

Juvenile Justice Systems: A Comparative Analysis

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This paper draws on an ongoing study of comparative penology that is being undertaken by Michael Cavadino and myself in collaboration with colleagues from a wide range of countries representing Western Europe (England and Wales, France, Germany, Italy, The Netherlands, Sweden and Finland), the non-European English-speaking world (USA, Australia and New Zealand), an advanced industrialised but non-Western state (Japan) and the fascinating but rather special case of South Africa. At a theoretical level, the approach we have adopted is based on an analytical framework as we have previously developed for our book on the English Penal System (Cavadino and Dignan, 2002), which we call radical pluralism. We have tried to show how the radical pluralist framework applies to the realm of penality with the aid of a diagram (see Figure 1).

Radical pluralism conceives of society as containing a plurality of interest groups, such as business organisations, trade unions, and political parties, which contend to have power exerted in their favour. These interest groups include economic classes, but are not restricted to them, since race, nationality and gender relations are also critical to any adequate social analysis. The state mediates this contest between the various interest groups, but does not do so in an impartial manner since it is inherently biased towards groups which already possess wealth, established power and status. However, the relationship between the state and the various interest groups is likely to vary from one country to another. The social world in which all this contending and mediating activity takes place has both material and ideological aspects to it, and these components interact with one another reciprocally [refer to diagram]. And the way they interact is likely to have important consequences in the realm of penality. Naturally, however, the precise nature of the relationship between political, economic and cultural factors – and also the interplay between them - is likely to vary within different kinds of societies.

General hypothesis

So, generalising somewhat, we might expect that societies that resemble one another in terms of their economies, politics and cultures would also broadly resemble each other in terms of their penalty, though it might be wise to expect some surprises and anomalies. In order to put this hypothesis to the test we have developed profiles of four different types of ‘late’ capitalist societies that we have derived from the work of Esping-Andersen (1990) and others. These are depicted in the form of a typology that is set out in Figure 2. The typology itself is described in more detail in Cavadino and Dignan (2005, forthcoming), where we argue that it is not only possible to differentiate between certain groups of countries on the basis of their political, social and economic arrangements, their material circumstances and also their ideological predilections, but also that these differences appear to be reflected in certain aspects of their penal ideology and penal practices. The more specific hypothesis that I would like to explore in this paper is that the penological differences that we have found between these various groups of countries are also reflected in their juvenile justice systems and the way they operate. Summarising greatly, I will seek to contend that the youth justice systems we have been examining have adopted different responses to the ‘youth justice’ problem, and continue to follow distinctively different developmental trajectories.

Trying to trace the origins, history and continuing development of ‘youth justice’ systems is not an easy task. So, in order to try to simplify matters I will make reference to a second typology that is set out in Figure 3. This one consists of five different youth justice models, or approaches that have at various times – and to differing extents - had an influence on the development of youth justice systems in the 12 countries comprising the comparative penology study. They are the welfare model, the justice model, the minimum intervention model, the restorative justice model and the neo-correctionalist model. Like all ideal types, this typology also comes with a ‘health warning’, which reads that they are simply devices that set out to ‘capture’ some important distinctions between a number of different approaches to the treatment and processing of particular categories of young people. It should not be assumed that any of the youth justice systems in the comparative penology study do or have ever corresponded exclusively and unequivocally to any of the models presented here. As we shall see, most have been influenced by a variety of approaches, and virtually all have changed, to a greater or lesser extent, over time. Nevertheless, one

important question is whether it is possible to detect any overall pattern in the way juvenile justice systems have developed in each of the main family groupings of states. This is an issue I will return to after briefly outlining the key features that are associated with each of the five main juvenile justice approaches.

The ‘Welfare Model’

The ‘welfare model’ adopts a positivistic approach that is based on the assumption that juvenile wrongdoing is the product of social or environmental factors for which the young person cannot be held individually responsible. Accordingly, the primary goal of the youth justice system is to provide appropriate help or treatment for offenders, rather than punishment. Indeed, young people who are vulnerable or in trouble are considered to be in need of protection from the potentially harmful and corruptive influences of the adult world, including the adult criminal justice system. Consequently, the primary emphasis is on the ‘needs’ and ‘best interests’ of the child rather than the ‘deeds’ they may have committed. These paternalistic assumptions are also reflected in the institutional arrangements that – in some jurisdictions at least - have come to be associated with the welfare model. The most distinctive of these arrangements has been the creation of a separate set of ‘socialised welfare tribunals’ as alternatives to the regular criminal courts. Within these tribunals, the state assumes the rôle and responsibilities of a surrogate parent in respect of troublesome and also vulnerable children.

One notable feature of this approach is that it uses the same set of tribunals for dealing with children who are in need of care and protection as well as those who are in trouble with the law. A second notable feature is that the tribunal’s jurisdiction is not only confined to conventional criminal offences but also encompasses so-called ‘status offences’ including behaviour such as truancy, or sexual precociousness. One consequence of this wide-ranging jurisdiction is that the welfare model does not wait until an offence has been committed before intervening in the lives of young people. A second consequence relates to a preference for informal procedures that are not constrained by concepts such as legal relevance or the need to prove the commission of an offence. A third characteristic feature of the welfare approach relates to the use of social scientific ‘experts’ in the form of social

workers, psychologists, psychiatrists, those trained in pedagogy, either as decision-makers in their own right or, more commonly, as advisers and report-writers to assist judges. Another closely related feature is that decision-makers are given wide-ranging discretion when determining and providing for the 'best interests' of the child. This often involves the use of 'custody' (or at least compulsory removal from home) both for diagnostic purposes and also to remove the child from its harmful environment. And there is also a marked preference for court orders and disposals that are flexible, individualised, and open-ended or indeterminate in duration. Such disposals likewise have the effect of investing a high degree of discretionary power over the young person's life in the practitioners who are charged with implementing them.

As for the impact of the welfare model: aspects of the welfare approach have at various times influenced the youth justice systems in all of the countries in our study, though both the extent and duration of its influence have been highly variable. Generalising very broadly, we can say that the welfare approach was adopted in its 'purest' form during the early part of the twentieth century in much of the United States and, somewhat later, in the Scandinavian countries (especially Sweden) and also Japan. Key elements of the welfare approach have also influenced the development of youth justice systems in most of the conservative corporatist countries, particularly Germany, but also Italy, France and (at least until recently) the Netherlands. The remaining common law countries have not been totally immune from its influence although in most of them, as we shall see, its impact has been far less pervasive, particularly with regard to the development of youth justice institutions and their associated jurisdictional arrangements. However, it is also true to say that the impact of the welfare approach has considerably diminished since its heyday during the first two-thirds of the twentieth century. Nowhere is this more apparent than in the United States, which has since the 1960s comprehensively abandoned many aspects of its former welfare-oriented youth justice system. Elsewhere, the welfare approach has also come under pressure, but while the influence of other approaches has become more apparent, it shows no signs in these countries of being abandoned altogether. This is particularly true of Sweden and, to a lesser extent also, it applies to several of the conservative corporatist countries (notably Germany

and France) and also Japan, where the welfare approach still retains much of its former pre-eminence.

The ‘Justice Model’

In contrast to the positivism of the welfare model, the ‘justice model’ espouses a ‘classicist’ approach that is based on the assumption that even young people are – with certain limited exceptions – endowed with free will. Because they are considered to be responsible for their actions, it is felt acceptable for them to be held accountable in law for what they have done, which means that the primary focus is on the ‘deeds’ of the child rather than their welfare ‘needs’. Accordingly, the principal goal of the youth justice system – as of the adult criminal justice system is initially to determine the suspect’s legal guilt or innocence and next, if convicted, to assess the degree of culpability that they bear. Punishment should then be apportioned in accordance with the seriousness of the offence and the offender’s corresponding ‘just deserts’. Because the system is acknowledged to be unequivocally engaged in the administration of punishment that often entails a loss of liberty there is a greater emphasis – formally at least - on the need for procedural rights of ‘due process’ and for appropriate constraints to be placed on the punitive power of the state.

Not surprisingly, perhaps, the institutional arrangements that are most closely associated with the justice model consist of modified ‘junior criminal courts’ rather than the socialised welfare tribunals that help to characterise ‘pure’ versions of the welfare approach. The notion that young people need to be protected from ‘contamination’ by mixing with older offenders is still present – up to a point – but is addressed by introducing relatively minor modifications to the standard lower-tier criminal courts that deal with adult offenders. The most common modifications relate to the provision of separate juvenile court proceedings that are held either in a different building or at least at a different time from adult court proceedings; and the restriction of access to both the public; and the media. A second tendency is to introduce some form of differentiation between the two jurisdictional strands relating on the one hand to young offenders and on the other to those in need of care and protection. In some cases this takes the form of a complete institutional separation with entirely separate courts and procedures for dealing on the one hand with children who are ‘in

trouble' for what they have done, and on the other hand with those who are vulnerable to abuse or neglect. But even where the two strands remain united, there is a tendency to adopt a 'two track' adjudication model, with different procedures for dealing with each group of children.

The procedural safeguards that are associated with the justice model include various rights: to be notified in advance of the specific charges a young person is facing; to legal representation (paid for out of public funds if necessary); to a fair and impartial hearing; to confront and cross-examine witnesses and to be presumed innocent until proven guilty (which includes a privilege against self-incrimination). The range of sentencing 'outcomes' that are associated with the justice model more closely resemble those available in adult criminal courts, with a strong emphasis on the need for proportionate, finite and consistent penalties rather than the open-ended, indeterminate and highly individualised orders that are characteristic of the welfare model.

As for the impact of the justice model, its influence – particularly with regard to the adoption of 'modified criminal courts' as opposed to socialised welfare tribunals - may be seen in the early development of juvenile justice systems in many of the common law jurisdictions, with the notable exception, initially, of the United States. However, its most dramatic impact was subsequently to be felt in the United States itself, as we shall see, following a series of landmark decisions by the Supreme Court during the 1960s. The ultimate effect of these rulings was to transform the juvenile court 'from a nominally rehabilitative welfare agency into a scaled-down second-class criminal court for young offenders', thereby paving the way for further, even more radical, changes to come. The influence of the justice approach on youth justice systems has also been felt in many other jurisdictions, including conservative corporatist states and Scandinavian social democracies. But although it has moderated certain aspects of their predominantly 'welfare-based' systems – notably with regard to the elimination of 'indeterminate' sentencing practices – it has failed to bring about a wholesale transformation of the systems themselves on anything like the scale experienced in the United States.

The 'Minimum Intervention Model'

The philosophy that underpins the 'minimum intervention model' is derived in part from criminological 'labelling theory', which suggests that all official forms of processing young offenders are potentially harmful to them since they 'label' and stigmatise them as criminals. This makes it more, rather than less, difficult for them to desist from crime in future since it may make it harder for them to engage in lawful activities, for example by rendering them unemployable. Indeed, it may also increase the risk of them participating in illicit activities, for example by confining them in custodial institutions where they can meet other offenders, learn from them and be drawn into criminal subcultures. Placement in custodial institutions could for this reason constitute the most harmful and counter-productive of all official interventions. In short, this approach is characterised by a concern that official responses to crime may frequently promote 'secondary deviance' on the part of young offenders, thereby fuelling the 'deviancy amplification spiral' that they are ostensibly designed to prevent!

Considerations such as these have given rise to a 'minimum intervention' strategy that incorporates some or all of the following elements:

- (i) avoiding the use of custodial or residential institutions wherever possible;
- (ii) using community-based alternatives to custody wherever possible in cases that do call for a punitive intervention (linked with a policy of diverting young offenders from custody);
- (iii) avoiding prosecution altogether where possible, by encouraging prosecutors to discontinue proceedings and encouraging the police to 'caution' or warn young offenders instead (linked with a policy of diversion from prosecution);
- (iv) taking care to avoid 'net-widening' by ensuring that the above interventions are never used for young people who would otherwise have been dealt with informally (linked with a policy of targeting and monitoring);
- (v) advocating a policy of 'decriminalisation', certainly with regard to 'status' offences, where they exist, but also at the very least in respect of minor criminal offences which, when committed by young people, would no longer carry even the threat of criminal sanctions; and

- (vi) advocating a policy of ‘depenalization’ whereby even young offenders who commit more serious offences would no longer come within the jurisdiction of the criminal courts, but would be dealt with instead by means of civil proceedings administered by an appropriate ‘child-sensitive’ institution or tribunal.

Another important feature of the minimum intervention philosophy is that it applies as much to ‘welfare-based’ interventions as it does to those that are imposed with criminal justice objectives in mind. For the ‘helping’ professions are seen as potentially just as harmful to young people as their more openly coercive criminal justice counterparts, since they, too, are apt to pathologize young people and intervene in their lives far too readily and too intensively, all too often with damaging consequences. As for the institutional arrangements that might be expected to feature within a minimum intervention model, one of the most important features is some form of ‘gate-keeping’ mechanism, in order to secure the diversion of offenders from prosecution or custody, though the precise form they take varies widely within different jurisdictions.

In terms of its impact, the minimum intervention model came to prominence much more recently than either of the other two models we have looked at so far and was particularly influential during the 1970s and 1980s in a wide variety of penal jurisdictions. One of the key tenets of the minimum intervention model – that custody should be imposed on those under the age of 18 only as a last resort and for the shortest possible period - was incorporated in Article 37 of the UN Convention on the Rights of the Child. So potent was the model for a time that in some countries [notably England and Scotland] it was referred to as ‘the new orthodoxy’. Despite these short-term successes, however, the influence of the model has waned more recently, especially in some of the neo-liberal countries, where it has lost ground to two even more recent models.

The ‘Restorative Justice Model’

The ‘restorative justice model’ is based on a radically different set of assumptions about the concept of crime itself, the relationship between offenders, victims, citizens and the state, and also about the most appropriate ways of responding to crime. Whereas traditional criminal justice theorists have portrayed crime first and foremost as an offence against the

state, the restorative justice model places particular emphasis on the harm that is done to the victim, whose interests were for many years neglected by mainstream criminal justice agencies and policy-makers alike. Traditional approaches have tended to place the responsibility for dealing with crime firmly in the hands of state-appointed agencies, who are expected to deal with offenders (and almost exclusively with offenders) in accordance with 'the public interest'. In marked contrast, the restorative justice model advocates a policy based on involving those who are most directly affected by a particular offence – victims, offenders and their 'communities of care' – in decisions about how it should be resolved. Moreover, such a policy gives primacy to those interests as opposed to the more general and abstract 'public interest'.

The restorative justice model also advocates a very different set of goals for the criminal justice system instead of the predominantly offender-focused goals - retribution, deterrence, rehabilitation, and incapacitation - that are associated with traditional approaches. With regard to victims, the aim is restoration, which encompasses the repairing of the physical, emotional and psychological harm that may have been experienced. With regard to offenders, the primary aims include the promotion of accountability towards those who have been harmed by an offence, and the active reintegration of offenders themselves back into the community. With regard to communities the goal is one of empowerment and a reinvigoration of civil society founded on a network of constructive and largely self-repairing social relationships.

Many of those who favour the restorative justice model advocate a radical reformulation of the state's rôle and responsibilities with regard to crime, which can be expressed in terms of the 'principle of subsidiarity'. Instead of the state – or its representatives within the criminal justice agencies – assuming direct and primary responsibility for 'dealing with' crime and its aftermath – its chief function should be to act as facilitator, provider of information and resources, and deliverer of services. Only in cases that cannot be satisfactorily resolved by the relevant communities of care should the state serve as the ultimate arbiter of fairness, and provide a court-based forum for delivering restorative outcomes.

In terms of criminal justice policies and processes, the restorative justice model – like the minimum intervention model – favours the diversion of (many if not most) offenders from prosecution, and also strategies aimed at decarceration (since custodial interventions often make it very difficult to secure restorative outcomes). Not surprisingly, the emphasis on meeting the needs of victims while promoting the accountability and well-being of offenders and at the same time securing the empowerment of victims, offenders and communities has resulted in a quest for new and more suitable institutional arrangements and procedures that are more culturally sensitive. The best known of these procedural innovations include the use of ‘family group conferencing’ and other variants on the conferencing theme, which enable offenders, victims and their respective families to informally resolve matters by reaching an agreement as to how the offence should be dealt with. Another, very closely related, innovation involves the use of ‘victim offender mediation’, which differs from conferencing mainly with regard to its more restricted focus on the principal ‘stake-holders’ themselves (victims and offenders) rather than their respective communities of care.

The impact of the restorative justice model has so far been highly variable. In North America victim offender mediation schemes are not in any sense integrated into the criminal justice system since they are not legislatively mandated and where they do operate it is solely on a ‘stand-alone’ basis. Elsewhere, notably in France and Germany, the use of victim offender mediation does form an integrated part of the regular criminal justice system, since it is now authorised by law, though the extent to which it is used in practice in these countries remains patchy. The family group conferencing approach was initially introduced and pioneered in New Zealand which remains unique in the extent to which it has adopted a reasonably ‘pure’ version of the restorative justice model as the basis of its youth justice system. Here the main role of the juvenile court is to determine issues of guilt or innocence in contested cases, and to provide a back-up in cases that cannot be satisfactorily resolved by the conference. Other forms of conferencing programmes have been developed elsewhere which differ from the New Zealand approach in a number of important respects, most notably insofar as they mainly involve the police rather than social workers as facilitators. This variant on the conferencing approach was initially introduced in a number of Australian

states as part of the regular criminal justice system, (though others have gone over to a New Zealand style conferencing model). It has also been introduced on a stand-alone, trial, basis in a number of other jurisdictions including the United States, England and Wales and also South Africa.

The ‘Neo-correctionalist Model’

The ‘neo-correctionalist model’ resembles the justice model inasmuch as both adopt an uncompromisingly punishment-oriented approach, but in other respects they are very different. Whereas the justice approach views the offender as a bearer of rights - and therefore entitled to protection against excessive punitive interventions on the part of the state - the neo-correctionalist approach is more likely to emphasise the responsibilities that young offenders, and even their parents, owe towards others, including the victim, the community and the state. And whereas the justice model makes at best modest claims as regards its ability to achieve any reduction in the incidence of crime- preferring to ensure that offenders receive the punishment which is most just rather than the most effective in terms of crime reduction - the neo-correctionalist approach espouses a much more ambitious crime control goal for the youth justice system.

Under this model, the prevention of offending by young people is accorded primacy, and all other aims are subordinated to it. For example, reparation - for victims and also the wider community - is favoured chiefly insofar as it may contribute to a reduction in reoffending rates rather than something to which recipients should be entitled as of right. Another aim of the neo-correctionalist model is to improve the efficiency of the youth justice system, for example by co-ordinating the activities of the various criminal justice agencies, speeding up the criminal justice process and increasing the effectiveness of the various interventions that are directed at young offenders. In addition to these purely pragmatic considerations, however, the principal philosophical foundation for the neo-correctionalist approach derives from an unashamedly populist ‘law and order’ ideology that equates effectiveness with the imposition of tough, intensive and unashamedly punitive interventions. In certain other respects, the neo-correctionalist model more closely resembles the welfare model than the justice model with which it is more commonly compared. This is particularly

true with respect to the type of behaviour it seeks to prevent, which is not confined to purely criminal behaviour but often extends also to acts of ‘pre-delinquency’, including truancy, and other non-criminal forms of rowdy or anti-social behaviour. To some extent this change of focus reflects the adoption of a much broader agenda for the criminal justice system as a whole, which is no longer restricted to responding to crime per se, but has to do with the preservation of ‘community safety’ in general. These broad assumptions are reflected in a number of more specific policies and processes that help to characterise the neo-correctionalist model. They include a marked preference for strategies based on the principle of ‘early intervention’, which in this context can take a number of different forms.

First, there is a tendency to adopt various preventive measures for dealing with acts of pre-delinquency, including the creation of new quasi-criminal forms of ‘civil’ penalties to combat anti-social and related forms of behaviour. Second, there is a tendency to extend the principle of criminal responsibility to younger age groups. One way of doing this involves the abolition of the protective legal doctrine of *doli incapax* whereby children of a certain age are presumed to be incapable of committing a crime unless they can be shown to appreciate the difference between right and wrong. Third, there is a tendency to adopt more intensive and punitive interventions even in respect of petty and first-time offending, in order to ‘nip it in the bud’: the policy of ‘zero tolerance’. Other measures that are associated with the neo-correctionalist approach include the use of mandatory or semi-mandatory penalties for certain categories of offenders, and the adoption of so-called ‘progressive’ sentencing strategies whereby persistent offending is met by increasingly punitive responses regardless of the seriousness of the offences themselves. Finally, the emphasis on efficiency is reflected in the adoption of two related sets of measures. One involves the introduction of ‘fast-tracking’ procedures that are designed to reduce the time taken to deal with young offenders. The other involves the extension of ‘systems management’ techniques – such as inter-agency collaboration – that are intended to unite all criminal justice agencies in pursuit of a common set of preventive goals. The institutional arrangements that are associated with the neo-correctionalist model include the adoption of the ‘transfer’ procedures which enable certain young offenders to be dealt with in adult criminal courts, and also modifications of juvenile

court proceedings in order to make them more meaningful to young people, thereby supposedly enhancing their preventive potential.

In terms of its impact, the first signs of an emergent neo-correctionalist model could be detected in the United States during the late 1970s, and during the next two decades the transformation of American juvenile courts from a nominally rehabilitative welfare agency into a modified criminal court for young offenders was increasingly influenced by an overtly neo-correctionalist agenda. Similar tendencies can also be discerned in most other neo-liberal countries during this period, with the notable and interesting exception of New Zealand. Beyond the neo-liberal sphere of influence however, as we shall see, the impact of the neo-correctionalist model has so far been much less pervasive.

One possible general explanation for this fairly pronounced ‘pattern of penalty’ in the youth justice realm is that the emergence of the justice model in many neo-liberal societies coincided with a severe and widespread economic downturn. This resulted in high levels of unemployment in which the young, the poor and the disadvantaged were particularly badly affected by the disruption of one of the main socialisation processes during the transitional period from childhood to adulthood. Perhaps not surprisingly, the same period also coincided with growing moral panics –by no means confined to neo-liberal countries - over various youth crime issues. In several neo-liberal countries, however, this disruption was compounded by attempts on the part of mainly right-wing governments to restructure the welfare state, notably by restricting young people’s access to unemployment benefits and other forms of welfare support. Within this context, the adoption of a justice model that was based on an explicitly punitive orientation – even though nominally tempered by just deserts principles – provided a fertile medium for the emergence of a still more punitive approach in pursuit of an openly neo-correctionalist agenda.

The fact that most conservative corporatist societies and social democracies appear not to have succumbed to the same tendencies despite their exposure to the same economic downturn, and in spite of their willingness to embrace at least some aspects of the justice model may be attributable to two important sets of differences, operating respectively at the material and ideological levels. First, such countries did not set about the systematic

dismantling of their welfare state provisions on anything like the scale experienced within the neo-liberal camp. And second, they did not entirely reject the welfare model, which continued to provide an alternative approach to the harsh punitive rhetoric that underlies both the justice and, in particular, the neo-correctionalist models.

Although the various models we have been examining have had some impact on virtually all the countries in the comparative penology study, the precise influence of each has been variable, as we have seen, suggesting that here again there is a ‘pattern of penalty’ that may be explicable in terms of the radical pluralist thesis that I referred to earlier. In order to see whether this really is the case, it may be helpful to briefly examine recent developments within the four main types of welfare capitalist systems that are set out in Figure 2.

NEO-LIBERAL YOUTH JUSTICE SYSTEMS

Generalising greatly, a number of broad tendencies can be discerned. The first is that the impact of the welfare approach has been far more uneven within this group of countries than in most other types of penal polity. Second, irrespective of its original impact, the welfare approach has shown far less endurance in neo-liberal than in most other types of youth justice systems. Third, neo-liberal youth justice systems have been particularly receptive to the justice model, though this could in part be explained by the fact that most of them have an adversarial form of criminal procedure which, at least formally, favours the adoption of procedural safeguards. And finally, with the singular and fascinating exception of New Zealand, neo-liberal youth justice systems have in recent years been far more likely to adopt an uncompromisingly neo-correctionalist approach than any other type of penal polity. [One clear illustration of this tendency is the fact that neo-liberal countries are in general far more likely than any others in the study group to routinely transfer young offenders to the adult criminal jurisdiction, where they will almost certainly be exposed to more exclusionary and more highly punitive sentencing measures].

As for New Zealand itself, the scale of the ‘restorative justice revolution’ that has transformed its youth justice system in recent years remains unique, both within the neo-liberal camp and also beyond it, which poses an obvious challenge for the radical pluralist

account. Can it explain how come its juvenile justice system seems to be so far out of line with its neo-liberal pedigree? I am not sure that we have a definitive answer to this question, but two factors may go some way to explain the conundrum. The first has to do with the racial politics in NZ, and the fact that the Maoris are a large and relatively powerful racial minority that has long felt itself to be severely disadvantaged by the country's colonial criminal justice system, thereby posing a challenge to the overall legitimacy of the system that could not simply be ignored. The second has to do with the fact that although New Zealand has in recent years become increasingly aligned to the neo-liberal camp, it has in the past shown strong social democratic tendencies, particularly with regard to its health system and very generous welfare state provisions in the post war years. So when faced with a serious challenge to the legitimacy of its juvenile justice system this residual social democratic legacy helped to nurture a more inclusive and culturally sensitive set of juvenile justice reforms?

CONSERVATIVE CORPORATIST YOUTH JUSTICE SYSTEMS

The youth justice systems that are found in most conservative corporatist countries all include the existence of specialised criminal courts for juveniles. And all have been shaped, to a greater or lesser degree, by a version of the 'welfare model', in which the primary justification for judicial intervention (or non-intervention) has been the 'best interests of the child', while the principal goal of the entire youth justice system could be defined as 'resocialisation through education'. Indeed, this pedagogical purpose is likely to be reflected in several key aspects of the court process itself including, for example, a much more active rôle for the judge than is associated with most neo-liberal youth justice systems. Moreover, the trial procedure is also designed to encourage a higher level of participation on the part of the juvenile accused and any accompanying family members. In part, these 'orientational' differences between the two types of juvenile justice systems may be attributed to deeper structural differences in the legal systems themselves (Weijers, 2002). Thus, it is probably no coincidence that the more pedagogically oriented youth justice systems are to be found in conservative corporatist states that have traditionally favoured a civil law based inquisitorial approach. Conversely, the adversarial system that is associated with the common law

tradition favoured by neo-liberal states tends to minimise the scope for interaction or dialogue between judge and accused during the trial process itself, and thereby inhibits the development of an explicitly pedagogical approach. Within common law based youth justice systems, the scope for pedagogical dialogue is at best confined to the period after conviction and may often depend on the type of sentence that is imposed instead of being a central and routine part of the trial process itself.

Another interesting feature of the welfare model that has been adopted by most of the conservative corporatist juvenile justice systems is that it has become imbued with a strong 'minimum interventionist' ethos. This also stands in marked contrast to the much more coercive and interventionist approach that is associated, for example, with the ostensibly welfare oriented American youth justice system. The minimum intervention approach may also be consistent with a belief in, and a commitment to enhancing, the pedagogical rôle of the trial process itself, which, if successfully accomplished, may be thought to preclude the need for further intervention. In common law based adversarial systems, however, the trial process is much more narrowly focused on the establishment of the guilt or innocence of the defendant, as an abstract legal subject rather than as a whole human being. Sentencing is often seen as something of a hurried afterthought, and is certainly largely divorced from the guilt-finding process. In the inquisitorial tradition, by contrast, the court is seen as actively engaging with the defendant as a whole person throughout a relatively seamless process. So it is perhaps no coincidence that in neo-liberal states minimum interventionist developments tend to be chiefly associated with pre-trial diversionary processes whereas in conservative corporatist states they are equally likely to be associated with court-based processes. The welfare approach was much slower to take hold in many conservative corporatist countries than it was in the United States but, once established, it has tended to show a greater degree of resilience in the face of challenges posed by the justice model and neo-correctionalist approach. Consequently, the youth justice systems that are found in most conservative corporatist countries – with the possible exception of the Netherlands – tend to show a much greater degree of stability than those associated with neo-liberal polities. They also tend to be far more homogeneous than their neo liberal counterparts. Summing up, we can say that the conservative corporatist countries appear to place far less emphasis on the need for

formal social control methods and a greater willingness to encourage the diversion of young offenders in particular from prosecution. Moreover, there is much less of a tendency to routinely transfer young offenders to the adult criminal jurisdiction.

SOCIAL DEMOCRATIC YOUTH JUSTICE SYSTEMS

The most obvious and distinctive feature of social democratic youth justice systems is the complete absence of a separate set of criminal courts for dealing with juvenile offenders, most of whom are dealt with instead by a specialist institution known as the child welfare board. These boards are also responsible for dealing with young people in need of care and protection, and have traditionally placed a strong emphasis on the welfare of the child, paying particular regard to the latter's needs and social circumstances rather than the deeds they may have committed. And even more so than conservative corporatist countries, social democratic states seem far more reluctant to invoke formal social control measures in respect of young offenders, many of whom are either diverted from the criminal justice system altogether, or else dealt with by social welfare authorities.

ORIENTAL LIBERAL CORPORATIST YOUTH JUSTICE SYSTEM

Japan's unique status— as the sole exemplar of an oriental liberal corporatist welfare model — is a product of the distinctive fusion that has taken place between selective overseas influences and Japan's own indigenous cultural traditions and values. Nowhere is this more vividly illustrated than in the field of youth justice. For more than a century, the Japanese youth justice system has been profoundly influenced by American youth justice principles and precepts while still retaining a distinctively Japanese orientation at the level of practice. For over 50 years the system displayed a remarkable stability, and during most of this period appeared largely immune to the reformist tendencies that have dramatically reshaped many other juvenile justice systems around the world, including its own American 'alma mater'. In recent years, however, the Japanese youth justice system has itself come under enormous strain, resulting in unprecedented and inexorable demands for fundamental reform that are proving to be impossible to withstand. Recent demands for reform have been influenced by both Justice Model and neo-correctionalist tendencies, though so far both have made relatively limited headway even though this seems likely to change in the future.

CONCLUSION: GENERAL PATTERNS OF PENALTY?

I would like to conclude by presenting two very striking ‘patterns of penalty’ that are also very much in line with the radical pluralist thesis we have been considering. The first relates to the various age thresholds that determine the extent to which young offenders may be exposed to the imposition of formal social control measures based on the application of criminal sanctions. Two age thresholds are of particular interest. The first relates to the ‘age of criminal responsibility’ which normally refers to the age at which young people first become liable to be prosecuted for criminal offences. The second relates to the minimum age at which young offenders become liable for penal detention. The relationship between these age thresholds and the four main groups of penal jurisdictions is depicted in Table 1. When the four different groups of countries we have been considering are compared, there does appear to be a fairly consistent pattern in the degree of protection that is afforded to young offenders against the risk of prosecution and the imposition of formal sanctions including the use of imprisonment.

Thus, the group of states which operate with the highest overall minimum age of criminal responsibility comprises the Scandinavian social democracies. In Sweden and Finland (and also in Norway and Denmark) the minimum age of criminal responsibility is 15, and offenders who are below that age cannot normally be prosecuted at all, whether in adult courts or even in specialised juvenile criminal courts. In both Sweden and Finland, as we have seen, even though young offenders who are between the ages of 15-18 may be prosecuted in the ordinary courts, this is relatively unusual, and offenders of this age are more likely to be dealt with instead by the social welfare authorities. Indeed, in Sweden, offenders even up to the age of 20 may be dealt with in this way though this only applies to a minority of such offenders. In Japan, the age of criminal responsibility is also fairly high, at 14, and young offenders between the ages of 14 and 20 are normally dealt with by welfare-oriented family courts although recently, as we have seen, the minimum age at which juveniles may be prosecuted in the ordinary criminal courts has been lowered from 16 to 14 years of age.

The minimum threshold age for criminal responsibility in most of the conservative corporatist states is somewhat lower than that found in the Nordic social democracies. In Germany and Italy, for example, the corresponding age is 14, which in turn is slightly higher than that in France where it is 13, and the Netherlands, where it is 12. Within the majority of social democratic states and corporatist states, therefore, there is a tendency to systematically divert most young people from the criminal justice system altogether. This is achieved by adopting a relatively high age of criminal responsibility, which thus operates as a fairly rigid bar on prosecution, and protects young offenders from exposure to the exclusionary effects of conviction and formal punishment.

In sharp contrast, most non-corporatist states, and especially those that have pronounced neo-liberal tendencies, appear much less reluctant to expose young offenders to the exclusionary risks of prosecution, conviction and the imposition of a variety of formal punishments. Moreover, even this limited degree of protection has been further eroded in several neo-liberal states recently. In England and Wales, for example, the position until recently was that only children below the age of ten were completely immune from prosecution. Children between the ages of 10 and 14 were presumed to be incapable of knowing that what they were doing was wrong, unless the prosecution were able to prove otherwise. However, the doctrine of 'doli incapax' on which this 'individual capacity' approach was based was abolished by s. 34 of the Crime and Disorder Act 1998. England and Wales already had one of the lowest ages of criminal responsibility - ten - in the whole of Europe, and the latest change reinforced its reputation for being one of the countries affording young offenders the least protection against the risk of criminal prosecution. The position is broadly similar in many American states (though some states retain the common law minimum age of seven, while others have a minimum age of 11 or 12). In South Africa also, the minimum age of criminal responsibility is currently seven although there have been recent moves to raise this to ten.

Generally speaking, therefore, it can be seen that the countries which afford young offenders the greatest degree of protection against the risks of prosecution and, consequently, the imposition of formal sanctions are the Nordic social democracies together with the rather

special case of Japan. The conservative corporatist states form an intermediate group in which young offenders are offered a moderate degree of protection against the risks of prosecution and the imposition of formal sanctions, while the states affording the most minimal levels of protection are the neo-liberal states.

The second, equally striking pattern, relates to the use of imprisonment for young people within each of the four main groups of penal jurisdictions, as depicted in table 2. Once again, when the four different groups of countries are compared, there appears to be a fairly consistent pattern in the extent to which imprisonment is resorted to, whether this is measured in terms of the proportionate size of the juvenile prison population in relation to the overall prison population or the imprisonment rate for young people per 100,000 of the relevant age sector of the population in each jurisdiction. Thus, with only one exception, the jurisdictions fall into four distinct bands according to their propensity to imprison juvenile offenders, with neo-liberal states at the most punitive end of the spectrum, and the Scandinavian social democracies and Japan at the most lenient end, with the conservative corporatist states occupying the middle ranking. The one exception is the Netherlands, which has been becoming steadily more punitive in recent years with respect to adult offenders as well as juveniles, though the degree of punitiveness that is currently being shown towards juveniles is a very recent phenomenon since as recently as 2002 the juvenile prison population was only a fifth as much as it was a year later, and the juvenile imprisonment rate was a much more modest 9 per 100,000, which is much more in line with the other conservative corporatist states.

These two related ‘patterns of penality’ – which are closely in line with similar trends relating to the imprisonment rate for adult offenders - are broadly consistent with the radical pluralist hypothesis outline above, and provide further support for the contention that penal practices in different jurisdictions are likely to be influenced by the social, economic and political context in which they operate.

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Figure 1.1 A radical pluralist analysis of youth justice systems

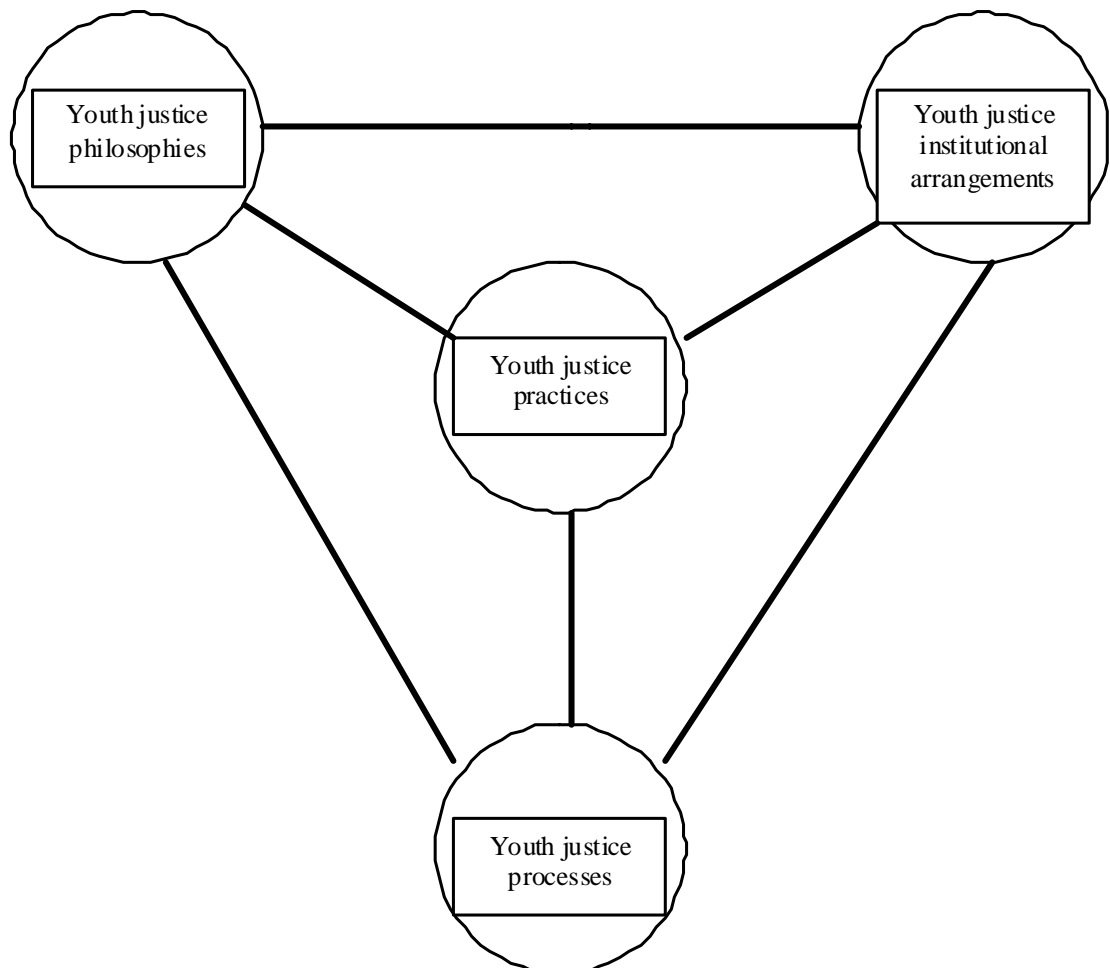


FIG YJ 1-2 TYPOLOGY OF YOUTH JUSTICE MODELS

MODELS	Philosophical assumptions	Institutional arrangements	Policies and processes
'WELFARE MODEL'	Determinist: crime is 'caused' Paternalistic and protectionist Focus on 'needs' not 'deeds' Child as dependent Help/treatment or education, not punishment	'Socialized welfare tribunal' based on 'parens patriae' Unified care/criminal jurisdiction	Pre-delinquent interventions Informal procedures 'One-track adjudication' Unfettered discretion Social science expertise Use of diagnostic custody Indeterminate, flexible orders
'JUSTICE MODEL'	'Free will' and 'accountability' Child as responsible agent Focus on 'deeds' not 'needs' Young offender as 'bearer of rights' Focus on 'just deserts'	'Modified criminal court' Distinct care/criminal jurisdiction	'Two-track adjudication' Procedural safeguards in court Procedural formality Determinate sentencing Proportionality in punishment Treat like cases alike
'MINIMUM INTERVENTION MODEL'	'Labelling perspective' Dangers of secondary deviance Avoidance of 'net-widening'	'Gate-keeping mechanisms' Alternatives to custody	Decriminalization Diversion from prosecution Decarceration Systems management approach Targeting, monitoring
'RESTORATIVE JUSTICE MODEL'	Focus on restoration for victims Focus on reintegration (and accountability) of offenders Empowerment of parties New role for state: 'subsidiarity'	'Family group conference' Victim/Offender mediation Changes in rôle of youth court Unified care/criminal jurisdiction	Diversion from courts combined with reparation Decarceration Flexible/innovative outcomes Need for cultural sensitivity
'NEO-CORRECTIONALIST MODEL'	Primacy of offending prevention 'Law and order' ideology 'Responsibilisation' of offenders & their parents Young offender as bearer of responsibilities & obligations Offender accountability towards victims and community Efficiency & effectiveness Focus on community safety	Reform of court process Closer links with adult courts New 'civil' forms of punishment	Early interventionism Pre-delinquent interventions Relaxation of age limits 'Zero tolerance' Reparation by offenders Focus on persistence 'Progressive' sentencing Quasi-mandatory sentences 'Fast-tracking' Systems management approach

Table YJ1-2: Proportion of the prison population comprising juveniles under the age of 18 and juvenile imprisonment rate

Penal Jurisdiction	Prisoners under 18 years of age (unless otherwise stated)		YP per 100k relevant pop	Remarks
	Number	Per cent of prison population		
United States	135,107 104,413	6.5	336.0	Of those in state and federal prisons at 30.6.2003; source: BofJ Stats, NCJ May 2004. Based on Juvenile offenders in public and private residential facilities on 24.10.01; source Sickmund et al, 2004
New Zealand	369	6.4	68.0	At 15 November 2001. New Zealand Dept of Corrections, 2003
England and Wales	2,288	3.1	37.3	At 30.4.03. Source: Home Office monthly prison population brief
Scotland	170	2.6	33.0	At 30.6.03. Source: Scottish Executive, 2004
Australia	545	2.4	24.9	At 30 June 2002. Source: Bareja and Charlton (2003); and AusStats, Australia Yearbook
South Africa	4,468	2.3	74.0	At 31.3.03. Source: South Africa Dept of Correctional Services
Netherlands	574	3.1	51.3	At 1.9.2003. Source: Council of Europe Annual Penal Statistics, 2002 & WODC personal communication.
France	797	1.4	19.8	At 1.4.2004. Source: Ministère de la Justice, 2004
Germany	841	1.38	23.1	As of 31.3.2001. Source: Kerner et al
Italy	0 (267)*	0 0.5	... (11.3)	In 2003. Source: Ministero di Giustizia, 2003
Finland	7	0.2	3.6	At 15.4.04. Source: International Centre for Prison Studies prison brief for Sweden.
Sweden	14	0.2	4.1	At 1.10.03. Source: Official statistics of Swedish Prison Administration (KVS), T. 4.5, 5.5
Japan	35**	0.05	0.01	At 31.12.00 (of convicted prisoners under 20). Source: Int. Centre for Prison Studies. Ministry of Justice, 2002