Child Defendants: Criminal Responsibility & Competence in Court

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NSPCC National Child Assessment & Treatment Service (NCATS)
This is a Political & a political topic………………

• Children who offend are not seen as ‘our’ children but as ‘those’ children

• Science has an annoying habit of intruding with the factual evidence base which is not always welcomed by politicians
Outline of Presentation

1. Child Development


3. Profiling Young Defendants (YDs)

4. Children’s Competence in Court

5. Welfare Needs

6. Cost Benefits
Child Development

Development is a lifespan process

- 8 ages of man  
  *Erikson 1950*

- Lifespan process of change  
  *Rutter & Rutter 1993*

- Much development occurs in early childhood and adolescence  
  *Steinberg & Schwartz 2000; RCPsychs 2006*

- Brain development continues into young adult life  
  *Blakemore 2006 & 2010*
Child Development

Developmental Psychology & Child Development

RCPsychs 2006

1. PHYSICAL DEVELOPMENT
   • Appearance of the child defendant can be very deceptive
   • Physical maturity & psychological maturity do not correlate

2. INTELLECTUAL DEVELOPMENT
   • High prevalence of learning disability amongst child defendants
   • Average I.Q. does not mean mature judgment

3. EMOTIONAL DEVELOPMENT
   • Mid to late teens for development of emotional maturity, self control, deferring gratification, insight, empathy, remorse etc

4. SOCIAL DEVELOPMENT
   • Social factors associated with moral development & with delinquency
   • Moral development deficient in callous-unemotional/psychopaths
   • Full moral development in adult life not childhood
What do we know about links between:

- ‘Nature’ *(brain structure & brain function)*

- ‘Nurture’ *(environment – abuse & neglect/care & protection)*

- ‘Resilience’ *(child)*?
Nature, Nurture & Resilience

Some studies show adverse effects on the developing brain from abuse and neglect on:

- Brain structure
- Brain function

But............there is also evidence of ‘catch up’ with brain development when ‘nurture’ improves

And............child resilience moderates between nature and nurture
Profiling Young Defendants

But...............
Are they ........
Profiling Young Defendants

• Many YD’s lack a robust ‘Nature’ start to life – i.e. they may have ‘hard wiring’ (neuro-cognitive) & genetic deficits

• In addition, YD’s often come from poor ‘Nurture’ homes with maltreatment & multiple risk factors
  
  McCrory et al 2010

• And, they may have little ‘Resilience’ due to weak attachments and a poor ability to ‘mentalise’/create a back story for their lives
Profiling Young Defendants

- A small number of people are responsible for much crime in adolescence & adult life:

  6% responsible for half the convictions up to age 32 years
  \[\text{Farrington & West 1993; Utting et al 2007}\]

- < 5% of male population responsible for 50 – 70% of all violent crime
  \[\text{Moffit 1993; Hodgins 1994}\]

- Males first convicted at an earlier age (10 – 13 yrs) became the most persistent offenders with careers spanning 9.9 yrs & averaging 8.8 offences
  \[\text{Farrington 1998}\]
3. Profiling Young Defendants

- Overactivity, impulsive, risk seeking, reading problems feelings of misery, drug & alcohol abuse, poor family relationships, debts, gambling, frustration, use of violence
  
  *Rutter 1998*

- High prevalence of Learning Disability (44%)
  
  *Vizard 2007*

- 34% 12-17 yrs old in custody with mental age <12 yrs
  
  *Ramsbotham 2001*

- 50% have literacy & numeracy levels > 11 yrs old:
  
  25% “ “ “ “ “ “ = 7 yrs or less
  
  *Consultation paper on Youth Crime Action Plan, 2008, p. 3*

- 3 - 5 Axis 1 Psychiatric Disorders
  
  *Bladon 2005*
**Children at risk of Antisocial Behaviour**

**Developmental Trajectories**

- ‘Life-Course Persistent’ trajectory - early neuro-psychological and environmental risk
- Early differences in cognitive, behavioural and personality functioning.
- Similar presentation with ‘Adolescence Limited’ individuals during adolescent period.  
  
  *Moffitt, 1993*
“Links between juvenile sexually abusive behaviour and emerging severe personality disorder traits in childhood”

Results of a 3 year Home Office funded study

November 2006

### ESPD (Higher Risk) vs. non-ESPD (Lower Risk): Psychosocial characteristics

*Red type = Psychosocial predictors of Early Onset of Sexually Abusive Behaviour*

<table>
<thead>
<tr>
<th></th>
<th>ESPD % (n=54)</th>
<th>Non-ESPD % (n=149)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Parental &amp; family factors:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parental childhood abuse</td>
<td>54</td>
<td>34 **</td>
</tr>
<tr>
<td>Parental mental health problems</td>
<td>69</td>
<td>32 **</td>
</tr>
<tr>
<td>Inconsistent parenting</td>
<td>76</td>
<td>58 *</td>
</tr>
<tr>
<td><strong>Attachment related factors:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early difficult temperament</td>
<td>46</td>
<td>21 **</td>
</tr>
<tr>
<td>Removal to Local Authority Care</td>
<td>93</td>
<td>74 **</td>
</tr>
<tr>
<td>6+ changes in home placement</td>
<td>62</td>
<td>30 **</td>
</tr>
<tr>
<td>Insecure attachment</td>
<td>72</td>
<td>44 **</td>
</tr>
</tbody>
</table>

(*p=.05, **p=.01)
**ESPD (Higher Risk) vs. non-ESPD (Lower Risk): Psychosocial characteristics**

<table>
<thead>
<tr>
<th>Child factors:</th>
<th>ESPD % (n=54)</th>
<th>Non-ESPD % (n=149)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hyperactive/impulsive</td>
<td>87</td>
<td>62 **</td>
</tr>
<tr>
<td>Disruptive behaviour in primary school</td>
<td>63</td>
<td>40 **</td>
</tr>
<tr>
<td>Sexual &amp; physical cruelty to animals</td>
<td>15</td>
<td>1 **</td>
</tr>
<tr>
<td>Childhood sexual abuse</td>
<td>69</td>
<td>72</td>
</tr>
<tr>
<td>Physical abuse</td>
<td>72</td>
<td>66</td>
</tr>
<tr>
<td>Emotional abuse</td>
<td>83</td>
<td>71</td>
</tr>
<tr>
<td>Physical neglect</td>
<td>54</td>
<td>58</td>
</tr>
</tbody>
</table>

(*p=.05, **p=.01)
**ESPD (Higher Risk) vs. non-ESPD (Lower Risk):**
Developmental continuity of non-sexual anti-social behaviour

<table>
<thead>
<tr>
<th></th>
<th>0-3yrs</th>
<th>4-6yrs</th>
<th>7-10yrs</th>
<th>11-17yrs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ESPD (n=54)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insecure attachment</td>
<td>15%</td>
<td>28%</td>
<td>56%</td>
<td>67%</td>
</tr>
<tr>
<td></td>
<td>4%**</td>
<td>17%</td>
<td>26%**</td>
<td>38%**</td>
</tr>
<tr>
<td><strong>NonESPD (n=149)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physically aggressive</td>
<td>30%</td>
<td>46%</td>
<td>76%</td>
<td>89%</td>
</tr>
<tr>
<td></td>
<td>11%**</td>
<td>19%**</td>
<td>38%**</td>
<td>64%**</td>
</tr>
<tr>
<td>Cruelty to animals</td>
<td>-</td>
<td>7%</td>
<td>13%</td>
<td>28%</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>0%**</td>
<td>2%**</td>
<td>9%**</td>
</tr>
<tr>
<td>Impulsivity</td>
<td>-</td>
<td>26%</td>
<td>43%</td>
<td>74%</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>9%**</td>
<td>13%**</td>
<td>34%**</td>
</tr>
<tr>
<td>Fighting &amp; stealing</td>
<td>-</td>
<td>9%</td>
<td>24%</td>
<td>66%</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>1%**</td>
<td>7%**</td>
<td>34%**</td>
</tr>
</tbody>
</table>

(*p=.05, **p=.01)
### ESPD (Higher Risk) vs. non-ESPD (Lower Risk):

**Lifetime conviction profile (n=196)**

<table>
<thead>
<tr>
<th></th>
<th>Whole Sample % (n = 268)</th>
<th>ESPD % (n=54)</th>
<th>Non-ESPD % (n=142)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any convictions</td>
<td>40</td>
<td>63</td>
<td>37 **</td>
</tr>
<tr>
<td>Sexual convictions</td>
<td>15</td>
<td>20</td>
<td>17</td>
</tr>
<tr>
<td>Violent convictions</td>
<td>23</td>
<td>44</td>
<td>19 **</td>
</tr>
<tr>
<td>Non-sexual/Non-violent convictions</td>
<td>33</td>
<td>54</td>
<td>31 **</td>
</tr>
</tbody>
</table>
Children’s Competence in Court

Conflicting psychiatric & legal concepts:

- Fitness to Plead (FTP) – 10 yrs +

- Diminished Responsibility (DR) – 10 yrs +

- Mental Disorder (Mental Health Acts ‘83 & ‘07) – any age

- Capacity (Mental Capacity Act 2005) – more than 16 yrs.
  Less than 16 yrs – ‘zone of parental control’

- Gillick Competence – Under 16 yrs

- Parental responsibility(Children Act ‘89) – under18yrs
Children’s Competence in Court

Fitness to plead & Adjudicative Competence

• FTP is adult UK concept  
  *R v Pritchard 1836*

• Adjudicative Competence is a child equivalent USA concept  
  *Grisso 2000*

• They are similar but not identical

• Law Commission currently reviewing Unfitness to Plead:

  ‘Many of the problems surrounding the current rules for determining fitness to plead and insanity relate to the fact that they were devised when psychiatry was in its’ infancy.’  
  *Law Commission Conference 2009*
Children’s Competence in Court

The Pritchard Test (of Fitness to Plead)  

Mr Pritchard was a deaf mute man who was accused of bestiality. Said to be ‘nearly an idiot with no proper understanding ’ but he could apparently read and write
Children’s Competence in Court

5 Criteria for the Pritchard Test:

• Ability to plead

• Ability to understand the course of proceedings

• Ability to understand the plea

• Ability to challenge the juror

• Ability to challenge the evidence
Children’s Competence in Court

The Pritchard Test:

- The test devolves around question of ‘comprehension’ to do all of the above.

- A finding of ‘unfitness to plead’ is rare in UK courts.

- Requires a high level of disability at the extreme end of spectrum of ‘psycho-legal’ ability.

Children’s Competence in Court

- Any defendant on trial for murder can plead a partial defence of diminished responsibility.
- But in the case of children the definition of diminished responsibility does not include developmental immaturity, referring to the child’s normal, immature, stage of development, i.e. not grown up. The concept is supported by the Law Commission & the Royal College of Psychiatrists:

It can be hard to distinguish normal developmental immaturity from abnormality of mental functioning. It is quite possible for both to be factors in a killing committed by a child. If this is so, then it is arguable that an omission from the current definition of diminished responsibility is any reference to ‘developmental immaturity’.

Children’s Competence in Court

Adjudicative Competence in Juveniles

A. Understanding Charges and Potential Consequences
B. Understanding the Trial Process
C. Potential for Courtroom Participation
D. Capacity to Participate with Attorney in Trial Process

‘Foundational component of adjudicative competence (fitness to plead) is...........competence to assist counsel (instruct a solicitor)’

Strong similarities to UK FTP Pritchard test

Grisso 2000
Children’s Competence in Court

Assessment Framework for Juveniles in Family & Criminal Courts
Vizard, Hoyano & McCrory (pending)

A. Cognitive Abilities
B. Mental Stability
C. Developmental Maturity
D. Social Awareness
E. Satisfactory ratings on A-D

• Requires a full, multi-disciplinary assessment of child
Children’s Competence in Court

- Children’s competence in court cannot be assessed without reference to the child’s developmental status, mental state and family/environment.

- Family/environment considerations are crucial in genesis of youth crime and affect YD’s competence in court.

- The arbitrary age of ‘criminal responsibility’ (10 yrs in England & Wales) is unrelated to evidence base and conflicts with other age limits for children in society.

- A reliable and structured method of assessing the YD’s competence in court should be introduced and should include assessment of family/environmental issues.
Welfare Needs

Integrating Criminal & Family proceedings: The advantages

• Better quality evidence is adduced for both criminal and family proceedings

• Human rights of child to a Fair Trial are protected

• Welfare needs of child defendant are addressed along with sentencing – far greater chance of preventing recidivism (a significant cost saving)

• Placement, care planning & treatment provision for child defendant can be agreed in an integrated Court Setting
Welfare Needs

• At present no agreed training in child development/communication with children for Defence Solicitors or Barristers

• No ‘cross over’ training for criminal & family lawyers to understand both the competency issues for child defendants and their welfare issues.

• No ’ticketing’ for Sentencing Judges to work with child defendants

• Well established trainings for the Family Law Bar in relation to children. Specialist Family Division Judges
Cost Benefits

• Integrated criminal & care proceedings mean great cost savings – half the number of lawyers, Judges, Experts, sitting days etc.

• De-criminalising young defendants will save a considerable amount of money from reduced crime and victim costs

• Conduct disordered children at age 10 years old will have cost the public purse an average of £70,000 by age 27 years old
  
  Scott et al 2001

• Government expenditure in England & Wales on public order and safety in 2008/9 was £24.6Billion

• The annual costs of youth Crime and antisocial behaviour in 2008/9 was < £4Billion

  Independent Commission on Youth Crime & Antisocial Behaviour, 2010
Final Thoughts……..

• Focus on full, scientifically based assessments of all very young defendants (> 14 years old) and of older young people who commit serious crimes

• By de-criminalising young defendants who are not Fit to Plead and providing an appropriate welfare response, we will prevent them from creating more victims

• Despite advances in neuroscience and mental health research, the financial argument may have equal weight with policy makers

• We need to present both the science and the money arguments……..
Selection of References


Selection of References