

What is a juvenile? A cross-national comparison of youth justice systems

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Abstract

In this paper, the authors analyze cross-national variations in policies pertaining to the Minimum Age of Criminal Responsibility and the Age of Criminal Majority. The authors purposively study the cases of Argentina, Belize, England/Wales, and Finland to maximize differences in how these age boundaries are defined and implemented. Analysis of legal history and current policy led to two focal areas: a) the presence or absence of a separate juvenile justice system, and b) the stability of age boundaries within the law. The findings provide insight into how the category of “juvenile” is conceptualized and delineated within diverse youth justice systems.

Introduction

The legal definition of “juvenile” is neither fixed nor universal in criminal justice systems around the globe. Variations in the legal categories of a “child” (typically considered incapable of committing an intentional criminal act), a “juvenile” (deserving of special consideration and protections, often in a separate court of law), and a “young adult” (culpable and deserving of the full force of the law with some exceptions based on age or maturity), reflect differences in historical, political, and economic factors that drive the evolution of the law. The establishment of a juvenile court, for example, often both relies on and produces views that young people are less culpable than adults, more capable of change and rehabilitation, and more deserving of protection from the harsh and punitive conditions of the adult criminal justice system (Tannenhaus, 2004). The age thresholds attached to these rationales for differential punishment are significant as they become codified into law and implemented in practice (Winterdyk, 2015).

Two central concepts lend themselves to cross-national study of how the category of “juvenile” is crafted by criminal law and policy. The Minimum Age of Criminal Responsibility (MACR) refers to the youngest age in which a person may be prosecuted for a crime and in the case of a nation with a juvenile court also refers to the minimum age of its jurisdiction. The Age of Criminal Majority (ACM) refers to the age at which a person becomes subject to adult criminal charges and penalties (Hazel, 2008). In some nations, the law does not clearly specify the MACR or ACM, which may leave these parameters to jurisdictional or judicial discretion; in other nations, there are fixed boundaries pertaining to each age threshold. While studies

have documented the variation in the MACR and ACM worldwide (Cipriani, 2009; Hazel, 2008), scant research has investigated cross-national variation in how these boundaries are defined and implemented in diverse youth justice systems.

In this paper, the authors describe and analyze variation in four youth justice systems by considering the evolution of the “basement” (MACR) and the “ceiling” (ACM) of juvenile status in law and policy. In this case study, we purposively select the nations of Argentina, Belize, England/Wales, and Finland to illustrate critical differences in how youth justice systems and their boundaries are defined and implemented. In doing so, we illustrate how these diverse countries codify the concept of a child, juvenile, and young adult into the law and elucidate the dynamic and critical nature of these distinctions. Our main research questions are as follows: (1) How are “children,” “juveniles,” and “young adults” distinguished across four diverse criminal justice systems? (2) What are the implications of these age boundaries and systems for the practice of youth justice?

Background and literature review

From an international perspective, there is wide variation in how youth (defined here as individuals falling under the age of majority threshold in a given country) are held responsible for criminal behavior. The implementation of the juvenile court during the period of rapid industrialization in the US and Europe reflected a larger movement over the protection of children from the potentially destructive forces of industry, child labor, and neglectful or absent parents (Tannenhaus, 2004). Initially, the juvenile courts in Western nations were charged with the dual role of child protection stemming from abuse, neglect, and parental

death as well as social control over crime (i.e., the regulation of delinquency often attributed to poor, urban, and immigrant populations). Given the frequent overlap between maltreatment and delinquency, this dual role has continued to be a delicate juggling act in most juvenile courts (Wynterdynk, 2015). Currently, not all nations have a designated juvenile court, and as such they may handle children in conflict with the law either outside of criminal court (such as in the child welfare system) or weave in special protections for minors into criminal laws and national or regional codes.

Evolving international norms and human rights law in the late twentieth century have influenced the age-related boundaries of youth justice systems. Most significantly, the UN General Assembly adopted the United Nations Convention on the Rights of the Child (CRC) in November 1989. To date, all 196 United Nations members with the exception of the United States have ratified the CRC. The CRC includes a number of guidelines for the treatment of children in conflict with the law with an emphasis on alternatives to formal prosecution, curbing the use of incarceration, and attending to the best interests of the child (Goldson and Muncie, 2012). Article 40(1) of the CRC recognizes that every child alleged or accused of a crime is to be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth.” Nation state signatories periodically appear before United Nations Committee on the Rights of the Child to report on their progress in implementation these standards, a process that is intended to lead to human rights protections and uniformity in global youth justice systems (Cipriani, 2009).

However, critics have noted that violations of the CRC with regard to juvenile justice are not regularly sanctioned (Goldson and Muncie, 2012).

Minimum age of criminal responsibility

Under Article 40 of the CRC, signatory states are required to establish or maintain a “minimum age below which children shall be presumed not to have the capacity to infringe the penal law.” The CRC did not originally include a specific MACR, yet in 2008 the Committee on the Rights of the Child indicated in its General Comment No. 10 that an MACR below the threshold of age 12 would be unacceptable by international standards. It further advised that if a higher minimum age has already been established, states should not lower their MACR to age 12. In the first major published study of the MACR, Cipriani (2009) found that since the adoption of the CRC 40 countries had established or increased their MACR. However, other reports suggest that several nations, such as Denmark, France, and Brazil have actually lowered their national MACR in response to General Comment No.10 (CRIN, 2017c).

There are various arguments for and against lowering the MACR. On the side of setting a higher MACR (i.e., greater than age 12), scholars have argued that placing young children in the hands of the law is essentially criminalizing poverty and childhood; in other words, the juvenile justice system should not be involved in handling problems that ought to be the responsibility of other social welfare agencies, such as child welfare or mental health (Butts and Snyder, 2008). Others have suggested that children should not be considered to have the capacity to formulate intent to commit a crime or to understand or meaningfully participate in

court proceedings (Weijers and Grisso, 2009). Moreover, from a public safety perspective, there is empirical evidence that involving younger adolescents or children in the juvenile justice system tends to exacerbate, rather than abate future crime (Petrosino et al., 2013).

On the other hand, scholars and policy makers have argued that a lower MACR can help to ensure public safety and pave the way for earlier intervention for troubled children. A substantial body of research from longitudinal work has shown that early onset of offending predicts a higher risk of developing into an adult criminal trajectory (Farrington, 1992). Compared with juveniles who first come into conflict with the law in their adolescence, child delinquents (defined by some researchers as those under the age of 13) are at greater risk of becoming serious, violent, and chronic juvenile offenders (Loeber et al., 2003). Thus, the argument for setting a lower MACR is that juvenile court intervention into anti-social behavior is preferable to no intervention at all.

Following this logic, some countries maintain a secondary, lower tier of MACR that applies only to more serious crimes. However, the UN Committee on the Rights of the Child has indicated that secondary classifications are not compatible with the CRC (Cipriani, 2009). In contravention to the CRC, youth justice systems may also abide by the principle of *doli incapax*, a presumption of incapacity for persons below a certain age threshold that can be rebutted with prosecutorial evidence of their sufficient maturity or of their understanding of criminal penalties. Under these circumstances, it is not age itself but rather an assessment of individual

maturity that might determine if a young person is able to be tried in a juvenile or criminal court.

Age of criminal majority

There is considerable consensus that international human rights law recognizes the minimum standard for ACM as age 18 (Cipriani, 2009). The International Covenant on Civil and Political Rights (ICCPR) does not define a specific ACM, but articulates in Article 14.4 the right of “juvenile persons” to legal proceedings that “take account of their age and the desirability of promoting their rehabilitation” (The United Nations, 1966). While the ICCPR does not define “juvenile persons” by age, this statement has been interpreted broadly as requiring states to set a lower bound (MACR) and upper bound (ACM) (Cipriani, 2009). The CRC does not address the ACM, but does define a child in Article 1 as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (UNICEF, 2017: 2).

While age 18 is the most common ACM worldwide for automatic trial in the traditional, adult criminal justice system, global policies and practices related to the permeability of ACM are diverse, nuanced, and complex (Hazel, 2008). The ACM may be defined in state policy by an upper age limit for juvenile court jurisdiction, a maximum age for special protections or considerations within the adult system, or a combination of each. In nations without a designated juvenile justice system, the MACR and ACM may be the same age (Cipriani, 2009). Moreover, in many justice systems around the globe, the law allow for persons younger than the ACM to face trial in adult courts, levy adult charges, or dole out adult sentences, including

confinement in adult prisons, life sentences, and even the death penalty (Hazel, 2008). These procedures, often conditioned on certain types of crimes or repeat offenses, introduce significant subjectivity and can be interpreted as contravening international human rights standards (Cipriani, 2009).

At the same time that the U.S. has constructed laws and policies to lower the ACM over the past thirty years (in some U.S. states, all individuals aged 16 can be automatically tried in the adult system), Scandinavian and some European countries have extended protections for young adults past the typical ACM. This includes provisions that allow adult courts to waive persons back into juvenile courts or to face less severe penalties based on being a “young adult,” which can include those up to age 21 (Hazel, 2008). Taken together, these trends are changing the nature and definition of a “juvenile” and more broadly the age-based discourses of youth and criminal responsibility. In this paper, we examine the boundaries of the MACR and the ACM through an in-depth case study of youth justice law and policy in four different countries.

Method

The methodology for this paper is a multiple case study of four countries: Argentina, Belize, England/Wales, and Finland. These purposively selected cases heed the advice of Seawright and Gerring (2008), who recommend that case selection should not be random and to select cases that are representative in nature. Essentially, the four countries were selected “to maximize what can be learned in the period of time available for study” (Tellis, 1997: 2) and to enable the exploration of differences within and between cases (Yin, 2003). We do not intend to directly

compare or evaluate these countries against a standard or norm but rather to explore the variation within four very different youth justice models employing various definitions and classifications according to age groups and presumed level of maturity.

In considering which countries to include in the case study analysis, the authors began by considering variations (low and high) in the combinations of MACR and ACM in a 2 x 2 case study format. To do so, we drew data from Hazel's (2008) report as well as the Criminal Children's Rights International Network website (CRIN 2017a). These were the official sources of information that helped to craft the initial organizing rubric (see Table 1). The initial model investigated the four countries as follows: Belize with a low MACR and low ACM, Argentina with a high MACR and low ACM, England with a low MACR and a standard but relatively higher ACM compared to the U.S. (where the ACM is left up to the states), and Finland with a high MACR and high ACM (see Table 1).

INSERT TABLE 1 ABOUT HERE

Data collection and review

Data were drawn from an extensive review of scholarly articles covering the legislative history and practices pertaining to youth justice in each country, reports from global and regional organizations and agencies such as UNICEF, and consultation with criminal justice and legal experts in each country. Facts and figures included in this study were obtained from world source books, government agency websites, and official reports. To aid in the organization of the array of data

and documentation, the authors thoroughly documented a timeline of the legislative history of each country to highlight major policy changes impacting how juveniles are processed when they come into conflict with the law. If a point of clarification was needed due to conflicting information, authors consulted an expert in that country and cited this information as “personal communication” without identifying anyone by name to protect confidentiality.

Brief country comparisons

Argentina, Belize, England/Wales, and Finland differ across a wide range of categories including, but not limited to, their size, population profiles, language, culture, economic development, and crime and incarceration rates (see Table 1). The UK is one of the most populous nations in Europe (61 million), with England/Wales equating to 57.9 million (Office of National Statistics, 2015). Despite concerns over the country’s surprising vote to leave the European Union in 2016, the economy remains relatively robust, with an unemployment rate of just 5.4% across the UK and a high level of prosperity (CIA, 2017). Finland has a smaller population (at 5.5 million) but also has a thriving economy. A member of the European Union since 1995, Finland exemplifies a modern welfare state with a high per capita income of \$41,100 and virtually no households falling below the poverty line (CIA, 2017). Argentina is a similar size as England/Wales in regard to total population yet is a much larger country geographically. Although a wealthy country relative to the South America region, the GDP per capita of \$22,000 is far lower than the UK at \$41,200 per capita (CIA, 2017). Belize, fully independent from the UK since 1981, is the smallest and least developed country of the four studied, with just

354,000 residents. It has a very high poverty rate with 41% living below the poverty line (compared to 30% in Argentina) and a GDP per capita of \$8,400.

Criminal justice related data reveal some pertinent information about the four countries. Table 1 shows Argentina and England/Wales are somewhat comparable in their rates of youth incarceration; Finland's rate of incarceration is significantly lower than all three other countries, and Belize's is far higher. Although a very small country, Belize has the highest rate of overall incarceration with an imprisonment rate of 449 per 100,000 (Walmsley, 2015). Also of note is Belize's relatively large youth population, with almost 21% of the entire population comprised of those aged 15-24 (CIA, 2017). This may contribute to Belize's high incarceration rates, as that age group includes the peak age of offending and arrests (Ulmer and Steffensmeier, 2014). Finally, despite a sizable youth population, it is of note that Argentina's rate of incarceration is relatively low compared to South America more generally (Walmsley, 2015).

INSERT TABLE 2 ABOUT HERE

Findings

This study sought to understand the meanings and definitions concerning the category of juvenile in the laws and policies of four select nations. We selected these cases based on the lower and upper bounds of the MACR and ACM, using knowledge from reliable sources. Despite these initial intentions and careful case selection, the findings revealed that age boundaries are often more complicated and permeable than initial appearance. Figure 1 displays the two driving themes that construct the

category of the “juvenile: in law and policy: a) the presence (or absence) of a separate juvenile justice system; and b) the stability (or lack thereof) of age classifications in the law. In addition, as Figure 1 displays, the nature of the MACR and ACM are much more complicated than we had initially assumed. For example, Belize’s juvenile justice system has age categories that are often in flux and conflicting statutes regarding the MACR and ACM. Based on these conflicting statutes, we note the MACR in Belize as “9/12”. This is similar to Argentina, where we note the ACM as “16/18” depending on the statute.

INSERT FIGURE 1 ABOUT HERE

As Figure 1 displays, two countries do not have a designated or separate juvenile justice system. In Argentina, the minimum age of criminal responsibility is 16, making it the oldest in Latin America. However, this age category is often contested with recent debate as to whether juveniles would be better served if the age of criminal responsibility were lowered to 14 and a separate juvenile justice system more formalized (CRIN, 2017b; Mendez, 2016). Moreover, while Finland does not have a separate juvenile justice system, the MACR and ACM are quite stable. No children under the age of 15 are held criminally responsible in Finland, and special provisions and sentencing guidelines are in place for those ages 15 to 17 and 18 to 20, respectively (this is also noted in Figure 1). In the remainder of this findings section, we chart the historical development of these laws and systems for each of the four cases.

Argentina: Protecting children without a juvenile justice system

Argentina is one of the largest and wealthiest countries in South America. Argentina's population of 44 million is heavily concentrated in urban areas, with one-third of its population residing in the capital of Buenos Aires. 1816 is recognized nationally as the year of Argentina's declaration of independence from Spain. A brutal military dictatorship ruled Argentina from 1976-1983 overthrowing an era of "Peronist populism" (CIA, 2017). Argentina employs a federalist system of governance, with 23 provinces and one autonomous city of Buenos Aires. The autonomous city of Buenos Aires served as the reference point for our case study.

Defining childhood. The MACR in Argentina is 16 year of age according to Article 1 of the 1980 Régimen Penal de la Minoridad (Law 22.278). In Article 1, persons under the age of 16 are defined as a child, as they are presumed to lack the capacity to form criminal intent. While they cannot be charged with a crime, Article 1 also suggests that they may be detained in youth institutions if the child is "abandoned, lacking assistance in material or moral danger, or has behavioral problems." The practice of protective confinement is traced back to the 1919 legal doctrine of *situación irregular*, which became a model 20th century policy for many Latin American countries, allowing judicial discretion in ordering institutional placements for children deemed in need of state intervention (Cipriani, 2009; Mendez, 2016).

In efforts to bring national law into alignment with Argentina's international obligations under the CRC, the 2005 Law on the Integral Protection of the Child (Law 26.601) expressly prohibited the placement, internment, or detention of a child in a locked institution "on grounds of educational, protective, punitive,

tutelary, security or any other purposes” (Mendez, 2016; 1). However, human rights advocates have critiqued the policy for failing to provide a distinctive legal framework to respond to children accused of crimes, as minors continue to face detention, sometimes for indeterminate periods due to the legacy of Article 1 (Defence for Children International, 2007; Mendez, 2016). Critics also argue that the ongoing use of judicial discretion results in the deprivation of liberty in contravention of Argentina’s obligations under the CDC, including the due process rights. Former member of the Buenos Aires Supreme Court Dr. Raúl Zaffaroni have argued for lowering the MACR to age 14 to help to ensure transparency and young people’s constitutional rights to a fair trial and other due process protections (Hill, 2011), while others have argued for a lower MACR to ensure early intervention and deterrence (O’Boyle, 2014). Recent efforts to lower the MACR to age 14 included a draft bill in 2009 (O’Boyle, 2014); however, no new legislation on MACR has been passed to date.

Juvenile justice. Argentina signed onto the CRC in 1990. Although earlier versions of youth justice in Argentina were patterned after those in the U.S., today Argentina does not have a separate juvenile court for 16- and 17-year-olds accused of criminal activity. Rather, minors face similar charges as adults in criminal courts and can be subject to indeterminate sentences (Ministry of Human Rights of Argentina, 2006; Defence for Children International, 2007). Despite the absence of a designated juvenile court, minors are still protected from full criminal responsibility by various aspects of state and federal laws, including a federal rule that minor cannot be incarcerated in adult prisons. According to UNICEF (2015), there were

nearly 4,000 children (ages 17 or under) detained in youth institutions throughout the country, the majority of whom (89.5%) were aged 16 and 17 (UNICEF, 2015: 15). Human rights groups have criticized these institutions for failing to provide for hygiene or basic needs and depriving children of their liberty and for mixing youth accused of crimes with those more generally displaying behavior deemed as uncontrollable or in “moral danger” (Defence for Children International, 2007).

Argentinian law draws additional distinctions between adults and minors prosecuted for crimes. For example, Article 1 of Law 22.278 states that persons who are under the age of 18 cannot be prosecuted for crimes of private action nor can they be charged with minor crimes subject to prison sentences under two years, fines, or incapacitation. A federal court ruling deemed life sentences for minors as unconstitutional, yet the criminal code has not been formally amended to reflect this ruling (O’Boyle, 2014). In January 2017, an article published on the website CRIN (2017b) stated that in spite of the constitution and the CRC an Argentinian court handed down life sentences to five young men for crimes committed when they were still minors (i.e., under 18). There is still debate in regard to whether or not minors above the MACR can face the full force of the law with full criminal capacity and intent (CRIN, 2017b).

Young adults. Persons age 18 and older are considered legal adults in Argentina as of a 2011 law that lowered the legal definition of adulthood from 21 to 18. However, some jurisdictions in Argentina delineate a category of “young adults” (ages 18-21) as more deserving of special protections or leniency in criminal law. Buenos Aires and other cities have established special prison wards to house young

adults ages 18 to 21, which are intended to provide protection from abuse by guards and older inmates in the general prison population (Newman, 2010). Designated rehabilitation and reentry services are also ostensibly offered to young adults in Argentina, although according to sources working on criminal justice reform in Buenos Aires, the actual availability of these services is restricted due to limited financial resources (personal communication, 2016).

Finland: An age-gradated view of culpability and punishment

A province of Sweden from the 12th to the 19th century and then Russia after 1809, Finland did not gain complete independence until 1917 (CIA, 2017). A member of the European Union since 1995, Finland exemplifies a modern welfare state with a high per capita income of \$41,000 and virtually no households falling below the poverty line (CIA, 2017). The Finnish approach to justice is largely informed by prevailing cultural beliefs that crime, in general, is a social problem requiring structural reforms rather than punitive action or restrictions of liberty for the individual (Lappi-Seppälä, 2006).

Like Argentina, Finland does not have a separate juvenile court; rather, cases involving minors are heard in adult criminal court (if they are over age 15) or the child welfare system if a child is in need of services or intervention. As such, experts describe juvenile justice in Finland as having “one foot in the adult criminal justice system and another foot in the child welfare system” (Lappi-Seppälä, 2011: 1). Rooted in the belief that families and the community are responsible for children’s behavior, the system is rehabilitative in its nature. The “best interest of the child” principle guides decision-making in the child welfare arena, and youth sanctioning

in criminal courts is largely framed by rehabilitative options and mitigated criminal sanctions (Marttunen, 2008; Harrikari, 2011).

Defining childhood. The MACR in Finland is defined as age 15 under the 1940 Young Offenders Act and dates back to the 1889 Penal Code of Finland. Despite some debate, the MACR has remained consistent in Finnish juvenile justice policy and practice since 1940. Political efforts to lower the MACR emerged from 1997-2004 with several pieces of legislation introduced by conservative members of Parliament, but these were ultimately unsuccessful (Harrikari, 2008). Today, all matters related to children under age 15 who are found to have engaged in criminal activities are heard by a municipal child welfare court, even in the case of acts that would otherwise be considered serious crimes. Children under 15 may be referred to child welfare services or referred by a child welfare judge to a secure children's home for an undetermined length of time. Children's homes are run by child welfare agencies, and families are typically offered child welfare or health services (Hart, 2015). Advocates and scholars have expressed some concern that the child welfare court has more discretion in ordering confinement to group homes or mental health services and that children in conflict with the law who are under age 15 may not receive due process in these circumstances (Hart, 2015).

Juvenile justice. There is no separate juvenile court system in Finland, however the Penal Code, Ch. 3, Section 4(1) defines a special class of young people between the ages of 15 and 17. Depending on the type of crime, cases involving 15 to 17-year-olds are heard by municipal, child welfare, appellate, or supreme court judges. Under Penal Code Ch. 6. Section 12, judges are authorized to waive criminal

proceedings for juveniles altogether. For those whose crimes are heard before a judge, the most common outcome is a fine, but those aged 15-17 may also be sanctioned to conditional imprisonment (similar to probation), community service, or unconditional imprisonment. The Criminal Sanctions Agency (CSA) supervises individuals with conditional sentences and runs all of the prison and parole services in Finland (Marttunen, 2008).

Although lacking a juvenile justice court, a specific “Juvenile Punishment” was introduced as an experiment in seven District Courts in 1997 (Act on Experimenting Juvenile Punishment 1058/1996, section 1) and expanded to the country in 2005. This order amounts to a community sanction comparable in severity to conditional imprisonment for an adult, meaning frequent monitoring and compliance with the terms of probation for four to twelve months in order to break “the cycle of crime of a young offender and improve his or her social abilities” (Linderborg and Tolivan, 2013: 11). However in practice, the juvenile punishment is used very infrequently with an average of 9 clients on a given day in 2015 (RISE, 2016: 12).

Sentencing laws are very clear for minors in Finland. All criminal sentences are determinate, and minors are subject to only a quarter of an adult sentence with a 10-year maximum sentence for a homicide conviction. Juveniles can be sentenced to confinement in adult prisons, as there are currently no facilities designated specifically for minors who are convicted of crimes. Only a handful of children are imprisoned in adult facilities, and there must be “weighty reasons” for this decision

(Martunnen, 2008). Between 2005 and 2011, the average number of 15-to 17-year-olds in state custody at any given time was just six (Hart, 2015).

Young adults. Young adults are legally defined in Finland as those ages 18 to 20 under the Criminal Procedures Act, Act 633/2010, and the Imprisonment Act, Chapter 4, Section 8. Similar to older adults, cases involving young adults may be heard in municipal, appellate, or Supreme Court, but young adults are subject to sentences at only two-thirds of the severity of adult sentences for similar crimes, including prison time. Moreover, young adult sentences for first time offenses may be only one-third to one-half the severity of typical adult sentences. While imprisoned, young adults are often (but not always) housed in separate groups or wards and, similar to the juveniles, reentry and parole services offered to young adults are supervised by a local CSA teams (RISE 2016). The country's laws with regard to age are thus very specific and clear with regard to procedure, incarceration, and sentencing.

Belize: A youth justice system in progress

Belize is a small country located in Central America with a population of just 354,000. (as of 2015). The official country language is English with Belize negotiating its independence from the United Kingdom in 1981 (CIA, 2017). According to the Belize Crime and Safety Report (2015), Belize consistently ranks among the top ten in the world for homicide rates. Other concerns center on a high foreign debt burden, unemployment, and economic entanglement in the Western Hemisphere drug trade (Peirce and Veyrat-Pontet, 2013). The country became a signatory member of the CRC in 1990 (UNICEF, 2016). Consistent with many

developing legal systems, discrepancies exist in regards to conflicting language of the law. Despite consultations with experts, we were unable to come to a clear resolution regarding these discrepancies. In this section, we note areas in the law that lack clarity or have conflicting information.

Defining Childhood. Conflicting statutory language in Belize reflects varying definitions of the child. The 1994 Crime Control and Criminal Justice Act, for example, included provisions allowing for the imprisonment of anyone older than 10 years old (UNICEF, 2000), while the 1999 Criminal Code exempts persons *under* age nine from criminal prosecution (Section 25(1)). The Criminal Code further states that “Nothing is a crime which is done by a person of nine and under twelve years of age who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct in the matter in respect of which he is accused” (Section 25 (2)). It is generally a matter of judicial discretion to determine whether the “sufficient maturity” threshold has been met, and in some cases psychiatric assessments may be conducted (UNICEF, 2000). In practice children under 12 are formally prosecuted in Belize due to the ratification of the CRC; however, this is yet to be written into the juvenile code (America Bar Association, 2010; personal communication, 2016).

Juvenile justice. Conflicting statutory language and practice produces some uncertainty related to the age parameters of juvenile court jurisdiction. Both the Juvenile Offenders Act, Section 2, and the Summary Jurisdiction Act, Section 2, define a child as a person under 14 years of age and a “young person” as at least 14 and under 16 years old. Under Section 3(2) of the Juvenile Offenders Act, the juvenile

court may proceed with any case involving persons “appearing to be under 16 years old,” as birth identification documents are not always available or reliable. The lower bound of the court’s jurisdiction is not addressed resulting in a lack of clarity between the lower age bounds in the Crime Control and Criminal Justice Act (age 9), Criminal Code (age 10), and Belize’s obligations under international law as signatory to the CRC (a minimum of age 12). Section 3(2) of the Juvenile Offenders Act further suggests that the court may also proceed with charges against persons “of the age of sixteen years and upward” if the court determines it would be undesirable to adjourn the case. Yet the Families and Children Act (2000) and the Constitution of Belize extend protections to children defined as persons under age 18 (American Bar Association, 2010). The Certified Institutions Act also requires that minors (under 18) be separated from adults (over 18) in custody. Thus the ACM appears to be 16 in some laws and 18 in others. A multi-sector Juvenile Justice Reform Committee is currently working to resolve some of these notable contradictions (personal communication, 2016).

For those deemed as minors, cases are processed in family court, juvenile court, municipal court, or the Supreme Court of Belize. The court assignment depends on the charge, the availability of judges, and geography. While the Families and Children Act of 2003 stipulates that family courts should hear juvenile cases, these courts do not exist in every region. The Juvenile Code guides sentencing for minors, however in if a person turns 18 before trial, the adult criminal code sentencing guidelines may apply (America Bar Association, 2010). There are no juries for cases involving minors unless the trial is transferred to the Supreme Court

of Belize for a capital offense or a co-charge with an adult. In these cases (and only in these cases), the minor is provided with free legal defense.

Minors who are convicted of a violent crime or on remand are housed in the Wagner Youth Facility located within the one prison in the country. However there is no youth prison for females, so in contravention to the CRC, young women are housed in the women's ward alongside adults in Belize Central Prison. (Peirce and Veyrat-Pontet, 2013). Minors who are on remand for or convicted of less serious crimes are often sentenced to the one locked group home facility in the country. This facility is more rehabilitation-oriented than Wagner Youth Facility (Peirce and Veyrat-Pontet, 2013). However, as in Argentina, the group home population is mixed with children accused of crimes as well as young people whose parents have asked the state for assistance due to uncontrollable behavior. Critics have argued that this practice goes against the CRC in that youth who may need mental health treatment or foster care are held in detention due a lack of alternatives (American Bar Association, 2010).

Young adults. The Criminal Code of Belize applies equally to all those over the age of 18 with no special provisions defining a separate status of "young adults" or similar with the exception that persons under age 18 are not eligible for the death penalty or a life sentence. However, the American Bar Association (2010) study found that exceptions allowing for persons under 18 to be sentenced to life imprisonment in Belize do not comply with the CRC. Moreover, advocates note that the courts are not explicitly required to establish proof of age and that this assessment often becomes a matter of judicial discretion (American Bar Association,

2010). Belize Central Prison is the only prison the country, and there are no special protections or rehabilitation programs offered to young adults. A “National Youth Development Policy” document published by the Ministry of Education, Youth, and Sports (2012: 18) defined “adolescence” as ages 10 to 18. However, it also defined an overlapping age category of “youth” as a person “between the ages of 15-29 who has passed through the dependent stage of childhood and transitioning [sic] from adolescence to adult maturity.” This definition is a more expansive view of young adulthood that has yet to be integrated into Belizean criminal justice policy.

England/Wales: Stability alongside public pressures

Part of the larger United Kingdom (UK), we focus on England/Wales as they share a criminal justice system that is distinct from Northern Ireland or Scotland. England/Wales was an early adopter of separate juvenile justice legislation with the passage of the Juvenile Offenders Act in 1847. Today, Section 37 of the 1998 Crime and Disorder Act articulates that prevention is a principal aim of the youth justice system (Blakeman, 2013). However, critics still attest that England/Wales adheres to a relatively punitive and expansive approach to juvenile justice that mirrors the US system of retributive justice (Goldson, 2013).

Defining childhood. The MACR in England/Wales was raised from age 7 to age 8 by the Children and Young Persons Act of 1933 (Ravenscroft, 2011) and again to age 10 through legislative amendments in 1963 (Blakeman, 2013). Until 1998, young people older than age 10 but under age 14 were protected in the court by the doctrine of *doli incapax*, which presumed their incapacity to form criminal intent, placing the burden on the state to overcome this presumption. This principle, in

place since at least the late 18th century, was abolished upon passage of the 1998 Crime and Disorder Act (Delmage, 2013). Goldson (2013) argues that sensationalized media coverage during the *Bulger* case in 1993, in which two 10-year olds were tried and convicted of murder in a public trial, was pivotal to this punitive turn in youth justice policy in England/Wales. Today, cases involving children under age 10 are handled in Family Court as children are presumed to be incapable of forming criminal intent. While there is no criminal sanctioning for those under age 10, these cases may result in referrals to local Youth Offending Teams (YOTs) for family services and may include placements in children's homes or mental health facilities by child welfare services (personal communication, 2016).

Juvenile justice. The status of juvenile for the purposes of juvenile court jurisdiction is specified as persons from age 10 through age 17. Charges involving juveniles are heard in youth courts with a specialized magistrate unless the co-defendant is an adult and/or a grave offense was committed. If such conditions are met, a case involving a minor may be heard in the high court, or the Crown Court, following procedures and sentencing guidelines equivalent to adults, including public jury trials and life sentences (Blakeman, 2013). Section 90 of the Powers of Criminal Courts Sentencing Act 2000 mandates that minors under age 18 who are convicted of murder (or another offense subject to life imprisonment) are detained at "Her Majesty's Pleasure," meaning an indefinite and indeterminate sentence. For those sentenced to secure detention, minors under age 15 are mandated to children's homes, which can be secure or semi-secure facilities (Blakeman, 2013).

Youth ages 15 to 17 may be detained awaiting trial and sentenced to secure Young Offender Institutions (YOIs). The Youth Justice Board (YJB) is the designated government entity to provide probation services and supervision to all juveniles involved in the justice system, including services provided at the YOIs. However, minors are often transferred from the YJB to the adult system upon their 18th birthday (Blakeman, 2013).

Young adults. The Powers of Criminal Courts Sentencing Act 2000 provides for judicial discretion to levy reduced sentences for young adults between 18 and 20 years old. Several YOIs imprison young adults between the ages of 18-20 where one side houses juveniles up to age 18 and is operated by the YJB and the other side houses those ages 18 and 20 and is operated by Her Majesty's Prison Services (HMP). Young adults may also be sentenced to adult prisons, which are operated by HMP or private prison corporations. Advocates in England/Wales are seeking to redefine "young adults" as between 18 and 25 years of age and to craft policies and practices to meet their specific needs (Transition to Adulthood Alliance, 2010). Like in Belize and Argentina, specific services or policies for young adults are a work in progress.

Discussion

In this multiple case study the authors sought to answer two key questions: (1) How are "children," "juveniles," and "young adults" distinguished, both discursively and practically, within these four diverse criminal justice systems? (2) How do state-level laws and policies drive and reflect these constructions? In sorting through law and implementation of juvenile and criminal justice codes, we

arrived at two main axes of difference: (1) the presence or absence of a juvenile court system; and (2) whether age categories related to the MACR and ACM are fluctuating or stable in the law and in practice.

The presence or absence of a juvenile court

The juvenile court as an institution historically intended to offer young people a separate system of justice—one that would be more humane, rehabilitative, and separate minors from adults in penal facilities (Tannenhaus, 2004). Some nations, like Argentina and Finland, have a high age of MACR and as such, do not have a standing juvenile court to deal with criminal matters (they may have a family court, but not a juvenile criminal court). In these two countries, the definition of the “child” has a higher age threshold and is therefore presumed too young for prosecution in any justice system. Effectively this keeps many children out of the justice system altogether, as evidenced by low rates of juvenile incarceration in both of these countries compared to nations of similar size and comparable settings within their region.

On the other hand, establishing a high age of MACR raises questions about how younger children are then handled by the state if they come into conflict with the law. Are these children simply funneled into other systems, such as the child welfare or mental health system? Critics of the system in Argentina have argue that since no formal juvenile justice system exists current courts of law fail to provide due process for juveniles and rely heavily on judicial discretion. Confinement orders are often based on a determination of “material” or “moral” risk, which are rather subjective and open to interpretation (Defence for Children International, 2007; Mendez, 2016). This is somewhat similar in Finland as well although less frequently

applied due to the view of incarceration as a last resort. Yet still, in the absence of a juvenile court of facilities, children under the age of 15 can be subject to group home orders by a child welfare court for long or unspecified periods of time (Harrikari, 2008; Hart, 2015). Thus, although the higher MACR results in fewer youth being detained or prosecuted than in comparable countries, the absence of such a system may end up blending youth with adults (in the criminal justice system) and lack the due process rights and regulations afforded in a juvenile court.

The presence of a juvenile court, however, does not guarantee that all children are treated fairly and according to the human rights standard laid out in the CRC. In both England/Wales and Belize, the low MACR does not comply with global human rights standards, and some minors under age 18 are subject to the full force of the law, including long or life sentences. Thus, while the juvenile court addresses several gaps or problems that may be caused by not having such a structure in tact, the rates of youth incarceration in those countries are quite high relative to similarly situated nations.

Fluctuating versus stable age categories

While the MACR have remained relatively stable in Finland and England for over thirty years, these age thresholds remain a topic of longstanding debate and shifts in Belize and Argentina. Instability of age-related status in conflicting policies and practices can leave room for some degree of arbitrariness in the administration of youth justice. For example, in Belize the official MACR is 9 in the juvenile code, however 12 is the MACR in practice according to multiple sources within the country (personal communication, 2016). In Argentina, the MACR policy is officially

16, yet in practice youth ages 14 and 15 can be deprived of liberty as a form of “treatment” if youth is considered to be at “moral or material risk,” a vague distinction that is determined solely by judicial discretion (Defence for Children International, 2007). One potential lesson from these findings is that until age categories and procedures are well established in the law, human rights criticisms and violations may continue to occur (American Bar Association, 2010; Mendez, 2016.).

The two nations with relatively stable categories contend with a different set of challenges. For example, in Finland a minor who is 14 and commits a grave crime cannot be charged with a crime, which could potentially be problematic for the public or for victims if this situation were to occur more frequently or with more public outcry. Moreover, setting the MACR at 10, as in England/Wales, may not provide enough leeway for individual differences in capacity and competency to be determined. By removing the principle of *doli incapax* and setting the MACR at 10, net-widening can be a problematic outcome (Goldson, 2013). Last, while we have found these two countries (Finland and England/Wales) to have *relatively* stable age boundaries compared to the other two countries examined, there are still some grey areas concerning the ACM. For example, in Finland minors can still be confined with adults, and their cases are heard in the same courts; in England, grave offenses are also heard in adult courts and indeterminate sentences are levied. Hence even with relative stability, there remain several grey areas around in ensuring that youth justice systems comply with all aspects of the CRC.

Conclusion

Children's rights are an important component of international human rights standards. Understanding how these four very different nations delineate the status of "juvenile" in law and policy helps to understand how the MACR and ACM not only translate into practices that reflect ideas about capacity and culpability, but also how these boundaries produce consequences for children's well being. Each country examined in this paper has its history and unique logics for handling children in conflict with the law. The reasoning underlying these various approaches sheds light potential routes to realize the CRC goals related to youth justice, including recognizing children's lesser criminal capacity, separating children from adults in prisons, and using confinement only as a last alternative. Future research can build on these ideas by continuing to understand the global contours of youth justice systems, differences across nations, and associated consequences for children's rights.

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Table 1. Initial organizing framework

MACR (row)	Low	High
ACM (column)		
Low	Belize <ul style="list-style-type: none"> • MACR – 9 years • ACM – 16/18 years 	Argentina <ul style="list-style-type: none"> • MACR – 16 years • ACM – 16 years
High	England/Wales <ul style="list-style-type: none"> • MACR – 10 years • ACM – 18 years 	Finland <ul style="list-style-type: none"> • MACR – 15 years • ACM – 21 years

Sources: Hazel (2008); CRIN (2017a)

Table 2. Country profiles (2015)

Country	Population Total	GDP (in USD)	Youth Population (ages 15-24)	Prison population (total)	Incarceration (per 100K)	Youth Incarceration Total (<18)
Argentina	43.9 mil	972 bil	15.4%	69,060	160	1375
Belize	0.35 mil	3.1 bil	20.7%	1,545	449	193
England/Wales	57.9 mil	2,680 bil	12.2% ^a	85,843	148	1834
Finland	5.5 mil	225 bil	11.6%	3,105	57	5

Sources: CIA (2017); Walmsley (2015).

^a This figure is based on the UK as a whole.

Figure 1: Display of cases by overarching findings

Presence of a Juvenile Court		
	Yes	No
Stable Age Categories	<p>NO</p> <p>Belize</p> <ul style="list-style-type: none"> Juvenile justice jurisdiction – 9/12 years Adult jurisdiction – 16/18 years <p><i>Fluctuating: Although the law states 9 years for the MACR, in practice Belize adheres to the UN convention of 12 years of age.¹ The law is also unclear about the age of majority at 16 or 18 years of age. While juveniles under age 18 are excluded from the death penalty, those convicted of capital crimes can receive life sentences in the Supreme Court of Belize.</i></p>	<p>Argentina</p> <ul style="list-style-type: none"> Juvenile justice jurisdiction – 16 years Adult jurisdiction – 16/18 years <p><i>Fluctuating: Argentina has no formal juvenile justice system. In 1983 the MACR was raised from 14 to 16, but there have been recent efforts to lower MACR back to 14.⁴ The age of adult penalties is designated at 18, yet Argentina has no juvenile court, and is the only country in Latin America where minors at 16 are eligible to receive a life sentence.</i></p>
	<p>YES</p> <p>England/Wales</p> <ul style="list-style-type: none"> Juvenile justice jurisdiction – 10 years Adult jurisdiction – 18 years <p><i>Stable: Stable laws exist to protect individuals ages 10-17 from adult proceedings. However, young people tried for grave offences can receive lengthy sentences. Those who offend near the age of criminal majority (between 18 and 20 years) have their status changed from 'juvenile offenders' to 'youth offenders and can be housed in Young Offender Institutions but are separated from those under 18.²</i></p>	<p>Finland</p> <ul style="list-style-type: none"> Juvenile justice jurisdiction – 15 years Adult jurisdiction – 21 years <p><i>Stable: There is no juvenile justice system in Finland, and all cases involving individuals under age 15 are handled in the child welfare system. Individuals aged 15-17 are tried in criminal courts with sentences that are delineated by age groupings. Most youth, specifically those aged 15-17, and to a lesser degree those aged 18-20 are in practice kept out of prison and given lighter sentences than those 21 and over.³</i></p>

¹ <http://www.refworld.org/docid/3df4be1420.html>

² Cross-national comparison of youth justice (2008)

³ Cross-national comparison of youth justice (2008)

⁴ Americans Society/Council of the Americas (2014)

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