

The Age of Criminal Responsibility

Age of Criminal Responsibility (ACR) is the age at which a child is judged to be able to understand both what they are doing, and that it is wrong.

Background

- England and Wales, and N Ireland, have one of the lowest ages of criminal responsibility (ACR) in the world, at 10. Scotland has committed to raise the age to 12 by 2018 (it is formally 8, but under-12s are not dealt within the criminal courts). The great majority of western countries have ACR of 12 or above. In the USA each state has its own (as low as 6), but for a federal offence ACR is 11. France 13, Italy 14, Denmark 15, Spain 16.
- In English law until the Crime and Disorder Act 1998 the principle *doli incapax* prevailed – that a child aged 10-13 is incapable of forming the intent to commit crime.
- In practice, prosecution and incarceration are used for children aged 12 and over, or 10-11 year olds in extreme cases such as murder. 3% of children committing offences are given custodial sentences. In the year ending March 2016 (the latest year for which figures are published), 69 ten-year-olds and 291 eleven-year-olds received a youth caution or court conviction. The average monthly figure for children aged ten to 14 held in youth custody between April 2015 and March 2016 was 38. Between 2004 and 2014, the number of ten- and eleven-year-olds who received a custodial sentence was twelve.
- The UN Convention on the Rights of the Child requires states to set an ACR, but does not specify one. However, the UN Committee on the Rights of the Child has called on the UK to raise ACR, and said in 2007 that an age under 12 was ‘not internationally acceptable’.
- In November 2015, there were 991 under-18s in custody: 64 less than the previous year. The number has fallen by over 2/3 in the last seven years.

The present Bill

- Lord Dholakia has three times proposed a Bill raising the ACR from 10 to 12. The government opposed it, on the basis that ten-year-olds ‘*are able to differentiate between bad behaviour and serious wrongdoing and should therefore be held accountable for their actions.*’ The government is always blunt in saying that the public outcry sure to greet any raising of ACR, in the light of the killing of James Bulger, prevents it from contemplating such a move.

Our line

It is possible that government positions in the past have been shaped by public and media resistance to any appearance of being soft on crime. The political race to be toughest on crime has abated, and to conform to international standards in this matter would not mean being less uncompromising in the response to serious crime by children; it would simply be to say that it is clearly inappropriate for the formality and weight of the criminal justice process to be brought to bear on children of 10 and 11.

Neurological and other scientific advances illustrate that maturity in young people (especially boys) is a slower process than may have been thought – male brains develop till the age of about 25. But the broader point is that criminalisation of 10-11-year-olds achieves very little and can

do much to damage the prospect that they might grow into citizens with a stake in the society in which they live.

Speech by the Bishop of Chelmsford, January 2016

The Lord Bishop of Chelmsford: My Lords, in rising to support the noble Lord, Lord Dholakia—and, indeed, pledging the support of the church to this campaign—I need to declare an interest: I was a child once and got into some scrapes. Now I am a parent and in the work I do hardly a week goes by when I am not in schools. Indeed, last year I had the sad but very moving honour of opening a garden of remembrance in the diocese where I serve in east London for young people who were the victims of, indeed had been killed by, knife crime. So I do not underestimate the seriousness of the crimes that we are talking about, nor the fact that children and young people do commit them.

It is often said nowadays that children grow up too quickly. I wonder if we have rather short memories. Although there are invidious and unspeakable pressures on children today, it was only a century or so ago that many of our children—who are now safely tucked up in our primary schools—were going out to work in pretty difficult and challenging conditions. Until 1875, a 12 year-old could have sex legally in this country. It was changed that year to 13. Since then, over the past 150 years, a succession of laws and protocols have recognised that with regard to all sorts of things, from smoking cigarettes to going to the cinema to watching certain sorts of films to sexual intercourse itself, we grow and develop gradually.

The decision about when someone is an adult is best made looking back from a point where there can be certainty or at least widespread agreement that at this age—it varies for different activities; it is often 16, sometimes 18—this person really has developed and is able to take responsibility for who they are and what they do. So why, in the case of criminal responsibility, do we make the decision speculatively, hoping that it might be the case that because there is some general growing sense of what is right and wrong, that person so knows what they are doing that they can be held culpable for their actions as if an adult and in a court of law?

But a child of 10 is just that—a child—not yet at that point where there could be such widespread agreement about their ability to know the consequences of their actions, nor developed morally or socially, so that we could be sure that they know what is right. That is why the law does not let them buy cigarettes or watch certain films or go to bed with each other. Therefore, when crimes are committed—for they are still crimes even if the child is no longer labelled a criminal—to deal with them in a court of law not only contradicts every other measure we have made, not only offends against common sense, not to mention the day-to-day experience most of us have as parents and grandparents, but it makes—and perhaps this is the biggest reason for supporting the noble Lord, Lord Dholakia—any possibility of rehabilitation or amendment of life that much harder. Of course, we agree with the noble Lord, Lord Cormack, that this is a civilised society, but this legislation diminishes us. As has already been referred to more than once, the United Nations Committee on the Rights of the Child has called on the United Kingdom to raise the age of criminal consent. Quite simply, we should heed that call.

Speech by the (former) Bishop of Derby in 2013.

The Lord Bishop of Derby: My Lords, I, too, thank the noble Lord, Lord Dholakia, for introducing this topic and I heartily endorse all that the noble Earl has said. This is a very complex issue, and we are having this debate in a national context in which public opinion wants justice to be seen to be done. A strong scapegoating mentality exists which indicates that there is also a high level of anxiety in society. The key people to be scapegoated tend to be criminals and immigrants. We have to take that part of the context seriously in having this debate. A second context, as we have heard, is the UN recommendation on the rights of the child, that the age of criminal responsibility should be at least 12. Many countries, as we have heard, go even higher than that. A third context is that there are suggestions, as there is in Ireland, of raising the age to 12, but of allowing some flexibility in dealing with serious crimes. So this is a very complex issue in an anxious society which is nervous about seeming to give positive signals to bad behaviour and social deviancy.

We have a variety of lines of approach. The Government, as I understand it from the briefing papers, are minded to stay with 10 years because of the argument that children at that age know what is right and what is wrong. That is one way of looking at it. Opponents say that the evidence of emotional and intellectual development means that children are too immature at the age of 10, even if they know what right and wrong are. The noble Earl eloquently mentioned the growth in maturity. I suggest that one of the dangers in this whole debate is treating children as individuals—which, of course, is a modern disease. Life is much more complex than about any of us being an individual. The Centre for Social Justice begins to recognise this. One of the arguments in its book on raising the age is about the need for what it calls a “whole family approach”, seeing the child in context.

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I make a plea that we not be intimidated by the scapegoating mentality of the wider society in which we sit, which forms a backcloth that might make the case for seeming to be tough, which will mean that children will pay the price. I am asking that we do not just objectify children as individuals, whether economic units, moral units or developmental units. Children above all human beings need to have taken seriously the fact that we grow through relationship and social formation.

The Christian gospel highlights the miracle of forgiveness, which we need to remember in this debate—the possibility to join in a different kind of set of social relationships that are more wholesome, nourishing and flexible. For children, the promise and possibility of forgiveness is very important. We have all done things when we were small that we needed the chance to recover from, and that needs to be a very important part of our calculations. If we are going to resist scapegoating and objectifying and take the social context of the formation of children seriously, and know that that, love and forgiveness and another chance are what grow people into full human beings, in the context of those things, I am minded to support the noble Lord’s suggestion to move from 10 to 12 years, and I can see lots of advances in perhaps raising the bar even higher one day.

(The full speech is available in Hansard)

Martin Kettle, Mission and Public Affairs Division, August 2017