chronicle* (n 32); 'Domestic Miscellany', *Preston Chronicle* (n 43); John Any Bird Bell, *The Newgate Calendar* (n 46).

cause of death of Richard Taylor was a wound on the neck that had been inflicted with a 'cutting instrument'.⁴⁸

Following the end of the case for the prosecution, the defendant told the judge that he had nothing to say and no witnesses to examine and hence the judge proceeded to address the jury.⁴⁹ He began by going through all the evidence and commenting upon it and then said that he had not seen a similar case before him and that there was thus a requirement for 'serious attention and consideration' by the jury.⁵⁰ Following 'a few minutes consultation' the jury returned a guilty verdict, though accompanied by a recommendation for mercy, even though good character witnesses had not been presented on behalf of the defendant. The recommendation was explained as being due to the defendant's 'extreme youth',⁵¹ the 'profligate and unnatural manner'⁵² in which he had been raised and the lack of education received from his parents.⁵³ Despite the recommendation, the judge imposed the death sentence on the defendant, saying that there was no 'hope of mercy'.⁵⁴

The execution of John Any Bird Bell took place on the 1st August 1831, outside Maidstone Prison in the presence of a sizeable crowd of people.⁵⁵ It was reported that once the rope was adjusted around his neck, John said: 'Lord have mercy upon us (...) All the people before me take warning by me!' and when asked if he had anything further to say, he said; 'Lord have mercy upon my poor soul'.⁵⁶ The bolt was then removed, killing him within the next two minutes and his body was given to the surgeons for dissection.⁵⁷

⁴⁸ Multiple News Items' *Hampshire Advertiser* (n 35); Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32).

⁴⁹ Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32).

⁵⁰ Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32).

⁵¹ Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32); 'Trial of Murder', *The Leicester Chronicle* (n 32); 'Wednesday's Mail' *The Lancaster Gazette and General Advertiser* (6 August 1831); 'Domestic Miscellany', *Preston Chronicle* (n 43).

⁵² 'Trial of Murder', *The Leicester Chronicle* (n 32); 'Wednesday's Mail' *The Lancaster Gazette* (n 51).

⁵³ 'Domestic Miscellany', *Preston Chronicle* (n 43).

⁵⁴ Summer Assizes', *The Standard* (n 32); 'Summer Assizes', *The Times* (n 32); Wednesday's Mail' *The Lancaster Gazette* (n 51).

⁵⁵ 'The Execution of John Any Bird Bell, for Murder', *The Times* (2 August 1831) 4; 'John Any Bird Bell', *The Newgate Calendar* (n 46) Loach (n 32) 41.

⁵⁶ 'The Execution of John Any Bird Bell, for Murder', *The Times* (n 55); 'Multiple News Items', *The Standard* (2 August 1831); 'Trial of Murder', *The Leicester Chronicle* (n 32); 'Domestic Miscellany', *Preston Chronicle* (n 43); 'John Any Bird Bell', *The Newgate Calendar* (n 46).

⁵⁷ 'The Execution of John Any Bird Bell, for Murder', *The Times* (n 55); 'Multiple News Items', *The Standard* (n 56); 'Trial of Murder', *The Leicester Chronicle* (n 32); 'Domestic Miscellany', *Preston Chronicle* (n 43); 'John Any Bird Bell', *The Newgate Calendar* (n 46).

The Criminal Justice System:

At the beginning of the 19th century the criminal justice system continued to prioritise the responsibility and punishment of young offenders.⁵⁸ This general approach is evident in the treatment of John Any Bird Bell in 1831.

The young perpetrator was tried as an adult, convicted of murder, sentenced to an adult punishment and executed.⁵⁹ No safeguards to protect him because he was a child, such as a form of the predecessor of the *doli incapax* presumption, were implemented during his trial. However, this treatment was a direct result of his age, since in the eyes of the law he was an adult because he had already turned 14, leaving the court no choice but to treat him in this manner. Accordingly it does not provide any evidence of association with the concept of the Adult Child. However, following John's conviction, the Home Office could have granted him a pardon but did not, a fact that does provide some evidence of association with the concept of the Adult Child.⁶⁰ Such pardons were very common during the 19th century. Statistics indicated that during the early 1800s approximately 90 percent of the people sentenced to death were pardoned, a figure that increased to 97 percent during the 1830s.⁶¹ Accordingly, by not being pardoned, John had been placed in the three percent of most serious and blameworthy offenders who were executed, indicating that his young age had no significant bearing on the outcome. The harshness of the sentence reflects the general approach of the criminal justice system towards male violent offenders, who were regarded as entirely blameworthy for their criminal behaviour and a grave danger to society.⁶² It is possible that he never applied for a pardon, a fact that was not clearly established by the evidence.⁶³ However, given that the decision to pardon by the Home Office was dependent upon the information received from the notes, report and comments of the trial judge it would be highly unlikely that such a petition would have been successful even if made, since the trial judge had already expressed his belief, in his closing statements at the trial, that it was his 'duty to deny' John forgiveness in this world.⁶⁴ While explaining his decision at the sentencing hearing,

⁵⁸ Julia Fionda, *Devils and Angels: Youth Policy and Crime* (Hart Publishing 2005), 34-35, 49; Hugh Cunningham, *Children and Childhood in Western Society since 1500*; (2nd edn, Pearson Longman 2005) 148; David Garland, 'Limits of the Sovereign state-Strategies of Crime Control in Contemporary Society' (1996) 36 *British Journal of Criminology* 445, 450-451.

⁵⁹ 'Summer Assizes' *The Times* (n 32); Summer Assizes' *The Standard* (n 32); 'Trial of Murder', *The Leicester Chronicle* (n 32); 'Wednesday's Mail' *The Lancaster Gazette* (n 51).

⁶⁰ Loach (n 32) 51.

⁶¹ <<http://www.oldbaileyonline.org/static/Punishment.jsp#notpunished-pardon>>, accessed 23/05/2012.

⁶² Pat Carlen (ed) and Anne Worrall (ed), *Gender, Crime and Justice* (Open University Press 1987) 90; Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Open University Press 1987) 100-101.

⁶³ Bentley (n 1) 284.

⁶⁴ Anonymous (n 44) 34; Bentley (n 1) 284.

the judge referred to the law of both 'God and man' that stated that if a man sheds the blood of another man then his blood should be shed.⁶⁵ Accordingly, the criminal justice system, from the police investigation to the trial and sentencing processes, did not make any allowances for John due to the fact that he was only 14 years old. On the contrary, it treated him as a fully competent and responsible male offender, who understood the wrongfulness and the consequences of his actions and was hence liable for punishment to the full extent of the law.

Associations between the concept of the Savage Child and John's treatment by the segments of the criminal justice system under consideration are also present and notable. Specifically, the trial judge talked about the fact that the deceased and the defendant had been playmates, that they did not fight about anything and that there was no motive for the commission of the crime other than to steal the victim's money.⁶⁶ He also referred to the crime as 'cold blooded', hence implying that the defendant had been entirely devoid of any feelings regarding its commission and by extension insinuating that he was evil.⁶⁷ The fact that John was a boy may have helped in accepting the presence of evil in him. As discussed in the first chapter, had he been a girl, a more detailed enquiry might have been made into his mental state.⁶⁸ Furthermore, the chairman of the coroner's inquest for the case, Reverend Brown, told John's parents that they had failed to 'properly train' their children 'up to virtue', the exact wording suggesting that the child was 'down' in evil, which is the starting point for all children, as the Concept of the Savage Child suggests, and he had to be brought out of that evil and 'up' into goodness by his parents' training, something they were not successful in doing.⁶⁹ Both the presence of evil in young children as well as the belief that children have to be restrained, controlled and reformed out of it are characteristics attributed to children within the concept of the Savage Child.⁷⁰

Some comments made by the judge and the jury in the case of John Any Bird Bell regarding children in general suggest that some associations can be drawn between the approach of the court towards children and the concept of the Romantic Child

⁶⁵ Anonymous (n 44) 34; Loach (n 32) 48.

⁶⁶ Anonymous (n 44) 34.

⁶⁷ *ibid* 34.

⁶⁸ Allen (n 62) 74, 75, xi-xii; Annie Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice System* (Routledge 1990) 33, 58; Lisa Appignanesi, *Mad, Bad and Sad: A history of women and the mind doctors from 1800 to the present* (Hachette Digital 2008) 7.

⁶⁹ Loach (n 32) 68-69.

⁷⁰ Philippe Ariès, *Centuries of Childhood* (Pimlico 1996), 6, 129; Jeroen J.H. Dekker, 'The century of the child revisited' (2000) 8 *The International Journal of Children's Rights* 133, 140; Arlene Stolnick, 'The Limits of childhood: Conceptions of child development and social context' (1975) 39 *Law and Contemporary Problems* 38, 44.

during the 1830s. The trial judge, for instance, declared his feelings of compassion towards children, even though he could not spare John in particular from a harsh sentence.⁷¹ In addition, the judge at the sentencing hearing commented that one ‘shudders’ to impose the death penalty on a person who is so young and the jury recommended mercy be shown to John because of his ‘extreme youth’ and the circumstances of his upbringing.⁷² These comments suggest that the imposition of a harsh penalty on a child of 14 was regarded by the judge and the jury as an undesirable event, because his youth made him precious and worth protecting, but also because he was not entirely to blame for his actions, since it was his upbringing and thus external factors that had corrupted him.⁷³ Therefore, there was some evidence of associations between the actions of the court while dealing with John and the concept of the Romantic Child. However, it is evident that these associations were brief and weak.

Finally, there are also some weak associations in the approach of the court towards John with the concept of the Unformed Child. John was outside the age of discretion and hence the *doli incapax* presumption or any of its predecessors did not apply to him. Despite that, the trial judge still briefly referred to his capacity, saying that he was not lacking in either ‘sense or understanding’ and that he understood the consequences of his crime, since he himself had already said that he would be hanged for it.⁷⁴ Again, however, this reference to capacity in its non-scientific form in a brief and non-analytical comment by the judge suggests only very limited associations with the concept of the Unformed Child.

In summary, the approach of the criminal justice system towards John Any Bird Bell, from the beginning of the police investigation into his crime to his trial and sentencing, shows important associations with the concepts of the Adult and the Savage Child. There is also some suggestion of weak associations with the concepts of the Unformed and the Romantic Child.

⁷¹ Anonymous (note 44) 34; Loach (n 32) 48.

⁷² Summer Assizes’ *The Times* (n 32); ‘Summer Assizes’ *The Standard* (n 32); ‘Trial of Murder’, *The Leicester Chronicle* (n 32); ‘Wednesday’s Mail’ *The Lancaster Gazette* (n 51); Anonymous (n 44) 34; Loach (n 32) 68.

⁷³ Jean-Jaque Rousseau, *Émile* (First published 1762, Barbara Foxley tr, The Kindle Edition) 233.

⁷⁴ It had been reported that John Any Bird Bell had said in his confession that he knew he would be hanged for his crime according to Anonymous (n 44) 34; Loach (n 32) 31.

The Press:

The approach of the press towards John in 1831 reveals associations primarily with the concept of the Savage Child, secondarily with the concept of the Adult Child and lastly with the concept of the Romantic Child. Associations with the concept of the Savage Child are strong and founded upon three sets of evidence. The first is the way in which the press described John and his actions. Namely, the press referred to him as ‘wretched’ on various occasions⁷⁵ and described him as having features that were ‘not good’ and blue eyes that were of ‘the murdering colour’⁷⁶ indicating a ‘strong expression of cunning’.⁷⁷ He was also said to have set out in the morning of the murder with ‘malice in mind’, fully intending to seduce the victim into the woods and kill him.⁷⁸ In addition, John was described as having exhibited a ‘composure approaching to indifference’⁷⁹ during his trial, looking at the victim’s father, who fainted twice while giving evidence, with ‘utmost indifference’ like he was a ‘mere common spectator’, and as showing no ‘outward symptoms of feeling’ when the death sentence was imposed on him.⁸⁰ Moreover, John was reported as being ‘utmost indifferent to his fate’, not showing any fear in relation to the potential consequences of his crime and as having made a confession right before his execution, which revealed some details of his crime that made ‘the blood run cold’.⁸¹ More specifically, the newspapers reported that the defendant confessed that the victim had kneeled before him and begged him for mercy, but he, the ‘murderer’, just went ahead and cut his throat.⁸² These descriptions of John and his behaviour suggest that he was evil, since he was remorseless, cold and calculated and that was how he was born, given that even his physical characteristics were those of a murderer.

The second set of evidence is related to John’s parents and their failure to educate him out of his naturally occurring evil tendencies. The press mentioned that John’s parents were of the ‘most immoral and depraved habits’, having brought up their children in ignorance of religious beliefs, giving them ‘profligate lessons’ and making

⁷⁵ ‘Summer Assizes’, *The Times* (n 32); ‘Summer Assizes’, *The Times* (1 August 1831) 6; ‘The Execution of John Any Bird Bell, for Murder’, *The Times* (n 55); ‘Wednesday’s Mail’ *The Lancaster Gazette* (n 51); ‘John Any Bird Bell’, *The Newgate Calendar* (n 46).

⁷⁶ ‘An Old Enemy with a New Terror’, *The Sheffield Independent and Yorkshire and Derbyshire Advertiser* (6 August 1831).

⁷⁷ ‘Summer Assizes’, *The Times* (n 32).

⁷⁸ *ibid*; Loach (n 32) 64.

⁷⁹ ‘Wednesday’s Mail’ *The Lancaster Gazette* (n 51).

⁸⁰ ‘Summer Assizes’, *The Times* (n 32); ‘Summer Assizes’, *The Standard* (n 32).

⁸¹ ‘The Execution of John Any Bird Bell, for Murder’, *The Times* (n 55); ‘Multiple News Items’, *The Standard* (n 56); ‘Domestic Miscellany’, *Preston Chronicle* (n 43); ‘John Any Bird Bell’, *The Newgate Calendar* (n 46).

⁸² ‘The Execution of John Any Bird Bell, for Murder’, *The Times* (n 55); ‘Multiple News Items’, *The Standard* (n 56); ‘Domestic Miscellany’, *Preston Chronicle* (n 43); ‘John Any Bird Bell’, *The Newgate Calendar* (n 46).

John unable to realise the terrible position in which his crime had placed him.⁸³ In addition, the press paid attention to a comment made by the chairman of the coroner's inquest that his parents had failed to 'properly train' their children 'up to virtue'.⁸⁴

The third set of evidence relates to the approach of the press to the death sentence imposed on John and in addition to supporting the existence of associations with the concept of the Savage Child it also supports the existence of associations with the concept of the Adult Child, discussed below. More specifically, the *Newgate Calendar* reported that the defendant was 'fully deserving of the fate which befell him', suggesting that the newspaper thought that the fourteen year old offender deserved to be punished to the maximum extent of the law.⁸⁵ This is in conformity with the concept of the Savage Child, according to which children must be punished as harshly as possible to suppress their evil tendencies.

Associations with the concept of the Adult Child are clearly present as well, though not as strong as the associations with the concept of the Savage Child. Firstly, the comment made by the *Newgate Calendar* that the defendant was 'fully deserving of the fate which befell him', mentioned above, makes no allowances for the fact that John was a child, but rather, suggests that sentencing him to death was entirely suitable and well deserved, just like for an adult in his position.⁸⁶ Moreover, the *Newgate Calendar* maintained that John fully understood the 'justice of his sentence', which suggests a maturity equivalent to that of an adult.⁸⁷ Moreover, in some instances the press proposed that John killed the victim solely to rob him of his money which he needed to satisfy his gambling addiction, a 'passion' that was common amongst both adults and children of the lower classes.⁸⁸ This reference to a pastime common to adults and children without distinction as a reason behind his crimes can be argued to constitute some further evidence of associations with the concept of the Adult Child.

Finally, the approach of the press towards John's sentencing and execution also reveals some associations with the concept of the Romantic Child. In particular, the execution was described as a 'sad spectacle',⁸⁹ and the defendant was reported as

⁸³ 'Summer Assizes', *The Times* (n 75); 'The Execution of John Any Bird Bell, for Murder', *The Times* (n 55); 'Multiple News Items', *The Standard* (n 56).

⁸⁴ Loach (n 32) 68-69.

⁸⁵ John Any Bird Bell', *The Newgate Calendar* (n 46); Loach (n 32) 1.

⁸⁶ John Any Bird Bell', *The Newgate Calendar* (n 46); Loach (n 32) 1.

⁸⁷ 'Wednesday's Mail' *The Lancaster Gazette* (n 51).

⁸⁸ Loach (n 32) 64.

⁸⁹ 'Multiple News Items', *Royal Cornwall Gazette, Falmouth Packet & Plymouth Journal* (13 August 1831).

having dropped ‘a solitary tear’ following the mention of the ‘dissection of his body’,⁹⁰ as having ‘wept bitterly’ for the whole day following his sentencing⁹¹ and as ‘awaiting with trembling anxiety’ on the day of his execution.⁹² These descriptions suggest some vulnerability on the part of the young defendant and thus allow some weak associations to be drawn with the concept of the Romantic Child.

In summary, the analysis of the treatment of John by the press reveals strong associations with the concept of the Savage Child, weaker ones, albeit still noteworthy, with the concept of the Adult Child and fainter ones with the concept of the Romantic Child. These associations resemble those found in the treatment of John by the criminal justice system. This similarity is probably due to the tendency of the press during the early 19th century to follow the lead of government institutions such as the courts without challenging them. There are also some differences in the approaches of the two fields. Firstly, the associations with the concept of the Romantic Child are weaker in the approach of the court than they are in the press, which can be attributable to the desire of the press to add emotion to its stories to make them more interesting, as well as the absence of formal constrictions that enabled it to do so. The second is the absence of any associations in the approach of the press with the concept of the Unformed Child. This might be due to their very weak, almost imperceptible presence in the approach of the court, which might have gone unnoticed by the press, despite its general tendency to follow the former’s lead.

Public Reaction:

The only associations evident in John’s treatment by the public are with the concept of the Romantic Child. Evidence of these associations is firstly provided by the fact that the trial was said to have excited ‘intense interest’ as very few cases did, since the court was ‘excessively crowded’ by members of all classes, including many women, with people queuing for hours outside the court to gain admittance.⁹³ This crowd was described as being angry with John’s parents and unhappy and grieving for the young offender, which suggested that the crowd viewed John as an innocent child, corrupted by the behaviour of his parents.⁹⁴ It should be noted that this attitude

⁹⁰ ‘Summer Assizes’, *The Times* (n 32); ‘Summer Assizes’, *The Standard* (n 32).

⁹¹ ‘Summer Assizes’, *The Times* (n 32); John Any Bird Bell’, *The Newgate Calendar* (n 46).

⁹² ‘The Execution of John Any Bird Bell, for Murder’, *The Times* (n 55); ‘Multiple News Items’, *The Standard* (n 56); ‘Domestic Miscellany’, *Preston Chronicle* (n 43).

⁹³ ‘Summer Assizes’, *The Times* (n 32).

⁹⁴Loach (n 32) 42, 68.

prevailed despite the fact that it was an era when there was enhanced fear of crime committed by the young, and the average age of a child committing his first offence was 12 years old.⁹⁵

Furthermore, it was reported that thousands of people gathered to watch John's execution.⁹⁶ The reasons given to explain the interest in his execution were the defendant's 'tender age' and the circumstances of the 'atrocious crime'.⁹⁷ The local newspapers reported that the hanging was 'detrimental to the proper feelings of the sufferers, and outrageous to decency',⁹⁸ indicating that the public was against the execution of a 14 year old child. Accordingly, it can be argued that the public favoured protecting young offenders and giving them a second chance, approaches fitting with the concept of the Romantic Child.

Therefore, the associations drawn between the concepts of the child and the treatment of John by the public differ substantially from those drawn with his treatment within the criminal justice system and by the press. It is possible that the differences are a result of the fact that public reaction is more fluid as a structure than the criminal justice system, in the sense that it does not have any legal rules that restrict it from following a sentimental approach. Similarly, public reaction had the capacity to be more spontaneous than the press, which, at the time of the case study in question, was customary to follow and not challenge governmental institutions and their decisions.⁹⁹ These differences possibly enabled public reaction to chronologically precede the other two fields with regard to changes in attitudes, outlooks and approaches and show associations with the concept of the Romantic Child earlier. This argument, however, is premature at this stage and is further explored subsequently, when the rest of the case studies are analysed and more information is revealed about the associations between the concepts of the child and the approach of the public towards these children who killed and their movement over time.

⁹⁵ *ibid* 55-56.

⁹⁶ 10 000 were reported to have gathered by the *Times*: 'The Execution of John Any Bird Bell, for Murder', *The Times* (n 55); 8000 were reported to have attended by the *Newgate Calendar*: John Any Bird Bell', *The Newgate Calendar* (n 46); 8000 or 9000 were reported to have attended by the *Preston Chronicle*: 'Domestic Miscellany', *Preston Chronicle* (n 43).

⁹⁷ 'The Execution of John Any Bird Bell, for Murder', *The Times* (n 55); 'Multiple News Items', *The Standard* (n 56).

⁹⁸ Loach (n 32) 49.

⁹⁹ Peter King, 'Newspaper reporting and attitudes to crime and justice in late-18th and early-19th century London' (2007) 22(1) *Continuity and Change* 73, 103.

The Case Study of Peter Barratt and James Bradley (1861)

The Facts of the Case:

Following the discovery of the dead body of the two-year old George Burgess in the spring of 1861 a coroner's inquest was held and Peter Barratt and James Bradley, two eight year old boys, were apprehended.¹⁰⁰ Police officer Morley, who had arrested the two young suspects, gave evidence at the inquest that they had confessed to having killed George Burgess at the time of their arrest and that no promises or threats had been made to either of them to do so.¹⁰¹ The police officer also gave evidence that the shoes of the two boys were compared with the footprints at the scene of the crime and were an exact match.¹⁰² Mr Massey, a surgeon, gave evidence that the immediate cause of death of the victim was suffocation from being under water.¹⁰³ The accused boys and their parents did not ask the witnesses any questions and the jurors returned a verdict of 'wilful murder' against both boys, which meant that they were to be tried in public, subjected to the adult trial process and liable for adult punishments.¹⁰⁴

The trial began on the 9th August 1861 at Chester Assizes, with Mr Swetenham and Mr Wood as prosecutors, Mr Lloyd as the defence lawyer and Mr Justice Crompton as the presiding judge.¹⁰⁵ Through the examination of various witnesses, the prosecution established some of the facts of the case. Ralf Burgess, the victim's father, gave evidence that he had seen his son alive for the last time when he was playing on some waste ground in front of Sarah Ann Warren's house, who was nursing him, and Sarah Ann Warren gave evidence that she realised that the boy was missing sometime between 2:15pm and 3:40pm on the day of his death.¹⁰⁶ Mary Whitehead testified that she had seen the defendants with the victim, who was naked and seemed to be acting against his will in following them, near her home at Love-

¹⁰⁰ 'Murder by two boys', *The Times* (19 April 1861) 10.

¹⁰¹ 'Murder by two boys', *The Times* (n 100); 'The Murder by two boys at Stockport', *Liverpool Mercury* (19 April 1861); 'The Murder of a Child at Stock', *The Lancaster Gazette and General Advertiser for Lancashire* (20 April 1861); 'Home News', *The Examiner* (20 April 1861); 'Murder of a Child by two boys, near Stockport', *Cheshire Observer and General Advertiser* (20 April 1861); 'Murder of a child by two boys near Stockport', *The York Herald* (20 April 1861); 'Murder of a child by boys' *Lloyd's Weekly Newspaper* (21 April 1861); 'Staffordshire', *The Derby Mercury* (24 April 1861); 'Summer Assizes' *The Times* (n 30); 'Chester Summer Assizes', *Manchester Times* (10 August 1861).

¹⁰² 'Murder by two boys', *The Times* (n 100); 'Murder of a child by two boys near Stockport', *The York Herald* (n 101); 'Murder of a child by boys' *Lloyd's Weekly Newspaper* (n 101); 'Summer Assizes', *The Times* (n 30).

¹⁰³ 'Murder by two boys', *The Times* (n 100); 'The Murder by two boys at Stockport', *Liverpool Mercury* (n 101); 'Home News', *The Examiner* (n 101); 'Murder of a child by boys' *Lloyd's Weekly Newspaper* (n 101); 'Summer Assizes', *The Times* (n 30).

¹⁰⁴ 'Murder by two boys', *The Times* (n 100); 'The Murder by two boys at Stockport', *Liverpool Mercury* (n 101); 'The Murder of a Child at Stock', *The Lancaster Gazette* (n 101); 'Home News', *The Examiner* (n 101); 'Murder of a Child by two boys, near Stockport', *Cheshire Observer* (n 101); 'General News', *The Preston Guardian* (20 April 1861); 'Murder of a child by boys' *Lloyd's Weekly Newspaper* (n 101); 'The wilful murder of a child by two boys', *Reynold's Newspaper* (21 April 1861).

¹⁰⁵ 'Summer Assizes', *The Times* (n 30); 'Summer Assizes', *The Standard* (n 30); 'Chester Summer Assizes', *Manchester Times* (n 101); 'Multiple News Items', *The Morning Post* (10 August 1861).

¹⁰⁶ 'Summer Assizes', *The Standard* (n 30).

lane, Stockport, on the afternoon of the killing and that she had asked them where they were going, to which they replied, 'Love Lane', the place where the body of the victim was later found.¹⁰⁷ Emma Williams gave evidence that she was at her house when she saw the two defendants, about 100 yards away, holding the naked victim by the hand and hitting him with a stick on the back of his legs.¹⁰⁸ She called out to them twice, she continued in her evidence, and they stopped, looked around and carried on in the direction where the body was found.¹⁰⁹ John Butler gave evidence that he had been working in a field nearby and found the body of the victim 'on its face', the water in the stream just covering his head and body, wearing only a pair of clogs.¹¹⁰ William Walker, the police inspector at Stockport gave evidence that he had been called to the scene of the crime, where he had found the victim's naked dead body, having a 'flattened' nose, indicating that his head had been pressed downwards.¹¹¹ Thomas Massey, the Stockport surgeon who had performed a post mortem on the body of the victim, gave evidence that he had found scratches and bruises on the front of the body that appeared to have been caused by hitting the child with a stick and severe bruises on the lower back and the buttocks, indicating that 'severe violence' was inflicted upon him.¹¹² The surgeon also gave evidence that coagulated blood between the scalp and the skull of the victim had also been found, showing that he had been hit on the head with a stick prior to his death, that the lungs and the brain were 'congested' and that the immediate cause of death was 'suffocation by drowning'.¹¹³

Finally, William Morley, the police officer who had arrested the defendants and given evidence at the coroner's inquest, gave evidence that upon their arrest on the 14th April 1861 the two defendants confessed that the previous Thursday they were going up Love-lane with the victim, whom they had just met next to the Star Inn.¹¹⁴ According to the witness, James told him that they were walking until they reached a hole with some water in it and at that point he and Peter both undressed the victim, an action followed by Peter pushing the toddler into the water and James taking him out

¹⁰⁷ 'Summer Assizes', *The Standard* (n 30); 'Summer Assizes', *The Times* (n 61).

¹⁰⁸ 'Summer Assizes', *The Standard* (n 30); 'Summer Assizes', *The Times* (n 61).

¹⁰⁹ 'Summer Assizes', *The Standard* (n 30).

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ 'Murder by two boys', *The Times* (n 100); Home News', *The Examiner* (n 101); 'The wilful murder of a child by two boys', *Reynold's Newspaper* (n 102); 'Shocking murder by two boys', *The Bury and Norwich Post and Suffolk Herald* (23 April 1861); 'Summer Assizes', *The Standard* (n 30).

only to put him back in after Peter said that the child ‘must have another dip’.¹¹⁵ Both defendants then confessed, the witness continued, that they beat the toddler while he was in the water on the back and the head until he was dead and then left him in the water and threw the stick into the fields.¹¹⁶ The witness also mentioned that he had compared the footprints found at the scene of the crime with the shoes of the defendants and they were matching.¹¹⁷ Finally, the witness gave evidence that the defendants had told him that they only ‘went to school sometimes on a Sunday’. Since Sunday schools provided moral education, it can be assumed from this information that their moral education was deficient.¹¹⁸

As regards the young age of the two defendants, the prosecutor referred to it in his opening statement, arguing that they knew that what they were doing was wrong because they tried to avoid one of the witnesses who had seen them mistreating the naked victim and because neither of them spoke of what they had done until they talked to the police two days later, despite the fact that everyone was looking for the victim during that time.¹¹⁹ In contrast, their defence lawyer argued that the boys should be acquitted due to their young age, since they could not have had the ‘malice aforethought’ required for the crime.¹²⁰ The judge then summed up saying, amongst other things, that the boys’ ability to distinguish right from wrong and to understand the consequences of their actions must be ascertained by the jury, who should only convict them of murder if they were satisfied that they could distinguish between the two and that they understood the said consequences, whereas if one of those could not be established, they should be convicted of manslaughter.¹²¹ The jury presumably concluded that the two boys could not distinguish right from wrong or understand the consequences of their actions, since they eventually convicted them of manslaughter.¹²² In addition, the jury expressed their desire for the boys to be sentenced to custody in a reformatory school, which the judge followed.¹²³ The boys were sentenced to one month in an adult prison, to be followed by five years in a reformatory school.¹²⁴

¹¹⁵ ‘Summer Assizes’, *The Standard* (n 30).

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ ‘Summer Assizes’, *The Times* (n 30); ‘Summer Assizes’, *The Standard* (n 30).

¹²¹ ‘Summer Assizes’, *The Times* (n 30); ‘Summer Assizes’, *The Standard* (n 30).

¹²² ‘Summer Assizes’, *The Times* (n 30); Loach (n 32) 131.

¹²³ ‘Summer Assizes’, *The Times* (n 30).

¹²⁴ ‘Summer Assizes’, *The Times* (n 30); ‘Summer Assizes’, *The Standard* (n 30); Loach (n 32) 131.

The Criminal Justice System:

During the second half of the 19th century the welfare model was beginning to emerge in the field of juvenile criminal justice, criminal behaviour was starting to be attributed to the circumstances of the offender and punishment moved away from retribution and towards addressing the needs of young offenders, with the aim of steering them away from a life of crime.¹²⁵ Reformatory schools had just come into existence following the Youth Offenders Act 1854 and they were places aiming to hold, discipline and reform offenders under 16 years old.¹²⁶ These developments were all evident in the case study of Peter Barratt and James Bradley.

Evidence of strong associations between the treatment of Peter and James by the criminal justice system, from the police investigation to their trial and sentencing, and the concept of the Romantic Child is provided by the words and reasoning of the trial judge in his summing at the trial of the two young offenders. He referred to the young defendants as children involved in ‘mere babyish mischief’, saying that he believed that their confessions contained statements that sounded more like ‘childish mischief’ rather than anything else, such as the fact that they said that they pushed the victim into the water, pulled him out again and then ‘let it have another dip’.¹²⁷ Their young ages, he also said, did make a difference to the ‘nature of the crime’, because when young children engaged in violent behaviour and caused others injury they might not actually intend the harm they caused, or understand that it might lead to death and what that is.¹²⁸ His reasoning reveals that he considered the young defendants as innocent, in the sense that children in general are innocent, and incapable of being evil, attributing their violent conduct to childishness. His description of the behaviour of Peter and James is in accordance with the view expressed by Rousseau, the first and fiercest advocate of the concepts behind the Romantic Child, who argued that children can do no evil because they cannot distinguish between good and evil or associate these concepts with their actions, and that any destructive behaviour, at least by male children, was the result of having vast energy, resulting in a desire for action.¹²⁹ Accordingly, the associations between the treatment of Peter and James by

¹²⁵ Andrew Rutherford, *Growing out of crime* (2nd edn, Waterside Press 1992) 32; Fionda (n 58) 35-37.

¹²⁶ <http://www.devon.gov.uk/index/councildemocracy/record_office/family_history_3/school_records/reformatory_schools.htm>, accessed 24/05/2012; <<http://www.nationalarchives.gov.uk/education/lesson25.htm>>, accessed 24/05/2012.

¹²⁷ ‘Chester Summer Assizes’, *Cheshire Observer and General Advertiser* (10 August 1861).

¹²⁸ *ibid.*

¹²⁹ Rousseau (n 73) 35.

the examined parts of the criminal justice system in 1861 and the concept of the Romantic Child were present to a noteworthy extent.

Associations with the concept of the Unformed Child were also present in the 1861 case study. During the 1860s the discipline of psychology had yet to develop and the concept of the Unformed Child essentially revolved around the non-scientific idea that children were born a 'blank slate', that their innocence was due to 'lack of social experience' rather than an innate characteristic, and that they could be educated and influenced to be either good or bad.¹³⁰

Accordingly, the verdict of manslaughter rather than murder because of incapacity to distinguish right from wrong or to understand the consequences of their actions, and the judge's comment at their sentencing that age constituted a 'mitigating factor in such a serious crime', seem to suggest that the leniency exhibited was due to the lack of understanding of the two young offenders, rather than any beliefs of inherent goodness or innocence.¹³¹ This lack of understanding is in accordance with the ideas within the concept of the Unformed Child, as described above. Moreover, the sentence to a reformatory school suggests that the factors surrounding the young offenders, rather than any inherent vices, were considered as the cause of their offending behaviour, since rehabilitation through education was deemed as a possible way of remedying it.¹³² Similarly, evidence of associations with the concept of the Unformed Child is present in the specific words of Mr Justice Crompton during the boys' sentencing hearing.¹³³ The judge said that he hoped that by sending the young offenders to the reformatory school they would no longer be in the company of 'their bad companions in Stockport', they would receive better education and skills and thus have an opportunity to be 'better boys', and that when they matured enough to understand 'the nature of the crime' that they had committed they would 'repent'.¹³⁴ These words reveal that he believed that the bad behaviour of the young offenders was the result of negative influences upon them and that if they were replaced by good influences, their behaviour would change. In addition, they reveal that the judge believed the young defendants not to have reached the full maturity of an adult. Both beliefs are relevant to the characteristics attributed to children within the concept of

¹³⁰ Chris Jenks, *Childhood* (2nd edn, Routledge 2005), 124; Alison James and Chris Jenks, 'Public perceptions of childhood criminality' (1996) 47(2) *The British Journal of Sociology* 315, 319.

¹³¹ *ibid.*; 'Chester Summer Assizes', *Manchester Times* (n 101); Loach (n 32) 131.

¹³² 'Summer Assizes', *The Times* (n 30); 'Chester Summer Assizes', *Manchester Times* (n 101); Loach (n 32) 131.

¹³³ 'A child murdered by children', *The Independent* (23 April 1995) <<http://www.independent.co.uk/arts-entertainment/a-child-murdered-by-children-1616746.html>>, accessed 30/03/2012, Loach (n 32) 140.

¹³⁴ *ibid.*

the Unformed Child. Therefore, there is evidence of associations with the concept of the Unformed Child, albeit in its original, pre-scientific form.

In conclusion, the approach of the courts as part of the criminal justice system in the current case study, making use of the new legislation and move towards a more welfare approach, differed from the approach towards John Any Bird Bell 30 years previously, in a number of respects. Firstly, no associations can be drawn with the concepts of the Adult Child or the Savage Child in the current case. Secondly, strong associations with the concept of the Romantic Child exist, as opposed to the weak ones present in the older case. Thirdly, the almost imperceptible associations with the concept of the Unformed Child in the 1831 case study have developed into significant associations in the current case, albeit still with the pre-scientific configuration of that concept. The differences in the two approaches, especially in relation to the concepts of the Adult Child and the Unformed Child, must be partly due to the different ages of the defendants involved, with John Any Bird Bell being 14 and outside the age of discretion while Peter Barratt and James Bradley were eight and within the age of discretion and found to lack capacity for their crime. However, the shift from the concept of the Savage Child to the concept of the Romantic Child observed between the two cases does appear to reveal a change in the approach of the segments of the criminal justice system under investigation, towards children who kill, even though a subtle one, since the evidence is founded upon a few words spoken by the trial judge in each case.

The Press:

A study of the approach of the press towards Peter Barratt and James Bradley reveals similarity to the one observed within the criminal justice system, in that both approaches lead to associations with the concepts of the Romantic and Unformed Child. However, there is one very significant difference. The dominant associations found in the press are with the concept of the Savage Child, which were strong in the approach of the court towards John Any Bird Bell in 1831, but absent in its treatment of Peter Barratt and James Bradley in 1861.

The characterisations of the young offenders by the press and the rationalisations offered in its attempts to explain the crime constitute the evidence of strong associations with the concept of the Savage Child. The two eight year olds were

characterised as ‘brutal tormentors’,¹³⁵ ‘young wretches’,¹³⁶ ‘young villains’, ‘young rascals’, ‘young ruffians’, ‘wicked urchins’, ‘youthful assassins’¹³⁷ and ‘very indifferent’ to their ‘awful situation’ during the inquest that determined whether they would be sent to trial for wilful murder.¹³⁸ Furthermore, their actions were described as ‘horrid barbarity’,¹³⁹ ‘Diabolical Brutality’¹⁴⁰ and ‘merciless’,¹⁴¹ their crime was said to be ‘shocking’,¹⁴² ‘revolting’,¹⁴³ ‘barbarous’,¹⁴⁴ and ‘atrocious’¹⁴⁵ and the case as a whole was said to be ‘extraordinary’ and ‘almost unparalleled in the annals of crime’,¹⁴⁶ with the trial constituting a ‘solemn scene’.¹⁴⁷ Moreover, the *Times* maintained that there was a ‘propensity to cruelty in children’, manifested when they killed insects.¹⁴⁸ However, the article continued, the killing of a child was ‘a horrible and inexplicable exaggeration of childish cruelty, an enormity and a monstrosity’ that was ‘a wholly unnatural defect for children’ and whose only motive was the ‘pleasure of witnessing an agony – the death struggle of a human creature’.¹⁴⁹ The only explanation for this cruelty, according to this article, was the way in which these children were brought up, namely that nobody was taking care of them, they were neglected because their parents were working and they were not properly educated out of their evil tendencies.¹⁵⁰ Similarly, *The Standard* and the *Stockport Advertiser* referred to the ‘savage impulse’, manifested in almost all children to kill insects or frogs, which could only be suppressed with ‘religion or education’, something the defendants were not privy to, since they appeared to have no proper ‘religious training’, no discipline in a school because they only attended Sunday school irregularly, and no occupation ‘earning their bread’. They passed most of their time in

¹³⁵ ‘Summer Assizes’, *The Times* (n 30).

¹³⁶ ‘Murder of a Child by two boys, near Stockport’, *Cheshire Observer* (n 101); ‘Miscellaneous’, *The Leeds Mercury* (20 April 1861); ‘Miscellaneous’, *The Leicester Chronicle* (20 April 1861).

¹³⁷ ‘Multiple News Items’, *The Standard* (12 August 1861).

¹³⁸ ‘Murder by two boys’, *The Times* (n 100); ‘The Murder by two boys at Stockport’, *Liverpool Mercury* (n 101); ‘Home News’, *The Examiner* (n 101); ‘Wilful Murder of a Child by Two Boys’, *Manchester Times* (20 April 1861); ‘General News’, *The Preston Guardian* (n 102); ‘Murder of a child by boys’ *Lloyd’s Weekly Newspaper* (n 101); ‘The wilful murder of a child by two boys’, *Reynold’s Newspaper* (n 102); ‘Murder by two boys’, *The Newcastle Courant* (26 April 1861).

¹³⁹ ‘Multiple News Items’, *The Standard* (n 137).

¹⁴⁰ Loach (n 32) 122.

¹⁴¹ ‘Murder by two boys’, *The Times* (n 100); ‘The Murder by two boys at Stockport’, *Liverpool Mercury* (n 101); ‘Murder of a child by two boys near Stockport’, *The York Herald* (n 101); ‘Murder of a child by boys’ *Lloyd’s Weekly Newspaper* (n 101).

¹⁴² ‘The Shocking Murder of a Child by two boys at Stockport’, *The Leeds Mercury* (20 April 1861).

¹⁴³ ‘Multiple News Items’, *The Standard* (n 137).

¹⁴⁴ ‘The barbarous murder of a child by two boys’, *The Hull Packet and East Riding Times* (16 August 1861); ‘The barbarous murder of a child by two boys’, *The Leeds Mercury* (17 August 1861).

¹⁴⁵ ‘Multiple News Items’, *The Standard* (n 137).

¹⁴⁶ ‘Summer Assizes’, *The Times* (n 30).

¹⁴⁷ ‘Multiple News Items’, *The Standard* (n 137).

¹⁴⁸ ‘There is so much of routine in the course of’, *The Times* (12 August 1861) 6; Loach (n 32) 136.

¹⁴⁹ ‘There is so much of routine in the course of’, *The Times* (n 148); Loach (n 32) 136.

¹⁵⁰ ‘There is so much of routine in the course of’, *The Times* (n 148).

the streets, engaging in ‘corrupt conversation and practicing mischief’.¹⁵¹

Accordingly, this article blamed the killing by these two eight year olds on the ‘ills attendant on the neglect and abandonment of poor children’.¹⁵² These articles both suggest that evil is inherent in children, that they are born with it and that their surroundings, especially the training by their parents and moral and religious education in school are the things that can suppress this evil and lead to their becoming good and moral human beings. According to them, the failure of the people around them to train, restrain or reform these children out of the evil they inherently possessed is what led to it becoming so uncontrollable that it resulted in them killing another child. The notion that children are born evil and act in evil ways that become gradually worse unless they are restrained, educated and controlled are ideas within the concept of the Savage Child.¹⁵³

Simultaneously though, the treatment of Peter and James by the press reveals noteworthy associations with the concept of the Romantic Child. The young defendants were often referred to as ‘two little boys’¹⁵⁴ and were described as being ‘only’ eight years old, with their heads barely visible above the dock.¹⁵⁵ Furthermore, the only part of the judge’s direction to the jury selected for reporting was the part in which the judge stated his belief that the two defendants were engaging in ‘mere babyish mischief’ and that their confessions had, at least partly, ‘been put into their mouth by the policeman’.¹⁵⁶ Therefore, the descriptions and characterisations of the defendants by the press also reveal that they were attributed characteristics of vulnerability and, to a degree, innocence and engagement in childish behaviour, which for boys meant that they were free to act in any way that came naturally, according to the concept of the Romantic Child.

Finally, there are also associations with the pre-scientific form of the concept of the Unformed Child. Evidence of these associations is offered by the fact that the young offenders were described as ‘quite incapable of giving a plea or knowing what was going on’ during their trial, suggesting a lack of maturity assumed in adult

¹⁵¹ ‘Multiple News Items’, *The Standard* (n 137).

¹⁵² *ibid*; Loach (n 32) 139.

¹⁵³ Ariès (n 70) 6, 129; Dekker (n 70) 140.

¹⁵⁴ ‘Chester Summer Assizes’, *Manchester Times* (n 101); ‘Multiple News Items’, *The Morning Post* (n 103); ‘The Stockport Murder’, *Lloyd’s Weekly Newspaper* (11 August 1861); ‘Miscellaneous’, *Birmingham Daily Post* (12 August 1861); ‘The murder of an infant by two children’, *The Belfast News Letter* (13 August 1861); ‘The barbarous murder of a child by two boys’, *The Hull Packet* (n 142); ‘The barbarous murder of a child by two boys’, *The Leeds Mercury* (n 142).

¹⁵⁵ ‘Summer Assizes’, *The Times* (n 30); ‘The murder by two children at Stockport’, *The Bury and Norwich Post* (13 August 1861); ‘The Kingswood Murder’, *The Essex Standard* (14 August 1861).

¹⁵⁶ ‘Chester Summer Assizes’, *Cheshire Observer* (n 127).

defendants.¹⁵⁷ More significantly, the press expressed the opinion that blame should be attached to the young defendants, but they should not have the same liability as an adult would.¹⁵⁸ The *Times*, for instance, maintained that the two defendants were guilty of ‘wilful murder’ in ‘some sense’ because they knew what life was, that they were taking it away from their victim and that it was wrong to do so.¹⁵⁹ On the other hand, the article continued, they should not be criminally liable as an adult would be, because their conscience was still not yet fully grown and it was thus not as forceful and serious as it was in an adult; criminal liability depended not on the existence of conscience, but on the ‘proper degree’ of it.¹⁶⁰ Along the same lines, the *Standard* and the *Advertiser* argued that they did not consider an eight year old child ‘irresponsible’, that eight year olds did perceive what was right and what was wrong and that they did have the maturity to be held responsible for their actions.¹⁶¹ However, this responsibility should not be to the same extent as that of a ‘grown man’, especially due to the smaller amount of ‘training and education’ that they had received.¹⁶² Therefore, the press supported the view that children possessed some maturity but not that equalling the maturity of an adult, which by extension meant that children’s maturity developed over time, a characteristic attributed to them within the concept of the Unformed Child.

The presence of associations between the treatment of Peter and James by the press and the concepts of the Romantic and Unformed Child are in accordance with the approach of the sections of the criminal justice system examined and hence in step with the general tendency of the press at the time not to challenge authority, albeit that that tendency gradually became weaker as the century progressed.¹⁶³ The existence, however, of strong associations with the concept of the Savage Child constitutes a significant departure from the approach of the criminal justice system. This departure might be explained in part by the adoption of pre-sensationalism by the press, meaning that the press portrayed the children as savage to increase the drama in its stories.¹⁶⁴ However, these strong associations cannot be entirely attributable to pre-

¹⁵⁷ ‘Summer Assizes’, *The Times* (n 30); ‘The murder by two children at Stockport’, *The Bury* (n 155); ‘The Kingswood Murder’, *The Essex Standard* (n 155).

¹⁵⁸ Loach (n 32) 134.

¹⁵⁹ ‘There is so much of routine in the course of’, *The Times* (n 148).

¹⁶⁰ *ibid*; Loach (n 32) 133.

¹⁶¹ ‘Multiple News Items’, *The Standard* (n 137); Loach (n 32) 133.

¹⁶² ‘Multiple News Items’, *The Standard* (n 137); Loach (n 32) 133.

¹⁶³ Jessica M. Pollak and Charis E. Kubrin, ‘Crime in the News: How Crimes, Offenders and Victims are portrayed in the media’ (2007) 14(1) *The Journal of Criminal Justice and Popular Culture* 59, 61.

¹⁶⁴ Kevin G. Barnhurst and John Nerone, *The Form of News: A History* (The Guilford Press 2001) 147-148.

sensationalism, since it was still in primal form at the time. An alternative or complementary explanation might be that the press had yet to adapt to the changing views within the criminal justice system and continued to follow in its own past footsteps, in an approach similar to the one adopted in the John Any Bird Bell case.

Public Reaction:

The treatment of Peter Barratt and James Bradley by the public only reveals associations with the concept of the Romantic Child, a fact that constitutes both a similarity and a difference to the approach of the sections of the criminal justice system examined. An examination of the 1861 case study shows that there was a lot of interest in the case, since the courtroom was ‘densely thronged’ throughout the hearing¹⁶⁵ and the people present at the trial were astonished by the physical appearance of the two defendants, who looked like two small children.¹⁶⁶ This astonishment suggests that it was quite unbelievable to the people present that two regular, small children engaged in the violent killing of another child. Furthermore, the audience at the trial burst out in ‘cries of approval’ once a lenient sentence, which would enable the boys to work and receive an education, was passed upon them.¹⁶⁷ The sentence provided the young defendants with an opportunity to rehabilitate and re-enter society as soon as the process was completed, hence giving them a second chance in life. Public approval of the sentence thus links public reaction to the concept of the Romantic Child.

Therefore, public reaction seemed to remain constant from the beginning to the middle of the 19th century. The approach of the public does bear closer similarity to the approach of the criminal justice system in the 1861 case as opposed to the 1831 case. It can thus be argued that the approach of the criminal justice system, at least of the segments of it that are part of the current analysis, was slowly moving in the direction of the approach of the public by the middle of the 19th century, without ignoring other relevant factors mentioned above, such as the ages of the defendants. The absence of associations in the approach of the public with the concept of the Unformed Child, which were present in the approach of the courts, as evidenced by the comments from the court and legislative policy, may be due to the fact that the

¹⁶⁵ ‘Chester Summer Assizes’, *Manchester Times* (n 101).

¹⁶⁶ ‘Summer Assizes’, *The Times* (n 30); ‘The Kingswood Murder’, *The Essex Standard* (n 155).

¹⁶⁷ Loach, (n 32) 140.

concept of the Unformed Child involves more rational and less emotional ideas. More specifically, as previously explained in the introduction, the current thesis examines public reactions rather than the general thoughts of the public included in public opinion. Accordingly, notions and ideas such as those involved in the concept of the Unformed Child, which by nature lack the intensity of emotion to be translated into public reactions, if at all present, cannot be visible within the scope and limitations of the current research.

The Case Study of Margaret Messenger (1881)

The Facts of the Case:

Margaret Messenger, the young domestic servant at the Pallister family farm, was charged at the Cumberland Winter Assizes before Lord Justice Kay with the wilful murder of six month old Elizabeth Pallister, at Sprunston, near Carlisle, in July 1881.¹⁶⁸ Margaret was 13 years old when she committed her crime, which placed her within the age of discretion, but she was 14 at the time of her trial, making this a borderline case.¹⁶⁹ The prosecutors were Mr Page and Mr Lowther and counsel for the defence was Mr Mattinson.¹⁷⁰

For the presentation of its case the prosecution called various witnesses, including Mrs Pallister, who was the victim's mother, Mr Haffen, another employee at the farm and Mrs Story, a neighbour who had been called to the scene of the crime. Mrs Pallister gave evidence that on the 2nd July 1881 she and Mr Pallister had left their two children, aged five years and six months, in the care of the defendant.¹⁷¹ Mr Haffen gave evidence that on the same day, around 10 o'clock in the morning, he had heard a child crying in the yard and an older child calling for the babysitter, who replied to her almost simultaneously, and not thinking anything of the cry he went on with his work.¹⁷² Around 10:30, he continued, the defendant called him and he went to a field nearby, where he saw her with the five year old sister of the victim and she told him that the deceased child was taken by a man and that he should go and look for her, which he did, unsuccessfully, before returning to work, despite the fact that he did not

¹⁶⁸ 'The Assizes', *The Times* (3 November 1881) 9; Loach (n 32) 151.

¹⁶⁹ 'The Assizes', *The Times* (n 168); 'Extraordinary child murder in Cumberland', *The Leeds Mercury* (3 November 1881); Kean (n 28) 369; Bentley (n 1) 15.

¹⁷⁰ 'The Assizes', *The Times* (n 168).

¹⁷¹ 'The Assizes', *The Times* (n 168); 'Extraordinary child murder in Cumberland', *The Leeds Mercury* (n 169).

¹⁷² 'The Assizes', *The Times* (n 168); 'Extraordinary child murder in Cumberland', *The Leeds Mercury* (n 169).

really believe the story.¹⁷³ Mr Haffen then gave evidence that around 11:30 he saw Margaret holding the deceased child and coming from the direction of the well, telling him that she was dead and he called a neighbour, Mrs Story.¹⁷⁴ Mrs Story gave evidence that she had picked up the body of Elizabeth Pallister and discovered that it was muddy in the front but not the back.¹⁷⁵ She also gave evidence that Margaret originally told her that she had fallen asleep in the yard and when she woke up she could not find the baby, whose body she later found ‘in a boggy place near the well’, though later in the afternoon she also told her ‘I will tell you; I did it myself, and nobody helped me’.¹⁷⁶

The newspapers also reported that Mr. Story had found an ‘indentation’ in the ground between the stream and the well that was in the shape of a child’s body and a stone, evidently removed from its original place, lying close to the indentation as well as clog marks on the ground from the house to the well.¹⁷⁷ However, it was not made clear whether he had given evidence at the trial regarding this fact or whether it was evidence that was presented by someone else, such as his wife or Police Officer Sempill who had inspected the scene of the crime, or not at all.¹⁷⁸ The prosecution also introduced evidence that the post mortem showed suffocation as the cause of death of the victim because mud had been found in her lungs and mouth.¹⁷⁹

The argument of the defence was that the defendant had left the deceased baby in the care of its sibling and during that time she fell down into the puddle and suffocated.¹⁸⁰ The Judge in his summing up said that the jury only had to answer the question whether it was possible that the deceased baby could have died in any way other than by the actions of the defendant.¹⁸¹ It should be noted that only two brief references were present in newspaper reports regarding the age of the defendant.¹⁸² Both said that although she was ‘*prima facie* incapable of crime’, since she was 13 when she committed the killing, she was ‘precocious enough to have a criminal intent’.¹⁸³ No clarifications were provided, however, as to how this fact was proven or

¹⁷³ ‘The Assizes’, *The Times* (n 168); ‘Extraordinary child murder in Cumberland’, *The Leeds Mercury* (n 169); ‘Tragic affair near Carlisle’, *Liverpool Mercury* (7 July 1881).

¹⁷⁴ ‘The Assizes’, *The Times* (n 168); ‘Extraordinary child murder in Cumberland’, *The Leeds Mercury* (n 169); ‘Tragic affair near Carlisle’, *Liverpool Mercury* (n 173).

¹⁷⁵ ‘The Assizes’, *The Times* (n 168); ‘Extraordinary child murder in Cumberland’, *The Leeds Mercury* (n 169).

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

¹⁸⁰ *ibid.*

¹⁸¹ *ibid.*

¹⁸² ‘Juvenile Murderess’, *Law Journal* (5 November 1881).

¹⁸³ *ibid.*

whether the judge gave a relevant direction to the jury, only that it was the conclusion of the jury. As for her psychological condition, no references exist in any reports of the trial, which can only lead to the conclusion that it was not considered up until this stage. The jury returned a verdict of ‘guilty’ of murder after 10 minutes of deliberation and strongly recommended that mercy be shown due to the defendant’s young age and hence, reference to her age was found for the first time in the reports of the trial.¹⁸⁴ However, the judge imposed the death sentence on the prisoner and ordered that a psychological examination be carried out.¹⁸⁵ The sentence was later ‘respite due to Her Majesty’s pleasure’ by the Home Secretary.¹⁸⁶

Following the respite of her sentence, Margaret was subjected to a psychological examination by Dr. Orange, the Medical Superintendent of Broadmoor Criminal Lunatic Asylum.¹⁸⁷ After she was told that she was no longer facing the death sentence, she confessed to having killed another child of the family in ‘a similar manner’.¹⁸⁸ The child in question was the two-year-old John Mark, who had been found drowned in the farm well a week prior to this incident and his body had been taken out of the well by the defendant, who had supposedly gone there to fetch some water.¹⁸⁹ The inquest into the death of this child had previously led to an ‘open verdict’.¹⁹⁰ According to the report prepared on her, Margaret said she had been chopping wood near the well and when she saw the two-year-old boy she had an urge to drown him, followed by pushing him into the well.¹⁹¹ A few days later, she continued, she got the desire to suffocate a child again and she then thought that she could not do it in the well again and thus drowned Elizabeth in the boggy ground near the well while her parents were away from the farm.¹⁹² The doctor concluded that Margaret was not suffering from insanity and that she was aware of the ‘sinfulness of her acts’, though due to her young age, she was not capable of ‘fully appreciating

¹⁸⁴ ‘The Assizes’, *The Times* (n 168); ‘Murder trials in England’, *The Belfast News-letter* (3 November 188); ‘A Girl of 14 sentenced to death’, *The Dundee Courier and Argus* (3 November 1881); ‘Extraordinary child murder in Cumberland’, *The Leeds Mercury* (n 169).

¹⁸⁵ ‘The Assizes’, *The Times* (n 168); ‘Murder trials in England’, *The Belfast News-letter* (n 184); ‘A Girl of 14 sentenced to death’, *The Dundee Courier and Argus* (n 184); ‘Extraordinary child murder in Cumberland’, *The Leeds Mercury* (n 169); ‘The murder by a girl’, *The North Eastern Daily Gazette* (10 November 1881); ‘The Belfast news letter’, *The Belfast News-Letter* (11 November 1881); ‘Margaret Messenger’, *The Dundee Courier and Argus and Northern Warder, The Royal Cornwall Gazette Falmouth Packet, Cornish Weekly News and General Advertiser* (11 November 1881).

¹⁸⁶ ‘The murder by a girl’, *The North Eastern Daily Gazette* (n 185); ‘The Belfast news letter’, *The Belfast News-Letter* (n 185); ‘Margaret Messenger’, *The Dundee Courier* (n 185).

¹⁸⁷ ‘Respite of Margaret Messenger’, *The Standard* (11 November 1881); ‘The confession of murder by a girl’, *Daily News* (12 November 1881).

¹⁸⁸ ‘The Belfast news letter’, *The Belfast News-Letter* (n 185); ‘Margaret Messenger’, *The Dundee Courier* (n 185).

¹⁸⁹ ‘General home news’, *Daily News* (6 July 1881); ‘North Country News’, *Northern Echo* (6 July 1881); ‘Summary of this Morning’s News’, *The Pall Mall Gazette* (6 July 1881).

¹⁹⁰ Loach (n 32) 150.

¹⁹¹ ‘Confession by the girl murderess’, *The North Eastern Daily Gazette* (11 November 1881).

¹⁹² *ibid.*

their nature and character and consequences to the same extent as would be the case with a person of mature age'.¹⁹³ Dr. MacDougal, the physician at Carlisle jail, concurred with this opinion.¹⁹⁴ Margaret Messenger's sentence was eventually converted to penal servitude for life.¹⁹⁵

The Criminal Justice System:

In the late 19th century the welfare model continued to prevail in the realm of criminal justice.¹⁹⁶ Concurrently, the discipline of psychiatry was just beginning to emerge, which meant that the factors affecting the development of children and their behaviour begun to be placed on a more scientific footing, although this was still at an early stage.¹⁹⁷ Margaret Messenger's treatment by the criminal justice system in 1881, from the beginning of the police investigation to the completion of her trial and sentencing, reveals the presence of all of these developments, as well as significant influences by the fact that she was female.

The associations between Margaret's treatment by the criminal justice system and the concept of the Romantic Child can be described as significant, although gender issues play an important role in the relationship. The Romantic Child, according to Rousseau, whether a boy or a girl, is vulnerable and needs the protection of adults.¹⁹⁸ Accordingly, the fact that upon the delivery of Margaret's verdict the jury made a recommendation for mercy and the judge was described by the reporters present as being 'much affected' while imposing the death sentence, do constitute associations with the concept of the Romantic Child.¹⁹⁹ Similarly, so does the fact that her sentence was commuted and eventually converted to penal servitude for life by the Home Secretary, who would undoubtedly not allow the hanging of a 14-year-old child,

¹⁹³ Loach (n 32) 165-166.

¹⁹⁴ 'Latest news', *Liverpool Mercury* (14 December 1881); 'Multiple News Items', *The Sheffield and Rotherham Independent* (14 December 1881) 2; 'Multiple news items', *The Standard* (14 December 1881) 2; 'The sentence of death on the girl Margaret Messenger', *Trewman's Exeter Flying Post or Plymouth and Cornish Advertiser* (14 December 1881); 'General news', *Aberdeen Weekly Journal* (17 December 1881); 'General News', *Berrow's Worcester Journal* (17 December 1881); 'Murders', *Manchester Times* (17 December 1881); 'Reprieve', *The Bury and Norwich Post and Suffolk Herald* (20 December 1881); 'General news', *The Royal Cornwall Gazette Falmouth Packet, Cornish Weekly News and General Advertiser* (23 December, 1881) 2; Loach, (n 32) 158, 168.

¹⁹⁵ *ibid*

¹⁹⁶ Fionda (n 58) 36.

¹⁹⁷ Rutherford (n 125) 32; David Garland, *The Culture of Control* (Oxford University Press 2001), 39; Fionda (n 58) 37.

¹⁹⁸ Rousseau (n 73) 46, 57, 76.

¹⁹⁹ 'Extraordinary child murder in Cumberland', *The Leeds Mercury* (n 169); 'The Assizes', *The Times* (n 168); 'Extraordinary child murder in Cumberland', *The North Eastern Daily Gazette* (3 November 1881); 'Summary of this morning's news'; *The Pall Mall Gazette* (n 189); 'General news', *Berrow's Worcester Journal* (5 November 1881) 6; 'Extraordinary trial for murder', *The Blackburn Standard: Darwen Observer and North East Lancashire Advertiser* (5 November 1881) 7.

according to the press.²⁰⁰ However, this desire for protection should not be overstated because her death sentence was merely commuted to life imprisonment, which remained a very harsh sentence.²⁰¹

Evidence of a desire to protect Margaret was further exhibited by the court through the order the judge gave that she be subjected to a psychiatric evaluation, in essence to provide grounds for leniency and to avoid the death penalty. The fact that Margaret was a female child probably made this order much more likely, since the criminal justice system has exhibited evidence of a chivalrous attitude towards female offenders manifested through a psychological approach throughout most of its history, as discussed in the first chapter.²⁰² Lord Justice Kay referred to the case as ‘mysterious’ because a young child had committed a ‘brutal and barbarous murder’ without ‘any apparent motive’,²⁰³ a statement that led to speculation as to whether Margaret’s mind was ‘disordered’ (as opposed to attribution of an evil nature) when she carried out the murder.²⁰⁴ This suggests links to the traditional approach towards female violent offenders. Namely, the notion of gender roles is invoked, according to which women are affectionate, family oriented creatures, who put the needs of others first, thus making any violence on their part hard to accept if not explained by a psychological condition.²⁰⁵ In addition, the judge referred specifically to Margaret’s motives, a concern reserved almost exclusively for female offenders, whose thoughts and feelings are often explored, while they are ignored in crimes committed by men.²⁰⁶ The approach of the court is thus highly gendered. However, there is also clear reference to Margaret as a child and to her young age, making both the fact that she was female and a child relevant. Accordingly, a sense of protectiveness within the context of the concept of the female Romantic child is present, strengthening the associations with that concept.

²⁰⁰ ‘Summary’, *The York Herald* (4 November 1881) 5; ‘The Belfast news letter’, *The Belfast News-Letter* (n 185); ‘Latest news’, *Liverpool Mercury* (n 194); ‘Multiple News Items’, *The Sheffield and Rotherham Independent* (n 194); ‘Multiple news items’, *The Standard* (n 194); ‘The sentence of death on the girl Margaret Messenger’, *Trewman’s Exeter Flying Post* (n 194); ‘General news’, *Aberdeen Weekly Journal* (n 194); ‘General News’, *Berrow’s Worcester Journal* (n 194); ‘Murders’, *Manchester Times* (n 194); ‘Reprieve’, *The Bury and Norwich Post* (n 194); ‘General news’, *The Royal Cornwall Gazette* (n 194).

²⁰¹ ‘Latest news’, *Liverpool Mercury* (n 194); ‘Multiple News Items’, *The Sheffield and Rotherham Independent* (n 194); ‘Multiple news items’, *The Standard* (n 194); ‘The sentence of death on the girl Margaret Messenger’, *Trewman’s Exeter Flying Post* (n 194); ‘General news’, *Aberdeen Weekly Journal* (n 194); ‘General News’, *Berrow’s Worcester Journal* (n 194); ‘Murders’, *Manchester Times* (n 194); ‘Reprieve’, *The Bury and Norwich Post* (n 194); ‘General news’, *The Royal Cornwall Gazette* (n 194).

²⁰² Frances Heidensohn, *Women and Crime* (2nd edition, Macmillan Press 1985) 32.

²⁰³ Loach (n 32) 151.

²⁰⁴ ‘The condemned girl murderer’, *The Huddersfield Daily Chronicle* (7 November 1881) 4.

²⁰⁵ Worrall (n 68) 33, 41, 49.

²⁰⁶ Allen (n 62) 35; Carlen and Worrall (n 62) 83.

The approach of the sections of the criminal justice system examined, in the current case study, also points towards the existence of associations with the concept of the Unformed Child, since the results of Margaret's psychological evaluation depended on a test of her capacity and the fact that she was unable to appreciate the consequences of her actions to the extent that an adult would.²⁰⁷ Accordingly, this evaluation constitutes the first encounter with evidence pointing towards associations with the concept of the Unformed Child founded upon scientific explanations. However, these associations remain rather weak, since the evaluation did not take place until after Margaret's trial had been completed, making it seem almost like an afterthought to the judicial process. The late stage at which the psychological evaluation was ordered, as well as the fact that it was probably motivated by gender-related factors, indicate a limited connection to the concept of the Unformed Child, however its mere presence and especially its results do suggest that the discipline of psychology and modern notions of the concept of the Unformed Child were beginning to find their way into the courts.

Evidence of associations with the concept of the Savage Child was entirely absent in the case of Margaret Messenger. It can be argued that this is partly due to the fact that she was a girl.²⁰⁸ Simultaneously though, it cannot be ignored that there was a tendency for the criminal justice system to move away from viewing children as savages that was also evident in the previous case study, in which the offenders were two boys.

In summary, the treatment of Margaret Messenger by the criminal justice system, from the commencement of the police investigation to the completion of her trial and sentencing processes, in 1881 reveals strong associations with the concept of the Romantic Child, albeit strongly influenced by gender considerations, and weak but undeniable associations with the newly founded scientific form of the concept of the Unformed Child. Associations are not found with either the concept of the Adult or the Savage Child. These findings reveal close similarities with the approach of the criminal justice system in Peter Barratt and James Bradley's case study, which took place 20 years earlier. The absence of associations with the concepts of the Adult and Savage Child is found in both, as well as the strong associations with the concept of the Romantic Child. The only discrepancies, which are minor, lie in the associations

²⁰⁷ Loach (n 32) 166.

²⁰⁸ Rousseau (n 73) 390-393; Mary Wollstonecraft, *Vindication of the rights of woman* (Dover Thrift Editions 1792) 101.

with the concept of the Unformed Child. These associations are present in both case studies, however, in the 1861 case they are slightly more extensive than in the 1881 case, since the notion of the reduced capacity of children was more extensively discussed during the trial and sentencing of Peter Barratt and James Bradley. However, this is due to the fact that the two boys were younger than Margaret and, unlike her, were deemed to lack capacity. The discrepancy that is of more interest for the purposes of the thesis is that in the case of Margaret Messenger, the evidence of the presence of the concept of the Unformed Child is of its modern, scientific configuration, in contrast to its appearance in the preceding cases.

The Press:

The approach of the press towards Margaret Messenger reveals strong associations with the concept of the Romantic Child and brief associations with the scientific version of the concept of the Unformed Child, closely reflecting the approach of the criminal justice system up to the completion of her sentencing. It must be noted that the press referred to Margaret more often as a girl rather than as a child, as well as other gendered descriptions, including murderess, suggesting that gender issues played a significant role in its approach towards her.²⁰⁹

Beginning with the associations between Margaret's treatment by the press and the concept of the Romantic Child, it is clear that they are related both to her young age and her gender. The characterisations used to describe Margaret by the press included 'young girl',²¹⁰ 'youthful murderess',²¹¹ 'Juvenile murderess',²¹² and 'Girl murderess',²¹³ suggesting that she was being treated leniently in comparison to the earlier defendants in the 1831 and 1861 cases.²¹⁴ Accordingly, Margaret's characterisations by the press suggests associations with the female version of the concept of the Romantic Child.

More significantly, the press focused on criticising the harsh sentence imposed on Margaret rather than on her violent behaviour, strengthening these associations.

²⁰⁹ Three times, in articles on the 3rd, 7th and 11th of November, she was referred to as a child. In contrast, she was referred to as a girl in about 50 articles, which were printed between the 5th and 22nd of July, the 3rd and 19th of November and 14 and 20th of December.

²¹⁰ 'Alleged murder by a young girl', *The Bury and Norwich Post and Suffolk Herald* (12 July 1881) 7; 'Murders', *Manchester Times* (16 July 188); 'Second edition', *The Newcastle Courant* (11 November 1881); 'Multiple news items', *The Sheffield & Rotherham Independent* (12 November 1881). She was referred to twice as a murderess on the 3rd and 5th of November.

²¹¹ 'Latest news', *Freeman's Journal and Daily Commercial Advertiser* (3 November 1881).

²¹² 'Juvenile Murderess', *The Standard* (4 November 1881) 3.

²¹³ 'Confession by the girl murderess', *The North Eastern Daily Gazette* (n 189); 'Multiple news items', *The Huddersfield Daily Chronicle* (11 November 1881) 3.

²¹⁴ 'Friday Morning', *Glasgow Herald* (11 November 1881).

Newspaper reports used titles such as ‘A child sentenced to death’,²¹⁵ ‘A girl of 14 sentenced to death’,²¹⁶ ‘The sentence of death on a young girl’,²¹⁷ ‘The sentence of death on a child’,²¹⁸ revealing their surprise, disapproval and indignation. The argument is reinforced by the fact that the press referred to Margaret as a ‘child’ when talking about her sentence to death, but not on any other occasion.²¹⁹ Moreover, the content of the articles emphasised the pain felt by the people present at the sentencing of Margaret Messenger upon hearing her death sentence, demonstrated by the crying of many women.²²⁰ This focus of the article on the negative, emotional reaction of the crowd aims to draw attention to how painful and reprehensible such a sentence towards a child actually was and thus reinforces the argument that the press was disapproving towards it and its reports focused on events that involved its criticism. One article went as far as to ask why such a sentence should be imposed when it was obvious that the judge imposing it was ‘affected’, the people hearing it were in tears and everybody knew that it would be commuted by the Home Secretary.²²¹ Accordingly, the approach of the press suggests that Margaret should have been protected from the harsh punishment of the death penalty, connecting this approach with the fact that she was young and female, strengthening potential associations with the concept of the Romantic Child, especially the female Romantic Child.

Finally, the *Carlisle Patriot*, suggested that such a murder, committed by a child so young, could only be the result of evil caused by ‘madness’ and the *Standard* maintained similarly that Margaret was suffering from ‘homicidal monomania’.²²² It was argued that Margaret was ‘not responsible for her actions’ due to the presumption that she was insane and hence incapable of committing a crime, a fact ‘strengthened by her extreme youth’.²²³ This approach reveals a reduction of Margaret’s blameworthiness with her actions being attributed to psychological, pathological factors, which reflects an approach common towards female violent offenders, as described in the first chapter. However, the specific reference to her young age, also

²¹⁵ ‘A child sentenced to death’, *Western Mail* (3 November 1881).

²¹⁶ ‘A Girl of 14 sentenced to death’, *The Dundee Courier* (n 184); ‘A girl of 14 sentenced to death’, *The Sheffield and Rotherham Independent* (3 November 1881) 7; ‘Extraordinary trial for murder’, *Liverpool Mercury* (3 November 1881); ‘Law and police’, *The Leeds Mercury* (5 November 1881); ‘A girl of 14 sentenced to death’, *The Bury and Norwich Post and Suffolk Herald* (8 November 1881) 3.

²¹⁷ ‘The sentence of death on a young girl’, *The Dundee Courier and Argus and Northern Warder* (11 November 1881).

²¹⁸ ‘The sentence of death on a child’, *Western Mail* (11 November 1881).

²¹⁹ ‘A child sentenced to death’, *Western Mail* (n 215); *ibid.*

²²⁰ ‘Extraordinary child murder in Cumberland’, *The North Eastern Daily Gazette* (n 199); ‘Extraordinary trial for murder’, *Liverpool Mercury* (n 216).

²²¹ ‘The condemned girl murderer’, *The Huddersfield Daily Chronicle* (n 204).

²²² Loach (n 32) 153-154.

²²³ Loach (n 32) 157.

ties the approach with the belief that a child, or at least a female child, would not engage in such violent behaviour had she not been affected by pathological factors like insanity. Accordingly, the press extracted Margaret from both the categories of normal children and normal women, strengthening the associations with the concept of the Romantic Child.

Some associations can also be drawn between Margaret's treatment by the press and the scientific version of the concept of the Unformed Child, though the evidence is limited to the argument made by the press that Margaret was an 'unhappy girl', who should not have been judged according to ordinary criteria because she was both intellectually and morally below average standards,²²⁴ and that she should have been examined by professionals which she was on remand prior to her trial, to determine whether she was a 'murderess or a lunatic'.²²⁵ The first part of the comment points towards incomplete development and the test of capacity, which are associated with the concept of the Unformed Child. However, the second part of the comment clarifies that the lack of capacity, if present, is perceived to be due to the existence of psychological, pathological factors. The use of the discipline of psychology is again related to the modern configuration of the concept of the Unformed Child, however, in the context that it is being used, it constitutes more of a reference towards gender-related approaches than child-related ones, especially since similar facts in the previous case studies were approached in a different way. The argument seems to be in accordance with the general approach of the courts to look for pathological explanations for violent behaviour engaged in by women, because such behaviour does not fit into the traditional female gender role and because it is a way for the chivalrous criminal justice system to reduce the blameworthiness and hence penal measures against female defendants.²²⁶ The argument in favour of a gender-related approach is reinforced when the case is compared to the previous two 19th-century case studies. In the 1831 case study, John Any Bird Bell's shortcomings in his ability to understand the consequences of his actions were attributed to his parents' failure to train him out of his evil tendencies, whereas the same lack of capacity in Peter Barratt and James Bradley was attributed to their young age and nature, rather than madness, a condition associated with women to a much larger extent than men. Therefore,

²²⁴ 'Summary of the week', *Manchester Times* (5 November 1881); *ibid.*

²²⁵ *ibid.*

²²⁶ Worrall (n 68) 41, 49, 58; Appignanesi (n 68) 7; Heidensohn (n 202) 32.

while the reference to a test of capacity and the use of psychology constitute some evidence of associations with the concept of the Unformed Child, the associations are weak at this point, because the references can be attributed to a much larger extent to a gender-related approach.

Finally, it is noteworthy that the associations with the concept of the Savage Child witnessed in the approach of the press in the Peter Barratt and James Bradley case are entirely absent in the case of Margaret Messenger. It can be speculated that the absence is due to a move away from the concept of the Savage Child altogether, which also occurred within the criminal justice system. However, it is also possible that the absence is because Margaret was a girl and girls were considered to be naturally sweet, gentle and docile and hence not at all associated with the concept of the Savage Child.²²⁷

In summary, the approaches within the sections of the criminal justice system examined and the press were again very similar in the 1881 case study, revealing the lingering presence of the tendency of the press not to challenge authority, as well as the fact that the press appeared to have become up to date with the approach of the criminal justice system. The approach of the press in the 1881 case study also reveals a certain consistency with its approach in the 1861 case study, since associations with the concept of the Romantic Child were strong in both and with the concept of the Unformed Child, moderate, albeit with different versions of it. A significant difference was the absence in the 1881 case of associations with the concept of the Savage child, which were strong in the 1861 case. The shift may be due to one or a combination of three factors, namely, a move away from the concept of the Savage Child in general at the time, the press becoming up to date with and following the approach of the criminal justice system, and/or the fact that Margaret Messenger was female and hence assumed not to be savage according to gender roles.

Public Reaction:

Similarly to the two preceding 19th century cases, the 1881 case study exposes strong associations between the treatment of Margaret Messenger by the public and the concept of the Romantic Child. Evidence of these associations is especially prominent when the reaction of the public in relation to the death sentence imposed

²²⁷ Rousseau (n 73) 390-393.

on her is studied. A ‘painful feeling’ was said to spread around the courtroom following Margaret’s sentence to death and many women were described as ‘sobbing aloud’.²²⁸ In addition, the newspapers wrote that the possibility of executing a 14-year-old child would make the nation shudder, even though there was no need to fear such an outcome, since her sentence would certainly be commuted.²²⁹ The intense reaction of the public to the possibility of executing a 14 year old is indicative of the fact that the characteristics of being precious and valuable were attributed to Margaret, making her eligible for a second chance in life.

Furthermore, when Margaret appealed for release in 1891, saying that she was ‘sorry for the past and anxious to have the opportunity of redeeming her character’, she was given the ‘blessing’ of the parents of the victims and was released on licence.²³⁰ Upon her release she returned to her home village and worked as a dressmaker without facing any serious problems.²³¹ These reactions further suggest that Margaret was believed to deserve a second chance due to her youth when she committed her crime.

Therefore, the approach of the public towards Margaret shows strong associations with the concept of the Romantic Child, as in the two cases preceding it. It also seems that the criminal justice system and the press in 1881 treated Margaret in a way that can be strongly associated with the concept of the Romantic Child, hence perhaps revealing that the approaches of the press and the criminal justice system were reaching a synchronisation to the approach of the public. As argued above, the absence of associations with the concept of the Unformed Child may be explained by the nature of public reactions within the scope of the current thesis.

Conclusion: From the Beginning to the End of the 19th century

The in-depth analysis in this chapter of the treatment by the criminal justice system of children who killed in the 19th century, starting with the police investigation process and ending with the completion of the trial and sentencing processes, through particular case studies, leads to several observations. The first is that associations with

²²⁸ ‘Extraordinary child murder in Cumberland’, *The North Eastern Daily Gazette* (n 199); ‘Extraordinary trial for murder’, *Liverpool Mercury* (n 216); ‘A girl sentenced to death’, *Aberdeen Weekly Journal* (5 November 1881); ‘Extraordinary trial for murder’, *The Blackburn Standard* (n 199) 7.

²²⁹ ‘The condemned girl murderer’, *The Huddersfield Daily Chronicle* (n 204).

²³⁰ Loach (n 32) 169.

²³¹ Loach (n 32) 170.

the concept of the Adult Child at the beginning of the century were strong, but disappeared by the middle of the century and remained absent until the end of the century. The second is that associations with the concept of the Savage Child were similarly strong at the beginning of the century, but subsequently also entirely disappeared. The third is that there was only a vague hint of associations with the concept of the Romantic Child in the approach of the segments of the criminal justice system examined at the beginning of the century, which transformed into strong associations by the middle of the century, a state in which they remained until the end of the century. Finally, almost imperceptible associations with the concept of the Unformed Child in its non-scientific configuration were apparent at the beginning of the century, which became stronger by the middle of the century, albeit not yet strong, and remained so at the end of the century, though with a changed, scientific formation of the concept. Moreover, the influence of gender issues was also substantial in the approach of the criminal justice system.

The treatment by the press of children who killed resembled the approach of the criminal justice system to a significant extent. In both fields, associations with the concept of the Romantic Child showed an upward movement from the beginning to the middle of the century, after which they remained constant and strong until the end of the century. Associations with the concept of the Unformed Child appeared weak, yet consistent in both fields from the middle of the century onwards. Associations with the concept of the Savage Child were similar in the two fields at the beginning of the century when they are strong and at the end of the century when they were absent, establishing a clear, downward movement. However, there was a discrepancy observed in the two fields in the middle of the century, when strong associations with the concept of the Savage Child persisted in the press whereas they were entirely absent in the approach within the criminal justice system, suggesting a time delay in the origins of the downward movement in the press when compared to the criminal justice system. Finally, associations with the concept of the Adult Child were strong in both fields at the beginning of the century, albeit weaker in the press. From then on, however, these associations in both fields disappeared completely.

By contrast, the study of public reaction towards children who killed during the 19th century reveals a level course, strongly associated with the concept of the Romantic Child. These findings suggest that the approach of the public was

associated with the said concept of the child chronologically earlier than the approaches within the criminal justice system and of the press, which were gradually following in its footsteps. The absence of associations with the concept of the Unformed Child in the approach of the public, unlike the approach within the criminal justice system, is likely to be due to the nature of public reactions and its limitation to expressing strong emotions rather than intellectual ideas based on rationality and research.

Therefore, it can be concluded that there were changes in the approach within the criminal justice system towards children who killed in the 19th century, that exemplify the adoption of different concepts of childhood. These shifts were away from the concepts of the Savage and Adult Child and towards the concepts of the Romantic and Unformed Child, occurring around the middle of the century. The approach of the press during the 19th century reveals movements in exactly the same directions as those evident in the sections of the criminal justice system examined. This similarity verifies the argument mentioned in the introduction that the press during this particular time period did not desire to challenge established institutions such as the courts or their decisions and approach.

Finally, public reaction presented an image that did not exhibit any variations throughout the 19th century, an image that might be a simplification of what the public was really feeling, since it was confined to expressing strong general sentiments. Nonetheless, the associations with the concept of the Romantic Child were clearly persistent and the strongest in the said period, since they were the only ones that were manifested. Accordingly, it seems that the fields of the criminal justice system and the press were mostly moving in the direction of public reaction, though it is noteworthy that the press exhibited further delay in doing so, since its approach in the Barratt and Bradley case reveals less associations with the concept of the Romantic Child than the approach within the criminal justice system. The order in which these changes in the movement of the associations with the concepts of the child occur is not surprising. Legal rules and precedent do not restrict public reactions like they do the criminal justice system, thus making it easier for a change in direction to occur faster in the former field rather than the latter. Simultaneously, the press during the 19th century was following the lead of institutions within the criminal justice system, which it refrained from challenging, and it is thus only logical that a change in direction of

associations in the press would come chronologically after a similar change in the direction of associations in the criminal justice system. The underdeveloped network of information availability existing at the time probably contributed to the delays in the field of the press when making these adaptations.

Chapter Three: The Case of Mary Bell (1968)

Introduction

Having observed the treatment of children who killed during the 19th century, drawn associations with concepts of the child, established the movements in those associations and made comparisons between the fields of criminal justice, the press and public reaction, we move to the 20th century and more specifically to the 1968 case of Mary Bell, the 11 year-old girl found guilty of the manslaughter of two boys aged three and four. The aim of the chapter is to further address the four questions posed in the introduction to the thesis and hence to determine what associations can be drawn with the concepts of the child, what movements can be established between the associations in the current case study and the 19th century case studies, how they compare with the equivalent associations and their movements in the fields of the press, the public and politics and whether any other factors have an impact on the findings. In other words, the chapter seeks to expand the analysis of whether the treatment by the criminal justice system of children who killed, starting with the police investigation into their crimes and ending with the completion of the trial and sentencing processes, differed over the years, and if so how and why, to the 20th century.

The chapter begins with an account of the facts of the case study and continues to an in-depth analysis of the approach of the relevant to the thesis sections of the criminal justice system and the associations that can be drawn with the concepts of the child. The chapter then moves on to an analysis of the approaches of the press, public reaction and politicians, comparing them to that of the criminal justice system.

The Facts

The trial of Mary Bell and Norma Bell, who were close friends and neighbours but unrelated, was a jury trial, beginning on the 5th December 1968 at Newcastle Assizes, lasting nine days and presided over by Mr Justice Cusack.¹ Mary and Norma,

¹ 'QC alleges schoolgirls murdered two boys "solely for pleasure"', *The Guardian* (London, 6 December 1968) 4; Gitta Sereny, *The Case of Mary Bell* (Pimlico 1995) 69-70.

aged 11 and 13 respectively, were accused of the murders of four-year-old Martin Brown, which took place on the 25th May 1968, and three-year-old Brian Howe, which occurred on the 31st July 1968.² They pleaded not guilty.³ Early on in the trial it was decided that the identities of the two young defendants were to be publicly revealed, based on the rationale that hiding their identities would smear the reputation of other children in Scotswood, the area where the killings had taken place.⁴

As is customary, the trial began with the opening statement of the prosecutor, Mr Rudolph Lyons.⁵ Mr. Lyons characterised the case as ‘exceptional’, saying that it was ‘possibly without precedent’⁶ and maintained that the children had committed the two murders by asphyxiating the two victims, ‘solely for the pleasure and excitement afforded by the killing’.⁷ Mr Lyons first described the facts related to the death of Martin Brown, saying that he was found dead in an abandoned house on St. Margaret Road and that the police had classified the death as an accident until Brian Howe was also found dead two months later.⁸ He stated that Mary had told two witnesses that Norma had strangled Martin Brown, revealing knowledge of the cause of his death before the police determined it.⁹ He also described a drawing of Mary’s that depicted Martin Brown’s dead body in the position it was found, hence showing knowledge that the public did not possess.¹⁰ He then placed special emphasis on four notes the defendants wrote and left at the local nursery during a break-in, in which they hinted that they had killed Martin Brown.¹¹

Mr Lyon then referred to the killing of Brian Howe, describing how both children accused each other of its commission.¹² He gave an account of Norma saying to the police that she had watched Mary strangle Brian and that they both revisited the dead body twice at Mary’s instigation, during which Mary used a pair of scissors to mark the body and cut some hair off the head.¹³ Furthermore, Mr Lyon told the jury that Norma had told the police that while strangling Brian, Mary told her that her hands were getting tired and asked her to take over, at which point she got scared and ran

² ‘Schoolgirls said to have killed for pleasure’, *The Times* (London, 6 December 1968) 5; Sereny, *The Case of Mary Bell* (n 1) 31.

³ ‘Schoolgirls said to have killed for pleasure’, *The Times* (n 2).

⁴ Sereny, *The Case of Mary Bell* (n 1) 75.

⁵ *ibid* 75-76.

⁶ ‘Girls killed two little boys for fun, says QC’, *Daily Mirror* (London, 6 December 1968) 5.

⁷ ‘Schoolgirls said to have killed for pleasure’, *The Times* (n 2).

⁸ ‘Schoolgirls said to have killed for pleasure’, *The Times* (n 2); Sereny, *The Case of Mary Bell* (n 1) 76-77.

⁹ Sereny, *The Case of Mary Bell* (n 1) 78.

¹⁰ *ibid* 79.

¹¹ ‘Schoolgirls said to have killed for pleasure’, *The Times* (n 2).

¹² *ibid*.

¹³ *ibid*.

away.¹⁴ The prosecutor then communicated to the court that Mary had told the police that it was Norma who strangled Brian while she was watching and that it was Norma who ran back home, got a pair of scissors and marked the boy's body and cut his hair.¹⁵ There is no doubt, he argued, that the young victim was killed in the presence of both children and that his death was the result of their 'joint actions', irrespective of who actually performed the action and who was watching.¹⁶ In addition, he mentioned that the pathologist who examined the body concluded that the marks found carved on his stomach resembled the letter N, with another small line, making it into the letter M, which were the initials of the defendants.¹⁷ Mr Lyon also informed the jury that fibres from Mary and Norma's clothes had been found on the victim.¹⁸

Mr Lyons portrayed the young defendants in his opening statement as evil. He maintained that they wrote the notes found in the nursery to show their superiority to the police for knowing something more than them.¹⁹ He also referred to the fact that when Martin's body was found, the two children appeared at the scene, eager to help and went to fetch his aunt.²⁰ Four days later, Mr Lyon continued, a grinning Mary visited Martin's home and asked his mother to see his dead body, while both children repeatedly visited Martin's aunt, asking her about her nephew's death.²¹ He also referred to the fact that the young defendants pretended to help Brian's sister look for him on the day of his disappearance, despite knowing where his body was throughout the search.²² Finally, Mr Lyons referred to a separate incident that did not eventually lead to legal action, in which the defendants approached three younger girls and Mary started squeezing their throats one by one, suggesting a propensity to strangle other children.²³

Another significant argument made by Mr. Lyons in his opening statement was that Mary was the cleverer, dominant and sophisticated one of the two defendants, since she requested a solicitor who was to get her out of being questioned, accused the police of brainwashing her, wondered whether the room was bugged and tried to make a boy known to have repeatedly hit Brian appear guilty of the killing by saying

¹⁴ "'Two tales of murder' by little Mary and Norma', *Daily Mirror* (London, 7 December 1968) 7.

¹⁵ 'Schoolgirls said to have killed for pleasure', *The Times* (n 2).

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ 'QC alleges schoolgirls murdered two boys "solely for pleasure"', *The Guardian* (n 1).

¹⁹ 'Girls killed two little boys for fun, says QC', *Daily Mirror* (n 6).

²⁰ Sereny, *The Case of Mary Bell* (n 1) 77.

²¹ 'Girls killed two little boys for fun, says QC', *Daily Mirror* (n 6); Sereny, *The Case of Mary Bell* (n 1) 78.

²² 'QC alleges schoolgirls murdered two boys "solely for pleasure"', *The Guardian* (n 1).

²³ "'Two tales of murder' by little Mary and Norma', *Daily Mirror* (n 14).

that she had seen them together prior to his disappearance.²⁴ Finally, Mr Lyon briefly referred to the capacity of the two children to have criminal responsibility, maintaining that both children knew what they were doing and that it was wrong, a fact he argued the jury would have no difficulty with.²⁵

Numerous witnesses were called by the prosecution, who largely substantiated the claims made by Mr. Lyons in his opening statement. June Brown, Martin's mother, gave evidence that Mary had indeed led her to her son's body on the day that it was found and that she had subsequently gone to her home and asked to see it, grinning while doing so.²⁶ Rita Finley, Martin's aunt, gave evidence that the children had visited her house repeatedly after Martin's death, asking her about her feelings and reactions to the tragedy.²⁷ Irene Frasier, who had been courting Brian's stepbrother at the time of Martin's death, gave evidence that Mary had told her that Norma strangled Martin.²⁸ Eric Foster, Mary's schoolteacher, affirmed the existence of the drawing Mary had made of the dead body of Martin Brown, depicting him in the position in which he was found.²⁹ Norma's mother also gave evidence that she and her husband had found Mary strangling their other daughter, Susan.³⁰ Finally, a 12-year-old boy gave evidence that Mary told him herself that she was a murderer.³¹ In addition, the prosecution also called expert witnesses. Mr. Roland Page, a handwriting expert, was questioned about the notes that were found in the nursery and gave evidence that the young defendants had undoubtedly written them.³² Mr. Norman Robert Lee, a scientific officer, gave evidence that fibers from Mary's dresses had been found both on Martin's body and on Brian's clothes and that fibers from Norma's skirt had been found on Brian's shoes.³³

The presentation of Norma's defence followed the end of the case for the prosecution, with Mr. Smith, Norma's defence lawyer, arguing that the scientific evidence was mostly against Mary rather than Norma and that although Norma had lied, the 'really wicked' lies were only told by Mary, who had tried to get an innocent

²⁴ 'Schoolgirls said to have killed for pleasure', *The Times* (n 2); QC alleges schoolgirls murdered two boys "solely for pleasure", *The Guardian* (n 1).

²⁵ 'Schoolgirls said to have killed for pleasure', *The Times* (n 2).

²⁶ 'Mother says girl led her to body', *The Times* (London, 10 December 1968) 3.

²⁷ *ibid.*

²⁸ 'Little Mary's death book - by teacher', *Daily Mirror* (London, 10 December 1968) 11.

²⁹ 'Girl led mother to son's body', *The Guardian* (London, 10 December 1968) 4; 'Little Mary's death book - by teacher', *Daily Mirror* (n 28).

³⁰ 'Court Adjourned for weeping child', *The Times* (London, 12 December 1968) 2.

³¹ *ibid.*

³² Sereny, *The Case of Mary Bell* (n 1) 113.

³³ 'Girl led mother to son's body', *The Guardian* (n 29); *ibid.* 99.

boy into trouble.³⁴ Norma's five-hour testimony was interrupted on numerous occasions by the judge, since she kept bursting into tears.³⁵ During one of the adjournments, the judge warned that he might at some point prohibit the prosecutor from continuing with the questioning of the child defendants if it became too distressful either for the children or the jury, since it would not 'be right to go on'.³⁶ He elaborated that it was his duty to conduct the trial, but simultaneously it was his duty to prevent the existence of too much distress when young children were involved.³⁷ However, he did clarify that the jury would be entitled to take into consideration the demeanour of the children as well as what they were saying, since their distress and tears may be either the result of genuinely being upset or their attempts to avoid a particular question.³⁸

In regards to the two killings, Norma gave evidence that she had not been with Mary when Martin Brown was killed, but that Mary had informed her that there had been an 'accident' involving him, upon which they went to the scene of the crime together.³⁹ She also described how Mary had hurt Brian Howe by strangling him and maintained that once Mary asked her to help in the strangling she ran away, leaving while Brian was still alive.⁴⁰ Norma in her evidence also verified that it was Mary who had squeezed the throats of three girls during the previously mentioned 'sandpit incident',⁴¹ that Mary had also strangled her brother's pigeon prior to the first killing and that Mary had bragged to her and another boy named David for having killed Martin Brown.⁴² In addition, Norma gave evidence that she had written one of the notes found in the nursery, that Mary had written the other note and that they had written another one together, all at Mary's initiative.⁴³ Dr Ian Frazer, the psychiatrist at the hospital where Norma was held on remand, was also called by Norma's defence to give evidence on her behalf.⁴⁴ He gave evidence that Norma would be able to know that killing was wrong, but she was mentally immature for her age and had limited

³⁴ 'Girl accuses friend in murder trial', *The Guardian* (London, 11 December 1968) 4.

³⁵ 'Court Adjourned for weeping child', *The Times* (n 30).

³⁶ Sereny, *The Case of Mary Bell* (n 1) 126.

³⁷ *ibid* 125.

³⁸ *ibid* 126.

³⁹ *ibid* 97-98.

⁴⁰ 'Girl's evidence in murder trial', *The Times* (London, 11 December 1968) 3.

⁴¹ Sereny, *The Case of Mary Bell* (n 1) 88-89.

⁴² 'Girl's evidence in murder trial', *The Times* (n 40).

⁴³ Sereny, *The Case of Mary Bell* (n 1) 114.

⁴⁴ *ibid* 112.

capacity for distinguishing between right and wrong and thus would not know that strangulation could result in death.⁴⁵

Mary during her evidence in court denied having hurt either Martin Brown or Brian Howe, saying that she had never taken another child by the throat.⁴⁶ Her account of Brian's death given in her court evidence was that Norma was squeezing Brian's throat, while she protested, trying to pull Norma off him.⁴⁷ Norma's reaction to that, according to Mary, was to start screaming at her and so she backed away, letting her kill him.⁴⁸ Mary then went on to say that she had seen Norma cut Brian's hair and the skin on his leg below the knee, while standing still, feeling unable to move.⁴⁹

Mary also referred in her evidence to some of the evidence that had been given against her. She attributed her knowledge of the position of Martin's body depicted in her schoolbook drawing to rumours.⁵⁰ She also explained that the fibres from her dress found on Martin's clothes were the result of a swing over a wall she had given him earlier on the day of his death, though this statement conflicted with previous accounts she had given to the police, where she said that she had not gone near Martin on that day.⁵¹ She denied the prosecutor's suggestion that this adjustment to her original story was made in an attempt to suit the scientific evidence that had been revealed to her during the trial, namely that fibres from her dress had been found on Martin's body.⁵² In addition, she said that she had talked about strangling in particular when referring to the method by which she said Norma had killed Martin, because she had watched it on a television programme called 'Apache', and when asked whether she knew that squeezing someone's throat would lead to their death, she answered in the affirmative, explaining that she had watched it on another television programme, called 'The Saint'.⁵³ Mary also admitted and explained various incidents while being questioned. She conceded that she had told Irene Frasier and Pat Howe that Norma had killed Martin, saying that she did it because she had had an argument with Norma

⁴⁵ 'Friend showed me how to kill little boy, says girl', *Daily Telegraph* (London, 12 December 1968), 25; 'Girl in murder case weeps', *The Guardian* (London, 12 December 1968) 4.

⁴⁶ 'Accused Child says she watched "The Saint", "Apache"', *The Times* (London, 13 December 1968) 3; Sereny, *The Case of Mary Bell* (n 1) 106.

⁴⁷ Sereny, *The Case of Mary Bell* (n 1) 136.

⁴⁸ *ibid* 136-137.

⁴⁹ *ibid* 145.

⁵⁰ *ibid* 108-109.

⁵¹ *ibid* 102.

⁵² *ibid* 111-102.

⁵³ 'Accused Child says she watched "The Saint", "Apache"', *The Times* (n 46); *ibid* 109.

on that day.⁵⁴ She also admitted that she had gone to Martin's house following his death and asked to see his body, explaining that she did this because she and Norma had been daring each other.⁵⁵ Finally, as far as the nursery notes were concerned, Mary gave evidence that they wrote them for a 'giggle'.⁵⁶

Two doctors were called by Mary's defence, Dr Orton, who had seen her twice and Dr Westbury, who had seen her four times during her remand.⁵⁷ As regards Mary's capacity for criminal responsibility, Dr Orton said that she would be able to recognise the consequences of her actions and distinguish right from wrong in the sense that she did know that squeezing a child's throat was wrong and that it would result in injury, that she did know that killing was a crime and that she did know that she should not have done it.⁵⁸ However, he also gave evidence that she had not yet reached the stage of moral development expected of a normal 11 year old, limiting her ability to evaluate the 'wickedness' of her actions.⁵⁹

Dr. Orton also gave evidence that Mary was suffering from 'psychopathic personality', which was a 'persistent disorder or disability of the mind which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient and requires medical treatment'.⁶⁰ He conceded that this condition was not associated with any 'specific mental illness' or absence of intelligence, but assured the court that there were symptoms associated with it, which Mary exhibited to 'varying degrees'.⁶¹ These symptoms included the lack of feeling towards other humans, acting on impulse without forethought, aggression, absence of 'shame and remorse', inability to learn from experience and hence unresponsiveness to punishment, viciousness and a desire to damage 'things or persons'.⁶² The doctor concluded his evidence by saying that Mary was suffering from an 'abnormality of mind', namely 'psychopathic personality', that 'substantially impaired her mental responsibility for her acts and omissions in doing or being a party to this killing' and that the disorder was the result of 'genetic factors', as well as 'environmental influences'.⁶³ Dr David Westbury similarly gave evidence that Mary was suffering from 'a serious disorder of

⁵⁴ Sereny, *The Case of Mary Bell* (n 1) 107.

⁵⁵ *ibid* 107.

⁵⁶ *ibid* 122.

⁵⁷ *ibid* 155, 162.

⁵⁸ *ibid* 161-162.

⁵⁹ *ibid* 162.

⁶⁰ *ibid* 156.

⁶¹ *ibid* 156.

⁶² *ibid* 156.

⁶³ *ibid* 159-160.

personality', which he called 'unsocialised manipulative personality'.⁶⁴ This, he continued, did constitute a 'persistent disorder of mind and has resulted in abnormal aggressive and seriously irresponsible conduct and required medical treatment'.⁶⁵ Dr Westbury agreed with Dr Orton that Mary's condition was the result of a combination of inherent causes, namely the 'inheritance of disease', and 'environmental factors' and that her condition substantially impaired her responsibility for her actions.⁶⁶ Dr Westbury also gave evidence that Mary was a 'manipulator' and a 'bully', as well as 'violent' and 'very dangerous'.⁶⁷

Mr. Lyons in his closing statement characterised the case as 'macabre and grotesque'⁶⁸ and said that 'unprecedented depths of juvenile wickedness' had been witnessed during the trial.⁶⁹ He argued that Mary, despite being younger than Norma, was the 'cleverer' of the two, possessing a 'dominating personality' and had exercised a dominating influence over Norma, resembling that of the 'fictional Svengali'.⁷⁰ He characterised Norma as a 'simple backward girl of subnormal intelligence' and Mary as an 'abnormal child, aggressive, vicious, cruel, incapable of remorse' possessing a 'degree of cunning that is almost terrifying'.⁷¹ The prosecutor referred to the numerous lies Mary had told and how she was able to change her evidence in order to make it accommodate the scientific data that had been established.⁷² He also emphasised the lies Mary told in her attempt to blame an innocent boy for Brian's death, saying that one 'shudders' to think of what would have happened to him if he had not had an alibi.⁷³ As for Norma, Mr. Lyons maintained that despite being under Mary's influence, she was not innocent, since there was evidence that indicated that she had participated in Brian's killing.⁷⁴

Mr. Smith, Norma's defence lawyer, argued in his closing statement that an 'innocent bystander' watching a crime being committed does not have criminal responsibility, claiming that Norma was just that in the killing of Brian Howe, whereas she was not even present in the killing of Martin Brown.⁷⁵ He said that there

⁶⁴ *ibid* 163.

⁶⁵ *ibid* 163.

⁶⁶ *ibid* 163-164.

⁶⁷ *ibid* 164.

⁶⁸ 'Influence of girl "like Svengali"', *The Times* (London, 14 December 1968) 3; *ibid* 166.

⁶⁹ 'Influence of girl "like Svengali"', *The Times* (n 68).

⁷⁰ Sereny, *The Case of Mary Bell* (n 1) 166-167.

⁷¹ *ibid* 166.

⁷² *ibid* 167.

⁷³ *ibid* 169, 172.

⁷⁴ 'Little Mary "an evil Svengali" QC tells jury', *Daily Mirror* (London, 14 December 1968) 7.

⁷⁵ *Ibid*; Sereny, *The Case of Mary Bell* (n 1) 172.

was no evidence against Norma except the evidence given by Mary.⁷⁶ Mr Smith conceded that it was easy to feel sorry for Mary, since it was not her fault that she was a psychopath, but that it was nonetheless she alone who had killed the two boys and not Norma.⁷⁷

Finally Mr Robson, Mary's defence lawyer, told the jury in his closing statement that it was easy to 'revile a little girl' without even considering why the situation as described during the trial had occurred.⁷⁸ He also said that he hoped that they, the jury would adopt a 'measure of pity' in their deliberations.⁷⁹ He conceded that laughing in the 'house of death', which referred to Mary grinning when she went to Martin's house and asking to see his dead body, was a 'heartless' action, but it should not be inferred from that that Mary was a murderess.⁸⁰

The judge's summing up lasted for more than four hours.⁸¹ Mr Justice Cusack told the jury that they must consider the charge of murder in relation to both defendants and make their decision based on what was proven in relation to each, not letting their feelings get in the way.⁸² The direction he gave the jury on the *actus reus* and *mens rea* of murder in relation to the case was that it was for the prosecution to prove that the victims were killed by 'a voluntary and unlawful act' and that the person committing or participating in the act did so with intent to kill or cause grievous bodily harm.⁸³ He clarified that when two people participate in a killing, they are both guilty even if only one of them performed the actual act that resulted to the death of the victim, though if one of the people present was there merely as a 'spectator' and not assisting in any way, she would not be guilty.⁸⁴ The judge also drew particular attention to the word voluntary in the definition of the *actus reus* of murder, saying that if one of the defendants was under the influence of the other defendant, to the extent that she exercised no will of her own, it meant that her actions were not voluntary and that she should not be convicted.⁸⁵

The judge also directed the jury on the issue of the presumption of *doli incapax*.⁸⁶ He explained that children aged between 10 and 14 are presumed to be unable to

⁷⁶ 'Influence of girl "like Svengali"', *The Times* (n 68).

⁷⁷ 'Little Mary "an evil Svengali" QC tells jury', *Daily Mirror* (n 74).

⁷⁸ Sereny, *The Case of Mary Bell* (n 1) 174.

⁷⁹ *ibid* 174.

⁸⁰ 'Influence of girl "like Svengali"', *The Times* (n 68).

⁸¹ Sereny, *The Case of Mary Bell* (n 1) 174.

⁸² *ibid* 175.

⁸³ *ibid* 175.

⁸⁴ *ibid* 175.

⁸⁵ *ibid* 176.

⁸⁶ *ibid* 176.

distinguish right from wrong and hence do not have criminal liability, until this presumption is rebutted by evidence presented by the prosecution.⁸⁷ The evidence, he continued, must indicate that the child defendant can distinguish between ‘good and evil’ and between ‘right and wrong’ and understand that her actions were wrong.⁸⁸ The word wrong, he specified, should not be taken to mean naughty, but wicked, which means something ‘seriously and gravely wrong’.⁸⁹

In addition, Mr Justice Cusack gave a direction on diminished responsibility, specifically in relation to Mary.⁹⁰ He referred to the Homicide Act 1957, which provided that a person is not to be convicted of murder if he or she is suffering from an ‘abnormality of mind’⁹¹ and clarified that this must result to an ‘inability to form sensible reasonable judgement’ and hence inability to distinguish ‘right from wrong’ that is caused by ‘arrested or retarded development’ or of ‘inherent reasons’, which leads in the inability to exercise ‘self control’ or ‘will power’, and must not be the outcome of ‘immaturity from being a child’.⁹² The medical evidence in this case, the judge explained, meant that if the jury were to find Mary guilty of something other than murder that would be voluntary manslaughter due to diminished responsibility.⁹³ The judge also warned the jury in his summing up that both children were liars, a fact proven by their own admissions, as well as from the stories they each told about the events of Brian’s death, which were entirely ‘irreconcilable’ with one other.⁹⁴

The verdicts that were returned by the jury were that Norma was not guilty of either the murder or the manslaughter of Martin Brown or Brian Howe.⁹⁵ Mary was found guilty of the manslaughter of both victims. She was acquitted of the murder charges because she was found to be suffering from diminished responsibility.⁹⁶

During Mary’s sentencing hearing, Dr Westbury gave evidence that no mental hospital that could take children under 15 years old had sufficiently secure conditions to hold her, because the children’s units had been closed down.⁹⁷ Following this evidence and the medical evidence given during the trial, Mr Justice Cusack said that he should have been able to make a hospital order under s.60 of the Mental Health

⁸⁷ *ibid* 176.

⁸⁸ *ibid* 176.

⁸⁹ *ibid* 176.

⁹⁰ *ibid* 159.

⁹¹ *ibid* 159-160.

⁹² *ibid* 160.

⁹³ ‘Judge’s warning on lies told by girls’, *The Times* (London, 17 December 1968) 4.

⁹⁴ *ibid*; ‘Additional witness called in girls’ trial’, *The Guardian* (London, 17 December 1968) 3.

⁹⁵ Sereny, *The Case of Mary Bell* (n 1) 179.

⁹⁶ *ibid* 179.

⁹⁷ ‘Callaghan’s problem: the child killer’, *Daily Mirror* (London, 18 December 1968) 1.

Act so that Mary would receive appropriate treatment, accompanied by a restriction order to ensure that she would not be released without review.⁹⁸ However, he continued, he could not make such an order because there was no institution to which Mary could be admitted under the Mental Health Act, a situation amounting to the ‘most unhappy thing’.⁹⁹

Mr. Justice Cusack continued by stating that according to the evidence, Mary was ‘dangerous’ and that although he was ‘anxious (...) to do everything for her benefit’, his ‘primary duty’ was to ‘protect other people’ and he felt that other children would be in danger if she was not properly confined and watched.¹⁰⁰ Accordingly, he concluded that he should impose a sentence of detention, since imprisonment was not an option due to Mary’s young age.¹⁰¹ He sentenced Mary under s.53 of the Children and Young Person’s Act, which provided that the place of detention was entirely at the discretion of the Home Office.¹⁰² As for the length of the sentence, the judge felt that he had to impose it for life because of the severity of the crimes, as well as the fact that Mary was suffering from a mental condition and it could thus not be predicted when she could be safely released.¹⁰³ He clarified that this did not mean that she would be confined for the rest of her natural life, but that her case would be considered ‘from time to time’.¹⁰⁴

Following her sentencing, Mary was originally sent to Cumberlow Lodge Remand Home in Norwood in London by the Home Secretary, Mr. Callaghan, because it provided secure conditions as well as diagnostic facilities.¹⁰⁵ The aim was for Mary to be properly evaluated, in order to determine what would be the most suitable accommodation for her to serve her sentence, as well as to avoid any danger to society in the meantime.¹⁰⁶ No information exists of the detailed findings of this evaluation, which is as expected given the confidential nature of meetings between psychologists and patients. Eventually, Mary was moved to a special unit for girls created for her at Red Banks, a boys’ approved school at Newton-le-Willows in

⁹⁸ ‘Hospitals could not take girl killer’, *The Guardian* (London, 18 December 1968) 1; Sereny, *The Case of Mary Bell* (n 1) 180.

⁹⁹ Sereny, *The Case of Mary Bell* (n 1) 180-181.

¹⁰⁰ *ibid* 181.

¹⁰¹ *ibid* 181.

¹⁰² ‘Hospitals could not take girl killer’, *The Guardian* (n 98).

¹⁰³ Sereny, *The Case of Mary Bell* (n 1) 181.

¹⁰⁴ *ibid* 181.

¹⁰⁵ ‘Mary Bell moving to London’, *The Guardian* (London, 20 December 1968) 4.

¹⁰⁶ ‘Little Mary will move to a new home’, *Daily Mirror* (London, 20 December 1968) 1.

Lancashire, where she remained for several years, despite some original, mild protests by local residents and officials.¹⁰⁷

In 1998, Gitta Sereny wrote a book on Mary Bell titled *Cries Unheard*, following extensive interviews with her.¹⁰⁸ The book, amongst many other things, revealed that Mary's mother was a prostitute often in Glasgow exercising her profession and her father was regularly in and out of prison for petty crimes, thus leaving her and her siblings alone and unsupervised on many occasions.¹⁰⁹ According to the biography, Mary had been rejected by her mother when she was born and many times thereafter, since she tried to kill her on four occasions and to give her away to strangers twice.¹¹⁰ It was also alleged in the book that Mary had been subjected to sexual abuse since the age of five, when her mother and several of her clients on different occasions held her down on the bed and ejaculated in her mouth, put things up her anus and scratched her legs.¹¹¹ Following her sixth birthday, Mary claimed in the book, her mother would take her to the rooms of clients and leave her there so that they would touch her and masturbate.¹¹² This information is important because it provides an explanation for Mary's disturbed mental state that was previously unavailable and thus possible insight into what motivated her violent behaviour, however, it must be approached with caution, since its source was Mary herself and hence it might not be a truthful account.

Mary Bell, Norma Bell and the Criminal Justice System

By the time of the offences and trial of Mary Bell in 1968 a juvenile justice system was in place in Britain, enabling the trial and sentencing of young offenders to take place in juvenile courts.¹¹³ Moreover, during the 1960s the ideology of juvenile justice turned towards the welfare system,¹¹⁴ with the division between 'deprived and depraved' children being eroded.¹¹⁵ However, in practice, the punishment approach

¹⁰⁷ 'MP says move Mary Bell', *The Guardian* (London, 12 February 1969) 4; 'Mary Bell is sent to a boys' approved school', *The Times* (London, 12 February 1969) 2.

¹⁰⁸ Sereny, *The Case of Mary Bell* (n 1).

¹⁰⁹ *ibid* 55.

¹¹⁰ *ibid* 12.

¹¹¹ *ibid* 329-330.

¹¹² *ibid* 331.

¹¹³ Children and Young Persons Act 1933, section 46

¹¹⁴ Anthony Bottoms and James Dignan, 'Youth Justice in Great Britain' (2004) 31 *Crime and Justice* 21, 35.

¹¹⁵ *Ibid*, 35; Andrew Rutherford, *Growing out of crime* (2nd edn, Waterside Press 1992) 60; Norman Tutt, 'A decade of policy' (1981) 21 *British Journal of Criminology* 246, 248.

was still alive and active.¹¹⁶ The use of child psychology within the field of criminology was increasing continuously throughout the century.¹¹⁷ Mary and Norma's treatment by the criminal justice system, through the police investigation and trial and sentencing processes, reveals associations of varying strengths with all four concepts of the child.

Adult Child:

Following the establishment of the juvenile courts in 1908 and their consolidation in 1933 most juvenile offenders were no longer tried in adult courts.¹¹⁸ However, Mary and Norma were accused of homicide and tried in an adult court, since the law prescribed that children above the age of 10 who committed grave offences, including homicide, could not be sent to juvenile courts for their trial.¹¹⁹ This legal provision that children who commit grave offences are to be tried as adults is not specific to the current case. However, it is still relevant to the current discussion. An alternative system had come into existence that enabled children to be tried differently than adults, but a distinction was made between children who killed and most other children who committed offences, since the former were excluded from being tried within it. This distinction between children who kill and most other children gives rise to significant associations between their treatment by the legislation and the concept of the Adult Child. Although the legislation is not specific to the case of Mary Bell, but applicable to all the cases of children tried for homicide, the fact that Mary and Norma were part of the small group this legislation applies to and hence sets apart in their treatment by the courts, means that some associations with the concept of the Adult Child do still arise. These associations are weak, because they are general rather than case specific and arise from legislative action that occurred 35 years prior, but are nonetheless present, since their treatment within this legal framework expresses the practical application of this legislation. What this meant for the two young offenders in practice was that their trial had to take place in public, under the adult criminal justice system and rules, despite the existence of an alternative process generally used for young offenders.¹²⁰ Being tried like an adult also meant that Mary and Norma's life circumstances were not investigated at any point before or during

¹¹⁶ Andrew Rutherford (n 115) 60

¹¹⁷ David Garland, *The Culture of Control* (Oxford University Press 2001) 43.

¹¹⁸ Children and Young Persons Act 1908; Children and Young Persons Act 1933, section 46.

¹¹⁹ Children and Young Persons Act 1933, section 56; Magistrates' Courts Act 1980, section 24(1B).

¹²⁰ Magistrates' Courts Act 1980, section 24(1B).

the trial by the social services, the police or the psychiatrists appointed by the court.¹²¹ The police investigator in their case clarified that the job of the police was limited to finding out who committed the crimes and how, but not why.¹²²

These associations are also limited by the application of the *doli incapax* presumption, which is again a general presumption and not case specific, whose origins significantly pre-date the 1960s. The presumption prescribed that the capacity of the young defendants was to be considered because they were children and it thus indicated that the court, even within the framework of an adult trial, treated them differently because they were children. However, the associations are not weakened by Mary's conviction for manslaughter rather than murder, since the leniency shown to her was due to the defence of diminished responsibility, an outcome more likely connected to gender-related rather than child-related considerations. This issue is discussed further in the section of the Romantic Child below.

Therefore, associations with the concept of the Adult Child are weak but cannot be entirely ignored. Their weakness is due to the fact that they are founded on the application of legislation that is of a general nature and applicable to all cases of children who committed grave crimes between the ages of 10 and 14 and are not particular to the present case study or the treatment of children who killed.

Unformed Child:

Associations between the treatment of Mary and Norma by the court and the concept of the Unformed Child are evident by the application of the *doli incapax* presumption. The rule applies to all cases of children aged 14 and under and hence its mere presence does not really suggest anything in relation to the approach of the court towards children who kill. However, the way in which it was applied does. Specifically, the conduct of the test of capacity in the 1968 case study offers insight into which version of the concept of the Unformed Child was adopted. Psychologists were called to testify as to the capacity of the two defendants and during their evidence they used phrases such as 'mentally immature for her age', 'limited capacity' and 'underdeveloped sense of morality for an 11 year old', all pointing

¹²¹ Sereny, *The Case of Mary Bell* (n 1) 12.

¹²² *ibid* 47-48.

towards the fact that associations existed with the modern, scientifically founded version of the concept of the Unformed Child.¹²³

Moreover, further evidence arises when observing the way, in which the Home Secretary implemented Mary's sentence. The law prescribes that the Home Secretary has to decide on the length and place of execution of the sentence when a child is sentenced to detention under her Majesty's pleasure, like Mary was, giving him or her significant discretion in doing so.¹²⁴ Accordingly, the discretionary decision making of the Home Secretary, namely his focus on Mary's rehabilitation based upon her needs and circumstances, constitutes significant evidence particular to the current case. More specifically, the Home Secretary based his decision on where to send Mary to serve her sentence on a scientific, psychological evaluation of her carried out at Cumberlow Lodge.¹²⁵ Even though the primary reason for sending her for psychological assessment was that her mental health situation posed difficult questions, which is related to pathological rather than developmental psychology and thus not to the concept of the Unformed Child, another reason for the evaluation was to establish her particular needs and general factors that would help in her development and rehabilitation.¹²⁶ The Home Secretary then sent Mary to Red Banks because that would enable her to experience a nice living environment, supportive staff and a good level of education.¹²⁷ These are factors that influence the development of morality and understanding in children according to the concept of the Unformed Child.

Therefore, associations between the treatment of Mary and Norma by the criminal justice system, through their trial and Mary's sentencing, and the scientific version of the concept of the Unformed Child exist due to the way in which the test of capacity was applied to them, as well as the actions of the Home Secretary in relation to Mary's sentencing.

¹²³ 'Girl in murder case weeps', *The Guardian* (n 45); Sereny, *The Case of Mary Bell*, (n 1) 162.

¹²⁴ Children and Young Persons Act, s 53.

¹²⁵ 'Where does Mary Bell go if her appeal fails?', *The Times* (London, 19 December 1968) 1; 'Appeal for the girl facing life detention', *Daily Mirror* (London, 19 December 1968) 1; 'Girl moving to London Home', *The Times* (London, 20 December 1968) 9.

¹²⁶ 'Where does Mary Bell go if her appeal fails?', *The Times* (n 125); 'Appeal for the girl facing life detention', *Daily Mirror* (n 125); 'Girl moving to London Home', *The Times* (n 125).

¹²⁷ 'Mary Bell is sent to a boys' approved school', *The Times* (n 107); 'MP says move Mary Bell', *The Guardian* (n 107); 'Minister: Take Mary Bell away', *Daily Mirror* (London, 12 February 1969) 2; Sereny, Gitta, *Cries Unheard, Why Children Kill: The story of Mary Bell* (Metropolitan Books, New York, 1998) pages 146-148.

Romantic Child:

The evidence in the current case study suggests notable associations with the concept of the Romantic Child and in particular the attribution of vulnerability to children and the desire to protect them and act in their best interests. These characteristics are even more pronounced for female children since according to Rousseau they are more vulnerable and in need of greater protection than male children due to their naturally sweet nature and docility.¹²⁸

By contrast with most of the evidence linked to the previous two concepts discussed, evidence of associations with the concept of the Romantic Child is mainly found in the informal actions, words and behaviour of the people involved in the criminal justice process, rather than in any general legal rules. This makes the associations stronger, since the evidence is particular to the case study rather than of a general nature. The principal instances from which associations with the concept of the Romantic Child might be drawn were related to the behaviour of the judge towards the young defendants. According to Gitta Sereny, he seemed to be overly patient with both of them at all times and to know when to be gentle or firm in order to help them.¹²⁹ For example, whenever he addressed them he would shift his entire body to face them, indicating his desire to treat them ‘individually and personally,’ a method that seemed to be successful, since whenever he was talking to them both children focused their entire attention on him.¹³⁰ Even more important was the recurring intervention of the judge during Norma’s evidence to protect her from the prosecutor’s questioning and allow her to recover from weeping.¹³¹ On one of those occasions Mr Justice Cusack even warned the prosecutor that he would impose limits on the questioning of the young girls, because it was his duty to ensure that not too much distress was caused to them.¹³²

Moreover, some other minor concessions were made during the trial of the two young defendants that indicated that they were attributed the characteristics of vulnerability and need for protection. One such concession was that the proceedings were held in a courtroom next to a waiting room, in order to enable the children to wait in private, away from prying eyes, showing a recognition of the fact that the

¹²⁸ Jean-Jaque Rousseau, *Émile* (First published 1762, Barbara Foxley tr, The Kindle Edition)

¹²⁹ Sereny, *The Case of Mary Bell* (n 1) 75.

¹³⁰ *ibid* 98.

¹³¹ ‘Court Adjourned for weeping child’, *The Times* (n 30); ‘Murder case counsel warned’, *The Guardian* (London, 12 December 1968) 1.

¹³² ‘Court Adjourned for weeping child’, *The Times* (n 30); ‘Murder case counsel warned’, *The Guardian* (n 131).

children, being especially impressionable and vulnerable, might be intimidated by the public and any questions they might pose to them and had to be protected from it.¹³³ Another concession was the absence of a dock from the courtroom,¹³⁴ which allowed the young defendants to sit on ‘bench seats’¹³⁵ close to their counsel and right in front of their families, which might have afforded them an additional feeling of security, again showing a desire to protect their delicate feelings, even in small ways, from the potentially overwhelming exposure to a courtroom.¹³⁶

Furthermore, the existence of a statutory duty on the court to consider the welfare of the child, imposed by s. 44(1) of the Children and Young Persons Act 1933 was specifically mentioned by the judge during Mary’s sentencing hearing, who maintained that he had to do ‘everything for her benefit’.¹³⁷ This provision of the legislation is a general consideration for all courts dealing with children and accordingly the extent of its application and priority are largely at the discretion of the judge. Mr Justice Cusack did concede that it was a secondary consideration in his deliberations on Mary’s sentencing, following the protection of society, but he also said that it was an important consideration and that it was regrettable to him that practical issues, namely the absence of a suitable hospital to take Mary, prevented him from materialising it fully.¹³⁸ His intentions, however, to act in the young offender’s best interests and his actions of doing what was best for her in the circumstances, are sufficient to significantly strengthen the associations of her treatment by the court with the concept of the Romantic Child.¹³⁹

Finally, a discussion on the associations with the concept of the Romantic Child would not be complete if her conviction to manslaughter rather than murder and its suggestion of leniency were not mentioned. On the surface, as aforementioned, the manslaughter conviction could be attributed to a desire for leniency linked to notions within the concept of the Romantic Child. However, the specific verdict of manslaughter due to diminished responsibility is much more relevant to a general predisposition of the criminal justice system to show leniency towards female offenders,

¹³³ Sereny, *The Case of Mary Bell* (n 1) 70.

¹³⁴ *ibid* 70.

¹³⁵ ‘Schoolgirls said to have killed for pleasure’, *The Times* (n 2).

¹³⁶ *ibid*; Sereny, *The Case of Mary Bell* (n 1) 70.

¹³⁷ ‘Life detention for girl of 11’, *The Guardian* (London, 18 December 1968) 5.

¹³⁸ ‘Hospitals could not take girl killer’, *The Guardian* (n 98).

¹³⁹ *ibid*.

using pathological factors and psychiatric evaluations to do so.¹⁴⁰ As discussed in the first chapter, the criminal justice system is very much inclined to inquire into and consider the mental state and motivation of women engaging in violent behaviour due to the fact that gender roles prescribe that normal women are caring, family oriented creatures, who place the needs of others above their own and would not engage in violence.¹⁴¹ This enquiry, more often than not, concludes that the female offenders in question suffer from mental abnormality, a result suggesting that they are not entirely culpable for their behaviour and that they should be protected from harsh penal sentences via an imposition of a sentence that calls for their treatment rather than their punishment.¹⁴² Courts usually welcome such suggestions because they enable them to follow their natural instincts of being chivalrous towards women and to satisfy their preconception that female offenders have limited blame for their actions.¹⁴³ It is along these lines that Mary's situation was considered. The court inquired into her mental state and eventually returned a verdict of diminished responsibility because such violence from a girl could not have been anything else but the result of abnormal pathology. Accordingly, the leniency suggested by Mary's verdict does not strengthen the associations with the concept of the Romantic Child any further, since it is related to her femaleness rather than her childishness. However, this does not negate the fact that the said associations are noteworthy, as discussed above.

Therefore, the treatment of Mary and Norma by the criminal justice system, through the police investigation and trial processes and Mary's sentencing, reveals important associations with the concept of the Romantic Child, mostly found in the informal and discretionary attitude and approach of the trial judge towards them. These associations are mainly centred on the characteristic of vulnerability, as well as the desire to protect children and act in their best interests, all elements within the concept of the Romantic Child and especially the female Romantic Child.

¹⁴⁰ Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Open University Press 1987) 74, 75, xi-xii; Elaine Showalter, *The Female Malady: Women, madness and English Culture 1830-1980* (Virago 1987) 3-4.

¹⁴¹ Annie Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice System* (Routledge 1990) 33, 41, 49, 58; Lisa Appignanesi, *Mad, Bad and Sad: A history of women and the mind doctors from 1800 to the present* (Hachette Digital 2008) 7, 348-349.

¹⁴² Allen (n 140) 35, 40, 42, 89, 94, 100, 114; Pat Carlen (ed) and Anne Worrall (ed), *Gender, Crime and Justice* (Open University Press 1987) 81- 85, 90

¹⁴³ Frances Heidensohn, *Women and Crime* (2nd edition, Macmillan Press 1985) 32; Allen (n 140) 7, 10, 73, 104; Carlen and Worrall (n 142) 93.

Savage Child:

In addition to associations with the concept of the Romantic Child statements made by the judge and the prosecutor also raised associations with the concept of the Savage Child, albeit weak ones. During his summing up speech to the jury, the judge referred to the possibility of children being ‘wicked’ or even ‘vicious’.¹⁴⁴ The prosecutor, Mr Lyons, portrayed the defendants as having committed their crimes ‘solely for the pleasure and excitement afforded by killing’¹⁴⁵ and referred to ‘unprecedented depths of juvenile wickedness’ being witnessed during the trial.¹⁴⁶ He also characterised Mary, inter alia, as ‘most abnormal, aggressive, vicious, cruel, incapable of remorse’, with a ‘dominating personality’, ‘unusual intelligence’ and a ‘degree of cunning that is almost terrifying’ and maintained that she had exercised an ‘evil and very compelling influence, reminiscent of a fictional Svengali’ over Norma, Svengali being a musician with ‘hypnotic powers’ in a novel.¹⁴⁷ It must be acknowledged that the role of the prosecutor in the English adversarial system was to present the two girls in the most unfavourable light possible.¹⁴⁸ On the other hand, this evidence of associations with the concept of the Savage Child cannot be entirely discounted because it suggests that the jury would be open to accepting the attribution of characteristics of the Savage Child to the young offenders.

It does seem surprising that such characteristics were attributed to Mary, a girl, since women and girls were traditionally regarded as non-violent and non-dangerous, according to their gender roles. However, these characteristics were explained later on as pathological, resulting in the success of the defence of diminished responsibility, a habitual approach in explaining violent behaviour exhibited by female offenders, as discussed earlier.

Therefore, evidence of associations with the concept of the Savage Child is present, though weak, in the Mary Bell case. Probably because she was female, the characteristics were explained away as being due to psychological problems. This, however, does not negate their existence.

¹⁴⁴ ‘Surprise alibi witness at girls’ murder trial’, *Daily Mirror* (London, 17 December 1968) 12

¹⁴⁵ ‘Schoolgirls said to have killed for pleasure’, *The Times* (n 2); ‘Girls killed two little boys for fun, says QC’, *Daily Mirror* (n 6); ‘QC alleges schoolgirls murdered two boys “solely for pleasure”’, *The Guardian* (n 1).

¹⁴⁶ ‘Influence of girl “like Svengali”’, *The Times* (n 68).

¹⁴⁷ ‘QC says girl wielded “Svengali” influence’, *The Guardian* (London, 14 December 1968) 12; ‘Influence of girl “like Svengali”’, *The Times* (n 68); ‘Little Mary “an evil Svengali” QC tells jury’, *Daily Mirror* (n 74).

¹⁴⁸ Edward P. Richards and Katharine C. Rathbun, *Medical Care Law* (Aspen Publications 1999) 6.

Conclusions:

In summary, the treatment of Mary and Norma by the segments of the criminal justice system examined is most notably associated with the concept of the Romantic Child. Associations with the concept of the Unformed Child are also present to a moderate degree, while associations with the concepts of the Adult Child and the Savage Child are present to a lesser degree. When the Mary Bell case is observed in relation to the 19th century case studies, the evolution into the 20th century, of the movement of the associations under study, can be seen. Associations with the concept of the Romantic Child are equally strong in both the cases of Margaret Messenger at the end of the 19th century and of Mary Bell in 1968, and in both cases they are very much affected by gender considerations. Their equal strength suggests that the horizontal movement observed in relation to the associations with the concept of the Romantic Child between the middle and the end of the 19th century continues into the mid 20th century and the said associations still constitute the dominant ones within the criminal justice system's treatment of children who killed.

Associations with the modern configuration of the concept of the Unformed Child are significantly stronger in Mary Bell's case than in Margaret Messenger's case. The strengthening of these associations suggests that the science of psychology was taking a more active role in criminal proceedings against children who killed.

Finally, the concepts of the Savage and the Adult Child, which were non-existent in Margaret Messenger's case, reappear to a limited extent in Mary Bell's case, representing a very mild reversal of the 19th century movement towards the disappearance of these concepts. Factors unrelated to the concepts of childhood may have contributed to these developments. Associations with the concept of the Savage Child may have been absent from Margaret Messenger's case largely because they were inconsistent with the gender role assigned to girls, whereas during the 1960s, the development of psychology and the increased ability to explain female deviations from traditional gender roles through psychopathology might have led to greater acceptance of the characteristics of the Savage Child being attributed to girls. Associations with the concept of the Adult Child in the case of Mary Bell are largely the result of the fact that a juvenile justice system was created in the period since the 19th century cases, offering an alternative to children being tried as adults. Accordingly, the existence of this alternative possibility and the choice of the

legislation to keep trying children for homicide outside that juvenile system, as adults, constitutes a distinction between them and other child offenders, giving rise to associations with the concept of the Adult Child. The court in the case of Mary Bell did not have a choice but to try the two girls as adults, since the legislation prescribed it, however, the fact that an alternative system did exist and that the practical application of the legislation meant that Mary and Norma had to be treated outside of it, does give rise to associations with the concept of the Adult Child, albeit weak ones, since the evidence is of a general nature and originates in a different time, rather than specific to the case.

Mary Bell, Norma Bell and the Press

The content, frequency and positioning of articles on the case of Mary Bell from five selected newspapers were observed, in order to determine whether any associations exist between the treatment of the two girls by the press and the concepts of the child, how they relate to the associations found in the approach of the relevant sections of the criminal justice system and what movements can be observed in these associations since the 19th century. The effects of the increased propensity of the press to challenge authority,¹⁴⁹ its turn towards sensationalism¹⁵⁰ and its gender oriented approach are also examined, in an attempt to determine the extent to which they influence the associations with the concepts of the child.

Substantial associations seem to exist with the concept of the Romantic Child, compelling evidence of which can be found in the articles that criticise the criminal justice system for not being able to offer Mary a sentence that would best serve her interests, clearly suggesting that they should be a priority.¹⁵¹ It also exists in articles that maintained that children like Mary needed help and condemned society and one particular MP for not realising this and for not wanting her moved to a reformatory school in his constituency.¹⁵² Furthermore, titles such as ‘Girl in murder case

¹⁴⁹ Peter King, ‘Newspaper reporting and attitudes to crime and justice in late-18th and early-19th century London’ (2007) 22(1) *Continuity and Change* 73, 103; Stephen Farrall and Will Jennings, ‘Policy Feedback and the Criminal Justice Agenda: An Analysis of the Economy, Crime Rates, Politics and Public Opinion’, (2012) 26(4) *Contemporary British History* 467, 468-469, 476; Tim Newburn, ‘“Tough on Crime”: Penal Policy in England and Wales’, (2007) 36 *Crime and Justice* 425, 454, 457-458.

¹⁵⁰ David A. Green, *When Children Kill* (Oxford University Press 2008) 48-50; Kevin G. Barnhurst and John Nerone, *The Form of News: A History* (The Guilford Press 2001) 150, 190-191, 198, 216.

¹⁵¹ ‘Sick, not sinful’, *The Guardian* (London, 18 December 1968) 1.

¹⁵² ‘Sick, not sinful’, *The Guardian* (n 151); ‘Mary Bell: cause for concern’, *The Guardian* (London, 15 February 1969) 8.

weeps’,¹⁵³ ‘Court adjourned for weeping child’,¹⁵⁴ and ‘Girl spoke of flowers on body – QC’,¹⁵⁵ as well as the use of the word ‘little’ to describe Mary and Norma in various titles, insinuate that the two girls have vulnerability and gentleness.¹⁵⁶ The fact that there were more references to the young defendants in the titles of articles as girls rather than as children, does suggest that their gender influenced the approach of the press significantly, increasing its tendency to attribute vulnerability and gentleness to them and to highlight the need to protect them, which are all notions that are in accordance with the concept of the female Romantic Child.¹⁵⁷

In addition, the frequency and positioning of the articles, which can be seen in detail in appendix two of the thesis, strengthen these associations, since the reporting on the case clearly intensified and the emphasis placed on the articles increased when an opportunity arose to portray the child defendants as vulnerable and to criticise the criminal justice system for not being able to offer them adequate protection and pursue their best interests. In particular, between the 6th and 17th December 1968, the days of the trial, during which the reports focused on its developments and hence necessarily the narration of the violent actions of the young defendants, no more than one article per day was published in each of the newspapers and none of them were on the front pages, with one exception mentioned below.¹⁵⁸ Furthermore, the researched newspapers did not mention the case on two consecutive Mondays.¹⁵⁹ This limited reporting occurred despite the fact that there was no ban on reporting the case or the identities of the two girls from the beginning of the trial.¹⁶⁰ In contrast, the only occasion on which the *Guardian* published two articles on the case during the trial, including one on the front page, was when their subject was the vulnerability of

¹⁵³ ‘Girl in murder case weeps’, *The Guardian* (n 45).

¹⁵⁴ ‘Court Adjourned for weeping child’, *The Times* (n 30).

¹⁵⁵ ‘Girl spoke of flowers on body – QC’, *The Times* (London, 7 December 1968) 2.

¹⁵⁶ ‘Two tales of murder’ by little Mary and Norma’, *Daily Mirror* (n 14); ‘Little Mary’s death book – by teacher’, *Daily Mirror* (n 28).

¹⁵⁷ ‘QC alleges schoolgirls murdered two boys “solely for pleasure”’, *The Guardian* (n 1); ‘Schoolgirls said to have killed for pleasure’, *The Times* (n 2); ‘Girls killed two little boys for fun, says QC’, *Daily Mirror* (n 6); ‘Girl accuses friend in murder trial’, *The Guardian* (London, 11 December 1968) 4; ‘Girl’s evidence in murder trial’, *The Times* (n 40); ‘Friend had hands on boy’s neck, says accused girl’, *Daily Telegraph* (London, 11 December 1968) 22; ‘Friend showed me how to kill little boy, says girl’, *Daily Telegraph* (n 45); ‘Court Adjourned for weeping child’, *The Times* (n 30); ‘Girl in murder case weeps’, *The Guardian* (n 45); ‘Accused Child says she watched “The Saint”, “Apache”’, *The Times* (n 46); ‘Influence of girl “like Svengali”’, *The Times* (n 68); ‘QC says girl wielded “Svengali” influence’, *The Guardian* (n 147); ‘Judge’s warning on lies told by girls’, *The Times* (n 93); ‘Hospitals could not take girl killer’, *The Guardian* (n 98); ‘Life detention for girl of 11’, *The Guardian* (n 137); ‘Girl, 11, sentenced to life detention for killing boys’, *The Times* (London, 18 December 1968) 4; ‘Callaghan’s problem: the child killer’, *Daily Mirror* (n 97); ‘Child killer problem’, *Daily Mirror* (London, 18 December 1968) back page; ‘Gallaghan probes the future of child killer Mary Bell’, *Daily Mirror* (London, 19 December 1968) 1; ‘Callaghan sends “life girl” to special centre’, *Daily Telegraph* (London, 20 December 1968) 1.

¹⁵⁸ *The Times* between 06/12/1968 and 17/12/1968; *The Guardian* between 06/12/1968 and 17/12/1968; *The Daily Mirror* between 06/12/1968 and 17/12/1968; *The Observer* between 06/12/1968 and 17/12/1968, *The Daily Telegraph* between 06/12/1968 and 17/12/1968.

¹⁵⁹ *Daily Mirror* (London, 8 December 1968); *The Guardian* (London, 8 December 1968); *The Times* (London, 8 December 1968); *The Daily Telegraph* (London, 8 December 1968); *The Observer* (London, 15 December 1968).

¹⁶⁰ Sereny, *The Case of Mary Bell* (n 1) 75

Norma while giving evidence, how she was unable to control her crying and the interventions of the judge to protect her from the prosecutor.¹⁶¹ By contrast, during the period of Mary's sentencing, when the subject matter of the articles was mainly criticism of the criminal justice system's inability to offer the young offender treatment that was in her best interests, more than one article per day appeared in each newspaper and often on the front pages.¹⁶² For instance, on the 18th December, when the sentencing was reported, *The Guardian* published three articles in relation to it, including one on its front page and another on page 10, openly condemning the system for failing children like Mary.¹⁶³ The *Daily Mirror* carried two articles, one on the front page and one on the back page and the *Daily Telegraph* carried one article on the front page and one on page 13.¹⁶⁴ On the following day, the 19th December 1968, when Mary's appeal was being reported, both *The Times* and the *Daily Mirror* carried articles reporting the developments on their front pages and the *Daily Mirror* and *The Daily Telegraph* also published front page articles on the next day, the 20th December 1968, reporting Mary's move to a different remand home for assessment.¹⁶⁵

Therefore, the associations between the approach of the press towards the young defendants, which is significantly influenced by their gender, and the concept of the female Romantic Child, are substantial. As discussed above, the equivalent associations in the approach of the sections of the criminal justice system examined towards Mary and Norma are also notable.

Associations between the treatment of the young defendants by the press and the modern configuration of the concept of the Unformed Child are also strong. This concept describes children as being born neutral and developing a sense of morality gradually with age, in a direction that is influenced largely by factors external to them, such as their home circumstances, their education and the various stimuli they are exposed to. These characteristics are ascribed to the young defendants by the press

¹⁶¹ 'Murder case counsel warned', *The Guardian* (n 131); 'Girl in murder case weeps', *The Guardian* (n 45).

¹⁶² 'Hospitals could not take girl killer', *The Guardian* (n 98); 'Life detention for girl of 11', *The Guardian* (n 137); 'Callaghan's problem: the child killer', *Daily Mirror* (n 97); 'Child killer problem', *Daily Mirror* (n 157); 'Sick, not sinful', *The Guardian*, (n 151); 'Where does Mary Bell go if her appeal fails?', *The Times* (n 125); 'Callaghan probes the future of child killer Mary Bell', *Daily Mirror* (n 157); 'Little Mary will move to a new home', *Daily Mirror* (n 106).

¹⁶³ 'Hospitals could not take girl killer', *The Guardian* (n 98); 'Life detention for girl of 11', *The Guardian* (n 137); 'Sick, not sinful', *The Guardian* (n 151).

¹⁶⁴ 'Callaghan's problem: the child killer', *Daily Mirror* (n 97); 'Child killer problem', *Daily Mirror* (n 157); 'Life Detention girl, 11, in remand centre', *Daily Telegraph* (London, 18 December 1968) 1; 'Life Detention for girl, 11, who killed two boys', *Daily Telegraph* (London, 18 December 1968) 13.

¹⁶⁵ 'Where does Mary Bell go if her appeal fails?', *The Times* (n 125); 'Callaghan probes the future of child killer Mary Bell', *Daily Mirror* (n 157); 'Little Mary will move to a new home', *Daily Mirror* (n 106); 'Callaghan sends "life girl" to special centre', *Daily Telegraph* (n 157).

in the current case study. Articles in the press related to the case study expressed the view that children in general act violently when things happen to them and not because they are born evil.¹⁶⁶ Moreover, the press maintained that children go through different developmental stages, which entail different particularities that need to be addressed when they are being treated for any mental abnormalities or illnesses.¹⁶⁷ In relation to Mary, an article in the *Daily Telegraph* reported the opinion of various psychiatrists that she should not have been moved to Cumberlow Lodge because it housed girls aged 15 to 17 and it would not be ‘helpful’ for her ‘to be with girls older than herself’.¹⁶⁸ Moreover, the press emphasised how important it was to send Mary to the appropriate institution that would provide her with the right surroundings, in order to achieve her rehabilitation,¹⁶⁹ as well as the need to place pressure on health services to provide places that offered the right conditions and surroundings for the psychiatric treatment and rehabilitation of children.¹⁷⁰ Finally, an article in *The Observer*, blamed the offending behaviour of children primarily on problems in their homes and families and secondarily on society and the authorities¹⁷¹ and an article in the *Times* blamed Mary’s behaviour partly on her exposure to television violence.¹⁷²

Therefore, associations between the concept of the Unformed Child in its modern configuration and the approach of the press towards Mary and Norma are strong. In fact, these associations are considerably stronger than their equivalent ones found in the approach of the criminal justice system towards the two young offenders.

In contrast to the associations with the concepts of the Romantic Child and the Unformed Child, the associations between the concept of the Savage Child and the press treatment of the young defendants are weak. Even though the newspapers examined contained various references to the girls that have the potential to be associated with the Savage Child, they were essentially reports of the trial, regurgitating the words of the various participants, a fact that was made clear in the relevant articles.¹⁷³ However, the newspapers did place some emphasis on events and

¹⁶⁶ ‘Sick, not sinful’, *The Guardian* (n 151).

¹⁶⁷ ‘Where does Mary Bell go if her appeal fails?’, *The Times* (n 125); ‘Appeal for the girl facing life detention’, *Daily Mirror* (n 125).

¹⁶⁸ ‘Doctors attack remand centre for “life girl”’, *Daily Telegraph* (London, 21 December 1968) 9.

¹⁶⁹ *ibid*; ‘Gallaghan probes the future of child killer Mary Bell’, *Daily Mirror* (n 157).

¹⁷⁰ ‘Mary Bell: cause for concern’, *The Guardian* (n 152).

¹⁷¹ ‘Terrence Morris considers the problem of keeping dangerously disturbed children in custody’, *The Observer* (London, 22 December 1968) 9.

¹⁷² ‘Accused Child says she watched “The Saint”, “Apache”’, *The Times* (n 46).

¹⁷³ ‘2 Girls killed for fun says QC’, *Daily Telegraph* (London, 6 December 1968) 26; ‘Girls killed two little boys for fun, says QC’, *Daily Mirror* (n 6); ‘Schoolgirls said to have killed for pleasure’, *The Times* (n 2); ‘QC alleges schoolgirls murdered two boys “solely for pleasure”’, *The Guardian* (n 1); ‘“QC says boy’s death was a “joint enterprise”’, *The Guardian* (London, 7

statements that suggested that the girls were calculating, devious, evil and with a serious propensity for violence, by putting them in the titles of their articles. For instance, there were titles such as ‘Girls killed two little boys for fun, says QC’, ‘Girls killed for fun says QC’, ‘QC alleges schoolgirls murdered two boys ‘solely for pleasure’’,¹⁷⁴ ‘Friend had hands on boy’s neck, says accused girl’,¹⁷⁵ ‘Friend showed me how to kill little boys, says girl’,¹⁷⁶ ‘Girl led mother to son’s body’, ‘Mother says girl led her to body’, ‘Accused girl led me to my dead son, says mother’¹⁷⁷ and ‘Mary strangled a pigeon’.¹⁷⁸ In addition, on the 14th December 1968, when reporting the closing statements of the trial, all newspapers used the word ‘Svengali’ in their article titles, a word used by the prosecutor to describe the type of influence Mary had over Norma.¹⁷⁹ Primal attempts at sensationalism by the press are partly the reason why the newspapers used titles such as these, since by the 1960s the purpose of titles had become to catch the attention of the reader and this was achieved by increasing their outrageousness.¹⁸⁰ However, this does not negate the presence of some associations with the concept of the Savage Child. These associations in the press treatment of Mary Bell and Norma Bell appear slightly stronger than the equivalent associations in the approach of the criminal justice system.

In summary, a study of the approach of the press towards the young, female offenders in the 1968 case study reveals fairly strong associations with the concepts of the Romantic and Unformed Child, weaker associations with the concept of the Savage Child and no associations with the concept of the Adult Child. Gender influences are also clearly evident. There are significant similarities in the approach of the press and the sections of the criminal justice system examined, despite the fact that the press was no longer as reluctant to challenge the decisions of government institutions, like the courts, as it had been during the 19th century. The associations with the concepts of the Romantic and Savage Child resemble their equivalent associations within the criminal justice system; however, they are both slightly more

December 1968) 5; ‘Girl spoke of flowers on body – QC’, *The Times* (n 155); ‘“Two tales of murder” by little Mary and Norma’, *Daily Mirror* (n 14).

¹⁷⁴ ‘Girls killed two little boys for fun, says QC’, *Daily Mirror* (n 6); ‘2 Girls killed for fun says QC’, *Daily Telegraph* (n 173); ‘QC alleges schoolgirls murdered two boys “solely for pleasure”’, *The Guardian* (n 1).

¹⁷⁵ ‘Friend had hands on boy’s neck, says accused girl’, *Daily Telegraph* (n 157).

¹⁷⁶ ‘Friend showed me how to kill little boy, says girl’, *Daily Telegraph* (n 45).

¹⁷⁷ ‘Girl led mother to son’s body’, *The Guardian* (n 29); ‘Mother says girl led her to body’, *The Times* (n 26); ‘Accused Girl led me to my dead son, says mother’, *Daily Telegraph* (London, 10 December 1968) 21.

¹⁷⁸ ‘Mary strangled a pigeon’, *Daily Mirror* (London, 11 December 1968) 5.

¹⁷⁹ ‘QC says girl wielded “Svengali” influence’, *The Guardian* (n 147); ‘Influence of girl “like Svengali”’, *The Times* (n 68); ‘Girl had Svengali-like hold over friend, says counsel’, *Daily Telegraph* (London, 14 December 1968) 13; ‘Little Mary “an evil Svengali” QC tells jury’, *Daily Mirror* (n 74).

¹⁸⁰ Barnhurst and Nerone (n 150) 190-191, 198, 216.

exaggerated in the approach of the press. The reason for this difference is probably the fact that sensationalism, albeit still in a nascent form, was beginning to find its way in the British press, since both concepts are centred on emotions that appeal to the sensitivities of the public.

The associations with the concept of the Unformed Child are considerably stronger in the press than in the criminal justice system. This discrepancy is perhaps the result of the fact that there was a growing interest in the field of child psychology and its use in matters of child criminality that was reflected in the press, again as a result of its desire to increase its popularity. This was possible given the freer nature of the press as opposed to the criminal justice system that is largely confined by legal rules and boundaries.

The movements of associations with the concepts of the Romantic, Unformed and Savage Child in the press since the 19th century are in the same direction as those observed in the criminal justice system. The continued absence of associations with the concept of the Adult Child in the press differs from the position in the criminal justice system, in which the Adult Child made a limited reappearance in the Mary Bell case. This discrepancy is perhaps a result of the desire of the press to make its stories more dramatic in its quest for increased popularity. Research mentioned in the first chapter suggests that the press tends to over report juvenile crime and exaggerate the young ages and violent nature of juvenile offenders in the name of sensationalism and appeal to the public.¹⁸¹ During the 1960s these tendencies had not yet developed to the extent that they would reach in the 1990s, in fact, the press was still rather reluctant to discuss violence conducted by children. However, some signs of dramatization of stories were evident, which explain the emerging aversion of the press to portray child offenders as adults rather than children.

Mary Bell, Norma Bell and Public Reaction

During the years leading up to and including the 1960s there was a general view adopted by political parties that criminal justice issues were sensitive and volatile and should be handled with care, away from the scrutiny and heat of the public.¹⁸² It is

¹⁸¹ Jessica M. Pollak, Charis E. Kubrin, 'Crime in the News: How Crimes, Offenders and Victims are portrayed in the media' (2007) 14(1) *The Journal of criminal justice and popular culture* 59, 72-73.

¹⁸² Green (n 150) 201.

thus not surprising that little information is available in any of the sources researched on the approach of the public regarding the case of Mary Bell, indicating that public reactions to the case were scarce. This observation supports Gitta Sereny's claim that people generally avoided talking about children committing evil actions.¹⁸³

It can be argued that the reluctance to talk or exhibit any form of public reaction towards children committing evil actions was due to the fact that the thought was so disturbing and in such contrast to the normal concept of the innocence and goodness of children that it needed to be ignored. Moreover, the display of discretion might also indicate a desire on behalf of the public to respect the privacy of the young offenders, enabling them to avoid stigmatisation and improve their chances of recovery. Accordingly, the absence of public reactions towards Mary Bell and her case might suggest associations with the concept of the Romantic Child. However, the argument is rather speculative, lacking sufficient evidence to support it, because it is only public reactions that can be observed and explained within the scope of the current thesis. Accordingly, the reasons behind the lack such public reaction can only be assumed, since data like opinion polls are not to be considered within the boundaries of the current thesis, in order to avoid distortions in the comparisons made with earlier cases, as explained in the introduction.

The little relevant information that does exist suggests the presence of weak associations with the concept of the Savage Child. Specifically, the newspapers reported that the Home Secretary's decision to send Mary to Red Banks was opposed by local residents, which might indicate that Mary was viewed as undesirable, dangerous and violent, characteristics attributed to children within the concept of the Savage Child.¹⁸⁴ However, these protests were of very limited scope and died down very quickly, indicating that such views, if held at all, were not maintained with much conviction.¹⁸⁵

Thus, the sole positive reaction of the public towards Mary reveals weak associations with the concept of the Savage Child. The absence of further reactions might suggest the existence of associations with the concept of the Romantic Child, however this argument cannot be more than speculation. The presence of weak associations with the concept of the Savage Child is similar to the approaches of the

¹⁸³ Sereny, *Cries Unheard* (n 127) 33.

¹⁸⁴ 'Mary Bell is sent to a boys' approved school', *The Times* (n 107); 'Minister: Take Mary Bell away', *Daily Mirror* (n 127).

¹⁸⁵ 'Mary Bell is sent to a boys' approved school', *The Times* (n 107); 'Minister: Take Mary Bell away', *Daily Mirror* (n 127).

sections of the criminal justice system examined and the press. The absence of any associations with the concepts of the Adult and Unformed Child in the reactions of the public is not surprising given, again, the nature of public reaction, which is limited to expressing strong feelings, usually of commiseration and sympathy or discontent and disapproval, and neither of the two concepts were related to strong emotions. The concept of the Adult Child was at the time not associated with such strong feelings, whereas the concept of the Unformed Child generally involves mostly unemotional, scientific notions.

Associations with the concept of the Romantic Child appear to have declined in the reaction of the public since the 19th century, since no positive actions performed by the public affirm their existence. This likely decline constitutes a departure from the approach within criminal justice system, as well as of the press. However, it is possible, albeit highly speculative, that the very absence of public reaction does indicate the existence of these very associations. Even so, in the 19th century cases, the existence of positive public actions that clearly reveal associations with the concept of the Romantic Child makes these associations stronger than in the current case, where they might exist due to the passive, non-existent reaction of the public. It can also be argued that this decline is partly due to the abolition of the death sentence in 1965 by the Murder (Abolition of the Death Penalty) Act 1965, since Mary Bell was not facing the possibility of being sentenced to death, an action that was considered especially appalling when dealing with a child, as demonstrated by the reactions of the public in the case study of Margaret Messenger above. This does not change the fact, however, that the potential associations with the concept of the Romantic Child in the current case are weaker than in the 19th century cases, especially given that such associations were also apparent and strong in the 1861 case of Barratt and Bradley, when they boys were not given a death sentence either.

Mary Bell, Norma Bell and Politicians

The approach of politicians towards Mary Bell more or less exhibits the same pattern of associations as the approaches within the criminal justice system and of the press, since noteworthy associations with both the concepts of the Unformed and the Romantic Child and weak associations with the concept of the Savage Child are

found. It should be mentioned that the particular features of politics at the time, namely the tendency to avoid public discussion on sensitive issues of crime and the absence of politicisation of crime significantly limited the engagement of politicians with Mary's case.¹⁸⁶

Evidence of associations between the concept of the Romantic Child and Mary's treatment by politicians exists in the exhibition of a general desire to defend and protect her. As soon as one politician spoke against her, numerous others rallied to her defence, saying that the attack on her was 'disgraceful' and 'shocking', in essence forcing him to change his position.¹⁸⁷ Moreover, the Home Secretary called on the press to exhibit 'restraint' in reporting the case in order to shield Mary from undue publicity.¹⁸⁸

Associations with the concept of the Unformed Child exist in the discussions of politicians that attributed Mary's behaviour and the criminal behaviour of children in general to their environment.¹⁸⁹ For instance, Raphael Tuck, Labour MP for Watford, argued that juvenile crime was largely the result of violence children watched on television and declared his intention to mount a campaign against showing horror films to children.¹⁹⁰ Furthermore, Mr Short, Labour MP for Wolverhampton, argued that Mary could be rehabilitated if placed in the right environment with children of her own age, in which secure accommodation, education and psychiatric treatment were provided.¹⁹¹

Finally, associations with the concept of the Savage Child are found solely in the reaction of Mr Lee, the MP for Newton, to the Home Secretary's decision to send Mary to the Red Banks reformatory school, which was situated in his constituency.¹⁹² In his complaint, Mr Lee asked for his constituency not to be burdened further by the arrival of female juvenile offenders, especially ones like Mary, whom he characterised as having been 'rejected by society everywhere else' and as the 'worst type of undesirables'.¹⁹³ However, this reaction was confined to one politician and

¹⁸⁶ Farrall and Jennings (n 149) 476-478.

¹⁸⁷ 'Mary Bell is sent to a boys' approved school', *The Times* (n 107); 'Minister to see Mary Bell Unit', *The Guardian* (London, 13 February 1969) 4; 'Killer Mary Bell stays – Callaghan', *Daily Mirror* (London, 13 February 1969) 1.

¹⁸⁸ 'Secrecy plea on Mary Bell', *The Guardian* (London, 18 February 1969) 7.

¹⁸⁹ 'Minister to see Mary Bell Unit', *The Guardian* (n 187).

¹⁹⁰ 'Appeal for the girl facing life detention', *Daily Mirror* (n 125); 'Girl, 11, sentenced to life detention for killing boys', *The Times* (n 157).

¹⁹¹ 'Mary Bell is sent to a boys' approved school', *The Times* (n 107).

¹⁹² 'Mary Bell is sent to a boys' approved school', *The Times* (n 107); 'MP says move Mary Bell', *The Guardian* (n 107).

¹⁹³ 'Mary Bell is sent to a boys' approved school', *The Times* (n 107); 'MP says move Mary Bell', *The Guardian* (n 107); 'Minister: Take Mary Bell away', *Daily Mirror* (n 127).

was met with significant criticism by other politicians,¹⁹⁴ resulting in its revocation soon after.¹⁹⁵ Further, it was largely made because Newton was already experiencing problems with escapes from Red Banks and Risley, a large mental hospital, that had Mr Lee worried.¹⁹⁶ Consequently, these associations with the concept of the Savage Child are very weak.

In summary, the approach of politicians towards Mary reveals similarities to the approaches of the examined sections of the criminal justice system and the press, in that associations with the concepts of the Romantic and the Unformed Child are fairly strong and associations with the concept of the Savage Child are present but weak. Furthermore, as in the press, associations with the concept of the Adult Child are absent. Given the absence of involvement by politicians in the 19th century case studies, it is not yet possible to discern any particular direction of movements over time in politicians' treatment of children who killed.

Conclusion: Since the 19th Century

The study of the case of Mary Bell enables the observation of the movements of associations between the treatment by the criminal justice system, through the police investigation and trial and sentencing processes, the press and the public of children who killed and the concepts of the child into the 20th century. The findings show that there are similar changes in the course of these associations in all three fields. Specifically, there is a limited move back towards the concept of the Savage Child in all three fields, more restrained in the criminal justice system than in the other two fields. The movement of associations with the concept of the Romantic Child remains level in both the criminal justice system and the press, though it declines in the field of public reaction, partly due to the limitations of the study within the thesis of public reaction to being able to observe only positive actions rather than the lack of action, but irrespectively, suggesting a general move away from the concept of the Romantic Child that has yet to be manifested in the other two fields. The movement of associations with the concept of the Unformed Child shows a rise in both the criminal justice system and the press, more pronounced in the latter than the former. Finally,

¹⁹⁴ 'Mary Bell is sent to a boys' approved school', *The Times* (n 107); 'Minister to see Mary Bell Unit', *The Guardian* (n 187).

¹⁹⁵ 'Minister to see Mary Bell Unit', *The Guardian* (n 187); 'Killer Mary Bell stays – Callaghan', *Daily Mirror* (n 187); 'MP satisfied over Mary Bell move', *The Times* (London, 18 February 1969) 2.

¹⁹⁶ 'Mary Bell is sent to a boys' approved school', *The Times* (n 107); 'MP says move Mary Bell', *The Guardian* (n 107); 'Minister: Take Mary Bell away', *Daily Mirror* (n 127).

there is a faintly upward movement in associations with the concept of the Adult Child in the criminal justice system, which is absent from the other fields. The discrepancy appears to be due to two reasons. The first is that it is partly due to the legislative changes in the criminal justice system that created juvenile courts but denied their use to the most serious child offenders, since the current case constitutes a practical application of this legislation. The second is that it is partly due to the fact that the particular features of the press, politics and public reaction discourage interest in the concept of the Adult Child.

Chapter Four: The Robert Thompson and Jon Venables Case Study (1993)

Introduction:

The murder of the two-year-old James Bulger by the two 10-year-olds Robert Thompson and Jon Venables in 1993 is one of the most cited, publicised and discussed homicides in Britain. It is chosen as a case study mainly because of this notoriety, as well as the fact that it is the last case of children under the age of 14 being convicted of murder in the United Kingdom. The chapter examines and compares the existence, strength and movements of associations between the ways in which the criminal justice system, starting with the process of police investigation and ending with the trial and sentencing processes, the media, politicians and the public treated Robert Thompson and Jon Venables, and the four concepts of the child, as well as other factors affecting their treatment. Eventually, the findings are compared with those of the preceding case studies, to establish the progress of movements of these associations into the late 20th century.

The Facts

The Crime, the Arrest and the Trial:

On 12th February 1993 the two-year-old victim, James Bulger, went with his mother, Denise Bulger, to the Strand shopping centre in Bootle, Merseyside, from where he disappeared.¹ The shopping mall security cameras recorded him leaving with 'two youths' and his body was found 48 hours later on the railway line three and a half miles away.² The police reported that the body had been 'dumped' on the railway line after 'horrific injuries' had been inflicted on him while he was still alive.³

Following an intensive police investigation two boys aged 10 were arrested on 20th February 1993 and charged with the abduction and murder of James Bulger as

¹ 'Mother's fears are confirmed as video boy is found dead', *The Times*, (London, 15 February 1993) 3; 'Body of missing 2 year old found', *The Guardian* (London, 15 February 1993) 1.

² 'Mother's fears are confirmed as video boy is found dead', *The Times*, (n 1); 'Body of missing 2 year old found', *The Guardian* (n 1).

³ 'Boy was dumped after horrific injuries', *The Times* (London, 16 February 1993) 1.

well as the attempted abduction of another two-year-old child.⁴ They appeared before South Sefton Magistrates court a day later, where it was decided that they were to remain in custody without bail.⁵ In a subsequent hearing on 14th May 1993 they pleaded not guilty and their trial was scheduled for 1st November 1993 at Preston Crown court,⁶ since, as in the Mary Bell case, the law prescribed that when children with criminal responsibility, i.e. children over 10 years old, were charged with murder, they would be tried at an adult Crown Court before a jury.⁷ Mr Justice Moreland presided over the 17-day trial, Richard Henriques QC led the prosecution and David Turner QC and Brian Walsh QC conducted the defence.⁸ Since the law provided that the court retained the authority to prohibit the publication of any material relevant to the case,⁹ the trial judge at the beginning of the trial made an order that the children involved, including the defendants, not be identified in the media.¹⁰ Moreover, a warning was given to reporters and newspaper distributors that they would be facing a 'lengthy jail term and fine' if they were to identify or carry material that identified the two accused boys.¹¹

On the first day of the trial Mr Henriques began his opening statement by narrating to the court in great detail the journey the two defendants had taken with the victim from the Strand shopping mall to the railway line and the events at the railway line that resulted to the latter's death.¹² He mentioned how various witnesses saw the three boys and how five intervened, but thought that James was being looked after by the defendants and hence did nothing to stop them.¹³ He also said that James had been killed by being stoned and beaten, the clothes from his lower body and his shoes had been removed and he was placed 'across a railway line'.¹⁴ He then described the extensive physical evidence linking the young defendants to the crime, including the

⁴ 'Boys aged 10 held by police over murder of James Bulger', *The Times* (London, 20 February 1993) 1; 'Boys, 10, deny killing', *The Times* (London, 15 May 1993) 2.

⁵ 'Police to cordon off court for Bulger case', *The Times* (London, 22 February 1993) 1; 'Mob vents fury at Bulger hearing', *The Times* (London, 23 February 1993) 22.

⁶ 'Boys, 10, deny killing', *The Times* (n 4).

⁷ Children and Young Persons Act 1933, s 50; Magistrates' Courts Act, 1980, s 24(1B).

⁸ 'Boys go on trial for murder of 2 year old', *The Times* (London, 1 November 1993) 3; 'Boys guilty of Bulger murder', *The Times* (London, 25 November 1993) 1; 'Boys guilty of Bulger murder', *The Guardian* (London, 25 November 1993) 1.

⁹ Children and Young Persons Act 1933, s 39.

¹⁰ 'Boys go on trial for murder of 2 year old', *The Times* (n 8); 'Glassy and expressionless, the boys squirmed and stared at the ceiling', *The Times* (London, 2 November 1993) 3.

¹¹ 'Police warn Bulger media', *The Times* (London, 6 November 1993) 1; 'World's media breach trial judge's ruling', *The Times* (London, 6 November 1993) 3.

¹² 'Child "kicked and beaten on walk to death"', *The Times* (London, 2 November 1993) 1; 'James Bulger "battered with bricks"', *The Guardian* (London, 2 November 1993) 1.

¹³ 'Child "kicked and beaten on walk to death"', *The Times* (n 12); 'James Bulger "battered with bricks"', *The Guardian* (n 12).

¹⁴ *ibid.*

presence of James' blood on the shoe of one of the accused boys.¹⁵ Mr Henriques then told the court that the defendants had unsuccessfully attempted to abduct another little boy before abducting James and that during their 19 police interviews they had blamed each other for causing James' death, demonstrating their 'fluent capacity' to lie.¹⁶ In order to convict the accused boys, Mr. Henriques concluded, it must be proven that each of them 'played a part in causing the death of James Bulger'.¹⁷ Participation, he specified was anything from intentionally encouraging the other participant solely by his presence, to delivering one of the blows or the fatal blow, things both defendants had done, he argued.¹⁸ In addition, he continued, since the two defendants were under 14 years old, the *doli incapax* presumption applied and hence it had to be proven by him on the balance of probabilities that they knew that what they were doing 'was seriously wrong, rather than just naughty or mischievous'.¹⁹ He maintained that they did have this knowledge, since their actions were 'most seriously obviously wrong' not only to a child of 10 years, but also to a child of possibly half that age or younger.²⁰

The prosecution then called witnesses who were at the Strand Mall at the time of James' disappearance to give evidence and showed images from the mall's security cameras, to establish the sequence of events leading to the defendants leaving the mall with the victim.²¹ These verified that the young defendants made attempts to abduct other children prior to abducting James²² and that they walked out of the mall holding James' hand.²³ That was followed by the evidence of various witnesses who encountered the three boys on their journey from the shopping mall to the railway line where James' body was found, mostly saying that he looked distressed to them, but they did not intervene because they believed that the defendants knew him, were related to him or were taking him to the police station.²⁴ A series of forensic experts

¹⁵ 'Child "kicked and beaten on walk to death"', *The Times* (n 12).

¹⁶ 'Mother "foiled an earlier kidnap bid"', *The Times* (London, 2 November 1993) 3; 'Bulger case boys blame each other', *The Times* (London, 3 November 1993) 1.

¹⁷ 'James' torture was unravelled in 19 police interviews', *The Times* (London, 3 November 1993) 3.

¹⁸ *ibid.*

¹⁹ *ibid.*; 'Police adopt gentle touch with children', *The Times* (London, 20 February 1993) 6; *R v Secretary of State for the Home Department, ex p Thompson and Venables* [1997] 3 W.L.R. 23 (Lord Hope).

²⁰ 'James' torture was unravelled in 19 police interviews', *The Times* (n 17).

²¹ 'Mother tells of last hours on shopping trip with James', *The Times* (London, 4 November 1993) 3; 'Witness saw "terrible lump" on baby's head', *The Times* (London, 6 November 1993) 6; 'Film "shows boy lured to his death"', *The Guardian*, (London, 4 November 1993) 3.

²² 'Mother tells of attempt to lure son', *The Times* (London, 3 November 1993) 3. 'Mother tells of last hours on shopping trip with James', *The Times* (n 21); 'Witness saw "terrible lump" on baby's head', *The Times* (n 21).

²³ 'Mother tells of last hours on shopping trip with James', *The Times* (n 21); 'Film "shows boy lured to his death"', *The Guardian*, (London, 4 November 1993) 3; 'Video shows final minutes in precinct', *The Times* (London, 4 November 1993) 3.

²⁴ 'Witnesses tell of James' tearful walk to death', *The Times* (n 24) 4; 'My girl held abducted boy's hand, says mother', *The Times* (London, 9 November 1993) 4.

were then called to give evidence for the prosecution. Their evidence established that there were 42 wounds on the victim's body, the cause of his death was 'multiple head injuries' and that following his death he was placed across the train tracks and hit by a train.²⁵ Moreover, the forensic expert evidence established that there was physical and DNA evidence linking the young defendants to the crime.²⁶

Mr Henriques then dealt with the question of whether the defendants were capable of distinguishing right from wrong. Their schoolteacher was called to the stand and gave evidence that they 'knew right from wrong' and that they did realise that taking a child away from its mother and hitting it with a brick was wrong.²⁷ In addition, two psychiatrists, Dr Eileen Vizard and Dr Susan Bailey, who had interviewed one defendant each, both gave evidence that on the balance of probabilities they could both distinguish right from wrong and knew that taking a child from its mother, injuring it and leaving it on a railway line were wrong.²⁸ During her cross-examination by the defence, Dr Bailey did concede that Jon Venables could not communicate regarding the matter of his indictment for the murder of James Bulger 'in any useful way' due to his distress.²⁹

Finally, to conclude the case for the prosecution, Mr. Henriques played sections of the audiotapes of the defendants' police interviews to the court.³⁰ On the tapes, Robert Thompson was first heard repeatedly denying having killed James Bulger and blaming Jon Venables for having done so.³¹ On one occasion he said that Jon had thrown a brick onto James and that he tried to stop him.³² However, he did confess to having taken James from the shopping centre with Jon, but claimed that they then left him 'near a church'.³³ Jon was then heard on a three-hour audiotape.³⁴ He also originally denied having killed James and blamed Robert for leaving James 'in the road' and for trying to get him, Jon, into trouble, but was later heard confessing to the

²⁵ 'Witnesses tell of James' tearful walk to death', *The Times* (n 24); 'My girl held abducted boy's hand, says mother', *The Times* (n 24); 'James Bulger "struck by 30 separate blows"', *The Times* (London, 10 November 1993) 3; 'Boy died from 22 head injuries', *The Times* (London, 10 November 1993) 2.

²⁶ 'Scientists link two accused to Bulger killing', *The Times* (London, 11 November 1993) 5; 'Blood on boy's shoe "was from victim"', *The Guardian* (London, 11 November 1993) 9.

²⁷ 'Accused boys "knew right from wrong"', *The Times* (London, 12 November 1993) 3.

²⁸ *ibid*; 'Boys "knew right from wrong"', *The Guardian* (London, 12 November 1993) 3.

²⁹ 'Accused boys "knew right from wrong"', *The Times* (n 27); Boys "knew right from wrong"', *The Guardian* (n 28).

³⁰ 'Boy wept in murder denial', *The Times* (London, 12 November 1993) 3.

³¹ *ibid*.

³² 'Boys "changed their stories over James Bulger murder"', *The Guardian*, (London, 3 November 1993) 3; Bulger case boy said he tried to stop attack', *The Times* (London, 17 November 1993) 4.

³³ 'Boy wept in murder denial', *The Times* (n 30).

³⁴ 'Weeping boy told murder police: "I never touched him"', *The Times* (London, 18 November 1993) 6.

murder.³⁵ Mr Henriques then argued that the interviews showed ‘a progression from total ignorance of James Bulger and events surrounding his death to partial knowledge and each of them placing as much of the blame as possible on the co-accused’.³⁶

Following the conclusion of the case for the prosecution on the 13th day of the trial the defence declared that they would offer no evidence.³⁷ All counsel then made their closing statements. Richard Henriques QC argued that the two accused boys had intended to kill a child and that they had ‘together led, pulled and dragged and injured James’,³⁸ making the killing a joint enterprise.³⁹ This argument, he continued, was strengthened by the fact that both boys told lies in their police interviews, including trying to deny any knowledge of the relevant events at first, which showed that they were trying to protect ‘the killer’, something they would not have done had they been innocent.⁴⁰ The prosecution also argued that the defendants knew that what they were doing was wrong, since even a ‘four year old’ would know.⁴¹ The closing statements of the two defence counsel followed on the 15th day of the trial.⁴² David Turner QC, Robert Thompson’s defence lawyer, argued that Jon Venables had initiated and carried out the attack on James Bulger and that he had in fact confessed to having killed James, saying ‘I killed him’ as opposed to ‘we’ killed him.⁴³ On the contrary, Brian Walsh QC, told the court that it was Robert Thompson who was the protagonist and characterised him as a ‘confident, cocky, arrogant, little liar’.⁴⁴ Jon Venables, he continued, might be guilty of manslaughter at most, but not murder and he had shown remorse by confessing, as opposed to Robert.⁴⁵ Mr Turner, referring to both defendants, also argued that the theory that the two young defendants ‘had been saddled by their own mischief’ was more probable than ‘the planned evil theory’ alleged by the prosecution.⁴⁶

Mr. Justice Moreland in his summing up told the jury that the important thing to determine in order to reach their verdict was whether the two defendants intended to

³⁵ *ibid*; ‘“What about his mum? Will you tell her I am sorry?”’, *The Times* (London, 19 November 1993) 7; ‘Boy “apologised to Bulger mother after confession”’, *The Guardian* (London, 19 November 1993) 3.

³⁶ ‘Boys “changed their stories over James Bulger murder”’, *The Guardian* (n 32).

³⁷ ‘No defence evidence in Bulger trial’. *The Times* (19 November 1993) 1.

³⁸ ‘Boys in Bulger case “had murder in mind”’, *The Times* (London, 20 November 1993) 4.

³⁹ ‘Child’s death “clear case of murder”’, *The Guardian* (London, 20 November 1993) 8.

⁴⁰ ‘Boys in Bulger case “had murder in mind”’, *The Times* (n 38).

⁴¹ ‘Child’s death “clear case of murder”’, *The Guardian* (n 39).

⁴² *ibid*; ‘Lawyers defending Bulger case boys swap accusations’, *The Times* (London, 23 November 1993) 3.

⁴³ ‘Child’s death “clear case of murder”’, *The Guardian* (n 39); ‘Lawyers defending Bulger case boys swap accusations’, *The Times* (n 42).

⁴⁴ *ibid*.

⁴⁵ *ibid*.

⁴⁶ ‘Child’s death “clear case of murder”’, *The Guardian* (n 39).

kill James while delivering the lethal blows.⁴⁷ He told the jury that they should not be influenced by any emotions and that the defendants were of ‘average intelligence’, had ‘no abnormality of mind’ and had been ‘taught at school the difference between right and wrong’.⁴⁸ The jury found Robert Thompson and Jon Venables guilty of the abduction and murder of James Bulger after five and a half hours of deliberation.⁴⁹ They could not reach agreement on the charge of attempted abduction of a second toddler, which was thus ordered to remain on file.⁵⁰

The Sentencing:

Following the convictions of Robert Thompson and Jon Venables, Mr Justice Moreland lifted the media suppression order, enabling the young offenders to be named by the media,⁵¹ saying that it was in the public interest given the ‘horrendous circumstances of the murder’.⁵² However, he subsequently banned the media from publishing photographs or sketches of the two boys taken or drawn after their arrest in February 1993, the units in which they were being detained and their parents’ houses.⁵³

Robert Thompson and Jon Venables were sentenced to detention at Her Majesty’s pleasure, a mandatory, indeterminate, custodial sentence for children convicted of murder as provided by the Children and Young Persons Act 1933, s. 53.⁵⁴ Despite the sentence being mandatory when a child was convicted of murder, the said legislation conferred a lot of discretion to the people responsible for its execution. Consequently, since the 1933 Act stipulated that it was for the Home Secretary to determine the place of execution and minimum length of the sentence,⁵⁵ the judge told the young offenders that they would be held in custody for ‘very, very many years’ until he (the Home Secretary) was satisfied that they had ‘matured and are fully rehabilitated’.⁵⁶ Furthermore, a provision of the 1933 Act states that the decision of the Home Secretary is to be guided by the recommendations of the trial judge and the advice of

⁴⁷ ‘Bulger jurors are told to put emotions aside’, *The Times* (London, 24 November 1993) 5; ‘Bulger jury told to curb emotions’, *The Guardian* (London, 24 November 1993) 3.

⁴⁸ *ibid.*

⁴⁹ ‘Boys guilty of Bulger murder’, *The Times* (n 8); ‘Boys guilty of Bulger murder’, *The Guardian* (n 8).

⁵⁰ *ibid.*

⁵¹ ‘Boys guilty of Bulger murder’, *The Times* (n 8).

⁵² ‘Tumim attacks Bulger judge’, *The Sunday Times* (London, 5 December 1993).

⁵³ ‘Bulger judge urges debate on parenting and videos’, *The Guardian* (London, 26 November 1993) 1; ‘Judge bans pictures of Bulger case units’, *The Times* (London, 27 November 1993) 2.

⁵⁴ Children and Young Persons Act 1933, s 53; ‘Police adopt gentle touch with children’, *The Times* (n 19); ‘Boys guilty of Bulger murder’, *The Times* (n 8).

⁵⁵ Children and Young Persons Act 1933, s 53(2).

⁵⁶ *ibid.*

the Lord Chief Justice,⁵⁷ allowing all three plenty of room for discretion. According to this provision, Mr. Justice Moreland made a recommendation that the two defendants serve a minimum tariff of eight years in custody while the Lord Chief Justice advised that a 10-year tariff be imposed, saying that he agreed with the judge that ‘a much lesser tariff should apply than in the case of an adult’.⁵⁸

These recommendation were followed by a public outcry, including over 20 000 people cutting out, completing and sending to the Home Secretary, a coupon printed by *The Sun* newspaper, saying ‘Dear Home Secretary, I agree with Ralph and Denise Bulger that the boys who killed their son James should stay in jail for life’⁵⁹ and another 278 000 people signing a petition asking the Home Secretary to consider their belief that the two child offenders ‘should not be released in any circumstances and should be detained for life’.⁶⁰ Eventually, the Home Secretary, Michael Howard, set the minimum tariff at 15 years.⁶¹ He explained in his decision letters that he had discounted the time an adult murderer would have received from 25 years to 15 years, to reflect the fact that the detainees were children and he mentioned that he had taken public opinion into consideration when making this decision.⁶²

The Appeal to the Divisional Court:

In November 1994, leave was granted to Robert Thompson and Jon Venables to appeal against their sentence.⁶³ This leave was granted following the decision of the European Commission on Human Rights in the case of *Hussain and Singh*, a 16- and a 15-year-old convicted of two separate murders during the 1970s, that minimum tariffs for young offenders ordered to be detained at Her Majesty’s pleasure should not be set by the Home Secretary.⁶⁴

At the appeal, Edward Fitzgerald QC argued for Jon Venables that Mr Howard had misdirected himself that the sentences of detention at Her Majesty’s pleasure imposed on a juvenile and the mandatory life term imposed on adult murderers were

⁵⁷ Criminal Justice Act 1991, s 35; Deena Haydon and Phil Scraton, ‘Condemn a Little More, Understand a Little Less’: The Political Context and Rights Implications of the Domestic and European Rulings in the Venables-Thompson Case’ (2000) 27(3) *Journal of Law and Society* 416, 431.

⁵⁸ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Goff); ‘Bulger murder boys could be freed in eight years’, *The Times* (London, 27 January 1994) 1; Haydon and Scraton (n 57) 432-433.

⁵⁹ David James Smith, *The Sleep of Reason: The James Bulger Case* (Faber and Faber 1994) xii.

⁶⁰ Haydon and Scraton, (n 57) 432-433.

⁶¹ ‘James Bulger killers have to serve at least 15 years’, *The Times* (London, 23 July 1994) 1; ‘The due tariff’, *The Times* (London, 23 July 1994) 15.

⁶² ‘Tariff period for minors unlawful’, *The Times* (London, 7 May 1996) 33.

⁶³ ‘Bulger case challenge’, *The Times* (London, 21 December 1994) 2; Haydon and Scraton, (n 57) 434.

⁶⁴ *Hussain v United Kingdom* (1996) 22 EHRR 1; ‘Euro ruling may sway Bulger case’, *The Guardian* (London, 1 June 1994) 5; ‘Young Killers win rights on release date’, *The Guardian* (London, 17 December 1994) 5; ‘Euro rights ruling challenges Bulger killers’ sentences’, *The Times* (London, 20 December 1994) 2.

the same thing, and had erred in law in doing so.⁶⁵ This error, he maintained, had resulted to him treating the applicants like adults, which included not taking any social and psychiatric reports into account.⁶⁶ The QC also maintained that Mr Howard had mistakenly taken into account public opinion in making his decision, a factor that a judge would not allow himself to consider while performing his sentencing functions.⁶⁷ The lawyers of the two boys claimed that the Home Secretary's raising of the recommended tariff amounted to a gross breach of natural justice.⁶⁸

On the other hand, David Pannick QC for the Home Secretary maintained that it was within the discretion of the Home Secretary to determine this tariff and that the crime in question was 'exceptionally cruel and sadistic'.⁶⁹ In addition, Mr Pannick argued that the Parliament had conferred wide discretionary powers on the Home Secretary under s. 53 of the Children and Young Persons Act 1933 in relation to the sentencing of juveniles to be detained at Her Majesty's pleasure to enable him to consider the public policy issues involved, including public opinion.⁷⁰

Pill LJ and Newman J presiding in the Divisional Court held that it was the duty of the Secretary of State to 'have regard to the age of the young offenders' and the fact that they 'change beyond recognition during the running of a tariff period'.⁷¹ Accordingly, they maintained that the 15-year tariff set by the Home Secretary was inappropriate because it was fixed at this early stage, not because it was without merit in relation to its length.⁷² A sentence of detention at Her Majesty's pleasure was different from a mandatory life sentence imposed on an adult, they continued, since it required that the period of detention of children be reviewed regularly.⁷³ In addition, they held that imposing a penal element in the sentence, in the same way as it was imposed in the mandatory life sentence for adults was unlawful.⁷⁴ The Divisional Court thus quashed the Home Secretary's decisions on the tariffs imposed on Robert Thompson and Jon Venables, though the grounds related to public opinion remained unconsidered.⁷⁵

⁶⁵ 'Howard "wrong to raise term for boy killers"', *The Times* (London, 18 April 1996) 6.

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ 'Howard "entitled" to alter sentence for Bulger killing', *The Times* (London, 19 April 1996) 2.

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Goff).

⁷² *ibid.*

⁷³ Haydon and Scraton, (n 57) 434.

⁷⁴ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Goff).

⁷⁵ *ibid.*

The Appeal to the Court of Appeal:

The Home Secretary appealed against the decision of the Divisional Court to the Court of Appeal.⁷⁶ The appeal was dismissed, with the majority judges being Hobhouse and Morritt LJ and the dissenting judge Lord Woolf MR.⁷⁷

Both the majority and dissenting judges in the Court of Appeal, contrary to the decision of the Divisional Court, agreed that the existence of a penal element in the punishment of young offenders was not inconsistent with the duty of the Home Secretary to continuously review their detention and hence was not unlawful, since the intentions of Parliament when enacting the Criminal Justice Act 1991 included the existence of such an element in the sentencing. In addition, also contrary to the opinion of the Divisional Court, they held that the Home Secretary had not erred in considering the period of detention that would have been imposed on an adult facing a mandatory life sentence and discounting it due to the young ages of the defendants.⁷⁸

However, the appeal was still dismissed on the ground that there had been a failure to disclose material, namely the summary of the facts made by the judge in his report to the Home Secretary, the psychiatric report on Robert Thompson sent to him and an earlier case he relied on.⁷⁹ In addition, there was a failure to collect material that would enable the Home Secretary to form his own opinion regarding the responsibility to be attributed to the defendants, such as 'psychiatric and social inquiry reports'.⁸⁰ Finally, it was held that it was unlawful to take public opinion into account and specifically the petitions that demanded the increase of the tariff contrary to the suggestions of the judiciary.⁸¹

The Appeal to the House of Lords:

Following the decision of the Court of Appeal, the Home Secretary appealed to the House of Lords. His counsel, David Pannick QC argued that the reason he had increased the tariff was because of how 'exceptionally cruel and sadistic' the offence had been and that he had taken the young age of the defendants into consideration.⁸² Lord Goff, Lord Steyn, Lord Hope, Lord Browne-Wilkinson and Lord Lloyd were the

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² 'Howard challenges Bulger jail ruling', *The Times* (London, 2 July 1996) 2.

judges presiding over the case, with the first four agreeing to the dismissal of the appeal and the fifth dissenting.⁸³

The House of Lord agreed with the decision of the Court of Appeal that Parliament when enacting the relevant legislation⁸⁴ did not intend that the Home Secretary be precluded from including a penal element in the setting of the tariff, though he should not be entitled to ignore the young ages of defendants, which he had not done in the present case, since he reduced the tariff from 25 years that would be imposed on an adult to 15 years.⁸⁵ Similarly, the decision of the Court of Appeal that the Home Secretary was not wrong in treating the defendants as adults receiving the mandatory life sentence and discounting it, was also accepted as correct.⁸⁶

The House of Lords though, disagreed on two of the three grounds given by the Court of Appeal for its decision.⁸⁷ The lack of disclosure of the judge's summary of facts was rejected as grounds for unfairness because the things not disclosed were 'relatively slight', and so was the lack of disclosure of the psychiatric report on Robert Thompson because the report had been inconclusive regarding his state of mind and was of no help to his case.⁸⁸ The second ground on which the Court of Appeal founded its decision, the failure of the Home Secretary to obtain reports on the two boys to help him form his own opinion, was held by the House of Lords not to constitute part of his duty, since he could rely on the detailed reports and evidence that had been presented during the trial.⁸⁹

However, the House of Lords did agree that the Home Secretary should not have taken public opinion into account.⁹⁰ In his decision letters, the Home Secretary had stated that he took into account petitions and letters from the public as evidence of the public concern in relation to the matter in question.⁹¹ Lord Goff characterised those petitions and letters as 'public clamour' that was 'worthless' and concluded that it should have been ignored by the Home Secretary when making his decisions.⁹² The House of Lords maintained that the sentencing function of the Home Secretary under s. 53 should have been carried out in a judicial manner, making public opinion an

⁸³ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19).

⁸⁴ Children Act 1908, s. 04; Children and Young Persons Act 1933, s 53; Criminal Justice 1991, s 43.

⁸⁵ *R v Secretary of State for the Home Department, ex p Jon and Robert* [1997] 3 W.L.R. 23 (Lord Goff).

⁸⁶ *ibid.*

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *ibid.*

irrelevant consideration, and taking it into account made the whole exercise unlawful.⁹³ Only ‘public concern of a general nature’ could have been taken into account, but not ‘public clamour’ that a specific offender should be ‘singled out for severe punishment’, according to the judgment.⁹⁴

Lord Browne Wilkinson, also in the majority, agreed with the above rationale and added that the 15 year tariff set by the Home Secretary was also unlawful because it precluded the consideration of the welfare of the children as a factor in determining their release from detention for the whole of their childhood, which was contrary both to domestic and international law.⁹⁵ On the contrary, Lord Steyn, who was also in the majority, argued that the rationale behind the sentencing was erroneous, as was originally maintained by the Divisional Court.⁹⁶ Specifically, he maintained that the Home Secretary was mistaken in treating the sentence of detention during Her Majesty's pleasure under s. 53(1) as equivalent to the mandatory sentence of life imprisonment imposed on an adult convicted of murder, since the two sentences were very different, with the former requiring periodic review of whether detention was still justified.⁹⁷

Overall, the court held that Mr Howard followed a procedure that was ‘so seriously flawed and lacking in fairness’ that the tariff should be quashed and the case should be reviewed by the Home Secretary to set a new tariff, something that was never done.⁹⁸

The European Court of Human Rights:

The current thesis analyses the approach of the criminal justice system from the beginning of a case, meaning from the start of the police investigation into a crime, until the conclusion of the court proceedings in England and Wales. Accordingly, the proceedings of the European Court are beyond its scope. However, they are briefly included in order to offer a comprehensive account of the facts of the case, as well as potential insight into similar proceedings in the future. The European Court of Human

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ Children And Young Persons Act 1933, s 43; United Nations Convention on Human Rights, art 3(1), 40(1); *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Browne-Wilkinson).

⁹⁶ United Nations Convention on Human Rights, art 3(1), 40(1); *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Browne-Wilkinson).

⁹⁷ United Nations Convention on Human Rights, art 3(1), 40(1); *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Steyn).

⁹⁸ ‘Howard was ‘unfair’ to Bulger killers’, *The Times* (London, 31 July 1996) 1; *V v United Kingdom* (2000) 30 EHRR 121; Haydon and Scraton (n 57) 436.

Rights heard the case of Robert Thompson and Jon Venables on 6th March 1998 and concluded that the UK government was in violation of the European Convention of Human Rights on three grounds.⁹⁹

The first ground was that the applicant had been denied a fair trial contrary to Article 6 of the Convention, because being tried in public in an adult court made him and his co-defendant unable to effectively participate in the proceedings against them.¹⁰⁰ The procedure of the Crown Court trial ‘must at times have seemed incomprehensible and intimidating’ to the two young defendants, the European Court of Human Rights concluded.¹⁰¹ In addition, the European Court held that it was very improbable that either of the two defendants was ‘sufficiently uninhibited’ to consult with their counsel due to the ‘tense’ atmosphere, the ‘public scrutiny’ and ‘their immaturity and disturbed emotional state’.¹⁰² The European Court claimed that Jon Venables was suffering from post traumatic stress, which it founded upon evidence given by Dr Bailey during the trial of the two defendants that Jon was not able to participate in his defence ‘in any useful way’ due to his emotional distress.¹⁰³

The second ground was that Article 6 was breached in regards to fixing the sentence, since the Home Secretary was not independent or impartial from the executive in this function.¹⁰⁴ The third ground was that Article 5(4) was breached because of the fact that no new tariff had been set following the quashing of the previous one, which prevented the applicant from having the continuous lawfulness of his detention examined by a judicial body periodically.¹⁰⁵

As a result of the proceedings in the European Court, £15 000 were awarded to Robert Thompson as compensation and £29 000 to Jon Venables.¹⁰⁶ However, the European Court of Human Rights rejected Jon’s claim that he had suffered inhuman and degrading treatment, since neither the fact that the trial had been conducted in public nor the fact that he had been attributed criminal responsibility at the age of 10, nor the fact that his name had been published following his conviction, amounted to the necessary level of severity to breach Article 3 of the Convention of Human

⁹⁹ Haydon and Scraton (n 57) 436.

¹⁰⁰ *ibid* 436.

¹⁰¹ *V v United Kingdom* (n 98); ‘Bulger case: killers to be freed early’, *The Times* (London, 17 December 1999) 1.

¹⁰² *ibid*.

¹⁰³ *ibid*; ‘Accused boys “knew right from wrong”’, *The Times* (n 27); Boys “knew right from wrong”, *The Guardian* (n 28).

¹⁰⁴ *V v United Kingdom* (n 101); ‘Bulger case: killers to be freed early’, *The Times* (n 101); Haydon and Scraton, (n 57) 436.

¹⁰⁵ *V v United Kingdom* (n 101); Haydon and Scraton (n 57) 436.

¹⁰⁶ ‘Bulger case: killers to be freed early’, *The Times* (n 101).

Rights.¹⁰⁷ The lack of an established minimum age of criminal responsibility throughout Europe was held not to constitute a breach of Article 3 either.¹⁰⁸

Release:

The Secretary of State had to refer the cases of children detained at Her Majesty's pleasure to a parole board when the minimum length of the sentence, or tariff, was almost completed and the Board had to give its opinion on whether the detainee should be released, based amongst other things on whether they presented a risk to the public.¹⁰⁹ Accordingly, in 2001 a Tariff Recommendation hearing was held for Robert Thompson and Jon Venables, after eight years of detention.

At the hearing, Lord Woolf said that both young offenders had shown significant progress academically and emotionally, genuine remorse for their crime and no further signs of violence.¹¹⁰ Accordingly, they were evaluated as constituting a low risk for re-offending.¹¹¹ In addition, he noted, they had turned 18 and were due to be transferred to a Young Offenders Institution, which would result in any progress achieved thus far during their detention being undone, since they would come into contact with many hardened criminals, in conditions similar to those in adult prisons.¹¹² He thus concluded that 'further detention would not serve any constructive purpose' and that due to their good behaviour they were entitled to a reduction in the tariff to eight years, even though the final decision to release them lay with the Parole Board.¹¹³ The Parole Board, followed the judge's recommendations and set the tariff to expire immediately, since by the time it examined the case and made the necessary arrangements for their release it would be after the 21st February 2001, the official date of expiry of an eight-year tariff.¹¹⁴

Robert Thompson, Jon Venables and the Criminal Justice System

The 1990s was a decade of change for British criminal justice policy. The decarceration and welfare principles of the 1980s were a thing of the past and the

¹⁰⁷ *V v United Kingdom* (n 101); *ibid*; Haydon and Scraton, (n 57) 436-437.

¹⁰⁸ Haydon and Scraton, (n 57) 437.

¹⁰⁹ Criminal Justice Act 1991, s 35(2); Haydon and Scraton, (n 57) 431.

¹¹⁰ *Re Robert and Another (tariff recommendations)* [2001] 1 All ER 737 (CA).

¹¹¹ *ibid*.

¹¹² *ibid*.

¹¹³ *ibid*.

¹¹⁴ *ibid*.

punishment model was returning in force.¹¹⁵ Simultaneously, research on children and child psychology had developed to a very considerable extent and were still advancing rapidly.¹¹⁶ The examination of the late 20th century case study of Robert Thompson and Jon Venables reveals associations between their treatment by the sections of the criminal justice system under examination and all four concepts of the child that are of various strengths, resulting in different movements in terms of both direction and intensity or steepness.

Adult child:

Associations between the treatment of the two boys by the criminal justice system, more specifically the court, and the concept of the Adult Child exist because, despite the existence of a juvenile justice system, Robert and Jon were tried in an adult court before a judge and jury, as is required by legislation that prescribes that young offenders committing grave crimes cannot be tried in juvenile courts.¹¹⁷ Like the case of Mary Bell above, this evidence of associations is weak, because it is of a general nature and originates in legislation that pre-dates the current case by many decades. However, the fact that the case constitutes a practical application of this legislation that prescribes that children who commit homicide are to be treated by the court more like adults than almost any other child offenders cannot be entirely ignored. Accordingly, it is argued that this application of the law in the current case, although mandatory, still leads to some weak associations with the said concept. In practice, this meant that all relevant rules that applied to adults also applied to them, including that they were not allowed any psychiatric treatment while in custody prior to their trial, in case it prejudiced their pleas.¹¹⁸ However, again identically to the case of Mary Bell, the application of the *doli incapax* presumption, alongside the general nature of the evidence, marks the limit of these associations, rendering them quite weak.

It could be argued that the way in which the Home Secretary carried out the sentencing of the young offenders constitutes further evidence of associations with the concept of the Adult Child, since under s.53 of the Children and Young Persons Act

¹¹⁵ Andrew Rutherford, *Growing out of crime* (2nd edn, Waterside Press 1992) 15; Julia Fionda, *Devils and Angels: Youth Policy and Crime* (Hart Publishing 2005), 38-40, 165-166.

¹¹⁶ Hugh Cunningham, *Children and Childhood in Western Society since 1500*; (2nd edn, Pearson Longman 2005), 176-177; Alison James and Alan Prout, *Constructing and Reconstructing Childhood* (2nd edn, Routledge 1997), 53.

¹¹⁷ Magistrates' Courts Act, 1980, s 24(1B).

¹¹⁸ Haydon and Scraton (n 57) 422.

1933, he had the discretion to determine the length and place of the execution of the sentence. Even though the Home Secretary expressly stated that the sentence of the young offenders was discounted to reflect the fact that they were children, he still increased the sentence by eight years from what the trial judge recommended, five from what the Lord Chief Justice advised, because, according to his own explanation, of the severity of their crime that needed to be punished.¹¹⁹ The concept of punishment prevailing over other considerations, such as the interests of the young offenders, suggests the adoption of an adult oriented approach. However, even though the Home Secretary was acting in a quasi-judicial capacity, political considerations likely dictated his conduct, since he himself admitted that he had taken public opinion into account when making his decision.¹²⁰ Accordingly, these associations with the concept of the Adult Child, although technically within the field of the criminal justice system, in reality belong to the field of politics.

Unformed Child:

Associations with the concept of the Unformed Child are strong in the 1993 case. The evidence of their existence, as in the previous case studies, consists partly of the application of the capacity test as a result of the *doli incapax* presumption. Like the Mary Bell case, the use of two psychiatrists in order to rebut the presumption and additionally the evidence of the young defendants' teacher, another professional concerned with their maturity and development, as well as the references of these professionals to the capability of the boys to make 'basic moral judgments' that they believed even a child half their age could make, provide more specific evidence that the associations are with the scientific configuration of the concept.¹²¹

Moreover, the trial judge set shorter hearing periods daily, lasting from 10.30 am to 3.30 pm, a concession that provides further evidence of associations with the said concept of the child because the judge specified that the reason for doing so was that Robert Thompson and Jon Venables had limited capacity to concentrate for long periods of time due to their young age, thus recognising that children have limited capacities in certain areas that have yet to reach the levels of the equivalent capacities

¹¹⁹ 'James Bulger killers have to serve at least 15 years', *The Times* (n 61); 'Bulger killers to appeal for freedom early next year', *Sunday Times* (London, 23 July 2000).

¹²⁰ *ibid.*

¹²¹ Accused boys "knew right from wrong", *The Times* (n 27); 'Boys "knew right from wrong"', *The Guardian* (n 28).

in adults, a notion supported within the concept of the Unformed Child.¹²² Other evidence of these associations exists in the discussion of the sentence of the young offenders. Both the trial judge and the Lord Chief Justice suggested a minimum sentence for them that was shorter than it would be for an adult because they were children, a suggestion that implies associations with both the concept of the Unformed and the Romantic Child.¹²³ The latter is discussed below. The associations with the Unformed Child are confirmed when it is noted that the judges' suggestions took the developing maturity of the young offenders into account. The judges considered that the length of detention of the young offenders had to depend on their maturity, signifying that maturity was a gradual process that they had yet to complete due to their young age.¹²⁴ Moreover, the Court of Appeal maintained that the circumstances of children change to a much greater extent than those of adults and hence their detention must not be left without review for 12 years, again referring to the fact that children grow and develop with age.¹²⁵ Similarly, Lord Browne-Wilkinson in the House of Lords argued that the welfare and hence 'progress and development (...) whilst detained' of child offenders must be taken into serious consideration throughout their detention, since they are subject to vast changes due to growth and development.¹²⁶ It is noteworthy that the approach of all three courts was very similar, despite the fact that the decisions of the two appellate courts were made years later, when scrutiny and condemnation by the public were not as intense as during the original trial and sentencing and they were working from transcripts rather than with actual, emotion filled witnesses.

Additionally, the judge, who was responsible under the legislation to make a suggestion as to the minimum length of the detention period,¹²⁷ maintained that the detention period had to last until the completion of the rehabilitation of the young offenders, suggesting that a crucial factor to altering their offending behaviour was exposure to positive influences ensured during their detention,¹²⁸ factors that would be present given that the places chosen for this detention would offer the young

¹²² 'Bulger case boys blame each other', *The Times* (n 16).

¹²³ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n19) (Lord Goff); 'Bulger murder boys could be freed in eight years', *The Times* (n 58); Haydon and Scraton (n 57) 432.

¹²⁴ 'Boys guilty of Bulger murder', *The Times* (n 8); 'Boys guilty of Bulger murder', *The Guardian* (n 8).

¹²⁵ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Goff).

¹²⁶ *ibid* (Lord Browne-Wilkinson).

¹²⁷ Children Act 1933, s 53.

¹²⁸ 'Boys guilty of Bulger murder', *The Times* (n 8); 'Boys guilty of Bulger murder', *The Guardian* (n 8).

offenders education, psychiatric help, recreational activities and ‘stability’.¹²⁹ Furthermore, the fact that the Parole Board in 2000 decided that the young offenders were not to be sent to prison when they turned 18, which was the customary process, but were to remain in local authority care until they were 19 to avoid potentially harmful effects on their rehabilitation through exposure to negative influences further strengthens the associations.¹³⁰ This decision shows some continuation and stability in the approach of the court over the years, since it is alongside the actions of the trial court, despite taking place eight years later when the outrage of the public had calmed down to an extent. The trial judge also seemingly accepted the significant role of surrounding factors in the formation of the behaviour of children, as prescribed by the concept of the Unformed Child when he partially attributed the violent behaviour of Robert and Jon to exposure to violent video films.¹³¹

Finally, following the confinement of Robert and Jon in their secure units, an extensive background check was conducted on them and their families to establish possible problems and traumas in order to be able to treat them accordingly.¹³² This reveals the extensive use of research and the discipline of psychology in treating offending behaviour in children, which is another element within the concept of the Unformed Child.

Therefore, associations with the scientific version of the concept of the Unformed Child in the 1993 case study are strong, with detailed attention paid by the court to notions within that concept.

Romantic Child:

Associations between the treatment of Robert Thompson and Jon Venables within the criminal justice system and the concept of the Romantic Child are also significant. Throughout the entire process there is evidence of attempts to handle the children with particular care, revealing the belief that they are especially vulnerable. For instance, Detective Superintendent Albert Kirby, the officer leading the police investigation into the Bulger case, said that the interviews of the young suspects with the police could not be ‘rushed’.¹³³ He explained that the police had to be ‘very gentle

¹²⁹ ‘Treatment offers hope return to outside world’, *The Times* (London, 25 November 1993) 4.

¹³⁰ ‘Bulger killers spared prison’, *The Times* (London, 5 June 2000).

¹³¹ ‘Boys guilty of Bulger murder’, *The Times* (n 8); ‘Boys guilty of Bulger murder’, *The Guardian* (n 8).

¹³² ‘Bulger killer “responding well” to regime of rehabilitation’, *The Times* (London, 31 July 1996) 2.

¹³³ ‘Boys, 10, held over murder’, *The Guardian* (London, 20 February 1993) 1; Nigel Bunyan, ‘10-year-old murder suspects held longer’, *Daily Telegraph* (London, 20 February 1993) 1.

and very soft' with child defendants in general and Robert and Jon in particular, putting aside any thoughts of their crimes and their severity and always remembering that they were only 10 years old.¹³⁴ Moreover, Robert and Jon were under the constant supervision of two social workers, who sat very close to them during their trial and they had been brought to the courthouse prior to the day of their trial to be familiarised with the surroundings.¹³⁵ Moreover, another concession made for Robert and Jon was that their parents sat very close to them in court.¹³⁶ The Children and Young Person's Act 1963, s.25(1) gives the court discretion to require the parents or guardians to attend the proceedings against their child, if it "thinks it desirable". Accordingly the court in question made the relevant decision for the parents of the young defendants to attend and also decided to sit them close to them. All these concessions, reveal that the court recognised the vulnerability of the young offenders and exhibited its desire to protect them by making them feel as safe and comfortable as possible, all notions within the concept of the Romantic Child.

Furthermore, a desire to protect the young offenders was evident in their sentencing. The trial judge and Lord Chief justice, who were given discretion by the legislation to recommend a minimum period of detention for children being sentenced under The Children Act 1933, s.53, suggested a minimum sentence for them that was far shorter than what the legislation prescribes in the same circumstances for an adult, which was life imprisonment,¹³⁷ because they were children.¹³⁸ As mentioned above, this approach is associated with the concept of the Unformed Child; however, it is also associated with the concept of the Romantic Child because it is clear that it calls for leniency due to the young ages of the offenders and hence a desire to protect them from the harsh punishments of the adult criminal justice system. Unlike the preceding case of Mary Bell, this leniency cannot be attributed to their gender, since the criminal justice system has a tendency to attribute male offenders, unlike female offenders, with full culpability and responsibility for their actions.¹³⁹

In addition the evidence indicates that this approach of the court was lasting over time, since four years later, Lord Hope during the House of Lords appeal maintained

¹³⁴ *ibid.*

¹³⁵ 'Glassy and expressionless, the boys squirmed and stared at the ceiling', *The Times* (n 10).

¹³⁶ *ibid.*

¹³⁷ Murder (Abolition of Death Penalty) Act 1965, s 1.

¹³⁸ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Goff); 'Bulger murder boys could be freed in eight years', *The Times* (n 58); Haydon and Scraton (n 57) 432.

¹³⁹ Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Open University Press 1987) 40, 89, 100, 114; Pat Carlen (ed) and Anne Worrall (ed), *Gender, Crime and Justice* (Open University Press 1987) 82-83, 90.

that there was a general ‘requirement to keep the protection and welfare of the child under review throughout the period while he is in custody’, hence emphasising the importance of protecting child offenders and their best interests.¹⁴⁰ Likewise, the secure units in which the young offenders were held, which were available for ‘violent, disturbed and dangerous youngsters’ in general, contained ‘classrooms, workshops, gyms and gardens’.¹⁴¹ This reveals associations with the concept of the Unformed Child, as mentioned above. However, it also reveals an attempt to provide these children with an environment befitting children, an environment in which they could hold onto their childhoods as much as possible under the circumstances, which is a notion within the concept of the Romantic Child.

On the other hand, the trial judge decided to allow the media to name the young offenders following their conviction because he believed it to be in the public interest given the ‘horrendous circumstances of the murder’, hence not affording them the protection of anonymity.¹⁴² This approach reduces the strength of associations with the concept of the Romantic Child. However, the judge also prohibited the press from disclosing the names of the young defendants during their trial, to protect them from the stigma attached to criminal charges in case they were cleared of them,¹⁴³ and following their conviction held that the press was not entitled to publish any photographs or sketches of them taken or drawn after their arrest, or any details or photographs revealing the locations in which they were detained, in order to protect them from undue publicity and possible hostility and physical violence, hence continuing to afford a degree of protection despite the publication of their names.¹⁴⁴

Therefore, associations with the concept of the Romantic Child are evident throughout the criminal justice process, starting with the police and ending with their detention and release. The approach of the court regarding the publicity of the case does weaken these otherwise substantial associations, though only to a limited extent.

Savage Child:

Evidence of associations between the treatment of Robert Thompson and Jon Venables by the criminal justice system, throughout the police investigation and their

¹⁴⁰ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Hope).

¹⁴¹ *ibid.*

¹⁴² ‘Tumim attacks Bulger judge’, *The Sunday Times* (n 52).

¹⁴³ ‘Boys go on trial for murder of 2 year old’, *The Times* (n 8); ‘Glassy and expressionless, the boys squirmed and stared at the ceiling’, *The Times* (n 10).

¹⁴⁴ ‘Bulger judge urges debate on parenting and videos’, *The Guardian* (n 53); ‘Judge bans pictures of Bulger case units’, *The Times* (n 53).

trial and sentencing processes, and the concept of the Savage Child is potent, though not extensive. It is limited to a few words said on one occasion by the police officer in charge of the investigation and the words of the trial judge following the conviction of the two children. More specifically, Detective Kirby characterised the two boys as ‘wicked’, with ‘a high degree of cunning and evil’ and described Jon’s smile towards Robert as ‘terrible chilling (...) cold (...) evil’, revealing their guilt and belief that they would get away with their crime.¹⁴⁵ The trial judge following the conviction of the young offenders said that they had committed actions of ‘unparalleled evil and barbarity’ and engaged in behaviour that was ‘both cunning and very wicked’.¹⁴⁶

Therefore, the associations with the concept of the Savage Child are restricted due to the fact that evidence of such associations exists only on a very limited number of occasions. However, on the occasions that it does exist, the words used, clearly and unequivocally attribute the young offenders with characteristics within the concept of the Savage Child. The fact that the young offenders were boys makes this approach less surprising, since boys are customarily viewed as more energetic, brutal and violent than girls.¹⁴⁷

Conclusions:

The 1993 case study of Robert Thompson and Jon Venables reveals strong and extensive associations with the concept of the Unformed Child. It also shows substantial associations with the concept of the Romantic Child and notable, albeit limited, associations with the concept of the Savage Child. Finally, associations with the concept of the Adult Child are present but weak, restricted to evidence that is solely of a general nature, constituting the mandatory application of legislation that significantly predates the case. These findings suggest that the movements of associations in relation to the concepts of the Romantic and Adult Child remain level, whereas movements regarding the concepts of the Unformed and Savage Child continue to move upwards since the late 19th century. Overall, there is a continuation of all the movements established in the case of Mary Bell. It is important to note that the approaches of the trial court, the Court of Appeal and the House of Lord were

¹⁴⁵ ‘Detective tells of boy’s ‘terrible chilling smile’, *The Guardian* (London, 25 November 1993) 2.

¹⁴⁶ ‘Boys guilty of Bulger murder’, *The Times* (n 8); ‘Boys guilty of Bulger murder’, *The Guardian* (n 8).

¹⁴⁷ ‘Slaughter of innocence’ *The Sunday Times* (London, 28 November 1993); Jean-Jaque Rousseau, *Émile* (First published 1762, Barbara Foxley tr, The Kindle Edition) 35, 390-393; Mary Wollstonecraft, *Vindication of the Rights of Woman* (A Public Domain Book, 1792, 97).

similar, revealing a certain lingering stability in the system, despite the fact that emotions run much higher during the trial, both in terms of public and political reactions, as well as the court being faced with the actual witnesses, victims and defendants as opposed to reading a transcript.

Robert Thompson, Jon Venables and the Press

This section examines the strength and movements of associations between the treatment of Robert Thompson and Jon Venables by the press and the concepts of the child and makes comparisons with the approach of the relevant sections of the criminal justice system towards them. Furthermore, it examines the features of the 1990s national British press, namely its intense competitiveness, politicisation and increased use of sensationalism, and their influence on those associations. The analysis shows that the approach of the press towards Robert and Jon varied depending on the type of newspaper observed, though both boys were treated in exactly the same way to each other in all the sources examined. Associations with the concept of the Unformed Child are particularly strong in the broadsheet press, albeit also noteworthy in the tabloid press. On the other hand, associations with the concept of the Savage Child are particularly strong in the tabloid press, albeit also present in the broadsheet press. Associations with the concept of the Romantic Child are present, though relatively weak, with evidence of their existence mostly found in the broadsheet rather than the tabloid press. Finally, associations with the concept of the Adult Child are entirely absent.

Evidence of the existence of associations with the concept of the Unformed Child exists in relation to various characteristics attributed to children within that concept, starting with the fact that children are born neutral. The *Times* argued that all children were born with a ‘capacity for evil and a readiness to be good’,¹⁴⁸ the *Observer* maintained that a child was not ‘an angel or a devil’, but born with elements of both,¹⁴⁹ and the *Guardian* claimed that children who kill are not ‘evil monsters’.¹⁵⁰ As far as tabloids are concerned, the *Daily Mirror* contended that ‘children who kill were

¹⁴⁸ ‘Janet Daley’, *The Times* (London, 25 November 1993) 18.

¹⁴⁹ ‘Encounters: Why little angels become monsters – each day seems to bring shocking new cases of children being more evil than ever before. Our reporter questions the judgment and looks for reasons’, *The Observer* (London, 28 March 1993) 55.

¹⁵⁰ ‘Child killers “not monsters”’, *The Guardian* (London, 15 December 1993) 2.

made, not born'¹⁵¹ and the *Sun* reasoned that a sense of right or wrong is not inherent, but acquired in children.¹⁵² Evidence of the notion that children develop morality gradually as they grow older is also present in both types of newspapers, but is more extensive in the broadsheets. For instance, the *Sunday Times* characterised Robert and Jon as not yet 'fully formed (...) moral, emotionally sentient individuals'¹⁵³ and the *Guardian* and the *Daily Telegraph* maintained that the behaviour of the young offenders fell short of the development evident in adult behaviour and referred to parts of Robert's police testimony as being 'clearly a child talking'.¹⁵⁴ Moreover, the *Times* focused on the need to determine the state of development and maturity of the young offenders when reporting the judge's summing up speech,¹⁵⁵ the *Daily Telegraph* repeatedly cited the law on the age of criminal responsibility and the *doli incapax* presumption¹⁵⁶ and the *Sun* briefly mentioned that children reason differently from adults and hence their imaginations need to be directed correctly to avoid tragedies.¹⁵⁷ In a more general approach, the *Daily Telegraph* mentioned the developmental theories of Piaget and Kohlberg, saying that even if moral teachings take place, children cannot internalise them before they acquire a full understanding of moral principles, an event that occurs gradually with growth and maturity.¹⁵⁸

Finally, comment on the effect of exogenous factors on the moral development of children was also present in similar ratio in both types of newspapers. In general, the *Times* stated that children characterised as evil by the press were in fact the 'product of sad upbringing', children who were 'taught cruelty' and thus did not know any other means of communication¹⁵⁹ and the *Guardian* maintained that violence by children could be the result of various 'social or domestic' events, more likely to occur when a child had 'suffered consistent cruelty'¹⁶⁰ and that children who killed were the result of abuse, loss, violence, rejection, mental illness and drugs.¹⁶¹ More specifically, the broadsheets as well as the *Sun* and the *Daily Mirror* attributed the

¹⁵¹ 'Home for rest of their childhood', *Daily Mirror* (London, 25 November 1993) 21.

¹⁵² 'A grim warning of nightmares to come', *The Sun* (London, 25 November 1993) 9.

¹⁵³ 'Yes, this is an injustice to the Bulger killers', *Sunday Times* (London, 31 October 1999).

¹⁵⁴ Nigel Bunyan, 'Boys lied and blamed each other, says QC', *Daily Telegraph* (London, 3 November 1993) 3; 'Boy "balked at dead child's bloodstains": Accused denies touching James for fear of big laundry bill', *The Guardian* (London, 17 November 1993) 6; 'Moreover: Beyond Good and Evil', *The Guardian* (London, 26 November 1993) 5.

¹⁵⁵ 'Bulger jurors are told to put emotions aside', *The Times* (n 47).

¹⁵⁶ Terrence Shaw, '10 the youngest age for children to face criminal charges', *Daily Telegraph* (London, 20 February 1993) 2; Robert Porter, 'Boys aged ten accused of the abduction and murder of two-year old James Bulger', *Daily Telegraph* (London, 21 February 1993) 1; Robert Porter, 'Liverpool's Murder... a nation's shame: United by horror and loathing', *Daily Telegraph* (London, 21 February 1993) 16-17.

¹⁵⁷ 'A grim warning of nightmares to come', *The Sun* (n 150).

¹⁵⁸ Raj Persaud, 'Why a child will kill', *Daily Telegraph* (London, 25 November 1993) 21.

¹⁵⁹ 'Commentary: Society's false sense of security', *The Times* (London, 19 February 1993) 20.

¹⁶⁰ 'Puzzled child care experts view killing as a one-off', *The Guardian* (London, 25 November 1993) 3.

¹⁶¹ 'Childcare: Just too young to know', *The Guardian* (London, 11 September 1996) 6.

violent behaviour of children in general and Robert and Jon in particular, to their family situations, including possible abuse and neglect that they suffered and the lack of proper teaching and positive influences from their parents.¹⁶² The broadsheets also attributed the violent behaviour to the moral vacuum of society that included the ‘grave social and economic neglect’ of children and the ‘society at large’ not teaching them ‘right and wrong’,¹⁶³ as well as the lack of instruction on morality by the church.¹⁶⁴ A brief mention of the latter is also found in the *Sun*.¹⁶⁵ Additionally, the routine, frequent exposure of children to violence was cited as a factor for their violent, criminal behaviour by both types of newspapers, whether that exposure was via violent films on television or videos, video games or hooliganism at football matches.¹⁶⁶ Lastly, there is the insistence of both the tabloids and the broadsheets on the possibilities for rehabilitation of the young offenders, signifying the belief that if positive instruction is given to children, their bad behaviour could change. This approach included references to Mary Bell to argue that ‘rehabilitation is possible’, mentions of psychiatric opinions that ‘the right kind of care’ can enable children to ‘salvage something of their own lives’ and reports of the good progress Robert and Jon were making in custody in response to their education and therapy.¹⁶⁷

Gender differences do not seem to affect the approach of the press to a great extent in relation to the concept of the Unformed Child, since Mary Bell was placed

¹⁶² ‘Encounters’, *The Observer* (n 147); ‘Little angels, little devils’, *The Times* (London, 10 February 1994) 14; Christina Hardymont, ‘The finger points at the parents’, *Daily Telegraph* (London, 21 February 1993) 16; Victoria Macdonald, ‘Merseyside hardships run deeper’, *Daily Telegraph* (London, 21 February 1993) 17; Bright kids so cruel’, *The Sun* (London, 22 February 1993) 4; ‘Break-up of family leads kids to crime’, *The Sun* (London, 25 November 1993) 28; ‘A grim warning of nightmares to come’, *The Sun* (n 152); ‘There’s no remorse? He does not accept he had done wrong’, *The Times* (London, 25 November 1993) 3; ‘Bully who sucked thumb for comfort’, *Daily Mirror* (London, 25 November 1993), 24-25; ‘Moment their masks cracked’, *The Times* (London, 25 November 1993) 1; Elizabeth Grice and Nigel Bunyan, ‘Accused little boys with ties and tidy hair’, *Daily Telegraph* (London, 2 November 1993) 1; Nigel Bunyan, ‘What kind of boys murdered James?’, *Daily Telegraph* (London, 25 November 1993) 4; ‘Devil himself couldn’t have made a better job of raising two fiends’, *The Sun* (London, 25 November 1993) 28.

¹⁶³ Nigel Bunyan, ‘Hunt for James Bulger’s killers focuses on boys seen in video’, *Daily Telegraph* (London, 16 February 1993) 3; Hardymont, *Daily Telegraph* (n 162); Valerie Elliot, ‘Jamie’s legacy: a new morality’, *Sunday Telegraph* (London, 28 November 1993) 18; ‘Church must lead in battle for souls’, *The Times* (London 27 November 1993) 5; ‘Holes in moral fabric’, *The Times* (London, 3 December 1993) 20.

¹⁶⁴ ‘Church must lead in battle for souls’, *The Times* (n 163); ‘Holes in moral fabric’, *The Times* (n 163); Phillip Johnston, ‘Challenge to the Church’, *Daily Telegraph* (London, 17 February 1993) 3; Persaud, *Daily Telegraph* (n 156).

¹⁶⁵ ‘A grim warning of nightmares to come’, *The Sun* (n 152).

¹⁶⁶ Johnston, ‘Challenge to the Church’, *Daily Telegraph* (n 162); Hardymont, *Daily Telegraph* (n 162); Anthea Hall, ‘Mary’s fears come home to roost’, *Daily Telegraph* (London, 21 February 1993) 17; Nigel Bunyan, ‘Boys guilty of Bulger murder: Detention for a ‘very very long time’ for killers aged 11’, *Daily Telegraph* (London, 25 November 1993) 1; George Jones and Nigel Bunyan, ‘Inquiry urged on violent films’, *Daily Telegraph* (London, 25 November 1993) 1; ‘A grim warning of nightmares to come’, *The Sun* (n 152); ‘My £40m killer video: Ban on boasting tycoon’s Bulger horror’, *Daily Mirror* (London, 26 November 1993,) 1; ‘I was born a weirdo’, *Daily Mirror* (London, 26 November 1993) 4, 5; ‘Video in death case No 2’, *Daily Mirror* (London, 26 November 1993) 4; ‘Church must lead in battle for souls’, *The Times* (n 163); ‘Holes in moral fabric’, *The Times* (n 163); John Troup and Guy Patrick, ‘Horror video replay: chilling links between James Murder and tape rented by killer’s dad’, *The Sun* (London, 25 November 1993) 2-3.

¹⁶⁷ ‘Leading Article: Lessons of an avoidable tragedy’, *The Guardian* (London, 25 November 1993) 25; Guy Patrick, ‘File on Child killer Mary Bell: Jamie’s parents will end up with own life sentence’, *The Sun* (London, 22 February 1993) 4; ‘Dark and savage from the cradle’, *Daily Mirror* (London, 26 November 1993) 7; ‘Even child killers deserve justice’, *Daily Mirror* (London, 22 February 1996) 6; ¹⁶⁷ ‘Bulger killer “responding well” to regime of rehabilitation’, *The Times* (n 132); ‘Bulger youth may come out decent’, *The Times* (London, 6 October 1998) 8.

more or less on an equal footing with the two boys in the current case study. For example, an article in the *Daily Telegraph* concluded that the two boys ‘match the model of Mary Bell’ because all three came from a background of ‘social deprivation’ that went beyond broken homes and none of them were evil but only ‘incapable of making contact with the world in which the rest of us live’.¹⁶⁸

However, evidence of associations with the concept of the Savage Child is more prominent within the 1993 tabloid press than the evidence of associations with the concept of the Unformed Child. Specifically, the *Daily Mirror* referred to Robert and Jon as ‘warped killers’ with ‘sick minds’,¹⁶⁹ ‘freaks of nature’,¹⁷⁰ ‘evil beasts’,¹⁷¹ and ‘the monsters who murdered James Bulger’.¹⁷² It also referred to Robert as a ‘cruel bully’, who was known by his neighbours as ‘a weird little bastard’¹⁷³ and posed the question: ‘how can anyone be so evil?’ in one of its titles, which was followed by an article that referred to the ‘sickened detectives’, who were ‘shocked (...) beyond words’ by the crime of the two boys.¹⁷⁴ In addition, the newspaper on another occasion featured a picture of each accused boy on its front page, inscribing it ‘the faces of normal boys but they had hearts of unparalleled evil. Killing James gave them a buzz’¹⁷⁵ and on another occasion, it referred to their impending imprisonment as their being ‘caged’, insinuating that they were animals.¹⁷⁶ Similarly, the *Sun* described both young offenders as ‘monsters’,¹⁷⁷ ‘bastards’,¹⁷⁸ ‘fiends’,¹⁷⁹ ‘urchins’,¹⁸⁰ ‘scallies’,¹⁸¹ and an ‘evil pair’.¹⁸² An article emphasised their criminal behaviour by placing the words ‘stole’, ‘threw’, ‘swore’, ‘jumped’, ‘stoned’ and ‘tortured’ in bold, capital letters.¹⁸³ Furthermore, the view of a psychologist claiming that the crime was ‘spurred on by twisted sex fantasy’ was reported, despite the fact that no such thing was proven at trial or subsequently by any official authorities.¹⁸⁴ Moreover, the bad

¹⁶⁸ ‘The girl killer who returned to glow’, *Daily Telegraph* (London, 26 November 1993) 21

¹⁶⁹ ‘Home for rest of their childhood’, *Daily Mirror* (n 151).

¹⁷⁰ ‘Freaks of nature’, *Daily Mirror* (London, 25 November 1993) 1.

¹⁷¹ ‘How can anyone be so evil’, *Daily Mirror* (London, 16 February 1993) 2.

¹⁷² ‘Judge Blames’, *Daily Mirror* (London, 25 November 1993) 4.

¹⁷³ ‘Bully who sucked thumb for comfort’, *Daily Mirror* (n 162).

¹⁷⁴ ‘How can anyone be so evil’, *Daily Mirror* (n 171).

¹⁷⁵ ‘ibid.

¹⁷⁶ ‘Judge Blames’, *Daily Mirror* (n 172).

¹⁷⁷ ‘Heartbreak of James’ mum’, *The Sun* (London, 16 February 1993) 6.

¹⁷⁸ John Troup, ‘For goodness sake hold tight to your kids’, *The Sun* (London, 16 February 1993) 10-11.

¹⁷⁹ ‘Devil himself couldn’t have made a better job of raising two fiends’, *The Sun* (n 162).

¹⁸⁰ John Troup and Kevin Ludden, ‘The Urchins: No fathers..mums on the booze..sad home life of boys, 10, in Jamie quiz’, *The Sun* (London, 20 February 1993) 1, 4, 5.

¹⁸¹ ‘Join our gang cos we’re gonna kill someone’, *The Sun* (London, 25 November 1993) 27.

¹⁸² John Troup and Guy Patrick, ‘One sobbed...the other stared: Gallery cheer as jury say evil pair are guilty’, *The Sun* (London, 25 November 1993) 4-5.

¹⁸³ ‘Join our gang cos we’re gonna kill someone’, *The Sun* (n 181).

¹⁸⁴ ‘Spurred on by twisted sex fantasy’, *The Sun* (London, 25 November 1993) 2.

behaviour of the parents of Robert and Jon was used by the *Sun* to paint an even worse picture of them as unruly, uncontrollable ‘urchins’, troublemakers and bullies, rather than to explain their behaviour.¹⁸⁵ Robert was further characterised by the *Sun* as a ‘killer,’ a ‘plump-faced monster’,¹⁸⁶ a ‘chubby skinhead’,¹⁸⁷ a ‘liar’ and a ‘cunning bully’.¹⁸⁸ His action to place a flower on the shrine for James was described as ‘callous’, further revealing his evil nature,¹⁸⁹ and he was said to have smiled ‘an evil little smile from an evil little boy’ and to have displayed ‘true wickedness’.¹⁹⁰ In addition, he was said to have displayed no remorse for his actions, since he showed no feelings during the trial, except a few tears that lasted for a mere 10 seconds and were not for James but for himself.¹⁹¹

Similar evidence in the broadsheet press is also present but is limited in scope and extent, since it is found on fewer occasions and mostly in the reports of comments of various persons talking about the young offenders. The *Times* referred to the young offenders as ‘glassy and expressionless’¹⁹² and described the case as ‘one of the worst seen in Britain’.¹⁹³ The *Guardian* emphasised the fact that the trial judge described the conduct of the young offenders as ‘unparalleled evil’, since it was included in the title of the article reporting the judge’s statement following their conviction, though it was made clear that this was the view of the judge and not the newspaper itself.¹⁹⁴ The *Daily Telegraph* characterised the young offenders as ‘freaks’, ‘evil’,¹⁹⁵ ‘whining, lying, calculating’ and ‘animals’.¹⁹⁶ The newspaper further titled an article ‘Boy A ‘is a cocky, confident, devious, arrogant little liar’’, though it was specified that it was the defence lawyer of Boy B who was making the claim.¹⁹⁷ The trial judge was quoted saying that Robert and Jon had engaged in behaviour that was ‘cunning and very wicked’ and that their killing of James exhibited ‘unparalleled evil and barbarity’.¹⁹⁸ Similarly, the leading police officer of the case was quoted describing them as

¹⁸⁵ Troup and Ludden, *The Sun* (n 182).

¹⁸⁶ John Troup, ‘So evil, so young: This boy and his pal murdered James Bulger, 2 and will be locked away for 20 years’, *The Sun* (London, 25 November 1993) 1.

¹⁸⁷ Troup and Patrick, ‘One sobbed...the other stared: Gallery cheer as jury say evil pair are guilty’, *The Sun* (n 182).

¹⁸⁸ John Troup and Guy Patrick, ‘He lied as easily as he breathed: cunning bully made friends with weirdo after punch-up in playground’, *The Sun*, (London, 25 November 1993) 25.

¹⁸⁹ ‘Monster’s 50p posy for victim’, *The Sun* (London, 25 November 1993) 2.

¹⁹⁰ ‘Guilty tears lasted 10 seconds: Arrogance of they boy who wouldn’t admit he did wrong’, *The Sun* (London, 25 November 1993) 29.

¹⁹¹ *ibid.*

¹⁹² ‘Glassy and expressionless, the boys squirmed and stared at the ceiling’, *The Times* (n 10).

¹⁹³ ‘Anatomy of a Child Murder Hunt’, *The Times* (London, 17 February 1993) 12.

¹⁹⁴ ‘Boys guilty of Bulger murder’, *The Guardian* (n 8).

¹⁹⁵ ‘Chilling smile that shocked detectives’, *Daily Telegraph* (London, 25 November 1993) 4.

¹⁹⁶ Elizabeth Grice, ‘Evil killers look in vain for an expression of sympathy’, *Daily Telegraph*, (London, 25 November 1993) 4.

¹⁹⁷ ‘Boy A ‘is a cocky, confident, devious, arrogant little liar’, *Daily Telegraph* (London, 23 November 1993) 7.

¹⁹⁸ Bunyan, ‘Boys guilty of Bulger murder’, *Daily Telegraph* (n 164).

‘wicked beyond any expectations’ with ‘a high degree of cunning and evil’¹⁹⁹ and a police officer was quoted recalling Robert giving Jon a ‘terrible chilling smile’.²⁰⁰

The publication of opinion articles related to the evil of children also constitutes evidence of associations with the concept of the Savage Child found in both types of newspapers. The *Times* published an article titled ‘Beast that hides in the infant breast’ that stated that there were children who were ‘simply bad’ from a very young age, that the ‘innocence of children’ was ‘one of the 20th century’s greatest misconceptions’ and that James’ murder was the result of innate evil that should be punished as severely as possible.²⁰¹ An article in the *Sun* also maintained that children can sometimes be ‘villains’ and that they can show cruelty to small animals, as well as kill younger children.²⁰² More specifically on Robert and Jon, an article mentioned that they went to a video store and were laughing as they were watching a *Bugs Bunny* cartoon the day after they killed James, suggesting that they were remorseless, unfeeling and evil.²⁰³ Similarly, statements of opinion that the young offenders had to be treated harshly by the criminal justice system in order to reform and conform them to authority are found in both the tabloids and broadsheets, though to a much greater extent in the former, and constitute further evidence of associations with the concept of the Savage Child. The *Daily Mirror* maintained that a 15 year sentence for the young offenders was not harsh considering their crime and that they should not be enjoying any special amenities while in detention, like ‘TV, pool, video games and daily counselling’, just because they were children.²⁰⁴ The *Sun* maintained that Robert and Jon should have been locked away forever²⁰⁵ and that a 20-year sentence of detention would mean that ‘justice had been done at last’.²⁰⁶ Moreover, it inscribed a photo of Robert with the caption that ‘he must stay locked up’.²⁰⁷ In a more discreet manner, the *Times* made the general statement that it was instruction by adults that ‘suppressed’ the ‘innate evil impulses’ in children and prevented them from running ‘amok into amoral sadistic egoism’²⁰⁸ and the *Observer* criticised the police for handling Robert and Jon ‘softly softly’.²⁰⁹

¹⁹⁹ *ibid.*

²⁰⁰ ‘Chilling smile that shocked detectives’, *Daily Telegraph* (n 195).

²⁰¹ ‘Beast that hides in the infant breast’, *The Times* (London, 18 February 1993) 12.

²⁰² John Stalker, ‘Evil that makes a child kill’, *The Sun* (London, 16 February 1993) 10-11.

²⁰³ ‘Bugs Bunny laugh- in as tot lay dead’, *The Sun* (London, 25 November 1993) 3.

²⁰⁴ ‘Punishment that fits the crime?’, *Daily Mirror* (London, 23 May 1994) 6; *ibid.*

²⁰⁵ ‘Heartbreak of James’ mum’, *The Sun* (n 177).

²⁰⁶ Troup, ‘So evil, so young’, *The Sun* (n 186).

²⁰⁷ ‘Spurred on by twisted sex fantasy’, *The Sun* (n 184).

²⁰⁸ Janet Daley, *The Times* (n 148).

²⁰⁹ ‘Two boys accused of killing James’, *The Observer* (London, 21 February 1993) 1.

It is noteworthy that during the 1990s the press exhibited a general tendency to over-represent violent and juvenile crimes, frequently exaggerating the senseless savagery and lack of remorsefulness of young offenders, despite statistical data to the contrary.²¹⁰ Their goal was to raise their market share in an intensely competitive field by focusing on popular subjects and engaging in sensationalism. The associations with the concept of the Savage Child were promoted by these aims of the press.

Finally, evidence of associations with the Romantic Child is present in the attention paid to the notion that the young offenders were innately innocent, vulnerable, valuable, constitute the future, are in need of protection and act in a free manner typical of children. Evidence of this perceived innocence of the young offenders is present in an article in the *Times* that described them when leaving the courtroom following their conviction as having gone ‘down the steps that led to the end of childhood (...) and of innocence’, tying together the two concepts.²¹¹ An article in The *Daily Telegraph* referred to the image of the young victim being led away to his death by two other children as the ‘double death of innocence’²¹² and an article in the *Sun* described young James as ‘angelic’ and mentioned that Britain was a nation that needed to believe in the innocence of children.²¹³ Evidence of the vulnerability of children, as well as the great value being attached to them and that they constitute the future is found in the *Guardian*, which criticised the criminal justice system for not ensuring that the two boys received treatment from the moment they had been detained, since the long delays served ‘nobody’s interests’, suggesting that helping these two young, vulnerable defendants should be of primary concern because it benefited everyone, both them and society as a whole.²¹⁴ Similarly, an article in the *Daily Telegraph* arguing that it was in the public interest that young defendants be rehabilitated²¹⁵ and an article in the *Sun* that stated that children are special and constitute the future, provide further evidence that children are perceived as being valuable to society and must be saved through rehabilitation for this very reason, even though the actual process of rehabilitation actually engages with notions more

²¹⁰ Jessica M. Pollak and Charis E. Kubrin, ‘Crime in the News: How Crimes, Offenders and Victims are portrayed in the media’ (2007) 14(1) *The Journal of Criminal Justice and Popular Culture* 59, 61-62, 72-75.

²¹¹ ‘Moment their masks cracked’, *The Times* (n 162).

²¹² Hall, ‘Mary’s fears come home to roost’, *Daily Telegraph* (n 166).

²¹³ Stalker, ‘Evil that makes a child kill’, *The Sun* (n 200); John Troup, ‘Journey of hell: Boys aged 10 dragged crying James through town before murder, told court’, *The Sun* (London, 2 November 1993) 1, 4.

²¹⁴ ‘Law that treats 10-year-olds like adults: Clare Dyer on concerns that lack of treatment can damage youngsters facing murder trial’, *The Guardian* (London, 25 November 1993) 2.

²¹⁵ ‘Judge orders curb on press coverage of boy killers’, *Daily Telegraph* (London, 27 November 1993) 3.

relevant to the concept of the Unformed Child.²¹⁶ Evidence of the vulnerability of the young offenders is found in all three broadsheets, which reported that Jon had ‘broken down’ in tears while being questioned by the police, rendering him unable to discuss the case,²¹⁷ and that he engaged in ‘hysterical crying and screaming’²¹⁸ while denying having committed the murder and while confessing to it, asking James’ mother for forgiveness.²¹⁹ Similarly, both broadsheets and tabloids, reported that Jon was crying while listening to the evidence given against him and Robert during the trial as well as the night before the return of the verdict, throughout a visit with his mother, and that both boys were weeping uncontrollably when they heard the guilty verdict.²²⁰ Moreover, readers were informed that the two accused boys were having nightmares, flashbacks and fears of persecution related to their crime and were suffering from post traumatic stress during their trial.²²¹

Similar evidence is also present in relation to the young offenders being in need of protection, even though it is brief and infrequent. The *Guardian* and the *Sunday Times* described the young offenders as ‘terrified children’ and maintained that having their trial in an adult court where they were not afforded the right protection was ‘grotesque’, ‘disgraceful’, ‘primitive’ and the act of a ‘helplessly vindictive society’.²²² Additionally, the *Daily Telegraph* maintained that the ban on publicity both of the identities of the young offenders at the beginning of their trial and of their whereabouts and faces following their convictions, were aimed at protecting them from undue publicity and stigmatisation.²²³ Likewise, the *Daily Mirror* argued that the case should have been heard entirely in private to protect the young boys from publicity and that the result of their actual trial was that ‘justice was not served’.²²⁴ Furthermore, the *Guardian* and the *Daily Mirror* heavily criticised the Home Secretary for imposing a harsh, 15-year tariff on the two young offenders,

²¹⁶ ‘A horror we can’t ignore’, *The Sun* (London, 25 November 1993) 6.

²¹⁷ ‘Nightmares for boys who ‘knew right from wrong’, *Daily Telegraph* (London, 12 November 1993) 3.

²¹⁸ ‘Weeping boy told murder police’, *The Times* (n 34).

²¹⁹ ‘Boy wept in murder denial’, *The Times* (n 30); ‘Accused boy “broke down” at interview’, *The Guardian* (London, 18 November 1993) 8; ‘“What about his mum?”’, *The Times* (n 35).

²²⁰ Troup, ‘Journey of hell: (n 213); ‘Mum weeps, Mrs Z weeps, Child B weeps and Child A sucks thumb’, *The Sun* (London, 3 November 1993) 4; ‘How brave James fought for his life’, *Daily Mirror* (London, 3 November 1993) 4, 5; ‘Bulger accused “blame each other”’, *The Guardian* (n 196); Troup and Patrick, ‘One sobbed...the other stared’, *The Sun* (n 182); Bunyan, ‘Boys guilty of Bulger murder’, *Daily Telegraph* (n 164); ‘Moment their masks cracked’, *The Times* (n 162).

²²¹ ‘James “hell”’, *Daily Mirror* (London, 12 November 1993) 17; ‘Fear and trauma in courtroom’, *The Guardian* (London, 17 December 1999) 1.

²²² ‘Stand up and be counted’, *The Guardian* (London, 27 November 1993) 24; ‘A murder trial that did not serve the true interests of Justice’, *The Guardian* (London, 28 November 1993) 26; ‘Murder in mind’, *The Sunday Times* (London, 30 March 1997).

²²³ Anthea Hall, ‘Torment of little James’ last walk’, *Sunday Telegraph* (n 205); Judge orders curb on press coverage of boy killers’ (n 213).

²²⁴ ‘Why I believe the Euro court was: Right’, *Daily Mirror* (London, 17 December 1999) 7.

saying that he was more concerned about his own popularity rather than the protection and well being of Robert and Jon.²²⁵ These criticisms could be the result of the affiliations of the particular newspapers with the Labour Party, however, this does not entirely negate the fact that their criticism contains associations with the concept of the Romantic Child. Finally, evidence of the childlike behaviour of the young defendants is found in the *Daily Telegraph*, the *Daily Mirror* and the *Sun*, which mentioned the fact that the boys were drawing and playing video games while waiting for their court appearance, ‘like the children that they are’,²²⁶ and that Robert was reported as ‘sucking his thumb’²²⁷ and liking *Bugs Bunny* cartoons.²²⁸ Moreover, the *Daily Mirror* referred to the crime as ‘a prank that went too far’²²⁹ and the *Daily Mirror* and *Daily Telegraph* emphasised the toys and pastimes the young offenders were given in their custody accommodation, as well as that Jon wished for the world to become a large chocolate factory and that he believed that if he placed a line of teddy bears on his bed they would keep the ‘bad things’ away.²³⁰

The high frequency and prominent positioning of the press articles on the 1993 case study intensify all the associations identified above. However, unlike the case of Mary Bell, they do not suggest that particular associations are stronger than others, since no particular aspects of the case were emphasised more than others. What the frequency and positioning do show, in Mr Justice Moreland’s words, is that ‘the saturation coverage of the case’ by the media ‘went well beyond what was normal’.²³¹ The wide coverage of the case started from the day of the discovery of James’ body, the 15th February 1993 and went on for years. During the last 15 days of February 1993, the seven newspapers researched published 58 articles, with 11 being on the front pages.²³² Twenty-four of those 58 articles were published by the three broadsheets, with seven being on their front pages, nine were published by the two Sunday newspapers with one being on the front page and 25 were published by one of

²²⁵ ‘Leading article: the Bulger sentences’, *The Guardian* (London, 28 January 1994) 19; Leading Article: Life after brutal death’, *The Guardian* (London, 27 May 1994) 23; ‘Law to himself’, *Daily Mirror* (London, 31 July 1996) 6; ‘Why I believe the Euro court was: Right’ (n 224).

²²⁶ ‘Toys brought in for Jamie charge boys’, *Daily Mirror* (London, 23 February 1993) 2.

²²⁷ ‘How brave James fought for his life’, *Daily Mirror* (n 220); ‘Bulger accused “blame each other”’, *The Guardian* (n 196); ‘Mum weeps, Mrs Z weeps, Child B weeps and Child A sucks thumb’, *The Sun* (n 218); Bunyan, ‘What kind of boys murdered James?’, *Daily Telegraph* (n 162).

²²⁸ Bunyan, ‘What kind of boys murdered James?’, *Daily Telegraph* (n 162).

²²⁹ ‘Jamie’s killing “a prank that went too far”’, *Daily Mirror* (London, 23 November 1993) 5.

²³⁰ ‘Home for rest of their childhood’, *Daily Mirror* (n 151); Nigel Bunyan, ‘Chocolate world dream of the boy killer who wants to live forever’, *Daily Telegraph* (London, 26 November 1993) 4.

²³¹ ‘Boys guilty of Bulger murder’, *The Times* (n 8).

²³² Appendix three.

the two tabloids researched, the *Sun*, with three being on its front pages.²³³ The *Daily Mirror* was slow to begin its coverage of the story, since the first article it published was on the 2nd March 1993, covering the funeral of James Bulger.²³⁴ During the trial of the young offenders, in November 1993 there were 252 articles on the case in the seven newspapers researched.²³⁵ One hundred and fifty-seven articles relevant to the Bulger case were published in the three broadsheets, with 25 being on their front pages.²³⁶ Sunday papers published nine articles, all on the 28th November 1993.²³⁷ Eighty-six articles were published by the two tabloids researched, eight being on their front pages.²³⁸ It is noteworthy that on the date of the reporting of the verdict of the trial, namely 25th November 1993, there was a culmination of publicity, with the *Times* publishing 13, the *Guardian* nine, the *Daily Telegraph* 13, the *Daily Mirror* 10 and the *Sun* a staggering 24 articles relevant to the case.²³⁹ All newspapers carried articles on the case on their front pages on that date.²⁴⁰ This over-representation verifies that the British press engaged in extremely sensationalist reporting of the case,²⁴¹ with front pages showing off the content of the newspaper,²⁴² and headlines aiming at making stories more attractive by capturing its basic essence,²⁴³ all focusing entirely on catching the attention of the passer-by to place newspapers ahead of competitors²⁴⁴ in an environment where there was very intense competition,²⁴⁵ a public preference for tabloid journalism²⁴⁶ and loose adherence to regulatory standards.²⁴⁷

In conclusion the approach of the press towards Robert Thompson and Jon Venables, in its entirety, resembles the approach of the relevant sections of the criminal justice system in that there are associations with the concepts of the Unformed, Savage and Romantic Child in both and that the associations with the first are prominent in both. However, that is where the similarity ends. The press exhibits much stronger associations with the concept of the Savage Child and weaker associations with the concept of the Romantic Child. It is noteworthy that it is the

²³³ *ibid.*

²³⁴ *ibid.*

²³⁵ *ibid.*

²³⁶ *ibid.*

²³⁷ *ibid.*

²³⁸ *ibid.*

²³⁹ *ibid.*

²⁴⁰ *ibid.*

²⁴¹ Pollak and Kubrin (n 210) 72-73.

²⁴² G. Barnhurst and John Nerone, *The Form of News: A History* (The Guilford Press 2001) 216.

²⁴³ *ibid.* 198.

²⁴⁴ David A. Green, *When Children Kill* (Oxford University Press 2008) 19.

²⁴⁵ *ibid.* 43.

²⁴⁶ 77 percent of British newspaper readers read either a tabloid or a mid-market newspaper, as opposed to 23 percent who read broadsheets as documented in Green (n 244) 43.

²⁴⁷ Green (n 244) 48, 50.

approach of the tabloids that exhibits most difference. In addition, both types of newspapers exhibit no associations with the concept of the Adult Child, as opposed to the criminal justice system, which exhibits weak associations with that concept. The inclination of the press, especially the tabloid press, to use intense sensationalism, over report juvenile crime, emphasise the young age and violence of juvenile offenders and favour the simplification of problems and solutions in pursuit of popularity and market share are probably the most prominent reasons for these differences of approach. Furthermore, the politicisation of the press also encouraged the focus on the concept of the Savage Child, since that was the image politicians of both parties were trying to promote at the time.

A comparison of the treatment of Robert Thompson and Jon Venables by the press and its treatment of Mary Bell reveals significant changes. There is an exponential rise in the movement of associations with the concepts of the Savage Child and an exaggerated movement of associations with the concept of the Unformed Child in the press, which are not matched by equivalent movements of the said associations in the sections of the criminal justice system under examination, where such movements are significantly smaller. Moreover, there is a decline in the movement of associations with the concept of the Romantic Child in the press that is not reflected by their treatment within the criminal justice system. These exaggerated rates of change are probably the result of the changing nature of the press, namely the intense competitiveness and resulting desire to appeal to the sensitivities of the public to increase their popularity.

Robert Thompson, Jon Venables and Public Reaction

The reactions of the public in the Robert Thompson and Jon Venables case study, similarly to the previous two chapters, are deduced from the reports of the press that expressly describe them and hence entail all the aforementioned limitations. However, the current case study analysis reveals unprecedented public reactions in terms of both intensity and extent, which are perhaps a result of the crime's over-reporting and politicisation.²⁴⁸ More specifically, the approach of the public shows, for the first time, very strong associations with the concepts of the Savage and the Adult Child.

²⁴⁸ *ibid* 247.

Evidence of associations with the concept of the Savage Child exists in the characterisations yelled out at the young offenders by a crowd of 300 to 500 people gathered outside South Sefton magistrates' court on Merseyside when they were being remanded, including 'little bastards', 'murderers' and 'scum'.²⁴⁹

The strong desire the public expressed for imposing a harsh punishment upon the young offenders constitutes evidence of associations with both the concepts of the Savage and the Adult Child: the former because the desire suggests a wish to punish them as much as possible in order to reform them into obedience and proper, non-criminal behaviour; the latter because the desire also expresses an element of vengeance towards the young offenders, which is not discounted in any way because they were children. In particular, following the recommendation of the judge for a minimum period of detention of eight years and the recommendation of the Lord Chief Justice for 10, the public was described as being 'outraged'.²⁵⁰ Approximately 270 000 people signed the petition of the Bulger family addressed to the Home Secretary and 5900 others communicated with the Home Office, all asking for a minimum tariff of 25 years to be imposed on the young offenders.²⁵¹ Furthermore, another 22,638 pieces of correspondence were sent to the Home Office in relation to the case, including 21,281 coupons from readers of the *Sun* newspaper, asking for their imprisonment for life.²⁵² Overall, about half a million people contacted Mr Howard, either via petitions or voting in telephone polls, asking that he set a lengthy tariff for the two boys.²⁵³ Lord Goff in his House of Lords judgment on the boys' appeal against their sentences described the situation by saying that there was a general feeling of revenge and a desire by the public to inflict the gravest of penalties upon the young offenders.²⁵⁴ Likewise, following the decision of the European Court of Human Rights in 1999, Liverpool residents were asked for quotes and the consensus was that the two boys should spend the rest of their lives in custody.²⁵⁵

Even more compelling evidence of associations with the concept of the Adult Child is the engagement of the public in acts of vigilante violence against the young offenders. These actions suggest that the public considered Robert Thompson and Jon Venables as adults, who deserved to suffer physical pain and injuries for their

²⁴⁹ 'Van pelted by hate mob', *The Sun* (London, 23 February 1993) 5.

²⁵⁰ 'Minimal Punishment', *The Times* (London, 29 January 1994) 17.

²⁵¹ 'Call of the wild', *The Guardian* (London, 26 July 1994) 18; Hayton and Scraton, (n 57) 432-433.

²⁵² 'Call of the wild', *The Guardian* (n 251); Hayton and Scraton, (n 57) 432-433.

²⁵³ 'The due tariff', *The Times* (n 61).

²⁵⁴ *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Goff).

²⁵⁵ "'They're evil, they should get life'", *The Times* (London, 17 December 1999) 9.

criminal behaviour, rather than two physically small, weak and vulnerable children. Specifically, the crowd outside the South Sefton magistrates' court started hitting the van carrying the young defendants with their fists, stood in its way and threw eggs, bricks and other material at it.²⁵⁶ Accompanying these violent actions and clarifying the intentions of the crowd were the comments yelled out at the young offenders, which included 'kill the bastards'²⁵⁷ and 'let them have it'.²⁵⁸ The press described the scene as 'an orgy of crude hatred'²⁵⁹ and a 'seething mob erupted in fury'.²⁶⁰ The extent of this desire to punish the young defendants exhibited through the public expression of violence is evident by the fact that the trial of the two boys was moved to Preston Crown Court because it was too dangerous for them to be tried locally, since according to the police 'the emotionally charged atmosphere of Liverpool' had to be avoided.²⁶¹ Moreover, the young offenders received a number of death threats throughout their remand, trial and detention, which made it necessary for them to be given new identities when they were released.²⁶² This desire for the punishment of the young offenders via vigilante violence was so great that it spilled over to their families as well. Their homes were vandalised, graffiti was written on their walls, their windows were smashed and mob crowds gathering outside them.²⁶³ Even Robert's grandparents, who had been estranged from their daughter and grandson for years, told the press that they had been receiving 'abuse, calls, threats'.²⁶⁴ The *Daily Mirror* reported that the families of Robert and Jon originally had to be placed under police protection²⁶⁵ and were later moved out of their homes and away from Liverpool under new identities because the police feared that they were in danger of facing further 'mob fury'.²⁶⁶ In addition to the treatment of Robert and Jon and their families, the treatment of another boy falsely arrested in relation to the killing by the public

²⁵⁶ *ibid*; 'Anyone with boys of that age expected the police. I kept looking at my kids to see if they fitted the descriptions', *The Guardian* (London, 23 February 1993) 2; 'The hate mob', *Daily Mirror* (London, 23 February 1993) 2; Bunyan, 'Shouts of 'kill them' as boys are remanded in Bulger case', *Daily Telegraph* (n 204).

²⁵⁷ Bunyan, 'Shouts of 'kill them' as boys are remanded in Bulger case', *Daily Telegraph* (n 204).

²⁵⁸ 'Van pelted by hate mob', *The Sun* (n 249).

²⁵⁹ 'Self-pity city', *The Sunday Times* (London, 28 February 1993).

²⁶⁰ 'Van pelted by hate mob', *The Sun* (n 249).

²⁶¹ 'Glassy and expressionless, the boys squirmed and stared at the ceiling', *The Times* (n 10); 'Stricken parents move to secret new addresses', *The Times* (London, 25 November 1993) 4; 'The future of the Jamie Bulger's killers', *The Observer* (London, 31 October 1999) 18.

²⁶² 'Court plea on Bulger killers', *Sunday Times* (London, 7 January 2001).

²⁶³ 'The future of the Jamie Bulger's killers', *The Observer* (n 261).

²⁶⁴ 'Consumed in the bonfire of misery', *The Observer* (London, 28 November 1993) 12.

²⁶⁵ 'Boys aged 10 held by police over murder of James Bulger', *The Times* (n 4); '10 year old boys charged with James' murder as Liverpool grieves', *The Sunday Times* (London, 21 February 1993).

²⁶⁶ 'Jamie quiz families in fear of their lives', *Daily Mirror* (London, 20 February 1993) 1; 'Siblings of two boys accused of Bulger murder taken into care', *The Guardian* (London, 24 February 1993) 2; 'Stricken parents move to secret new addresses', *The Times* (n 261).

²⁶⁶ 'Stricken parents move to secret new addresses', *The Times* (n 261).

also revealed these associations with the concept of the Adult Child. An ‘angry’²⁶⁷ ‘screaming mob’,²⁶⁸ of about 80 people were present during the arrest of the 12 year old suspected of being involved in James’ murder and were ‘jeering and shouting’.²⁶⁹ The incident eventually resulted in the arrest of two people for public disorder offences and the necessity for the 12-year-old boy’s family to go into hiding and eventually be re-housed to avoid public hostility, despite his release on the following day and elimination as a possible suspect for the murder.²⁷⁰

It is noteworthy that none of the reactions of the public in the Robert Thompson and Jon Venables case show associations with the concept of the Romantic Child. Such associations did exist to a great extent in relation to the young victim through the various expressions of public grief, such as placing a huge amount of flowers and toys at the site where his body was found and attending his funeral.²⁷¹ These associations, however, are only relevant to contrast with the preceding ones related to the young offenders, since the approach towards victims is not the subject of this thesis.

In summary, the approach of the public in the 1993 case study is radically different from its approach 25 years earlier in the case of Mary Bell. The most striking difference is the move from being discreet in 1968 to being intensely and passionately involved in 1993. This is perhaps a result of a change in the very nature of public involvement in such issues due to the influence of both the press and politics, which made juvenile crime a significant part of their daily agendas, whereas they formerly largely abstained from any public discussions of it. For instance, a vast number of articles were present daily in newspapers for weeks, even months, often on their first pages, as is evident in Appendix Three. These articles often included catchy, dramatic titles and photographs, like the images from the CCTV cameras of the two young offenders leading their toddler victim out of the mall from which they abducted him by the hand.²⁷² Such words and images were geared to make the readers emotional and entice reactions out of them. This comes into contrast with the limited

²⁶⁷ ‘Wanted youths tried to take another child’, *The Times* (London, 18 February 1993) 1.

²⁶⁸ ‘I saved my tot from boys who took Jamie’, *Daily Mirror* (London, 18 February 1993) 2.

²⁶⁹ ‘Liverpool police arrest three during hunt for boy’s murder’, *The Times* (London, 17 February 1993) 1.

²⁷⁰ *ibid*; Richard Spencer and Nigel Bunyan, ‘12 year old boy arrested over boy’s murder’, *Daily Telegraph* (London, 17 February 1993) 1; ‘Wanted youths tried to take another child’, *The Times* (n 267); ‘I saved my tot from boys who took Jamie’, *Daily Mirror* (n 268); ‘Boys aged 10 held by police over murder of James Bulger’, *The Times* (n 4).

²⁷¹ ‘Three questioned over boy’s killing’, *The Times* (London, 17 February 1993) 1; ‘Merseyside parents told to be on guard’, *The Times* (London, 16 February 1993) 1; ‘James Bulger’s sad last journey’, *The Guardian* (London, 2 March 1993) 1; ‘Two boys accused of killing James’, *The Observer* (n 209); ‘Dire Liverpool drag down Ipswich into pit of despair’, *The Sunday Times* (London, 21 February 1993).

²⁷² Appendix Three

reporting of the cases examined in the previous years and their less sensationalist nature.²⁷³

As regards the movements of associations with the concepts of the child, it is observed that there is a steep rise in associations with the concept of the Savage Child and a decline in associations with the concept of the Romantic Child, mirroring the approach of the press, though not the approach of the sections of the criminal justice system examined. It is noteworthy that this approach is particularly similar to that observed in the tabloid press, which is not surprising given the previously noted general preference of the public for the oversimplification of problems and solutions that resulted in its preference for tabloid rather than broadsheet newspapers.²⁷⁴ There is also a sharp rise in associations with the concept of the Adult Child, absent from the approaches of both the criminal justice system and the press. Finally, unlike the approaches of the criminal justice system and the press, there are no associations in public reaction with the concept of the Unformed Child. However, this is expected, given the scientific nature of the concept and the inability of public reactions, as mentioned above, to engage with such notions. Accordingly, similarly to the press, public reaction displayed radical, sharp changes in its approach towards children who killed in the late 20th century, which were unlike the more subtle changes observed in the criminal justice system, throughout the police investigation and trial and sentencing processes.

Robert Thompson, Jon Venables and Politicians

The section discusses the existence, strength and movements of associations between the approach of politicians towards Robert Thompson and Jon Venables and the concepts of the child, comparing this approach with the approaches of other fields and assessing the extent to which the associations were influenced by the quest of politicians for popularity and public approval and any other related factors. An important background to the analysis is that the flaring of competition between the Conservative and Labour parties on law and order issues, which dramatically increased their politicisation during the 1990s, resulted in the existence of an abundance of information relating to the approach of politicians towards Robert

²⁷³ Appendices One and Two

²⁷⁴ Green (n 244) 43.

Thompson and Jon Venables, in contrast to the information available in the preceding cases that was either entirely absent or significantly limited.²⁷⁵ That information comes from public statements of politicians found in both the press and parliamentary debates and suggests associations with the concepts of the Savage and Unformed Child, whose strength varies depending on the source. Associations with the Savage Child exist only in the press and are absent from parliamentary debates, while associations with the Unformed Child are stronger in parliamentary debates than in the press.

Associations with the concept of the Savage Child in the approach of politicians are found in a number of press reports, starting with the characterisations of the young offenders. The Sports Minister called Robert Thompson and Jon Venables ‘little thugs’²⁷⁶ and Kenneth Baker, a former Home Secretary,²⁷⁷ referred to them as ‘persistent, nasty, little juvenile offenders’, who had no ‘values’ or ‘purpose’²⁷⁸ and said that the murder of James Bulger was ‘a crime from the heart of darkness’.²⁷⁹ Furthermore, the Home Secretary referred to juvenile offenders in general as ‘nasty pieces of work’.²⁸⁰ The public expression of the belief that the young offenders should be punished severely for their criminal actions provides further evidence, especially since several of the statements made by politicians also suggested that the criminal behaviour of children was the result of inherent factors rather than their circumstances and that the best interests of the young offenders were no longer the primary consideration in their treatment. In particular, the Prime Minister, John Major ‘called for a crusade against crime’, ‘imminent legislative action’²⁸¹ and ‘a change from being forgiving of crime to being considerate to the victim’.²⁸² He maintained that ‘we should condemn a little more, understand a little less’.²⁸³ Similarly, Mr Clarke announced that he intended to increase the powers of the courts to punish young offenders, whom he said, think they ‘can commit crime after crime with impunity’.²⁸⁴ In specific reference to Robert Thompson and Jon Venables, a government official

²⁷⁵ Tim Newburn, ‘Tough on Crime’: Penal Policy in England and Wales’, (2007) 36 Crime and Justice 425, 426.

²⁷⁶ ‘Play up, play up, and get on with the real thing’, *The Observer* (London, 3 April 1994) 19.

²⁷⁷ Home Secretary between 28th November 1990 and 10th April 1992.

²⁷⁸ Haydon and Scraton (n 57) 426.

²⁷⁹ Johnston, ‘Challenge to the Church’, *Daily Telegraph* (n 162); ‘Yesterday’s Today tomorrow?’, *The Sunday Times* (London, 7 March 1993).

²⁸⁰ Phillip Johnston, ‘Clarke pledge to curb crime by juveniles’, *Daily Telegraph* (London, 22 February 1993) 1.

²⁸¹ ‘Children and Crime’, *The Times* (London, 22 February 1993) 17.

²⁸² Haydon and Scraton (n 57) 426.

²⁸³ ‘Leading Article: A lasting memorial for James Bulger’, *The Guardian* (London, 22 February 1993) 18; Johnston, ‘Clarke pledge to curb crime by juveniles (n 275); ‘Brainwashed by hysteria’, *The Times* (London, 24 February 1993) 16.

²⁸⁴ ‘10 year old boys charged with James’ murder as Liverpool grieves’, *The Sunday Times* (n 265).

stated that ‘the emphasis is always on containment, not therapy’, since the protection of the public was the primary consideration.²⁸⁵

Associations with the concept of the Unformed Child are substantial in parliamentary debates and also considerable in the press, though limited to discussions of the possibility of external factors causing the criminal behaviour of young offenders. In the House of Lords Debates, Lord Northbourne maintained that children who are emotionally and behaviourally disturbed, like Robert Thompson and Jon Venables, most likely ‘suffer from inadequate support at home’.²⁸⁶ Similarly, Lord Ashbourne argued that the way in which Robert and Jon tortured James before killing him showed that there was something seriously wrong with their upbringing, that there was something ‘fundamentally wrong with our society’ and that only education and family could rectify children’s bad behaviour.²⁸⁷ Moreover, Lord Elton blamed the effects of ‘sado-masochistic videos’ for the corruption of children, leading them to violent behaviour.²⁸⁸ In the House of Commons Debates the Minister of State, Mr David Maclean, maintained that violence on television, films, videos and video games was a powerful medium that affected the behaviour of children.²⁸⁹ In the press, Kenneth Clarke, Tony Blair and David Maclean cited the existence of a ‘moral vacuum’ and inability of the church to address this ‘ethical crisis’ as the reasons behind the criminal behaviour of Robert and Jon.²⁹⁰ In addition, two MPs, David Alton of the Liberal Democrat Party and Michael Alison of the Conservative Party, were reported as tabling a Commons motion asking for the commencement of an investigation into the possible link between the film *Child Play 3* and the killing, which was signed by more than 100 MPs from all political parties and in effect blamed video violence watched by children for their criminal behaviour.²⁹¹ Mr Alton went as far as to characterise such video ‘nasties’ as ‘a form of child abuse’²⁹² and Mary Whitehouse, the political activist leading the ‘campaign to clean up British

²⁸⁵ ‘Home for rest of their childhood’, *Daily Mirror* (n 151).

²⁸⁶ Education Bill Deb 23 March 1993, vol 544, cols 199-322, 271.

²⁸⁷ HL Deb 08 December 1993 vol 550, cols 951-1012, 952, 989; HL Deb 23 November 1993, vol 550, cols 142- 252, 222.

²⁸⁸ HL Deb 08 December 1993 vol 550, cols 951-1012, 952, 989.

²⁸⁹ HC Deb 16 December 1993, vol 234, cols 1395-1402, 1399.

²⁹⁰ ‘Death of a child’, *The Times* (London, 18 February 1993) 17; Johnston, ‘Challenge to the Church’ (n 164); ‘Blair adopts moral values line on crime’, *The Guardian* (London, 20 February 1993) 6; ‘Bulger case sparks row over morals’, *The Times* (London, 26 November 1993) 1; ‘I know, blame the bishops’, *Daily Mirror* (London, 26 November 1993) 2, 3; ‘Street watch can conquer truancy, says Patten’, *The Times* (London, 27 November 1993) 4.

²⁹¹ ‘Boys guilty of Bulger murder’, *The Times* (n 8); ‘MPs want ban on release of violent videos’, *The Sunday Times* (London, 28 November 1993).

²⁹² ‘Experts condemn video nasties as form of child abuse’, *The Times*, (London, 1 April 1994) 3.

television’, suggested that violent television programmes and films might have ‘adversely affected’ the two boys who killed James.²⁹³

Lastly, there are weak associations with the concept of the Adult Child, found in the Home Secretary’s approach in setting the punishment of the young offenders, using punitive elements above other considerations such as the welfare of the young offenders, as discussed earlier.²⁹⁴ Political considerations guided his approach, as he admitted, thus turning his conduct into politics, even though it was technically part of the judicial process.²⁹⁵

Therefore, it appears that the discussions of politicians in Parliament were more scientifically informed and founded upon arguments that were more reasoned and less passionate than their approach reported in the press. Their public statements in the press focused on emotional notions within the concept of the Savage Child and more simplistic references to elements of the concept of the Unformed Child, designed to appease the public. By contrast, the more sophisticated audience that could and would challenge scientifically unfounded statements within parliament, forced politicians to adopt a less passionate and better informed approach in parliamentary debates, focusing on more scientifically researched aspects of the concept of the Unformed Child. However, even within parliament, the intense competitiveness between political parties required that politicians focused on practical problems and solutions, such as what caused the criminal behaviour and how it could be fixed, and avoided theoretical discussions like what characteristics children were born with and how they gradually developed, hence the associations with the concept of the Unformed Child being confined to factors affecting behaviour. Additionally, ample evidence suggests that politicians during the 1990s had the appeasement of the public as a primary goal. The Home Secretary himself mentioned in his letter of decision that his imposition of a tariff of 15 years on Robert Thompson and Jon Venables, which was much longer than the eight or 10 years suggested by the trial judge and Lord Justice Taylor respectively,²⁹⁶ was partly due to the fact that he had taken ‘public concern’ and the desires of the ‘ordinary man in the street’ into account.²⁹⁷ Furthermore, conservative

²⁹³ ‘Whitehouse fires parting shot at sadism’, *The Times* (London, 26 November 1993) 3.

²⁹⁴ ‘James Bulger killers have to serve at least 15 years’, *The Times* (n 61); ‘Bulger killers to appeal for freedom early next year’ (n 119).

²⁹⁵ *V v United Kingdom* (n 98); ‘Bulger case: killers to be freed early’, *The Times* (n 101); Haydon and Scraton, (n 57) 436. *R v Secretary of State for the Home Department, ex p Jon and Robert* (n 19) (Lord Goff). ‘Howard challenges Bulger jail ruling’ (n 82).

²⁹⁶ ‘James Bulger killers have to serve at least 15 years’, *The Times* (n 61).

²⁹⁷ *ibid*; ‘Bulger killers to appeal for freedom early next year’ (n 119).

MPs, following Mr Justice Moreland's suggestion of an eight-year tariff, accused the judiciary of being 'out of touch with public opinion, of making recommendations which could undermine public confidence in justice'²⁹⁸ and of prioritising the interests of criminals 'above the public'.²⁹⁹ Similarly, Kenneth Clarke, the Home Secretary preceding Mr Howard, urged the parliament to 'catch up with the mood of the people' regarding the 'war on crime' and to condemn criminals more, as opposed to excusing them.³⁰⁰ Various commentators affirmed the argument by criticising the significant effect of public opinion on the approach of politicians towards Robert and Jon. For example, Lord Lane, the former Lord Chief Justice, argued that taking public opinion into account only meant that the decisions on minimum tariffs would be geared towards gaining popularity and votes for the politician involved.³⁰¹ Harry Fletcher, an officer of the National Association of Probation Officers, criticised the fact that politicians were responsible for making decisions on minimum tariffs for juveniles because they had 'one eye on the opinion polls'³⁰² and the *Guardian* maintained that the killers of James Bulger had been 'tried and sentenced at the bar of public opinion rather than in a court of law' and that kind of practice led to 'rule by lynch mob'.³⁰³

In conclusion, the overall approach of politicians and the movements of associations established resemble the approach of the press to a great extent and have significant similarities to public reaction. However, it substantially differs from the approach within the criminal justice system. There was an upward movement in associations with the concept of the Unformed Child in both politics and the segments of the criminal justice system examined, however this constitutes the only similarity between the approaches taken in the two fields. This is perhaps a result of the fact that both members of the criminal justice system and politicians, at least while the latter are delivering speeches in parliament, take into account scientific developments and advances in the field of psychology, given their official standing and capacity. The strong associations with the concept of the Savage Child in the approach of politicians in 1993, in contrast to the weak associations with this concept in the 1968 case study, however, create a movement which differs from that observed within the criminal justice system, though it is similar to the movements in the press and public reaction.

²⁹⁸ 'Bulger murder boys could be freed in eight years', *The Times* (n 58).

²⁹⁹ 'Howard was 'unfair' to Bulger killers', *The Times* (n 98).

³⁰⁰ '10 year old boys charged with James' murder as Liverpool grieves', *The Sunday Times* (n 265).

³⁰¹ 'Leading article: the Bulger sentences', *The Guardian* (n 225).

³⁰² 'James Bulger killers have to serve at least 15 years', *The Times* (n 61).

³⁰³ 'Prisoners of Prejudice', *The Observer* (London, 25 February 1996) 5.

Similarly, the strong associations with the concept of the Romantic Child in the approach of politicians in 1968 and their complete absence from their approach in 1993 again differs from the movement observed within the criminal justice system, but is similar to the movements in the press and public reaction. These discrepancies with the approach of the part of the criminal justice system that is examined are probably the result of the desire of politicians to appease the public, a need the criminal justice system does not have. This argument is strengthened by the fact that the most compelling evidence of associations with the concept of the Savage Child is found in the approach of politicians in the press, which is geared directly towards reaching the public, as opposed to their approach in parliamentary debates. Finally, evidence of associations with the concept of the Adult Child in the political field increased slightly since the case of Mary Bell. This is unlike the movement of the approaches in any of the other fields. Associations with the concept of the Adult Child within the criminal justice system remained level between the Mary Bell case and the current case, while associations in the field of public reaction saw a sharp upward rise. The middle ground occupied by politicians between the criminal justice system and public reaction is perhaps a result of their ambivalent attitude towards Robert Thompson and Jon Venables. On one hand, politicians in general avoided referring to the young offenders as adults, since that generally detracted from their appeal to public sentiments, following the reasoning of the press. On the other hand, the public in the current case specifically demanded the harsh, adult punishment of the young offenders, which the Home Secretary felt compelled to appease.

Conclusion: Since the mid-20th Century and the Case of Mary Bell

The study of the 1993 case of Robert Thompson and Jon Venables reveals many differences to the preceding case studies examined, not all relevant to the concepts of the child. The study reveals that the approach of the criminal justice system towards children who killed, starting with the beginning of the police investigation and ending with the completion of their trial and sentencing, remained relatively stable since the case of Mary Bell, exhibiting similar associations with the concepts of the child. Associations with the concept of the Unformed Child were somewhat stronger in 1993, revealing a continuation of the gradually upward movement of associations

with that concept since the late 19th century. Noteworthy associations with the concept of the Romantic Child and weak associations with the concept of the Adult Child remained constant between the 1968 and 1993 case studies. Finally, associations with the concept of the Savage Child were slightly stronger in the 1993 case study than in the 1968 case study, since they were founded upon comments targeted towards the specific defendants rather than being about children in general, although the gender difference between the defendants may have accounted for this change, at least to some extent.

These conservative movements in the field of the criminal justice system bear little resemblance to the movements evident in the other three fields examined, which do exhibit similarities to each other. The most notable differences between the approaches of the other three fields and the approach within the criminal justice system are observed in relation to the concepts of the Romantic and the Savage Child, which are the most emotion-based concepts. While associations in the press, public reaction and politicians with the concept of the Romantic Child declined substantially, associations with the concept of the Savage Child increased dramatically. In relation to the concept of the Unformed Child, there were similar upward movements within the criminal justice system and in the political field, but a steeper upward movement in the field of the press. This is perhaps because legal rules, regulations and precedent within the courts and challenges from other politicians within Parliament might have acted as constraints in the respective fields. More specifically, the courts could not dedicate more attention, time and effort to issues related to notions within the concept of the Unformed Child because they were not at liberty to significantly deviate from the common practice followed by previous courts and prescribed by legislation from which they were bound, without any official legislative reform, which had yet to take place in 1993. Correspondingly, politicians in parliament referring to notions within the concept, knew that rival politicians were likely to have detailed knowledge of the issues discussed and hence could challenge them if they were not able to completely substantiate their views by evidence. This would have the opposite effect from what they desired, it would discredit them rather than earn them respect. In contrast, the press was not facing any similar restrictions and could thus expand and explore notions relevant to the said concept further, motivated by the fact that they were new, popular ideas, for which interest was growing rapidly. Associations with the concept

of the Unformed Child remained absent, however, in the field of public reaction, largely due to its very nature that precludes the expression of any notions that are not founded by strong emotion, as already explained. Finally, associations with the concept of the Adult Child show a sharp upward movement in the field of public reaction and a weaker upward movement in the political field but are absent in the field of the press. This is in contrast with their stable, weak presence in the sections of the criminal justice system examined in both 20th century case studies.

The 1993 case study is the only one in which there are such significant discrepancies between the approach of the criminal justice system towards children who killed and the approaches of the other three fields examined. It is the only case study in which the associations with the concepts of the child in the press, public reaction and politics reveal extreme changes, while the equivalent associations within the criminal justice system show only gradual changes, continuing in patterns similar to the ones observed during the rest of the time period examined. It is evident that factors such as the separation of the press into broadsheet and tabloid journalism, increased press coverage of the 1993 case study due to intensified competitiveness, the turn in the press towards sensationalism, the politicisation of crime and the simplistic, emotional nature of the approach of the public acquired a significant role, perhaps for the first time overriding considerations directly relevant to the concepts of the child in the three fields other than the field of the criminal justice system.

Chapter Five: Conclusions, Events after 1993 and Final Thoughts for the Future

Conclusions:

This thesis has undertaken an in-depth analysis of five case studies of children who killed in England over the 19th and 20th centuries, with the aim of discovering whether the criminal justice system, starting with the beginning of the police investigation and ending with the completion of the trial and sentencing processes, treated these children differently over time, and if so, how and why, placing a special focus on concepts of childhood as a possible reason for differing approaches. An attempt to answer these questions has been made through the discussion of four specific questions set out in the introduction, namely whether the treatment by the criminal justice system of children who killed can be associated with particular concepts of the child, whether these associations form any kind of patterns or specific movements over time, how the associations and their movements in the criminal justice system compare to their equivalents in the fields of the press, politicians and public reaction, and if other factors like gender inequalities, changing features of the British press and British politics and features of public reaction, affect these associations. The analysis reveals that although differences in the approach of the relevant sections of the criminal justice system towards children who killed over the years do exist, these have been subtle, without pronounced fluctuations or erratic responses.

The associations between the concept of the Unformed Child and the approach of the criminal justice system towards children who killed are persistent throughout the period discussed, albeit with different configurations of the concept. The capacity and maturity of the young offenders was discussed during the trials of all the young offenders in the case studies and over time this discussion became more detailed and more scientifically oriented. The judge in the case of John Any Bird Bell in 1831 briefly referred to the young offender's capacity and ability to understand the consequences of his actions, creating an association with the concept of the Unformed Child despite the fact that the young offender was slightly over the age of discretion

and hence the *doli incapax* presumption did not apply to him.¹ In the middle of the 19th century in the case study of Peter Barratt and James Bradley, the maturity of the young offenders was discussed in more detail because the presumption did apply, however, it was still discussed in simple, non- scientific terms.² The more scientific approach to the discussion of capacity and hence the associations with the modern configuration of the concept of the Unformed Child started with the case of Margaret Messenger and increased gradually in the cases following it, accompanied by a growing use of professional psychiatrists, psychiatric tests, scientific terms and psychological help and education being offered to the young offenders.³

Associations with the concept of the Adult Child are strong in the case study of John Any Bird Bell in 1831, perhaps partly as a result of the fact that he was outside the age of discretion. After that, however, the associations disappear for the rest of the 19th century and re-appear in a weak form in both 20th century case studies. It should be mentioned that their re-appearance is somewhat fabricated by legislative evolution.⁴ In other words, the creation of the juvenile justice system at the beginning of the 20th century and the introduction of juvenile criminal courts provided a possible alternative to treating young offenders within the adult criminal justice system.⁵ Given that there was such an alternative, the fact that the new legislation required that young offenders tried of homicide, like the ones in the case studies, be tried as adults gives rise to associations with the concept of the Adult Child. It is conceded that the legislation is general and significantly pre-dates the cases in question, however, the creation of associations with the concept of the Adult Child through the practical application of the legislation by the case studies and the resulting distinction made between most child offenders and children tried of homicide should not be entirely ignored. Nevertheless, these resulting associations are weak because of their general nature. In addition, the associations are rendered even weaker by the fact that there were safeguards within the adult criminal justice system, like the *doli incapax* presumption, that ensured that the defendants would be treated like children to an extent, even within the framework of an adult trial.

¹ Anonymous, *Trial 1600-1926, A Narrative of the Facts Relative to the Murder of Richard Faulkner Taylor, in the Woods Between Rochester and Maidstone, On Friday the 4th of March, 1831* (Gale MOML Print Editions 1831) 34; Loretta Loach, *The Devil's Children: A History of Childhood and Murder* (Icon Books 2009) 31.

² 'Chester Summer Assizes', *Manchester Times* (10 August 1861); 'A child murdered by children', *The Independent* (23 April 1995); Alison James and Chris Jenks, 'Public perceptions of childhood criminality' (1996) 47(2) *The British Journal of Sociology* 315, 319; Chris Jenks, *Childhood* (2nd edn, Routledge 2005), 124; Loach (n 1) 131, 140.

³ Loach (n 1) 166.

⁴ Children and Young Persons Act 1933, section 46

⁵ *ibid*

As regards associations with the concept of the Romantic Child, the evidence demonstrates weak associations at the beginning of the 19th century, in the John Any Bird Bell case study, which become stronger in the Peter Barratt and James Bradley case study by the middle of the century and continue at the same level thereafter, including the late 20th century case study of Robert Thompson and Jon Venables. Lastly, associations with the concept of the Savage Child are strong in the case of John Any Bird Bell and then disappear for the rest of the 19th century, to reappear weakly in mid-20th century case study of Mary Bell and in slightly stronger form in the late 20th century case study of Robert Thompson and Jon Venables. As suggested above, the shifts and changes in the movements of associations are subtle and gradual throughout the period studied.

These movements in the associations observed through the case studies examined are very similar to the movements of the associations within the criminal justice system in general, as they were observed in the first chapter. More specifically, the concept of the Unformed Child turns from non-scientific to scientific in the second half of the 19th century in both instances and follows an upward course from then on. The concepts of the Adult and Savage Child both start out strong at the beginning of the 19th century and weaken to the point of disappearing, until the 20th century, when they demonstrate upward movement once again. Finally, the concept of the Romantic Child is weak at the beginning of the 19th century in both the case studies and the criminal justice system in general and becomes notably stronger by the middle of the 19th century. From then on it continues to show significant presence in both approaches until the middle of the 20th century. The only slight discrepancy between the two approaches is evident in that the associations with the concept of the Romantic Child remain steady in the late part of the 20th century in the case studies, whereas they decline in the general approach of the criminal justice system. A possible reason for the discrepancy is that the latter covers a period after 1993, when the last case study took place, the time period during which this decline mostly took place, though it did originate slightly before. These significant similarities show that the treatment by the criminal justice system of children who killed, did not occur in vacuum, but largely followed the overall developments of the criminal justice system as a whole. The thesis cannot support a generalisation of the movements observed to cases other than those of children who killed, due to the very specific selection of case

studies. However, it can suggest that there is correlation between the overall direction and adoption of concepts of the child by the criminal justice system as a whole and the associations present in the treatment by the criminal justice system of children who kill.

In contrast to the more subtle approach within the criminal justice system towards the children who killed examined in the thesis, the approaches of the press, politicians and the public towards children who killed during the 19th and 20th centuries show some erratic, emotional shifts. The approaches in all three fields resemble each other. More specifically, associations with the concept of the Savage Child are generally either absent or declining during the 19th century, to the point that they entirely disappear in all three fields by the end of the century. They then make a re-appearance in the middle of the 20th century in the Mary Bell case study and increase sharply at the end of the century in the Robert Thompson and Jon Venables case study. This movement significantly diverges from the one exhibited in the relevant sections of the criminal justice system during the late 20th century in terms of the intensity of the associations. It is possible that the general tendency not to regard girls as savage, but rather as more sweet, docile and gentle than boys, might have influenced the shape of the movement in the three fields, making its decline steeper at the end of the 19th century and its rise sharper at the end of the 20th century.⁶ However, it is doubtful that the influence of gender differences is such that it would have changed the overall direction of the movement, namely the reappearance and rise of associations with the concept of the Savage Child in the mid-late 20th century.

The associations with the concept of the Romantic Child, similarly to the associations with the concept of the Savage Child, show similar movements in all three fields, which differ from that evident in the approach within the criminal justice system towards the end of the 20th century. Associations with the concept of the Romantic Child are strong throughout the 19th and into the middle of the 20th centuries, whereupon they decline rapidly in the late 20th century in the case of Robert Thompson and Jon Venables. Again, it is possible that the fact that there is a move from female to male offenders exacerbates the rate of decline, however there is little doubt that the decline, even at a slightly more gradual rate, would have been notable regardless.

⁶ Jean-Jaque Rousseau, *Émile* (First published 1762, Barbara Foxley tr, The Kindle Edition); Mary Wollstonecraft, *Vindication of the Rights of Woman* (A Public Domain Book, 1792) 390- 393.

As regards the concept of the Unformed Child, there is a close resemblance in the approaches of the press and politicians overall. In the press, associations with the concept of the Unformed Child first become apparent in the middle of the 19th century, and switch to the modern, scientific version of the concept at the end of the century. From then on they follow a steadily upward movement, which is mirrored in the field of politics, particularly within parliamentary debates. The early course of the associations is missing in the latter field because politicians did not become involved in juvenile crime issues during the 19th century. Both approaches coincide with that exhibited within the criminal justice system towards children who killed up to the middle of the 20th century, when the upward movement of associations in the press becomes considerably steeper than in the other two fields. By contrast, the case studies reveal no associations between public reaction and the concept of the Unformed Child, most likely because the concept is founded upon complicated, scientific ideas rather than emotion and public reaction as reported by the press, is by nature limited to only expressing the latter, as mentioned above.

Finally, the associations with the concept of the Adult Child exhibit resemblances within the three fields, but also show some discrepancies. These associations are entirely absent within the field of public reaction throughout the period discussed, up until the end of the 20th century when they become noteworthy. Within the fields of politicians and the press the associations are likewise either absent or very weak throughout most of the period studied, resembling the approach of the public. However, the associations with the concept of the Adult Child in these two fields do not re-appear strongly in the late 20th century as they do in the field of public reaction, since they remain absent from the press and weak in the field of politics. The discrepancy is probably a result of the reluctance of both the press and politicians to portray children as adults.⁷ As aforementioned, the press, especially from the 1990s onwards, displays a tendency to over represent juvenile crime and place an emphasis on the young ages and violent behaviour of young offenders because this exacerbates fear and interest in the public, who will thus be more likely to follow its stories, making the newspaper in question more desirable for purchase.⁸ Similarly, following the politicisation of crime, also a feature of the 1990s, politicians have used juvenile

⁷ Jessica M. Pollak, Charis E. Kubrin, 'Crime in the News: How Crimes, Offenders and Victims are portrayed in the media' (2007) 14(1) *The Journal of criminal justice and popular culture* 59, 72.

⁸ *ibid* 72-73.

crime and especially violent behaviour displayed by children, to appeal to the fears and sensitivities of the public, portraying themselves as the best suited candidates for solving what they have repeatedly referred to as a growing problem, in order to gain the trust of the public, increasing their popularity and votes.⁹ Accordingly, members of both fields would not miss an opportunity to emphasise the youthfulness of violent offenders by portraying them in any way that resembled an adult, since that might take away from the appeal of their stories and their overriding goal of engaging the sensitivities of the public to increase their popularity. Another discrepancy is that in the press there are associations with the concept of the Adult Child at the beginning of the 19th century, which do not appear in the field of public reaction. These are probably a result of the tendency of the press during the early 19th century not to challenge the lead established by official government institutions, such as the criminal justice system.¹⁰

Therefore, the analysis of the case studies shows that the treatment by the criminal justice system of children who killed, from the beginning of police investigation to the completion of the trial and sentencing processes, can be associated with particular concepts of the child and that these associations form specific, observable movements over time that are stable, gradual and similar to the approach of the criminal justice system towards children as a whole. Moreover, the analysis reveals that there is a strong correlation between the associations and their movements found in the fields of the press, politicians and public reaction. These associations and their movements exhibit some resemblance to the approach of the sections of the criminal justice system examined until the middle of the 20th century, but deviate from then on, since the 1993 case study reveals swift, erratic changes in the fields of politics, the press and public reaction that are not reflected in their approach. These significant divergences evident at the end of the 20th century suggest that reasons other than the widespread adoption of different concepts of childhood also influence the treatment of children who killed in all the fields examined. Specifically, the dramatically changing features and natures of the press, politicians and public involvement and reaction at the end of the 20th century appear to have been decisive.

⁹ Tim Newburn, *Crime and Criminal Justice Policy* (2nd edn, Pearson Longman 2003) 426, 454-455, 457-458; Stephen Farrall and Will Jennings, 'Policy Feedback and the Criminal Justice Agenda: An Analysis of the Economy, Crime Rates, Politics and Public Opinion', (2012) 26(4) *Contemporary British History* 467, 468-469, 476-479, 482.

¹⁰ Peter King, 'Newspaper reporting and attitudes to crime and justice in late-18th and early-19th century London' (2007) 22(1) *Continuity and Change* 73, 102-103.

In the field of the press, the tendencies of the early 19th century to avoid in depth reports of crime, graphic accounts of juvenile violence and challenges to authority gradually changed throughout the period studied.¹¹ However, it was the end of the 20th century that witnessed a rapid increase in the competitiveness of the press that led to a swift turn towards sensationalistic journalism, a divided approach towards crime reporting between broadsheets and tabloids, over-reporting of all aspects of violent and juvenile crime, and the politicisation of newspapers leading to significant challenging of the actions of the criminal justice system.¹² It appears that these changes in the press had a profound effect on its approach towards Robert Thompson and Jon Venables, since they largely strengthened associations with the concept of the Savage Child, weakened associations with the concept of the Romantic Child and emphasised associations with the concept of the Unformed Child. It is noteworthy that gender considerations also affected the approach of the press, possibly making the swift changes in its approach even more pronounced. For instance, as described earlier, gender considerations were prominent in both the case studies of Margaret Messenger and Mary Bell and might be responsible for the sizeable shift in associations with the concepts of the Savage and Romantic Child between those case studies and that of Robert Thompson and Jon Venables.

In the field of politicians, the discreet approach towards juvenile crime and child offenders that was dominant throughout the 19th century and extended to an extent up to the middle of the 20th century entirely disappeared by the end of the century.¹³ It was succeeded by the intense politicisation of criminal justice issues, especially involving juvenile, violent offenders, public discussion of which was pursued relentlessly in order for each political party to establish itself as being tough on crime, an approach that had public appeal at the time.¹⁴ This alteration in the nature of politics is responsible for moving from a situation where there was a total lack of involvement of politicians with children who killed during the 19th century, to politicians persistently presenting strong views in the late 20th century. These views essentially pursued the appeasement of the public, thus strengthening the associations with the concepts of the Savage Child and weakening the associations with the

¹¹ Ibid 102- 103

¹² David A. Green, *When Children Kill* (Oxford University Press 2008) 19, 43-44, 48.

¹³ Norman Tutt, 'A decade of policy' (1981) 21 *British Journal of Criminology* 246, 247; Richard J. Terrill, 'Margaret Thatcher's Law and Order Agenda', (1989) 37 *The American Journal of Comparative Law* 429, 433; Newburn (n 9) 425, 454, 456-458; Julia Fionda, *Devils and Angels: Youth Policy and Crime* (Hart Publishing 2005) 141; Green (n 12) 201; Farrall and Jennings (n 9), 457, 468- 469, 475- 476, 478.

¹⁴ Newburn (n 9) 454-455, 457 – 458; Farrall and Jennings (n 9) 468-469, 476, 478-479, 482.

concept of the Romantic Child. Furthermore, in the same manner as in the field of the press, gender considerations might have enhanced the changes in the approach of politicians towards children who killed during the 20th century, since they were dealing with a female offender in the middle of the century, as opposed to male offenders at the end of the century.

Finally, the nature of public reaction is what made it especially volatile at the end of the 20th century. Namely, public reaction is largely restricted to exhibiting strong emotional responses. Associations with the concept of the Romantic Child in the 19th century and the concepts of the Savage and Adult Child in the 20th century, for instance, are the only ones evident in the approach of the public towards children who killed because they were the only ones sufficiently dominant to be apparent in the emotional outbursts of the public. Furthermore, the public can be manipulated to an extent by the press and politicians, especially regarding its objects of focus, which in 1993 was the Bulger case and by extension, juvenile violent offending.¹⁵ Moreover, the fact that the young offenders were male in the 1993 case study, following two female offenders in the two cases preceding it, might have made the movements in the associations more extreme.

These potent shifts within the three fields appear to be largely responsible for the sudden and swift changes in their approaches towards children who killed at the end of the 20th century. Conversely, the criminal justice system does not seem to be affected by such swift changes of opinion, largely due to its operation through legal rules and precedent, which ensure stability, independence and predictability of approach. These are ensured by the fact that the police and the courts operate within a legislative framework, set by statute and precedent, that pre-determines significant aspects of their functions to a significant extent. For instance, the place of the trial and potential sentences if found guilty are set by legislation.¹⁶ Similarly, the requirement for the rights of the young defendants to be preserved is established by either common law or statute, and includes the right to have an adult present during questioning by the police,¹⁷ for considering their capacity during trial¹⁸ and generally to have their best interests in mind as much as possible.¹⁹ There is significant room for discretion

¹⁵ Kevin G. Barnhurst and John Nerone, *The Form of News: A History* (The Guilford Press 2001) 211; Pollak and Kubrin (n 7) 60; Green (n 12) 119- 120.

¹⁶ Children and Young Persons Act 1933, s. 56; Magistrates Act 1980, s.24(1B).

¹⁷ Police and Criminal Evidence Act 1984, Code C, para 11.15.

¹⁸ *Rex v. Owen* (1830) 172 E.R. 685; *Reg. v. Smith (Sidney)* (1845) 1 Cox C.C. 260; *Reg. v. Vamplew* (1862) 176 E.R. 234.

¹⁹ Children and Young Persons Act 1933, s. 44(1)

throughout the process, but there are restrictions and boundaries within which organs of the criminal justice system must operate. One factor that does affect the approach of the criminal justice system, however, is gender considerations.²⁰ These tend to reinforce the use of elements within the concepts of the Romantic Child and/or the Savage Child when the young offenders are male, while explaining and treating female offending as pathological. These effects are notable, though they are also relatively stable and long lasting and thus do not have any sudden effects on the approach of the criminal justice system in particular cases.

In conclusion and in reply to the fundamental question of the thesis, the sections of the criminal justice system examined do display some variations in the way in which they treated children who killed throughout the 19th and 20th centuries, related to a great extent to changing concepts of the child. These variations are subtle and gradual, supported to a substantial degree by scientific discovery and research. The erratic, emotional responses associated with the case study of Robert Thompson and Jon Venables at the end of the 20th century, creating the impression that the case was unique and unprecedented, do not reflect the approach within the criminal justice system towards the young offenders, but rather the approaches of the press, politicians and the public, which were largely dictated by particular changes they each underwent during the time period in question. It was the re-appearance in these three fields of associations with concepts of the child that were popular more than 100 years earlier that created the impression that the 1993 case study was an unprecedented phenomenon. In reality, the notoriety of the case is not due to a sudden shift in the approach of the criminal justice system, but rather it is because of the fact that there was a move towards the Adult and Savage concepts of the Child that were developed chronologically earlier than the concepts of the Romantic Child that had previously largely replaced them, creating the feeling that there was a move backwards rather than forward in the treatment by the press, politicians and public reaction of children who killed.

²⁰ Frances Heidensohn, *Women and Crime* (2nd edition, Macmillan Press 1985) 32, 38, 44-47; Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Open University Press 1987) xi-xii, 7, 10, 40, 42, 73-75, 89, 94, 100-101, 104, 114; Elaine Showalter, *The Female Malady: Women, madness and English Culture 1830-1980* (Virago 1987) 3-4; Pat Carlen (ed) and Anne Worrall (ed), *Gender, Crime and Justice* (Open University Press 1987) 82, 83-84, 86, 88-90, 93; Annie Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice System* (Routledge 1990) 41, 49, 58; Lisa Appignanesi, *Mad, Bad and Sad: A History of Women and the Mind Doctors from 1800 to the Present* (Hachette Digital 2008) 7.

The late 1990s: After the Thompson and Venables case study

The mid and late 1990s, meaning the period after the case study of Thompson and Venables, were a period of legislative reform towards punitivism in general, including punitivism towards juvenile offenders in particular. The two pieces of legislation that mainly effected this shift were The Criminal Justice and Public Order Act 1994 and the Crime and Disorder Act 1998. The Criminal Justice and Public Order Act 1994 introduced Secure Training orders that enabled the detention of young offenders aged 12 to 15²¹ and doubled the maximum length of custodial detention in a Young Offenders Institution from 12 to 24 months.²² It also extended the powers of the police to arrest and detain young offenders, enabling it to detain children as young as 12 years old, whereas it had formerly only had the power to detain children who were above 15 years of age.²³ Moreover, reforms within the Act that were punitive towards both adults and juveniles included the fact that it allowed inferences to be drawn from a person's silence in effect negating the right to silence²⁴ and restricted the right to bail.²⁵ Similarly, the Crime and Disorder Act 1998 introduced an array of measures related to young offenders or potential young offenders. One such measure was the Child Safety Order that enabled the court to place children aged 10 or younger under the supervision of a responsible officer and set conditions for them to follow if they committed an action that would have been a crime if they were above the age of 10 or if they might commit such offence in the future.²⁶ Another such measure was the Anti-Social Behaviour Order, addressed to children aged 10 or above, who engaged or might engage in anti-social behaviour that caused or was likely to cause 'harassment, alarm or distress', and prohibited them from doing anything prescribed in the order, failure to comply could lead to custody.²⁷ The Curfew Schemes, by which children of certain ages could be banned from being in public during specified hours without being accompanied by an adult was another such measure²⁸ and if in contravention of the curfew, children could be removed from the public place by a

²¹ Criminal Justice and Public Order Act 1994, s 1.

²² Criminal Justice and Public Order Act 1994, s 17.

²³ Criminal Justice and Public Order Act 1994, s 23, s 24.

²⁴ Criminal Justice and Public Order Act 1994, s 34, s 35.

²⁵ Criminal Justice and Public Order Act 1994, part II.

²⁶ Crime and Disorder Act 1998, s 11.

²⁷ Crime and Disorder Act 1998, s 1.

²⁸ Crime and Disorder Act 1998, s 14.

police officer and returned to their homes.²⁹ Moreover, the Act gave police officers the power to remove school truants to designated premises or back to their school,³⁰ restricted the amount of warnings that could be given to a young offender before being prosecuted to one³¹ and abolished the *doli incapax* presumption.³²

These legislative changes clearly introduced measures geared towards punishing and restricting young offenders or even potential young offenders. They hence suggested that the emotional approaches of the press, politicians and the public witnessed in 1993 in relation to the Thompson and Venables case that adopted the concepts of the Adult and Savage Child to a significant extent, were being turned into practical reality for the criminal justice system, which was previously cushioned from them. This raises the question of whether the case itself motivated to some extent or had any effect on the course of action that led to the legislative changes of the 1994 and 1998 Acts. In the conclusion above it is stated that the criminal justice system, in contrast to the press, politics and the public, remains fairly stable, unemotional and impartial when dealing with children who kill. These legislative changes, however, if they were significantly affected and mainly motivated by the Thompson and Venables case, have the potential to raise question marks as to these very qualities of the criminal justice system.

An examination of the Hansard Debates on both The Criminal Justice and Public Order Bill in 1994³³ and the Crime and Disorder Bill in 1998³⁴ was conducted, looking at the explanations and justifications offered for their introduction, as well as arguments in their favour, with the purpose of determining whether such question marks indeed arise, as well as to provide answers in case they do. It was clear from the statement of the objectives of the two Bills that there was an undeniable move towards punitivism. During the 1994 Debate the Home Secretary, Mr. Howard, clearly declared that the purpose of the Bill was to fight crime and protect the public and stated that the principles that lay at its heart were that the protection of the public was the first priority of the government, that criminals must be held responsible for their actions and that the police should be given the powers to catch criminals.³⁵ Four years and a change of government later, Mr. Straw, the new Home Secretary,

²⁹ Crime and Disorder Act 1998, s 15.

³⁰ Crime and Disorder Act 1998, s 16.

³¹ Crime and Disorder Act 1998, s 66.

³² Crime and Disorder Act 1998, s 34.

³³ HC Deb 11 January 1994, vol 235, cols 20-122.

³⁴ HC Deb 08 April 1998 vol 310, cols 370-452.

³⁵ HC Deb 11 January 1994, vol 235, cols 20-122, 20.

speaking in Parliament regarding the introduction of the new Crime and Disorder Bill in 1998, claimed similar guiding principles behind its introduction, though phrased slightly differently.³⁶ He talked about rights and how he wished that everyone would enjoy ‘the right to live life free from fear and free from crime’.³⁷ He maintained that the purpose of the Bill was to ‘reduce crime and disorder’, to ‘put the victim first’ and make sure that offenders take responsibility and understand that all crimes have victims.³⁸

Moreover, it was clear from the discussions of the Bills in parliament that juvenile crime was one of the issues at the centre of both and that there was little sympathy to be shown to juvenile offenders. Mr. Howard in 1994 claimed that the criminal justice system, amongst others, had not been able to deal with the ‘core of persistent juvenile offenders’, whom he called ‘young tearaways who commit crime after crime, and who cock a snook at our entire criminal justice system’.³⁹ He further expressed the belief that the current Bill would finally enable the system to protect the public from them.⁴⁰ Similarly, Mr. Maclean, The Minister of State, maintained that juvenile offenders must understand that a life of crime does not pay and that their criminal behaviour will have serious consequences.⁴¹ Mr. Blair for the opposition also maintained that there were juvenile offenders who were ‘making life hell’ and that they had to be confined to secure accommodation.⁴² Mr. Straw in the 1998 debate claimed that people were increasingly complaining since the beginning of the 1990s about anti-social behaviour, intimidation and harassment, which were largely caused by ‘children and young people who were out of control’.⁴³ He claimed that young offenders and their lawyers “run rings around the court system’ using the *doli incapax* presumption, enabling them to get away with their crimes.⁴⁴ The system was ‘replete with excuse’, creating a general impression that young offenders could get away with their crimes and youths repeatedly committed crimes for long periods of time, without any intervention.⁴⁵ Moreover, he argued that the first priority of the criminal justice system should be to stop young offenders from committing crimes and that

³⁶ HC Deb 08 April 1998 vol 310, cols 370-452, 370.

³⁷ Ibid 370.

³⁸ Ibid 372.

³⁹ HC Deb 11 January 1994, vol 235, cols 20-122, 23.

⁴⁰ Ibid

⁴¹ Ibid, 116.

⁴² Ibid 39.

⁴³ HC Deb 08 April 1998 vol 310, cols 370-452, 370.

⁴⁴ Ibid 372.

⁴⁵ Ibid 373-374.

rehabilitating them was secondary.⁴⁶

These approaches showed similarity to the approaches of the public, the press and politicians towards Thompson and Venables in 1993. However, it cannot be argued that these legislative changes were in fact motivated by the said case, since the case itself was not mentioned at all during either of the two debates, not even once. It was not offered as justification or explanation for the approach followed or for any of the measures suggested. Other cases, all of persistent young offenders that conducted a significant bulk of juvenile crimes were instead cited. This suggested that the main targets and motivators of the Bills were the everyday, common place, not so serious or violent offences conducted by juveniles, rather than the one off, rare cases of extreme violence and severity such as the murder of James Bulger. More specifically, Sir Ivan Laurence, the Chairman of the Home Affairs Select Committee, referred to a 13 year old in Birmingham, who appeared in court after being charged with 225 offences of car related crime and burglaries.⁴⁷ Moreover, he mentioned that a police officer in Birmingham believed that the crime of the city could be reduced by 18 percent and car related crimes by 30 to 40 percent, if he could place merely six such persistent offenders in custody.⁴⁸ Similarly, Mr. Straw in 1998 referred to a case in his Blackburn constituency a few years prior, in which five members of one family had been arrested at least 50 times for offences including attempted robbery, burglary, theft, criminal damage and public disorder.⁴⁹ Despite their arrests and various convictions, he continued, their anti-social, criminal behaviour did not cease and they went on to keep terrorizing the locals.⁵⁰ He also referred to two brothers on the Stoke Heath estate in Coventry, who repeatedly terrorized their neighbours without the criminal justice system being able to stop them.⁵¹ It was cases like these, the speakers suggested, that had to be addressed by the new legislation, in both instances.

Following these observations, it is doubtful whether the case of Thompson and Venables actually played any role, let alone an important one, in the legislative changes that followed it. It is of course indisputable that the politicians in the press, as well as the press itself, used the case to sway public opinion in their favour to gain votes and readership respectively. That is arguably the reason due to which the case

⁴⁶ Ibid 376.

⁴⁷ HC Deb 11 January 1994, vol 235, cols 20-122, 55.

⁴⁸ *ibid*

⁴⁹ HC Deb 08 April 1998 vol 310, cols 370-452, 370.

⁵⁰ *ibid*

⁵¹ *ibid* 371

has been repeatedly mentioned in numerous press reports for years after the end of the trial and the sentencing of the two young offenders and not only to follow its developments in the Appeal courts, the European court or the release proceeding of the two boys.⁵² However, when it came down to the actual Bills that effected the shift, it becomes clear that they were motivated by and geared to combat less serious and more wide-spread types of juvenile crime rather than the type witnessed in cases of children who kill and more specifically the Thompson and Venables case.

Accordingly, the question as to whether the criminal justice system might not be as stable as previously suggested is answered in the negative. It is conceded that long

⁵² Mary Ann Sieghart, Family policy should begin in the office, *The Times* (London, 1 January 1994, 14); Ben Preston, Patten spells out code to tighten school discipline, *The Times* (London, 5 January 1994, 1); Sex, symbols and the fallen Virgin, *The Times* (London, 14 January 1994, 13); Peter Lewis, When a child is judge, *The Times* (London, 21 January 1994, 14); Arthur Leathley, Howard hints at censorship laws on video violence, *The Times* (London, 22 January 1994, 8); Don Mackay, TV Under Fire on all channels, *Daily Mirror* (London, 24 January, 1994); Andrew Culf, Survey Shows increase in rate of violence on TV, *The Guardian* (London, 27 January 1994, 3); Give killers the life James lost, *Daily Mirror* (London, 31 January 1994, 27); Parental Duty, *The Times* (London, 4 February 1994, 17); John O'leary, Parents fear a repeat of Bulger abduction, *The Times* (London, 10 February 1994, 6); Emma Wilkins, Little angels, little devils, *The Times* (London, 10 February 1994, 14); Headstone tribute to Bulger boy, *The Times* (London, 12 February 1994, 4); Richard Wallace, Fears grow on TV time, *Daily Mirror* (London, 16 February 1994, 13); Peter Waymark, Scapegoats for the crimes of the children, *The Times* (London, 19 February 1994, 17); Even child killers deserve justice, *Daily Mirror* (London, 22 February 1994, 6); John O'leary, School inspectors tell teachers to instil moral values, *The Times* (London, 26 February 1994, 9); Marcel Berlins, A national nightmare, *The Times* (London, 21 March 1994, 35); Andrew Culf, Video-Crime link stronger than thought, say Child Experts, *The Guardian* (London, 1 April 1994, 1); Richard Ford, Experts condemn video nasties as form of child abuse, *The Times* (London, 1 April 1994, 3); John Rea Price, 'Age escape' for children under 14, *The Times* (London, 1 April 1994, 21); Nicholas Wood, Howard tells censor to turn back tide of video nasties, *The Times* (London, 2 April 1994, 2); Play Up, Play Up, and get on with the real thing, *The Observer* (London, 3 April 1994, 19); Frances Gibb, A time to adapt or die, *The Times* (London, 5 April 1994, 33); David Bradshaw and Nigel Morris, Banned: Thanks to your Daily Mirror, *Daily Mirror* (London, 13 April 1994, 1); Jan Moir, Public Lives: Land of Soap and Gory; Young offenders are hooked on video nasties, right? Wrong, says a survey released this week. And as David Alton MP calls for a ban anyway, survey co-author Ann Hagell enters the battle of the small screen, *The Guardian* (London, 13 April 1994, 8); Penelope Leach, Frightened Face of the Future: Pursuing social policies that fail to put children first will mean continuing all the old mistakes, *The Guardian* (London, 18 April 1994, 20); Robi Dutta, Ministers 'blind to value of childcare', *The Times* (London, 20 April 1994, 6); Peter Waymark, Putting adult ideas into infant minds, *The Times* (London, 7 May 1994, 17); James Roberts, TV, Pool, Video Games and Daily Counseling – Life inside the world of young offenders: Punishment that fits the crime?, *Daily Mirror* (London, 23 May 1994, 6); Francis Wheen, Wheen's world: The typically British way of Bastardly, *The Guardian* (London, 25 May 1994, 7); Edward Pilkington, Killing the Age of Innocence; The Bulger backlash is in danger of destroying the values that the Children Act sought to enshrine in law, *The Guardian* (London, 30 May 1994, 18); Leading Article: Guscott and Bugler, *The Guardian* (London, 23 July 1994, 24); Ann Owers, Justice: Wrong Way to right a wrong, *The Guardian* (London, 14 September 1994, 7); Michael Prescott, Howard to ban video nasties, *The Sunday Times* (London, 16 October 1994); Allan Levy, The End of Childhood; An increasingly politically motivated approach in the criminal justice system is leading to the victimisation of children, *The Guardian* (London, 29 November 1994, 12); Virginia Bottomley, Society: International Year of the Family: Safe in our Hands: In a provocative assessment of the last year, Virginia Bottomley argues that Conservative policies offer the best hope for retaining stable communities, *The Guardian* (London, 28 December 1994, 13); David Harrison, Unbelievably Evil, *The Observer* (London, 18 January 1995, 19); When children kill, *The Times* (London, 16 April 1996, 37); Leading Article: Time to Balance the Scales of Justice, *The Observer* (London, 5 May 1996, 3); Lord Harris, Shirley Williams, Stephen Tumim And Anthony Lester, Michael Howard's Decisions are overturned so often and calls for his resignation are so numerous that 'beleaguered' seems part of his official title. Four leading critics analyse his policy failures and ask... is this man the worst Home Secretary ever?, *The Observer* (London, 19 May 1996, 7); Euan Ferguson, Focus: Reclaiming the Streets: Full of Woe or Far to Go? The Nation's Children on Trial, *The Observer* (London, 9 June 1996, 16); Richard Ford, Bulger killer 'responding well' to regime of rehabilitation, *The Times* (London, 31 July 1996, 2); Martin Woollacott, Bangs and Whimpers; Martin Woollacott unravels the moral tangle of government and public opinion in cases such as the Bulger sentencing, Hawk -missile bashing and owning handguns, *The Guardian* (London, 1 August 1996, 17); Paul Cavadino, Childcare: Just too young to know; Paul Cavadino argues the case for a separate and more humane legal system for the children who kill, *The Guardian* (London, 11 September 1996, 6); Brian Masters, Murder in mind, *The Sunday Times* (London, 30 March 1997); Richard Ford, Bulger youth may come out 'decent', *The Times* (London, 6 October 1998, 8); Nick Cohen, Comment: Without Prejudice: When it comes to child criminals, the lynch mob still rules, *The Observer* (London, 31 October 1999, 33); Nick Cohen, Without Prejudice: Comment: The Third Way make the third generation pay: Is Ramsbotham just one more victim of snob rule?, *The Observer* (London, 7 November 1999, 31); Bulger killers need justice not vengeance, *The Guardian* (London, 8 November 1999, 19); Justice for adults is not justice for children, *The Sunday Times* (London, 26 December 1999); Politicians at the head of the Bulger lynch mob, *The Sunday Times* (London, 29 October 2000)

term, general public feelings eventually do find their way into legislation, as they did in the present situation. This is, after all, how long-term change that enables the criminal justice system to remain contemporary rather than archaic and to keep up with current outlooks and scientific developments is sustained. However, short term, emotional outbursts regarding specific cases, like the 1993 case study, have not been proven in the current thesis to sway the entire direction of public policy. The aforementioned conclusion that the criminal justice system is stable and predictable is not negated by the fact that long-term change does take place, since such change is well known in advance and happens gradually, in stages, hence making it anticipated and predictable. It is not the result of emotional reactions founded upon a single case.

Since the case of Thompson and Venables in 1993 there have been various cases of children accused and tried for murder, but none of children under the age of 14 killing other children. Accordingly, it is not possible to say with conviction how the legislative changes, the policy shift towards punitivism, the approaches of the press, public opinion and politicians in the Thompson and Venables case and the lessons learnt, if any, from the case itself, have affected the treatment by the criminal justice system of children who killed, within the case study parameters set by the thesis. The closest the issue came to be re-visited was in what the press called either the 'Edlington case' or the 'Doncaster case',⁵³ a case in which a 10-year-old and an 11-year-old boy lured two boys of approximately the same age to the woods, tortured them and left them for dead.⁵⁴ However, the victims survived and hence the charges against the young offenders were of grievous bodily harm and not murder.⁵⁵ Moreover, the defendants pleaded guilty so no trial took place.⁵⁶ These are crucial differences that make the case incomparable to the ones analysed in this thesis. However, it can be noted that the court did not allow the revelation of the identities of the young defendants and it only sentenced them to five years in custody, suggesting perhaps that the intervening legislation and policy and attitude shifts did not have a profound effect on the treatment by the courts of children who kill. Moreover, it can be suggested that since the court required the anonymity of the young offenders in the press, that the criminal justice system had learnt its lesson regarding making such

⁵³ Doncaster torture case: Brothers, 12 and 10, used sticks and noose on boys, *The Guardian*, (London, 3 September 2009); Edlington torture brothers said 'We can't go yet, we haven't killed them', *The Mirror* (London, 4 September 2009); Doncaster attack: brothers subjected two young boys to vicious, prolonged attack, *The Telegraph* (London, 20 January 2010); Edlington brothers jailed for torture of two boys, *The Guardian*, (London, 22 January 2010).

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ *ibid*

cases entirely open to the public eye.⁵⁷ However, this must be said with caution because of the vast differences between the current case and the 1993 case. In contrast, the references to the case in the press were numerous, the discussions of politicians in relation to it were extensive and the reports of the enraged public were plenty, revealing reactions similar to those in the 1993 case, albeit of a much shorter duration.⁵⁸ The shorter duration is probably due to the lower level of controversy surrounding the facts of the case, the lack of a trial, and the absence of the irreversible consequence of dead young victims at the end of the criminal conduct.⁵⁹ Therefore, it appears, at least on the surface, that little has changed in the approaches of these three fields, since the Thompson and Venables case study.

In 2016 there was another case that bore some similarity to the Thompson and Venables case, which took place in Ireland and. Two young girls were convicted of a murder that involved the extensive torture of their victim and the infliction of heavy brutality.⁶⁰ However, the victim was a 39 year old alcoholic named Angela Wrightson, rather than a child, and the perpetrators were 15 years old and thus outside the age range the thesis is exploring. These are significant differences that place the case outside the ambit of the thesis. However, it can be mentioned that although a life sentence with a tariff of 15 years was imposed, which was longer and stricter than the one eventually imposed on Thompson and Venables, the names of the two girls were never allowed to be released publicly, because, according to the judge, that would pose danger to their lives. This is contrary to the practice followed in the two 20th-century case studies examined, where the names of Mary and Norma Bell were revealed from the beginning of their trial and the names of Robert Thompson and Jon Venables were revealed as soon as they were convicted. The approach of the court in 2016 does suggest the existence of punitivism within the criminal justice system, given the long sentence, but simultaneously, it suggests that some lessons were learnt from the past, since the involvement of the press was limited, to an extent. The case, however, like the Edlington case, is very different from the ones examined in the current thesis, hence the brief analysis and the resulting inability to draw strong, general conclusions from it.

⁵⁷ibid

⁵⁸ ibid

⁵⁹ ibid

⁶⁰ Angela Wrightson murder: Girls given life terms for 'corwardly killing', *BBC News*, (England, 7 April 2016) <<http://www.bbc.com/news/uk-england-35989955>> accessed 10/10/16

Final Thoughts for the Future:

The thesis examines the differences in the treatment by the section of the criminal justice system that starts with the commencement of the police investigation and ends with the completion of the trial and sentencing processes, the press, politicians and the public of children who killed in England over time and the relationship of this treatment to the four concepts of the child. These four concepts of the child are developed by the thesis, from various characteristics attributed to children during different time periods. It analyses these interrelations and their evolution, aiming to clarify what role the different perceptions of childhood played over time in this treatment in the different fields and meanwhile shed light on misconceptions and wrong perceptions that were created over the years regarding the approach of the criminal justice system.

Accordingly, the thesis offers a comprehensive historical analysis. An exploration of the advantages and disadvantages of the criminal justice system in dealing with children who kill is beyond its scope. Also beyond the scope of the thesis is the contemplation of specific improvements or suggestion of a comprehensive framework for alternatives to the current approach of the criminal justice system. The current analysis does provide a stepping-stone, a platform, on which such suggestions might be made, as explained below, though substantial additional analysis is required to actually develop them. Analysis that would lie beyond the boundaries of the current thesis.

Nonetheless, some advantages of the approach of the criminal justice system towards children who kill were noticeable and are worth mentioning. Specifically, it has become apparent that notions such as the capacity of child offenders, their ability to understand the proceedings, their best interests and their psychological and medical treatment and rehabilitation are very much present and important within the approach of the criminal justice system towards children who kill. It is true that the English system is by no means ideal and that it is far removed from being focused on the child offender's welfare as, for example, is the juvenile justice system in Norway.⁶¹ However, the findings of the research indicate, through its preoccupation with the aforementioned notions, that the punitive, emotional approaches of the press, the

⁶¹ Trauma of Norway's killer children deepens, *The Observer*, (London, 23 October 1994) 13; David A. Green, Comparing Penal Cultures: Child on child homicide in England and Norway (2007) *Crime and Justice* 591

public and politicians towards Robert Thompson and Jon Venables, were not imitated by the criminal justice system. In addition, the presence of logic, consistency, stability and predictability within the criminal justice system's approach also become apparent in the current analysis. Amongst some of the examples that demonstrate this approach are that police officers dealing with them clearly mentioned how they were being careful and soft with them,⁶² the judge and Lord Chief Justice both suggested leniency in sentencing in comparison to adults⁶³ and Lord Hope referred to the need to protect them and keep their welfare in mind throughout their custody.⁶⁴

Moreover, the thesis makes it possible to observe the detrimental role played by the press in the 1993 case study, especially after the changes it underwent during the early 1990s. This can justify a suggestion that the role of the press in such cases be as restricted as possible, perhaps by the courts requiring the anonymity of the perpetrators. The cases can still be reported, maintaining the requirement for transparency and the right of the public to be informed, however the protection of the identities of young perpetrators would afford them some security and peace of mind. Moreover, the use of photographs, life events and the names of the actual young perpetrators can make stories more personal, dramatic and sensationalized. By extension, they make these stories more attractive to both the press and politicians to use in order to increase their readership and popularity respectively, which in turn might lead to significant over reporting. This practice seems to have been a lesson learnt, given that the anonymity of the perpetrators was required by the courts, even after their conviction, in the cases following the Thompson and Venables case mentioned above. However, this cannot be concluded with certainty, given the aforementioned differences between the said cases.

Another deliberate choice made at the beginning of the thesis was not to examine or question the truth or validity of the various characteristics attributed to children within each of the concepts of the child, but simply to accept their existence as fact, a result of the social construct of childhood at different time periods. Accordingly, the thesis is not about a normative evaluation of these characteristics and it is beyond its scope to make suggestions as to whether one or a combination of the concepts of the

⁶² *ibid.*

⁶³ *R v Secretary of State for the Home Department, ex p Thompson and Venables* [1997] 3 W.L.R. 23 (Lord Goff); "Bulger murder boys could be freed in eight years", *The Times* (London, 27 January 1994) 1; Deena Haydon and Phil Scraton, "Condemn a little more, understand a little less": The Political Context and Rights Implications of the Domestic and European Rulings in the Venables-Thompson Case' (2000) 27(3) *Journal of Law and Society* 416, 432-433

⁶⁴ *R v Secretary of State for the Home Department* (n 63) (Lord Hope).

child analysed is better than another. The thesis accepts that characteristics from all the concepts can be present in children and that the presence of one does not negate the presence of another.

However, even though the thesis is neither about providing a normative approach regarding the different characteristics attributed to children within the concepts of the child, nor composing a comprehensive framework for reform, it does provide a stepping-stone on which potential alternatives to the existing approach of the criminal justice system towards children who kill can be founded. One potential alternative that can be closely linked with the various characteristics the criminal justice system associates with children as they are explained and analysed in the current thesis is the rights-based approach. The approach entails the simultaneous attribution of various categories of rights to children who kill. One category of rights that should arguably be attributed to children tried for homicide is one that includes the rights that protect them against injustices throughout their experience within the criminal justice system, in the same way adult defendants are protected. These include, amongst others, a right to a fair trial, a right to defend themselves through legal assistance, a right to be presumed innocent until proven guilty, a right to be informed of the charges against them in a language that they understand and a right not to be subjected to torture or inhuman and degrading treatment.⁶⁵ Such rights can be built on the notion that children are like adults, possessing autonomy, competence and responsibility, characteristics attributed to them within the concept of the Adult Child.

In addition to the rights adults have within the criminal justice system, an additional category of rights that one might maintain should also be ascribed to children who kill when they go through the criminal justice system is that which offers them additional protection because they are vulnerable, due to their young age. Hence, a category of rights founded upon the construction of the Romantic Child. Such a category might include rights like the need to have special safeguards guiding the conduct of the police towards child suspects, to have a guardian or parent present during their trial, making their court surroundings less intimidating and more familiar prior to the commencement of their trial and maintaining their anonymity.

Moreover, it can be contended that another category of rights, which should be attributed to children tried for homicide, is one that recognises their limited capacities

⁶⁵ European Convention on Human Rights, art 5 and art 6.

both to have committed the crime and to follow legal proceedings. This includes a form of consideration of their capacity to commit the crime like the presumption of the *doli incapax* used to be and concessions that would make the proceedings more simple and easy to follow, like shorter sessions and the use of simpler language. Similarly, the criminal justice system when dealing with children who kill should recognise the fact that childhood is a period of growth and development and thus incorporate a category of rights that ensures that this growth and development that will eventually lead to them reaching their full potential is not hindered by the way in which it treats them. Both of these categories can be founded upon the concept of the Unformed Child.

The rights-based approach developed by Kathryn Hollingsworth is one that can be very closely linked with this argument. In summary, the author argues that child offenders have a dual status within the criminal justice system,⁶⁶ that of offender and that of a child.⁶⁷ The former ensures that they enjoy the rights of adult defendants, whereas the latter enables the content of those rights to be altered to accommodate for the fact that they are vulnerable and less competent.⁶⁸ Moreover, the writer maintains that childhood is the period during which children collect and develop ‘assets’, in order to reach the state of ‘full autonomy’ of adults.⁶⁹ Accordingly, when the criminal justice system deals with children following a rights-based approach, it must protect their future capacity for full autonomy, meaning their ability to develop the capacities, which will enable them to achieve full autonomy at some future date.⁷⁰

Therefore, the thesis offers a historical analysis whose significance lies in the fact that it enables the clarification of the past and the present, in a manner that can provide a stepping-stone into the future. The development of potential alternatives itself, such as the rights-based approach of Hollingsworth, lies outside its boundaries, however it does lay the foundations on which such alternatives can be built. The thesis clarifies past misconceptions regarding the way in which the criminal justice system treated children who kill, starting with the beginning of the process of the police investigation and ending with the completion the trial and sentencing processes. It does so via extensive analysis of particular case studies spread

⁶⁶ Kathryn Hollingsworth, ‘Protecting Rights at the Margins of Youth Justice in England and Wales: Intensive Fostering, Custody and Leaving Custody’ (2008) 8(3) Youth Justice 229, 230.

⁶⁷ *ibid.*

⁶⁸ *ibid.*, 230-231.

⁶⁹ Kathryn Hollingsworth, ‘Theorising Children’s Rights in Youth Justice: The Significance of Autonomy and Foundational Rights’ (2013) 76(3) Modern Law Review 1046, 1049.

⁷⁰ *ibid.*, 1049-1050.

throughout the 19th and 20th centuries and has left open the way for future research to build on its findings and conclusions.

Appendix One: Tables of Press Articles related to the 19th century case Studies

John Any Bird Bell:

Date	Number of articles ¹	Articles on the front pages	Newspaper	Article Title	Page(s)
27/5/1831	1	n/a	The Morning Post	The Murder near Rochester'	n/a
28/5/1831	2	n/a	Jackson's Oxford Journal	Murder Near Rochester'	n/a
		n/a	Hampshire Advertiser: Royal Yacht Club Gazette, Southampton Town & County Herald, Isle of Wight Journal, Winchester Chronicle, & General	'Multiple News Items'	n/a
2/6/1831	1	n/a	The Standard	Multiple News Items'	n/a
3/6/1831	1	n/a	The Morning Chronicle	The Editor of the Moring Chronicle'	n/a
4/6/1831	1	n/a	Jackson's Oxford Journal	Wednesday's and Thursday's Posts'	n/a
30/7/1831	2	0	The Times	Summer Assizes'	4
		n/a	The Standard	Summer Assizes'	n/a
1/8/1831	1	0	The Times	Summer Assizes'	6
2/8/1831	2	0	The Times	The Execution of John Any Bird Bell, for Murder'	4
		n/a	The Standard	Multiple News Items'	n/a
6/8/1831	4	n/a	The Leicester Chronicle: or, Commercial and Agricultural Advertiser	Trial of Murder'	n/a
		n/a	Preston Chronicle	Domestic Miscellany'	n/a
		n/a	The Lancaster Gazette and General Advertiser	Wednesday's Mail'	n/a
		n/a	The Sheffield Independent and Yorkshire and Derbyshire Advertiser	An Old Enemy with a New Terror'	n/a
13/8/1831	1	n/a	Royal Cornwall Gazette, Falmouth Packet & Plymouth Journal	Multiple News Items'	n/a
	Total: 16	Total: n/a			

¹ References of the case located on different pages are counted as different articles, even if they carry the same title, unless they are on a double page spread, which is noted in the pages column, but counted as one article in the number of articles column.

Peter Barratt and James Bradley:

Date	Number of articles ²	Articles on the front pages	Newspaper	Article Title	Page(s)
19/4/1861	2	n/a	The Times	Murder by two boys'	10
			Liverpool Mercury	'The Murder by two boys at Stockport'	n/a
20/4/1861	9	n/a	The Lancaster Gazette and General Advertiser for Lancashire	The Murder of a Child at Stock'	n/a
			The Examiner	Home News'	n/a
			Cheshire Observer and General Advertiser	Murder of a Child by two boys, near Stockport'	n/a
			The York Herald	Murder of a child by two boys near Stockport'	n/a
			The Preston Guardian	'General News'	n/a
			The Leeds Mercury	Miscellaneous	n/a
			The Leeds Mercury	The Shocking Murder of a Child by two boys at Stockport'	n/a
			The Leicester Chronicle	Miscellaneous	n/a
			Manchester Times	Wilful Murder of a Child by Two Boys'	n/a
21/4/1861	2	n/a	Lloyd's Weekly Newspaper	Murder of a child by boys'	n/a
			Reynold's Newspaper	The wilful murder of a child by two boys'	n/a
23/4/1861	1	n/a	The Bury and Norwich Post and Suffolk Herald	Shocking murder by two boys'	n/a
24/4/1861	1	n/a	The Derby Mercury	Staffordshire	n/a
26/4/1861	1	n/a	The Newcastle Courant	Murder by two boys'	n/a
10/8/1861	5	n/a	The Times	Summer Assizes'	10
			The Standard	Matthew Johnston, 'Summer Assizes'	n/a
			Manchester Times	Chester Summer Assizes'	n/a
			Cheshire Observer and General Advertiser	Chester Summer Assizes'	n/a
			The Morning Post	Multiple News Items'	n/a
11/8/1861	1	n/a	Lloyd's Weekly Newspaper	The Stockport Murder'	n/a
12/8/1861	3	n/a	The Standard	Multiple News Items'	n/a
			The Times	There is so much of routine	6
			Birmingham	Miscellaneous	n/a

² References of the case located on different pages are counted as different articles, even if they carry the same title, unless they are on a double page spread, which is noted in the pages column, but counted as one article in the number of articles column.

			Daily Post		
13/8/1861	2	n/a	The Bury and Norwich Post	The murder by two children at Stockport'	n/a
			The Belfast News Letter	The murder of an infant by two children'	n/a
14/8/1861	1	n/a	The Essex Standard	The Kingswood Murder'	n/a
16/8/1861	1	n/a	The Hull Packet and East Riding Times	The barbarous murder of a child by two boys'	n/a
17/8/1861	1	n/a	The Leeds Mercury	The barbarous murder of a child by two boys'	n/a
	Total: 30	Total: n/a			

Margaret Messenger:

Date	Number of articles ³	Articles on the front pages	Newspaper	Article Title	Page(s)
7/7/1881	1	n/a	Liverpool Mercury	Tragic affair near Carlisle'	n/a
12/7/1881	1	n/a	The Bury and Norwich Post and Suffolk Herald	Alleged murder by a young girl	n/a
16/7/1881	1	n/a	Manchester Times	Murders	n/a
3/11/1881	10	n/a	The Times	The Assizes'	9
			The Leeds Mercury	Extraordinary child murder in Cumberland'	n/a
			The North Eastern Daily Gazette	Extraordinary child murder in Cumberland'	n/a
			The Belfast News-letter	Murder trials in England'	n/a
			The Dundee Courier and Argus	A Girl of 14 sentenced to death'	n/a
			The Pall Mall Gazette	Summary of this morning's news'	n/a
			Freeman's Journal and Daily Commercial Advertiser	Latest news'	n/a
			Western Mail	A child sentenced to death'	n/a
			The Sheffield and Rotherham Independent	A girl of 14 sentenced to death'	7
			Liverpool Mercury	Extraordinary trial for murder'	n/a
4/11/1881	2	n/a	The York Herald	Summary	5
			The Standard	Juvenile Murderess'	3
5/11/1881	7	n/a	The Blackburn Standard: Darwen Observer and North East Lancashire Advertiser	Extraordinary trial for murder'	7
			Cheshire Observer	Extraordinary trial for murder'	2
			Law Journal	Juvenile Murderess'	n/a
			Berrow's Worcester Journal	General news'	6
			The Leeds Mercury	Law and police'	n/a
			Manchester Times	Summary of the week'	n/a
			Aberdeen Weekly Journal	A girl sentenced to death'	n/a
7/11/1881	1	n/a	The Huddersfield Daily Chronicle	The condemned girl murderer'	4
8/11/1881	1	n/a	The Bury and Norwich Post and Suffolk Herald	A girl of 14 sentenced to death'	3
10/11/1881	1	n/a	The North Eastern Daily Gazette	The murder by a girl'	n/a

³ References of the case located on different pages are counted as different articles, even if they carry the same title, unless they are on a double page spread, which is noted in the pages column, but counted as one article in the number of articles column.

11/11/1881	9	n/a	The Belfast News-Letter	The Belfast news letter'	n/a
			The Dundee Courier and Argus and Northern Warder; The Royal Cornwall Gazette Falmouth Packet, Cornish Weekly News and General Advertiser	Margaret Messenger'	n/a
			The Standard	Respite of Margaret Messenger'	n/a
			The North Eastern Daily Gazette	Confession by the girl murderess'	n/a
			The Newcastle Courant	'Second edition'	n/a
			The Huddersfield Daily Chronicle	Multiple news items'	3
			Glasgow Herald	Friday Morning'	n/a
			The Dundee Courier and Argus and Northern Warder	The sentence of death on a young girl'	n/a
			Western Mail	The sentence of death on a child'	n/a
12/11/1881	2	n/a	Daily News	The confession of murder by a girl'	n/a
			The Sheffield & Rotherham Independent	Multiple news items'	n/a
14/12/1881	4	n/a	Liverpool Mercury	Latest news'	n/a
			The Sheffield and Rotherham Independent	Multiple News Items'	n/a
			The Standard	Multiple news items'	2
			Trewman's Exeter Flying Post or Plymouth and Cornish Advertiser	The sentence of death on the girl Margaret Messenger'	n/a
17/12/1881	3	n/a	Aberdeen Weekly Journal	General news'	n/a
			Berrow's Worcester Journal	General News'	n/a
			Manchester Times	Murders	n/a
20/12/1881	1	n/a	The Bury and Norwich Post and Suffolk Herald	Reprieve	n/a
23/12/1881	1	n/a	The Royal Cornwall Gazette Falmouth Packet, Cornish Weekly News and General Advertiser	General news'	2
	Total: 45	Total: n/a			

Appendix Two: Table of Press Articles related to the Mary Bell Case Study

Date	Number of articles ¹	Articles on the front pages	Newspaper	Article Title	Page(s)
6/12/1968	4	0	The Guardian	QC alleges schoolgirls murdered two boys "solely for pleasure"	4
			The Times	'Schoolgirls said to have killed for pleasure'	5
			Daily Mirror	Girls killed two little boys for fun, says QC'	5
			Daily Telegraph	2 Girls killed for fun says QC'	26
7/12/1968	3	0	Daily Mirror	Two tales of murder" by little Mary and Norma'	7
			The Times	Girl spoke of flowers on body – QC'	2
			The Guardian	'QC says boy's death was a "joint enterprise".'	5
10/12/1968	4	0	The Times	'Mother says girl led her to body'	4
			Daily Mirror	'Little Mary's death book – by teacher'	11
			The Guardian	'Girl led mother to son's body'	4
			Daily Telegraph	'Accused Girl led me to my dead son, says mother'	21
11/12/1968	4	0	The Guardian	'Girl accuses friend in murder trial'	4
			The Times	'Girl's evidence in murder trial'	3
			Daily Telegraph	'Friend had hands on boy's neck, says accused girl'	22
			Daily Mirror	'Mary strangled a pigeon'	5
12/12/1968	4	1	The Times	'Court Adjourned for weeping child'	2
			Daily Telegraph	'Friend showed me how to kill little boy, says girl'	25
			The Guardian	'Murder case counsel warned'	1
			The Guardian	'Girl in murder case weeps'	4

¹ References of the case located on different pages are counted as different articles, even if they carry the same title, unless they are on a double page spread, which is noted in the pages column, but counted as one article in the number of articles column.

13/12/1968	2	0	The Times	'Accused Child says she watched "The Saint", "Apache"	3
			Daily Mirror	'Little Mary is violent and dangerous, murder jury told'	4
14/12/1968	4	0	The Times	'Influence of girl "like Svengali"'	3
			Daily Mirror	'Little Mary "an evil Svengali" QC tells jury'	7
			The Guardian	QC says girl wielded "Svengali" influence'	12
			Daily Telegraph	Girl had Svengali-like hold over friend, says counsel'	13
17/12/1968	3	0	The Times	Judge's warning on lies told by girls'	4
			The Guardian	Additional witness called in girls' trial	3
			Daily Mirror	Surprise alibi witness at girls' murder trial	12
18/12/1968	8	3	Daily Mirror	Callaghan's problem: the child killer'	1
			Daily Mirror	Child killer problem'	Back page
			The Guardian	Hospitals could not take girl killer'	1
			The Guardian	Life detention for girl of 11'	5
			The Guardian	Sick, not sinful'	10
			The Times	'Girl, 11, sentenced to life detention for killing boys'	4
			Daily Telegraph	Life Detention girl, 11, in remand centre	1
			Daily Telegraph	Life Detention for girl, 11, who killed two boys'	13
19/12/1968	3	2	The Times	Where does Mary Bell go if her appeal fails?'	n/a
			Daily Mirror	Appeal for the girl facing life detention'	1
			Daily Mirror	Gallaghan probes the future of child killer Mary Bell'	1
20/12/1968	4	2	The Times	Girl moving to London Home'	9
			The Guardian	Mary Bell moving to London'	4
			Daily Mirror	'Little Mary will move to a new home'	1
			Daily	Callaghan sends "life girl" to	1

			Telegraph	special centre'	
21/12/1968	1	0	Daily Telegraph	Doctors attack remand centre for "life girl"	9
22/12/1968	1	0	The Observer	Terrence Morris considers the problem of keeping dangerously disturbed children in custody'	
12/2/1969	3	0	The Guardian	MP says move Mary Bell'	4
			The Times	Mary Bell is sent to a boys' approved school'	2
			Daily Mirror	Minister: Take Mary Bell away'	2
13/2/1969	2	1	The Guardian	Minister to see Mary Bell Unit'	4
			Daily Mirror	Killer Mary Bell stays – Callaghan'	1
15/2/1969			The Guardian	Mary Bell: cause for concern'	8
18/2/1969			The Guardian	'Secrecy plea on Mary Bell'	7
	Total : 50	Total: 9			

Appendix Three: Table of Press Articles related to the Thompson and Venables Case Study

Date	Number of articles ¹	Articles on the front pages	Newspaper	Article Title	Page(s)
14/02/1993	2	0	Observer	Shop security camera filmed kidnap of two-year-old James	2
			Sunday Times	Police hunt widens as fears for snatched two year old grow	
15/02/1993	5	1	Times	Missing Boy found murdered	1
			Times	Mother's fears are confirmed as video boy is found dead	3
			Times	Boy Murdered	18
			Sun	Kidnap tot murdered: James 2, found on railway line after snatch from shops	4-5
			Sun	Gone in a flash	4
16/02/1993	4	0	Daily Telegraph	Hunt for James Bulger's killers focuses on boys seen in video	3
			Sun	Heartbreak of James' mum	6
			Sun	For goodness sake hold tight to your kids	10-11
			Sun	Evil that makes a child kill	10-11
17/02/1993	5	1	Daily Telegraph	12 year old arrested over boy's murder	1
			Daily Telegraph	Murdered James was seen injured and in tears	3
			Daily Telegraph	Challenge to the Church	3
			Sun	I saw battered Jamie dragged away by youths	7
			Sun	No help for snatch tot	7
18/02/1993	5	0	Daily Telegraph	Bulger case police free 12-year old	3
			Daily Telegraph	Mothers rein in their children	3
			Sun	It was snatch No 2 – mother tells how youths tried	8-9

¹ References of the case located on different pages are counted as different articles, even if they carry the same title, unless they are on a double page spread, which is noted in the pages column, but counted as one article in the number of articles column.

				to grab her son, too	
			Sun	Mums dash to get reins	9
			Sun	Hannibal' joins hunt	9
19/02/1993	6	1	Daily Telegraph	TV photos aid murder hunt	1
			Daily Telegraph	Police trace James Bulger's three-mile journey to death	2
			Daily Telegraph	135 children questioned as murder inquiry widens	2
			Sun	Video youths killed Jamie	7
			Sun	Killing even stuns U.S.	7
			Sun	Murderers must never be freed..help them commit suicide if they can't take it	9
20/02/1993	5	2	Daily Telegraph	10-year-old murder suspects held longer	1
			Daily Telegraph	10 the youngest age for children to face criminal charges	2
			Sun	The Urchins: No fathers..mums on the booze..sad home life of boys, 10, in Jamie quiz	1,4-5
			Sun	Men cry at Jamie tribute	5
21/02/1993	10	2	Sunday Telegraph	Boys aged ten accused of the abduction and murder of two- year old James Bulger	1
			Sunday Telegraph	Liverpool's Murder... a nation's shame: United by horror and loathing	16-17
			Sunday Telegraph	The finger points at the parents	16
			Sunday Telegraph	Mary's fears come home to roos	17
			Sunday Telegraph	Merseyside hardships run deeper	17
			Observer	Two boys accused of killing James	1
			Observer	Columnist	24
			Observer	A report from a town stunned by the killing of little Jamie Bulger	25
			Sunday Times	10 year old boys charged with James' murder as Liverpool grieves	
			Sunday	Dire Liverpool	

			Times	drag down Ipswich into pit of despair	
22/02/1993	9	2	Daily Telegraph	Clark pledge to curb crime by juveniles	1
			Daily Telegraph	Plea for calm after boys' murder charge	2
			Daily Telegraph	Britain Condemned for under-21 detainees	2
			Sun	Riot mob fears at Jamie court	1,5
			Sun	Locked up in luxury: Pocket money and video games for accused	4-5
			Sun	File on Child killer Mary Bell: Jamie's parents will end up with own life sentence	4
			Sun	Bright kids so cruel	4
			Sun	Priest's moving tribute to tot	5
23/02/1993	6	1	Daily Telegraph	Shouts of 'kill them' as boys are remanded in Bulger case	1
			Daily Telegraph	Row over boy held in Bulger murder case	3
			Sun	Little victim's mum gets sick hate mail	4
			Sun	One boy yawned, one just stared ahead: Pair so calm as they face court over Jamie's killing	4-5
			Sun	Sympathy of Nikki's mum	4
			Sun	Van pelted by hate mob	4
26/02/1993	1	1	Sun	Major defends Britain over Jamie murder	1
28/02/1993	2	0	Observer	The messy truth about Britain's violent youth: An examination of how last week's apocalyptic rhetoric has obscured the facts about juvenile offenders	10-11
			Sunday Times	Self-pity city	
02/03/1993	2	2	Guardian	James Bulger's sad last journey	1
			Daily Mirror	A tear for Jamie	1
05/03/1993	1	0	Times	How they keep an eye trained on you	35
08/03/1993	1	0	Times	Taking responsibility	31

11/03/1993	1	0	Times	Film makers defend record on violence	3
01/11/1993	3	0	Times	Boys go on trial for murder of 2 year old	3
			Times	News	18
			Daily Mirror	Jamie trial boys get high seats	15
02/11/1993	15	5	Times	Child kicked and beaten on walk to death	1
			Times	Two hour frogmarch led James to his death	3
			Times	Glassy and expressionless the boys squirmed and stared at the ceiling	3
			Times	Mother 'foiled an earlier kidnap bid'	3
			Times	News	24
			Guardian	James Bulger 'battered with bricks'	1
			Daily Telegraph	Accused little boys with ties and tidy hair	1
			Daily Telegraph	James Bulger's journey to death	2
			Daily Telegraph	Watchful mother 'saved her child	2
			Daily Mirror	The killing of baby James	1
			Daily Mirror	Killed with bricks, stones and a piece of metal, then laid across the railway line where a train sliced him in two	4-5
			Sun	Journey of hell: Boys aged 10 dragged crying James through town before murder, told court	1,4
			Sun	World glued to trial	4
			Sun	Battered, stoned, kicked to death: Court told of James' horrific last hours	4-5
03/11/1993	15	2	Times	Bulger case boys blame each other	1
			Times	Mother tells of attempt to lure son	3
			Times	News	24
			Guardian	Bulger accused 'blame each other'	1
			Guardian	Boys 'changed their stories over James Bulger murder'	3

			Guardian	Leading article: The crime of not thinking coolly	19
			Daily Telegraph	Boys lied and blamed each other, says QC	3
			Daily Telegraph	US puts case on front pages	3
			Daily Telegraph	Mother tells how attempt was made to lure son away	3
			Daily Mirror	How brave James fought for his life	4-5
			Daily Mirror	When the news is too hard to bear	11
			Sun	Mum weeps, Mrs Z weeps, Child B weeps and Child A sucks thumb	4
			Sun	James Bulger: Killing that shocked the world: We threw paint and bricks at his face..he fell but he kept getting back up again	4-5
			Sun	They tried to grab my lad says mother	5
			Sun	James: The horror making headlines around the world	6
04/11/1993	10	2	Times	James Bulger	1
			Times	Mother tells of last hours on shopping trip with James	3
			Times	Video shows final minutes in precinct	3
			Times	People in the Times	24
			Guardian	Bulger accused listen to mother's hope and agony	1
			Guardian	Film 'shows boy lured to his death'	3
			Daily Mirror	The James Bulger trial	5
			Sun	My agony by James' mum	8-9
			Sun	Boy stared at me as I called son	9
			Sun	No need to turn James trial into a snuff video	11
05/11/1993	7	0	Times	Witnesses tell of James' tearful walk to death	4
			Times	News	22
			Daily Mirror	I saw James led off to his death	17
			Sun	I saw James' ordeal from top of a bus	7
			Sun	Crying tot 'snatched up in a bear hug	7
			Sun	Driver saw lad kicked	7

			Sun	He had bump on fore head, sobs witness	7
06/11/1993	7	1	Times	Police warn Bulger media	1
			Times	Boys with James 'like his brothers'	3
			Times	World's media breach trial judge's ruling	3
			Times	Victims of criminal hysteria	16
			Guardian	Witness saw 'terrible lump' on baby's head	6
			Daily Telegraph	I saw James with terrible lump on his head, pensioner tells jury	5
			Daily Mirror	I saw tragic James in tears	7
07/11/1993	2	0	Sunday Telegraph	Torment of little James' last walk	5
			Sunday Telegraph	Satellite sidesteps ban on naming accused	5
09/11/1993	4	0	Times	My girl held abducted boy's hand, says mother	4
			Guardian	Murdered boy 'was twice nearly saved'	6
			Daily Telegraph	Mother let daughter hold James' hand	9
			Daily Mirror	James wept as I spoke to him, says boy	8
10/11/1993	4	0	Times	James Bulger 'struck by 30 separate blows'	3
			Guardian	Boy died from 22 head injuries	2
			Daily Mirror	James laughed then 30 blows ended his life	8
			Sun	Jury shock at big bar used to batter James: Killing that shocked the world	11
11/11/1993	2	0	Times	Scientists link two accused to Bulger killing	5
			Guardian	Blood on boy's shoe 'was from victim'	9
12/11/1993	6	0	Times	Accused boys 'knew right from wrong'	3
			Times	Boy wept in murder denial	3
			Guardian	Boys 'knew right from wrong'	3
			Daily Telegraph	Nightmares for boys who 'knew right from wrong'	3
			Daily Telegraph	'I saw him but I never took him', 11-year-old told police	3

			Daily Mirror	James 'hell'	7
13/11/1993	4	0	Guardian	Bulger jury hears how James wept	6
			Daily Telegraph	'I want my mum' pleaded James as he was being led away	7
			Daily Telegraph	We left him safe besides a phone box, says suspect	7
			Daily Mirror	I want me mum	8
17/11/1993	2	0	Times	Bulger case boy said he tried to stop attack	4
			Guardian	Boy 'balked at dead child's bloodstains': Accused denies touching James for fear of big laundry bill	6
18/11/1993	6	0	Times	Weeping boy told murder police: 'I never touched him'	6
			Times	Why did we not spare you the details	20
			Guardian	Accused boy 'broke down' at interview	8
			Daily Telegraph	I didn't kill baby says wailing boy	4
			Daily Mirror	An insult to his memory	9
			Daily Mirror	'Don't send me to jail' plea by boy	9
19/11/1993	4	0	Times	No defence evidence in Bulger trial	2
			Times	What about his mum? Will you tell her I am sorry?	7
			Guardian	Boy 'apologised to Bulger mother after confession'	3
			Daily Telegraph	'I did kill James - tell his mum I'm sorry', boy admits on tape	9
20/11/1993	5	0	Times	Boys in Bulger case 'had murder in mind'	4
			Guardian	Child's death 'clear case of murder'	8
			Daily Telegraph	Boys 'equally guilty of killing James'	5
			Daily Mirror	Jamie boys 'are liars'	15
			Sun	2 James boys 'lied and lied'	13
23/11/1993	4	0	Times	Lawyers defending Bulger case boys swap accusations	3
			Daily Telegraph	'It was Boy B who carried out the sustained attack'	7

			Daily Telegraph	Boy A 'is a cocky, confident, devious, arrogant little liar'	7
			Daily Mirror	Jamie's killing 'a prank that went too far'	5
24/11/1993	4	0	Times	Bulger jurors are told to put emotions aside	5
			Guardian	Bulger jury told to curb emotions	3
			Daily Telegraph	Put your emotions aside, judge tells Bulger jury	6
			Daily Mirror	James Bulger jury is out	13
25/11/1993	70	10	Times	Boys guilty of Bulger murder	1
			Times	Moment their masks cracked	1
			Times	Police were quick to find answers, but they led to more questions	2
			Times	Defendants' early distress soon gave way to boredom	2
			Times	Parents wrestle with the agonising question: Why?	3
			Times	There's no remorse? He does not accept he had done wrong	3
			Times	'Jon has had a lot more love and attention than some children'	3
			Times	Treatment offers hope return to outside world	4
			Times	Stricken parents move to secret new addresses	4
			Times	Trial makes news around the world	4
			Times	Janet Daley	18
			Times	In the face of frailty	18
			Times	News	24
			Guardian	Boys guilty of Bulger murder	1
			Guardian	For the parents, the nightmare will never end	1
			Guardian	Two youngsters who found a new rule to break	1
			Guardian	Law that treats 10-year-olds like adults; Clare Dyer on concerns that lack of treatment can damage youngsters facing murder trial	2
			Guardian	Police chief labels two boy killers as evil:	2

				Detective tells of boy's 'terrible chilling smile'	
			Guardian	Puzzled child care experts view killing as a one-off	3
			Guardian	'They were wicked beyond expectation'	3
			Guardian	Videos: Judge's remarks prompt MP's horror video curb call	4
			Guardian	Leading Article: Lessons of an avoidable tragedy	25
			Daily Telegraph	Boys guilty of Bulger murder: Detention for a 'very very long time' for killers aged 11	1
			Daily Telegraph	Inquiry urged on violent films	1
			Daily Telegraph	'Yeah, my son's a robber but he's not a murderer'	1
			Daily Telegraph	What kind of boys murdered James?	4
			Daily Telegraph	'He was a loving son'	4
			Daily Telegraph	Chilling smile that shocked detectives	4
			Daily Telegraph	Evil killers look in vain for an expression of sympathy	4
			Daily Telegraph	The life that now lies before them	4
			Daily Telegraph	How they were caught	5
			Daily Telegraph	Psychologist's profile so accurate that it was almost embarrassing	5
			Daily Telegraph	Trial revives grim memories	5
			Daily Telegraph	Justice seen to be done	5
			Daily Telegraph	Why a child will kill	21
			Daily Mirror	Freaks of nature	1
			Daily Mirror	I'll keep new baby close by.. always	2-3
			Daily Mirror	Playground boast	2
			Daily Mirror	Judge Blames	4
			Daily Mirror	Out in 10 years	4
			Daily Mirror	Home for rest of their childhood	21

			Daily Mirror	James Bulger: Beyond Belief	22-23
			Daily Mirror	Bully who sucked thumb for comfort	24-25
			Daily Mirror	I saved my boy from their grasp that day	26-27
			Daily Mirror	The birth of a deadly union	28
			Sun	So evil, so young: This boy and his pal murdered James Bulger, 2 and will be locked away for 20 years	1
			Sun	Spurred on by twisted sex fantasy	2
			Sun	Monster's 50p posy for victim	2
			Sun	Vital link to nail the child killers	2
			Sun	Tot's death is so sad, killer told gran	2
			Sun	Horror video replay: chilling links between James Murder and tape rented by killer's dad	2-3
			Sun	Bugs Bunny laugh- in as tot lay dead	3
			Sun	One sobbed...the other stared: Gallery cheer as jury say evil pair are guilty	4-5
			Sun	Monster's mum: I'm not to blame	5
			Sun	A horror we can't ignore	6
			Sun	A grim warning of nightmares to come	9
			Sun	He lied as easily as he breathed: cunning bully made friends with weirdo after punch-up in playground	25
			Sun	Worst pupil in 30 years	25
			Sun	Lies of killer: Scallies' boast to pals as they terrorized the neighbourhood	26
			Sun	Join our gang cos we're gonna kill someone..	27
			Sun	Our shame by parents of boy killer	27
			Sun	It could have been my boy in the dock	27
			Sun	Devil himself couldn't have made a better job	28

				of raising two fiends	
			Sun	Break-up of family leads kids to crime	28
			Sun	Thugs beat James from head to toe	28
			Sun	Guilty tears lasted 10 seconds: Arrogance of they boy who wouldn't admit he did wrong	28
			Sun	Nintendo put trial kid at ease	29
			Sun	We'll never let out new baby out of our sight: I was sobbing with Denise says girl cop who tried to ease her torment	30, 35
			Sun	'It could have been my boy on the railway line'	35
26/11/1993	37	8	Times	Bulger case sparks row over morals	1
			Times	Howard rejects clampdown on video nasties	3
			Times	Whitehouse fires parting shot at sadism	3
			Times	Jurors are offered support	3
			Times	Horror films do not turn children into horrible people'	3
			Times	Civic heads keep alive the spark of hope	3
			Times	Minors who murder	18
			Times	Show me where it hurts	20
			Times	Child's play	21
			Times	Malaise behind the Bulger tragedy	21
			Times	News	24
			Guardian	Bulger judge urges debate on parenting and videos	1
			Guardian	Grief-stricken Liverpool searches its soul	2
			Guardian	Indecent exposure?; Child play 3	2
			Guardian	World reaction	2
			Guardian	Moreover: Beyond Good and Evil	5
			Daily Telegraph	Church 'fails to give lead on morality	1
			Daily Telegraph	Sentences on boys are condemned	1

				abroad	
			Daily Telegraph	Mrs Whitehouse to retire	1
			Daily Telegraph	Sky drops film James' killers may have seen	4
			Daily Telegraph	New baby is part of healing process, says police friend	4
			Daily Telegraph	Chocolate world dream of the boy killer who wants to live forever	4
			Daily Telegraph	No change in council's policy over truancy	4
			Daily Telegraph	Mother leaves children at abduction spot	4
			Daily Telegraph	The killer girl who returned to gloat	21
			Daily Mirror	Patrols to hunt truant terrors	1
			Daily Mirror	My £40m killer video: Ban on boasting tycoon's Bulger horror	1
			Daily Mirror	I know, blame the bishops	2-3
			Daily Mirror	I was born a weirdo	4-5
			Daily Mirror	Video in death case No 2	4
			Daily Mirror	Save the boys with cuddles	6
			Daily Mirror	Wage war on army truants	6
			Daily Mirror	Dark and savage from the cradle	7
			Sun	For the sake of all our kids...burn your video nasty	1
			Sun	Life for killer: Burn this evil video	11
			Sun	Tory raps churches	11
			Sun	Evil Jon dreams of rescuing tot James	11
27/11/1993	16	2	Times	Major supports Lilley's welfare society	1
			Times	Patten calls on public to spot truants	1
			Times	Judge bans pictures of Bulger case units	2
			Times	One day in February	3
			Times	Street watch can conquer truancy, says Patten	4
			Times	Schools ask parents to support moral code	4
			Times	Church must lead in battle for souls	5
			Guardian	Leading article:	24

				Blood in a blind alley	
			Guardian	Stand up and be counted	24
			Daily Telegraph	Church and state seek truce over moral teaching	3
			Daily Telegraph	'Sadism the motive for murder'	3
			Daily Telegraph	Judge orders curb on press coverage of boy killers	3
			Sun	End for Chucky – Gordon Stott and John Troup	4-5
			Sun	Tell us how long killers will serve	4
			Sun	Sick movie made my son a demon	5
			Sun	How we can leave a happy memory in honour of James	6
28/11/1993	14	0	Sunday Telegraph	Outside other children play, but the widows are covered...	18
			Sunday Telegraph	Jamie's legacy: a new morality	19
			Sunday Telegraph	Take action – or do nothing?	19
			Sunday Telegraph	When the grim facts outstripped fiction	19
			Sunday Telegraph	How a revolution aimed at the young brought violence into the home	18-19
			Observer	Consumed in the bonfire of misery	12
			Observer	How we make demons of children	12
			Observer	Television: Murdoch tops sickbag ratings	24
			Observer	A murder trial that did not serve the true interests of Justice	26
			Sunday Times	The seeds of evil sown on our screens	
			Sunday Times	MPs want ban on release of violent videos	
			Sunday Times	Shame on the QC who went too far	
			Sunday Times	The triumph of evil	
			Sunday Times	When the wicked witch tells a child to do bad	
29/11/1993	9	1	Times	Carey warns against Bulger case 'panic'	1
			Times	Evil children chill French with echo	12

				of Bulger case	
			Times	High camp Christmas	16
			Times	Facing up to evil in the Bulger trial and on our screens	19
			Times	News	22
			Guardian	Carey backs 'one society'	3
			Guardian	Love, not hate, will heal the tragedy of three small boys	18
			Daily Mirror	Don't blame me for death of baby James	13
			Sun	Don't blame me says man who made Chucky	8
30/11/1993	1	0	Times	A lesson from the killers	31
02/01/1994	1	0	Times	Bulger parents live in fear of killers' release	4
27/01/1994	3	1	Times	Bulger murder boys could be freed in eight years	1
			Daily Mirror	Bulger sentence uproar	8
			Guardian	Survey shows increase on rate of violence on TV	3
10/02/1994	1	0	Times	Little angels, little devils	14
26/02/1994	1	0	Times	School inspectors tell teachers to instil moral values	9
20/04/1994	1	0	Times	Ministers blind to value of childcare	6
30/05/1994	1	0	Guardian	Killing the age of innocence	18
23/06/1994	1	1	Times	James Bulger killers have to serve at least 15 years	1
18/10/1994	3	1	Times	Girl, 5, died after attack by playmates	3
			Guardian	Howard rules boy's killers should serve 15 years	1
			Daily Mirror	15 years for Jamie killers	2
05/11/1994	3	1	Times	James Bulger parents split	1
			Times	Pressure drives Bulger parents to seek divorce	3
			Guardian	Stress separates Bulger parents	8
29/11/1994	2	0	Guardian	The end of childhood	12
11/06/1995			Sunday Times	Bulger killers in appeal to Europe	
18/04/1996	1	0	Times	Howard wrong to raise term for boy killers	6

03/05/1996	1	0	Times	Howard acted unlawfully over Bulger sentences	7
02/06/1996	1	0	Guardian	Judges made mistake in Bulger case ruling	4
31/06/1996	1	0	Times	Bulger killers responding well to regime of rehabilitation	2
07/03/1998	1	0	Times	Bulger killers are allowed to challenge trial	5
06/10/1998	1	0	Times	Bulger youth may come out decent	8
13/03/1999	2	0	Times	Bulger killers take appeal to Euro court	5
			Daily Mirror	Fury at Bulger killers appeal	15
17/12/1999	1	1	Guardian	Boy killers denied fair trial: European court of human rights ruling on James Bulger case forces radical changes in way children are tried	1
14/04/2000	1	1	Times	Euro ruling may set teen killers free	1
	Total: 343	Total: 50			

Table of Cases

UK Cases

C (a minor) v DPP [1994] 3 W.L.R. 888

C (a minor) v DPP [1996] AC 1

Gillick Respondent v West Norfolk and Wisbech Area Health Authority and
Department of Health and Social Security [1986] AC 112

Owen (1830) 172 E.R. 685

R (a minor) (wardship: consent to treatment), Re [1992] Fam 11.

R v Secretary of State for the Home Department, ex p Jon and Robert [1997] 3
W.L.R. 23 (Lord Hope)

R v Secretary of State for the Home Department, ex p Venables and Thompson
[1997] 2 WLR 67

R v Secretary of State for the Home Department, ex p Venables and Thompson
[1997] 3 W.L.R. 23

R(Axon) v Secretary of State for Health and the Family Planning Association [2006]
EWHC 37

Robert and Another (tariff recommendations), Re [2001] 1 All ER 737 (CA).

Smith (Sidney) (1845) 1 Cox C.C. 260

Thompson and Another (tariff recommendations), Re [2001] 1 All ER 737 (CA)

Vamplew (1862) 176 E.R. 234

W (a minor) (medical treatment: court's jurisdiction), Re [1993] Fam 64

European Cases

Hussain v United Kingdom (1996) 22 EHRR 1

V v United Kingdom (2000) 30 EHRR 121

Table of Legislation

Children Act 1908, s. 4

Children Act 1989, s 1, s 8

Children and Young Persons Act 1908

Children and Young Persons Act 1933, s 39, s 43, s 46, s 50, s 53, s 56

Children and Young Persons Act 1963

Crime and Disorder Act 1998

Criminal Justice Act 1991, s 35, s 43

Criminal Justice and Public Order Act 1994

Education Act 1996, ss 548-549

Education Act 2002, s 29B

European Convention on Human Rights, art 5, art 6

Family Law Reform Act 1969, s 8(1)

Magistrates' Courts Act, 1980, s 24(1B)

Murder (Abolition of the Death Penalty) Act 1965, s.1

Police and Criminal Evidence Act 1984, Code C, para 11.15

Sexual Offences (Amendment) Act 2000

Sexual Offences Act 2003, ss 5-8

United Nations Convention on Human Rights, art 3(1), art 40(1)

United Nations Convention on the Rights of the Child (1990), art 13, art 24(1)

Bibliography

- 1815 Stamp Act, <http://www.spartacus.schoolnet.co.uk/Lstamp.htm>, accessed 04/05/2012.
- 19th Century Justice: Courts of Justice, <http://vcp.e2bn.org/justice/page11374-courts-of-justice.html>, accessed 23/05/2012.
- ‘30 June 1855: Newspaper stamp duty abolished’ (London, 30 June 1855) *The Guardian* <http://www.guardian.co.uk/theguardian/from-the-archive-blog/2011/may/10/guardian190-newspaper-duty-cut>, accessed 04/05/2012.
- ‘A child murdered by children’, *The Independent* (23 April 1995), <http://www.independent.co.uk/arts-entertainment/a-child-murdered-by-children-1616746.html>, accessed 30/03/2012.
- Angela Wrightson murder: Girls given life terms for ‘corwardly killing’, *BBC News*, (England, 7 April 2016), <http://www.bbc.com/news/uk-england-35989955>, accessed 10/10/16
- Bedfordshire Schools, <http://www.schools.bedfordshire.gov.uk/gaol/ccourts.htm>, accessed 23/05/2012.
- Child Killings in England and Wales, Explaining the statistics, *NSPCC* (March 2014), <https://www.nspcc.org.uk/globalassets/documents/information-service/factsheet-child-killings-england-wales-homicide-statistics.pdf>, accessed 25/8/16
- Coroner’s Jury, *Encyclopedia Britannica* <http://www.britannica.com/EBchecked/topic/138341/coroners-jury>, accessed 23/05/2012.
- Early public opinion polling and research, <https://www.boundless.com/political-science/textbooks/boundless-political-science-textbook/public-opinion-6/measuring->

[public-opinion-46/early-public-opinion-research-and-polling-266-1855/](#), accessed 2/9/16.

--‘Every parent’s nightmare’, *BBC News* (26 October 2000), <http://news.bbc.co.uk/2/hi/uk/991562.stm>, accessed 12/11/16.

--Glossary: Green Papers <http://www.parliament.uk/site-information/glossary/green-papers/>, accessed 20/02/2012.

--Glossary: White Papers <http://www.parliament.uk/site-information/glossary/white-paper/>, accessed 20/02/2014.

--History of opinion polling, <http://www.pbs.org/now/politics/polling.html>, accessed 2/9/16

--‘James Bulger Murder’, *Chanel 4 News* (3 March 2010), <http://www.channel4.com/news/articles/uk/james+bulger+murder+timeline/3567882.html>, accessed 12/11/16.

--‘John Any Bird Bell’, *The Newgate Calendar, Part III* (1800 to 1841), <http://www.exclassics.com/newgate/newgate3.txt>, accessed 29/05/2012

--Joint Committees, <http://www.parliament.uk/about/how/committees/joint/>, accessed on 21/02/2014.

--Leader’s Speech, Brighton 1995: Tony Blair (Labour), <http://www.britishpoliticalspeech.org/speech-archive.htm?speech=201>, accessed 09/04/2014.

Polling the nations: a brief history of polling, <http://poll.orpub.com/static.php?type=about&page=briefhistory>, accessed 2/9/16,

--Press Reference, The United Kingdom: Basic Data

<http://www.pressreference.com/Sw-Ur/The-United-Kingdom.html>, accessed 03/03/2012.

--Reports of Committees: The White Paper: "The Child, the Family and the Young Offender" (1966) 29 *Modern Law Review* 409.

--The Children's Court of New South Wales: Children's Law News: Doli Incapax – The Criminal Responsibility of Children',

https://docs.google.com/viewer?a=v&q=cache:YPXsir3GyvEJ:www.lawlink.nsw.gov.au/lawlink/childrens_court/ll_cc.nsf/vwF, accessed 29/05/2012.

--*Trial 1600-1926, A Narrative of the Facts Relative to the Murder of Richard Faulkner Taylor, in the Woods Between Rochester and Maidstone, On Friday the 4th of March, 1831* (Gale MOML Print Editions 1831).

--Victorian Children in Trouble with the Law: Did the Punishment Fit the Crime?

<http://www.nationalarchives.gov.uk/education/lesson25.htm>, accessed 24/05/2012.

Aberdeen Weekly Journal, 5 November 1881, 17 December 1881.

Abernethie L, 'Child labour in contemporary society: why do we care?' (1998) 6 *The International Journal of Children's Rights* 81.

Albrecht HJ, 'Youth Justice in Germany' (2004) 31 *Crime and Justice: Review of Research* 443.

Allen H, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Open University Press 1987).

Appell AR, 'The pre-political child of child-centred jurisprudence' (2009-2010) 46 *House of Lords Review* 703.

Appignanesi L, *Mad, Bad and Sad: A History of Women and the Mind Doctors from 1800 to the Present* (Hachette Digital 2008).

Ariès P, *Centuries of Childhood* (Pimlico 1996).

Ashworth A, *Principles of Criminal Law* (3rd edn, Oxford University Press 1999).

Augustine, *Edwarda; The Confessions of St Augustine* (first published 397 AD, Bouverie Pusey tr, Arc Manor 2008).

Bandura A, 'Social Cognitive Theory of Moral Thought and Action' in W.M. Kurtines and J.L. Gewitz (eds), *Handbook of Moral Behaviour and Development* (Laurence Erlbaum Associates Publishers 1991).

Barnhurst KG and Nerone J, *The Form of News: A History* (The Guilford Press 2001).

BBC News, 'The Observer Under Review' (London, 4 August 2009)
<http://news.bbc.co.uk/2/hi/programmes/newsnight/8184667.stm>, accessed 01/03/2012.

Beatty B, 'Transitory Connections: The Reception and Rejection of Jean Piaget's Psychology in the Nursery School Movement in the 1920s and 1930s', (2009) 49(4) *History of education quarterly* 442.

Bentley D, *English Criminal Justice in the 19th Century* (The Hambledon Press 1998).

Berrow's Worcester Journal, 5 November 1881, 17 December 1881.

Birmingham Daily Post, 12 August 1861.

Bogart L, 'The Public Use and Perception of Newspapers' (1982) 48 *Public Opinion Quarterly* 709.

Bottoms A and Dignan J, 'Youth Justice in Great Britain' (2004) 31 *Crime and Justice* 21.

Carlen P (ed) and Worrall A (ed), *Gender, Crime and Justice* (Open University Press 1987).

Carpendale JIM, 'Kohlberg and Piaget on Stages and Moral Reasoning' (2000) 20 *Developmental Review* 181.

Cavadino P (ed), *Children who kill*, (Waterside Press, 1996).

Cheshire Observer and General Advertiser, 20 April 1861, 10 August 1861, 5 November 1881.

Chesney-Lind M (ed) and Pasko L (ed), *The female offender: Girls, women and crime* (3rd edition, Sage Publications 2013).

Clapton G, 'Yesterday's Men: The Inspectors of the Royal Scottish Society for the Prevention of Cruelty to Children, 1888-1968' (2009) 39 *British Journal of Social Work* 1043.

Communications Select Committee, *The Ownership of the News* (HL 2007-08, 122-I) 222.

Crime and Disorder Bill [Lords], SC Deb (B) 12 May 1998.

Crime and Disorder Bill [Lords], SC Deb (B) 12 May 1998, part 6.

Crofts T, 'Catching Up with Europe: Taking the Age of Criminal Responsibility Seriously in England' (2009) 17 *European Journal of Crime, Criminal Law and Criminal Justice* 267.

Cunningham H, *Children and Childhood in Western Society since 1500* (2nd edn, Pearson Longman 2005).

Daily Mirror, 1 November 1960, 17 November 1961, 12 June 1962, 6 May 1963, 6-20 December 1968, 12-13 February 1969, 15 – 24 February 1993, 2-26 November 1993, 24-31 January 1994, 16 - 22 February 1994, 13 April 1994, 23 May 1994, 23 July 1994, 6 May 1995, 22 February 1996, 6 May 1996, 31 July 1996, 4 March 1997, 20 February 1998, 13 March 1999, 17 December 1999, 4 September 2009.

Daily News, 6 - 7 July 1881, 12 November 1881.

Daily Telegraph, 6 - 21 December 1968, 16 - 23 February 1993, 2 - 27 November 1993, 20 January 2010.

Dekker JJH, 'The century of the child revisited' (2000) 8 *The International Journal of Children's Rights* 133.

Devon Country Council, School Records: Reformatory Schools

http://www.devon.gov.uk/index/councildemocracy/record_office/family_history_3/school_records/reformatory_schools.htm, accessed 24/05/2012.

Dolgin JL, 'The fate of childhood: Legal Models of Children and the Parent- Child Relationship' (1997-1998) 61 *Alb. L. Rev* 345.

Doob AN and Sprott JB, 'Youth Justice in Canada' (2004) 31 *Crime and Justice: Review of Research* 185.

Education Bill Deb 23 March 1993, vol 544, cols 199-322.

Elkind D, 'The law and postmodern perceptions of children and youth' (1992) 69 *Denv.U.L. Review* 575.

Emsley C, Hitchcock T and Shoemaker R, *Crime and Justice: Punishments at the Old Bailey*, The Old Bailey Proceedings Online

<http://www.oldbaileyonline.org/static/Punishment.jsp#notpunished-pardon>, accessed 23/05/2012.

Engels F, *The Condition of the Working Class in England* (Progress Publications 1973).

Evans DT, 'Falling angels? the material construction of children as sexual citizens' (1994) 2 *The International Journal of Children's Rights* 1.

Farrall S and Jennings W, 'Policy Feedback and the Criminal Justice Agenda: An Analysis of the Economy, Crime Rates, Politics and Public Opinion', (2012) 26(4) *Contemporary British History* 467.

Fionda J, *Devils and Angels: Youth Policy and Crime* (Hart Publishing 2005).

Fortin J, *Children's Rights and the Developing Law* (3rd edn, Cambridge University Press 2009).

Foucault M, *The Order of Things* (Routledge Classics 2002).

Freeman's Journal and Daily Commercial Advertiser, 3 November 1881.

Fyfe NR, 'Law and order policy and spaces of citizenship in Contemporary Britain' (1995) 14(2) *Political Geography* 177.

Garland D, 'Limits of the Sovereign state- Strategies of Crime Control in Contemporary Society' (1996) 36 *British Journal of Criminology* 445.
--*The Culture of Control* (Oxford University Press 2001)

Gilligan C, *In a Different Voice* (Harvard University Press 1982).

Glasgow Herald, 11 November 1881.

Green DA, Comparing Penal Cultures: Child on child homicide in England and Norway (2007) *Crime and Justice* 591.

--*When Children Kill* (Oxford University Press 2008).

Hall JS, 'Psychology and schooling: the impact of Susan Isaacs and Jean Piaget on 1960s science education reform' (2000) 29(2) *History of Education* 153.

Hampshire Advertiser: Royal Yacht Club Gazette, Southampton Town & County Herald, 28 May 1831.

Haydon D and Scraton P, "'Condemn a little more, understand a little less": The Political Context and Rights Implications of the Domestic and European Rulings in the Venables-Thompson Case' (2000) 27(3) *Journal of Law and Society* 416.

HC Deb 06 June 1848, vol 99, cols 429-70.

HC Deb 08 April 1998, vol 310, cols 370-452.

HC Deb 11 March 1969, vol 779, cols 1176-303.

HC Deb 12 February 1932, vol 261, cols 1167-246.

HC Deb 16 December 1993, vol 234, cols 1395-1402.

HC Deb 23 June 1998, vol 314, cols 907-11.

HC Deb 25 November 1993, vol 233, cols 571-573.

HC Deb 27 February 1963, vol 672, cols 1265-379.

HC Deb 27 November 1997, vol 301, cols 1089-103.

Health Committee, *Social Care* (HC 2009 Pat Thane Memorandum).

Health Committee, *Social Care* (HC 2009 Pat Thane Memorandum).

Heidensohn F, *Women and Crime* (2nd edition, Macmillan Press 1985).

Hersh RH, Paolito DP and Reimer J, *Promoting Moral Growth – From Piaget to Kohlberg* (Longman, New York, 1979).

HL Deb 08 December 1993 vol 550, cols 951-1012.

HL Deb 12 February 1998, vol 585, cols 1265-325.

HL Deb 16 December 1997, vol 584, cols 532-99.

HL Deb 19 June 1969, vol 302, cols 1128- 213.

HL Deb 19 March 1998, vol 587, cols 820-60.

HL Deb 20 November 1962, vol 244, cols 803-74.

HL Deb 23 November 1993, vol 550, cols 142- 252.

HL Deb 24 January 1963 vol 246, col 218.

HL Deb 24 January 1963, vol 246, cols 174-238.

HC Business Papers 9 March 1993, Early day motion 1555.

HC Deb 11 January 1994, vol 235, cols 20-122.

HL Deb 27 November 1997, vol 583, cols 1121-32.

HL Deb 28 October 1908, vol 195, cols 215.

HL Deb 31 March 1998, vol 588, col 206.

HC Deb 08 April 1998 vol 310, cols 370-452.

Holland P, “‘I’ve just seen a hole in the Reality Barrier!’: Children, Childishness and the Media in the Ruins of the twentieth century’ in Jane Pilcher and Stephen Wagg (eds) *Thatcher’s Children? Poitics, Childhood and Society in the 1980s and 1990s* (RoutledgeFalmer, 1996).

Hollingsworth K, ‘Protecting Rights at the Margins of Youth Justice in England and Wales: Intensive Fostering, Custody and Leaving Custody’ (2008) 8(3) *Youth Justice* 229

Hollingsworth K, ‘Theorising Children’s Rights in Youth Justice: The Significance of Autonomy and Foundational Rights’ (2013) 76(3) *Modern Law Review*, 1046

Home Office, *Crime, Justice and Protecting the Public* (White Paper, Cm 965, 1990).

Home Office, *No More Excuses* (White Paper, Cm 3809, 1997).

Home Office, *Tackling Youth Crime* (Green Paper, HO 421/2, 1996).

Home Office, *The cautioning of offenders* (Circular 14/1985, 1985).

Hopkins E, ‘A charity school in the 19th century: Old Swinford hospital school 1815-1914’ (1969) 17(2) *British Journal of Educational Studies* 177
<http://scholarship.law.berkeley.edu/californialawreview/vol54/iss3/3>, accessed 03/04/2015.

Isle of Wight Journal, 28 May 1831.

Jackson’s Oxford Journal, 28 May 1831, 4 June 1831.

James A and Jenks C, ‘Public perceptions of childhood criminality’ (1996) 47(2) *The British Journal of Sociology* 315.

--and Prout A, *Constructing and Reconstructing Childhood* (2nd edition, Routledge 1997).

Jenks C, *Childhood* (2nd edition, Routledge, New York, 2005).

Joint Committee on Human Rights, *The Government's response to the Committee's Tenth Report of Session 2002-03 on the UN Convention on the Rights of the Child* (2002-2003, HL 18, HC 18).

Kean AWJ, 'History of the Criminal Liability of Children' (1937) 53 *The Law Quarterly Review* 364.

Kelly L, 'Representing and Preventing Youth Crime and Disorder: Intended and Unintended Consequences of Targeted Youth Programmes in England', (2012) 12 (2) *Youth Justice* 101.

King M, 'The Child, childhood and children's rights within sociology' (2004) 15 *K.C.L.J.* 273.

-- and Piper C, *How the Law Thinks about Children* (2nd edn, Arena 1995).

King P, 'Newspaper reporting and attitudes to crime and justice in late-18th and early-19th century London' (2007) 22(1) *Continuity and Change* 73.

Kohlberg L, *The Philosophy of Moral Development: Moral Stages and the Idea of Justice* (Harper and Row Publishers 1981).

Kyvsgaard B, 'Youth Justice in Denmark' (2004) 31 *Crime and Justice: Review of Research* 349.

Law Journal, 5 November 1881.

Leveson B, *The Leveson Inquiry: An Inquiry into the Culture Practices and Ethics of the Press, Executive Summary* (The Stationery Office 2012).

Liverpool Mercury, 19 April 1861, 7 July 1881, 3 November 1881, 14 December 1881.

Lloyd's Weekly Newspaper, 21 April 1861, 11 August 1861.

Loach L, *The Devil's Children: A History of Childhood and Murder* (Icon Books 2009).

Manchester Times, 20 April 1861, 10 August 1861, 16 July 1881, 5 November 1881, 17 December 1881.

Mayall B, 'The sociology of childhood in relation to children's rights' (2000) 8 *The International Journal of Children's Rights* 243.

McCormack C, 'Straw bonnets to superior schooling: The "failure of the charity school movement in the context of 19th century Ireland – a reappraisal' (2012) 48 (5) *Paedagogica Historica: International Journal of the History of Education* 711.

Ministry of Justice, 'Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System' (July 2012),
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217328/swift-and-sure-justice.pdf, accessed 12/11/16

Moore M, 'Social Control or Protection of the Child? The debates on the Industrial Schools Acts 1865-1894' (2008) 33 *Journal of Family History* 359.

Morrow V, "'We are people too": Children's and young people's perspectives on children's rights and decision-making in England' (1999) 7 *The International Journal of Children's Rights* 149.

Morss JR, 'The several social constructions of James, Jenks and Prout: A contribution to the sociological theorisation of childhood' (2002) 10 *The International Journal of Children's Rights* 39.

Newburn T, *Crime and Criminal Justice Policy* (2nd edn, Pearson Longman 2003).
-- "Tough on Crime": Penal Policy in England and Wales', (2007) 36 *Crime and Justice* 425.

Northern Echo, 6 July 1881.

Paul J, *When Kids Kill: Shocking Crimes of Lost Innocence*, (Virgin Books Ltd, 2003).

Piaget J, *The Moral Judgment of the Child* (Routledge and Kegan Paul 1932)
--*The Moral Judgment of the Child* (first published 1932, Marjorie Gabain tr, Free Press Paperbacks 1997).

Pilcher J and Wagg S, *Thatcher's Children? Politics, Childhood and Society in the 1980s and 1990s* (RoutledgeFalmer 1996).

Platt A and Diamond BL, The Origins of the Right and Wrong Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey, 54(3) *California Law Review* 1227 (1966).

Pollak JM and Kubrin CE, 'Crime in the News: How Crimes, Offenders and Victims are portrayed in the media' (2007) 14(1) *The Journal of Criminal Justice and Popular Culture* 59.

Preston Chronicle, 6 August 1831.

Reynold's Newspaper, 21 April 1861.

Richards EP and Rathbun KC, *Medical Care Law* (Aspen Publications 1999).

Rooney R, Think Stuff Unwanted: History of tabloid newspapers in England
<http://www.scribd.com/doc/26869993/History-of-Tabloid-Newspapers-in-England#>,
accessed 27/02/2012.

Rousseau JJ, *Émile* (First published 1762, Barbara Foxley tr, The Kindle Edition)

Royal Cornwall Gazette, Falmouth Packet & Plymouth Journal, 13 August 1831, 23
December, 1881.

Rutherford A, *Growing out of crime* (2nd edition, Waterside Press 1992).

Schmidt JD, 'The Ends of Innocence: Age as a Mode of Inquiry in Social Studies'
(2007) 32(4) *Law and Social Inquiry* 1029.

Scottish Law Commission, *Report on Age of Criminal Responsibility* (Scot Law Com
No 185, 2002).

Sereny G, *The Case of Mary Bell* (Pimlico 1995).

--*Cries Unheard, Why Children Kill: The story of Mary Bell* (Metropolitan Books
1998).

Showalter E, *The Female Malady: Women, madness and English Culture 1830-1980*
(Virago 1987).

Smith DJ, *The Sleep of Reason: The James Bulger Case* (Faber and Faber 1994).

Stolnick A, 'The Limits of childhood: Conceptions of child development and social
context' (1975) 39 *Law and Contemporary Problems* 38.

Sunday Telegraph, 7 - 28 November 1993.

Terrill RJ, 'Margaret Thatcher's Law and Order Agenda', (1989) 37 *The American Journal of Comparative Law* 429.

The Belfast News Letter, 13 August 1861, 3 - 11 November 1881.

The Blackburn Standard: Darwen Observer and North East Lancashire Advertiser, 5 November 1881.

The Bury and Norwich Post and Suffolk Herald, 23 April 1861, 13 August 1861, 12 July 1881, 8 November 1881, 20 December 1881.

The Derby Mercury, 24 April 1861.

The Dundee Courier and Argus, 3 - 11 November 1881.

The Essex Standard, 14 August 1861.

The Examiner, 20 April 1861.

The Guardian, 6 - 20 December 1968 12 - 18 February 1969, 15 - 24 February 1993, 2 March 1993, 2 - 29 November 1993, 15 December 1993, 27- 28 January 1994, 1 - 18 April 1994, 25 May - 1 June 1994, 2 - 26 July 1994, 14 September 1994, 5 - 29 November 1994, 17 - 28 December 1994, 2 July 1996, 1 August 1996, 11 September 1996, 2 May 1997, 8 November 1999, 17 December 1999, 3 September 2009, 22 January 2010.

The Huddersfield Daily Chronicle, 7 - 11 November 1881.

The Hull Packet and East Riding Times, 16 August 1861.

The Independent, 23 April 1995.

The Lancaster Gazette and General Advertiser, 6 August 1831, 20 April 1861.

The Leeds Mercury, 20 April 1861, 17 August 1861, 3 - 5 November 1881.

The Leicester Chronicle: or, Commercial and Agricultural Advertiser, 6 August 1831, 20 April 1861.

The Morning Chronicle, 3 June 1831.

The Morning Post, 27 May 1831, 10 August 1861.

The Newcastle Courant, 26 April 1861, 11 November 1881.

The North –Eastern Daily Gazette, 5 July 1881 3 November - 11 November 1881.

The Observer, 22 December 1968, 21 February 1993, 8 - 28 March 1993, 28 November 1993, 19 December 1993, 3 April 1994, 23 October 1994, 18 January 1995, 25 February 1996, 5 - 19 May 1996, 9 June 1996, 31 October 1999, 7 November 1999.

The Pall Mall Gazette, 6 July 1881, 3 November 1881.

The Preston Guardian, 20 April 1861.

The Royal Cornwall Gazette Falmouth Packet, Cornish Weekly News and General Advertiser, 11 November 1881.

The Sheffield and Rotherham Independent, 3 - 12 November 1881, 14 December 1881.

The Sheffield Independent and Yorkshire and Derbyshire Advertiser, 6 August 1831.

The Standard, 2 June 1831, 2 August 1831, 10 - 12 August 1861, 4 -11 November 1881, 14 December 1881.

The Sun, 15- 23 February 1993, 2 - 25 November 1993.

The Sunday Times, 21 February 1993, 7 - 28 March 1993, 28 November 1993, 5 December 1993, 16 October 1994, 11 June 1995, 30 March 1997, 26 - 31 October 1999, 23 July 2000, 29 October 2000, 7 January 2001.

The Times, 30 July 1831 - 2 August 1831, 23 August 1855, 19 April 1861, 10 – 12 August 1861, 3 November 1881, 01 August 1935, 5 November 1958, 28 October 1960, 12 January -11 February 1963, 13 June 1968, 6 - 20 December 1968, 12 – 18 February 1969, 17 April 1989, 15 - 24 February 1993, 15 May 1993, 06 August 1993, 1 – 27 November 1993, 3 December 1993, 1 -29 January 1994, 4 - 26 February 1994, 21 March 1994, 1 - 27 April 1994, 7 May 1994, 23 July 1994, 18 October - 5 November 1994, 20 - 21 December 1994, 31 May 1995, 1 August 1995, 16-19 April 1996, 3- 7 May 1996, 2- 31 July 1996, 04 March 1997, 23 September 1997, 12 February 1998, 06 October 1998, 19 October 1999, 11 November 2005.

The York Herald, 20 April 1861, 4 November 1881.

Trendle N, *The Royal Prerogative of Mercy: A review of New Zealand Practice* http://www.peterellis.org.nz/docs/2003-0500_MinistryJustice_RoyalPrerogativeOfMercy-Review.htm#t6, accessed on 23/05/2012.

Trewman's Exeter Flying Post or Plymouth and Cornish Advertiser, 14 December 1881.

Turiel E, *The Development of Social Knowledge, Morality and Convention* (Cambridge University Press 1983).

Tutt N, 'A decade of policy' (1981) 21 *British Journal of Criminology* 246, UN Committee, *Rights of the Child, United Kingdom of Great Britain and Northern Ireland* (CRC/C/15/Add 34, January 1995).

Urbas G, 'The Age of Criminal Responsibility, Trends and Issues in Crime and Criminal Justice' (2000) 181 *Australian Institute of Criminology* 1.

Wainryb C, Smetana JG and Turiel E, *Social Development, Social Inequalities, and Social Justice* (Lawrence Erlbaum Associates, Taylor and Francis Group, New York, London, 2008).

Western Mail, 3 - 11 November 1881.

Whyte B, 'Counterblast: Youth In Justice in the UK – Which way for Scotland?', (2009) 48 (2) *The Howard Journal* 200.

Winchester Chronicle, & General, 28 May 1831.

Wollstonecraft M, *Vindication of the Rights of Woman* (A Public Domain Book, 1792).

Worrall A, *Offending Women: Female Lawbreakers and the Criminal Justice System* (Routledge 1990).

