INTRODUCTION

Several incidents recently captured the world’s attention. In Singapore, police officials caned an American teenager for committing acts of vandalism. In Nairobi, a police officer shot a street boy five times, kicked the boy’s lifeless body into a gutter, and spat on the body simply because the boy had allegedly stolen a rearview mirror from a car. In Brazil, a police squad shot and killed six homeless teens. In England, the court system grappled with the fate of two eleven-year-old boys who brutally killed a toddler. In Chicago, a ten- and an eleven-year-old boy threw a five-year-old off a high-rise as another ten-year-old was given a “head start” to run down fourteen stories to catch his brother. In the same city, an eleven-year-old boy was found dead under a railroad viaduct—he had been murdered in apparent retaliation for his felonious activities.

Although these incidents may soon be forgotten, each event continues to raise different concerns and highlights the challenges facing
societal attempts to deal with problem youth. Each also points to society's failure to prevent and to react properly to complex problem behavior.

To counter continued failures in implementing effective juvenile justice systems, international law seeks to offer guidance and appropriate policy responses. Despite popular commentaries to the contrary, several important and somewhat radical themes and principles have emerged to help deal with problem youth. The world community has officially recognized the proposed policies as reflected in the almost universal ratification of key documents urging reform. Far from ignoring these policies, the international community has taken upon itself to encourage reforms consistent with emerging recommendations.

Regrettably, these developments have remained part of a largely silent and unheralded event in both international law and criminal

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7. The notion of juvenile justice is admittedly much broader than the notion to which American readers have grown accustomed. Internationally, juvenile justice involves issues of broad social development and poverty, in addition to attempts to deal with youth who break societal rules. See infra notes 40-59 and accompanying text.


11. This should not surprise those who are familiar with traditional international law, which aimed to regulate inter-nation behavior rather than intra-nation behavior. The focus on inter-nation issues has led international legal and criminal justice systems to concern themselves with, for example, the creation of a criminal court of justice and the broader international dimensions of crime such as drug trades and war crimes. See
In light of the paucity of attention paid to these momentous developments, this Article examines recently adopted international mandates regarding juvenile justice. After detailing the important developments and highlighting their significance, this Article investigates how nations have reacted to these developments. The examination reveals a disturbing disjuncture between official juvenile justice policy and actual practice. Although this investigation reveals that nation states are only beginning to react appropriately to international mandates, this investigation also reveals an ever increasing movement toward further reform. This movement, coupled with unprecedented changes in international law, makes critical an evaluation of the appropriateness of emerging mandates. Furthermore, these changes direct future visions of juvenile justice and move the theoretical legal world of the children's rights movement closer to the reality of social practice.


12. The field of criminal justice has only recently been concerned with cross-cultural approaches to juvenile justice issues. For an informative compilation of various sources, see OFFICIAL RESPONSES TO PROBLEM JUVENILES: SOME INTERNATIONAL REFLECTIONS (Jim Hackler ed., 1991). A major reason for the lack of interest is the rather large number of impediments to doing cross-cultural research. Marc G. Gertz & Laura B. Myers, Impediments to Cross-National Research: Problems of Reliability and Validity, 16 INT'L J. COMP. & APP. CRIM. JUST. 57, 58-64 (1992) (detailing barriers to doing effective comparative work in criminal justice).

13. See infra notes 15-59 and accompanying text (stating that the only focus has been on comparing international prohibitions against the death penalty and noting how the United States would violate that standard). The United States placed a reservation on prohibitions against imposing the death penalty on juveniles. See S. EXEC. REP. No. 23, 102nd Cong., 2d Sess. 13-14 (1992) (placing a reservation on article 14(4), which reserved the right to treat juveniles as adults in "exceptional circumstances").

14. See infra notes 81-112 and accompanying text.
Despite the long history of the notion of children's rights, the incorporation of children's rights into the juvenile justice system is a recent development. It was not until 1966, with the adoption of the International Covenant on Civil and Political Rights ("International Covenant"), that juveniles' rights in judicial proceedings made their first formal appearance. The International Covenant urged states to separate juvenile offenders from their adult counterparts, speedily adjudicate claims, adopt different trial procedures for juveniles, consider the juvenile's age, and promote rehabilitation.

Although the protections afforded by the International Covenant are limited, these protections are still considerably revolutionary. At a minimum, all nations that ratify the International Covenant must treat some juveniles differently from adults. In addition, ratifying nations must move toward implementing a separate juvenile justice system that includes rehabilitation. Despite demonstrating the differing needs of youth from adults, the International Covenant essentially allows individual nation states the authority to determine the nature of the separate system and its requisite procedures.

Two decades elapsed before the international community attempted to curtail the broad discretion nation states had in determining the nature of their separate juvenile justice systems. In 1985, the International Covenant's broad guidelines became the cornerstone of the Beijing Rules. The Beijing Rules offer principles to guide the development of juvenile justice systems, and to provide a model for fair and humane responses to problem youth. The Beijing Rules detail how best to ensure the rights of youth by enumerating broad princi-
ples to guide the criminal justice process.\textsuperscript{21} Although the Beijing Rules are not in treaty form and thus are not directly enforceable, they nevertheless made a significant contribution to children's rights. In 1989, the general principles of the Beijing Rules were incorporated into the Convention on the Rights of the Child ("Children's Convention").\textsuperscript{22}

The Children's Convention is the most comprehensive human rights treaty in force.\textsuperscript{23} In addition to enumerating the entire range of civil, political, economic, psychological, social, and cultural rights, the Children's Convention offers yet another series of important guiding principles.\textsuperscript{24} When designing and implementing policies affecting children and families, nations are now obligated to consider children's best interests,\textsuperscript{25} take into account an individual child's evolving capacity,\textsuperscript{26} and respect and ensure the inherent dignity of all children.\textsuperscript{27} These considerations are without historical parallel. Indeed, they are now formal rights enshrined in international law and bestowed upon "every child."\textsuperscript{28}

The Children's Convention offers rather extensive, formal protections to children and youth "alleged as, accused of, or recognized as having infringed the penal law."\textsuperscript{29} These protections include: the presumption of innocence, the right to be informed of charges and to have assistance to prepare a defense, the right to have determined the matter without delay by a competent authority, the right to have the determination reviewed by a higher authority, the right to protections against self-incrimination and to examine witnesses, and the child's right to privacy throughout all proceedings.\textsuperscript{30} In addition to these

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\textsuperscript{21} The Beijing Rules, supra note 20.
\textsuperscript{22} Children's Convention, supra note 9.
\textsuperscript{24} Levesque, 9 CONN. J. INT'L L. at 269-78.
\textsuperscript{25} See Children's Convention, supra note 9, at Art. 3, 9, 21, and 37. For a thorough examination of this standard, see The Best Interests of the Child: Reconciling Culture and Human Rights (Philip Alston ed., 1994).
\textsuperscript{26} See Children's Convention, supra note 9, at Art. 12. This is perhaps the most radical aspect of international children's rights. See also Levesque, 9 CONN. J. INT'L L. at 278 (proposing that the phrase allows for the development of adolescents' human rights, a factor which has heretofore been ignored by international law).
\textsuperscript{27} See Children's Convention, supra note 9, at Preamble Para. 2 (stating that this standard is a fundamental aspect of human rights law — the promotion of human dignity). See also Roger J.R. Levesque, Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights, 60 BROOK. L. REV. 959, 997 (1994) (stating that "[i]f consensus exists among nations, it is that the official doctrine underlying the international law of human rights is in principle universal and is based on human dignity").
\textsuperscript{28} Children's Convention, supra note 9, at Art. 1.
\textsuperscript{29} Id. at Art. 40(1).
\textsuperscript{30} Id. at Art. 40(2)(b).
procedural rights, children now have the right to be free from "torture or other cruel, inhuman or degrading treatment or punishment," including protections against life imprisonment and the death penalty.\textsuperscript{31} Likewise, any deprivations of liberty "shall be used only as a measure of last resort."\textsuperscript{32} When deprivations of liberties are deemed necessary, children are to be separated from adults and "shall have the right to prompt access to legal and other appropriate assistance."\textsuperscript{33}

Despite the seeming comprehensiveness of protections offered by the Children's Convention, the Riyadh Guidelines ("Guidelines") quickly complemented these protections.\textsuperscript{34} These Guidelines move beyond viewing children's rights simply as procedural. The Guidelines adopted a more expansive approach to children's rights and urged a focus on the development of social policies and practices that avoided criminalizing and penalizing behaviors.\textsuperscript{35} This approach is even more dramatic than the traditional concern to avoid stigmatizing youth.\textsuperscript{36}

Essentially, the new Guidelines intend to rechannel resources in order to prevent antisocial behavior. For example, these resources are aimed at strengthening families, reforming educational programs, reorienting community resources toward supporting children and families, and maximizing the appropriate use of the mass media.\textsuperscript{37} In short, the Guidelines emphasize society's responsibility to assist families in providing care and protection for youth and in ensuring their physical and mental well-being.

\begin{itemize}
\item \textsuperscript{31} Id. at Art. 37(a).
\item \textsuperscript{32} Id. at Art. 37(b).
\item \textsuperscript{33} Id at Art. 37(c) \& (d). Nations are obliged to separate the children from the adults, "unless it is considered in the child's best interest not to." Id. at Art. 37(c).
\item \textsuperscript{35} The Riyadh Guidelines do so to the extent that it would not cause "serious damage" to the child or "harm to others." Riyadh Guidelines, supra note 34 at §5. Indeed, the Riyadh Guidelines move away from criminalizing and penalizing children's behavior which would not be an offense or punishable if committed by adults. Id. § 56.
\item \textsuperscript{36} The concern to avoid this stigma is reflected in the concern with preserving the privacy of youth involved in the juvenile justice system. See \textit{Kent v. United States}, 383 U.S. 541, 556 (1966) (noting that juvenile justice provisions have sought to shield youth from publicity). \textit{See also Bureau of Justice Statistics, U.S. Dep't of Justice, Criminal Justice Information Policy: Privacy and Juvenile Justice Records; Jan L. Trasen, Note, Privacy v. Public Access to Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System?, 15 B.C. Third World L.J. 359, 361-62 (1995)}.
\item \textsuperscript{37} Riyadh Guidelines, supra note 34, at §§ 11-44. The approach encourages family-focused and community-based systems. It reaffirms that "the institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance." Id. at § 46.
\end{itemize}
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This admittedly terse exposition on the evolving notions of children's rights undoubtedly supports the appropriate conclusion that the term "children's rights" is no longer "a slogan in search of a definition."38 Over the past three decades, society has begun to address juvenile rights with a substantial policy framework designed to address the rights of troubled youth. This development has been remarkably quick and extensive. In the early stages, the notion of rights focused on a child's basic right against state intervention, including comprehensive "negative" rights to procedural protections from certain punishments. More recently, youth have been accorded "positive" rights to progressive crime prevention services. These developments are truly staggering, because these emerging rights are bestowed on children whose legal personhood has not been fully recognized!39

A SEISMIC SHIFT IN INTERNATIONAL LAW?

The current international statement of children's rights to juvenile justice may not bring a sense of optimism or signal its auspiciousness to those unfamiliar with children's rights. Taken together, however, these few but significant documents undoubtedly provide an important edifice on which to construct and rethink juvenile justice systems and respond appropriately to the needs of troubled youth. Indeed, these documents point to a rather "radical" approach to juvenile justice. The approach urges us to rethink fundamentally ingrained ideologies of childhood, families, rights, communities, and international law.

International human rights law no longer limits itself to laws between nations.40 International law now includes legal rules and principles that apply both among states, between states, and even between other actors. For example, international law obligates nations, non-governmental organizations, communities, and even individuals to work together to promote and ensure children's rights outside and within a nation's borders.41 This is a remarkable development, for less than a decade ago there was not a formal, internationally binding

40. Levesque, 60 BROOK. L. REV. at 977 (detailing the traditional approach to international law). See Levesque, 24 CAL. W. INT'L L.J. at 214 n.151 (detailing the current approach to human rights law).
41. Levesque, 9 CONN. J. INT'L L. at 275 (noting that the Children's Convention places the duty to recognize children's rights on parents, community members, and participating nation states).
convention on children's rights. Now, the entire world community is obligated to recognize and ensure children's rights.

This development has profound implications for juvenile justice systems across the globe. First, the international community has adopted the role of establishing universal standards. By setting such standards, the international community establishes a minimum standard which all nations strive to achieve. By focusing on universal standards, the international community also maintains the power to intervene on behalf of the rights of youth. Second, the international community has taken upon itself the obligation to be a benefactor to nations who have difficulty implementing international norms. The obligation comes in the form of sharing more than economic resources; nations are to conduct research and exchange information with a view toward full implementation of guidelines and principles.

Even more ground-breaking than the international community's power to intervene and influence the internal workings of nations is the new focus on intervening in families to ensure that parents recognize and respect children's rights. The significance of this development cannot be overstated. In its current metamorphosis, international law challenges the private, patriarchal nature of families. International law aims to open the family to public scrutiny.

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42. Note, however, that there were documents dealing with children's issues, but none were as comprehensive as the current convention. Nor were these documents directly enforceable. See Levesque, 24 Cal. W. Int'l L.J. at 209-20.

43. Some commentators have gone so far as to suggest that it has become customary law. See Gary B. Melton, *Is There a Place for Children in the New World Order?*, 7 Notre Dame J. L. Ethics & Pub. Pol'y 491 (1993).

44. Levesque, 24 Cal. W. Int'l L.J. at 214. The article stated:

Unlike more traditional areas of international law which aim at influencing and regulating behaviors among countries, human rights documents like the Convention aim at influencing domestic law. International human rights documents embody an implicit moral ideal and recognize the role of nation-states to work to realize the ideal in their obligations to their own citizens.

Id. at 214 n.151.

45. *Children's Convention*, supra note 9, at Art. 4 (stating that "[i]n regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.").

46. The Riyadh Guidelines urge the international community to develop and exchange information about juvenile delinquency. *Riyadh Guidelines*, supra note 34, at §§ 60-66. The Beijing Rules also mandate the same cooperation. *Beijing Rules*, supra note 20. Likewise, the Children's Convention, like most human rights treaties, mandates countries to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention." *Children's Convention*, supra note 9, at Art. 4.


48. See supra notes 23-28 and accompanying text.
and ensure each member's equality within the family unit.\textsuperscript{49} Simply stated, the Children's Convention is a convention that refocuses our view toward parental rights by centering on the child's interests and recognizing the family's need for societal support.\textsuperscript{50}

This refocus on children rather than those holding "parental status" is quite revolutionary and momentous.\textsuperscript{51} For example, children have a right to remain in their families and to maintain ties with their parents.\textsuperscript{52} This focus allows for the creation of policies aimed at keeping children in their homes and with their families. These policies do not only include traditional child welfare services, but also apply to the juvenile justice system.\textsuperscript{53}

Equally radical to bestowing rights upon children rather than adults is the notion that families are entitled to resources. Society has an obligation to use these resources to ensure that children remain in their families and communities.\textsuperscript{54} This positive right is rather expansive.\textsuperscript{55} Although the right could be narrowly interpreted, parents and communities clearly have a responsibility to ensure the rights of children.\textsuperscript{56}

In addition to discussing the roles of nations, communities, and parents, international law also focuses on the children themselves. For example, children are no longer "mere objects of socialization or

\textsuperscript{49}. See Levesque, 60 BROOK. L. REV. at 987-97 (detailing the international focus on opening families to public scrutiny in order to deal with child abuse and neglect). Despite the critical move toward ensuring intra-family equality, there still remains considerable respect for parental rights and obligations. That respect, however, is tempered. See supra note 27.

\textsuperscript{50}. See supra notes 25-27 and accompanying text.

\textsuperscript{51}. This extends from those acting as parents within family-type situations to state officials such as teachers and others acting as \textit{parens patriae}. See Levesque, 9 CONN. J. INT'L L. at 222-64 (detailing how the law tends to view children as "in custody" of either parents or other state actors).

\textsuperscript{52}. Note that the notion of the parent is broadly defined. Likewise, by focusing on the child, it is the child's view of the family that becomes important in defining family. See Levesque, 24 CAL. W. L. REV. at 235-40 (describing how the international focus on relationships would revolutionize family jurisprudence recognizing children's rights "in" and "to" relationships).

\textsuperscript{53}. The Riyadh Guidelines explicitly adopt a family-focused approach to interventions with problem youth. See supra notes 34-37 and accompanying text.

\textsuperscript{54}. See supra notes 34-38 and accompanying text.

\textsuperscript{55}. These rights include: the necessary protection for the child's well-being; the assurance of maximum protection to ensure the child's survival and development; the right to the highest available medical treatment and health care facilities; a standard of living that promotes the child's mental, physical, spiritual, social, and moral development; the right to education; and the right of the child to rest and play. Children's Convention, supra note 9, at Arts. 3, 6, 7, 24, 27, 28, 31.

\textsuperscript{56}. Levesque, 9 CONN. J. INT'L L. at 275-78 (detailing the different responsibilities placed on states and parents to ensure children's rights).
control," for children have a right to self-determination.\textsuperscript{57} All children must participate in decisions that affect them.\textsuperscript{58} The task of including children in decisionmaking is much more difficult than it may appear. Indeed, taking a child's interest and voice seriously often requires the enactment of somewhat "radical" policies.\textsuperscript{59} Although these policies may seem radical, they are not necessarily ineffective or infeasible.

THE FEASIBILITY OF TAKING INTERNATIONAL LESSONS SERIOUSLY

Despite considerable optimism regarding the international approach to juvenile justice, efforts to implement this approach remain problematic. A primary concern is the difficulty of challenging prevailing, punitive ideologies and of implementing adequate reforms to match our understanding of delinquency and crime prevention.\textsuperscript{60} Regrettably, these discussions have been trapped by a tendency to focus on two opposing positions — the rehabilitative or the retributive approaches to juvenile justice. These narrow views date back to the foundation of juvenile justice systems.

Ever since their inception, juvenile justice systems have been plagued by the ceaseless need to balance retributive concerns with rehabilitative needs.\textsuperscript{61} The thrust behind a traditional juvenile justice

\textsuperscript{57} Riyhad Guidelines, supra note 45, at § 3; see supra notes 25-27 and accompanying text.

\textsuperscript{58} Children's Convention, supra note 9, at Art. 12 (stating that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.") This is not an easy matter. For a thorough discussion of children's rights to participate in decisions affecting them, see Leonard P. Edwards & Inger J. Sagatun, Who Speaks for the Child?, 2 U. CHI. L. SCH. ROUNDTABLE 67 (1995).

\textsuperscript{59} See Roger J.R. Levesque, Prosecuting Sex Crimes Against Children: Time For "Outrageous" Proposals?, 19 L. & PSYCH. REV. 59 (1995) (proposing that the current child protection system is doomed to continued failure because of its inability to approach child protection "from the child's point of view"); Roger J.R. Levesque, The Peculiar Place of Adolescents in the HIV-AIDS Epidemic: Unusual Progress & Usual Inadequacies in "Adolescent Jurisprudence," 27 LOY. U. CHI. L.J. 701 (attributing the failure to address the dramatic increase in adolescent HIV-AIDS cases to the inability to respect adolescents' needs and ensure that adolescents' perspectives are taken into account when decisions are being made on their behalf).

\textsuperscript{60} Roger J.R. Levesque, Is There Still a Place for Violent Youth in Juvenile Justice?, 1 AGGRESSION & VIOLENT BEHAV. 1 (forthcoming Spring 1996).

\textsuperscript{61} The juvenile court originated at the end of the nineteenth century from the Progressive Party's reformulation of two ideas — strategies of social control and the cultural conceptions of childhood. The juvenile court combined a conception of childhood with approaches to social control in a specialized agency designed to accommodate the child offender. These programs aimed at resocialization, however, were quickly criticized. This criticism resulted in a move toward a "just desserts" model currently espoused in contemporary penal debates regarding the proportionality between crime and punishment. See generally Anthony M. Platt, The Child Savers: The Invention of
system is that child offenses are not be taken as signs of a bad child, but as a sign of a malfunctioning society. From that starting point, the emphasis is switched from retributive principles to social intervention. This form of intervention endeavors to rectify deviance with a response fitted to the youth's problems and needs. Preferably, the intervention begins with early screening and treatment of “danger” and “risk” situations aimed at preventing delinquency.62

Regrettably, as social service systems have failed to provide effective rehabilitative services and to prevent a rise in the rate of problem behavior,63 the trend has been to increase retributive sanctions.64 These two differing views have created a system that holds that youth should be punished and rehabilitated.

The actual synthesis of the retributive and the rehabilitative principles has proven difficult. Both principles have been the subject of major criticisms.65 In addition, when both methods are part of the same system, persuasive evidence indicates that they compound each other's weaknesses. Systems that attempt to merge retributive and rehabilitative goals tend to reduce legal remedies and diminish the rehabilitative qualities of juvenile justice.66 This has led commenta-
tors to conclude that the failure of the juvenile justice system is not in implementation, but in its basic conception.\textsuperscript{67}

International law recognizes that there is a proper balance between holding youth accountable for their actions and protecting these children's rights.\textsuperscript{68} International law has done so by emphasizing the need to protect youth while also bestowing on them a "voice" in decisions that ultimately affect them.\textsuperscript{69} Instead of simply punishing youth, efforts are made to hold children accountable for their actions by giving them the power to influence dispositional decisionmaking.\textsuperscript{70} Thus, unlike the traditional focus of selecting either rehabilitation or punishment to deal with problem youth, a third alternative has emerged. This new alternative renews emphasis on protection, care, and treatment; reaffirms the need for societal and victim compensation and compensation to society and individual victims for injuries; and reestablishes the need to hold child offenders accountable while still encouraging responsibility.\textsuperscript{71} The ultimate goal is to reintegrate problem youth back into their families and communities.\textsuperscript{72}

\textsuperscript{67} See supra notes 23-39 and accompanying text.

\textsuperscript{68} See infra notes 103-12 and accompanying text.

\textsuperscript{70} See infra note 105 and accompanying text.
The question arises whether it is realistic and reasonable to claim that accountability, rehabilitation, and reintegration of youth are at all possible. Commentators continue to propose that these goals are essentially antithetical. Yet, contrary to popular notions that "nothing works," some researchers have found reason for hope. Research indicates that, to be effective, juvenile justice programs must address the multiple causes of antisocial behavior, offer services in an ecologically sensitive manner that address the multi-determined nature of behavior, and include youth in decisions that affect them.

This research has led to two highly innovative programs. One approach to service provisions aims to provide flexible, cost-effective services to youth and their families. The other approach focuses on restoring justice and hastening reintegration. Although researchers

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73. See Feld, 79 MINN. L. REV. at 1126.
74. One of the most aggressively debated conclusions in criminal justice and delinquency has been the early claim from treatment research that "nothing works." For a review of these early findings, see Levesque, 1 AGGRESSION & VIOLENT BEHAV. at 70.
75. See REASON TO HOPE: A PSYCHOSOCIAL PERSPECTIVE ON VIOLENCE & YOUTH (Jacquelyn H. Gentry & Peggy Schlegel eds., 1994) (collection of essays by leading scholars addressing current approaches to dealing with youth violence and victimization); RESPONDING TO THE MENTAL HEALTH NEEDS OF YOUTH IN THE JUVENILE JUSTICE SYSTEM (Joseph J. Coccoza ed., 1992) (compilation of articles examining the ability of the juvenile justice system to deal with troubled youth).
76. Levesque, 1 AGGRESSION AND VIOLENT BEHAV. at 73-74.
77. This observation is not new. Indeed, it spawned a move toward interagency collaboration in the provision of child and family services that has extended to the treatment of juvenile offenders and has resulted in comprehensive services. Levesque, 1 AGGRESSION AND VIOLENT BEHAV. at 73-74.
78. This is not just seen in traditional notions of due process, but also in innovative efforts aimed at including youth in the determination of their punishment. See infra notes 103-12 and accompanying text.
79. Several promising programs have effectively addressed "troubled" youth, even violent youth. For a thorough review of recent innovative programs that have withstood empirical scrutiny, see Levesque, 1 AGGRESSION AND VIOLENT BEHAV. at 73-74. See also Levesque, 48 WASH. U. J. URB. & CONTEMP. L. at 98-102 (noting that there is a growing consensus among reviewers of intervention efforts that family-based intervention with adolescents represents the most promising treatment for antisocial behavior); Richard Sullivan & Marcia Fenner Wilson, New Directions for Research in Prevention and Treatment of Delinquency: A Review and Proposal, 30 ADOLESCENCE 1, 10-15 (1995) (proposing a model for intervention).
80. In the restorative justice paradigm, the focus shifts from incurring debt to society to that of incurring a responsibility for making amends to the victimized person. There is a focus on actively making things right rather than passively taking punishment. See Mark S. Umbreit, Holding Juvenile Offenders Accountable: A Restorative Justice Perspective, 46 FAM. CT. J. 31, 31-41 (1995) (summarizing the restorative justice paradigm and how it differs from traditional, retributive approaches); Lode Walgrave, Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative?, 34 HOW. L.J. 228, 234-45 (detailing the basic principles of restorative justice and their empirical bases). See generally Mark S. Umbreit, VICTIM MEETS OFFENDER: THE IMPACT OF RESTORATIVE JUSTICE & MEDIATION (1994); M. Wright, JUSTICE FOR VICTIMS AND OFFENDERS: A RESTORATIVE APPROACH TO CRIME (1991); RESTORATIVE JUSTICE ON
have identified effective approaches to dealing with troubled youth, it remains to be seen whether the innovations have been appropriately integrated into domestic policies. It also remains to be determined whether current trends found in nation states allow for integrating more expansive and innovative approaches to juvenile justice policy.

THE ACTUAL EFFECT OF INTERNATIONAL LAW ON INDIVIDUAL STATES: A MERE TREMOR?

Although international law, buttressed by innovative research, may point nation states in the right direction, these nations may not necessarily adopt the proper reforms. Recent reforms in international juvenile justice systems are illustrative. Several countries, including Canada, England, Australia, the Netherlands, France, Sweden, and Germany, have enacted new reforms or are in the process of doing so. Although each country has taken different approaches toward juvenile justice, their focus arguably has been on affording youth procedural rights and protections from governmental intrusions, rather than on providing services that would foster reintegrative and preventative efforts.

Despite its consistency with the narrow interpretations of international standards relating to juvenile justice, the focus on providing juveniles "adult" due process rights has been unfortunate. Affording youth additional rights has forced the courts to place emphasis on the protection of the community. The resulting tendency has been for society to "get tougher on youth" rather than to enact policies that promote children's interests.  

81. See infra notes 90-96.
82. See infra notes 97-102.
Several countries exemplify the wide disparity between broad interpretations of international guidelines and actual reforms.9 Several countries exemplify the wide disparity between broad interpretations of international guidelines and actual reforms.89 Canada's experience illustrates well the new get-tough approach to procedural rights. In 1984, Canada passed a new Youth Offenders Act ("YOA").90 The YOA emphasizes societal protection, punishment, deterrence, and youth accountability.91 Since its promulgation, the YOA has been amended to make even more paramount the focus on societal protection.92 Current reforms continue the trend away from treatment and other traditional child welfare approaches.

The YOA has proven effective in accomplishing its goals. Canada has witnessed a dramatic increase in the use of custody and a concomitant decline in the use of treatment services.93 A most troubling aspect of the YOA is its attempt to rehabilitate youth through the use of formal custody for non-violent offenders.94 In the rush to increase offender accountability, there is little differentiation among types of offenses and offenders "with the result that many non-violent perpetrators are routinely incarcerated for relatively minor infractions."95 However, this increase in offender accountability has neutralized the previous focus on treatment.96

England's new "get tough" approach is also indicative of the reactionary nature of juvenile justice policy-making.97 Historically, Eng-

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89. See, e.g., Darby, 16 ADEL. L. REV. at 293 (noting the "clear divergence between the rhetoric of rights in the Young Offenders Act ... and the reality of its foreseeable consequences in terms of the rights of the child accused of an offense.... The rights of the child are once again being fatally compromised").
90. For thorough analyses of the Youth Offenders Act in the context of Canadian juvenile justice, see JUVENILE JUSTICE IN CANADA (Raymond R. Corrado ed., 1992); THE YOUNG OFFENDERS ACT: A REVOLUTION IN CANADIAN JUvenile JUSTICE (Alan W. Leschied et al. eds., 1991).
92. Id.
94. Raymond R. Corrado & Alan Markwart, *The Need to Reform the YOA in Response to Violent Young Offenders: Confusion, Reality or Myth?*, 36 CANADIAN J. CRIMINOLOGY 343, 343-72 (1994) (detailing evidence indicating that the YOA has created a system that is more punitive for less serious offenses and less punitive for serious offenses).
95. Hylton, 36 CANADIAN J. CRIMINOLOGY at 244.
96. Leschied, 36 CANADIAN J. CRIMINOLOGY. at 293-300.
land was in the forefront of juvenile justice reform and epitomized “the best interests of the child” approach.\textsuperscript{98} Yet, despite this long history of taking children’s interests seriously,\textsuperscript{99} England recently became disenchanted with the welfare approach and enacted its Criminal Justice and Public Order Act of 1994 (“Act”).\textsuperscript{100} On its face, the Act does not seem to be a radical re-orientation. For example, the Act decreases the age, yet increases the number of crimes for which youth can be accountable, and mandates the use of secured training centers for twelve- to fourteen-year-old persistent offenders.\textsuperscript{101} However, the Act is not without criticism — officials are beginning to remove youths from their communities and to ignore long-standing prevention efforts.\textsuperscript{102}

Despite some alarming trends, it would be erroneous to conclude that the formal international movement, which takes a more comprehensive approach to juvenile justice, has failed to influence reform efforts. The new international ethos in juvenile justice is reflected in the recent changes some countries have made to their juvenile justice systems.\textsuperscript{103} A most often cited example of these international changes is the recent approach taken by New Zealand. New Zealand’s Children, Young Persons and their Families Act of 1989 provides a new

\textsuperscript{98} Donald N. Duquette, Child Protection Legal Process: Comparing the United States and Great Britain, 54 U. Pitt. L. Rev. 239, 270 (1992). See also M.D.A. Freeman, Protecting Children on Both Sides of the Globe, 16 Adel. L. Rev. 79, 84-90 (1994) (detailing the major components of England’s 1989 Children Act, which placed a focus on intervention only when it is “better” for the child, and focusing on children’s rights and child liberation).


\textsuperscript{101} Id. at 579-80.

\textsuperscript{102} Id. at 581-83.

\textsuperscript{103} It is important to note, however, that some countries were already taking an approach consistent with new international mandates. For example, Sweden provides a social welfare system to respond to youths’ welfare needs, even though Sweden has no juvenile court. See Barry C. Feld, Juvenile Justice Swedish Style: A Rose by Another Name?, 11 Just. Q. 625 (1994). Feld argues that Sweden takes crime and prevention seriously. Id. When behavior requires a penal response, youth age fifteen and older are tried in the adult criminal justice system which uses youthfulness as an important mitigating factor. Young offenders and their families are first offered voluntary services. If a voluntary resolution cannot be reached, then a clinical evaluation is made to determine whether social service intervention is to be compulsory. Youths and their parents may challenge the imposition of services; an administrative agency will determine whether the youth is “seriously endangering his health or development.” Id. at 637. See also L. CRAIG PARKER, JR., FINISH CRIMINAL JUSTICE: AN AMERICAN PERSPECTIVE 87-88 (1993) (finding that Finish children under a certain age are dealt with by child welfare authorities).
mandate for juvenile justice. The new approach emphasizes the following needs: involving families in juvenile justice decisions, keeping children in their homes, strengthening and maintaining child-family relationships, and promoting the development of the child in the family. In addition to these concerns, there is a focus on reintegrating juvenile offenders by using a "restorative justice" model. Research has found the new approach more than promising.

In addition to explicit policy changes, other countries have committed to increasing the use of intermediate sanctions on juvenile offenders. For example, China has moved away from using traditional policing to using extensive community-based corrections. Other nations have adopted similar policies. Perhaps an even more illustrative example is Great Britain, a nation that has officially adopted a "get tough" approach, but still recognizes the potential utility and effectiveness of alternative sanctions. Indeed, Britain continues to move toward more intensive probation services rather than simply formal custody for problem youth. Britain's use of non-custodial sentences has been tracked in several official documents promoting...


107. Morris, 26 Austl. & N.Z. J. Criminology at 88-89 (noting the positive effects of the Act, such as greater involvement of families, less reliance on the use of institutions, and significant diversion from the criminal courts); David B. Moore, Shame, Forgiveness, and Juvenile Justice, 12 Crim. Jus. Ethics 3, 20-23 (1993) (presenting research indicating that the approach is not too optimistic); Christine Coumares & Don Weatherburn, Targeting Intervention Strategies to Reduce Juvenile Recidivism, 28 Austl. & N.Z. J. Criminology 55, 70 (1995) (offering a more critical conclusion and emphasizing the need for more extensive evaluations).


“punishment in the community” as a viable method of sentencing all but the most violent offenders. These countries’ attempts to deal with troubled youth reflect the changing nature of punishment — instead of simply warehousing youth, governments are strengthening probation orders by adding fines and making more effective use of day centers.

A survey of juvenile justice systems reveals a piecemeal implementation of international standards. As youth have been accorded more adult due process rights, nations have also subjected youth to increasingly adult forms of punishment. Despite this tendency, some countries have moved toward restorative models and more flexible notions of punishment. Other countries have moved toward using more intermediate sanctions that invoke traditional forms of punishment, while acknowledging the need to reintegrate youth back into their own communities. Simply put, the international approach has revealed progressive changes that focus on a variety of intermediate measures, rather than on simply “getting tough” on youth.

THE UNITED STATES’ CURIOUS POSITION TOWARD INTERNATIONAL LAW

Although the United States has endorsed the international children’s rights standards, it continues to employ a punitive approach to juvenile justice. Several reasons account for the United States’ failure to take the international standards seriously. First, several other countries that have ratified major children’s rights covenants and treaties also have ignored their obligations. Second, nations tend to interpret narrowly the obligations and rights enumerated in international documents, resulting in an apparent nullification of these

111. Id. at 217 (listing sources).
112. See id. at 228 (finding that “diversion is taking place in a way that is cost-effective and, so far as can be ascertained at present, without increasing the risk to the general public from re-offending”). For a more critical analysis of these innovations, see Antony A. Vass & Alan Weston, Probation Day Centres as an Alternative to Custody: A “Trojan Horse” Examined, 30 BRIT. J. CRIMINOLOGY 189 (1990).
113. Recall that the United States has ratified the International Covenant on Civil and Political Rights and has signed the Children’s Convention. See supra note 9 and accompanying text.
114. See supra notes 81-112 and accompanying text.
provisions.\(^{116}\) Third, the United States has been in the forefront of affording juveniles procedural rights,\(^ {117}\) whereas the international movement is only beginning to recognize juveniles' positive rights to services\(^ {118}\) and approaches that stress their interests and capacities.\(^ {119}\) Fourth, previous attempts to reform juvenile justice systems have been relatively unsuccessful,\(^ {120}\) and those that have succeeded tend to be counterproductive.\(^ {121}\) Fifth, reversing the current trend toward punitive measures remains difficult because policy responses are subject to misinformed public opinion based on misperceived crises.\(^ {122}\) Finally, juvenile justice professions dispute the extent to which the child's interests should be primary in the juvenile justice system.\(^ {123}\) If professionals cannot persuade each other of the need for their respective approaches, it is not surprising that the general public and policymakers cannot agree on appropriate reforms.\(^ {124}\)

Despite disagreements and difficulties, the new international guidelines provide an occasion to rethink the current punitive ethos prevailing in the United States. The prevailing "punitive zeitgeist" in juvenile justice has been the subject of considerable commentary.\(^ {125}\)

\(^{116}\) International documents are notoriously difficult to enforce. For example, the Children's Convention has no formal enforcement mechanism; it relies on education. See Children's Convention, supra note 9.

\(^{117}\) See supra notes 22-33 and accompanying text. Of course, the argument could be made that it is only by providing adequate due process rights that successful reintegration can be achieved. See Jeffrey Fagan, Social and Legal Policy Dimensions of Violent Juvenile Crime, 17 CRIM. JUST. & BEHAV. 93, 103 (1990) (noting that the primary rationale for increasingly punitive programs is actually to increase the successful "reintegration of violent delinquents into the community").

\(^{118}\) Melton, 7 NOTRE DAME J.L. ETHICS & PUB. POL'y at 519.

\(^{119}\) See supra notes 68-72 and accompanying text.

\(^{120}\) The greatest testament to the continued failings of juvenile justice systems' rehabilitative efforts is the increasing punitiveness of reform efforts. See Levesque, 48 WASH. U. J. URB. & CONTEMP. L. at 87-89.

\(^{121}\) For example, the due process rights revolution undoubtedly contributed to the increase in punitive sanctions and focus on community protection. See Levesque, 1 AGGRESSION AND VIOLENT BEHAV. at 70-71.

\(^{122}\) Internationally, there has been a decline in juvenile delinquency. For a thorough review of declines in specific countries, see Britta Kyvsgaard, The Decline in Juvenile Delinquency: Possible Explanations of an International Trend, reprinted in OFFICIAL RESPONSES TO PROBLEM JUVENILES: SOME INTERNATIONAL REFLECTIONS 31, 31-39 (Jim Hackler ed., 1991). See Levesque, 48 WASH. U. J. URB. & CONTEMP. L. at 87 (noting that juvenile crime in the United States is declining). Yet, the prevailing perception is that we are facing a youth crime epidemic. Id. at 87.

\(^{123}\) Joseph B. Sanborn, Jr., The Juvenile, the Court, or the Community: Whose Best Interests Are Currently Being Promoted in Juvenile Court?, 17 JUST. Sys. J. 249, 261 (1994).

\(^{124}\) Despite this gloomy picture, signs of progress have emerged. See Gary B. Melton, Bringing Psychology to Capital Hill: Briefings on Child and Family Policy, 50 AM. PSYCHOLOGIST 766, 766-70 (1995) (describing attempts by research groups to directly influence policy).

\(^{125}\) See Levesque, 48 WASH. U. J. URB. & CONTEMP. L. at 87-90 (discussing the use of punitive measures to meet public perception of increasing juvenile violence).
Indeed, several of the more punitive reforms and alternatives to incarceration have developed in the United States and have been transported abroad.\textsuperscript{126}

However, there are other models more consistent with the international mandates and the evolving notions of children's rights. These innovative models offer hope that juvenile justice reforms can more effectively deal with troubled youth. Arguably, the restorative model currently in vogue holds considerable promise. Holding youth accountable for their actions is appealing. Indeed, the United States is already using this approach in the form of mediation and other juvenile justice models which include communities, offenders, families, and victims in dealing with behavior that has become problematic.\textsuperscript{127}

Another equally plausible approach is preventing problem behavior from first arising and helping at risk youth. This approach has received considerable interest in the United States and focuses on family and community-based juvenile justice systems.\textsuperscript{128}

The models that seem to hold the most promise are those which aim to increase juvenile accountability. This notion, however, unlike previous approaches, does not view accountability as a necessary evil associated with punitive approaches to juvenile justice. Instead, this approach focuses on the youth's obligations and accountability and provides the opportunity to involve youth in their rehabilitation and reintegration.\textsuperscript{129}

Equally important, this approach reinforces the


\textsuperscript{127} For example, Minnesota has developed an intensive restorative justice program. See Umbreit, 46 Fam. Ct. J. at 31-41. Likewise, the use of mediation has grown tremendously. See U.S. Department of Justice, Victim-Offender Mediation in the Juvenile Justice System (1991) (noting a comprehensive examination of the characteristics and effectiveness of mediation programs).


\textsuperscript{129} See id. at 106 n.80 (noting that psychological benefits exist when involving children in their own rehabilitation).
commitment that parents, communities, and institutions have toward youth.\textsuperscript{130}

MOVING BEYOND SYMBOLISM: REFLECTING ON FUTURE VISIONS OF JUVENILE JUSTICE

Several countries have launched sweeping and dramatic reforms to deal with the "youth problem." Although these countries have stated their intent to follow the international mandates in administering their juvenile justice systems and juvenile crime prevention efforts, most have enacted reforms that directly contradict these intentions.\textsuperscript{131} Only a handful of countries have enacted changes consistent with the spirit of these international mandates.\textsuperscript{132} Although the extent to which either approach will succeed in alleviating the youth problem remains to be determined, all indications are that the current "state of the art" model to juvenile delinquency remarkably parallels the emerging international approach.

Given this parallel, the presence of the international ideology is momentous. The international norms offer the opportunity to develop juvenile justice systems that are responsive to the actual needs of offenders, families, and society, rather than the prejudices of the day. Given the wide range of possibilities and innovative models used to deal with problem behavior, the disenchantment with juvenile justice and notions that "nothing works" must be reconsidered.

Despite the important developments in children's rights, one must keep in mind that simply giving youth the same rights as adults will not solve the issue. Indeed, conferring procedural rights on children has arguably resulted in harsher juvenile courts and stifled rehabilitative and reintegrative efforts. Yet, youth continue to need protections from arbitrary governmental intrusions.\textsuperscript{133} Likewise, children still need protections from their families\textsuperscript{134} and communities.\textsuperscript{135} The lesson to be learned from the international approach is that providing for the social welfare of young people is ultimately a

\textsuperscript{130} There are no legal obstacles to adopting the above policies. See Levesque, 48 WASH. U. J. URB. & CONTEMP. L. at 95-98, 106-16 (stating that there are no legal obstacles to policies promoting accountability and rehabilitation).

\textsuperscript{131} See supra notes 88-102 and accompanying text.

\textsuperscript{132} See supra notes 103-07 and accompanying text.

\textsuperscript{133} See supra notes 7-10 and accompanying text.

\textsuperscript{134} U.S. ADVISORY BOARD ON CHILD ABUSE & NEGLECT, A NATION'S SHAME: FATAL CHILD ABUSE AND NEGLECT IN THE UNITED STATES 13 (1995) (stating that "most physical abuse fatalities are caused by enraged or extremely stressed fathers or other male caretakers").

societal responsibility, rather than a judicial one. Juvenile courts cannot be expected to alleviate every social ill afflicting young people or to have a significant impact on juvenile crime.

The conclusion that there is a need for a broader conception of children's rights and a need to hold more institutions and individuals accountable is reinforced by the nature of the effective models that have emerged. For example, these innovative programs address unmet needs and break the cycle of poverty, lack of education, and drug and alcohol abuse, all of which lead to crime. Properly addressing these issues requires a whole host of social development programs promoting the basic needs of youth, children, and families. Yet, despite the ability to provide adequate and cost-effective services, the current approach found in several countries clearly aims to get tougher on youth and to remove them from society and their families. These near-sighted visions of juvenile justice are unable to look beyond traditional visions of the juvenile court.

Future visions of juvenile justice must move beyond the juvenile court. Effective programs have the following characteristics in common: a social-ecological perspective approaching problems in terms of key social contexts, delivery of services to that natural social context, involvement of youth in rehabilitative and punitive procedures, and provision of individualized and flexible services. However, the significance of these innovative approaches does not lie in their ability to develop new forms of intervention. Rather, the utility of these approaches rests in reminding us of the need to flexibly and creatively implement service plans tailored to the multiple needs of individual youth.

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137. The increasing recognition of the need to adopt this approach is reflected in some recent creation of multi-agency approaches to juvenile delinquency. See CAL. WELF. & INST. CODE § 501(a) (West 1984 & Supp. 1995) (creating an inter-agency program that utilizes law enforcement, probation departments, schools, and juvenile courts); ILL. ANN. STAT. Ch. 705, § 405/1-8.2 (Smith-Hurd 1987 & Supp. 1995) (creating a “multi-disciplinary interagency” case management and information sharing management system); 10 OKLA. STAT. ANN. § 1160.3.5 (West Supp. 1995) (creating a program to ensure diversion of youth from the juvenile justice system and to provide intensive services); VA. CODE ANN. § 16.1-330.1(B) (Michie Supp. 1995) (creating a multidisciplinary case management and information sharing system). Regrettably, however, these services are aimed at dealing with serious and habitual offenders and fail to include broader intervention.
CONCLUSION

An inflexible system simply could not address the multiple problems faced by the children discussed above.\textsuperscript{138} Problem youth must contend with chronic difficulties ranging from socially toxic environments to sheer personal pathologies.\textsuperscript{139} Yet, current policies continue to offer single solutions and fail to move beyond symbolic gestures, quick-fixes, and the search for the silver bullet.\textsuperscript{140} The success of the few implemented innovations indicates that juvenile offenders can be held accountable, while still protecting society in a more cost effective and humane manner. This success reaffirms the continued need for the juvenile courts' rehabilitative and restorative ideals and reconsiders the juvenile's place in the future of juvenile justice.

\textsuperscript{138} See supra notes 1-6 and accompanying text.

\textsuperscript{139} See James Garbarino, Raising Children in a Socially Toxic Environment (1995). Despite strong evidence to the contrary, there is still the tendency to view children as innocent and incapable of brutal acts. The result has been a striking tendency to ignore the root of problem behavior. See, Thomas J. Dishion, et al., The Development and Ecology of Antisocial Behavior, 2 Developmental Psychopathology 421, 424 (Dante Cicchetti & Donald J. Cohen eds., 1995) (reviewing research and finding that aggressive behavior during early childhood predicts later antisocial behavior). Despite accumulating evidence regarding the importance of recognizing early antisocial behavior, the tendency to ignore even public acts of violence continues. See Levesque, 27 Loy. U. Chi. L. J. at 701 (citing adults' failure to recognize even public displays of sexual harassment by children).

\textsuperscript{140} Programs must be comprehensive; those that are not are doomed to failure. For example, wilderness programs, the current craze, continue to be implemented despite little evidence of their effectiveness. See Scott Bandoroff & David G. Scherer, Wilderness Family Therapy: An Innovative Treatment Approach for Problem Youth, 3 J. Child & Fam. Stud. 175 (1994); Patricia M. Harris, et al., A Wilderness Challenge Program as Correctional Treatment, 19 J. Offender Rehab. 149 (1993); Thomas C. Castellano & Irina R. Soderstrom, Therapeutic Wilderness Programs and Juvenile Recidivism: A Program Evaluation, 17 J. Offender Rehab. 19 (1992).