American Exceptionalism and the UN Convention on the Rights of the Child: The Implications of American Non-Ratification

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Abstract: *American Exceptionalism and the UN Convention on the Rights of the Child: The Implication of American Non-Ratification*

This capstone project analyzes the non-ratification of the Convention on the Rights of the Child (CRC) in the United States through a framework of comparative criminal justice. It analyzes the "exceptionalist" American attitude towards the CRC as well as the singularly punitive trajectory of American juvenile justice. In order to explain how the phenomenon of American Exceptionalism has effected political actions regarding the CRC, it analyzes scholarly explanations for American Exceptionalism, narrowing the applicability of these explanations down to the specific political movements that influence the campaigns for and against American ratification of the Convention. This paper concludes that while American Exceptionalism is generally regarded as a broadly American phenomenon, it is best described as a regional phenomenon in the context of arguments against the CRC, as empirical analysis shows that support for anti-CRC political measures are overwhelmingly Southern and religious in nature. The resulting refusal of the US to ratify the CRC has resulted in the failure to embrace principles and suggestions for the administration of juvenile justice that could drastically alter and improve the current American juvenile justice system. The system currently struggles with an increasingly punitive and expansive juvenile justice system even as other Democratic nations have applied principles of rehabilitation and incarceration as a last resort to make their systems more manageable and to reduce juvenile crime rates. This capstone project was inspired by research into the evolution of the American juvenile justice system that was completed for a Legal History Seminar course last fall, and was undertaken under the advisement of Professor Douglas Klusmeyer.
I. Introduction

Most Americans are familiar with the term “American exceptionalism.” However, the definition of “exceptionalism” is often vague and the implications of exceptionalism on American foreign, and even more so, domestic policies are clouded and often difficult to discern. In order to address this phenomenon as both an influence upon and a framework through which to analyze American political culture, we must first address the question of what is American exceptionalism. There are three important distinctions in what exceptionalism is and how it functions. Trevor McCrisken, a lecturer on international relations at Oxford University describes American exceptionalism simply as “the belief that the United States is an extraordinary nation with a special role to play in human history; a nation that is not only unique but also superior.” Exceptionalism can be characterized by the belief that the United States is morally superior to other nations and is destined to remain the dominant economic, moral, and political power in the world. As such, exceptionalism is an expression of nationalism detailed by the belief that this nation is not only different, but better than all other nations. In this way, exceptionalism is a method of self-understanding and expression of nationalist ideology.

Secondly, the United States uses this “superiority” as a manner of excusing, or excepting, itself from international guidelines, treaties, and obligations. Exceptionalism functions as a political justification for the exemption of the United States from international agreements and codes. Most nations in the world show a similar use of exceptionalist rhetoric in order to exclude themselves from obligations or legal restraints that they feel they have reason not to follow, but it is America’s exceptionalism that has become the subject of world-wide discussion, derision (from liberal thinkers), lauding (from conservative thinkers), and debate. This conversation leads to the third major facet of exceptionalism, as an analytical claim regarding a national history and social culture, which is how this paper will focus on exceptionalism. It seeks to determine whether America’s exceptionalism is different from other forms of exceptionalism. Though much literature focuses on America’s exceptionalism as unique, the answer to this question is not one-sided. Many voices, such as that of Sabrina Safrin, a professor of Law at Rutgers University and an award-winning author in the field of international law, argue that American exceptionalism is not itself actually exceptional, and is not responsible for a unique phenomenon in American political culture.

In reality, Safrin's argument neglects the fact that the belief in American exceptionalism is a deeply rooted element of our political culture that informs and explains American domestic policies widely divergent from the policies of otherwise similarly-functioning democratic nations; for example, the far-reaching effects of exceptionalist rhetoric are clearly recognizable in a comparative study of juvenile justice systems. America's refusal to ratify the UN's Convention on the Rights of the Child despite ratification by almost all other nations in the world, including all of the Western world, exemplifies the permissible exemption from international standards created by the rhetoric of exceptionalism. Additionally, the United States excuses itself from the CRC and other international children's rights agreements using two specific arguments; first, that the United States' sovereignty must not be compromised by international legislation, and two, that the United States does not need international standards to make it treat children properly, because it already does. The United States argues that it does not need other governing bodies to tell it how to govern (despite its history of doing so itself) and that the importance of American sovereignty supersedes the importance of children's rights legislation. This argument is an application of exceptionalist rhetoric as both a sentiment of

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nationalism and a political justification for America's exemption from international laws that, in the case of the CRC, it helped to create.

America's exceptional approach to international human rights and justice standards has left it as the only historically democratic nation in the world to not ratify the above-mentioned Convention on the Rights of the Child, a significant piece of UN legislation guiding most nations in the world in how to approach juvenile justice. Additionally, resulting in uniquely punitive measures and remarkably high rates of arrest, incarceration, and recidivism. In order to understand why the United States has such a singularly unique system of juvenile justice, we must first examine the existence and influence of American exceptionalism in international law, and then analyze what factors in American culture and history have forged an “exceptional” juvenile justice system within the nation.

Current scholarship on exceptionalism almost exclusively posits the idea that it is a unique combination of factors regarding the US Constitution and the process of judicial review that informs our understanding of the concept of “American Exceptionalism.” While it is impossible to entirely reduce exceptionalism as a rhetorical framework and political framework down to a handful of socio-historical factors, this paper seeks to identify the factor(s) that are most influential specifically in creating the exceptionalist policies that have formed the juvenile justice system. The factors posed as responsible for American exceptionalism in the literature review include the age and functionality of our current Constitution; “strong-form” judicial review resulting in Constitutional “integrity-anxiety” and a highly conservative reading of the Constitution; and the US's unmatched geopolitical power and long-standing history of unchallenged democracy, and most significantly, the political activity of right-wing religious organizations within the country. However, as the reader shall discover, much of this literature dissatisfies the need for an explanation of US non-ratification of the CRC and the subsequently very singular American juvenile justice system. In order to more fully explain the issue at hand in this case study of American juvenile justice, this paper turns to research on the influences of the religious rights in the US, as well as literature on American Federalism. It finds that it is the American federalist system that enables the disproportionate representation of Southern-based conservative religious viewpoints in the political system, which have disabled the ratification of the Convention of the Rights of the Child in the United States and thereby enabled the continuation of exceptionally destructive and illogical practices in American policies towards juvenile justice.

II. Literature Review

The literature discussed in this section is representative of contemporary understandings of how exceptionalism has gained dominance as a rhetorical and political tool in the United States, as well as understandings of how the American criminal justice system differs from other nations' systems. In reviewing this literature, this paper identifies which analyses are applicable to a case study of juvenile justice, and how the phenomenon of American exceptionalism ties into the formulation and consequent uniqueness of the American juvenile justice system.

2 American exceptionalism is, as explained in the introduction, regularly used to describe the belief that America is not only different, but better than other nations. Here I use the word “exceptional” in relationship to America's juvenile justice system not because I wish to express that it is “better” than the systems in other nations; rather, I use the word “exceptional” in order to form the correlation between American exceptionalism abroad and its counterpart domestically, the highly unique juvenile justice system that has been influenced by many of the same factors that have influenced America to be “exceptional” abroad.
American Exceptionalism and Human Rights by Michael Ignatieff

The relationship between this volume and the other works mentioned here must be recognized in order to facilitate a fully-developed discussion on how American exceptionalism (the concept, as well as the rhetoric thereof), significantly effects both American domestic and foreign policy, and is oftentimes informed in both spheres by the same or a similar set of factors. Having used Ignatieff's volume to make the case for a three-dimensional analysis of American exceptionalism, this paper will focus specifically on one of those dimensions in order to examine several approaches to the question of American exceptionalism, focusing through the lens of the juvenile justice system.

Ignatieff's volume provides essays on a full range of aspects of American exceptionalism, proffering explanations for the exceptionalism witnessed in human rights policy of all kinds, including freedom of speech, the death penalty, and the incorporation of international human rights policy. The essays in this volume reflect deeply upon the exceptionalist response to the CRC as well as the development of an exceptional domestic system of juvenile justice. Many of the facets of exceptionalism that are examined in these essay bear directly on America's juvenile justice system, such as Cass Sunstein's essay “Why Does the American Constitution Lack Social and Economic Guarantees?” Sunstein disregards the age of the Constitution, the strength of American democracy, and the difference between European and American attitudes towards constitutional enforcement as sufficient explanations for American exceptionalism in social and economic guarantees. The importance of his argument is related to the relationship between these guarantees and the manner in which the juvenile justice system functions within the United States; as with the criminal justice system, social and economic guarantees are highly influential upon the system and the individuals within it because included amongst social guarantees are prisoner's rights. One significant area of criminal justice in which the difference between the way social rights function for prisoners in America versus abroad is seen manifested in the popularity and common use of retribution instead of rehabilitation in the United States. European approaches to prisoner's rights are drastically different than the US's, and the manner in which rights for prisoners are approached reflects on Whitman's argument regarding social hierarchies within the US and other nations. Additionally, Ignatieff's volume provides insight into the functioning of judicial review in the United States and abroad in Frank Michelman's essay on integrity-anxiety, which will help frame this paper's analysis of how the judiciary regulates the interpretation of the Constitution and how this action influences social rights and the manner in which international legislation such as the CRC is approached.

This volume provides a necessary framework for analyzing the factors that create American exceptionalism, as well as the way that this exceptionalism functions in relation to international human rights policy. Included within human rights policy as a general subject is policy regarding the treatment of children and the functioning of juvenile justice systems. The CRC is the predominant source of international guidelines and standards within the area of treatment of children and juvenile justice. America's treatment of the CRC can therefore be analyzed through the lens of America's exceptionalism towards human rights policy. Ignatieff's volume analyzes exceptionalism in all three of the methods introduced in the beginning of this paper, as a political justification for non-adherence and excuse from international standards, as an expression of nationalist ideology and self-understanding, and as an analytical framework through which to view a cultural and political background and history. This third method of viewing exceptionalism is particularly relevant to this paper, and is present within Sunstein's, Michelman's, and other authors' essays examining the factors regarding US history and culture that have led the US to demonstrate exceptionalist rhetoric and political justifications.
The Un-Exceptionalism of American Exceptionalism by Sabrina Safrin

While the concept of American exceptionalism is widely acknowledged by both American and international law scholars, Sabrina Safrin challenges the perception of "exceptionalism" as a unique phenomenon. Safrin's argument centers on exceptionalism as a method of behavior in order to acquire exemption from rules when a nation sees their need as "exceptional." Safrin points to examples from both the European Union and developing countries in their responses to international agreements. Safrin creates parallels between the behavior of other nations and the United States in order to make American exceptionalism appear more normal and non-exceptional. She describes the manner in which the EU seeks exceptionalism in many of its treaties and agreements, though it does so differently than the United States because it joins onto treaties and seeks exceptional treatment within the normal guidelines, whereas the US is exceptional in simply refusing to become a party to such agreements.

Safrin's argument contends with the general argument proposed by Michael Ignatieff's volume, which is that America's exceptionalism in the realm of human rights has made a significant difference in the way that people are treated in the United States versus other nations that have agreed to international standards. Safrin's argument counters Ignatieff's analysis of the way other countries behave, not necessarily how the US behaves. While the many contributing authors in Ignatieff's volume may be correct in their observations about American behaviors, they may have overlooked similar behaviors in other nations that are simply not as obvious in their exceptionalism.

Safrin's argument is necessary to our analysis in order to truly identify not only the way American exceptionalism functions in international human rights and juvenile justice policy but how it affects American domestic policy. Safrin's argument would be supported by evidence that the United States, despite being one of the only nations to not ratify the CRC, does not have a drastically different juvenile justice system, or that other nations, despite ratification, have allowed the CRC to have just as minimal an influence on their domestic policies as the US has. While Safrin argues that America is not truly exceptional, this paper will argue that the manner in which America approaches international treaties and, more distinctly, the way that the juvenile justice system has developed within the United States, is exceptional and has created a significantly different outcome than that which is faced in other European and North American nations.

Harsh Justice by James Q Whitman

Whitman's work seeks to analyze and explain the difference between American and European "harshness" in punishment, to identify the exceptionalism of American harshness, and to explain its origins. His illuminating argument posits that it is the absence of a distinctive social hierarchy in American history, as well as a long-standing distrust of government, that creates American harshness in all parts of punishment, from arrests, to sentencing, to law-making. Whitman explains America's historical withdrawal from British rule and its rebellion against the ideals they believe that rule to represent; because Americans were themselves on the low end of the social hierarchy in Britain, they rejected the concept of such a social hierarchy in the founding of their new nation. The lack of social hierarchy in American history influences harshness in punishment because criminals are transformed into the only distinctive lower social class; because American s are all in approximately the same social class, they seek to distinguish themselves from one another, and this competition lends itself to the distinction between criminals and non-criminals. Offenders are the only individuals that can be
relegated to a distinct lower social class.

Whitman goes on to argue that America's punishment is exceptionally harsh compared to European punishment, due to the dissimilar social histories of the two geographical entities. Europe, which has experienced a long history of social hierarchy and continues to do so to a slighter degree today, has as a result instituted forms of egalitarianism in punishment; punishment does not become about relegating people into lower social levels, but about treating them with respect and decency. Their history does not lend itself to a need, in the modern day, to create social distinction between criminals and non-criminals, and in fact feelings of shame for the cruelty, harshness, and inequality of European punishment in the past makes them avoid it now. In pronouncing this distinction in the way America's unique history has shaped its modern methods of criminal justice and punishment, Whitman makes a case for the exceptionalism of the American criminal justice system by comparing it to many of the other nations in the Western World.

Whitman's argument is compelling and extremely helpful in framing significant differences present in the way that the American and other Western criminal justice systems punish their inmates. However, Whitman's analysis has aged since it was published in 2003, and cannot account for several developments in criminal justice and punishment practices in the last ten years. Firstly, it was published before the Roper v Simmons decision of the Supreme Court, which ended the death penalty for juveniles. Several more states have individually banned use of the death penalty since this book was published, and the number of inmates in state and local level facilities has been declining steadily for the last few years. These changes are significant because Whitman uses death penalty practices in the United States, including the application of the death penalty to juveniles, to illustrate and substantiate the unique harshness of American punishment. Additionally, in 2012 the number of inmates in federal prisons declined for the first time in decades, demonstrating a possible change in the harshness of sentencing and arrests.

While Whitman's argument does not account for such changes because they had not yet appeared, due to their existence now they bring into question another weak point in Whitman's book and how it analyzes the unique harshness of American punishment. Whitman relies heavily on the presence/lack of social hierarchy as the explanation for different trends in the harshness of punishment, without taking into account any other factors. This is not due to oversight; Whitman specifically states that he will not address other factors such as race, violence, and Fascism in this book because he does not believe they are adequately explanatory for the conditions he wishes to address. However, as Jessica Zager writes in The German Law Journal, “All factors contribute in tandem to the creation and evolution of any given society's criminal justice system.” She uses Canada as an example of one nation whose system is not explained solely by social hierarchy; in many respects they have a similar history to the United States, but their criminal justice systems, while not as mild as European systems, are more closely related to those systems than the American one. America's unique and highly influential history of race violence is an important factor to analyze in order to fully understand criminal justice in the United States, particularly considering racial disparities in the arrest and imprisonment of inmates and in the harshness of the punishment that inmates receive.

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What this paper will draw from Whitman's argument is the importance of social hierarchy on the traditions and psychology of punishment in the United States. I will use it not so much to explain, along with the factors above, why the US has failed to ascribe to international standards of justice, but why the American system of punishment (developing independently as it has) has developed in the direction that it has. This does not create an entire explanation, but will help form a solid foundation for what this paper aims to address. Combined with other factors, it will help shape a strong comparative analysis of the US's current position in criminal justice.

Punishing Race by Michael Tonry

Michael Tonry's 2011 publication focuses on the racial disparities in American punishment and thereby sheds light onto a significant facet of American exceptionalism in criminal punishment that is brushed over in Whitman's work. Tonry examines the history of race in the United States, using the history of minority repression to explain how laws have been formed in the United States. Tonry argues that American punishment is exceptional in the harshness of its punishment, and that it is influenced by law-making that is inherently (yet unofficially and often subconsciously) influenced by race. Tonry points to the American "war on drugs" and the implementation of "three-strikes" laws as policies that are particularly harsh (resulting in long sentences for what are typically seen as fairly non-serious crimes) and that effect Black Americans disproportionately to the rest of the American population. Tonry argues that this disproportionality is rooted in the racial hierarchy of the United States, linking them to subconscious attitudes towards behaviors perceived as characteristic of Black versus white Americans.

Tonry's argument challenges Whitman's hypothesis, arguing that there is a hierarchy in American culture that is important as a framework for exceptionalism in criminal punishment. Whitman's claim that there is no social hierarchy in the United States is countered by Tonry's argument that a hierarchy does exist, based not on class but on race. Together, the two analyses create an informed view of how American history and social interactions have influenced the criminal justice system, its method of punishment, and how harshness is incorporated into that punishment. Additionally, the racial disparities that Tonry discusses are important to understanding how the American juvenile justice system is influenced by unique American social histories, including the American history of racial discrimination.

The American Language of Rights by Richard Primus

In The American Language of Rights Richard Primus examines the way that the rhetoric of rights has evolved in the history of the United States, and how that rhetoric has affected the way in which rights are demonstrated and defended in American political culture. Primus' analysis contains a discussion of post-WWII rights language that is key to the understanding and application of Charles Epp's work addressing the importance of the American rights revolution. Primus argues that because the United States fought fascism in WWII, and as a result of the heavily propagandized perception of the enemy as an enemy of democracy, individual rights became an issue of core importance within the American political sphere. As a result of this fear of fascism and the loss of individual rights at the hands of powerful governments, the language of rights evolved, and what had previously been referred to as "natural rights" became "human rights." "Human rights" is a much more explicitly inclusive category than natural rights, and therefore more individuals were included in the granting of rights; support-structures were created that facilitated the rights revolution.
The language of rights that Primus discusses is key to our analysis of juvenile justice because it is the uniquely American concept of rights that sets the American juvenile justice system apart from other Western systems. Due to America's experiences in the war and the political backlash against totalitarian governments, America moved to protect the rights of individuals within the United States. This created the rights revolution, which bore influence on the criminal and juvenile justice systems through the assumption of responsibility implicit in the granting of those rights. As echoed in Harcourt's analysis of the effects of laissez-faire economic philosophies on criminal justice, individuals that value stronger individual liberty tend to also favor stronger punishments for misuse of liberty; thus we see with the addition of rights protections to the juvenile justice system, the implementation of stricter punishments for adolescents. In addition, the focus on individual rights that Primus identifies within American rhetoric influences the way in which social justice issues, such as juvenile justice, are perceived by society. In societies that experience a rhetorical emphasis on individuality, communal approaches to social justice are discouraged; individual choice in the commitment of crime results in individual punishment and retribution for the committed crime.

**The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective** by Charles R Epp

In this work, Epp charts the course of the "rights revolution" in the United States, India, the UK, and Canada. Epp's comparative work focuses on the causes of these so-called revolutions, and why they were so successful in some countries (the United States) and not others (the UK). Debunking the myth of entrenched constitutional rights as the sole cause of the success of the rights revolution in the United States, Epp focuses on the creation of a "support structure" for rights activists in the United States that resulted in the movement of rights-violation cases to the Supreme Court. After WWII, this support structure enabled rights organizations to move forward civil-rights and constitutional rights cases to the Supreme Court, which began to hand down opinions favoring these rights, beginning with cases such as *Brown v Board of Education*.

The significance of Epp's "rights revolution" and its basis in support-structures reverberates deeply throughout this paper as an explanation of both the United States' anomalous non-ratification of the CRC as well as its domestic juvenile justice policies. This paper applies Epp's analysis of the place of constitutional rights to the criminal justice system, examining the affects of the phenomenon he refers to as the rights revolution. Beginning with *Haley v Ohio*, the Supreme Court addressed a multitude of cases regarding the practices and philosophies of the juvenile court in the United States. Placing a greater emphasis on the protection of constitutional rights for juveniles, the Court inherently stripped juveniles of many of the special legal exemptions that they maintained from the inception of the American juvenile justice system until the 1960s. This shift in the way juvenile's rights are conceived offers explanation for the behaviors of the US juvenile justice system. Further, applying Richard Primus's explanation of why the American political culture changed during the 1960s and 1970s will allow this paper to analyze why the American juvenile justice system has evolved in a manner divergent from other Western nations. This explanation is amplified by the fact that Epp sees America's rights revolution and its results as distinctive from similar movements in other nations; Epp examines similar "revolutions" in other nations, such as the UK and India, and concludes that their rights revolutions do not result in the same cultural immersion of individual rights that America's rights revolution led to.

**The Illusion of Free Markets** by Bernard Harcourt
Harcourt's work, like Tonry's and Whitman's, examines the way in which the American criminal justice system is exceptional in its harshness, but he does so not by examining social hierarchies but by analyzing the way in which the uniquely neo-liberal economic policies in the United States affect criminal justice policies. Harcourt links the two by examining neo-liberal economic policies and their connection to campaigns to “get hard on crime,” as well as the substantial growth in the modern era of the private prison market. Harcourt explains that presidents and significant politicians who most staunchly adhere to the rhetoric of American freedom and economic deregulation have traditionally linked the idea of economic freedom to crime control; because individuals philosophically devoted to the idea of market liberty are also in strong favor of market choice, they tend to view crime as a result of a similar choice to become involved in criminal activities. Therefore, in order to preserve the liberty of individuals who make the “correct” choices, those who do not should be punished, and punished harshly. Additionally, private prisons are supported by neo-liberal economists on the basis that they too are a free-market enterprise that the government should not interfere with or ban.

Harcourt's work deviates from the other works introduced here not in what it seeks to explain about American exceptionalism, but how it seeks to explain it. Rather than looking at an aspect of American social hierarchy or historical social aspects, Harcourt examines our economy as well as the social and political ideologies that have built the economy in his specific pattern. However, Harcourt's work may be connected into Tonry and Whitman's works because America's predominant economic ideology reflects, in many ways, on another aspect of unique American culture, and because the mass incarceration rates and privatization of punishment that Harcourt describes are symptomatic of a prison industrial system in the United States that is linked to the racial concerns that Tonry discusses (and which Harcourt himself mentions) as intrinsic in America's criminal justice exceptionalism.

The Tyranny of the Minority: American Federalism, Democratic Participation, and the Affordable Care Act by Lisa Miller

Lisa Miller's analysis of American Federalism focuses on the the way in which the federalist system enables minority belief-systems to gain significant political representation. When small groups are highly organized, they become situated higher up in the “federalism hierarchy.” Miller uses the example of the NRA, which is highly organized and resource-rich and is therefore able to vocalize and earn wide political recognition of its viewpoints; meanwhile, individuals who suffer from gun-violence tend to face limited resources and mobility, and therefore are unable to create a strong political organization for their expression, despite being a wide population of individuals. The phenomenon of disproportionality in political representation is highly applicable to the event of CRC non-ratification and unlike other literature in this review, does not face the problem of being limited to discourse as a nationally-based phenomenon.

Miller's thesis that highly organized groups become disproportionately represented over larger, less-organized groups is malleable to either broadly-national political issues or regional issues. In a later section, this paper will provide an analysis of the religious right's influence on CRC ratification that suggests that Convention opposition is largely regional in nature. Due to the regional nature of the opposition, broadly national explanations for this exceptionalism are inadequate for this case study, but Miller's thesis may be applied regionally and explains the presence of a highly influential religious right in certain geographical areas of the United States.

The recognition of American exceptionalism as a phenomenon that is not American in broad,
nationalist sense is similarly important for questioning the remainder of the literature that this review has discussed on the basis for American exceptionalism. Tonry's analysis of racial hierarchies within the United States is quite relevant; racial tensions in the United States have historically followed much the same pattern that is represented by conservative religious exceptionalism. However, Tonry's work never focuses in on the issue of racial hierarchy as an issue of American geography. Lisa Miller's scholarship on federalism may be used in order to hone the focus of Tonry's work; she includes in her analysis of federalism an explanation of the way in which the same phenomenon of disproportionate representation that has effected the CRC also effects minority (specifically Black) representation in the South.4

Similarly, Whitman's analysis of the lack of American social hierarchy seems not to explain why one region of the United States would display exceptionalism more than others; it also bears no connection to the development and presence of conservative Christian organizations within regions of the United States. Harcourt's focus on the effects of a neo-liberal economy focuses on American broadly, without regard for regional differences. All of these scholars are missing necessary components in developing an accurate understanding of American exceptionalism in this case study because they fail to explain American exceptionalism as a geographically regional phenomenon that is intrinsically tied to the Federalist system within the US.

The Importance of the Literature

The literature discussed in this review provides guidance to the analysis of American exceptionalism. It provides a framework through which to view the exceptionalism that is witnessed in the juvenile justice system, and allows this research to determine whether the application of empirical evidence corresponds with existent understandings of American exceptionalism, or whether this scholarship requires amendment or additions. In order to fully analyze the utility of these theories, the following section of this paper will apply them to the exceptionalist activities that relate to the treatment of the CRC in the United States.

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III. The Factors that Shape American Exceptionalism

In the introduction, this paper states that there are several facets of American socio-cultural and political history that should be considered most important in framing the political and cultural significance of exceptionalist rhetoric in the United States. These factors include the age and functionality of our current Constitution; “strong-form” judicial review that results in Constitutional “integrity-anxiety” and a highly conservative reading of the Constitution; and the US's unmatched geopolitical power and long-standing history of unchallenged democracy, and most significantly, the political activity of right-wing religious organizations within the country. The significance of the religious right is exceedingly pertinent in a discussion of the CRC and its treatment within the United States. However, before this paper can address the activities of the religious right in regards to the CRC and similar international agreements, it will address the other factors included in this list, almost all of which are in a meaningful relationship with the political activities of the religious right. The discussion in this section will, then, move through conversations about each of these factors in an attempt to illustrate their inter-relatedness and their political affect.

Any analytical discussion of American exceptionalism must begin by addressing the American Constitution. This document is found at the root of much of the rhetoric of American exceptionalism. This fact makes sense if only simply because the United States Constitution is different than other Constitutions. It is older, it has sustained fairly little revision compared to the Constitutions of most other nations, and it was one of the first Constitutions to contain an explicit “Bill of Rights,” a concept now imitated by other nations in their newer constitutions. Woodrow Wilson stated in his inaugural address that:

We have been, and propose to be, more and more American. We believe that we can best serve our own country and most successfully discharge our obligations to humanity by continuing to be openly and candidly, intensely and scrupulously, American. If we have any heritage, it has been that. If we have any destiny, we have found it in that direction.1

What Wilson states is that America, as a nation, is most successful when it stays true to what makes it America; he invokes the rhetoric of American Exceptionalism, telling all of America that we are different, and better, than other nations. And what makes us more uniquely American than the American Constitution?5It is exceptional compared to other constitutions due to its age; its codification in 1788 makes it the oldest functioning national constitution in the world, only barring San Marino's 1600 constitution. It's age is important for more than just the simple fact that it is old, however. Implicit in the age of the American constitution is the way the constitution addresses rights, citizenship, and political process.

While other nations have updated their constitutions over the years to make them correspond with changing concepts of economic, political, and social rights, the United States Constitution has changed very little since 1788. As a result, economic and social rights are virtually non-existent in the

US Constitution, simply because the concept of economic and social rights as explicitly-stated political promises had not yet been realized when the American Constitution was written. As Cass Sunstein explains in “Why Does the American Constitution Lack Social and Economic Guarantees?” the presence of such guarantees in other nations' constitutions can be fairly accurately predicted just by looking at the year in which the constitution was codified. Additionally, the American constitution is incredibly difficult to alter. Because the amendment process is so convoluted and it is difficult for amendments to succeed in passing, there are many changes that politicians have not even attempted to make to the constitution. A lack of social guarantees could be listed in this grouping. This argument, however, does not serve as a full explanation of the American lack of social guarantees neither for Sunstein nor this paper.

Sunstein eventually argues that, while the age of the Constitution is important, it is not the determining factor in preventing social and economic guarantees from gaining entrance into the language of the constitution; that, he suggests, is due to the election of President Nixon. This paper agrees that the age of the constitution is not the only important factor explaining our lack of social and economic guarantees, but disagrees as to what other factors are significant. Rather than looking at a specific presidential election, I would like to focus in on the difficulty of amending the constitution, as mentioned recently. It is clearly acknowledged by constitutional scholars that the American constitution is difficult to amend. What is most important to this paper is why it is difficult to amend.

The United States was, like many other nations, born out of a revolution. As a result of our revolutionary background and America's resultant distrust of tyranny in government, the American Constitution was created in such a way that the amendment process is long and difficult. This process itself could have been changed. However, the United States is uniquely loyal to the original language of its constitution. Michael Bailey, a political scientist and scholar, explains that “we have invested our founding period—and the Framers—with something resembling infallibility. We idolize the Framers.” The anxiety with which many Americans address the thought of altering the constitution can be readily witnessed in the debate over the use of the death penalty on juveniles. Cases questioning the constitutionality of this practice reached the Supreme Court several times, and the argument found at the Supreme Court had globalist implications.

In 1988, the Supreme Court ruled in *Thompson v Oklahoma* that the death penalty was unconstitutional for juveniles under the age of 16. Included in the Court's decision were statistics from Amnesty International, used to demonstrate that the United States would not be, in executing individual under age 16, adhering to “civilized standards of decency” in the democratic world. However, while international standards of decency were cited in the decision, they were rejected in the dissenting opinion of Justice Antonin Scalia: “We must never forget that it is a Constitution for the United States of America that we are expounding...the views of other nations...cannot be imposed upon Americans through the Constitution.” The next year, when the Court determined in *Stanford v Kentucky* that applying the death penalty to 17 and 18 year-old individuals was not unconstitutional, it was Scalia's

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7 Ibid
8 Ibid
9 Bailey, Michael.
11 Ibid
anti-globalist argument that prevailed.

This argument over whether or not to consider international standards and norms in determining the interpretation of the American Constitution is still showing itself in the decisions of the Supreme Court. In *Roper v Simmons* (2005), the Court was split almost in half not only on the constitutionality of the death penalty for juveniles, but also on the way in which the constitutionality should be determined. In the decision, standards from the Convention on the Rights of the Child were cited as reflective of changing “global standards” for the treatment of juveniles. The dissent, again led by Scalia, again rejected the use of international standards or norms as evidential of American norms or of the manner in which the American Constitution should be interpreted. This argument continually finds its way into American law-making and constitutional interpretation, and the rejection of international norms is explained by Michaelman as “integrity-anxiety.”

Integrity is, according to Michaelman, an “unbroken identity through time as a distinctly cognizable, self-contained discursive object- a kind of discursive domain unto itself, visibly separate and free-standing from other normative discourses.” This idea of integrity has produced in conservative politicians and political organizations a sense of anxiety, and a fear that the United States, in applying international doctrine to the interpretation of its constitution, will lose its “American-ness.” This fear is particularly strong amongst members of the religious right, who have argued against judicial decisions (abortion, birth-control, homosexuality) not just on the basis of religion, but also as political arguments. The need for loyalty to the constitution is founded in, according to Michaelman, the Supreme Court's need for an “object to point to” to prove the objectivity of its decisions. This objectivity is necessary because of a long-accepted American culture of moral plurality. As a Court determining important cultural and political debates, the judiciary turns to the distinct body of “American constitutional-legal discourse.”

This introduction of international standards and global norms into American legal discourse creates anxiety in part because of the age of the Constitution. International standards, agreements, and norms did not exist until post WWII at which point the United States had already amassed a significant history of judicial precedent and uniquely American constitutional law. This body of law, though it has evolved, has formed a fairly standard basis on which the American legal system stands and on which American political and social culture depends for guidance. The fear and “integrity-anxiety” of conservative individuals is that with the introduction of international norms into the American legal system, this body of American constitutional law will be lost, and the way in which America functions as a unique and “exceptional” society will be lost with it. “Integrity-anxiety,” therefore, is related to the effects of the age of the American Constitution. Also related to the Constitution’s age is the lack of entrenched social and economic guarantees in American Constitutional law. Inter-related to these factors are the long-held geopolitical power of the United States, as well as its history of unbroken democratic rule.

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12 *Roper v Simmons* 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1, 2005 U.S.
13 Michaelman, Frank I. Pg 265
14 Michaelman, Frank. Pg 270
15 Ibid 270
16 Ibid 271
17 The UN was created in 1945, and is responsible for guiding most international human rights agreements that are currently in place.
The United States is able to exert its exceptionalism in the particularly strong manner that it does because of its long-held political power. As Sabrina Safrin states, the United States is not the only nation in the world that exerts some form of exceptionalism. Safrin argues that an undue level of scrutiny on the exceptionalism of the United States, and not other nations, has led to the belief that America is the only nation that exerts exceptionalism. She explains that: "The collapse of the Soviet Union left the United States as the world's sole superpower and unleashed a growing torrent of international and academic concern over U.S. legal exceptionalism." However, it is exactly the situation that Safrin relates as responsible for undue attention to America's exceptionalism that is also responsible for the significant use of exceptionalism as a political justification and its strength as a rhetorical instrument. As Safrin says, after the fall of the Soviet empire the United States was left as the sole superpower in the world. Even previous to Soviet dissolution, the United States was a significant geopolitical power throughout the world. Post Civil-war America quickly industrialized, becoming economically powerful and stable, while catastrophes in Europe, such as the Irish potato famine, drove greater numbers of immigrants to the United States, enhancing their man-power. America acquired further territories through the Spanish-American War, the purchase of Alaska, and the annexation of Hawaii. American involvement in WWI brought the United States to fruition as a global power, which was enhanced through our involvement in WWII and the resolutions created after the war. The United States began its long history of guiding international organizations and the formation of international rules and legislation.

With this position of global security and geopolitical power, the United States has found itself in a position to demonstrate its belief in its own exceptionalism without consequences. As Michael Bailey states, every nation believes that it is exceptional. However, not all nations have the power to exert exceptionalist justifications to excuse themselves from international agreements or standards. When the United States began to involve itself in the creation of international organizations and international regulations, it created a paradox. While the United States involved itself in the formation of the UN, the IMF, the World Bank and other international organizations, it refused to adhere to the decisions made by those organizations. America began to use American exceptionalism as a method of justification for exclusion from the rules it helped make. But, while scholars like Bailey recognize this behavior as representative of a unique phenomenon of American exceptionalism, other scholars such as Sabrina Safrin do not identify a unique quality in this behavior.

In order to prove the normalcy of America's exceptionalist behavior, Safrin uses the example of the UN's Ottawa Treaty to remove Landmines. Safrin seeks to demonstrate that other nations participate in exceptionalism by noting that though France has committed to removing all land mines from its territories it has yet to do so, years after signing the Treaty. However, Safrin's explanation that the United States did not sign the treaty because of "special obligations" does not, however exempt it from the argument that the United States demonstrates exceptionalism. Safrin argues that "U.S. insistence on an exception to accommodate its special obligations in Korea is not exceptional when compared...with the demands by other countries to address their perceived special circumstances." The special obligations that Safrin mentions, however, are indicative of an attitude of exceptionalism for the global role of America; the insistence that the United States must help protect the democracy of

18 Safrin, Sabrina. The Un-exceptionalism of American Exceptionalism. Pg 1309.
19 Bailey, Michael.
20 Safrin, Sabrina. Pg 1323
other nations. Whether other nations have made similar requests or have displayed similar opinions to the United States does not effect the quality of the United States' exceptionalism. Additionally, Safrin's use of the US's "obligation" to South Korea as an excuse for its refusal to sign the Ottawa Treaty is in itself an example of exceptionalism as a political justification for avoiding international agreements or treaties.

This section of this paper has applied several different explanations for American exceptionalism analyzed in the literature review to the actual phenomenon of American exceptionalism, linking them to identifiable socio-cultural conditions. It has shown how the theories presented by the current scholarship on exceptionalism coincide with one another, and are in fact, all inter-related, tracing the relationship between the age of the Constitution, anxiety over Constitutional integrity, the American process of judicial review and America's long-standing geopolitical power. Most importantly, it has shown how each of these theories connects with the exceptional behavior of the religious right, which is pertinent to this study of CRC non-ratification and juvenile justice. It is now important to narrow the lens used to view exceptionalism to the specific problem of CRC non-ratification in the United States. In the following section, the political situation of the Convention on the Rights of the Child in the United States will be analyzed in order to determine whether the explanations examined in this section are applicable to this specific case study.

IV. The CRC in the United States

This paper has thus far introduced the concept of American Exceptionalism and demonstrated a three-dimensional framework through which to analyze the factors that have influenced the rhetorical phenomenon of exceptionalism. It has then presented a literature review that hones its focus on the place of exceptionalism in American political culture and presents a list of factors as relevant to a discussion on the impact and evolution of exceptionalism. From that point, it then guides the examination of these factors through the lens of the criminal justice system, connecting them to an analysis and explanation of American exceptionalism. What is now necessary is to connect the concept of American exceptionalism with its influence upon the CRC, as well as to develop an analysis of exceptionalist factors as they apply to the CRC.

The United States' legacy regarding the Convention on the Right of the Child is long-standing and rife with contradictions. While the United States played a key role in the ten year drafting process, it failed to ratify the convention at home. When the Convention was published and brought up for ratification in 1990, the House of Representatives strongly encouraged the Clinton Administration to support and ratify the CRC. In a House Resolution, representatives asked Clinton to send the CRC to the Senate for Consent and Advice to ratify. This resolution was ignored, and the administration did not send the CRC to the Senate. Since then the House has passed at least five more resolutions favoring the CRC, the most recent written in 2009 again urging the Consent and Advice of the Senate on the CRC, among other resolutions:

Whereas the United States has played a leading role in developing global human rights standards since the country's inception... the United States Senate should give its advice and consent to the ratification of the UN Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional

Protocol, the UN Convention on the Rights of the Child...  

The House's resolution was again ignored. Significantly, this bill as well as all other bills in favor of the CRC have been brought before the House while it was under Democratic control. Additionally, resolutions have been passed in opposition of the CRC as well, in order to support an American avoidance of the document. In 1995, Senate Resolution 133 was passed in opposition of the Convention on the Rights of the Child, expressing the idea that “because the United Nations Convention on the Rights of the Child could undermine the rights of the family, the President should not sign and transmit it to the Senate.” While there have been at least six House Resolutions in favor of the Convention on the Rights of the Child, S.R. 133 has been the only formal resolution produced in opposition to the Convention, which was published during a period of Republican control of both houses of Congress. This opposition in led primarily by the religious right in the United States who express concerns about the rights of parents that they believe would be infringed upon by the CRC.

The religious right, while numerically in the minority, has a very concentrated political power within the United States and many members of the religious right have used this political situation in order to halt the ratification of the CRC. Senator Jesse Helms, former chair of the Foreign Relations Committee and arch conservative Republican from North Carolina, who wrote and sponsored SR 133 cites fundamental family rights as the main issue at stake in ratification of the CRC; "the United Nations Convention on the Rights of the Child is incompatible with God-given right and responsibility of parents to raise their children." Helms' concern over the rights of the family encapsulates the majority of anti-ratification sentiment within the United States and demonstrates the use of religiously- fueled exceptionalist rhetoric. Christian-based organizations such as the National Center for Home Education, the Family Research Council, and Concerned Women for America all cite the same argument against ratification of the CRC. In particular, the right to home-school children is both considered by these organization to be in danger. Fear of the Convention on the Rights of the Child has led the website organization Parentalrights.org to publish and seek legislative support of a Constitutional Amendment entitled “the Parental Rights Amendment.” The proposed amendment uses language specifically targeted to nullify any possible effects of the CRC should it ever be ratified: it declares the "upbringing, education, and care" of children as a fundamental right to their parents, and states that "No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article." The amendment, according to Parentalrights.org, is currently supported by six states, and there are a handful of other states reported to overwhelmingly oppose ratification of the CRC. However, both sides of the debate are still raging in the United States, and the Petition to Ratify the CRC is active and adamant that the CRC be ratified in the US.

Many state and local governments within the US have shown support, rather than opposition, for the CRC. According to a report by the head of the Center for International Human Rights at

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22 Emphasis added.
Northwestern University, five state governments have passed resolutions favoring the CRC, including some traditionally conservative states such as South Carolina. An unreported number of other states have been unable to pass resolutions, but have created resolutions or otherwise expressed interest in the CRC at the state level or within their highly populated urban centers. The Iowa General Assembly, for example, sent a resolution to Congress in 1996 stating that “the Convention on the Rights of the Child stands alone in international human rights law as the clearest expression of what the world community of nations has established as the minimum standards for protecting the rights of children” and implored that “the United States Senate act to protect the most vulnerable persons in our country by ratifying the Convention on the Rights of the Child.” At the federal level, the Obama administration has shown support for the ratification of the CRC, calling the American failure to ratify the convention “embarrassing” and reviving official efforts to sign on to the convention. However, since efforts were formally announced in 2009, no progress towards ratification has been reported. 

The contentiousness of the domestic discourse surrounding the Convention on the Rights of the Child in the United States has brought the discussion on what to do with the Convention to a now decades-long standstill. The significance of this discourse however, is not as much the actual blockage of CRC ratification as it is the content of the discourse, particularly the anti-ratification rhetoric. The rhetoric of “family rights” as fundamental rights, and the unwarranted influence of international legal doctrine on American sovereignty is reflective of American exceptionalism as a more general event. According to Howard Davidson, head of the ABA Center on Children and the Law, right-wing religious organizations are the primary source of opposition to the CRC in the United States. Primary among their reasons for opposing the Convention are their fear of having their rights as parents infringed upon by the guidelines within the Convention. According to the Oxford Handbook of Church and State in the United States:

Christian Right activists see the family as the central social unit, and believe that it is under siege by a secular culture that glamorizes sexuality, disrupts the natural relationships between men and women, and undermines parental authority.

The fear that the CRC will institute standards and regulations that will rip away their parental authority is the main incentive in the religious right's campaign to block the CRC from ratification in the United States. This point is exemplified by the fact that the organization leading the movement opposing the CRC and promoting a Constitutional Amendment guaranteeing parents' rights is the internet activist organization, Parentalrights.org.

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30 Interview, 8 March 2013. Davidson recognizes the right to corporal punishment and to home-schooling as the primary rights that right-wing organizations fear will be infringed upon by the Convention.
31 Davis, Derek H. The Oxford Handbook of Church and State in the United States. 18 November 2010.
32 This amendment is implicitly intended to protect parental rights from any future ratification of the CRC; the language in the proposed amendment does not include mention specifically of the CRC but includes a section declaring that the rights stated elsewhere in the amendment may not be superseded by any international treaties or legislation.
It is important to recognize that the organizations that oppose the CRC due to religious conservatism are not typically large international churches. The Presbyterian Church USA, United Methodist Church, Unitarian Universalists, African Methodist Episcopal Church, Evangelical Lutheran Church in America, Greek Orthodox Church of North and South America, as well as multiple significant Jewish and Catholic organizations in the USA all formally support American ratification of the Convention on the Rights of the Child.\textsuperscript{33} The Holy See (and therefore the Catholic Church) has ratified the CRC and submits reports to the Committee just as all other member states. In its written acceptance of the CRC, the Holy See declares reservations on issues of “family planning education” and the rights of parents, but states that:

The Holy See regards the present Convention as a proper and laudable instrument aimed at protecting the rights and interests of children, who are “that precious treasure given to each generation as a challenge to its wisdom and humanity” (Pope John Paul II, 26 April 1984).\textsuperscript{34}

As such, the Catholic Church within the United States is beholden to an official position of acceptance and support for the CRC. With the support of the Catholic Church and most of the numerically significant Christian organizations, the CRC has a numerically large base of support within the religious community; the worst opinion that the CRC faces from any of the large church organizations in the United States is political ambivalence.

The fastest growing church in the United States, the Church of Jesus Christ of the Latter-day Saints (LDS), has not taken an official stance on the Convention on the Rights of the Child. The LDS (Mormon church) as an organization it purposefully distances itself from becoming involved in political arguments.\textsuperscript{35} However, despite the lack of organizational political viewpoints, individuals identifying as Mormon are overwhelmingly Republican and/or conservative; 74% lean towards the Republican party and 66% call themselves conservative.\textsuperscript{36} With these political leanings, it is unlikely that members of the LDS largely support the Convention on the Rights of the Child, but there is no data currently available that measures their response to the Convention as individuals. Where the more real, numerically measurable threat to the CRC comes into play is with small Christian organizations.

The list of faith-based and religious organizations that support the parental rights amendment proposed by ParentalRights.org are almost exclusively small American organizations, such as the Salt and Light Council, the Children of God for Life, and the Coalition for Urban Renewal and Education (CURE).\textsuperscript{37} The significant exception to this generalization is the Southern Baptist Church.\textsuperscript{38} The


\textsuperscript{35} The notable exception to the non-political nature of the LDS is gay marriage; they have actively supported laws to confine the definition of marriage in several states to one-man, one-woman, despite actively encouraging church members to understand that the church does not support specific political movements or politicians.


\textsuperscript{37} United Nations. Treaty Series.

Southern Baptist Convention stated in 2000 that:

we urge our political, educational, business, and religious leaders to do all in their power to protect the traditional family and reject all assaults against the family which have proliferated through various conferences and organizations within the United Nations...  

The SBC is based largely in what is considered the American South. This geographical region is home to the “Bible Belt,” a set of states known for high numbers of conservative religious individuals. The American South is also more extensively represented by the religious right, which directs this paper towards the question of whether American exceptionalism is not just about America, but parts of America. Exceptionalism rhetoric, particularly that which has blocked the CRC from ratification, seems to be based in the political strength of the religious right in America. The religious right seems to be based in certain geographical areas within the country, the fact of which leads to the consideration of whether American exceptionalism is to be rightfully called American. Perhaps it is instead, the American South's exceptionalism.

The geography of American exceptionalism is revealed by studies connecting religious belief and exceptionalism. According to a study done by Drs. D. Jason Berggren & Nicol C. Rae of Florida International University,

The tendency in the literature of American exceptionalism has been to treat the United States as a monolithic whole.... In this study, using common measures of religious belief and behavior, we show that of the four major American regions, it is the South that more accurately fits the claims of religious exceptionalism made by scholars than the rest of the country. It is the South that pulls the country more toward religious traditionalism and the Northeast and West that the pushes the country more toward greater secularity and patterns more commonly found in “secular” Europe.  

Berggren and Rae state that the American South is the most religious region not only within the United States, but within the Western world. This religious zeal expressed in the South fuels a belief in the destiny of America to build Christianity abroad as God's chosen people. Without the inclusion of the South, the United States is much closer in religiosity to Canada, Mexico, Australia, and European countries. With the South, it becomes one of the most religious places in the world, and “part of American exceptionalism may be driven by the presence of the South.” Indeed, of the thirteen American senators currently signed on to Parentalrights.org's “Parental Rights Amendment,” six are from Southern states. Second to the South in representation is the West, with 4 co-sponsors from the states of Idaho, Wyoming and Utah, areas influenced by conservative Mormon religious groups. The Midwest claims two sponsors, from states very near to the South; Kansas and Missouri. There are no sponsors from the Northeast.

http://www.sbc.net/resolutions/amResolution.asp?ID=786
39 Ibid
40 Berggren, D. Jason and Nicol C. Rae. "The American South; the "Bible Belt" of America (and the Western World?)" Florida International University.
http://citation.allacademic.com/meta/p_mla_apa_research_citation/0/6/8/9/0/pages68909/p68909-2.php
41 Ibid 5
42 Ibid
43 Parentalrights.Org
The disproportionate representation of Southern religious conservatives seems contrary to logical interpretation. How does one region of the United States, particularly one that contains fewer and smaller densely populated areas than other regions, control the national response to certain political issues? The explanation for such disproportionality lies, according to professor and scholar Lisa Miller, in the establishment of American federalism. According to Miller:

This is because the fragmented and multi-layered American political landscape exacerbates classic collective action problems that plague groups concerned with broad social problems. Indeed, American-style federalism facilitates political activity by the exceptionally highly organized and those with the most robust resources, even when those groups represent only a fraction of political viewpoints on a given issue.\(^{44}\)

Therefore, Southern conservative religious organizations that oppose the CRC are able to gain greater representation through high levels of organization, resulting in the disproportionate affect of their political viewpoints and the effective blockade of the CRC in the United States.

V. The Juvenile Justice System in Other Nations

This paper has identified factors that are recognized by scholars as influential on American exceptionalism, and then analyzed the way in which American exceptionalism has influenced the Convention on the Rights of the Child in the United States. This analysis has demonstrated that the factors determined by the scholarship in the literature review are not adequate in explaining the presence of American exceptionalism as it regards the American juvenile justice system. Rather, this paper has demonstrated through empirical analysis that the phenomenon of American exceptionalism as it applies to a case study of juvenile justice system policies and practices is regional in nature and is best recognized as an issue enabled by the American Federalist system.

In order to understand the extent to which the United States' approach to the CRC is actually divergent from other nations and to understand the exceptional trajectory of the American juvenile justice system, the United States, this paper will now analyze the extent to which the CRC has influenced the juvenile justice systems in other nations. In order to compare the United States to nations similar to itself, the chosen nations are those that have a long history of democratic rule and modern industrialization whose juvenile justice systems have related histories.\(^{45}\) The Netherlands, Australia, Mexico, Canada, Ireland and Germany will be examined, with case studies focusing on the juvenile justice systems of Australia, Canada, and Ireland in particular. These case studies demonstrate that the standards found in the CRC have had a substantial affect on the manner in which these nations approach juvenile justice, though not to the exclusion of policies divergent from CRC guidelines.

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\(^{45}\) The qualifications for "related" juvenile justice systems are not strict, and rest primarily on the foundation of the juvenile justice system as a welfare-based system. In all of these nations excluding Germany, youth justice has evolved towards more punitive methods and systems prior to the influence of CRC guidelines.
The Netherlands created its juvenile justice system in the early 1900s as a welfare-based system, modeled after the newly formed American system. Similar to the American system, the Dutch juvenile justice system consists of a separate court with specialized judges to deal with juvenile crime. Also similar to the United States as well as most other Western countries, police statistics and crime reporting services suggest that youth crime has been increasing since the 1960s. However, changing crime rates did not effect the juvenile justice system in the Netherlands until a change in the Dutch political atmosphere in the 1990s resulted in alterations to the system, making it more punitive.

Throughout the 1980s and 1990s, the Netherlands experienced multiple changes in its juvenile justice system, including the inclusion of new programs for alternative methods of punishment. Notably, the Dutch system has focused on restorative methods of justice, which were first implemented through “Het AL.Ternatief” (the alternative) programming, also known as HALT. Through HALT, officers are allowed to avoid prosecuting juveniles by assigning them small restorative tasks as an alternative. Other alternative sentencing programs, such as rehabilitation and community service, were also implemented in the 1990s, enhancing the Netherlands' richness of alternatives to institutionalization. However, the Dutch system also underwent a simultaneous increase in punitive measures during the 1990s.

In 1995, the Netherlands passed the Juvenile Justice Law of 1995, effectively increasing the punitive nature of the juvenile justice system. Included in this legislation were increases in the maximum sentencing for juveniles up to sixteen years of age from six months' detention up to one year of detention, and up to two years for juveniles aged 16-18. Despite these changes in sentencing capability, the Netherlands largely follows the guidelines given by the CRC. The only major area in which the Netherlands has failed to meet the criteria set forth by the CRC is that, as included in the Juvenile Justice Act of 1995, there is a broad range of qualifications for juvenile transfer to adult court. Additionally, the CRC has had a direct effect on the Dutch juvenile justice system in at least two important ways. First, the Netherlands has implemented a “closed doors” policy towards all aspects of juvenile court proceedings specifically due to privacy guidelines outlined in the CRC. Second, all new juvenile justice legislation in the Netherlands is tested against the Convention before it may be implemented.

Interestingly, Dutch juvenile crime shares many similarities with American juvenile crime. It has followed the same trend, increasing since the 1960s. Dutch reformation of juvenile justice legislation in order to crack down on juvenile crime was implemented at roughly the same time as American legislation was also passed. In addition, the Netherlands experiences similar disparate representations by minorities youths. However, the way in which minorities are represented in the

46 In the context of juvenile justice systems, this paper refers to “welfare-based” systems as those that operate in order to reform, help, and teach juveniles, as opposed to retributive systems, which function in order to serve justice, punish delinquents, and seek retribution.
48 Ibid.
50 Tonry, Michael and Catrien Bijeveld. pgs 262-263.
juvenile justice system of the Netherlands is determined not by race, as it is in the United States, but by ethnicity. Antillean, Turkish, and Moroccan youth are most overrepresented in the Dutch juveniles justice system. Statistics show that this overrepresentation is particularly prevalent amongst Moroccans: “54% of Moroccan [youth] born in 1984 have been in contact with the police before turning 22 years of age.”

Another notable difference between Dutch and American youth justice is that the Netherlands has a much smaller total number of juveniles imprisoned, as well as a much smaller percentage of youth incarcerated per capita than the United States; while the US had 336 juveniles per 100,000 youth population incarcerated in 2008, the Netherlands had 51.3. The Dutch response to juvenile crime has been quite different than the American response, however, maintaining relatively mild sentencing maximums and relying on rehabilitative and restorative opportunities much more heavily than punitive measures to deal with youth crime.

Germany

Like the Netherlands, Germany's juvenile justice system has a broadly recognizable history. Established in 1923, the German Youth Court Law established a separate youth court in Germany and established the philosophy of rehabilitation for juvenile offenders. Despite forming similarly to other Western nations' juvenile justice system, the youth court in Germany has followed a largely different trend. Rather than becoming steadily more punitive in nature, the German system has, for the most part, retained its rehabilitative nature, even despite reform. The German youth court was again amended in the 1990s; however, while other nations implemented punitive reforms during this decade, the German amendment expanded upon decarceration policies and restricted pre-trial detention. Germany's pattern of decarceration has not, however, reflected the trends in youth crime. Germany, like other European countries, has experienced a steady increase in juvenile criminal activities. As a percentage of total crime, youth are responsible for an above average amount of crime compared to other European nations. Despite this increase in youth crime rates, Germany has resisted a punitive youth justice system, and has allowed the influence of the CRC's guidelines on its systems.

Germany was among the first nations to ratify the CRC, but did so with reservations. While maintaining the fact that the Convention was not self-executing and would be interpreted through the German Constitution as well as the European Convention on Human Rights, the country has dedicated itself to “drafting legislation to live up to the spirit of the Convention and to ensure the well-being of the child.” While the CRC is therefore not self-executing in Germany, there have been changes

56 The one notable exception to this trend was the Youth Court Law amendment of 1943, while Germany was under Nazi rule. This amendment lowered the age of criminal adulthood and made punishments slightly harsher; these changes were immediately amended at the end of WWII, in the Youth Court Law amendment of 1953.
58 Weerman, Frank W. 269.
created as a result of the CRC and the nation's promise to measure all new legislation according to the guidelines in the CRC. In 2004, the CRC Commission to which Germany gave their second five year report listed several concerns:

the Committee is concerned at the increasing number of children placed in detention, disproportionately affecting children of foreign origin, and that children in detention or custody are placed with persons up to the age of 25 years.\footnote{http://www.loc.gov/law/help/child-rights/germany.php}

As acknowledged by the Committee, Germany has a similar set of issues with minority over-representation to those seen in the Netherlands. Germany’s over-representation of ethnic minorities hinges predominantly on the identification of non-German descended individuals as “foreigners’’ despite being born in the country. Over-representation does not touch every aspect of German juvenile justice; pre-trial detention appears to be uninfluenced by ethnicity.\footnote{Dunkel, Dr. Frieder. “Migration and Ethnic Minorities in Germany: impacts on youth crime, juvenile justice, and youth imprisonment.” University of Greifswald, Germany. http://www.rsf.uni-greifswald.de/fileadmin/mediapool/lehre/duenkeli/duenkeli/Germany_youngMig.pdf} However, throughout the late 1990s studies showed that ethnicity was a significant factor in the harshness of punishment among arrested juveniles.

Turkish and Yugoslavian offenders clearly demonstrated that they received a harsher punishment than their German counterpart.\footnote{http://www.loc.gov/law/help/child-rights/germany.php} Foreign recidivists were exposed to more severe punishment, particularly imprisonment.\footnote{Ibid}

These concerns were not discussed in Germany’s 2009 session, but are addressed in Germany’s report to the 2013 Committee, which will return observations in June-July 2013. In Germany's report they state that:

The principle of —deprivation of liberty as a last resort is practiced in the Land Berlin, in particular by applying measures of youth welfare, such as anti-violence and anti-aggression training or settlement between offenders and victims. The Act on the Execution of Remand Detention... in Berlin, which is to enter into force shortly, furthermore does greater justice to the development of modern youth prisons by guaranteeing the placement of juveniles and adolescents and young remand detainees (aged up to 24) separately from criminal inmates and older inmates by age.\footnote{http://www.loc.gov/law/help/child-rights/germany.php}

While the grouping of individuals through age 24 together with juveniles was defended by Germany, the concern over incarceration was addressed through reference to The Act on the Execution of Remand Detention. While no exact numbers on juvenile detention are accessible, “the reduction in the overall prison population is mainly the result of a sharp decrease in remand detention from 18,300
inmates in 2000 to 10,781 inmates in 2010\textsuperscript{64} according to a report by the Council of Europe. Juveniles and adolescents make up a very small percentage of these remaining remand detainees; only 4.3% in 2008.\textsuperscript{65} Additionally, the overall number of juveniles and adolescents incarcerated in Germany has steadily decreased since the early 2000s, when the CRC questioned whether Germany adhered to the guideline of loss of liberty as a last resort.\textsuperscript{66}

Ireland

Like the systems that have already been discussed, Ireland's juvenile justice system was built upon the ideals of rehabilitation for troubled youth. The system was established in the wake of the US's new juvenile justice system with the passing of the Children Act in 1908. The Children Act (1908) was the basis of juvenile law in Ireland for almost one hundred years. It established a very low age of criminal responsibility at under 7 years of age, and permitted a reliance on institutionalization of children as a primary resort.\textsuperscript{67} Because of the Irish system of crime recording, it is impossible to ascertain the exact numbers of youth prosecuted in Ireland\textsuperscript{68}, but the number of youth cases that are submitted for recommendation increased steadily throughout the late 1990s and early 2000s.\textsuperscript{69} Unlike the other countries this paper has examined, however, Ireland had an extensive period of stagnation that ended in significant changes to the Irish juvenile justice system, heavily influenced by international standards such as the CRC.

Ireland did not develop new methods of juvenile justice until the Children's Act of 2001 was passed. While they did increase the amount of programming to preemptively avoid arrest (predominantly by enhancing educational opportunities for at-risk youth), there was little political interest in addressing the functioning of the system for children and youth that were entered into the system.\textsuperscript{70} Such political interest did not occur until much later on, when Ireland ratified the Convention on the Rights of the Child. During their first report from the Committee on the Rights of the Child in 1998, the Committee cited concerns about aspects of the juvenile justice system:

The Committee is concerned about the low age of criminal responsibility
and the treatment of children deprived of their liberty, particularly in light
of the principles and provisions of the Convention and other relevant
international standards such as the United Nations Standard Minimum Rules for

\textsuperscript{64} "Report to the German Government on the Visit to Germany Carried Out by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment." Council of Europe. Strasbourg, 22 February 2012 http://www.cpt.coe.int/documents/deu/2012-06-inf-eng.htm


\textsuperscript{66} Ibid


\textsuperscript{68} Ireland divides its crime and arrest statistics into categories seen as largely unorthodox compared to other countries: the categories are ages up to 14, 14-16, 17-20, and 21+. Because of the 17-20 category, it is impossible to know the exact number of minors who are arrested/investigated because they are grouped together with 19 and 20 year olds.

\textsuperscript{69} Ibid

\textsuperscript{70} Seymour, Mairead.
the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and

In response to this criticism, new rules and regulations were created in Ireland, but the passage of the new Children Act took several years to gain enough momentum for passage. In the Children Act (2001) myriad alterations to the system created under the Children Act (1908) were created, including raising the age of criminal responsibility, creating a new Child Court to replace the Youth Court, and creating a legal commitment to incarceration as a last resort for individuals 18 years of age or younger. In addition to the Children Act (2001), Ireland passed several more acts that focused specifically on children's rights, human rights (with applications for children) and the extension of education. In the UN's second report, they cited six such acts and laws, as well as the ratification of multiple human rights conventions and treaties. However, the Commission reported concern over the fact that the Children Act (2001), while adequately addressing many of their previous concerns, was only partially enacted. In addition, it expressed concerns over the rights of children in other aspects of society. The influence on these criticisms on Irish law is seen in the passage of a referendum amending the Irish constitution to include many of the issues addressed by their last report:

The proposed constitutional amendment looks at a number of areas of children’s rights including adoption, protection, State intervention in neglect cases and giving children a say in their own protection proceedings.  

This referendum, despite being passed by voters, is currently being held up by a law suit regarding the government's use of possibly misleading propaganda in favor of the amendment. Ireland's responses to the CRC and its recommendations have followed a pattern of being held up and delayed due to legal issues, as well as issues of implementation. According to a report submitted to the Thematic Working Group on Juvenile Justice in the European Society of Criminology, the implementation of important aspects of the Children's Act 2001 were held up because of infrastructural setbacks and a lack of appropriate resources, but the passage of these acts and amendments, which respond directly to concerns iterated by the Committee on the Rights of the Child's reports, suggest that the CRC has had significant influence on the way in which juvenile justice in the Republic of Ireland has been and will be addressed.

Canada

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72 Seymour, Mairead.
74 Ibid
77 Seymour, Mairead.
Canada's system of juvenile justice was established in the vein of the American juvenile justice system in the early 1900s. Throughout its history, it has relied on an institutionalization of youth as a means to rehabilitate and re-educate them. Throughout the 1990s, Canada surpassed the United States in the percentage of youths within the juvenile justice system that were placed in detention for both violent and non-violent crimes. 78 In recent years, Canada has experienced a phenomenon quite opposite of Ireland's in that there has been excessive political interest in youth crime. In fact, throughout the 1990s and 2000s, Canadian politics have been influenced by a statistically false belief that violent youth crime has been skyrocketing. Even in communities in which youth crime decreased during this time period, a majority of polled residents believed that sentencing for juveniles was not harsh enough. 79 This has led to an increase in both incarceration rates and sentencing length. 80 Canada's response to youth crime has been very similar to the United States in these aspects, but there are several significant differences in the way in which it has approached what it believes to be a "youth crime problem," which are notably influenced by the country's ratification of the CRC.

The Canadian justice system, like the Dutch juvenile justice system, has recently begun to implement extensive programming in restorative justice. This programming became paramount within the Canadian legal reaction to youth crime with the passage of the Youth Criminal Justice Act (YCJA) in 2002. 81 The YCJA implements restorative and diversionary programs for youth in order to reduce the rate of incarceration for youth. The Act outlines the specific options for the sentencing of youth, beginning with the most basic and least restrictive outcome, that the court "reprimand the young person." 82 However, according to Anthony Doob and Carla Cesaroni, there are discrepancies between the way in which the YCJA and relevant law are written and how they are applied. 83 Additionally, the wording of the YCJA does not commit to Canadian youth court to a sentence of least restrictive means, simply stating that the court "may impose any other of the sanctions set out in this subsection that the court considers appropriate." 84 Even given these contradictions in policy, Canada still relies more heavily on less restrictive means than detention in most cases. Probation has been the most frequently applied sentence for youth in Canada since the 1990s, and the YCJA has decreased the number of juveniles that are given detention by restricting the cases in which youth are able to be sentenced to incarceration. 85 As a result, in 2010/2011, there was a 6% decrease in youth incarceration in Canada from the previous year, and a 12% decrease from 5 years prior, when the YCJA was implemented. 86 87

Australia

Australia's youth justice system begins similarly to the other nations mentioned here, and has become increasingly punitive over the past few decades. With a decentralized system similar to the American system, Australia lacks an over-all cohesiveness in the methods and restrictions that apply to

79 Ibid
80 Ibid
82 Ibid.
83 Doob, Anthony and Carla Cesaroni. Responding to Youth Crime in Canada.
84 YCJA, S.C. 2002 s 1, item 42. Justice Laws Website.
85 Doob, Anthony. P 223-225.
87 See Appendix: Chart 2
its youth justice system. While there are federal regulations on juvenile justice, there are also separate laws regarding punishment and incarceration of youth in each state. The overall trend in Australia has been towards a more punitive approach to justice. Throughout the 1990s, a moral panic swept through Australia fueled by public perception of the prevalence of violent crime committed by juveniles. As a result, there was a significant decrease in the use of diversionary tactics used for youth and an equally significant increase in the use of incarcerations and institutionalization for juveniles. This trend was reversed briefly in the early 2000s before continuing in the mid 2000s.

According to a non-governmental report in 2005 by The National Children’s and Youth Law Centre and Defence for Children International (Australia), “in Western Australia and the Northern Territory, mandatory sentencing legislation was enacted in 1996 and 1997, requiring courts to apply minimum sentences of detention for people convicted of certain offences.” While mandatory sentencing legislation in the Northern Territory was amended by the early 2000s, this policy has continued in Western Australia, where it inordinately affects Aboriginal youth. Because of the lack of centralization of the juvenile justice system in Australia, it is difficult to discuss the nation’s response to the CRC as a whole; however, there are evident trends which suggest that state-level juvenile justice legislation has been affected by the CRC. Tasmania, Victoria, and the Northern Territory have all developed practices in youth justice designed to be in the “best interests of the child.” For example, the Northern Territory passed an the Youth Justice Act in 2005 that eliminated the above mentioned mandatory incarceration laws, instead replacing them with the ideology that:

unless the public interest requires otherwise, criminal proceedings should not be instituted or continued against a youth if there are alternative means of dealing with the matter and a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time.

However, Australia still faces many issues of concern by the CRC. In the Committee's 2008 response to Australia's fourth CRC report, they stated “despite its earlier recommendations, the juvenile justice system of the State party still requires substantial reforms for it to conform to international standards...” Australia's decentralized system makes it difficult to apply changes to the juvenile justice system in a broad, national way. However, despite the committee's continuing concern, youth incarceration rates in Australia have fallen over the past two decades; rates of incarceration in 2007 were 51% lower than they were in 1981. Australia struggles, despite this decrease in youth

89 ibid
91 ibid
93 ibid
incarceration, with a disproportionate representation of indigenous youth. In 2007, indigenous youth made up 59% of the total incarcerated population, and were 28 times more likely to be incarcerated than non-indigenous youth.  

Mexico

Mexico's juvenile justice history is an anomaly amongst those studied here. Unlike US, Australia, and the European nations that this paper has looked at, Mexico did not establish its juvenile justice system for the intent of rehabilitation. Unconcerned with the protection of children, Mexican youth justice was punitive in nature, with a long recorded history of abuses of children's rights. However, in the 1990s, Mexico began to address these rights abuses and build systems for the protection of children. Mexico ratified the CRC fairly early on, and responded to Committee recommendations with the implementation of an increased amount of child protective programming. Despite these changes, in 2000 the Committee on the Rights of the Child reported that they remained concerned about the conditions of Mexican youth justice, particularly because "deprivation of liberty is not systematically used only as a measure of last resort".

Another important concern of the Committee's was the decentralization of Mexico's juvenile justice system. Like Australia, Mexico at this time a decentralized system that resulted in tremendous disparities between the punishment of juveniles in one state to another. By their next report in 2005, however, Mexico had taken significant action towards addressing several of the concerns of the Committee. In their next set of observations, the Committee reported:

[the Committee] takes note with appreciation of the 2005 amendment of article 18 of the Constitution, which establishes a unified juvenile justice system. It welcomes in particular the development of alternatives to detention, the respect of the rules of procedure and the specialization of courts.

Alterations to Mexico's legal system regarding juveniles have expanded significantly since it signed on to the CRC, in direct relation to the recommendations of the CRC Committee. While Mexico still has significant problems within their juvenile justice system, such as mixed housing between juveniles and adults in facilities with poor conditions, these issues relate more directly towards lack of resources rather than lack of effort to become CRC friendly. Unfortunately an accurate comparison of Mexico's youth incarceration rates to other nations' is almost impossible due to minimal statistic keeping; despite this paper's inability to analyze empirical data on the numerical affects of these program changes, the evidence of the Convention's influence is present in the very implementation of these changes.

Significance of Case Studies

The inclusion of these case studies is of particular importance to this paper, because this section

96 See Appendix: Chart 1
97 Ibid
98 "Children's rights" as measured by international standards
is what demonstrates the actual influence of the Convention on other nations' juvenile justice systems. Without evidence that the CRC is influential in other nations, the US's failure to ratify the Convention lacks significance, because the Convention then bears no importance anywhere. Also of significance is the specific countries represented by the case studies; comparative analysis of the effects of the CRC are made meaningful by comparing nations with similar political structure, histories, and specifically similarly functioning juvenile justice systems.

VI. Conclusion

Between 1985 and 2009, the juvenile justice caseload in the United States increased by 30%. While this increase still represents a 20% decrease in caseload between America's peak juvenile crime year in 1994, and 2009, there were over 4,000 juveniles being processed every single day. It is easy to disregard statistical arguments such as this because, after all, the United States rate of juvenile incarceration has decreased. Juvenile crime is lower now than it has been since 1984, and juvenile arrest rates have decreased in a corresponding manner. What then, is the problem with the United States juvenile justice system? The problem is that despite the fact that trends in juvenile crime and arrest are decreasing, the American juvenile justice system still arrests juveniles in a disproportionate manner compared to the rest of the world, and punishes those juveniles for increasingly longer measures of time, often as adults.

In the United States, juveniles who are sentenced to spend time in a juvenile detention center can expect an average sentence of over 5 years. The closest any other country involved in these case studies (or in fact any country that carries such records) approaches to this harshness is Australia, with an average of 3 years for juvenile sentences. Additionally, the majority of American youth cases that go to court result in incarceration; 69.9% of juvenile cases end in incarceration. These numbers represent a drastic increase in the number and severity of juvenile incarceration sentences as a percentage of total arrested juveniles, but "U.S. research shows little to no correlation between time spent in prison and recidivism rates." Because it bears no correlation with decreasing crime, the harshness of American punishment causes alarm. It is important to examine the ways in which these methods of juvenile justice are exceptional because witnessing and analyzing the differences between the US' and other countries' systems helps build a critique of the American system and determine alternative to the mass incarceration of American juveniles.

The literature examined in this paper provides a wide array of explanations for the phenomenon of exceptionalism in US policies. However, these explanations fail to explain the differences in the instance of a juvenile justice case study. The framework that this case study provides directs the analysis of exceptionalism to US exceptionalism towards international children's rights law and its subsequent effect on American domestic law. The Convention on the Rights of the Child provides the most widely-recognized global standards for the treatment of children within juvenile justice systems,

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102 Ibid
103 Ibid
105 Ibid
106 Ibid
and the result of the US's non-ratification of the CRC is clearly reflected in American domestic policies. To understand these policies, a new approach must be taken in order to address this instance of American exceptionalism.

By linking American singularity in juvenile justice approaches to the effects of an exceptionalist rhetoric manifested in a significantly geographical manner, this paper narrows the explanation for American juvenile justice policies and relates them to literature explaining Southern\(^\text{107}\) exceptionalism. Explanations for exceptionalism that are based on broadly nationalist effects are, therefore, set aside as stand-alone explanations in order to examine the socio-cultural influences that have resulted in the disproportionate representation of regionally-based groups that have blocked the ratification of the Convention on the Rights of the Child in the US. What this papers finds is that the best explanation for the exceptional rejection of the Convention on the Rights of the Child results from the disproportionality enabled by the structure of American federalism.

American federalism, as Lisa Millers explains, allows for the disproportionate representation of highly organized minority groups, which in this case includes the small, Southern-based right-wing religious organizations that lobby against ratification of the CRC in the US. This conclusion is significant because it enables the reader to identify the important aspects of American exceptionalism that have influenced the juvenile justice system in the United States. As these influences are recognized, they may be combated in order to make changes to the juvenile justice system and to address its ineffective policies. Comparison with other nations teaches us that the standards created in the CRC have helped other nations, through willing participation in the Convention, create more successful juvenile justice systems. Likewise, there is a vast potential for the United States to improve not only the outcomes but its very understanding and goals of juvenile justice, if it ratified and considered even a select few standards set forth in the Convention on the Rights of the Child.

\(^{107}\) And to a lesser degree, Western (i.e. Idaho, Utah, and other states influenced by substantial Mormon populations),
Appendix

Chart 1: Persons in juvenile detention centers, from 1981 to 2007, by sex (per 100,000 of that sex per year) in Australia


Chart 2: Sentences for persons in juvenile justice systems (per 100,000 youth population) from 2005-2011

YOUTH INCARCERATION RATE: UNITED STATES VS. OTHER NATIONS

JUVENILE INCARCERATION RATE PER 100,000 YOUTH POPULATION

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