

CONFERENCE REPORT
4th Annual 'Experiencing the Law' Conference
SOLON, IALS and CCBH

OBJECTIFYING CHILDREN:
Law, Policy-Making and Human Rights Responses

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When identifying the theme for the annual Experiencing the Law conferences, the Organising Committee (Judith Rowbotham, Lorie Charlesworth, SOLON, Belinda Crothers, IALS, Michael Kandiah and Virginia Preston, CCBH) always seek to identify a theme that is likely to be particularly topical and relevant in a particular year, particularly to the mix of practitioners and academics we seek to attract to listen to the range of interdisciplinary speakers we bring together to debate the topic. Our priority is always to think about a theme in ways that highlight aspects with a public policy dimension that needs to be addressed. Our intention in this conference was to put together a conference programme to reflect on the ways in which it could be argued that children were being objectified, as much by the law as by any other institution or cultural, economic or political force within society. We knew that our e-journal, *Crimes and Misdemeanours*, was featuring a special edition reflecting on the centenary of the Children Act 1908, and its implications, which again underpinned the choice of this conference theme because it provided a good backdrop, and provided us with the speakers for one of our key sessions. However, in the early summer of 2009, when we finalised the theme and the broad perspective we would take in the December 2009 conference, we had no idea that within months, many of the issues within the broad theme would have acquired a new relevance; and that, in the three months after the conference in March 2010, a further topicality would be added by the return to prison of Jon Venables, given that another of our key speakers was Laurence Lee, the Liverpool-based solicitor who acted for Venables in the aftermath of his arrest for the murder of Jamie Bulger.

We did not wish to explore the experiences of children simply as victims and perpetrators within the criminal justice system, but instead to contextualise such experience (undoubtedly of great importance in such a theme) within a broader consideration of children and rights. Thus the opening plenary, delivered by Nick

Wikely, who combines twin roles as a leading scholar and as a leading practitioner in the area of welfare law,¹ raised the issue of children's rights within the community in the widest sense. Historically, children were viewed as possessions of their parents (especially their fathers), as the proceedings of the Poor Law system underlines. Listening to his comments, one questioned how far things had changed or improved in terms of children's actual experience of the law in action, when it focuses on the needs of children for practical protection and support. In an age when the rhetoric of human rights is regularly invoked, the key question raised was the extent to which children themselves were perceived as holding rights, and having consequent entitlements, particularly in the light of the Convention on the Rights of the Child. The extent of children's continuing 'objectification' within the social security system was starkly highlighted, and the actual impacts on individual realities of the flaws in current (often well-meaning, but poorly drafted) legislation also became plain through Nick Wikely's measured but depressing commentary on current realities and how these related to what had happened in the past.

This provided an interesting commentary on the apparently more optimistic paper delivered by Rebecca Probert, who argued that child welfare considerations had moved centre stage, on the basis of her survey of the issue of joint registration of births and its historical roots. This paper encouraged a reflection on the point and purpose of birth registration – is it or was it simply useful as a strategy to record social realities of importance to a particular period in time, having only indirect relevance to the actual interests of the registered child? Thus, in the eighteenth century, it could be argued that property issues were of key significance to both the state and adult society for a variety of reasons: that birth registration, indicating the legitimacy or otherwise of a birth through the identification (or lack of it) of both parents, was a key aid to this adult agenda. In the late twentieth and early twenty-first centuries, this paper encouraged a consideration of how far child welfare issues were now a more directly relevant factor in the shaping of current birth registration strategies. Are not the social realities encapsulated in the legislation and the contextualising practices more about adult agendas and social realities than those of the children, especially given the comments made by Nick Wikely on the practical lack of children's rights?

¹ An Emeritus Professor of Southampton University, he has also, since November 2008, been Judge of the Administrative Appeals Chamber of the Upper Tribunal

Again, Richard Morgan's paper on adoption in the post 1945 period encouraged reflection on the contested realities of a child's 'legitimacy' in actuality and in the eyes of the state (via its legislative practices). His use of the term 'market' to describe the adoption landscape was particularly telling in the circumstance of its use within a conference discussing the objectification of children. It is more usual, after all, to emphasise the 'best interests of the child'. What Morgan's discussion revealed was the extent to which there was a very conscious objectification of the child within the adoption process, emanating both from the Adoption Societies and the biological family involved in the process. The burning question in adoptions must remain who decides what constitutes this 'best interest', and how it is possible for the courts to establish any principles or practical guiding rules which protect the child's interests in both the long and the short term. It could also be asked, on the basis of some of Morgan's evidence, how far rules were obstacles to any nuanced judgements in individual cases of adoptions.

Mike Nellis and Helen Baker provided further interesting frameworks in which to consider the objectification of children, through consideration of legislative strategies on the daily experiences of older children, or teenagers. In looking at 'tagging' or electronic monitoring, and at homelessness among teenage boys as a result of domestic violence, both presenters queried whether, in reporting on this modern reality, the right questions were being asked of the evidence collated. Mike Nellis talked of the urgent need for more work on electronic monitoring, in order to answer the issue of whether it was more surveillance than confinement. This chimed well with Helen Baker's point that teenage boys were, most usually, *potentially* rather than actually violent. Like Nellis, she argued also that the need was for more empirical work, rather than problematic theorising about these crucial areas. In talking of objectifying children, the older child – the teenager – must not be forgotten. Equally, Jean La Fontaine's paper raised challenging questions about the need to protect children in this country and in other locations, such as Africa, because of the reality in today's multi-cultural society that lines of connection transcend formal state boundaries. The problem lies in the presumptions and assumptions entrenched in cultural difference and the consequent silences, as the subsequent narratives when accusations of witchcraft made against children results in those children seeking help from the established authorities and/or appropriate support agencies. How ready are such groups to 'hear' and believe the children, and how appropriate are their actions if they do seek to help the child? Is the 'best' reaction taking a child into care, with the

possibility of levelling charges of child abuse? Might there be a need for family mediation services as a preliminary step?

These papers, and the debates which followed the presentations, provided an important contextualisation for another thread which ran through the conference, the issue of the ways in which the criminal justice system relates to children and young people. The Children Act 1908 was shown, by Kate Bradley and Simon Shaw, to have set the agenda for the management of welfare policy in relation to the operation of the criminal justice process ever since; and as such – this informs us more broadly about how children and young people are perceived within society, helping us to understand how, and why, children can be ‘objectified’ within an otherwise well-meaning system. The 1908 Act finally formalised a separation, within the legal gaze, of children and adults, where children formed a special category in particular need of protection. That process of identifying juveniles as ‘different’ within the legal process had been ongoing since the Juvenile Offenders Act 1847. Judith Rowbotham pointed this out in her paper, revisiting Rev Benjamin Waugh’s *The Gaol Cradle – Who Rocked It?*, one of the most powerful of Victorian arguments for specialist treatment of juveniles within the criminal justice process, and one that has a real resonance today with its pinpointing of current dilemmas over why, when and how to punish juveniles for transgressions, including the extent to which the law should be part of that. The duty of adults to protect the juvenile transgressor from what Waugh called ‘the thrilling technicalities’ of the law, in order to prevent a further degeneration of the child into criminality remains, if in superficially different ways today. Bradley and Shaw also highlighted the relationship between political imperatives and trends in the way in which vulnerable and offending children and young people are treated.

However, the most formidable contribution illustrating the realities of the impact of the criminal justice process on children, and the broader consequences for society and the individuals involved, came from the concluding Round Table; both in terms of the presentations and the debate that this inspired. Samantha Pegg, in her discussion of the historical echoes in cases of child on child killing, provided the contextualisation for a contribution from Laurence Lees. Pegg drew on the example provided by a killing in 1861 where the narrative strongly paralleled the Bulger case, and also reflected on other cases of child killing, including some brief preliminary commentary on the media presentations of the Edlington case. In examining the media presentations of such cases, she revealed how much more difficult it was in the twenty-first century than in the nineteenth century for a child adjudged guilty of a

heinous crime like murder to benefit from a broader cultural belief in the ability of the individual to reform. While in the nineteenth century, and arguably early twentieth century, there was a real potential for acceptance within society that children, even child killers of other children – the ultimate challenge to the prized stereotype of the normality of childhood innocence – could be rehabilitated and grow up to be valid members of the adult community. As Laurence Lees pointed out, this was not the reality for Robert Thompson or Jon Venables, with their continuing need for anonymity. His measured but powerful case study dissection of his experience in acting as solicitor for Jon Venables not only posed a number of challenges to stereotypical assumptions about the family background of children found guilty of serious crimes but also reflected on the extent to which it was possible to use the law to protect children – a further echo of Waugh's nineteenth century challenge (made at a time when a child's capacity for reformation was not doubted) for the modern age. The reformatory process within the confinement experience for any child must represent the abnormal, in terms of usual childhood and adolescent experience: raising wider questions about the usefulness of prison or related institutions as a penal strategy for children.

Further challenges to ready assumptions came out during this concluding Round Table. Lees' description of the role played by Venables' parents, for example, both during the initial questioning of the two boys accused and then while the trial took place, challenged the enduring stereotype that child criminality was associated with irresponsible and uncaring parents, lacking in what might be termed 'respectable' values. In answer to questioning from the floor during the debate, Lees provided further narrative details on which he reflected, explaining not only the chance which had brought him to act for Venables, but also how the case against Thompson and Venables had been constructed. But did that reflect the full 'truth' of the incident? Amongst other things, he revealed the deeply emotional, even traumatic, nature of a case such as this for all involved, forcing his audience to question the usual stereotyping of who were the victims in such a case. The reportage and speculation surrounding the subsequent recall of Venables to jail have again underlined the questions Lees raised about the 'justice' of such cases, including the issue of the age of criminal responsibility. Do children the age of Venables and Thompson have the maturity to answer for their actions within a court of law? Pegg showed how in the Victorian parallel, the court then clearly had doubts about this aspect. Laurence Lees insisted on the importance of retaining the potential to prosecute children aged ten for the protection of society: his point was rather that the adult stereotyping

associated with those accused of serious crime had to be carefully avoided with children. It was difficult and unjust to class a child as 'evil', with all the implications that had for the potential for rehabilitation.

Equally, have children like Venables and Thompson forfeited their right to protection under and within the law? The European Court of Human Rights in 1999 touched on this issue in adjudging that they should not have been tried in an adult court. It is also telling that, in December 2009, within the debate following his presentation, Lees reflected on the chances that Venables could have for leading a 'normal' life and the extent to which, thanks to 'demonisation' by the media, he would effectively remain imprisoned by his offence because of the need to 'live a lie' in his daily life. They have had to adopt entirely new identities – even to the point of losing their distinctive Liverpool accents. We recognised that, from a populist perspective, such a continued social punishment might be argued to constitute 'justice'. However, in terms of the potential for rehabilitation, the need to 'live a lie' and always to be on guard against self-betrayal must, as Lees reflected, be a constant challenge to any real re-integration into the community. Media coverage of the announcement of the recall to prison of Venables in March 2010 provided a particular point to his commentary, and its wider implications.

In this discussion, the wide ranging ramifications of a high profile case such as this acted to draw together the theoretical threads of the conference, as well as revealing the importance of promoting dialogue between practitioners and academics. The general conclusion at the end of the conference was that we had no cause for self satisfaction and complacency at the start of the twenty-first century: in some ways, there had actually been a greater individual sensitivity and a lesser reliance on stereotyping, particularly within the media, in the nineteenth century. Questions had to be asked about how the interests of children and their acknowledged need for protection in a 'civilised' society were best guaranteed by invoking the formal processes of the law. How far were welfare procedures less open to the methodology of objectification, likely to be more fruitful in protecting both society as a whole and children, both those as victims of offences and perpetrators? It is worth emphasising that it was academics (speakers and delegates) who were amongst the most eager questioners of both Nick Wikely at the start of the day and Laurence Lees at the end, seeking to explore the empirical evidence to affirm, challenge or nuance their existing conclusions. It affirms, again, the importance of a conference series such as this, seeking to explore currently topical questions by introducing a historical context and

ensuring that practitioners as well as academics shape the dialogue through their presentations and commentaries.

As always, our thanks go to the Institute of Advanced Legal Studies, as well as to the CCBH, its fellow institution in the School of Advanced Studies at the University of London. The continued support of IALS in facilitating such events is in line with its important tradition of promoting interdisciplinary dialogue, especially between academics and practitioners. We are deeply grateful to both Belinda Crothers and Virginia Preston – without the practical input of Belinda in particular this event could not take place. However, we are also very grateful to our speakers and participants and to the efforts they made to be with us – particularly in the case of Nick Wikely and Laurence Lees. We look forward to the fifth conference, on a topic to be announced in the summer, to be held at IALS on Friday 3 December 2010.