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Juvenile Justice in the United Kingdom and Hong Kong: Historical and Modern Perspectives

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Abstract: The 19th century saw the introduction of numerous acts in the United Kingdom relating to juvenile justice that emphasised rehabilitation and sought to protect the rights of child offenders. Since then, legislative and institutional changes have generally increased the leniency of the law towards acts of juvenile delinquency, but exceptional cases involving child killers have raised jurisprudential concerns relating to these acts. This paper explores the question of punishment in criminal law from the Victorian era onward, focusing on the disparity in treatment between juvenile and adult offenders, and summarises the relevant extant U.K. and Hong Kong legislation. The case of Sharon Carr, a woman convicted of murder for a thrill stabbing she had committed at age 12, is examined with a comparative approach with the judgement of Mary Bell, who was convicted of manslaughter for strangling two toddler boys. A conclusion on the evolution of the juvenile justice system through jurisprudential perspectives will be offered.

Keywords: Criminal Law, Juvenile Justice, Youth Courts, Jurisprudence

1. Introduction

The pervasiveness of juvenile delinquency has historically been reflected through literature, such as the depictions of the gang of child pickpockets in Charles Dickens's 1837 novel Oliver Twist. The book's satirical portrayal of child labour, child criminals, and street children reflected the typical Victorian-era conceptions of a link between crime and poverty, which persists in juvenile-targeted laws in the 19th century [1].

Legislative efforts to distinguish between adults and children in the justice system were only introduced in 1847 under the Juvenile Offenders Act, which stipulated that children under 14 who commit minor offences can now be tried summarily in magistrates' courts [2]. Seven years later, in 1854, the Reformatory Schools Act and the Youthful Offenders Act were passed to supplement the execution of relevant laws [3,4]. The former put into place reformatories as an alternative to prisons for the benefit of "vagrant children." The latter act allowed courts to sentence under-16s to a two to five year period in a reformatory as an alternative option to prison, but mandated an initial two-week stint in prison before being transferred.

The following sections will examine the jurisprudential implications of the above acts on the development of the juvenile justice system, offer an overview of existing legislation in the United Kingdom and in Hong Kong, a territory formerly under U.K. jurisdiction, and evaluate the case of Sharon Carr, Britain's youngest female murderer.

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2. Overview of the 19th Century U.K. Juvenile Justice System

2.1. Jurisprudence

The evolution of legislation regarding juvenile delinquency in the United Kingdom during this time reflects a shift, though to a limited extent, in the targeted purpose of punishment. Previously, prison hulks had been introduced in 1823, and the first juvenile-exclusive state-operated prison, Parkhurst Prison, opened in 1838. These institutions were castigated by prison reformers for their cruel treatment of prisoners and unhygienic environment, in particular by reformist Mary Carpenter, who believed that children should not be imprisoned at all [5]. In her 1851 publication Reformatory Schools for the Children of the Perishing and Dangerous Classes, and for Juvenile Offenders, Carpenter proposed three types of schools that were imperative to the youth of her day, which included "reformatory schools" for juvenile offenders. The attention garnered to her work from this book led to Carpenter's increased political involvement through consultations with House of Commons committees, which provided evidence and served as a consultative basis for the passing of the Juvenile Offenders Act [5]. Nevertheless, the incapacity of the prison system for most young offenders to be housed separately and the wide-scale invariance in treatment between children and adults in the early 1800s shows emphasis on the incapacitative element of punishment: ensuring that there was less poverty on the streets was perhaps the preferred method to keeping crime rates low.

The introduction of the three juvenile-targeted acts, however, suggests that rehabilitation, through reformatories and the separation of juveniles from adult prisoners, may have been seen as a preferred method for reducing recidivism in younger individuals. The linkage between poverty and crime as understood by the legislators at the time is evident from both the wording of the Reformatory Schools Act, "vagrant children," and its contents, which punished children who refused to attend these schools. Although there is a degree of rehabilitative provision present in the passing of this act, the punishment for the aforementioned crime includes, ironically, imprisonment for up to 20 days. Furthermore, the mandate for a two-week period in prison could have served as a warning to those convicted as a more lenient alternative to spending their entire term in prison, but preserving some of its cautionary effect.

Beyond this point, the United Kingdom would see no new major change in juvenile justice-related legislation from 1854 until the end of Queen Victoria's reign in 1901. Only the Reformatory Schools Act saw two amendments in 1893 and 1899, which made the initial two weeks of prison optional, and then abolished it completely [6]. This legislative revision at the turn of the century, though minor, would precede another century and beyond of struggle to refine the juvenile justice system. Its integrity would be constantly evaluated through many instances of juvenile delinquency—up to the most severe crime of murder, a case study of which will be explored in the following section.

2.2. Execution

Given the age of criminal responsibility in the 19th century, children between the ages of seven and fourteen were not seen to be capable of developing criminal intentions. They might still, however, be found guilty if the incentive for their crime was established beyond reasonable doubt. The full force of the law, including sentences of incarceration, transportation, and capital punishment, was applied to minors found guilty of major felonies, but these punishments were not often carried out on the grounds of leniency. Between 1801 and 1836, none out of the 103 children aged fourteen and below sentenced to death in the United Kingdom were executed; the phrase "recommended to mercy on account of their youth" saw widespread adoption by the courts to pardon lesser crimes and commute death sentences to transportation or more lenient sentences [7]. These juvenile offenders, some as young as 10 years old, were sent to Australia to work on public projects as a form of rehabilitation. Others were sent to prison alongside adults, a hardly justifiable procedure whether judged by

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effectiveness of rehabilitation or reducing recidivism, until prison system reforms were introduced throughout the 19th century for juveniles.

3. Overview of the Extant U.K. and Hong Kong Juvenile Justice Systems

3.1. Legislation (U.K.)

The earliest formal juvenile justice system independent of the regular criminal system in the U.K. was established by the Children Act 1908 [8]. Section 103 of the same act also abolished the death penalty for juveniles under the age of 16, ceding their sentencing for crimes that would have been punishable by death to detention during His Majesty's pleasure, an indefinite amount of time during which the prisoner is periodically reviewed to determine whether their sentence can be deemed complete. In 1933, under the Children and Young Persons Act, the minimum age for capital punishment was raised to 18 years old and sustained until its abolition [9].

On the other hand, the age of criminal responsibility was first raised from seven to eight years in section 50 of the Children and Young Persons Act 1933 and subsequently raised again to 10 years in a 1963 amendment [10]. It was raised to 12 in Scotland following the passing of the Age of Criminal Responsibility (Scotland) Act 2019 [11].

A juvenile will typically be tried in a youth court, a type of magistrates' court for those above the age of criminal responsibility but under the age of majority. There is no jury and members of the public are not allowed in for the sake of protecting the privacy of the offender. Youth courts only deal with less severe offences like burglary and drugs offences; "grave crimes" including violent and sexual offences that would carry a sentence of 14 years or more, as well as homicide, must be passed to a crown court [12].

The sentences given to juveniles for less severe crimes in the modern-day U.K. are characterised by emphasis on rehabilitation. One type of sentence is the community sentence, which involves the offender agreeing to a programme designed to address their behaviour planned by youth justice workers; detention and training orders could also be given to be carried out in young offenders institutions. No sentence given to a juvenile can be harsher than one that would be given to an adult committing the same crime, and no offender under 21 can be sentenced to (an adult) prison [13].

3.2. Legislation (Hong Kong)

For the majority of Hong Kong's history as a Crown Colony (up until 1997), capital punishment was the usual sentence given for crimes of equal magnitude to those punishable by death in the United Kingdom. Following the Crimes (Amendment) Ordinance 1993, the death penalty was officially abolished in Hong Kong; the most severe punishment is life imprisonment to this day [14]. Under the People's Republic of China's constitutional principle of "one country, two systems", the death penalty continues to be repudiated in Hong Kong after its handover in 1997 despite executions still being regularly carried out in mainland China.

Under the Juvenile Offenders Ordinance, the juvenile court proceedings of Hong Kong are highly aligned with those of the U.K. Two amendments have been made since Hong Kong's handover in 1997, one to do with the Chief Executive's power to make rules and the other to deal with transitional provisions, but neither directly changes the legislation in place since its time as a U.K. colony [15].

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4. Case Study: Sharon Carr

4.1. Historical Background: Murder

"[There is] no country on the face of the earth in which there [have] been so many different offences according to law to be punished with death as in England," Sir Samuel Romilly states in a speech to the House of Commons in 1810 [16]. Indeed, early codifications of a criminal justice system in the British Isles saw the proliferation of laws that mandated capital punishment. The number of offences punishable by death in England and Wales quadrupled from 50 in 1689 to 220 by the end of the 18th century: the notorious Waltham Black Act of 1723 alone created 50 capital offences for various acts of theft and poaching [17]. As a result, an estimated 35,000 were sentenced to death between 1770 and 1830, and this series of laws became known as the "Bloody Code."

Since the "Bloody Code", the criminal justice system of the United Kingdom has steadily increased its tolerance for crimes previously punishable by death. Following the Judgement of Death Act 1823, judges were given the right to commute the death penalty for all crimes except treason and murder [18]. This act, in essence, legally recognized and permitted the preexisting phenomenon of capital punishment being selectively enforced for reasons like the benefit of clergy—only 7,000 of the aforementioned 35,000 death sentences were carried out. In 1861, the number of civilian crimes punishable by death was reduced to five (murder, treason, espionage, arson in royal dockyards, and piracy with violence). There would be few changes in this facet until the gradual phasing-out of the death penalty in the 20th century.

Conviction of murder, the unlawful premeditated killing of a person by another, has historically carried the most severe sentence under U.K. jurisdictions. There are two types of manslaughter, a less serious offence, voluntary and involuntary. In the former case, the offender acts with an intent to kill but is not guilty of murder because they are defended by diminished responsibility (e.g. the mental incapacity to exercise self control). In the latter case, the offender commits an unlawful act or demonstrates gross negligence without an intent to kill.

Although calls to abolish the death penalty rose in prominence starting from the early 1900s, it was not until the Murder (Abolition of the Death Penalty) Act 1965 that the death penalty for murder was suspended for a trial period of five years. Receiving support from parliament members of all three major parties of the time (Labour, Conservative, and Liberal), the act was affirmed in 1969 and made permanent. Following the abolition of the death penalty, murder carries a mandatory life sentence regardless of juvenile status [19].

4.2. Case Details

Sharon Carr is a Belizean British woman born in 1979. In the early hours of 7 June 1992, at 12 years of age, Carr stabbed 18-year-old Katie Rackliff to death in a thrill killing. Thirty-two knife wounds were found on Rackliff's body and her sexual organs were mutilated. The brutality and sexually motivated nature of the killing led police to believe that the murderer was a grown man, which caused the case to initially go unsolved.

Exactly two years after the murder of Rackliff, Carr stabbed Ann-Marie Clifford, a fellow 13 year old student, in the school toilet for no apparent reason, puncturing her lung and nearly killing her. She was stopped when other students intervened and quickly put to trial. She attempted to strangle two staff members at a medical assessment centre following her arrest, and was charged with two counts of actual bodily harm in addition to her wounding of Clifford. She was sentenced to detainment at Her Majesty's Pleasure—potentially the most severe punishment available to a juvenile.

During her imprisonment, Carr was discovered to be speaking and writing about the killing of Rackliff. Her diaries were seized and discovered to contain details of the murder not publicly

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disclosed; she later confessed to the killing when questioned. Four years had passed since her murder by this point.

On 25 March 1997, Carr was convicted of murder at Winchester Crown Court. She received a minimum tariff of 14 years in addition to her detainment during Her Majesty's Pleasure from her previous incident. With an unanimous guilty verdict, she had become Britain's youngest female murderer—the jury, after a five hour deliberation session, decided that her situation constituted murder, not manslaughter.

In 2004, Carr's defence team appealed for a reduction in her tariff and the replacement of her murder conviction with one of manslaughter on the grounds of diminished responsibility. The charges were dismissed. With numerous violent incidents with inmates and prison staff since then, she is imprisoned to this day despite the expiration of her tariff [20].

4.3. Evaluation

The case of Sharon Carr, a 12-year-old killing an adult unprovoked, received widespread media attention for its peculiarity and led to her being branded the "Devil's Daughter" in the press. Whilst Mary Bell had killed two boys when she was 10 in 1968, Carr remains Britain's youngest female murderer because Bell was convicted of manslaughter under the defence of diminished responsibility. Bell strangled two boys, four and three years old, with her hands, but Carr stabbed and mutilated her victim thirty-two times. Both cases were deemed killings out of excitement, but the extreme brutality of Carr's stabbing led to her murder conviction. Judge Scott Baker declared during the sentencing: "What is clear is that you had a sexual motive for this killing … you are in my view an extremely dangerous young woman [21]."

During Carr's 2004 appeal, Lord Woolf refused to cut her tariff from 14 years to her legal team's recommendation of nine years, stating "Nothing in the pages before me suggests the tariff of 14 years in this case should be revised despite Carr's youth at the time of the offence." However, it was later reduced to 12 years after a review by the Lord Chief Justice. Despite the expiration of her tariff, her continued violence towards inmates and guards means that her appeals for parole still have not been granted [22]. Bell, on the other hand, was released from custody in 1980 at the age of 23.

5. Conclusion

From the early legislative interventions of the 19th century to contemporary practices guided by principles of rehabilitation, the United Kingdom's juvenile justice system has evolved alongside society's perception of juvenile delinquents. The historical context of the Victorian era underscores the societal shifts in perceptions of youth crime and punishment, from harsh punitive measures to an emphasis on welfare and reformative approaches.

Reforms such as the introduction of reformatory schools and later the abolition of the death penalty for juveniles demonstrate the reformist commitment to upholding the principle of rehabilitation through punishment while addressing the institutional difficulties of preventing future problems.

Through a case study analysis of Sharon Carr, the study delves into the complexities of adjudicating extreme cases of juvenile delinquency. Carr's case prompts reflection on the balance between accountability and rehabilitation for young offenders, highlighting the ongoing challenge within the juvenile justice system of distinguishing between acts of premeditation versus thrill, and the capabilities of a child to consciously commit a crime.

In summary, while significant progress has been made towards a more equitable and rehabilitative approach to juvenile justice, challenges remain in both determining the degree of lenience that should be let upon juvenile offenders, and effectively rehabilitating and reintegrating young offenders into society. Continued research, policy development, and community engagement are essential in

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addressing these jurisprudential challenges and further refining juvenile justice systems to uphold—considering the age of the convicted—the rights of all parties involved in a criminal case.

References

[1] *Jstor.org. (2024). The Evolution of Juvenile Delinquency in England 1890-1914 on JSTOR. Retrieved from https://www.jstor.org/stable/650234.*

[2] *The National Archives. (2021). Victorian children in trouble with the law. The National Archives.*

[3] *The National Archives. (2024). Reformatories and Industrial Schools, The National Archives. Nationalarchives.gov.uk. Retrieved from https://www.nationalarchives.gov.uk/default.htm.*

[4] *Gillard, D. (2019). Youthful Offenders Act 1854.*

[5] *Jstor.org. (2024). Mary Carpenter: 19th Century English Correctional Education Hero on JSTOR. Retrieved from https://www.jstor.org/stable/41971151.*

[6] *Parliament.uk. (2014). Reformatory Schools Amendment Bill (Lords.) Retrieved from https://api.parliament.uk/historic-hansard/lords/1899/jun/08/reformadery-schools-amendment-bell-lords.*

[7] *British Library. (2017). Juvenile crime in the 19th century.*

[8] *Legislation.gov.uk. (2024). Children Act 1908.*

[9] *Legislation.gov.uk. (2014). Children and Young Persons Act 1933.*

[10] *Legislation.gov.uk. (2014). Children and Young Persons Act 1963.*

[11] *Legislation.gov.uk. (2019). Age of Criminal Responsibility (Scotland) Act 2019.*

[12] *Hooper, Ormerod. (2007). Section F19 Inferences from Silence and the Non-production of Evidence. Blackstone's Criminal Practice.*

[13] *Government Digital Service (2012). Criminal courts. GOV.UK. Retrieved from https://www.gov.uk/courts/youth-courts.*

[14] *Hong Kong e-Legislation. (1993). Crimes (Amendment) Ordinance 1993.*

[15] *Hong Kong e-Legislation (2022). Cap. 226 Juvenile Offenders Ordinance.*

[16] *Jstor.org. (2024). Sir Samuel Romilly and Criminal Law Reform on JSTOR.*

[17] *Jstor.org. (2024). The Waltham Blacks and the Black Act on JSTOR.*

[18] *The Statutes Project. (2019). 1823: 4 George 4 c.48: Judgement of Death Act.*

[19] *Jstor.org. (2024). Patterns of Death Penalty Abolition, 1960-2005: Domestic and International Factors on JSTOR. Retrieved from https://www.jstor.org/stable/23256781.*

[20] *Live, S. (2003). Katie killer set to fight murder conviction. Retrieved from https://www.getsurrey.co.uk/news/local-news/katie-killer-set-fight-murder-4853422.*

[21] *Daniels, Alison (26 March 1997). Youngest female murderer jailed: Prison confessions trapped attacker. The Guardian.*

[22] *Sharon Carr. (2022). Britain's youngest female murderer who stabbed stranger and bragged about it "makes bid for release". The Independent.*