



Student Paper Series

**Welfare State Regimes & Youth Incarceration:
A Comparison of Germany, Sweden, and the United States**
By Haley Reibold (MPP/MPA 2015)

Academic Advisor: Prof. Dr. Klaus Hurrelmann
Professor of Public Health and Education

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I. EXECUTIVE SUMMARY

Despite international consensus among researchers that incarcerating youth is an ineffective and inefficient response to crime, this practice persists—to widely varying degrees—in every country. What are the differences in youth incarceration in disparate welfare state regimes? To answer this question, this paper develops a youth incarceration typology by comparing three cases: that of Sweden, Germany, and the United States. The first multi-dimensional typology specific to youth incarceration, this tool encompasses four key domains central to the type of system operated in a nation. These include the purpose and extent of incarceration use, compliance with international human rights, and privatization receptiveness. A fifth domain, disproportionate minority incarceration, was considered but results indicate the need for further research on this issue.

Three youth incarceration types, aligned with welfare state regimes, are developed from a mixed methods research design comparing the countries of interest. With juvenile justice systems situated within justice departments and a central aim of punishment, liberal regimes, such as the United States, demonstrate low compliance with human rights, and the highest rates of prison privatization. Conservative regimes, based on data from Germany, exhibit a central goal of rehabilitation, low privatization receptiveness, and ratification of human rights resolutions. Social democratic regimes, such as Sweden, have a youth rights-centered system, with no privatization and full adoption of human rights resolutions. When accounting for diversity in each country's population, Sweden was found to have the highest levels of disproportionate minority incarceration and the United States the lowest, with Germany between the two. Regarding this domain, further research is required to determine if this finding is characteristic of social democratic and liberal nations. After comparing the countries of interest, the relationship between welfare state regime types and juvenile justice systems is examined. This paper concludes with recommendations for the research, policy, and practitioner communities to advance analysis and reforms to improve the effectiveness and efficiency of juvenile justice systems internationally.

II. INTRODUCTION

A. YOUTH INCARCERATION: A CRITICAL & COMPLEX ISSUE

1. An Ineffective & Inefficient Response to Crime

Incarcerating youth is a harmful practice that has been repeatedly proven to produce a host of negative outcomes for youth, families, and communities (Aizer & Doyle, 2013; Braman, 2002; Holman & Ziedenberg, 2006; Lambie & Randell, 2013). While in prison, youth are at risk of violence and abuse at the hands of correctional staff, adult offenders, and their peers (Abram et al., 2004; Liefgaard, Reef, & Hazelzet, 2014; Neubacher, 2014). In many countries—including developed nations—youth prisons lack basic educational, medical, mental health, and other needed services (Cocozza & Skowrya, 2000; Dembo, 1996; Golzari, Hunt, & Anoshiravani, 2006; Leone, 1994). Upon being released from prison, youth are more likely to reoffend than those who committed similar crimes but were offered alternative, community-based programs (Holman & Ziedenberg, 2006; Mendel, 2011; Pfeiffer, 1996). If the goal of youth incarceration is to prevent future offending and improve public safety, this practice is failing.

In addition to being an ineffective response to crime, incarceration is inefficient. A recent report found that state and local governments in the United States spent \$21 billion each year on youth incarceration, with an average per child daily cost of over \$400 and an annual cost per child of \$148,767 (Petteruti, Schindler, & Ziedenberg, 2014). Cost-benefit analyses have indicated that community-based alternatives are significantly less expensive than incarceration, thereby improving government efficiency while producing better results (Mendel, 2001; Robertson, Grimes, & Rogers, 2001).

2. Divergence in Youth Incarceration Rates

While several nations have worked to reduce youth incarceration rates in recent years, this practice is increasing in other jurisdictions (Mendel, 2011). The imprisonment of youth persists despite four international human rights treaties—including one of the most widely ratified treaties, the Convention on the Rights of the Child—holding that

incarceration should only be used as a measure of last resort (UNCRC, 1989; Riyadh, 1990; Havana, 1991; Beijing, 1985). Given the widely disparate juvenile imprisonment rates across nations, ranging from 1.6 to 298.2 per 100,000, there is apparently little consensus on the meaning of this directive (Aebi et al., 2010). A recent review of Convention on the Rights of the Child Committee reports assessing compliance in 15 countries in Western Europe indicated that of these, only Norway met standards set forth (Muncie, 2008). The most commonly cited area in need of improvement pertained to the overuse of incarceration and need for additional alternatives to imprisonment (Muncie, 2008).

3. Increasing in Complexity

A complex mix of historical, political, legal, economic, and social factors influence a country's use of incarceration as a response to youth crime. In recent years, the issue of youth incarceration has become increasingly complex on a variety of levels. Muncie (2006) attested to this fact, holding that "juvenile and youth justice may be becoming more globalized through the impact of neo-liberalism, policy transfer and international conventions, but at the same time it is becoming more localized through national, regional and local enclaves of difference, coalition and resistance" (p. 56). Increasingly, a diversified set of players are involved in youth incarceration with public-private partnerships bringing for-profit entities into corrections in many countries. A final contributor to the rising complexity of juvenile justice is increased cross-border mobility, which is bringing people from different racial, ethnic, national, and religious backgrounds to countries that may struggle with challenges that increased diversity can present.

4. Limited Cross-National Data and Research

Comparative international data regarding adult incarceration rates for developed countries is readily accessible as is data on a host of youth-related issues and indicators, such as education and health (Walmsley, 2013). Despite an increasing number of entities

at national and international levels focused on juvenile justice, internationally comparable data on the use of incarceration in juvenile justice is lacking (Winterdyk & Miller, 2014, p. 464). Where data on youth in custody does exist, it is rarely comparable across countries due to inconsistent definitional and measurement standards. The ages of youth under juvenile justice system jurisdiction vary, as do the types of custody. Given this, it is both difficult to find a common definition for youth and for incarceration internationally.

5. Public Demands for Justice System Reforms

The justice reform movement has gained momentum in recent years, especially in the United States, in response to widely publicized abuses of power by police, youth courts, and youth prisons. The killings by police of Michael Brown in Ferguson, Missouri and Trayvon Martin in Sanford, Florida—both unarmed black youth—brought protesters to the streets in cities across the country and world (McKay, 2014). The highly publicized 2008 “Kids for Cash” scandal in Luzerne County, Pennsylvania—where two juvenile court judges were indicted for accepting \$2.1 million in kickbacks over 12 years from a prison developer for sending youth to this private facility for excessive periods of time—resulted in organizations and communities mobilizing around the issue of prison privatization (Urbina, 2009). In Germany, the 2006 death of Hermann H., a youth who was tortured, sexually assaulted, and forced to hang himself by his three cellmates, brought national attention to the issue of youth incarceration and prompted reforms by the Justice Ministry (Boeticher & Feest, 2008; Abramsohn, 2006).

B. YOUTH INCARCERATION IN SOCIETY

Youth prisons are longstanding institutions in developed countries, with the first facility on record established in 1825 in New York (Fox, 1970). Prior to the creation of separate youth prisons, young people were treated as and held with adults. Juvenile courts sentence youth to prison most commonly for committing crimes, but also in some

countries for violations of probation—or failure to meet court-ordered conditions set forth in their release agreement—and for status offenses, which are acts that are considered criminal only when committed by minors. Lengths of stay in youth prisons vary widely, as do the range and quality of services available to youth while incarcerated and upon re-entering the community.

At the most basic level, the function of youth incarceration is to remove a young person from society. The intention behind this action depends on the context of the juvenile justice system, with research literature identifying two central models. The welfare model, centered on protectionism and the concept of *parens patriae*—the state as parent—emphasizes treatment and care for incarcerated youth (Alder & Wundersitz, 1994; Hazel, 2008). The basis for this approach, as Alder and Wundersitz (1994) write, is that “because of their immaturity, children cannot be regarded as rational or self-determining agents, but rather are subject to and are the product of the environment within which they live. Any criminal action on their part can therefore be attributed to dysfunctional elements in that environment” (p. 3). In contrast, the justice model focuses on accountability, punishment, and retribution where the court weighs the offense, sets a sentence proportional to the crime, and the youth prison delivers this punishment. Alder and Wundersitz (1994) write that this model “assumes that all individuals are reasoning agents who are fully responsible for their actions and so should be held accountable before the law” (p. 3). Additional purposes of incarceration of note discussed by MacKenzie (2012) include deterrence, incapacitation, rehabilitation, and intervention.

C. RESEARCH QUESTION & HYPOTHESES

What are the differences in youth incarceration in disparate welfare state regimes? It is expected that differences in incarceration policy and practices will exist in five primary domains, which also serve as the categories of the youth incarceration typology. The following hypotheses will be tested:

- **H1: PURPOSE & POSITIONING OF JUVENILE JUSTICE SYSTEM (Domain 1)**
 Juvenile justice systems in liberal regimes will fall under the purview of the justice department and will have a central aim of punishment. Conservative regimes will focus on rehabilitation and oversight will be provided by both justice and child welfare systems. Social democratic regimes' systems will be within a child welfare department and will center on the care and rights of incarcerated youth.
- **H2: USE OF YOUTH INCARCERATION (Domain 2)**
 Liberal regimes will demonstrate the highest youth incarceration rates and social democratic regimes the lowest, with conservative regimes between the two.
- **H3: COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS (Domain 3)**
 Social democratic regimes will exhibit the highest levels of compliance with international human rights standards regarding youth incarceration followed by conservative regimes. Liberal regimes will have the lowest levels of compliance.
- **H4: EXTENT OF & RECEPTIVENESS TO PRIVATIZATION (Domain 4)**
 Liberal regimes will demonstrate highest privatization receptiveness, with the largest proportion of privately owned and operated youth prisons. Social democratic regimes will demonstrate the lowest, with conservative regimes situated between the two.
- **H5. DISPROPORTIONATE INCARCERATION OF MARGINALIZED GROUPS (Domain 5)**
 Liberal regimes will have the highest rates of disproportionate racial (in the United States) or nationality-based (in Sweden and Germany) representation in youth prisons and social democratic regimes the least, with conservative regimes between the two.

C. RATIONALE & INTENTIONS

Public dissatisfaction with the administration of justice coupled with recent fiscal crises are compelling policymakers around the world to address youth incarceration. This paper provides two main contributions to the discussion on youth prison reform internationally. Given the increasing complexity of juvenile justice systems, this paper has developed a multi-dimensional typology focused on youth incarceration, which includes

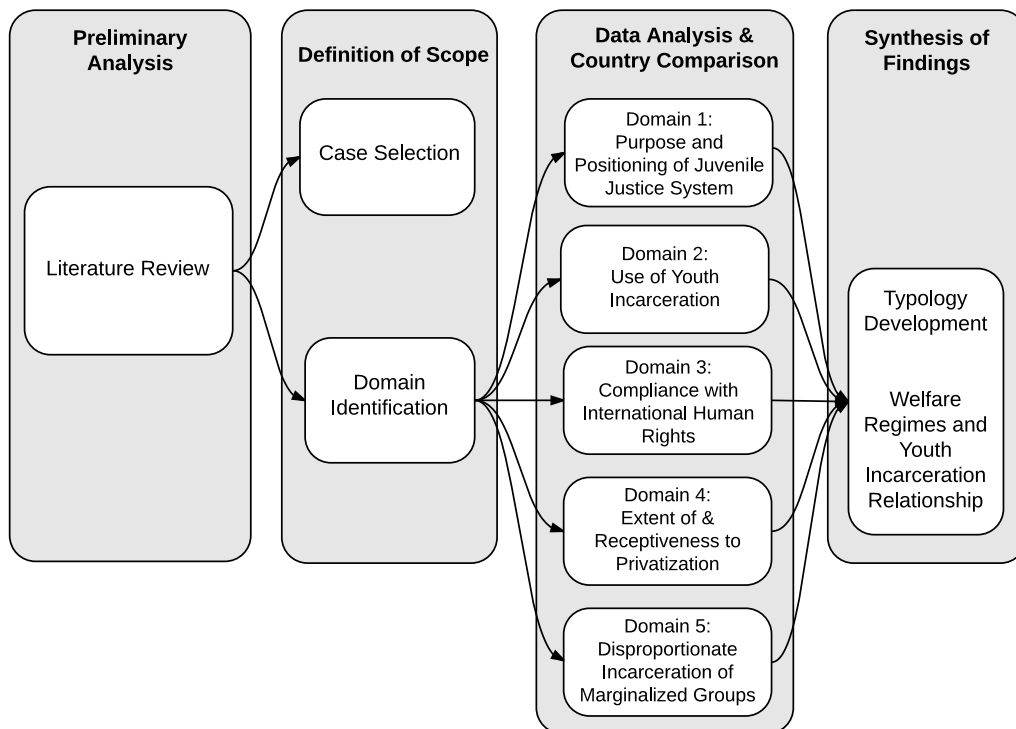
consideration not only of the aims of the system, but also youth incarceration rates, compliance with human rights resolutions, and receptiveness to privatization. Additionally, this paper places the practice of incarceration within the context of the welfare state and explores relationships and interactions between a nation's regime type and its juvenile justice system.

This paper will first provide an overview of research processes and methods employed, followed by a synthesis of the welfare state and justice system typology literature. In the analysis section, after providing a brief overview of each nation of interest's juvenile justice system, the three countries will be compared across five core issue areas aligned with the hypotheses posited above. Using these findings, a juvenile justice typology will then be created. A discussion of the relationship between welfare state regime types and youth incarceration will follow, concluding with a summary of results and recommendations for future action to the research, policy, and practitioner communities.

III. RESEARCH DESIGN

This international comparison of youth incarceration across three nations representing disparate welfare state regimes employs mixed methods research, using an approach that is both quantitatively and qualitatively driven. The four phases of the research process, detailed in Figure 1, include preliminary analysis, definition of scope, data analysis and country comparison, and synthesis of findings.

Figure 1. Research Process



A. PRELIMINARY ANALYSIS

1. Literature Review

Four central strains of literature were consulted in the preliminary analysis phase including welfare state regime theory; incarceration, social control, and corrections theory; public sector and justice system typologies; and international comparisons of justice systems. Particular focus was given to the three countries of interest. A review of 84 articles resulted in the creation of a literature review matrix, synthesizing the central themes, methods, approaches, and findings from each article. This literature review informed the identification of the most relevant justice typology research and informed the selection of cases and domains.

B. DEFINITION OF SCOPE

1. Case Selection

The primary cases considered in this paper, that of Sweden, Germany, and the United States, were selected for several reasons. While acknowledging that there are no nations that perfectly meet all the criteria for one welfare state regime ideal type, the selected nations serve as an approximate representation of each of Esping-Andersen's (1990) three central types. Sweden, Germany, and the United States were identified as dissimilar nations by Esping-Andersen (1990) and were used in his analyses as archetypes for each of the three core regimes identified. The identification of these three countries as "prime examples" is confirmed by Ebbinghaus (2012), who also refers to them as "placeholders" for the three ideal types (p. 6).

2. Domain Identification

The literature review conducted in the preliminary analysis led to the identification of the five hypotheses and potential domains. Developing the five prospective domains began with the compilation of all justice system typology domains previously created by researchers, a condensed version of which is presented in Table 1. To bolster this, international juvenile justice comparisons that did not make use of typologies were also consulted to identify the core system elements that researchers took into account in their analyses. From this research, a total of 16 possible domains related to youth incarceration were identified. These include the five central domains examined in this paper as well as the following: alternatives to detention, recidivism rates, average length of stay, transfer of youth to adult system, existence of juvenile life without parole, ages of youth under juvenile jurisdiction, proportion of juvenile justice budget spent on incarceration, centralization or decentralization of system oversight, visitation and family engagement policies, ombudsman services, youth voice or leadership opportunities in facility. The five core domains for consideration were identified based on their indicative power of system type, the ability of these five to capture elements in several other of the

16 possible indicators, the relevance or timeliness of the particular domain, the frequency at which the literature mentioned this domain, and the availability of comparable data.

C. DATA ANALYSIS & COUNTRY COMPARISON

1. Purpose and Positioning of Juvenile Justice System (Domain 1)

A qualitative text analysis was conducted to identify both the purpose and positioning of each country's juvenile justice system. Sources consulted to identify the central aim of each system included the mission, vision, or goal statement of juvenile justice-focused agencies, national or state legislation setting forth mandates for the central aim or purpose of the system, and, to a lesser degree, analyses and assessments of the central purpose by researchers. All of the expressed aims of each system were compiled and the most frequent word or theme was selected as the central aim. The positioning of juvenile justice was determined by consulting organizational charts, government directories, and legislation in each country to identify which agency maintains oversight.

2. Use of Youth Incarceration (Domain 2)

To identify differences in youth incarceration rates between the three nations of interest, quantitative data was triangulated and analyzed. Available data included the number of youth incarcerated—a stock variable from a point-in-time count in each country—and the total number of youth in each country's population in the same age range and year. For Sweden and Germany, incarceration data was from the *European Sourcebook of Crime and Criminal Justice Statistics* (Aebi et al., 2010) and population data from Eurostat (Šteinbuka & Mercy, 2009). For the United States, national justice department and census bureau data were used. Using this data, the rate of youth incarceration per 100,000 youth in the population was calculated, countries were rank ordered by their rate, and the range, mean, and median were determined to facilitate comparison.

A further quantitative analysis and data triangulation was conducted to account for differing youth arrest rates in each country, comparing the percentage of arrested youth to those who are incarcerated. Arrest data in Sweden was from the National Council for Crime Prevention, in the United States from the Office of Juvenile Justice and Delinquency Prevention, and in Germany from the Federal Criminal Police Office.

3. Compliance with International Human Rights (Domain 3)

To determine the degree to which each country has embraced international human rights standards on youth incarceration, four resolutions that include the measure of last resort mandate were identified. As three of the four resolutions are soft law, compliance with only the Convention on the Rights of the Child was assessed through qualitative text analysis. Ratification status was assessed first; for the two countries that did ratify the Convention on the Rights of the Child, the extent to which this resolution was integrated into government systems and operations through national laws, offices, policies and plans was assessed. Alignment with Convention on the Rights of the Child principles was also analyzed through a review of Convention on the Rights of the Child Committee Concluding Observations assessing compliance for the two countries that ratified this treaty.

4. Extent of & Receptiveness to Privatization (Domain 4)

Qualitative text analysis was used to determine a country's receptiveness toward privatization. The assessment was first based on whether any private prison facilities—for youth, adults, or immigrants—exist in the country. This was the case for two of the three nations, but only one incarcerates youth in private facilities. The proportion of youth held in private facilities in this nation was calculated based on United States Department of Justice National Census of Juveniles in Custody data and, for the other country, the number of facilities operated by private agencies and the nature of their involvement was identified.

5. Disproportionate Incarceration of Marginalized Groups (Domain 5)

Quantitative analysis is used to compare disproportionate representations of minority groups in youth prisons across the three countries. Minority group is defined in the United States as racial minorities, including Black, Hispanic, Asian, Native American/Hawaiian youth and in Sweden and Germany as youth who are foreign nationals. Majority is defined as all others not in those classifications. Data were triangulated for comparison and aligned within countries, and, to a lesser extent, across countries.

The percent of minority versus majority youth in prison was calculated based on national data from the United States' Office of Juvenile Justice and Delinquency Prevention, Germany's Federal Statistics Office, and Sweden's Prison and Probation Service. This was then compared to the racial or national composition of the general population, with percentages calculated from data from the Census Bureau in the United States, *Statistisches Bundesamt* in Germany, and Statistics Sweden. To compare these two percentages, ratios were calculated for each country to identify how over or under-represented minority youth are in prison compared to the general population. These ratios were then compared across the three countries. To advance this analysis, arrest rates were taken into account, again, by identifying the percentage of minority versus majority youth arrested in each country and calculating a ratio to compare the proportion incarcerated to those arrested. Arrest data for the United States was from the Office of Juvenile Justice and Delinquency Prevention, in Germany from the Federal Criminal Police Office, and in Sweden from The Local report as the prison service is prevented by law from reporting nationality in crime and arrest statistics (Immigrants, 2005; Swedish Code, 2001).

D. SYNTHESIS OF FINDINGS

In the final phase of the research process, results from the analysis of the five domains in each of the three countries were synthesized to create the youth incarceration typology. This process entailed identifying, adjusting, and accounting for potential inconsistencies. While the majority of results from Sweden, Germany, and the United States aligned with the youth incarceration model proposed for each type, findings pertaining to disproportionate minority incarceration did not. This incompatibility was analyzed and it was determined that additional research is required prior to including a domain related to disproportionate minority incarceration in the typology. Drawing from the literature review and results of the analysis of the three countries of interest, the relationship between youth incarceration and welfare states is discussed, highlighting how youth incarceration domains align with key considerations in welfare regime types.

IV. WELFARE STATE & JUSTICE SYSTEM TYPOLOGIES

A. WELFARE STATE REGIME TYPOLOGIES

Typologies have long been used in policy, social science, and sociological research, beginning in 1949 with Max Weber's identification of the ideal type methodology to compare social phenomena. This approach allows for the construction of model cases based on specific criteria to identify classifications, or groupings, of like-type entities (Lange & Meadwell, 1991; Weber, 1949). This methodology is particularly appropriate to and useful in international comparisons, as variation across countries depends on a multitude of factors (Ebbinghaus, 2012, p. 2). Grouping similar nations provides the opportunity for more meaningful and useful international comparisons and for realistic norm and standard setting given the unique context and factors within like-type classifications. It can also facilitate cluster analysis among like-type countries for comparison (Ebbinghaus, 2012, p. 2).

Esping-Andersen (1990) applied the concept of ideal types to welfare state regimes in developed nations, identifying three core classifications: liberal, conservative, and social democratic. These were developed, and nations were assigned to these general groupings, based on how responsibility for citizen welfare is divided among the government, market, and family units. This classification system indicates the extent to which governments provide for citizen wellbeing through labor market regulation and social services.

In liberal regimes such as the United States and other Anglo-Saxon nations, individuals are most reliant on the market and benefits are only available to those with no other means. Corporatist states, including Germany, ensure social rights by class thereby reinforcing social stratification while enabling levels of social service provision by the state. Social democratic regimes, which describe Scandinavian countries including Sweden, are more likely to have universal, high quality services provided by the government.

The central domains used by Esping-Andersen to develop social welfare regime types include decommodification, stratification, and privatization levels. Decommodification is highest in social democratic systems, where the ability to live comfortably is least constrained by market participation because of the availability and quality of government supports. Stratification, the structure and rigidity of divisions in society and the ascription of rights based on these, is highest in liberal states. The third central factor, privatization, is highest in more capitalistic liberal states and lowest in social democratic regimes.

B. PUBLIC SECTOR & JUSTICE SYSTEM TYPOLOGIES

Theories and frameworks have been developed to apply ideal type methodology to specific national systems, facilitate international comparisons, and explore relationships between welfare state regimes and social service systems (Lange & Meadwell, 1991). To analyze national healthcare systems, for example, Wendt, Frisina, &

Rothgang (2009) identified three ideal types based on the level of control that government, private sector, or citizens maintain over the dimensions of financing, service provision, and regulation and governance. Kuhry and Pommer (2004) classified national education, healthcare, and justice systems according to the level of governmental provision and guarantee. Although justice systems indisputably fall within the purview of welfare state service provision, these institutions are rarely examined through the lens of typologies or welfare state regimes. Without typologies that identify ideal types or assign countries to like-type groupings based on juvenile justice systems, international comparisons are constrained. Further discussion of the complex relationship between welfare state regime types and justice systems concludes the analysis portion of this paper.

To date, the vast majority of typologies created for the justice system have focused on individual criminal behavior. These range from broad classifications of types of and motivations for committing crime to the identification of crime behavior typologies within very specific domains, such as those committing adolescent sexual offenses and white collar crime (Clinard, Quinney, & Wildeman, 1994; Naylor, Taylor, & Bahramitah, 2002; O'Brien & Bera, 1986). This focus on the individual is indicative of the challenges that remain for research on justice, and incarceration specifically, as centering analyses on offender behavior can obscure the need to analyze system responses.

Recently, several researchers have put forth typologies specific to the adult justice system. In their study on European justice systems, Kuhry, Smit, Backbier and van der Torre (2004) identified eight country groupings, which align with geographic regions, by considering domains across the spectrum of the justice system. Cavadino and Dignan (2005) created four country clusters aligned with welfare state regimes: neoliberal, conservative corporatist, social democratic, and oriental corporatist by analyzing the domains of penal ideology, mode of punishment, and privatization.

The few juvenile justice system typologies that have been created are limited in their usefulness. Hazel (2008) assigned countries to two systems types: the welfare

model, which is protectionist and focused on care for a young person, and the justice model, based on rights and responsibilities. Winterdyk (2015) created the most expansive groupings of juvenile justice systems, considering 46 nations across three domains. Table 1 provides an overview of the domains that Cavadino and Dignan (2005), Kuhry, Smit, Backbier, and van der Torre (2004) and Winterdyk (2015) utilized to inform their classification of countries into like-type groupings. This compilation informed both the identification of domains to be considered in this paper's analysis of juvenile incarceration and the placement of the countries of interest within like-type groupings.