

Introduction

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Juvenile courts are both a very recent legal invention and an almost ubiquitous presence in modern nations. The first juvenile court was established by statute in Illinois in 1899 and quickly spread to other American states and to a number of other nations. Both the jurisdictional features and policy ambitions of the Illinois juvenile court were widely emulated in the systems that were established worldwide in the first half of the 20th century. And there is one important feature of every juvenile court's delinquency jurisdiction that complicates the task of creating a comparative law of juvenile courts. When juvenile courts are introduced in a legal system, they remove a segment of young offenders that had been traditionally the responsibility of criminal courts. So every juvenile court becomes part of a dual legal system of responding to criminal offenses—a juvenile court for young offenders and a criminal court for adult offenders. One critical dimension of every nation's juvenile court system is the differences in outcome, process, and philosophy between juvenile and criminal courts. This means that the comparative law of juvenile justice is best regarded as a process of double comparison in which juvenile justice systems are compared both to the juvenile systems of other places and to the criminal courts that they coexist with.

The Usual Suspects

This book has three complementary ambitions. The first goal of the volume is to substantially increase both the number of juvenile justice systems that are profiled in English-language scholarship and the variety of geographical, political, and religious contexts in which juvenile courts have been observed. The modest efforts to date at comparative

analysis of juvenile justice have focused on systems found in Western developed nations. There is a substantial literature on a relatively small sample of nations—Canada, England, France, Germany (Tonry and Doob 2004) and (for geographic diversity) eastern Europe (Dünkel and Drenkhahn 2003; Dünkel, Grzywa, Horsfield, and Pruin 2011; Junger-Tas and Decker 2006) and Japan (Muncie and Goldson 2006). But the sample of nations where juvenile justice has been profiled is both small and unrepresentative (Hartjen 2008; Jensen and Jepsen 2006). These are the rich nations, mostly Western and tending toward democracy and political stability.

Our first aim is to create in these pages a much wider world map of juvenile justice systems, one that comes closer to approximating the near universality of juvenile justice in the modern world. We think that profiles of juvenile courts in places such as India, the People's Republic of China, Latin America, and the Middle East can provide readers with a much more representative sample of current systems and a better test of whether the features found in Canada and western Europe are more widely shared and thus qualify as essential characteristics of juvenile justice or are simply a variant found in Western developed democracies. The individual chapters on these understudied systems will be useful in two ways: (1) individually, as an introduction to the specific national systems discussed, and (2) collectively, as a wider sample of the variety of juvenile justice systems now functioning. How many different types of juvenile systems currently exist, and how do they differ? What characteristics other than the common label unify juvenile systems in different regions and in different forms of government?

A second ambition of this study is to seek knowledge of the operations of juvenile justice using the double-comparison perspective that seeks to explore the special features of a nation's juvenile system by comparing it to the operations and ideology of the criminal justice system that it adjoins. So we want to find the special character of a specific juvenile system by comparison with its domestic criminal justice sibling as well as with the juvenile justice systems of other nations. This type of two-dimensional mapping can create a much more complicated location of particular systems but one that provides important clues about why juvenile systems may differ from one another and also why there may be characteristic differences in emphasis and operation among

juvenile systems in many different national environments and the criminal systems next door to them. In this context, we have included in our case studies not only politically stable countries but also countries that have undergone major political transitions, to explore whether any relevant differences exist between these two types of political situations. We hope a double-comparison perspective produces important hypotheses in this study even if the data we collect will fall far short of supplying definitive answers.

And there is one central issue we hope a broad survey of varieties of juvenile justice in the modern world can help us consider, and that is whether there is a core contrast between juvenile courts around the world and the criminal justice systems that they adjoin. We know that a dual system of justice is a near universal in modern nations, with almost only the Scandinavian nations operating without distinctive juvenile courts. But why is this? In theory, a single institution could coordinate a variety of different policies for offenders of all ages, but no modern nation has chosen to do this. (The Scandinavians give responsibility for offenders under 15 to social service systems and only process older youth through criminal courts, as discussed in chapter 2.) What are the reasons that have made two separate courts for the same behaviors the nearly universal choice of modern governments?

Fashion or Function?

Not all widely adopted institutional structures have clear functional advantages over alternative arrangements. Sometimes labels and organizations are widely adopted simply because they are in fashion. And the very good press that juvenile courts and the mission of rehabilitation of children received all through the 20th century might have made the label appealing without its carrying any distinctive functional arrangements or ambitions. Under such circumstances, the actual functions of a juvenile court might vary widely from system to system, and the operating priorities of a juvenile system adopted as a fashion statement should closely resemble the priorities found in the same nation's criminal courts.

But if there are instead significant differences between juvenile and criminal court principles and priorities and if the features that

distinguish juvenile courts in Argentina and South Korea are similar, then careful study of a wide variety of juvenile systems can help us identify what deep structural priorities and strategies define juvenile courts. In this sense, the attempt to broaden the sample of systems studied in this book and to focus on the distinction between juvenile and criminal courts is a down payment on an ambitious empirical jurisprudence.

A Map of the Book

The studies in this volume are divided into four sections and ten chapters. Part 1 covers the familiar territory of juvenile justice in developed western Europe, but the two chapters in this part cover their topics in unconventional ways. In chapter 1, Frieder Dünkel provides a summary of major features in western European systems with special attention to trends over time. Are there major differences in the operating systems on the continent? Have there been major changes in some or many systems? In chapter 2, Tapio Lappi-Seppälä examines the major features of Scandinavian courts and social agencies that are a special case in modern legal systems. This is juvenile justice without juvenile courts. How does this system differ from the outcomes and criteria in nations with juvenile courts? Could other countries produce outcomes similar to Scandinavia without special courts for young offenders?

Part 2 examines juvenile justice in regions and states where little has been reported in English-language literature. In chapter 3, Weijian Gao narrates the history and current status of juvenile courts in the People's Republic of China. In chapter 4, Ved Kumari provides a portrait of juvenile courts in India. In chapter 5, Mary Beloff and Máximo Langer report on Latin America. In chapter 6, Lena Salaymeh reports on juvenile courts in the Muslim-majority nations of the Middle East and North Africa.

Part 3 concerns three nations where major political changes occurred in the last third of the 20th century. In chapter 7, Barbara Stańdo-Kawecka provides an extensive history of juvenile justice in Poland and traces the apparent impact of the country's transition from socialist satellite that happened in 1989. In chapter 8, Ann Skelton traces the ideological and operational impact of the transition from apartheid to democratic rule in South African juvenile courts. In chapter 9, Jae-Joon

Chung contrasts the impact of legislative change in Japan with the non-legislative shifts that occurred in South Korea after a political transition from long-term governance by right-wing political parties to a decade of left-leaning presidential leadership.

In part 4, a concluding chapter surveys the wide variety of systems and trends that this volume has collected to search for common themes in the global portfolios of juvenile courts and correctional facilities. While there are a large number of variations in juvenile systems, there are important overarching similarities among juvenile courts. The passive virtue at the center of juvenile courts is the effort to minimize the use of secure confinement, rather than to interrupt the process of juveniles' maturation in community settings. This is a strategic adjustment to the demands for penal confinement that goes beyond the boundaries of diminished responsibility and requires a separate institution to protect it.

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