



# JUVENILE JUSTICE SYSTEMS

An International Comparison of Problems and Solutions



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## CHAPTER 1

# Introduction: An International Perspective on Youth Justice

*Nicholas Bala and Rebecca Jaremko Bromwich*

**E**very legal system recognizes that children and adolescents are different from adults, and should not be held accountable for their violations of the criminal law in the same fashion as adults. There are, however, very substantial differences in how different countries give effect to this basic principle, and indeed in how they legally define such fundamental concepts as “child,” “youth” and “adult.”

An important and revealing measure of a society is its responses to those who are at its margins. Adolescents in conflict with the law are often seen as marginal. They are often excluded from the economic, social, cultural and racial mainstreams of their societies, in addition to being alienated by virtue of their developmental stage. Understanding how a society responds to young persons who violate its criminal law provides important insights to that society as a whole.

This book offers a comparative study of how the world’s major predominantly English speaking jurisdictions respond to juveniles who have violated the law. The comparative study of the treatment of young offenders should be of interest to all of those who seek to better understand social dynamics and the place of adolescents in their societies, as well as of value to those who want to better understand and improve how their own societies can improve their juvenile justice systems.

### The Legal Recognition of Childhood and Adolescence

When children are born, they have very limited physical and social capacity, and no capacity to make decisions or control their actions. Although newborn infants have some legal rights (for example, to inherit property) and are entitled

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to the protection of the law, their legal rights can be exercised only through a legal guardian or other adult. As they mature, children gradually gain in physical strength, intellectual judgment and social maturity. They slowly gain the capacity to make decisions and moral judgements, and they gradually begin to exercise legal rights and assume legal obligations on their own. When adulthood is reached (in most countries between the ages of 18 and 21 years), a person is afforded a full range of legal rights and obligations.

By the beginning of adolescence, between the ages of 10 and 13, youths display a growing sexual, social and moral awareness, as well as increasing physical size and strength, though most continue to mature intellectually, psychologically, physically and socially until adulthood. While for many adolescents, physical growth ends about the age of 15, there is growing evidence that neurological and social development continues into the years of late adolescence, 16 to 18 years of age, and even into early adulthood. Childhood, which can be defined as the period between birth and the beginning of adolescence, is the formative stage of life, but also a stage of limited capacity, including only a limited capacity to harm others. By adolescence, a youth has at least the potential to cause serious harm to others.

Adolescence is a time of great change and development for most youth, as parents, teachers, and adolescents themselves well know. Sometimes adolescents seem quite childish, but at other times they act like adults, or at least want to be treated like adults. Adolescence is a period of growing self-awareness and increasing autonomy, as well as a time of challenging authority figures and testing limits. While adolescents have a growing knowledge of the world around them, they often lack judgment and maturity. Frequently, they feel as though they are “invulnerable” and act in an impulsive and irresponsible fashion. Adolescents tend to be more impulsive and concerned about immediate consequences rather than with their long-term well being, and are more susceptible to peer pressures than adults. In far greater numbers than adults, adolescents engage in high-risk activities, such as unsafe sex, drunken driving, and substance abuse.

Adolescence is often characterized by feelings of alienation from parents, teachers and society as a whole, with a greater willingness to test social norms and conventions, as well as to engage in offending behaviour. Adolescence is also a time of life when, for some individuals, feelings of alienation and depression may peak; it is a time when there is a high risk of suicide and self-destructive behaviour. There are substantial differences between countries in types and levels of youthful crime and deviant behaviour, but in all modern societies the rates of delinquent and antisocial behaviour peak somewhere between the ages of 15 and 21, in late adolescence or early adulthood, reflecting the immaturity and lack of judgment of this period of life, as well as its energy and search for excitement.

While there is significant variation between countries in legal regimes, in every society there is the recognition of a stage of life when there is no criminal law accountability for wrongful acts – a legal recognition of childhood. And in every country the law recognizes adolescence in some fashion, holding young persons accountable under criminal law, but not to the same extent or in the same manner as adults. While terminology and approaches vary, this recognition of adolescence creates what is referred to as “youth,” “children’s” or “juvenile” justice systems.

### The Value of Comparative Analysis

This book explores the different responses to criminal behaviour by children and adolescents in the world’s major predominantly English-speaking countries: Australia, Canada, Great Britain (with separate treatment of England & Wales, Northern Ireland and Scotland), Ireland, New Zealand and the United States.

The nature of the special legal treatment afforded to children and youth has not been constant. In each of these countries, the approaches to youth crime are in flux and there is controversy, often intense controversy, about juvenile justice issues. There is, however, widespread appreciation that children and adolescents have special needs and limited capacities, and hence require distinctive, or at least separate, treatment from adults.

By studying the experiences in different countries, one can discern common problems and themes, as well as better understand the strengths and weaknesses of the approaches in each country. This comparative study of approaches to juvenile justice provides a set of case studies that explore the relationship between political, social and economic context and legal responses to youth crime. Comparative study can help policy-makers and professionals consider a wide range of possible responses to youth offending, and help them determine which strategies work most effectively in different contexts. The dissemination of innovation has long been an important feature of juvenile justice. The first juvenile justice regime separate from the adult system was established in the United States at the end of the nineteenth century; this model was highly influential in other countries, which soon after established their own juvenile justice systems – systems that all initially shared a distinctive welfare-oriented focus. More recently the development in New Zealand of “family group conferences,” which seek to achieve objectives consistent with restorative justice, has been very influential in the development of diversion and restorative justice mechanisms in other countries.

Comparative study provides an opportunity for countries to continue to learn from each other’s experiences. Ultimately, this type of comparative study should help each country to develop better approaches to dealing with the universal problem of youth crime.



At the same time, making international comparisons poses considerable challenges. As many researchers engaging in cross-cultural study have found, concepts do not always translate well across cultural borders. Despite sharing a language and a common legal heritage, the countries in this study have legal systems that differ significantly. While the legal systems of all countries in this study have to a large extent been influenced by the English common law, Scotland and Canada are also influenced considerably by the Civil Law system dominant in Continental Europe. Even where legal concepts are shared, differences between the social, economic and political context of countries give rise to distinct legal cultures that are not always easy to compare. Comparison of terms used in describing juvenile justice provides an important example illustrating problems in the translation of concepts between cultures.

Countries differ significantly in how they define children and youth. Different terms are often applied to individuals in the same age category. An obvious example of this is that in Canada and South Australia adolescents in conflict with the law are referred to as “young persons” or “youths,” while the term “juveniles” is used in Queensland and in the United States, and “children” in Scotland.

Conversely, the same terms may be used to refer to different things in different countries. An example of this is the age range of people dealt with by the juvenile justice systems of various countries. Illustratively, persons aged 7-15 inclusive in Scotland are dealt with by the juvenile justice system as “children,” while in South Australia, the juvenile justice system deals with “children” aged up to 18. In Canada, the same term, “child,” is used to refer exclusively to those under the age of 12, who are immune from criminal prosecution.

Different terminology is only the tip of the iceberg of variation between the legal cultures of these countries, variation that makes it challenging to compare the methods used to deal with young people in conflict with the law in different countries. Another important dimension of variation in approach is reflected in the different types of statistics that are available for each jurisdiction.

In each country different social phenomena and characteristics are seen as worth counting. For example, in the chapter on Northern Ireland, O’Mahony describes his country as a divided society in which Catholics constitute a prominent religious minority who are marginalized in many respects, but there are no data on representation of Catholic and Protestant adolescents in the juvenile justice system. By way of contrast, in the United States, religion is not an important social variable in assessing juvenile crime, but race is considered an important factor for understanding the juvenile justice system and comprehensive data on visible minority representation in the juvenile system are available.

Differences in terminology, concepts and data mean that international comparisons must be approached carefully, with close attention paid to context.

### Juvenile Justice: Evolution and Models

The historical development of the youth justice systems of the countries in this book over the past century reflects ideological shifts in the perceptions of the needs, rights and capacities of children and adolescents.

Separate systems to deal with juvenile justice are a relatively recent phenomenon in human history. In European cultures, prior to the nineteenth century, there was little social or legal recognition of the special needs and particular capacities of children and youth. This is graphically demonstrated to any tourist in a European museum by the posed portraits of upper class children standing stiffly, dressed as little adults, and by the sad predicament of working class children laboring in mines, factories and farms.

Until the nineteenth century, the only recognition of childhood as a distinct period of life for criminal law purposes was the defence of *doli incapax* (Latin for incapacity to do wrong). At English common law, children under 7 years of age were immune from prosecution, while between the ages of 7 and 14, there was a presumption of incapacity, which, if not rebutted by the prosecution, meant that they could escape criminal sanction. However, there were no separate juvenile justice systems, and older children and adolescents were subjected to punishments such as hanging or imprisonment in penitentiaries with adults.

Towards the end of the nineteenth century, as part of a broader movement of social reforms that included the enactment of child labour laws and the establishment of the first child welfare agencies, the first reformatories and training schools were established to confine child and adolescent offenders separate from adult criminals. The first Juvenile Court was established in the United States by the state of Illinois in 1899. In the first few years of the twentieth century, all of the countries in this book enacted legislation to establish juvenile justice systems. Canada's *Juvenile Delinquents Act*, the *Children Act* of England and Wales and the Irish *Children Act* were all enacted in 1908.

These original juvenile justice regimes were characterized by an informal and private process, and by a philosophy that emphasized the rehabilitation of youthful offenders. The philosophical premise of these regimes was the treatment by probation officers and juvenile court judges of "delinquent" juveniles in the same way as a "wise but stern parent," with a focus on the long-term welfare of the child. This was an enormous improvement over the treatment of young offenders in the same way as adults, though in practice juveniles often faced harsh treatment in juvenile correctional facilities.

These early juvenile justice systems were established on what is now commonly referred to as a "welfare model" of juvenile justice, with the main focus of intervention, at least in theory, being the promotion of the welfare of the



child (Corrado et al., 1992). Since the promotion of the child's welfare was the objective, the focus of intervention was to help "wayward youth" rather than to punish them for the offence. This welfare orientation was used to justify minimizing concerns about due process of law. There was also a broad definition of "delinquency," to permit speedy intervention to "save" the child from a life of crime.

While the term "welfare model" is not used totally consistently in the juvenile justice literature, it is a helpful theoretical construct that captures the salient features of these early juvenile justice regimes, and can still be used to characterize the juvenile justice systems of some countries, such as Ireland and Scotland.

The welfare model can be understood as one polarity on a theoretical continuum of possible models of regimes of juvenile justice, though in the real world, no justice system exists in one of the pure forms described by analytical models.

In a welfare model, the focus of juvenile justice is on the offender rather than the offence, and on the welfare of the youth rather than punishment or accountability for an offence. Characteristics of a welfare model are informality and lack of due process, as well as indeterminate sentencing since a youth should be kept in custody as long as necessary to effect rehabilitation. Another characteristic of juvenile justice systems operating on a welfare model is the high degree of discretion given to judges, probation officers and juvenile correctional officials, so that they can do what they consider best for the individual juvenile they are dealing with.

The welfare model can be summed up nicely, as Asquith and Buist note with reference to Scotland's present Children's Hearing system, as focusing on the juvenile's "needs not deeds." Where the focus is on the child's welfare, the lines between justice and child protection are easily blurred and there is only limited recognition of a child's legal rights.

Across national boundaries, the prime rationale for establishing a juvenile justice system that was separate from the adult system was the belief that youths are more vulnerable than adults as well as more amenable to rehabilitation. Long-term social protection was seen to be best achieved by concentrating resources on their rehabilitation, and by protecting them from the glare of public accountability. At the very least, the establishment of separate juvenile justice systems was justified by concerns about the corruption or abuse of children and youth if they were placed in correctional facilities with adult offenders that justified their separate confinement.

While the systems set up by these early welfare regimes were a very significant improvement over the past treatment of youthful offenders, they were not without serious problems, and by the latter part of the twentieth century many of these regimes were coming under increasing criticism. A central

concern was that focusing on the special needs and rehabilitation of youth did not necessarily translate into “more lenient” treatment.

Critics contended the welfare model was predicated on “naive arrogance” (Zimring, 2001). A desire to promote rehabilitation formed the basis for a more intrusive approach or a longer period in a youth custody facility than an adult might receive for the same offence, even though the facility was separate from one that was used for adults and had programmes with more emphasis on rehabilitation. The rationale for a longer sentence could have been that the youth needed the benefit of a longer period in a rehabilitative environment, or a longer period away from a corrupting living situation. Inconsistencies in the treatment of juveniles from different socioeconomic classes or racial heritages were criticized as a discriminatory consequence of the high level of discretion accorded judges and correctional officials.

As a rights culture developed in various countries, the welfare model of juvenile justice was criticized for its paternalism, violation of rights, and potential for discriminatory treatment. Informal proceedings in juvenile courts were highlighted as violative of the presumption of innocence and the right of an accused youth to counsel. The reality of the operation of juvenile courts was criticized as fundamentally divergent from their welfare rhetoric. In *Re Gault* (387 U.S. 1 at 27 (1967)), Justice Fortas of the United States Supreme Court wrote:

Ultimately ... we confront the reality... of the juvenile court process.... The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence – and of limited practical meaning – that the institution to which he is committed is called an Industrial School.... however euphemistic the title.

Worse still, it is now clear that the privacy, discretion and lack of rights characteristic of the early juvenile justice regimes created an environment with a high potential for exploitation and abuse of juveniles in custody facilities by staff or fellow inmates. It was only towards the end of the twentieth century that adult survivors of institutional abuse started to come forward in large numbers to document the institutional abuse that they experienced as children, for example in Ireland’s “reformatories” and Canada’s “training schools.”<sup>1</sup> The greater emphasis of rights and greater awareness of issues of abuse makes it more difficult for institutional abuse to occur, though institutional abuse remains a serious concern.

At the same time as these criticisms were being levied, public concern about youth crime was increasing in a number of countries. With this increase in concern about youth offending came a new public focus on public protection and a recognition that not all juvenile offenders are amenable to rehabilitation. There was a growing appreciation that the welfare model may not be well equipped to deal with “persistent offenders.” There is not enough knowledge to effectively

rehabilitate all youth offenders, or even to know with a high degree of certainty which offenders are likely to be recidivists.

These criticisms and a changing political climate resulted in legislators in a number of countries dramatically changing their juvenile justice regimes in the last years of the twentieth century. While Scotland, Northern Ireland and the Republic of Ireland have continued to operate under welfare-oriented regimes, other countries radically revamped their juvenile justice regimes. Examples of these new laws include Canada's *Young Offenders Act*, which came into force in 1984 and New Zealand's 1989 *Children, Young Persons and Families Act*.

These new legal regimes, particularly those enacted in most of the United States, moved away from a welfare model toward what is referred to as a "justice" model of juvenile justice (Corrado et al., 1992). In a justice model, there is a recognition of the importance of legal rights, and for those convicted a focus on punishment for specific criminal offences through determinate sentences.

While the newer legislative regimes mark a move away from the welfare model *towards* regimes that reflect a justice model, in all of the countries in this book there continues to be at least a rhetorical commitment to the importance of rehabilitation of juvenile offenders. Although these new regimes acknowledge the importance of legal rights and the need to protect society, the preservation of the rehabilitative ideal remained an important rationale for having a distinct youth justice system.

In most countries discussed in this book, the twentieth century saw two distinct periods in the administration of youth justice. In Canada and the United States, there were clear moves away from the welfare model in the 1980s towards the justice model, while other jurisdictions such as the Republic of Ireland continue to operate juvenile justice systems that have a strong welfare orientation.

### Legal Rights for Adolescents

In the past fifty years there has been a remarkable increase in the recognition of the importance of human and legal rights (Ignatieff, 2000; Abella, 1999). Women, employees, consumers, indigenous peoples, ethnic and racial minorities, the disabled and others have increasingly demanded rights, and have increasingly seen those rights recognized in the courts.

Beginning with the adoption by the United Nations of the *Universal Declaration of Human Rights* following World War II, a rights consciousness began to develop that transcended national boundaries. It included movements to end colonialism in Africa and Asia, and in the 1950s and 60s the Civil Rights movement to end discrimination against the Afro-American descendants of slaves in the United States. In the 1970s the "Women's Movement" began to

demand that women have equal opportunity to participate in politics and employment.

Rights consciousness, and specifically the right to substantive equality, soon spread from women and minorities to other equality-seeking groups. Rights rhetoric spread into advocacy for young people, and into the legal realm of juvenile justice. In 1967, in *Re Gault*, the United States Supreme Court held that “due process” rights applied to adolescents in juvenile court proceedings, entitling them to state-provided legal counsel. This seminal declaration that children have due process rights gradually spread to become an international concern by the 1980s.

The countries in this book have in important respects become “rights-based societies,” and there is greater recognition of the importance of legal rights in most juvenile justice systems than was the case in the past. An example of the link between rights consciousness and changes to juvenile justice is provided in Canada. The rights culture was both reinforced and reflected by the enactment of the *Canadian Charter of Rights and Freedoms* in 1982, the same year the *Young Offenders Act* was enacted, legislation that also recognized the rights of adolescents, for example ensuring that they could have access to legal representation. While there is significant variation between countries as to the level of protection for juveniles’ due process rights, such as a right to counsel, in all of these countries consciousness of these rights has had some impact.

Although rights rhetoric is an important aspect of the discourse about juvenile justice systems, the concept of “rights” for children and youth remains contentious and in some respects confused. While one can assert that, for example, people of all races are inherently equal and entitled to equal treatment, youth are inherently different from adults. Children and adolescents lack the physical, social and intellectual capacities of adults, and are justifiably denied some of the rights afforded adults, such as the right to vote. In some countries in this study, such as Canada and the United States, there is an emphasis on affording adolescents in conflict with the law “due process” legal rights that are similar to those rights recognized for adults. In other countries, such as Ireland, there is much less emphasis on “legal rights” for adolescents, though there is still a recognition of the importance of the “social rights” of adolescents, the rights to a priority for the receipt of educational and rehabilitative services.

The different attitudes and approaches to rights for adolescents in the countries in this study marks an interesting dimension of contrast as there is quite a wide variation in approach. Readers may consider the advantages and disadvantages of the differing approaches.

Consciousness of children’s rights culminated in the enactment of changes to domestic legislation in several countries, and in the signing of comprehensive international agreements setting out standards for the treatment of children and adolescents by the end of the 1980s.



## International Standards for Juvenile Justice

Internationally accepted norms and principles for juvenile justice have been gradually evolving over the past century, and are now explicitly recognized in the United Nations *Convention on the Rights of the Child*.

It has long been accepted that the general rules of international customary law concerning torture, capital punishment and humanitarian law apply to juveniles at least as much as to adults. The *Standard Minimum Rules for the Treatment of Prisoners* of 1955, which was itself an endorsement by the United Nations of an earlier League of Nations treaty signed in 1934, required the separation of “young prisoners” from adults in custodial facilities (UNICEF International Child Development Centre, 1998).

In the past two decades there has been greater international attention turned to specific protection of children’s rights. In the 1980s mounting concern for the rights of children resulted in several child-focused international treaties that set out standards for the treatment of young persons in conflict with the law. Some of these international treaties are declarations, guidelines and rules that provide standards, but offer no formal mechanisms to ensure that the standards that are aspired to are actually achieved. Important examples of these international standards for the treatment of juveniles are 1985 *Standard Minimum Rules for the Administration of Juvenile Justice* ( the Beijing Rules), and the 1990 *Riyadh Guidelines and United Nations Rules for the Protection of Juveniles*.

The *Convention on the Rights of the Child* (CRC) was adopted by the United Nations in 1989. It is the most important international treaty concerning the rights of children and youth, establishing standards for a range of legal, civil, political, economic, social and cultural rights of children. UNICEF describes the CRC as establishing “non-negotiable minimum standards and obligations” for the treatment of children. The CRC deals with a broad range of issues, including juvenile justice, and establishes provisions for the monitoring of each signatory country’s level of compliance.

By 1997, all of the members of the United Nations had ratified the CRC except the United States of America and Somalia. Opposition to the *Convention* in the United States comes from a number of sources, including those who fear that it might erode the rights of parents or place burdens on the government for the provision of services.

The central principle of the *Convention* requires that in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (Article 3). Article 37 has specific protections for all of those who are under 18 years of age, and faced with “deprivation of liberty,” and is of direct relevance to the juvenile justice process:

Art. 37: States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner that takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

Article 40 of the CRC explicitly articulates standards for juvenile justice, recognizing both due process rights for individual juveniles and the obligation of the state to provide a range of rehabilitative services:

Art 40 (1): States Parties recognize the right of every child... 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.

(2) To this end and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that...

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent,



independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

(3) States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children, without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

(4) A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

The CRC provides for a process of monitoring of implementation in different countries, which is intended to allow for public scrutiny and pressure to ensure compliance. Each country is obliged to present a report to the UN Committee on the Rights of the Child every five years. The primary report for a country is made by the national government, though various non-governmental advocacy and children's services groups are also involved in reporting. The UN Committee on the Rights of the Child issues a report that comments on the degree of each country's compliance for use by advocates for children and governments. The Committee can recommend that actions be taken, but it has no power to direct governments or agencies to act.

UNICEF reports that, despite the rhetoric in the international community about the importance of children's rights, the monitoring of the implementation of the *Convention* shows that (UNICEF International Child Development Centre, 1998):

the rights, norms and principles involved are regularly ignored and seriously violated virtually throughout the world... on a scale... unmatched in the field of civil rights implementation.

A consideration of the limitations of the *Convention* and the constraints on implementation helps to explain the discrepancies between stated commitments to the recognition of the rights of children and their limited implementation in practice.

The nature of international treaties and the constitutional division of powers within nations create formidable obstacles to the implementation of international standards in the treatment of youth who come into conflict with the criminal law. The responsibility for entering into international treaties, like the *Convention*, rests with national governments, but in many countries the national government has little or no responsibility for juvenile justice. For example, in Australia, juvenile justice is within the legislative jurisdiction of state governments, while it is the federal government that signed the CRC. Even in those countries where youth justice is within the legislative jurisdiction of the national government, the country's constitutional division of powers may pose problems for implementing that legislation. For example, in Canada, while it is the federal government that makes laws concerning youth justice, it is the provinces that implement and administer these laws. Where there are ideological or other conflicts between the different levels of government, attempts to implement the international standards articulated by the *Convention* may be frustrated.

Another obstacle to implementation of international standards reflects the consensual nature of the international treaty-making process, as countries are permitted to determine that they will not be bound by either the entire treaty, or particular provisions of it. In particular, the United States has not ratified the CRC and is in no way bound by it. Further, several countries have filed reservations<sup>2</sup> to particular parts of the CRC, stipulating that they are not bound by some of its provisions. All of the countries in this study, with the exception of the Republic of Ireland, have elected not to be bound by Article 37(c) of the CRC, which requires that children who have committed offences are to be detained separately from adults.<sup>3</sup>

While the *Convention* provides for an international monitoring process, in most countries there are no mechanisms to allow children or adolescents, or advocates acting on their behalf, to directly assert the rights in the CRC through a legal process. However, the CRC is being cited by courts and policy makers as an important bench-mark against which to assess national policies and programmes. In Canada, for example, the CRC is sometimes cited by courts as an aid to help in the interpretation of legislation.<sup>4</sup>



A couple of recent Australian and Canadian decisions demonstrate that at least in some situations advocates may be able to use the CRC to advance the position of those involved in court processes. Both of these decisions involved situations where parents were facing deportation; the courts held that the failure of immigration authorities to even consider the effect that these decisions would have on the welfare of their children was wrong, citing the *Convention* as a basis for interpreting and applying domestic laws.<sup>5</sup> Despite these two decisions, in most situations the *Convention* is more likely to be a tool for political advocacy than directly applicable in the courts.

### Political Context and Public Sentiment Towards Juvenile Justice

While there is greater respect for human rights and less deference towards authority than in the past, the 1990s and the start of the new millennium have been politically conservative times. The reasons for this more conservative environment are complex, but at least in part it is a response to government debt problems, the end of the Cold War, and an increasingly global and competitive economy, as well as to a sense that some of the expensive social reform projects of the post World War II period have not produced the desired results.

Governments have become more conservative, particularly with respect to spending on social programmes, and in a number of countries have adopted “get-tough” rhetoric and policies on youth crime. Negative public responses to youth offending, and towards young people in general, is a recurring theme in this book. There is a strong theme of anti-youth sentiment, which is described aptly as “moral outrage” by Graham in the chapter on England and Wales. This pervasive anti-youth public sentiment has troubling sources and dimensions.

The media has played a role in increasing public concerns about youth crime. An increasingly competitive market for news media has created pressure towards a more sensationalist approach to reporting, which has often resulted in disproportionate coverage of youth violence. Reports of youth crime are frequently inflammatory. Youth crime, and especially youth violence, attract considerable media attention, and contribute to the sense of “moral panic” and demands for government action to “do something” about youth crime.

An obvious and tragic case that illustrates the extent of media reporting of youth violence was the coverage of the murder in England of 2-year-old Jamie Bulgar by two 10-year-old boys. This was certainly a terrible crime, but it was also unique. It received months, actually years, of detailed worldwide media coverage. It was the impetus for dramatic legislative change to English juvenile justice legislation, and is often cited in countries like Canada as a reason for lowering the age of criminal accountability. While this crime was horrific, it did not justify a “toughening” of youth crime laws, especially since there is no evidence that harsher responses to youth crime increase the protection of society.

Like other dramatic news reports, media stories about youth offending “sell” because they are shocking. It is important to recall that they shock us precisely because they are unusual. Somewhat paradoxically, youth crime might be more cause for concern if it stopped being newsworthy.

It is also clear that politicians use the issue of youth crime to advance a particular agenda. Youth crime raises the specter of social decay and the need to “take a stand” to prevent a further decline in values and behaviour. As O’Connor notes with reference to Australia, a “get-tough” stance on out-of-control-youth is a metaphor for unease with social change. Politicians can relatively easily use a concern with youth crime and demands for a “get tough” approach as a rhetorical tool to rally aging voters with nostalgia for an idealized past. It is clear that a get-tough agenda serves political interests, not the best interests of young people or community health (U.S. Surgeon General, 2001). The unfortunate irony is that politicians too often promote a get tough approach to youth crime, arguing that this is a means of increasing public safety, while at the same time advocating reductions in government spending for health, education and social services, which will inevitably lead to conditions that will increase youth crime. Unfortunately, “get-tough” strategies do not seem to benefit at-risk youth or society in general. Those youth who are inclined to commit crimes, especially the serious and repeat offenders, lack the judgement, foresight and self control to be in any way deterred by the prospect of longer sentences.

At least in part the political and media concern with youth crime reflects the fact that populations are aging. Youth seem increasingly distant and alien to the average voter. At its most benign, anti-youth public sentiment may simply reflect the “generation gap.” In these times of rapid technological and social change, young people are growing up in a radically different world from that in which their parents and grandparents came to maturity. As societies change more rapidly, it is not surprising that young people start to seem stranger in the eyes of adults. Of course, there has always been a tendency for people, as they grow older, to find teenagers stranger and more threatening. What is different now is that the relative size and influence of the older generations is growing. The growing anti-youth sentiment, then, may have its roots, at least to some extent, in demographic change.

More disturbingly, this relationship between population demographics and anti-youth sentiment may also have a subtle racist dimension. Young people in the countries in this book are increasingly of ethnic minority or indigenous heritage. Increased immigration of visible minority groups and higher birth rates among some minority and aboriginal groups make the racial composition of adolescent populations quite different from the adult populations in Australia, Canada, England, New Zealand and the United States. The change in the ethnic and racial composition of youth means that young people do not seem strange simply by reason of their behaviour, music, and appearance, or other reflections of a distinctive youth subculture. As young people are increasingly not just

members of a different generation, but also of a cultural, ethnic, racial or linguistic minority, these adolescents may be resented at least in part because they may not be perceived as the legitimate inheritors of their respective nations.

It is interesting, and perhaps somewhat disconcerting, to observe that the two countries in this study with the most racially and religiously homogenous populations, Scotland and the Republic of Ireland, also have the most political support for a welfare oriented approach to young offenders. While there is concern about youth crime in those two countries, the politicians do not try to exploit fears about youth in general, and policies are aimed at protecting the public by rehabilitating young offenders.

### Conclusion: The Importance of Comparative Study and the Reform of Juvenile Justice

Antisocial behaviour in youth, including criminal behaviour, while not socially acceptable, is not abnormal. Some degree of deviant and offending behaviour is a universal aspect of the adolescent stage of human development. Juvenile justice is thus a concern shared internationally.

Concerns common in the writings of founders of the Illinois Juvenile Court in 1899 are mirrored in the 2001 report of the American Surgeon General on *Youth Violence*. Juvenile offending and the social problems to which it is tied are not new problems. The pervasiveness of juvenile offending as a problem makes historical and cross-cultural study of juvenile justice relevant. What is done elsewhere and what has been done in the past can be helpful in formulating strategies to deal with these shared problems.

Currently, there is great controversy over juvenile justice legislation and policy in many countries. Policy makers are looking for ways that are more effective, both in terms of financial and human cost, to reduce and respond to youth crime. Many commentators in the countries in this book feel that their juvenile justice systems are in need of substantial reform.

It is vitally important that rigorous research is undertaken to determine what kinds of programmes and interventions are most effective in responding to the needs of different youth, and ultimately in reducing offending behaviour. International comparisons, like those presented in this book, can play a central role in increasing understanding of different alternatives for reform and in the development of more effective ways to conceive of and administer juvenile justice.

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## Notes

- 1 In Canada, there have recently been public inquiries, as well as civil suits and criminal prosecutions against staff at many of the juvenile institutions for abuse that occurred in the period from 1940 to 1980.
- 2 Reservations are unilateral statements countries can make when signing or ratifying a multilateral international treaty. By making such a reservation, a state can exclude or modify the effect of stated provisions of the treaty in their application to that state, without modifying the effect of those provisions on other parties to the treaty. Reservations are permitted so long as they do not defeat the general purpose of the treaty.
- 3 Australia, Canada, the Cook Islands, Iceland, New Zealand, Switzerland and the United Kingdom have filed such a reservation on the grounds that they claim such separation is either not feasible in all circumstances or is not appropriate (UNICEF International Child Development Centre, 1998).
- 4 See, for example *R. v. D.O.L.* [1993] 4 S.C.R. 419 and *Lennox and Addington Family and Children's Services v. T.S.* [2000] O.J. No. 1420 (Ont Fam. Ct.).
- 5 *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Minister of State for Immigration and Ethnic Affairs v. Ah Hin Teoh* No. WAG118 of 1993 FED No. 182/94 (AUS).