Little Adults on Trial:

The Prosecution of Juvenile Killers in Nineteenth-Century England and Wales.



*Modern-day segregation between adult and juvenile courts.*

Name:Adam Langham

Student ID:3865533

Tutor: Dr Ruberg

Email: adam\_langham@gmx.co.uk

**Table of Contents**

P.3 Introduction.

P.7 Chapter one: Juvenile crime in nineteenth-century Britain.

P.8 The segregation of juvenile law.

P.10 Chapter two Case Study: The trial of William Allnutt for the murder of Samuel Nelme.

The prosecution of a child for homicide in the early nineteenth century.

P.13 Public opinion surrounding the Allnutt trial.

P.14 The importance of independent experts.

P.15 Views on childhood and diminished responsibility in children

P.16 Chapter three Case Study: The trial of Robert and Nathaniel Coombes for the murder of Emily Coombes. The prosecution of a child for homicide in the late nineteenth century.

P.20 Differing verdicts for similar crimes.

P.21 A lack of evolution

P.22 Conclusion

P.23 Bibliography

Introduction

The murder of a child is viewed as an abhorrent crime in all modern human cultures. Adults who murder a child face demonization of their character and are subjected to the harshest punishments the judicial system can dole out. When it is a child that murders however, society faces a problem. Society views children as weak, vulnerable, and in need of protection. When a child lashes out and murders it acts contrary to how we would expect a child to behave. Children who commit homicide attract significant media attention, especially if the victim is another child. British cases which have attracted significant attention include that of James Bulger, a three-year-old who was abducted and murdered by two boys aged ten in 1993,[[1]](#footnote-1) and infamously the case of Mary Bell who in 1968 at ten years of age killed two infants aged three and four years old, mutilated their corpses with a pair of scissors and then proclaimed that "Murder isn't that bad, we all die sometime anyway’’.[[2]](#footnote-2) Children such as Mary Bell are viewed in contemporary British society as ill, deranged individuals but homicidal children are rare. A mere 6% of homicides were committed by people under 18 years of age in Britain in 2007. This is a relatively low percentage, in the United States and Canada 10% and 12% of homicides respectively were performed by juvenile offenders in 2007.[[3]](#footnote-3)

The judicial system does not currently hold children to account for their actions as they do adults. English Common Law dictates under section 50 of the Children and Young Persons Act (1963) that ‘’No child under the age of 10 can be guilty of any offense’’.[[4]](#footnote-4) English law operates under the presumption that children under the age of ten are not capable of morally distinguishing right from wrong; the legal term is *‘doli incapax’* otherwise known as the ‘Defense of Infancy’*.* In practice this exempts children younger than 10 from criminal prosecution but culpability remains extremely contestable until the age of fourteen.[[5]](#footnote-5)

This has not always been the case; children in the nineteenth century were only protected from prosecution until the age of seven. It was permissible for defendants to use the *‘doli incapax’* defense until the age of fourteen, but the validity of this defense was determined on a case-by-case basis.[[6]](#footnote-6) There was a marked shift in attitudes towards child offenders throughout the nineteenth century which is the topic I will discuss in this paper. The research question that will be researched in this paper is: How were children who committed murder judged, to what extent were they held criminally responsible for their actions and how big a role did psychiatric experts play in their prosecution in England and Wales 1800-1900? The first chapter will discuss the background of juvenile delinquency in nineteenth-century England and Wales and clarify the rise of psychiatry within the judicial system in this century. The sub-questions I will discuss in the first chapter are: What were the main developments within juvenile delinquency and law in nineteenth-century England and Wales? And how did the field of forensic psychiatry develop within nineteenth-century England and Wales? The sub-question I am going to answer in the second chapter is: How were children who murdered prosecuted and to what extent were external experts such as psychiatrists involved in trials concerning children that had committed murder in the early-nineteenth century? In the third chapter the sub-question I would like to answer is: How were children who murdered prosecuted in the latter part of the nineteenth century and to what extent was there an evolution in the application of psychological expertise in trials related to children who had committed homicide?

I predict that the outcome of this research will be that homicidal children were more likely to be prosecuted and convicted as adults at the beginning of the nineteenth century and that the judicial system evolved throughout the nineteenth century towards the reform and education of juvenile murders rather than simply punishing them. This research will go on to show that the penalization of juvenile killers in the nineteenth century fits into a general trend, as described by Foucault, of the increasing influence of psychiatry and governmental behavioral engineering in the nineteenth century.[[7]](#footnote-7)

A considerable amount of research has been performed on the study of juvenile crime and delinquency in the nineteenth century. Peter King discusses the general rise in juvenile crime in England in his article *‘*The Rise of Juvenile Delinquency in England 1780-1840: Changing patterns of perception and Prosecution’. He argues that in the early nineteenth century juvenile crime was on the rise and was increasingly viewed as a societal problem.[[8]](#footnote-8) One important reason for this was the very large amount of children as a percentage of the total population in England. Peter King argues that because the proportion of children in the general population was so large the supply of child labour was far greater than demand. The market for child labour flooded, which led to youth unemployment, and thus to a rise in crime. Peter Kings believes another reason for the rise in juvenile crime was increase in reports to the police as people moved to urban centers and relied on the police to punish children rather than social discipline as was practiced in the rural community.[[9]](#footnote-9) He goes on to emphasize the relationship between industrialization, urbanization and juvenile crime. He discusses the changing attitudes towards children and childhood in the nineteenth century. Australian historian Susan Magarey agrees with Peter King that juvenile crime was viewed as a serious problem in early nineteenth-century England. She goes so far as to speak of a ‘’moral panic.’’[[10]](#footnote-10) She also emphasizes the link between juvenile crime and industrialization. Because children were very much economically active Magarey claims that the notion of *doli incapax* fell into disuse in the early nineteenth century where children under the age of fourteen were concerned. She believes this is evidence of a widespread erosion in the belief in the innocence of childhood and that this occurred throughout British society.[[11]](#footnote-11)

Harry Hendrick argues that there were three main developments in juvenile crime in the nineteenth century. Firstly there was an increase in recorded juvenile crime. He attributes this to urbanization and the decreasing importance of social policing in rural communities just as Peter King does. He also argues that ‘age relations’ shifted in the nineteenth century. Children were subjected to new societal norms influenced by Rousseau’s ideal of the natural child and that ‘’nature wants children to be children before they become men.’’[[12]](#footnote-12) Lastly he agrees with Magarey and King that there was increasing public worry and debate about juvenile delinquency, especially in urban areas such as London and Manchester where impoverished and abandoned children were very much visible in the public space, and therefore visible to the gentry.

There is thus a consensus among historians that juvenile delinquency was something that was perceived as a problem in early nineteenth-century England. They agree that urbanization and industrialization played a role in the rise of juvenile crime. They also agree that the image of the child changed in the nineteenth century, but they differ in opinion in what way. Hendrick believes that adults, inspired by Rousseau’s ideal of the natural child, saw children in a more childlike way. King does not explicitly mention Rousseau but does believe that attitudes within the gentry developed towards a ‘romantic ideal’ which encapsulated protecting children from painful experiences and offering them a childhood before they entered adult life. However, he states that these ideals were not applied to children from the lower and working classes who were largely viewed as threats to public safety, private property and the future of the nation.[[13]](#footnote-13) Magarey does not mention Rousseau or the ‘romantic ideal’ and finds that if anything, children were viewed in a less childlike manner and she uses the erosion of the notion of *doli incapax* in the first half of the nineteenth century to illustrate this. Magarey uses a quote by a 1852 Metropolitan police magistrate who remarked that ‘’the characters of children brought up in town are so precociously developed that I should find it difficult to mention any age at which they should not be treated as criminals’’.[[14]](#footnote-14) I align myself with Peter King’s position as I find the relationship between industrialization, urbanization and a rise in juvenile crime plausible. His claim that the romantic ideal of childhood was solely projected on the children of the gentry and that lower-class children were exempted from differential treatment on account of their age rings true if we consider the amount of children which were economically active. The research performed by these three historians is largely quantitative; they use figures to illustrate how juvenile crime, its prosecution, and the steps taken to punish and rehabilitate offenders evolved throughout the nineteenth century. This paper will differentiate from this by using case studies and by limiting itself to juvenile homicide rather than incorporating all crimes committed by children. It thus operates from a qualitative rather than a quantitative perspective. I will also focus on the role of psychiatric experts in the prosecution of children as psychiatry is used to determine if and to what extent a child can be held responsible for its actions.

This paper is of academic relevance as to my knowledge no literature exists on the prosecution of homicidal children in nineteenth-century England and Wales. A substantial amount has been written about the evolution of juvenile crime in the nineteenth century, this paper will thus attempt to highlight this specific group of individuals and place them within the context of the evolving judicial system of the nineteenth century. This paper gives us an insight into how the notion of diminished responsibility in children was gradually introduced into the criminal justice system, and would produce material towards the study of the increasing importance of psychiatry within criminal justice.

The definition of childhood I will use in this paper is any person thirteen years of age or younger. Present-day English juvenile law maintains an age of criminal responsibility of ten, in the nineteenth century however a two-tier system existed. Under the age of seven prosecution was impossible under *doli incapax,* ‘The Defense of Infancy’. Defendants between the ages of seven and fourteen were also assumed to be protected from prosecution but the prosecution could overturn this if it could prove the defendant was of sufficient maturity when he or she committed the crime[[15]](#footnote-15). The infancy defense was thus similar to the insanity defense where the prosecution would try to prove the defendant was sane, in cases in which infancy was used as a defense it would attempt to prove the defendant was mature enough to have understood that the crime he committed was morally wrong.

Methodologically I have used two case studies to try and establish if there was an evolution in the way children who were suspected of homicide were tried in the nineteenth century. The case-studies are court records from the Old Bailey, London’s main criminal court. As stated, homicides committed by children are rare. The amount of cases involving homicidal children in the nineteenth century with sufficient documentation to conduct research upon is limited; the vast majority of children arrested were convicted of such crimes as trespassing, larceny, begging and vagrancy.[[16]](#footnote-16) The reason I chose these specific cases is that they are half a century apart; the trials took place in 1847 and 1895 respectively. I believe I can effectively chart the evolution of how homicidal children were tried in the nineteenth century by analyzing these cases in depth. The influence of external professionals will become visible by closely examining these case studies and thus offer a perspective on how the increasing use and importance of psychiatry played its part in the examination and prosecution of homicidal children. I will try to tie in these case studies with secondary literature to sketch the overall development in the prosecution of juvenile delinquents and the evolution in societal and legal views on youth and childhood throughout the nineteenth century.

In this paper I am solely going to discuss the situation as it existed in England and Wales, thereby disregarding the rest of the United Kingdom. Scottish and Irish law (in the nineteenth century the entire island of Ireland was a constituent country of the United Kingdom) deviate significantly from English law. The Scottish age of criminal liability in the nineteenth century was eight years old, a whole six years younger than under English law.[[17]](#footnote-17) This paper will limit itself to where English common law applied: England and Wales.

Chapter one: Juvenile crime in Nineteenth-century Britain

In 1820 a staggering 39% of the population was between 0 and 14 years old, as a comparison: in 1670 it had been 29%, and in 2001 it would drop to 18.8%.[[18]](#footnote-18) The large increase in the amount of children in the British population was challenging to a British society which was experiencing the Industrial Revolution. Britain was accustomed to children being economically active; Susan Magarey claims that in 1844 half the factory workers in Britain were under the age of eighteen, children as young as eight were employed in the mines or packing cartridges in the London arsenal.[[19]](#footnote-19) The market for child labour became saturated and many children were unable to find paid employment. Poorhouses, orphanages and charity-run support services found it impossible to cope with the large amount of children needing lodgings, nourishment and employment. As a result of this many children lived a life of homelessness, begging and theft.

Especially in urbanized areas impoverished children congregated and formed gangs.[[20]](#footnote-20) Peter King uses statistics to display the difference between rural and urban areas when it comes to juvenile crime. He finds that between 1820 and 1822 the industrial powerhouses of Bristol and Manchester recorded that respectively 47% and 48% of all property crimes were committed by juveniles. For rural Berkshire and Hertfordshire the figures were 17% and 13% respectively. The discrepancy in the relative and absolute amount of juvenile crime between urban and rural areas in nineteenth-century Britain is undeniable.[[21]](#footnote-21) In 1848 a member of the House of Lords, Lord Ashley, estimated that there were more than 30.000 ‘’ naked, filthy, roaming, lawless and deserted children roaming London.’’[[22]](#footnote-22)These children resorted to crime as a means of survival. Charles Dickens fictional character the Artful Dodger whom appears in his 1839 novel *Oliver Twist* would be an excellent representation of a child which had to resort to pickpocketing and theft to survive.

As stated in the introduction juvenile delinquency was viewed as problem within British society, and with reason. Throughout the 1840’s and 1850’s the amount of children under twelve which experienced prison rose, in absolute as well as in relative terms.[[23]](#footnote-23) Radical solutions to the rise in juvenile crime were proposed. In 1830 the Society for the Suppression of Juvenile Vagrancy was formed, it tried to tackle juvenile vagrancy by giving children a brief religious and agricultural education and then transporting them to South Africa. By 1837 the society reported that it had transported 1300 boys to Africa, thus supplying crucial labour to the farms which fed the empire, while alleviating London of its juvenile vagrancy and crime problem.[[24]](#footnote-24) The Society was applauded by newspapers, the clergy and government ministers alike. It was believed that fresh air and honest farmwork would turn these street ruffians into good honest Englishmen. The children were subjected to hard labour and harsh conditions in Africa, scandal erupted when The Times reported several cases of white British boys being sold into slavery and forced to live in the same huts as black plantation slaves.[[25]](#footnote-25) Emigration continued to be viewed as a solution to juvenile crime until well into the nineteenth century and children were transported to places as diverse as Bermuda, Tasmania, New Zealand and Canada.[[26]](#footnote-26) Courts had the power to convict offenders to transportation and frequently did so. Up until 1854 there was no separate legislation geared towards juveniles. Juveniles were tried as adults, and if convicted to prison they were incarcerated in a regular prison with adult inmates.

The Segregation of Juvenile Law

In 1854 the House of Commons passed the Youthful Offenders Act which described youth delinquency as a ‘distinct social phenomenon.’[[27]](#footnote-27) This act led to the establishment of reformatories and subsequent legislation in 1857 led to the creation of industrial schools, these institutions were founded exclusively for juvenile delinquents. By the end of the century over 30.000 juvenile offenders were incarcerated in these penal institutions. The English judicial system thus catered specifically to juvenile offenders rather than maintaining a one size fits all approach to delinquents, whether they were juvenile or adult. Juveniles were now to be tried in front of a magistrate who had the authority to confine juveniles within these new institutions rather than being sentenced before a judge and a jury in court. Homicide was however explicitly mentioned as an offense over which juvenile magistrates had no jurisdiction, children suspected of homicide thus continued to appear in adult courts.

One of the main reasons for the creation of separate penal institutions for juveniles were fears that by being in close contact with adult inmates children would be criminally contaminated even further. By isolating children from adult delinquents lawmakers thus hoped that children not be exposed to ‘’prison culture’’ and thus easier to reform.[[28]](#footnote-28)

The institutionalization and specialization of juvenile law would correspond with Michel Foucault’s theory that in the nineteenth century punishment was inflicted upon the soul rather than the body. Instead of corporal punishment as practiced in earlier centuries, prisoners were punished by imprisonment, a non-corporal punishment. The idea that prisoners could be reformed became prominent, thus leading to behavioural engineering.[[29]](#footnote-29) To facilitate the reform of prisoners, scientists tried to gain knowledge about delinquents as to better ascertain the ‘cure’ to their criminal ehavior. This led to the rise of independent experts, unaffiliated with the judicial or policing systems but operating within these judicial and penal institutions.[[30]](#footnote-30)

As shown the transportation of juvenile offenders to the colonies had a double purpose. The streets of British towns and cities were cleansed of undesirable delinquent children, while labour was supplied to parts of the empire that were in need of it. If regarded from a Foucaultian perspective transportation deprived the delinquent of his liberty in the same way imprisonment did.[[31]](#footnote-31) Transportation deprived children of their liberty by shipping them to the other side of the world, far from their family and friends, where the inmate was deprived from his freedom of movement by iron bars and stone walls.

Paradoxically the hope that children would be reformed by transportation to the colonies was not an altogether unrealistic one. There are reports of juvenile delinquents growing up in the colonies to become skilled craftsmen, clergymen, even landowners.[[32]](#footnote-32) That is not to say that many of the transported children faced incredible hardship and exploitation, the article in the London Times that reported on the enslavement of children transported by the Society for the Suppression of Juvenile Vagrancy should be viewed as the tip of an iceberg in this respect.

The founding of separate institutions for the imprisonment and reform of juvenile delinquents in 1853 has to be viewed within the context of the specialization and institutionalization of criminal law. The rise of psychiatry within the judicial system of the nineteenth century has been well-described by Foucault. In effect he argues that the increasing prominence of psychiatry within the judicial system gave independent experts power over prisoners. Psychiatrists could now decide who was insane and who was sane and thus exercised power and authority over prisoners.[[33]](#footnote-33) As I will go on to show their power was not solely limited to the prison but was also exercised in the courts. Independent experts opinions on who was sane and who was not could mean the difference between a capital conviction and admittance to a mental asylum for a juvenile killer on trial. The prominence of experts on mental health in both case studies support Foucault’s claim that the rise of psychiatry within the judicial system came to pass between 1800 and 1830. In the case of juvenile killers the question is not solely if the defendant is sane enough to have understood what he was doing but also if the defendant was mature enough. The very existence of the *doli incapax* legal defense would require a thorough examination of every juvenile killer; it is thus unavoidable that psychiatric experts play a crucial role in trials involving juvenile murderers in the nineteenth century.

Juvenile crime was a ‘hot topic’ in nineteenth-century Britain and there was considerable debate surrounding it. The segregation of juvenile law is arguably the biggest development in the century as far as juvenile delinquency is concerned. Different strategies were pursued to tackle the problem of children committing crimes, the segregation of juvenile law and the creation of penal institutions specifically for delinquents should be regarded as one of those strategies. The rise of forensic psychiatry within the judicial system is undeniable, cases involving juvenile delinquents were not exempt from the new-found influence this field held in the courts. They held a crucial role as far as children on trial for murder were concerned, not only were they to judge if the defendant was of fit mental health but also if they were mature enough to be held responsible for their crimes. If a child wished to plead diminished responsibility on account of his age or mental health they were wholly dependent on the opinions of psychiatric experts.

Chapter two Case Study: The trial of William Allnutt for the murder of Samuel Nelme.

The prosecution of a child for homicide in the early nineteenth century.

The court records concerning the trial of William Allnutt for murder in 1847 are extensive, taking the details of the case into account this is unsurprising. Not only was the accused only twelve years of age, he was suspected of murdering his own grandfather, a crime against kinship. This source is valuable to historians interested in the history of crime because of the involvement of several ‘experts’ in the fields of medicine and mental psychiatry. A great deal of attention was given to the boys’ mental state of mind and his character was investigated thoroughly. Within the context of attenuating circumstances and independent specialist opinion beginning to play an ever increasing role within the criminal justice system in the 19th century this case is quite remarkable and of the highest relevance to this paper. In my own conceit the study of this trial is an effective way to understand the way in which homicidal children were prosecuted in the first half of the nineteenth century, and to what extent external experts such as psychologists influenced the way homicidal children were tried.

Trial description

On the 25th of October 1847 Mr Nelme, aged 73 or 74, died what appeared to be a natural death of cholera. Dr. Toulmin, who had Mr Nelme in his charge in his profession as a doctor, at first saw no reason to attribute Mr Nelme’s death to anything but natural causes. When Mrs Nelme, the wife of the deceased Mr Nelme fell sick as-well the doctor decided to take with him from the house some arrow-root and sugar because he wanted to investigate the cause of their illness and both those were products frequently consumed by the couple. He took the sugar to London hospital where Dr. Letheby conducted several experiments on the sugar; it was found to contain a considerable amount of arsenic.[[34]](#footnote-34) Dr. Toulmin thus concluded that the cause of Mr Nelme’s death was poisoning. Dr. Toulmin, who was present at the trial in the capacity of a witness, declared that he had a professional relationship with the suspected child William Allnutt as he had treated him for an abscess the year previous. In his professional opinion William Allnutt seemed rather diminutive, meaning small or childish for his age.

Next to the witness stand was Dr. Letheby, the physician who had performed the initial test in London Hospital to ascertain what the contents of the sugar were, he had then performed experiments on the organs harvested from Mr Nelme’s corpse to confirm that the cause of death indeed was the contaminated sugar. He found a lethal amount of arsenic in Mr Nelme’s stomach, brain and liver and stated that he was under the impression that Mr Nelme had been under the influence of arsenic for several days prior to his death. In Dr. Leheby’s judgement, arsenic was certainly the cause of death.

The late Mr Nelme’s wife, Mrs Nelme, testified before the court that Dr. Letheby indeed had consumed the contaminated sugar on the Saturday before his death, she also mentioned feeling ill herself after consuming the contaminated sugar the week after her husband’s death. She declares that her husband consumption of sugar was far greater than that of the other members of her household that being herself, her daughter-in-law Mrs Allnutt, and her grandson William Allnutt. According to Mrs Nelme her grandson William was well aware of where the sugar was stored and that his grandfather consumed it in significant amounts.

The suspect’s mother, Mrs Allnutt, testified to administering sugar to Mr Nelme on the Sunday and Tuesday before he died unbeknown of the fact that it contained arsenic. She also stated that she felt ill herself after consuming the contaminated sugar. The mother attested that her son William was troublesome and lacked in morals compared to her other children. She also claimed he had health problems due to a fall on a ploughshare which left him temporarily paralyzed and unable to speak. He had also suffered from a fall on the ice, a ringworm and several abscesses. She questioned his mental health, her reason for this is that after remonstrating her son for wrongdoings he apparently often claimed ‘’that somebody told him to do it; that somebody seemed to say to him, “Do it, do it, you will not he found out;” that they talked to him in his head.’’ [[35]](#footnote-35) According to Mrs Allnutt this happened more frequently in the time leading up to Mr Nelme’s death, he also suffered from sleepwalking and ‘’hooting in his sleep.’’[[36]](#footnote-36)

Independent experts’ differing opinions

Up to this stage of the court proceedings witnesses were merely asked to ascertain facts. William Allnutt’s mother, Mrs Allnutt, was the first to question her son’s mental health. This was about to change as no less than seven experts on mental health were asked for their opinions on William Allnutt. We thus assume the court found the question of William Allnutt’s sanity of the greatest importance. The court could simply have established if William Allnutt had indeed contaminated the sugar with arsenic and then convicted him. The lengths to which the court went to establish William Allnutt’s sanity would be in accordance with Michel Foucault’s theory that in the nineteenth century there was a gradual evolution within criminal law which put ever more importance on the criminal rather than solely on the crime. As Foucault puts it: “Criminal law knew only two terms, the offense and the penalty. The new criminology recognizes three, the crime, the criminal and the means of repression.”[[37]](#footnote-37) Foucault argued that between 1800 and 1835 criminal danger became ‘psychiatrized’, I regard this 1847 trial as evidence to this psychiatrization.[[38]](#footnote-38)

The first person asked to testify was Dr. Letheby who conducted the initial experiments on the sugar. He believed that a fall on a ploughshare such as Mrs Allnutt had described indeed could cause ‘’mischief in the brain.’’[[39]](#footnote-39)A London policeman was also asked to act as a witness, he told the court that William Allnutt claimed that voices in his head had told him to steal a watch a couple of months prior to Mr Nelme’s death.

The next witness was the chaplain of the prison in which William Allnutt was being held. He had told William Allnutt to ask for God’s forgiveness and thus repent for his sins. William Allnutt had then proceeded to write a letter to his mother in which he confesses to putting arsenic into the sugar vial and begs for her, and God’s, forgiveness. He told his mother that the reason he poisoned the sugar was that his grandfather had knocked him down which had hurt. The chaplain was subjected to fierce cross-examination as the defense argued that William Allnutt confessed to his crime under duress and that the chaplain put him up to it. The chaplain maintained that it was not his intention to make William Allnutt confess and that he was merely concerned about his spiritual wellbeing. He had intended for the boy to confess to God, rather than his mother.

The following witness is the prison doctor. He disagreed with Dr. Letheby and stated that in his opinion William Allnutt was ‘’of sound mind’’ and in no way criminally insane, although he concedes he is no expert on the subject of psychiatry. The lawyer for the prosecution asked the prison doctor if he agreed that the moral faculties of a person are always the first to be impaired when a person is overcome with insanity. This statement comes from a book written by a Dr. Winslow, an expert on insanity. The prison doctor disputed the authority of the book the lawyer for the prosecution used and recommended another book by a certain Dr. Conelly, also an expert on insanity who contradicts Dr. Winslow’s findings. The prison doctor was cross-examined at length but maintained that William Allnutt was sane and capable of making moral decisions.

Next another letter by William Allnutt to his mother is produced. In the letter he again asks for the forgiveness of his mother and he hopes for the forgiveness of God, he complains about being visited at night by someone or something supernatural. The exact phrasing he uses is: ‘’When I am reading, or lying down at night, I fancy I can see some one; and it does startle me so, and makes my heart beat so; and when I look, I see no one; and I lay down again, and I fancy I can see it again; and I get up again, and ask it what it wants. It mutters something, but I do not know what it says. ‘‘I think it is fair to assume that this passage from this particular letter would imply to the court and the jury that the boy is either hallucinating or making it all up.

Note that until this stage of proceedings all witnesses were called up by the prosecution, it is noteworthy that the only ‘expert’ to find William Allnutt sane in this trail was the prison doctor, a witness for the prosecution. Every other expert was called up by William Allnutt’s defense and all of them found him criminally insane to varying degrees. This would imply that experts were filtered by the prosecution and the defense respectively to support their case.

In conducting William Allnutt’s defense his lawyer called up several medical experts. The first was a certain Dr. Edward Payne who concluded that the boy was most likely ‘’partially insane’’ due to his history of ill-health which might have had its repercussions on the functioning of the mind. The witness was cross-examined by the prosecution but did not change his opinion. Dr. Payne had previously treated the boy for ‘’excitability’’ and claims to have believed the boy insane since October of the year before, exactly one year before the trial.

The next witness was a surgeon called Edward Croucher, he had treated William Allnutt when he hit his head on a ploughshare. He stated that William suffered from severe inflammation and blood-loss following the accident and that such an injury might very well have caused ‘’derangement and insanity.’’[[40]](#footnote-40)

The following person called to testify was Dr. Duesbury, who claimed to have treated William Allnutt’s father who had died ‘mad’ several years prior to the trial, raising the question if madness was genetic. Like the prison doctor, Dr. Duesbury admitted to not having a great knowledge on the topic of insanity other than that which would ‘’occur to a general practitioner [of medicine].’’[[41]](#footnote-41) He believed that William Allnutt was in an early stage of insanity which had polluted his moral judgment but had not as yet damaged his intellect. The doctor stated that although William Allnutt knew he was poisoning his grandfather and understood the implications of this he did not see this as morally wrong because the early stage of lunacy had impaired his moral judgment. When pressed on this during cross-examination by the prosecution he refused to answer or expand upon this opinion.

The last witness the defence called to the stand was Dr. Conolly who worked in a lunatic asylum. Incidentally Dr. Conolly is the author of the book the prison doctor referred to in his earlier statement and was thus an expert on lunacy rather than a general practitioner of medicine. He stated that in his opinion William Allnutt’s mind was diseased and that the boy was insane. Furthermore he believed the condition would worsen as time passed and disputed Dr Duesbury’s finding that the accused was morally impaired while intellectually healthy. He maintained that the suspect is completely insane. Dr Conolly was the last witness to be called up and the court proceeded to the sentencing of the suspect.

The jury found William Allnutt guilty of murder but earnestly recommended he should be treated with mercy on account of his young age. William Allnutt was however sentenced to death and this verdict was upheld, thus ignoring the jury’s plea for mercy.

Public opinion surrounding the Allnutt Trial.

Much can be learned from the trial of William Allnutt. The attention the murder of Mr Nelme and the subsequent trial received can hardly be understated. So much was written about the case in the press that the London-based newspaper *John Bull* in its coverage of the trial wrote that ‘’The whole of this sad case has been so repeatedly before our readers that it is needless to repeat the evidence adduced before the grand Jury.’’[[42]](#footnote-42) In its coverage of the trial the newspaper states that the judge Baron Rolfe had ‘’rejoiced’’ at hearing the jury’s verdict as he had believed that the attempt by the defense to establish that William Allnutt was insane was an attempt by the defense to let the jury swerve from the ‘’strict path of duty’’[[43]](#footnote-43). Another London-based newspaper, *The Satirist, or the Censor of the Times*[[44]](#footnote-44) wrote an editorial about the trial. In its opinion ‘’The evidence given by highly respectable, and as we believe, competent parties, who had come to conclusions as regard him, were surely sufficient to raise, *fairly*[sic], the question for a jury, whether or not the prisoner was sane.’’[[45]](#footnote-45) The newspaper takes offense with the judge ‘rejoicing’ at the death of so young a child and warns against a precedent being set of courts dismissing pleas of insanity out of hand. The more high-brow newspaper, Bells Life in London and Sporting Chronicle, however ‘rejoices’ together with the judge and finds that ‘’of late it had become a kind of mania with a certain class of people to talk of the crime being committed under an ‘‘uncontrollable impulse’’ and an effect to call that impulse madness. But religion and law alike require that there shall be no uncontrollable impulses among men, and if the injunctions of religion and law are not obeyed, those who disregard them must be prepared to receive punishment.’’[[46]](#footnote-46) It would thus be fair to state that opinion within British society was divided on the topic of William Allnutt’s death sentence; sections of society obviously were opposed to the death penalty being performed on children. It is important to note that the opinions of psychiatric experts were taken very seriously by *The Satirist, or Censor of the Times* which would confirm Foucault’s finding that psychiatric expertise played an increasingly important role in criminal justice throughout the nineteenth century. Psychiatry had not only influenced the trial itself, but also public opinion surrounding the trial.[[47]](#footnote-47) Psychiatric expertise had thus by 1847 acquired such a status as to be regarded as relevant and believable by members of the general public.

The importance of independent experts

The opinions of the psychiatric experts involved in the trial of William Allnutt were highly disparate. Six out of the seven independent experts who were asked for their opinion regarding the mental health of William Allnutt thought he was criminally insane in some form or other, with only the prison doctor dissenting and maintaining that William Allnutt was completely sane. Furthermore, experts disagreed on which literature should be used in gauging the boy’s mental state of mind and had no qualms in calling other expert’s opinions false or misguided. Interestingly, two of the seven medical witnesses stated that they had no great knowledge of mental health, thus undermining their own expertise on the subject. The prison doctor stated that ‘’it [the study of mental health] had been made a branch of itself for many years.’’[[48]](#footnote-48) This would correspond with Foucault’s finding that the introduction of psychiatry into the criminal justice system came to pass between 1800 and 1830.[[49]](#footnote-49) Foucault also argued that judges frequently disregarded the opinion of psychiatric experts, in this trial it was inevitable that someone’s opinion is to be disregarded simply because the expert’s opinions were so wide-ranging and contradictory. The judge found William Allnutt sane and found him criminally liable for the murder of Mr Nelme. This judgement would correspond with the prison doctor’s opinion but contradict the opinion of the other six experts who thought William Allnutt suffered from at least partial insanity.

Views on childhood and diminished responsibility in children

It is important to note that this trial predated the Youthful Offenders Act of 1854 which effectively led to the creation of Juvenile law. The only defense children had to their disposal which differentiated them from adults was *doli incapax,* the Defense of Infancy. Magarey speaks of an erosion in the belief of *doli incapax* throughout British society in the first half of the nineteenth century.[[50]](#footnote-50) William Allnutt however did not use the Defense of Infancy; he used the Defense of Insanity. I believe this was a strategic choice made by William Allnutt and his defense council as the belief in *doli incapax* was so heavily contested in British society it hardly offered the defendant any protection at all. In my opinion the harsh punishment William Allnutt was subjected to, and the refusal of the judge to grant William Allnutt mercy on account of his age even after the jury advised him to do so, is evidence of a societal and judicial view of childhood that doesn’t differentiate it from adulthood at all. The London Metropolitan magistrate’s opinion who stated in 1852 that ‘’the characters of children brought up in town are so precociously developed that I should find it difficult to mention any age at which they should not be treated as criminals’’[[51]](#footnote-51) seems to have been a widespread one throughout the judicial system.

Historian Margaret May argues that until the Youthful Offenders act of 1854 children that came before the court were effectively treated as ‘’little adults’’.[[52]](#footnote-52) The case of William Allnutt would most definitely support this claim. The lack of a statutory distinction between juvenile and adult offenders in the early nineteenth century combined with the erosion of *doli incapax* as a legal defense and as a societal notion led to a situation wherein homicidal children were trialed and sentenced in much the same way as adults were. Although sections of the public were sympathetic towards the plight of children on trial for homicide, and thus facing capital punishment if convicted, their age offered very little protection in legal terms. Children who murdered were liable to all the main forms of punishment, including imprisonment, transportation to the colonies, and the death penalty.[[53]](#footnote-53) Juveniles who were convicted had no right to differential treatment, although individual judges might decide to act compassionately.[[54]](#footnote-54) That some publications viewed the sentencing of William Allnutt as too harsh is evidence of a changing public perception towards juvenile homicide and childhood in general. The law would eventually catch up, beginning in 1854 with the Youthful Offenders act, reinforcing the special status children received with the Industrial Schools act of 1857 and ultimately culminating in the creation of juvenile courts and prisons under the Children’s Act in 1908[[55]](#footnote-55) which fully segregated juvenile and adult law. I believe the trial of William Allnutt is evidence that children who were on trial for homicide were effectively prosecuted and trialed as adults. Children had little to no protection from prosecution beyond the age of seven, the public’s perception of this trial is however evidence of changing societal views on homicidal children and childhood in general eventually, leading to the segregation of juvenile delinquency within the legal system. Independent psychiatric experts played a significant role in the trial and were respected by the public, but in this case largely ignored by the judge and the jury.

Chapter three case study: The trial of Robert and Nathaniel Coombes for the murder of Emily Coombes.

The prosecution of a child for homicide in the late nineteenth century.

Half a century after William Allnutt’s conviction the Old Bailey criminal court in London saw another high-profile homicide case in which a child was prosecuted for murder. In 1895 Robert Allen Coombes aged 13 and his brother Nathaniel George Coombes aged 12 were prosecuted for the murder of their mother Emily Coombes. I am of the opinion that this case-study is of importance to this paper because the way in which the boys were prosecuted and ultimately sentenced was markedly different from William Allnutt’s. The trials were equally thorough in the amount of witnesses who were asked to testify before the court, the difference being that in William Allnutt’s case the majority of witnesses were experts asked to determine whether the boy was sane or not, in the case of the Coombes brothers most witnesses were relatives, neighbours, teachers and policemen. Only 2 medical experts were asked to determine whether the boys were insane or not.

On Friday the 5th of July 1895 Robert Coombes Sr, father of Robert and Nathanial Coombes and husband to Emily Coombes, boarded a ship called the *France* on which he was employed as a steward. The following day the 6th of July was the last time Emily Coombes was seen in public. Her sister-in law, also called Emily Coombes, went to visit the house she and her sons lived in several times after the 6th but was told by the boys that their mother was out at the market, visiting an aunt in Liverpool, and on a holiday respectively. On the 17th of July she forced her way into the house where she found a stranger playing cards with the two boys; he identified himself as John Fox. She had borrowed a key to the house from the landlady and proceeded to unlock the door to the master bedroom where she found the dead body of her sister-in-law. When she asked the boys what had happened to their mother Robert said that he and Nathaniel had conspired to kill their mother on Saturday the 6th of July after she had hit Nathaniel when he had misbehaved. Robert claimed that he had been sleeping in the same bed as his mother in the night from Sunday the 7th to Monday the 8th of July when his mother pushed him out of bed because he kept on kicking her. He then got out of bed, fetched a knife and stabbed his mother to death. After they had killed their mother they proceeded to pawn off their parent’s possessions including a gold watch and their father’s best suit. John Fox helped them to pawn off these items. Robert Coombes admitted to buying the knife he killed his mother with the week before the murder with the express purpose of killing his mother with it. They used the money obtained by pawning off their parents possessions by visiting Lord’s Cricket Ground to watch a match, they went to see plays at several different theaters and they frequently had meals in pubs and eating-houses.

Nathaniel Coombes testified in court that he and his brother had conspired to kill their mother weeks before their father left on the ship. He didn’t have the courage to do it so he asked his brother to do it instead. He was aware his brother had bought a knife and he was witness to the killing itself in which he did not intervene. He claims that they knew John Fox as he was an acquaintance of their father and had visited their home to cut wood for the furnace. They met John Fox at the dockyards after the death of their mother on Wednesday the 10th of July and invited him to stay at their home as he usually slept rough at the dockyards. He claims John Fox was not aware of Emily Coombes body in the bedroom. The boys told him that their mother went to visit an aunt in Liverpool and did not mind him staying at the house. They split the money they had earned pawning off their parents possessions three-ways. He said he thought John Fox was a half-wit and never spoke much.

The next witness was a police surgeon who stated that Mrs Coombes body was in a horrible state of decomposition which was unsurprising as she had been dead for ten days. He claims the smell of the body was so rank and fierce it must have been noticeable in other parts of the house and not only in the locked room. He does however concede that people living in the house would not notice the smell as fiercely as outsiders because it would have increased gradually.

The next couple of witnesses are neighbours who state that they saw the boys going around their business as usual after their mother’s death, they played cricket in the garden with John Fox, they played on the street with other neighbourhood children and nobody suspected anything out of the ordinary.

John Fox’s employer testified that he found John Fox half-witted but not maliciously so. He was usually assigned manual work which did not require much intellect.

Robert Coombes jr had gone to the office of his father’s employer with a letter he had forged in his mother’s name asking for an advance on her husband’s wages as she was supposedly ill. The clerk dismissed this request out of hand as there was no doctor’s slip attached. Robert Coombes then returned to the office with a forged doctor’s slip whereupon the clerk agreed to advance part of the wages if he could visit Emily Coombes himself as to avoid fraud. Robert Coombes then left the office and did not return.

The following witnesses are a procession of Robert and Nathaniels former teachers and school-master’s. They all concur that both boys were bright and well-behaved while in school and never caused any trouble. They all concur the boys had never previously showed signs of mental instability or violent intent.

The next witness is the boy’s father Robert Coombes sr. He claimed that Robert had suffered from headaches from the age of four onwards. He had gotten a doctor’s prescription to treat these headaches. He believed the headaches were caused by the difficult delivery of his son when doctors had resorted to the use of forceps to extract him from his mother’s body which had bruised his temples. He claimed the boy continually complained of headaches and was diagnosed as having an ‘’affection of the brain’’ in 1892 which surprised him as the boy had never caused any trouble and seemed very bright. He had enjoyed reading and was a good student. He also claimed the boy complained of hearing noises at night while he was at home which he failed to hear himself and believes to have not existed.

The last two witnesses called to the stand were medical experts, one of which was an expert on criminal insanity. The first was the medical officer of the prison in which Robert Coombes was being held. He noted that Robert complained of headaches and noted that the boy had suffered from them all his life. He had examined Robert and found that the forceps used to deliver him as a baby had compressed his brain. He diagnosed Robert as suffering from cerebral irritation. He claims Robert told him that voices in the night told him to ‘’kill her, kill her, kill her and run away.’’[[56]](#footnote-56) He said he had felt an irresistible urge to kill her. He had also written a letter to his neighbour Mrs Shaw which had strengthened him in his conviction that Robert Coombes was suffering from mental illness. The letter reads:’’ Dear Mrs. Shaw,—I received your letter on last Tuesday. I think I will get hung, but I do not care as long as I get a good breakfast before they hang me. If they do not hang me I think I will commit suicide. That will do just as well. I will strangle myself. I hope you are all well. I go up on Monday to the Old Bailey to be tried. I hope you will be there I think they will sentence me to die. If they do I will call all the witnesses liars.—I remain, yours affectionately, R. A. Coombes.” The medical officer followed up his testimony with the statement that: ‘’there are two forms of homicidal mania: sometimes the crime is committed on the impulse of the moment; sometimes with great deliberation and cunning—pernicious literature would be very bad for such a boy to read—I have been studying criminal lunacy more or less for the last twenty-three years—in my opinion these symptoms would be characteristic of the boy during his life.’’ In the doctors opinion the boy could have been suffering from homicidal mania when buying the knife he used to kill his mother. He also finds he could have been suffering from it while killing his mother but he does not want to positively state that that was the case. To conclude he stated that the boy could very well be suffering from insanity, he was suffering from all the symptoms, but he is unsure if the insanity is permanent, it could very well be recurrent and appear in fits and bouts. The term he uses is recurrent homicidal mania which he describes as: ‘’Recurrent mania is a condition in which the person would not know the nature and quality of the act he was doing, while the attack was upon him—he would not then know that he was doing wrong—he did not know the difference between right and wrong on the 5th, I fancy; I would not state positively.’’[[57]](#footnote-57)

The last witness called to the stand is Mr Griffin, a doctor who had tended to Robert Coombes after he complained of incessant headaches. He agrees that the boy suffered from cerebral irritation due to forceps being used at birth which had scarred his temples. He thought mania could very well have developed in the boy but he had never witnessed it himself. He believes the boy had changed for the worse and would continue to gradually slide towards insanity. He was primarily asked to comment on the boy’s physical condition, he only refers to the boy’s mental health in passing.

The judge then passed sentencing on Robert Coombes, Nathaniel Coombes and John Fox. Nathaniel Coombes was found not guilty as he had not participated in the killing, John Fox was acquitted as he was unaware the body of Mrs Coombes lay in the house while he stayed there, and was thus cleared as a suspect of accessory to murder. Robert Coombes was declared guilty, but suffering from insanity at the time. He was found to be a criminal lunatic and a danger to the public and was thus to be interred. He was transferred to the Broadmoor institute for the criminally insane in Berkshire, this was not a juvenile institution, the majority of the inmates were adults. Apparently he developed an aptitude for chess as he was included in the English national chess team that faced Ireland in 1904. He was released in 1912 when he was sent to the Salvation Army which employed and re-educated offenders as farm-hands on a manor in Essex. He emigrated to New Zealand in 1913 whereupon I am unable to trace him any further.

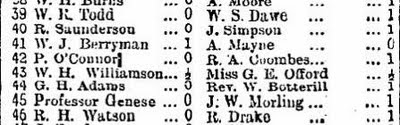
[](http://3.bp.blogspot.com/-khR9zFmYgdc/Tl9eynwXiJI/AAAAAAAABZ4/kjZmYGziDs0/s1600/North+v+South+Saunderson+and+Coombes+together.jpg)

Figure 1. Robert Coombes contributed to an English victory over Ireland by defeating his opponent on board 42.[[58]](#footnote-58)

The significance of the Coombes trial.

There are some obvious similarities between the Allnutt and the Coombes trial. Both murdered a family-member in a premeditated fashion. William Allnutt did not prevent his grandfather from consuming more of the poisoned sugar while he knew full well that it was killing him, while Robert Coombes went out to buy a knife with the express purpose to kill his mother with it more than a week before her actual death. Both boys used the Defense of Insanity in court, and found medical experts willing to support their claim. They had also both faced physical disfigurement which according to the medical experts could have caused insanity, William Allnutt had fallen on a ploughshare and had a scar running across his face, Robert Coombes had scars on his temples caused by the use of forceps at his birth. Both complained of headaches and whispering voices in the night and wrote letters admitting to their guilt. The similarities are remarkable, but let us not forget the differences. William Allnutt faced a thorough mental examination with no less than seven independent experts asked for their opinions on his mental health. Robert Coombes was only examined by one expert on criminal lunacy, the prison doctor; every other witness was either a character witness or a medical witness who referred to his medical history rather than his mental health. The only exception is the last witness who did both.

Furthermore, public opinion surrounding William Allnutt’s trial was divided with some publications agreeing with the sentence the boy received while others strongly opposed it. Publications reporting on the Coombes trial seem to have found the verdict unremarkable and did not contest the sentence Robert Coombes received. The *Women’s Signal*, a London publication geared towards middle-class women finds that ‘’Mothers and teachers may do much to form right ideals and to correct false standards, and the task cannot begin too early; the nursery and the infant school must be sought to set right the wrong state of mind in boys’’[[59]](#footnote-59) in a call for more public money to be spent on education following the conviction. The *Sporting Times*, a paper geared towards working class-males, reminds readers in an editorial that ‘’My friends, let us not forget that Master Robert Coombes ransacked the dress or his murdered mother as she lay with his dagger in her heart, in order to find money to take him to Lord’s[Cricket Ground].’’[[60]](#footnote-60) It argues that professional sport, especially cricket and football, are a corrupting influence on ‘British Lads’, it implies the motive for the murder was that Robert killed his mother because he wanted money to visit a cricket match. Newspapers were thus speculating on why Robert Coombes committed the murder, but seem to be preaching to the choir somewhat as regards to their respective readerships. I can find no evidence of moral outrage or extended public debate in the British press surrounding the trial and sentencing of Robert Coombes which is an important difference between this trial and that of William Allnutt.

Differing verdicts for similar crimes

The most important difference between the two cases are the sentences both defendants respectively received. Where William Allnutt’s plea for sanity was overturned and he was put to death, Robert Coombes insanity plea was upheld where-after he was interned in an insane asylum. Taking into account that he was selected for the English national chess team, he enjoyed a remarkable amount of freedom while in this institution. He was later judged to be so ‘’even-keeled’’ it was permissible for him to move out of the insane asylum and work on a farm in Essex, albeit under supervision of the Salvation Army. He emigrated to New Zealand the following year, he did so of his own violation and thus effectively left psychiatric care. For two crimes so similar, the sentences are very disparate. Where William Allnutt was put to death, ignoring a plea for mercy from the jury, fifty years on, Robert Coombes was interned for eighteen years, at the government’s expense, where-after he was readmitted to society. I believe the outcome of these two cases show a remarkable shift within the English judicial system away from solely punishing offenders towards the imprisonment and re-education of criminals. This would correspond with Foucaults finding that throughout the nineteenth century the penal system evolved away from public corporal punishment towards imprisonment. According to Foucault prisons played two important roles namely: ‘’the deprivation of liberty and the technical transformation of individuals.’’[[61]](#footnote-61) The insane asylum Robert Coombes was admitted to fulfilled exactly those two functions, physical confinement, and re-education. The institutionalization of the criminally insane had taken a great flight during the nineteenth century, throughout the century three hundred thousand people in England and Wales were admitted to asylums.[[62]](#footnote-62) Government-funded asylums were set up by law in England and Wales in 1845.[[63]](#footnote-63) Public controversy surrounding the harsh penalty William Allnutt received, and the lack of controversy surrounding Robert Coombes conviction would imply that British society in general trended towards lenient treatment of juvenile killers, especially those in which the child’s sanity was contested. One possible factor in explaining the different sentences which William Allnutt and Robert Coombes received in court was that in the mid-nineteenth century medical expertise as regards to the delineation between insanity and criminal responsibility remained contestable in English courts due to centuries of lay popular ideals about insanity.[[64]](#footnote-64) By the end of the nineteenth century lay attitudes towards medical expertise had evolved in such a manner that psychiatric opinion on who was a lunatic and who was not was respected to a greater extent.[[65]](#footnote-65) This would explain why William Allnutt was examined by 7 psychiatric experts, who all disagreed with each other as regards to the diagnosis and were then largely ignored, while Robert Coombes was examined by a single expert on insanity, whose opinion that Robert Coombes was indeed a lunatic was upheld. I would argue that the asylum which Robert Coombes was admitted to was part of the ‘Carceral archipelago’ as described by Michel Foucault. The Carcarel archipelago is defined by Foucault as a system where the asylum, like the prison, is not an institution in its own right but functions as part of a network of social control which extends through society.[[66]](#footnote-66)

A lack of evolution

I thus conclude that the Coombes trial showcases a remarkable lack in evolution in the way children were tried for homicide in the nineteenth century. In legal terms the Youthful Offenders Act of 1854 and the Industrial Schools Act of 1857 separate the two trials. William Allnutt was not treated any differently than adult murderers, he could have invoked *doli incapax* but he did not, likely because its significance as a legal defense had eroded and it did not offer much protection.[[67]](#footnote-67) The reforms to the justice system in 1854 and 1857 were implemented by the time Robert Coombes went to trial, however they did not apply to him as he had committed murder and was thus not entitled to enrollment in an industrial school or a reformatory rather than a prison. He was tried as an adult and did not use *doli incapax* as a legal defense, just like William Allnutt.

As far as the influence of psychiatric expertise on the trial of Robert Coombes was concerned the amount of independent experts had decreased from seven to one as compared to the Allnutt trial. The opinion of the sole expert was however upheld where the opinion of six out of the seven experts in the Allnutt trial were ignored. I must thus conclude that as Robert Coombes received no differential treatment on account of his age, he as well had been tried as a ‘little adult’ and that there had been no evolution in the way juvenile killers were prosecuted as compared to the Allnutt trial. In my estimation the differing verdicts in both cases can be accounted for by an evolution in attitudes and laws with regards to lunacy in general and criminal lunacy in particular and cannot be attributed in an evolution in the way in which juvenile murderers were prosecuted.

Conclusion

The conviction and execution of William Allnutt was seen as harsh in 1847, in contemporary Britain it would be unimaginable. As of 2004 the United Kingdom, as a signatory of the European Convention on Human Rights, has abolished the death penalty in all cases. The treatment Robert Coombes endured would seem much more enlightened to contemporary eyes, his internment in an asylum and eventual re-integration into society would support the notion that reform and re-education is a viable alternative to indefinite imprisonment, especially where children are concerned. As a result of this research I feel confident that I can answer the question I set out to investigate. The original research question was: How were children who committed murder judged, to what extent were they held criminally responsible for their actions and how big a role did psychiatric experts play in their prosecution in England and Wales 1800-1900? As a result of my research I am of the opinion that the statutory prosecution of juvenile killers did not evolve at all during the nineteenth century. The judicial system in the nineteenth century shows a complete lack of evolution as far as the prosecution of juvenile killers is concerned, I do however believe that attitudes towards juvenile murderers evolved markedly throughout the nineteenth-century as evidenced by the newspapers covering the trial. The evolution in attitudes towards children on trial for murder was however not mirrored by changes in law. The reforms to the judicial system in 1854 and 1857 which led to the creation of a separate judicial and penal system for juveniles specifically exempted murderers. I find that children on trial for murder were held wholly responsible for their actions, the concept of *doli incapax* had eroded to such an extent that age did not play any role whatsoever in the prosecution of child on trial for murder.

Furthermore I believe that this research would support the notion that psychiatry implanted itself within the legal system throughout the nineteenth century. As far as children who were on trial for murder were concerned the defense of insanity was the best, and perhaps the only, way to plead diminished responsibility. Psychiatric experts played a crucial role in both trials studied in this research; this was not however due to the age of the defendant but a phenomenon which is evidenced throughout the English judicial system of the nineteenth century. Historian Margaret May truly hit the nail on the head when she noted that children in court were treated as ‘’little adults’’. Children on trial for homicide were no exception. The only difference between a child and an adult on trial for homicide in the nineteenth-century was their stature; I therefore find the description of a homicidal child in court as a little adult particularly apt.

**Bibliography**

Bell's Life in London and Sporting Chronicle (London, England), Sunday, December 19, 1847

Bradley, K Logan, A and Shaw, S. ‘Youth and crime centennial: reflections on the children act 1908.’

Children and Young Persons Act (1963) Article 50.

Cover picture: John Taylor, Daily Telegraph 27th of January 2008, retrieved at: http://i.telegraph.co.uk/multimedia/archive/00439/news-graphics-2008-\_439471a.jpg

Foucault, Michel. ‘About the concept of the ‘’ dangerous individual’’ in 19th-century legal

psychiatry’, International journal of Law and Psychiatry (1978)

Foucault, Michel. Discipline and punish: The birth of the prison (Paris/Montreal 1977)

Hadley, E. ‘Natives in a Strange Land: The Philanthropic Discourse of Juvenile Emigration in Mid-Nineteenth-Century England’

Hendrick, Harry. ‘Histories of youth crime and justice’ In: Barry Goldson and John Murcie, Youth Crime and justice (London 2006) 3-15, 6.

Irish Times (Dublin, Ireland) 7th of May 1904

John Bull (London, England), Saturday, December 18, 1847

King, Peter. ‘The rise of juvenile delinquency in England 1780-1840: Changing patterns of perception and persecution’, Past and Present 160 (1998)

Magarey, S. ’The invention of Juvenile Delinquency in early Nineteenth-century England.’ In: Albert Hess and Priscilla Clement, History of Juvenile delinquency, a collection of essays on crime committed by young offenders, in history and in selected countries (London 2008) 335.

Maher, G. "Age and Criminal Responsibility’, Ohio State Journal of Criminal Law (2005)

May, Margaret. ‘Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century’ Victorian Studies

Proceedings of the Central Criminal Court, 13th December 1847

Proceedings of the Central Criminal Court, 9th of December 1895

Rodway, C. ‘A population-based study of juvenile perpetrators of homicide in England and Wales,’ Journal of Adolescence 34 (2011) 19-28.

Scott, S. ‘Mary Bell’, Crime Library, Criminal minds and methods, Retrieved: http://www.trutv.com/library/crime/notorious\_murders/famous/bell/caught\_6.html (20/11/12)

Scottish Law Commission, Report on Age of Criminal Responsibility, (2002). Retrieved: www.scotlawcom.gov.uk/download\_file/view/280/ (26/11/2011)

Sellers, B and Heide ,K. ‘Male and Female Child Murderers: An empirical Analysis of U.S Arrest Data’

Sheridan, Alan. ‘Review of discipline and punish: The birth of the prison by Michel Foucault’, Theory and Society (1981) 741-745.

Smith, Roger. 'The Boundary Between Insanity and Criminal Responsibility in Nineteenth-Century England', in Scull, Madhouses

The Satirist, or the True Censor of the Times (London, England), Sunday, December 26, 1847

The Sporting Times (London, England), Saturday, October 12, 1895

The Woman's Signal (London, England), Thursday, September 26, 1895

Vol. 17, No. 1 (1973),

Wright, D. *‘Getting Out of the Asylum: Understanding the Confinement of the Insane in the Nineteenth Century’*

1. B, Sellers and K, Heide,. ‘Male and Female Child Murderers: An empirical Analysis of U.S Arrest Data’, *International Journal of Offender Therapy and Comparative Criminology* (2011) 691. [↑](#footnote-ref-1)
2. S, Scott, ‘Mary Bell’, *Crime Library, Criminal minds and methods*, Retrieved: http://www.trutv.com/library/crime/notorious\_murders/famous/bell/caught\_6.html (20/11/12) [↑](#footnote-ref-2)
3. C, Rodway ‘A population-based study of juvenile perpetrators of homicide in England and Wales’, *Journal of Adolescence* (2011) 19-28. [↑](#footnote-ref-3)
4. Children and Young Persons Act (1963) Article 50. [↑](#footnote-ref-4)
5. P, King, ‘The rise of juvenile delinquency in England 1780-1840: Changing patterns of perception and persecution’, *Past and Present*  (1998) 139. [↑](#footnote-ref-5)
6. H, Hendrick, ‘Histories of youth crime and justice’ In: Barry Goldson and John Murcie, *Youth Crime and justice* (2006) 3-15 [↑](#footnote-ref-6)
7. M, Foucault, *Discipline and punish: The birth of the prison* (Paris/Montreal 1977) 129. [↑](#footnote-ref-7)
8. P, King, The rise of juvenile delinquency in England, 138. [↑](#footnote-ref-8)
9. P, King, The rise of juvenile delinquency in England, 161. [↑](#footnote-ref-9)
10. S, Magarey, ’The invention of Juvenile Delinquency in early Nineteenth-century England.’ In: Albert Hess and Priscilla Clement, *History of Juvenile delinquency, a collection of essays on crime committed by young offenders, in history and in selected countries* (London 2008) 335. [↑](#footnote-ref-10)
11. S, Magarey, ‘Invention of juvenile delinquency’, 336. [↑](#footnote-ref-11)
12. H, Hendrick, ‘Histories of youth crime and justice’, 4. [↑](#footnote-ref-12)
13. P, King, ‘The rise of juvenile delinquency in England’, 158. [↑](#footnote-ref-13)
14. S, Magarey, ‘Invention of juvenile delinquency’, 19. [↑](#footnote-ref-14)
15. G, Maher, ‘Age and Criminal Responsibility*’, Ohio State Journal of Criminal Law* (2005) 493. [↑](#footnote-ref-15)
16. S, Magerey, ‘The invention of juvenile delinquency’, 338. [↑](#footnote-ref-16)
17. Scottish Law Commission, *Report on Age of Criminal Responsibility,* (2002). Retrieved: www.scotlawcom.gov.uk/download\_file/view/280/ (26/11/2011) [↑](#footnote-ref-17)
18. P, King, ‘The rise of juvenile delinquency in England’, 146. [↑](#footnote-ref-18)
19. S, Magarey, ‘Invention of juvenile delinquency’, 337. [↑](#footnote-ref-19)
20. Ibid, ‘Invention of juvenile delinquency’, 340. [↑](#footnote-ref-20)
21. P, King, ‘The rise of juvenile delinquency in England’, 124. [↑](#footnote-ref-21)
22. Ibid, ‘Invention of juvenile Delinquency’, 338. [↑](#footnote-ref-22)
23. Ibid, ‘Invention of juvenile Delinquency’, 339. [↑](#footnote-ref-23)
24. Hadley, ‘Natives in a Strange Land: The Philanthropic Discourse of Juvenile Emigration in Mid-Nineteenth-Century England’ 412. [↑](#footnote-ref-24)
25. The Times, 11th of January 1939. [↑](#footnote-ref-25)
26. Ibid, 415. [↑](#footnote-ref-26)
27. Hendrick, ‘Histories of youth crime and justice’, 6. [↑](#footnote-ref-27)
28. Magarey, ‘Invention of Juvenile Delinquency’, 24. [↑](#footnote-ref-28)
29. A, Sheridan, ‘Review of discipline and punish: The birth of the prison by Michel Foucault’, *Theory and Society* (1981) 741-745 [↑](#footnote-ref-29)
30. Ibid, 745. [↑](#footnote-ref-30)
31. Ibid, 744. [↑](#footnote-ref-31)
32. E, Hadley, ‘Natives in a Strange Land: The Philanthropic Discourse of Juvenile Emigration in Mid-Nineteenth-Century England’, *Victorian Studies* (1990) 418. [↑](#footnote-ref-32)
33. A, Sheridan, ‘Review of discipline and punish’, 744. [↑](#footnote-ref-33)
34. Arsenic is a toxic chemical compound. In the Victorian era it was widely used as rat poison. [↑](#footnote-ref-34)
35. Proceedings of the Central Criminal Court, 13th December 1847, p 48 [↑](#footnote-ref-35)
36. Ibid. [↑](#footnote-ref-36)
37. M, Foucault, ‘About the concept of the ‘’dangerous individual’’ in 19th-century legal psychiatry’, *International journal of Law and Psychiatry* (1978) 1-18 [↑](#footnote-ref-37)
38. Ibidem, 3. [↑](#footnote-ref-38)
39. Proceedings of the Central Criminal Court, 13th December 1847, page 49 [↑](#footnote-ref-39)
40. Proceedings of the Central Criminal Court, 13th December 1847, page 50 [↑](#footnote-ref-40)
41. Ibid. [↑](#footnote-ref-41)
42. John Bull (London) Saturday, December 18, 1847 [↑](#footnote-ref-42)
43. Ibid. [↑](#footnote-ref-43)
44. As to avoid confusion: The Satirist, or the Censor of the Times is the complete title of the publication. [↑](#footnote-ref-44)
45. The Satirist, or the True Censor of the Times (London) Sunday, December 26, 1847 [↑](#footnote-ref-45)
46. Bell's Life in London and Sporting Chronicle (London) Sunday, December 19, 1847 [↑](#footnote-ref-46)
47. The Satirist; or, the True Censor of the Times (London) Sunday, December 26, 1847 [↑](#footnote-ref-47)
48. Proceedings of the Central Criminal Court, 13th December 1847, page 52 [↑](#footnote-ref-48)
49. M, Foucault, ‘About the concept of the ‘’dangerous individual’’ in 19th-century legal psychiatry’, *International journal of Law and Psychiatry* (1978) ,1-18. [↑](#footnote-ref-49)
50. S, Magarey, ‘Invention of juvenile delinquency’ 19. [↑](#footnote-ref-50)
51. Ibidem. [↑](#footnote-ref-51)
52. M, May ‘Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century’ *Victorian studies* (1973), 7-29, 8. [↑](#footnote-ref-52)
53. M, May, ‘Innocence and Experience’ 9. [↑](#footnote-ref-53)
54. Ibidem [↑](#footnote-ref-54)
55. K, Bradley, A, Logan and S, Shaw, ‘Youth and Crime Centennial Reflections on the Children Act 1908.’ *Crimes and Misdemeanors* (2009) 1-17. [↑](#footnote-ref-55)
56. Proceedings of the Central Criminal Court, 9th of December 1895, Page 999. [↑](#footnote-ref-56)
57. Proceedings of the Central Criminal Court, 9th of December 1895, Page 998. [↑](#footnote-ref-57)
58. Irish Times (Dublin) Saturday, May 7, 1904 [↑](#footnote-ref-58)
59. The Woman's Signal (London) Thursday, September 26, 1895 [↑](#footnote-ref-59)
60. The Sporting Times (London) Saturday, October 12, 1895 [↑](#footnote-ref-60)
61. M, Foucault, *Discipline and Punishment: The Birth of Prison* (Montreal/Paris 1975) 131. [↑](#footnote-ref-61)
62. D, Wright ‘Getting Out of the Asylum: Understanding the

    Confinement of the Insane in the Nineteenth Century’, *Social History of Medicine’* (1997) 137-155 [↑](#footnote-ref-62)
63. Ibidem, 195. [↑](#footnote-ref-63)
64. Ibidem, 144. [↑](#footnote-ref-64)
65. Roger Smith, 'The Boundary Between Insanity and Criminal Responsibility in Nineteenth-Century

    England' *Criminal Law in Society 1860-1914* (1981) 363-384. [↑](#footnote-ref-65)
66. Foucault,*Discipline and Punishment,* 132. [↑](#footnote-ref-66)
67. S, Magarey, ‘Invention of juvenile delinquency’, 19. [↑](#footnote-ref-67)