



# What Is a Juvenile? A Cross-National Comparison of Youth Justice Systems

Youth Justice  
2018, Vol. 18(2) 111–130  
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DOI: 10.1177/1473225418779850  
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## Abstract

In this article, the authors analyze cross-national variations in how the category of ‘juvenile’ is defined in criminal law and policy. The authors purposively selected the cases of Argentina, Belize, England/Wales, and Finland to maximize differences in the boundaries of the Minimum Age of Criminal Responsibility and the Age of Criminal Majority. Legal analysis identified two key factors: (a) the presence or absence of a distinct juvenile justice system, and (b) the stability (or fluctuation) of youth justice laws and age boundaries. These axes of difference and their various configurations across cases have broader implications for advancing children’s rights.

## Keywords

children’s rights, criminal responsibility, cross-national, juvenile law, youth justice

## Introduction

The legal definition of ‘juvenile’ is neither fixed nor universal in criminal justice systems around the globe. Variations in the legal construction of the age-bounded status of a ‘juvenile’ in regard to delinquency and criminality reflect differences in historical, political, ideological, and economic developments that drive the evolution of youth justice models and institutional structures. The establishment of a separate juvenile court, for example, often relies on and produces views that youth are less culpable than adults, more capable of change and rehabilitation, and more deserving of protection from the harsh and punitive conditions of the adult criminal justice system (Abrams, 2013). At the same time, separate juvenile systems often criminalize behaviors that are not otherwise penalized among adults (Tannenhaus, 2004). The laws and policies that establish age thresholds for juvenile court jurisdiction or mitigated sanctions based on an individual’s chronological

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age or presumed maturity are significant to comparative studies of youth justice systems worldwide (Wynterdyk, 2015).

Two central concepts lend themselves to a cross-national investigation of youth justice systems and their associated age boundaries. The Minimum Age of Criminal Responsibility (MACR) refers to the youngest age in which a person may be prosecuted for a crime, and in the case of a system with a designated juvenile court, it also refers to the minimum age of its jurisdiction. The Age of Criminal Majority (ACM) refers to the age at which a person becomes subject to adult criminal charges and penalties with the full force of the law (Hazel, 2008). In some countries or municipalities, the law may not clearly specify an MACR or ACM, which may leave these parameters more malleable to political interpretation or judicial discretion. In other nation-states, these age boundaries are clearly codified in the law, procedurally established, and routinely enforced. Prior studies have described the worldwide variation in the MACR and ACM (Cipriani, 2009; Hazel, 2008). However, scant research probed how the category of 'juvenile' is crafted in law and policy and what these boundaries mean for children's rights.

In this article, the authors describe and analyze the legal construction of the category of the 'juvenile' in four diverse justice systems. Throughout the article, we use the term 'juvenile' to refer to the status above the MACR and below the ACM, which varies widely across nation-states and sometimes within them. In this case study, we purposively selected the nations of Argentina, Belize, England/Wales, and Finland to maximize differences in the legally documented MACR and ACM. In doing so, we illustrate how these diverse nations codify the concept of a juvenile into the law and elucidate the dynamic and critical nature of these distinctions for children's rights. Our main research questions are as follows: (a) How is the category of the 'juvenile' defined and distinguished in four diverse youth justice systems? (b) What are the implications of these various approaches to youth justice for children's rights?

## **Background on the MACR and ACM**

From a global purview, there is wide variation in how concepts of chronological age, criminal responsibility and their intersections have influenced juvenile and criminal justice law and policy. The emergence of the juvenile court in the United States and Europe at the turn of the 20th century is arguably one of the most significant contemporary developments tethering an age-based status to a separate justice system. The juvenile court signaled a merging and expansion of state's investments in child welfare and crime control (Tannenhaus, 2004), and the model proliferated internationally over the past century. However, many nations never adopted the juvenile court or abandoned the model, instead embedding age-related classification within criminal law, child welfare policies, and administrative practices, including judicial discretion based on age or presumed maturity. Coupled with presumed maturity and capacity to commit an offense, chronological 'age' can also influence how nation-states define 'youth' in contrast to adults or children.

Evolving international norms and human rights decrees have influenced how age is conceptualized as a key boundary in youth justice around the globe. The International Covenant on Civil and Political Rights (ICCPR) articulated the right of 'juvenile persons'

to legal proceedings that ‘take account of their age and the desirability of promoting their rehabilitation’ (The United Nations (UN), 1966, Article 14.4). While the ICCPR does not define ‘juvenile persons’ by age, the language has been interpreted broadly as requiring states to set both a lower bound (MACR) and an upper bound (ACM) of juvenile justice jurisdiction (Cipriani, 2009).

In 1985, the ‘Beijing Rules’ for the administration of juvenile justice, presented at the UN General Assembly, recognized the importance of setting an age of criminal responsibility concordant with children’s ‘emotional, developmental, and cognitive’ maturity. At the same time, they acknowledged variations and cultural parameters between nations around who is considered under the jurisdiction of the juvenile court, stating,

The age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of ‘juvenile’, ranging from 7 years to 18 years or above. (The UN, 1985: x)

In 1989, the UN Convention on the Rights of the Child (CRC) recognized a right for every child who is alleged or accused of a crime to be ‘treated in a manner consistent with the promotion of the child’s sense of dignity and worth’ (UN General Assembly, 1989, Article 40.1). The CRC defined a ‘child’ (Article 1) as ‘every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier’ (United Nations Children’s Fund (UNICEF), 2017: 2). To date, all 196 UN members with the exception of the United States have ratified the CRC. Nation-state signatories periodically appear before Committee to report on their progress in implementation of these standards, a process that is intended to lead to the protection of children’s rights (Cipriani, 2009). Despite this explicit attempt to hold nations to a set of standards, critics have noted that violations of the CRC with regard to juvenile justice are not subject to sanction (Goldson and Muncie, 2012).

## MACR

Under Article 40 of the CRC, signatory states are required to establish or maintain a ‘minimum age below which children shall be presumed not to have the capacity to infringe the penal law’. While the original text did not specify a chronological age for the MACR, the Committee on the Rights of the Child indicated in 2008 in its General Comment No. 10 that an MACR below age 12 would be unacceptable by international standards. It further cautioned that if a higher minimum age has already been established, states should not lower their MACR to age 12. In the first major international study of the MACR, Cipriani (2009) reports that 40 countries had established or increased their MACR following the adoption of the CRC. However, advocacy groups also report that several nations, including Denmark, France, and Brazil, actually lowered their MACR following General Comment No. 10 (CRIN, 2017b). In light of these developments, the Committee on the Rights of the Child is currently revising its General Comment No. 10 and considering a recommendation to a higher age of criminal responsibility.

The MACR has long been subject to questions and shifts. Political factors, sensationalized crimes, developments in neuroscience, and economic factors sway evidence about

the chronological age in which children can be deemed to have the capacity to formulate intent to act or to understand and meaningfully participate in court proceedings (Weijers and Grisso, 2009). Human rights advocates and scholars have argued that adjudicating children (often considered to be under 12 years of age) in a court process amounts to the criminalization of poverty, in that the issues presented by children who engage in criminalized activity are better handled by social welfare programs (Butts and Snyder, 2008). Those arguing from a public safety perspective point to empirical evidence suggesting that the adjudication of younger adolescents or children tends to exacerbate, rather than abate future involvement in the criminal justice system crime (Petrosino et al., 2013).

In contrast, others have argued that future criminal behavior is predicted by early onset of delinquency, and thus, a lower MACR can promote earlier intervention through child welfare, mental health, or other court services (e.g. Farrington, 1992; Loeber et al., 2003). Following this logic, some countries utilize a secondary, lower tier MACR that applies only to more serious crimes. The UN Committee on the Rights of the Child has indicated that secondary classifications are not compatible with the CRC (Cipriani, 2009). Also in contravention to the international standards within the CRC, youth justice systems may maintain the legal principle of *doli incapax*, the presumption of incapacity for persons below a certain age threshold that can be rebutted with prosecutorial evidence of their sufficient maturity or of their understanding of criminal penalties. In such systems, an assessment of individual maturity can override the presumption that a young person is unable to form intent to commit a crime or understand criminal proceedings.

## ACM

There is considerable international consensus that the minimum standard for the ACM is age 18 (Cipriani, 2009). While 18 is the most common age for automatically processing a case in an adult criminal justice system, ACM-related policies and practices are diverse, nuanced, and complex, illuminating the permeability of the standard (Hazel, 2008). In national laws, the ACM may be defined by an upper age limit for juvenile court jurisdiction, a maximum age for special protections or considerations as a young person within the adult system, or a combination of each. In nations without a designated juvenile justice system, the MACR and ACM may be of the same age (Cipriani, 2009). Moreover, in many justice systems around the globe, criminal laws and procedures allow for persons younger than the ACM to be indicted as an adult, to face trial in adult courts, and/or to be sentenced as an adult, including confinement in adult prisons, life sentences, and the death penalty (Hazel, 2008). These procedures, often conditioned on certain types of crimes or repeat offenses, introduce significant subjectivity and have also been interpreted as contravening international human rights standards (Cipriani, 2009).

The United States, for example, has been emblematic of efforts to lower the ACM with some states (until very recently) allowing persons 16 and older to be automatically tried in the adult system and most states having set standards to transfer youth as young as 12 to the adult system under a given set of circumstances. Conversely, Scandinavian countries and others around the globe have extended protections for young persons beyond the ACM, such as provisions that allow adult courts to waive persons back into juvenile courts or mitigate penalties for 'young adults' (Hazel, 2008).

**Table 1.** Initial organizing framework.

MACR (row) ACM (column)	Low	High
Low	Belize MACR – 9 years ACM – 16/18 years	Argentina MACR – 16 years ACM – 16 years
High	England/Wales MACR – 10 years ACM – 18 years	Finland MACR – 15 years ACM – 21 years

Sources: Hazel (2008) and CRIN (2017c).

MACR: minimum age of criminal responsibility; ACM: age of criminal majority.

Taken together, these laws and policies reflect and drive a broader definition of what constitutes a ‘juvenile’ (i.e. behavior, maturity, or chronological age?) and more critically, discourses of criminal responsibility for children and youth. In this article, we examine the logics surrounding the category of the juvenile in four nation-states. The literature to date on this topic has been largely descriptive in regard to age boundaries of the juvenile court. Yet the right for youth to be free from prosecution of crimes related to immaturity or development, to have due process when prosecuted in court, and to have a system of penalties and institutions that recognize the unique needs of youth are important components of international human rights standards that warrant an analytical approach. This study conducts a deeper analysis of law and policy in order to address these central questions from a comparative standpoint.

## Method

This article is based on a multiple case study of four countries: Argentina, Belize, England/Wales, and Finland. These purposively selected cases heed the advice of Seawright and Gerring (2008), who recommend that case selection should not be random and to select cases that purposively maximize variation. Essentially, the four countries were selected ‘to maximize what can be learned in the period of time available for study’ (Tellis, 1997: 2) and to enable the exploration of differences within and between cases (Yin, 2003). We do not intend to directly compare or evaluate these countries against a universal standard; rather, we analyze how the age boundaries surrounding youth justice are defined and implemented according to evolving laws and cultural values.

In considering which countries to include in this study, the authors began by considering variations (low and high) in the combinations of MACR and ACM in a 2 × 2 case study format. To do so, we examined data from Hazel’s (2008) global report as well as the Criminal Children’s Rights International Network website (CRIN, 2017c). These were the official sources of information that guided our purposive case study selection (see Table 1). The initial model investigated the four countries as follows: Belize with a low MACR and low ACM, Argentina with a high MACR and low ACM, England with a low MACR and a standard but relatively higher ACM compared to the United States (where the ACM is left up to the states), and Finland with a high MACR and high ACM (see Table 1). While there were potentially other cases to choose from in this 2 × 2 design, we selected cases

from two major geographic areas (Europe and then Central/South America) that were information-rich, feasible to study, and where law and policy were accessible to the study team in language and through available sources.

### *Data collection and review*

Data were drawn from an extensive review of scholarly articles covering the legislative history and practices pertaining to youth justice in each country, reports from global and regional organizations and agencies such as UNICEF, and consultation with criminal justice and legal experts in each country. Facts and figures included in this study were obtained from world source books, government agency websites, and official reports. To aid in the organization of the array of data and documentation, the authors thoroughly documented a timeline of the legislative history of each country to highlight major policy changes impacting how juveniles are processed when they come into conflict with the law. If a point of clarification was needed due to conflicting information, authors consulted an expert in that country and cited this information as 'personal communication' in order to protect the confidentiality of these sources.

### *Brief country comparisons*

Argentina, Belize, England/Wales, and Finland differ across a wide range of categories including, but not limited to, their size, population profiles, language, culture, economic development, legal systems, and crime and incarceration rates (see Table 2). In any comparative case study, it is important to take stock of context (Yin, 2003). Poverty, lack of access to education, urbanization, global migration patterns, and dense youth populations are factors that may drive crime and incarceration practices (Newman, 2010; Sudbury, 2014) and may also shape approaches to youth justice. The demographic factors presented here thus serve as a starting point for the presentation of our four cases, but do not account for nuances in culture, values, and other aspects of a society that shape approaches to youth justice and children's rights.

The United Kingdom is one of the most populous nations in Europe (61 million), with England/Wales equating to 57.9 million (Office of National Statistics, 2015). The economy is robust, with an unemployment rate of just 5.4 per cent across the United Kingdom and a high level of prosperity (Central Intelligence Agency (CIA), 2017). Finland has a smaller population (at 5.5 million) but also has a thriving economy. A member of the European Union since 1995, Finland exemplifies a modern welfare state with a high per capita income of US\$41,100 and virtually no households falling below the poverty line (CIA, 2017).

Argentina is one of the geographically largest and wealthiest countries in South America. The country's population of 44 million is heavily concentrated in urban areas, with one-third of its population residing in the capital of Buenos Aires. Argentina is a similar size as England/Wales in regard to total population, yet is a much larger country geographically. Although a wealthy country relative to the South America region, the gross domestic product (GDP) per capita of US\$22,000 is far lower than the United

**Table 2.** Country profiles (2015).

Country	Total population	GDP (in US\$)	Youth population (ages 15–24)	Prison population (total)	Incarceration (per 100,000)	Youth incarceration (total) (<18)
Argentina	43.9 million	972 billion	15.4%	69,060	160	1375
Belize	0.35 million	3.1 billion	20.7%	1,545	449	193
England/Wales	57.9 million	2680 billion	12.2% <sup>a</sup>	85,843	148	1834
Finland	5.5 million	225 billion	11.6%	3105	57	5

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

GDP: gross domestic product.

<sup>a</sup>This figure is based on the United Kingdom as a whole.

Kingdom at US\$41,200 per capita (CIA, 2017). Belize, fully independent from the United Kingdom since 1981, is the smallest and least developed country of the four studied, with just 354,000 residents. It has a very high poverty rate with 41 per cent living below the poverty line (compared to 30% in Argentina and 17% in the United Kingdom) and a GDP per capita of US\$8,400. Belize has one of the highest homicide rates in the world, high rates of unemployment, a significant foreign debt burden, and economic entanglements in the Western Hemisphere drug trade (Peirce and Veyrat-Pontet, 2013).

Criminal justice statistics also reveal some information relevant to this study. Table 1 shows that Argentina and England/Wales are somewhat comparable in their rates of youth incarceration; Finland's rate of incarceration is significantly lower than all three other countries, while Belize's is far higher. Although a very small country, Belize has the highest rate of overall incarceration with an imprisonment rate of 449 per 100,000 citizens (Walmsley, 2015). Also of note is Belize's relatively large youth population, with almost 21 per cent of the entire population comprising those aged 15–24 (CIA, 2017). This may contribute to Belize's high incarceration rates, as that age group includes the peak age of offending and arrests (Ulmer and Steffensmeier, 2014). Finally, despite a sizable youth population, it is of note that Argentina's rate of incarceration is relatively low compared to South America more generally (Table 2; Walmsley, 2015).

## Findings

In this section, we delve into the logics of youth justice in each country as formed by policy, legal history, government reports, and consultation with experts. We start with understanding the MACR (often delineating childhood from 'youth' or 'adolescence'), explaining the history and legal boundaries of the 'juvenile' justice system, and following briefly with how 'juveniles' are defined in relation to 'young adults' and/or adults. In each case, we also note major changes in the law/policy and, as applicable, the origins of these significant changes. As mentioned, we selected these cases based on the lower and upper bounds of the MACR and ACM for maximum variation as indicated in reliable sources (i.e. CRIN, 2017c). Even with careful case selection, the findings reveal that the age boundaries surrounding juvenile justice are permeable and complicated.

### *Argentina: Protecting childhood without a juvenile justice system*

The Argentine legal system is based on civil law with a federalist government of 23 provinces and one autonomous city of Buenos Aires. For this case study, the city of Buenos Aires served as the main reference point as it contains the largest number of youth in custody in the Country (Mendez, 2016).

*Age of criminal responsibility.* Article 1 of the 1980 Régimen Penal de la Minoridad (Law 22.278) defines a ‘child’ as persons under the age of 16 and states that children are presumed to lack the capacity to form criminal intent. The MACR of 16 is high compared to other countries in the region (Hazel, 2008). While persons under age 16 cannot be charged with a crime, Article 1 indicates that if the child is ‘abandoned, lacking assistance in material or moral danger, or has behavioral problems’, that child may be confined to a youth institution. The legal framework for protective confinement is based on the doctrine of *situación irregular*, which became an early 20<sup>th</sup>-century model policy for many Latin American countries and allows for judicial discretion in ordering institutional placements (Cipriani, 2009; Mendez, 2016).

In efforts to bring national law into alignment with Argentina’s commitment to the CRC, the 2005 Law on the Integral Protection of the Child (Law 26.601) expressly prohibited the placement, internment, or detention of a child in a locked institution ‘on grounds of educational, protective, punitive, tutelary, security or any other purposes’ (Mendez, 2016: 1). Yet human rights advocates have critiqued the policy for failing to provide a distinctive legal framework to respond to children accused of crimes, as this remains a justification for detention, at times for indeterminate periods (Defence for Children International, 2007; Mendez, 2016). Advocates have further argued that the ongoing use of judicial discretion in ordering confinement results in the deprivation of liberty without due process and violates Argentina’s obligations as a signatory to the CRC. Former member of the Buenos Aires Supreme Court Dr Raúl Zaffaroni has argued for lowering the MACR to age 14 to help ensure transparency and constitutional rights to a fair trial (Hill, 2011), while others have argued for a lower MACR to ensure early intervention and deterrence (O’Boyle, 2014). Recent efforts to lower the MACR to age 14 included a draft bill in 2009 (O’Boyle, 2014); however, no new legislation on the MACR has passed to date.

*Juvenile justice.* Argentina does not maintain a separate juvenile court for those over the MACR but under the age of legal adulthood, currently defined as age 18. In this system, 16- and 17-year-olds who are accused of crimes face similar charges as adults in criminal courts, albeit with some special considerations for age (Defence for Children International, 2007; Ministry of Justice and Human Rights of Argentina and UNICEF, 2006). These conditions construct the ‘juvenile’ in criminal law as a narrow category ‘in between’ childhood and adulthood.

Despite the absence of a designated juvenile court, minors are protected from the full force of adult criminal sanctioning. For example, Article 1 of Law 22.278 states that persons who are under 18 cannot be prosecuted for crimes of private action nor can they be charged with minor crimes subject to prison sentences under 2 years, fines, or

incapacitation. A federal court ruling deemed life sentences for minors unconstitutional, yet the criminal code has not been formally amended to reflect this ruling (O'Boyle, 2014). The Children's Rights International Network reports that an Argentinian judge recently handed down life sentences to five young men for crimes committed when they were still juveniles. The case added to preexisting uncertainties over whether or not those under age 18 should face the full force of the law (CRIN, 2017a).

As further evidence of some separation between the categories of 'juvenile' and 'adult' under federal rules, a minor cannot be incarcerated in adult prisons. According to UNICEF (2015), there are nearly 4000 children and juveniles (ages 17 or under) detained in youth institutions throughout the country, the majority of whom (89.5%) are aged 16 and 17 (UNICEF, 2015: 15). Human rights groups have criticized these institutions for failing to provide distinctive legal framework and for mixing both youth who are accused of or adjudicated for crimes in court and those deemed to be uncontrollable or in 'moral danger' together (Defence for Children International, 2007).

*ACM and young adulthood.* In 2011, Argentina lowered the age of legal adulthood from age 21 to 18, and the ACM in Argentina is likewise 18. Some jurisdictions delineate a category of 'young adults' (ages 18–21) as deserving of special protections or leniency in criminal law. For example, Buenos Aires has established special prison wards to house young adults aged 18–21, which are intended to provide protection from abuse by guards and older inmates in the general prison population (Newman, 2010). Nevertheless, once an individual turns 18, they are subject to the full force of criminal law, including the possibility of life without parole sentences. In sum, in lowering the age of adulthood to 18 and keeping the MACR at 16, Argentina has a narrow category of the 'juvenile' that appears to be more closely mirror adult proceedings with some exceptions for age and maturity in sentencing and institutional care.

### *Finland: An age-gradated view of culpability and punishment*

The Finnish approach to criminal justice is largely informed by prevailing cultural beliefs that crime in general is a social problem requiring structural reforms rather than punitive action or restrictions of liberty for the individual (Lappi-Seppälä, 2006). This perspective applies broadly to principles of youth justice, as emphasized throughout our discussion of this case.

*Age of criminal responsibility.* The MACR in Finland is age 15 as defined under the 1940 Young Offenders Act and dates back to the 1889 Penal Code of Finland. Despite some political debates, the MACR has remained consistent in Finnish youth justice policy since 1940. Political efforts to lower the MACR emerged from 1997 to 2004 with several pieces of legislation introduced by conservative members of Parliament, but these were ultimately unsuccessful (Harrikari, 2008). Today, all matters related to children under the age of 15 who are found to have engaged in unlawful activities are heard in a municipal child welfare court, even in the case of acts that would otherwise be considered serious or violent crimes if the accused was older. That said, children may be referred to supervised child welfare services or under the discretion child welfare judge, interned to a secure

children's group home or mental health program for an undetermined length of time. Children's homes are run by child welfare agencies, and families are typically offered child welfare or health services (Hart, 2015). Advocates and scholars in Finland have expressed concerns regarding the discretionary powers of child welfare judges to order confinement of children under age 15 without due process protections (Hart, 2015).

*Juvenile justice.* Like Argentina, Finland does not have a separate juvenile court; however, Penal Code, Ch. 3, Section 4(1) defines a special class of young people between the ages of 15 and 17. Depending on the type of crime, cases involving 15- to 17-year-olds may be adjudicated in municipal, child welfare, appellate, or supreme courts. Under Penal Code, Ch. 6. Section 12, judges are authorized to waive criminal proceedings for juveniles altogether.

For cases heard in criminal court, modified sentencing laws are very clear for juveniles. All prison sentences are determinate, and juveniles are subject to only a quarter of an adult sentence with a 10-year maximum sentence for a homicide conviction. Juveniles can be sentenced to confinement in adult prisons, as there are currently no facilities designated specifically for juveniles who are convicted of crimes. Only a handful of juveniles are imprisoned in adult facilities, and according to the law, there must be 'weighty reasons' for this decision (Marttunen, 2008). Between 2005 and 2011, the average number of 15- to 17-year-olds in state custody at any given time was just 6 (Hart, 2015).

As part of an effort to better control delinquency among repeat youth offenders, specific 'juvenile punishment' was introduced as an experiment in seven District Courts in 1997 (Act on Experimenting Juvenile Punishment 1058/1996, Section 1) and expanded to the rest of the country in 2005. This order amounts to a community sanction comparable in severity to conditional imprisonment (similar to probation) for an adult, meaning frequent monitoring and compliance with the terms of probation for 4–12 months in order to break 'the cycle of crime of a young offender and improve his or her social abilities' (Linderborg and Tolovan, 2013: 11). However, the juvenile punishment is used very infrequently, and the most common sanction for a younger person is a fine (RISE, 2015).

*ACM and young adulthood.* 'Young adults' are legally defined in the Criminal Procedures Act, Act 633/2010, and the Imprisonment Act, Ch. 4, Section 8, as individuals between the ages 18 and 20. Similar to adults (aged 21 years or older), cases involving young adults may be heard in a municipal, appellate, or supreme court. However, young adults may be sentenced to only two-thirds of the severity of adult sentences for similar crimes, including prison time. Moreover, sentences for first-time offenses among young adult may be only one-third to one-half the severity of typical adult sentences. While imprisoned, young adults are often (but not always) housed in separate groups or wards, and similar to the juveniles, reentry and parole services offered to young adults are supervised by local Criminal Sanctions Agency (CSA) teams (RISE, 2015).

In sum, Finland ascribes to a distinct, age-gradated view of youth justice that clearly delineates childhood, juvenile, and young adult justice in relation to adult justice. This is explicit in laws concerning the MACR and ACM, sentencing, and facilities and placement. With 'juveniles' constituting the most narrow category and with discretion between

the receiving system (i.e. criminal justice or child welfare) within this category, experts describe juvenile justice in Finland as having ‘one foot in the adult criminal justice system and another foot in the child welfare system’ (Lappi-Seppälä, 2011: 1).

### *Belize: A youth justice system in the making*

Belize became independent from the United Kingdom in 1981 and maintains a legal system based on English Common Law (CIA, 2017). The country became a signatory member of the CRC in 1990 (UNICEF, 2016). Consistent with many postcolonial and developing legal systems, discrepancies and conflicts in written law and policy are not uncommon. Throughout this case, we note areas that lack clarity or where we tried to clarify the law in consultation with experts.

**MACR.** Conflicting statutory language in Belize reflects uncertainty in the legal definition of the MACR. The 1994 Crime Control and Criminal Justice Act includes provisions allowing for the imprisonment of anyone *older than* age 10 (UNICEF, 2000), while the 1999 Criminal Code exempts persons *under* age 9 from criminal prosecution (Section 25(1)). The Criminal Code further states,

Nothing is a crime which is done by a person of nine and under twelve years of age who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct in the matter in respect of which he is accused. (Section 25 (2))

A determination of ‘sufficient maturity’ is a matter of judicial discretion and in some cases includes a psychiatric assessment (UNICEF, 2000). Various sources suggest that children under the age of 12 have not been formally prosecuted in Belize since the ratification of the CRC (American Bar Association, 2010; personal communication, July, 2016).

**Juvenile justice.** Belize operates a distinct juvenile court; however, conflicting statutory language produces uncertainty related to the age parameters of its jurisdiction. Both the Juvenile Offenders Act, Section 2, and the Summary Jurisdiction Act, Section 2, define a child as a person under 14 years of age and a ‘young person’ as at least 14 and under 16 years old. Under Section 3(2) of the Juvenile Offenders Act, the juvenile court may proceed with any case involving persons ‘appearing to be under 16 years old’, as birth identification documents are not always available or reliable in the country. The lower bound of the court’s jurisdiction is not addressed, resulting in a lack of clarity between the lower age bounds in the Crime Control and Criminal Justice Act (age 9), Criminal Code (age 10), and Belize’s obligations under international law as signatory to the CRC (a minimum of age 12).

Section 3(2) of the Juvenile Offenders Act further suggests that the court may also proceed with charges against persons ‘of the age of sixteen years and upward’ if the court determines it would be undesirable to adjourn the case. The Families and Children Act (2000) and the Constitution of Belize further extend special protections to children defined as persons under age 18 (American Bar Association, 2010), and the Certified Institutions Act requires that minors (under 18) be separated from adults (over 18) in custody. Thus, the ACM appears to be age 16 in some laws and 18 in others, and as such, ‘juveniles’ may

be considered broadly between the ages of 9 and 18. A multi-sector Juvenile Justice Reform Committee is currently working to resolve some of these contradictions (personal communication, July, 2016).

Cases involving juveniles may be processed in family court, juvenile court, municipal court, or the Supreme Court of Belize. The court assignment depends on the charge, the availability of judges, and geography. While the Families and Children Act of 2003 stipulates that family courts should hear juvenile cases, these courts do not exist in every region of the country. The Juvenile Code guides sentencing for minors; however, if a person turns age 18 before trial, adult sentencing guidelines may apply (American Bar Association, 2010). There are no juries for cases involving juveniles unless the trial is transferred to the Supreme Court of Belize for a capital offense or when a juvenile is charged as a co-defendant with an adult. In these cases (and only in these cases), the juvenile is provided with free legal defense.

Juveniles who are convicted of a violent crime or are held on remand for a serious charge are housed in the one youth prison in the country, which is located within the larger central prison. In contravention to the CRC, girls are housed in the women's ward alongside adults (Peirce and Veyrat-Pontet, 2013). Juveniles held on remand or convicted of a lesser charge are often sentenced to a secure group home (Peirce and Veyrat-Pontet, 2013). Like in Argentina, the group home population is mixed with youth accused of crimes and those confined through a civil commitment based on 'uncontrollable behavior'. Critics have argued that this practice violates UN human rights standards (American Bar Association, 2010).

*ACM and young adulthood.* The Criminal Code of Belize applies equally to all persons over the age of 16 or 18 (depending on the law) with no special provisions for 'young adults', with the exception that persons under age 18 are not eligible for the death penalty or a life sentence. However, the American Bar Association (2010) found several cases in which persons under 18 were sentenced to life imprisonment and further note that a lack of an explicit requirement to establish proof of age may render juveniles vulnerable to adult sentencing by judicial discretion. A 'National Youth Development Policy' document published by the Ministry of Education, Youth, and Sports and UNICEF (2012: 18) defined 'adolescence' as between ages 10 and 18; however, it also defined an overlapping age category of 'youth' as a person 'between the ages of 15–29'. This more expansive view of young adulthood has not yet been integrated into Belizean approaches to youth justice.

In sum, Belize maintains the intention to have a separate system of youth justice from adults, yet the boundaries around the MACR and ACM are unclear and often conflicting. As a developing and newer country in the wake of violent and extractive colonial rule, a significant proportion of youth do not attend high school and many fewer attend college (Ministry of Education, Youth, and Sports and UNICEF (2012). That, coupled with high rates of violence and poverty, likely allows 'youth' and 'young adults' to be perceived and possibly treated as adults in regard to matters of criminal responsibility and conduct. The response in Belize has more generally emphasized crime control, rather than child protection.

### *England/Wales: Stability alongside public pressures*

Part of the larger United Kingdom, England/Wales shares criminal laws, policies, and institutions that are distinct from Northern Ireland or Scotland. Hence, we refer only to England/Wales in this case.

**MACR.** The MACR in England/Wales was raised from age 7 to age 8 by the Children and Young Persons Act of 1933 and again to age 10 through legislative amendments in 1963 (Blakeman, 2013). Until 1998, the doctrine of *doli incapax* was applied to persons older than age 10 but under age 14 presuming their incapacity to form criminal intent and placing the burden on the state to overcome this presumption. This principle, in place since at least the late 18th century, was abolished with the 1998 Crime and Disorder Act (Delmage, 2013). The Act articulates that prevention is a principal aim of the youth justice system (Blakeman, 2013); however, critics attest the contemporary practices adhere to a relatively punitive and expansive approach of retributive justice that was motivated by the *Bulger* case, in which two 10-year-olds were tried and convicted of the murder of a child in a highly public trial (Goldson, 2013).

Today, the MACR of England/Wales remains at age 10 and cases involving children under age 10 accused of illegal activity are handled in Family Court, not a criminal court. While there is no criminal sanctioning for those under age 10, these cases can result in referrals to local services and may include confinement in a children's home or mental health facility operated by child welfare services (personal communication, April, 2016).

**Juvenile justice.** For the purposes of court jurisdiction in England/Wales, juveniles are defined as persons aged 10 through 17. Charges involving juveniles are heard in youth courts with a specialized magistrate unless the co-defendant is an adult and/or the charge involves a 'grave offence'. In these cases, a juvenile may be tried in the Crown Court (a higher court) and procedures and sentencing guidelines may resemble adult criminal proceedings, including public jury trials and the possibility of long or life sentences (Blakeman, 2013). Section 90 of the Powers of Criminal Courts Sentencing Act 2000 mandates that persons under 18 who are convicted of murder or another offense subject to life imprisonment be detained at 'Her Majesty's Pleasure', meaning an indeterminate sentence. This provision remains at odds with maintaining a separate system of juvenile justice.

The Youth Justice Board (YJB), a division of the larger Ministry of Justice, is the designated government entity to provide probation services and supervision to all justice-involved youth in England/Wales. Youth under age 15 are sentenced to state-run children's homes (Blakeman, 2013). Males aged 15–17 may be detained awaiting trial and sentenced to secure Young Offender Institutions (YOIs), which are similar in structure to adult prisons, but with a lower adult to youth ratio and more educational opportunities. Some of the YOIs also house offenders aged 18–21 on a separate wing of the facility. Females are no longer housed in YOIs and are sent to Secure Training Centres, which are locked group homes run by the Youth Justice Board (YJB).

**ACM and young adulthood.** The Powers of Criminal Courts Sentencing Act 2000 permits judicial discretion in reduced sentencing of persons between 18 and 20 years of

age. Several YOIs imprison young adults between the ages of 18 and 20 where one side houses juveniles up to age 18 and is operated by the YJB and the other side houses those aged between 18 and 20 and is operated by Her Majesty's Prison Services (HMP). Young adults may also be sentenced to adult prisons, which are operated by HMP or private prison corporations. Advocates in England/Wales are seeking to redefine 'young adults' as between age 18 and 25 and to establish policies and practices aimed at addressing specific needs (Transition to Adulthood Alliance, 2010). However, the practices related to 'young adults' in the justice system are still evolving and not uniform.

In sum, the youth justice system in England/Wales is well defined by age and court jurisdiction, but has been subject to political and public pressures focused on containing violent crime. The lower age of the MACR compared to the rest of Europe reflects these pressures. Moreover, as in Argentina and Belize, there is some degree of overlap with the adult system in the case of more severe crimes, wherein youth then become subject to longer sentences.

### Cross-case findings

Figure 1 presents a revised model of the 2 × 2 case study based on our results. Building on existing literature around the permeability of age boundaries (Hazel, 2008), we find that the MACR and ACM were more complicated than we initially assumed. For example, Belize has conflicting statutes particularly in regard to the MACR. Based on these conflicting statutes, we note the MACR in Belize as '9/12'. This is similar to Argentina, where Figure 1 notes the ACM as '16/18', since some statutes suggest that anyone under age 18 cannot be prosecuted with the weight of adult penalties, yet this is not clearly articulated in the law. The MACR and ACM for Finland and England did not change in the revised model.

While age parameters create a 'wider' or 'narrower' net for bringing youth into the justice system, our analysis found additional elements of laws and structures that are quite relevant to children's rights. Specifically, viewing all four cases together, we found that a combination of *institutional structure* (i.e. courts and penal institutions) and the *stability and consistency of youth justice laws* contributed to significant variations in constructing the relevant categories surrounding youth justice.

Figure 1 displays the main cross-case analysis. The two main axes represented in the figure are (a) the presence (or absence) of a separate juvenile justice system, and (b) the stability (or lack thereof) of classifications regarding who is a 'juvenile' (vs a child, young adult, or adult) within in the law. As shown in the figure, two countries do not have a designated or separate juvenile justice system: Argentina and Finland. However, in Finland, the laws concerning age and criminal penalties are clear and stable, but in Argentina, they are unclear and contested. Similarly, Belize and England/Wales have established a separate system of juvenile justice and thus are noted as such in the table. However, the two countries differ in that England/Wales has specific laws governing the MACR and ACM, whereas the boundaries of youth justice in Belize are often contradictory and unclear. In the discussion below we elaborate on these main findings and their implications for advancing children's rights.

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

Figure 1. Display of cases by overarching findings.

## Discussion

This case study sought to answer two key questions: (a) How is the category of the ‘juvenile’ defined and distinguished in four diverse youth justice systems? (b) What are the implications of these various approaches to youth justice for children’s rights? Building on existing cross-national youth justice literature (i.e. Muncie and Goldson, 2006), this study attempted to dig deeper into the legal logics and policies that carve out the boundaries of youth justice and have implications for children’s rights.

### *The presence or absence of a juvenile court*

The juvenile court as an institution historically intended to offer young people a separate system of justice – one that would be more humane, rehabilitative, and separate minors from adults in penal facilities (Abrams, 2013). Some nations, including Argentina and Finland, have a high MACR and as such do not have a standing juvenile court to deal with criminal matters (they may have a family court, but not a juvenile justice court). In these two countries, the MACR has a relatively high age threshold, discursively narrowing the scope of who is considered a ‘juvenile’ and also promoting the value that children are not developmentally culpable for illegal acts. This high MACR effectively keeps many children out of the criminal justice system altogether, as evidenced by low rates of juvenile

incarceration in both of these countries compared to nations of similar size and comparable settings within their region.

On the contrary, establishing a high MACR raises questions about how younger children are handled by the state if they come into conflict with the law. Specifically, are these children subject to interventions, including institutional confinement, within other systems, such as the child welfare or mental health system? Critics of the MACR in Argentina have argued that since no formal juvenile justice system exists, the child welfare system can confine young people for indeterminate sentences without due process. Confinement orders are often based on a determination of 'material' or 'moral' risk, which are rather subjective and open to interpretation (Defence for Children International, 2007; Mendez, 2016). This is somewhat similar in Finland although less frequently applied due to social views of incarceration as a last resort. Yet in the absence of a juvenile court, children under age 15 in Finland can be subject to group home orders for long or unspecified periods of time (Harrikari, 2008; Hart, 2015).

Thus, although the higher MACR results in fewer youth being criminally prosecuted or imprisoned than in comparable countries, the absence of such a system may result in some juveniles being placed in adult facilities, on the one hand, and confinement orders in child welfare processes without due process protections, on the other. Critics of these two systems have noted that without a distinct system, these 'grey area' youth are inappropriately placed with adults or in the child welfare system based on their own developmental needs.

The presence of the juvenile court, however, does not guarantee that youth receive due process protections or that they are treated according to the CRC standards. In England/Wales and Belize, the low MACR does not comply with global human rights standards, and some minors under age 18 are subject to long or indeterminate sentences that may also be out of compliance with the CRC. Thus, while the juvenile court in Belize and England/Wales addresses some of the questions in boundaries between child welfare and youth justice left open in Finland and Argentina, the rates of youth incarceration in Belize and England/Wales are high relative to similarly situated nations.

### *Fluctuating versus stable laws and age boundaries*

While the MACR has remained relatively stable in Finland and England for over 30 years, these age thresholds remain a topic of long-standing debate and shifts in Belize and Argentina. Instability of age-related status in conflicting policies can leave room for some degree of arbitrariness in the administration of youth justice creating opportunities to violate children's rights. For example, in Belize, the official MACR is 9 in the juvenile code; however, 12 is the prevailing MACR according to multiple sources (American Bar Association, 2010; personal communication, July, 2016). In Argentina, the MACR policy is officially 16, yet in practice youth aged 14 and 15 can be confined as a form of 'treatment' if considered to be at 'moral or material risk', a vague distinction that is determined solely by judicial discretion (Defence for Children International, 2007). One potential lesson from these findings is that until age categories and procedures are well established in the law, human rights criticisms and violations based on these contradictions are likely to occur (American Bar Association, 2010; Mendez, 2016).

The two nations with relatively stable categories contend with a different set of challenges related to public pressure and criticism. For example, in Finland, a person who is aged 14 and commits a grave offense (such as murder or rape) cannot be charged with a crime, which could potentially be problematic for the public or for victims if this situation were to occur more frequently or with more public outcry. On the other side of the spectrum, the low MACR in England/Wales may not provide enough leeway for individual differences in capacity and competency to be determined. By removing the principle of *doli incapax* and setting the MACR at 10, the process of net-widening can be a problematic outcome (Goldson, 2013).

Last, while we have found these two countries (Finland and England/Wales) to have stable laws and age boundaries compared to the other two countries examined, there are still some gray areas concerning the ACM. For example, in Finland, minors (defined as under 18) are often confined in facilities with adults due to the absence of designated juvenile justice or detention facilities, and their cases are heard in the same courts. In England/Wales, although juvenile law is very clear as applying to all aged 10 through 18, grave offenses may still receive long and indeterminate sentences. Hence, even with relatively stable laws concerning courts of law and sentencing by chronological age, there remain several aspects of the law that may contravene the criteria set forth in the CRC, such as mitigating sentences based on age.

## Limitations

Inherent in any case study are limitations to transferability of the findings. Our case selection also had a bearing on the findings. Had we selected four other nations that fit our initial criteria, our conclusions would likely vary due to the unique nature and dynamics of individual youth justice systems. Moreover, this article was confined to presenting analysis of existing law, policy, and literature, so we may have lacked some even deeper nuances that direct fieldwork would address. Additional papers from this study will build on these ideas and incorporate primary data sources for further analysis.

## Conclusion

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

## Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This study was funded by a seed grant the Institute on Inequality and Democracy at the UCLA Luskin School of Public Affairs and institutional support from the Department of Social Welfare at UCLA.

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