

Angels and demons

June 2 2011



The Old Bailey Credit: Joe Dunckley via Flickr Creative Commons

No country's legal system is made with children in mind, but that has not stopped large numbers of children from becoming involved with it. Last year alone, an astonishing 50,000 children testified in UK courts for one reason or another. Yet that reason can make a huge difference. Whether they are witnesses or suspected offenders - whether, in fact, the system views them as would-be angels or demons - dramatically affects the manner in which they are treated.

That inconsistency, and the need to make legal systems fairer, was the subject of a compelling talk by the Cambridge social and developmental psychologist Professor Michael Lamb at the Hay Festival last weekend. One of his areas of expertise is the way in which [children](#) respond to different types of questioning where the evidence they provide is potentially critical to the outcome of serious criminal trials, particularly cases involving [child abuse](#).

This has become an issue of greater prominence since the early 1980s, which marked the beginning of what Lamb calls an “epidemic” of child abuse cases – often directed at child care centres. To some extent it continues to this day. The trials themselves are often long and complex; at their most epic, they have taken many years to conclude, sometimes involving hundreds of separate charges and multiple court hearings.

Inevitably, the surge has led to a sea change in the way in which children’s evidence in such cases is treated. Early on, particularly during some of the highest-profile cases in the United States in the 1980s, those investigating took the view that children who are believed to be the victims of abuse do not lie about their experiences, because they simply do not have the capacity to make such distressing experiences up.

After a wave of research investigated how well young children are equipped to describe those experiences, there was an inevitable backlash which swung opinion towards the other extreme – the view that children can never be trusted as useful informants. The truth, Lamb says, predictably lies somewhere in between and depends, critically, on the way in which questioning of the child is dealt with by the adults responsible for carrying out a “forensic interview”.

Key to this are our misconceptions about suggestibility. It is widely believed that child witnesses are too suggestible and too easily manipulated by the interviewer. This is not quite as straightforward as it sounds, however. “We have lost sight of the fact that we are all suggestible,” Lamb told his audience. “We all respond to suggestion and it doesn’t exclusively apply to children.”

Children are, of course, suggestible – but not because they are children. It has more to do with why they retain information, and the nature of the information they retain. Any human is more suggestible when dealing with a subject that they don’t know well or don’t understand, and

children understand less about the world around them than adults. As a result, they look to adults to help them get a grip on what is going on. They also seek their approval, and will easily acquiesce to suggestions which they think will win them the favor of an adult questioner.

All of which places a great deal of responsibility at the doors of those adults responsible for interviewing the children supplying evidence in suspected cases of child abuse. “If an interviewer makes clear to a child that they don’t know what happened, that allows the child to perform more effectively,” Lamb said. The manner in which questions are asked is critical.

In Britain, significant steps have been taken in light of this to ensure that forensic interviews are conducted in the right manner. In 1992, a Memorandum of Good Practice was introduced providing guidelines for interviewers involved in precisely this sort of case. This is precisely because the work of social and developmental psychologists like Michael Lamb has taken us closer to understanding how children relate to interviewers and how they remember information.

So it is disturbing to find that these guidelines are not applied across the board. Once the law views a child as a potential demon, rather than a probable angel, the position shifts. No similar guidelines apply for children who are suspected offenders in criminal trials – in spite of the provocative, heavily rhetorical nature of cross-examination that takes place in the courtroom.

The likely consequences of this are severe. Many of the children who are questioned as potential offenders are just as limited, in terms of their capacity to understand and their vulnerability to suggestion, as the witnesses in child abuse cases. Studies have already shown that a disproportionate number of confessions emerge from cases where very young or adolescent offenders are interviewed by the police – compared,

that is, with the confession rate among adults. All of which can have disastrous results if the confession is false, because the British legal system tends to view a confession as vital evidence. Attempts to backtrack on a false confession are rarely accepted by the court.

In spite of all of this, no special attention is given to child suspects on account of their age, even though it would be extended them were they witnesses. While police guidance for interviewing has improved dramatically since the 1980s, there are concerns that the way in which adolescents, or younger suspects, are interviewed is not appropriate to their age for precisely the reasons that were discovered when people of the same age, but on the other side of the angel/demon divide, were examined in the wake of the upswing in child abuse cases two and a half decades ago.

“We still need to recognize that age does have important implications for children in the legal system,” Lamb concluded. “It affects them in a variety of ways at all stages of the process. Now that we recognise children’s limitations and how we can overcome them, it is, surely, crucially important that we extend justice and fairness to all children in the legal system. We have focused for the better on children who are victims. We need to remember that children are involved in the legal system for a wide variety of other reasons as well.”

Provided by University of Cambridge

Citation: Angels and demons (2011, June 2) retrieved 1 May 2024 from <https://phys.org/news/2011-06-angels-demons.html>

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