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Massachusetts and Scotland: from juvenile justice to child welfare?

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ABSTRACT

Comparative data from two systems of dual jurisdiction, the Massachusetts juvenile court and the Scottish children's hearings, is examined to explore the relative use of child welfare and juvenile justice referrals in the lives of children. In Scotland a radical shift away from juvenile delinquency towards child welfare cases has altered its capacity to fulfil a welfare-oriented approach to older adolescents. In Massachusetts the juvenile court is becoming more welfare-oriented as older adolescents are claimed.

INTRODUCTION

In the early 20th century juvenile courts were established in the USA and Scotland for humanitarian reasons. The aim was to separate children from the adult system and to focus on rehabilitation. The United States retains a court based system emphasising due process and children's legal rights following the Supreme Court decision *In re Gault*, 387 U.S. 1 (1967). In 1971 Scotland introduced an integrated system of non-adversarial tribunals for decision-making for children referred on delinquency and child welfare grounds. In many jurisdictions the separation of juvenile justice and child welfare systems restricts examination of any connection between criminal and care jurisdictions in the lives of delinquent and deprived children. By comparison systems of dual jurisdiction offer a synoptic view of the relative use of child welfare and juvenile justice systems in the lives of children referred.

This paper examines comparative data from two systems of dual jurisdiction: the Massachusetts juvenile court and the Scottish children's hearings system. It draws on statistical data routinely collected on juvenile justice and child welfare from the two jurisdictions in the last ten years (2000-2010) and key studies. This comparison offers three advantages. First, an opportunity to unsettle ethnocentric and culture-bound assumptions behind accepted policies and practices in respective jurisdictions – 'to see the limits of our ways of seeing things' (Nelken 2009: 392). Second, it reveals the capacity for changing selectivity over time between and within the juvenile court in Massachusetts and the tribunal in Scotland through observation of the relative use of juvenile justice and child welfare referral categories. In other words are low levels of juvenile justice intervention associated with higher levels of child welfare cases or vice versa: or is there no correspondence between these two referral categories. Third, it yields a more accurate picture of the extended presence of the state in some children's lives by serial or dual involvement in juvenile justice and child welfare (AIHW 2008).

There is a sound case for comparison of criminal and care jurisdictions in Massachusetts and Scotland. Both sit within wider jurisdictional influences and operate at sub-national level according to devolved or state powers from national or federal government. In the USA States retain 'primary authority' for their juvenile courts (Shook 2005). In 1999 juvenile justice devolved to the newly established Scottish Parliament notwithstanding UK international obligations, the European Convention on Human Rights (embodied in the Human Rights Act

1998) and the United Nations Convention on the Rights of the Child (UNCRC, since 1991). The USA has not yet ratified the UNCRC.

Population size in Massachusetts and Scotland is similar: 6,631,280 citizens (US Census Bureau 2011) and 5,222,100 (General Register Office for Scotland 2010). Children under 18 years (UNCRC definition) represent around one-fifth of the population in both jurisdictions 21.7 per cent in Massachusetts (US Census Bureau 2009) and 19.8 per cent in Scotland (General Register Office 2011). Both encompass significant rural areas and substantial urban conurbations. A longstanding research alliance developed between Massachusetts and Scotland. The first major study of the children's hearings involved the late Sanford Fox, Boston Law College (Martin et al. 1981). The authors completed a juvenile justice policy comparison (McGhee and Waterhouse 1999) and conducted further fieldwork in Massachusetts (2005).

Comparisons of complex social institutions like juvenile justice and child welfare are not straightforward which may account for the relatively few comparative analytical studies of juvenile justice systems (Tonry and Doob 2004, Muncie 2010). Social policy will be influenced by the socio-economic, cultural and historical development of that country (Hantrais 2004). The extent of multi-level governance within countries (federal in the USA or devolved in the UK) affects the distribution of responsibility for different areas of social policy (Hallett and Hazel 1998). Supra national bodies (the United Nations (UN), European Union (EU)) may influence policy development and practice (the UN Beijing Rules on youth justice). Administrative data and inconsistency in the age of criminal responsibility varies within and between countries.

To address some of the challenges of a 'bi-national' comparison this paper uses explanatory and interpretive approaches to examine similarities and differences between the two jurisdictions (Massachusetts and Scotland). Explanations of the two systems and the intentions behind them are drawn from current and historical documentary sources. The statistical data on patterns of involvement and outcomes are analysed to provide a basis for interpretive enquiry into the operation of the categories of juvenile justice and child welfare within each jurisdiction. This comparison seeks to advance understanding of both jurisdictions in their treatment of juvenile justice and child welfare cases within formal decision making fora and the relationship between these two categories.

Massachusetts

Massachusetts' juvenile court has eleven divisions and sessions in more than 40 locations. The age of criminal responsibility is 7 years. Traditionally juvenile court jurisdiction ended on a child reaching 18 years. In 1990 this was extended to 19 years in supervising probation orders and commitment when cases were not disposed of prior to age 18 years. The process for extended commitment to age 21 years was found to be incompatible with 'the due process clause of the Fourteenth Amendment to the United States Constitution' (Kenniston vs. Department of Youth Services 453 Mass. 179, 179-190 (2009)). Legal changes in 1992 expanded the statewide Juvenile Court Department and ended trial *de novo* in the District Court Department. The Massachusetts Juvenile Justice Reform Act 1996 enhanced the jurisdiction of the juvenile court with sentencing authority equal to the superior court and created a new category of 'youthful offender' for more serious or persistent offenders.

The court has general jurisdiction over delinquency/youthful offender cases, children in need of services (CHINS), dependency (care and protection/termination of parental rights proceedings), adoption and guardianship petitions and where an adult is contributing to the delinquency of a minor. Delinquency disposals include: general continuance (where there is a deferral of outcome on good behaviour); continuance without a finding (the child is subject to probation and if s/he complies with the requirements the case is dismissed and only a record of arrest is on file); probation and commitment to the Department of Youth Services (DYS) where the child is in the care and custody until age 18 years (or 19 years if the child's case is disposed off after s/he turns 18 years) regardless of the child's age at the time of commitment.

The category of 'youthful offender' applies when the prosecutor proceeds by indictment in relation to a young person aged 14 years or older who has been charged with a felony offence and has previous experience of committal to the Department of Youth Services (DYS) or due to the specific nature of the alleged offence. If found guilty the young person can be committed to the DHS, or committed to the DHS with a suspended adult sentence plus probation (a form of 'blended sentence'), or sentenced as an adult. Juveniles aged 14 years and over charged with murder are tried in the adult court and if convicted receive the adult sentence (life without parole or with parole after 15 years depending on the nature of the charge). The Supreme Court, in *Miller and Jackson* 567 U.S. (2012), ruled mandatory sentences of life without parole for juveniles was unconstitutional.

The primary child welfare cases dealt within the juvenile court are care and protection cases where there are concerns about abuse or neglect and where children are in need of services (CHINS). These include parental or professional concern about a child's troubled and/or troublesome behaviour at home and/or school.

Scotland

In the UK, Scotland has separate laws and institutions including juvenile justice and child welfare. The Scottish juvenile justice system remains different to its English, Wales and Northern Ireland counterparts through its children's hearings tribunals. The Scottish approach with the children's hearings tribunals can be seen to be closer to the juvenile justice systems in central Europe. England, Wales and Northern Ireland all retain court based systems for juvenile offenders. However, all have high rates of incarceration of children under eighteen (Aebi and Delgrande 2011).

The Scottish Children's Reporter Administration (SCRA) is divided into four regions comprising 37 authority teams with 42 offices and Hearings Centres throughout Scotland. The intention is to move to 9 localities by 2014 (SCRA 2011). The age of criminal responsibility in Scotland is eight years although children under twelve years are immune from prosecution in the adult court (section 52 Criminal Justice and Licensing (Scotland) Act 2010). The commission of an offence remains a ground of referral to the hearings. The UK has been criticised by the UN Committee on the Rights of the Child (2008) for its low age of criminal responsibility.

Children's hearings provide a unitary civil jurisdiction over children deemed in need of

compulsory measures of supervision by reason of their care or their deeds including offending. Substantive decision-making is by a lay tribunal following acceptance of grounds of referral, or if contested by the child or relevant persons (primarily parents and/or non-professional carers), is proved in a separate court hearing. Citizen volunteers are appointed to lay tribunals by Children's Hearings Scotland and its National Convener.

A compulsory supervision order is the only disposal available to the hearing. A wide range of measures can be encompassed within the order including, but not limited to, *inter alia* regulation of the child's residence (such as out-of-home care), placement in secure care, electronic tagging, and regulation of the child's contact with others. The hearings may retain a child on compulsory measures until they are aged 18 years although discharge at 15 and 16 years is routine. Despite the UK's ratification of the United Nations Convention on the Rights of the Child, Scottish 16 and 17 year olds are almost universally dealt with in the adult criminal justice system.

COMPARING MASSACHUSETTS AND SCOTLAND

The primary sources of statistical data were the Fiscal Year statistics from the Juvenile Court Department of the Massachusetts Court System (JCDM) and annual children's hearings statistics produced by the Scottish Children's Reporter Administration (SCRA). For the purposes of comparison 'child welfare referrals' were defined as CHINS applications and care and protection petitions in the juvenile court. These are similar to the non-offence grounds of referral associated with the children's hearings system, which include both care and protection, truancy and beyond parental control grounds but not adoption cases (they are dealt with in a separate Scottish court), thereby permitting some broad comparability of categorisation. Delinquency cases were defined as complaints dealt with in the juvenile court. These include the small number of 'youthful offender' cases in Massachusetts's court system statistics. In the children's hearings delinquency cases encompassed referrals on the offence ground disposed of in the data collection period. A common term 'referral' was employed to count the number of cases where there was a decision/action in the data collection period.

Child Welfare and Delinquency Referrals to the Juvenile Court and the Children's Hearings: 2000 to 2010.

The end of the first decade of the 21st century saw an overall decrease in combined delinquency and child welfare referrals in both jurisdictions. Massachusetts reported 33,827 referrals in 2010 compared to 41,105 in 2001 with referrals reaching 48,781 in 2004 (JCDM 2010); Scotland 73,783 referrals in 2009/10 compared to a peak of 102,787 in 2005/06 (SCRA 2001 and 2009/10). By the end of the decade 4.7% of all children in Scotland (under 16 years) were referred to the system (SCRA 2010).

Delinquency Referrals

In the US juvenile courts overall the number of delinquency cases increased by 44% between 1985 and 2007. Cases peaked in 1997 and by 2007 the delinquency caseload had declined by 11% (Knoll and Sickmund 2010). In Massachusetts a decline in offence referrals was apparent from 2007: a 35% drop by 2010 (JCDM 2010). There was insufficient longitudinal data to trace the pattern of delinquency cases before 2001. From 1995 to 1997 the statistics were for four counties. As the juvenile court expanded over the years, the number of divisions had grown to six counties in 1998, nine counties in 1999 and 2000. The statistics thereafter were based on eleven counties, which is where things stand to day.

There remain no comparable national offence referral estimates for the UK. Delinquency referrals in Scotland steadily increased by 30% between 1985 and 2005/06 (SCRA 2007). Referrals peaked in 2005/06 declining 5% by 2006/07 (SCRA 2007). Between 2007 and 2010 delinquency referrals continued to decline: a reduction of 40% by 2009/10 (SCRA 2010).

Child Welfare Referrals

There are no national estimates of child welfare referrals processed in formal court or tribunal systems for the USA (National Center for Juvenile Justice, personal communication November 7, 2011) or for the UK. There are national data about child abuse and neglect known to child protective services (CPS) agencies in the United States collected and analyzed through the National Child Abuse and Neglect Data System (NCANDS). This forms the basis of an annual report by the U.S. Children's Bureau, Department of Health and Human Services' Administration which includes data on maltreatment victims where court action has been taken (Child Maltreatment 1995-2011). These data have not been included due to the specific focus on maltreatment referrals to the court.

Between 2001 and 2008 Massachusetts saw an increase in child welfare referrals and thereafter a fall of 13% from 2008 to 2010. In Scotland, child welfare referrals peaked in 2006/7 falling 23% by 2009/10 (SCRA 2010). In 2009/10 12.1% of all children referred were under two years (SCRA 2009/10, p.6).

Delinquency and Welfare Referrals

The balance between delinquency and child welfare referrals remained relatively constant in Massachusetts throughout most of the decade at around one-quarter of referrals from 2001 to 2007 (between 24% and 26% of referrals). More recently there was a shift towards child welfare referrals: in 2010 these constituted 32% of referrals. Delinquency referrals reduced by almost two-fifths (39.5%) from 2006 to 2010 (see Table 1).

The pattern was different in Scotland. Since 1972 (the inception of the children's hearings) there has been an almost continuous rise in child welfare referrals. In 1972 child welfare referrals stood at 12.5% against delinquency referrals of 87.5%. By 1982 there proportions respectively were 21.4% v 78.6%: by 1992 43% v 57% (Figure 1).

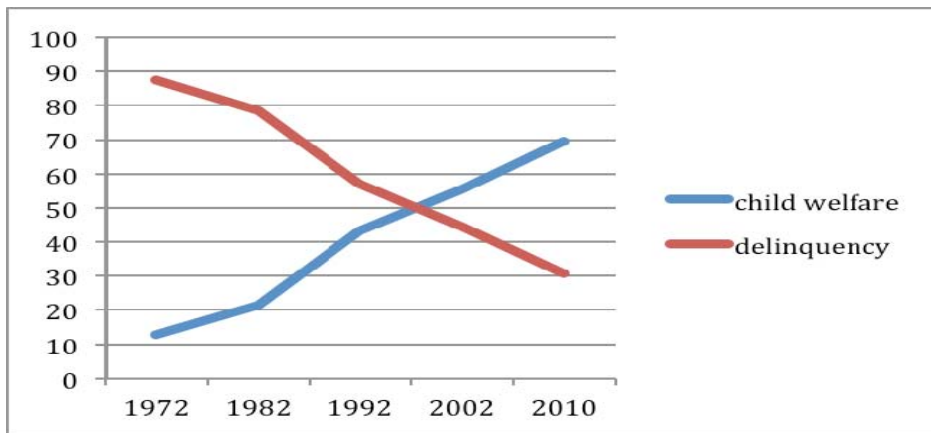


FIGURE 1. Percentage of delinquency v child welfare referrals in Scotland 1972-2010

In 2000/01 55% of referrals were child welfare and by 2010 this increased to 69.4% (see Table 1).

TABLE 1. Case patterns in Scotland and Massachusetts 2000 and 2010

	2001				2010			
	Delinquency		Child Welfare		Delinquency		Child Welfare	
Massachusetts	30,479	74%	10,626	26%	22,596	68%	10,667	32%
Scotland*	26,820	44.6%	33,342	55.4%	22,585	30.6%	51,276	69.4%

* Total referrals are not the sum of offence and non-offence as a single referral can contain both types of grounds.

Multiple Involvements

In Massachusetts almost half (55%) of the committed youth population of the DYS had prior contact with children and families services (75% of young women committed); and almost half of the committed population had been in a residential placement arranged by another agency prior to commitment (Sylva 2010). Almost 75 per cent had been placed on probation at least once before commitment to the DYS (ibid.). Similar figures for 2004 suggested an on-going pattern of high levels of prior social service contact (Sylva 2004).

A longitudinal analysis of 482 children in the hearing system found children referred for non-offence reasons frequently had prior offence referrals (41.9%); and children referred on offence grounds frequently had prior referrals on care and protection grounds (38.4%) (see Table 2). Almost one-third (30%) of ‘offenders’ first entered the system on a ‘care and protection’ ground; and more than one-quarter of ‘non-offenders’ (29%) first entered the system on an offence referral (Waterhouse et al. 2000).

TABLE 2. Prior referral categories for children referred on offence or non-offence grounds (1 February 1995*)

Category of referral	Offence grounds (n=310)	Non-offence grounds (n=172)
Care and protection	119 (38.4%)	97 (56.4%)
Offending	275 (88.7%)	72 (41.9%)

*Multiple referrals on different grounds are possible

Outcomes

Between 1994 and 2004 the population of juveniles committed to the Department of Youth Services grew from 1,849 to 2,944 followed by a reduction reflected in a population of 1,436 by 2010 (Sylva 2010). In 2007 the rate of juvenile offenders in residential placement was 167 for every 100,000 juveniles (aged 10 through the upper age limit of a states' juvenile jurisdiction) compared to a national rate of 263 for every 100,000 juveniles. This made a total of 969 children.

In the US an estimated 200,000 youth are tried, sentenced, or incarcerated as adults annually (Campaign for Youth Justice 2010). Massachusetts has the 11th highest rate of juveniles sentenced to Life without Parole (LWOP) in the country, with 18.49 youth per 100,000 receiving LWOP sentences (CfJJ 2011). There are currently over 57 people serving the LWOP sentence in Massachusetts for crimes committed when they were under age 18 (Children's Law Center of Massachusetts 2009). A child as young as 14 years may receive a sentence of life without parole.

Scotland saw an increase in children subject to compulsory measures of supervision through the children's hearings in the first decade of the century from 10,876 in 2000/01 to 13,829 in 2009/10. This is a rate of 15 per 1000 child population under 16 years, an increase from the 2000/01 rate of 9.6 per 1000 under 16 years.

Children may be deprived of their liberty through the use of secure (locked) accommodation either via the children's hearings or the adult court. Children's hearings admissions (through supervision requirements or warrants) represented 33% of admissions to secure care in 2009/10 a slight reduction from 2008/09 (Scottish Government 2008a, 2009, 2010, Tables 7, 7 and 18 respectively).

The number of young people convicted in Scottish courts declined following a peak in 2006/07: this fell to 22 per 1,000 population in 2009/10 from 38 in 2006/07 for 16 year-olds and for 17 year olds from 93 per 1,000 to 57 per 1,000 in 2009/10 (Scottish Government 2011, Criminal Proceedings in Scotland 2009/10).

In 2009/10 of 5,242 under 18 year-olds convicted in Scottish courts, 653 received a custodial sentence including 18 under 16 years (Scottish Government 2011, Table 11). At census date of 30 June 2009, 205 children aged 16 and 17 years were in custody (Scottish Government 2010).

DISCUSSION

The juvenile court and the children's hearings have shown considerable longevity. Both systems share comparable founding principles of treatment and rehabilitation of juvenile offenders and adopt relatively young ages of criminal responsibility. Each has incorporated 'safety valves' permitting some children to enter adult criminal fora.

Relative use

Both jurisdictions have seen an overall decline in the volume of referrals in the first decade of the 21st century. In Massachusetts from 2007 delinquency cases declined and from 2008 the same pattern emerges in respect of child welfare cases. There has been an absolute reduction in both types of cases. The relative use of juvenile justice and child welfare referral categories has remained broadly constant. There is some suggestion that the child welfare referrals at 2010 compared to 2001 represents a slightly larger proportion of the overall referrals. It is not clear whether this variation will continue.

Scotland, like Massachusetts also saw an absolute reduction in both types of cases by the end of the decade. From 2007 delinquency referrals were already declining, as were child welfare referrals from 2007/08. The relative use of juvenile justice and child welfare referral categories varies from Massachusetts. There is a steady increase in the proportion of child welfare against delinquency referrals year on year from 1972. This is in marked contrast to the beginning of the children's hearings when four-fifths (87.5%) of referrals were on offence grounds (Martin et al. 1981, p.7). In 1990/000 child welfare referrals surpassed delinquency referrals. By 2010 the children's hearings system was primarily a system to address child welfare cases. This reversal in referral patterns has attracted little attention despite representing such a significant departure from its original purpose to address juvenile delinquency.

Public policy and law in Scotland have always permitted children who commit serious offences to be tried in adult courts. The vast majority of child welfare and delinquency referrals to the children's hearings continue to be made by the police (SCRA 2010). Sixteen and seventeen year olds are routinely dealt within the adult system. Exporting adolescents as they approach 16 years to adult criminal justice may have allowed the children's hearing to focus their attention increasingly on child welfare cases. The increase in the proportion of very young children may also have served to preserve the hearings welfare-oriented philosophy. The emphasis on the needs of children in trouble with the law does not encourage equal attention to the possible presence of offending by children referred on child welfare grounds. This may have encouraged a formulation of children's difficulties to correspond with what the system was best placed to deal, the needs rather than the deeds of children. In other words the children's hearings has made itself up in its own likeness. Its actors come to perceive children in terms that reflect the underlying rationale behind the system (Bowker and Star 2000), a welfare-oriented treatment model focused on a children's needs separating fact-finding from lay tribunal decision-making. The fundamental point is that the hearings system primarily has become a child welfare system.

How might this reversal be explained? Community expectations concerning child welfare in Scotland and the UK have been profoundly influenced by a succession of public inquiries into the role of state agencies in responding to child maltreatment (Munro 2011). The last decade has seen a policy orientation towards early intervention to improve children's life

chances and to prevent later delinquency (Scottish Executive 2005). Furthermore, political investment in the uniqueness of the system and the marginalisation of competing ideas may also have reinforced the importance of retaining its distinctive discretionary welfare orientation as a juvenile justice system. A word of caution. This longitudinal change in the relative use of delinquency and child welfare referral categories would be less marked if 16 and 17 year olds were routinely dealt with in the children's hearings. Their exclusion from the system may also disguise the welfare needs of this older group of children just as the concentration on welfare may overshadow the presence of delinquency in the lives of children in the two systems. Growing evidence points to the cost to society of failing to address the complex needs of children (Gilbert 2011).

Massachusetts appears to have a higher percentage of delinquency cases than Scotland. The proportion of referrals for delinquency consistently exceeded child welfare cases in the decade examined. More recently the relative use of juvenile delinquency and child welfare referrals altered marginally towards child welfare. Developments in juvenile justice policy in Massachusetts appear consonant with national patterns in the USA across a range of indicators. These include, for example, the possibility of transfer to the adult court in certain cases; exclusion of some serious offences from the juvenile court; and powers to impose criminal sanctions in certain categories. The Massachusetts juvenile court is primarily concerned with the determination of fact and sentencing.

American juvenile justice policy and legislative reform has concentrated on the place of juvenile and adult courts in sentencing children in trouble with the law and in the use of juvenile detention centres and prisons in their punishment (Tannenhaus 2004). Following *In re Gault* fairness through legal standards became the central organising principle in the methods applied to decision-making. Despite the drop in the juvenile crime rate in the USA (Puzzanchera 2009) the juvenile court has remained consistent to its original philosophy.

Neither the USA nor the UK provides national estimates of delinquency and all child welfare referrals. As outlined earlier the USA collects and analyses national data on child abuse and neglect referrals to child protective services (Child Maltreatment 1995-2011). The two local examples of the Massachusetts juvenile court and the Scottish children's hearings, however, serve to illuminate the possible connection between juvenile justice and child welfare. By the end of the decade the overall number of referrals for juvenile justice and child welfare fell in Scotland and Massachusetts, although the rate of fall was greatest for delinquency in both jurisdictions. Despite policy and operational differences at a cross-national level both systems are seeing a similar pattern of decline. Reductions in delinquency referrals are not straightforwardly associated with an increase in child welfare referrals. The picture appears more complex.

Multiple involvements

The Child Welfare League of America (CWLA) has disseminated research findings on the connection between child maltreatment and juvenile delinquency and its adverse sequelae for child life and health outcomes (Wiig, Widom and Tuell 2003, Maughan and Moore 2010). The CWLA is a foremost advocate in recognising the importance of connecting child welfare and juvenile justice through research, policy development (Jonson-Reid 2004, Petro 2006) and practice guidance on coordinating and integrating child welfare and juvenile delinquency systems for the benefit of children (Wiig and Tuell 2008). The Scottish data (Waterhouse et al. 2004) suggest that children move between categories of juvenile justice and child welfare

over time and do not fall neatly into one or other. Bradshaw (2006) found 62% of a sample of 'persistent offenders' was first referred to the hearings on non-offence grounds. Similar data from Massachusetts are not available but contextual data point to contact with child and family services prior to juvenile justice involvement (Sylva 2010).

Evidence suggests relative continuity in the population of children coming before formal systems of adjudication. Social and economic deprivations remain prominent (Waterhouse *et al* 2000; Massey 1996), age and gender relatively consistent with a disproportionate involvement of children from minority ethnic backgrounds. The juvenile court and the children's hearings, as two institutions, appear to be responsive to shifting community expectations and social science theory regarding children. These expectations in turn have material consequences in practice for the constitution of caseloads in both systems. In both jurisdictions the nature of caseloads may also be influenced by fiscal concerns about the disjuncture between expenditure on juvenile justice systems and the decline in serious youth crime (Scott and Steinberg 2008, Audit Scotland 2002).

Political priorities continue to affect juvenile justice policy in both the USA and Scotland. The USA has not ratified the United Nations Convention on the Rights of the Child (UNCRC) despite its near universal adoption throughout the world. In the USA political and public concern regarding violent juvenile crime triggered an extension of waiver processes, including Massachusetts. In the USA public policy emphasises holding children to a similar standard of adult criminal responsibility as represented by juvenile waiver and blended sentencing laws. Recognition of developmental differences between adolescents and adults is leading to the moderation of juvenile court law (Scott and Steinberg 2008). The Supreme Court decision in *Roper v Simmons* 543 U.S. 551 (2005) declared the death penalty on offenders who were under the age of 18 when their crimes were committed unconstitutional. In Massachusetts legislation to bring 17 and 18 year olds under the jurisdiction of the juvenile rather than the adult court is on the political agenda. This coincides with findings in neuroscience research pointing to the developmental difference between the adolescent and adult brain (Grison 2006).

In the UK the UNCRC has differentially influenced juvenile justice policy with explicit commitment to its principles in Scotland, Northern Ireland and Wales compared to England (Muncie 2011). The response of the Committee on the Rights of the Child (CRC) to the UK's third and fourth periodic report, highlighted the continuing need of the UK to fully implement international standards of juvenile justice, in particular articles 37 and 40 relating to the detention and punishment of child offenders. The Beijing and Havana Rules do not define a specific age of criminal responsibility. The CRC has consistently maintained 12 years as the minimal age of criminal responsibility. Scotland's response to the Committee's observations is not wholly satisfactory. Children under 12 years are now immune from prosecution (section 52 Criminal Justice and Licensing (Scotland) Act 2010). Children between the ages 8 to 11 years remain open to referral to the children's hearings on the basis of having committed an offence.

In the UK an attempt to develop cross-jurisdictional approaches to juvenile offending coincided with the creation of devolved administrations and legislatures. Bottoms and Dignan (2004) suggest that the creation of the Scottish Parliament in 1999 and devolved government may have raised the political profile of youth crime and disorder. In 2003 the Scottish First Minister (Head of the Scottish Government) set up an Ad-Hoc ministerial Group on Youth Crime that led to a pilot project to 'fast-track' persistent offenders in the children's hearings.

Concern with low-level antisocial behaviour became a central focus for legislative activity (Antisocial Behaviour (Scotland) Act 2004). The advent of a Scottish Government led by the Scottish National Party (which campaigns for independence for Scotland from the rest of the UK) has brought a diminution of this more punitive political rhetoric with greater focus on preventive approaches to reducing offending (Scottish Government 2008b).

Outcomes

For both jurisdictions dealing with 16 and 17-year olds remains controversial. In Scotland the routine incorporation of these children into the hearings system appears unlikely. They continue to be subject to the adult system. An explanation might be found in the cultural and historical interpretation of childhood. In Scotland, marriage without parental consent is permitted at age 16, the high school leaving age is 16 years, voting in the forthcoming independence referendum is agreed for 16 and 17 years olds (18 years is the UK minimum age for electoral participation). The pivotal age of sixteen therefore brings both benefits and disbenefits to young people. In juvenile justice policy this leaves some children exposed, at a formative stage, to an adult criminal justice system that is unable to take their developmental needs into account. In the USA Mlyniec (2010) argues that there is little public interest in dealing with all children under 18 years in the juvenile court. However, there are a number of States that have amended legislation to retain 16 and 17-year olds in the juvenile court, Massachusetts is not among these as yet (Campaign for Youth Justice 2011).

CONCLUSION

The relative use of juvenile justice and child welfare systems nationally and internationally has received limited attention in research and policy despite recognition of the association between childhood maltreatment and juvenile delinquency. This relative use is key to understanding the development of a unifying approach to research, policy and practice affecting children who have serial and dual involvement in both systems. Comparison within and between countries is complex. National statistics are frequently bifurcated, reflecting an operational divide between juvenile justice and child welfare systems. This restricts analysis of how these systems are used in the lives of children. Massachusetts and Scotland, both systems of dual jurisdiction, provide an opportunity to explore juvenile justice and the child welfare referral patterns in the first decade of the 21st century.

From the inception of the Scottish system, child welfare referrals began to grow until there was an almost complete transformation of the hearings from its origins as a response to juvenile delinquency. The preservation of a welfare-oriented philosophy has been at the price of routinely excluding sixteen and seventeen-year olds from its purview. The institutional history of the hearings suggests it has become frozen in one critical respect: it has not had the courage of its convictions to bring these adolescents in trouble with the law fully into its ambit. This has altered its capacity to fulfil a welfare-oriented philosophy in response to juvenile delinquency. In Massachusetts the juvenile court is in the process of claiming its older adolescents up until the age of 18 years. This is consistent with the origins of the juvenile court whose purpose was to sanction juveniles without criminalising them in the adult system. The juvenile court as an institution continues to demonstrate a capacity to reflect and to adapt its response to the challenges of a dynamic political, economic and scientific environment.

International comparison between the Massachusetts juvenile court and the Scottish children's hearings helps us to examine some of the intrinsic philosophical issues that concern how some children come to be defined - either as child or adult, delinquent or deprived by formal systems of intervention. Exploring statistical trends across jurisdictions provides an opportunity to look afresh at the fundamental question of how we treat our vulnerable children and intervene in their lives to solve basic social problems.

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