

Bar-coded children: an exploration of issues around the inclusion of children on the England and Wales National DNA database

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Abstract

The forensic database of England and Wales is the largest in the world with profiles from over 3 million people. Samples can be taken without consent, not only from convicted criminals, but, also from all those arrested on suspicion of a recordable offence even if they are not subsequently charged. There has been little public debate on the database, in contrast to other applications of genetic technology, and, in particular, a lack of discussion on the inclusion of children despite the UN Convention on the Rights of the Child and the debate around children's consent. The paper begins by briefly introducing the significance of the inclusion of children on the England and Wales National DNA database (NDNAD) in the context of current law. Next there is a report of the findings of a small focus group study carried out with children aged 10-12 and one of their parents, who were contacted through their schools. The study explored issues related to the inclusion of children on the NDNAD, including children's responsibility and independence, and gathered responses to real life case studies about the taking of DNA samples from children. These findings are used to *further* support multi-disciplinary arguments on why the inclusion of children, between the ages of 10-12, may be considered controversial.

The law and the National DNA Database

The National Police DNA database in England and Wales has been steadily growing and is the biggest in Europe with over 3 million samples.¹ There are at least 750,000 juveniles age 10-17 included (230,000 were added in 2004-05).² Under the current law in England and Wales, DNA samples can be taken from anyone arrested in connection with a recordable offence, without their consent. Recordable offences cover most criminal offences including offences under the Public Order Act.³ This has changed since 1984 when bodily samples could be taken only from those suspected of 'serious arrestable offences'.⁴ These samples are kept permanently and the DNA profiles and some personal data are entered on the National DNA database even if the person is never charged or is subsequently acquitted of the offence.⁵ The data from these people is subject to speculative searches for matches with samples from crime scenes in the same way as the profiles from convicted criminals. Close matches may also be picked up which could reveal a familial connection. The law in Scotland is under review but currently profiles from people who are not convicted are required to be deleted from the database.⁶ This was also the situation in England and Wales until May 2001 when the retention of DNA samples was legalised. It had been found that around 80,000 samples had been illegally retained and one of these had been used to secure a conviction for murder.⁷

Although age 10 is the age of criminal responsibility this does not mean that children will be treated as adults in terms of prosecution and punishment. For example, in Scotland where the age of criminal responsibility is eight, over 99 per cent of children

under the age of 16 are not prosecuted but are dealt with in children's hearings. Where children are prosecuted the prosecution must be able to prove *mens rea*.⁸

However, for the police database children are treated as adults or, more harshly than adults. If a sample is taken during the investigation of any recordable offence, even if the child is not later charged or cautioned, the sample is retained. Under a pilot scheme, which was operating in Lancashire at the time this research was conducted, samples may also be on the database, with parental permission, from children who have been served with penalty notices for 'nuisance crimes' including dropping litter, vandalism or harassing neighbours.⁹ In these cases the 'crime' may not be a recordable offence.

The retention of samples from those who are innocent (i.e. never charged with an offence or found not guilty by a court) was tested in the case of Marper & S. Both Marper and 'S', a 12 year old boy, had been cleared of all criminal charges but their fingerprint and DNA samples retained. This case went to the Court of Appeal and then the House of Lords who upheld the judgement that it was legitimate to retain DNA samples indefinitely. The Court of Appeal ruling included the words:

*'Not all un-convicted people are equal from a policing point of view, even though they are from a legal one; and amongst those who have been charged but not convicted it is especially so.....the courts know well that among [those acquitted] is a significant proportion – markedly higher than in the un-convicted population at large – who will offend in the future.'*¹⁰

This ruling supports the police in their view that the database could hold the records of 'the entire persistent criminal population' (estimated at 3 million).¹¹

What is interesting about the NDNAD in relation to children?

First, it is interesting that there has been a lack of public concern in general about the national police database and, in particular, a lack of concern about the inclusion of children. This is despite the increasingly protective measures taken for children in other areas of law (e.g. health and safety) and by parents in their day to day care. Second, children are not given any special treatment when DNA samples are collected, stored and used. This is inconsistent with the special consideration usually given when genetic samples are collected, for example, for health databases or research, and, in the way children (especially younger children) are dealt with in the criminal justice system. Third, parents have no rights to refuse permission to take a sample even from a young child (age 10 or over) when arrested for a recordable offence, nor is any other responsible adult involved to safeguard the child's interests. The lack of special consideration for children could be seen as contrary to the United Nation's Guidelines for the prevention of juvenile delinquency which states that when dealing with children accused of committing crimes there should be:

Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

[and]

*Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.*¹²

The GeneWatch report on the police database did not specifically mention children other than to make a similar point about the dangers of premature labelling, 'keeping records permanently on the database, particularly in the case of juvenile offenders, can also be seen to be a problem as it undermines the long-standing principle of rehabilitation.'¹³ The National database contains samples of 24,000 young people (under 18) who have never been charged, convicted or cautioned¹⁴.

In the United Nations Convention on the Rights of the Child, children are recognised as a special case. Article 40 reads:

*States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*¹⁵

Fourth, there is a surprising lack of empirical data on the attitudes of children and their parents to NDNAD, raising concerns about whether there has been sufficient consideration and relevant public debate on present practices that result in children as young as 10 being included the NDNAD. This data may support *further* arguments about whether or not children can be considered morally competent and responsible agents.

Fifth, having the criminal age of responsibility as low as 10, as compared with 12 in the Netherlands, means that children in judicial terms *can be* considered as morally competent agents that are responsible and blame worthy. While this can be defended, we will provide *further* arguments to show why this could be considered controversial from a multidisciplinary perspective.

Purpose of a focus group study on the attitudes of children and their parents to NDNAD

The aims and objectives of this study can be set out as follows

- To explore a number of issues indirectly relating to the inclusion of children on the NDNAD – namely, independence and responsibility and understanding right and wrong – and then to draw out a number of analytical themes to interpret select findings.

- To explore two real life case studies, when DNA samples are taken from children, and to elicit a *direct* understanding of attitudes from children aged 10-12 and their parents, thus generating more themes to interpret findings. The primary purpose is to widen the constituency of debate on the inclusion of children on NDNAD, deepening understanding of the views of children and their parents.
- To use the data gathered as support for further multi-disciplinary arguments as to why the inclusion of children, aged 10, may be controversial. This is a secondary purpose of this study.

Method of focus group study

Questions on public attitudes to the police database have been included in more general surveys reports. However, these were not specifically on the inclusion of children, nor did they include young children themselves.¹⁶ While children might find a one-to-one interview with an adult intimidating, the focus group method meant that they were talking in a group with their peers in a familiar setting. The opening topics of responsibility and independence were ones that both children and parents were interested in and had strong opinions about. The discussion was then steered towards more specific issues by the use of short case studies about children and the NDNAD based on newspaper reports.

The focus groups

The primary aim of this pilot study was to talk to the youngest age group that would be on the police database in UK. The simplest way to contact children and obtain parental permission to talk to them was through their schools. Since many children of this age will be collected from school, it was decided to hold separate focus groups with children and parents on school premises immediately after the end of the school day. The four schools chosen were in the same town and included two academically selective single sex secondary schools, one non-selective secondary and one Church of England primary school. There was a total of 21 children (thirteen boys and eight girls) each of whom brought one parent or, in two cases, both parents. Eight focus groups were carried out, with an average of six people per group – four focus groups with the children and four with their parents. Only three fathers took part, all in focus group one. The schools sent out letters on our behalf asking parents whether they and their year 6 or 7 child would like to take part in a discussion group as part of an EU funded project. They were given a general indication of the topics in the letter, with more specific information provided at the end of the discussion. Children and parents were each given a gift voucher after the focus group had ended. Each focus group lasted around one hour and was recorded and transcribed in full.

The protocol

As a warm-up question, parents were asked whether they thought it was a difficult time to be a parent, and children were asked what they liked about being the age they were. This led into a discussion on independence and responsibility of children; what sort of things children are allowed to do on their own, what responsibility they have

and how parents decide. Next, all groups were asked about their own, or their child's, understanding of right and wrong, where they learn this, and, (for parents), whether they consider it is harder to teach children about right and wrong than it was for their own parents. Parents and children were then reminded (or informed) that the age of criminal responsibility differs between countries but is set at 10 years in England and Wales, and were asked what they thought about that fact. They were then introduced to/reminded of the existence of the National DNA database and that 'when someone [adult or child over 10] is arrested on suspicion of an offence....the police can take a DNA sample and store it on the police database.' After collecting any immediate concerns or thoughts on the database two short case studies based on newspaper reports were distributed and read, one at a time. The children's versions had simpler language and omitted some details e.g. in case study 1 'a sample of her genes was taken' (checking what they understood by that) rather than 'she was DNA swabbed' and omitting the town where the offence took place. Both parents and children discussed the case studies and, where necessary, were probed for how long they thought samples should be kept, whether they should be destroyed if the child was innocent, what they thought about speculative searching of the database and whether they felt differently about a DNA sample being on a database compared with a fingerprint.

Finally both groups were asked what 'a genetic sample can tell us' and probed for their ideas on the importance of genes, upbringing or environment as the key to identity. This topic was introduced by examples of people looking for their 'real'/genetic relatives as a theme in TV soaps.

Themed findings and further analysis on the inclusion of children on NDNAD

Responses to general questions: responsibility, autonomy and authority

For children in years 6 and 7, freedom outside the home is limited, with elaborate procedures for checking up on them and ensuring their safety. Parents are both anxious about their children and recognise the need to gradually allow some freedom. Children, aged 10-12, are 'bathed in an atmosphere of rules'.¹⁷ The responsibility they have is that gifted by their parents, usually involving jobs around the house and helping with younger siblings. Children have limited responsibility. For example,

From five boys in year 7: 'Lay the table and do the dishes and do the polishing sometimes.'... 'I set the table and do some other stuff sometimes or take everything off the table afterwards'... 'I feed my goats in the afternoon and check my chickens for eggs' (Boy FG2)... 'I've sometimes got to look after my younger brother'
(Boys, Year 7, FG3)¹⁸

Parental caution is common. When they are allowed out, this is under strict conditions for their safety, as this 11 year old girl explains:

'I'd actually want to be able go out and not have a plan of my set route.... 'cos she makes sure that she knows where I am, she knows who I'm going with and have to sort of tell her how I'm doing it...it's kind of annoying'
(Girl, Year 7 FG1)

Moreover, parental caution is negotiated, with their children and other parents. For example:

Parent 1: *They all wanted to go, the whole class, into town, and I'm like, but it's because they've got these mobile phones they think they're safe. They say oh I'll phone you if I'm in trouble...*

Parent 2: *I said no...and then my son was actually in town with his dad and he ran into another set of parents, it was the Williams', and you know Hannah's mum was there saying how awful she thought the whole situation was and Hannah hadn't been allowed to go, so [my son] came home absolutely gutted that, oh no, we ran into someone who also said No. So then we started to feel a bit better. At first I was tempted to say, you know because I fully believed that the whole class, you know how it is when children feed you these things. So we initially agreed that possibly, at a future date we'd drive into town together and split up for half an hour*

Parent 1. *In fact all the parents had said no*

Parent 2. *Yeah, but we didn't realise it!*

Parent 1. *And I just thought I was being really mean*

Parent 2. *Yes I did, as well, it was a big issue*

(Parents of 10/11 year old children, FG3, names changed)

Children recognised and identified that a major influence in knowing right from wrong came from their parents:

'I think you usually take what the parents think are wrong and right and you'll probably end up thinking of as wrong and right because you usually do pick up the traits in your parents...'

(Boy Y7, FG2)

Children recognise the role of parents but also seek to influence them:

Moderator: *And do you help at home?*

Girl: *'You get away with more because all you have to say is I'm doing my homework...You have a permanent book in front of you 'Do the washing' 'I'm doing homework' ... You're watching TV like this ... 'will you go and walk the dog?''[parent's voice]...doing homework [her reply] [laughter]*

(Girl, Y7, FG1)

Another important influence was from others – mainly the children's peer group – and the school. At one primary school we found that the school reinforced the importance of the learning from others by way of a poster:

'We've got a poster in there with like a polar bear, one polar bear standing up, right, and one polar bear just skidding across the floor, and it's got a sign saying watch from others, you can't make mistakes all yourself'

(Girl Y6, FG3)

Transgression of the rules and children's sense of right and wrong tend to gravitate towards their immediate experience of their 'life-world', so oft quoted responses were:

'Using your mobile phone to stay up and chat late at night and you use up all your credit...so they (parents) have to top it up again.'

'Wasting your pocket money (laughter)'...

'Bullying -- I'll not say any more'

(3 Girls Y7 FG1)

'Smoking...Swearing...Drugs...Vandalism...Disrespecting adults and showing off and giving way to peer pressure.'

(5 Boys, Y7, FG2)

Many children in our focus groups demonstrated a certain sophistication in knowing the difference between right and wrong. They were able to contextualise rightness and wrongness, demonstrating an ability to move beyond simple authoritarian rule following. Nevertheless, taking responsibility cannot entirely be disentangled from authoritarian figures, namely parents and teachers. The two examples below, from the same child, show that she will admit her mistake, taking responsibility for the action, but only when 'caught' and that tied up with learning what is right is an awareness that responsible behaviour elicits reward from authority figures.

'If your friends are like saying 'will you play with my hair in assembly?', 'will you play with my hair just while we wait for the music?' and the teachers says 'oh can you stop doing that in assembly it's not dutiful', I'd think now at my age I'd be grown enough up to say sorry it was my fault, I told her to do that so...'

(Girl, Y6, FG3)

'And you learn mistakes from others, because you can see, if kids in like your age are responsible, like sensible and you know reliable and then they get lots of credit for it [from teachers] and then you think well I would like to do that...'

(Girl, Y6 FG3)

Indeed, what is clearly evident is that the ability to situate rightness and wrongness within its appropriate context is offset by a heavy dependence on rules and authority figures. In this example, while the respondent sense of 'fairness' is abstracted out to being dependent on circumstances, blameworthiness is still entangled in being told off by an authority figure:

'... 'cause if they didn't know it was wrong then they should just be told not to do it again but if they'd made that mistake...done that thing before or they knew it was wrong then they should be told off - be blamed'.

(Girl, Y6 FG3)

When parents were asked whether their children understand right and wrong, they tend to quickly answer 'yes', but the ensuing discussion makes it obvious that this 'yes' was for a normal child of 10-12 years old for whom knowledge of right and wrong cannot be separated out from parental retribution.

In the girls' grammar school a parent commented:

'I think they're much more likely to think about, you know, likely retribution than whether something is right or wrong. Will they get away with it?'

(Parent, FG1)

To which another parent added:

'But I think the thing about retribution is true because our daughter will lie to, not to me in a major way, but she will lie to avoid punishment. And you just think I'd rather you told me the truth. So it isn't a sense of right and wrong it's a sense of fear of the punishment'

(Parent, FG1)

The fear of retribution and punishment shows that children's judgements about right and wrong, while intellectually sophisticated, are tied up with reward and punishment.

In this sense their full autonomy as moral agents comes in to question because such common behaviour militates against taking full responsibility for oneself and one's actions. While this is also true of some adults, it is likely that many children of this age do not have that capacity. This begs the question why have the criminal age of responsibility as low as 10, when moral autonomy is clearly linked (philosophically) with self-determination – the ability to determine the course of one's own life. Arguably, while having a low criminal age of responsibility does require further judicial proof that they are indeed morally responsible, it is not clear that this makes much sense, when it is questionable that children aged 10-12 have the capacity for being classed as morally autonomous agents. According to Mill, at least, this means that we are dealing with people who are, (to use Mill's famous phrase in *On Liberty*), 'in the maturity of their faculties'.¹⁹ Here, Mill is clearly hinting at linking autonomy with becoming an adult, i.e. with maturity rather than the maturation process.

Responses to case studies: approval, consent, responsibility, autonomy, authority and child-development/stigma

The first case study was taken from a report in *New Statesmen* (21/4/05) referring to an incident in England and read:

*'In February 2005 a 13-year-old schoolgirl was arrested for throwing a snowball at a police car. A sample of her DNA (gene sample) was taken and put on the National Police Database.'*²⁰

Most of the immediate responses were to say that the police had over-reacted, and that the arrest and the subsequent DNA swab for recording was considered a disproportionate measure in relation to the 'offence'. Quite clearly parents showed disapproval of the action taken by the police. For example:

*'No, not for throwing a snowball
'It's a prank it's not a crime, it's a prank'.
(Parents, FG4)*

Some girls put the same view more strongly:

*'Yeah right if it went through the blooming windscreen ...but not just
for throwing a snowball'.
'How weird [all talking at once], throwing a snowball!'
'You throw snowballs at people so what's the difference ... a person
is like weaker than a car so surely...'
'It shouldn't make any difference [that it's a police car not an
ordinary car]'
(Girls Y7, FG1)*

As did the boys from another school:

*'A 13 year old schoolgirl was arrested for throwing a snowball at a
police car, it's pathetic.'
(Boys, FG4)*

There was a significant minority, however, who voiced approval but also drew out the implications of why they approved, and how they could improve the current system.

*'Yes I am aware of it and I think it's fantastic... Of course I'm biased
because I was 11 years in the police force but even if as a result of
that one person is caught for a serious crime then I think it would all
be worth it.'
(Parent, FG1)*

*'What could happen if she could do it perhaps once and if they
didn't take a DNA she could do it again and again and they don't
realise that she's the same person and if they take the DNA they'll
know it's the same person and send her to a young offender's
institute.'
(Boy, Y7, FG2)*

*'You should keep it on the database but perhaps put in the less
important parts of the database so then she's not always there and
she's not always there doing one little thing but then you've still got
reference for it if she does anything else'.
(Boy Y7, FG2)*

Most respondents however expressed disapproval, offering grave reservations about taking a sample on many and varied grounds: parental consent, the child's emotional welfare (both in a developmental sense and as a way to avoid stigma); the ability to foresee the consequences of their actions.

One parent, for example, objected to the case study on the grounds that it did not require parental consent:

'Terrifying, I would be furious, I would be livid if they did that without my consent.'

(Parents YR7, FG1)

Another parent had reservations on the grounds that children are very much in a state of transition, so that having any official misdemeanour 'pinned on to you' would not reflect a child's development and their need to progress.

'Yes I think that's important for the child, that they kind of feel, that, you know, ok. I shouldn't have done that or, that was a really stupid mistake or, that they can take it on board, that it was something wrong. But it shouldn't be that she would then feel it's something that's been pinned on you as it were. Because its part of a child's development to be able to move on.'

(Parent, Y7, FG2)

This was reinforced by another parent, below, who was critical of stigmatising or, 'pigeon-holing them':

'... I think that you're almost pigeon-holing them when they are still a child. You're not giving them a chance to change. Children do a lot of growing up, a lot of changing around that age.'

(Parent, FG1)

Surprisingly this theme of the importance of children's development and change was also reflected in the some of the children's focus groups. For example:

'If they were little... like T did something wrong and then they grew out of it then when you're a teenager again you'll probably grow back into it and when you're an adult you'll grow out of it.'

(Boy, Y7, FG2)

More specifically, one parent noted that this example could have had serious emotional repercussions:

'The repercussions for that child emotionally, could be quite vast I think'

(Parent Y7, FG1)

Exploring the question of child development further, it is difficult to see any straightforwardly linear progression. This was reflected in 11 and 12 year olds commenting on the behaviour of a 13 year old – the teenage subject of the arrest in our first case study. For them teenager's were different. For example:

'She's a teenager as well that makes a difference. Teenagers just do stupid stuff. They do'.

(Girl Y7, FG1)

Interestingly this connects to some of the differing models in the psychological literature. Whereas in Piaget's model one stage is clearly an advance on the next, there is no such staged sense of progress if one looks at Erikson's socio-emotional model of development (an emotionally biased model).²¹ Whereas in Piaget's intellectually biased model, child development involves a move from concrete to formal operations, involving the ability to think more abstractly, the picture is complicated if we take heed of Erikson's socio-emotional model. This is because adolescents and teenagers, according to Erikson, experience a psycho-social crisis in the fifth stage (out of eight) in their social-emotional development. Called the identity versus identity diffusion (or fidelity) stage, adolescents and teenagers, from 13/14 to about 20, experience a period of identity experimentation that they grow out of. 'Even the best adjusted adolescents' according to Erikson 'experiences some role identity diffusion; most boys and probably most girls experiment with minor delinquency; rebellion flourishes etc.'²²

Another critical reaction to the case study involved the introduction of possible mitigating circumstances, introduced through careful reflection of how and why adolescents and teenagers act in the way that they do. A significant number of focus group participants raised the issue of peer group pressure in mitigation. There are a number of examples:

'Teenagers they also have lots of daring and if it was a dare some people can't get out of dares always.'

(Boy, Y7, FG2)

'I think they probably know what's right and wrong in many cases but they might follow their friends. They can act very responsibly and very grown up if they're on their own, but if there is a group of them together and they encourage each other to do things and then that [right and wrong] might get forgotten.'

(Parent, FG1)

'But some children are very leadable and if they're with the wrong people even though they know that it might not be the right thing to do they're worried about what their peers will think and they'll go along with stuff just because its happening.'

(Parent, FG1)

The idea that children of 11 or 12 are unable to fully understand the consequences of their actions, introduced in the previous section, was reinforced in response to the case study. For example:

'Sorry, it goes back to do they know right and wrong? And can a child of that age, 11 say, can a child of that age see that far ahead? So they may see I'm going to throw a snowball and that's a fun thing to do because we've taught them that throwing snowballs is a good thing to do. You could almost tell them otherwise.'

(Parent, FG1)

The second case study, significantly different from the first, introduced the idea of ‘on the spot fines’ for yobbish behaviour. It was taken from a report in the Sunday Times 29/5/05. The parents’ version read:

‘Children of 10-16 years old can be given on-the-spot fines of £30 or £40 for yobbish behaviour under a new scheme to be launched in June 2005 in seven areas (including Lancashire). The youths will be served with penalty notices for ‘nuisance’ crimes such as vandalism, harassing neighbours and dropping litter. They will be asked for proof of identity and will sign a form to acknowledge receipt of the penalty notice which will be issued in front of their parents. Fingerprints and DNA will be taken if they consent. The penalty notice will be recorded on the police national computer but will not count as a criminal conviction’²³

Many parents and children responded more favourably to this kind of measure, partly because it involved the parents and avoided DNA being logged and stored indefinitely on a police database. In the main they showed approval of this measure. There are a number of examples:

‘Better than being put on the system for throwing a snowball at a police car’.

Mod: Right, You think that’s better. Why?

‘Cause it just is...plus you’re tackling them...it works much better. And it’s up to the parents what happens.

Mod: OK so they’re involving the parents and you think that’s important.

Yeah.’

(Boys, FG4)

And:

‘... (it) will make sure the parents make sure the children won’t do it again and also parents should be involved because they may have seen that their child is under the influence of someone else ...and they don’t want their fingerprints and DNA taken because they’ll make sure they won’t do it again. They really don’t want the child on [the database].’

(Boy, Y7, FG2)

Although the general reaction to this second case study was much more favourable, there were a series of reservations that reflected disapproval.

One expression of disapproval revolved around the fact that it was in effect blaming parents and making them pay without directly tackling miscreant adolescent behaviour. For example:

‘Well, parents may become responsible for paying it... I don’t know what the age is that they (children) can take on a part-time job, but apart from pocket money, they’re not always going to have this money are they, so you are really punishing the parents...’

(Parent, FG3)

Another expression of disapproval vocalised the fact it was inequitable, not distinguishing those who could pay and from those that could ill afford it (children and poorer parents). Moreover it was inappropriately directed, children thinking they could get away with it, if their parents paid up. For example:

‘Where are children of 10-16 going to get £30-40 from – not a lot of money to some people but it’s a lot of money for other to find and if the parent just pays the children might think well I’ve just got away with it.’

(Parent, FG4)

Yet another sense of disapproval came out of the fact it concentrated too much power in the police. For example:

‘It also seems to make the police judge and jury.’

(Parent, FG2)

Conclusion

The issue of including children from the age of ten has not led to negative media coverage or debate. There has been coverage of Grant Shapp’s campaign, COND (children off the national DNA database), but this aims only to remove those who are innocent.²⁴ The parents and children in this study supported the existence of a NDNAD and its use to solve crime. However, they had reservations about samples being taken for petty crime, were critical where there was a lack of parental involvement and felt that there are dangers of stigmatising young people for a one-off act. Practical suggestions included the keeping of samples for a limited time or in a different part of the database.²⁵

The focus group study revealed that these children, age 10-12, had limited responsibility and independence. For them, right and wrong is tied up with reward and punishment and taking responsibility is interpreted as admitting fault when ‘told off’ rather than being self-governing. Parents were cautious about granting new types of independence but recognised the need to negotiate gradual change with their children, as they grew older. Both parents and children saw the dangers further ahead in the teenage years when, as one mother put it, ‘the hormones set in’. For this reason many took issue with the case study involving the 13 year old girl because the arrest and taking of a sample did not make any concession to her being a teenager. Specifically, they argued that teenagers are in a state of transition and there is a danger of life long stigmatization for one act where children might have been subject to peer pressure and are certainly less able to foresee the consequences of their actions. The involvement of parents in the second case study met with more approval from parents and children although some had reservations about the effectiveness of the on-the-spot fines, which parents would probably pay, and about increased police power.

Finally there are further multi-disciplinary arguments that support the data and may add weight to the argument that the inclusion of children on the NDNAD is controversial.

- Although children are given special consideration and care in the criminal justice system, the setting of the age of criminal responsibility at age 10 does imply that children can be considered able to take responsibility for their actions. However, it seems unlikely that the children in this study, including those at academically selective schools, could be classed as autonomous moral agents which makes the inclusion of this age group on the NDNAD controversial (according to J.S. Mill at least).²⁶
- Including children on NDNAD may be inappropriate for developmental reasons. Since they are in a state of transition, in which their intellectual development is complicated by socio-emotional development, it is controversial to consider them criminally responsible with the capacity (at least) to be tried and convicted, when it is possible that they will grow out of their socially unacceptable behaviour. This is reflected in the UN convention on the Rights of the Child, quoted earlier.
- The policy is inconsistent with policy in the area of health care where there has been a move to find ways of including children in decision-making processes as much as possible, treating each child as an individual.²⁷ In health care children are unlikely to be considered ‘Gillick competent’, in terms of being able to refuse treatment, before age 13.²⁸

Children are probably included on the NDNAD because they can be included, rather than as the result of a debate over their inclusion when the database was first set up. The purpose of this research was to shed light on aspects of children’s life worlds and parental attitudes in order to highlight one aspect of the NDNAD and the ethical and social issues which it raises.

Acknowledgements

We are grateful to the EU for funding this research which was carried out as part of work package 7 on the project ‘The Institutionalisation of Ethics in Science Policy’ (INES). 2004-07. (No SAS6-CT-2003-3282). Thank you to the schools which co-operated in this research and the children and parents who took part. Thanks to the staff and students from the Institute for the Study of Genetics, Biorisks and Society (IGBiS) at Nottingham University for their helpful comments on an earlier draft presented in their seminar series and the two anonymous referees. Finally we would like to thank Robin Williams and Stephanie Lawler, Durham University for discussion on the initial ideas.

¹ Parliamentary Office of Science and Technology (POST). 2006. The National DNA Database. POST note no.258. Feb. 2006. London: POST. Page 1. <http://www.parliament.uk/documents/upload/postpn258.pdf>.

² Henderson M. 2006. DNA of 750,000 juveniles stored. The Times. 1/09/06. <http://www.timesonline.co.uk/newspaper/0,,170-1976353.00.html> (accessed 14/04/06).

³ A recordable offence is any offence for which a person may receive a prison sentence and other offences defined by statutory instrument.

⁴ The law was changed in 1994 under the Criminal Justice and Public Order Act. This has aided the

expansion of the NDNAD.

⁵ House of Commons Science and Technology Committee. 2005. Forensic Science on Trial. Seventh Report of session 2004-05. HC 96-1. London. The Stationery Office. Para.65 p.35.

⁶ Scottish Executive. 2005. Police retention of prints and samples. Consultation Document. <http://www.scotland.gov.uk/Publications/2005/10/PROPS> (accessed 14/04/06).

⁷ House of Commons Science and Technology Committee. 2005. Forensic Science on Trial. Ibid.

⁸ Scottish Law Commission. 2002. Report on the age of criminal responsibility. Edinburgh: The Stationery Office. SE/2001/1. Scot Law Com No 185. Section 3.6-3.10 <http://www.scotlawcom.gov.uk/downloads/rep185.pdf> (accessed 14/04/06).

⁹ D. Leppard '10 year olds could get £30 fines for dropping litter'. Sunday Times. 29/05/05. <http://www.timesonline.co.uk/article/0,,2087-1632076,00.html>.

¹⁰ R. Williams ., P. Johnson and P. Martin 2004a Genetic Information and Crime Investigation. London: Wellcome Trust p.97.

¹¹ Figure given by Ben Gunn, Chief Constable of Cambridgeshire and Association of Chief Police Officers' Forensic science spokesman. BBC news report 19/01/01 http://news.bbc.co.uk/1/hi/uk_politics/1125655.stm accessed 15/04/06.

¹² U.N. Guidelines (1990) for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990 http://www.unhchr.ch/html/menu3/b/h_comp47.htm.

¹³ GeneWatch UK (2005) The Police National DNA Database: Balancing Crime Detection, Human Rights and Privacy. Buxton: GeneWatch UK <http://www.genewatch.org/HumanGen/Publications/Reports/NationalDNADatabase.pdf> (accessed 14/01/06).

¹⁴ Figures from website of Grant Shapps, a member British Parliament who has started a campaign to remove 'innocent' children (i.e. those not charged or charged but acquitted) from the NDNAD. <http://www.grantshapps.org.uk/Home.aspx> (accessed 14/01/06).

¹⁵ U.N. General Assembly (1989) Convention on the Rights of the Child Document A/RES/44/25 (12 December 1989) <http://www.cirp.org/library/ethics/UN-convention/> (accessed 14/04/06). The convention is not part of the law in UK but a failure to take it into account in legislation could make UK open to international criticism.

¹⁶ G., Gaskell, N. Allum and S. Stares. 2003. Europeans and biotechnology in 2002 Eurobarometer 58.0. A report to the EC Directorate General for research from the project "Life sciences in European Society" QLG7-CT-1999-00286.

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¹⁷ D. Sugarman . 1987. Piaget's construction of the child's reality Cambridge: Cambridge University Press p.52.

¹⁸ The four parents' and four children's groups are both numbered 1-4 indicating parallel groups i.e. FG1 parents were the parents of children in FG1 children.

¹⁹ J.S. Mill .1863 'On Liberty', in Mary Warnock ed., Utilitarianism, On Liberty and other Essays 1962 London: Fontana.

²⁰ T. Wall. 2005 'A simple prank by a 13-year-old. Now her genetic records are on the National DNA Database for ever'. New Statesman 25/4/2005. Vol.134 Issue 4737 pp.32-33.

²¹ Erik Erikson 'Stages of Social Emotional Development in Children and Teenagers. <http://childdevelopmentinfo.com/development/erickson.shtml> (accessed 14/4/06).

Jean Piaget Theory of development. The Formal Operational Stage. <http://facultyweb.cortland.edu/~ANDERSMD/PIAGET/d.HTML> (accessed 14/4/06).

²² Erik Erikson *ibid*.

²³ D. Leppard. 2005. *op cit*.

²⁴ Campaign website <http://www.grantshapps.org.uk/Home.aspx> (accessed 14/01/06).

²⁵ In Belgium DNA from suspects is not subject to speculative searching and so is in effect in a different part of the database, as are samples now taken from all new entrants to the police in the UK. For details of the practice throughout Europe see R. Williams and P. Johnson. 2005. Forensic DNA Databasing: A European Perspective. Interim Report June 2005 produced for the Wellcome Trust..

http://www.dur.ac.uk/p.j.johnson/EU_Interim_Report_2005.pdf.

²⁶ J.S. Mill op cit.

²⁷ P. Alderson. 1996. *Young Children's Rights: Exploring Beliefs, Principles and Practice*. London. Jessica Kingsley Publishers.

²⁸ The parental right to determine a child's medical treatment 'terminates if and when the child achieves sufficient understanding and intelligence to enable him to understand fully what is proposed' judgement by Lord Scarman. *Gillick v. West Norfolk and Wisbech Area Health Authority* (1986) AC, 112. In practice, judgement as to whether a child is Gillick competent is left to a medical doctor. Gillick competence has been linked to a mental age of at least 13. The measurement of a 'mental age' is of course controversial.