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Journal Item

How to cite:

Muncie, John (2008). The 'punitive' turn in juvenile justice: cultures of control and rights compliance in western Europe and the USA. *Youth Justice*, 8(2) pp. 107–121.

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Version: Accepted Manuscript

Link(s) to article on publisher's website:
<http://dx.doi.org/doi:10.1177/1473225408091372>

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The ‘Punitive Turn’ in Juvenile Justice: Cultures of control and rights compliance in Western Europe and the USA.

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Abstract

Separate systems of justice for children and young people have always been beset by issues of contradiction and compromise. There is compelling evidence that such ambiguity is currently being ‘resolved’ by a greater governmental resort to neo-conservative punitive and correctional interventions and a neo-liberal responsibilising mentality in which the protection historically afforded to children is rapidly dissolving. This resurgent authoritarianism appears all the more anachronistic when it is set against the widely held commitment to act within the guidelines established by various children’s rights conventions. Of note is the United Nations Convention on the Rights of the Child, frequently described as the most ratified human rights convention in the world, but lamentably also the most violated. Based on international research on juvenile custody rates and children’s rights compliance in the USA and Western Europe, this article examines why and to what extent ‘American exceptionalism’ might be permeating European nation states¹.

Keywords: children; convergence; custody; diversity; punitiveness; rights compliance; juvenile justice policy

It is now almost a decade since Wacquant (1999) noted how law and order talk directed at ‘youth’, ‘problem neighbourhoods’, ‘incivilities’ and ‘urban violence’ had come to increasingly dominate the political and media landscape of the USA.

Significantly, he argued, this talk was also in the process of gradually permeating European public debate such that it had begun to provide the framework for any broader political discussions of justice, safety, community and so on. Wacquant detailed how various neo-conservative think tanks, foundations, policy entrepreneurs and commercial enterprises in the USA were able to valorise the diminution of the social or welfare state (in the name of neo-liberal economic competitiveness) and the expansion of a penal or punitive state (in order to deal with the economically excluded). Wacquant records how this mentality:

'originates in Washington and New York City, crosses the Atlantic to lash itself down in London, and, from there, stretches its channels and capillaries throughout the Continent and beyond...[such that] one discerns a solid consensus taking shape between the most reactionary segment of the American Right and the self proclaimed avant-garde of the European 'New Left' around the idea that the 'undeserving poor' ought to be brought back under control by the (iron) hand of the state...' (Wacquant, 1999 pp.322; 333).

Two years later Garland's analysis of USA/UK policy convergence added significant weight to this thesis by arguing that we are witnessing a new *culture of control* characterised by mass imprisonment, curfews, interventions based on risk assessment rather than need, zero tolerance, naming and shaming, and three strikes legislation that have produced a punitive mentality affecting not only offenders but 'everyday' social relations (Garland, 2001). Pratt et al's (2005) edited volume was similarly dedicated to identifying (and challenging) the parameters of a 'new punitiveness' capable of crossing international borders. Much of this analysis appeared to resonate directly with the proliferation of law and order politics in the UK, particularly in England since the early 1990s (Goldson, 2002; 2005). Moreover it provided a valuable contextualisation for the tangible re-penalisation of young people in England and Wales who were (and continue to be) subjected to a 'new correctionalism' of intensive pre-emptive intervention and dramatically rising penal populations (Muncie, 2002; Muncie and Goldson, 2006).

However certain key questions remain unresolved:

(1) How far is a renewed punitiveness reflected and empirically discoverable in youth and juvenile justice throughout the UK and western Europe? Is it a case of 'American exceptionalism'? How far are American and European juvenile justice policies in convergence?

(2) If we are witnessing widespread resort to a USA - driven neo conservative punitiveness, how is this made possible in the context of the near universal ratification of the 1989 UN Convention on the Rights of the Child (UNCRC) which stipulates that in all state interventions the 'best interests' of the child should always be a primary consideration?

Cultures of control?

On the basis of studying numerous published commentaries on juvenile justice emanating from the USA and various UK and European jurisdictions over the past decade, arguments in support of the ‘punitive turn’ thesis are unequivocal. In the UK the Children’s Legal Centre/Y Care International (2006) campaign report, for example, is firmly based on the supposition that ‘states all over the world have retained an overwhelmingly punitive response to young offending’. In the USA juvenile incarceration increased by 43% during the 1990s reaching an estimated 105,600 in 2006. From 1989 and until its repeal in 2005 18 states continued to permit the execution of those who had committed serious crimes at age 16 and 17. Many still retain powers of life imprisonment without parole. At least 2,225 child offenders were serving such a sentence in 2005; 60 per cent of whom were African-American (Human Rights Watch/Amnesty International, 2005). In contrast to the ‘best interest’ principle underpinning the establishment of the first juvenile court in Chicago in 1899, juvenile justice systems throughout America now give greater weight to punishment as an end in itself. Almost all states have made it easier to transfer young people to the adult system, have created mandatory minimum custody sentences and have undermined the principle of confidentiality by facilitating the sharing of youth defendants’ social history among criminal justice, education, health and social service agencies and the media (Amnesty International, 1998; Snyder, 2002; Mears, 2006). As a result an average of 7500 children are being held in adult jails at any one time (Campaign for Youth Justice, 2007). The depth of a ‘punitive turn’ in America in the 1990s is undeniable, although we should also be mindful of distinct state differences and current pressures – economic, moral, pragmatic - to reverse this trend (Krisberg, 2006; Benekos and Merlo, 2008). Wacquant’s thesis also seems to hold true when considering policy trajectories over the past two decades in the UK and in particular in England and Wales. Here a doubling of the population of children detained in the ‘juvenile secure estate’ since 1993, the adoption (symbolically or otherwise) of American experiments with curfews, naming and shaming, zero tolerance, dispersal zones, parental sin-bins, fast tracking, coupled with the abolition of the presumption of *doli incapax* and the targeting of pre-criminal disorder and incivility, all suggest an

American-inspired 'institutionalised intolerance' towards those aged under 18 (Muncie, 2002).

But is this mirrored in the rest of Western Europe? Against a backdrop over the past 30 years of a near universal shift in juvenile justice from discretionary welfare interventions to various justice-based principles and procedures, Junger-Tas (2006, p. 505) claims that the 'main trend in juvenile justice in a number of countries has been more repressive but not necessarily more effective'. Numerous recent developments and state commentaries give this thesis some support. Van Swaaningen (2005) records how a traditional culture of tolerance in Holland has been rapidly dismantled by a vastly expanded and punitive criminal justice state. The number of places of youth detention has tripled since 1990 whilst early intervention projects, such as STOP, have effectively lowered penal responsibility from 12 to 10 year olds (uit Beijerse and van Swaaningen, 2006). In Belgium public debate about insecurity and lack of safety has fuelled a fear of youth crime and legitimised police initiatives in curfew and zero tolerance (Put and Walgrave, 2006). Long standing principles of youth protection also appear threatened by increased resort to referring juvenile offenders to the adult court (van Dijk et al, 2005). The election of Sarkozy in France in 2007 was swiftly followed by a promise that re-offenders aged 16 and above would be treated as adults. Sarkozy's electoral success has been partly explained by his pre-election declaration (at a time of widespread urban disturbances in 2005) that delinquent youths on poor estates were 'scum' that should be 'cleaned out with a hose' (*The Times* 4 November 2005). In 2008, with regional elections in the offing, Chancellor Merkel in Germany announced plans to introduce boot camps and 'warning shot arrests' particularly for immigrant youth. The issue had come to a head following an attack on a pensioner by Greek and Turkish youths. She declared that 'we have too many criminal young foreigners' despite statistics showing that crime by non-Germans was in decline and that youth crime had remained stable at around 12% of all crimes for the past 15 years (*Guardian* 8 January 2008). Commentaries on juvenile justice in Spain have concluded that recent legislative change has in the main devalued principles of 'best interest' in favour of a toughening of responses to young offenders (Rechea Alberola and Fernandez Molina, 2006). The reformed children's court in Ireland (Kilkelly, 2008) and the new youth courts for 16 and 17 year olds in Scotland (Piacentini and Walters, 2006) both tend to fail to recognise the particular needs of young people and

operate in a manner more akin to the adult court. This concern also appears capable of crossing traditional political boundaries. In Sweden, alarmism, zero tolerance and increased sanctioning of penal control has become as much at the heart of social democratic as conservative political discourse (Tham, 2001). In the context of a 'return to law and order' (Balvig, 2004), Denmark's long standing welfare boards, which act instead of court based systems for young offenders, are also reported to be under threat by more repressive crime control initiatives (Jepsen, 2006).

Such commentaries clearly suggest that not only in the USA and England and Wales but throughout much of western Europe, punitive values associated with retribution, incapacitation, individual responsibility and offender accountability have achieved a political legitimacy to the detriment of traditional principles of juvenile protection and support. But given the paucity of truly comparative work in this area, this article examines further whether a 'new punitiveness' can be substantiated with reference to: (a) the degree of compliance with international rights conventions and (b) comparative rates of juvenile custody. Whilst such an exercise should not be expected to particularly advance the methodological rigour of comparative criminology or to indisputably confirm or deny the 'punitive turn' thesis, these criteria should provide more reliable comparative data than that currently available and allow us to begin to unravel some of the complexities in understanding the nature and meaning of contemporary shifts in international juvenile justice.

Assessing rights compliance

The 1989 United Nations Convention on the Rights of the Child (UNCRC) established a near global consensus that all children have a right to *protection*, to *participation*, to *personal development* and to basic material *provision*. In terms of juvenile justice it promoted the core principles of 'best interests' of the child, custody as a last resort, separation from adults and processes that respect the dignity of the child. By 2006 191 countries had ratified the Convention, the major exception being the USA which had long claimed that it would fundamentally undermine parental rights and authority (Krisberg, 2006). Further, in 2006 The Commission of the European Communities published its own separate EU strategy on the rights of children affirming the issue as a 'priority' with the aim of promoting the EU as 'a

beacon to the rest of the world'. To establish how far individual states are treating their young in the spirit, if not the word, of the Convention, the United Nations also established a separate Committee which requires nation states to report on their 'progress' and to receive recommendations for further action. The foundational element of international youth justice, it claimed, is that children in 'conflict with the law' deserve to be treated with a respect and dignity that recognises their vulnerability and their lack of full awareness of the consequences of their behaviour (United Nations Committee on the Rights of the Child, 2007).

Studying these reports reveals the extent to which international obligations are being ignored or utilised to counter the 'punitive turn'.²

The UN Committee's 'concluding comments' for the three jurisdictions of the UK (England and Wales, Scotland, Northern Ireland) and 15 west European states (Austria, Belgium, Denmark, France, Finland, Germany, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland) between 2001 and 2006 (there is of course no report on the USA, but see, for example, critical commentaries from Amnesty, 1998, Human Rights Watch/Amnesty International, 2005 and Campaign for Youth Justice, 2007) note various positive developments in most jurisdictions, such as :

- Introduction of child protection laws
- Acknowledgment of problems of child trafficking, sexual exploitation and the recruitment of children for armed conflict
- Introduction of measures to give children a voice such as through school councils or youth parliaments
- Introduction of legal representation in juvenile court and attempts to divert from court through mediation and restoration.

However the Committee's 'General Comments' published in 2007, as well the critical commentaries from the various countries already noted, conclude that implementation of the UNCRC has often been piecemeal and that in juvenile justice reform the issue of children's rights frequently appears as an afterthought :

'...many States parties still have a long way to go in achieving full compliance with CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort... The Committee is equally concerned about the lack of information on the measures that States parties have taken to prevent children from coming into conflict with the law. This may be the result of a lack of a comprehensive policy for the field of juvenile justice. This may also explain why many States parties are providing only very limited statistical data on the treatment of children in conflict with the law'.
(United Nations Committee on the Rights of the Child, 2007, p.1).

In addition a United Nations report specifically on violence against children states that in care and justice systems:

'Millions of children, particularly boys, spend substantial periods of their lives under the control and supervision of care authorities or justice systems, and in institutions such as orphanages, children's homes, care homes, police lock-ups, prisons, juvenile detention facilities and reform schools These children are at risk of violence from staff and officials responsible for their well-being. Corporal punishment in institutions is not explicitly prohibited in a majority of countries. Overcrowding and squalid conditions, societal stigmatization and discrimination, and poorly trained staff heighten the risk of violence. Effective complaints, monitoring and inspection mechanisms, and adequate government regulation and oversight are frequently absent. Not all perpetrators are held accountable, creating a culture of impunity and tolerance of violence against children'. (United Nations General Assembly, 2006, p.16)

The problem is that the UNCRC is persuasive but breach attracts no formal sanction. It may be the most ratified of all international human rights instruments but it is also the most violated. In most cases it has not been incorporated into the domestic statutes of those ratifying it. Abramson (2006) has concluded that the obligations of the UNCRC are received by many states as 'unwanted'. He notes how disproportionate sentences, insufficient respect for the rule of law, excessive use of custody and

improper use of the juvenile justice system to tackle other social problems, are widespread.

The recurring issues raised by the UN Committee in relation to children rights in the UK and western Europe focus in particular on sections 37, 39 and 40 of the Convention. In all of their reports it is recommended that every state (except Norway) give more consideration to implementing these core principles (see figure 1). This in itself is a cause for concern given that each country has now had almost 20 years to move towards implementation. It is also quite staggering that most states appear to have failed to recognize the centrality of such issues as distinctive needs, dignity, humane treatment and so on as absolutely core to the realization of children's rights.

[Figure 1 here]

Eight states (Finland, Denmark, Switzerland, Austria, Ireland, UK, Germany, and Portugal) have been specifically criticized for failing to separate children from adults in custody or because they are beginning to break down distinctions between adult and juvenile systems allowing for easier movement between the two (as is characteristic of the widely used juvenile transfer to adult court in USA). The irony is that some states, attempting to comply with the Convention's principle of due process, have dismantled existing measures that might have protected children from 'adult justice'.

The report on Germany (see note 2 for full reference to this and the other countries discussed below) condemns the increasing number of children placed in detention, (especially affecting children of foreign origin), and that children in detention or custody are being placed with persons up to the age of 25 years.

The Report on the Netherlands in 2004 expressed concern that custody was no longer being used as a last resort.

In its report on France the Committee reiterates its concern about legislation and practice that tends to favour repressive over educational measures. It expressed

concern about increases in the numbers of children in prison and the resulting worsening of conditions.

Just as significantly 15 (of the 18) jurisdictions are condemned for discriminating against minorities/asylum seekers and having overrepresentations of immigrant and minority groups under arrest or in detention. The UN Committee in particular notes the disproportionate criminalization and incarceration of Roma and traveller communities (in Italy; Switzerland, Finland, Germany, Greece, the 3 UK jurisdictions, Ireland, France, Spain, Portugal), Moroccans and Surinamese (in the Netherlands), and North Africans (in Belgium and Denmark).

This raises the question of a fundamental racialisation of youth justice in western Europe. Although no nation state collects data on the ethnic background of the children and young people that enter and are processed by their respective systems, there again appears to be a notable emulation of racialised processes and outcomes as witnessed in the USA. In the USA ethnic minorities make up about a third of all juveniles in the general population but about two thirds of those in secure detention. In some states almost all cases of juvenile waiver involve 'minorities'. There can be little dispute too that across Europe, ethnic and immigrant groups have been increasingly identified as a threatening 'underclass' deserving only of suspicion, neutralisation and exclusion (Wacquant, 1999a). For example, Europe's 8 million Roma, which make up the largest ethnic minority group in the European Union, are widely reported as enduring systematic harassment, discrimination, forced eviction, ghettoisation and detention. In some jurisdictions, such as Switzerland, Austria, Belgium and Italy over a third of their total prison populations are foreign nationals. Over 100,000 prisoners in EU countries do not have citizenship of the countries in which they are incarcerated. The more punitive elements of juvenile justice do appear to be increasingly used/reserved for these sections of the population. Is juvenile justice being further corroded as a mechanism for the punitive control of primarily immigrant and 'minority' populations?

Arguably the most damning UN Committee report was reserved for the UK. The Committee was particularly critical of the low age of criminal responsibility; at 8 in Scotland and 10 in England and Wales and N. Ireland, the UK countries have the

lowest ages of criminal responsibility in western Europe (reflecting something more of an American than a European norm, see table 1). Indeed of note in some European jurisdictions has been the recent raising of the age of responsibility (as in Spain, Switzerland and Ireland).

[Table 1 here]

The Committee was also scathing of the UK's record of imprisoning 12 year olds (through the use of secure training centres in England and Wales, for which there is no European equivalent), of increases in lengths of sentence, for targeting the non-criminal through antisocial behaviour legislation and for generally failing to act in the child's 'best interests'. The Children's Rights Alliance for England (CRAE, 2005) concluded that England and Wales had effectively 'torn up' the UN Convention. Pre-emptive intervention has also been considered by the European Human Rights Commissioner to be 'entirely disproportionate', 'counter-productive' and in violation of the European Convention on Human Rights (ECHR) (Office of the Commissioner for Human Rights, 2005). In November 2004 Jaap Doek, chair of the UN Committee on the Rights of the Child, called on the UK to take 'urgent action' to stop abuses, recalling the death of two children in custody that year and asking why England and Wales continued to tolerate the unnecessary jailing of juveniles (Goldson and Muncie, 2006).

Estimating rates of custody

There are various sources, such as the United Nations *Surveys on Crime Trends and the Operations of Criminal Justice Systems* (now in its 10th edition) and The *European Sourcebook of Crime and Criminal Justice* (now in its 3rd edition) that provide estimates (usually as a percentage of total prison populations) of the juvenile secure population in various countries at various times. These particular sources however have often proved partial and contradictory with data absent for numerous states and/or collected at different times of the year (Muncie, 2005). The lack of reliable data on how many children are incarcerated at any given time is probably symptomatic of the relative lack of importance given to the issue. Even when data is recorded their use may be of limited comparative value because what constitutes a

‘child’, a ‘juvenile’ or a ‘young person’ means different things within different jurisdictions. This is clearly apparent in the variance in ages of criminal responsibility ranging from 7 or below in some states in America, 8 in Scotland to 18 in Belgium (see table 1 above). It also still appears to be the case that if a particular state is asked to estimate how many juveniles are locked up at any one time (if there is indeed a response) it is never clear whether the data is based on statistics of ‘stock’ or ‘flow’, to under 18s or to under 21s, to total custodial populations or just those under sentence or indeed to just those in prisons or whether it includes those in other custodial institutions which may be located in quasi welfare systems. The *European Sourcebook* (2006, p. 21) acknowledges that ‘the lack of uniform definitions of offences, of common measuring instruments and of common methodology makes comparisons between countries extremely hazardous’.

With these warnings in mind the following estimates of penal populations are based on the world prison population list produced by Walmsley initially for the Home Office and latterly for the International Centre for Prison Studies (ICPS) based at Kings College London. Walmsley (2006) estimates that over 9 million people are being held in penal institutions worldwide at any one time. His data do not detail the number of juveniles but this has been estimated at being in the region of one million (Goldson, 2008). The USA has by far the highest penal population with some 738 incarcerated per 100,000 population. The England and Wales rate of 148 places it as the highest in Western Europe (see Table 2). Of equal significance is a reported increase in the prison populations of all of these countries between 2000 and 2005 (except Switzerland). The largest increase has been in the Netherlands.

[Table 2 here]

These data of course combine adults and juveniles. Arguably the most accurate estimate of rates *juvenile* incarceration can be derived by combining custody data collected by ICPS and population data gathered by UNICEF. This allows estimates to be made of juvenile custody rates per 1000 under 18 population.³ Once again these sources identify USA as atypical. It easily outstrips the rest with a rate of 1.4/1000. In Western Europe, the Netherlands, England and Wales and Germany appear the most ‘custody prone’. Of note is that England and Wales, France and Italy have roughly

equal numbers of under 18 year olds in the general population. But in 2006/7 England and Wales held just under 3000 under 18 year olds in custody, compared to 572 in France, and 275 in Italy (see table 3)

[Table 3 here]

There are of course good reasons to remain cautious (if not dismissive) in ‘reading’ such statistics. Most worrying and probably reflecting the relative lack of importance that some nation states give to the issue, is that many countries do not have any reliable statistical record of who they lock up and where. There are no data specifically on under 18 year olds for Portugal and Spain. As a commentary on juvenile justice in Spain noted: ‘There is one problem with juvenile justice statistics in our country; there are none’ (Rechea Alberola and Fernandez Molina, 2006). When data is collected it appears rarely done so on a regular basis or on equivalent dates (juvenile custody rates are known to fluctuate widely through the year). Often these *prison* statistics explicitly exclude those children removed from home on welfare and protection grounds rather than criminal grounds. But what is classified as penal custody in one country may not be in others though regimes may be similar. The existence of specialised detention centres, psychiatric units, training schools, treatment regimes, community homes, reception centres, residential care institutions, closed juvenile care (as in Sweden), reformatories (as in Finland) and secure wards (as in Denmark), may all hold young people against their (and their parents) will but may be excluded from penal statistics.

So for example the statistics presented here for England and Wales include all elements of the ‘secure estate’ but do not include children incarcerated in psychiatric secure provision under mental health legislation. Pitts and Kuula (2006) have argued that Finland’s extremely low rate of custody may somewhat mask extensive resort to reformatories and psychiatric units via the youth welfare system. On this basis they estimate that Finland may remove from home and institutionalise more children pro rata than do England and Wales. What is at stake here is the perennially disputed logics of whether troubled and troublesome children are deserving of a ‘welfare’ or a ‘criminal’ response. Such research also reinforces the doubt whether ‘punitiveness’ can or should be measured solely with reference to rates of *penal* custody.

The wildly diverse resort to penal custody across Western Europe (and a generally lower resort compared to the USA) though remains an issue crying out for explanation. Is it suggestive of a tolerant and less repressive penal climate in Europe? Walmsley (2006) found in his world prison population list of 211 countries that 73% had recorded *increases* in their total prison populations over the previous five years. There are no comparable worldwide or European statistical time series records for under 18s. But a monitoring of International Centre for Prison Studies-derived figures between 2004 and 2007 suggests *increases* in the USA (+3000 since 2003), the Netherlands (+1800 since 2004) and England and Wales (+300 since 2004), compared to a *steady (and low)* rate in Denmark, Norway, Sweden, and Finland and *decreases* in Ireland (-30 since 2004) and Italy (-130 since 2004). If these figures have any value at all, then some European states might well be considered as witnessing a form of USA-inspired youth re-penalisation/culture of control, whilst others are pursuing reductionist programmes and those in Scandinavia seem quite content without having any significant resort to penal custody at all. 4

The significance of diversity

The most common, popular, indeed political, explanation for this diversity is that it simply reflects differences in rates of juvenile crime, particularly rates of violent juvenile crime. This assumption, however, has been roundly dismissed. The Council of Europe has long concluded that there is no relation between crime and prison rates: 'High overall crime rates do not necessarily induce high prison rates and vice versa. Neither do high prison rates necessarily induce low overall crime rates and vice versa' (European Sourcebook, 2003, p.193). Estrada's (2001) study of self report surveys and hospital admission data also concludes that any purported rise in juvenile violence across Europe is probably illusory and more likely to be a politically and media driven ideological construct paralleling the general shift towards systems of 'just deserts'.

'Trends in juvenile crime do not constitute the primary explanation for the rapid rise in the number of youths registered by the criminal justice system during the 1990s. The rise is rather the result in a marked shift in the way society reacts to the actions of young people' (Estrada, 2001, p.647)

Von Hofer's (2003) comparative study of incarceration in Finland, Sweden and Holland, similarly argues that their differences and convergences are best explained as a result of specific political decision making at the level of the nation state. Here again we face something of a paradox: that is an assumption of greater criminal justice intervention across Europe but also an acknowledgement of the centrality of how individual nation states can and do react differently to the 'actions of young people'.

Certain global/neo-liberal readings of criminal justice reform are persuasive that a growing necessity of nation states to attract international capital might compel them to adopt similar economic, social *and* criminal justice policies. In this process juvenile crime and juvenile justice typically become excessively politicised and core principles of 'meeting needs' eclipsed by those of 'addressing fears'. But it is also clear that there is little homogeneity in how the neo-liberal might be translated into punitive or tolerant values. One widely adopted means employed to illustrate this diversity has been through the construction of typologies and models of juvenile justice. Certainly the traditional binaries of 'welfare' and 'justice' are broadly acknowledged as no longer capable of capturing an increasingly complex constellation of competing rationales. Winterdyck (2002) identified 'welfare' (eg Scotland, France), 'corporate' (eg. England and Wales), 'modified justice' (eg. the Netherlands), 'justice' (eg. Germany), 'crime control' (eg, USA) and 'participatory' (eg. Japan) models. Cavadino and Dignan (2006) have explored patterns in international juvenile justice penalty in terms of their relation to differing political economies such as the 'neo-liberal', (eg. USA, England and Wales), conservative corporatist (eg. Germany, Italy, France and the Netherlands), social democratic corporatist (eg. Sweden, Finland) and oriental corporatist (eg. Japan). Such typologies are indeed useful in giving juvenile justice reform some grounding in material realities but disputes over their accuracy or applicability remain. How for example can the apparently vastly different trajectories of juvenile justice in the Netherlands and Italy be explored within such frameworks? Classificatory models often fail to do justice to the myriad ways in which broad trends can be challenged, reworked, adapted or resisted at the local level and the degree to which any system is likely to be in continuous flux as it implements, imitates or rejects policy and practices developed both internally and externally (Muncie, 2005).

Analyses at the local level for example seem better capable of identifying some of the key drivers of less punitive and more progressive policies and practices which at least hold a promise of moving towards implementation of the UNCRC. For example we can identify the full incorporation of UNCRC into domestic law (as in Norway); the acknowledgement of children as a deserving case through setting the age of criminal responsibility at 15 (as across Scandinavia) or 18 (as in Belgium); a general depoliticisation/media desensationalisation of the issue of juvenile crime (as in Finland); and the abolition of specific youth prisons (as in Norway and Denmark) as marking some of the foundational elements of a principled youth justice (Goldson and Muncie, 2006). In turn this might be supported by specific practices such as the Swedish waiver of prosecution/suspended sentences (Storgaard, 2004); the adoption of the Italian *messa alla prova* (pre trial probation for all, including the most serious offenders) (Nelken, 2006) or the Finnish insistence that social policy should always come before criminal justice policy (Lappi-Seppala, 2006). Even then we should acknowledge that just as cultures of control are differentially realised in different contexts the same applies to anything we might identify as ‘progressive’ or ‘tolerant’. It is doubtful that either are simply transferable from one jurisdiction to another. For example, the precise reasons for apparent tolerance in Italy bear little or no relation to that experienced in Scandinavia; being (partly) driven in the former by measures designed to continually postpone or avoid court proceedings (Nelken, 2006) and (partly) driven in the latter by a historical commitment to child welfare (Lappi-Seppala, 2006).

Whatever the impact of the merging of ‘global’ neo-liberal economics with neo-conservative politics emanating from the USA, (and clearly affecting England and Wales and the Netherlands) it is also clear that globalisation is mediated by distinctive national and regional and local practitioner cultures. The cultural dynamics and institutional constraints of particular localities can empower or disempower key professions and enable external policy imperatives to be mediated or resisted (McAra, 2004). Or as Tonry (2001, p.518) put it the ‘best explanations’ for penal severity or tolerance remain ‘parochially national and cultural’ such that some European countries appear more comfortable with experts, rather than politicians and public opinion, driving penal policy and that those with more extensive social welfare systems continue to foster ‘value systems in which crime raises more complex social

issues than many politicians in moralistic America believe or will admit' (p.530). All of this affords a continuing centrality to cultural contingency and local actors in the precise ways in which the global, the national, and the sub-national are activated on the ground (Muncie, 2005). There is something of an unfortunate tendency for many Anglophone academics and policy makers to assume that general trends in the USA are not only crossing all American states, but are also capable of being transferred internationally. They are not.

Two examples best exemplify this divergence. In the USA juvenile incarceration rates, at the peak of its 'punitive turn' in the late 1990s, varied from 70 per 100,000 juveniles in Vermont to 583 in Louisiana. Mears (2006) accounts for this contrast as reflective of localised cultural mentalities such that degrees of juvenile incarceration tend to be reflections of broader responses to adult violent crime and of adult criminal justice policy rather than as anything to do with the behaviour of young people per se. Similarly it is becoming increasingly important not to automatically equate England with the rest of the UK. With the establishment of a separate Welsh Assembly Government, for example, youth policy in Wales appears more concerned with conforming to a UNCRC 'children first' philosophy rather than following an 'offender first' mentality so evident in England (National Assembly for Wales, 2004).

Comparative analysis may reveal something of a 'globalised' emergent politicisation of the 'youth problem', but also the continuance of a diverse range of 'localised' juvenile justice practices based on informal social controls, diversion, education and social protection. These contrary cases can be used as one basis for re-instating and promoting the broad contours of a juvenile justice working in the 'best interests' of the child and through which the excesses and failures of contemporary punitiveness can be exposed and challenged.

Notes

1. This article is based on a paper delivered to the European Society of Criminology annual conference held in Bologna, Italy in September 2007.

2. This overview is based on a review of the concluding comments made by the UN Committee on the Rights of the Child in their consideration of reports submitted by states parties under article 44 of the Convention on the Rights of the Child. Sixteen reports from European state parties were analysed: Italy (CRC/C/15/Add.198, 18 March 2003); Germany (CRC/C/15/Add.226, 26 February 2004); Sweden (CRC/C/15/Add.248, 30 March 2005); Portugal (CRC/C/15/Add.162, 6 November 2001); United Kingdom (CRC/C/15/Add.188, 9 October 2002); Spain (CRC/C/15/Add.185, 13 June 2002), Netherlands (CRC/C/15/Add.227, 26 February 2004); Ireland (CRC/C/IRL/CO/2, 29 September 2006); France (CRC/C/15/Add.240, 30 June 2004); Belgium (CRC/C/15/Add.178, 13 June 2002); Denmark (CRC/C/DNK/CO/3, 23 November 2005); Greece (CRC/C/15/Add.170, 2 April 2002); Switzerland (CRC/C/15/Add.182, 7 June 2002); Finland (CRC/C/15/Add.272, 20 October 2005); Norway (CRC/C/15/Add.263, 21 September 2005); Austria (CRC/C/15/Add.251, 31 March 2005).

3. This method of estimating juvenile incarceration rates was first employed by Tim Bateman when preparing a report on a Nacro/Children Law UK sponsored conference on European experiences in reducing custodial populations held in London in October 2002 (Nacro, 2002). Cavadino and Dignan (2006) have further refined this method by correlating numbers in custody against relevant age ranges according to ages of criminal responsibility (rather than total under 18 year old populations). Nevertheless this produced a similar 'league table' headed by the USA, with the Netherlands and England and Wales incarcerating at the highest rate in western Europe and Finland at the lowest rate.

4. Data collected by Nacro (2003) estimated similar under 18 year old custody rates (at various dates in 2000) for some of the countries discussed in this article with the exception of a 0.49 rate in Germany, and a 0.034 rate in the Netherlands. The extent of such disparity lends further weight to treating this custodial data with some caution. As the European Sourcebook (2006) advises: 'Avoid interpreting 'large' variations from one year to another as evidence for changes in the measured phenomenon. Sudden increases or decreases are often merely indicative of modifications in the law or in the underlying statistical routines/counting rules'.

Figure 1

United Nations Convention on the Rights of the Child

Sections 37, 39 and 40

- **No child to be subject to inhuman or degrading treatment or punishment (Article 37a)**
- **Detention of a child as a last resort and for the shortest period of time (Article 37b)**
- **Separation from adults in custody (Article 37c)**
- **Access to legal assistance (Article 37d)**
- **Priority for health, self respect and dignity of child (Article 39)**
- **Privacy in all judicial proceedings (Article 40vii)**
- **Establishment of minimum age below which children are assumed not to have the capacity to infringe penal law (Article 40viiia)**
- **Establishment of measures which circumvent judicial proceedings (Article 40viib)**
- **Availability of alternatives to institutional custody/care in which children are dealt with proportionate to their circumstances and offence (Article 40, 4)**

Source: Abbreviated from United Nations Convention on the Rights of the Child (1989).

Table 1

Variance in ages of criminal responsibility

USA	6+ (state variance)
Scotland	8
Switzerland	10 (raised from 7 in 2006)
England and Wales	10 (<i>doli incapax</i> abolished 1998)
Northern Ireland	10
Ireland	12 (from 7 in 2001; to be implemented)
Netherlands	12
Portugal	12
Greece	12
France	13
Germany	14
Austria	14
Italy	14
Spain	14 (raised from 12 in 2001)
Denmark	15
Finland	15
Norway	15 (raised from 14 in 1990)
Sweden	15
Belgium	18
Luxembourg	18

Table 2

Prison Populations in North America and Western Europe 2005-2006

	Total	Rate per 100,000 Population
North America		
USA	2,186,230	738
Canada	34,096	107
Western Europe		
England and Wales	79,861	148
Spain	64,215	145
Scotland	7,131	139
Netherlands	21,013	128
Portugal	12,870	121
Austria	8,766	105
Italy	61,721	104
Germany	78,581	95
Belgium	9,597	91
Greece	9,984	90
France	52,009	85
N. Ireland	1,466	84
Switzerland	6,111	83
Sweden	7,450	82
Denmark	4,198	77
Finland	3,954	75
Ireland	3,080	72
Norway	3,048	66

Source: Derived from Walmsley, *World Prison Population List* (7th edition) ICPS, 2006

Table 3

Estimated number of juveniles in penal custody: USA and Western Europe (at various dates 2004-2007)

	Under 18 year olds in custody	Rate per 1000 under 18 population
USA	105635 (06/06)	1.4
Netherlands	2038 (07/06)	0.57
England and Wales	2927 (06/07)	0.25
Germany	3448 (11/06)	0.23
Greece	434 (09/06)	0.22
Spain (under 21)	1520 (05/07)	0.20
Scotland	188 (09/04)	0.17
N. Ireland	76 (09/04)	0.16
Austria	161 (05/07)	0.10
Portugal (under 19)	140 (12/06)	0.06
Ireland	52 (04/06)	0.05
France	572 (09/06)	0.04
Switzerland	52 (09/06)	0.03
Italy	275 (12/06)	0.02
Norway	10 (06/07)	0.009
Belgium	19 (08/06)	0.008
Sweden	14 (10/06)	0.007
Denmark	3 (07/07)	0.002
Finland	3 (05/07)	0.002

Sources: http://www.unicef.org/statistics/index_countrystats.html and http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/world_brief.html (accessed September 2007)

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