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Varieties of Youth Justice

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Like parents trying to figure how best to raise their children, countries have, in recent years, wrestled with the question of how to respond to youths who break laws. There are many different models. Few appear to work in a completely satisfactory manner from the perspective of those in each jurisdiction. There is not even consensus on what “youth justice systems” (where they exist) are trying to accomplish. Few decisions—other than that youths are different from adults—have been settled in the same way across jurisdictions. The manner in which each country has resolved the “youth justice” problem is almost certainly best understood within the broad context of that country’s history and justice institutions. Hence it would be premature to carry out a true multicultural cross-jurisdictional study of youth justice systems without first attempting to understand each system within its own context. The essays in this volume represent an attempt to understand each system within the cultural context in which it exists.

Many jurisdictions are searching for new and better approaches for dealing with youth crime. It is as if, in the latter part of the twentieth century, many countries suddenly discovered that there was more than one way of responding to youths who offend. Principles, purposes, and procedures all changed, but the ambivalence within each community remained.
Approaches to youth justice are sometimes caricatured as falling at different points along a dimension of which one pole is a “pure” welfare model and the other is a “pure” criminal law or punishment model. Although this is an oversimplification, the tension that exists between responding to youths who have offended in terms of their social or psychological needs, and punishing them for what they have done, is part of the story of youth justice in many jurisdictions. Various essays in this volume illustrate that a criminal law approach need not be particularly punitive, nor a child welfare approach particularly effective.

Policy makers and practitioners often are not comfortable making clear distinctions between these two approaches. Snyder and Sickmund (1999, p. 87) suggest that most states in the United States have not been able to decide between them. Hence, they characterize thirty-two states as having both a “prevention/diversion/treatment” orientation and a “punishment” orientation in their legislated goals. The other eighteen jurisdictions are evenly split in their legislative goals between “punishment” and “child welfare” orientations. These stated goals are not unimportant, but seldom do they determine what actually happens.

This essay explores the variation that exists in the eight jurisdictions discussed in this volume. Section I describes one of the most important single facts about youth justice systems: a separate youth justice system is not necessary to ensure that youths are dealt with differently than are adults processed in the adult system. Section II outlines the complexity of the age limits of youth justice systems. Youth justice systems in many countries were quite stable until roughly 1970 or so. In the latter part of the twentieth century, however, many experienced changes, sometimes quite rapid, and often quite unprincipled. These changes are discussed in Section III. Section IV describes one aspect of the changes that took place in many countries—how various jurisdictions reconciled the tension between welfare principles and criminal law or punishment principles. Finally, in Section V, we note the contrasts between law in books and law in action. Understanding any youth justice system requires one to look not only at the formal legal structure but at how it operates in practice.

I. Separate Systems?
Youth justice systems vary much more between countries than do adult systems. Adult systems vary in many detailed ways but are broadly similar in most important respects. There is a good deal of consensus
about what constitutes an offense. The exact nature of the prosecution process and court structures differs (especially between common-law and European countries), but there is widespread agreement that, at the end of the process, the sentence should, to a large extent, reflect the seriousness of the offense. Whatever else a sentence was said to accomplish, it would be seen unambiguously as punishment by the community and by the person subject to it. Sentencing systems in many countries have changed in the last thirty years—sometimes dramatically—but the focus of the sentence is more likely to be on the severity of punishment, rather than its purposes.

Youth justice systems do not have these same basic similarities. To give one illustration, what are commonly known as “status offenses”—behavior that is prohibited only because of a person’s status as a youth (e.g., curfews, truancy) exist in some jurisdictions (e.g., in many U.S. states) but not in others (e.g., Canada, Denmark, or Germany).

Nor do all youth justice systems feature the same core features. In England and many U.S. states, youth justice systems closely resemble adult courts in their organization and their focus on punishment as a primary aim. In Scandinavian countries, people below age fifteen are legally incapable of committing crimes, and their serious misconduct is dealt with by social welfare agencies. At and after age fifteen, young offenders are processed by the same courts as process adults. In Scotland, a strong social welfare ethos dominates handling of young offenders. In New Zealand, nearly all cases are handled by conferences that many see as premised in part on ideas akin to those embodied in restorative justice.

The most notable aspect of the treatment of youths who offend in Western countries is that every country appears to have laws or policies reflecting the belief that youths should be treated differently from adult offenders. Exactly how they should be treated differently varies from country to country. What constitutes a “youth” also varies from country to country. And the rigidity of the demarcations between a child who is not criminally responsible and a youth who might be, and the demarcations between youthfulness and adulthood, also vary. But those responsible for criminal laws in all countries examined in this volume seem to agree that there should be some form of separation in how youthful and adult offenders are treated.

Accounts of juvenile justice history in the United States often focus on 1899 (the date of the founding of the first American separate court for juveniles in Chicago), just as Canadian juvenile justice is seen as
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dating from the first comprehensive “delinquency” legislation in 1908 or the first juvenile court in 1894. The experience of others, however, instructs that the formal beginnings of a “separate” youth justice system may not be especially important. The formal creation of a juvenile court is not necessary for there to be what is, from an operational standpoint, a separate youth justice system. Formal separation of juvenile from adult systems, exemplified by the “founding” of a juvenile court, may be no more than a North American idiosyncrasy and less important than the administrative structures and practices that determine a society’s responses to youthful offending.

In Denmark, there is no formally separate system for young offenders. There are no special courts, and there are no special offenses (i.e., there are no status offenses). Denmark does not appear to have had a formally separate system (with distinct youth justice laws and a completely distinct set of youth justice institutions) for youths who offend. A naive American, therefore, might think that Denmark had not progressed even as far as reforms introduced in the early twentieth century in Chicago. As Kyvsgaard’s essay in this volume demonstrates, however, that does not mean that Danish youths are treated as if they are adults. Clearly they are not.

The Swedish system of youth justice has similar characteristics. Early twentieth-century American reformers would be dismayed to find that those over the age of criminal responsibility (fifteen) in Sweden are dealt with in the criminal courts. The system that existed at the end of the twentieth century—with shared responsibility between the welfare system and the justice system—for those between ages fifteen and twenty—does not sound like a “separate justice system.” Nevertheless, various rules identified by Janson in this volume differentiate the treatment of a sixteen-year-old from that of a twenty-one-year-old and add up to, in effect, a separate system. Youths between ages fifteen and seventeen, for example, cannot normally be sent to prison.

These two examples highlight the importance of looking at how youth justice systems work rather than exclusively at formal laws and institutions. Furthermore, it is well established that in the United States and Canada there were many aspects of a separate youth justice system, including separate custodial institutions and probation officers for juveniles, in place long before the establishment of the youth courts in Chicago and Toronto.

The tendency of most countries represented in this volume, how-
ever, was to establish some form of separate set of formal rules for youthful offenders. Beyond that, however, the similarity—at least at the level of the underlying operating theory—more or less disappears. It is difficult to find many similarities among England's preponderantly punitive system, the Scottish system of children's hearings, New Zealand's conferences, and the juvenile courts in the Netherlands.

Similarly, the influence of international conventions (the European Convention for the Protection of Human Rights and Fundamental Liberties and the United Nations Convention on the Rights of the Child) on European youth justice (see, in particular, Junger-Tas's discussion with respect to the Netherlands and Kyvsgaard's concerning Denmark) is not likely to have been anticipated by an American whose country is not even a signatory to the U.N. Convention.

But all of these "systems" have one important common element: all reflect the view that youths should be dealt with differently from adults. And, generally speaking, the assumption is that the youthfulness of an offender mitigates the punishment that youths should receive and that youths should be kept separate from adult offenders.

II. Age Limits
Many countries—Canada and Germany, for example—appear to have quite rigid demarcations between the system for dealing with youthful offending, the adult system of criminal justice, and the welfare system. One might suppose that these demarcations had meaningful referents—that youths are different the day after their eighteenth birthdays from the way they were the day before, or that the homeless seventeen-year-old who steals something to eat is different from the homeless seventeen-year-old who obtains food through some legal process. When the more fluid systems of Denmark and Sweden are compared to the more rigid systems of Canada or many American states, it is clear that there are advantages and disadvantages to each.

Countries vary widely in both minimum ages of criminal responsibility, before which a young person cannot be charged with a crime, and jurisdictional ages of youth courts. Snyder and Sickmund (1999, p. 93) present such data for the U.S. states that demonstrate wide variation. For example, the age of criminal responsibility is six in North Carolina and seven in Massachusetts, Maryland, and New York. The maximum ages of jurisdiction of the youth courts vary from fifteen (e.g., New York, North Carolina, and Connecticut) to seventeen (for
TABLE 1
Minimum and Maximum Ages of Youth Court Jurisdiction
by Country

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Minimum Age</th>
<th>Maximum Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>12</td>
<td>17*</td>
</tr>
<tr>
<td>Netherlands</td>
<td>12</td>
<td>17</td>
</tr>
<tr>
<td>Germany</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>England</td>
<td>10</td>
<td>17</td>
</tr>
<tr>
<td>Scotland</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>United States (typically)</td>
<td>10</td>
<td>17</td>
</tr>
<tr>
<td>Sweden</td>
<td>15</td>
<td>Not relevant</td>
</tr>
<tr>
<td>Denmark</td>
<td>15</td>
<td>Not relevant</td>
</tr>
<tr>
<td>New Zealand</td>
<td>14</td>
<td>16</td>
</tr>
</tbody>
</table>

* This is the maximum age, meaning that the young person is a youth until the eighteenth birthday. Hence, “15” means up to the sixteenth birthday.

most states). Such data are useful for certain purposes, but can easily give a false impression of stability and certainty.

Table 1 shows maximum and minimum ages of youth court jurisdiction for the countries represented in this volume and the United States. Minimum ages vary widely, from eight to fifteen. In most countries adult court jurisdiction begins at age eighteen. Denmark and Sweden have no specialized youth court, so “adult” jurisdiction begins at age fifteen.

These data, then, would give an impression of similarity at the top age for five of the ten jurisdictions, and considerable variability at the bottom. They obscure, however, two phenomena. First, these ages have been, in some jurisdictions, unstable over time. These were the correct ages when these essays were written. In some jurisdictions, however, the ages have varied somewhat over time. More important, however, we see that the ages are not necessarily as firm as they might appear.

In Canada, the minimum age (twelve) was established in 1984. Prior to that, it had been seven. Until 1985, the maximum age had varied between provinces, with some provinces declaring youths to be adults at any age between sixteen and eighteen, or, in the case of Alberta, different ages had been set for girls and boys. Until April 2003, youths aged fourteen and above could be transferred into adult court. Indeed, presumptively they were to be transferred into adult court if they were at least sixteen years old at the time of the offense and were charged
with certain serious violent offenses. If they were transferred, they
would, for almost all purposes, be treated as if, by judicial decision,
they had aged instantly into adulthood.

Since April 2003, youths charged with serious offenses remain
youths for criminal justice purposes and remain in youth court but can,
on application from the prosecutor, be sentenced as an adult if a judge
determines that a proportionate youth sentence is not possible because
the maximum permissible youth sentence is not long enough. Even
then, the judge can sentence the youth to serve his or her sentence in
a youth facility. To imply, then, that the juvenile justice law in Canada
has always maintained jurisdiction over youths for six years beginning
at the youth's twelfth birthday is an oversimplification, given that
transfers were possible before April 2003 and adult sentences are per-
missible after that date.

The Netherlands' youth justice system, on the dimensions described
in table 1, would appear to be very similar to Canada's. However, the
apparent similarity of the age range of the two countries results more
from coincidence than a similar development or similar principles. As
Junger-Tas notes in this volume, the first formal criminal code in the
Netherlands established, in 1809, that the minimum age of criminal
responsibility was twelve, and youths up to age eighteen were liable to
less severe sentences than were those ages eighteen and over. Only two
years later, however, the French occupation resulted in the abolition
of the minimum age, with judges having to decide on a case-by-case
basis whether the youth should be held criminally responsible. In 1881,
age fourteen became an important dividing point: those under age
fourteen were, in effect, kept out of prisons but held in community
facilities. In 1901, the maximum age was set at the eighteenth birthday,
and the minimum age was again abolished.

Chronological ages are relatively easy to define. What become more
murky, however, are situations where youths are deemed to be adults
because of what they did. As Junger-Tas notes, the Netherlands' 1995
Juvenile Justice Act changed the manner in which sixteen- and seve-
ten-year-olds could be transferred into the adult system. Earlier, three
conditions had to be met before a youth could be transferred: the of-
fense had to be serious, there had to be aggravating factors such as the
offense having been committed with adults, and the offender had to be
seen as, effectively, having the maturity of an adult. The legislation
that came into effect in 1995 changed this: only one of the conditions
had to be present, and the "age" criterion apparently became more fo-
cused on the age of the offender at the time that the offense was committed rather than the youth’s maturity. As an additional complication related to the issue of age, the maximum period of detention was changed with the new act so that those aged twelve through fifteen are liable to receive a maximum of a one-year sentence and those ages sixteen or seventeen at the time of the offense are liable to receive a two-year sentence.

The lower limit of criminal responsibility, on the surface identical to Canada’s (age twelve), has become somewhat permeable. Junger-Tas describes a special project—called STOP—that focuses on minor infractions of the law by those under age twelve. Police are allowed to arrest these youths who, according to the “tabled” data, are below the age of criminal responsibility in the Netherlands. The police can propose an intervention by social workers, but formally this intervention requires parental approval. As Junger-Tas notes, increased transfer to adult court of those over age sixteen combined with increased use of STOP have the practical effect of lowering both of the age limits of the juvenile justice system. Said differently, these easy-to-define rigid dates have become less determinative.

The German Youth Court Law came into effect in 1923 and provided the framework for the state’s response to offending by those between their fourteenth and eighteenth birthdays. Special courts and prisons for youths had existed before that time. Germany, Albrecht notes in this volume, has endorsed for approximately a century the idea that punishment is not the best approach to youthful offending. Nevertheless, in 1943, the Nazi government lowered the age of criminal responsibility to twelve and allowed the transfer to the adult system of offenders aged sixteen and over. These changes lasted only three years, however. But the age limits set out in the legislation are not quite as firm as would be implied by a table of minimum and maximum ages. Young adults, aged eighteen to twenty, can be prosecuted as if they were juveniles. In effect, there is the possibility of a transfer down because of variation in “maturation, social and moral development, and integration into the adult world” (Albrecht, in this volume). Germany’s maximum age of seventeen is, then, very different from those ages found in American states.

The “age jurisdiction” for England appears to be fairly simple. However, within the range of juvenile jurisdiction, variation does exist. Until 1998 there were special restrictions on the use of custody for those under fifteen, but these restrictions were relaxed by the 1998 leg-
islation. In addition, youths in England can be dealt with by the Crown (adult) Court rather than by the youth court. In serious cases, the youth is in jeopardy of receiving the same sentence an adult would receive. In the case of a homicide offense, committal to the Crown Court is mandatory. That is why probably England’s most famous recent youth offense—the case involving two ten-year-old youths who killed James Bulger in 1992—was held in Crown Court and received full publicity. Interestingly, when the two youths found guilty of the offense were released as young adults, the government felt it necessary to protect their identities so that they could integrate into civil society.

But the lower age limit in England is being weakened in other ways. As Bottoms and Dignan note in this volume, children aged nine and under run the risk of formal intervention if they do something that could be considered criminal or if they misbehave in other ways. Though technically it is a civil proceeding, the child can be placed under the supervision of a social worker for what would otherwise be criminal behavior. Furthermore, the court is given powers to impose conditions designed to prevent future similar behavior. The difference between a criminal and a civil proceeding is probably somewhat obscure to the nine-year-old with restrictions on his freedom.

The age jurisdiction of the juvenile system in the United States varies from state to state, though the modal ages would appear to be similar to those in the United Kingdom. However, that is where the similarity ends. In particular, two factors must be considered. Even at the lowest age, in certain states, youths under twelve years old can be prosecuted as if they are adults.

More common is the ambiguity about the age jurisdiction at the top end. It is estimated that as many as 200,000 youths a year under the age of eighteen are processed in the adult courts in the United States as if they were adults.

In comparison, Canada, with about one-tenth as many youths as the United States, transferred fewer than 100 youths per year to adult courts even though the overall use of youth court appears to be relatively comparable in the two jurisdictions (Sprott and Snyder 1999). Most of the American youths who end up in adult court are not there as a result of judicially ordered waivers. In a few states (e.g., New York), there is no “judicial waiver” to adult court (Szymanski 2002).

Instead, two mechanisms account for most of these “instant adults.” In many states, prosecutors have the power to decide that an offender should be dealt with as an adult. If the indictment is filed in the adult
court, the youth is, then, for criminal justice purposes, an adult. Alternatively, some state legislatures have decided that, for certain serious offenses, a youth is to be considered to be an adult and the case is automatically processed through the adult criminal courts. The idea that the youth court jurisdiction is ages ten through seventeen, then, applies in many states only if the youth is lucky enough to avoid being deemed to be an adult for criminal justice purposes.

For someone from England, the United States, or Canada looking at youth justice systems, the idea of having a minimum age of criminal responsibility at age fifteen would almost certainly be seen as completely unrealistic. Sweden and Denmark, however, appear to survive quite well with such a system. When the youth is between the age of fifteen and his or her twenty-first birthday, sanctions are handed down by courts, but this period is described by Janson in this volume as part of the transition to adulthood. As he notes, prison for a youth below age eighteen requires “extraordinary” justification and between ages eighteen and twenty requires “special” justification. In any case, those under age twenty-one serve their time separately from adults. And, equally clearly, youth under age fifteen who offend are not completely ignored by the state.

If nothing else, the variation on what the upper and lower age limits mean should demonstrate the complexity and the interrelatedness of the various youth justice provisions that exist in Western countries. A seventeen-year-old would be a youth in five countries we have mentioned. But if that seventeen-year-old were to offend, he or she might well be treated in quite different ways—and decisions would be guided by quite different principles—depending on the country.

III. Stability and Change

Though the age jurisdiction is one tangible way in which youth justice systems in various countries have changed over the past 100 years, more profound changes have taken place in some, but not all, countries. There appears to have been stability in these systems up until the latter part of the twentieth century. Changes clearly occurred, but dramatic and rapid changes did not occur until the last few decades of the twentieth century.

In New Zealand, for example, the formal youth justice system brought to the country by its colonizers started off as might be expected: the values and practices of its original inhabitants were largely ignored in favor of a very British-sounding set of practices. From that
time onward, there were many changes in how the justice system responded to youthful offenders. However, these changes were more evolutionary than radical. In the late nineteenth century, neglected children were sent to industrial schools, and youthful offenders could end up in prison or industrial schools. In 1925, children’s courts were established, and the state’s interpretation of the “best interests” of the child ostensibly defined what happened to youthful offenders. In the 1950s and 1960s some modifications were made—allowing for more punitive responses for older children and for the raising of the age of criminal responsibility from seven to ten.

Things began to change more radically in 1974 when, among other things, a distinction was made between those over and under age fourteen. In particular, the age of criminal responsibility (ten) and the age of prosecution (fourteen) were distinguished. This can be seen as an early sign of what New Zealand is today best known for—the involvement of families and local communities in decisions concerning youthful offenders. The legislative changes apparently did not have the impact expected, and the law itself was repeatedly amended over the next ten years. In 1989, the most radical change occurred when the youth justice legislation for which New Zealand is well known was introduced—a system that focuses, more than others described in this volume, on conferencing processes to decide how to deal with youthful offenders.

Canada’s stability is easier to describe. The federal law that established a separate youth justice system in 1908 remained essentially untouched for seventy-six years. The 1984 law lasted only until 2003, but even that law was changed in symbolically important ways three times during its nineteen-year history. The changes that took place in the past twenty-five years, however, transformed Canada’s youth justice system from a clearly welfare-oriented system (though technically under the federal government’s criminal law jurisdiction) to a system based largely on accountability and responses proportional to the offense that was committed.

Scotland’s history looks, on the surface, to be quite similar to Canada’s in the sense that there was a period of long stability followed by change relatively late in the twentieth century. The Children Act of 1908 established a separate juvenile court that remained largely unchanged until 1968. At that point, the Social Work (Scotland) Act, which was fully implemented in 1971, set up a completely new system of “children’s hearings.” These remained largely intact until the early
England, as Bottoms and Dignan point out in this volume, had a history that appeared to be similar to that of Scotland until the 1960s. At that point, the two jurisdictions diverged dramatically. That divergence can be characterized on two dimensions: youth justice principles and the stability of the laws. The 1969 English legislation created what Bottoms and Dignan in this volume describe as a “radical shake-up of procedures, orders, and supporting service structures.” The controversy around these changes resulted, beginning in the 1970s, in an “often bewilderingly rapid [set of] changes in the English youth justice system” from the mid-1970s to the late 1990s.

At the other extreme is Germany. As Albrecht notes in this volume, the notable characteristic of youth justice in Germany is its stability throughout the twentieth and early twenty-first centuries. There might be two reasons for this stability. First, the law was founded on clear criminal law principles; hence, the apparent disillusionment with social welfare interventions for offending youths that might be seen as characterizing other countries toward the latter part of the twentieth century was irrelevant in Germany. Second, there appears to have been a widely shared philosophical basis for the German juvenile justice system throughout the twentieth century: less criminal justice intervention is better than more.

It is not clear why stability seems to have characterized some systems and change has characterized others. To say that youth justice became politicized toward the end of the twentieth century in some countries but not others is only to restate the question.

IV. Welfare and “Justice”

The conflict between what are generally referred to as welfare principles and criminal law principles appears to have featured in at least some of the changes that have taken place in the latter part of the twentieth century. Criminal law, however, incorporates a number of quite independent concepts. As contrasted with welfare, criminal law can mean a greater focus on the offense rather than the offender, more focus on due process issues, proportional responses to offending, or a focus on punishment as a justification for intervention.

Every jurisdiction has had to grapple with this distinction in some way. Even Germany, which had a criminal law basis for its youth justice system throughout the twentieth century, had to consider whether
social welfare concerns should be integrated into it. The prolonged consideration in the 1960s and 1970s of whether to “shift” delinquency into the welfare system, Albrecht notes, was never implemented and has since disappeared as an issue. Other countries—like Canada—have moved from a system that gave priority to one principle (welfare, under the law in effect from 1908 to 1984) to a law that came into effect in 2003 that focuses initially, and perhaps primarily in most cases, on the offense. Still others, as in many states in the United States, focus on welfare issues within the juvenile court, but focus on the offense (and criminal justice approaches) when dealing with relatively serious offenses.

Welfare issues played out in different ways in Denmark, a country with one of the more stable systems of dealing with youthful offenders. There is no formally separate juvenile justice system in Denmark. Kyvsgaard notes in this volume that Denmark’s 1930 Criminal Code allowed a form of indeterminate sentence to be handed down to young offenders. These “youth prison sentences,” which aimed at “educating and training juveniles with criminal proclivities,” were abolished in 1973 in part because of concerns related to the indeterminacy of the sentence. Not until 2001 was a new special “youth sentence” reintroduced. Interestingly enough, the new youth sentence came about not because of concerns about education or welfare of youths but because of concerns about serious violent youthful offenders. Although not used very often (fifty times per year), it is notable that a type of special prison sentence that had been put in place seventy years earlier and abolished thirty years earlier was reincarnated (though in a somewhat different form) to accomplish the dual goal of rehabilitation and incapacitation. Even in relatively stable Denmark, there is tension between criminal law and child welfare.

The tension between a criminal law approach and a child welfare approach played out somewhat differently in the Netherlands. Although for centuries the history of juvenile justice predominately focused on the welfare tradition, more recently the system may have become more repressive. It is described, however, as a hybrid of punitive and welfare traditions. For most of the twentieth century, the system was largely oriented toward the welfare of young offenders, rejecting, therefore, the notion that the severity of the intervention or treatment should be proportional to the offense. This changed in the 1980s when, in a manner that was similar to that of other countries around this time, children’s rights became an issue. Junger-Tas’s characterization, in this
volume, of the shift in approach is blunt, and her statement no doubt echoes in other countries: “The welfare approach to youth justice persisted until the 1980s, when it became obsolete. One reason was its excesses.” She notes—again with words that could apply to many countries—that “a more general problem was that most interventions had no solid scientific basis. Far-reaching decisions taken on behalf of juveniles were based on shaky evidence and had a highly arbitrary quality.” The result is that criminal law principles ascended in importance in 1995, and criminal law principles appeared, in the Netherlands, to be associated with more severe punishments for juveniles.

The association of welfare approaches to juvenile justice with leniency and criminal law or proportional sentencing with harshness is being challenged (or at least tested) by Canada’s shift to a proportional (criminal law) model from a more mixed model of juvenile justice. Canada explicitly endorsed proportionality principles in sentencing in order to reduce the intrusion of the justice system into the lives of young people. Its 2003 legislation has specific prohibitions against the use of pretrial detention and prison for welfare purposes. The reasons for these provisions are clear: too many youths were being detained and sentenced to custody for welfare purposes. The preamble to the legislation refers to the goal of reducing the overreliance on incarceration for nonviolent offenses. It is impossible to know, however, whether this criminal law approach will result in reduced use of detention and custody.

Scotland’s appears, on the surface, to be one of the apparently more “pure” welfare approaches. As Bottoms and Dignan note in this volume, the contrast between Scotland and England is particularly interesting because the two systems came out of the same legislative body, the U.K. Parliament. In comparing the decidedly more welfare orientation of the Scottish juvenile justice system to the more criminal law system that exists in the south, one important difference must be borne in mind. England’s system deals with youths ages ten to seventeen (inclusive). In Scotland, an offender is no longer considered to be a youth after the sixteenth birthday, but eight-year-olds can be brought to the hearing as a result of an offense.

Hence a comparison of the welfare-oriented Scottish system with the more criminal English system is also a comparison of a system dealing with eight-to fifteen-year-olds with a system dealing with ten-to seventeen-year-olds. The Scottish system, as Bottoms and Dignan point out, deals in the same way with cases involving matters of “care” as it
does with offenses. In all cases, the children’s hearing and the court are
to deal with a child in such a way that “the welfare of that child
throughout his childhood shall be . . . [the] paramount consideration”
(Children [Scotland] Act 1995, sec. 16[1]). Indeed, the children’s hear-
ing—probably the most distinctive aspect of the Scottish system—is to
be invoked not just when a child has committed an offense but when
it is in the child’s interest that there be some form of compulsory care.
Compulsory outcomes, however, cannot be ordered unless they are in
the child’s interest; the commission of an offense is not sufficient cause
for the state to intervene in the life of a young person.

But even in this welfare-oriented system, the threads of its welfare
orientation are beginning to unravel. In 1995, the law was changed so
that the primary role that welfare issues play in guiding outcomes can
be reduced if it is necessary for public protection from serious harm.
Apparently, this is rarely invoked. But even in Scotland, it seems, the
notion that the youth justice institutions can protect the public from
youth crime through the use of punishments has made its way into the
legislation, though less so into practice.

England, as Bottoms and Dignan point out, presents a dramatic con-
trast. In 1991, the separation of the care and crime functions became
complete. Crime was to be dealt with by the English youth court, and
care was sent to the family court. This separation appears to be stable.

One of the less obvious shifts away from a welfare model occurred
in New Zealand during the latter part of the twentieth century. The
New Zealand youth justice system is notable in large part because of
the emphasis that has been given, since 1989, to conferencing as a way
of resolving cases involving youthful offenders. Though conferencing
may not be seen as a “tough” response to youthful offending, its ori-
tention is clearly some distance from a welfare-intervention model. The
focus of a conference is more than simply a focus on the child.

We are not suggesting that a major focus on the welfare of children
can be assumed in the long term to be in unrelenting decline in West-
ern juvenile justice systems. However, as a generalization, its overall
importance as an organizing principle in many (but not all) systems
appears to be on the decline.

One reason may, of course, relate to the politicizing of youth justice
in many countries. As Roberts points out in this volume, the belief in
many countries that youth crime is increasing appears to fuel moves
to “do something” about the problem. Moving away from a welfare
orientation in dealing with youthful offenders may be one way of mak-
ing the political point that a crime is a crime. Roberts quotes a former Canadian minister of justice as saying in 1997 that “if people think violent crime is an increasing problem, then there is a problem that we have to address,” and “violent youth crime demands a strong response”—a statement that clearly is not likely to be interpreted as being supportive of a welfare orientation. Similarly, Roberts notes that mandatory sentencing laws in Australia were introduced in 1992 specifically to address concerns about leniency in the youth justice system.

Youth crime is an attractive territory for political opportunism since tough legislation (e.g., the automatic processing as adults of youths who murder, or mandatory sentences for very serious violent offenses) can be enacted with relatively few political or financial costs. Few people—or at least few of those who appear to influence political agendas—view tough youth crime measures as being tough on youths. Instead, they are seen as being tough on crime. But tough youth crime measures have another political advantage. Compared to legislative changes that affect sentencing generally (e.g., three-strikes laws for adult offenders), a shift from a welfare orientation to a tough offense-based system for the most serious offenders will not be likely to affect many youths and, therefore, will not cost a great deal.

V. Law in Books and in Action

Much of the toughening in youth justice systems came after apparent increases in youth crime leveled out. Much of the activity in the United States occurred in the mid-to-late 1990s, for example. Crime rates in the United States for adults and youths, including for violence, peaked in the early 1990s and then dropped off. Roberts suggests that extraordinary cases have sparked the moves in many countries toward toughness. One of the clearest examples of this—but at the same time one of the numerically least important—came in the mid-1990s in Canada. In 1991, Canada had changed the test for transferring youths to the adult justice system. It was a shift away from a balancing of the welfare needs of the youth and protection of society toward a clearer protection-of-society model. In 1995, legislation was once again introduced to change the rules on the transfer of youths. This was done at a time when there were no data on the effect of the earlier change, in large part because only a few cases had been handled under the 1991 rules. What is, perhaps, most important about these changes is that they had no apparent impact on the number of youth cases transferred
to adult court. Few cases were transferred before the change, and the change in the legislation apparently had no effect on transfers.

The distinction between law as it is written and law as it is administered, then, is crucial in understanding a youth justice system. Canada, with a single youth justice law administered by thirteen different jurisdictions (ten provinces and three territories) demonstrates this: the manner in which youths are processed varies dramatically across jurisdictions. Furthermore, when legislation was enacted in the mid-1990s that, among other things, encouraged the use of alternatives to custody, there were no apparent changes in the high-rate use of custodial dispositions. Another broad, but little noticed, change that took place without new legislation was the dramatic increase in the use of short custodial sentences in the late 1980s in many provinces (Doob 1992). In the case of this increase, there not only was no legislative change but also little awareness, it seems, that this was occurring.

In Denmark, Kyvsgaard notes that between the 1950s and the 1990s there was a dramatic shift in the proportion of youth cases handled formally in the justice system. In the mid-1950s, only about 5 percent of youths apprehended for offenses were found guilty, but by 2000 this had increased to 77 percent. She notes that “this has not resulted from specific amendments or deliberate youth policy changes, but has resulted from general changes in legal usage and criticisms of withdrawals of charges for young offenders.”

In Germany, for at least part of this period, the trend—again without legislative direction—was in the opposite direction. During the latter part of the twentieth century, there was increased diversion of youths from the formal system, which led to complaints by the police about underenforcement of the law.

In England during the latter part of 1980s, rates of formal processing decreased, though in this case the exact reasons are known. Other changes in the prosecution process—the establishment of the Crown Prosecution Service and greater use of informal warnings by the police—were responsible for the changes. However, why this trend apparently continued into the 1990s in periods of rising (the early 1990s) and then falling crime (mid-1990s onward) is somewhat mysterious. Some of this change at the end of the century, Bottoms and Dignan suggest, might be due to changes in offending (or at least apprehension) rates, but it is not clear how much can be attributed to this. In Scotland, by contrast, formal processing increased over the past twenty years.
The most interesting explanation for the variability in the United Kingdom is that there might be changes in confidence in the two jurisdictions in the manner in which youths are processed. If the system is trusted by the criminal justice community in Scotland, and youth justice officials (police, etc.) believe that youths will be handled appropriately, it makes sense that the system would be increasingly used. In England, Bottoms and Dignan suggest, the earlier days of minimum intervention and the "new youth justice" initiatives did not earn the confidence of the criminal justice community.

These are only a few examples of the large changes that occur in the youth justice system independent of formal policy and formal legislative actions designed to create changes. Whatever the reasons for the individual changes in specific countries, what is clear is that the modifications reflect complex interactions of the law, the community in which the law is being enforced, attitudes of justice officials and the public, and the operation of other related institutions. Nothing is simple in the field of youth justice.

The latter part of the twentieth century and the early part of the twenty-first century have been times when people in many countries have been searching for the "right" solutions to youth justice problems. Compromises abound. As Walgrave notes in this volume in his essay on one of the newest popular innovations in youth justice, restorative justice initiatives, there will always be tensions between the social welfare and social control approaches. More important, however, is his observation that "this tension is inevitable because juvenile justice jurisdictions try to combine what cannot be combined satisfactorily." Walgrave notes that the so-called Beijing rules expressed in the United Nations Declaration on the Rights of Children, which are meant to act as a guide to how young people are dealt with in all countries, "reflect a fundamental ambivalence" and, in attempting to combine approaches, might best be described as an attempt to sound good but gloss over basic incompatibilities between the approaches. The grafting of restorative justice principles onto the unresolved conflict between welfare and punishment goals obviously leads to other difficulties. Among them, Walgrave suggests that restorative approaches, when added to this mix of goals, may be vulnerable to all of the existing criticisms of punishment and treatment approaches.

The stories these essays tell will not provide the thoughtful reader with a simple solution to the fundamental problems of youth justice, just as reading about different methods of raising children will not help
parents know with certainty how best to raise their own. Nevertheless, the stories about how these countries have developed and modified their approaches to youthful offending, along with the data they provide on youth crime and youth justice, provide a background against which all of us can learn more about the complexity of the problem.

The essays raise important questions about our youth justice systems. Youth justice systems, and changes in youth justice systems in particular, as Zimring (2002) suggests, need to be understood in the context of the criminal justice system that is in place for adults in each jurisdiction. In Sweden and Denmark, they are one and the same. But even in those jurisdictions that have formally separate justice systems, it is worth considering what the relationship is between changes in the two systems.

We tend to know less than we should about the involvement of the state in the lives of children during adolescence. Though we know that in some jurisdictions youths who are heavily involved in the youth justice system also are likely to have welfare needs, we know little about the decisions that are made which determine which system is invoked when both systems could be used and each might be seen as being relevant. Longitudinal studies of youths with representative samples are not terribly helpful in this regard because relatively few youths ever come in contact with the formal youth justice or child welfare systems. Although comparative data across jurisdictions on the relative use of the two systems do not exist (even where there are separate systems), these might be useful in understanding the ways in which states intervene in the lives of children. It might be, for example, that jurisdictions that have low rates of youth court, or criminal law, involvement have relatively higher rates of some form of state intervention into the lives of children for welfare purposes. Alternatively, it might be that the social policies that are likely to affect the level of welfare needs among children are the same as the policies that affect the level of involvement in offending. If this were the case, one could expect youth justice and child welfare rates to be positively correlated across jurisdictions.

In a similar vein, neither within jurisdictions nor across them do we know much about the reaction of youths to different types of interventions. Little is known about the relative efficacy of interventions in the two processes.

Nevertheless, the central lesson these essays offer is an important one: there is not likely to be a single best approach to responding to youthful offending. There is a good argument for seeing youthful of-
fending and the youth justice system that responds to it as quite separate phenomena. Youthful offending may affect the youth justice system, but youth justice systems probably have very little impact on youthful offending. Some might see this hypothesis as a pessimistic one. Alternatively, it may free those who are responsible for modifying youth justice systems to focus more clearly on what is important about society’s responses to crime. What is clear from the essays in this book, however, is that relatively similar Western countries have not arrived at a consensus on how best to respond to youth crime.

REFERENCES