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One Theme or Many?

The Search for a Deep Structure in Global Juvenile Justice

FRANKLIN E. ZIMRING AND MÁXIMO LANGER

The ambition of this chapter is to use the global portrait of juvenile courts found in the volume to address a central and essential question: why is it almost universal in our contemporary world that special policies toward young offenders have come hand in hand with separate judicial institutions? The historical pattern is that dissatisfaction with the outcomes that young persons faced in criminal courts led to not merely different policies toward young offenders but different judicial institutions to generate case outcomes. This imperative for institutional separation almost always goes beyond the practical safeguards of separate institutions of confinement and separate types and intensities of sanctions. What young offenders are thought to need is instead an entirely separate set of institutions and decision makers to dispose of and adjudicate their cases. And the strong commitment to institutional separation of young offenders is not confined to juvenile courts created at the turn of the 20th century. The new juvenile policies in the People's Republic of China (PRC) in the 1980s were just as firmly committed to a separate court and separate judges for juveniles as the Illinois reformers of 1899 were. And once a separate juvenile court is established in a modern state, its separate structure and operations are almost never undone.

In this final chapter, we discuss possible explanations for the almost ubiquitous existence of separate juvenile courts around the world. After briefly analyzing the role that power, emulation, and structural factors have played in the global diffusion of the juvenile court, we discuss what theory of juvenile courts may underlie their actual practices. We argue that the main function that juvenile courts have performed has been

letting juvenile offenders grow up out of crime and that such a function also provides the best justification for the continuing existence of these courts.

Theories on Institutional Diffusion and the Insufficiency of Power and Emulation Explanations

According to existing understandings that our chapters have not disputed, the first juvenile court was created in Chicago in 1899 and spread from there to the rest of the world.¹ The literature on the diffusion of institutional innovations among states has articulated different types of theories to explain these diffusion processes. A first set of theories emphasizes power, in the form of military occupation, threats, or material incentives by states.² This group of explanations helps to explain the diffusion or transplantation of juvenile courts to some countries, such as India and a number of Muslim-majority countries,³ and to East Asian countries, such as South Korea, which was subjected to Japanese and American influence and occupation before and after World War II.⁴

However, power did not seem to play a role in the diffusion of juvenile courts from the United States to Europe and to peripheral countries such as those of Latin America.⁵ There are no indications that in these cases the United States or any other state encouraged or facilitated the diffusion of juvenile courts in the first half of the 20th century. It should also be noted that the United States was not a world superpower at the time. In this sense, the global diffusion of juvenile courts does not fit into a flow of diffusion from central to central or from central to peripheral or semiperipheral countries that is typical in these power explanations.⁶ In addition, even countries that initially adopted juvenile courts during colonial or occupation times kept and expanded the use of juvenile courts after independence and political transitions.⁷

In recent times, power may have played an explanation in the European context, given the incentives that countries that wanted to enter or stay in the European Union or the European system of human rights have had to adopt certain regional juvenile law standards.⁸ But this trend took place after (most of) these very countries had already adopted juvenile courts.

A second set of explanations emphasizes processes of emulation as a cause for the diffusion of policies or institutions. In these accounts, policies or institutions are adopted due to nonrational or semirational phenomena, such as the reputation of the originating jurisdiction, the creation of a new international social norm, or a fashion in a certain policy area.⁹ Jurisdictions adopt the new policy or institution not because they have material incentives to do so but because it is simply what others are doing or is the appropriate thing to do.

The chapters in this volume provide some support for this sort of explanation on the global diffusion of juvenile courts. In a real sense, the process that generated the worldwide growth of juvenile courts in the 20th century was the international prominence of a U.S. court that inspired domestic imitations in many different nations.¹⁰ This leadership by example may not have been an original priority of the U.S. reformers, but it was welcomed and soon became an objective of those who were interested in the international aspects of children's welfare. The high positive status and frequent emulation of juvenile courts in other nations soon became an important element of what political scientists call the "soft power" of admirable examples that invite emulation.¹¹ The way that the new court spread to new places was to provide domestic advocates with both positive and negative examples to use—the negatives were the jailing and criminal justice processing of young offenders, and the positive was the new court for children. All of this contagion was informal in the early 20th century.

Even if emulation plays a role in explaining the global diffusion of juvenile courts, the chapters in this volume and other available data indicate that emulation does not fully explain such a process. Emulation or acculturation processes tend to take place within a relatively short span of time, especially after they reach a tipping point. Even if juvenile courts arguably reached a tipping point in the first half of the 20th century with their spread to a substantial number of countries, the span of time in the diffusion of these courts was long. For instance, as Weijian Gao's chapter on China indicates, that country only adopted juvenile courts in the 1980s.¹²

In addition, at the time of the adoption of the Chicago juvenile court in 1899, the United States as a country and legal system had not become a global model and one of the main producers of international

norms. Also, processes of emulation often take place among countries with a common language or cultural or political background that places them within a group of peers that pay attention to what other members of the group are doing in different policy areas. In contrast, juvenile courts have spread across world regions, languages, cultures, and political regimes.

Furthermore, once a separate juvenile court is established in a modern state, its separate structure and operations are almost never undone.¹³ This continuing existence of juvenile courts suggests that there may be characteristics of young offenders that help explain the reproduction of this type of court over time.

We are thus going to spend most of the rest of this chapter exploring a third type of theories on the global diffusion of policies and institutions. These theories can be called functionalist or structural. The idea behind this third set of explanations is that the diffusion of institutions among states is triggered, facilitated, or brought about by structural background conditions or by the need to have institutions or policies perform certain functions.

In this regard, some of the chapters in this volume suggest that there may have been a relationship between the creation and diffusion of juvenile courts and processes of industrialization and urbanization in specific countries and around the world.¹⁴ These processes of industrialization and urbanization contributed to concern for children and adolescents who were in conflict with the law and in a vulnerable situation and thus opened windows of opportunity for reformers to introduce juvenile courts. In addition, some of the chapters in this volume also describe the role that the juvenile justice system has had, together with other state institutions, in the reproduction of social, racial, and ethnic inequalities and oppression.¹⁵

However, without discarding these possible structural factors as part of the explanation for the spread of juvenile courts to many countries as well as the reproduction of these courts over time, in the following sections, we concentrate on the analysis of possible penological reasons for the creation, diffusion, and reproduction of juvenile courts around the world. We argue that an analysis of these penological reasons or functions are central to understanding not only why juvenile courts have

spread around the world but also what role they perform once adopted by individual jurisdictions. We also maintain that one of these penological theories, maturation, provides an appealing rationale for the continuing existence of juvenile courts.

Juvenile Courts and Diminished Responsibility

There are a number of penological explanations for separate policies toward young offenders that do not fully justify a separate court for young offenders. At times, the rhetoric of reform comes close to denying that youth can be criminal, but as a technical matter, that notion is contradicted both by the technical definition of delinquency (requiring the commission of a crime) and by the legal potential for trying juveniles who have been transferred from juvenile court to criminal courts. But there is a deeper reason why juvenile justice is closely linked to the special character of criminality by the young. It is law violation by the young that was always the principal element that triggered the jurisdiction of the juvenile court and that is now frequently the only behavior that invites the court's concern.

That said, the capacity of young persons to commit crimes does not mean that they are as blameworthy as older offenders and should be punished as harshly. Diminished capacity by reason of immaturity is an obvious dimension of youth crime and one that legal systems have acknowledged for centuries.¹⁶ But this lack of full blameworthiness is not a basis for excluding criminal court jurisdiction for intellectually handicapped or mistaken criminal defendants. Criminal courts have a long tradition of considering diminished capacity in measuring just punishments. Why not for kids who offend? The issue of diminished penal capacity is a part of determining just punishments in a retributive system. An agency that is dedicated to determining just punishment would have the comparative advantage in adjusting the punitive price tag for youthful offending. Creating a separate institution in these circumstances to deal with juvenile offenders is a clear signal that something very different from just punishments must be the objective of the special institutions for the young who offend. But what might that be?

The Myth and Reality of Juvenile Court Rehabilitation

From the very beginning of juvenile justice in Illinois, the official rationale for the new institution was not the downward adjustment of punitive consequences (the metric of diminished capacity because of immaturity) but rather a totally distinct basis for imposing consequences and measuring the justness of outcomes. Here is Judge Julian Mack writing the famous prospectus for the Illinois Juvenile Court in the *Harvard Law Review* of 1909, declaring that the purpose of the new judicial institution was “not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.”¹⁷

And the rhetorical case for juvenile justice was quite clear on how the new system could accomplish the tasks of uplifting and reforming—the process was called rehabilitation. Rehabilitation also played such a rhetorical role in the adoption of juvenile courts in the first half of the 20th century in different corners of the world.¹⁸

Penal rehabilitation is a process of trying to change offenders by external programs of education or therapy or drug treatment. This was to be compulsory but beneficent state intervention in the lives of young offenders, similar in its combination of forceful methods and good intentions to other state programs for the young, such as compulsory education.

Belief in what Francis Allen came to characterize as “the rehabilitative ideal” was not confined to juvenile courts in the first two-thirds of the 20th century, but there was probably no other institution of social control whose announced ambitions fit more perfectly with rehabilitation as a state objective than the delinquency jurisdiction of the juvenile court.¹⁹ The fact of criminal offending manifested a need for programs of attitudinal and behavioral change. The youth of the court’s clientele provided the court with the clear analogy of compulsory public education and also supported the assumption that young delinquents were malleable and could be changed in the direction that rehabilitation programs and juvenile court officials desired.

One other feature of rehabilitation as a penal purpose is of particular importance when searching for the justification of the need to create

a juvenile court separated from criminal courts. The commitment to selecting interventions on the basis of the need for rehabilitation is *not* a complement to retributive justice and the search for deserved punishments; it is an antagonistic alternative to a jurisprudence of just deserts. If the same court were trying to make retributive punishment decisions for adults and rehabilitative choices for youth, the clash of antagonistic principles would prove painful and confusing to the decision maker.²⁰ With a separate system for distinct priorities, the new court for young offenders could function most harmoniously. As a wholly separate institution, it would not face the conflict between punishment and rehabilitation because its only operating logic is rehabilitation.

So rehabilitation as a dominant, indeed exclusive, basis for choosing interventions when delinquency was established became the orthodox jurisprudence of juvenile courts in Anglo-American law at least through the first two-thirds of the 20th century, and rehabilitative sentiment may to this day continue as the distinguishing rhetoric of some juvenile courts. The chapters in this volume indicate that this rehabilitation rhetoric is still alive also around the world.²¹

But the programs and logic of penal rehabilitation were *never* dominant parts of the real world of juvenile courts, not in 1899, not in 1970, and not in 2015. The real contrast between penal sanctions in criminal courts and delinquency dispositions in juvenile courts is not the richer variety of programs that juvenile courts send young offenders to join. The real contrast is that secure confinement is used less in juvenile court and terms of confinement, when given, are much shorter. The strong preference in modern juvenile courts is to keep kids in community settings, on probation rather than in jails or training schools. The virtues of the modern juvenile court are almost all passive virtues. The use of intensive programs and special residential programs is rare.

And this was also the pattern from the very beginning of juvenile courts. The early Illinois court kept 75% of its delinquents in their homes and communities despite the fact that all the new court's probation officers were unpaid volunteers (typically off-duty police). The training schools that were the court's most serious placement option were not well regarded by the court or by the ardent supporters of juvenile justice in the community—they were a last resort rather

than a hope of carefully programmed methods of changing troubled youth. The training school's only virtue was that it was not as bad as a prison. The occasional efforts to scientifically assess the impact of intensive supervision and counseling were disappointingly bereft of evidence that programs changed behavior. In the famous Cambridge-Somerville experiments, the kids with more treatment did worse than the controls.²²

And by the 1960s, the constitutional courts reviewing procedures in juvenile courts did not extend any special leeway to juvenile courts because they were engaged in a helping enterprise. The key constitutional decision on this matter was *In the Matter of Winship*,²³ in which a state juvenile court act had only required that delinquency be established by a preponderance of the evidence rather than the much more restrictive criminal conviction standard of proof beyond a reasonable doubt. New York argued that the state's more beneficent objective in juvenile versus criminal courts justified a lower, essentially civil standard of proof. But the U.S. Supreme Court rejected this argument, imposing instead as a constitutional minimum proof beyond a reasonable doubt.

Reaching this kind of decision *must* undermine the rehabilitative logic of juvenile justice. The justification for the criminal standard of proof beyond a reasonable doubt is that conviction of the innocent carries a larger social cost than acquittal of the guilty. The Law Day speeches proclaim that "it is better that ten guilty men go free than for one innocent man to get convicted." But was the court in *Winship* saying, "it is better that ten kids who need help don't get it than for one kid who doesn't need help to receive it"? Or was the court unwilling to assume that the street-level reality of juvenile justice in the United States was a rehabilitative enterprise?

And many of the patterns long noted in the United States are documented in this volume in a very wide variety of different systems. There is a strong preference in both the theory and practice of juvenile courts to keep young offenders in their home and community settings in all the major juvenile systems studied. Probation and community supervision are the first resort of the vast majority of juvenile courts from Poland to Pretoria and from Brussels to Rio de Janeiro.²⁴ In practice, all

of the modern juvenile court's advantages over criminal justice seem to be the passive virtues of intervening less. But isn't this quite far from the profile of a muscular penal rehabilitation regime?

There is another striking feature in this book's global profile that undermines a rehabilitative theory of juvenile courts. The one region that operates *without* a separate set of judicial institutions for juvenile offenders is Scandinavia—a group of nations as dedicated to government programs for the improvement of citizens as anywhere on earth.²⁵ If the true distinguishing feature of juvenile courts were an emphasis on rehabilitative interventions, Norway, Sweden, Denmark, and Finland should be the first in line to create such a court rather than the only advanced nations without juvenile courts.

And a large number of the nations that embrace separate institutions for young offenders include many with no facilities for interventions. What, if anything, is the particular promise of juvenile courts in Tajikistan in 2012? Rehabilitation?

The more recent history of juvenile justice in the United States provides one further reason to doubt the dominance of belief in rehabilitation for the strong commitment to separate juvenile courts. In the generation after *In Re Gault* and *In Re Winship* were decided, after the Supreme Court had forcefully disconnected juvenile justice from its claims of rehabilitation, there was no retreat from the jurisdictional reach and autonomous status of juvenile courts in the 50 U.S. states.

Whatever justified a wholly separate court for young offenders in 1915 seemed fully in place a century later. But what was that animating theory or function?

In the past few decades, restoration has been proposed as a new goal of the juvenile court.²⁶ Restorative justice refers to victim-offender reconciliation, mediation, or mechanisms that would require reparation or apology to the victim by the youth or his or her family.²⁷ But as a recent theory on the goals of juvenile justice, restorative justice could not provide a rationale for the establishment of independent juvenile courts for most of the 20th century. In addition, even in those jurisdictions where restorative justice programs have been implemented, these programs cover only a fraction of the reactions of the juvenile justice system.²⁸ In other words, we do not dispute the value of restorative justice as a

possible goal of juvenile courts, but this goal could provide, at best, a partial explanation and justification for the existence of these courts.

Two Meanings of Malleability

There are two different theories of malleability that distinguish the aspects of adolescence that lie at the heart of separate policies of juvenile justice. The notion that young offenders are easier to change was the battle cry for programmatic rehabilitation and for an active and powerful juvenile court system that would intervene forcefully in the lives of young offenders to bend their wills toward appropriate behavior and social ambitions. This was the active mode of juvenile justice decisively rejected in the era of *Gault* and *Winship*.

But the same young persons who might be hard to change programmatically are in the midst of a period of very rapid social, economic, and educational change. They are growing up. And this dynamic progress of maturation provides another basic approach to state policy toward adolescent crime. Rather than active intervention, why not keep the offending young in community and home settings where a normal maturation process will reduce the propensity to offend as they grow up? The policies based on this theory of juvenile malleability and of juvenile justice are passive rather than active. The court should be restrained in its punishments and careful not to interrupt a normal maturation process that is the best hope for the eventual reduction of social risk. In this policy approach, the best cure for youth crime is growing up. This is a juvenile court that aims, at almost all costs, to facilitate a normal maturation.

Both the rehabilitative and maturational theories of juvenile justice are deeply invested in the unique character of adolescence as a period of development, and both theories hope to exploit the changeability of young persons to create a specific jurisprudence of youth crime. But the two theories differ almost to the point of contradiction in both their philosophies and modes of practice. After making the case for the dominance of the maturational perspective in the practice of modern juvenile justice, we will return to the striking contrasts between maturational and rehabilitative theories of juvenile justice and show that maturational strategies are the heart of progressive juvenile justice globally.

A Separate Court to Facilitate Maturation

The maturational juvenile court understands high rates of adolescent law violation as a usually transitional phenomenon. Whenever possible, the court's task is to balance the need to condemn harmful acts and to create some punitive consequences for them with continuity in the offender's home life and in the community-based educational and work experiences of normal maturation. The strategic ambition is to wait out a difficult transitional period with the minimum necessary intervention. So the strong preference of this kind of court is for informal and nondisruptive reactions to law violation. All over the developed world, juvenile misbehavior results in "station adjustments" by police, as well as diversionary adjustments by probation screeners at the front door of the juvenile court for the young offenders who make it to the front door as well as prehearing diversion to counseling or community resources with no court proceedings. For the cases that survive these diversionary screenings, three-quarters of the offenders adjudicated are assigned to probationary supervision or other orders that keep them in the community. When secure confinement is used, it is most often short term and frankly punitive detention that its architects hope does not last long enough to disrupt the youth's normal living situation.

This long list of minimal interventions, and the very few longer custodial sentences issued by juvenile courts, are the result of a delicate balancing act between the punitive and incapacitation sentiments that serious law violations provoke and the court's reluctance to interrupt normal maturation. Young offenders do commit crimes with very harmful consequences. A car theft or burglary can lead to probation in a maturational juvenile court, but what if the car injured or killed a pedestrian, or what if someone was shot? The retributive and incapacitation pressures that serious offending generates are relevant to the calculus of a maturational court's consideration of sanctions, as they may have to be. But the balance between the pressure for punishment that interrupts normal development and the young offender's prospects for growth is not the typical calculus of just deserts. And the prospect of natural maturation also affects incapacitation calculations in particular ways.

Why a Separate Court?

If the penal requirements of youth crime are considered by the maturational juvenile court, what elements of such a court's jurisprudence make a separate court for juvenile offenders a necessity? There are two reasons why the policies and the dispositions of this kind of court cannot be seamlessly blended into the usual business of criminal courts. The first problem is that youth welfare interests will trump the usual demands of penal justice in most cases. This kind of court will choose probation in a large number of cases in which the seriousness of the offense might generate a short prison sentence in a criminal court. And the scales of maturational juvenile justice only produce long penal confinement outcomes when the harm and guilt are overwhelming. So the biases that are designed into a maturational juvenile court would clash with the just deserts and the incapacitation calculus of the modern criminal court. The strong preference for noncustodial outcomes contradicts the preferred outcome in criminal courts. And this contrast in outcomes is not an idiosyncratic feature of the incarceration-heavy U.S. system so much as a general distinction between penal and juvenile courts in most countries.

The second element of the workload of the "maturational" juvenile court that requires a separate court is the need to design even punitive dispositional sanctions around the specific developmental needs of young offenders. Young offenders must be the center of attention and regard in the maturational juvenile court, as they never were in the criminal courts of most developed nations. Of course, the best interests of the young offender has never been the only interest to be balanced in juvenile court, but it must be a major concern at every stage and a particular priority when dispositional sanctions are at issue. So one similarity between a juvenile justice system organized around rehabilitation and what we have termed the "maturational" court is that both require a separate juvenile court system to function properly. But even though both types of court are organized around the changeability and developmental needs of young offenders, they are as different as night and day in most other respects.

The rehabilitative court uses state programs to interrupt the development of young offenders to change their behavior. It is an active and

aggressive form of government intervention. The maturational court hopes to wait out a normal developmental process in most cases. It is a passive program when pursuing its priority, considering restraint to be a judicial virtue. The principle of minimum intervention is one of its guiding maxims.

The two systems are also in stark contrast in their sentiments about both adolescents and state programs. The believer in penal rehabilitation is a pessimist about the future prospects of young offenders left without major intervention. That must be the reason heavy intervention is necessary. But this pessimism about the kids is combined with an optimism about the ability of state intervention to create positive change.

The proponents of a maturational policy are usually pessimistic about the ability of compulsory programs to generate positive change in youth behavior. But this pessimism about state intervention is balanced by an optimistic assessment of the capacity for kids to grow up and grow out of delinquent lifestyles. The maturational judge is optimistic about kids and pessimistic about programs. The rehabilitative judge is optimistic about programs and pessimistic about kids.

One other important contrast between maturational and rehabilitative theories of juvenile justice concerns the timing of expected crime-prevention benefits. The impact of an intervention program should be relatively soon after the program has been experienced by its subjects. So the search for program impacts is a short-term expectation of relative improvement if rehabilitative programs are effective. But keeping young offenders in community settings while expecting them to grow up is a much longer-term investment, and continued offending in the short term is not necessarily a sign of failure. A maturation strategy can look past rearrests after earlier court processing without admitting failure. This long-term hope for a law-abiding adulthood is reminiscent of Mark Twain's observation, "It's easy to quit smoking. I've done it hundreds of times." Just as with people who keep trying to quit smoking, it is not so much the outcome of individual attempts that is important but whether repeated efforts produce eventual success. While any focus on short-term rearrest chances will be frustrated by the ironically high rearrest propensities of young offenders, a policy that can successfully shift the focus to eventual success can tolerate short-term frustration.

Maturation theories could also accommodate easily the due process demands brought by the civil rights revolution in the United States and by the human rights revolution at a global level. We already explained the tension between the rehabilitative ideal and due process demands. Instead, from the perspective of maturation, "it is better that ten guilty kids who will likely mature naturally go free than one innocent kid who will also mature naturally be unnecessarily convicted." In fact, from the perspective of maturational theory, it does not make much sense to convict (almost) any of them.

Unity and Diversity in the Practice of Juvenile Justice

The major focus of this volume has been describing and analyzing the treatment of young offenders in a wide variety of different settings. The vast majority of systems studied use separate juvenile courts for young offenders, but there are substantial variations in types and intensities of sanctions and some variance as well in the ages that serve as a transition from juvenile to criminal court jurisdiction. In other words, even if the chapters show that the juvenile court is an almost global phenomenon, individual jurisdictions have translated or adopted this institution in different fashions.²⁹ How deep are the similarities between the juvenile justice systems found in Europe and Asia and Latin America and South Africa, and how great are the differences? And what would explain these differences?

With very few exceptions, one characteristic of most juvenile courts everywhere is a lack of explicit discourse about priorities and the reasons for case outcomes. Even after the procedural changes brought about since *In Re Gault* and the inclusion of due process provisions in the UN Convention on the Rights of the Child and other international instruments, in many places, trial courts exercise huge discretion, they rarely issue detailed explanations of dispositional decisions, and their dispositions are rarely appealed.³⁰ And the ambiguous phrases and general sentiments of statutory law are almost never tested against decisions about dispositions in individual cases. For juvenile justice systems all over the world, the only path to knowledge is to watch what they do rather than to listen carefully to the announced justifications for decisions. In this sense, careful observation of the statistics on case

processing, secure confinement, and sanctioning does provide important indications of the real priorities in juvenile court policies. If we do a good job of observing what juvenile courts do, we can learn a great deal about them. And the authors who have built this volume have done a good job of learning from the statistics as well as from the rhetoric of their national systems.

This section summarizes our view of the common trends and noted differences in the national systems covered in the first nine chapters of the book. The following section will consider the current and potential role of international standards influencing the principles and practice of juvenile courts.

The nations examined in this book have a lot in common in their legal policies toward young offenders. The notion that immaturity by reason of youth should reduce maximum deserved punishment is universally accepted in both juvenile and criminal courts. While some Muslim nations use a religiously based reduced age boundary for the end of a period of protected immaturity,³¹ the 18th birthday is a nearly universal boundary for protected youthful status, perhaps because secondary education typically ends about then. While both the idea of diminished responsibility and the 18th-birthday boundary are the subject of consensus, different systems seem to have very different standards of appropriate levels of punishment. The only place where diminished responsibility is the only major influence on different punishments for youth is with very serious crimes where an offender has been transferred out of juvenile court jurisdiction.³²

A second pattern to be discovered in the previous chapters is the absence of aggressive interventions based on penal rehabilitation without concern for the severity of the offense or the wishes of the family.³³ In every system observed in this book, the real contrast between juvenile and criminal court is that the juvenile court does less when dealing with its clients than would a criminal court for the same offense.

The mechanisms used to reduce the confinement of young offenders vary widely and do not always reflect the statutory framework of juvenile justice. Different degrees of economic and human resources in developed and developing countries may contribute to explaining the gap between legal regulations and the law in action of juvenile justice in this regard.³⁴ However, the interactions between the levels of

confinement according to the juvenile law on the books and the juvenile law in action are complex and go in multiple directions. In India, for example, Ved Kumari shows a statutory framework that emphasizes noncustodial sanctions after adjudication, and the rate of juvenile confinement in India is also quite low. But the main reason detention rates per 100,000 kids is low in India is a lack of arrests. And patchy statistics on custody in “special homes” show substantial use when young offenders do penetrate the system. In Scandinavia, the arrests of 15- to 17-year-olds are processed by a criminal court with no special rules for separate treatment, but penal confinement rates are much lower in such courts than for the next youngest group of defendants in three of the four Scandinavian nations.

A different degree of economic and human resources in different countries may also account for how much of a gap there is between the promises of juvenile policies and the actual practice beyond confinement, such as, for instance, whether states provide social programs to juveniles in conflict with the law.³⁵ Religious influence may also explain certain differences among juvenile systems. For instance, among Muslim-majority countries, we find differences in the minimum age of penal responsibility that may be partially explained by the French colonial, Islamic, or Soviet origin of the regulation.³⁶

While detailed profiles of juvenile court sanctions are not available for many nations, there are enough statistics on case outcomes in various systems to demonstrate substantial differences in the penalties imposed in different juvenile court systems. The data that Weijian Gao obtained about theft adjudications in the PRC shows that a majority of such cases lead to confinement in juvenile court, a much higher percentage than would happen in most other systems. No data come from case outcomes in places such as Saudi Arabia and Iran, but the assumption of informed observers is that confinement is common and the terms of confinement can be expected to be longer than in most other places.

Do such contrasts in outcome in different juvenile systems result from different philosophies of juvenile justice? The question is an important one, and the apparent answer is yes, with important qualifications. The different outcomes reflect a real contrast in the mix of philosophies in different systems, but this is not a result of different

philosophies of juvenile justice as much as the different power in different systems of retributive or incapacitation priorities of the same kind that govern dispositions in criminal courts. In the PRC, the relatively new juvenile courts operate under the same penal code as criminal courts but with somewhat different patterns of emphasis. So it is not a competition between maturational and rehabilitative theories of juvenile justice that produces more custody and longer terms in the PRC so much as the conflict between conventional retributive or incapacitation priorities and maturational concepts of juvenile justice. Whether the overlap between criminal and juvenile sanctions will diminish in China as the juvenile courts develop further is yet to be seen. But what China has now is a weaker form of juvenile courts, rather than a different philosophy of juvenile justice. The same seems to be true in many Middle Eastern nations, although the empirical foundations for any firm conclusions there are lacking.

The passive and reactive preferences in juvenile courts are widespread, but they compete with the retributive or incapacitation pressures of conventional criminal justice with varying degrees of success in different places. This overlap with retributive pressures is most evident in younger systems and where the institutions of juvenile justice still depend on the punishments provided in a penal code.

Most of the variations we observe in juvenile sanctions are then a function not of different philosophies of juvenile justice but rather of the continued power of conventional retributive or incapacitation pressures from criminal justice that still compete with the standard maturational priorities of juvenile court. The conflicts that are observed in 2015 are not that far removed from those in the early years of juvenile courts in the Western world.

Our chapters suggest that politics, the degree of autonomy of juvenile judges and other officials, and the penological preferences of the operators of the juvenile system are three crucial variables in explaining the extent to which a maturational policy of juvenile justice has the upper hand over a retributive emphasis in a given situation.³⁷ The transitions from authoritarian to democratic rule in central and eastern Europe, Latin America, South Africa, and South Korea opened up policy windows for the introduction of less punitive and more due-process-oriented rhetoric or legal regulations on juvenile courts.³⁸ In the case of

Poland, these regulations resulted in a less punitive legal regime. In the case of the South Korean transition to democracy, a less punitive turn in juvenile justice took place without a need for formal reform, as the operators of the juvenile justice system supported or accepted the winds of political reform.³⁹

Political agendas that created, responded, or channeled concerns about crime have pushed juvenile justice in the opposite direction, as indicated by the chapters in this volume on China, Europe, Japan, India, Latin America, Poland, and South Africa.⁴⁰ In some cases, these concerns have brought an increase in the use of punitive rhetoric or measures on juveniles.⁴¹ However, in Japan, the degree of autonomy of the juvenile justice system seemed to have neutralized the effect of formal "tough-on-crime" changes on the levels of sanctions for juveniles.⁴² The fact that prosecutors do not dominate the Japanese juvenile justice system may have enabled such an autonomy from and neutralization of "tough-on-crime" policies.⁴³ (In fact, we have not received indications from the chapters in this volume that prosecutors' pressures on the juvenile justice system, which has become a central characteristic of the U.S. system in the past few decades, has spread around the world.)⁴⁴

Political regimes that torture or otherwise abuse prisoners may also abuse juveniles under detention.⁴⁵ In addition, institutional weakness and insufficient penetration of national laws may help explain why some countries have still executed juveniles despite national policies prohibiting such a practice.⁴⁶

But despite these different trends in different countries, it is remarkable that juveniles accused of the commission of crime are thought to require a different set of adjudicatory institutions and less or non-punitive measures. In any case, as we already mentioned, any conclusion about the current circumstances of juvenile justice must be qualified by the substantial limits on information available on juvenile and criminal case outcome. The comparative study of juvenile justice is still too much a guessing game for important systems in Asia, Latin America, and Africa. And one of the larger dangers of limited data is that observers are tempted to see what they want to see. So most of our conclusions should be regarded as tentative, subject to corrections in the face of better data. We hope that our efforts and opinions about current circum-

stances will provoke more careful statistical profiles that can test and may supplant the findings in this volume.

International Standards as an Influence on National Systems

In the previous sections, we have analyzed the global spread of juvenile courts around the world. Such a spread took place in a decentralized way, with the Chicago juvenile court being the first model for reform that was then followed by other possible reform models in Europe, Latin America, and elsewhere. The United States has still been influential in this area in the past few decades with the trend of due process requirements brought about or highlighted by *In Re Gault* and with new scientific studies on the adolescent brain that have been brought to the foreground by decisions such as *Roper v. Simmons* and *Graham v. Florida*.⁴⁷ But many juvenile justice advocates and scholars have also considered the United States a problematic case not to be followed due to its more punitive approach to juvenile cases in the past few decades.⁴⁸

Simultaneously, the last few decades of the twentieth century brought global standards in this area, with the articulation of international legal documents on juveniles and juvenile justice, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the “Beijing Rules”), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the “Havana Rules”), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”), and the United Nations Convention on the Rights of the Child.

In addition, bodies such as the European Court of Human Rights started to develop a line of cases on juvenile justice, interpreting the European Convention on Human Rights and Freedoms to protect juveniles’ rights.⁴⁹ Decisions made by that body are enforced in Europe by monetary damages, have contributed to the arguments of advocates in Europe and elsewhere, and have led to legislative changes in a number of countries.⁵⁰

These international developments do not seem to have played a role in the introduction of separate juvenile courts, partially because by the time the specific international regulations on children and juveniles were

passed, most countries had already adopted separate juvenile courts. But these international instruments and developments have played a role in and had an impact on juvenile policies in many countries.⁵¹

The central document concerning a global policy relating to juvenile justice is the United Nations Convention on the Rights of the Child, adopted in 1989 and ratified at last count by 193 nations. The Committee on the Rights of the Child, composed of 18 independent experts appointed by state parties, monitors the implementation of the Convention through country reports.⁵² Country reports and other documents issued by the committee have had an influence on specific countries, as the chapters in this volume on India, Poland, and South Africa indicate.⁵³ By the end of 2011, the United Nations General Assembly approved an optional protocol to the Convention on a communications procedure, which allows individual children to submit complaints regarding specific violations of their rights under the Convention. This protocol entered into force upon ratification by 10 United Nations Member States in April 2014.⁵⁴

In addition, depending on the relationship of individual legal systems to international law and human rights treaties, the Convention may be self-executing and have a legal status superior to regular laws and even a constitutional status in some states.⁵⁵ These standards have also provided rhetorical and normative support for children's advocates in legislative and judicial discussion about juvenile justice policy, even in one of the very few countries of the world that has not ratified the Convention, the United States.⁵⁶

In the spirit of the earlier Universal Declaration of Human Rights, the Convention seeks to prohibit a wide range of abusive and neglectful threats to child development and to generate positive rights to support, education, family life, and privacy. The document is concerned with the treatment of young offenders both in its positive aspirations and in the harmful state policies it seeks to prohibit. The positive ambitions include a qualified right to the status of childhood ("A child means a human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier" under article 1) and the apparent prohibitions of solely punitive state interventions ("In all actions concerning children . . . the best interests of children shall be

a primary consideration” under article 3.1). Positive aspirations have also included, among other rights, the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness (article 24), the right to benefit from social security (article 26), and the right to a standard of living adequate for the child’s physical, mental, spiritual, moral, and social development (article 27). Domestic laws implementing the Convention have thus included similar rights that have also been seen as crime-preventive measures.⁵⁷ However, often no programs or adequate programs for the implementation of these rights have actually been adopted.⁵⁸

The practices that article 37 of the Convention seeks to prohibit are more limited: “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age.” Article 37’s limit on incarceration is more qualified: “The arrest, detention or imprisonment of a child shall be used only as a last resort and for the shortest appropriate period of time.”

The two specific and unqualified prohibitions in article 37 have probably had more impact on domestic policy than the general standard about the “shortest appropriate period of time” for confinement has, at least among states that could still apply the death penalty and life without parole on juveniles, such as the United States. While the general definition of childhood’s boundary at 18 is qualified so that an earlier age of majority is allowed, the prohibition of both state execution and life without the possibility of release for acts committed under age 18 are unqualified. Whether the general acceptance of these exclusions is a product of their widespread popularity independent of the Convention or in part a result of the article 37 condemnation should be explored further in future studies.

As a literal matter, it may be fanciful to ask what theory or theories of juvenile justice are favored by the Convention on the Rights of the Child. In relation to juvenile justice, the Committee on the Rights of the Child issued General Comment No. 10 (2007) on “children’s rights in juvenile justice” in order “to provide the States parties with more elaborated guidance and recommendations for their efforts to establish an

administration of juvenile justice in compliance with the Convention on the Rights of the Child" (§ 3). On theories of juvenile justice, Comment No. 10 says,

Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. (§ 10)

A number of countries that have introduced new juvenile justice acts after ratifying the Convention also mention rehabilitation as a rationale for the reforms.⁵⁹

Despite the Comment No. 10's reference to rehabilitation as one of the theories underlying juvenile justice, there are three sets of provisions in the Convention and in Comment No. 10 that instead point collectively toward a maturational philosophy. The first is that the Convention establishes that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding" (preamble) and that "States Parties shall ensure to the maximum extent possible the . . . development of the child" (art. 6). According to Comment No. 10, this right to development "should result in a policy of responding to juvenile delinquency in ways that support the child's development" (§ 11). In addition, article 40.1 of the Convention establishes that "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, . . . which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

The second set of provisions that point toward a maturational philosophy is the clear downgrading of punitive sanctions including

confinement “except as a last resort” (article 37(b)) and the requirement that in all state actions concerning children, “the best interests of the child shall be a primary consideration” (article 3.1). Article 40.3(b) of the Convention also establishes, “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: . . . Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.” The preference for passive over active state programs can be seen not only in the rejection of confinement and formal judicial proceedings but also in the right of the child to preserve family relations (article 8) and the restriction of separation from family to circumstances in which separation is “necessary for the best interests of the child” (article 9). The emphasis on the rights of the child is one of family and child choices and state responsibility.

The third set of provisions is the explicit rejection of status offenses and the imposition of criminal justice due process standards, in article 40, that can be considered inconsistent with rehabilitative theories of state involvement. In relation to status offenses, article 40.2(a) says that no “child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.” And General Comment No. 10 says,

It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts. . . . These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee recommends that the States parties abolish the provisions on status offenses in order to establish an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: “In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.”

As for due process protections, article 40 of the Convention provides for a wide variety of rights, including the presumption of innocence, the right to proper legal assistance, and the right against compulsory self-incrimination. As pointed out previously, these types of due process protections are in tension with the rehabilitative ideal.

Juvenile courts are only one of the domains of concern to authors and interpreters of the Convention on the Rights of the Child. But their general conceptions of childhood, state responsibility, and juvenile justice are compatible with and even closely linked to the passive virtues of a maturational juvenile court policy.

Conclusion

The aim of this chapter was to test theories of the objectives of juvenile court against the data reported on the actual operations of juvenile courts in many countries. There is a relatively small literature on theories of juvenile justice, and there is also a growing number of empirical profiles of juvenile courts, for the most part concerning North America and Europe. But these two developing literatures have often been isolated from each other rather than combined. This chapter is one preliminary attempt to use the operational reality of modern juvenile courts to observe what must have been the priorities being served.

The major contrast operationally between criminal and juvenile courts is that juvenile courts use much lower levels of confinement and shorter durations of confinement for juvenile offenders. The juvenile offender is far more likely to remain in the community while the system waits out the process of his or her growing up. There is not now, nor was there ever, substantial investment in relocation and indoctrination of young offenders. Instead, the court for young offenders hopes to do less harm than long-term incarceration would produce. Most of the virtues of what we have called a maturational strategy of juvenile justice are passive virtues.

This strategy has special appeal for the treatment of youthful offenders because they do grow up. The dynamic processes that go with the adolescent years promise not an instant reformation of kids who offend but a relatively swift transition for most kids into adult roles and reductions in offending.

NOTES

We would like to thank Frieder Dünkler, Ved Kumari, Tapio Lappi-Seppälä, and David S. Tanenhaus for comments on an earlier draft of this chapter and Jeff Fagan for conversations about it.

1. See, e.g., H. H. Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina Press, 1927). Correctional measures specifically aimed at juveniles predated the creation of juvenile courts. See, e.g., Robert M. Mennel, *Thorns and Thistles: Juvenile Delinquents in the United States, 1825–1940* (Hanover, NH: University Press of New England, 1973); Robert S. Pickett, *House of Refuge* (Syracuse, NY: Syracuse University Press, 1967); David J. Rothman and Sheila M. Rothman, *Documents Relative to the House of Refuge Instituted by the Society for the Reformation of Juvenile Delinquents in the City of New York in 1824* (New York: Garland, 1987).

2. See, e.g., S. D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).

3. See, in this volume, Kumari, chap. 4; and Salaymeh, chap. 6.

4. See Chung, chap. 9 in this volume.

5. See, in this volume, Beloff and Langer, chap. 5; Lappi-Seppälä, chap. 2; Stańdo-Kawecka, chap. 7.

6. Máximo Langer, “Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery,” *American Journal of Comparative Law* 55 (2007): 622–623.

7. See, in this volume, Chung, chap. 9 (explaining that South Korea adopted its own “homegrown” regulations of juvenile justice in 1958); Kumari, chap. 4 (describing the adoption of the Children Act of 1960 and its spread to Indian states); Salaymeh, chap. 6 (describing the spread and extension of the jurisdiction of juvenile courts in Muslim-majority countries in the past few decades); Skelton, chap. 8 (describing the adoption of the Child Justice Act of 2008 in South Africa).

8. See, e.g., Salaymeh, chap. 6 (appendix on Turkey).

9. See, e.g., W. Richard Scott, John W. Meyer, and Associates, *Institutional Environments and Organizations: Structural Complexity and Individualism* (Thousand Oaks, CA: Sage, 1994); Martha Finnemore, “Norms, Culture, and World Politics: Insights from Sociology’s Institutionalism,” *International Organization* 50 (1996): 325–347.

10. On the influence of the U.S. juvenile court model in the first half of the 20th century, see, e.g., Beloff and Langer, chap. 5 (explaining that the U.S. juvenile court was the model followed by Argentina); Kumari, chap. 4 (explaining that even though India was a British colony, it followed the U.S. model when it adopted its first juvenile act in 1920); Stańdo-Kawecka, chap. 7 (explaining how the youth court movement in Europe relied on the U.S. model of juvenile courts).

11. Joseph S. Nye, Jr., *Soft Power: The Means to Success in World Politics* (New York: Public Affairs, 2004).

12. See Gao, chap. 3 in this volume.

13. One example of undoing comes from the province of Chubut, in Argentina, where there used to be separate juvenile courts that have been recently eliminated.

14. See, e.g., Gao, chap. 3. On the relationship between urbanization and industrialization and the spreading of the concept of juvenile delinquency and the adoption of juvenile courts, see, e.g., Victor Bailey, *Delinquency and Citizenship: Reclaiming the Young Offender, 1914–1948* (New York: Oxford University Press, 1987); Anthony Platt, *The Child Savers: The Invention of Delinquency*, 2nd ed. (Chicago: University of Chicago Press, 1977); Anthony Platt, “The Child-Saving Movements and the Origins of the Juvenile Justice System,” in *The Sociology of Juvenile Delinquency*, ed. Ronald J. Berger (Chicago: Nelson-Hall, 1991) 5; David J. Rothman, *The Discovery of the Asylum* (Boston: Little, Brown, 1971).

15. Among the chapters in this volume, see, e.g., Skelton, chap. 8 (describing the role of the juvenile system in the reproduction of racial oppression in South Africa). See also Geoff K. Ward, *The Black Child-Savers: Racial Democracy and Juvenile Justice* (Chicago: University of Chicago Press, 2012).

16. See, e.g., Beloff and Langer, chap. 5 (on Latin America during colonial times); Kumari, chap. 4 (on Hindu and Islamic law); Salaymeh, chap. 6 (on Islamic law). See also William Blackstone, *Commentaries on the Laws of England*, vol. 4 (1765–1769; repr., Chicago: University of Chicago Press, 1979), 22–24 (analyzing diminished responsibility regulations in civil and common law).

17. Julian Mack, “The Juvenile Court,” *Harvard Law Review* 23 (1909): 107.

18. See, e.g., Beloff and Langer, chap. 5 (describing rehabilitation as one of the central goals that the introduction of juvenile courts in Latin America was supposed to advance); Stańdo-Kawecka, chap. 7 (explaining that the youth court movement in Europe coincided with the modern school of criminal law that had rehabilitation as one of its goals).

19. Francis A. Allen, “Legal Values and the Rehabilitative Ideal,” in *The Borderland of Criminal Law: Essays in Law and Criminology* (Chicago: University of Chicago Press, 1964).

20. See Franklin E. Zimring, “The Common Thread: Diversion in the Jurisprudence of Juvenile Courts,” in *A Century of Juvenile Justice*, ed. Margaret K. Rosenheim, Franklin E. Zimring, David S. Tanenhaus, and Bernardine Dohrn (Chicago: University of Chicago Press, 2002), 197.

21. See, e.g., in this volume, Beloff and Langer, chap. 5; Dünkler, chap. 1; Kumari, chap. 4; Stańdo-Kawecka, chap. 7 (mentioning rehabilitation as one of the goals of the 1982 Polish Juvenile Act).

22. See P. S. Cabot, “A Long-Term Study of Children: The Cambridge-Somerville Youth Study,” *Child Development* 11, no. 2 (1940): 143–151; Joan McCord, “A Thirty-Year Follow-Up of Treatment Effects,” in *Crime and Family: Selected Essays of Joan McCord*, 13–21 (Philadelphia: Temple University Press, 2007).

23. 397 U.S. 358 (1970). See also *In Re Gault*, 387 U.S. 1 (1967).

24. See, e.g., Beloff and Langer, chap. 5; Dünkler, chap. 1; Skelton, chap. 8; Stańdo-Kawecka, chap. 7.

25. See Lappi-Seppälä, chap. 2.
26. See, e.g., in this volume, Beloff and Langer, chap. 5 (describing the introduction of restorative justice mechanisms by the laws adopted in the past twenty-five years in Latin America); Dünkkel, chap. 1 (arguing that restorative justice has been one of the main goals of juvenile justice in recent years in Europe); Skelton, chap. 8 (describing restorative justice as one of the main forces behind the South African Child Justice Bill).
27. See, e.g., Dünkkel, chap. 1.
28. See, e.g., *ibid.*
29. On the metaphor of legal translation, see Máximo Langer, "From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure," *Harvard International Law Journal* 45 (2004): 1–64.
30. On the gap between due process protections on the books and the actual practice of magistrates, see, e.g., Kumari, chap. 4 (describing such a gap in India).
31. See Salaymeh, chap. 6.
32. Franklin E. Zimring, "Juvenile or Criminal Court? A Punitive Theory of Waiver," in *American Juvenile Justice* (New York: Oxford University Press, 2005), 155.
33. See, e.g., Lappi-Seppälä, chap. 2.
34. See, e.g., Kumari, chap. 4 (describing implementation problems of the Juvenile Justice Act of 2000 in India); Salaymeh, chap. 6; Skelton, chap. 8 (mentioning lack of training of police officials in the Child Justice Act as a reason for the reduction in the number of children who get into the child justice system after the passing of the act).
35. See, e.g., the contrast between the lack of meaningful programs in most of Latin America, referred to by Beloff and Langer in chapter 5, and the situation in Scandinavia, described by Lappi-Seppälä in chapter 2.
36. See Salaymeh, chap. 6.
37. Socioeconomic factors (see, e.g., Dünkkel, chap. 1) and crime rates (see, e.g., Skelton, chap. 8) are other possible relevant variables.
38. See Beloff and Langer, chap. 5; Chung, chap. 9; Dünkkel, chap. 1; Skelton, chap. 8; and Stańdo-Kawecka, chap. 7.
39. See Chung, chap. 9.
40. See, e.g., Dünkkel, chap. 1 (describing demands for a more punitive approach to juvenile justice in many European countries, as well as the moderate impact that such demands have in fact had on European juvenile justice systems); Gao, chap. 3 (indicating that the higher rate of juvenile confinement in China than in other nations may be the result of more substantial punishment policies in Chinese juvenile courts); Kumari, chap. 4 (describing the retributivist attitudes by many Indian judges as a cause for the circumvention of the regulations of the Juvenile Justice Act of 2000); Skelton, chap. 8 (describing the introduction of new minimum-sentences legislation as a populist move to woo voters who were angry about high crime rates, as well as mentioning popular demands as a possible explanation for the increase in the number of children serving sentences between 1995 and 2004).

41. See, e.g., Beloff and Langer's chapter 5 on the case study of Chile, where they conclude that juvenile justice reform has likely increased confinement levels of juveniles.

42. See Chung, chap. 9. See also Stańdo-Kawecka, chap. 7 (arguing that the skepticism by Polish family courts about rehabilitation was one of the possible factors that explain the low use of correctional measures in that juvenile system).

43. Chung, chap. 9.

44. On the dominance of prosecutors over the juvenile justice system in the United States, see, e.g., David S. Tanenhaus, "First Things First: Juvenile Justice Reform in Historical Context," *Texas Tech Law Review* 46 (2013): 281–290.

45. See Salaymeh, chap. 6.

46. See, e.g., *ibid.* (on Yemen).

47. On the influence of *In Re Gault* and due process requirements on other jurisdictions, see, e.g., Beloff and Langer, chap. 5 (describing such an influence in Latin America). On the influence around the world of these recent scientific studies on the adolescent brain, see the contrast between Kumari's chapter 4 (embracing these scientific studies as a crucial component to design and implement public policy on juvenile justice in India) and Skelton's chapter 8 (explaining the strategic decision by the Centre for Child Law in South Africa not to refer to the juvenile brain studies because it was planning to challenge a law that criminalized consensual sex between adolescents). On the limits of brain studies as firm ground for future reform efforts on juvenile justice, see Terry A. Maroney, "The Once and Future Juvenile Brain," in *Choosing the Future for American Juvenile Justice*, ed. Franklin E. Zimring and David S. Tanenhaus (New York: NYU Press, 2014), 189–215.

48. For articulation of these criticisms among the chapters in this volume, see, e.g., Dünkler, chap. 1; Kumari, chap. 4.

49. The first case in this line of cases was *Tyrer v. United Kingdom* (1978) (holding that judicial corporal punishment on a juvenile was degrading treatment in violation of article 3 of the European Convention of Human Rights).

50. See, e.g., Stańdo-Kawecka, chap. 7 (describing how the European Court of Human Rights' decision in *Ademkiewicz v. Poland* of March 2, 2010, no. 54729/00, on the right to a fair and public hearing, led to an amendment of the 1982 Juvenile Act by the Polish Parliament in August 2013).

51. Among the chapters in this volume, see, e.g., Beloff and Langer, chap. 5 (describing the impact of the UN Convention on the juvenile justice reforms in Latin America); Dünkler, chap. 1 (arguing that the UN Convention has had a role in the relative invulnerability of juvenile justice systems against punitive demands in Europe); Lappi-Seppälä, chap. 2 (describing the impact that the Convention's demand of separation of juveniles from adult prisoners had in Denmark and the Convention's impact on the adoption of closed youth care in Sweden); Salaymeh, chap. 6 (describing the different strategies that Muslim-majority countries have adopted to deal with and accommodate to the UN Convention); Skelton, chap. 8 (describing the influence of the Convention and other international developments on the Child Justice Act in South Africa).

52. The Committee on the Rights of the Child also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography.

53. See Kumari, chap. 4 (describing the influence of the *Concluding Observations of the Committee on the Rights of the Child on India* on the adoption of a new juvenile justice act in that country in 2000); Skelton, chap. 8 (explaining that civil society organizations urged a higher age than 10 years in light of the UN Committee on the Rights of the Child's General Comment No. 10, which urged setting a minimum age of no less than 12 years); Stańdo-Kawecka, chap. 7 (considering problematic the Polish minimum age of criminal majority set at 17 years, in view of General Comment No. 10).

54. See Committee on the Rights of the Child, home page, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>; United Nations, "Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure," December 19, 2011, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11-d&chapter=4&lang=en.

55. See, e.g., Argentine Constitution, sec. 75.22 (giving constitutional status to the Convention on the Rights of the Child); Skelton, chap. 8 (describing South African constitutional regulations on children's rights, the constitutional obligation that courts consider international law when interpreting the Bill of Rights, and the frequent reference by the South African Constitutional Court to international documents, including the Convention).

56. See, e.g., *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010).

57. See, e.g., Kumari, chap. 4.

58. See, e.g., Beloff and Langer, chap. 5.

59. See, e.g., Kumari, chap. 4 (mentioning rehabilitation as a rationale for the introduction of the Juvenile Justice Act of 2000 in India).