

The Woolf Judgment

The former Master of the Rolls and current Lord Chief Justice gives his decision in reviewing the Bulger case

It was a crime that shocked the nation. In November of 1993, Robert Thompson and John Venables were convicted at Preston Crown Court for the abduction and murder of James Bulger. The boys then aged 11, (but 10 in February when the offences occurred) were sentenced to be detained at Her Majesty's pleasure with a recommendation from Mr Justice Morland (the trial judge) that they each serve a minimum tariff period of eight years.

Since 1993, changes have been made to alter the tariff period. Lord Taylor of Gosforth, the Lord Chief Justice at the time, in reviewing the case altered it to ten years. The Home Secretary, Michael Howard, serving under the Conservative Government raised the recommended tariff to fifteen years in response to newspaper campaigning and public outcry.

The European Court of Human Rights successfully dealt with the issue of raising tariffs, and the boys' right to a fair trial under Article 6 of the European Convention. The decision has fallen to the newly appointed Lord Woolf of Barnes in his capacity as Lord Chief Justice in reviewing the case to decide exactly how the matter should proceed.

Influencing factors which, it is argued, led Lord Woolf to uphold the trial judge's recommendation were phrases like the "*striking progress*" the boys have made, the fact that they seem "*genuinely extremely remorseful*" about the crime, and that the risk of re-offending was low. A major factor though was their age. In most countries the age of criminal responsibility is higher. For example, Germany's age of criminal responsibility is 14, Norway and other Scandinavian countries the age of criminal responsibility is 15. Scotland is the only exception, with the age of criminal responsibility being 8 years.

Many will argue that the punishment does not fit the crime, and that life should mean life. It is to be remembered though, that Mr Justice Morland did not serve the sentence of life on the two boys, but gave a recommendation on the minimum tariff time period. Additionally, the tariff of eight years which expired on Thursday, 26th September 2000, will not automatically let them out into the community, but will, when the time is right, (to be set by the parole board and is expected in February of 2001) let them out into the community on licence. It is imperative to remember that the licence can be revoked if they commit a further crime; revocation of the licence will consequently place them into custody for the rest of their lives.

In this and many other cases, we must not forget the impact the death had (and no doubt still has) on the family. Mrs Bulger has now separated from (and I believe, divorced) her husband, Ralph Bulger over the death which she maintains would not have happened if James had still been alive. However, it must be recalled, that the period of detention can be equated to half of their

lives. In addition, because of their acts they have been deprived of their homes, friends, family and adolescent period. Furthermore, attacks on them when they are released are not ruled out either.

The review of this case was about striking the correct balance. The decision, whichever way it was decided was not going to please everyone, but it must be appreciated that this case contained issues of great importance and significance.

In conclusion, I articulate the view that Lord Woolf was correct in his decision, however, two points remain unseen: firstly, whether the outcome of this case will have a substantial effect in the already prevalent lack of public confidence in the Criminal Justice System; and secondly, is what use (if at all) the Human Rights Act 1998 will play in protecting the interests of Messrs Thompson and Venables upon their release.

Time and subsequent reports will only reveal.

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