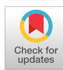

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RESEARCH ARTICLE

Children, juveniles, and crime in early modern London: Old Bailey trials, 1674–1750

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Abstract

This article uses the early records of the Old Bailey to examine how the court handled cases involving children and juveniles, whether as offenders, victims or witnesses. It argues that though juvenile courts belong to a later age, the early modern court was already applying different criteria in trying young offenders. It demonstrates how juries used age, gender and related considerations to justify the 'pious perjury' that sheltered many from the full rigour of the law. Previous work on children as victims has focused on child-rape and infanticide. This article explores other categories. It argues that in cases of death following a severe beating the court's sympathies lay firmly with the defendants, determined to uphold the authority of employers and parents. Lastly, the article explores cases involving children as witnesses, which raised difficult questions about the admissibility of evidence. Judges had to decide if the youngster was sufficiently mature to give evidence on oath.

1. Introduction

This article analyses in depth how courts in this period handled cases involving children and juveniles, by exploring the early records of the Old Bailey, the court that dealt with major crime in London and Middlesex. It aims to demonstrate the importance of age and related factors in the delivery of justice. The first section, on offenders, challenges the idea that the concept of the 'young offender' was 'a Victorian creation'.[1] This article argues that in practice young offenders were already recognised as a distinct category, and shows how they were judged and sentenced by criteria that took account of age, gender and a range of related considerations. The second and third sections, focusing on children as victims and/or witnesses, address different issues. The second section argues that in some contexts, compassion was outweighed by other considerations. In cases of child homicide, for example, the court appeared primarily concerned to uphold the authority of parents and employers. In most other cases, including allegations of child-rape, it had to decide whether a child's testimony might be permitted and, if so, what credibility it should have. The article shows how its decisions very often determined the outcome of the trial.

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The historiography on criminal justice in early modern England is vast.[2] On many of the specific issues in the period covered in this article, however, it is limited. The best study of juvenile crime and punishment, Paul Griffiths's *Youth and Authority*, covers the earlier period 1560–1640 and explores petty offences, not felonies.[3] And while a rich body of literature exists on the issues of child-rape and infanticide, some other issues have received little scholarly attention for the early modern period. No study explores the whole range of issues covered by this article (children and juveniles as offenders, victims or witnesses) and the literature is therefore discussed in the section to which it relates.

The Old Bailey *Proceedings* date from 1674 and record trials for serious offences in London and Middlesex. A parallel series, the *Accounts* of the Newgate Ordinary (the prison chaplain), describe his conversations with the condemned felons awaiting the gallows, and provide more biographical details than the trial reports.[4] The Old Bailey *Proceedings* record 25,360 trials in the period to 1750, of which 1,434 clearly relate to infants, children or youths in one or more of the categories under review here (offender, victim, witness). The records present major problems for quantitative analysis, however, and this study is primarily qualitative in design.[5] Survival is patchy for the 1670s and 1680s, accounts are brief, and outcomes often unknown. The defendant's age is frequently unstated or imprecise, and terminology was loose. Many individuals described simply as 'servant' or 'apprentice' were probably also juveniles but have not been included in the analysis. Ages are almost always provided, however, for child-victims in rape cases, and often for children abducted and/or robbed in the street. When age is stated, we have made 16 the upper limit, for defendants, victims and witnesses alike, for reasons that will become clear. The article's quantitative data is based on only those trials that did provide specific ages. The more general analysis draws additionally on cases where individuals were described as boys, girls, children, and little or young youths.

From the 1720s the *Proceedings* change in character, with a few selected trials reported in detail while coverage of mundane cases shrinks. The article does not extend beyond 1750 because trial reports in the second half of the century provide minimal information about routine cases, making it impossible to compare court practice with the earlier decades.

The court reports also shed valuable light on the wider issue of social attitudes towards childhood and youth in the early modern period.[6] Moralists and social commentators, both clerical and lay, agreed on the need for discipline in raising children and youths, but not on its extent. Some viewed youth as a disorderly and irresponsible stage of life, requiring harsh discipline to curb its excesses. Others, more optimistic, saw a smoother path to adulthood, guided by caring parents and employers, and were more tolerant of youthful misbehaviour. Most contemporaries accepted the need for both discipline and sympathetic nurture, but there was no consensus on the right balance between them. It was agreed that children deserved more tolerance than youths, who had greater understanding. Youth was a more contentious issue, for while juveniles were easily led astray by their passions, they might still be reformable. And a related problem facing the court, and society at large, was the lack of agreement in the age at which childhood become youth, and youth became fully responsible adulthood.[7]

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The Old Bailey records show judges and juries having to assess the circumstances of each case and decide whether harsh punishment or leniency was the more appropriate. While infants below seven were not legally responsible for their actions, those above that age were tried in the same courts as adults and faced the same penalties. Lord Chief Justice Sir Matthew Hale urged the need to ensure that those under 14, and especially under 11, could distinguish between right and wrong, and recommended reprieving any condemned felon under 14. But Hale respected judges' discretionary powers, and his view of 14 as the 'common standard' was not universal. Moreover, his magnum opus (*Historia placitorum coronae*) was published in full only in 1736, and the summary previously available was hopelessly vague.[8]

The English judicial system famously left much to the discretion of judges and juries, and most historians have noted age as one mitigating factor. Peter King, addressing the issue in a major study of trials for property offences in a slightly later period, treated youngsters up to 16 as a single category.[9] This article, though limited to a single body of source-material, examines age more closely, alongside related considerations such as gender and domestic circumstances. It looks at crimes against the person as well as property, and at child victims and witnesses. While it remains, as John Beattie once observed, 'impossible to discover how and why juries arrived at their decisions', we can at least identify pointers.[10] The article is not concerned with the level of juvenile indictments or crime; it focuses on the considerations that might sway the judge and jury once a case had reached the court.

2. Children committing crime

Only a tiny proportion of London's juvenile (or indeed adult) offenders appeared before the Old Bailey. Many suspects were despatched to a Bridewell (a prison-workhouse for petty offenders) for summary punishment, usually a whipping and a few days' hard labour. Many others were tried at the London or Middlesex sessions. Youngsters tried at the Old Bailey had generally been accused of a major crime, were known as habitual offenders, or had the misfortune to be pursued by a determined prosecutor.[11]

As we might anticipate, children were rarely indicted for murder, and such crimes have received very little scholarly attention. The victims were generally a resented parent or master/mistress, a fellow youngster killed in a quarrel, or a stranger killed inadvertently. It was customary in homicide trials to indict the accused for murder, leaving jurors to decide if a lesser charge was more appropriate.[12] In the case of juveniles, they almost always decided it was. Only two defendants were convicted and condemned for murder. The first, in 1675, was 'a little boy of about 14', who was described as 'young in years, but old in wickedness', and confessed to killing a silkman in Milk Street. The report provides no details.[13] More information survives on Elizabeth Mason, an orphan also 14, hanged in 1712 for murdering her mistress, a laundress who had raised her from early childhood. Resenting a life of hard toil and harsh discipline, Mason had taken revenge by putting arsenic in her mistress's coffee.[14] Another girl was tried but cleared of poisoning her mother, while Mary Tame, who had drowned her two–year-old sister in a pond, was found insane.[15]

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When a death had occurred in the context of a trivial fight, juries generally chose to acquit or return a verdict of manslaughter. John Fathers, 'a little Boy', may have been only playing when he killed another little boy with a wooden sword. The jury judged it an accident.[16] Jurors clearly saw age as a powerful argument for leniency. They chose to acquit a boy who had thrown a brickbat with fatal consequences, he 'being very young', and another defendant who had dealt his opponent a fatal blow 'when they were Fighting (being Youths)'.[17] Judges appear to have shared this approach and sometimes encouraged it. That was explicit in the suggestive case of an angry apprentice who had reacted to a companion's prank by seizing a knife and stabbing him. By the 'Statute for Stabbing' (1604), the use of a knife barred offenders from claiming 'benefit of clergy', a legal device that allowed many felons to escape the gallows if they could read a verse from scripture. But the judge urged jurors to consider whether the 'boy understood what he had done, or not, he being but thirteen years and a month old'. Thus guided, they returned a verdict of manslaughter. Judge and jury had colluded to ignore statute law.[18]

We find similar leniency towards fatal brawls between rival neighbourhood gangs, loosely linked to the Rogationtide custom of 'beating the bounds'. A tradition designed to preserve an accurate memory of parish boundaries could easily descend into violence, especially in an urban setting. One Saturday evening in April 1722, a court heard, 'the Boys of St Giles Parish, and those of St Ann's [Westminster], met to fight, as was usual the Week or two before the Holidays'. The encounter led to a youth of 16 killing an opponent by a blow to the head. Here too the jury returned a verdict of manslaughter.[19] A rather different dispute over territorial rights, in 1679, underlined the combined significance of age and status. A dozen Westminster schoolboys had assaulted and killed a bailiff trying to make an arrest on a property close to the school and protected, they claimed, by privilege. Their trial was deferred and the court, judging it inappropriate for 'young Gentleman Scholars' to be held among the reprobates in Newgate, given their 'Youth and Quality', allowed them extraordinary bail. The king pardoned eight of the alleged offenders before its next session, and only three were indicted. All three, remarkably, were then able to produce alibis, and were acquitted.[20] Social status also shaped the outcome of a later trial involving schoolboys at a private academy in Soho. William Chetwynd, 'gentleman', aged 15, had stabbed another pupil to death in a squabble over a slice of cake. The facts were not disputed but Chetwynd appears to have been the son of a royal official, and other prominent families were involved. The jury eventually chose to return a narrative 'special verdict', leaving it to higher authorities to resolve the case. The crown granted a pardon.[21]

Several homicide cases, all in the early part of the period, had their origin in youngsters playing with firearms. One boy of about 12 had been watching the trained bands exercise and prompted by a 'Childish desire to be doing something like a Soldier', had fired his master's musket at random out of the window, killing a passer-by. The report describes him as 'an object of Pitty'. The jurors, directed that 'chance-medley' was not an acceptable verdict in the circumstances, found him guilty of manslaughter. Another boy had thrust his master's pistol in jest in the face of a maidservant, who had then teasingly wagered 6d that he dared not fire it. In this case the jury did return a verdict of chance-medley.[22]

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Most juvenile defendants at the Old Bailey, like most adults, were charged with offences against property. The harsh criminal code stipulated the death penalty for almost all such crimes except petty larceny, the theft of goods worth less than a shilling (12d). In practice, as across the nation, only a tiny percentage of those indicted for felony died on the gallows. Favouring leniency, juries repeatedly committed 'pious perjury' to secure a different outcome, manipulating or ignoring the evidence. Partial verdicts provided the usual mechanism. Defendants charged with burglary might be convicted only of felony, allowing them to claim benefit of clergy. Juries routinely reduced grand larceny to petty larceny by valuing the goods at only 10d, with comparable fictions in more serious crimes. Moreover, even offenders condemned to death still had a reasonable chance of escaping the noose, with sentences respited to transportation or, in wartime, service in the armed forces.[23] After the Transportation Act of 1718, which authorised judges to sentence offenders to penal servitude in the American colonies for a certain number of years, or for life, this became the normal punishment for clergiable felonies.[24]

The court considered mitigating factors for almost all offenders, but age and gender were both critical for the young. This is most evident in the pattern of executions, where precise age mattered. Some 44 juveniles are known to have been hanged at Tyburn between 1674 and 1750 for property crimes (alongside many hundred adults), 41 male and 3 female. The pattern that emerges shows how closely age was related to outcome. Only one youth, the youngest, suffered at 13, five at 14, nine at 15, and twenty-four at 16. Age as a mitigating factor clearly diminished year by year. Juveniles aged 17 and above had very little prospect of mercy on the grounds of age.[25]

Analysis of those reprieved after being condemned throws further light on the factors shaping outcomes, and reveals some changes over time. The period under review covers roughly 75 years, and the first quarter-century (1674–1699) saw at least 35 male juveniles condemned to death, though the records are patchy. Of the 26 cases where outcomes are known, 13 juveniles were hanged, the remainder reprieved. In the following period (1700–1724) the number recorded as condemned dropped to 18, despite far better record survival. In the 15 cases where outcomes are also recorded, seven juveniles were hanged with eight reprieved. The court had become less willing to sentence youngsters to death, though the proportion of those then reprieved remained unchanged. In the final period (1725–1750) the number condemned rose significantly to 42, with at least 21 hanged, which reflected growing alarm over youthful gangs rampaging across the city.

The period 1674–1750 also saw at least 29 girls condemned to death for property crimes, 18 of them before 1700. The only three known to have been hanged were all aged 15 or 16. One, Constance Wainwright, had been reprieved but went to the gallows after attempting to burn down the prison.[26] There was clearly an increasing distaste for death sentences and especially for executions. But while gender was undoubtedly a significant mitigating factor, its role is complicated by considerable differences in the pattern of male and female criminality, at all ages.[27] Most of the youths hanged had been condemned for major felonies such as burglary or highway robbery. These were not crimes associated with female offenders. Indeed, when Martha Harman, a young woman, was hanged for housebreaking in 1676, the Ordinary pronounced it 'a matchless piece of Female Impudency' and 'a Crime

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rarely if ever attempted by that Sex'. Mary Huggins, though only 16, was similarly hanged in 1698 for the supposedly masculine crime of burglary.[28] Most young female offenders were tried for lesser felonies, such as picking pockets, shoplifting, or stealing from an employer.

Across the board, trials show juries repeatedly using partial verdicts to exclude any possibility of a death sentence, and with age the primary mitigation. In one typical case, they convicted a youngster of stealing a valuable silver tankard, but 'considering the Tenderness of his Age, found him guilty to the value of 10d'.[29] Their belief that juveniles, especially female offenders, were still potentially reformable was sometimes explicit, as when a girl convicted of stealing from her mistress was judged 'young enough to be taught more honesty'.[30] And gender could sway verdicts as well as sentences. One jury chose to give a young defendant the benefit of the doubt and acquit her, 'it being a Girl'.[31] For youngsters of either sex, of course, the likelihood of reformation depended on whether they had responsible parents or 'friends' able and willing to provide guidance and discipline. That was frequently not the case; sometimes, indeed, it was parental neglect or influence that had set them on the criminal path. The Newgate Ordinary, reflecting sadly in 1732 on the number of youngsters dying on the gallows, held the parents mainly to blame in the case of those aged up to 15 or 16.[32]

Courts considering age as a key mitigating factor were often hindered by their lack of precise or reliable information. Many defendants were simply described as 'young boys'. Some did not know their own age, while the streetwise might claim to be younger than they were. One prosecutor consulted the parish register to expose the lie, and in another case a witness revealed that George Dawson, an habitual offender claiming to be 11, was really 14. At 11 he might have received a whipping; instead, he was sentenced to death.[33] Juries took maturity as well as arithmetical age into account, sometimes judging defendants too innocent or naive to have understood the significance of their actions. Thus in 1703 a jury chose to acquit 'a little Girl' of stealing ribbon from a shop, 'considering the Tenderness of her Years, and that she was not sensible of her Fault'.[34] Ann Whitmore, charged with stealing diamond earrings from her mistress, had not attempted to hide them 'and did out of Bravado show them to the Boy at dinner'. The jury decided it had been merely a childish prank.[35] The court itself could show similar pity. When one youngster, accused of a trivial theft, 'Childishly and Innocently pleaded Guilty' to felony, the judge ordered him to be brought back and plead again, 'by reason of his Youth'. This time, better advised, he pleaded Not Guilty and was acquitted.[36]

Several other mitigations were linked to age and allowable only in trials of juveniles. One was evidence that the offender had been enticed into the crime by an adult, often the case with pickpocketing or stealing from shops. Katharine Pars, condemned in 1721, was said to have kept '3 Children of her own, and 4 others on purpose to go a Thieving'.[37] One youngster, who had stolen goods worth £5 from his master at the instigation of a female broker, was convicted only of petty larceny.[38] If there was evidence of coercion, juries were still more compassionate. One 'little boy' explained that his employer had threatened to kill him if he told anyone, whereupon the jury acquitted him.[39] Children coerced by their own parents enjoyed similar favour. A jury convicted Margaret Gill of theft in 1712 but acquitted her daughter

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and co-defendant, 'being a young Girl'.[40] Edward Wright, who had stolen over 50 guineas from his master, said he had been 'drawn in by his Mother, who would not let him alone till he was Hang'd'. Theft on this scale could hardly be condoned, but he appears to have been reprieved. His mother was transported as an accessory, so he may finally have escaped her malign influence.[41]

Character evidence from respectable neighbours or employers, a mitigation for both adults and youngsters, could persuade jurors to acquit in marginal cases or help secure a lesser sentence. Charles Searl, charged with picking a pocket, was described as a good boy who attended school diligently, whereupon the jury ignored his pre-trial confession and acquitted him.[42] Compelling evidence of remorse was another powerful mitigation. Mary Jones, 13, who had confessed to stealing from her employer on her mother's instructions, was acquitted by a jury impressed by her penitence.[43] Jurors were still more impressed by Elisha Puppey, 16, who had stolen a valuable silver tankard and escaped detection. Three months later, consumed by guilt, he returned to the house to confess his crime. He did not deny it at his subsequent trial, the report notes, yet 'the jury were so merciful as to acquit him'.[44]

The court also showed compassion by being deeply suspicious of pre-trial confessions, which the prosecutor or a constable might have extracted by threats or promises. One girl, aged 12, said the prosecutor had told her she would be hanged if she denied his accusation, but forgiven if she confessed, which, 'frighten'd out of her wits', she did. A terrified boy said that his prosecutors had 'brought him crying, and he told them he would say any thing'.[45] Youngsters generally repudiated such confessions when they came to trial, and in at least some cases probably had good grounds to do so.

Age did not guarantee leniency, however, and could be outweighed by aggravations such as previous convictions or association with notorious gangs. Some defendants also proved unable to produce any character witnesses, even their own parents. One woman branded her stepson 'a vile boy' and habitual thief.[46] Youngsters denied leniency were often described as old offenders, like John Turpin, 'a Notorious Pick Pocket, and light finger'd Youth, yet very young'. Samuel Yorke, possibly only 11, had 'a cunning Newgate story ready in his Defence' but was 'lookt upon as an Arch young Rogue, and an early Thief'. Given his age, the court still clung to the slim possibility of redemption; he was branded and sent to serve in the armed forces.[47] The usual punishment was a public whipping or transportation, but a few incorrigible young offenders were sentenced to death, despite their age. Francis Russel was only eight when he was condemned for stealing 11 guineas from a gentleman's pocket in the street, though the court probably did not expect or wish such sentences to be carried out.[48] William Smith, condemned at 12 in 1697 for picking pockets, 'wept much' and vowed to reform if he was spared. He was. Margaret Beard, a 'very impudent' girl, was also eventually respited, after being left for months to languish in Newgate.[49] By contrast, Elizabeth Cannon was hanged in 1743 for stealing from her mistress. No character witnesses had appeared, and no one had lobbied on her behalf.[50]

In a few extreme cases, as we have seen, the court was determined for the law to take its course. Nicholas Carter and his companion, 'two pick-pocket Boys', were tried in 1691 for snatching a beaver hat worth over £3 from a gentleman in the

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street. Carter was only 14, and the jury signalled its wish for leniency by valuing the hat at only 10d but the court, knowing him as an old offender, ignored its wishes and sentenced him to death. It is one of the few clear instances of disagreement between juries and judges. On the scaffold, Carter confessed that he had 'been used to pick pockets all his life'.[51] Association with notorious juvenile gangs was the most damning aggravation, and youngsters previously spared could find mercy eventually withheld. John Evans knew the strength of the evidence against him and pleaded guilty to all charges within benefit of clergy, but to no avail. The court had previously allowed him that favour and refused to do so again.[52] It also ran out of patience with Roderick Awdry, hanged in 1714 at the age of 15. An orphan left to fend for himself at an early age, he had initially stolen food to survive and then graduated to major crime. Before his execution he confessed to at least 38 robberies. The court's sympathy had eventually dried up, and his story illustrates both the extent and limits of mercy.[53]

The gravity of the crime itself was of course also a significant factor. Coining, classed as high treason, was usually too heinous for mercy, whatever the offender's age or character. The Recorder of London, condemning a youngster in 1678, expressed horror at such villainy in one who looked like 'a virtuous boy' with 'so promising and so good a face'. The lad was dragged on a hurdle to Tyburn and hanged, though spared the horror of being drawn and quartered.[54] Julian, 'a Black Boy from India' hanged in 1724 for stealing from his employers, had aggravated his crime by firing the house to conceal it.[55] Highway robbers had less chance of mercy than most other youthful felons. Around ten aged 16 perished at Tyburn, a quarter of all the juveniles hanged, though others aged 12–14 appear to have escaped the gallows.[56]

Only occasionally do the *Proceedings* throw light on the contentious issue of juries' independence. Did verdicts represent their own considered opinion, or decisions that the judges had steered them towards?[57] The reports did not publish the judge's summing-up, and seldom indicate any disagreement between judge and jury. Most trials probably witnessed a broad measure of agreement. But in the case of one truculent youngster, who had stolen gold and cash from his own mother, the foreman felt it necessary to explain that their partial verdict was 'out of compassion to the mother and the family, and not in regard to the prisoner'. That suggests an independent verdict which the jurors feared the judge would dislike.[58] In the case of the young thief Nicholas Carter, cited above, the judge chose to ignore the jury's clear wish for mercy. Overall, juries appear to have returned merciful verdicts more frequently than judges wished, ignoring any hints from the bench. That was the background to a juridical change in 1718, empowering judges to impose a sentence of transportation for petty as well as grand larceny. The effect was to transfer discretionary power from jury to judge.[59] Thereafter, when jurors returned a partial verdict of petty larceny, they were clearly still signalling a wish for leniency, but it was a signal now frequently ignored. Attitudes on the bench were diverging from those of the jurors.

The trial reports contain plentiful evidence of judicial severity as well as compassion, with the rise of lawless juvenile gangs hardening attitudes. In 1683, Judge Jeffreys declared death sentences essential for a gang in their late teens, despite them 'being in a manner but children', to deter those still younger.[60] In 1744 a

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wave of violence by the notorious Black Boy Alley Gang led the lord mayor and aldermen to lobby the crown to reduce the number of pardons and reprieves it granted. The following sessions saw 18 felons hanged on Christmas Eve, including nine from that gang. Most were in their early twenties, but among them was Henry Gadd, 14, already an inveterate housebreaker.[61]

Shoplifting and theft by domestic servants also became an increasing concern in the capital, and the court was very ready after the Transportation Act of 1718 to ship even children as young as eight or ten to the colonies. While that was harsh, several considerations might be in play. In 1743 the bench ignored the jury's plea for only corporal punishment on one young offender, but the report adds that it did so in his own interests.[62] If whipped and discharged, he would probably return to his old companions, reoffend, and gravitate to more serious crimes. Youngsters pushed into crime by controlling parents would also benefit by being removed from their baleful domestic environment, and America offered at least the possibility of reformation. Such thinking occasionally appears in the reports themselves. In the case of a boy convicted of stealing from the man who had raised him, the report explains that the 'Indictment was laid favourably, with a Design to prevent his receiving a heavier sentence hereafter, hoping that going abroad may reclaim him'.[63] We can only speculate how often sentences reflected such reasoning. Whether the primary aim was to clear the streets or open a path to reformation ultimately matters little, and the two probably operated in tandem. The establishment of the Marine Society in 1756, a body funded by London philanthropists to train youngsters at risk for service at sea, provides further evidence of belief in the possibility of juvenile reformation. Over the next few years, the London courts sent hundreds of young offenders to a training-ship owned by the Society, to fit them for employment at sea and save them from a life of crime.[64]

While by 1750 there had been no procedural or institutional reforms relating to young offenders, the court clearly viewed them as a distinct category, and many as still potentially able to amend their lives. Compassion and hope for reformation were often in the jurors' minds, and could sway the bench too. When two destitute little boys were tried for grand larceny in 1749, the jury acquitted them and the lord mayor 'order'd the two starving children to the London workhouse', to rescue them from destitution and inevitable reoffending.[65] Compassion was evident, even if it also had limits.

3. Children as victims of crime

Most children featuring in the records as victims of crime did so, predictably, in trials for offences against the person. Few children owned property. Most homicide cases fell into three categories: children killed by their parents or employers, dying at the hands of strangers; or, probably numerous but almost invisible, very young children killed by the nurses hired to keep them. Children killed in fights or careless play were discussed in the previous section while cases involving new-born infants were prosecuted for the separate felony of infanticide.

Charges of murder against parents and stepparents were extremely rare, with convictions rarer still. Only 11 trials are recorded, and juries almost invariably gave defendants the benefit of the doubt, returning verdicts of accidental death

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or death from natural causes. Society approved of firm parental discipline and neighbours, parish officers and the courts were reluctant to meddle. When a case did reach the court, the jurors' primary concern appears to have been upholding domestic authority. One man, accused of stabbing his son in the back, claimed it had been an accident; a knife he had thrown at a cupboard had fallen short. He was acquitted.[66] Only two defendants were convicted and hanged. Judith Defour had taken her two-year-old child out of the parish workhouse and strangled it, leaving the body in a ditch, and then sold its clothes for a few pence. There was no issue of domestic authority here for jurors to consider. Joseph Barret, described as a 'brutish' ex-marine, had flogged his 11-year-old son to death, berating him for his drunken, 'wicked courses'. He would not have struck jurors as a responsible household head.[67]

Trials of employers for beating a servant or apprentice to death were also rare, with 24 cases recorded, and juries again favoured defendants. Every juryman would have been a master too, firmly committed to the principle of domestic authority. Acquittal was almost certain if several days or weeks had passed between the beating and death, regardless of undisputed evidence of savage punishments.[68] Even a minimal time-lapse enabled jurors to seize on the possibility of death from natural causes. In one case, where an apprentice had died only half an hour after a beating, the jury still chose to believe he had died of a fit.[69] Only when faced with overwhelming proof did jurors set aside their deep reluctance to convict. Alice Wigenton, a sempstress, was condemned in 1681 for flogging a female apprentice for hours with a cat-of-nine-tails until blood poured down, in what was described as a 'barbarous inhuman' crime.[70] Similarly, Elizabeth Deacon was condemned for beating her young servant on the head and body with a hammer, and burning her with a fire-poker, all witnessed by two apprentices.[71] Elizabeth Crosman, a toolmaker's wife, was convicted of stabbing a male apprentice to death. Knives were not acceptable instruments of correction, and it was considered improper for a mistress to discipline a male apprentice, so Crosman had flouted two important conventions.[72] It may be no coincidence that all three condemned employers (and another who had also stabbed her maidservant) were women.[73] In this context, gender appears to have been an aggravating factor.

While the courts did thus recognise some limit to employers' disciplinary rights, they set the bar exceedingly high. Even when beatings could not conceivably be construed as 'reasonable correction' and had been the direct cause of death, the court was still inclined to favour the defendant. The trial of Judith Bayly heard evidence of 'unparallel'd cruelty' against an apprentice, 'illegal, inhumane, and most brutish'. Yet the bench raised doubts on the grounds that her husband, still at large, had been the main perpetrator, whereupon Judith was acquitted and merely bound over to good behaviour.[74] The court also showed leniency to a respectable merchant who had beaten a footboy to death for failing to clean his wife's clogs properly. In this case, the evidence was too strong to brush aside, but the jury convicted him only of manslaughter. Numerous witnesses gave supportive character evidence, and no sentence was pronounced. His name was withheld, he was allowed bail, and probably escaped punishment.[75]

Juries proved far readier to convict in cases where the defendant had not been in a position of authority over the child, and so raised no issue of household order. In

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most, nothing suggested homicidal intent, and manslaughter was the usual verdict. A cook-maid, who had hit a young fellow-servant on the head with a pewter plate, explained that she had simply been annoyed by his meddling in the kitchen and had meant him no harm. Several other defendants had been similarly provoked by misbehaving children. One man had lashed out with a cudgel at boys stealing his wood for a bonfire, while a woman had thrown a brickbat to drive away some noisy children, accidentally hitting and killing one.[76] Several victims had been collateral damage in tussles between adults.[77] Other deaths were judged accidental or from natural causes. Capt. Henry Membry was indicted in 1720 for kicking and beating to death a girl sleeping rough on Tower Hill, and was said to have complained about such 'loose Cattle' being allowed to lie there. But after a lengthy trial the jury chose to believe a claim that the girl that he had kicked was not the one found dead. It is difficult not to suspect that the relative status of defendant and victim – officer and juvenile vagrant – helped sway the verdict.[78] Only when faced with incontrovertible evidence did juries return a verdict of murder. Joseph Phillips, a silk-weaver who killed a boy aged six in 1712, had no apparent motive 'saying, he did it only to be hang'd; for he mightily long'd to die'. Perhaps a depressive, he had his wish. By contrast Mary Price, hanged in 1718 for strangling a little girl aged between three and five, had a very clear motive: she had vowed revenge on the child for giving away a treasured keepsake from a former lover.[79]

An important sub-category of victims, generally overlooked by scholars, comprised the children crushed to death by waggons and carts in the crowded streets of the capital. In 1692 Middlesex justices were moved to issue an order against carters' and coach-drivers' 'common practice of driving furiously' and endangering the lives of young children.[80] Though no-one thought such homicides deliberate, juries were far readier to convict than in trials of parents or employers; here, too, they saw no issue of domestic authority. At least 40 drivers were charged with homicide, and in 14 cases were found guilty of what is now classed as careless or dangerous driving, or of failing to stop after an accident, and convicted of manslaughter. In the case of two drivers who admitted they had been racing and blamed each other, the jury was directed to convict them both as a warning to others.[81] Defendants who could establish they had been driving responsibly, and had immediately stopped, were generally acquitted.

The children arguably most at risk, throughout the early modern period, were the very youngest: new-born infants. The harsh Infanticide Act of 1624, designed to deter single women from sex outside marriage, laid down the death penalty on an unmarried mother if she had concealed an infant's death. Infanticide has been explored in depth by several scholars, and Mary Clayton's thorough and perceptive analysis of the Old Bailey trials from 1674 to the Act's repeal in 1803 renders unnecessary a full account here.[82] Clayton documents a dramatic decline in convictions over the period, despite the law remaining unchanged. Juries became increasingly reluctant to convict under the terms of the Act, and demanded clear evidence of violence, as required in common law murder trials. When Mary Maye was acquitted in 1694, the report noted that the jury had found 'no positive Evidence that she was guilty of murthering the Child' – something the Act did not require.[83] Juries also increasingly ignored concealment and chose to accept any (legally irrelevant) argument supporting the mother's innocence. Clayton outlines

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the main defence strategies: claiming the child had been stillborn or had died from natural causes, that the birth had been premature and sudden, that the mother had notified her pregnancy to a neighbour or midwife, and that she had laid in childbed-linen, indicating that she had intended to keep the child. Judges and lawyers connived at jurors' 'pious perjury' and, as Clayton shows, encouraged it.

Infants dying immediately after birth tell us little about social attitudes towards childhood, but the trial reports show how juries sometimes struggled to weigh the death of an innocent newborn against the life of a young, distressed woman. Most research has focused on what persuaded juries to acquit defendants. The trend towards compassion was clear, but it was also gradual. In the period 1674–1714, 53 per cent of defendants were convicted, and still almost a quarter (23.4 per cent) in the following period, to 1750.[84] Some trials proved lengthy affairs, and show jurors torn between disgust at the mother's behaviour and reluctance to see her hanged.[85] So what persuaded juries to convict in a significant if steadily shrinking number of cases?

In some trials the evidence left no scope for pious perjury. There could be no room for doubt when a baby had been thrown out of a window or into a river, found with its throat cut, or buried in the garden with 'two Stabs in the Belly'.[86] In other cases, defendants were too naive or possibly guilt-ridden to employ the usual defence strategies. Ann Morris, hanged in 1722, certainly paid heavily for her simplicity. Asked by the midwife if she had made any provision for a child, she had replied, 'No indeed, Mrs Cooper, I've provided nothing; I would not tell a lie for the world.'[87] Several convicted defendants were depicted by their employers as simple-minded. One, condemned in 1723, was described as 'a very silly Creature' and 'a half natural'. Instead of hiding the body, she had left it in a chamber-pot.[88] Of course, branding a servant stupid also helped deflect criticism of the mistress for failing to exercise proper household discipline; the fault lay with the servant, too dim to be guided. That relates to a wider concern that may have swayed some jurors. A servant who had borne and possibly killed an illegitimate child damaged the reputation of the household itself, suggesting employers unable to maintain proper order or with low moral standards themselves. That may have convinced some jurors to see a harsh penalty as an essential deterrent.

Over time, as Mary Rabin has shown, judges and juries also became more sympathetic to another defence strategy, that the mother had been temporarily deranged by the pain and stress of labour.[89] But in some cases, the defendant's character and court demeanour may have persuaded them that she did not deserve compassion. One woman admitted that the father had offered marriage, and that her mistress had offered to provide for her lying-in. She had spurned both offers. Another, seduced by her master, admitted that he had promised to provide for her and her child, and had been doing so for three months before she threw it into a pond. Jurors would have seen such behaviour as aggravations, and both women were hanged.[90]

By the end of the century, Old Bailey juries invariably chose to ignore the Infanticide Act of 1624 and acquit the defendant. The Act that replaced it in 1803 demanded the same level of proof for infanticide as for murder, but concealing the body now became a separate offence, with a penalty of up to two years' imprisonment.[91]

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Infants, especially those orphaned, abandoned, or born out of wedlock, faced other perils in their first months and years. High mortality rates led contemporaries to suspect that many died from neglect by the nurses hired to keep them, for such children were generally little valued.[92] Abuses, however, occasionally became too blatant to be ignored. In 1693 Mary Compton was hanged for starving to death four infants placed in her care, 'that she might take more in their room'. A pamphleteer published harrowing details of remains buried under the cellar floor. Compton had been paid £3 to £5 for each child to free the parish from any further responsibility, leading the judge to excoriate the parish officers as little better than accomplices to murder.[93] The scandal prompted Middlesex magistrates to demand closer supervision of nurses hired by parish officers, though seemingly to little effect.[94] In 1718 Eleanor Gallimore was tried for starving an illegitimate baby, whose father had paid her £10 to keep it. Neighbours testified that she would abandon five small children to go out drinking, but the evidence proved insufficient. A few months later she was prosecuted again, this time for beating a child to death, though again the evidence was inconclusive. The parish officers' readiness to place the child in Gallimore's care, despite her recent prosecution for child-murder, underlines how little society cared about the orphaned, destitute or abandoned children of the poor.[95] Another trial exposed a related abuse, with several nurses convicted of abandoning infants that parents had hired them to keep, and then contriving to be rehired by parish officers to care for them as foundlings.[96]

Children also feature as victims of crime in many non-lethal contexts. The gravest danger facing girls was rape. This crime has also been explored in depth by other scholars, many drawing on the Old Bailey material.[97] The summary that follows considers the offence from the perspective of the jurors, struggling with few hard facts to guide them.

Prosecutors had to prove that the action had been against the child's will and had involved full penetration. The issue of consent was irrelevant for girls under 10, an Act of 1576 having declared them too young to make an informed decision. The legal age of consent was 12, which left girls of 10 and 11 in an ambiguous position.[98] Before allowing a girl to give sworn evidence in court, the court had to establish that she fully understood the significance of an oath. Her account also had to be corroborated by independent evidence from a surgeon or physician. In practice, the medical evidence often proved inconclusive, with surgeons uncertain about penetration and explaining that sexual disease could be transmitted without it.[99] Without compelling evidence of internal injury, juries found it hard to be sure of guilt. And with rape they could not return a partial verdict. Assault with intent was a misdemeanour, not a felony, and required a separate indictment. It is hardly surprising that only 27 of the 110 recorded trials involving girls up to 16 (24.5 per cent) resulted in a conviction.

The trial reports support Garthine Walker's conclusion that the limited admissibility of child-testimony provides the best explanation for the low conviction rates. Most cases involved girls aged 7–12, but children in that age-group were only rarely allowed to testify, and juries placed little weight on evidence not given on oath. Older girls were asked if they understood the meaning of an oath and the grave consequences of perjury. Many admitted they did not, and the trial would then collapse.[100] If they cleared that hurdle, they might then prove to have little sexual

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understanding, rendering them incapable of providing an account that would stand up in court. Mary Elliot, allowed to testify at 8, had clearly been abused and infected with the pox, the report explains, but 'how it came she did not know, for she did not understand Penetration'.[101] Other prosecutions failed with the girl too embarrassed to describe what had happened. One said the defendant had 'put something into her, but was so modest she would not declare what'.[102]

The evidence that jurors did hear had to outweigh the defendant's efforts to discredit it. The children had often remained silent, with the assault coming to light only when they were obviously in pain, or the mother discovered stained linen. Even then, most remained too confused, embarrassed, or afraid to elaborate. Many feared being blamed and perhaps beaten by their parents, fears not necessarily misplaced. Margaret Thomson was only six or seven when her parents heard that a man had been seen taking 'indecent liberties' with her. They responded by whipping her and telling her never to go near him again. Mary Tabor's mother recalled that when she found her 7-year-old daughter had been abused, 'Ye young Baggage you, says I, how came this about?' Another mother sounds similarly brusque: 'I took her to Task, Hussy, says I, tell me who it is that has been meddling with you.'[103] Some defendants had terrified their victims into silence by threatening to kill them, or warning they would be sent to Bridewell, have their tongue cut out, or be hanged.[104] While jurors would have been shocked by such reports, the child's failure to reveal an assault played into the defendant's hands, suggesting she might have invented it or been coached to make false allegations. In one case, the defendant's friends claimed variously that the child (aged eight) had been molested by boys, that her mother had coached her, or that she had done the injury to herself.[105]

With few hard facts to guide them, juries often had to place considerable weight on the evidence of character witnesses. The defendant's friends would attest to his good name and respectability and try to blacken the reputation and credibility of the child and her family. One girl's detailed account of being raped on the way home from school was distrusted because she was said to be, at the age of nine, of 'Evil Repute', whereas the defendant's alibi and good character were upheld by numerous gentlemen.[106] Jurors similarly gave defendants the benefit of the doubt if evidence emerged of quarrels that might have triggered a malicious prosecution.[107] Several prosecutions also failed when jurors suspected extortion. One girl's confident account was outweighed by the revelation that her father had demanded £100 to compound the charge.[108] Another girl, 'young and innocent as she seemed', was described as 'notoriously known to be lewd, lascivious and disorderly', and had plotted with her mother to extort money from the defendant.[109]

The issue of consent, though irrelevant in law for children under ten, proved hard to eradicate from jurors' minds, and can be detected in several trials. Thomas Benson, an apprentice, was condemned to death in 1684 for multiple rapes of a seven-year-old child, but his claim that she had come to his chamber voluntarily helped secure a very rare pardon from the crown.[110] Two other early reports underline the interlocking significance of consent, age, and sworn testimony. Stephen Arrowsmith was charged in 1678 with repeatedly abusing his master's daughter, Elizabeth Hopkins, aged eight, while her parents were at church. She had not told them and admitted that after the first encounter she had accepted small sums of money. Some jurors were unwilling to believe her story, and one

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thought rape physically impossible with so young a child. They acquitted the defendant, a verdict the judge refused to accept. Pressing them to reconsider, he eventually agreed to have Elizabeth and another child-witness give their evidence again under oath, after establishing that they understood its significance. Arrowsmith was finally convicted and at the gallows confessed his guilt.[111] The trial of William Pheasant in 1699 raised similar issues. He had met the child, Deborah Wise, at a dancing-school and allegedly raped her several times in a privy. Deborah, who was under ten, told no-one, and also accepted small presents such as sugar-candy and oranges, implying acquiescence. This trial raised the additional issue of social status, for Pheasant was described by defence witnesses as 'a very civil young Gentleman'. It lasted seven hours, and the jury convicted him only after Deborah too was allowed to testify on oath.[112]

Most victims and defendants came from a similar world of artisans, small tradesmen, shopkeepers and their servants. Few girls dared accuse a gentleman, a charge almost certain to fail if it came to trial. When a young servant charged her employer, Sir John Murry, Bt., with whipping and raping her in 1719, the outcome was hardly in doubt.[113] Several trials collapsed when no prosecutor appeared in court, the defendant having probably paid off or intimidated the girl's family into withdrawing.[114] In some cases, defendants presented themselves as the victims. When Martha Gilbert accused a man of raping her and threatening to charge her with picking his pocket if she reported him, he countered by accusing her of picking his pocket and threatening to accuse him of rape if he pressed charges. The jury gave him the benefit of the doubt.[115] Another defendant had the child's mother arrested for spreading scandal about him.[116]

Despite the low conviction rates, the reports do not support the view that the court's sympathies lay with the defendants.[117] In several successful prosecutions, the crime was labelled brutish, odious, or vile.[118] And in one case, when the medical evidence showed there had been no penetration during a violent assault on a five-year-old, the jury chose to ignore the law and convict the defendant regardless, 'considering the Barbarity of the Crime'.[119] When the admissible evidence proved insufficient, defendants were sometimes then indicted for assault with intent. If convicted, they could be whipped through the streets and gaoled for a year with hard labour.[120]

Examining conviction-rates more closely across the period 1674–1750, Garthine Walker identified significant differences related to the victims' age. For girls of nine or below, it stood at 17.1 per cent, and for those aged 10–11 16 per cent, but it rose significantly for girls of 12–13 to 23.08 per cent. The most likely explanation, as she suggested, is that judges generally allowed girls of that age to testify on oath, clearly a decisive factor. Conviction-rates were lower in the eighteenth century than in the late seventeenth, as judges became more reluctant to let girls testify, perhaps reflecting heightened concerns over extortion, malicious prosecution, and child-prostitution.[121]

There is little evidence to suggest that the rapists were paedophiles.[122] Antony Simpson has argued persuasively that their primary motivation was the mistaken but widespread belief that sex with a young girl provided the best cure for the pox. That was certainly the case with James Booty, hanged at the age of 15 for raping his master's five-year-old child. After his conviction he confessed to having also

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raped several other little children, in the same hope.[123] But a close analysis of the 26 successful prosecutions across the period suggests that accessibility was an equally important factor. Eighteen of the children were aged under ten and living at home, with the rapists almost all apprentices or servants living in the same household, or lodgers in the same building. These children were close by, already familiar with the offender, and young enough to be swayed by inducements with little if any need to use force.[124]

Other crimes involving child-victims have received far less attention. The most significant was robbing young children in the street. Dozens of prosecutions confirm that children playing or on their way to or from school were easy prey for unscrupulous predators, generally women, who would strip them and sell their clothes. One had tricked a little girl with a fictitious message from her mother and taken her to an alehouse where she stripped off her lace and linen before abandoning her, crying and lost.[125] Another little girl was lured away with the promise of cakes and ale, while two heartless women enticed a 'Negro' child into a cellar, where they broke open and stole his silver collar.[126]

As with rape-trials, many prosecutions failed because the victims were too young to testify and there were no adult witnesses. Many other cases never came to court. Prosecutions tended to occur in clusters, for example in 1695 and 1715–1716, presumably reflecting the concerns of individual court officials or magistrates. While convicted offenders were generally transported, judges were ready to condemn to death the most egregious offenders, and several were hanged. One had threatened to rip open the victim's guts if she cried out, while another had forfeited any possibility of mercy by strangling the little boy she had stripped and leaving his naked body in a ditch. The judge pronounced it 'such a Piece of Barbarity as no Age can hardly parallel'.[127] The court also considered any mitigating factors. The parents of one victim described the defendant as a neighbour of good character apart from this drunken lapse. The jury reduced her crime to petty larceny 'to save her from Transportation', and the court obliged by imposing a whipping in the hope that 'Clemency may have a good effect upon her'.[128] Age was a more common mitigation, for this was a rare crime in which both defendant and victim might be juveniles. A child was less likely to feel suspicious if approached by another child rather than an adult. One sly girl had presented herself as a playmate, while several boys had tricked their victims by promising to show pictures or catch birds for them.[129] In such cases the sentence was generally a whipping though, as with other crimes, habitual offenders forfeited the mitigation of age. Henry Danzey, a 'little Boy', was transported in 1697 as already 'a notorious offender in such kinds, having been several times in Newgate.'[130]

Slightly older children faced a closely related danger. Youngsters running errands were always at risk of being robbed in the street of the goods or money they were carrying, by trickery or force.[131] Again, defendants often walked free when the victims were judged too young to testify or did not understand the significance of an oath. Two women were cleared in 1679 of snatching silk worth £9 from a girl aged nine, deemed too young to testify even though she had 'told her tale very notably'. The reporter urged parents not to entrust small children with such valuables, 'when there are so many mischievous people abroad, that lie in wait to rob and abuse them'.[132] Young servants left to mind the shop were

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similarly vulnerable, easily deceived by practised shoplifters operating in pairs or groups. One wily operator had flattered and distracted a little shopgirl 'by asking to hear her Read'.[133] One man, who had tricked a little girl into handing over a box of clothes worth over £4, was asked by the court 'how he could have the Heart to rob so innocent a Child', and 'answer'd, that it was to Learn her more wit'.[134] London children needed to be streetwise.

4. Children as witnesses

The admissibility and credibility of child-testimony remained an area of confusion throughout the early modern period, and not only when the child had been a victim.[135] It has received little attention, with the major exception of rape-trials, though it could also be a significant factor in many other contexts. A youngster might happen to see a crime in progress, overhear an incriminating conversation, or possess information that would reinforce or demolish an alibi. Such evidence could prove critical. In 1707 a boy of 11 gave testimony that was decisive in securing the condemnation of a gang of burglars.[136] Other boys were key witnesses in several cases of highway robbery and murder.[137] But permission to testify was at the court's discretion, and often withheld on grounds of age or character. The principle behind sworn testimony was that a witness who lied on oath would face damnation. Since 1563 perjury had also been made a criminal offence. But perjury trials were extremely rare, and the court recognised that the threat of divine retribution might carry little weight with criminals. In practice, jurors were invited to decide on the credibility of the testimony they heard. Supporting evidence from an adult was usually also essential.[138]

The issue of admissibility became acute when an accomplice was hoping for pardon and possible reward by offering to turn 'king's evidence' and testify against other defendants. Judges frequently refused such offers. The trial of one gang was thwarted because the only witness was 'a little Boy, too young to be an Evidence'.[139] The court needed to be confident that accomplices understood the full significance of swearing on oath, and one prosecution failed when the two key witnesses, aged 9 and 11, admitted they did not.[140] Yet even when accepted, accomplices' testimony remained problematic. They had a strong incentive to incriminate their fellows, and the threat of divine punishment was unlikely to trouble habitual offenders. Sarah Bibby, 14, had allegedly boasted of sending five companions to the gallows and threatening another, saying she would use the reward to 'put some clothes on my back'.[141] And when Ned Langford, 'an idle loose Boy', was examined on the consequences of perjury, he answered blandly on one occasion, 'Nay, I don't know, but they say it's Damnation in t'other World'. That did not suggest much anxiety about either divine or human penalties, and he was called a rogue who would 'swear any Body's Life away for a Farthing'.[142] Yet both Bibby and Langford were allowed to testify in several trials. A judge determined to destroy a notorious gang might prove willing to relax standards.

Juveniles' attempts to save themselves by destroying others could, however, occasionally backfire. Robert Scofield, accused of burglary in 1692, offered to testify against three companions but was refused, 'being very young, and a suspicious Boy'. Instead, the information he had already supplied was used to draw up an indictment against him, and he was convicted and sentenced to transportation.[143]

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Credibility, crucial whenever juveniles were permitted to testify, rested heavily on the jurors' assessment of character. In the trial of one boy, for robbing another youngster in Moorfields, the alleged victim was also the sole eyewitness, making character evidence the central issue. The jurors threw out the charge when they heard the 'victim' damned as 'a Boy of an ill Character, very malicious, a great Liar, given to pilfering, and would not scruple to swear any thing'.[144] Another trial saw the witness's credibility demolished by the defendant herself, a servant named Jane Finch. Her employers had left her in charge of their house and children while they were out of town, and charged her with theft when they returned to discover valuable goods missing. Their elder daughter Mary, 11, was the key witness. But Jane was able to convince the jury that Mary herself was the thief, had been stealing from her parents for years, and that her mother was ashamed of her.[145] Another juvenile was similarly discredited, in a very rare case of alleged bestiality. A girl in the room above claimed to have seen the woman and dog through a hole in the floor, but neighbours described friction between the two families, and a diligent constable reported that little could be seen through the hole. The charge was dismissed as malicious.[146] These were unusual cases, but they would have fuelled unease about the general reliability of child evidence. The testimony supplied by deeply untrustworthy youths who had turned 'king's evidence' would have had the same effect. And that in turn may well have reduced juries' willingness to believe evidence given by young girls in rape trials.

5. Conclusion

Throughout the period 1674–1750, the Old Bailey was already treating child and juvenile offenders as a distinct category. While procedural and institutional changes came much later, judges and juries made liberal use of their discretionary powers to shield most young defendants from the full rigour of the law, guided in part by hope in the possibility of reformation. Juries sometimes went further, ignoring the evidence and acquitting defendants if they were moved by pity or convincing signs of penitence. And it was not only in infanticide trials that judges might encourage them to disregard statute law; the statute on stabbing offers another example. Jurors, like witnesses, were bound on oath to tell the truth, but their own habitual 'pious perjury' appears to have troubled them little.

This article has underlined the importance of age in the delivery of justice. The age of sixteen had no significance in the pattern of criminal behaviour; juvenile gangs often had members both above and below that age. But it clearly counted in verdicts and sentences, with leniency rare for offenders aged 17 or more. By contrast, trial reports repeatedly noted jurors' and sometimes judges' pity for those younger. Juries also took account of a wide range of related mitigations, including gender, contrition, coercion, and evidence from character witnesses. Even the most egregious offenders were almost invariably reprieved. At least four youths under 15 are known to have been hanged for property crimes in the period 1674–1699, but only one in the much longer and better documented period 1700–1750. Juries consistently favoured partial verdicts. Judges also clearly favoured lenient verdicts in homicide cases, though with property crime the picture is less straightforward. While only a handful of reports indicate serious disagreement, the transfer of

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discretionary power from juries to judges in larceny cases suggests unease at juries' leniency. Judges' subsequent readiness to transport offenders convicted only of petty larceny confirms hardening attitudes.

In trials involving children as victims of fatal beatings, by contrast, the court's sympathies lay firmly with the defendants. As heads of households, jurors consistently chose to uphold domestic authority by giving parents and employers the benefit of the doubt. They were far readier to convict carters who had knocked down children in the street, offences which raised no issue of domestic authority. Low conviction rates in rape cases tell us less about the court's sympathies than its difficulty in deciding whether to admit children's testimony and the weight it should bear. The trials also point to the specificity of age, with different conviction rates for children of different ages. The reports suggest that the court took child-rape very seriously, while always alert to the possibility of malice, extortion, and perjury.[147]

The exercise of discretion in Old Bailey trials undoubtedly served to modify the savagery of the law. More lenient court practices did not have to wait for institutional change. But it is also true that attitudes and practices fluctuated over time, especially between periods of war and peace. And, as Peter King has demonstrated, the period c1780–c1820 was to see a dramatic reversal, with juvenile offenders more often viewed as deserving harsh punishment rather than compassion.[148] The relationship between justice and humanity has rarely been straightforward.

Notes

1 Leon Radzinowicz and Roger Hood, *A history of English criminal law from 1750* (London, 1948–1986), v.133; cf. Peter King, 'The rise of juvenile delinquency in England 1780–1840', *Past and Present* **160** (August 1998), 116.

2 For introductory surveys see J. A. Sharpe, *Crime in early modern England 1550–1750*, 2nd edn (London, 1999); John Briggs et al., *Crime and punishment in England* (London, 1996).

3 Paul Griffiths, *Youth and authority. Formative experiences in England 1560–1640* (Oxford, 1996).

4 Old Bailey Proceedings (hereafter OBP) and The Ordinary's Accounts (hereafter OA), both online at www.oldbailetonline.org.

5 For an analysis of the problems see Robert Shoemaker, 'The Old Bailey Proceedings and the representation of crime and criminal justice in eighteenth-century London', *Journal of British Studies* **47** (July 2008), 559–70; Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'The value of the proceedings as a historical source', *The Proceedings of the Old Bailey, 1674–1913*, https://www.oldbaileyonline.org/about/value.

6 For overviews see Anna French ed., *Early modern childhood. An introduction* (London, 2020); Hugh Cunningham, *Children and childhood in western society since 1500* (London, 2021).

7 Griffiths, *Youth and authority*, 111–40; Ilana Krausman Ben-Amos, *Adolescence and youth in early modern England* (London, 1994).

8 Sir Matthew Hale, *Historia placitorum coronae* (London, 1736), i.22, 25–7; Sir Matthew Hale, *Pleas of the crown* (London, 1678), 35, 53, 224.

9 Peter King, *Crime, justice, and discretion in England 1740–1820* (Oxford, 2000); Thomas Andrew Green, *Verdict according to conscience. Perspectives on the English criminal trial jury 1200–1800* (Chicago, 1985); J. M. Beattie, *Crime and the courts in England, 1660–1800* (Oxford, 1986), 440.

10 J. M. Beattie, *Policing and punishment in London, 1660–1750. Urban crime and the limits of terror* (Oxford, 2001), 339.

11 Griffiths, *Youth and authority*; Faramerz Dabhoiwala, 'Summary justice in early modern London', *English Historical Review* **121**, 492 (2006), 796–822; Stephen Macfarlane, 'Social policy and the poor in the later seventeenth century', in A. L. Beier and R. Finlay eds., *London 1500–1700* (Harlow, 1986),

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252–77; Robert Shoemaker and Tim Hitchcock, *London lives. Poverty, crime and the making of a modern city, 1690–1800* (Cambridge, 2015), esp. 52–6; Beattie, *Policing and punishment*, 29–58.
12 Beattie, *Crime and the courts*, 80–1.
13 OBP, t16751013-4.
14 OA, June 1712. The victim was also Mason's godmother. Mason's crime was detected only when she also attempted to poison her mistress's sister. A few years later, Elizabeth Cranberry was similarly condemned for poisoning her stepfather with arsenic, but her age and fate are not recorded: OBP, t17200427-43.
15 OBP, t16770711-11; t17190903-33.
16 OBP, t16961209-86.
17 OBP, t16970707-8; t16831212-21; t17000115-16.
18 OBP, t16760114-8; cf. the 'Statute for Stabbing', 1 James I, c.8.
19 OBP, t17220510-2. Several other homicides were committed by adults joining in similar clashes: OBP, t16760628-1; t16880425-30; t16930531-50.
20 OBP, o16790827-1; t16791015-5. One alibi was supplied by the famous headmaster, Dr Busby.
21 OBP, t17431012-28; *The trial of William Chetwynd* (Dublin, 1744), 46; *The court and city calendar for 1744* (London, 1744), 6.
22 OBP, t16760628-4; t16880831-19. Another case also saw jurors told that chance-medley was not an admissible verdict: t16770711-6.
23 Beattie, *Policing and punishment*, especially chapter 5; Beattie, *Crime and the courts*, 400–49; King, *Crime, justice*, 221–96; Green, *Verdict*, 105–52.
24 Shoemaker and Hitchcock, *London lives*, 63–8, 78–82; Beattie, *Policing and punishment*, 424–62.
25 OA, 16980309.
26 OA, 16901222.
27 Garthine Walker, *Crime, gender and social order in early modern England* (Cambridge, 2003), 160–76; see also J. M. Beattie, 'The criminality of women in eighteenth-century England', *Journal of Social History* **8**, 4 (1975), 80–116; Peter Lawson, 'Patriarchy, crime, and the courts: the criminality of women in late Tudor and early Stuart England' and Paula Humfrey, 'Female servants and women's criminality in early eighteenth-century London', both in Greg T. Smith et al. eds., *Criminal justice in the old world and the new* (Toronto, 1998), 16–57 and 58–84.
28 OA, 16760830; OA, 16980309. Elizabeth Wann, 16, was condemned for robbing her victim, probably a child, of a gold necklace, but was reprieved for pregnancy: OA, 16930308.
29 OBP, t17030115-15.
30 OBP, t16780828-3.
31 OBP, t17320223-33.
32 OA, 17320605.
33 OBP, t17410116-2, 52; t17441205-34; t17330221-15. Dawson was reprieved and transported: OA, 17330305.
34 OBP, t17031013-6.
35 OBP, t17230710-1 (age not stated).
36 OBP, t16760117-1.
37 OBP, t17210301-29.
38 OBP, t16880831-38.
39 OBP, t16741014-3. His master was then indicted and condemned.
40 OBP, t17120227-33.
41 OBP, t17200907-34.
42 OBP, t16930531-5.
43 OBP, t17460515-16.
44 OBP, t16890516-49.
45 OBP, t17300228-1; t17401015-21.
46 OBP, t17440728-7. The boy countered that his father and stepmother had always been 'vile people to me' and blamed them for his fall into crime. Cf. OBP t17470225-8.
47 OBP, t16890516-8; t16950403-31; cf. t16940524-8.
48 OBP, t16810520-6. There is no record of his fate.
49 OA, 16970528; OBP, t16910527-14; s1692011-1.

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50 OBP, t17430413-29; OA, 17430518. The Ordinary thought her father unnatural for doing nothing to help or relieve her.
51 OBP, t16910115-23; OA, 16910126.
52 OBP, t16760823-8; OA, 16760830.
53 OA, 17140528. On Awdry see further Shoemaker and Hitchcock, *London lives*, 65, 68, 80.
54 OBP, t16781211-29. But a 'young lad' condemned for clipping was expected to receive mercy 'in compassion to his Youth and Simplicity': OBP, t16771018-4.
55 OA, 17241111. Brought from Madras as a small child, he had been taught to sing and dance to entertain his mistress, without learning much English. In Newgate he became suicidal and, shackled in chains, was crippled by the time he reached Tyburn.
56 OA 16980126; 17000524.
57 For overviews of the debate see e.g. King, *Crime, justice*, 246–52, 257–8; Green, *Verdict*, 138–41, Beattie, *Crime and the courts*, 95–6, 406–10.
58 OBP, t17480907-55.
59 Beattie, *Crime and the courts*, 500–6.
60 OBP, t16831010-1; t16831010a-3 (second file).
61 OA, 17441224; cf. Beattie, *Crime and the courts*, 513–19; Beattie, *Policing and punishment*, 370–423, esp. 406–8. He notes that Tyburn hangings rose sharply from 18 in 1743 to 63 in 1750 (p. 459).
62 OBP, t17430114-8.
63 OBP, t17190514-39.
64 Donna T. Andrew, *Philanthropy and politics: London charity in the eighteenth century* (Princeton, 1989), 127–51; James Stephen Taylor, 'Jonas Hanway', in *Oxford Dictionary of National Biography* (www.oxforddnb.com); Jonas Hanway, *Three letters on the subject of the Marine Society* (London, 1758).
65 OBP, t17491011-44.
66 OBP, t16790716-16; cf. t17110516-12.
67 OBP, t17340227-32; OA, 17340308; OBP, 17280117-38; OA, 17280212.
68 OBP, t16810706-3.
69 OBP, t16860520-22.
70 OBP, t16810117-7. Her lodger, who had joined in the assault, was condemned too: OBP t16810226-2.
71 OBP, t16900226-1 (respited for pregnancy and later pardoned).
72 OBP, t16820116-6. The victim's age was not given.
73 OBP, t17200115-35; OA, 17200129.
74 OBP, t16920115-7; o16920115-4. Her husband appears never to have been brought to trial.
75 OBP, t16931206-36.
76 OBP, t16910422-13; t16820906-9; t17200712-1.
77 OBP, t16800526-6; t16830418-7.
78 OBP, t17201012-37. A porter at Somerset House, driving away people sleeping rough, was seen throwing a boy into the river at midnight, and was convicted of manslaughter: OBP, t17150713-58.
79 OA, 17120801; OBP, t17180709-36; OA, 17180806. A drunken Dutch soldier, who had killed a baby in its cradle with his sword during an alehouse brawl, was also hanged: OBP, t16890828-20; cf. o16900115-1.
80 W. J. Hardy ed., *Middlesex county records. Calendar of the sessions books 1689 to 1709* (London, 1905), 85; cf. Beattie, *Crime and the courts*, 86.
81 OBP, t16930906-6; cf. t16840227-9.
82 Mary Clayton, 'Changes in Old Bailey trials for the murder of newborn infants, 1674–1803', *Continuity and Change* **24**, 2 (2009), 337–59; Mary Rabin, *Identity, crime and legal responsibility in eighteenth-century England* (Basingstoke, 2004), 95–110; Walker, *Crime, gender*, 148–58. cf. Keith Wrightson, 'Infanticide in the earlier seventeenth century', *Local Population Studies* **15** (1975), 10–22; R. W. Malcolmson, 'Infanticide in the eighteenth century', in J. S. Cockburn ed., *Crime in England 1550–1800* (London, 1977), 187–209. For pamphlet accounts and plays see e.g. Frances Dolan, *Dangerous familiars. Representations of domestic crime in England 1550–1700* (Ithaca, NY, 1994), 121–70; Josephine Billingham, *Infanticide in Tudor and Stuart England* (Amsterdam, 2019). See also Laura Gowing, 'Secret births and infanticide in seventeenth-century England', *Past and Present* **156** (August 1997), 87–115.
83 OBP, t16940711-23; t16900903-4.
84 Clayton, 'Changes', 339; the second calculation is my own.
85 e.g. OBP, t17170713-18.

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86 OBP, t17440510-8; t17390906-8; t17370216-21; t17240226-72.
87 OBP 17220907-5.
88 OBP, t17230116-38.
89 Rabin, *Identity*, 95–110.
90 OBP, t17111205-21; OA, 17111222; 17120801; Clayton, 'Changes', 353 and note 95.
91 Mark Jackson, *New-born child murder. Women, illegitimacy and the courts in eighteenth-century England* (Manchester, 1996), 168–77.
92 But on rescue projects see e.g. Andrew, *Philanthropy and politics*, 57–65; Taylor, 'Jonas Hanway'.
93 OA, 16931023; *A particular and exact account of the trial of Mary Compton, the bloody and most cruel midwife of Poplar* (London, 1693).
94 Hardy, *Middlesex county records*, 110. Some parishes had better-organised relief systems: Jeremy Boulton, 'Welfare systems and the parish nurse in early modern London, 1650–1725', *Family and Community History* **10**, 3 (2003), 127–51.
95 OBP, t17180227-41; t17180910-76.
96 OBP, t16850826-18.
97 Sarah Toulalan, 'Child sexual abuse in late seventeenth and eighteenth-century London', in Nigel Goose and Katharine Honeyman eds., *Childhood and child labour in industrial England* (Farnham, 2013), 23–43; Sarah Toulalan, '"Is He a Licentious Lewd Sort of a Person?" Constructing the child rapist in early modern England', *Continuity and Change* **23**, 1 (2014), 21–52; Garthine Walker, 'Rape, acquittal and culpability in popular crime reporting in England, c1670–c1750', *Past and Present* **220** (August, 2010), 115–42; Jennie Mills, 'Rape in eighteenth-century London: a perversion "so very perplex'd"', in Judith Peakman ed., *Sexual perversions, 1670–1890* (Basingstoke, 2006), 140–66 (analysing verdicts in the context of misogyny); Martin Ingram, 'Child sexual abuse in early modern England', in Michael Braddick and John Walter eds., *Negotiating power in early modern society* (Cambridge, 2001), Julie Gammon, '"A Denial of Innocence": female juvenile victims of rape and the English legal system in the eighteenth century', in Anthony Fletcher and Stephen Hussey eds., *Childhood in question* (Manchester, 1999); Esther Snell, 'Trials in print. Narratives of rape trials in the Proceedings of the Old Bailey', in David Lemmings ed., *Crime, courtrooms and the public sphere in Britain, 1700–1850* (Abingdon, 2016), 23–41.
98 Antony F. Simpson, 'Vulnerability and the age of female consent: legal innovation and its effect on prosecutions for rape in eighteenth-century London', in G. S. Rousseau and Roy Porter eds., *Sexual underworlds of the Enlightenment* (Manchester, 1987), 184–7; Ingram, 'Child sexual abuse', 67–8; Toulalan, 'Child sexual abuse', 37.
99 OBP, t17070903-25; t17230116-39.
100 OBP, t16841008-12; t17200427-38; t17200712-39; t17230116-36; t17240226-73.
101 Sarah Toulalan, 'They "Know as Much at Thirteen as If They Had been Mid-Wives of Twenty Years Standing": girls and sexual knowledge in early modern England', in Naomi Pullin and Kathryn Woods eds., *Negotiating exclusion in early modern England, 1550–1800* (London, 2021), 200–20; OBP, t17180910-78.
102 OBP, t17150713-54. Cf. Snell, 'Trials in print', 24, on adult victims' own embarrassment.
103 OBP, t17340911-6; *Select trials … for murders, robberies, rapes … and other offences* (London, 1734–1736), i.12–14, 360–1; Snell, 'Trials in print', 29–30.
104 OBP, t16780703-3; t16800421-5; t16860114-16; t17211206-46; t17230116-39; t17200712-39; cf. Ingram, 'Child sexual abuse', 71–4.
105 OBP, t17180910-78.
106 OBP, t16940711-37; t17190225-43. In one case, several character witnesses naively insisted that as he was 'the Father of 22 Children by his Wife, [they] could not believe him to be guilty of such an Offence': OBP, t17040426-33.
107 OBP, t17151207-52; *Select trials*, i.97–8.
108 OBP, t16790226-9.
109 OBP, t16750707-8; cf. t16850225-43; t16871207-30; t17190225-48; t17281016-50.
110 OBP, t16841008-12; OA, 16841017.
111 OBP, t16781211e-2; OA, 16781216; *The Confession and execution of … Steven Arrowsmith* (London, 1678).
112 OBP, t16991213a-1.
113 OBP, t17190225-43.
114 OBP, t17210830-9; t17341204-75; t1741014-34.

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115 OBP, t17201012-38.
116 OBP, t17211206-67.
117 Cf. Mills, 'Rape in eighteenth-century London', 140–66.
118 Toulalan, '"Is He a Licentious Lewd Sort of a Person?"', 33; OBP, t16860901-21; OA, 16860917.
119 OBP, t17270227-72. The judge 'rectified' the situation: the sentence was a fine and imprisonment, not execution.
120 OBP, t16750115-3; t16940830-9; t16991213-40; t17450710-15; t17500711-25; cf. Beattie, *Crime and the courts*, 129–32.
121 Walker, 'Rape, acquittal', 132–5; Mills, 'Rape in eighteenth-century London', 156–8. Similar conviction rates in trials involving girls below 9 and those aged 10–11 indicate that the latter group's ambivalent status was not in practice a problem.
122 Toulalan, '"Is He a Licentious Lewd Sort of a Person?"'
123 OBP, t17220510-34; Simpson, 'Vulnerability and the age of female consent', 194–6.
124 Three rapists were neighbours to whom the children had been sent on errands. Three older girls, aged 13–16, were raped in very different circumstances: one in a highway robbery, one overpowered by a husband and wife, and one the victim of incest, who testified against her father (OBP, t17390117-25).
125 OBP, t16740717-6; t16750707-7.
126 OBP, t16950508-2; t17160113-18.
127 OBP, 17410828-21; OA, 17410914; OBP, t17130225-27; OA, 17130313; OBP, 17500530-12; OA, 17500706; cf. OBP, t167507607-7; s16750707-1; t16950508-27.
128 OBP, 17470604-9.
129 OBP, t16950828-57; t16950703-17; t17200303-57.
130 OBP, t16970901-8.
131 OBP, t17200712-17; t17251013-37.
132 OBP, t16790605-15.
133 OBP, t17091207-2; t16810117-10; t16980504-8; t16991011-3; t17111010-11.
134 OBP, t17200812-17.
135 Barbara J. Shapiro, 'Oaths, credibility and the legal process in early modern England: Part one', *Law and Humanities* **6**, 2 (2012), 145–78, and 'Part two', **7**, 1 (2013), 19–54; Beattie, *Crime and the courts*, 128n.
136 OBP, t17071210-24.
137 OBP, t16970519-27; t17000828-11.
138 Shapiro, 'Oaths'.
139 OBP, t17170227-49.
140 OBP, t17230116-14.
141 OBP, t17450530-8.
142 OBP, t17330912-25, 26, 27.
143 OBP, t16920115-14, 20. Paradoxically his companions, against whom other evidence was inconclusive, were acquitted.
144 OBP, t17220704-48.
145 OBP, t17251013-10.
146 OBP, t17040426-42. In 1677 Mary Hicks and her dog were both hanged for a similar offence: OBP, t16770711a-8.
147 Cf. Gammon, 'Denial of Innocence', 74–5.
148 Douglas Hay, 'War, dearth and theft in the eighteenth century', *Past and Present* **95** (1982), 117–60; Peter King and Barbara Ward, 'Rethinking the Bloody Code in eighteenth-century Britain: capital punishment at the centre and on the periphery', *Past and Present* **228** (2015), 159–205.

French Abstract

Cet article repose sur d'anciens dossiers du tribunal Old Bailey à Londres (1674-1750) et étudie comment cette cour de justice a traité les cas impliquant enfants et adolescents délinquants, victimes ou témoins. L'argument avancé est que, même si les tribunaux

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pour mineurs sont apparus plus tardivement, cette cour, à l'époque moderne, appliquait déjà des critères spécifiques lors du jugement de jeunes contrevenants. L'auteur montre comment les jurés ont invoqué l'âge, le sexe et autres considérations connexes pour justifier, de la part de l'accusé, un 'mensonge pieux', ce qui mit de nombreux jeunes gens à l'abri des rigueurs de la loi. Jusqu'à maintenant, les travaux historiques sur les enfants en tant que victimes se sont essentiellement portés sur des faits de viol et d'infanticide. D'autres catégories sont explorées dans ce travail. On y fait valoir que, dans le cas d'un décès d'enfant consécutif à un sévère châtiment corporel, la sympathie du tribunal allait fermement aux accusés, la cour se montrant déterminée à défendre l'autorité des employeurs et des parents. Enfin, le présent article explore des affaires criminelles qui impliquèrent des mineurs comme témoins, des questions bien difficiles se posant alors quant à la recevabilité de leur déposition. Les juges devaient décider si le gosse était suffisamment mûr pour témoigner valablement sous serment.

German Abstract

Dieser Beitrag verwendet frühe Akten des Old Bailey, um herauszufinden, wie das Gericht Fälle behandelte, in die Kinder und Jugendliche – als Täter, Opfer oder Zeugen – verwickelt waren. Er vertritt die These, dass auch frühneuzeitliche Gerichte bereits andere Maßstäbe anlegten, wenn junge Täter vor Gericht standen, auch wenn regelrechte Jugendgerichte erst in späterer Zeit entstanden. Er zeigt auf, wie Geschworene Alter, Geschlecht und ähnliche Gesichtspunkte heranzogen, um auf ‚frommen Meineid' zu plädieren, durch den viele Beklagte vor der vollen Härte des Rechts geschützt wurden. Während sich bisherige Arbeiten über Kinder als Opfer vor allem auf Vergewaltigung und Kindesmord konzentriert haben, untersucht dieser Beitrag andere Tatbestände und legt dar, dass in Fällen von schwerer Züchtigung mit Todesfolge das Gericht fest zu den Angeklagten stand und entschlossen war, die Autorität von Arbeitgebern und Eltern aufrechtzuerhalten. Schließlich untersucht der Beitrag Fälle, in denen Kinder als Zeugen vernommen wurden, woraus sich schwierige Fragen der Zulässigkeit von Beweismitteln ergaben – die Richter hatten zu entscheiden, ob ein Jugendlicher hinreichend reif war, um Aussagen unter Eid zu machen.

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