Comparing and Delivering Juvenile Justice Across the World

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Abstract There are both assumptions and evidence that undergird the official response to juvenile delinquency in different countries. The similarities and differences among these approaches are evaluated to assess their contribution to fairness, justice, crime control, and delinquency prevention. A brief historical review of the recognition of childhood innocence is followed by the nature of formal procedures for handling juvenile offenders, and specific governmental and multilateral responses to juvenile delinquency that form the basis for greater consistency in dealing with juveniles in the justice process.

1 Introduction

This chapter considers the variation in attitudes and approaches used over time and place when governments respond to misbehaving young people. It aims to make clear the assumptions and evidence that undergird the official response to juvenile delinquency in different countries. The similarities and differences among these approaches are evaluated to assess their contribution to fairness, justice, crime control, and delinquency prevention. After reviewing the historical recognition of childhood innocence, we review the introduction of formal procedures for handling juvenile offenders then proceed through specific governmental and multilateral responses to juvenile delinquency.

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H. Kury et al. (eds.), *Women and Children as Victims and Offenders: Background, Prevention, Reintegration*, DOI 10.1007/978-3-319-28424-8_30

1.1 The Discovery of Childhood

The terms juvenile and delinquency are fairly new, but the people and the behavior are not. Ariès (1962) reminds us that during the Middle Ages and well into the seventeenth and eighteenth centuries, many Western civilizations did not have words to distinguish babies from bigger children. The concept of "adolescence" was not formed until 1890. Even the term childhood is recent; apparently, first being used during the thirteenth century. Before that time, the child was seen as no more than a miniature adult.

Ariès (1962) sees the seventeenth century as a turning point in the conception of childhood. It was then that we begin to find a vocabulary relating to infancy and the idea of childhood innocence began to develop. Before this time, all types of language and behavior were permitted in front of children, since there was no idea of an *innocence* to be violated. By the end of the sixteenth and the start of the seventeenth century, Protestants and Catholics in France and England began regulating access of children to certain books. Although Christianity had implied childhood innocence centuries earlier (e.g., Christ advising people to "become as little children"), the idea did not have much impact until the 1500s and 1600s.

After the discovery of childhood, and the attaching of special meaning to it, society was forced to show how the ideal child might be produced and how the undesirable one might be prevented from developing—or controlled if one did develop. But describing just what was undesirable was still in the developmental stage. Just as society has always had children, whether identified as such or not, those children have always been rather consistent in their behavior. Consider, for example, three current areas of concern linked to juveniles: use of weapons, sexual misbehavior, and alcohol/drug abuse. In fact, juveniles have been engaging in these types of activities for centuries. As late as the seventeenth and eighteenth centuries, European children continued the medieval practice of wearing and using arms. The schools of seventeenth-century France had so many duels, mutinies, brawls, and beating of teachers that the result was regulations requiring that students store their weapons outside the school (Ariès 1962).

Sexual practices, portrayals, and references, which many may consider inappropriate if not obscene today, were often the norm in medieval times. That indulgence regarding sex carried over into later centuries. By 1760, Englishman Samuel Foote commented that public schoolboys practiced more vices by the age of 16 than anyone else would have by 60 (Ariès 1962, p. 324). Finally, the young people of the Middle Ages were heavy drinkers of alcohol. After regulations forbade it in school, they simply went to nearby taverns where it was not prohibited (Alarid and Reichel 2008, pp. 459–460).

This concept of childhood innocence began influencing how society perceived a child's ability to form criminal intent. By the time Blackstone's *Commentaries on the Laws of England*, was published in the late 1760s, common law had established age seven as the point at which one could understand their own actions and therefore be able to form criminal intent. Prior to that age, people were

incapable—under common law—of committing a crime. This principle of *doli incapax* (inability to do wrong) gave immunity from criminal prosecution to children under age seven and those between ages seven and fourteen were presumed incapable of doing wrong unless there was evidence to the contrary. Persons over age 14 continued to be tried as adults. We return to this topic of age and criminal responsibility later in the chapter, but first we take time to review some of the initial steps toward a formal response to children and young people who engage in criminal acts and other mischief.

1.2 Formal Responses to Misbehaving Youth

Whether credit for establishing the world's first juvenile court lies with South Australia in 1890 (Sarri and Bradley 1980, p. 46) or Cook County (Chicago), Illinois in 1899 (Platt 1969), we can agree that a formal response to juvenile offenders began taking hold in the late nineteenth and early twentieth centuries. We also know that both South Australia and Chicago, Illinois operated under a legal system that was heavily influenced by British values. Especially important among such values was the concept of *parens patriae* wherein the court (as the agent of the state) is viewed as having ultimate responsibility for junior citizens.

Because of the *parens patriae* doctrine, the initial approach of the juvenile court was non-adversarial and based on a philosophy that assumed that all court personnel were interested in the child's welfare and best interests. The result was a statutory court, rather than criminal court, with jurisdiction over offenses committed by juveniles that would be a crime if committed by an adult. Also, since everyone involved was looking out for the rights and interests of the juvenile, there was no need to be overly concerned with due process issues. Why clog things up with procedural trappings, the attitude seemed to be, since there would be only rehabilitative consequences rather than penal.

The initial juvenile court model based on the child's welfare and treatment was copied, with modification of course, throughout much of the world. Mehlbye and Walgrave (1998) and McHardy (1998) explain that within the first 25 years of the twentieth century, separate jurisdictions, penal laws, or courts for children had been created in Argentina, Austria, Belgium, Brazil, Canada, France, Germany, Great Britain, Hungary, and the Netherlands. Typically, the laws and special courts followed a welfare model as the basic approach toward child offenders. Through the remainder of the twentieth century and into the twenty-first, nations continue to determine the most appropriate way for them to respond to juveniles in conflict with the law. In some places the welfare/treatment approach continues to be preferred, but in other jurisdictions modified approaches are holding sway. To best appreciate that diversity and to understand why a standard approach is unlikely to be taken, we first consider the diversity in the broader legal traditions within which the juvenile justice systems must operate.

2 Legal Systems and Legal Traditions

There are many legal systems in the world, but they can be grouped into several types. Comparative criminal justice scholars distinguish between these functional and conceptual aspects of justice by referring to the legal system (the functional aspect) operating in a state, province, or country, as distinct from a jurisdiction's legal tradition (the conceptual aspect).

Whereas legal systems depend on the nation-state for their specifics (e.g., how to structure police agencies and organize courts), legal traditions are more cultural than political. The term legal tradition refers to attitudes, values, and norms regarding the nature and role of law. It is a broad concept that implies a deeply rooted and historically based heritage. Legal systems, on the other hand, direct attention to the specific organization and procedures a political entity sets forth to carry out the ideas of a legal tradition. Of particular concern in this chapter is the concept of legal tradition—especially as it applies to the attitudes, values, and norms influencing and directing a country's response to misbehaving youth.

Broad descriptions of legal traditions are best accomplished by identifying only a few categories in which many countries can be placed. While legal systems can be described according to how they accomplish policing, adjudication, and sanctioning, legal traditions are typically categorized as falling into one of several legal families. Comparative legal scholars do not agree on how many legal traditions, or families, exist today. Depicting legal families requires the drawing of rather random lines. There is an arbitrary aspect to the delineation, but the resulting picture should make enough sense to people that it is reasonable if not precise.

The decision to group legal systems into legal traditions is easier than deciding what criteria to use for the categories and determining how many such categories to use. Bracey (2006) argues for concentrating on three legal traditions based on the perceived source of law. Glenn (2010) uses seven categories but suggests that even more exist. Reichel (2013) highlights four legal traditions (common, civil, Islamic, and Eastern Asia). Dammer and Albanese (2014) also recognize four legal traditions but identify them as common, civil, socialist, and sacred.

A key point upon which all those scholars agree is that any categorization of legal traditions is more provisional than conclusive. As Bracey (2006) puts it, any attempt at grouping legal systems into broader categories of legal traditions results in something reflecting the designer's goals more than any agreed-upon reality. So, why do it? Because doing so provides some clarity to a very complex situation. For our purposes, that attempt at clarity will follow the lead of Reichel, Dammer, and Albanese, and use a four-category scheme. The resulting legal traditions or families are referred to as common, civil, Islamic, and mixed. A brief description of each will provide a base from which we can discuss variations in how juvenile justice is conceived and implemented around the world.

2.1 The Common Legal Tradition

Because common law developed in England and influenced the law's application in the British colonies, Australia, Canada, India, New Zealand, the United States, and former British colonies in Africa, joined the United Kingdom in having legal systems counted among those of the common legal tradition.

Several things distinguish common law from the other legal traditions (Dammer and Albanese 2014; Reichel 2013), but the key feature is the belief that custom provides the primary source of law. The idea is that traditional, consistent, and reasonable ways of deciding disputes provides the appropriate source of law. Determining whether something was "customary" fell to members of the community who sat as a jury of peers.

Countries differ in the specific structure and procedures established for their legal system, but if they maintain that law originates in custom they are included among those countries following the Common legal tradition (Dammer, Reichel, & He, 2014). Identifying those countries where law is based on custom is often accomplished by reference to the use of precedent or *stare decisis*. Following this principle, decisions in current cases are guided by decisions made on similar points in earlier cases. The rationale for this practice was originally an understanding that earlier court decisions were evidence of custom. Judges were expected to follow legal custom by abiding by prior decisions in similar cases. In this manner, custom could be identified by reliance on the people and through reference to several cases.

Because the traditional way of identifying custom was through the court rather than legislative process, judges came to play a pivotal role in common law. A decision by a judge was accepted as legal recognition of a custom. It is important to note, however, that the case was not referred to as the source of law; it merely provided proof that a legal principle (i.e., a custom) was once applied. Eventually prior cases were used less to prove custom and more to reference authority—typically a higher court (Reichel 2010).

2.2 The Civil Legal Tradition

The civil legal tradition, which is also called the Roman or Romano-Germanic legal tradition, is the oldest and most widespread of contemporary legal traditions. Originating in the codes of Roman law (e.g., the *Corpus Juris Civilis*), the civil legal tradition views law as resulting from written codes provided by a political authority. When laws are put in writing, or codified, they are believed to provide a clear statement to citizens regarding their rights and obligations. In addition, written laws allow judges to easily determine if a crime has occurred and to set the appropriate punishment. In this way, law is made by legislators (or other political authorities) and the courts simply enforce the law rather than interpret it or make new laws (Reichel 2002).

Contemporary countries identified as falling in the civil legal family were most likely inspired by the civil codes of France or Germany. The French Code Napoléon (1804) was especially influential in continental Europe and Latin America. It was developed to be an easily read and understood handbook that would allow citizens to figure out for themselves (rather than relying on a lawyer) their legal rights and obligations. Like their French contemporaries, nineteenth-century Germans believed codification of law could help pull together a new nation. However, unlike the French, the Germans did not believe it was either desirable or possible to remove lawyers from the legal system. The German Civil Code of 1896 was a historically oriented, scientific, and professional document that assumed lawyers would be needed to interpret and apply the law (Merryman 1985; Reichel 2002).

Despite some dissimilarity between the French and Germany codes, both incorporated a sharp separation of powers in which the legislator makes law and the judge does not. Instead of offering direct and specific solutions to particular problems, codes supply general principles from which logical deduction provides a resolution in each case (Sereni 1956). In this manner, civil judges need only identify the applicable code principle to decide a particular case. The solution is expected to be reached through an independent process of legal reasoning that the judge can identify and explain. This process allows the judge to apply, not make, law. Therefore, under the civil legal tradition, the solution to each case is to be found in the provisions of the written law, and the judge must show that the decision is based on those provisions.

2.3 The Islamic Legal Tradition

Legal traditions based on religious principles have included such important examples as the Hindu and Judaic ones. The primary contemporary example, however, is Islamic law.

The Islamic legal tradition is unique among legal families in its view of law's source as being sacred rather than secular. The other legal traditions, especially civil and common, have religious links, but they remain distinct and separate from religion. The Islamic legal tradition, on the other hand, is completely reliant on religion.

Islamic law is called the Shari'a (the path to follow). Its primary sources, the Qur'an (Islam's holy book) and the Sunna (the statements and deeds of the Prophet Muhammad), specify the legal principles linked to right and wrong behavior. The Qur'an and Sunna identify both crimes and punishments but they provide little information regarding the legal process by which offenders are brought to justice.

Because Islamic law is presumed to be of divine origin, its authority is based on God's commands instead of long-held traditions (as in common law) or directives by state power (as in civil law). In fact, the divine nature of Shari'a means that no worldly authority can change it, let alone supplement it. So, like civil law judges, Islamic *qadi* (i.e., judges) must turn to written documents for solutions to disputes.

Also like their civil counterparts, *qadi* cannot do more than identify the correct principle for use in a particular case. The difference lies in the source of that principle—the code, for civil law judges, and the Qur'an and Sunna for *qadi*.

2.4 The Mixed Legal Tradition

Countries included in the mixed legal tradition are those that incorporate elements from several of the traditions. Also called hybrid systems, the countries in this grouping include those where components of one legal tradition have combined with components from another legal tradition to form a mixed or hybrid system (Dammer, Reichel, & He, 2014).

Palmer (2008) and Castellucci (2008), suggest that countries in this category will clearly have elements of two or more traditions. Using a family-tree approach, Castellucci describes a forest of legal system family trees wherein the branches and foliage of each tree (each legal system) intertwines with others. Such a forest/family tree model would allow, for example, the existence of a Chinese legal system coming from a mixture of civil law and socialist law. That "tree" intertwines with, for example, Hong Kong's Chinese-common law mix and with a Chinese-customary mix that may describe the North Korea legal system (Dammer et al. 2014).

Scholarship on mixed jurisdictions has a rich history but became more focused with the work of Palmer (2001), who argued that some mixed jurisdictions were so alike as to be considered a separate legal tradition. In 2002, the World Society of Mixed Jurisdiction Jurists[1] was organized to unite jurists and comparatists around the globe in the study and advancement of mixed jurisdictions. The initial focus was on "classical" mixed jurisdictions (those combining common and civil law) such as Israel, Louisiana, the Philippines, Puerto Rico, Quebec, Scotland, and South Africa. More recent interest has included Cyprus, Hong Kong and Macau, Malta, and Nepal (Donlan 2012).

2.5 Legal Traditions and Juvenile Justice

It is reasonable to expect that each legal tradition will give rise to a particular type of juvenile justice system just as it does to a criminal justice system. As explained in Sect. 4 below, that is not necessarily the case. However, it is still instructive to review the four major legal traditions because doing so highlights the diversity found in how social order is accomplished and reminds us of the role played by a country's values and norms—both indigenous and imposed. Values, norms, and a

[1] http://www.mixedjurisdiction.org/.

region's history also influence how a country responds to troubled and misbehaving young people. But, children and youths present problems and opportunities that are different from those presented by adult offenders. The next section highlights some of those differences before we move to a review of juvenile justice models.

3 Children as Different

Nations around the world have drawn an arbitrary line to distinguish juvenile delinquents from adult criminals in the eyes of the law. If a criminal act is committed by a person under the legal age established by the government, the act is considered delinquency. The same illegal act committed by someone who has reached this age threshold is considered to have committed a crime. Therefore, delinquency is distinguished from crime not by the behaviors engaged in, but by the age of the offender.

3.1 Differences in Definitions of Delinquency Globally

In the United States, a person becomes an adult in legal terms at age 18. Unlike most other countries, the United States empowers individual states with unique legal authority, so in three U.S. states a person legally becomes an adult at age 16, in seven states the legal age is 17, and in one state the legal age is 19. In most states, however, the age that distinguishes juvenile delinquency from adult crime is age 18.

Around the world, there is similar variation among nations in establishing the threshold age at which an act of juvenile delinquency becomes an adult crime. An analysis of 22 countries found that the age of criminal responsibility ranged from 7 to 21 years of age (Meuwese 2003). United Nations agreements (discussed below) indicate that age 18 is the most universally accepted age of adult criminal responsibility. In most countries, including the United States, there is also a certain age below which a child cannot be held legally responsible for any law violation. In the United States, that age of minimum responsibility is usually 7 years old, but it ranges from ages 6 to 16 in different countries. The reason for establishing such a minimum age is that small children are not seen as not being old enough to fully understand the consequences of their actions, and so they cannot be adjudicated as either a juvenile delinquent or an adult criminal. Therefore, juvenile delinquency is confined, in general terms, to the law violations of young people between the ages of 7 and 18.

Some nations add a middle category for which there is no criminal liability; often this category includes children from 7 to 12 years of age, but children may still be subject to child welfare interventions. This keeps young juveniles out of the adjudication process, but permits governments to intervene in their lives due to misbehavior.

One factor in defining delinquency is the existence of status offenses, acts for which only juveniles can be held liable. Status offenses do not involve violations of the criminal law but are undesirable behaviors designed to thwart more serious delinquent behavior. Examples of status offenses include habitual truancy, curfew violations, repeated running away, disobeying the reasonable requests of parents, and, in some countries, begging and suspected gang membership. Noncriminal offenses such as these are especially common in industrialized countries, where younger children are not expected to participate in the workforce. In England, for example, children under age 10 are not held criminally liable, but those between ages 10 and 18 are heard in Youth Court and are subject to special laws and procedures. Nevertheless, countries like Canada and Germany do not have status offenses.

3.2 Use of Age Limits in Other Settings

It is clear that the selection of any precise age to distinguish delinquency from crime is arbitrary, yet age limits continues to be used throughout the world. In fact, age is used as an arbitrary demarcation in many ways in society. For example, a person must be 25 to be elected a representative in the U.S. Congress, 30 to be a U.S. Senator, and 35 to be President of the United States. In England no one can be elected a Member of Parliament until he or she is 21 years old. There are similar wide variations around the world (and within the United States) in the ages at which people can have consensual sex, marry, join the military, drive an automobile, vote, and otherwise participate fully in civil life. It should be seen that age is merely an administrative convenience that is used as an arbitrary marker for "maturity" in the broadest sense.

An alternative to using age to distinguish delinquents from criminals might be to use the adjudication process solely as a fact-finding hearing to determine whether the suspect did indeed commit the offense alleged. If proof beyond a reasonable doubt could be established in a given case, then the offender would face a disposition hearing at which a judge would impose some kind of punishment, treatment, or both, after an investigation into the offender's background, experiences, needs, and maturity to determine an appropriate disposition (Albanese, 2008). This would be one way to avoid the arbitrary age cut-offs that cause problems in trying to answer difficult questions of the appropriate disposition when young persons commit very serious crimes, or commit very minor offenses.

4 Juvenile Justice Models

As explained earlier in this chapter at Sect. 2.5, four legal traditions were presented as one way to view the variation in how nations seek to establish a system of social order. Unfortunately, those traditions cannot easily be used to categorize juvenile

justice systems. Certainly there are norms, values, and beliefs associated with each legal tradition that influence the philosophy and procedures of a country's juvenile justice system; but not with a consistency that results in one tradition producing a particular response to misbehaving youth. Instead, descriptions of youth justice have most often been linked with adherence to, and variation from, the welfare approach that was taken by those first jurisdictions to established separate laws, procedures, and courts for children and young people.

4.1 An Underlying Philosophies Model

As explained earlier in this chapter at Sect. 1.2, the first juvenile justice systems followed a welfare approach built on the *parens patriae* model. Delinquency was a symptom of underlying family and community problems requiring treatment to improve the welfare of children. The emphasis of the justice process was changed from the adjudication of guilt to diagnosis of a condition to be corrected through rehabilitative treatment of the juvenile, not punishment.

The evolution of juvenile justice in Western Europe followed a similar path with initial emphasis on the child's welfare and treatment. However, by the mid-twentieth century, there was disillusionment with the rehabilitative philosophy of juvenile justice, stemming from the government's poor record in trying to act as a surrogate parent. There were numerous instances of child maltreatment and neglect while children were in state custody leading to cynicism about the rehabilitative ideal. The result was a shift toward a system of juvenile justice that ensured a young person's legal rights were scrupulously regarded, so that their legal rights as citizens were protected. This model took hold during the 1950s through the 1970s, and it focused on ensuring justice for juveniles by providing them **due process** rights under law, ensuring fair and equitable hearing procedures.

Finally, beginning in the 1980s, a third shift occurred during a general rise in the crime rate in many countries (Dambach 2007; French 1999; Pfeiffer 1998). This rise in the overall crime rate (although rates of juvenile delinquency actually declined in many countries), combined with disillusionment from the poor success of many rehabilitation efforts, led to the emergence of punishment as a primary objective of juvenile justice. The result was changes in attitude, law, and policy, reflecting the view that the public safety was more important than the welfare of the child. The possibility of crime and victimization came to be viewed as more important than any underlying problems a juvenile might have. The outcome was a juvenile justice system that treated juveniles similarly to adults, much in the way it was in the nineteenth century. The difference, of course, is the existence of many more legal protections in the adjudication process, but these protections increasingly treat juveniles and adults alike—resulting in a juvenile justice system that looks more and more like the adult criminal justice system (Albanese 2013; Bala et al. 2002; Urbina and White 2009).

Table 1 Three underlying philosophies of juvenile justice

Primary thrust of adjudication	Underlying philosophy	Adjudication outcome
Rehabilitative (Welfare of child)	Serve best interests of *child* by changing juvenile's ability to lead a life that conforms with the law.	Rehabilitative treatment of juvenile.
Due process (Legal rights)	Serve best interests of *justice* by ensuring a fair and equitable proceeding.	In accord with the rule of law (process more important than outcome).
Punitive (Crime control)	Serve best interests of *public* by making sure that public safety is not put in jeopardy.	Punishment to ensure public safety.

These three basic philosophies are summarized in Table 1 and they serve to remind us of important issues that essentially all juvenile justice systems hope to attain. That is, a desirable response to misbehaving youth would be one that holds young people accountable for their acts (crime control) in a manner that protects their interests and provides opportunities for their betterment (rehabilitative) while protecting the person's rights throughout the process (due process). Not surprisingly, balancing these is more problematic than is first apparent. Attempts to find the right balance must take into consideration such things as a jurisdiction's overall legal tradition, culture, institutional capacity, public perception of justice agencies and agents, crime rate, and many other matters. An example of one attempt to describe a suitable balance is found in the work of the United Nations.

5 The United Nations and Juvenile Justice

The United Nations is a voluntary organization comprised of nearly all the countries in the world. Its charter states that its mission is, in part, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom" (United Nations 2004). Juvenile justice is clearly part of the UN's mission in its efforts to promote human rights, worth of the human person, equal rights, respect for law, social progress, and better standards of living.

The United Nations attempts to achieve these goals by developing rules, guidelines, standards, principles, and conventions by consensus among member nations. These tools are used to promote most desired practices on a worldwide scale in fulfillment of the UN charter. "Conventions" are more significant than "rules," principles," or "guidelines" because they are binding in nature, requiring ratifying nations to abide by their provisions or else face sanctions. In the area of juvenile justice, there have been four major United Nations efforts to develop international standards relating to juvenile delinquency.

- Convention on the Rights of the Child (Adopted by General Assembly resolution 44/25 of 20 November 1989)
- Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing rules," Adopted by General Assembly resolution 40/33 of 29 November 1985)
- Rules for the Protection of Juveniles Deprived of Their Liberty ("Havana Rules," Adopted by General Assembly resolution 45/113 of 14 December 1990)
- Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Rules," Adopted by General Assembly resolution 45/112 of 14 December 1990)

The **Convention on the Rights of the Child** entered into force in 1990, and it has since been ratified by nearly all UN member countries. No other international agreement relating to justice has such universal support. It defines a child as a person under 18 years of age, and established many protections, such as protection against cruel, inhuman, and capital punishment. It states that arrest, detention, or imprisonment of a child shall be in conformity with the law, that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, and that children accused of law violations shall be treated in a manner consistent with the promotion of the child's dignity and worth. It also states the desirability of promoting the child's reintegration and resumption of a constructive role in society. Furthermore, the Convention states that children are presumed innocent until proven guilty according to law, should have appropriate assistance in the preparation and presentation of his or her defense, and must not be compelled to give testimony or to confess guilt; it also describes related legal protections (United Nations 1989).

The Standard **Minimum Rules for the Administration of Juvenile Justice** were adopted in 1985 at the United Nations meeting in China (and thus are sometimes called the Beijing Rules). The Beijing Rules are historic in that they constitute the first international legal instrument to detail comprehensive rules for the administration of juvenile justice with a child rights and child development approach. The Beijing Rules predate the binding Convention on the Rights of the Child; they provided earlier guidance for countries on protecting children's rights and observing their needs in separate juvenile justice systems. Many of the Beijing Rules were later incorporated into the Convention on the Rights of the Child. The Beijing Rules encouraged fair and humane treatment of juveniles, emphasizing their well-being and the importance of rehabilitation for young people (United Nations 1985).

The **Rules for the Protection of Juveniles Deprived of Their Liberty** (sometimes called the "Havana Rules"), adopted in 1990, are standards for the treatment of persons under age 18 when confined to any institution or facility by the order of a court or similar body. These Rules set forth principles to universally define the circumstances under which children can be deprived of their liberty, emphasizing that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases. Rules are also included for the training of juvenile justice personnel and the inspection of juvenile facilities (United Nations 1990b).

The **Guidelines for the Prevention of Juvenile Delinquency** (called the Riyadh Guidelines) were also adopted in 1990. They represent a proactive approach to

delinquency prevention involving the roles of the family, the school, the community, the media, social policy, legislation, and juvenile justice administration. Prevention should involve "efforts by the entire society to ensure the harmonious development of adolescents." Countries are encouraged to develop community-based interventions to prevent children from coming into conflict with the law, and to use legal systems only as a last resort in addressing juvenile delinquency. The Riyadh Guidelines also call for the decriminalization of status offenses (United Nations 1990a).

The Convention of the Rights of the Child, like all U.N. conventions, is a binding document that requires all signing countries to abide by its standards in its national laws, procedures, and policies. It has become the most universally approved treaty in the world, with only two countries—Somalia and the United States—refusing to ratify it. The U.S. Senate has not, and presumably will not, ratify the convention because some individuals and groups believe the convention will interfere with parents' ability to raise and discipline their children, and could even elevate the rights of children above the rights of parents.

When agreeing to the CRC, countries are allowed to note reservations they have regarding any of the provisions. This procedure provides countries an opportunity to avoid abiding by certain provisions as long as a majority of the other signing nations make no objection to the reservations. For example, Australia, Canada, and several other countries registered reservations regarding separation of detained children from adults. Those countries generally accept the principle involved but maintain there are situations when separation is not feasible or could even be inappropriate. Several countries following Islamic law have made reservations regarding the application of the CRC when its articles conflict with the provisions of Shari'a. Germany and the Netherlands noted that minor offenses could be tried without legal assistance (International Child Development Centre 1998). Despite the occasional reservation, however, the CRC stands as an important international document that provides minimum standards for handling young offenders and has encouraged countries around the world to recognize and respect the rights of children.

5.1 Summary of International Agreements Related to Juvenile Justice

These four international agreements demonstrate an evolving international consensus regarding the appropriate response to juvenile delinquency. The combined substance of these agreements is summarized below.

- All children should be respected as fully fledged members of society, with the right to participate in decisions about their own futures, including in official proceedings, without discrimination of any kind.
- Children have the same rights to all aspects of due process as those accorded to adults, as well as specific rights due to their special status as children.

- Children should be diverted from the formal system of justice wherever appropriate and specifically to avoid being labeled as criminals.
- There is a set of minimum standards that should be provided to all juveniles in custody.
- Custodial sentences should be used as a last resort, for the shortest possible time, and limited to exceptional cases.
- A variety of noncustodial sentences should be made available, including care, guidance and supervision orders, counseling, probation, foster care, education, and vocational training programs.
- Capital and corporal punishment of children should be abolished.
- There should be specialized training for personnel involved in the administration of juvenile justice.
- Children have the right to be released from custody unless there are specified reasons why a release should not be granted.
- Children have the right to measures to promote recovery and reintegration for victims of neglect, exploitation, abuse (including torture and ill-treatment), and armed conflict.
- States are obliged to establish a minimum age of criminal responsibility that is not set too low but reflects children's capacity to reason and understand their own actions.
- States should invest in a comprehensive set of welfare provisions to contribute to preventing juvenile crime (International Human Rights, 2004).

These rules and guidelines set minimum standards for juvenile justice by providing fair trial guarantees and basic procedural safeguards (for example, presumption of innocence, right to notification of charges, right to legal representation) and by promoting the desirability for rehabilitation and reintegration of the young person. Unfortunately successful implementation of the standards into some national legal and judicial systems has not been fully achieved, but progress is apparent.

6 Implementing the Standards

6.1 Indicators

The implementation of international standards occurs at the national and subnational level. Experts under the auspices of the United Nations have been gathered to develop indicators, or common measures, to assess compliance with international standards set by the conventions. The United Nations introduced 15 indicators it believed that all countries should use to gauge their juvenile justice efforts (United Nations 2007, p. 5). These indicators are shown in Table 2.

As the table shows, the proposed indicators are rudimentary, but important to document the experience of juveniles in the justice process. Some countries now collect these data, but many do not. In some cases, the lack of data reflects a more

Table 2 The UN's fifteen juvenile justice indicators

Indicator		Definition
Quantitative indicators		
1	Children in conflict with the law	Number of children arrested during a 12 month period per 100,000 child population
2	Children in detention (CORE)	Number of children in detention per 100,000 child population
3	Children in pre-sentence detention (CORE)	Number of children in pre-sentence detention per 100,000 child population
4	Duration of pre-sentence detention	Time spent in detention by children before sentencing
5	Duration of sentenced detention	Time spent in detention by children after sentencing
6	Child deaths in detention	Number of child deaths in detention during a 12 month period, per 1000 children detained
7	Separation from adults	Percentage of children in detention not wholly separated from adults
8	Contact with parents and family	Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
9	Custodial sentencing (CORE)	Percentage of children sentenced receiving a custodial sentence
10	Pre-sentence diversion (CORE)	Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11	Aftercare	Percentage of children released from detention receiving aftercare
Policy indicators		
12	Regular independent inspections	Existence of a system guaranteeing regular independent inspection of places of detention Percentage of places of detention that have received an independent inspection visit in the last 12 months
13	Complaints mechanism	Existence of a complaints system for children in detention Percentage of places of detention operating a complaints system
14	Specialised juvenile justice system (CORE)	Existence of a specialised juvenile justice system
15	Prevention	Existence of a national plan for the prevention of child involvement in crime

general inattention across a particular country. In others, it reflects a lack of priority placed on the treatment of juveniles in the justice process.

6.2 Trends

The actual implementation of international standards has not been universal or uniform. An assessment of the experience in 15 countries found that "the global progress made in terms of juvenile justice has been very uneven" (Defence for Children International 2007). The problem of most concern was the over-use of pre-trial detention and the conditions under which children were often held (including non-segregation of children and adults, poor hygiene, and lengthy pre-trial detention periods).

Also, there was found to be a lack of government data and statistics on the lengths of imprisonment and pre-trial detention imposed. Many countries did not track how long children actually remained in custody, and there was limited data regarding the extent to which alternatives to detention were employed.

Violence against children was reported to occur in juvenile justice systems in all the countries surveyed. Finally, there was a distinct lack of resources devoted toward implementing better juvenile justice practices, even when the rhetoric appeared to show a commitment to do so.

The report made a series of recommendations both for government and for civil society (Defence for Children International 2007, p. 56):

Governments should undertake the following actions:

- Monitor more closely the conditions and length of pre-trial detention in accordance with international standards;
- Establish effective complaints mechanisms within juvenile justice systems and conduct exit interviews with children to gauge the upholding of the rights of children deprived of their liberty; and commit to investigating and sanctioning those responsible for violations.
- Develop diversionary practices and alternatives to the deprivation of liberty; and, monitor their use and effectiveness;
- Develop programmes for the prevention of juvenile delinquency which do not stigmatise certain groups or children and young people in general;
- Establish a national action plan on juvenile justice if one is not already in place;
- Collaborate with NGOs throughout the development and implementation of all strategies for juvenile justice;
- Collaborate meaningfully with children throughout the development and implementation of all strategies for juvenile justice

Civil society should undertake the following actions:

- Lobby their governments to uphold the rights of children in juvenile justice systems by raising awareness about General Comment No 10 on "Children's Rights in Juvenile Justice" of the UN Committee on the Rights of the Child (2007);
- Monitor the conditions of detention centres and remand homes and report on abuses where possible; where not possible, create a visible presence and pressure nonetheless;
- Talk with children and young people; record their stories and make their voices heard;
- Educate and inform children of their rights in juvenile justice systems; provide them with a place to turn when their rights are violated;
- Work to change negative public perceptions about children and young people;
- Educate and train prison staff, police officers and judges on violence against children in juvenile justice systems and alternative forms of discipline

A recent follow-up to the DCI report was undertaken by the International NGO Council on Violence Against Children, which was established to work with NGOs and member states to ensure that the recommendations from the UN Study on Violence against Children are effectively implemented. The International NGO Council includes representatives from nine international NGOs, including major human rights and humanitarian agencies, as well as nine representatives selected from their regions. Their 2013 report (The International NGO Council on Violence Against Children 2013) found many instances of needless arrests, brutal interrogations, conviction without cause, and lengthy incarceration. It concluded that:

> although there has been ample time, guidance and encouragement to address this growing crisis, distinct juvenile justice systems remain underdeveloped, underutilized, underresourced and underappreciated. All too often, promises of positive, healing interventions into children's lives have collapsed into inevitable violations of their rights. (p. 43)

The report found many instances of violations of international principles in the treatment of juveniles that continue today, despite the conventions, earlier surveys of compliance, and attention given to the situation. The 2013 report made recommendations for change, which include many that have been made before:

- *A Distinct Juvenile Justice*: Operate a separate justice system for children accused of being in conflict with the law that is firmly grounded in the rehabilitative ideal and fully recognises children's unique rights and vulnerability.
- *Reach and Jurisdiction*: Ensure that all and only children accused of being conflict with the law are processed through the juvenile justice system, meaning that no child is tried in adult criminal court and that any child in contact with the law not suspected of committing an offence is handled through a suitable alternate channel.
- *Minimum Age*: Prevent the criminalisation of children by raising the minimum age of criminal responsibility to match the internationally accepted age at which children attain majority.

- *Staffing*: Screen and hire qualified professionals, treat all juvenile justice personnel with suitable respect and appreciation, and offer staff continued training and education on children's rights, non-violent interaction, and other pertinent topics.
- *Prevention*: Adopt a preventive focus as a front-line strategy, respecting children's rights from birth and providing the familial, educational, social and financial support necessary to help every child grow, develop and reach his or her full potential.
- *Diversion and Non-Custodial Measures*: Promote diversion and non-custodial measures, recognising both that children in conflict with the law are better rehabilitated in the community and that children may only be lawfully detained as a matter of last resort and for the shortest possible period of time.
- *Restorative Justice*: Building on traditional notions of justice, adopt community-based, restorative solutions that help children to take responsibility for their actions outside the formal justice system.
- *Data Collection*: Systematically collect data on juvenile justice indicators to determine the extent of violence against children in conflict with the law and aid in the analysis and evaluation of relevant laws, policies and practices.
- *Research*: Encourage and fund research studies in the area of juvenile justice with a view to improving the effectiveness of non-violent interventions.
- *Public Support*: Raise awareness of children's rights and the non-violent juvenile justice imperative, enhancing public support and respect for children in conflict with the law.

It should be noted that many of these observations in 2013 reflect the concerns that brought about the international standards, including the Convention on the Rights of the Child (1990), Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules," 1985), Rules for the Protection of Juveniles Deprived of Their Liberty (1990), and Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Rules," 1990). Therefore, it is clear that greater vigilance, oversight, and priority are needed to ensure that the needs and rights of juveniles are respected and acted upon across the world.

7 Conclusion

It must be concluded that the promise of justice for juveniles has not yet been met. Despite international consensus being reached and codified in important and universally acclaimed international agreements, the implementation of indicators and procedures to ensure justice for juveniles has lagged. Clearly, greater priority and resources are required (internationally, nationally, and subnationally). Vigilance is required to keep attention focused on the problem, so the world is not left to reacting to horrifying incidents, violence, and crises in juvenile justice.

The Interagency Panel on Juvenile Justice (IPJJ) was created to provide technical assistance in juvenile justice and help States comply with their obligations under the international standards adopted for juvenile justice. The IPJJ is composed of 13 United Nations agencies and non-governmental organizations actively involved in juvenile justice, and it works on the development and dissemination of implementation tools and good practices. It is only through the ongoing work of NGOs like IPJJ, together with governments, academics, and civil society (see Fritz 2011; Hamilton and Harvey 2004), that the objectives of juvenile justice will be realized in practice.

Five Questions

1. The idea of children as "different" certainly includes the concept of age as a social status, but it may also include topics related to physical, social, and psychological development. To what extent should a juvenile justice system take psychological development into consideration when determining such things as criminal responsibility and appropriate sanctions for misbehavior? How about physical and social development?
2. What do you see as the most important underlying philosophy of juvenile justice? In what way should this philosophy drive the operations of the juvenile justice process?
3. The treatment of juveniles under law, historically, has been susceptible to change, based on crime rates, school discipline problems, and other kinds of contemporary social problems. Should the treatment of juveniles change in this way, or should it be consistent over time?
4. In order to manage juvenile courts, detention facilities, and prevention programs on the national and subnational levels, local conditions must be accounted for. How should local conditions be permitted to impact compliance with international standards?
5. Review the summary of international agreements related to juvenile justice (Sect. 5.1). Do you find any of those listed to be inappropriate or unreasonable? Why? Are there other concerns that should be addressed in the list that are missing? Which ones?

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