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# **The Globalisation of Crime Control: the Case of Youth and Juvenile Justice**

Neo-liberalism, policy convergence and international conventions.

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## **Abstract**

The concept of globalisation has gradually permeated criminology, but more so as applied to transnational organised crime, international terrorism and policing than in addressing processes of criminal justice reform. So how useful is it in understanding contemporary transformations in systems of youth and juvenile justice? Until the 1970s juvenile justice, was dominated by an entrenched series of debates circulating around the often-nebulous opposition of welfare and punishment. Since then neo-liberal assaults on the social logics of the welfare state and public provision, particularly in Britain, USA, Canada and Australasia, have brought profound shifts in economic, social and political relations associated with the 'free market'. In their wake have emerged a renewed penalisation of young people and an emphasis on enforcing individual, family and community responsibility. Simultaneously many jurisdictions worldwide have begun to experiment with restorative justice and the prospect of rehabilitation through mediation. Widely ratified international directives, epitomised by the United Nations Convention on the Rights of the Child, have also begun to stress the importance of incorporating a rights consciousness into juvenile justice reform. These diverse trajectories in retribution, responsibility, restoration and rights have created a particularly complex contemporary landscape of youth governance. The concept of *globalisation* draws attention to the impact that these competing transformations have had on processes of policy and legal convergence. Based on a wide range of bibliographic and web resources, this article assesses the extent to which it is now possible to talk of a global juvenile/youth justice or whether persistent national and local divergences, together with the contradictions of contemporary reform, preclude any aspiration for the delivery of a universal and consensual product.

## **Key Words**

Comparative criminology · globalisation · localisation · governance · policy transfer

## **Introduction**

There has been a remarkable correspondence in the nature of juvenile/youth justice reform particularly across many western societies in the past 40 years. Since the 1970s there has been a notable shift from a welfare model based on meeting individual needs to a justice model more concerned with the offence than the offender. By the 1980s 'justice' had, however, come to take on numerous forms from

due process and rights; to 'just deserts' and authoritarian crime control. In the 1990s many states began experimenting with forms of restorative justice as a means of re-introducing a greater emphasis on rehabilitation whilst still holding young people accountable for their actions. By the 21<sup>st</sup> century juvenile/youth justice had developed into a particularly complex agglomeration of competing and contradictory policies, including retribution, responsibility, rights, restoration and rehabilitation, which simultaneously exhibit strong exclusionary and inclusionary tendencies (Muncie and Hughes, 2002). Of course these shifts were never uniform but no western society has been able to ignore their impact. The key issues addressed in this paper are why did this general trend from welfare to justice to just deserts to restoration and responsibility occur? and with what effects? To do so it assesses the analytical usefulness of the concept of globalisation.

The notion of globalization suggests a growing international economic, political, legal and cultural interconnectedness based on advances in technological communications, the removal of trade barriers underpinned neo-liberal economics and politics and the formulation of directives in international law. It is contended that shifts in political economy, particularly those associated with capital mobility and information exchange, across advanced industrialised countries have progressively eroded the foundations of redistributive welfare states and severely constrained the range of strategic political strategies and policy options that individual states can pursue (Beck, 2000). The concept of globalisation suggests two inter-related transformations of interest to criminology. Firstly that criminal justice policies are converging worldwide (or at least across the Anglophone global north). A combination of macro socio-economic developments, initiatives in international human rights and accelerations in processes of policy transfer and diffusion can be viewed as symptomatic of a rapid homogenisation of criminal justice policies. The necessity of attracting international capital compels governments (if they are to achieve status as modern states) to adopt similar economic, social and criminal justice policies in part aided by geo-political mobility and subsequent policy transfer, diffusion and learning. Secondly this homogenisation, it is contended, is underpinned by a fundamental shift in state/market relations. A loss (or at least a major reconfiguration) of 'the social' is evidenced in the processes whereby neo-liberal conceptions of the market and international capital encourage the formulation of policies based less on principles of social inclusion and

more on social inequality, deregulation, privatisation, penal expansionism and welfare residualism. In effect, the thesis presages the decline of social democratic reformist politics and projects worldwide (Mishra, 1999). And it is children, as the least powerful members of communities, who are the most likely to routinely feel the brunt of this neo-liberal economic project.

This paper assesses the pertinence of such thematics to understanding global, international, national and local shifts in contemporary youth and juvenile justice policy and practice. But ‘globalisation’ immediately poses some thorny questions for the study of systems of youth justice. Is it synonymous with such competing terms as universalism and transnationalisation? Does it signify a wholesale removal of national and international borders or does it conjure up visions that are peculiarly western? Policy making in this area has also traditionally been studied with regard to national sovereignty and the independence of the nation state. Indeed criminal justice remains a powerful icon of sovereign statehood. As a result the paper explores how youth justice is embroiled, not simply in the processes of globalization, but in negotiating its way through a number of diverse and multi-tiered national and local modes of governance. Global processes of convergence may not be as singular and one dimensional as might be first assumed.

### **Global processes 1: From welfare to neo-liberal governance**

It has been widely observed that since the 1960s penal welfarism has been undermined by the development of forms of neo-liberal or ‘advanced’ governance (Bell, 1993; Rose, 1996a and b; 2000; Garland, 1996; 2001). This fundamental change in criminal and juvenile justice has been broadly characterized as placing less emphasis on the social contexts of crime and measures of state protection and more on prescriptions of individual/family/community responsibility and accountability. The shift has been captured in the notion of ‘governing at a distance’. Welfarism has been increasingly critiqued for encouraging state dependence, overloading the responsibilities of the state and undermining the ability of individuals to take responsibility for their own actions. ‘Old’ notions of *social engineering*, *social benefits*, *social work*, and *social welfare*, it is claimed, have been transformed to create responsible and autonomous (i.e. not welfare dependant) citizens (O’Malley,

2001). A 'loss of the social' thesis suggests a number of interrelated - sometimes contradictory - criminal justice processes that have occurred to varying degrees across neo-conservative and social democratic neo-liberal states. These include the privatizing of the state sector and the commodifying of crime control; the widening of material inequalities between and within states thus creating new insecurities and fuelling demands for centralised authoritarian law and order strategies; the devolving of responsibility for government to individuals, families and communities (as captured in the notion of the 'the active citizen'); and the espousing of scientific realism and pragmatic 'what works' responses to crime and disorder in the hope that an image of an 'orderly environment' can be secured which in turn will help to attract 'nomadic capital'.

Numerous authors have remarked upon the impact that these processes have had in a growing homogenisation of criminal justice across western societies, driven in particular by the spread of punitive penal policies from the USA (see for example, Wacquant, 1999; Garland, 2001). In youth and juvenile justice these shifts are recognised in a general diminution of a welfare- based-mode of governance in favour of various 'justice' based responsabilisation and managerial strategies (Muncie and Hughes, 2002). Six recurring and inter-related themes can be identified (Muncie, 2003a):

*Diminution of welfare:* By the late 1970s, liberal lawyers, civil libertarians and radical social workers were becoming increasingly critical of 'welfare-based' procedures and sentencing. They argued that meeting the 'needs' of offenders acted as a spurious justification for placing excessive restrictions on individual liberty, particularly for young women, which were out of proportion either to the seriousness of the offence or to the realities of being in 'need of care and protection'. Social work interventions were considered to not only preserve explanations of individual pathology, but also to undermine the right to natural justice. Young people were considered in double jeopardy, sentenced for their background as well as for their offence. In the wake of these criticisms a new justice based model of corrections emerged. Its leading proponent, Von Hirsch (1976) proposed that proportionality of punishment to fit the crime, determinacy of sentencing, equity and protection of rights through due process and an end to judicial, professional and administrative discretion be reinstated at the centre of youth and criminal justice practice. The idea of punishing the crime, not the

person, had clear attractions for those seeking an end to the abuses of discretionary power. Indeed the impact of this 'back to justice' was reflected in juvenile/youth justice reform in many western jurisdictions at the time. A focus on 'deeds' rather than 'needs' formally expunged many of the last vestiges of welfarism from many youth justice systems.

*Adulteration:* This liberal critique of welfare, however, also coalesced with the concerns of traditional retributivists that rehabilitation was a 'soft option'. For them tougher sentencing would enable criminals to get their 'just deserts'. Within the political climate of the 1980s a discourse of 'justice and rights' was appropriated as one of 'individual responsibility and obligation'. Accordingly, Hudson (1987) has argued that the 'just deserts' or 'back to justice' movements that emerged in many western jurisdictions in the 1980s was evidence of a 'modern retributivism' rather than necessarily heralding the emergence of new liberal regimes and a positive rights agenda. An 'adulteration' of youth justice has witnessed widespread dismantling – particularly in the US - of special court procedures which had been in place for much of the 20<sup>th</sup> century to protect young people from the stigma and formality of adult justice (Fionda, 1998; Grisso and Schwartz, 2000; Schaffner, 2002). The emphasis has become one of fighting juvenile crime rather than securing juvenile justice. The principle of *doli incapax* was abolished in England and Wales in 1998. Similarly Canada's 2003 youth justice reforms are based on the core principle that the protection of society be uppermost. As such, the age at which the youth court is empowered to impose adult sentences has been lowered from 16 to 14.

([www.canada.justice.gc.ca/en/dept/pub/yjca](http://www.canada.justice.gc.ca/en/dept/pub/yjca)).

*Risk factor prevention:* In place of traditional attempts to isolate specific causes of crime has emerged a risk factor prevention paradigm which focuses attention on the *potential* for harm, disorder and misbehaviour (rather than crime itself). These risk factors include hyperactivity, large families, poor parental supervision, low achievement and family disharmony (Farrington, 1996). It has been argued that these risks have a strong transatlantic replicability (Farrington, 2000) and certainly an obsession with identifying, assessing and managing 'risk' is central to youth justice practice not only in England and the US but also in Australia (Cunneen and White, 2002) and Canada (Smandych, 2001). In such legislation as England's Crime and Disorder Act of 1998 and Canada's Youth Criminal Justice Act of 2003 there is an amalgam of restorative, community and custodial measures based on risk profiling

and risk management. 'Risk' is increasingly presented as a factual reality rather than as a complex construction mediated through interpretative judgements of what is considered to be the norms of acceptable behaviour. Boundaries between the deviant and non-deviant; between the public and the private have become blurred. Early intervention strategies designed to identify 'anti-social' behaviour and to 'nip offending in the bud' have produced new criminal subjects and deviant 'others'. Invariably those considered most at risk are precisely those marginalised and socially excluded (street children, the disadvantaged, the impoverished, migrant children, the destitute and so on) who critics of neo-liberalism would claim are the first 'victims' of a widening income gap between rich and poor.

*Responsibilisation:* Garland (1996, p.452) refers to a responsabilisation strategy involving 'central government seeking to act upon crime not in a direct fashion through state agencies (police, courts, prisons, social work, etc.) but instead by acting indirectly, seeking to activate action on the part of non-state agencies and organizations'. The message is that all of us – from property owners to manufacturers to school authorities, families and individuals - have a responsibility to reduce criminal opportunities and increase informal controls. Rose and Miller (1992) reasoned that this was not a simple case of state abrogation or of privatization of public issues, but of a new mode of 'governing at a distance'. The state may issue directives, but responsibility for their enactment is passed down to local bodies and communities. In this climate notions of communitarianism, 'joined up' partnerships, Communities that Care (CtC), community justice, community policing, community safety and multi agency collaboration have proliferated, particularly in the UK, Canada and the US (Hughes and Edwards, 2002). The globalising appeal of zero tolerance policing strategies also ensures that youth crime and disorder is increasingly politicised and has come to dominate concerns about quality of life, urban renewal and social policy in general. Social problems are defined in terms of their criminogenic potential and criminal justice systems are taking over some of the roles that were previously undertaken by welfare and child protection agencies (Crawford, 2002).

*Actuarial justice:* Juvenile/youth justice has become progressively more disengaged from philosophies of welfare and/or justice in favour of improving internal system coherence through evidence-led policy, standardised risk assessments, technologies of actuarial justice and the implementation of managerial performance targets.

Rehabilitation or due process have been replaced by the rather less transformative rationales of processing complaints and applying punishments in an efficient and cost effective manner. Indicators that measure 'outputs' rather than 'outcomes' have begun to take on a life of their own such that the meeting of targets has become an end in itself (Feeley and Simon, 1992, Garland, 1996, Kempf-Leonard and Peterson, 2000). *Penal expansionism*: Prison populations have been growing in many countries since the 1980s. Of the 205 surveyed by Walmsley (2003), 68% recorded increases since the mid 1990s. An increasingly internationalised alliance of private industrial and penal interests has emerged that has a vested interest in penal expansion (Christie, 2000). This is most notable in prison building programmes and in the technological apparatus of crime control, such as CCTV and electronic monitoring. Juvenile codes have been reformulated to prioritise punishment. Certain groups – particularly immigrants - are identified as a threatening and permanently excluded underclass about which little can be done but to neutralise and segregate them in 'gulags of incapacitation': a process Wacquant (2001) has referred to as the neo-liberal 'penalisation of poverty'. Vengeance and cruelty are no longer an anathema to many parts of criminal justice (Simon, 2001). Politics and culture have become saturated with images of moral breakdown, incivility and the decline of the family (Garland 2001). A loose knit set of policy networks and think tanks have constructed a 'neo-liberal penal policy complex' that encourages the dissemination of punitive and exclusionary practices (Newburn, 2002).

Collectively these processes suggest an acceleration of the governance of young people *through* crime and disorder (Simon, 1997). The continual reworking and expansion of juvenile/youth justice systems; streams of legislation apparently dominating all other government concerns; the politicisation of youth crime as a means to secure electoral gain; the excessive media fascination – both as news and entertainment with all things 'criminal'; and the obsession with regulation whether through families, schools or training programmes all attest to the disorder attributed to young people as a central motif of governance. Wherever the principles of the 'free market' have spread, so have rates of incarceration. Wherever welfare state protection has been eroded, so early diagnosis of those assumed most at risk of offending have burgeoned. The punitive and the preventive may sit uneasily together but their

combination suggests a broadening and deepening of regimes of surveillance, inspection, regulation and control.

Such readings of contemporary juvenile justice give weight to the primacy of ascribing the multi-variate modes of youth governance to a combination of neo-liberal and neo-conservative rationalities and technologies. These broad trends, now recognisable, to varying degrees, particularly in many western juvenile/youth justice systems in the 21<sup>st</sup> century, lie at the heart of a neo-liberal version of the globalisation of crime control thesis.

### **Global Processes 2: Policy transfer and convergence**

Policy transfer can be considered as one of the most tangible effects of such processes. Numerous authors have remarked upon a growing similarity in criminal justice across western societies, driven in particular by neo-liberalism and the spread of penal policies particularly from the USA (Wacquant, 1999; Christie, 2000; Garland, 2001; Jones and Newburn, 2002; Newburn, 2002). It has become more and more common for nation states to look worldwide in efforts to discover 'what works' in preventing crime and to reduce re-offending. The talk then is of the possibility of a global youth justice. Much of this analysis relies on tracing the export of penal policies from the USA to other advanced industrial economies. Certainly, aspects of zero tolerance policing (France, Australia, Germany, Brazil, Argentina, Ireland), curfews (Belgium, France, Scotland), electronic monitoring (Singapore, Canada, Australia, Sweden, Holland, Scotland), scared straight programmes (Italy), mandatory sentencing (Western Australia, Northern Territories) and pre-trial detention as a 'short, sharp, shock' (Germany, Holland, France) have not only been transported to England and Wales but to many western jurisdictions.

However the possibility of an Anglo-American convergence tends to dominate the literature on policy transfer (Dolowitz, 2000; Dolowitz and Marsh, 2000; Garland, 2001). And at first sight it seems apposite. In the early days of opposition Labour persistently challenged and condemned the Conservatives' overt transatlantic policy transfers in both social and criminal justice matters. The left of centre preferred to look to Europe. However after Blair's visit to the USA in 1993, which presaged the new doctrine of 'being tough on crime and tough on the causes of crime', New Labour also shifted its focus from Europe to the New Democratic policies of the USA. Since the mid 1990s, not only compulsory and conditional welfare-to-work

(workfare) but also zero tolerance policing, night curfews, electronic tagging, mandatory minimum sentences, drugs czars, the naming and shaming of young offenders, community courts, private prisons, Chicago style policing based on neighbourhood focus groups, strict controls over parents and, for a short period in the 1990s, boot camps have all, in some form, been transported to England. A tough stance on crime and welfare has become the taken-for-granted mantra to achieve electoral success. But as Sparks (2001, p. 165) has put it, there may be inherent difficulties to this type of comparative analysis because of the 'distracting sway of the American case as a pole of attraction'. It tends to drive out historical and cultural difference by assuming that what happens in the US will always presage comparable developments elsewhere.

Indeed it is also clear that youth justice in England and more widely across Europe has also been informed by contra penal trajectories such as those derived from the import of restorative justice conferencing pioneered in New Zealand and Australia. The transfer of policy is clearly not one directional or one dimensional (Karstedt, 2001). Critics of USA inspired neo-liberal globalisation would point out countervailing tendencies at work in numerous juvenile justice systems across the world. Within restorative justice the talk is less of formal crime control and more of informal offender/victim participation and harm minimisation. Advocates of restorative justice look to traditional forms of dispute resolution reputedly to be found in the informal customary practices of Maori, Aboriginal and Native American indigenous populations. The prominence of faith-based ideas and communitarianism is also much in evidence. According to its proponents restorative justice holds the potential to restore the 'deliberative control of justice by citizens' and to restore 'harmony based on a feeling that justice has been done' (Braithwaite, 2003 p.57). It has come to find practical expression in various forms of family group conferencing in Australasia, in healing circles in Canada and in community peace committees in South Africa. The Northern Ireland criminal justice review advocates youth conferencing, as part of a broader peace process, to be at the heart of its new approach to juvenile justice (O'Mahony and Deazley, 2000). Both the United Nations and the Council of Europe have given restorative justice their firm backing. Various commentators (see for example, Merigeau, 1996) detected an opening up of youth justice throughout most of Europe in the 1990s whereby custodial sanctions were on

the decrease. Community safety, reparation, community work, courses in social training and so on together with compliance with United Nations rules and Council of Europe recommendations have all been advocated as means to achieve participative justice and to reduce the recourse to youth imprisonment. The Council of Europe has recommended to all jurisdictions that mediation should be made generally available, that it should cover all stages of the criminal justice process and, most significantly, that it should be autonomous to formal means of judicial processing. The European Forum for Victim-Offender Mediation and Restorative Justice was established in 2000. Across Africa, Stern (2001) records renewed interest in solidarity, reconciliation and restoration as the guiding principles for resolving disputes rather than the colonial prison. In 2002 the UN's Economic and Social Council formulated some basic universal principles of restorative justice, including non-coercive offender and victim participation, confidentiality and procedural safeguards. It is clear that restorative justice is no longer marginal as some have claimed (Garland, 2001 p.104) but a burgeoning worldwide industry with local projects proliferating across much of Europe, Canada, the US and Australasia (see for example, Buckland and Stevens, 2001). In a European context, Austria is often cited as being at the forefront of such developments. Following its 1988 Juvenile Justice Act, 50% of cases suitable for prosecution were resolved by out of court mediation and by informal negotiations between offender, victim and mediator to achieve reconciliation (Justice, 2000). But there is little evidence of a pan-European homogeneity. European implementation of restorative principles is marked by heterogeneity rather than convergence. In Belgium, Finland and Norway restoration is an extension of existing welfare, education or rehabilitative strategies. In England, as evidenced, for example, in its referral orders and youth offender panels restoration is more authoritarian and paternalistic aimed at responsabilising the offender. In Norway victim-offender mediation is used as an *alternative* to judicial processing whereas in most jurisdictions it is integrated into other criminal justice processes. Some systems are victim oriented (Denmark), some focus on the offender (France, Spain) and in others the orientation is mixed. Belgium employs restorative principles at all stages of the judicial process; in France and England and Wales it only operates at a pre-or initial trial stage, whilst in Denmark it is employed at the moment of sentence (Miers, 2001).

In some contrast restorative justice processes in New Zealand and in most Australian states are now established in statute as the fundamental rationale for youth justice. Their aim is to keep young people out of formal court processes by way of various types of family group conferences. Most academic and policy entrepreneur research speaks highly of such an approach in impacting on re-offending (particularly for less serious violent offenders) and on ensuring that both victim and offender are the *key* participants and decision-makers in determining any future action (Morris and Maxwell, 2001; Miers, 2001; Bazemore and Walgrave, 1999). In Australasia professional decision-making and formal court processing appear marginal to an extent not contemplated in most other western systems (with perhaps the exception of Scotland, but there the Children's Hearing system does not involve victims so its restorative credentials might be called into question). Much of this, again, is probably due to an *alliance* between neo-liberalism and a social democratic politics and thus a political willingness to hang on to vestiges of social welfarism (O'Malley, 2002). But we should be wary that this is some general panacea. Australian research for example has suggested that for indigenous populations it may lead to a double failure: failing to be law abiding and failing to act appropriately according to an indigenous justice script rewritten by whites (Blagg, 1997). In general the danger remains that any form of compulsory restoration may degenerate into a ceremony of public shaming and degradation, particularly when it operates within systems of justice that are driven by punitive, exclusionary and coercive values and whose primary intent is the infliction of further harm (as currently seems to be case in England and Wales and the US).. Neither is it probably any coincidence that restorative justice and neo-liberal ideologies have emerged simultaneously. Both proclaim an end to state monopoly and a revival of community responsabilisation. Whilst appearing progressive and rehabilitative, restoration can simply be used to once more enforce neo-liberal notions of individual responsibility (Gelsthorpe and Morris, 2002). Nevertheless it does open a space to consider a series of replacement discourses of 'social harm', 'social conflict', and 'redress' to challenge conservative neo-liberal conceptions of punitive populism and retributive justice (De Haan, 1990; Walgrave, 1995). It opens a door to the development of a restorative *social* justice based on community building, solidarity and empowerment (White, 2000; 2002).

The notion of homogenised policy transfer has also been critiqued by those concerned not just with issues of structural convergence/divergence but with the role of ‘agency’ in the formulation and implementation of specific policies (Jones and Newburn, 2002; Nellis 2000). Detailed empirical examinations of policy making in different countries reveal important differences in substance and significant differences in the processes through which policy is reformed and implemented. Both O’Donnell and O’Sullivan (2003) and Jones and Newburn (2002), for example, argue that the concept of zero tolerance associated with New York policing reforms in the early 1990s barely survived its import to Ireland and the UK. The strategies adopted by the NYPD were only employed by some minor experiments in mainstream British policing. Its impact has been more on the level of political rhetoric, fuelled by Fianna Fail in Ireland and by cross party commitments in the UK to develop more punitively sounding policies that can be widely perceived as being ‘tough on crime’. Similarly Nellis’ analysis of the transatlantic transfer of electronic monitoring from the USA to England in particular (but also to Singapore, some Australian states, Sweden and the Netherlands) makes clear that the terms ‘inspiration’ and ‘emulation’ rather than ‘copying’ best describe the processes involved.

These lines of enquiry suggest that policy transfer is rarely direct and complete but is partial and mediated through national and local cultures (which are themselves changing at the same time). Policy transfer can be viewed as simply a pragmatic response where nothing is ruled in and nothing ruled out. Authoritarian, restorative and actuarial justice might all be perceived as useful tactics to employ to get the crime rate down. Or they can be viewed as symptomatic of juvenile/youth systems that have lost their way and no longer adhere to any fundamental values and principles, whether they are rooted in welfare, punishment, protection or rights. The logic of assuming we can learn ‘what works’ from others is certainly seductive. It implies rational planning and an uncontroversial reliance on a crime science which is free of any political interference. But it also assumes that policies can be transported and are transportable without cognisance of localised cultures, conditions and the politics of space. (Muncie, 2002).

Policy transfer and international dialogue will probably become a more dominant aspect of juvenile/youth justice if only because of the possibilities opened up by the

growth in international telecommunications. But at a nation state and at regional and local levels things may look a bit differently. Individual states continue to jealously guard their own sovereignty and control over law and order agendas. Local implementation of key reforms may also reveal a continuing adherence to some traditional values and a resistance to change.

### **Global processes 3: International Conventions**

The 1989 United Nations Convention on the Rights of the Child has established a near global consensus that all children have a right to *protection*, to *participation* and to basic material *provision*. It upholds children's right to life, to be free from discrimination, to be protected in armed conflicts, to be protected from degrading and cruel punishment, to receive special treatment in justice systems and grants freedom from discrimination, exploitation and abuse. The only countries not to have ratified are Somalia and the USA (Somalia has no recognised government, the US has claimed it cannot ratify whilst it is considering other rights issues). The Convention builds upon the 1985 UN Standard Minimum Rules for the Administration of Youth Justice (the Beijing Rules) which recognised the 'special needs of children' and the importance of dealing with offenders flexibly. It promoted diversion from formal court procedures, non-custodial disposals and insisted that custody should be a last resort and for minimum periods. In addition the Rules emphasised the need for anonymity in order to protect children from life long stigma and labelling. The Convention cemented these themes in the fundamental right that in all legal actions concerning those under the age of 18, the 'best interests of the child shall be a primary consideration' (Article 3.1). Further it reasserts the need to treat children differently, to promote their dignity and worth with minimum use of custody and that children should participate in any proceedings relating to them (Article 12). In 1990 the UN guidelines for the Prevention of Juvenile Delinquency (the Riyadh guidelines) added that youth justice policy should avoid criminalising children for their minor misdemeanors. The International Covenant on Civil and Political Rights expressly outlaws capital punishment for under 18s and promotes rehabilitative interventions. The European Convention on Human Rights first formulated in 1953 provides for the due process of law, fairness in trial proceedings, a right to education, a right to privacy and declares that any deprivation of liberty (including curfews, electronic monitoring and community supervision) should not be arbitrary or consist of any

degrading treatment. Collectively these Conventions and Rules can be viewed as tantamount to a growing legal globalisation of juvenile justice.

Many countries have now used the UN Convention to improve protections for children and have appointed special commissioners or ombudspersons to champion children's rights. Of note has been a raft of legal reforms in Latin America during the 1990s associated with a renewed recognition of a distinctive Latin American affirmation of human rights. Venezuela and Argentina, for example, were key advocates in the formulation of the UN Convention (Carozza, 2003). A monitoring body – the UN Committee on the Rights of the Child - reports under the Convention and presses governments for reform. Yet, Human Rights Watch (1999) has noted that implementation has often been half-hearted and piecemeal. The Convention is persuasive but breach attracts no formal sanction. Millions of children worldwide continue to live in poverty, have no access to education and are routinely employed in armed conflicts. Street children on every continent continue to endure harassment and physical abuse from the police and many others work long hours in hazardous conditions in flagrant violation of the rights guaranteed to them under the Convention. Countries give lip service to rights simply to be granted status as a 'modern developed state' and acceptance into world monetary systems. The pressure to ratify is both moral and economic (Harris-Short, 2003). It may be the most ratified of all international human rights directives but it is also the most violated. Abramson's (2000) analysis of UN observations on the implementation of juvenile justice in 141 countries notes a widespread lack of 'sympathetic understanding' necessary for compliance with the UN Convention. Describing these obligations as being largely received as 'unwanted', he notes that a complete overhaul of juvenile justice is required in 21 countries and that in others torture, inhumane treatment, lack of separation from adults, police brutality, bad conditions in detention facilities, overcrowding, lack of rehabilitation, failure to develop alternatives to incarceration, inadequate contact between minors and their families, lack of training of judges, police, and prison authorities, lack of speedy trial, no legal assistance, disproportionate sentences, insufficient respect for the rule of law and improper use of the juvenile justice system to tackle other social problems, are rife. In addition there is a notable lack of reliable statistics or documentation as to who is in jail and where they are. 33 countries continue to accompany their ratification with reservations. For

example Canada and the UK have issued reservations to the requirement to separate children from adults in detention. In the English case this is because of an inability to fund suitable places for young women. Many Islamic nations have filed reservations when the Convention appears to be incompatible with Islamic law and domestic legislation (Schabas, 1996). The UK has also reserved its option to deploy children in active military combat. It is the only country in Europe that extensively targets under 18s for recruitment into the armed forces. Similarly the UN has consistently, and most recently in 2002, advised the UK to raise its age of criminal responsibility. At 8 in Scotland and 10 in England, Wales and Northern Ireland these are the lowest ages in Europe. Somewhat perversely the UK instead moved in the opposite direction by abolishing the principle of *doli incapax*. The UN's 2002 observations on the UK's implementation of the Convention also expressed concern at the failure to ban corporal punishment in the home, and at the increasing numbers of children in custody, at earlier ages for lesser offences and for longer periods, together with custodial conditions that do not adequately protect children from violence, bullying and self harm (Children's Rights Alliance, 2002). Similarly those jurisdictions that have introduced schemes to enforce parental responsibility, curfews and anti-social behaviour legislation (most notably in England and Wales, France and the US), would again appear to be in contempt of the right to respect for private and family life and protection from arbitrary interference (Freeman, 2002). More seriously, many of the principles of restorative justice which rely on informality, flexibility and discretion sit uneasily against legal requirements for due process and a fair and just trial.

In many countries it seems abundantly clear that it is possible to claim an adherence to the principle of universal rights whilst simultaneously pursuing policies which exacerbate structural inequalities and punitive institutional regimes. 'Cultural difference' and the absence of localised human rights cultures preclude meaningful adoption of international agreements (Harris-Short, 2003). The US case is indicative. Violations of the Convention appear built in to aspects of US law which allow for the death penalty, prosecution in adult courts and which fail to specify a minimum age of criminal responsibility (Amnesty, 1998). Moreover relying on international statements of due process and procedural safeguards can do little to deliver justice on the ground. The development of positive rights agendas remains limited (Scruton and Haydon, 2002). Little attention has also been given to the extent to which legal globalisation

itself is a concept driven by Western notions of 'civilised' human rights. Far from opening up challenges to neo-liberalism, rights agendas may simply act to bolster Western notions of individuality and freedom whilst implicitly perpetuating imperial and postcolonial notions of a barbaric and authoritarian 'global east' or 'global south'. It is indicative in itself that of those countries where the UN Committee has identified 'tradition' and 'culture' as impeding implementation, the vast majority are 'non-Western'.

### **Comparative juvenile justice 1: rates, flows and stocks of youth imprisonment**

There are relatively few rigorous comparative analyses of youth and juvenile justice. Most provide important case studies of particular jurisdictions but tend to be stronger on the descriptive than the analytical (see Bala et al 2002; Winterdyk, 2002; Doek, 2002). In many respects this is not surprising. Doing comparative research is fraught with difficulties (Nelken, 1994; 2002). The classification and recording of crime differ and different countries have developed different judicial systems for defining and dealing with young offenders. In itself it is significant that throughout Europe and most other western jurisdictions the term *juvenile* justice is preferred to the English and Canadian concept of *youth* justice, whilst the UN advocates the formulation of a *child-centric* criminal justice. What is classified as penal custody in one country may not be in others though regimes may be similar. Not all countries collect the same data on the same age groups and populations. None seem to do so within the same time periods. Linguistic differences in how the terms 'minor', 'juvenile', 'child' and 'young person' are defined and operationalised further hinder any attempt to ensure a sound comparative base. However even a cursory analysis highlights national diversity rather than global similarity.

Of the statistical data that is available most is directed at recording head counts and rates of custody. Walmsley (2003), for instance, regularly updates a world prison population list. These consistently reveal the US as having the highest prison population in the world (at 686 per 100,000 population) and that across the world prison populations are generally growing. There are however wide variations, ranging from 139 per 100,000 in England and Wales (the highest in Europe) to 59 per 100,000 in Denmark and Finland (the lowest in Europe). Of the major industrialised nations Japan records one of the lowest rates at 48 per 100,000, whilst Russia is one of the

highest at 638 per 100,000. These figures, however, aggregate juvenile and adult rates.

United Nations Surveys on the Operation of Criminal Justice Systems (2002) have attempted to provide rates of *youth/juvenile* imprisonment per 100,000 of population. These statistics provide a similar picture of 38.40 per 100,000 in the USA and 18.26 per 100,000 in England and Wales but an almost absence of youth custody in Denmark (0.11/100,000), in Norway (0.07/100,000) and in Belgium (0.02/100,000). According to these statistics, England and Wales continue to incarcerate young people at a higher *rate* than any other country in Europe; indeed in the world only the USA, South Africa, Belize and Swaziland are recorded by the UN as having higher incarceration rates (though it should be noted that some states, such as Australia and Canada have no entry presumably because they either do not collect such data or declined to respond to the UN's survey). In a European context, the Council of Europe (1998) has recorded that in 1996, Ireland, Turkey, England and Scotland had the highest percentage of their prison population under the age of 21, with Ireland at 24.7%, Scotland at 18.8%; England 17.8%; France 10%; Italy 4.5%; and Finland 3.6%. There seems to be something of a correlation here: those countries with the lowest ages of responsibility also have more of their prisons filled with young people. Data derived in the main from the International Centre for Prison Studies (2002) but also from various national websites is again partial and ranges across some 4 years but also reveals some remarkable divergences. Snapshots of European population *stocks* reveal wide disparities of the numbers in prison at specified dates. So for example, whilst in September 2002 England and Wales held 3126 under 18 year olds in prison, this compared to 862 in France (May 2002), 841 in Germany (March 2001), 152 in Spain (December 2000), and just 16 in Norway (September 2000), 12 in Sweden (October 1998), 9 in Denmark (September 2000) and 2 in Finland (October 2002). Unpublished and provisional data collected for the Council of Europe's *European Sourcebook on Crime and Criminal Justice Statistics* (personal correspondence, August 2003) confirms this pattern. The total *flow* of young people admitted to prison in Europe in 2000 ranged from 2 in Sweden to nearly 4000 in France but some 12000 in England and Wales.

All of these statistical measures come with the usual health warnings that differences in what counts as prison and in offender classification as well as often haphazard

modes of national data collection preclude any absolute comparative reliability. Aggregate figures such as these also tend to suppress the disproportionately high rates of incarceration for particular ethnic groups: a notable feature of juvenile justice not only in the US but also in the imprisonment of aboriginals in Canada and Australia. Nevertheless they remain our best guide to the relative punitive climate of particular countries and their administrations. Across the world the US consistently emerges as a particularly atypical (and excessively punitive) case, as does England and Wales in Europe. In these countries there appears little reluctance to locking up young people and to designate such places of detention as 'prison' whilst doing so.

### **Comparative juvenile justice 2: national sovereignty and cultural diversity**

The UK countries stand out as having some of the lowest ages of criminal responsibility in the European Union. These ages range from 8 in Scotland, and 10 in England and Wales to 15 in Denmark, Norway, Finland and Sweden and 18 in Belgium and Luxembourg. Ireland raised its age of criminal responsibility from 7 to 12 in its Children Act 2001. Spain has also recently moved in the same direction by increasing the age of responsibility from 12 to 14 in its Juvenile Responsibility Act of 2001 (Rechea and Molina, 2003). Interestingly too most Central and Eastern European countries have relatively high ages of responsibility (most in accord with Russia's 16) but at least six (Estonia, Latvia, Ukraine, Moldova, Poland, Macedonia) are currently considering whether to lower this to 14 or below (Asquith, 1996). In contrast, England and Wales abolished the principle of *doli incapax* for 10 to 14 year olds in 1998 despite recurring complaints from the UN. In Holland, too, the conditions governing the possibility of transferring juvenile cases to an adult court have also been recently relaxed.

The 'adulteration' of youth justice is though most clearly marked in the USA which has witnessed widespread dismantling of special court procedures which had been in place for much of the 20<sup>th</sup> century to protect young people from the stigma and formality of adult justice. Since the 1980s (but beginning in Florida in 1978) most USA states have expanded the charges for which juvenile defendants can be tried as adults in criminal courts, lowered the age at which this can be done, changed the purpose of their juvenile codes to prioritise punishment and resorted to more punitive training and boot camps. Accordingly the numbers of under 18 year olds committed to

adult prisons in the USA has more than doubled since 1985, with nearly 60% being of African –American origin (CNN News 28 February 2000). Since 1997 four countries – the US, Iran, Pakistan, and the democratic Republic of Congo - have executed individuals for crimes committed before they were 18. But the practice is in worldwide decline due to the express provisions of the UN Convention. The USA is now the only country in the world to still apply the death penalty to under 18 year olds. The last 5 executions between 2001 and 2003 have all occurred in the US. Five US states, notably Texas and Florida, allow execution for 17 year olds and a further seventeen, notably Alabama and Louisiana, can authorise the death penalty for children aged 16 (Streib, 2003). In some states there is no age limit at all to adult criminal prosecution and trial.

The push for ‘adult justice’ is however far from uniform. Belgium and Scotland stand out as examples where the primacy of the welfare principle remains the fundamental rationale for youth justice. In Belgium all judicial interventions are legitimated through an educative and protective, rather than punitive and responsabilising discourse (Walgrave and Mehlbye, 1998). Whilst in practice some welfare measures are backed by coercive powers, it remains impossible to impose legal penalties on those aged under 16 (though this may be about to change through a growing emphasis on offender accountability). Equally, it is not always fully acknowledged that Scotland abolished the juvenile court in 1968 and has been operating with a welfare tribunal for the majority of under 16 year old offenders for the past 30 years. It has not been without its critics, not least because of the lack of legal safeguards and the apparent tendency for the adult courts to deal with those aged 16 and over with undue severity. Scotland continues to have a high percentage of its prison population dedicated to under 21 year olds. Nevertheless the hearing system continues to ensure that child welfare considerations hold a pivotal position for younger offenders and provides a credible alternative to the punitive nature of youth justice pursued in many other jurisdictions (McAra and Young, 1997; Whyte, 2000; Smith, 2000).

In the past decade many European countries have reported a distinct hardening of attitudes and criminal justice responses to young offending. According to Council of Europe statistics, England and Wales, Holland, Greece, Germany and Portugal have all reported significant *increases* in their daily counts of the numbers of under 18 year

olds in prison between 1995 and 2000. In Holland, youth prison populations were reduced in the 1970s by limiting penal capacity, emphasising rehabilitation and supporting a culture of tolerance (Downes, 1988; Komen, 2002). HALT projects begun in Rotterdam in 1981 and various other social crime prevention initiatives replaced judicial intervention with reparation schemes and advice agencies to improve youth's 'survival skills'. However there has been a dramatic reversal in Dutch penal policy from the mid 1980s onwards. Once heralded as a beacon of tolerance and humanity, Holland embarked on a substantial prison building programme linked to a tendency to expand pre-trial detention and to deliver longer sentences on conviction (Pakes, 2000). In 2002 Dutch city councils gave the police new powers to arbitrarily stop and search without reasonable suspicion in designated areas of 'security risk'. The practice has amounted to the criminalisation of poor and black neighbourhoods, targeting in particular Moroccan youth (*Statewatch* Jan-Feb, 2003, p.8).

In Germany the average number of over 14 year olds in prison increased by 21 per cent during the 1990s (Suhling, 2003). In Ireland prison building and expansion has been a notable feature of the 1990s despite falling crime rates (O'Donnell and O'Sullivan, 2003). These shifts in part appear driven by neo-liberal market reform, welfare residualism, fears of migrants, changes in the labour market and a related lowering of the tolerance level for crime and violence. Fear and insecurity fuel a popular punitiveness that demands some overt 'norm enforcing system' that is both retributive and interventionist (Junger-Tas, 2002).

In France in the 1980s the Mitterand government responded to a series of violent disturbances in Lyon and Marseilles, not by implementing more authoritarian measures, but by developing means of education and vocational opportunity and avenues for local political participation and incorporation. The *Bonnemaïson* initiative involved the recruitment of older youth (animateurs) to act as paid youth workers with youngsters in the ghetto suburbs. These were connected with residents and local government officials to form crime prevention committees designed to address issues of citizenship and urban redevelopment as well as those of security. It is widely assumed that such strategies, based on local democratic representation, rather than repression, were at least initially successful in achieving a greater integration particularly for children of North African origin (King, 1988, 1991; King and Petit, 1985; Pitts, 1995, 1997). Since the 1980s however there is compelling evidence of a greater convergence of French and English crime prevention strategies

made up of a patchwork of zero tolerance policing and of situational and social methods (Crawford, 2001; Roche, 2002). The right wing government of Alain Juppe from 1993 to 1997 prioritised a zero tolerance police led approach to crime prevention. It is a policy that was continued by the left wing Jospin government. The socio-economic conditions that produce youth marginalisation and estrangement are no longer given central political or academic attention (Bailleau, 1998). Rather concern is directed to migrant children, particularly from Africa, Asia and Eastern Europe who have arrived in search of political asylum and economic opportunity. Special surveillance units have been established to repress delinquency in 'sensitive neighbourhoods', penalties for recidivism have been increased and the deportation of foreigners speeded up (Wacquant, 2001). Since the return to power of the right in 2002 a new public safety law has expanded police powers of search, seizure and arrest, instituted prison sentences for public order offences (such as being disrespectful to those in authority), lowered from 16 to 13 the age at which young offenders can be imprisoned and introduced benefit sanctions for parents of offending children (Henley, 2002).

In Scotland the Scottish Executive (2003) has recently decided to pilot the re-establishment of youth courts for 16 and 17 year olds. Ostensibly this is to deal with 'persistent offenders' but would also overcome the Scottish anomaly of being the only Western European country to routinely deal with this age group in the adult courts.

Whilst these broad political shifts have yet to produce any notable expansion in prison populations in all jurisdictions, it is clearly associated with a break up of social democratic welfare humanitarianism and the emergence of a new moralism of 'zero tolerance' associated with the disciplinary techniques of the free market (Tham, 2001). Such analyses clearly resonate with the 'criminalisation of the undesirable and the unfortunate' and the expansion of interventionist and authoritarian policies characteristic of the US and England and Wales. Across Europe where a philosophy of child protection and support continues to hold greater sway it is increasingly being tested by new discourses of responsibility. The irony for all though is that during the last decade youth crime rates across Europe, Canada and the US have been mostly falling or at least stable.

Conversely, Spain, Italy and the Czech Republic have all reported *decreases* in their daily count of youth incarceration between 1995 and 2000. Canada has begun to report significant decreases since the implementation of its 2003 Act due to the wider availability of community alternatives, though it has done so from a very high base figure. (Canada, reputedly, had one of the highest rates of youth imprisonment in the world, exceeding that of the US). Belgium, Finland, Norway and Sweden stand out as countries which seem to be able to keep youth imprisonment to an absolute minimum and have been able to maintain such a policy throughout the 1990s. In Finland the young offender prison population has been reduced by 90 per cent since 1960 without any associated rise in known offending. This was achieved by suspending imprisonment on the condition that a period of probation was successfully completed. Finland is one of a very few countries to be able to claim that community penalties are given as direct alternatives (rather than as additions) to prison sentences. Immediate ‘unconditional’ sentencing to custody is a rarity (National Research Institute, 1998). The Norwegian criminologist Nils Christie (cited in Karstedt, 2001) has argued that this dramatic shift has been made possible by a conscious effort on the part of successive Finnish governments to formulate a national identity closer to that of other Scandinavian states. In turn it has been argued that this reductionist movement has rested on the formulation that ‘social development policy is the best criminal policy’ (Kuure, 2002).

In Italy, judges have an additional power to grant a ‘judicial pardon’ which together with a policy of ‘liberta controllata’ (a form of police supervision) and a greater willingness to defer control to families means that young people are incarcerated only for a very few serious violent offences (Ruxton, 1996; Dunkel, 1991; Nelken, 2002). The exception seems to be for non-nationals, particularly young Romanis. Cultural difference is also a key factor. An Italian cultural tradition of soft paternal authoritarianism has been traditionally linked to low levels of penal repression. The ‘cultural embeddedness’ of Catholic paternalism (compared for example to US evangelical Protestantism) may not determine penal policy but provides the parameters in which the purpose and meaning of punishment is understood (Melossi, 2000). Similarly Japan’s relative non-punitiveness has been accounted for in the context of a tradition of ‘maternal protectionism’ and a culture of ‘amae sensitivity’ which prioritises interdependence over individual accountability (Morita, 2002).

In Trondheim, Norway in 1994 a five year old girl was murdered by two six-year-old boys. The exceptionality of this case mirrored that of the murder of James Bulger by two 10-year-old boys a year earlier in England. In the seven subsequent years public, media and political outcry remained unabated in the UK, continually dwelling on the ‘leniency’ of their sentence, their ‘privileged’ access to specialised rehabilitation and their eventual ‘premature’ release under a cloak of fearful anonymity. In Norway the murder was always dealt with as a tragedy in which the local community shared a collective shame and responsibility. The boys were never named. They returned to school within two weeks of the event (Muncie, 2002). Some commentaries on an England/France comparison also continue to maintain that a culture of French republicanism, driven by notions of legal equality and of social *solidarity* and *integration*, ensures more of a lasting rejection of American punitiveness than seems to be possible or politically acceptable in countries such as England and Wales (Pitts, 2001).

However it is explained it is clear that locking up young people is driven by something other than global increases in crime, or, as has been most recently assumed, by increases in violent crime. International research has consistently found that there is no correlation between crime rates and custody rates (Council of Europe, 2000). The use of custody appears politically and culturally, rather than pragmatically, inspired. For some jurisdictions prison seems to ‘work’ at a political and symbolic level even when it is a demonstrable failure.

### **Local contingencies and resistances**

The ‘catastrophic’ images raised by some neo-liberal readings of governance may help us to identify significant macro social changes, but are less attuned to resistance to change, to contradictions within neo-liberalism and its often hybrid nature, to the inherent instability of neo-liberal strategies and to the simultaneous emergence of other competing transformational tendencies (Muncie and Hughes, 2002). Neo-liberalism not only has a global impact but also, under the rubric of ‘governing at a distance’ has encouraged the proliferation of ‘local solutions’ to local problems. To fully understand the workings and influences on juvenile/youth justice we need to be attuned to the twin and contradictory processes of *delocalisation* and *relocalisation*

(Crawford, 2002). The risks and hazards of globalisation have simultaneously produced a 'retreat to the local' and nostalgia for tradition and community. The local governance of crime and insecurity is evidenced in the prolific discourses of 'community safety' in the UK and of 'urban security' across Europe (Hughes, 2002). Both are informed by notions of community participation, proactive prevention, informalism, partnership and multi-agency collaboration. Given that they are directed not only at crime but also incivilities and the antisocial, it is not surprising that their usual target is the (mis)behaviour of young people, particularly in 'high risk' neighbourhoods. Yet what emerges from studies of the actual conduct of governance in particular localities is not uniformity, but diversity. In Australia and the US there are wide divergences in custody rates from state to state. In such countries as Spain, Italy, Germany and France it is indeed difficult to prioritise national developments above widely divergent regional differences, most evident in sentencing disparities. Again, the possibility of identifying coherent and consistent patterns in (youth and juvenile) governance is called into question (Hughes and Edwards, 2002).

Broad governmental mentalities – whether global or national – will always be subject to revision when they are activated on the ground. Policy transfer will be piecemeal and reconfigured in local contexts. Whatever the rhetoric of government intention, the history of youth justice (e.g. in England and Wales) is also a history of active and passive resistance from pressure groups and from the magistracy, the police and from youth justice workers through which such reform is to be effected. At one level this is reflected in the wide disparities between courts in the custodial sentencing of young people. In England and Wales, for example, these range from 1 custodial sentence for every 10 community sentences in the South-West to 1 in 5 in the West Midlands and the North-West. On another level it is reflected in the haphazard implementation of national legislation and youth justice standards in different localities (Holdaway et al, 2001). Indeed Cross et al (2003) have begun to detect divergences between policy and practice in Wales and in England. Significantly the Welsh Assembly decided to locate youth justice services in the portfolio of Health and Social Services rather than Crime Prevention thus prioritising a 'children first' rather than an 'offender first' (as in England) philosophy. There is also always a space to be exploited between written and implemented policy. The translation of policy into practice depends on how it is visioned and reworked (or made to work) by those empowered to put it into practice.

As a result youth justice practice is likely to continue to be dominated by a complex of both rehabilitative ‘needs’ and responsabilized ‘deeds’ programmes. Joined up strategic co-operation will often coexist with sceptical and acrimonious relations at a practitioner level (Liddle and Gelsthorpe, 1994). A social work ethic of ‘supporting young people’ may well subvert any partnership or national attempt to simply responsabilise the young offender. This is also because many of the ‘new’ global, neo-liberal targets for intervention – inadequate parenting, low self esteem, poor social skills, poor cognitive skills – are remarkably similar to those targets identified by a welfare mode of governance. The incongruity between such latent welfarism and the retributive nature of penal expansionism may well create some space in which the complex welfare needs of children in trouble can be re-expressed (Goldson, 2000). Equally there is a growing recognition that securing universal children’s rights depends as much (if not more) on grassroots initiatives than on ‘agreements’ between nation states as epitomised by the UN Convention (Veerman and Levine, 2000). The ill-defined rhetoric of crime prevention can also enable localised social programmes to be re-elevated as those most likely to secure ‘community safety’. Thus even in the US – reputedly the bastion of conservative neo-liberalism – we can still find numerous programmes funded by justice departments and run by welfare/police partnerships which appear more concerned with social support (e.g. providing housing, health care, employment opportunities) rather than overt crime control (Mears, 2002). Moreover such reinventions of the social can also be based on long term and large scale programmes which address such issues as poverty, powerlessness, discrimination, and so on, which fly in the face of neo-liberal, short-term, ‘what works’ evaluative, or neo-conservative punitive, agendas. Long range projects of ‘the social’ can survive or be reborn (O’Malley, 2001).

Rather than an inexorable global conquest of American inspired neo liberal rationalities and technologies, this analysis of juvenile/youth justice gives weight to a succession of local encounters of complicity and resistance. It ensures that the role of ‘agency’ is centred in understanding processes of policy implementation. Youth/juvenile justice, as one element of penal policy, remains stubbornly local and contingent (Tonry, 2001).

## **Conclusion**

Understanding the role of globalisation in processes of international and national criminal justice reform is in its infancy. This exploration of juvenile/youth justice has revealed some of the possibilities and pitfalls that await any research in this area. As an analytical concept globalisation is both seductive and flawed. It is seductive because it seems to offer some valuable means through which sense can be made of a widely recognised dismantling of welfare statism and a resurgence in authoritarian responses to juvenile offending; it is flawed because it encourages the tendency to deliver reductionist and economic readings of policy convergence. The argument that youth justice has become a global product can only be sustained at the very highest level of generality. Firstly globalisation is not one – dimensional. Economic globalism speaks of the import, largely US inspired, of neo-liberal conceptions of community responsabilisation backed by an authoritarian state. However legal globalism, largely UN inspired, unveils a contrary vision of universal human rights delivered through social democracies. Globalisation simultaneously conjures up images of both the usurpation and protection of children's rights. Secondly the idea that global capital is hegemonic and capable of transforming all that it touches is both essentialist and determinist. Relying on a model of US/UK convergence blinds any analysis to the differentiated and differentiating impact of the global. As Clarke (2000) has argued, its effect is neither uniform nor consistent. The empirical 'evidence' of juvenile/youth justice reform considered in this paper does more to deny than confirm any flattening of national political and cultural difference. The diversity of reform trajectories warns against any attempt to imply homogeneity. What is required is a level of analysis which neither elevates nor negates globalisation but recognizes that the global is only realized in specific localities and through which it will inevitably be reworked, challenged and contested. The key issue to be addressed is not how globalisation is producing uniformity but how it is activating diversity.

Juvenile and youth justice may be becoming more globalised through the impact of neo-liberalism, policy transfer and international conventions, but at the same time it is becoming more localised through national, regional and local enclaves of difference, coalition and resistance. Individual nation states are undoubtedly being challenged by global processes, but analysis at the level of the nation state also appears limited and

limited. Regional governments, federated states, international cities, and multiple forms of community governance all suggest alternative visions of statehood and citizenship and offer alternative routes of access to decision making on social and economic issues. Similarly there are discrete and distinctive ways in which neo-liberalism finds expression in conservative and social democratic *rationalities* and in authoritarian, retributive, human rights, responsabilising or restorative *technologies*. For example, the anti-welfare neo liberalism of the USA would seem to have little in common with other 'neo-liberal' countries such as Canada, New Zealand, Australia and most of Western Europe (O'Malley, 2002). Globalising forces may straddle (part of) the world but also have to manifest themselves at the national and local levels, at all of which they may be subject to multiple translations or oppositions. As Bauman (1998) tried to capture in his notion of the 'glocal', global neo-liberal pressures are always mediated, and can only be realized, through national and local identities and sensibilities. Globalisation can only ever be one amongst many influences on policy and then its influence may pull and push in diverse ways at the same time. Above all the global/national/local are not exclusive entities: the key issue is how they are experienced differently in different spaces and at different times. For Yeates (2002) a mutually transforming relationship among global and local processes prefigures *plurality* as a driving context for policy implementation. Youth justice reform cannot be simply reduced to global economic transformations or to universal legal treaties. All such processes are mediated by distinctive national and sub-national cultures and socio-cultural norms when they are activated on the ground.

In every country and in every locality youth justice appears to be 'made up' through unstable and constantly shifting alliances between neo-liberal, conservative and social democratic mentalities. In terms of policy, the authoritarian, the retributive, the restorative and the protective continually jostle with each other to construct a multi-modal landscape of youth governance (Muncie, 2003a). The end result is ongoing processes of multiplicity (as well as uniformity), divergence (as well as convergence) and contingency (as well as determinism). This hybridity activates multiple lines of invention, contestation and contradiction in policy making and implementation. As a result it is impossible to identify, and fruitless to try and construct, any pure models of juvenile/youth justice.

Globalisation does not simply produce uniform or homogenising outcomes. It also produces social differentiation, segmentation and contestation. Economic globalisation suggests the unfettered freedom of the market; legal globalisation suggests universal regulation through the instruments of human rights. Similarly whilst some nation states may well be in a process of being reconstituted by global (neo-liberal economics), international (e.g. UN conventions; European integration) and national (e.g. privatisation) pressures, criminal justice tends to be held onto as a powerful symbolic display of local sovereignty. The epitome of this, of course, is the US and its belligerent opposition to the authority of any international courts and human rights conventions. Questions of who is criminalised and how are they to be dealt with are nationally and locally specific political and cultural decisions. The forces of globalisation, such as neo-liberal economics and international human rights conventions, cannot be ignored, but neither should the processes through which these forces have come to be negotiated in different localities and communities. Essentialist conceptions of globalisation imply homogeneity and hegemonic dominance, but globalisation is but one element in a series of complex processes and political strategies that make up the multi-modal landscape of juvenile/youth justice which is being continually pushed and pulled in different directions at the same time. The problem with the concept of globalisation is that it inevitably draws our attention to macro political and economic determinants. Dangers of over-generalisation and neglect of local variance abound. Rather what is required is an analysis of how global pressures work themselves out differentially in individual jurisdictions. Because the concept has been applied predominantly to transformations in western and Anglophone countries, our understanding of global processes to date might itself also be considered to be peculiarly ethnocentric. To test this proposition, what is clearly required is more of an immersion in the culturally *specific* national, regional and local politics of reform than has been possible here.

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