Balancing Punitive and Rehabilitative Approaches to Juvenile Justice

An Investigation into the Common Mechanisms used by Countries to Prosecute Young Offenders as Adults

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This presentation is based on the report titled, *Balancing Punitive and Rehabilitative Approaches to Juvenile Justice*, prepared by Kirsti Wright, Mia Roundtree, Emily Rich and Adam Muddle, senior law students from the Macquarie University’s Law Department. The report provides insight and understanding on different approaches to juvenile justice in 15 countries, particularly in the light of international standards, increasing use of ‘waivers’ to try juveniles as adults and the use of psychological assessments.

It is part of the LAWS552 PACE International Remote Internships Programme carried out through partnership between the Macquarie University in Sydney, Australia and HAQ: Centre for Child Rights, an NGO based in New Delhi, India.

The project was carried out under supervision of Debra Ronan (PACE Supervisor at Macquarie University) and Bharti Ali (Co-Founder & Executive Director at HAQ).
What we will discuss

1. Brief Overview
2. What drives juvenile crime?
3. Theory: Approaches to juvenile justice
4. International Standards
5. ‘Populist Politics’
6. Juvenile Waiver overview
7. Psychological Assessment overview
8. Welfare Approach
   ○ Canada
9. Justice Approach
   ○ Saudi Arabia
10. Hybrid Approach
    ○ Belgium and USA
9. Recommendations / Further Research
1. An understanding of the common mechanisms used by countries to prosecute young offenders as adults i.e. juvenile waivers.

1. An understanding of how psychological assessments are used to determine capacity and criminal responsibility.

1. Analysing how these two focus areas (theory) are implemented in legal systems across the globe (in practice).
What Drives Juvenile Crime?

Causes of juvenile crime

Socioeconomic factors

Psychological Deficits
### Different Approaches to Juvenile Justice

**Three different models**

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<tr>
<td>• Parens patriae</td>
<td>• Punitiveness</td>
<td>• Combination of approaches from both the welfare and justice models</td>
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<td>• Child protection</td>
<td>• Incapacitation</td>
<td>• E.g. High age of criminal responsibility + juvenile waiver (Belgium)</td>
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<td>• Education</td>
<td>• Punishment</td>
<td>• E.g. Educational reforms + wide judicial discretion when sentencing (Malaysia)</td>
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<td>• Rehabilitation</td>
<td>• Retribution</td>
<td>• E.g. Ratification of international instruments + cultural and religious principles</td>
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<td>• Restorative justice</td>
<td>• Deterrence</td>
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<td>• Best interests of child</td>
<td>• Victim support</td>
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<td>• Judicial waiver</td>
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Populist Politics, Moral Panic and Sensationalist Media Reporting
‘Every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice’.

- Participation by juvenile
- Best - Interests of juvenile
- Community Safety
- Detention as a last resort
- Shortest appropriate time in cases of detention
- Rehabilitation
- Cruel, inhuman or degrading
- Proportionality
- Are a range of sentencing options available?
- Is the sentence free from arbitrariness?
Juvenile Waiver

Common mechanism by which to try juveniles as adults

Factors considered:
- Risk to the community
- Severity of the offence
- Maturity and character of the juvenile
- Legal history
- Nature of the offence

Opportunity for the use of psych assessments (welfare considerations)

No psych assessments (justice considerations)
Psychological Assessments

- **Screening / triage on entering justice system**
  - Used to triage or ‘sort’ juveniles to appropriate testing
  - The Massachusetts Youth Screening Instrument-Version 2 (MAYSI-2)
  - Problem-Oriented Screening Instrument for Teenagers (POSIT), and the Child and Adolescent Functional Assessment (CAFAS)

- **Assessments & capacity**
  - Risk assessments using Risk, Sophistication-Maturity, and Treatment Amenability instrument or the Structured Assessment of Violence Risk in Youth (SAVRY)
  - Needs to evaluate dynamic MH conditions
  - Mental health assessments – looking for underlying mental health disorders
  - Youth Level of Service/Case Management Inventory

- **General psychological testing**
  - Personality, i.e. Minnesota Multiphasic Personality Inventory
  - Behavioural, i.e. Revised Behaviour Problem Checklist
  - General Intelligence, i.e. Wechsler Intelligence Scale for Children
  - Emotional functioning, i.e. Hare Psychopathy Checklist: Youth Version

- **Post adjudication mechanisms**
  - Used to triage or ‘sort’ juveniles to appropriate testing
  - The Massachusetts Youth Screening Instrument-Version 2 (MAYSI-2)
  - Problem-Oriented Screening Instrument for Teenagers (POSIT), and the Child and Adolescent Functional Assessment (CAFAS)
Welfare Model

Approach 1

Welfare Model

- Reconciliation
- Education
- Rehabilitation

France

Italy

Belgium
France

CHILD WELFARE
Justice Model

Approach 2
Saudi Arabia

JUSTICE MODEL
Hybrid Approach

Hybrid model (welfare + justice)
China

HYBRID MODEL

Maoism and Confucianism

Rehabilitation

Reconciliation

International Treaties and Conventions

Juvenile Waiver

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Further Research

  – Excellent resource on psychological evaluations, social inquiries, risk assessment, training professionals to perform psych evaluations etc. in the U.S.


  – Two excellent and recent resources on juvenile transfer in Belgium and the Netherlands

  – 42 item list to survey youth in Canada, including scientific and psychological assessments