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Criminal responsibility

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Source: Goldson, B. (2008) *Dictionary of Youth Justice*, Cullompton, Willian.

Criminal responsibility (or criminal minority) refers to the age at which a child may be arrested, prosecuted, tried and, if found guilty, may receive a disposal from a criminal court for an offence.

The age of criminal responsibility in England and Wales is 10, fixed by the Children and Young Persons Act 1963. Below that age a child is irrebuttably presumed to be *doli incapax*, or incapable of evil, and any 'offending' behaviour by him or her would have to be addressed through other means: either by the provision of non-coercive services by the local authority or through care proceedings under the Children Act 1989. Above the age of 10, the child is subject to the provisions of the substantive criminal law in the same way as adults. If the child is proved by the prosecution to have committed the *actus reus* (the physical part) with the necessary *mens rea* (the required state of mind) and has no defence, then he or she is liable to be found guilty and his or her criminal record begins. The principle of subjectivity, which focuses on what is in the mind of the particular 'offender' and which is fundamental to the criminal law, should make a child's lesser ability to understand or foresee consequences a material issue in determining his or her *mens rea*, but childhood as such is not directly relevant.

There has been much discussion about whether 10 is an appropriate age to hold a child responsible for 'offending'. Historically, the trend has been to raise the age of criminal responsibility, and it was set at the current level in 1963. Attempts in the Children and Young Persons Act 1969 to raise it to 12 and then 14 were never implemented. Certainly since the mid 1990s there has been government action to increase the criminal responsibility of children rather than decrease it, by the abolition of the presumption of *doli incapax* for those aged 12–14 in the Crime and Disorder Act 1998. Before this the prosecution had to prove that a child knew what he or she was doing was *seriously wrong* and not merely naughty, in addition to other aspects of criminal liability.

The argument in favour of the low age of criminal responsibility is that the criminal law is a response that recognizes the rights of the victim and community, acknowledging harm caused and punishing and/or rehabilitating the offender with the aim of preventing further criminal behaviour. In this way, the youth justice system can be perceived to be a platform from which to deliver services aimed at 'nipping offending in the bud'. From this perspective, the earlier that intervention occurs, the better, and this is justified as being in the child's 'best interests'. This is the approach of the present government as enunciated in the 1997 white paper, *No More Excuses*.

The argument in favour of raising the age of criminal responsibility proceeds from a view of the criminal law as a very blunt instrument to use in solving social problems. Criminal liability is premised on the principle of autonomy – that each person is a responsible being and chooses to act in a particular way. However, children are clearly not fully 'autonomous', and there are few areas of law and policy that allow them to make decisions for themselves, particularly under the age of 14.

The use of the criminal law has numerous undesirable consequences for children, including the perfunctory attention given to the substantive criminal law in children's cases; the inappropriateness of much criminal procedure, both in the police station and in the courtroom; the range of disposals

available (some of which are disproportionate to the offence); and the inappropriate use of custodial sentences. Additionally, there are other less direct consequences of contact with the youth justice system, such as the damaging effects of labelling and negative social reaction; the acquisition of a criminal record and its effect on a child's life chances; and the ineffectiveness of many youth justice interventions, particularly custody, to curb reoffending.

Child psychologists question whether children, especially those aged 10–14, fully understand the consequences or possible gravity of their actions in a way that makes them autonomous, responsible subjects in criminal law. The approach envisaged in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) is to consider whether the child meets the moral and psychological requirements of criminal responsibility that are dependent on his or her capacity to discern and understand. Fixed too low and the notion of responsibility becomes meaningless. There should be a closer relationship between criminal responsibility and other social rights and responsibilities. The lack of children's autonomy is readily recognized in other areas – for example, the way the law treats children in connection with voting (18), owning land (18) and purchasing alcohol (18).

The United Nations Committee on the Rights of the Child has twice recommended (in 1995 and 2002) that the age of criminal responsibility be raised in accordance with the UK government's obligations under the United Nations Convention on the Rights of the Child. A recent report of the committee (United Nations Committee on the Rights of the Child 2007) indicates that an age of criminal responsibility below 12 is not internationally acceptable. The ages of criminal responsibility in England and Wales (10), Northern Ireland (10) and Scotland (8) are among the lowest, not only in Europe but also in the world (Muncie and Goldson, 2006). There is no indication of any movement towards complying with the recommendation in any of the UK jurisdictions.

Key texts and sources

Bandalli, S. (2000) 'Children, responsibility and the new youth justice', in Goldson, B. (ed.) *The New Youth Justice*, Lyme Regis, Russell House.

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

Muncie, J. and Goldson, B. (2006) *Comparative Youth Justice: Critical Issues*, London, Sage.

United Nations Committee on the Rights of the Child (2007) *General Comment No. 10: Children's Rights in Juvenile Justice*, Geneva, United Nations Committee on the Rights of the Child.