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JUSTICE FOR YOUTH: THE BETRAYAL OF CHILDHOOD IN THE UNITED STATES

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Why are people criticizing the young people? Why are they portraying us as villains? Why are they putting us down?[1]

INTRODUCTION

In February, 1996, a twelve-year-old boy became the youngest inmate at a high security prison. This child, along with a thirteen-year-old who received the same sentence, was convicted for the death of five-year-old Eric Morse.[2] The boys, ten and eleven at the time of the tragic incident, dropped Eric fourteen stories out of a window after he refused to steal candy for them.[3] In choosing to send the boys to a maximum security juvenile prison, the judge rejected the defense counsel's argument that the youngsters, barely able to see over the bench, needed extensive psychiatric treatment and counseling.[4] Both boys had stood before judges in juvenile

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[1] Press Release from the Department of Justice, Attorney General Janet Reno Remarks on the Decrease in Youth Violence in 1995 (Aug. 8, 1996) (on file with *Journal of Law and Policy*) (quoting questions directed at Attorney General Reno by youths).

[2] Alex Kotlowitz, *It Takes a Village to Destroy a Child*, N.Y. TIMES, Feb. 8, 1996, at A25.

[3] *Id.*

[4] Don Terry, *Prison for Young Killers Renews Debate on Saving Society's*

court on numerous occasions prior to this incident. Time and again, both had been returned home to the same poverty-stricken neighborhood in Chicago, without any ongoing care or intervention. "He's not a monster," argued David Hirschboeck, a public defender representing one of the boys, but "we are barreling down the road to making him one."[5]

A few weeks later, in California, a six-year-old boy was charged with beating a neighbor's newborn infant.[6] The only factor that the prosecutor used in deciding whether to charge the six-year-old with the crime was whether he understood the difference between right and wrong.[7] Across the state, everyone from the district attorney to Governor Pete Wilson (R-Cal.) cried out to charge the child as an adult and to force him to face an adult sentence.[8] Although less than one-half of one percent of America's children are responsible for serious, violent crimes,[9] journalists and politicians around the country heralded the arrival of a generation of young "superpredators," and called for the end of rehabilitative justice for the country's youngest citizens.[10] The presumption that children who commit crimes deserve to be treated differently than adults, a philosophy already under siege, was well on its way to extinction.

Around the same time, South Africa, which for many years had tried juveniles as adults and incarcerated its youth—some as young as ten—in adult prisons, began to treat juveniles as children.[11]

Lost, N.Y. TIMES, Jan. 31, 1996, at A1. Michelle Kaplan, a lawyer for the older boy, expressed her dissatisfaction with the sentence, stating, "They're children. They're not animals." *Id.*

[5] *Id.*

[6] Carey Goldberg, *6-Year-Old Charged with Trying to Kill Baby*, N.Y. TIMES, Apr. 26, 1996, at A20.

[7] *Id.*

[8] *Id.* Surprisingly, the father of the baby was one of the few who was not seeking revenge. Instead, he urged that the six-year-old receive psychiatric treatment and counseling. *Id.*

[9] HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT 51 (1995).

[10] Peter Annin, *'Superpredators' Arrive*, NEWSWEEK, Jan. 22, 1996, at 57.

[11] *See* Di Caelers, *Free Children by Christmas, Says Report*, WEEKLY MAIL,

This decision was prompted by a national outcry after child advocacy groups learned that some children as young as seven were being held in adult prisons. In order to protect future generations from harm, South African lawmakers chose to include the concept of children's rights within their constitution. The constitution includes a section that expressly forbids the incarceration of children under the age of eighteen with adults.[12] Legislation is currently pending that will put in place a community-based youth justice system founded upon principles of restorative justice and special treatment for children in trouble with the law.[13] In New Zealand, a similar youth justice system has drastically lowered youth crime rates and is receiving enthusiastic responses from both the government and the general public.[14]

This Article will question what system of justice is appropriate for children in the United States. International laws and standards begin to provide an answer, and are the foundation for analysis of the reluctancy of the United States to follow established international norms for the treatment of youth offenders who experience

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Oct. 23-29, 1992, at 10 (responding to the large number of children who have been assaulted by other prisoners while awaiting trial in prison, especially after the sodomization and brutal death of thirteen-year-old Neville Snyman); Di Caelers, *Jail Kids Scandal*, WEEKLY MAIL, Oct. 10, 1992, at 1 (criticizing police for failing to search for the parents of arrested children, and thereby abusing the law that allows children to be incarcerated if their parents cannot be found. As a result, thousands of children are subjected to assault and sodomy by other prisoners); Gaye Davis, *No Safe Haven for the Caged Children*, WEEKLY MAIL, Oct. 23-29, 1992, at 10 (reporting that children detained in prison while awaiting trial are subjected to traumatizing physical and sexual abuse by adult prisoners). *See generally* YOUTH ADVOCS. OF THE CHILDREN'S RIGHTS RES. & ADVOC., LETTING IN THE LIGHT: SEEKING JUSTICE FOR THE CHILDREN OF SOUTH AFRICA (Michelle Morris ed., 1993) (profiling the experiences of specific South African children that have been incarcerated while awaiting trial, including accounts of shocking physical and mental abuse).

[12] S. AFR. CONST., ch. II, § 28 (1996).

[13] ANN SKELTON, JUVENILE JUSTICE FOR SOUTH AFRICA 5-6 (1995).

[14] *Id.* at 7. *See* Michelle Morris, The Search for Justice in a Juvenile System, Paper presented at the International Conference on the Rights of the Child 53-54 (June 10-13, 1992) (on file with *Journal of Law and Policy*) (indicating that just one year after implementing its new juvenile justice system, New Zealand saw its number of reformatories reduced from 26 to three).

the justice system. Part I provides an overview of the situation confronting children who encounter the justice system in the United States. Parts II and III review both international and domestic laws and standards on justice for youth. Part IV illustrates the ways in which U.S. policy deviates from international norms, in, for example, waiver and transfer laws, conditions of incarceration and the death penalty. Part V gives voice to some of the youngsters who have wended their way through the juvenile justice system. This Article concludes that if the United States wants to be a world leader in human rights, as it purports to be, then it should use international standards as a model for the restructuring of a juvenile justice system that is currently detrimental to the future of its youth.

I. AMERICA'S PUNITIVE JUVENILE JUSTICE SYSTEM

While attitudes and policy around the world have shifted toward the use of restorative justice for juveniles,[15] the United States is increasingly adopting a punitive approach toward its children.[16] This "get tough on youth crime and violence" approach is taking the United States progressively further away from the rehabilitative goals set forth by international standards governing the operation

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[15] *See generally* Jean-Pierre Bonafe-Schmitt, *Alternatives to the Judicial Model, in* MEDIATION AND CRIMINAL JUSTICE 178, 178-94 (Martin Wright & Burt Galaway eds., 1989) (describing the various extra-judicial programs for dispute resolution which now exist in France); L. M. Muntingh, *Introduction, in* DIVERSIONS: AN INTRODUCTION TO DIVERSION FROM THE CRIMINAL JUSTICE SYSTEM (L. M. Muntingh & Rosemary Shapiro eds., 1993) (describing the three diversionary options available to the criminal justice system through the National Institute for Crime Prevention and Rehabilitation of Offenders: (1) victim-offender mediation; (2) pretrial community service; and (3) a youth offender program).

[16] *See* Fox Butterfield, *Republicans Challenge Notion of Separate Jails for Juveniles*, N.Y. TIMES, June 24, 1996, at A1 (discussing proposal to eliminate separate youth prisons in order to "get tough" on juvenile crime); Don Terry, *supra* note 4, at A1 (discussing the failure of harsher prison sentences to provide necessary psychiatric counseling and rehabilitation for child felons); *Prosecuting Juveniles as Adults*, N.Y. TIMES, May 20, 1996, at A14 [hereinafter *Prosecuting Juveniles*] (arguing that prosecuting juveniles as adults is an ineffective method of crime prevention).

and objectives of a youth justice system, and further behind other countries in the humane treatment of its youth.[17] The result may be that American children are less likely to receive the treatment that their age and maturity warrant. Ultimately, it may mean the demise of an already strained youth justice system and the creation of more, and younger, convicted criminals who are unable to successfully reintegrate into society as productive citizens.

In this U.S. presidential election year, the calls to "get tough on youth crime and violence," from both politicians and the body politic, have only increased in frequency and stridency. Fearful of a perceived rise in youth violence,[18] there has been a rush to condemn an already underfinanced youth justice system, thought to be too lenient, too ineffective at prevention and too focused on the ideal of rehabilitation. Anything less than the harshest sentence is seen as the "coddling" of a young criminal.[19] Punishment is the new philosophy toward children in trouble with the law, and the term "juvenile delinquent" is gradually being replaced by the term "youth predator."[20] The trend toward substantive and procedural convergence between juvenile and adult criminal courts has, therefore, gathered momentum over the past two decades.[21]

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[17] *See infra* Part II (discussing international juvenile justice standards).

[18] *See* THE REAL WAR ON CRIME: THE REPORT OF THE NATIONAL CRIMINAL JUSTICE COMMISSION 12 (Steven R. Donziger ed., 1996) [hereinafter WAR ON CRIME] (reporting that while crime rates have dropped dramatically in the last year, the average American's fear of crime in his or her own neighborhood is higher than that of any other country in the world); Fox Butterfield, *After a Decade, Juvenile Crime Begins to Drop*, N.Y. TIMES, Aug. 9, 1996, at A1 (quoting Attorney General Janet Reno reporting that the nationwide rate of juvenile violence declined in 1995 for the first time in a decade).

[19] *See* Butterfield, *supra* note 16, at A1 (discussing the Republican move to "end what they see as the coddling of violent young offenders" by eliminating federal mandates which require the segregation of juveniles in jails and prisons).

[20] *See* Debbie Garlicki, *Adult Sentences May be Making Teen Criminals Tougher*, MORNING CALL, June 12, 1996, at B6 ("Teen criminals have been labeled predators and super-predators by lawmakers eager to serve up tougher penalties to satisfy a victimized public's hunger for retribution.").

[21] *See generally* Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965 (1995) (questioning the need for a separate, more lenient juvenile court as the problem of teen crime increases).

Conditions in which juveniles are confined by the states, both before and after an adjudication of delinquency, are often harsh, punitive and seriously deficient in the programming required to make a realistic, rehabilitative difference.[22] While some juvenile institutions may look like "home," most juvenile correctional facilities resemble adult prisons. Many are severely overcrowded, with youngsters sleeping in packed, poorly supervised dormitories.[23] This overcrowding often affects the operation of the facility and the ability of the staff to control behavior, thus increasing the use of leg shackles and handcuffs to maintain order.[24] Overcrowding also decreases the availability and effectiveness of counseling and treatment programs, thereby increasing

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[22] *See* Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment and the Difference It Makes*, 68 B.U. L. REV. 821, 893 (1988) (stating that "[d]espite the rhetoric of rehabilitation, the daily reality of juvenile offenders confined in many 'treatment' facilities is one of staff and inmate violence, predatory behavior, and all of the attendant punitive consequences of custodial incarceration"). *See generally* HUMAN RIGHTS WATCH CHILDREN'S RIGHTS PROJECT, UNITED STATES: CHILDREN IN CONFINEMENT IN LOUISIANA 28-34 (1995) [hereinafter HUMAN RIGHTS, LOUISIANA] (documenting interviews with young inmates revealing a glaring lack of rehabilitative programming and the pervasive use of physical abuse, restraints and solitary confinement to "discipline" youth).

[23] *See* SNYDER & SICKMUND, *supra* note 9, at 170 (stating that overcrowding is commonplace in most juvenile detention facilities and rarely meets the 1989 American Correctional Association ("ACA") accreditation standards for juvenile facilities, which require that juveniles held in one-person sleeping rooms have 70 square feet of floor space and sleeping areas housing three or more juveniles provide 50 feet per youth). In visits to juvenile facilities in Louisiana, juveniles in all of the four training facilities were held in rooms that violated the standard which limits capacity to 25 youths per living unit. HUMAN RIGHTS, LOUISIANA, *supra* note 22, at 20-21.

[24] *See, e.g.*, Charlie Brennan, *Crowding Puts Kids' Prisons At Danger Level*, ROCKY MTN. NEWS, Jan. 23, 1996, at 4A (reporting that juveniles were routinely shackled at an overcrowded prison to prevent escapes); Bernardine Dohrn, *Listen to the Children*, CHI. TRIB., Aug. 29, 1995, at 6 (reporting that a 12-year-old girl was shackled and imprisoned by a local judge); Evelyn Nieves, *Disciplinarian Is Not Sorry for Shackling*, N.Y. TIMES, Sept. 29, 1996, §1, at 39 (reporting that Essex County Youth House Director routinely shackled detainees to beds as a disciplinary measure).

the likelihood of criminal activity by the juveniles upon release.[25] Even the traditional rule of separate courts and prisons for youth and adults is eroding. This undermining of children's rights continues through the passage of increasingly aggressive waiver and transfer laws,[26] lax monitoring by the state and federal government of adult prisons and local jails to ensure segregation and the proposal of new legislation that would enable judges to sentence juveniles to adult facilities if they commit and are convicted of adult crimes.[27]

While the law and order approach may appease the masses and help some politicians maintain positions and win votes, it ignores the fact that children are developmentally different from adults. Furthermore, they cannot vote and can never be tried by a jury of their "peers" in adult court.[28] Even within the existing juvenile court system, there is a general disregard and disrespect for the individual lives of children. The book, *There Are No Children Here*, by Alex Kotlowitz, an author and philosopher, provides an accurate example of America's current attitude toward children. In Kotlowitz's example, a Chicago judge spends less than a few minutes with a twelve-year-old boy charged with robbery, never looking up and "never so much as glancing" at the boy and his mother.[29] Moments later, when the mother returns to ask the judge a question, he does not recall seeing the boy and does not even remember his name.[30] This sort of attitude, that children in trouble

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[25] *See generally* WAR ON CRIME, *supra* note 18, at 130-45 (discussing juvenile correctional facilities and their connection to teen violence).

[26] Waiver and transfer laws allow minors to be prosecuted in adult criminal courts, thereby making it virtually impossible for the youth to be sent to a juvenile institution. WAR ON CRIME, *supra* note 18, at 135-36.

[27] *See* Garlicki, *supra* note 20, at B6 (discussing the methods by which increasing numbers of states are attempting to prosecute juveniles as adults).

[28] *See generally* EDWARD HUMES, NO MATTER HOW LOUD I SHOUT: A YEAR IN THE LIFE OF JUVENILE COURT (1996) (detailing true accounts of juveniles that have gone through the Los Angeles Juvenile Court System); Alex Kotlowitz, *Their Crimes Don't Make Them Adults*, N.Y. TIMES, Feb. 13, 1996, §6 (Magazine), at 40 (suggesting that adult court is too harsh in dealing with juvenile offenders).

[29] ALEX KOTLOWITZ, THERE ARE NO CHILDREN HERE 273 (1991).

[30] *Id.*

with the law do not have names (or rights), but are best served by being put out of sight and out of mind, lies at the core of U.S. policy toward youth justice. This policy is not only destroying the traditional idea that rehabilitative care and legislative protections were created to help children in trouble, it is also violating international law[31] and destroying the reputation of the United States as a leader in the human rights community. Tragically, this lack of compassion is destroying many young lives along the way.

II. INTERNATIONAL STANDARDS

The United Nations Convention on the Rights of the Child ("CRC")[32] was unanimously adopted by the United Nations General Assembly on November 20, 1989, and is the primary international document dealing with the rights of children who encounter the law. The CRC is the only treaty that directly affects the issues insofar as children, and not adults, are concerned by acknowledging that children are "full human beings, entitled to human and civil rights and entitlements."[33] The CRC defines a child as an individual eighteen-years-old or under.[34] Other sections

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[31] *See infra* Part II (discussing international juvenile justice standards).

[32] G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 1, U.N. Doc. A/44/736 (1989). The United Nations Convention on the Rights of the Child ("CRC") was set forth on September 2, 1990. It was signed by the United States in February, 1995, but has not been ratified. The United States is one of only six countries who have not ratified the CRC. *See* Paula Donnolo & Kim K. Azzarelli, *Ignoring the Human Rights of Children: A Perspective on America's Failure to Ratify the United Nations Convention on the Rights of the Child*, 5 J.L. & POL'Y 203, 215 app. (1996) (listing the 187 countries that have signed and ratified the CRC).

[33] *See* Bernardine Dohrn, Leastwise of the Land: Children and the Law, Paper presented at *Children at Risk*, An International, Interdisciplinary Conference sponsored by the Norwegian Centre for Child Research, The Norwegian Commissioner for Children, Redd Barna, the City of Bergen and the United Nations International Children's Educational Fund in Bergen, Norway 19-20 (May 13, 1992) (on file with *Journal of Law and Policy*).

[34] In Article 1, the CRC specifically states that a child is "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." G.A. Res. 44/25, *supra* note 32, at 5. The only exception spelled out in the CRC is found in Article 38 dealing with the

of the CRC that do not deal specifically with detained children, yet indirectly mandate their treatment, are: the right to maintain contact with parents,[35] the right to health[36] and the right to education.[37] Despite resolutions by both houses of Congress, a supportive resolution by the House of Delegates of the American Bar Association, and an aggressive campaign by hundreds of nationally respected organizations, the United States has yet to ratify the CRC.[38] The hesitation of the United States to ratify the CRC mirrors our country's failure to recognize children as human beings and to act positively to improve their lives.

Articles 37 and 40 of the CRC pertain directly to the issues of incarceration and judicial proceedings. Under Article 37, the states have an obligation to ensure that no child is subjected to "cruel, inhuman or degrading treatment or punishment."[39] Children deprived of liberty are to be separated from adult prisoners and

> shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.[40]

Article 40 sets out the guarantees to a fair hearing where a child is charged with infringing the penal law.[41] Article 40 also mandates

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recruitment and use of child soldiers. It allows for children fifteen and over to take part in direct hostilities and be recruited into the armed forces. G.A. Res. 44/25, *supra* note 32, at 18. Not surprisingly, the United States was one of a handful of countries that argued vehemently for this exception to lower the age of childhood for young soldiers. For a discussion of the role of the United States in drafting the CRC, see George Kent, United States Policy on Children (May 23, 1991) (unpublished manuscript, University of Hawaii) (on file with *Journal of Law and Policy*).

[35] G.A. Res. 44/25, *supra* note 32, at 7.

[36] G.A. Res. 44/25, *supra* note 32, at 12-13.

[37] G.A. Res. 44/25, *supra* note 32, at 14-15.

[38] Donnolo & Azzarelli, *supra* note 32, at 215 app. (listing the 187 countries that have signed and ratified the CRC).

[39] G.A. Res. 44/25, *supra* note 32, at 17 (prohibiting the death penalty for crimes committed by children).

[40] G.A. Res. 44/25, *supra* note 32, at 17.

[41] G.A. Res. 44/25, *supra* note 32, at 17.

that states "shall seek to promote the establishment of laws, procedures, authorities and institutions applicable to children" accused of infringing the penal law.[42] This provision further suggests that alternative measures to judicial proceedings are preferable whenever appropriate.

In addition to the CRC, five other international documents dictate the treatment of children in confinement and create a more comprehensive set of international standards. These include: the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ("U.N. Rules");[43] the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules");[44] the United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines");[45] the Standard Minimum Rules for the Treatment of Prisoners ("Prisoner's Rules");[46] and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment ("Principles").[47] Except for the Prisoner's Rules, these standards have been accepted by the international community via adoption as General Assembly resolutions.[48]

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[42] Telephone Interview with Lois Whitman, director of Human Rights Watch, Children's Rights Project, New York (Sept. 24, 1996). America's move away from separate justice systems for children and adults is in direct conflict with the underlying principles of Article 40 of the CRC, signed and ratified by 187 countries around the world. *Id.*

[43] G.A. Res. 45/113, U.N. GAOR, 45th Sess., Supp. No. 49A, at 1, U.N. Doc. A/45/49 (1991).

[44] G.A. Res. 40/33, U.N. GAOR, 40th Sess., Supp. No. 53, at 3, U.N. Doc. A/40/53 (1985).

[45] G.A. Res. 45/112, U.N. GAOR, 45th Sess., Supp. No. 49A, at 1, U.N. Doc. A/45/49 (1991).

[46] E.S.C. Res. 2076 (LXII), U.N. ESCOR, 62d Sess., Supp. No. 1, at 35, U.N. Doc. E/5988 (1977).

[47] G.A. Res. 43/173, U.N. GAOR, 43d Sess., Supp. No. 49, at 1, U.N. Doc. A/43/49 (1988).

[48] In international law, a treaty is considered binding on all signatory parties; however, the entire international community may be bound by the law if it is a practice that has, by virtue of broad and stated acceptance, become part of unwritten customary international law. Hiram E. Chodosh, *An Interpretive Theory of International Law: The Distinction Between Treaty and Customary Law*, 28 VAND. J. TRANSNAT'L L. 973, 990-92 (1995). A General Assembly resolution

The Beijing Rules and the Riyadh Guidelines build upon the principles of treatment and rehabilitation by emphasizing alternatives to incarceration and by calling for extensive programming for children in cases where incarceration is the only option. The broad "fundamental perspectives" section of the Beijing Rules provides for the establishment of a youth welfare system which will minimize the necessity of intervention by the criminal justice system.[49] That section provides:

> Member States shall endeavor to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when he or she is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible.[50]

In the event that a child does come into contact with the law, the Beijing Rules emphasize that incarceration be the last resort and that the guiding factor in any decision be the well-being of the juvenile.[51] The implication of the Beijing Rules is that strictly punitive approaches are not appropriate for children.[52] Section 17.2 reiterates the CRC prohibition on the imposition of capital punishment for any crime committed by a juvenile.[53] Should institutionalization become necessary, however, the Beijing Rules clearly provide that the objective is training and treatment, "with a view to assisting [juveniles] to assume socially constructive and productive roles in society."[54]

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is evidence of a commitment by the international community, but it is not formally binding on the countries who voted for the resolution. Gregory J. Kerwin, Note, *The Role of United Nations General Assembly Resolutions In Determining Principles of International Law In United States Courts*, 1983 DUKE L.J. 876, 876-77.

[49] G.A. Res. 40/33, *supra* note 44, at 3.

[50] G.A. Res. 40/33, *supra* note 44, at 3.

[51] G.A. Res. 40/33, *supra* note 44, at 10.

[52] G.A. Res. 40/33, *supra* note 44, at 10.

[53] G.A. Res. 40/33, *supra* note 44, at 10.

[54] G.A. Res. 40/33, *supra* note 44, at 13. Section 26.3 stipulates that juveniles are always to be separated from adults prisoners. G.A. Res. 40/33, *supra* note 44, at 23.

The Riyadh Guidelines focus specifically on issues like "socialization processes" and "social policy."[55] The U.N. Rules deal exclusively with the circumstances and conditions in which children deprived of liberty must be held. The primary goal of the detailed specifications for institutions housing children is to create an environment that minimizes the differences between life inside and life outside the institution. This goal is the principle of "naturalization,"[56] and it is, according to the international standards, essential to the ultimate objective of treatment, not punishment. At the outset, the U.N. Rules provide that they are established "with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society."[57] As a result of the focus on naturalization and treatment in the U.N. Rules, the standards are fundamentally different in scope from those that pertain to adults, and it is, therefore, essential that juveniles be incarcerated separately to meet the international standards.

The Principles and Prisoner's Rules are never more rigorous than those applicable to children and are frequently less onerous. For example, the specifications for the physical environment of adult facilities deal primarily with the tangible material environment such as the size of the cell, the bed, the shower and the toilet. The standards for youth facilities, however, call for units designed to be small enough to enable individualized treatment in keeping with the rehabilitative aims. In addition, institutions housing children are required to provide education, vocational training and work opportunities, as well as recreational and physical training. Solitary confinement, however, is prohibited for children, though not for adults. Apart from the basic necessities, including physical and mental health treatment, there are no treatment, programming or rehabilitation measures required for adults by

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[55] G.A. Res. 45/112, *supra* note 45, at 6-11 (citing to Parts IV and V).

[56] Naturalization is the principle that a child's environment in detention should, as closely as possible, resemble his or her natural environment at home. Denise M. Fabiano, Note, *Immigration Law—Flores v. Meese: A Lost Opportunity to Reconsider the Plenary Power Doctrine In Immigration Decisions,* 14 W. NEW ENG. L. REV. 257, 294 n.76 (1992).

[57] G.A. Res. 45/113, *supra* note 43, at 4.

international standards.[58] Finally, the U.N. Rules, as well as the CRC and Beijing Rules, provide that the death penalty is absolutely prohibited for children, though it is not for adults.[59]

III. UNITED STATES STANDARDS

Article 40 of the CRC, which guarantees fair hearings for juveniles and provides for the establishment of separate laws, procedures, authorities and institutions specific to juveniles, encapsulates the philosophical issue that drives the debate in the United States. Article 40 harmonizes the two threads that have plagued the U.S. conception of a juvenile justice system from the beginning: the need to treat children differently because of their age, development and malleability, and the need to accord children the procedural safeguards enjoyed by adults.[60]

Philosophically, the United States has apparently been unwilling to differentiate children from adults and to procedurally protect children to the same extent as adults. The result is a mix of philosophies that usually fails to capture the idea of protection or the notion of rights.[61] In determining how to handle wayward children, "the less done to them the better" approach is not the policy followed in the United States because the history of youth injustice reflects a complexity and a bureaucracy that belies any evidence of such simplicity.

The concept of "children's rights" is relatively new in the United States. Children were neither considered "citizens" nor entitled to all the rights contained in the U.S. Constitution until the

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[58] *See generally* G.A. Res. 43/173, *supra* note 47 (enumerating the rights afforded all persons in any form of detention or imprisonment); E.S.C. Res. 2076 (LXII), *supra* note 46 (enumerating the rules for the treatment of prisoners).

[59] G.A. Res. 45/113, *supra* note 43, at 4; G.A. Res. 44/25, *supra* note 32, at 17; G.A. Res. 40/33, *supra* note 44, at 10.

[60] G.A. Res. 44/25, *supra* note 32, at 18-19.

[61] *See generally* AMERICAN BAR ASSOCIATION JUVENILE JUSTICE CENTER, JUVENILE LAW CENTER, AND YOUTH LAW CENTER, A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS (1995) (arguing that inadequate resources, overburdened lawyers, and ill-informed clients jeopardizes the quality of legal representation).

Supreme Court's landmark decisions of *In re Gault*[62] and *Kent v. United States*[63] in the late 1960s. Previously, juvenile courts operated according to a *parens patriae*[64] philosophy. Courts and judges were "parental" and formality was eschewed in favor of a more flexible, and thus discretionary approach.[65]

Court decisions in the 1960s and 1970s ushered in the shift toward increased due process within the juvenile courts.[66] During this period, the U.S. Supreme Court dramatically redefined the nature of the juvenile court system. Referring to the "unbridled discretion" given to juvenile court judges and criticizing judicial decisions that resulted in the "worst of both worlds" for children in trouble, the Court began to incorporate into the juvenile system many of the procedures used in the adult criminal justice system.[67]

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[62] 387 U.S. 1 (1967) (holding delinquency proceedings invalid for a lack of due process, notice of charges, right to counsel and right to confrontation and cross-examination).

[63] 383 U.S. 541 (1966) (affirming a minor's right to counsel, right of counsel to see the child's social records, as well as the minor's right to a hearing before any disposition).

[64] *Parens patriae* literally means "parent of the country." BLACK'S LAW DICTIONARY 1114 (6th ed. 1990).

> It was originally used in the 1500s in England in connection with children whose parents had died, leaving an estate. In such cases, a special court (called Chancery Court) would manage the estate until it could be turned over to the child at the age of 21. This was done on the theory that, when the child's natural parents were dead, the state, as parent of the country ("parens patriae"), would take over the role of the child's parent.

THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 69 (1992).

[65] Deborah L. Mills, United States v. Johnson: *Acknowledging the Shift in the Juvenile Court System from Rehabilitation to Punishment*, 45 DEPAUL L. REV. 903, 920 (1996).

[66] For a general discussion of the evolution from *parens patriae* to due process, see Task Force on Juvenile Justice, *The Massachusetts Juvenile Justice System of the 1990's: Re-Thinking a National Model*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 339, 341-44 (1995).

[67] *See generally* SNYDER & SICKMUND, *supra* note 9, at 69-95 (stating that the juvenile justice system now affords the accused the rights of due process, probable cause and proof beyond a reasonable doubt).

In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act[68] ("JJDPA"), ushering in a twenty-plus year history of oversight and administration of youth justice by a federal body—the Office of Juvenile Justice and Delinquency Prevention ("OJJDP"). JJDPA prohibits both the incarceration of status offenders[69] in secure facilities and the confinement of juveniles with adults.[70] Judicial, legislative and administrative reforms that followed in the 1980s tended to treat children more like adults in all respects.[71]

In the late 1980s and early 1990s, there was a breakdown in the principle of separation of adults and children based upon the public perception that juvenile courts were "soft" on crime.[72] Both the states and the federal government have responded by passing more punitive laws related to juvenile offenders.[73] Although the U.S. Constitution protects adult prisoners from conditions that amount to "cruel and unusual punishment," and this protection was also extended to protect children from conditions that "amount to

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[68] 42 U.S.C. §5601 (1994).

[69] A status offender is a child who commits an action which, if committed by an adult, would not be illegal; for example, truancy or running away from home. *See* 42 U.S.C. § 5633(a)(12)(A) (1994) (enumerating the requirements for states to receive federal assistance for state and local juvenile justice and delinquency prevention programs).

[70] Compliance with the Act is verified through self-reporting by the states, and there is no general monitoring of the conditions in which adjudicated delinquent children are held. *See id.* § 5633(a)(13) (prohibiting federally funded juvenile justice programs from incarcerating juveniles with adult prisoners or with staff from an adult facility).

[71] SNYDER & SICKMUND, *supra* note 9, at 69.

[72] SNYDER & SICKMUND, *supra* note 9, at 72.

[73] In Georgia, for example, a 1994 reform in the legislation requires children 13-years-old and over to be tried as adults for certain crimes. GA. CODE ANN. §§ 15-11-5, -39, -39.1 (1994). *See, e.g.*, ALA. CODE § 12-15-34 (1995); CAL. WELF. & INST. CODE §§ 707, 707.2 (West 1984 & Supp. 1996); FLA. STAT. ANN. §§ 39.022, .047, .052 (West Supp. 1996); KY. REV. STAT. ANN. §§ 635.020, 640.010 (Michie 1990 & Supp. 1994); N.J. STAT. ANN. § 2A:4A-26 (West 1987 & Supp. 1994); TENN. CODE ANN. §§ 37-1-134, -159 (1991 & Supp. 1995). *See generally* SNYDER & SICKMUND, *supra* note 9, at 69-95 (describing changes in laws surrounding treatment of juvenile offenders, and changes in the structure of the juvenile justice system).

punishment,"[74] under the Fourteenth Amendment, these protections are limited.[75]

In the 1970s, some courts held that involuntarily incarcerated juveniles had a constitutional right to "rehabilitative treatment"[76] because the nature and duration of incarceration had to be "reasonably related to the purpose for which the individual [was] committed."[77] The 1980s brought a reversal of this trend, and courts started to find that there was no obligation to provide treatment.[78] In one of the leading cases on the issue, *Youngberg v. Romeo*,[79] the Supreme Court held that the committed individual's liberty interests required the state "to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint."[80] In short, *Youngberg* demands only a minimal amount of training for incarcerated individuals. Furthermore, the liberty interests of the individual must be balanced against the state's interest in protecting others from violence.[81] Thus, minimal obligations and broad discretion undercut the court's former protections.

In the absence of court leadership, the most influential source of standards for juvenile and adult correctional institutions in the United States is the American Correctional Association ("ACA").

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[74] Bell v. Wolfish, 441 U.S. 520 (1979).

[75] *See* Sue Burrell, Legal Issues Relating to Conditions of Confinement for Detained Children, Paper presented at the NJDA 6th Annual National Juvenile Services Training Institute (1995) (on file with *Journal of Law and Policy*) (discussing U.S. Constitutional Law and juveniles). The Fourteenth Amendment provides that a state cannot "deprive any person of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV, § 1.

[76] *See, e.g.*, Nelson v. Hyne, 491 F.2d 352, 358 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); Morgan v. Sproat, 432 F. Supp. 1130, 1135 (S.D. Miss. 1977); Pena v. New York State Div. for Youth, 419 F. Supp. 203, 209 (S.D.N.Y. 1976); Martarella v. Kelley, 349 F. Supp. 575, 599 (S.D.N.Y. 1972).

[77] Jackson v. Indiana, 406 U.S. 715, 738 (1972).

[78] *See, e.g.*, Santana v. Collazo, 714 F.2d 1172 (1st Cir. 1983) (holding that there is no right to rehabilitative treatment).

[79] 457 U.S. 307 (1982).

[80] *Id.* at 319. The Supreme Court did not rule on the issue of whether a mentally retarded person who has been involuntarily committed to a state residential facility has a general right to training.

[81] *Id.* at 319-20.

The ACA is a private, nonprofit organization that administers voluntary accreditation to juvenile and adult correctional facilities.[82] Although ACA standards are rehabilitation-oriented, they are not legally binding and, in many respects, fall short of international law.[83]

IV. UNITED STATES COMPLIANCE WITH INTERNATIONAL STANDARDS

Since the late 1980s, many of the protections afforded children in trouble with the law have been whittled away by state and federal legislation. This trend has been based on misperceived notions of rising youth crime rates and the trend to hold children responsible for their actions in adult criminal court. Recent legislation has removed classes of offenders from the juvenile justice system, handled them as adult criminals, required juvenile courts to act more like adult criminal courts, excluded juveniles charged with certain offenses from juvenile court jurisdiction and allowed mandatory or automatic waiver to the criminal court system. Other states have forced juveniles to face mandatory sentences or have simply lowered the age of criminal responsibility for certain crimes so that more juveniles may be tried as adults.[84]

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[82] HUMAN RIGHTS, LOUISIANA, *supra* note 22, at 8. *See generally* AM. CORRECTIONAL ASS'N, STANDARDS FOR JUVENILE TRAINING SCHOOLS (3d ed. 1991) ("[P]romoting improvement in the management of correctional agencies through the administration of a voluntary accreditation program and the ongoing development and revision of relevant, useful standards.")

[83] HUMAN RIGHTS, LOUISIANA, *supra* note 22, at 24. For example, the ACA standards allow for the use of disciplinary isolation of children for up to five days, while the international standards prohibit solitary confinement as a disciplinary measure for children. HUMAN RIGHTS, LOUISIANA, *supra* note 22, at 24.

[84] SNYDER & SICKMUND, *supra* note 9, at 72-73. *See supra* note 73 (citing to states that have enacted legislation that increases the number of juveniles subject to adult court jurisdiction).

A. Federal and State Legislation Allowing Transfer of Juveniles to Adult Courts and Prisons

The Violent Crime Control and Law Enforcement Act of 1994,[85] the most recent federal crime bill, simultaneously reduced the age at which a juvenile may be transferred to adult court jurisdiction for certain enumerated crimes from fifteen to thirteen, created new federal crimes for juveniles and increased the sentences for juveniles convicted of certain federal crimes.[86] This Act is at the forefront of heavy-handed responses by politicians to the perceived tidal wave of youth crime. It was enacted without consideration of its long-term impact on children or its adherence to international norms.

The proposed Violent and Repeat Juvenile Offender Reform Act of 1996[87] (formerly called the Violent Youth Predator Act) revises the federal court procedure for trying juvenile offenders thirteen years of age or older, providing that in certain cases they must be tried as adults.[88] It also calls for the elimination of the OJJDP, the only federal body devoted to juvenile crime.[89] The proposed bill also allocates four times more funding for "the investigation, prosecution or detention of juvenile offenders" than for prevention programs.[90] This proposed legislation, therefore, reflects a conscious decision by legislators to ignore a 1993 OJJDP study entitled *Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders*[91] that was the result of years of research by juvenile

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[85] Pub. L. No. 103-322, 108 Stat. 1796 (codified in scattered sections of 2, 15, 16, 18, 21, 28, 31 and 42 U.S.C.A.).

[86] *Id. See* Mark Soler, *Juvenile Justice in the Next Century: Programs or Politics?*, PERSPECTIVES, Winter 1996, at 27.

[87] S. 1854, 104th Cong. 2d Sess. § 1 (1996).

[88] *Id.* § 103.

[89] *Id.*

[90] *Id.* § 411(a)(1); *see id.* §§ 410-411 (authorizing a maximum of $100 million for preventing youth crime and violence compared to $400 million for the criminal procedures associated with juvenile offenders).

[91] OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS (1993).

justice experts and reflected a consensus in the field of juvenile justice. The study advocated a preventative approach that relied on community- and family-based programs.[92] Despite its findings, the federal government chose to dedicate more funds to locking children away than to rehabilitating them.[93]

Even though the gravity of America's crime problem far surpasses that of most other industrialized democracies and its imprisonment rates are much higher because of our increasingly harsh treatment of people convicted of lesser crimes, the United States spends most of its money and efforts on a narrow range of solutions.[94] This is particularly ineffective in the youth crime arena where studies have shown that the "shock incarceration" in programs like boot camps and other "scared straight" techniques, which are steadily rising in popularity,[95] may actually produce

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[92] For example, the Effective Parenting Information for Children Program ("EPIC"), conducts parent workshops designed to build parental skills and to increase parental involvement in their child's school and personal life, in order to strengthen the family and help children avoid delinquency. DENNIS C. VACCO, REPORT ON JUVENILE CRIME app. f at 5-6 (1996) [hereinafter VACCO REPORT]. Countee Cullen Beacon-Rheedlen Centers for Children and Families keep a public school open day and night, thus providing children with a place to go after school, homework assistance, as well as the opportunity to develop social, cognitive and vocational skills. *Id.* app. f at 7-8. Mothers Against Violence Coalition of NYC, Inc., created safe havens for youth by providing after school programming and all-year recreational programs to keep children off the streets. *Id.* app. f at 7-8.

[93] The OJJDP study also rejects the findings of a recent survey by the Rand Institute on juvenile delinquency. *See generally* PETER W. GREENWOOD ET AL., DIVERTING CHILDREN FROM A LIFE OF CRIME: MEASURING COSTS AND BENEFITS (1996) (concluding that crime can be reduced through "parent training, graduation incentives, and delinquent supervision").

[94] *See* WAR ON CRIME, *supra* note 18, at 10-35 (stating that there are currently 1.5 million Americans behind bars in the United States today and 3.6 million more on probation or parole. Almost three percent of the adult population of the United States is under the supervision of the criminal justice system of the United States at any one time).

[95] Many states are heading in the direction of programs like boot camps. In a recent report on juvenile crime, New York State Attorney General Dennis Vacco suggested that the state invest in "shock camp programs" as an "early intervention tool." VACCO, *supra* note 92, at 29. The report also cited Texas as an example of a state using boot camps. *See* VACCO, *supra* note 92, at 29 (noting

negative effects. Although intensive educational, vocational and counseling programs, such as those required by international standards, have been found to produce significant positive effects on recidivism rates,[96] they are being ignored in favor of programs such as "community prosecution teams" that "target youth who 'are the terrors of the neighborhood.'"[97] Studies in New York, New Jersey and Florida reached the conclusion that youths treated as adults are approximately thirty percent more likely to be rearrested for violent crimes.[98] Juvenile delinquents who fail to receive adequate treatment, and are instead treated as "mini-adults," are more likely to adopt a lifetime pattern of criminality as adults.[99]

The separation of children and adults is jeopardized by efforts to remove the segregation requirement in the JJDPA.[100] In June 1996, the Republicans introduced legislation in both the House of Representatives and the Senate that would effectively end federal

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that the Texas boot camp operates as both a short stay program and as a "stand-alone sanction"). New York Governor George Pataki also proposed the automatic transfer of children that are "16 through 18 year-old violent juvenile offenders" into adult correctional facilities as a cost saving measure because it would save approximately $51,000.00 per juvenile each year. VACCO, *supra* note 92, at 26. Currently, it costs between $60,000.00 and $80,000.00 to house one youth in a juvenile facility in New York. VACCO, *supra* note 92, at 25. In addition, both Georgia and Louisiana have recently built new boot camps for juveniles. *See* HUMAN RIGHTS, LOUISIANA, *supra* note 22, at 39-40 (noting that the Bridge City facility is similar to a boot camp, although it does not purport to be one).

[96] GREENWOOD ET AL., *supra* note 93, at 23.

[97] VACCO REPORT, *supra* note 92, app. f at 4. A program initiated by the Erie County District Attorney Kevin M. Dillon's Prosecution Team in Buffalo, New York is prioritizing its efforts towards locating and prosecuting juvenile "terrors" instead of first-time offenders. VACCO REPORT, *supra* note 92, app. f at 4.

[98] Garlicki, *supra* note 20, at B6.

[99] *See* Garlicki, *supra* note 20, at B6 (noting that an early criminal record may prevent a child from later acquiring employment, thus turning the juvenile toward a criminal lifestyle); *Prosecuting Juveniles, supra* note 16, at A14 (expressing fear that adult sentences for juveniles will "breed tougher criminals," and reporting higher recidivism rates for juveniles treated as adults in New York and Florida).

[100] *See* 42 U.S.C. § 5602(a)(9) (1994) (stating that the goal of this provision is "to assist State and local governments in removing juveniles from jails and lockups for adults").

mandates requiring states to segregate juveniles from adults in correctional facilities.[101] After the New York state legislature failed to adopt a similar proposal authorizing the removal of children sixteen years of age and older to adult facilities, Governor George Pataki used his executive powers to propose or institute regulations that would, in effect, allow the state Division for Youth to remove any youth sixteen years of age or older to an adult facility at its discretion.[102] In doing so, New York would join the ranks of other jurisdictions who have forfeited hundreds of thousands of dollars in federal funding because they failed to comply with the JJDPA.[103] The integration of juvenile and adult facilities is in direct violation of the CRC and all other international standards related to the detention of juveniles, and also poses one of the most serious threats to the dignity and the rights of children in trouble with the law.

B. Conditions of Incarceration

Children who are incarcerated in secure facilities in the United States are confined in circumstances where the benefits intended by the segregation from adults are often nullified. The conditions frequently resemble prison-like conditions and create punitive environments where physical restraints, like four-point restraints—strapping wrists and ankles to metal framed beds—and handcuffs, are used.[104] Such degrading conditions fail to

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[101] Butterfield, *supra* note 16, at A1; *Bill Would Crack Down on Youth Crime*, OMAHA WORLD HERALD, July 1, 1996, at 6.

[102] N.Y. St. Reg. 7591 (proposed addition of subpart N.Y. COMP. CODES R. & REGS. tit 9, § 175-4) (providing for the "transfer of juvenile offenders to the Department of Correctional Services from the Division for Youth; ensur[ing] that the youth in Division for Youth secure facilities . . . benefit from the programs provided, by transferring those juvenile offenders [who do not benefit] to the Department of Correctional Services . . . .")

[103] Soler, *supra* note 86, at 27.

[104] *See, e.g.*, Gary v. Hegstrom, 831 F.2d 1430, 1431 (1987) (stating that incarcerated "[c]hildren have been placed in disciplinary segregation for periods exceeding 24 hours without a hearing." The record also stated that "[l]ight, ventilation and cleanliness could be improved"); Martarella v. Kelley, 349 F. Supp. 575, 603 (1972) (holding that conditions existing at one juvenile detention

adequately educate the children or address their mental and emotional problems. Children are also subjected to physically unsafe environments because of gross overcrowding, which affects sanitary, health and security concerns.[105] The risk of suicide among young people is high in these environments; each year 11,500 out of 65,000 incarcerated children commit suicidal acts.[106] The U.S. Department of Justice is currently investigating juvenile detention facilities in Louisiana. In addition, national child advocacy groups, such as the Youth Law Center, have entered into consent decrees[107] with facilities across America, from California to New York, aimed at improving confinement conditions for juveniles.[108]

C. Death Penalty

The death penalty is an irreversible and harsh punishment, yet the United States continues to impose and carry out death sentences on people who were under the age of eighteen at the time they committed their crime.[109] The U.S. Supreme Court has stated in

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center violated the Eighth Amendment); Lollis v. New York State Dep't of Social Servs., 322 F. Supp. 473, 482-83 (S.D.N.Y. 1970) (holding that confinement of a fourteen-year-old girl in night clothes to a stripped room with no recreational facilities or reading matter constituted cruel and unusual punishment). *See also* David A. Geller, Note, *Putting the "Parens" Back Into Parens Patriae: Parental Custody of Juveniles as an Alternative to Pretrial Juvenile Detention*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 509, 525 (1995) (analyzing the purpose and consequences of pretrial juvenile detention).

[105] Karen B. Swenson, John L. v. Betty Adams: *Taking Bounds in the Right Direction for Incarcerated Juveniles*, 24 MEM. ST. U. L. REV. 429, 449-450 (1994). *See* HUMAN RIGHTS, LOUISIANA, *supra* note 22, at 21 (indicating that usage of large dormitories (instead of single rooms) has been found to be directly and positively linked to child-on-child injury).

[106] WAR ON CRIME, *supra* note 18, at 131.

[107] A "consent decree" is "[a] judgment entered by consent of the parties whereby the defendant agrees to stop alleged illegal activity without admitting guilt or wrongdoing." BLACK'S LAW DICTIONARY, *supra* note 64, at 410.

[108] Telephone Interview with James Bell, staff lawyer at the Youth Law Center, San Francisco, California (Aug. 12, 1996).

[109] *See United States: A World Leader in Executing Juveniles*, HUMAN RIGHTS WATCH NEWSLETTER (Human Rights Watch Children's Project, New

dictum that there exists a national consensus suggesting that the minimum age for receiving the death penalty should be sixteen.[110] In *Eddings v. Oklahoma*,[111] the Court held that the defendant's young age should be considered a mitigating factor of great weight in deciding whether to apply the death penalty.[112] It is significant to note that the Court found adolescents to be "less mature and responsible than adults," thus, less able to consider the long-term implications of their actions.[113]

However, subsequently, in *Stanford v. Kentucky*,[114] the Court held that the Eighth Amendment's prohibition against cruel and unusual punishment did not forbid the execution of juveniles for crimes committed at ages sixteen or seventeen.[115] As a result, the United States is in the company of only eight other countries who carry out executions against individuals who were under the age of eighteen when they committed the crimes for which they were executed. The illustrious company kept by the United States includes Iran, Iraq, Nigeria, Pakistan, Saudi Arabia, Yemen and Bangladesh.[116] This reservation reflects a collective desire to ignore the right to life of the most vulnerable U.S. citizens—children. While young people cannot vote until they are eighteen, they face the possibility of death at the hands of the state at a much younger age. While approximately seven percent of death sentences prior to 1987 involved juveniles, that percentage has dropped in

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York, N.Y.), March 1995, at 10-19 (discussing the use of the death penalty against children in the United States).

[110] Thompson v. Oklahoma, 487 U.S. 815, 829 (1988) (holding that execution of a person under 16-years-old at the time of offense is deemed "cruel and unusual punishment" under the Eighth Amendment, and is therefore prohibited).

[111] 455 U.S. 104 (1982).

[112] *Id.* at 115-16.

[113] *Id.* at 116.

[114] 492 U.S. 361 (1989).

[115] *Id.* at 380.

[116] *Human Rights: U.S. Death Penalty Comes Under Fire*, INTER PRESS SERVICE, Jan. 14, 1994, *available in* LEXIS, World Library, Allwld File; *Crossfire* (CNN television broadcast, April 15, 1994), *available in* LEXIS, World Library, Allwld File.

recent years.[117] However, seven percent of those individuals sitting on death row were under the age of eighteen at the time they committed their crimes,[118] and the threat of more young people joining this group is increasing with the proliferation of provisions mandating the incarceration and prosecution of children as adults.

V. THE VOICES OF YOUNG PEOPLE

There is no denying that many young people are viewed as threats in U.S. society and that arguments for a "law and order" approach to youth justice have achieved ideological dominance over those set forth by proponents of a rehabilitative approach. However, there has been no corresponding shift toward a full-blown "justice" model that encapsulates children's rights that will achieve success in practice. Instead, there has been an increase in administrative bureaucracy, uncertain and diverse sentencing, increased caseloads for youth lawyers and increased incarceration of children with little assurance of rehabilitation. In the last few months, one of the authors of this Article has spoken with young people who have experienced the juvenile justice system in New York City firsthand. Informal conversations with children revealed the following:[119]

- Young people feel like they are the "enemy."
- Young people misunderstand and misconstrue much of what occurs in court.
- Processes prior to, during and after court prevent youth participation.
- Formally and informally, young people are pressured into passivity and relegated to the status of objects to be dealt with and hidden away.
- Young people come to court feeling disempowered by their views of police treatment, by actual or threatened

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[117] SNYDER & SICKMUND, *supra* note 9, at 179-80.

[118] SNYDER & SICKMUND, *supra* note 9, at 179.

[119] Michelle India Baird of The Youth and Family Justice Center has interviewed 20 children about their experiences in the juvenile justice system from May 1996 to October 1996.

physical or psychological police violence and overstated warnings.

The court process, the reliance on threats and warnings and the limitations on defendant participation undermine any potential of the court to respond effectively to youth crime. The process shifts attention away from the consequences for the victim, the surrounding events in the youth's life and the ways in which the young person can realistically right the wrong, and shifts attention toward a hasty determination of the young person's fate and future based solely on the offense committed. Essentially, the process shapes, creates and hardens young criminals.

CONCLUSION

A change in the youth justice system is not a panacea. No matter how many judicial, legislative and administrative reforms are made in the youth justice system, it cannot undo the formative damage suffered by young people trying to grow up in the United States today due to the fundamental lack of a social welfare system that adequately meets their health, educational, housing, nutrition and family needs. The United States refuses to ratify the CRC possibly based on its inability to meet the social and economic rights guaranteed to children in this international treaty.[120] Even though the CRC contains rights that most countries can only aspire to implement for all children, the U.S. record in the area of social justice for children is shameful.[121] Every day, 2660 babies are born into poverty.[122] More than twenty-one percent of all children in the United States are poor.[123] Many go hungry every day. More than 13,000 public school students are suspended and almost 3000 high school students drop out each school day.[124] Some of these children become part of the statistic of the more than 6000

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[120] Dohrn, *supra* note 33, at 21.

[121] *See generally* CHILDREN'S DEFENSE FUND REPS. (Children's Defense Fund, Washington, D.C.), Jan. 1996, at 3 (reporting statistics on America's poor social justice record).

[122] *Id.*

[123] *Id.* at 5.

[124] *Id.* at 3.

children under the age of eighteen who are arrested every day in the United States.[125] The United States cannot guarantee human rights for its children in trouble with the law until it establishes a pattern of respect for children's basic rights to nutrition, adequate health care and education at early ages.

If the United States wants to set an example to be a world leader in human rights, as it claims to be, then it must, at a minimum, start by reversing the trend toward the criminalization of children. The United States must commit itself in a serious manner to the development and implementation of a system that is in the best interest of children, a system that contains elements of care and compassion for our children and a system whose goal is the rehabilitation and successful integration into society of children in trouble with the law. This means more than a mere shifting of duties and responsibilities among existing players. Parents, teachers, community leaders, victims and young people must play a crucial role in the decisionmaking process. Lawmakers must also be reminded that although they may have a role in the search for a more just manner of caring for children in trouble, they do not have a monopoly on the solutions for these children. The search for justice and rights must be centered in the communities and families of children who are in trouble.

Most importantly, there must be a change in the way children are perceived in the United States. Last year, a young boy who was arrested in California wrote that he felt no one in the system or at home was listening to his needs, "no matter how loud I shout."[126] Sadly, many children in the United States have abandoned hope of ever having a voice, much less attaining a positive place in their communities and their country. If the United States hopes to achieve a culture that includes human rights for our children, at the very least, it must begin by listening to their problems and treating them with the respect and dignity that they deserve. To continue down the present path is to betray our children's futures.

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[125] *Id.*

[126] George Trevino, *Who Am I?, reprinted in* EDWARD HUMES, NO MATTER HOW LOUD I SHOUT,, *supra* note 28, at 21. The author of the poem was 16-years-old.