Youth Justice Board
Bwrdd Cyfiawnder Ieuenctid

Cross-national comparison of youth justice

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Acknowledgements

As always, a number of people have assisted in the preparation of this report. I am grateful to the Youth Justice Board for England and Wales (YJB) for funding the research (of which this represents the final report), and in particular Nisha Patel for managing the research and Helen Powell for shepherding the application.

I would also like to express my gratitude to the support staff at the Institute for Social, Cultural and Policy Research (particularly Mary Byrne) and at the School for English, Sociology, Politics and Contemporary History (particularly Beryl Pluples) for their help in administering the report. I am also grateful to Dr Christopher Birkbeck for his help and information relating to South American jurisdictions and translation. In addition, thanks go to Jackie Bowers in the University's Information Services Department for her help in accessing electronic databases.

I am particularly grateful to Sarah Wands for her work on this research, including involvement in data collection, analysis, and translation.

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Executive summary

Background to the research

This volume is the final report in a cross-national scoping review of policy and practice in juvenile justice. In common with other areas of social policy, youth justice is of increasing interest in comparative analysis to researchers and policymakers. This is partly fuelled by international obligations and harmonisation, and partly by the attractions of 'policy diffusion', whereby one country can learn and transfer policies and practices from another. Commentators have noted the cross-national concerns raised by youth justice.

This study aims to explore several key questions at both the system-wide and individual case levels. It focuses on:

- overall approaches taken by systems (including aims, philosophies, pressures and trends)
- structures and procedures for the administration of youth justice (including relevant agencies, judicial processes, diversionary practices)
- interventions (including differences within each intervention, custodial provision, aftercare).

The study will also highlight some illustrations of innovative or good practice.

The key purpose of this report is to present findings on comparative patterns in youth justice approaches, policy and provision across jurisdictions. It does so by first considering the pressures that countries face in relation to youth justice, and also common models and principles within systems. These provide a reference framework to explore policy and practice similarities and divergences in the four areas of:

- age thresholds for entering and leaving juvenile justice
- prevention and early intervention
- processes in youth justice, including investigations and decision-making
- outcomes and disposals, including a particular focus on restorative outcomes, other community penalties and variations in the use of custody.

Competing pressures on youth justice systems

- The development and implementation of policies and practices are subject to a number of pressures both internal and external to each country. Tension between these competing pressures is played out in debates and formulation of policy. Policies adopted can be seen as the real-life result of how each of these pressures are (temporarily) borne in each country.
- Most international pressure comes from a number of prominent United Nations agreements. The most significant of these is the United Nations (UN) Convention on the Rights of the Child 1989, which states, among other things, that the best interests of the child must always be the primary consideration and that custody should only be used as

a last resort. Implementation of the convention is monitored and pressure is put on countries to comply through public censure.

- Other Unied Nations agreements have set standards for:
  - the process of youth justice, with a focus on children's rights, including recommending that the age of criminal responsibility is not set too young
  - early intervention in the cases of abused children
  - rules governing custody.
- European countries are also subject to the European Convention on Human Rights 1989, and consequent rulings of the European Court of Human Rights. There are also recommendations made by the Committee of Ministers of the Council of Europe.
- While affected by these international pressures, each system is subject to political agendas, media panics and public opinion at the national and local level. It is possible to identify similar types of moral panics over youth crime around the world.
- The result of these pressures is that youth justice systems are extraordinarily varied, while at the same time there are patterns and trends in policy development.

System models and key principles

- It is possible to identify system 'models' around the world, however these are only ideal types and not replicated exactly. In addition, they do not determine policy formation, but are best seen as either philosophical approaches that wax and wane in policy formation debates, or accumulative patterns that have arisen from the competing pressures on youth justice.
- The most established differentiation between systems of youth justice around the world is that of welfare versus justice. Arguably, every other model that has been developed in the literature can be traced back to variations of these two basic types of approach. The welfare approach emphasises paternalism and protection, and has resulted in treatment rather than formal justice and punishment. The justice approach emphasises ideas of judicial rights and accountability for crimes, favouring formal justice and proportionality in sentencing.
- Recently, more complex models have been introduced which reflect variations in the way that countries have implemented the above approaches in light of the competing pressures. Models include those emphasising accountability through punishment and the protection of society; an emphasis on restorative justice; and an emphasis on restorative justice and a preference for diversion.
- Although acting in the best interests of the child is an obligation under the UN Convention on the Rights of the Child 1989, and is a dominant principle in youth justice systems around the world, there are a number of other principles that have been adopted. These include:
  - the principle of 'preventing offending', which is influential in England and Wales

- the protectivist *parens patriae*; of treating young people who offend as children in trouble who require welfare
- minimal intervention
- protection of society
- education and resocialisation.

- Together, the models and principles discussed provide a framework to consider and understand similarities and divergences in youth justice policies around the world.

Age thresholds within systems

- The most basic defining characteristic that distinguishes youth justice systems is the ages of young people that they cater for. There is an incredible amount of variation in these ranges, with the differences coming at both the upper and lower age ranges.
- The ages of criminal responsibility found in 90 jurisdictions included countries with none, and then a range from 6 to 18-years-old. The threshold of 10 years in England and Wales was young in comparison to the most common and median average age of 14 years. Most European countries set their age between 14 and 16-years-old.
- Countries institute policies and procedures that, in effect, alter the threshold for criminal responsibility. The age is sometimes effectively lowered by some forms of early intervention, and legislation on sub-criminal behaviour and status offences. The age is effectively raised, or protection from prosecution given at a higher age, by the use of *doli incapax*, treating offenders as welfare cases, and restricting the range of disposals until subsequent ages.
- Criminal majority is the age at which the criminal justice system processes offenders as adults. The age of criminal majority found in 34 countries also varied greatly, but was typically set at 18 years, the level in England and Wales. Countries with higher ages of criminal responsibility also tended to have higher levels of criminal majority.
- Again, countries institute policies and procedures that, in effect, alter the threshold for criminal majority. The age is effectively lowered by transferring some juvenile cases to adult courts, while it is raised by extending juvenile processes and disposals.

Prevention and early intervention

- Early intervention projects are widespread and varied, although many (more welfarist) countries frame them within normal social support for families and children, with crime prevention as a by-product.
- Where crime-prevention is the primary aim, it is usually within the ‘at risk’ paradigm, designed to address risk factors and bolster protective factors for youth crime. An alternative framework found elsewhere is social inclusion and engagement, and particularly children’s rights. Such an approach might be useful for excluded racial or religious groups of young people in England and Wales.

- Family-focused initiatives include parenting programmes (usually voluntary), and community-wide support for pre-school children. The latter is also used for early screening of problem behaviour.
- School-based preventative initiatives are widespread. Teaching relevant social skills, including conflict resolution and resisting peer pressure, may be part of the classroom curriculum. Peer mediation is increasingly popular, with students trained to resolve conflict themselves. It is also common for police to be involved in school initiatives (not necessarily a permanent presence), including organising a programme of talks and other organised activities.
- A variety of approaches have been developed that intervene with at risk children directly. Although some approaches have been discredited (e.g. scare tactics), others are perceived as successful, are growing rapidly, and being adapted (e.g. mentoring now involving young people). Organising positive leisure activities is often a primary focus, occupying time usefully, developing positive peer relations and fostering preventative social skills. They may be combined with availability of other services (e.g. home-work support and lawyers).
- Although specific orders against anti-social behaviour have not been adopted widely, many countries have similar authoritarian 'status' measures directed against young people collectively or individually to restrict sub-criminal activity (including curfews). Similar concerns exist over net-widening and human rights.

Investigations and decision-making processes

- In recognition of the different protections necessary for children, and in order to feed into later juvenile justice decision-making processes, countries often have different police procedures for dealing with children. Some countries have special police officers, others have specific training for those coming into contact with children.
- There is particular divergence and concern about 'stop and search' regulations, and different powers given to police to be used directly against young people.
- Delays in proceedings are a particular concern cross-nationally. The estimated average time of investigation until prosecution ranges from three months to more than a year.
- The main divergences and debates over decision-making surround the extent to which young people should be dealt with through formal judicial channels, or diverted away from these to more informal child-focused proceedings. Since the emergence of due process in the 1960s, a number of countries insist on a formal court trial for young people. The issue of legal advocacy and representation in judicial hearings is particularly controversial.
- However, there are practices around the world along a continuum of destructure and informality towards true diversion (avoiding any treatment or sanction). These diversions may be instituted by the police, through forms of cautioning, by other gatekeepers intervening before a case reaches court, or by replacing the court proceedings wholesale.

- Alternatives to court proceedings are informal hearings, the most famous of which are Family Group Conferences (FGCs) and the Scottish Children's Hearings system. In these informal hearings, decisions are not made by professionals, but by lay members of the community or even the child's own family.
- There are a number of criticisms raised about diversionary practices. Apart from the concern with due process, other issues include the extent to which decision-making is coercive rather than inclusionary, and the extent to which it widens the net by intervening with children who would otherwise have had their cases dismissed.

Outcomes and disposals

- The rise in restorative justice is one of the strongest trends in youth justice over the past 30 years, resulting in the popularity of mediation and reparation as case outcomes. However, varying emphasis is placed on their purpose (depending upon current pressures and system principles) and this produces great variety in their implementation. For example, they can be carried out as an alternative to traditional disposals, or as outcomes reached before a trial.
- Mediation between victim and offender has become particularly prominent internationally from its inception in the 1970s. However, there are variations in the extent of its integration into law, and its extent of use – and the two do not necessarily go hand in hand. The high amount of mediation in some countries may be because prosecutors are obliged to consider it before sending a case to court, or where it is clearly in the interests of the young person who offends. There is considerable variation in who organises the mediation, from the police to the local community.
- Reparation may variably take the form of individual victim compensation or indirect community work, and the extent to which either is stressed varies between countries, but commonly both are available, and are sometimes used extensively. Reparation can sometimes be almost indistinguishable from other community disposals when courts impose it as a punishment.
- There are a number of distinctive, controversial, innovative or fast-growing community penalties being implemented around the world. These include:
    - an increasing emphasis on the accountability of parents, with a variety of sanctions
    - public censure of children, despite international agreements to the contrary
    - referrals to social welfare agencies
    - the use of education, including individualised social programmes
    - methods of intensive supervision and social control
    - use of community-based institutions as alternatives to full custody.
- There is huge variety in the use of custody for young people who offend, ranging from virtually none in some jurisdictions to over 100,000 young people at any one time in the United States of America (USA). England and Wales have a particularly high rate of custody compared to the vast majority of other countries, and the YJB has committed itself to reducing the demand on the juvenile secure estate.

- Countries that succeed in having lower custody rates enshrine in policy and practice the commitment in the UN Convention on the Rights of the Child 1989, Article 37, to custody only being used as a last resort. In addition, custody rates have also been lowered by:
  - introducing more welfare-based processes and emphasising restorative justice
  - providing more community-based alternatives
  - implementing compulsory use of suspended prison sentences.
- A number of countries have indeterminate sentences similar to section 90/91 sentences in England and Wales. However, the majority of countries place limits on the length of time a person can be held in custody, ranging from two years to 25 years.
- There is a surprising variety of different types of sentences and regimes across the world, serving different practical and philosophical purposes. Other countries share the English and Welsh model of split custody-community sentences; sometimes focused on intensive education, sometimes custody may be focused on institutional care, and sometimes prisoners are free to leave during the day for external employment or education.
- Short sentences are an issue of particular difference and debate, particularly the reoccurring iteration of the short sentence intended to cause a 'short, sharp shock' (sometimes in the form of boot camps). As in England and Wales, these are intuitively appealing to policymakers internationally but usually have a short shelf life.
- Countries have tried a number of different incentives and punishments within custody, ranging from the right to use their own personal equipment to outside visits; and from loss of privileges to, controversially, solitary confinement for up to, and more than, 40 days.
- This issue of remand prisoners has been debated across a number of jurisdictions. In some, recent concern has been the high number of remand prisoners, while in others there has been a hardening of attitudes. In many jurisdictions, the period of remand is tightly restricted.
- There is international concern over the conditions in custodial institutions and the United Kingdom (UK) is not alone in having been criticised for this. Lack of human rights around the world includes abuses from staff and other inmates and lack of sanitary conditions.

Conclusions

The report presents youth justice as dynamic, and made up of a mixture of policies and practices that have often changed considerably over recent years. Overall, the picture is of a common set of pressures producing divergent solutions to common problems. But there are discernable patterns in all of these. This report provides a framework of pressures and principles for looking at youth justice around the world, and gives a guide to the similarities and divergences in relation to policy and practice. Fundamentally, it can be seen that each of these adopted policy solutions can still be considered in the framework of welfarism and justice. In relation to youth justice, this translates as the extent to which 'young offenders' are

treated as ‘young’ and needing special protection or interventions, or ‘offenders’ who need to be held accountable.

1 Introduction

Comparative analysis and youth justice

This report is the latest study in the increasingly popular branch of policy analysis known as comparative analysis. It is the study of differences and similarities across countries at macro (i.e. systems) and micro (i.e. individual interventions) levels. It has been encouraged in recent years by increasing globalisation, improved communication (e.g. the internet), and increased international co-operation (e.g. the United Nations and European Union). The last of these is particularly important in areas such as justice and social welfare because, as will be evident in this study, the UK has signed up to international agreements that are meant (to an extent) to harmonise policies and lay down common standards for practice. Related to this, there has been a growing interest by policymakers in cross-national learning and policy-transfer (or 'diffusion'), by which ideas, policies and programmes are adopted (and sometimes adapted) by one country from another (Freeman and Tester, 1996; Dolowitz and Marsh, 2000; see Molina and Alberola, 2005 for a discussion of youth justice policy transfer to Spain).

Youth justice has been no exception to the growth in comparative analysis (Muncie, 2006). Indeed, very recently there have been a number of publications that have tried to provide comprehensive international 'handbooks' of youth justice (e.g. Muncie and Goldson, 2006; Winterdyk, 2005; Junger-Tas and Decker, 2006) or, more typically, that have bound together potted summaries of various youth justice systems into one volume (e.g. Cavadino and Dignan, 2006; Tonry and Doob, 2004). Individual studies have tried to identify common international patterns and trends over time (e.g. Hallett and Hazel, 1998), and others have stressed the differences between systems (or groups of systems) that come from very different starting points and have followed different developmental paths (Cavadino and Dignan, 2006:199).

The inclusion of youth justice in this growth is, perhaps, not surprising. Winterdyk has noted the particular suitability of youth crime and youth justice for comparative study: "Youth crime is not by definition transnational in its scope, but it is an international problem, and it raises cross-national concerns" (2005:459). Similarly, Muncie has discussed the extent to which youth justice is 'a global product' (2005:56).

Indeed, crudely speaking, youth crime appears to be a common social concern across the globe, and policymakers and researchers are keen to explore and explain different solutions that have been tried in other countries.

Aims of this study

Overall, the study has several key areas of interest, at both the system wide and individual case levels. The following questions under each of the headings below were borne in mind as the literature was searched, and helped direct analysis:

- **Approach**
  What are the stated overall aims of the systems? What philosophies are inherent in the system (e.g. assumptions of responsibility, due process, restorative justice)? What are the

recent trends in the systems? What pressures (judicial, political, etc) for change are currently being felt? What age thresholds are inherent in the system (e.g. age of criminal responsibility, juvenile to young adult, criminal majority), and how do these affect legal assumptions? What approaches have been developed towards sub-criminal anti-social behaviour?

- **Structure and procedures**
  Which bodies are responsible for youth justice (e.g. Government department, independent, non-Government organisations [NGOs]), and how do they link with other areas of youth policy (including education, training and employment)? How do legal processes differ from adults (e.g. court processes, responsible adults etc)? How are youth justice workers organised (e.g. multi-agency teams)? How closely do sentencing bodies work with other youth justice professionals? How are services delivered (e.g. one-stop shops or separate agencies)? What role do victims and other members of the public play in proceedings and disposals? What approaches and procedures have been adopted towards identification, referral and tracking of children at risk of offending? What procedures are in place for monitoring offenders within the youth justice system (e.g. *Asset*)?

- **Interventions**
  How do approaches to early intervention differ (e.g. parental support, early monitoring, etc)? How have different approaches (e.g. mediation and restorative justice) been translated into interventions? What support is given for the through and aftercare from custody? What examples of good practice exist across all types of promising interventions?

Remit and structure of this report

The key purpose of this report is to present findings on comparative patterns in youth justice approaches, policy and provision across jurisdictions. The report is aimed primarily at policymakers, but may be of interest to practitioners and others wishing to contextualise youth justice in this country. The study was commissioned by the YJB in order to scope how other countries may differ in their approaches to dealing with youth crime, and so prompt and inform reflective debate in England and Wales. The emphasis of the report is not on providing specific examples of individual good practice (although some notable innovative practices are referred to), but on presenting wider policy patterns; thus allowing the reader to contextualise how young people are dealt with in England and Wales in comparison to the bigger international picture. Likewise, the report does not detail policies and practices in England and Wales (assuming reader familiarity with this jurisdiction), but does make frequent references in order to draw comparisons.

Following a chapter which considers the methods used for the report, emerging findings are presented in six substantive chapters, prior to a concluding chapter.

The first findings chapter highlights the competing pressures that countries face in relation to youth justice. The following chapter explores different models that have emerged in relation to youth justice in light of these pressures and a number of key principles that can be identified within systems. Together, these two chapters provide a framework for considering the development of policies and practices across countries, including their similarities and divergences.

The last four findings chapters examine some of these policies and practices. The first of these explores the most basic characteristics of youth justice, that of the age thresholds for entering and leaving the systems and the special procedures and disposals that they may entail. The next chapter looks at early intervention in preventing youth crime, noting different approaches, then focuses on initiatives at the level of the family, the school and the individual child at risk of offending. The next chapter concentrates on the processes in youth justice, including investigations and decision-making. The final findings chapter explores the patterns in the resolutions to cases, including particular focus on restorative outcomes, other community penalties and variations in the use of custody.

The concluding chapter summarises these findings, including overall messages.

2 Methods

Comparative analysis

The methodological dangers of exploring other countries' policies, comparing them with your own, and considering adopting them, are well established (e.g. Higgins, 1981 and 1986; Jones, 1985; Hallett and Hazel, 1998; Nelken, 2002; Muncie, 2005). It is important that these dangers and their inherent limitations are borne in mind when considering this report and any comparative research on youth justice.

First is the problem of accessing reliable comparative data (Hantrais, 1996), because each country uses different units of analysis, different methods of collection and analysis, and collects data for different purposes. With specific regards to youth justice, it has been noted that international agencies have collected relatively little data compared to the data collected for other social issues, compounding the problem (Hamilton, 2002, cited in Winterdyk, 2005:464). This first problem is compounded by differences in language and problems of translation and misinterpretation.

Second, it is sometimes difficult to define the geographical unit of analysis. Again, with youth justice in particular, although data may be provided on a national level, there may well be different jurisdictions operating within a federal country (e.g. Canada, the USA, Australia, and to some extent the UK). For example, in Canada, there is a much more welfare-oriented approach taken to young people who offend in Quebec compared to more justice-oriented and punitive states in the west of the country (Winterdyk, 2005:461). To complicate matters further, these countries often have some elements of their systems defined federally, and others at the local level (e.g. US states have nationally-recognised rights of due process, but very different ages of criminal responsibility). Even where there is not full federalisation, countries may allow significant degrees of devolution or discretion to regions (e.g. Spain, Italy and Germany). Even if the country has a relatively united system, there may be variation at the level of individual interventions (as we know from differences in services available in youth offending teams [YOTs] in England and Wales), including the piloting of new interventions.

Third, it is necessary to bear in mind the different political, socio-economic and cultural contexts within which systems and policies operate. It would be wrong to assume that one country's policies and practices could necessarily be transferred to another country with the same level of success. In relation to youth justice, it would be dangerous to imagine that we are about to see the possibility of universally-agreed ideas of 'what works in youth justice':

> *Juvenile and youth justice may be becoming more globalized through the impact of neo-liberalism, policy transfer and international conventions, but at the same time it is becoming more localized through national, regional and local enclaves of difference, coalition and resistance.* (Muncie, 2005:56)

In particular, it has been noted that when considering whether to transfer a procedure or disposal, it is important to recognise that the systems within which they presently operate may well be based on very different assumptions and philosophical underpinnings to our own

(Cavadino and Dignan, 2006:199). For that reason, later in this report we consider the different models and principles that group and distinguish different youth justice systems.

While it has not been possible within the scope of this report to analyse the methodological, cultural and political implications of transferring each comparable policy and approach, the reader should continue to be alert to the problems highlighted above.

Data collection

The methods used in the desk-based literature review were very similar to those developed successfully by the author in recent research projects. Searches were made both of existing cross-national studies, and of local studies focusing on key areas of interest (listed in Chapter 1 in the 'Aims of this study' section). The primary combination of terms on which cross-national literature was searched is summarised in Table 2.1 (searches on key areas of interest were much more subject specific).

Table 2.1: Primary search terms used for cross-national studies

Term 1:	***and***	**Term 2:**	***and***	**Term 3:**
Juvenile		Justice		Comparative/comparison
Or		*or*		*or*
Youth		Judic* system		Cross-national
or		*or*		*or*
Young		Criminal		International
or		*or*		*or*
Child		Offen*		Jurisdiction
or		*or*		*or*
Minor		Delinquen*		Countries
				or
				Transnational

The search for relevant literature and ongoing projects involved three main sources:

1. **Literature databases and web searches**
   Systematic searches of the following type of databases:

   - academic library databases (including the University of Salford, the University of Manchester and Manchester Metropolitan University), in addition to overall mapping of the field using the British Library database
   - specialist child and youth-focused library databases (including the National Children's Bureau's 'ChildData' and NSPCC)
   - academic journal and book databases (including Sociofile and Psychlit)
   - internet search engines (including Google, Lycos, Webcrawler) and subject specialist websites (including National Clearinghouse for Youth Studies [Australia], Centre for Europe's Children [Scotland] and Juvenile Justice Clearinghouse [USA])

- Research Council and research funder websites from the UK and overseas (e.g. Economic and Social Research Council, the Joseph Rowntree Foundation and the Nuffield Foundation in the UK).

2. **Government literature**
   The review included government reports from studies, inquiries, white and green papers etc, from both European governments and beyond. This also included a search for any public guidelines or 'what works' literature in this area.

3. **Reference trails**
   Reference lists and bibliographies from each collected text would be examined, and where relevant, would be traced.

Although the search was not limited to English language studies (and databases searched included foreign language papers), most studies collected were in English. There were a small number of papers in French (mainly European) and Spanish (mainly Latin American), and these were analysed by the author in collaboration with a translator (see below). In total, data was found and analysed relating to 146 jurisdictions across 93 countries (see Box 2.1 below), and all of these have been referred to at some point in the report.

Box 2.1: Countries referred to in this report

England & Wales	Cyprus	Kuwait	Romania
Algeria	Czech Republic	Latvia	Russia
Andorra	Denmark	Lebanon	San Marino
Argentina	Ecuador	Libya	Saudi Arabia
Armenia	Egypt	Liechtenstein	Scotland
Australia	Estonia	Lithuania	Senegal
Austria	Finland	Luxembourg	Singapore
Azerbaijan	France	Macedonia	Slovakia
Bahrain	Germany	Malaysia	Slovenia
Barbados	Greece	Malta	South Africa
Belarus	Honduras	Mauritius	Spain
Belgium	Hong Kong	Mexico	Sweden
Bosnia &	Hungary	Moldova	Switzerland
Herzegovina	Iceland	Mongolia	Syria
Brunei	India	Namibia	Tanzania
Bulgaria	Iraq	Netherlands	Thailand
Canada	Ireland	New Zealand	Togo
Cayman Islands	Israel	Northern Ireland	Trinidad
Chile	Italy	Norway	& Tobago
China	Jamaica	Panama	Turkey
Columbia	Japan	Philippines	Ukraine
Costa Rica	Kazakhstan	Poland	USA
Croatia	Kenya	Portugal	Zambia
Cuba	Korea	Qatar	

Analysis

The methods of analysis used for this report were similar to those used in previous studies by the author (e.g. Hallett and Hazel, 1998; Hazel, Hagell and Brazier, 2002b; Hazel, 2003).

First, incoming articles and other literature were ranked in order of relevance to our research aims, and further weighted according to their scientific/providence standing (from empirical refereed journal articles down to unverified intelligence from government officials). Details of the literature (including jurisdiction, methodology, and key findings) were inputted on a chart, enabling (a) analysis of patterns and trends in research and (b) highlighting a thematic framework for further detailed analysis of each text.

Second, based on emerging findings, we created two frameworks for analysis: (1) key characteristics of each jurisdiction, and (2) cross-national approaches, procedures and interventions. The latter framework assisted in building a thematic analysis of contemporary patterns of development across the various jurisdictions, with particular attention paid to issues of convergence and divergence. Data from overseas were analysed cross-nationally in relation to England and Wales, while maintaining awareness of differing national political, socio-economic and cultural contexts.

3 Competing pressures on youth justice systems

The development and implementation of policies and practices within individual countries are shaped by a number of different pressures at any one time. These pressures can come from outside of the country, from within it at a national or cultural level, and can originate more locally. In addition, it is important to recognise that these pressures are often competing, and result in a constant debate and flux within jurisdictions. This chapter explores some of the main pressures that have been, and still are, key influences in youth justice policy formation.

International pressure

Countries have found themselves under unprecedented pressure over the past generation to develop (or revise) their youth justice policies and practices in accordance with agreed principles and minimum standards. This has been played out through diplomatic efforts, legal rulings, and through academic comparisons, as this publication attests.

The most international pressure has been put on individual countries in relation to their youth justice policies through the auspices of the United Nations. The United Nations has consistently championed the cause of rights in youth justice procedures and disposals since the International Year of the Child in 1979. This has resulted in a number of key international agreements and guidelines that have set principles and minimum standards by which countries can be compared and judged (see United Nations, 2000, for a summary). Lahalle (1996) has argued that there is a particular emphasis in these agreements on the avoidance of the deprivation of liberty for the child, and the search for diversionary measures.

The best known, and perhaps the most significant, of these agreements is the UN Convention on the Rights of the Child 1989. Following ratification of the convention, Member States have regularly had to report to, and be scrutinised by, the UN Committee on the Rights of the Child. Within that process, the committee publishes reports that name and shame a country's procedures that it believes fail to abide by the convention's principles. Several articles within the convention are of particular relevance to youth justice. In particular, Article 3(1) states that:

> *…in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be of primary consideration.*

This clearly has implications for the principles that underpin each stage in the youth justice process, which is discussed further in the next chapter. However, in relation to international pressure on countries, it should be noted that by 2000 the committee had reviewed 122 countries. In relation to youth justice, they identified incompatibility with the convention, and made recommendations on necessary youth justice reform in almost all of them (United Nations, 2000).

Article 12 provides recognition that children should have the right to voice their views, and have those views given due weight in accordance with age and maturity. It also states that the child:

…shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

This has clear implications for the conduct of decision-making processes, and speaks to concerns about the lack of due process in the treatment of young people who offend that have been present in some aspects of the more 'Orwellian' welfare-oriented interventions (particularly in the 1960s). In addition, Article 19 states that all children should be protected by the state from maltreatment and violence, which has implications for procedures, including the use of physical punishment, police and security handling, and custodial conditions.

It is important to note that the USA is one of only two countries in the United Nations not to have ratified this convention (Somalia is unable to do so with no functioning government). As such, its youth justice policies and practices are not bound by the convention's principles of human rights in dealing with young people who offend (Winterdyk, 2005:466). It was only in March 2005, for example, that the USA finally ruled against the death penalty for juveniles. For this contextual reason, particular caution should always be taken when considering transferring policies, or trying to draw any lessons of good practice, from US systems and facilities. And this has been a danger in the formation of penal policy in England and Wales which has already been well documented (e.g. Muncie, 2005; Dolowitz and Marsh, 2000; Sparks, 2001).

The second United Nations agreement of particular importance is the UN Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules), agreed in May 1984. These rules set standards for the process of youth justice, with a particular focus on children's rights. They cover almost every procedural aspect of youth justice, from general principles through adjudication and disposals to policy evaluation. Particular rules to note for discussions in this report include a principled focus on the well-being of the juvenile (as with Article 3 of the UN Convention above) and a requirement that the age of criminal responsibility not be set too young.

The third United Nations agreement is the Directing Principles for the Prevention of Juvenile Delinquency (also known as the Riyadh Guidelines), agreed in 1990. These are concerned primarily with early intervention (from offending) in the cases of children who are abandoned, neglected or abused.

The fourth United Nations agreement of note for applying pressure to Member States is the Rules for the Protection of Juveniles Deprived of their Liberty (also known as the Havana Rules), created in 1990. The Havana Rules specifically establish minimum standards of provision for young people under 18 years who are held in custody.

In addition, there is pressure on European countries to abide by additional international standards and agreements. Of particular note is the 1987 Committee of Ministers of the Council of Europe Recommendation (R (87) 20) that Member States pursue the development of measures for diverting offenders from court processes, and towards interventions specifically designed to aid social integration and inclusion. More legally binding on European countries are the minimum standards established by the European Convention on Human Rights (1953), including the right to due process in law, and restrictions on the deprivation of liberty. This is put into force through rulings by the European Court of Human Rights. Examples close to home include court rulings on fair trials for juveniles in England

and Wales following the Venables and Thompson case in 1994, and the ruling that juveniles should have full access to reports on them following Scotland's McMichael case in 1995.

Other pressures

In spite of international agreements that have set standards and made recommendations on processes for dealing with young people who offend, there remains extraordinary variation between jurisdictions. Muncie has noted that youth justice systems, and changes within them, certainly do not seem to follow universal trends in the way that such agreements would suggest: 'Juvenile justice reform appears remarkably nationalised, localised and contingent' (Muncie, 2006:50).

It is clear that these international agreements are being used at best as guidelines, and at worst are being ignored. But why should this be the case? Why is there not a consensus of policy, in line with the apparent relative consensus of the signatories to these agreements? According to Winterdyk, it is due to the way that youth justice reform around the world is being increasingly dictated to by political agendas and public opinion at the national and local level:

> *…pragmatic factors such as social values and norms, economic standards, cultural ideologies, and political and public opinion continue to compromise the establishment of universal standards for juvenile justice*. (Winterdyk, 2005:466)

In particular, it is possible to clearly identify the local level moral panics about youth crime that have put pressure on policymakers to move towards particular reforms (usually increasingly punitive), which might be directly opposed to these international agreements. For instance, in England and Wales, it has been well documented that public and media concerns surrounding young people who persistently offend, and the killing of Jamie Bulger in the early 1990s, influenced policy. Moreover, similar examples can be cited across the world. Winterdyk has noted the important influence of recent violent cases captured by the media in Canada (2005:458). The same could be said for the moral panics in the USA over crack cocaine and gangs in the 1990s (Cavadino and Dignan, 2006:216). A similar tendency has been observed in Western Australia in the 1990s, with increased penalties for violent and motoring offences in response to panics over joyriding (Cavadino and Dignan, 2006:237). Likewise, in Asia, Japan toughened up laws after moral panics about joyriding, teenage prostitution (Fenwick, 2004, cited in Muncie, 2006:59) and high-profile murders by a child (Fenwick, 2006). Overall, as in England and Wales, the media seem to feed public opinion that juvenile crime is more prolific than it actually is (for example, see Greece [Stando-Kawecka, 2004]).

Consequently, then, we often see a tension between these pressures being played out in debates and formulation of policy, where there are competing pressures within the same country. In Scotland, for example, McAra has noted the tension that has resulted between the welfarist commitment of professionals and an increasingly punitive political discourse (McAra, 2004). The situation in Canada sums up the sort of contention around the world that results from these competing pressures. According to Winterdyk, Canada 'struggles to find a balance between accountability and rehabilitation' (Winterdyk, 2005:458).

Policies adopted can be seen as the real-life result of how each of these pressures are (temporarily) borne in each country:

> *In every country and in every locality, youth justice appears to be 'made up' through unstable and constantly shifting alliances between neo-liberal, conservative and social democratic mentalities. In terms of policy, the authoritarian, the retributive, the restorative and the protective continually jostle with each other to construct a multi-modal landscape of youth governance (Muncie, 2004).* (Muncie, 2005:57)

The next chapter considers the different models and principles around the world that have accumulatively resulted from these competing pressures.

4 System models and key principles

This chapter explores the idea of summative models of youth justice to help us understand patterns in the proliferation of policies and procedures. Is it possible to state that a country's policies seem to follow a coherent approach to youth justice? Or, at the very least, is it possible to see clear approaches to youth justice around the world within which we can start to frame developments within individual countries, and then begin to compare them? The two main approaches that have emerged in the literature from analysis of youth justice systems are explored below. The chapter then briefly introduces more complex variations of these approaches that have appeared in the literature in recent years.

System models

The most established differentiation between systems of youth justice around the world is that of *welfare* versus *justice*. Arguably, every other model that has been developed in the literature can be traced back to variations of these two basic types of approach.

Essentially, this dichotomy can be recognised as the old battle between the competing criminological theories emanating from the Classical School and Positivism. Crudely, informing the justice model, the Classical School would lay the blame for behaviour firmly with the offender and their choices, and punish proportionately. In contrast, Positivism would highlight factors bearing on the offender, and would support welfarist interventions aimed at treating these.

These models are, of course, ideal types. It is not assumed that any one country will match either type exactly and display at any one time all of the characteristics identified with either model. However, as extreme poles they do provide a framework for mapping, and charting, the movement of systems and policies. Indeed, successive authors have charted how both systems and individual disposal types in each country travel back and forth somewhere between the two poles over time (e.g. Harris, 1985, on England and Wales in the 1960s and 1970s; Wundersitz, 1996, on the South Australia system; Muncie, 2005, on systems globally; Hagell and Hazel, 2001, on custody in England and Wales).

The welfare model

Alder and Wundersitz summarised the welfare model in the following way:

> *The 'welfare model' is associated with paternalistic and protectionist policies, with treatment rather than punishment being the key goal. From this perspective, because of their immaturity, children cannot be regarded as rational or self-determining agents, but rather are subject to and are the product of the environment within which they live. Any criminal action on their part can therefore be attributed to dysfunctional elements in that environment. The task of the justice system then, is to identify, treat and cure the underlying social causes of offending, rather than inflicting punishment for the offence itself.* (1994:3)

These ideas were dominant in the thinking surrounding the establishment of early youth justice processes and disposals. In Britain, it was the 'saving' of the child from negative

influences that prompted the setting up of reformatories by philanthropists (e.g. the Royal Philanthropic Society [Rainer], and reformers like Mary Carpenter in England and Wales) in the nineteenth century. It was the idea of state responsibility for the protection of the child (*parens patriae*) that was fundamental to the establishment of the separate courts for juveniles in Western Australia in 1895, Illinois in the USA in 1898, and in England and Wales in 1908. Indeed, although welfarism was in constant competition with justice ideas, this model can be seen as being dominant in most jurisdictions up until the second half of the twentieth century.

The model, with its emphasis on child protection, is still dominant in much of Europe. However, from Scotland to the Eastern European states, these principles seem to be increasingly challenged by discourses of accountability and responsibility (Muncie, 2006:53).

Indeed, one of the main criticisms of this model is the undermining idea of individual responsibility for one's own actions. It has also been accused of encouraging state dependence, and eroding an individual's rights through practices like compulsory intervention without trial and indeterminate treatment (Muncie, 2005). The growth of the justice model seemed to answer these criticisms.

The justice model

Alder and Wundersitz have summarised the justice model by noting that it:

> *…assumes that all individuals are reasoning agents who are fully responsible for their actions and so should be held accountable before the law. Within this model, the task of the justice system is to assess the degree of culpability of the individual offender and apportion punishment in accordance with the seriousness of the offending behaviour. In so doing, the individual must be accorded full rights to due process, and state powers must be constrained, predictable and determinate.* (1994:3)

Elements of the justice model were present from the beginning of youth justice, politically countering welfarism. For instance in England and Wales, the introduction of tough borstals can be seen as a response to concerns about the 'softness' of reformatories, and detention centres were introduced in the 1950s as a 'trade-off' in the Commons for the abolition of judicial corporal punishment for juveniles. However, the global increase in dominance of this model has been charted particularly to the 1960s and 1970s (Muncie, 2004; Hallett and Hazel, 1998). In summary, the justice model has meant a focus on responding appropriately to the deeds of the offender rather than their needs.

Fundamental to this model are the converse concepts of rights and responsibilities. Rights would be protected by ensuring that all interventions were decided through full legal due process, where the young person would have the right to defend themselves. This would mean an end to the discretion given to social and youth workers to start and continue treatment.

However, it is seen that these increased rights are matched by responsibility. If the young person is old enough to enjoy the rights of citizenship, the thinking goes that they are old enough to accept responsibility for their actions. By the same token, this can be extended to a process of actively apportioning blame, and ensuring accountability is accepted by those individuals (usually the young people who offend, but sometimes their family). This

accountability normally means tough punishment, although with the principle of proportionality, the punishment should fit the crime. The young people who offend would receive their 'just deserts'. Indeed, since the emergence of the justice model, the principle of positive rights has gradually become so overshadowed as to become almost unrecognisable in some jurisdictions. As such, some commentators have argued that it really constitutes a new model of 'neo-correctionism'. This is just one of a number of new models that have been developed as countries have tried to negotiate the competing pressures on youth justice, which were explored in the previous chapter.

More complex models introduced

In recent years, commentators have tried to take account of the rapid development of youth justice systems around the world, and the different combinations of policies resulting from the competing pressures explored in the last chapter, by presenting a more complex typology of models. Two useful examples of recent typologies are presented below in Table 4.1 and Table 4.2.

In addition to the established welfare and justice models, these typologies each have a number of variations. One other variation common to each model (crime control in Table 4.1 and neo-correctionalism in Table 4.2) relates to the hardline development of the justice model described earlier, with an emphasis on accountability and punishment. It has been noted that the rise of neo-correctionalist policies has served the interests of both politicians and business, particularly in the perceived need for private prison expansion, and increase in technological monitoring systems, such as electronic tagging (Christie, 2000; Muncie, 2005).

Early variations to this welfare-justice dichotomy centred on the addition of a third classification relating to ideas of societal responsibility for the criminal behaviour (e.g. Parsloe, 1978; Smith, no date, cited in Parsloe, 1978; McGarrell, 1989). In the above models, this variation relates closest to Cavadino and Dignan's 'minimal intervention' model. Mainly stemming from thinking about the dangers of labelling young people as offenders, this approach argues that the behaviour is as a result of inequitable social structure. This classification has been applied to youth justice systems where there is a principle of minimum intervention through the community (e.g. early diversion to community projects).

Table 4.1: Typology of youth justice system approaches by Winterdyk (2002 and 2005)

Model	Basic features	Countries
Welfare	Diagnosis and treatment by social workers	Austria, India, Italy, Scotland
Justice	Legal process and punishment, responsibility and rights	Russia, China
Modified justice	Punishment/welfare mix based on diminished responsibility, treatment and punishment by social work and law	Canada, South Africa
Participatory	Education based	Japan
Corporatist	Inter-agency justice specialists implementing multi-focused policies	England and Wales, Hong Kong
Crime control	Legal process and punishment, accountability and retribution, incarceration and protection of society	USA, Hungary

Table 4.2: Typology of youth justice system approaches by Cavadino and Dignan (2006:201)

Model	Basic features	Countries	Theory*
Welfare	Focus on needs of dependent child, unified care/criminal jurisdiction, diagnosis and treatment, informal procedures, indeterminate sentences	Norway, Sweden, France, Germany, Japan, USA (pre-1960s)	Positivism
Justice	Accountability, focus on deeds of responsible agent, just deserts, criminal jurisdiction, procedural formality, punishment	USA (post-1960s)	Classical
Minimal intervention	Avoidance of 'net-widening', diversion from criminal proceedings, decarceration, community alternatives	Scotland	Interactionist /Left Idealism
Restorative justice	Focus on accountability and reintegration, reparation and mediation for victims, diversion, decarceration	New Zealand	Left Realism
Neo-correctionalist	Responsibility of parents and children, early intervention and prevention, accountability to victim, reparation, systems management, focus on effectiveness	England and Wales	Right Realism

* Added for this report

It should be noted that policymakers in England and Wales have also declared in recent years an attempt to go down this third way of emphasising personal responsibility (together with prevention) rather than welfare or punishment per se. However, without the political or judicial backing for 'minimal intervention', observers tend to question the extent to which the juvenile justice agencies have really been able to move away from the justice model, and its above variations (e.g. Stevens, Kessler and Gladstone, 2006). A similar situation exists in Spain, which has been influenced by England and Wales's *No More Excuses* report (Alberola and Molina, 2004).

Just as the justice model and positivism can be seen as informed by the Classical School and Positivist theories, it can also be recognised how these newer models of youth justice system developed (e.g. punitive neo-correctionalist) as new thinking and theories in criminology emerged (e.g. Right Realism).

Key system principles

Whereas the models above might be thought of as accumulative or products of different policies and procedures adopted rather than formative, it is possible to identify certain principles that countries have adopted to influence youth justice development (and which change over time). In England and Wales, the example is the overall principle of preventing offending adopted in the Crime and Disorder Act 1998. However, other countries are influenced by very different principles. This should, of course, ring warning bells when

considering transferring policies from one country to another – those policies and practices may well have been designed to address and abide by very different aims and expectations to our own. Some of the most prominent principles found in different youth justice systems are outlined briefly below.

Best interests/welfare of the child

The principle of acting in the 'best interests of the child' has a long history in youth justice (including the Children and Young People Act 1933 in England and Wales, although diverted by the Crime and Disorder Act 1998). However, if anything, it has grown in dominance internationally in recent years. This should not be any surprise as the UN Convention on the Rights of the Child 1989, Article 3, states that this must be the primary principle of any processes involving children. By this token, it should be questioned whether any youth justice system that does not have this as its primary aim is abiding by the convention.

There are good examples of systems that do have this principle, or variations of it, at their core. The overriding principle in Sweden, for example, is that interventions should be based on the needs, rather than the deeds, of the young person. In addition, the Social Service Act 1998 states that the best interests of the child are specifically to be observed (Cavadino and Dignan, 2006:274 and 275). The Youth Protection Act of 1965 demands the same in Belgium (Van Dijk, 2004). And it is to be the primary consideration in Spain (Alberola and Molina, 2004). Similarly, Greece does have a directing principle of preventing delinquency (like England and Wales), but balances it with an equal provision to respect the rights and interests of the child (Spinellis and Tsitsoura, 2004).

It is also possible to see how this principle is played out in practice. For example, in Belgium, it is impossible to impose a punishment on a child under 16, specifically because of the principle of welfare and protection (Muncie, 2005:50; Van Dijk, 2004). Similarly, the Scottish Children's Hearings system expressly prohibits their outcomes to be punitive. In Spain, the Social Team write a report on what would be in the child's best interests, and if judges do not follow the recommendation, they must explain why in detailed 'motivation' statements (Alberola and Molina, 2004).

However, it should be noted that there is evidence of some jurisdictions overtly moving away from this principle, despite international obligations such as the UN Convention above. In Western Australia this principle had been enshrined in law since 1947, but was replaced by more justice-oriented principles in 1994 (Omaji, 1997).

Parens patriae

Parens patriae is a principle that was at the heart of old welfarist approaches to youth justice, but its influence has gradually reduced over the last 50 years or so. Essentially, it is a protectivist idea where the court is responsible for deciding and protecting the future of the child (Cavadino and Dignan, 2006:287). In doing so, it has the authority to decide for the child in a sort of *in loco parentis* role, without necessary regard to the child's wishes. This principle was dominant in the USA (as in many other places) in the first half of the twentieth century, but then waned in the face of the rise of due process as a concern of the courts. This is still a guiding principle in Japan, where the influence of the USA remains strong.

Young people who offend as children in trouble

Treating all children in trouble together, whether they are in trouble as a result of abuse/neglect or because they have offended, has been a feature of countries influenced by a

more welfarist approach. Indeed, the extent of this integration has also been noted as a useful historical meter of welfarism in this country, the height of which was observed in the 1969 *Children in Trouble Report* (Home Office, 1968; Hagell and Hazel, 2001).

This has traditionally been the case in the Scandinavian social democratic countries, such as Sweden, Norway and Finland (although not in Denmark), and the low countries, such as Belgium, France and the Netherlands. The care system has long been seen as the best place to deal with, and make an impact on, offenders (Cavadino and Dignan, 2006:272). This approach also exists in the UK, in Scotland, where children come to the Children's Hearing Panel because of a welfare need, whether or not that was prompted by offending. The Scottish Children's Hearings system is completely within civil jurisdiction and deals with both offenders and those in need of care and protection.

However, some countries have only recently moved away from this position. Western Australia overtly separated youth justice issues and procedures from welfare ones in 1994 (Omaji, 1997:2). India's Juvenile Justice (Care and Protection of Children) Act 2000 makes an increased distinction between offenders and neglected children (Winterdyk, 2005:466).

Minimal intervention

One of the outcomes of the retreat from welfarism that accompanied the focus on due process in the 1960s was the concern with indeterminate non-proportional sentences (perhaps still found here in use of section 90/91 held at Her Majesty's pleasure). Out of that concern came a principle now found in many countries that interventions should only be implemented if necessary and for the minimum length of time necessary. In line with this, for example, was the ending of indeterminate prison sentences in Germany in 1990 (Cavadino and Dignan, 2006:257), when reforms underlined the principle that any court sanction should be as a last resort (Dunkel, 2004).

Canada introduced a law to the youth justice system in 1984 based on minimal intervention in the welfarist system, in which it stressed ideas of proportionality in order to limit intrusion (Tonry and Doob, 2004). In Scotland, the Children (Scotland) Act 1995, section 16.3, only allows an order or intervention to be made if it is evident that it would have a clearer advantage for the child than making no order at all (Cavadino and Dignan, 2006:222). Indeed, there are an increasing number of cases where no action is taken (71% in 1999) (Bottoms and Dignan, 2004).

Similarly, the most popular disposal in Italy is the judicial pardon, which is used in 80% of cases. This is used where the court believes that the maturation of the young person will be better served by not imposing a criminal sanction (Cavadino and Dignan, 2006:262).

Protection of society

A key principle in countries associated with the 'crime control' or 'neo-correctionist' models is that of the protection of society. This tends to emphasise custodial provision of young people when it can be shown that they are a risk to the public. Reforms in Canada in 2003 affirmed the primary principle of the protection of society. Likewise, this principle was also introduced as the primary principle in juvenile justice reforms in Western Australia in 1994 (Omaji, 1997).

Education and resocialisation

Education is a principle at the heart of a number of mainland European conservative welfare youth justice systems, such as Germany, France and Italy. Germany is a good example, where the law states that rehabilitation and education is a key focus in disposals. In addition, the courts must take account of family background and school achievements in order to look for opportunities for resocialisation, rather than focusing primarily on the offence as tends to be the case in more liberal systems (e.g. England and Wales). Nevertheless, it has been noted that the strength of this focus on education has been tempered in Germany by a further principle of proportionality enshrined in the constitution (Cavadino and Dignan, 2006:255-6).

Social integration

Some countries have seen the emergence of the principle of social integration, in part influenced by restorative ideals. This emphasises re-engaging the young person in their community, social inclusion and maintaining positive relationships. For instance, since 2003 the law in the Czech Republic has explicitly emphasised restoring broken relations and reintegration (Valkova, 2004). In Belgium too, the Youth Court must try to achieve social rehabilitation through measures of care, preservation and education (cited in Put and Walgrave, 2006).

Similarly, since 1996, Austrian judges must consider the impact of a sentence on the young person's integration into society. Such a consideration inevitably relates to the above principle of minimal intervention (Bruckmuller, 2004).

In the following chapters we will see how these debates are carried out in practice by looking at some similarities and differences in specific parts of the system.

5 Age thresholds within systems

The most basic defining characteristic that distinguishes youth justice systems is the ages of young people that they cater for. There is an incredible amount of variation in these ranges, with the differences coming at both the upper and lower age ranges. This chapter examines those thresholds, including a number of policies within countries that blur these thresholds in practice.

Age of criminal responsibility

The age of criminal responsibility is the point at which the jurisdiction can prosecute a child for a crime. It is the age at which the child is considered capable of understanding what they did wrong, and so are dealt with accordingly through the criminal justice system. The concept was first introduced in France at the turn of the nineteenth century under the new Napoleonic codes, and now almost all countries have an age of criminal responsibility (notable exceptions include Panama, Brunei and Saudi Arabia). However, there is tremendous variation in the level of this threshold. Table 5.1 shows the age of criminal responsibility in 90 countries around the world, derived from a variety of sources and compiled for this volume.

Table 5.1: Age of criminal responsibility (CR)

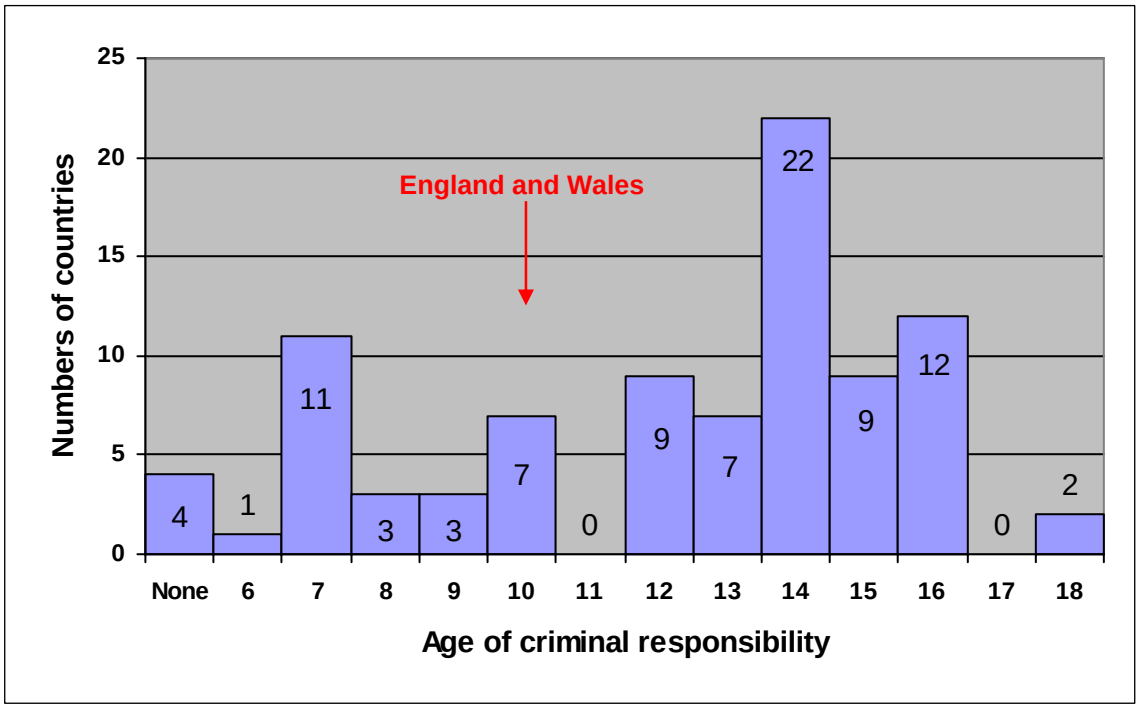
Country	Age of CR	Country	Age of CR	Country	Age of CR
England and Wales	10	Germany	14	Namibia	10
Algeria	13	Greece	13	Netherlands	12
Andorra	16	Honduras	12	New Zealand	10
Argentina	16	Hong Kong	16	Northern Ireland	10
Armenia	14	Hungary	14	Norway	15
Australia	10	Iceland	15	Panama	None
Austria	14	India	7	Philippines	9
Azerbaijan	14	Iraq	9	Poland	13
Barbados	7	Ireland	12	Portugal	16
Belarus	14	Israel	13	Romania	16
Belgium	16	Italy	14	Russia	16
Bosnia	14	Jamaica	7	San Marino	12
Brunei	None	Japan	14	Saudi Arabia	None
Bulgaria	14	Kazakhstan	14	Scotland	8
Canada	12	Kenya	7	Senegal	13
Cayman Islands	8	Korea	14	Singapore	7
Chile	16	Kuwait	7	Slovakia	15
China	14	Latvia	16	Slovenia	14
Columbia	18	Lebanon	12	South Africa	10
Costa Rica	12	Libya	8	Spain	14
Croatia	14	Liechtenstein	7	Sweden	15
Cuba	16	Lithuania	14	Switzerland	7
Cyprus	7	Luxembourg	18	Tanzania	15
Czech Republic	15	Macedonia	14	Thailand	7
Denmark	15	Malaysia	10	Togo	13
Ecuador	12	Malta	9	Trinidad	7

Egypt	15	Mauritius	14	Turkey	12
Estonia	16	Mexico	6	Ukraine	14
Finland	15	Moldova	16	USA	6+/N
France	13	Mongolia	14	Zambia	14

Sources: Winterdyk, 2005; Winterdyk, 2002; Calvadino and Dignal, 2006; Muncie, 2005; Muncie, 2006; Rutter et al, 1998; Hallett and Hazel, 1998; Asquith, 1996; United Nations, 1998; Almir, 2004; Dunkel, 2004. Where sources differed, the most recent figure was normally used.

The ages of criminal responsibility found in these jurisdictions ranged from 6 years old to18 years old. The most common age (mode) by far was 14 years old – the case for about a quarter of countries. Although the mean average was 11.9 years, this was skewed by four countries that have no age of criminal responsibility; these were analysed as 0 years because children in those countries can be prosecuted at any age. Given these 'outliers', a better measure of average age of criminal responsibility would be the median, which is 13.5 years across the 90 countries. Both the median and the mode, then, were substantially higher than the England and Wales threshold of 10 years old. If we only consider countries that have stated ages of criminal responsibility (i.e. leaving out the four where children can be prosecuted at any age), the situation in England and Wales looks even more out of kilter with other countries. The mean average age was 12.5 years and the median average age was then 14 years. It is perhaps easier to see where England and Wales fall in the distribution of ages of criminal responsibility in the bar chart in Figure 5.1.

Figure 5.1: Ages of criminal responsibility



Sources: As Table 5.1 above.

Most European countries set their ages of criminal responsibility at between 14 and 16 years, although France comes in just under at 13 years. The three major exceptions are Switzerland and Cyprus at seven years, and the countries of the UK (Scotland at eight years, and Northern Ireland and England and Wales at 10 years). Similarly, the former British colonies seem to have a lower threshold (e.g. Canada, New Zealand, Australia and the USA). Indeed,

the majority of US states do not even have a minimum age (King and Szymanski, 2006). Asquith (1996) and Muncie (2005) have noted the particularly high rates of Central and Eastern European states, similar to the standard of 16 years set by Russia. However, countries in the Middle East and Asia tend to be lower than Europe.

These variations may be partly due to the fact that the recommendations of the Council of Europe as well as of the United Nations express themselves vaguely, if at all, on the issue (Dunkel, 1996:39). The United Nations Minima Rules (4.1) state that the age of criminal responsibility should not be set too low, and should bear in mind the factors of emotional, mental, and intellectual maturity (Winterdyk, 2005:464). The precise age to which this points is unclear. However, the UN Committee on the Rights of the Child has consistently advised Scotland and England and Wales to raise their ages from eight years and 10 years respectively. The first report from the committee, in 1995, stated:

> *The low age of criminal responsibility and the national legislation relating to the administration of juvenile justice seem not to be compatible with the provisions of the Convention [on the Rights of the Child (1989)], namely Articles 37 and 40.* (Concluding observations of the Committee on the Rights of the Child: The UK 1995, par 17, cited in Cleland and Sutherland, 1996:297.)

Despite this vagueness and variation, there has been a trend for countries around the world to raise their ages of criminal responsibility, perhaps partly in response to this international pressure, and thus protecting children from prosecution for longer. For example: in 1977, the age was raised in Israel from nine to 13 years; in 1979, Cuba raised the age from 12 to 16; in 1984 in Canada it was increased from seven to 12; it was raised in 1983 in Argentina from 14 to 16; and in 1987 in Norway from 14 to 15 (Hallett and Hazel, 1998). More recently still, Ireland raised its age of criminal responsibility from seven to 12 in 2001, and in the same year, Spain raised the level from 12 to 14 years (Muncie, 2005).

However, although these are the stated ages of criminal responsibility, it can be argued that policies and procedures in a number of countries (to varying degrees) effectively alter this threshold. They either allow interference by authorities in the person's life at an earlier age, on the basis of their behaviour, or they act as buffers to the full force of criminal prosecution (even as a juvenile) until they are slightly older. A number of these policies and procedures are listed briefly below.

Lowering the age of criminal responsibility: early intervention

Recent years have seen the increase in popularity of developing interventions that address identified risk factors that lead to youth offending (see 'The at risk paradigm' in the 'Prevention and early intervention' section of this report). In practice, it has meant trying to identify and intervene with potential offenders (as well as families and whole communities) who are considered to be at risk as early as possible – which often means below the age of criminal responsibility. Thus, the young person is already often involved with criminal justice agencies (or associated agencies). It can be noted that early intervention has mainly been a feature of neo-liberal countries such as the USA, England and Wales, Australia and Canada (Muncie, 2005: 39). So, for instance in England and Wales, the youth inclusion and support panels (YISPs) that were rolled out in 2004 have effectively enabled the targeted intervention of at risk children from eight years, two years below the age of criminal responsibility.

Lowering the age of criminal responsibility: anti-social behaviour

The idea of 'baby ASBOs' (Anti-Social Behaviour Orders) as a way of controlling young people showing criminal and anti-social tendencies under the age of criminal responsibility in England and Wales has been well debated. Although these have not been introduced as such, Child Curfew Orders, including YOT supervision, can be applied to a child under 10 years who has committed an 'offence'. A similar, but less binding, scheme was introduced in the Netherlands in 1999. The STOP project allows the police to arrest children under the age of criminal responsibility and propose educative social work involvement (with parental permission). Nevertheless, there has been concern that this undermines the age of criminal responsibility from 12 to 10 years (Cavadino and Dignan, 2006:271; Uit Beijerse and Van Swaaningen, 2006; Junger-Tas, 2004, cited in Muncie, 2006:54). Curfews in Belgium (*streetrazzias*) may also be used by police to control the activites of young people under the age of criminal responsibility (Put and Walgrave, 2006).

Similar again, in France, although the official age of criminal responsibility remains at 13 years, since 2002 courts can institute civil 'educational sanctions' on children as young as 10 years, including confiscating belongings, banning them from seeing certain people, or going to certain places or attending training courses (Wyvekens, 2004).

Raising the age of criminal responsibility: *doli incapax*

In some countries, particularly those with a lower age of responsibility, protection from prosecution is offered to the child in the form of *doli incapax*. This is where there is a presumption of incapacity in the child unless the prosecution can show that they knew what they were doing was seriously wrong. This effectively passes discretion on decisions reflecting the Minima Rules statement, that children being prosecuted should have the emotional, mental, and intellectual maturity, down from the legislators to the courts on a case-by-case basis.

England and Wales removed this discretion from the courts with the abolition of *doli incapax* for 10 to 13-year-olds in the Crime and Disorder Act 1998. Parliament effectively made the decision that all children reach the capability of understanding crime and its consequences at the age of 10 years.

In France, although their age of criminal responsibility is lower than the most common age of 14 years, there is a presumption of incapacity up to the age of 18 years. Similar discretion is applied until the offender is 18 years in Austria and Italy. This presumption also exists in many other countries with an age closer to England and Wales, including Hong Kong (up to 14 years), some Australian states (up to 13 years), Namibia (up to 14 years), and New Zealand (up to 14, except grave crimes).

Raising the age of criminal responsibility: welfare processes

Although both Scotland and New Zealand have low ages of criminal responsibility (eight and 10 years respectively), almost no young people are prosecuted through the criminal courts. Instead, they are dealt with through welfare-oriented routes (Scottish Children's Hearing system, and Family Group Conferences [FGCs] in New Zealand). The focus of any intervention would then be the welfare of the child, rather than emphasising the responsibility of the child or involving any punishment per se. Thus, although interventions are compulsory, these lower ages of criminal responsibility do not mean that the young people are likely to face legal punishments (including custody) early. In fact, young people

are protected from ‘criminal justice’ until past the average age of criminal responsibility (16 years in Scotland). However, an exception is normally made for cases involving grave crimes, such as murder and manslaughter (Bradley et al, 2006).

Raising the age of criminal responsibility: restricting disposals

In many jurisdictions, young people over the age of criminal responsibility are often offered protection from certain disposals until they reach higher age thresholds. This is particularly the case for custodial disposals (e.g. 16 years instead of 14 years in Austria [Bruckmuller, 2004] and Spain [Alberola and Molina, 2004]). In England and Wales, this is not the case for young people committing grave crimes, although all other offenders are protected from custody until the age of 12 (although the law does allow the Home Secretary to lower the Detention and Training Order [DTO] age threshold from 12 to 10 years).

There have been movements both ways in recent years on the minimum age at which a young person can be imprisoned. In 1994, South Africa moved to raise the age at which a young person can be detained to 14 years (Cavadino and Dignan, 2006:241). However, in 2002 France lowered its threshold for the imprisonment of young people from 16 years to its age of criminal responsibility,13 years (Henley, 2002, cited in Muncie, 2006:53).

Age of criminal majority

The age of criminal majority is the age at which the criminal justice system processes offenders as adults. This is the point when the offenders no longer have any protection from the juvenile system in terms of process, no longer receive different sentences from adults, and they serve any sentences with adults. Table 5.2 below shows the ages of criminal majority in 54 countries around the world.

If there is a standard age of criminal majority around the world, it is 18 years old. This is also (not entirely coincidentally) the age at which the UN Convention on the Rights of the Child 1989, and its protection of children, fails to apply any more. Eighteen years is, of course, the age of criminal majority in England and Wales.

Again, perhaps not surprisingly, the countries with the highest ages of criminal responsibility also tend to have the highest ages of criminal majority – extending each level of protection for young people. In particular, the Scandinavian welfarist countries continue to recognise the peculiar nature of young people who offend later than other countries. In Sweden, for example, some scope to treat young people who offend differently from adults exists until they turn 21 years, and 20 years in Finland.

Conversely, then, in both Australia and New Zealand the age of criminal majority is slightly lower at 17 years. We also find some of the lowest ages of criminal responsibility in New York, North Carolina and Connecticut, where the age at which young people must be dealt with as adults is as low as 16 years old. Interestingly, this particularly low age of criminal majority is also found in Scotland in most cases.

Table 5.2: Age of criminal majority (CM)

Country	Age of CM	Country	Age of CM	Country	Age of CM
England and Wales	18	France	18	New Zealand	17/18
Argentina	18	Germany	18/21	Northern Ireland	18
Australia	17	Greece	21	Norway	18
Austria	18	Honduras	18	Philippines	15
Barbados	16	Hong Kong	20	Poland	17
Belarus	16	Hungary	18	Romania	21
Belgium	18	India	16m/18f	Russia	18
Bosnia	18	Ireland	18	Scotland	16/18
Canada	18	Israel	18	Singapore	12
Cayman Islands	17	Italy	18	Slovakia	18
China	25	Jamaica	14	Slovenia	18
Croatia	21	Japan	20	South Africa	18
Cuba	16	Latvia	18	Spain	21
Czech Republic	18	Lithuania	16	Sweden	18/21
Denmark	18	Macedonia	16	Switzerland	18
Egypt	18	Moldova	16	Turkey	15
Estonia	18/20	Namibia	18	Ukraine	16
Finland	20	Netherlands	21	USA	15-17

Sources: Winterdyk, 2005; Winterdyk, 2002; Calvadino and Dignan, 2006; Dunkel, 2004 (note: there is some disagreement between authors on legal interpretation. Where this is the case, the two figures are provided)

However, like the age of criminal responsibility, the situation is not as clear cut as simply having an age of criminal majority would suggest. There are variations between systems which mean that some aspects of the youth justice system may be ended sooner or later than this age. In the former, some young people would lose the right to some or all welfarist (or child-focused) aspects that characterised the juvenile system sooner than the age of criminal majority. In the latter, some young people would continue to benefit from (or be protected by) some child-focused aspects of the juvenile system beyond the age of criminal majority. Some systems, like England and Wales, see examples of both. These policies and procedures are summarised briefly below.

Lowering the age of criminal majority: transfer to adult courts

The main way that countries effectively lower their age of criminal majority is to institute a policy allowing some juvenile cases to be transferred from the youth court to the adult court, and be dealt with accordingly. In countries where this occurs, it is usually on the basis of the crime being 'too serious' to be dealt with in the juvenile justice system. In England and Wales, young people under the age of criminal majority have been dealt with in adult courts for grave crimes – a practice that caused concern for the European Court in relation to the case of Venables and Thompson in 1994. It should be noted, however, that the situation is slightly tempered here because the young people are still subject to juvenile justice policies (albeit that these are arguably sometimes more severe than their adult counterparts – e.g. Section 90/91 can be indeterminate).

There has been a discernable trend cross-nationally in recent years towards transfer, waiving the special procedural and disposal protection given to child offenders. This process has been led by the USA, under the neo-correctionist heading of increasing young people's accountability for their crimes and protecting the public. Between 1992 and 1997, 44 US states and Washington DC passed laws to make transfer easier, allowing children to be tried

and punished as adults (Cavadino and Dignan, 2006:217). In Canada, the young person is not transferred to an adult court per se, but since 2003, they can now be given an adult sentence in a youth court from the age of 14 (Muncie, 2005:39).

Moreover, this trend has even found its way into more welfare-oriented systems. In the Netherlands, the criteria for transferring children to adult courts was relaxed in 1995, although in practice judges have been reluctant to use these powers (Cavadino and Dignan, 2006:270). A similar measure was introduced in Belgium in 1994, although it was used very rarely (Van Dijk, 2004). In Japan, since 2001, offenders can now be sent to adult courts from the age of 14, allowing imprisonment for the first time, and there is an assumption that this would normally happen for those aged over 16 years old (Cavadino and Dignan, 2006:286; Fenwick, 2006). Research has suggested that transferring juveniles in this way has negative effects on preventing offending, including increased recidivism (Bishop, 2000).

Raising the age of criminal majority: extending juvenile processes and disposals

Although the age of criminal majority in Germany is 18 years, that jurisdiction is unusual in allowing courts the option to try offenders as juveniles beyond that date. The adult courts have the provision to transfer offenders the other way, back down to the juvenile courts, up to and including 20-year-olds (academically, then, one could argue that 21 is the age of criminal majority). This also happens in some US states (Hallett and Hazel, 1998:24).

More common is for countries to stagger the status of young people who offend around the age of criminal majority, which mainly affects how they are treated after conviction. This is the case in England and Wales, where young people between 18 and 20 years have their status changed from ‘juvenile offenders’ to ‘youth offenders’. Although tried in adult courts, the disposals to which they are subject are different to adults. This includes use of a separate custodial institution. In the Philippines, prison sentences are suspended while the offender has the status of ‘youth’ from 15 to 17 years, and then given more lenient custodial sentences than adults until they are 21 years old. A similar situation occurs in Switzerland, where ‘young adults’ are given less severe sentences until they are 25 years old, in Austria until 21 years old (Bruckmuller, 2004) and in Bosnia and Herzegovina until 23 years (Almir, 2004).

Another variation which helps extend juvenile status is where offenders are allowed to keep existing placements in juvenile establishments even when they reach the age of majority, rather than being transferred to adult institutions. This is the case in most of the USA for a limited period, and for the full term of the sentence in Colorado, Hawaii and New Jersey (King and Szymanski, 2006).

This chapter has considered the most basic defining characteristic of a youth justice system – the ages at which young people can be dealt with. We have seen that there is a great deal of variation at either end, both when young people are considered responsible enough for their crimes for a judicial intervention, and the age at which they are then treated as adults. England and Wales has a lower-than-average age of criminal responsibility, but a fairly typical age of criminal majority for most offenders. However, we have also noted that these thresholds can be blurred by local policies and procedures, which, it is argued, effectively alter the points at which juvenile justice interventions are possible.

The next chapter looks at approaches and policies adopted by counties to prevent young people getting involved in crime in the first place. These preventative interventions may take place before or after a child reaches the age of criminal responsibility.

6 Prevention and early intervention

This chapter focuses on the approaches taken in different countries to prevent children from offending. Although the definitions and boundaries of prevention are fluid (after all, the whole of youth justice in England and Wales is concerned with preventing offending), this discussion is concerned with any action taken before a young person has entered the juvenile justice system. Indeed, such early interventions would normally assume that the young people were not even offending, although they may be targeted because they are displaying behaviour difficulties. Furthermore, many early intervention initiatives focus their attention on children before they are even old enough to be considered criminally responsible (see previous chapter).

As this description suggests, the nature and focus of prevention is broad and varied. This chapter charts a range of different approaches to this issue, and gives examples of specific interventions within those approaches. For a more detailed discussion of good practices in Europe for preventing juvenile crime (and an inventory of projects) see Stevens, Kessler and Gladstone (2006), which is referred to regularly throughout this chapter.

It should be noted, however, that most countries have a poor record of evaluating their crime prevention initiatives, where resources are too stretched to even try anything innovative (e.g. Bosnia and Herzegovina have not had any evaluated programmes [Almir, 2004]) (Stevens et al, 2006; Wyvekens, 2004). Consequently, most of the interventions referred to in this chapter are innovative ideas or alternative practice, rather than necessarily models of good practice.

Criminal justice or social welfare contexts for prevention

Given the Crime and Disorder Act's (1998) emphasis on 'preventing offending' it is not surprising that England and Wales has produced a plethora of innovative initiatives in this area over recent years. Clicking on the Crime Reduction Programme's website will present projects intended to prevent crime by working with families (e.g. On-Track), schools (e.g. Safer Schools Partnerships) and young people themselves (e.g. Splash, YISPs).

However, not all countries frame such early intervention activities as crime prevention; they would not be found on a crime reduction website. Although they involve the same types of activities, many countries just consider it part of normal social support for families and children. As a result, such initiatives may be contextualised by some within welfare systems. For example, in Austria, any prevention activities are covered by the Youth Welfare Act 1989 (Bruckmuller, 2004).

Perhaps unsurprisingly, this distinction is usually mapped fairly closely with the welfare and justice models for juvenile justice systems explored in Chapter 4. While countries adhering to the justice model tend to see prevention as part of the justice (crime reduction) agenda, others that emphasise a welfarist approach to young people in trouble with the law are more likely to contextualise prevention within their normal welfare systems (particularly Scandinavia, Eastern and Southern Europe). For these countries, getting in trouble is just a by-product or symptom of social problems and those should be the main concern. The political placement of a programme clearly has implications for its aims, objectives, and measures of success.

However, even within England and Wales we have seen examples of this ambiguity. For example, the On-Track early intervention project was first situated in the justice-oriented Home Office, before being transferred to the welfare-oriented Children and Young People's Unit in the then Department for Education and Skills. Most initiatives are usually contextualised (or 'marketed') within the justice-oriented 'Crime Reduction Programme', yet some are administered through the welfarist Children's Fund and *Every Child Matters*. More generally, Muncie and Goldson (2006:36) argue that, in England and Wales, 'what may previously have been an indictor of the need for family welfare support is now read as a possible precursor to criminality' because of the new emphasis on intervening when children are at risk of offending.

The at risk paradigm and alternative frameworks

The countries which tend to frame early intervention initiatives within the crime prevention context have done so within the theoretical framework of risk and protective factors. This paradigm, in research and policy, has developed from the USA to the UK and then mainly other English speaking countries over the past 40 years (e.g. it's now firmly established in Australia [Cunneen and White, 2006]). It is based on scientifically robust identification of background factors associated with youth offending. More recently, such an approach has started to become popular more widely, such as the Rotterdam Youth Monitor Project in the Netherlands (Stevens et al, 2006). It has also been noted that ideas from this paradigm are now impinging on more welfarist systems (e.g. Scotland), controversially 'making offending, rather than the offender, the focus of intervention' (McAra, 2006:134).

In terms of prevention, the idea is to negate or reduce risk factors and bolster protective factors as early as possible in the young person's development. These factors are thought to work at different levels – for example, individual level, family level, neighbourhood level, society level – and interventions are co-ordinated accordingly. Rutter et al (1998) is the most comprehensive meta-analysis of such research, and evaluations of promising interventions to that date. A consequence of some countries adopting this at risk paradigm, rather than dealing with problem behaviour within welfare systems, is a host of interventions aimed at addressing the risk and protective factors. These then have to be evaluated, adding to the at risk knowledge base, and so on.

Youth justice workers in England and Wales carry out a risk assessment on young people who come to their attention, completing an electronic version of *Asset.* Similar risk assessment tools exist elsewhere, including *Asset* also in Scotland (McAra, 2006), and the Youth Level Service Case Management Inventory in Australia and Canada. However, these tools have been criticised for being subjective and culturally biased rather than being about objective and scientific analysis (Cunneen and White, 2006). It should also be noted that a particularly controversial initiative as part of the at risk paradigm is that of monitoring or tracking through childhood a young person who shows early risk factors. Their details may be kept on a database or shared between agencies. This is supposed to ensure a co-ordinated response from agencies, but has been criticised for labelling young people, and for data protection, confidentiality and related human rights reasons. Such databases have had support from political and police quarters in this country, and have begun to emerge elsewhere. In the Netherlands, a monitoring system for young people with a high-risk profile has already been established (*cliëntvolgsysteem*) (Uit Beijerse and Van Swaaningen, 2006).

It has been argued that in some countries without risk as a theoretical framework, welfare-based interventions have tended to be more traditional (e.g. Germany [Stevens et al, 2006]; Belgium [Van Dijk, 2004]), or the countries have not developed early prevention of delinquency at all (Wyvekens, 2004 [France]; Alberola and Molina, 2004 [Spain]). However, it is possible to identify alternative emphases in the initiatives of those countries, even though developments may not have been as intense as in the at risk paradigm, and these may still have some applicability to England and Wales.

In particular, a pattern across European countries is to focus their welfarist concerns on tackling social exclusion, particularly in immigrant groups. Early intervention initiatives in France since the 1980s have been specifically designed to help social inclusion rather than reduce offending per se (Wyvekens, 2004). In particular, it has involved the recruitment of older youths to act as youth workers in poorer districts (Muncie, 2005; Pitts, 1995). Their particular success in the greater integration of all groups through democratic representation and regenerative activities may have particular relevance for excluded racial or religious groups in the UK. It has also been noted that in Southern European countries, early intervention initiatives aimed at reducing 'social maladaption' have placed a particular emphasis on children's rights and participation (Alberola and Molina, 2004).

The following sections explore interventions largely in terms of risk factor categories (although they include relevant initiatives from countries with an alternative framework). They are divided here for the purposes of analysis into interventions focused on the family, school-focused initiatives, and those aimed directly at young people who are at risk.

Family-focused initiatives

In England and Wales, the most co-ordinated parent focused initiative has been the Parenting Programmes (Ghate and Ramella, 2002), which provided parenting skills training for children seen as at risk (as well as parents given Parenting Orders – see the 'Responsibility of parents' section in Chapter 8). This has followed examples in the USA and in Australia. Such schemes have been criticised for making families responsible for youth crime and diverting attention from structural and wider social problems (Muncie and Goldson, 2006).

In Sweden (based on a US programme), the Community Parent Education Program is focused on families with pre-school children showing problem behaviour. The intervention consists of group sessions with parents aimed at promoting positive child behaviour, boundary setting and conflict avoidance. Like most countries, this is a voluntary programme, in contrast to Parenting Orders in England and Wales (although it is recognised that this country takes a mixed approach here). Research seems to indicate that the earlier the family support is provided, the better (Stevens et al, 2006).

It is also common to have universal services for the whole community, but with a particular emphasis on parenting support. An example of a community level initiative in England and Wales is the On Track programme. This was targeted at deprived communities, known to both have a number of risk factors themselves (e.g. high crime rates, high drug use, etc) but also have a high proportion of families with risk factors (e.g. low income, unemployment, large families). The project focused on providing services for families with children aged four to 12 years old. Most services were not targeted at specific people, but were open to the whole community (e.g. drop-in centres). An increasing trend is to combine such early intervention with early years screening for behavioural risk factors in young children. In

Holland and Germany, for example, doctors look for behavioural problems in pre-schoolers and babies, and advise parents appropriately (Schmetz, 2004). The Dutch initiative, Starting Together, includes early screening for social problems to go alongside early parenting support (Anker, 2004).

School-focused initiatives

Unsurprisingly given their prominent place in most children's lives, schools have been seen as a useful resource for early intervention initiatives. Whether designed primarily to tackle exclusion, promote rights or opportunities, highlight responsibilities or prevent crime, classroom-based initiatives are widespread. Although England and Wales has developed skills and cognitive behavioural education programmes for use in custodial institutions (particularly as part of the DTO), other countries have focused more on their use as an early intervention tool on the mainstream school curriculum. Teaching may include conflict resolution, negotiation training, assertiveness, problem-solving, moral education and various other fundamental social skills. In Austria, teachers teach 'Communication, Cooperation and Conflict resolution' in a set lesson every week (Bruckmuller, 2004). Another prime example is the Beccaria Model Project in Hungary, running since 2004, which provides training for teachers and material for students (Crime Prevention in Hungary, 2005). An Austrian project (translated as 'I'm strong' or 'Out – the Outsiders') has a slightly different emphasis on developing skills specifically to resist negative peer pressure, which we know is a key risk factor in youth offending (Öffentliche Sicherheit, 2000; Bruckmuller, 2004).

Following restorative principles, there has been a trend recently to develop positive peer relations, teach conflict resolution and tackle signs of anti-social behaviour in schools through mediation projects (see www.mediation-eu.net). School students are trained up as mediators, helping their negotiating and leadership skills as well as the social skills of those involved in the conflict. There has been significant progress on this in England and Wales (see Baginsky, 2004; or www.mediation.org.uk), including an unevaluated part of the YJB's Restorative Justice in Schools Programme (Youth Justice Board, 2004). There are similar programmes across Europe and beyond, including Belgium, Italy, France, Austria (Bruckmuller, 2004), Scotland (Lawrence, 2000), Hungary (Hadhanzi, 2004), USA (Karp and Breslin, 2001), Canada and Germany (Stevens et al, 2006; Shaw, 2001).

It is particularly common for police to be involved in school-based initiatives. This has been best developed in North America, but is increasing in Europe (see Shaw, 2004, for a good guide to cross-national practice in this area). England and Wales initiated the Safer Schools Partnerships, which saw police officers being stationed in secondary schools, with mixed results (Bhabra et al, 2004). Some other countries have tried this 'permanent' presence approach, including Canada, the USA (e.g. COPS in Schools Programme and School Resource Officers) and the Netherlands (School agents).

However, in most countries, the role of police tends to be more educational, systematically organising visits and discussions, etc in schools (including Sweden, Denmark, Norway, Finland). The USA has used this approach to deal with particular problems there, such as drug offences and, for instance, gang-related violence (e.g. GREAT Project [Esbensen et al, 2001]). One of the most widespread examples in Europe is the School Adoption Plan (Poland, Belgium, Slovakia, the Netherlands, Estonia), in which police teach primary students twelve classes. In Poland, such discussion-based projects have included 'Police for

children-children for the police', in order to try to build positive relations between the two groups (a problem identified cross-nationally [Hazel, 2005]). An extended version of this exists in Western Australia (Police Schools Involvement Project) (Sutton, 1998) and Austria (Bruckmuller, 2004), where police teach, organise activities and work with the staff.

Like the family-focused initiatives, schools can also be used not just for support but also to monitor or track potential offenders. For example, in France 'school monitoring' involves educational and social services agencies to note young people at risk of truancy and dropping out. Again, the main principle is welfarist and educational, but with crime-prevention implications (Wyvekens, 2004).

Initiatives directed towards at risk children

Some projects have focused resources more specifically on children considered to be at risk. Examples of these targeted programmes in England and Wales include Youth Inclusion Programmes (YIPs), for 13 to 16-year-olds, and YISPs, for 8 to 13-year-olds, although they may also include universal services as well.

Some initiatives try to shock the child in order to deter them from getting involved in further anti-social behaviour or going down a pathway into crime. The most cited example of such a programme is Scared Straight, which is used widely in the USA. Young people at risk of offending are taken into prison to be shown the negative implications of such a course. Unfortunately, several evaluations have indicated that this approach actually seems to increase rates of offending among participants (e.g. Petrosino et al, 2003, cited in Stevens et al, 2006).

More positively, mentoring socially-excluded youths or those at risk of offending was pioneered in the USA and has been exported widely, including the UK. Such schemes, including Big Brothers/Big Sisters (originally in the USA), try to match up a young person with a responsible adult who can give them attention and act as a positive role model (e.g. see www.bbbsi.org [international], www.mentoring.org [US] or www.mentors.org.uk [UK]). Evaluative results have been mixed, and depend on several factors, including how careful the match is, and whether mentors have been trained (Stevens et al, 2006). In Sweden, young unemployed people in the Peaceful Street project are trained to become 'guardians' with a dual security and mentoring role in deprived areas (Roth, 2004).

A number of projects in England and Wales have focused on giving at risk young people organised leisure activities to both divert them from offending, and engage them in positive interests (e.g. Splash, some YISP and YIP activities). This has been a particular focus in the early intervention practice of some other countries, such as Prevention Clubs in France [Wyvekens, 2004], and is particularly favoured as a first resort of prevention in Eastern Europe, for instance, Hungary, Lithuania, Slovenia (Stevens et al, 2006). Morris et al (2003) provide a useful summary of the hundreds of leisure projects in Australia (and good practice guidance), the majority of which have the primary aim of diverting at risk children from anti-social behaviour and crime.

However, as mentioned previously, many countries would think of these projects more as engaging socially excluded or maladjusted children rather than as crime prevention per se (although sometimes the police are involved in its organisation – e.g. Centres de loisirs des jeunes run by French police [Wyvekens, 2004]). In Austria, many parks have supervisors

who organise group games as a matter of course (Bruckmuller, 2004). In the Czech Republic, such interventions include youth clubs, sports games, and 'street sports' such as skateboarding. These would be provided at the same time as other support such as counselling. Similarly, Youth Club in Lithuania combines various leisure activities with the availability of lawyers, police liaison officers, teachers, careers advisors etc (Stevens et al, 2006).

The Czech Republic and other countries, such as France and Lithuania (Project Springboard) have provided summer camps to help develop social skills and encourage integration. Indeed, outwardbound style programmes are still popular in many countries as a way of using organised leisure with at risk young people, although their effectiveness has been questioned (e.g. Farrington and Welsh, 2005; Jones et al, 2004). For example, in Finland, the Boys in the Forest scheme uses adventure camping to build skills, enhance self-esteem and give new experiences (Stevens et al, 2006).

A more fundamental change in the life of a young person who is at risk is placing them in therapeutic foster care as a preventative measure. Like most of the activities above, this is done across countries alternatively within the crime prevention or welfarist agenda. Schemes are particularly well developed in the USA (Task Force on Community Preventive Services, 2004), and is starting to develop elsewhere, with examples now in England and Wales, such as in Kent (Kent County Council, 2006).

Indeed, overall, research has indicated that the best programmes for dealing with those involved with, or at risk of criminal activity is intensive support of one kind or another. In the USA, this has been shown with the results of multi-systemic therapy programmes (normally staying with their own family). Despite the fact that it involves intensive treatment from professional therapists available 24 hours a day, they have been shown to be cost-effective (Rutter et al, 1998).

Authoritarian controls

There are a number of ways that countries try to prevent crime in a more direct, authoritarian way. These preventative measures specifically target and react to lower level behaviour directly, or ban activities that are thought to increase the risk of criminal behaviour. In practice, it means the quasi-judicial control of children in public spaces.

In England and Wales, for example, the Crime and Disorder Act 1998 introduced Anti-social Behaviour Orders (ASBOs) as a civil intervention requiring a lower behaviour threshold and a lower burden of proof than criminal orders. Although not specifically intended for young people, the substantial proportion of ASBOs have been directed at youths (from 10 years old). They can expressly prohibit the child's movement (curfews), association and other activities, and in doing so are intended to prevent criminal activity. Breaching the order is a criminal offence punishable with up to five years' imprisonment. ASBOs have been widely criticised as being ineffective, net-widening ('trapping' more children in the criminal justice system) and against human rights (Muncie and Goldson, 2006). Nevertheless, both Northern Ireland and Scotland have also recently moved towards using ASBOs, and this has proved to be just as controversial as in England and Wales. In particular, it is considered that the imposition of restrictions and then criminal punishment for breaching (including imprisonment) is not consistent with principles of custody as a last resort or restorative justice (O'Mahony and Campbell, 2004).

The most widespread alternative around the world for controlling anti-social behaviour in youths is the creation of 'status offences'. This term refers to offences (sometimes civil) where the range of behaviour considered worthy of intervention is broader or more applicable to juveniles than it is for adults. England and Wales has such provision under the Anti-Social Behaviour Act 2003, in which the police have the power to remove children under 16 years if they 'believe' someone 'might be' distressed, and to disperse groups of youths (with the threat of custody) (Muncie and Goldson, 2006). Status offences around the world include acts of truancy, school and family disobedience, public drunkenness, street gambling, idle behaviour, loitering in groups, running away from home, etc. For instance, the youth court in Belgium has the power to try cases of deviant behaviour such as truancy (Van Dijk, 2004). The United Nations noted that there were examples of status offences in almost half of the Member States surveyed in the late 1990s, including Argentina, Algeria, Australia, Egypt, Malaysia, Poland, Korea, Austria, and Estonia (United Nations, 1998). Like ASBOs, such actions may help to lower the threshold at which young people become subject to criminal justice interventions (see Chapter 5).

It has also been argued that in some Australian states (particularly Queensland and New South Wales), police tend to control such anti-social behaviour by having a liberal interpretation of vague public order legislation (Cunneen and White, 2006).

Another authoritarian development in preventing anti-social behaviour that specifically depends upon the 'status' of young people is curfews for all young people in a particular geographical location (see also 'Supervision and social control' section in Chapter 8 for curfews on individuals as a disposal). This restriction effectively makes being out at night a punishable anti-social act. Local authorities have had the ability to ask the Home Secretary for such curfews, although this option has yet to be taken up. However, it has also been tried in some urban areas in the UK (notably Glasgow). Like with ASBOs, the idea is to reduce opportunities for young people to get involved in criminal behaviour. This measure is widespread in the USA, where, since 1990, 1,000 localities have introduced curfews to keep young people off the streets at night (Cavadino and Dignan, 2006:220). If caught, the police have the powers to intervene and impose negative consequences. However, evaluations have shown them to be ineffective in reducing crime, and raise serious human rights issues (Wacquant, 1999 and Adams, 2003, cited in Stevens et al, 2006). Relatedly, in a Paris scheme parents may be summoned to Community Justice Centres if the police have found their children out on the street at night, and the prosecutor's office and social services are then involved (Wyvekens, 2004). It has been noted that, as with the introduction of Curfew Orders in the UK, Australian curfew legislation was couched in terms of the welfare of the child (Cunneen and White, 2006).

The next chapter looks at the processes within youth justice systems. It considers the nature of the proceedings of investigation and decision-making applicable to young people suspected of crimes who are within the ages of criminal responsibility and criminal majority.

7 Investigations and decision-making processes

This chapter focuses on the process by which young people who are suspected of offending are dealt with, from the point of investigation to the point of conviction. It discusses some of the main convergence and divergence between systems in relation to investigations and decision-making processes for juvenile offenders. In doing so, the chapter considers some of the key issues of debate, including appropriate diversion from formal justice proceedings, and the contrasting concern for due process. It also points to features peculiar to individual jurisdictions.

Investigations

Juvenile specialism

It is recognised cross-nationally that young people need special consideration in investigations of their offences for a number of reasons. First, they are more vulnerable than adult offenders and require special protection. Second, different approaches from investigating adults may yield better results. Third, particular methods of investigation may feed more appropriately into later decision-making processes and disposals adopted for young people.

In relation to the first two of these reasons, the police often adopt different procedures or approaches when dealing with young people. In England and Wales, some investigation procedures are adapted to suit juveniles (e.g. appropriate adults in police interviews), but many are not (e.g. juveniles may be held in police cells). Other countries go further in ensuring that their procedures are 'child-focused'. In Belgium, for example, police often interview children in dedicated rooms, and use anonymous cars (Van Dijk, 2004). In Spain, the children must be kept in a special room away from adult offenders (Alberola and Molina, 2004).

Indeed, most fundamentally, some countries have police who specialise in young people. According to the United Nations, approximately half of countries provide specific training for police who are likely to come into sustained contact with young people (United Nations, 1998). Although there is some police training in this way in England and Wales, it is not systematic or widespread.

Moreover, in some countries this specialism may even mean using a different set of police from those dealing with adults. This is in line with paragraph 12.1 of the UN Beijing Rules, which recommends that:

> *In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.*

Within the police, this recommendation for specialist juvenile police officers or units is not generally fulfilled in England and Wales, nor is it in some other countries (e.g. Bosnia and Herzegovina) that tend to frame their specialist units around offence types (Almir, 2004).

Other jurisdictions (e.g. Honduras) have instituted the legislation, but found that resources have not allowed full implementation (Harvey, 2005). However, others comply more fully. In France there are over a 100 specialist 'juvenile brigades' (Wyvekens, 2004), and New Zealand has a Youth Aid section of the police (Bradley et al, 2006). Northern Ireland has had specialist juvenile officers as part of the Juvenile Justice Liaison Scheme, and then the Youth Diversion Scheme, since 1975. These officers deal with all youth cases (O'Mahony and Campbell, 2004).

The Dutch police have recently introduced a new Youth Police section; additionally, they have also appointed social workers to help them with their cases (Cavadino and Dignan, 2006:271). This effectively means that in the Netherlands, they are starting to use a multi-agency child-focused team to deal with investigations, not completely unlike the approach taken later on in the justice process by YOTs in England and Wales (including police officers).

Interrogations and police power

Interrogations have been considered a particular point of concern in some countries. The United Nations found that the training for police usually focused on this aspect of contact with juveniles (United Nations, 1998). In France since 2000, young people have the right of silence in interrogations, and police interviews must be videotaped (Cavadino and Dignan, 2006:267). In Austria, children are entitled to the presence of an appropriate adult for psychological support and a solicitor for legal support (Bruckmuller, 2004).

Developments in relation to stop and search regulations are particularly interesting. England and Wales have placed greater accountability on police stop and search activity after revisions to the Police and Criminal Evidence Act codes (following recommendations in the Stephen Lawrence Inquiry). Police are required to give reasons for the search. In contrast, Dutch police have powers to arbitrarily stop and search young people in certain city areas (Muncie, 2005), and similar changes took place in France in 2002 (Muncie, 2006:53).

In its survey in 1998, the United Nations found some interesting differences between countries on the powers given to the police to be used directly against young people, prior to any prosecution or formal diversion. If it's 'in the best interests of the child', 14 countries allow the police to use harsh language (including Argentina, Egypt, Israel, Luxembourg and Switzerland). Only in Syria may police (legally) use physical violence, although Colombian police may 'expose the child to the environment' (United Nations, 1998:6). In contrast, young people in France must be examined by a doctor if held in custody (Wyvekens, 2004).

A further restriction on police power in France is that a young person is not allowed to be held in police custody without agreement of the prosecutor's office, and will usually be called back for voluntary questioning (Wyvekens, 2004).

Issue of delay in proceedings

The issue of delay of proceedings during the investigation of young people rose to the fore in England and Wales in the late 1990s, when the Government pledged to an average of 71 days from arrest to sentence. This concern has been repeated in other countries, resulting in a number of new laws and regulations. For instance, in 2000, India required that all cases be completed within a four-month period (Winterdyk, 2005:466), and France has been fast-tracking young people who offend more seriously to the juge des enfants since 2002

(Cavadino and Dignan, 2006:266). Pilot fast-track hearings have also been tried recently in Scotland (McAra, 2006).

However, it does appear that the target set in England and Wales is substantially lower than for most other countries around the world. This is perhaps not surprising given the particular emphasis on effectiveness and efficiency in the neo-correctionalist model with which England and Wales has been identified. According to the United Nations, the periods of time between a young person who offends' case first being investigated and the actual prosecution ranged across countries from between three months to over a year (see Table 7.1 below). In the latest figures from the USA (mid 1990s), the median for the largest states (over 400,000 in population) was more than 82 days (Butts and Halemba, 1996).

Table 7.1: Estimated average time of investigation until prosecution

Time	Countries
3 months	Australia, Azerbaijan, Bahrain, Cuba, India, Japan, Kazakhstan, Korea, Malaysia, Mexico, Norway, Qatar, Saudi Arabia, Senegal, Singapore, Zambia
6 months	Colombia, Costa Rica, Finland, Kuwait, Libya, Luxembourg, Mauritius, Poland, Spain, Sweden, Switzerland, Syria, Togo
9 months	Israel
12 months	Estonia , Lebanon, Panama, Slovakia
More than 12 months	Argentina, Ecuador, Italy, Mongolia, Trinidad and Tobago

Source: United Nations (1998)

Decision-making processes

In essence, the main divergences and debates over the decision-making processes in youth justice relate to whether young people should be dealt with through formal judicial channels, or diverted away from these to more informal child-focused proceedings. The former is more in line with the justice model, and is concerned with due process on the one hand and efficiently holding young people to account on the other. The latter is in line with welfarist models. It is informed by the idea that formally labelling a child criminal is negative, and is focused on resolving cases without necessarily laying blame or handing out punishments and without the need for formal court justice.

Due process during youth hearings

The issue of due process in youth hearings, that youths should have the same full procedural rights as adults, first came to prominence in the USA in the 1960s, with reverberations around the world ever since. Before that, the US youth justice system's existing guiding principle of *parens patriae* had meant that state youth courts could take on the role of a parent, and effectively decide what would happen to a young person without necessary regard to legal procedure. However, two Supreme Court cases changed that. In 1966, *Kent vs. United States* gave due process safeguards to juveniles who could be transferred to the adult courts. In the following year, *In re Gault* ensured the constitutional right of a hearing to juveniles facing confinement. Together they ensured the prominence of legal rights in youth justice cases in America, and beyond, from then on.

Some countries still officially reject the idea of any diversion from a formal court trial, mainly on the continuing basis of due process and procedural rights (unless the diversion is directed by the court). Such countries include Algeria, Argentina, Azerbaijan, Brunei, Chile, Colombia, Italy, Kuwait, Lebanon, Mauritius, Mexico, Panama, Qatar, Slovenia, Syria, and Trinidad and Tobago (United Nations, 1998). However, in Italy for example, the system has several stages of court appearances and various forms of diversion are permitted before the final trial stage (Cavadino and Dignan, 2006:260-62). In addition, this principled objection to diversion would not necessarily rule out avoidance of conviction or imprisonment as forms of diversion from some aspects of the justice system that might produce 'labelling'.

Legal advocacy and representation in judicial hearings is a particularly interesting aspect of due process that still causes particular concern around the world. According to the United Nations, 37 out of 51 jurisdictions always allowed juveniles to have legal representation. In others, including Cuba and Saudi Arabia, they were not represented. This is sometimes due to pressure of resources, including Columbia, Chile, Ecuador and Panama (United Nations, 1998). However, it is argued that even the USA fails to provide adequate legal representation, particularly for immigrant families (Krisberg, 2006). The reason why this is a particularly tricky problem is that legal representation implies a more adversarial system, which goes against many welfarist or restorative justice principles (e.g. inclusion on conferences). Consequently, like indeterminate welfarism in the past, it is often those countries that claim most concern with the best interests and rights of the child that fall foul on this particular issue. Indeed, the UK was forced to include an exclusionary clause to this effect when ratifying the UN Convention on the Rights of the Child (1989) because of Scotland's Children's Hearings system, although free representation is now appointed if the child's liberty is at risk or they may not understand proceedings (McAra, 2006).

When legal representation is provided, there are some differences across jurisdictions about who takes on that role. In most countries the role is fulfilled by ordinary lawyers, but there are some innovative schemes to involve either special Child Protection Unit lawyers, such as in Cambodia, or special advocate volunteers, for instance in the Phillipines (Bergeron, date unknown).

Whether or not legal representation is provided, there is widespread concern that young people understand what is happening to them throughout the legal process. This concern has been prominent in England and Wales in recent years, with the European Court ruling that the defendants in the 1993–4 James Bulger murder case were denied their rights because they could not fully understand Crown Court proceedings. Further studies in England and Wales have suggested that this was also a problem in magistrates' courts (Hazel et al, 2002b). There have been a number of initiatives in England and Wales to counter this problem, including increased judicial training, use of video equipment, counsel removing wigs, etc. Similar efforts have been made elsewhere. In particular, Thailand has established a video link system throughout the country, and increased training and the use of training manuals (Bergeron, date unknown).

The emergence of diversion

Almost immediately after the concern with due process in the 1960s, there was a cross-national drive to find ways of diverting young people from the full effect of court proceedings. The aim was to find alternative proceedings or interventions that provided an alternative to the court, resolved the problem, but did not return to the imposition on rights of

the old welfarist systems. The idea of 'true diversion' combines avoidance of the juvenile justice system with the absence of coercion to achieve 'the avoidance of any sanction or treatment imposed on a juvenile offender by either official or unofficial agents' (Frazier and Cochran, 1986, cited in Seyfrit et al, 1987:303). What emerged was a spectrum of diversionary tactics across a large number of countries, each somewhere towards this ideal. Along this continuum towards true diversion, the young people may be diverted to other parts of the juvenile justice system, to welfare-based agencies, or away from agencies altogether (Hallett and Hazel, 1998).

Feest (1990) has attempted a classification of diversionary strategies to try to capture the range of ways that countries have attempted to reduce criminal justice involvement with adults (cited in Asquith and Samuel, 1994:5), and later related to young people (Hallett and Hazel, 1998):

- entry avoidance – e.g. informal cautioning, mediation, general diversion from formal processes of social control
- process interruption – e.g. unconditional dismissals, police cautions, conditional dismissals (fine, restitution), handling of cases outside of the criminal justice system
- remand avoidance – mediation, deferred sentences
- conviction/sentence avoidance – e.g. mediation, deferred sentences, etc
- imprisonment avoidance – e.g. community service, no short sentences, early release.

This is in line with government policy adopted in England and Wales in the early 1980s. The White Paper on Young Offenders stated that:

> *...all the available evidence suggests that juvenile offenders who can be diverted from the criminal justice system at an early stage in their offending are less likely to re-offend than those who become involved in judicial proceedings*. (Home Office, 1980: par 3.8)

Likewise recommendations from the Committee of Ministers of the Council of Europe (Recommendation no R [87] 20) held that Member States pursue the development of measures for diversion from the juvenile court and for interventions designed to promote the social integration of young people.

The next chapter concerns itself with issues of outcome and disposal, including searches for more socially integrative outcomes through restorative justice. The remainder of this chapter discusses some measures towards diversion from formal court proceedings.

Diversion by the police

The first contact that a juvenile offender would have with the criminal justice system is almost always the police. As such, the police have often become a primary focus for diversionary tactics. Out of 51 countries responding to a survey by the United Nations in 1998, 19 allowed diversion to be instituted by the police (United Nations, 1998). In those countries that do not allow police diversion, including Germany (Dunkel, 2004), Poland (Stando-Kawecka, 2004), Slovenia (Filipcic, 2004), Belgium (Van Dijk, 2004), Austria (Bruckmuller, 2004) and Bosnia and Herzegovina (Almir, 2004), it would be compulsory to report every case to the prosecutor to make those decisions. This may be to avoid excessive

police power or corruption. Indeed, in Poland, it is the family judge who institutes an investigation rather than the police (Stando-Kawecka, 2004).

In some countries, the police have a greater role than in England and Wales in deciding how cases should progress, and in the process of prosecution. For example, in Japan, police bring offenders suspected of minor offences directly to the courts rather than through a public prosecutor. The public prosecutor is then free to concentrate on investigating more serious cases (Cavadino and Dignan, 2006:281). In Northern Ireland, the specialist Youth Diversion Scheme officers recommend to the prosecutor whether to drop the case, give an informal warning, official caution or prosecute. The informal warning (called 'advice and warning') to the child and parents is seen as sufficient in three-quarters of cases (O'Mahony and Campbell, 2004).

Police cautioning is the main method of police diversion used in many countries, including Ireland (Gilligan, 1989), the USA (Snyder and Sickmund, 1995; Puzzanchera et al, 2003), Zimbabwe (Kaseke, 1993), Canada (Doob et al, 1995), South Australia (Wundersitz, 1996) and Israel (Sebba, 1981). This seems to be part of a wider trend, particularly in neo-liberal (or neo-correctionist countries), to polarise their treatment of young people who offend by being particularly tough on serious offenders, but diverting less serious offenders. For example, in Australia there has also been increased emphasis on police cautioning over the past 15 years (Cavadino and Dignan, 2006:238). Indeed, that country has had some of the most innovative experiments in police cautioning in Queensland and with the Wagga Wagga model (O'Connell and Moore, 1992).

It has been noted that police cautioning constitutes evidence of the court as no longer being the main site for decision-making in youth justice, as long as guilt is not disputed (Pratt, 1990). In further support of that, police often combine their cautions with other 'agreed' courses of action. In New Zealand, police frequently give informal warnings, sometimes accompanied by restorative actions like offering an apology to the victim or making reparation (Cavadino and Dignan, 2006:234). Similarly, since 2001, Northern Ireland police administer 'restorative cautioning', where a conference involving the victim is convened (O'Mahony and Campbell, 2004). This model has also been tried in England and Wales by Thames Valley Police (Hoyle et al, 2002), and a similar scheme now exists in Scotland that involves specially trained police and parents exploring why the young person offended (McAra, 2006). In Israel, there is a formal police cautioning scheme for casual drug users, providing that they co-operate with police investigations (Sebba, 1981).

Ironically, there have been particular criticisms of police cautioning as a mechanism of 'net widening'; that they involve young people in the criminal justice system rather than divert them because they would otherwise have received no further action (Polk, 1984; Davies et al, 1995). Certainly, it was noted in Hallett and Hazel (1998) that most police cautioning schemes do not constitute 'true' diversion because official records are normally kept, and the caution sometimes initiates some other involvement of agencies. This is the example in England and Wales, where a Final Warning initiates a level of intervention by the local YOT. In Central Scotland, from 1995, the Recorded Warning System allowed police to caution first-time offenders, but the record was accessible to the police and Reporter (part of the Scottish Children's Hearings system). This is even the case in Northern Ireland's informal advice and warning scheme (O'Mahony and Campbell, 2004).

The role of other gatekeepers

Police are not the only agents of diversion before cases get to court. In many countries, including Germany (Dunkel, 2004), Bosnia and Herzegovina (Almir, 2004), Slovenia (Filipcic, 2004) and the Czech Republic (Valkova, 2004), it is the legal prosecutor who decides what cases are diverted and what cases are brought to court. This may be because only they (or judges), with their legal knowledge, are thought able to ensure that diversion is not used for cases where a prosecution would not have been brought, or not have made a conviction (Spiess, 1994). Consequently, this protection against diversion produces the above 'net-widening' effect. In addition, in Germany, public persecutors can dismiss proceedings if adequate 'educational responses' have already been made by other agencies (Cavadino and Dignan, 2006:255). Alternatively, in Belgium the prosecutor can decide that the offence is a symptom of an underlying personal, social or familial problem and involve social services instead (Van Dijk, 2004).

In Scotland, the Reporter has to be satisfied of the need for care, before any formal or informal action by the police or social workers, and before the child appears before a Hearing (Cavadino and Dignan, 2006:222). Indeed, it has been noted that increasing numbers of young people who offend are being diverted at this stage and not reaching Hearings (which in themselves can be seen as diversionary, see below). Eighty per cent of young people who offend were diverted in Scotland in 1999 (Bottoms and Dignan, 2004).

France has a particularly interesting 'inquisitorial' system, whereby the judge is involved with the young person who offends, from the initial investigation to negotiating the final outcome (Cavadino and Dignan, 2006:264) and decides any diversionary activities according to the best interests of the child. Similarly, in Belgium, offenders have the same judge through all stages of the procedure to ensure continuity and understanding of the best interests of the child (Van Dijk, 2004). Interestingly, the idea of judges continuing their involvement through to sentencing is an element of recent youth court developments in Scotland, where a review hearing takes place after the initial sentence for the Sheriff to check on progress (McAra, 2006).

Informal hearings

Perhaps the best known forms of diversion from formal court justice are the alternative informal hearings that have emanated from a few countries around the world. Recently, these have sometimes been fostered under the auspices of restorative justice as an inclusionary process involving the young people. However, they have their origins at the height of the diversionary movement of the late 1960s to the 1980s. They are systems set up specifically with the needs of children in mind, rather than simply being modified versions of the adult court. The two best known types of informal hearings are the Scottish Children's Hearings system, and FGCs.

The Scottish Children's Hearings system was established in 1971 following the recommendations of the *Kilbrandon Report* (1964). The primary intention at the time of inception was to find an extra-judicial resolution to problems. It does so on an informal basis in discussion with parents and child in a hearing conducted by lay people, in the spirit of participation (Hallett and Hazel, 1998). It is different from other restorative justice schemes because it does not involve the victim in proceedings, and so is not reconciliatory in purpose. The system has carried remarkable support among policymakers, professionals and commentators over the past 35 years. In Sweden, care tribunals similar to Children's

Hearings have also been long established. These tribunals work on the basis of allowing a large amount of discretion to all agencies in order to find a suitable individualised solution (Cavadino and Dignan, 2006:272).

FGCs were first developed in New Zealand in the late 1980s. However, their perceived success has meant that they have been adopted (often with variations) in several countries around the world, including Australia, South Africa, Canada (Bala and Roberts, 2004), the USA, Belgium (Van Dijk, 2004) and England and Wales (Cavadino and Dignan, 2006:210). It is worth noting that these countries are mainly neo-liberal, and the conferences are less well developed in conservative corporatist countries. The impetus for their development came from criticisms from Maori people that the existing white dominated justice systems (largely inherited from Britain) undermined traditional decision-making processes in their communities and discriminated against Maori children. Consequently, the conferences will include the traditional extended family and wider community in decision-making. However, unlike in Scotland, FGCs will involve the victim in a restorative approach. Although research has suggested that they may not reduce recidivism compared to youth courts, they do report higher levels of satisfaction for all concerned (including victims) and may promote family cohesion (Stevens et al, 2006). Similar restorative conferences are held in Canada (partly to involve extended aboriginal families), but young people may be referred there before, during or after trial by judge, prosecutor or police officer (Smandych, 2006). The latter is sometimes called ‘circle sentencing’ (Bala and Roberts, 2004).

Apart from the informality and diversion from judicial courts, the Scottish Children’s Hearings and FGCs also have in common the fact that decisions are not made by professionals. In Scotland, Children’s Hearings are conducted by lay panels with three members of the public, who are specifically ‘recruited, trained and required to deal with children according to their needs’ (Cavadino and Dignan, 2006:222). Thus, they differ from magistrates both because of their specialty with children and because of their focus on the child’s needs. In New Zealand, young people, their families, victims and supporters reach an agreement taking into account the welfare of the offender and victim. In fact, having outlined the cause for concern in the particular case, the professionals and co-ordinator withdraw, leaving the family network to deliberate and propose a solution. This is based on the perception that the family and wider networks have the right and strengths necessary to overcome the problems more effectively than if imposed by professionals (Lupton et al, 1995). In England and Wales, this may offer particular potential for faith-based or cultural groupings who may feel socially excluded by mainstream systems.

More recently (2003), Youth Conferences have been introduced into Northern Ireland and are fast becoming the primary means of dealing with nearly all prosecuted juvenile offenders. While still informal in procedure, these conferences have more of a role for professionals, including police officers and the Youth Conference Co-ordinator. The conference may be diversionary (i.e. avoiding court) or ordered by the court. Indeed, it is compulsory for the court to refer a young person for a youth conference if they admit guilt (except for grave crimes). In contrast to Referral Panels in England and Wales, diversionary conferences are only for when a young person would otherwise go to court (including more serious offences) and not for first-time offenders. The youth conference agreed plans are then sent to the prosecutor (diversionary) or the judge (court ordered) for consideration. If the court agrees, this becomes the Youth Conference Order. Breach of this order would not necessarily mean

revoking the order; the child can be punished with an additional community penalty and resume the order.

Criticisms of diversion

As should be noted by the number of countries who believe that young people ought to go through the formal justice proceedings (see above), diversion is not without its critics. Wundersitz (1992:115) summarised the criticisms found in evaluations of diversion schemes in the USA as:

1. failure to reduce recidivism
2. gender biased
3. failure to protect due process rights
4. participation was coercive
5. the private discretion risked arbitrary and unjust decision-making
6. widening the net of social control.

In theory, diversion is not meant to be coercive, although it has been suggested that the implicit threat of judicial proceedings means that young people's participation is never voluntary (Bullington et al, 1982:232). In addition, it is debatable how far some children are able to have their views taken into account in proceedings involving, or led by, their families. More prominent have been the criticisms of net-widening (Hallett and Hazel, 1998), as noted with police cautioning, and that diversionary schemes still interfere more with constitutional rights than sanctions imposed by a judge, which leads to more restrictive or severe outcomes overall (Dunkel, 1996).

This chapter considered issues of convergence and divergence in juvenile justice processes, through investigation and decision-making. Particular note was made of the debate between due process through the courts and diversion from the formal justice process. The next chapter moves beyond looking at proceedings, and explores issues in relation to outcome decisions for young people.

8 Outcomes and disposals

This chapter looks at different outcomes for young people from their involvement in youth justice systems around the world. It considers, in particular, outcomes involved in restorative justice, other community disposals and custody.

Restorative outcomes

The rise in restorative justice is one of the strongest trends in youth justice over the past 30 years, to the point where it is now a global phenomenon (Justice, 2000). Indeed, the European Forum for Victim-Offender Mediation and Restorative Justice was established in 2000 (Muncie, 2006:60). Its international popularity is arguably because different parts of its philosophy can be embraced to some extent by policymakers influenced by both the welfarist model and the justice model. Welfarists are attracted by the 'restorative' side, which focuses on the inclusion and reintegration of the offender, and is about diversion from formal justice (including custody). Neo-correctionists are attracted by the 'justice' side, which focuses on making sure that the offender takes responsibility for their crime and pays their dues to the victim or society. This is classic 'third-way' post-modern politics, which has unsurprisingly been particularly popular with 'new' neo-liberal governments such as that of post-1997 in England and Wales, Australia, Canada etc.

Consequently, as Muncie has recognised, the use of restorative justice across the world is marked by a process of divergence rather than by convergence, noting that even the aims of the processes seem to vary. He cites the difference between the emphasis on paternalism and personal responsibility in England and Wales, rather than similar policies being seen as principally rehabilitative in Belgium, Finland and Norway (2004:43). Similarly, we can contrast differing emphases in offender-victim mediation – on offenders recognising damage and victims' rights in England and Wales and Denmark, while on reconciliation in Austria and many African states (Justice, 2000).

Strictly speaking, restorative justice per se is more about a process than disposal. Nevertheless, it does involve seeking an outcome for the case – albeit not in the form of a 'sentence'. The most common elements of restorative justice (offender-victim mediation, and reparation) are often considered appropriate outcomes in themselves. Certainly, restorative justice work can actually be sentenced by the court as an alternative to traditional disposals in several countries, including Belgium, Denmark, Poland, Slovenia and Spain. In addition, courts in a few countries also tend to use restorative justice as a supplement to normal disposals rather than just as an alternative to it; for example, in Germany and Norway (Miers, 2001). However, using mediation and reparation as sanctions has been criticised for undermining the inclusive and voluntary principles of restorative justice (Dunkel, 2004).

Indeed, depending upon the emphasis placed on their purpose, in some countries (particularly neo-correctionist countries including England and Wales, Australia and the USA) these outcomes seem to run seamlessly into other forms of community penalties (e.g. community reparation and old-fashioned community service). In some countries, for instance the Netherlands, this has effectively been a form of 'conditional' diversion, gradually replacing unconditional pardons, the most common court disposal (Cavadino and Dignan, 2006:269).

In the Netherlands since 1982, offenders can be required to undertake diversion programmes, a package which may consist of apologising, reparation, and paying compensation (Cavadino and Dignan, 2006:269).

However, the decision to employ these elements of restorative justice as an outcome (or attempt to find an outcome) to a case can come at different points within more traditional judicial routes, not just as a disposal after a trial. It tends to be used before charge in a few countries, including Austria, Belgium, France (Wyvekens, 2004), Netherlands, and Slovenia. In Austria the public prosecutor may divert cases to restorative justice after charge but before trial, or the courts may invoke mediation itself (Miers, 2001). Similarly, prosecutors in Germany (Dunkel, 2004), Slovenia (Filipcic, 2004) or Spain (Alberola and Molina, 2004) may waive prosecution if reparation or mediation has started to take place before the trial has started.

Victim-offender mediation

Resolving the case through mediation between the offender and the victim has arguably been the most dominant aspect of restorative justice internationally, even though reparation has taken the front seat in England and Wales. Ideas about mediation originated in North America with informal 'victim-offender reconciliation projects' in the 1970s and 1980s (Cavadino and Dignan, 2006:209), and by 2000 there were more than 350 victim-offender mediation programmes for juveniles in the USA alone (Cavadino and Dignan, 2006:247). However, these tend to be run by non-public agencies and are not integrated into law.

In contrast, mediation is integrated into law in some European countries including France, Germany and England and Wales. However, in practice its use is still said to remain patchy in some countries (Cavadino and Dignan, 2006:209; Van Dijk, 2004 [Belgium]; Nelken, 2006 [Italy]). For example, mediation was introduced by law into Germany, and most localities do have victim-offender mediation projects, but most have not used it as an integral part of their proceedings (Cavadino and Dignan, 2006:259).

There is a contrasting picture, too, in more traditional welfarist countries. Although it has hardly made an impact on Sweden, victim-offender mediation is more popular in Finland (Cavadino and Dignan, 2006:277). Similarly, in Austria, victim-offender mediation is used to settle over half of all cases before they go to court (Justice, 2000).

This high degree of mediation is because in several countries, the prosecutor is obliged to consider a restorative justice intervention (particularly mediation) before sending a case to court. These countries include Austria, Denmark, Germany, Norway and Slovenia (Miers, 2001:100). Certainly, referral to mediation is primarily the role of the public prosecutor in most countries reviewed by Miers (2001), including Austria, Belgium, the Czech Republic, Finland, France, Germany, Netherlands, Norway, and Spain (although specifically not in Poland and Slovenia). In France, prosecutors have had the power to send offenders to 'penal mediation' instead of prosecution since 1993. However, the power to do so does not mean that it commonly replaces prosecution. In both France and Germany, it has been noted that this is rarely used by prosecutors (Cavadino and Dignan, 2006:267).

In other countries, it is evident that being involved in mediation is clearly in the interests of the offender, and this will push up participation. For instance, mediation in Finland is not prescribed by the court (as an outcome), but may influence a court's decision by being taken into account as a mitigating factor (Cavadino and Dignan, 2006:276–277; Lappi-Seppala,

2006). Similarly, in Italy, this may be imposed at an early court stage. If the outcome is positive by the time that the case reaches trial, it may be dismissed or given a pardon (Cavadino and Dignan, 2006:263). In Austria, mediation work already undertaken may be taken into account by the court as mitigation at the sentencing stage (Miers, 2001:8), and a particular type of specific 'pre-sentence mediation' is carried out in a few countries, including Germany, Norway, Poland, Slovenia and Spain (Miers, 2001).

There is no consensus across countries as to who co-ordinates the restorative justice, and this reflects the fact that it can take place at different stages of the process, the varying purposes, and the different activities that come under the auspices of restorative justice. In Norway, where restorative justice is an alternative to prosecution, mediation is set up by the local communities themselves rather than by professionals (Cavadino and Dignan, 2006:277), although the local authority may have a supporting role (Miers, 2001). In some countries, where the mediation is often attempted as an early outcome to the process, it is organised by the police, for instance in Denmark, although they can also have a role in referral in Norway and Finland (Miers, 2001). In Greece, the prosecutor may facilitate the dialogue (Spinellis and Tsitsoura, 2004).

In countries where it is more common for restorative justice to be imposed by the court (rather than as a diversion from it), it is much more likely that the activities are organised by either the court service itself (e.g. Germany, Slovenia), or by the probation services (e.g. the Czech Republic). Where there may be slightly more emphasis on the welfare of the child, this role tends to be taken by social services teams (e.g. Finland, Netherlands, Spain [Alberola and Molina, 2004]). In Austria, the mediation is organised by a dedicated public body, the out-of-court resolution unit, as part of probation rather than individual mediation workers within multi-agency teams, as tends to be the case in England and Wales (Miers, 2001:8).

It should also be noted that a number of countries now employ private organisations to set up and supervise the mediation, notably France and Poland, and to an extent Denmark (Miers, 2001). In the Philippines, mediation (which is used as diversion before trial) is organised by an NGO and the Children's Justice Committee (Bergeron, date unknown). Similarly, in Spain, about a quarter of mediation cases are dealt with by NGOs (Alberola and Molina, 2004), and in 2001 the NGO SACRO was given a grant to develop pre-trial mediation in Scotland (McAra, 2006).

Reparation

The other main restorative outcome is reparation in some form. This may take the form of reparation or compensation to the individual victim, or more indirect community work. The extent to which either is stressed varies between countries, but commonly both are available. England and Wales have both, with Reparation Orders focused on direct work or monetary compensation, and Community Punishment Orders focused on paying back society. This split has been adopted by Northern Ireland, which innovatively combines community service with classes in citizenship in their Community Responsibility Orders (O'Mahony and Campbell, 2004).

These options are often used extensively by decision-making bodies. In New Zealand, for example, a fifth of young perople who offend are persuaded by police to undertake victim reparation, and a third to undertake community work (Maxwell et al, 2002, cited in Cavadino and Dignan, 2006:234). Community service-type reparation work used to be a significant

part of restorative justice in Austria, but this has now become the exception to victim-focused compensation (Miers, 2001).

It was noted earlier that restorative justice as an outcome by the court can sometimes be almost indistinguishable from other community disposals. This is the case when the reparation is imposed, without any emphasis on its restoratory potential. For instance, it has been noted in Western Australia that reparation orders tend to be imposed by the courts as punishment, under the auspices of accountability, rather than taking into account whether this will actually resolve or restore any relationships (Omaji, 1997).

Other community penalties

This section very briefly reviews some of the popular community penalties around the world, focusing particularly on distinctive, controversial, innovative or fast-growing disposals.

Responsibility of parents

The idea of making parents accountable for the actions of their children has been an increasingly popular one in recent years, both in England and Wales and elsewhere. Early examples included Israel in 1989 stating that the parents of 'rock throwers' would have their property impounded. In 1990, Florida passed a law allowing courts to imprison parents for their children's offences, and other states have moved towards making parents pay for the cost of state care of their children. Similarly, in New Zealand, parents may be required to pay for prosecution costs (ICCLR, no date). In Australia, parents can be prosecuted if they knowingly allow their child to carry a dangerous implement, including scissors and nail files (Cunneen and White, 2006).

More recently, sanctions for the parents of offending children were also introduced into the French juvenile justice system in 2002 (Henley, 2002, cited in Muncie, 2006:53). Similarly, in Japan, judges have recently been given the power to warn and instruct parents based on their child's behaviour (Fenwick, 2006). In addition, in Greece, a court may place the young person who offends under the supervision of their parents with an explicit sanction for the parents if they fail to deter their child from offending (Spinellis and Tsitsoura, 2004).

Like the Parenting Orders in England and Wales (Ghate and Ramella, 2002), the consequences of making parents accountable in the USA is that an increasing number of US states use compulsory parenting classes as a sanction (Cavadino and Dignan, 2006:220). Parenting Orders have also now been implemented in Scotland (McAra, 2006).

Public censure

Despite the assurance of privacy throughout young offender proceedings being included in international agreements (Beijing Rule 8; UNCRC Article 40), courts in some countries explicitly or implicitly publish case details as a way of shaming young people who offend. In Bulgaria, public censure was a sentence on the statute books imposed in around 10% of cases (1993 figures). In addition, 29 US states allow the names and photographs of young people who offend to be released (ICCLR, no date). Implicitly as a sentence, courts in England and Wales have stated clearly that if offences are very serious, rights to privacy are withdrawn – although this is a practice also used in the minor case of ASBOs.

Social welfare

In Sweden, the court can transfer cases to the social welfare agency as an outcome. However, since 1999, the agency has to show the court that these are commensurate with the seriousness of the offence (not just the need of the child) before acceptance. In addition, the court can now impose a supplementary penalty of a fine or reparation to go along with the transfer. This latter development could be seen as an example of the growing influence both of punishment models and restorative ideas on the once steadfast welfare models (Cavadino and Dignan, 2006:274).

Use of education

Educational measures are particularly common in the conservative welfarist countries of mainland Europe. These countries have (re)education as a key principle and disposals tend to reflect this. In France, a stated aim of community penalties is to produce a transformation of their image of the adult world and life in society (Ministry of Justice website cited in Wyvekens, 2004).

In Germany, measures are focused on how best to socialise the individual young person or teach them appropriate behaviour. Disposals that the court can impose include participation in social training courses, traffic education, and vocational training (Cavadino and Dignan, 2006:255). These courses are intensive (similar to Intensive Supervision and Surveillance Programmes [ISSPs] – see the section on Supervision and multi-agency support below), involve meetings every few days and are combined with compulsory weekend organised leisure activities (sports or adventure) for up to six months (Dunkel, 2004).

There is a similar idea of personalised social programmes in Italy (Cavadino and Dignan, 2006:260), and in the Netherlands with their Intermediate Treatment Programmes (Cavadino and Dignan, 2006:270). In France, the idea of flexible individual programmes is linked with the continuing involvement of the judge, who can alter other aspects of the proramme as the sentence progresses (Cavadino and Dignan, 2006:265).

Supervision and multi-agency support

There is some variation across jurisdictions regarding responsibilty for delivering supervision and other probation services. In England and Wales, this is administered and is, in the most part, delivered by 157 locally based multi-agency YOTs. These are under the administrative control of local authorities, although they receive policy directives from the Youth Justice Board for England and Wales. Similar multi-disciplinary teams exist in France (Centres d'action educative and Service éducatif auprès du tribunal) to assist the judge in building reports, proposing educative recommendations and carrying out supervision (Wyvekens, 2004). In the Netherlands, partnerships have been established at the level of court districts that include police, child protection, prosecution, probation, judiciary and prison services (Uit Beijerse and Van Swaaningen, 2006).

Perhaps unsurprisingly, the US variety of multi-agency working tends to rely less on the public sector, even when compared to England and Wales as a whole (where we involve private prisons, etc). In Colorado, for example, their multi-agency team is a large public-private partnership. In Virginia, the team is a collaboration of state and community organisations (Gies, 2003). In addition, this 'mixed economy of justice' approach is rarely quite as integrated as the office-sharing experience in YOTs, and tends to be described in the literature as a close partnership or collaboration. In the USA, juvenile supervision and

probation is usually organised and delivered at state level rather than locally (New York City is an exception). Responsibility then tends to be taken by either the juvenile courts (21 states), State Executive (14 states), or a combination (16 states). If supervision is by the state, the responsibility is sometimes devolved to a separate juvenile corrections agency (nine states), social services/child protection (10 states), or adult corrections (four states) (Griffin and King, 2006). In Greece, the public prosecutor is also responsible for the supervision of all educative and therapeutic measures (Spinellis and Tsitsoura, 2004). In Italy, probation is the responsibility of social workers employed by the Ministry of Justice, helped by local social workers (Nelken, 2006).

Some countries seem to be moving towards intensive supervision as an alternative to custody, in the same way as ISSP is intended in England and Wales (including Canada [Bala and Roberts, 2002]). In Italy, for example, police supervision is used as an alternative to short-term custody. In this scheme, the young person is required to report to the station on a very regular basis (Cavadino and Dignan, 2006:262). In a similar intensive scheme in the Netherlands, parents are obliged to participate and all members of the family sign a contract committing to observe conditions (Uit Beijerse and Van Swaaningen, 2006). Intensive supervision is also popular in the USA, but has developed mainly as a form of care after prison rather than as an alternative to custody (see the section on 'Aftercare' in the 'Custody' section below) – like the second half of the Detention and Training Order in England and Wales. The 8% Early Intervention Program in California has been noted as an example of good practice in this area, and focuses on including the whole family in the intensive support (Grant, 2004).

Other forms of social control

Another form of social control rapidly growing in popularity around the world is the use of curfews. Countries imposing curfews on young people who offend include the USA, Belgium, France, England and Wales, Scotland (Muncie, 2005) and, recently, four states in Australia (Cavadino and Dignan, 2006:238).

Electronic monitoring is now an increasingly common form of social control across the world, often tied to either curfews or intensive supervision. Apart from the USA and England and Wales, it has recently been introduced in France (Cavadino and Dignan, 2006:266), Singapore, Canada, Australia, Sweden, Holland, and Scotland (Muncie, 2005:41; McAra, 2006).

Removal from family home/placed into non-custodial care

As a form of supportive supervision other than by the state or by parents, a number of countries remove the child from their home and place the offender in alternative familial care of a trustworthy adult (e.g. the Czech Republic [Valkova, 2004]; Spain [Alberola and Molina, 2004]). This may be another member of their own family, or foster care. If the latter, it may be therapeutic or intensive foster care. This is used in Greece explicitly as an alternative to custody (Spinellis and Tsitsoura, 2004).

Community-based institutions

In some countries, it can be difficult to distinguish between closed custodial institutions and open treatment centres. This is increasingly the case in France, and three examples are cited below. First, Emergency Placement Centres for offenders who need to be removed from their social environment in order to deal with a temporary crisis were set up in 1999 (Cavadino

and Dignan, 2006:266). Second, that same country also makes use of community-based treatment centres, run by public, private or religious organisations. These house both delinquent and non-delinquent children, and are used partly to help the juge des enfants monitor cases personally (or helped by a social worker; Cavadino and Dignan, 2006:266). Third, since 2002, France has introduced Closed Education Centres for young people subject to other community orders. Although not locked up overnight, the young person is not allowed out overnight under the threat of imprisonment (Cavadino and Dignan, 2006:267). None of these institutions are custodial, but all are institutions for young people and involve close and intensive supervision.

Custody

Extent of the use of custody

There have been various attempts to compare juvenile prison populations by collecting data from each jurisdiction. However, this analysis is fraught with difficulties, not least because not all countries collect these data and when they do, they use different age definitions of 'juvenile' or 'youth' or 'child', and different definitions of 'custody'. Muncie (2005; 2006) has noted that institutions such as training schools, treatment centres and reception centres may all hold young people against their will but might not be included in penal statistics because they are not considered by their jurisdiction to be part of the official prison system, or may not even be considered 'imprisonment' per se.

Table 8.1: Numbers of under-18s in custody

Unit	No. of convicted under-18s in prison (incidence)	% of prison population under 18	Young people per 100K of relevant population
England & Wales**	**2,869**	**3.8**	**46.8**
Australia	545	2.4	24.9
Austria*	114	1.5	-
Belgium*	105	1.1	-
Bulgaria*	121	1.3	-
Croatia*	7	0.3	-
Denmark*	12	0.3	-
Finland**	7	0.2	3.6
France**	751	1.2	18.6
Germany	841	1.4	23.1
Italy**	267	0.5	11.3
Japan**	7	0.0	0.1
Netherlands**	574	3.1	51.3
New Zealand**	369	6.4	68.0
Norway*	13	0.5	-
Portugal*	289	2.1	-
Scotland**	170	2.6	33.0
South Africa**	4,158	2.2	69.0
Spain*	136	0.3	-
Sweden**	14	0.2	4.1
Turkey*	2,237	3.7	-
USA**	104,413	-	336.0

*Figures for September 2002. Council of Europe, 2002, cited in Muncie, 2006. ** Various collated figures from national statistics, Cavadino and Dignan, 2006.

Table 8.1 above collates figures cited in Cavadino and Dignan (2006) and Muncie (2006) on the numbers of young people aged less than 18 years in custody at any one time. Where the sources gave conflicting figures, the most recently compiled total has been selected.

Looking at the rates of custody, many of the lowest proportions of young people in custody are in the more welfarist Scandinavian countries (apart from the exceptional Japan), followed by the protectionist welfare-influenced European countries, and with the justice-focused and neo-correctionist liberal countries having the highest rates (Cavadino and Dignan, 2006:301). In addition, they also seem to show that countries with the lowest ages of criminal responsibility also share the highest juvenile custody figures (Muncie, 2005). What they do not show is that in the USA, there has also been a doubling in the numbers of these juveniles being sent to adult prisons since 1985 (Muncie, 2005:50).

However, some caution is advised with these figures. In theory, in Sweden only about seven to 14 young people aged less than 18 receive prison sentences each year. Consequently, there are no separate young person prisons. However, there are reformatories, which although officially for care and treatment, involve sentencing about one hundred children a year for up to four years, crucially depending upon the offence (Cavadino and Dignan, 2006:275).

These figures also do not show trends. For instance, there has been a dramatic increase in the use of custody in South Africa in recent years (Cavadino and Dignan, 2006:242), and prison building and expansion has been a characteristic of youth justice in Ireland over the past 15 years (O'Donnell and O'Sullivan, 2003, cited in Muncie, 2005).

Muncie (2005:48) noted that, according to the United Nations figures, England and Wales have the highest incarceration rate in Europe, and of those jurisdictions with data, it is fifth highest in the world (behind the USA, South Africa, Belize and Swaziland).

> *In an English context, comparative issues are brought to the fore when pressure groups query why England and Wales appear to have high and increasing numbers of under-18s locked up in prison.* (Muncie, 2006:42)

However, the YJB has now committed itself to reducing the demand on the juvenile secure estate. The principal method for doing this has been the introduction of strict social control measures in community sentences, such as ISSPs and electronic tagging. However, the YJB might be able to look to other countries to see possible ways forward in trying to make this commitment a reality on the ground.

Custody as a last resort

The main way that countries try to ensure lower custody figures is to enshrine a principle of only using custody as a last resort, when it can be proved that the child is dangerous in the community and cannot be controlled or dealt with in any other way. Indeed, any assessment of the figures in the above table should be read with regard to the countries who have adopted a principle of custody as a last resort. This principle is enshrined in Article 37 of the UN Convention on the Rights of the Child (1989) (an Article for which the UK has been accused of contravening by the UN Committee monitoring the Convention). Indeed, the USA, which has both the highest numbers in custody and who has failed to sign the Convention, has consistently refused to commit itself to the idea of custody as a last resort and to minimum intervention (Cavadino and Dignan, 2006:246).

In contrast, countries with lower totals in custody have formally integrated this principle into youth justice legislation and processes. For instance, Germany adopted it in the Youth Court Amendment Act 1990 (Cavadino and Dignan, 2006:258). Similarly, in Finland, a 1989 law specifies that young people should only be imprisoned if there are 'weighty' reasons for imposing it other than the seriousness of the offence. This has resulted in only about seven young people under 18 years old in prison at any one time (Cavadino and Dignan, 2006:277). Similar results have been reported in Greece (Spinellis and Tsitsoura, 2004). This principle is even enshrined in some more neo-correctional jurisdictions, for instance, Western Australia, although this may be proving more difficult to fulfil within that context in practice (Omaji, 1997). In Austria, the principle of custody as a last resort is reinforced by the legal rule that judges must consider the impact of a sentence on the offender's integration into society. This has a similar effect to the principle of custody as a last resort (Bruckmuller, 2004).

In Canada, the principle of last resort in sentencing was made clear in 2002. Since then judges must show that they have determined that there is no possible alternative/s to custody before such a sentence can be given. Together with increased availability of such community alternatives, more diversion and stricter controls on remand, this rule has seen significant decreases in custody rate (Bala and Roberts, 2004; Muncie 2005:52; Smandych, 2006).

Last resort is also the case in Scotland, where there is a downward trend in residential placements by the Scottish Children's Hearings system in the last 25 years (Bottoms and Dignan, 2004). However, as young people who offend join the adult system at age 16, Scotland still has a particularly high rate of custody for those aged less than 21, although there is evidence that this has been falling in recent years (Cavadino and Dignan, 2006:223).

However, some countries are overtly moving away from using prison as a last resort. In some cases, this has seen custody become available to the courts for an increasing number of offences. For example, from 2002, young people in France can be imprisoned for public order offences, including being disrespectful to those in authority (Henley, 2002, cited in Muncie, 2006:53).

In other cases, this movement has seen a number of offences and circumstances for which custody has now become mandatory. For example, in several states in the USA – including California, Georgia, Florida, Michigan and Massachusetts – prison is now mandatory in respect of gun crimes (ICCLR, no date). From 1996, Western Australia adopted a 'three strikes and you're in' policy by instituting a mandatory prison sentence for young people who offend convicted of burglary for a third time. Not surprisingly, this legislation has been criticised for not allowing mitigating circumstances, for causing a large increase in the prison population, and rather makes a mockery of Western Australia's principle of custody as a last resort (Omaji, 1997).

Other methods of reducing custody rates

There are several examples around the world of countries who have successfully managed to cut their custodial rates, with or without the principle of last resort. For example, over the past 10 years there has been a perceptible lowering in raw numbers across a number of European states, including notably Germany, Spain, Italy and the Czech Republic (Muncie, 2005:52; Cavadino and Dignan, 2006:256).

The reasons for decline in custody can often be seen to be related specifically to reform of either youth justice processes or disposals. In relation to processes, there has been a dramatic

fall in custody rates in New Zealand since the introduction of the FGC system based on the welfare of the child. In the year following the introduction of conferences, the custodial rate halved, and that country has now dismantled the vast majority of its custodial provision. A similar dramatic decline in custody occurred across several Australian states on the introduction of conferencing, notably in Victoria (ICCLR, no date). Closer to home, Northern Ireland has seen a similar decline which can be put down to (arguably among other things) the new emphasis on restorative diversion by police and compulsory youth conferencing as part of proceedings (O'Mahony and Campbell, 2004).

Perhaps the most dramatic historical fall has been in Finland, which has reduced its custody rates of young people who offend to almost nothing since the middle of the twentieth century. This was achieved by an incentive scheme of compulsorily offering a suspended prison sentence, which would see any threat of prison quashed on successful completion (Muncie, 2005:52).

Length of custody

Although the maximum Detention and Training Order given to juvenile offenders in England and Wales is one year in custody (followed by one year supervision in the community) , grave crimes can receive indeterminate sentences at Her Majesty's Pleasure. The United Nations survey in 1998 found a number of other countries with similar indeterminate sentences, including Western Australia, Italy, Japan and Argentina. However, the majority of countries placed limits on the length of time that a young person could be held in custody, with a number of countries (including Spain and Switzerland) restricting the length to just two years (see Table 8.2 below).

Table 8.2: Maximum custodial sentence for juveniles

Max. duration (years)	Country
2	Australia (the Capital Territory, New South Wales and Tasmania), Lebanon, Senegal, Spain, Switzerland, Togo
3	Australia (Victoria), Colombia, Malaysia, Slovenia (institutionalisation other than prison)
4	Australia (South Australia) and Ecuador
5	Brunei
8	Estonia
10	Australia (Queensland, but there is also the possibility of life imprisonment with possible early release), Azerbaijan, Bahrain, Egypt, Germany, Libya, Qatar, Slovakia, Slovenia (imprisonment)
15	Austria, Finland, Mongolia, Korea
25	Israel
Unlimited	Argentina, Armenia, Australia (Western Australia), Chile, China, England & Wales (for grave crimes), Italy, Japan, Kazakhstan, Kuwait, Mauritius, Panama, Poland (until 21 years old), Saudi Arabia, Syria, Trinidad and Tobago, Zambia

Source: United Nations (1998)

There have been some movements in the length of sentences in recent years, and this has tended to be to increase them. For example, the Netherlands have doubled the maximum terms for detention for 12 to 15-year-olds to 12 months and increased them to 24 months for 16 to18-year-olds (Cavadino and Dignan, 2006:209).

Types of custodial sentences and regimes

There is a surprising variety of different types of sentences and regimes across the world, serving different practical and philosophical purposes. Some are very similar to those we have in England and Wales. For instance, the Netherlands have recently introduced a system whereby offenders sentenced to custody can be released less than halfway through their sentences in order to take part in training courses or treatment, similar to the Borstal system or the Detention and Training Order here (Cavadino and Dignan, 2006:271). Northern Ireland has an almost identical Juvenile Justice Order (O'Mahony and Campbell, 2004). Canada's custodial sentences have the intensive community phase for the last third of the sentence (Bala and Roberts, 2004).

In Sweden, where a few offenders are in custody for very serious crimes, they are under closed institutional 'care', with an emphasis on welfare and treatment (for abuse issues etc), rather than detention or imprisonment (Muncie, 2006:57). As such, they are closer to section 90/91 offenders in local authority secure children's homes, than secure training centres or young offender institutions in England and Wales.

The training element of the DTO is similarly emphasised in Austria, where trainees receive professional work training, and receive a proper wage for work – most of which is saved until release (Bruckmuller, 2004).

Some interesting variations include the use of intermittent custody in other countries. Night detention exists in some countries, including Italy (Cavadino and Dignan, 2006:263) and the Netherlands (Uit Beijerse and Van Swaaningen, 2006), where the young person is free to take part in external employment or education during the day, but is required to spend the night in prison. A converse sentence operates in Spain, where a Day Centre provides a tight structure, but the child resides at home. Spain also includes weekend only custody (Alberola and Molina, 2004).

The idea of short sentences is one that regularly causes some debate in different countries, as it did in England and Wales over short DTOs. Short sentences being used at the moment include those served at Secure Education Centres in France, since 1999, which provide intense educational activity lasting between three and six months (Cavadino and Dignan, 2006:266). This is, of course, in line with the French emphasis on (re)education more generally in youth justice. Similarly, Germany has implemented short periods of custody for up to four weeks that, importantly, do not appear on the offender's criminal record. At the same time, Germany has a minimum sentence of six months for imprisonment proper, because they believe that education (which forms the crux of the German system) cannot be implemented over a shorter period (Cavadino and Dignan, 2006:255). Austria has gone one step further by having a 'custodial sentence without conviction', where the record would show a custodial conviction as a warning but no sentence is served (and no threat like a suspended sentence) (Bruckmuller, 2004).

A popular and reoccurring iteration of the short sentence is detention intended to cause a 'short, sharp shock'. Muncie has noted the emergence of using pre-trial detention in such a

way in recent years, for instance, in the USA, Germany, Holland, France (Muncie, 2005). The most notorious example of this type of sentence is the boot camp, developed in the USA, which involves military-style training, and includes hard physical labour, verbal bullying and degradation. However, there has also been a good deal of dissatisfaction with boot camps, and they often tend to have rather a short shelf-life after an initial intuitive appeal. There have been several examples of England and Wales trying and then moving away from similar short sharp shock interventions, and some American states (including Arizona) have now closed their boot camps, having found that they make little difference to recidivism (ICCLR, no date). Similarly, intensive boot camps were introduced into Western Australia in 1995, but there they have also retreated by moving away from the strict military model (Cavadino and Dignan, 2006:238).

Incentives and discipline in custody

Almost all countries have incentives and privileges schemes inside custodial institutions in order to promote good behaviour. The incentives are wide-ranging. In Austria, the incentives are mainly to do with re-personalisation; for instance, young inmates can earn the right to wear their own clothes, use their own personal sports equipment or their own electronic goods. In Australia, the incentives relate more to contact with the outside world, including earning participation in outside activities (such as camping), visits to their family, weekend release and extra telephone calls. Different privileges relating to outside visits are also used in Japan, Poland, Philippines, Israel, and Switzerland, for instance, going to a movie. In Zambia, rewards are linked to less strict control in prison and giving leadership responsibilities, like the role of school prefect (United Nations, 1998).

Conversely, many countries use loss of privileges as a punishment, although often limited to say a maximum of 30 days. Other punishments include limitations on family visits and receiving mail. Poland suspends leave from the institution. Australia, Philippines and Colombia include extra chores. Although rejected by a number of countries, solitary confinement is used as a punishment in several systems. It is restricted to 10 days in countries including Australia, Switzerland, Syria, Cuba and Malaysia; between 11 and 20 days in Austria, Finland, Germany and Japan; between 21 and 30 days in Denmark, Luxembourg and Panama; but more than 40 days in Korea and Togo (United Nations, 1998).

Issue of remand prisoners

The issue of prisoners on remand has been debated across a number of jurisdictions. In some cases, the concern has been that the numbers are too high, in South Africa for instance, where there have been more remand prisoners than convicted (Muntingh, 2003, cited in Cavadino and Dignan, 2006:251). A number of jurisdictions, including Northern Ireland (O'Mahony and Campbell, 2004), France (Wyvekens, 2004) and Slovenia (Filipcic, 2004), now state explicitly that remand should only be used in most serious cases – which usually means only sexual or very violent cases – and numbers are reduced to a handful of children in each. In order to achieve this, in 1999, Slovenia instituted alternative restrictive bail conditions, including home detention, curfews and very regular reporting to a police station (Filipcic, 2004). In some countries, including Austria (Bruckmuller, 2004) and Canada (Bala and Roberts, 2004), remand must only be given if a prison sentence is deemed likely on conviction.

Contrasting with this, in others, there has been a political hardening of attitudes towards pre-trial detention, including in the Netherlands, where there has been a significant expansion of

the use of remand custody in recent years (Pakes, 2000, cited in Muncie, 2005). On a micro level, there is some suggestion that judges have been holding young people on remand as a kind of summary punishment (Bala and Roberts, 2004).

The United Nations survey of jurisdictions (1998) noted that the period that a young person could be held on remand was often tightly restricted. In parts of Australia, Luxembourg, Saudi Arabia, Spain, Switzerland and Zambia, detention pending trial (including periods between court dates) was limited to 30 days or less. In other countries, it was restricted to periods from two months (including Armenia, India, Japan and Libya), through to three months (Colombia, Bahrain, Lebanon), and to five months (China). In contrast to the DTO in England and Wales, time on remand may be taken into account in Slovenia (Filipcic, 2004).

Conditions in custody

The UN Committee on the Rights of the Child in 2002 criticised the UK for not ensuring that children were adequately protected from violence, bullying and self-harm. Indeed, there have been a number of high profile deaths of children in custody in England and Wales in recent years. However, the UK is certainly not alone in this criticism. It is estimated that three in four US custodial institutions lack adequate health care and security (Prince, 1997, cited in Winterdyk, 2005:464). In addition, there are well cited serious human rights risks in South African reform schools, places of safety and prisons, such as the almost universal but illegal use of corporal punishment, high rates of assaults by other inmates, and appalling sanitary conditions (Kiessl, 2001; Robinson, 1997, cited in Cavadino and Dignan, 2006:40).

A United Nations survey of 51 juvenile justice systems revealed a number of countries where juveniles were entitled to take a bath or shower less than once a week, including Argentina and Australia (Captial Territory). Several countries could not ensure that institutions were kept clean (Argentina, Brunei, Colombia, Ecuador, Kazakhstan, Togo, Lebanon, Zambia), and Zambia could not provide adequate food for inmates. Drinking water was not always provided, or at the discretion of the authorities, in Mongolia, Togo, Panama, Brunei and Israel (United Nations, 1998).

It is understood that since the US Supreme Court ruling in March 2005, there is now no jurisdiction that allows the death sentence for child offenders.

Aftercare

The evaluation of the Detention and Training Order in England and Wales (Hazel et al, 2002a) stressed the importance of, and was critical of, the co-ordination of services for meeting the needs of offenders when they were released back into the community. It is interesting to note that similar concerns have been expressed in the USA, which, as has been stated, also has comparatively high custody rates (and also high reconviction rates, e.g. Byrnes et al, 2002; Rodriguez-Labarca and O'Connell, 2003). In England and Wales, only half of trainees were engaged in education, training or employment by the end of supervision, but this figure is down to a third in US research (Bullis et al, 2002).

In most states in America, supervision and care after custody is the responsibility of the custodial institution rather than the local judicial or probation agency (Griffin and King, 2006). However, in some states the courts take the lead, supported by local probation departments, in organising and monitoring aftercare (Griffin, 2005).

As noted under Supervision and multi-agency support above, the USA has developed a similar intensive aftercare programme to the Detention and Training Order and ISSP

provision in England and Wales. The Intensive Aftercare Programme model in the USA is focused on providing a highly structured period in the community following release. The model has been most developed in Colorado, Nevada and Virginia (Gies, 2003).

In Finland, the Youth Rise project is an intensive holistic intervention. It combines an intensive three-month Immediate Intervention Programme, beginning a few days after custody with a week-long outdoor camp (including skills training), with intensive mentoring. The mentoring is similar to supervision under the DTO (including starting in custody), but is not carried out by a Supervising Officer. Instead, mentors are employed from job seekers, who provide intensive support to a young person primarily to gain valuable work experience (Airaksinen, 2004).

Hazel et al (2002a) raise particular concerns over the stability of accommodation for released juveniles on DTOs, noting that about a third of offenders moved on from their first place of housing, often after a breakdown of the parental relationship. In an innovative project in the Philippines, offenders are able to stay in an open halfway house while they slowly rebuild relations with their parents and wider community (Bergeron, date unknown).

The last chapter summarises the findings chapters from this report and presents an overall picture of youth justice in an international context.

9 Conclusions

This report has presented the findings of a cross-national comparison of youth justice, funded by the YJB. Although the term 'youth justice systems' is widely used in criminology to describe how each country deals with young people who offend, in some ways this is misleading because it suggests stable and coherent entities. Instead, this report has presented youth justice within, and beyond, each country as dynamic, and is made up of a mixture of policies and practices that have often changed considerably over recent years. These policies and practices are subject to varying pressures both from within and from outside each country, and these can be seen as constantly battling it out philosophically and politically. These pressures include obligations under international treaties, the views of professionals, and moral panics played out in the media and by politicians.

Consequently, any 'system' of youth justice is really an accumulation of policies and practices developed historically against this background of competing pressures. Nevertheless it is possible, by looking internationally, to discern common 'models' of approaches to youth justice. But these are ideal types that at best describe the accumulation of policies that happen to have developed in one country, and at worst simply describe a philosophical leaning of one side of the policy debate in that country. The fundamental models of welfare and justice were discussed in this report, as well as briefly presenting a number of variants that have developed in recent years. However, it is unusual for a country to institute a completely new system based on these models. Perhaps it is more useful, when examining the transfer of policies and practice, to consider key principles that have been followed at different points by different jurisdictions. Although almost all countries have signed up to the UN Convention on the Rights of the Child 1989, which specifies that the primary concern should always be the 'best interests of the child', it was noted that other pressures have meant countries adopting a whole range of other principles. These were listed as including the principle of 'preventing offending', which is influential in England and Wales; the protectivist *parens patriae*; of treating young people who offend as children in trouble who require welfare; of minimal intervention; of protection of society; and of education and resocialisation.

The rest of the report explored the ways in which these pressures and principles have been played out in relation to specific areas of policy and practice. The most basic way in which countries reflect these are in the age thresholds that are put on young people entering and leaving the youth justice system. The report showed a great deal of variety in the age of criminal responsibility and the age of criminal majority across countries. It showed England and Wales as having a relatively low age of criminal responsibility, but a typical age of criminal majority for most children. However, the report also noted a number of policies and practices across countries that implicitly raise and lower these thresholds, to protect or expose young people to different levels of intervention earlier or later than the headline ages would suggest. Some of these affect this country to an extent, including some early intervention practices, anti-social behaviour laws, restrictions on disposals, transfer to adult courts, extensions to juvenile processes and disposals; and some which do not, including *doli incapax* and instituting more child-focused welfare proceedings rather than court proceedings.

In terms of early intervention, the report noted that many of the initiatives on the crime reduction agenda in England and Wales would simply be considered part of social support elsewhere, without the same focus on prevention. The approach in this country (and increasingly others) is influenced by the 'at risk of offending' paradigm, but more welfarist alternative frameworks around social inclusion and children's rights also exist. The report considered a variety of innovative early-intervention initiatives focusing on families, schools and individuals. Many of these focused on developing social skills, conflict resolution, positive relationships and access to intensive support – often through providing adequate leisure facilities and activities for young people. The converse side of focusing on sub-criminal behaviour was also noted – the widespread use of various quasi-judicial authoritarian controls of children in public spaces, comparable with ASBOs in England and Wales.

Within youth justice processes, this report considered areas of development and divergence with regard to investigations and decision-making. The former included several variations in police practice, including specialist police training, as well as issues of interrogations, powers given to police including stop and search procedures, as well as looking at the time that investigations took. In relation to the latter, the report focused on the competing demands of formal due process in youth hearings, including issues of advocacy, and the push for diversion from such proceedings, mainly to avoid labelling. Although some countries come down on the side of the former and expressly forbid diversion, diversion is a key element to youth justice around the world, commonly conducted by police as well as a number of other gatekeepers. In some countries, this means the avoidance of formal proceedings for almost all young people through adopting alternative informal hearings.

In terms of case outcomes, the report focused on the three areas of restorative justice, other community penalties and custody. The growth in restorative justice was noted as one of the strongest trends in youth justice in recent years, with the widespread adoption of mediation and reparation for case outcomes (although maybe more in policy than in practice in some countries). Again, there was considerable variation in the ways that these were implemented, at the point in the case proceedings at which the outcomes may occur and who organised them. Much of these differences were due to the purpose which the restorative justice was meant to serve in these countries, which again came back to the competing pressures and approaches. The report briefly considered a number of distinctive, controversial, innovative or fast-growing disposals around the world, including variations of outcomes stressing the responsibility of parents, public censure, social welfare, use of education, supervision and social control, and community-based institutions.

The use of custody also showed great divergence across jurisdictions, both in the extent of use and how it is used. The high use of custody in England and Wales contrasted to most other countries, and ways in which other countries have lowered their rates were considered, including adopting the principle of last resort and compulsorily offering a suspended prison sentence. There is a range of different custodial regimes operating, including those that focus on education, and the often tried but rarely retained solution of 'short, sharp, shock' sentences, such as boot camps. The exploration of custody ended by considering some problems and differences in relating to discipline in custody, the use of remand prisoners and human rights issues in relation to conditions in custody.

Overall, the picture is of a shared set of pressures producing divergent solutions to common problems. But patterns in all of these are discernable. In addition, the divergence offers

several alternative ways of facing these problems for any one country to consider, subject to the problems of comparative analysis and policy transfer discussed earlier in the report. Fundamentally, however, it can be seen that each of these policy solutions, for policymakers in England and Wales and beyond, can still be considered in the framework of welfarism and justice. In relation to youth justice, this is arguably a question of the extent to which 'young offenders' are treated as 'young' and needing special protection or interventions, 'offenders' who need to be held accountable, or the mixture that results from the competing pressures on policymakers.

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