Children in Custody

Anglo-Russian Perspectives

Mary McAuley

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Preface

In 2006 I wrote a book, *Children in Prison*, for those in Russia 'who wish to find a better way to treat their young offenders'. The book, now published in Moscow, is intended for policy-makers, professionals, journalists and the general public.[1]

The Russian story allows us to see how the political environment, attitudes to youth crime and to criminal justice, and the relationship between state and society have interacted to influence the treatment of young offenders. And, in their turn, the twists and turns in policy towards youth illuminate the extraordinary history of Russia in the twentieth century, and the role of key actors, be they individuals, ideas or institutions. It is a tale to attract the attention of all with an interest in Russia in the twentieth century and of those, in particular, who wish to understand the making of social policy in Russia today.

But if this is a story worth bringing before an English-speaking readership in its own right, why make it part of a revised and expanded version, a comparative study with England and Wales?[2] The answer is twofold. Russia and England and Wales, different in so many ways, are two of the worst offenders in Europe as regards the imprisonment of children. Despite their very different histories, their very different societies, political and legal systems, Russia and England and Wales stand out, among their European colleagues as favouring a punitive approach to young law-breakers. Why is this so? A comparison allows us to highlight the factors that are responsible for the making of 'punitive' policy in the two societies. But, as important, by placing Russian and English policies in a European context, we can see how their European neighbours manage to place far fewer children behind bars. We can identify the issues that have to be addressed, if a more humane approach towards children is to be adopted, issues that are salient not only for today's policy-makers in England and Wales, Russia and North America, but for all who are concerned with the treatment of children. I had not expected to find our politicians quite so unenlightened, and I came to realize how little most of us know about the way we treat young law-breakers in our own countries.

The origins of the book lie in the experience gained from working during 1996-2002 for the Ford Foundation, based in Moscow, developing a programme of support for human rights and legal reform in Russia. This

involved identifying local talent, people who have the ideas, commitment and ability to make a lasting improvement in the life of their society. It included support for organizations or projects connected with penal reform – the NGO Moscow Center for Prison Reform, led by Valeri Abramkin, a small grants programme run by Alla Pokras of International Penal Reform, Krasnoyarsk State University's legal clinic for prisoners spearheaded by Professor Alexander Gorelik and Alexander Nazarov, the work of INDEM on the release of young offenders – and, rather differently, the 1999 census of the remand centres and prison population under the Ministry of Justice, led by Professor Alexander Mikhlin, and the Stalker human rights film festivals in the regions, organized by Igor Stepanov, which included visits to penal institutions. Through these organizations I began to learn about the problems and the issues, to attend round tables, and conferences, and to visit the prison colonies, remand centres and special schools. Between 1998 and 2004 I visited perhaps a dozen closed institutions in places as far distant from each other as St Petersburg and Krasnoyarsk in Siberia.

In 2002 I left the Foundation and returned to London. What now? Perhaps I could write something useful? The irrational and cruel practice of isolating and locking up children, in whatever country, nagged at my conscience. I was fortunate to be welcomed as an associate by the International Centre for Prison Studies, King's College London. My particular thanks to Vivien Stern and Andrew Coyle who took me in, and to Rob Allen, the present director. The members of ICPS have a wealth of experience of prisons, and are engaged in projects involving prison reform worldwide, including partnership projects between UK and Russian prisons. I am grateful to all at ICPS for help and advice. I began to read, to think, to visit young offender institutions in England and Northern Ireland (four in all) and to contrast their practices with those in the colonies. I started to analyze the Russian experience, and that of other countries. I had not expected to find the young offenders, in Russia and in England, talking so similar a language. There are differences between them, of course, but the fears, anxieties and assessment of the effects of custody are common property. The professionals, the colony and prison staff who work with the children in Russia or in England talk a language that crosses national boundaries despite the differences between the two societies and their politics.

All translations from Russian sources are mine, except for the excerpt from Kalinin's speech (ch.4). I have retained the original Russian Cyrillic, both in

the Bibliography and in references, for publications in the Russian language. Since these publications will only be of interest to the reader who knows Russian, there is no sense in providing transliterations. However, when I refer to a Russian author in the text, I give his or her name in transliteration to enable the reader to follow the account without stumbling. Several of the websites, referenced and easily accessible, have an English-language page that the non-Russian reader can consult.

The excerpts from the Russian children's essays (Introduction, and chapters 4 and 5) are taken from essay-writing competitions organized by Russian penal reform organizations over a number of years (and referenced in the Bibliography). All quotations/commentary by Russian criminal justice officials or those who work with young children, unless stated otherwise, and the children's answers to the question 'What is a crime?', are from interviews conducted in March–April 2004 by sociologists from St Petersburg, Saratov, Ulyanovsk and Moscow. The interviews constituted part of a research project on attitudes to youth crime and the treatment of young offenders. The project, proposed initially by the author, and led by the St Petersburg Centre for Independent Social Research, was planned and implemented by sociologists and statisticians from the four cities. The Ford Foundation and the FCO, London, contributed research funding. The sociologists looked at attitudes of three different groups: first, professionals who work with young people (school teachers, police, judges, advocates, staff from closed schools, penal institutions, and from local authority commissions on juvenile affairs); second, young people themselves, including both 'law-abiding' and young offenders; and third, the adult population.[3] Preliminary results of the research project were discussed at seminars attended by representatives of the different criminal justice and children's agencies in the four cities, and have been published in Общество и преступность несовершеннолетних / Под ред. Л. Ежова, М. Маколи. СПБ: Центр независимых социологических исследований, 2007. Some of the data, and analysis, used here in chapters 5 and 7 has appeared in Mary McAuley and Kenneth I. Macdonald, 'Russia and Youth Crime: A Comparative Study of Attitudes and their Implications', *British Journal of Criminology* 47 (2007): 2–22.

The quotations from young inmates, prison staff and other professionals working with young offenders in English institutions, unless otherwise cited, are from interviews conducted by Barry Goldson in 2001-2 (see Goldson

2002 in the Bibliography). Where confusion might arise over whether the respondent is from Russia or England, I include 'Russ' or 'Eng'. In general this is not needed, and would overburden the text, as would page references for all the quotations. Throughout I have refrained from identifying a young offender institution by name. This was a condition for Goldson's research, and I copy it here. Where an author (Neustatter) quotes the name of an institution, I repeat it. I have included the regions for the Russian colonies from which the children's essays come because this is already published material.

The photographs in the Russian penal colonies were taken in 1999–2001 by Sergei Sayapin and Liudmila Alpern in their capacity as representatives of Russian human rights organizations, working on penal reform. They are reproduced here with their permission. The use of photographs to bring issues before the general public, in exhibitions or publications, is acceptable in Russia. Legal restrictions make it very difficult to provide English or Welsh photographs. To provide a sense of contrasts between custodial regimes we can only use (English) photographs featuring models. These are included courtesy of the Youth Justice Board.

Many, apart from those already mentioned, have given time to answer my questions, to comment, and suggest new ideas. I am grateful to Nikolai Shilov, chair of the Vasileostrovskii district court, St Petersburg; to Oleg Zykov and Nodari Khananashvili of NAN; Rustem Maksudov of the Centre for Judicial and Legal Reform; Valeri Abramkin of the Moscow Center for Prison Reform; Boris Altshuler of The Rights of the Child; and Mariya Razumovskaya of Citizens Watch. Also to V.S. Chernobrovkin, chair of the Commission for Juvenile Affairs and Children's Rights of Saratov region; Aleksei Golovan, Ombudsman for Children, Moscow; and Tatyana Margolina, Commissioner for Human Rights, Perm region. My thanks go too to professors A.S. Avtonomov, L. I. Belyaeva, Ya. I. Gilinskii, G.I. Zabryanskii, A.S. Pashin, S.P. Peregudov and V. A. Utkin. Also to the sociologists who undertook the survey research project and, in particular, to Marina Goloviznina of the European University at St Petersburg and to Liubov Yezhova of the Centre for Independent Social Research, St Petersburg. And to Rob Allen, Andrew Coyle, Jane Henderson, Judith Pallot and Andrew Wilson who commented on earlier drafts, and offered corrections.

Finally I am grateful for the time given by staff of the colonies and secure institutions in Russia, England, and Northern Ireland, from governors to staff, to discuss both practical and long-term issues raised by locking up young people.

London, 2008

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Introduction

Russia and England: Two Outliers in Europe

Not all the children in our society become great violinists or outstanding ballerinas; some, who are discarded by society, end up with us, and that's dreadful. I wish that society would recognize they are not shipped to us from Mars, but that they are our children and this is our society. Our future. It would be great, if everyone understood that.
Deputy governor, juvenile colony, Russia[1]

The first children's penal colony I visited in Russia was one of the bad ones. The boys were dirty, they milled around in a mud-baked sports yard, smoking, bored out of their minds. Those who were lucky enough to be ordered into the shabby hall to watch a film sat, many with vacant eyes, some with a desperately vulnerable look. The colony had no workshops. Some of the boys were in the damp, cold barracks, again idling away the time. Thirty to forty iron bedsteads stood close together, double-tiered, each with its neatly folded bedclothes, and each with a tag that states the boy's name, article from the Criminal Code and length of sentence. 'How long is your sentence, and what for?' I asked a 15-year-old. 'Five years, for stealing a piece of electric cable,' he answered, before breaking into tears, covering his face with his denim cap. An older boy, standing by, said calmly 'there's no one here who doesn't cry at some time'. As we were leaving, the order to line up came and, driving away, we could hear the stamping feet of the boys, marching, and the chorus of ragged raucous voices.

In Russia the age of criminal responsibility is 14 for serious crimes, 16 for less serious. A variety of secure institutions exists to house children who have broken the law, both those who are too young to be tried for a criminal offence, and those who are awaiting trial or sentenced to custody. Children aged between 11 and 18 may, by a court order, be detained in a Centre for the Temporary Holding of Juveniles, under police jurisdiction, for up to 45 days; those under the age of 14 may then be sent (by a judge) to a special secure school for a period of up to three years; older children whose offences do not fall under the Criminal Code may be sent to a secure Technical School.

Boys in colony yard, Russia

Children aged 14 and above who are detained on remand while awaiting trial or, following sentencing, await transport to a colony, are held in 'investigative isolation' centres (SIZO). These, run by the Prison Service, are best described as local prisons, and will have a separate unit for juveniles. A young person sentenced to custody (aged 15–17) will serve his or her sentence in an 'educational colony' (*vospitatelnaya koloniya*[2]), a secure institution, often in an isolated locality, far from local transport, maybe in the same region, maybe hundreds or even thousands of miles from home. Those whose sentence has not been completed when they reach the age of 18 may be allowed to stay, until they reach the age of 21. These are the juvenile (penal) colonies. Not every region has one for children (and a region in Russia may be the size of the UK), and there are only three in the whole country for girls. In this book I focus on the use of detention for those charged with or sentenced for a criminal offence.[3]

In England and Wales the age of criminal responsibility is 10. There are no separate institutions for those held on remand, awaiting trial; they spend their time in the same (juvenile) institutions as those convicted. Very few 10–12-year-olds receive custodial sentences but both boys and girls up to age

Girls in colony yard, Russia

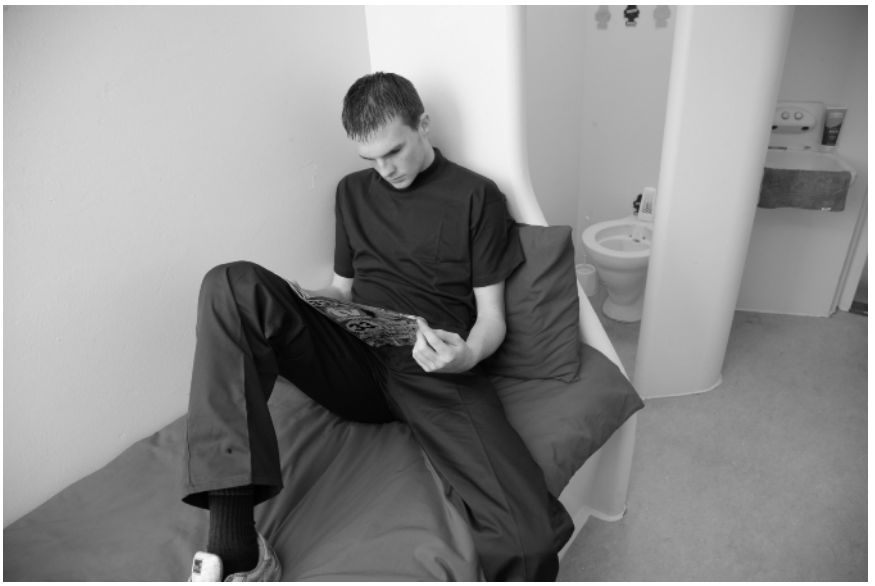
of 16 may be placed in a Secure Children's Home, run by the local authority. Here they will join those who have not been convicted of an offence but for their own safety or welfare been placed in a secure institution. Boys, between the age of 15 and 17, may be sentenced to serve time in one of the four (new) Secure Training Centres (STC), run by private operators, or in a closed Young Offender Institution (YOI), run by the Prison Service for those between the age of 15 and 18 and/or for those aged 18–20.[4] The YOIs may be old prisons or new facilities, they are mostly in towns, and easily accessible by public transport. Girls under the age of 17 may be sentenced to an STC; those aged 16 and above will serve a custodial sentence in a women's prison, but housed in a separate unit.

Both in Russia and in England and Wales, when their inmates are children or even 18–20-year-olds, we now prefer to find other names than 'prison' for institutions with high perimeter walls, topped with rolls of wire, with high security entry and exit systems – places isolated from the outside world where children are locked up, either in small cells or in barracks until an external authority decides they should be allowed back into society. The institutions may or may not have a sports hall, workshops and library; rules on visits may

vary greatly. But everywhere there will be day-in, day-out repetitive routines, punishment cells, warders, and links between inmates and the world outside will be monitored – all the accoutrements of institutions which, when they house adults, we have no hesitation in referring to as 'prisons'. If a prison is a place where someone is locked up, while awaiting or serving a sentence in isolation from society, then the colonies and SIZOs, the STCs and YOIs are as much prisons as are those that house adults and (in England) young girls. The 'secure' institutions for younger children may not be that different.

While I visited a variety of secure institutions, in localities across Russia, in the main my visits were to the colonies, several for boys, and one for girls. All were better than the first, but the same questions continued to haunt me. What is the system that sends them to spend, sometimes years, behind bars, hundreds of miles from home? And what happens to them afterwards? Even a colony with facilities and a more enlightened governor, I came to realize, cannot counter the negative consequences, in the great majority of cases, of locking up children. The same is true in England and Wales. What had I expected to find on my first visit to a Young Offender Institution in England? Of course it would be different from a Russian colony, but how different? Now, just as in Russia, YOIs in England differ, and in this case too the first I visited was one of the most depressing. Perhaps the state of shock in which I left the institution – on the one hand everything was so different, on the other sadly similar – was accentuated by its size, by its holding nearly a thousand boys, both those on remand and those serving sentences, short and long, and by the matter-of-fact statement by an officer that recidivism runs at 80 per cent.

The high walls with their wire topping were better built, everything rather smarter and tidier, but the checks and security systems were very familiar. Only the notices were different – frequent warnings that racial discrimination was not tolerated here. The prison officers were in civvies, no one seemed to have a truncheon. There was grass, and flowerbeds, and recently built brick units, each with a spacious communal area, and a billiard table. A few boys, in track suits, were doing some mopping, and cleaning. A new entrant was sitting on a couch going through his dossier with a receiving officer. So far, so good, I thought, but when the prison officer unlocked a cell, recently vacated by the boy who had gone to court, I felt sick at heart. A cream-coloured compartment, with a bed, lavatory, basin, a small table, everything fixed in such a way that the inhabitant could not do himself harm; that he could not, in effect, do anything. I tried to imagine a 15-, 16-, 17-year-old locked



Boy (model) in YOI cell, England

in here, from evening to morning, and again for much of the day. Someone who had never slept in a room on his own. For those on remand (and they do not know how long they will be here – it may be days, it may be months) the cell remains bare.

> I'm 15 and most of the time I'm locked in my cell 'cos there's no place in education for me and they've got nowhere else to put me. (Boy aged 15)

> There's a limit to what you can have in your cell. You can have more in your cell when you are sentenced. You can't have any posters. I can't even have a picture that my little sister drew for me. (Boy aged 16)

> It drags the time. I've got nothing to do but think when I'm on bang-up. No radio and I can't read. (Boy aged 16)[5]

The cell for a convicted offender may well have posters, photos, a TV, video player, all aimed at filling the time. Some cells are single, some double. Meals are eaten in isolation, back in the cells. Why? So the staff can have

proper meal breaks. And once the boys are locked in for the night, the staff can go home.

> You don't know who is watching you, plus you've got your pad mate. You don't know who he is or what he is. Basically you just feel like there's lots of things running through your head. You can't sleep. You just think. You wonder 'Am I going to get beat up?' 'Am I going to get killed?' There was loads of shouting out of the windows. I just didn't know what to do. I didn't even speak with my pad mate. I was too frightened. (Boy aged 16)

> It happens every night at the windows – people shouting at each other, and stress heads banging on the pipes. Everyone running their mouths off at the windows and that. 'Window warriors' they call them. (Boy aged 16)

> It's going on all the time – threatening you, shouting things, calling your mum names. There's nothing you can do about it. You just have to cope with it. I don't know how I do, you just do. My mate was hammered in the showers. When the screws asked him what was wrong he said he fell over. If he had told the truth, he would have got hammered again. Most of the staff are all right but some either ignore you or try to wind you up. They swear at us and that, and call us names, and they threaten to drag us down to the block… (Boy aged 15)

I found myself wondering how even a well-balanced, resourceful teenager could survive the anxiety, isolation and boredom, and the majority of the kids who find themselves held on remand or sentenced to custody are not well-balanced children with supportive families outside.

To begin to understand what is happening, we need to know more about the children who find themselves behind bars. Among those in the Russian colonies there are strong and weak personalities, able children and those with severe learning difficulties or psychological disorders (perhaps a third of all inmates), those guilty of murder and those who have stolen to feed their brothers or sisters. A high percentage come from broken homes, maybe with alcoholic parents. Boys outnumber girls by nine to one. The youngest are 15 and the oldest, who may have remained in the colony to finish a sentence rather than transferring to an adult colony at age eighteen, may be 20.

Just as their Russian counterparts, the children who are locked up in England and Wales come disproportionately from among the most vulnerable and damaged, and from among those with inadequate families. A comprehensive survey of the inmates of 21 YOIs during 2001–3 found that a third of the boys and more than 40 per cent of the girls had previously spent time in a foster home or in care (Young People in Prison).[6] Further studies have suggested that approximately half of those in custody will have come before welfare agencies, 80 per cent or more excluded from school, and, in the governors' estimation, roughly 75 per cent will be on drugs (Goldson 2006; Neustatter 2002).

> Most young people received into prison custody will be suffering from a diagnosable mental disorder. … They will have left school well before the age of 16 with no qualifications. Most will have grown up in poor households. Estimates vary but between one third and a half will have spent time in local authority care prior to custody and many will have slept rough. Young prisoners are much more likely than young people in the community to have used illegal drugs, engaged in hazardous drinking, become early parents and to have attempted suicide. Up to 30 per cent of young women in custody report having been sexually abused in childhood and many young offenders will have experienced untimely bereavement. These are teenagers on the margins. And prison will exclude them still further. (Lyon 2003: 28–9)

Essays written by the Russian children give us a sense of the world from which they come, of their different personalities, and of how they respond to life behind bars.[7] We do not have essays written by the English children, but from their conversations with interviewers we see evidence of similar backgrounds and sentiments. We start with excerpts from the Russian essays.

> I didn't manage to finish 9th grade because they locked me up, that is they arrested me. I'm serving time under clause 3, article 113 of the Criminal Code (grievous bodily harm): I hit a man who had got into my grandmother's flat, with a hammer. He stole her TV, player and iron. She's a pensioner and she can't replace these things. Work and work, and you can't keep what's yours. When I knew who had stolen them, I went and asked him to return the things. But he refused, said the things had already been sold. But not to whom. When I was leaving, he

grabbed me and started to strangle me. There wasn't anything I could use except the hammer. I hit him much harder than I had expected. I honestly didn't want it to happen.

Now I blame myself very much, you see it wasn't only I who got sent down but also my mum. She tried to cover up for me but it didn't work. They convicted her for false testimony. I got five years and one month. I've still got a long time to serve, I won't be included in the amnesty. … I haven't got a father, my grandmother brought me up. My mother lived far away. She earned money and sent it to us. … I've a sister in Cheboksar but she doesn't write; it looks as though I don't mean anything to her. I believe that some day some one will help me to survive … but all the same there's such a feeling of hurt and disappointment: other girls, like me, have someone visit them, but no one comes to visit me. … I'll try to get though this and to survive. Here life is a matter of survival, if you cope you survive, if you don't you die. (Lena, Ryazanskaya VK)

If some blame themselves for committing a crime, others are more concerned that they have been too harshly sentenced.

Well, I don't really know but I didn't mean to end up here, that is I didn't really understand what was happening when I knifed a kid, they gave me article 3 and 2, and I think that this is not right. I had a tough childhood, at 13 I was put into a children's home, and at 16 they took me out on 16 February. I want to be freed as soon as possible and never get put back in prison, because you are separated from society, and that's the worst punishment of all. I've two brothers, one is Kostya, the other Dima. Kostya was 20 on 7th October but unfortunately he's in prison no. 29, but everything is OK with Dima, he lives with mother, I was living with Kostya, until they put him behind bars, he was looking after me. I was going to school, everything was all right, and then it all fell apart, and now we are both locked up, I want to ask a big favour of you, I want to apply for a pardon, could you help me write it, I want to do it after new year. Well, that's about all. I miss my brother and home an awful lot. Thanks in advance. (Yakov, Perm)

Although among the children are those who have committed murder, grievous bodily harm, or armed robbery, the majority are there for theft. A

second offence, even if minor in terms of value, or theft committed with others (thus qualifying as a group crime) may well produce a sentence of detention.

> Only 19 of those in the colony are here for serious crimes related to murder, grievous bodily harm. Twenty-four are here for rape. The remaining 220 (that's 82 per cent) have convictions for stealing private or state property. More often than not the damage was small. They broke into a kiosk, took sweets, wine, drank it and were caught. One stole a bike from a cellar. One stole 5 rabbits from his grandfather. The grandfather reported him to the police. Now he wants the boy released, but the court has already passed sentence. (Interview with governor of Bryansk colony, 1999, ДТ 2001: 24)

> My mother is serving a sentence in Novgorod region, they arrested her on 3 December 1998. They gave her 3 years and 6 months. And they put my brothers and sister in a hospital in Segezh. They did this because they didn't want to put them into a children's home while mother was awaiting trial. They thought she'd be given a suspended sentence. But when she was sentenced, they put them in a children's home.
>
> Counting me, my mother has seven children. I've been convicted under article 158 (theft); I broke into a shop and stole things to eat. And when in the morning I came home and told mother that I had broken into a shop, she was very upset and beat me. But I said to her, don't hit me, I did it for my brothers and sister. I can't bear to see my little sister and brothers so hungry, and that day we hadn't eaten anything except water from the tap, and water doesn't fill you up at all.
>
> My mother didn't work, she cleaned the house, washed our clothes, prepared food, and I always worked – somewhere or other – either I helped old ladies, or collected empty bottles and traded them in, I collected berries, mushrooms, we had a vegetable patch, but we couldn't live off this – and I sometimes stole from mother and then pretended I had earned the money. (Sergei, Nevelskaya VK)
>
> When I was 10 my father died, and my mother started to live with a drug addict. He began to sell everything and to beat her in front of me. And mother began to drink very often and I was put into a children's home and mother lost her parental rights. Before I was put in a children's home my grandmother and grandfather became my guardians and I got

> out of control, started to go out with girls, had to repeat the 7th class in school, spent the night away from home. Then they sent me to a children's home, and after a few months my grandfather died, and then a few months later grandmother was murdered and I was left all on my own. It so happened that I was caught stealing and they gave me 2 years and 6 months, I've done 1 year and 3 months. There's the flat which belongs to me out there and I so much want to live there with a family. I dream of getting early release and living peacefully, not breaking in anywhere, studying, working. (Evgenii, Perm)

An 18-year-old from Manchester tells Neustatter (2002: 35):

> We lived in a very rough area of Manchester and my Mum well she didn't seem to give a f*** about me – once she moved this geezer in when I was eight. She'd been good to me up until then. My Dad died when I was 18 months. I started staying out all night, mixing with a bad crowd and by the time I was 12 I was well off the rails. Nobody could control me. I did a lot of crime.

Maybe a third of the Russian children receive neither letters nor visits from relatives. But even those whose relatives maintain contact find the separation from their family, and above all from their mother, deeply distressing. For some of them this is made more acute by their feelings of guilt for the suffering they have caused to their families.

> I've been behind bars for almost 10 months and during that time I haven't seen any of my relatives or anyone close to me. I think that's what is worst of all, when you have no opportunity to see close relatives. For me it is not possible because the financial situation in my family, one can say, is not all it should be. It's because of this that I am here. I know that my Mum and my Dad would give all that they have, if it would get me home more quickly, or even just to see me, but it's all a question of money. My parents are not alcoholics, they are not drunkards, nor, it goes without saying, are they drug addicts. It's just that they are pensioners, live off their pension, and can't earn any money, and they are not only supporting themselves, but our very old grandmother, and me, and my brother. All in all there's thirteen of us, not even counting the little ones, my nephews, on whose behalf

> I started to steal. Because they, my nephews, were crying and begging for bread. Worst of all for me is that when they sentenced me to detention, they cut me off from all those close to me, and now I can't help them at all.
>
> Of course, our law is severe but I don't hold it to blame. When I am released, I won't steal any more, I'll work, and in that way I'll help my family. Worst of all that I've learnt from imprisonment is that I can't live without my dear ones, I love them that much. I hope that half the other prisoners feel the way that I do. (Serezha, Perm)

Perhaps a quarter of the children in custody in England and Wales receive no visits, despite the fact that distance is hardly an obstacle. And their feelings are the same.

> I was feeling really bad thinking about my Mum. She won't come and see me here. She said to me when I was sentenced, 'I told you before you got into all that crap that you'd be on your own. I'm not coming to see you.' I can understand it would hurt her to see me here. I shouldn't have let it get to me that bad but sometimes it just does 'cos I really want to talk to my MUM. If I could have killed myself then I would have. But an officer had a chat and really listened to me and that kind of got me out of it. (Abbie, aged 16 in Holloway for drug offence; quoted in Neustatter 2002: 75)

> You should at least be allowed home. It hurts all the time. All you do is miss your family and you can't hack it sometimes. I wouldn't send kids to a place like this. I'd send them somewhere where they could go home at night. My Mum can't make it here to visit me. I wrote her letters but she doesn't write back. She has other kids to look after so I haven't seen her. It does my head in. … It can crack you up inside. It hurts all the time. (Boy aged 16)

Even those who have a family to go back to, whether in England or in Russia, will get little if any help in adapting to and finding a place for themselves in society. Some of the Russian children recognize this. Some of them dream dreams.

> Now I am still here, but when I am released, I'll start a different life, I'll behave differently towards everyone and everything because, while in

> prison, far away from my Beloved Mum, relatives, brothers and sisters, I begin to understand what it means to steal. When I am free again I shall work or study, do sport, go fishing, spend more time with friends. Time will pass – and I'll get married, I'll live differently, find a way. I miss Mum so much, our love for each other, I wish I could turn the clock back, I repent for what I did, [I want] to go home, I'm so waiting for Conditional Early release. When I am free again I'll remember how time passed in the VK, I wouldn't want friends, I wouldn't want even bad and unpleasant [kids] to end up here, all the same home is so much better, together with Mum and the family, in your own surroundings, in the place you come from. (Sergei, Chusovoi)

Some recognize the problems that lie ahead of them, but still cling to their hopes.

> Mum has written to me that the house is falling apart, the fence has come down. Father is drinking and doesn't do a thing, doesn't lift a finger to put the house to rights. So I am thinking of being released and starting to repair the house … first I'll cover the roof with sheeting so that it doesn't leak, then I'll fix the fence, so that the goats and sheep and other domestic animals can't get into the vegetable patch.
>
> Then I must help to teach my youngest sister. She goes to a special school for children with special needs. There's those who are deaf, and those who were born with deformed hands or legs. My sister was born with damage to her nervous system. She's always out of sorts, always playing up, and worst of all her mental development is backward. She only learnt to read and write very late. She's 10 now but she can only read in syllables, she writes very slowly. But I hope that she'll learn and lead a life as a literate person.
>
> And I need to help Mum, she's already 49, and she gets very tired, her back constantly is hurting her, and her hands are swollen…
>
> Then, when I've done everything that I need to do at home, I'll go to train as a 'machinist'. I really like that profession. A machinist is a train driver and railway lines run all across Russia. I'll travel from one town to another. And after the railway technical school Mum suggests that I should study at the Perm radio-mechanics college. Radio-mechanic – now there's an interesting job. You sit at home and repair televisions and other kinds of radio equipment.

And in the future I want to find work. I don't want to find myself again in a place of detention. And when I get out I'll tell others not to do bad things so that they don't end up behind bars. (Viktor, Permskaya VK)

After my release, on arriving home, I would straightaway talk to Mum about the future. I would like to go on studying, get as many professional skills as possible because I only have one – car mechanic and driver. I've got a licence, but not for all categories of vehicle. Every summer I would visit my grandmother, whom I love very much and I would help her, because she lives alone, and I would find work on the state farm, help the tractor drivers, because I love taking machines apart and putting them together again. As soon as summer was over I would return home to finish my studies, as soon as I completed them, I'd get the qualification (electrowelder), then I'd go round the garages, try to get taken on, but I know how hard it is for someone who has been behind bars to find work, but I'd try in any way possible to get work. But if it doesn't work out, I'll go to my uncle for work, he's got his own garage, and I'll start by working as a mechanic, and when I'm a bit older, I'll ask to be allowed to sit behind the wheel and drive to faraway countries.

Once I have earned a bit of money, I would begin bit by bit to build a house because I know that my relatives and friends will help me, and that would help me to forget the past, because I don't want to remember it, and I would straightaway tell friends how awful it is to be there [in a colony]. When the house is built, I would begin to look for a wife (someone beautiful, hardworking, clever and who doesn't drink), I would have three children, and live without any misfortunes, and work until I got my pension. And I'd really look after the children, I wouldn't want them to end up here. I'd give them a lot of attention.

That's how I want to live when I get out. (Igor, Perm VK)

Fishing, driving a car, building a house, having a paid job, a peaceful family life – we see all the elements that are missing in the colony: the freedom of being alone, of being in control, the security of a home, a family, and earning a living. But even if they have a family to go back to, both family circumstances and the problems of continuing education or finding employment will make such plans very difficult to realize. It is not only that the environment will be unwelcoming. It will be alien. In four or five years the town, and its street culture, may have changed dramatically. Vitya, just such a 19-year-old in Kansk colony in the Krasnoyarsk region, was due in two weeks' time to set

off on the several thousand-mile trip home to Norilsk, the nickel city built with convict labour in the far north. 'Are you a bit scared?' I asked him. 'Yes,' he said, although he had probably dreamt of the day for the past four years. The girls in the Tomsk colony come from all over Siberia and the Far East. Many of them have learnt excellent sewing skills but they head back to faraway towns whose local authorities, more often than not, do not reply to the colony's enquiries prior to the girl's release, and where these skills are not in demand. There is no one help them adjust to the giddiness of freedom, and its demands.

Imagine a young man of 18 or 19 who, since the age of 15, has lived day in, day out in a colony where life is regimented from dawn till dusk; he will have lost any sense of coping with everyday life, of managing money, of shopping; he will have grown up away from and outside his family, his friends, and missed out on adolescent romances; he will have survived by withdrawing into himself or threatening others. It's the same in England and Wales.

> They may have been Mr Big inside but so often they've got nothing on the outside and no idea how to cope. For months or even years they've been told when to go to bed, when to get up, what they must do at any time, what they must eat. And all too often the experience is dehumanizing. They are called 'you', pointed at, searched several times a day when they move from wing to wing. What kind of preparation is that for living a decent life outside? (Ian Ross, director of Outside Chance; quoted in Neustatter 2002: 115)

> When you put youngsters into custody you freeze time, reality is suspended and so they adapt to the culture and that becomes their life. When they come out they suddenly have to get to grips with reality again and they are faced with all the questions that are hard enough if you haven't been in prison. (John Harding, probation service; quoted in Neustatter 2002: 115)

But it's not only the isolation. Secure institutions are frightening places, often unsafe, and time spent inside may damage the inmates irrecoverably. A harsh description of the Russian situation is offered by Valeri Abramkin, one of the first, during perestroika, to raise the issue of penal reform for adults and children alike:

> The inner world of the juvenile institution is a world of violence and cruelty … constant anxiety and stress is the characteristic state of absolutely all the inhabitants, regardless of their status. This is connected with the feeling of fear and the expectation of danger which 'spurs on' the torturers too: they are compelled to torment, torture and degrade their fellow-sufferers in order to preserve their special standing in the informal hierarchy … in an environment, isolated and shut off from the outside world where there are young and old, adults and adolescents, violence and cruelty acquire extreme forms … our children and young people leave our penitentiary institutions as moral and physical cripples. (ДТ 2001, 1: 22)

Rob Allen may be more measured but the message is similar:

> At worst, detaining damaged and difficult young people 24 hours a day, seven days a week for weeks, months or even years can interrupt the normal process of growing up, reinforce delinquent attitudes, and create the ingredients for bullying, intimidation and racism. The deaths of 28 young people in custody since 1990, and the fact that 36 per cent of teenagers in prison say that they have felt unsafe while inside, make it hard to argue that custody is safeguarding, let alone promoting, the well-being of children. (Allen 2006: 22)

The English youngsters talk openly about bullying:

> I am very lucky I suppose – my pad mate has been here for ages and he looks after me. He knows the tricks of the trade. I never go out of my cell much though. … I've been out a couple of times on association, but I feel much safer in my cell. This one lad in the next pad from me, the only time I get to see him is in education, but he gets bullied left, right and centre. He grassed up his pad mate for pinching his clothes, so he got beat up, and he gets bullied all the time… (Boy aged 16)

> My first time inside I was sent to Feltham. It was a battlefield. … They had this brilliant idea that if they put a bunch of offenders together they will get on nicely and sing songs. In fact it is quick way of dividing the weak from the strong. The weak get bullied in front of everyone for the enjoyment of the strong and nobody takes much notice. The point is that

> it doesn't matter to the officers if we mangle each other. Why should it? We're not their kids. (Glen, now 19; Neustatter 2002: 59)

The Russian children refer to it more obliquely in their essays:

> When a person is constantly within four walls, he or she becomes more aggressive, and besides that everyone in prison wants to seem cool and tough, for something trivial people can attack others, just to show that they are stronger. And it turns out that when someone is released, nothing scares him or her any more, and moral codes no longer have any influence. In my view, you can't get free from prison because life in prison sucks you in, especially if you are there for long. (Marina, Novooskolskaya VK)

Prison staff are well aware of the inherent dangers.

> It [bullying] comes in waves, it depends who's on the wing. You get kids bullying each other, you get staff bullying kids and get staff bullying staff. … Outside kids can get status in lots of ways. In here status is measured in different ways: fear and respect become very confused. Having lots of toiletries becomes status, so taking them off other kids takes place. They won't tell you because that's grassing, and it's a sin to grass … it comes with experience – seeing bullying, and then choosing how to deal with it. You'll never get rid of it though, it's power, isn't it? (Prison Officer, Eng)

> You have to have your staff switched on to it all the time. Even within the vulnerables you have a vulnerable who wants to be on top. It's the nature of the beast – it's part of the prison itself. (Senior Prison Officer)[8]

The officers' task is to ensure that the kids do not escape, do not do too much damage to themselves and others, including the staff. Officers in both Russia and England and Wales recognize these as priorities, but the approach to ensuring safety within the institution is very different. The English approach is to isolate the child in an environment so devoid of anything sharp that s/he cannot harm him or herself. The Russian approach is to keep the children in groups but to monitor a child's behaviour 24 hours a day. Two officers will patrol the dormitories throughout the night. Neither approach works with desperate children. The figures for suicide, and for self-harm, in the English

institutions are witness to that. Children find ways to hang themselves, to secrete razors to use on themselves or on others. Between 1990 and August 2008 of the 30 children who have died in custody almost all have committed suicide. At the time of writing yet another 15-year-old has hung himself in a STC. In 2007 there were 1,007 incidents of self-harm in young offender institutions; 78 children received hospital treatment for damage incurred from restraint, assault or self-harm (criminal damage). In Russia suicide is rare – I heard of no instances in the colonies and Russian prison officials are shocked by the English figures – but self-harm does occur, including on a collective scale when it can take on the form of a protest against a punitive regime. And in extreme cases, worse can occur. In one colony a few years ago, the boys attacked and murdered the two officers patrolling the barracks on night shift. During a recent attempted mass breakout in protest against the transfer of a recognized 'authority' among the boys to an adult remand prison, the staff lost control of the situation and camp guards opened fire. One prison officer, and two boys lost their lives (<Gazeta.ru> 17/19 October 2007).[9]

In both countries the children themselves are aware of how prison affects them and their future.

> I don't think that imprisonment improves a person, on the contrary, it hardens him. In prison a person becomes angry, cruel and revengeful. When he doesn't like something, he begins to get irritable, angry, to behave like a loony. In places of detention a person learns a lot of bad things. He begins to swear, to shout obscenities of all kinds when he doesn't like something or when someone starts to shout at him. He can get ill with all kinds of illnesses. When he gets irritable, he gets quite unbalanced. And when his nerves are shot to pieces, he can do something really bad. Many illnesses are related to nerves. When someone is put in prison he begins to put the blame on the justice system or the victims, but never on himself. A person becomes an egoist, self-centred. He couldn't care less about others as long as he's all right. (Vladimir, Permskaya VK)

> Because he's lost his bearings, when someone is released he carries on living by the rules, laws and practices which existed in prison, but he's already out. That means he doesn't appear in a good light. He remembers all the stories he heard in prison: who stole and how someone stole, robbed, took a car. He begins to remember them all and plans how

> to avoid the mistakes the storyteller made, thinking that he'll do it all in the right way and he won't be caught. So prison isn't a place for correcting or improving people, but a school for new crimes. (Maksim, Arzamasskaya VK)
>
> They did give me a Welfare to Work pack but I couldn't make that out, reading's not really my thing. The day I was released I just walked out into nothing, which was scary underneath. But on top I was angrier than when I went in because of having to put up with so much humiliation and being pushed around by the screws… (Peter; quoted in Neustatter 2002: 120)

****

Deprivation of liberty is, today, in many countries the most serious sanction for law-breaking by adults and children alike. It is a relatively new addition to society's arsenal, and one that, for children, has long been recognized to do more damage than good. Academic experts and practising professionals are in agreement here.

Boys in colony hall, Russia

Boys (models) in YOI gym, England

> In one of his final works, N.A. Struchkov [an eminent jurist – MM] wrote: 'It is possible that mankind made a fatal mistake, at the turn of the XVI–XVII centuries, when it chose imprisonment as the chief weapon in the struggle with crime, largely because it could not think of another means of countering crime.' Truly, isolation from society, placing an individual in a closed environment with other criminally infected and socially inadequate people, is not the best way of correcting the behaviour of such a person and then returning him to society as a fully integrated citizen. Time spent in detention has a particularly negative effect upon convicted teenagers. … As is well known that is the age at which the process of forming the personality is completed … the acquiring of social roles, norms, and values. It is the age during which the process of socialization of the individual is taking place … and this requires widening and increasing the individual's links with the outside world, with the community. (Поздняков: 11)

How can a *closed* institution teach a child the skills needed to function in an *open* society? Can one teach a child to swim in a swimming-pool without water?

It is not surprising to hear from the head school teacher in a colony:

> Although the colony, I tell the kids, is called educational, we don't re-educate you here. Honestly, we can't educate or re-educate anyone here…

Or, from a YOI governor:

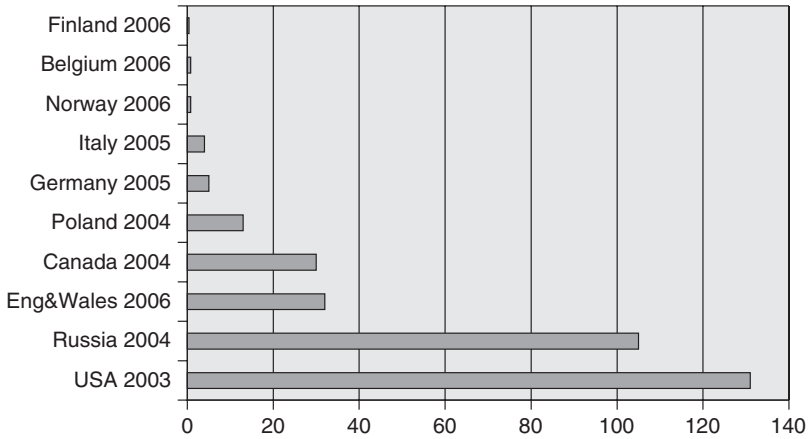
> I do the best I can to offer young inmates something constructive out of the time they spend here and I hope this approach will prove to have better outcomes than the brutalizing punitive regimes. But I am a realist and I know that majority of these kids will go out and reoffend for all sorts of reasons that we simply cannot address. So how can I argue that prison is right for them? If I were running a business that had the success rate that I and other youth prisons have, then I'd be forced to resign. (Quoted in Neustatter 2002: 27–8)

For more than a hundred years, reformers have been arguing that detention should only be used in extreme cases, and this is now stated in international conventions, drawn up by the United Nations and the Council of Europe. Today the use of custody varies greatly from country to country (with countries such as the USA, Russia or England locking up substantial numbers of young people, others, such as Italy or the Scandinavian countries, only a handful). See Figure 1.

The contrasts between the different countries are striking.[10] They cannot be explained by the criminality of their young people. (The question of 'level of crime' is a complicated one, one we discuss in later chapters, but here we ask the reader to accept the statement.) Why have most European countries sought alternatives to detention? Because they recognize that locking up children:

1. fails as a 're-education strategy' : rather it does psychological damage, stigmatizes the individual, makes it more difficult for the young person to reintegrate into society;
2. there is no evidence that it acts as a deterrent for the individual – rather it tends to create future criminals;
3. there is no evidence that it acts as a deterrent to others;
4. the great majority of those detained, where it is widely used, present no danger to society;

Figure 1: Under-18s in detention, various countries (per 100,000 of under-18 age group)



Sources: Data from or calculated from: World Prison Brief <www.icps.kcl.ac.uk>; UNICEF <http://www.unicef.org/infoby country/index.html>; England and Wales <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=60>; USA: Snyder and Sickmund (2006); Russia: RF Report to UN Committee (2005), and <www.prison.org>; Finland, Germany and Italy, Ministry of Justice official website references: <http://www.kriminaalihuolto.fi/16935.htm> and <www.rikosseuraamus.fi/16918.htm>; Jehle (2005): <www.bmj bund.de/media/archive>; <www.giustizia.it/statistiche/statistiche_dgm/organigramma.htm>.

5. it does not provide an opportunity for the offender to make reparation to or compensate the victim or the community.

Why then should Russia and England and Wales make much greater use of detention?

1. Because, at least while they are locked up, the offenders cannot be committing further crimes?
2. Because young people should be punished for breaking the law, and detention (as opposed to, for example, hanging, flogging, cutting off a hand, branding, deporting, hard labour, fining, community service) is a good (appropriate) type of punishment?

The logic of the first argument would be to keep the young people locked up permanently, which is hardly a tenable position. Further there is no demonstrable evidence that harsher punishments lead to less crime.[11]

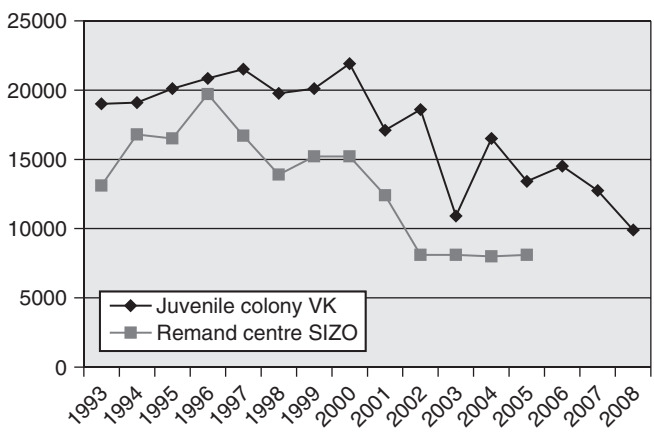
It seems then that to explain the use of custody as a measure for dealing with young offenders who are not dangerous, the 'punishment' argument is the key one. Or maybe detention is still used because some societies or politicians are unable or unwilling to find ways to help children in trouble? Prison serves as a useful deposit box for those whom society cannot cope with. Yet both Russia and England and Wales can point to periods in their past when they set an example to others on how to keep children out of custody.

We note that Russia's figures for young people in detention are lower only than those for America, and that England and Wales' are higher than those of their other European neighbours. Figure 2 gives an indication of the numbers we are talking of.

The size of the 14–17 age cohort increased steadily between 1993 and 2002, before beginning to decline, and rapidly from 2004, but this cannot account for the erratic movement since 2002.[12] The question we want to address is why change in the post-Soviet period has been so little and so slow in coming.

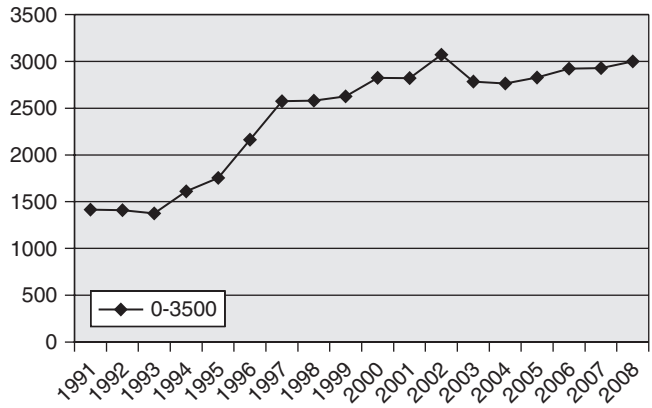
For England and Wales the figures are truly depressing: first a rapid increase, then a slow but steady movement upwards over recent years

Figure 2: Young people in detention, Russia, (January) 1993–2008



Sources: Data are from Тюрьма и Воля, <www.prison.org>; *Penal Systems in Russia*, 1993–2003; RF Report to UN Committee 2005; FSIN website.

Figure 3: Under-18s in custody, England and Wales, (June) 1991–2008



Sources: Data from Allen (2006: 23, Table 3.1); and updated from <www.yjb.gov.uk/en-gb/>
The figures include those held on remand.

(see Figure 3). Population data suggest that the 15–19 age cohort remains stable over the period; the 10 to 18 age group surely was very similar.

Figures on numbers at a particular point in time each year do not, of course, tell us how many have been committed to custody during the course of the year. In June 2004, for example, the figure held in England and Wales was 2,748 while during the course of the year 6,325 were sentenced to immediate custody (*Sentencing Statistics*, Table 2.4). The same point holds for Russia: on 1 January 2005 13,440 were in the colonies while during 2004, 20,880 had been sentenced to custody.

My initial question: 'Why is Russia still locking up so many of its children?' is now joined by another: 'Why are we, in England and Wales, now locking up so many more of our children than we were twenty years ago?' Decisions on whether it is desirable or appropriate to lock up young people, as opposed to dealing with their transgressions in some other way, are influenced by a number of factors, and it is this we shall need to explore. After all some societies manage to reduce the use of detention to a minimum. Does history play a part, perhaps in Russia, but surely not in the UK? Are there specific aspects of Russian or English culture that contribute? Or is the way policy is made in the two countries the key factor?

The second, and more important question, is one posed by some of the children: How can the existing systems be changed – and in which directions – in order that fewer children find themselves behind bars?

> In prison a person becomes angry. After all *they* are hurting not only him but also his relatives. … I agree that they should lock up people. But justly. For example, for a first offence, give a sentence of one year. Or of two years … but not more…
>
> It is absolutely not compulsory to use imprisonment: after all it's possible to talk to each of us in a normal way. And give, for example, different punishments: to clear up around a house, to work on the territory of the victims, to give a concert or take part in a competition … we'll understand what it's all about and we'll stop doing foolish and stupid things. That's all that I can say about whether prison has to be used in order to atone for guilt. I am grateful for your paying attention. Thank you. Don't forget us. (Artur, Shakovskaya VK)

> I reckon they should put us in a children's home or something. I don't reckon they should put us in proper jails for adults. That is what this place is, you know. We need more support, more people who can talk to us and help us and that. I've had a bad enough life and so have most of the kids in here. Some of us have done bad things but I don't think it's right that we are locked up in here. Bad things are done in here as well. What's the point in just doing bad things to us 'cos we've done bad things? Some kids can't handle it and can't cope. The ones that cope just get worse, like. What good is that? (Boy aged 16, Eng)

And, finally, from a girl in a colony:

> … It seems to me that locking up children is terrible. Replace it by some sort of compulsory work or something else, but don't use imprisonment. After all a child's psyche is weak, even if s/he is a criminal. It can leave a child deeply scarred, and many are imprisoned for a bucket of potatoes or a bicycle, or a jar of jam. And many girls who are behind bars lose contact with their close relatives, what can be worse than that? And afterwards – where can they go – back to stealing potatoes, and back behind bars. I don't want to say that everyone is locked up for nothing. But there's not many of the others. Some steal a couple of thousand

rubles, and people who steal millions, carry on living contentedly. So it seems to me that the justice system is not just. I wish so much that everything could be as it ought to be. (Ekaterina)

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In the following chapters I present the results of my search for answers to these questions. I begin with Russia, and give it greater attention. An extensive literature on juvenile justice and policy towards young offenders in England and Wales exists in English, accessible to the English-speaking reader. Hence here I narrow the focus to those issues that are highlighted by the comparison with Russia and which shed light on changing policy in England and Wales. I then look at Germany, Italy and Finland to see whether their responses to juvenile offending include strategies that could be relevant for Russia or for England and Wales.

My conclusions turn out to be encouraging and simultaneously a little disheartening. I summarize them here.

Encouraging:

- Historically, in both societies, the treatment of society's young offenders during the past two centuries has undergone significant and quite frequent changes. There is every reason to believe not only that change is possible, but that it is the norm.
- There is great variety, across a range of societies, in today's responses to deviant youth and, in particular, in the use of custody: some societies lock up large numbers, some only a handful. Societies, it seems, can manage perfectly well without locking up large numbers of their children. There is no reason why Russia or England should not follow this example.

Disheartening:

- Societies struggle to find ways to cope with errant youth. 'Modern' society has a patchy record and too often resorts to using a criminal justice system (a blunt and inappropriate instrument) to deal with wayward behaviour by children.
- There is a punitive wind of change blowing from North America into Europe, which has already affected England and may represent a trend affecting some other European countries.

Encouraging or disheartening?

- The role of political leadership is critical, and a window of opportunity exists in both countries.
- The youth justice reform-minded community can have an impact but, in both societies, it can also be ignored and marginalized by policy-makers.
- In both societies the professionals who work with children would like to see less use of custody. In neither society are the public's attitudes towards young offenders as punitive as sections of the media suggest (England and Wales) or as is often believed (Russia). Public support for reform exists, yet this is not translated into policy.

I do not attempt to provide a comprehensive account of the causes of youth crime, and of preventive measures, nor do I deal with the many different infringements of young people's rights and of strategies to defend them. However, by concentrating on one issue – how to reduce the use of custody as a strategy to deal with errant behaviour by children – I am simultaneously touching upon prevention (custody encourages recidivism) and writing about rights.

CHAPTER 1

Criminal Justice and the Welfare of Children

Crime does not exist. Only acts exist, acts often given different meanings within various social frameworks.
Christie 2004: 3

All the societies we are dealing with here have come to use a criminal justice system, but not all of them use it for children and, when they do, they use it in very different ways. In this chapter we set out, briefly, the issues raised by employing a criminal justice system and show how they led, at the beginning of the twentieth century, to attempts to use other means or to alter the principles and practices of criminal justice when the offender is a child.

In all societies there are types of behaviour that incur disapproval, or anxiety, among certain groups, and societies devise ways of coping with this – religious mechanisms, local community actions, family norms. The focus of disapproval shifts, and the type of sanctions changes, but agreement and disagreement within and between groups in society over what is acceptable behaviour is always present. The same behaviour may be seen as 'normal' by some or at one point in time, 'anti-social' or 'criminal' at another. Alongside the state's criminal justice system, Russian peasant communities operated their own systems of 'summary justice', with their conventions, rituals and punishments (sometimes fatal) meted out to those who offended norms of appropriate behaviour. School playgrounds everywhere usually have their own very clear rules on acceptable behaviour and procedures for meting out punishment to those who infringe them. In an environment, such as a prison, the prisoners' community will establish their own rules and methods of enforcing them to ensure 'order' and justice (Олейник 2001). 'Criminal' means that society's rulers have decided which acts are unacceptable, and have created procedures – a criminal justice system – for dealing with them.

All ruling authorities, whether self-appointed or elected, must show that they can exert authority – both to defend their right to make the rules and to defend the realm for which they claim responsibility. A centralized authority, striving to extend its reach over the territory as a whole, claims priority for its rules, and needs to be able to enforce them. Order is critical. Rulers may use

physical means, including violence by the army or police, to put down disorder or riots. They may use the security services or enlist the support of church, educational establishments and employers to instil good behaviour. All ruling authorities are anxious to retain the right to use extra-judicial methods against their enemies (who may include their own citizens, as happened under Fascism and Stalinism), and we have seen the issue resurfacing with the use of detention and torture in 'the war against terror'. Yet concurrently many favour transferring part of the task of maintaining order to a justice system, closely associated with, but separate from, the political rulers themselves.

'Law' as a mechanism enables the sovereign to divest itself of everyday involvement in the settlement of disputes, between citizens or groups, and between citizens and the state, yet to retain authority (Glenn 2000; Holmes 2003). And this means creating procedures and finding people to implement them. A criminal justice system, it seems, is an admirable mechanism for transferring the direct management of dangerous and unruly behaviour to an agency, whose decisions will reflect the values of its more privileged or powerful citizens, while the rulers retain responsibility to provide institutions for the enforcement of the decisions. At the same time, rulers recognize that for the criminal justice system to work effectively judges must be seen to apply the law impartially; rulers and their servants should obey the law too, and for infringements they too will be charged and tried by impartial judges.

As we see, from Figure 4, almost all use a criminal justice system to deal with some of their children's actions. But which actions? Decisions on this and on the role allotted to the criminal justice system, compared with that of the government or social organizations, the church or the family, vary enormously from one country to the next.

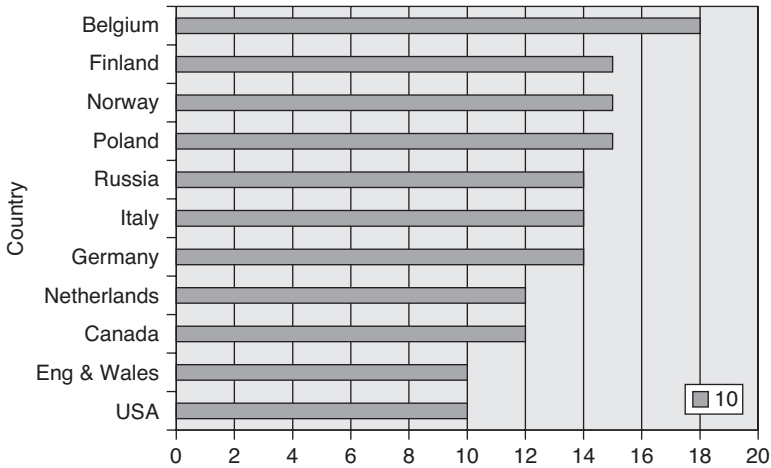
The question immediately arises: What is the thinking behind such different approaches to dealing with errant children? And this leads on to: What are the consequences (good and bad) for using a criminal justice system to deal with unacceptable behaviour by children?

What is a crime?

Young people in Russia (both school children and those on police record or in a colony) were asked what they thought a crime was.[1] Some gave 'correct' answers:

breaking the law and the criminal code
illegal actions

Figure 4: Age of criminal responsibility, various countries



Notes: Poland: age 15 for serious crimes, 17 for more minor crimes; Russia: age 14 for serious crimes, 16 for more minor; USA: age varies by state.

and one (rightly) drew attention to the link between law and order:

Crime – it's infringing order and law

The straightforward answer is: those actions that 'the law' identifies as 'crimes'. The law changes, and 'crimes' appear or disappear. Exchanging currency and buying and selling foreign goods ceased to be crimes in Russia in the 1990s. Behaviour of young people that is found the world over – truancy, running away from home, loitering – falls into a category of 'status crimes' in the USA whereas in most European countries there is no such category. 'Carrying a knife' has become a new criminal offence in the UK. So 'crime' is determined by the law-makers but, in different societies, they approach their task differently. For the French there are contraventions, delit and crimes, which carry different kinds of sanctions, imposed by different agencies. If in Russia, to qualify as a crime an act must be considered to be socially dangerous, and all 'crimes' must be listed in the Criminal Code, in the UK 'crimes' are simply acts that a law classifies as such. Travelling without a ticket is a criminal offence in England, but

only an administrative misdemeanour in Russia. Hence the same act will or will not be a crime in one country, depending upon the law and the age of criminal responsibility: cross the border from England into Scotland (although the traveller may not be aware of where the crossing is) and the rules change.

Law then creates 'crime'. As Christie puts it, 'Crime does not exist. Only acts exist, acts often given different meanings within various social frameworks' (2004: 3). There are those who decide on the 'law' and there are procedures and institutions to ensure that the law is observed.

Property, violence and statistics

Many of the Russian children who were asked 'what is a crime?' thought in terms of concrete examples of bad behaviour:

murder, stealing, robbery
thieving
murder, stealing
murdering someone selling drugs, murder, stealing
it's murder, robbing, it's illegal activity
stealing cars, or from kiosks, or beating someone up

In their answers we see the two dominant 'categories' in criminal legislation in all our societies: acts against property and acts of violence but, even so, some kinds of property issues and types of violence have tended to occupy the law-makers.

Theft, burglary, and in some countries dealing in stolen property, dominate the code books and consequently the statistics. Such behaviour is age-related and income-related. These are young persons' activities, and those of deprived young persons. Tax evasion, fiddling expense accounts, corporate theft – those adult white-collar practices – have not traditionally occupied such a dominant place in the code books, in the statistics, or in public discussion of 'crime'. Recently, very recently, they have begun to attract more attention. But is there less of this behaviour than of theft by young people? Wilful damage to property, vandalism – is this as socially damaging or as dangerous as the dumping of toxic waste, developers breaking agreements on the preservation of green zones, or the export of arms to dictators?

At first sight crimes of violence against the person, as defined in law, seem to be more straightforward: murder, grievous bodily harm, assault. These are the recognized crimes of violence. But governments everywhere are anxious to keep violence committed by police, prison officers or the military out of the public gaze and, where possible, out of the ordinary justice system. Mugging is predominantly a young person's pastime – mugging other young people – and they get caught. But what about those adult patterns of violent behaviour – domestic violence, for example, which only relatively recently, and not as yet in Russia, has entered the statute books as a crime? Child abuse? These violent acts remain much less prosecuted. Yet do we really think that less domestic violence occurs than mugging on the streets?

Our criminal justice systems have traditionally identified as 'crimes' activities or behaviour that will cause the 'offenders' to be drawn disproportionately from among the young male and more deprived sections of the population.

> As the criminal law is in the main directed against forms of behaviour associated with the young, the working class, and the poor, we should not be surprised to find that, officially, it is these groups that are 'found' to be the most criminal. (Muncie 1999: 37–40, 118–24)

The most 'criminal' age-cohort, everywhere, is that of young men between the age of 18 and 30. They seem to be the group that rulers feel are most dangerous, most unruly. They dominate the statistics and the prison population. Women everywhere appear as a small minority. Their deviant behaviour has tended to be subject to other kinds of control, and seen as less dangerous.[2] So the question arises: is 'crime' an appropriate descriptor of children's behaviour?

Official crime rates, recorded by the police, are hard enough to interpret for one society; doubly difficult if we want to make comparisons between societies, whose legislation differs on the definition of criminal acts, whose procedures for recording crimes differ, where public attitudes towards the police vary markedly, and the police's recording of incidents differs. The legislation changes and new 'crimes' appear. If the local population becomes less trusting of the police, they may report fewer crimes and the crime figures will show a decrease, although nothing has changed in the incidence of such activities. Social attitudes may change: when women

feel they can and should report rape, the statistics suggest that rape has increased. Changes are introduced in the reward system for the police (bonuses are tied to solving cases) and (hardly surprisingly) the recorded figures of difficult-to-solve crimes will drop.[3]

The importance of police behaviour has led some to argue that 'Official statistics reflect not patterns of offending but patterns of policing' (Muncie 1999: 20). I would put it a little differently: crime rates represent the result of many different responses to rulings from above. This means that we need to approach them and any claims made on their behalf with a great deal of caution. There are many interested parties in such debates: politicians, police, all the agencies of the criminal justice system, and the public. But the role of the police is critical in determining the future fate of young people, and we shall return to this in later chapters.

Everywhere only a small percentage of 'criminal acts' gets reported to or recorded by the police. So maybe unrecorded crime looks different? In order to get a better sense of criminal behaviour, some countries, including the UK, have introduced both victim surveys (where a representative sample of the adult population is asked whether it has been a victim of crime during the past 12 months and, if so, of the type of crime) and self-reporting surveys (where young people are asked whether they have committed a crime, and if so, of what kind). No one suggests that any of these approaches allows a 'true' representation of criminal behaviour, but they can offer a better picture of long-term trends than can officially recorded crime data. Surprisingly, perhaps, given all the factors that can affect recorded crime data, data from such surveys tend to support the official trends.

The staying power of criminal justice systems

Both (civil) continental and common law are based on the following principles:

1. a) There exists a public (written and accessible) listing of those actions that are 'crimes', and ignorance of the law is no excuse;
   b) the individual is responsible for his/her actions.
2. a) All are equal before the eyes of the court;
   b) the accused must have the right of defence;
   c) the judge is independent, and guided by the law, and only the law.

and, further:

3.a) The court should determine whether the accused did commit the crime;
b) the judge should award a 'proportionate' sentence, i.e. proportionate to the offence;
c) the court decision is upheld by the government, which is responsible for seeing that there are agencies to ensure its implementation.

To understand this quite complicated set of principles, we need to remember that criminal justice, as a mechanism, evolved in societies where inequality in wealth and power prevailed, and that criminal justice systems are designed by the powerful, and powerful adult males at that.

Take the principle that the individual is responsible for his actions, and all are equal before the court. If a rich man steals a loaf of bread, and a poor man steals a loaf of bread, they are both equally culpable. It is the offence that matters. No privileges allowed here. Both have the same right of defence. Both should be sentenced to the same punishment, if found guilty. 'Equal cases have to be treated equally and according to the rules. But of course cases are never equal, if everything is taken into consideration' (Christie 2004: 76). There is no good reason for a rich man to steal a loaf of bread, and should he absentmindedly walk off with one, he can pay for a lawyer to explain the mistake, and the judge will recognize that he is not really a bread-stealer . . . and so on. It is then a system that advantages those who have already established a place for themselves in society. Is it then appropriate for children?

Had it not proved itself to be such a flexible and useful mechanism for deciding who is a danger to society and enforcing order, criminal justice would not have established such a foothold in so many very different societies. But there is more to it than that. Although designed by the powerful, criminal justice systems simultaneously can and do provide valuable protection for large sections of the population in a number of areas. People want to feel they can walk the streets safely, that their homes will not be burgled, or that their children will not be approached by drug dealers (though they may be tolerant of advertisements for junk food that damages their health). One of the great pluses of a criminal justice system is that it can help to provide this kind of security, and one that does bring benefit to many. It can offer a means of defence to those whose only chance of defending themselves is clear rules and judges who believe in evidence. And it provides a check on arbitrary behaviour by rulers. If this were not the case, it is unlikely that such a mechanism for solving some of society's problems would have survived the introduction of

universal suffrage, which can require governments to listen to the voices of the poor as well as the rich.

However, perhaps as important, pronouncing on 'crime' allows the making of public moral statements, something that groups and societies seek as one form of social glue. 'Law' allows the rulers to pronounce on society's moral codes, sometimes reflecting widely shared values, sometimes imposing those of the powerful. Some of the children's answers to the question 'what is a crime?' emphasize the perceived link between 'moral' or 'socially unacceptable' behaviour and crime:

a bad action, breaking the law
breaking the rights of society and laws
it's breaking moral and social norms
deviation from moral norms
harming a person
it's betrayal of other people
it's a bad act affecting people around you
it's insulting someone and causing him harm, only a really low person acts this way

The connection between 'crime' and 'morally reprehensible behaviour' comes out quite clearly in their answers although, of course, everywhere only a small minority of morally reprehensible acts is classified as 'crimes'. Across the societies we are talking about, there is wide agreement that murder and violent assault are unacceptable as a way for individuals or groups of individuals to settle disagreements among themselves; that disputes over property should be settled 'fairly' and not by force; that people have a right to a fair trial and, a more recent development, that people have a right to humane treatment by those in a position of authority. In contrast, attitudes on sexual morality, on treatment of children, animals or the environment differ widely, and changing attitudes find their reflection in criminal codes. In their turn, norms or values may change, influenced by the law or the operation of the criminal justice system.

Maintaining order, maintaining privilege, maintaining social cohesion – the different interpretations that have been offered to explain the role or rationale of criminal justice systems reflect the fact that to different degrees at different times in a variety of contexts criminal justice systems are doing

all of these – and this largely explains why they have become engrained in modern societies. Yet there is still something else. As one child put it: 'crime must be punished'.

People, it seems, want not only security from those who threaten their life or possessions, but they want 'justice'. And justice involves a variety of things – not only repayment for damage done, the restoration of rights, but also, many feel, punishment for wrongdoing. Several of the children pick this up in their answers – crime is linked with punishment:

> a person must be punished for murder or stealing
> a crime must be punished, it's an offence against the law
> a crime – it's something that you can be put in prison for

Criminal justice enables a society to identify the guilty and then to punish them. Crime and punishment are, it seems, inextricably linked. If this were not the case, it would be difficult to understand why – in the face of all evidence to the contrary that detention either rehabilitates or reduces crime by young people – some governments, at different times and in different countries, actively pursue policies of locking up more of their young people. But is punishment then the aim of sentencing policy?

The different, sometimes contradictory, aims behind sentencing policy

Garland maintains that

> Although legal punishment is understood to have a variety of aims, its primary purpose is usually represented as being the instrumental one of reducing or containing rates of criminal behaviour.

However, Garland continues, the failure over the centuries of legal sanctions to demonstrate their effectiveness as a method of controlling or reducing crime alerts us to the fact that punishment (or sentencing)

> is a social institution embodying and 'condensing' a range of purposes. … It involves discursive frameworks of authority and condemnation, ritual procedures of imposing punishment, a repertoire of penal sanctions, institutions and agencies for the enforcement of sanctions and a rhetoric

> of symbols, figures and images by means of which the penal process is represented to its various audiences (Garland 1990: 17),

and this means that it can take very different forms.

Today, politicians, the media, penal reformers, judges and the public – with different voices in different societies – will cite a number of aims that sentencing should be achieving: retribution, deterrence of the individual or of others, safeguarding society from danger, rehabilitation of the individual (morally or in terms of skills), compensation for damage to the victim or the community. These are very different aims, and seem to be addressing different audiences (in some cases 'the offender', in others 'society', in some 'moral sensibilities', in others 'the victim'…). It is clear that no sentence could possibly address all these aims simultaneously. Some contradict each other. Yet, here again, we see the flexibility of criminal justice. The proliferation of aims allows those who sentence to respond very differently to similar acts at different times or in different social contexts. Sentencing policy can adapt to changes in attitude towards what is a crime or how to 'treat' criminals. It can be tough or soft; pay more or less attention to the consequences for the individual, for the offender or for the victim.

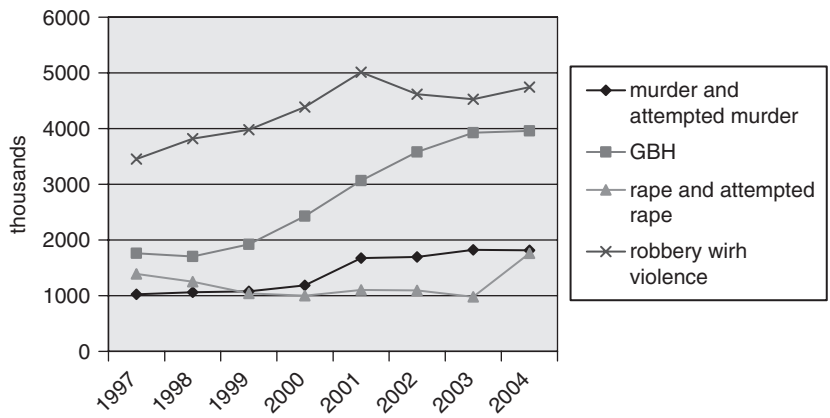
Officially recorded data, for countries across the northern hemisphere, suggests that crime by young people has, over the past ten to fifteen years, levelled off or decreased. In England and Wales between 1980 and 1990 the number of 10-16-year-olds cautioned or convicted fell from 175,700 to 110,800; police recorded crime fell every year between 1992 and 1999, and fell by 25 per cent over the longer period 1992–2005. Despite the Crime and Disorder Act of 1998, which limited police discretion on the recording of minor offences (which inflates the figures), the overall trend has been one of stability, and this is supported by the findings of the Crime Survey and self-reporting surveys (NACRO 2005; Bateman 2006). Russia looked different in the early 1990s (when it experienced a rapid increase increase in offending behaviour (both crimes and administrative offences) by children under the age of 18; by 1997 the figures were stabilizing but the financial crisis of 1998/9 brought another upsurge; since 2000 the figures have flattened out again to bring Russia in line with other countries.

Local police forces everywhere are aware of changing patterns – types of theft or burglary, in drug-dealing, use of guns, trafficking in women – which reflect changes in society. Crime waves (of some kinds) transcend borders.

There is some evidence across several countries that violent crime, which accounts for a small percentage of youthful crime everywhere, is increasing, and that everywhere there is a very small minority of kids who are the serious, repeat offenders (Junger-Tas 2002; Van der Laan 2004; Mehlbye and Walgrave 1998; Dunkel 2003; *Youth Crime Action Plan* 2008). As regards England and Wales, NACRO (2003: 4) argues that 'violence against the person, which accounts for less than 13% of youth crime, is falling', while Hough and Roberts (2004: 9) suggested some rise in the known number of young offenders involved in robbery and violence, and these figures (although small as a percentage of youth crime) have almost certainly risen in the past two years. The numbers of those sentenced to custody for crimes involving violence against the person remained almost unchanged between 1996 and 2006, as did the share of such sentences (around 14 per cent) among all those sentenced to custody (*Sentencing Statistics*, Tables 2.4–2.6). The recent spate of murders of teenagers by other teenagers or young people, while highly localized, will increase the homicide figures for 2008.

In Russia the number of violent crimes has risen significantly since 1997 and continues to rise, although at a slower rate. The homicide figures are high (higher than in Europe, if not in the USA). In this respect, and not only in this, Russian youth seems to be behaving as its counterparts in many other countries. Figure 5 provides data on convictions for violent offences in

Figure 5: Convictions (14–17-year-olds) for violent crime, Russia, 1997–2004



Source: Data from MVD statistical handbooks, 2002, 2004 and 2006.

Russia. As a percentage of all convictions violent crimes remain very small. The percentage increases over the period – from 6 to 12 per cent – but this should be seen in context: the total number of criminal convictions is less than it was in the mid-1990s. Theft, everywhere the key to youth crime, has fallen sharply and, very recently, hooliganism has been reclassified in such a way as to take many activities out of the criminal code. Hence the percentage of violent crime will surely rise, regardless of actual numbers.

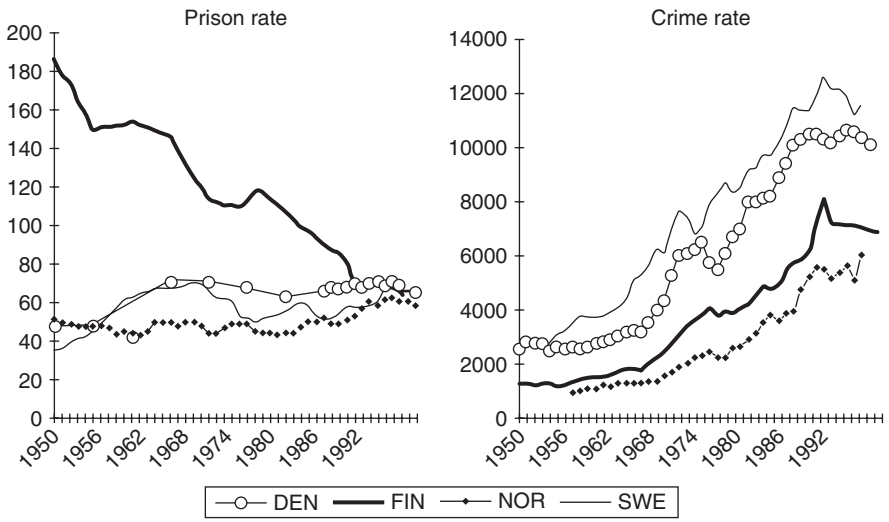
The point that interests us here is why, despite stable or declining crime rates, some societies are reacting more punitively towards their young people and adults. The toughening response in the USA in the 1990s came at a time when youth crime, including violent crime, had dropped. UK politicians insist that more prisons are needed, although crime rates in England and Wales are lower than they have been since the 1960s. In England and Wales, with no increase in the youth crime rates, changes in prosecution and sentencing policy, particularly since the 1998 Act, led to a rise in custodial sentences from 4,719 in 1994 to 6,183 in 2006 (Morgan and Newburn 2006; *Sentencing Statistics*, and Figure 3 above). In Russia, sentencing policy has been remarkably unresponsive to changes in crime rates. So what explains this? Goldson suggests that patterns in the use of penal custody

> have little or no direct relation either to the actual volume and/or seriousness of youth crime on the one hand, or the outcomes of incarcerative interventions on the other. Rather the ebbs and flows of custodial sanctions are more readily explained by reference to the vagaries of political imperatives and policy contingencies. (Goldson 2006: 140)

This is something we shall need to explore in later chapters.

If politicians and publics, in some countries, seem convinced that crime rates can be brought down by the harsher treatment of offenders, criminologists have long recognized that 'crime rates rise and fall according to laws and dynamics of their own' (Lappi-Seppala 1998: 25), and he adds that 'sentencing policies in turn develop and change according to dynamics of their own: these two systems are fairly independent of one another'. There seems to be little evidence that crime rates and sentencing policy are related. Finland demonstrates, very clearly, how a radical shift away from the use of detention can have little impact on crime (Figure 6).

Figure 6: Prison and crime rates of the Nordic countries



As Lappi-Seppala (1998: 25), from whom the information is taken, suggests, 'A simple comparison between the Scandinavian countries reveals a striking *difference* in the use of imprisonment as well as a striking *similarity* in the trends in recorded criminality' [my emphasis – MM].

If only to persuade politicians that 'prison doesn't work', it would be nice if one could demonstrate that a humane sentencing policy is directly related to a reduction in crime. But, since crime data represents a (summed) indicator of many activities, only one of which is 'actual deviant behaviour', it is not surprising that such evidence is not available. On the other hand, we can say that societies that opt for using alternatives to detention do not suffer from higher crime rates. And we can add that subjecting young people to detention probably increases the incidence of crime. Time spent in detention will almost certainly make it more difficult for a young person to cope with life outside, let alone find a job, and will encourage him or her to return to crime, regardless of whether time spent in detention has meant induction into a criminal fraternity.

There is no evidence that tougher sentencing has an effect on crime, whether it is Russia or the UK (Марогулова 1992; Bateman 2006). Crime, by adults or youth, is governed by far more factors than sentencing policy or indeed by the type of justice system. The editors of a recent comparative study of different youth justice systems concluded

> There is a good argument for seeing youthful offending and the youth justice system that responds to it as quite separate phenomena. Youthful offending may affect the youth justice system, but youth justice systems probably have very little impact on youthful offending. (Tonry and Doob 2004: 19–20)

In other words, one should not look to a criminal justice system to 'solve' the problem of youth crime.

So are we suggesting that policies towards youth will have no effect upon 'crime'? No, of course not. We are saying that the criminal justice system is a clumsy and ineffective instrument to use for reducing or changing patterns of behaviour by children – whether it is stealing because they are hungry, robbing their peers of their mobile phones, consuming alcohol or drugs, or increasingly using knives and other instruments in violent attacks. When it is already too late, the criminal justice system is expected to solve the problems, something it cannot do. All these types of behaviour have to be addressed by other means and, despite a century's experience, the record is still poor.

From retribution to re-education

If retribution and isolation were the dominant characteristics of sentencing policy in the eighteenth century, by the beginning of the nineteenth century, from North America across to Russia, views of the adult criminal and hence of appropriate sanctions were changing, and by the end of the century judges and governments were talking a different language. Reform the offender, correct his ways, became the key words. This was to have major consequences for policy towards children, for whom, it was accepted, education was paramount.

Russia had traditionally relied upon corporal punishment, hard labour and exile (graded according to social status) as the core of its sentencing policy, but as the first two – for a variety of practical as well as altruistic reasons – came to be considered less effective means of maintaining order and political control, prisons began, in the nineteenth century, to occupy a more important place. Use of the knout (which could result in death) was abolished in the mid-nineteenth century but birching continued. Europe and America had earlier witnessed the rapid expansion of prisons and reformatories as places where offenders, maybe in solitary confinement reading the Bible, maybe

under Spartan conditions and hard labour, were to learn to repent of their ways and return to society as reformed individuals. The deporting of felons to Australia (England's Siberia) gradually fell out of use.

In Russia in the mid-eighteenth century, secret instructions recommended that corporal punishment and penal servitude should be adjusted to take account of age, but this was on the grounds that children (under the age of 17) were physiologically weaker than adults. By 1845, while the principle was reaffirmed, a debate as to whether this was the appropriate approach for children was under way, and it was agreed that a child must understand his actions to be held responsible for them. This, the principle of *razumeniye* (understanding) had its counterpart in the English common law presumption of *doli incapax* (for children aged 10–13).[4]

However, in Russia as in Europe and America, the reformers were arguing more than this. If adults could be reformed, how much more so could children. A child's moral sensibilities had to be developed. Regardless of whether in part this view stemmed from the desire to create well-behaved members of an expanding industrial labour force out of the bands of roving vagrants, begging children, and the filthy and 'depraved' street children in the expanding cities, the result was the conviction that the child needs education and moral upbringing to become a law-abiding member of the community. If the family fails to provide this, and society creates a damaging environment, then the state must step in *loco parentis* to bring up the child, and attention must be focused on those social conditions that create young criminals. The line between the abandoned kids in need of care ('the deprived') and those who commit offences ('the depraved') became blurred: the former will become depraved if they are not cared for, but even the depraved can be taught skills and morality. It is inappropriate, it was argued, to hang an eight-year-old for stealing a loaf of bread (UK) or to birch him and send him to Siberia (Russia), and to send a child to prison will only set him or her on the path to crime.

The conviction that children not only can but must be brought up to be good laid the ground for the setting up of new educational–correctional institutions for the young. These dated from the late 1850s in the UK, from the 1860s in Russia. From Mary Carpenter's campaigning on behalf of the 'perishing' (deprived, vagrant, homeless, begging) children and the 'dangerous' (depraved, stealing, gambling, drinking, engaged in prostitution) came the industrial schools and the reformatories in the UK.

These were to reform the child, to produce moral, hard-working, law-abiding adults, but punishment was still part of the agenda. Children could be sent for a short, sharp prison spell as a salutary punishment before beginning their training in the institutions, and judges still could and did sentence them to prison in preference to a reformatory (Muncie 1999). In Russia, hard labour and exile to Siberia came to be used increasingly sparingly. Between 1891 and 1893 only 42 children, including one 11-year-old, were sent to Siberia (Труды IV сьезда 1898: 17). The majority of young offenders now received prison sentences but nineteen 'correctional' *priyuty* (shelters, refuges) or *kolonii* opened between 1866 and 1891, and by 1907 there were 53. By 1909 (now renamed 'educational–correctional') they housed both criminal offenders and the vagrant and needy. In England the first Borstal was opened in 1902.

The combination of changing attitudes towards the purpose of sentencing, and towards the child, whose personality had still to be developed, produced a radical critique of existing practices. Penal reformers (in North America, Europe and Russia) shared a vision of how young offenders ought to be treated, of measures that would benefit them and society. They thought they had the answer: solve the social problems bred by poverty and ignorance, and save the children at risk through education; re-educate, do not punish, young offenders. Abolish imprisonment for young people, and keep it to a minimum for adults. Russian criminologists, charitable societies and judges were as active as their western counterparts in advancing these claims and offering alternatives. All were talking a common language: re-educate, do not punish, and above all do not use detention as punishment.

In a two-year study of child crime published in Moscow in 1912, Gernet, a leading criminologist from Moscow State University, quoted approvingly Winston Churchill's statement of the British government's position in the debate on the prison bill in 1910:

> The first principle which should guide anyone trying to establish a good system of prisons should be to prevent as many people as possible getting there at all. There is an injury to the individual, there is a loss to the state whenever a person is committed to prison for the first time, and every care, consistent with the maintenance of law and order, must be taken constantly to minimize the number of persons who are committed to goal.[5] (Churchill, quoted by Гернет: 415)

The authors of the study reminded the reader that in Russia, as in western countries, it had long been recognized and accepted that prison is a school for criminals: a visit to UK prisons in the 1870s by a Russian delegation confirmed that the hardened criminals had all begun their criminal careers with a prison sentence for a minor misdemeanour when they were still young. More than a hundred years later a delegation could have made the same observation, this time quoting Andrew Coyle:

> In the late 1980s I was appointed Governor of Peterhead Prison. At that time Peterhead held the sixty prisoners who had been identified as being the most difficult and dangerous in Scotland.... I immediately discovered one fact which has remained with me ever since. Almost all of these 'most difficult and dangerous' men had been with me some 12 years before when I had been had been an assistant governor at Polmont Borstal. At that point, like me, they were fairly new to the prison system. Many of them had previously been in what were then known as Approved or List D schools before graduating to the borstal system. Also like me, they had progressed through the criminal justice system, subsequently serving time in young offender institutions and adult prisons and here we were together in 1988 in a bleak granite fortress on the north east shoulder of Scotland.... But I found myself asking whether their progression through the criminal justice system had been inevitable. At what point might it have been possible to divert them to other paths?[6]

Although the authors of the 1912 study made the abolition of prison their key target, they argued for far more radical changes than this in the treatment of young people. They prefaced their book with the statement:

> Russian society, as that in many countries, is paying more and more attention to the issue of child crime and of new measures to deal with it. Society now has the opportunity to take an effective and active part in shifting the justice system into a quite new framework – not one which embraces the sharp sword of Femida and sumptuous palaces of justice with their altars consecrated to 'just deserts' but one which takes on the form of sensible and heart-felt aid to those who are drowning and, as far as is possible, leads to the elimination of at least some of the causes of crime.

By the end of the nineteenth century, the pendulum had swung away from 'retribution' and towards what has come to be called a 'welfare approach'. This new welfare philosophy, which would subsequently influence policies towards youth crime across all the societies of the northern hemisphere, includes the beliefs that:

- the underlying causes of juvenile crime are social, primarily deprivation;
- the deprived will become the depraved unless their circumstances are addressed;
- if parents are too poor or unable to care for and bring up their children, state and society should take on the responsibility.

Some children, when asked what is a crime, automatically make such an association:

> a person commits a crime when he needs money or he kills someone for his money
> it's breaking the law which is usually done by children (orphans)
> crimes are committed by children who don't have a family

and we can see it borne out by some of the children's essays, quoted in the Introduction.

Further, the welfare philosophy assumes that

- children can and should be reformed, to grow into moral and industrious adults;
- they should not be punished; their needs should be addressed;
- prison is the worst possible environment for a child: it creates criminals; residential care, which provides education, can play a role where parents have failed.

The 'welfare' approach, with its emphasis on government's and society's responsibility to ensure that its children are provided for, its insistence that children should not be punished, and that prison is not appropriate for them, brings into question the appropriateness of criminal justice as an instrument for dealing with youth crime.

A criminal justice system rests on the assumption that the individual is responsible for his action. The judge (or jury) should determine whether the offence was committed, and the judge award an appropriate sentence. To a greater or lesser degree criminal justice systems allow the judge some flexibility in sentencing, that is, to take into account the individual circumstances, but the underlying principle remains – it is the 'offence' that warrants the response. It is hard to imagine that that anyone would set out to devise such rules to deal with children's behaviour, especially when some may be illiterate, others hungry, homeless, or abused by adults. And when, as we know, young children often are not able to foresee or think in terms of the consequences of their actions. They may act impetuously. One child picked this up when asked 'What is a crime?': 'rashness, not thinking', he wrote.

If a child does not understand the morality or the consequences of an action, it is difficult to hold him or her 'responsible'. According to criminal law, ignorance of the law is no defence. But the conviction, strongly held by children, that if they did not know they were not allowed to do x, it is not fair to punish them, is one to which we usually give weight in our relations with children. To concentrate on the 'offence', with no regard as to whom the 'offender' is – his or her age, the circumstances – is not the way we usually respond to children's behaviour.

While the penal reformers came up with different answers they all agreed that society should tackle the causes of crime, which was not the job of a criminal justice system. Its role should be slimmed right down and, where the offender was a child, it should operate on the basis of different principles. Five key issues preoccupied them, and they are the issues that still dominate discussion today.

1. Limiting the activities that are classified as 'crimes'

Imagine a society where none of its children broke the rules. Would it be a healthy society?[7]

The authors of the 1912 Moscow study argued that most of the 'offences' committed by young people should be taken off the statute book: stealing by the wanderers and the hungry in order to eat, or to keep warm, and the pranks – riding on tram buffers, ringing doorbells, catapulting windows, setting off fireworks, peeing in letter boxes. Such actions, they suggested, deserved another name and a different treatment. And, indeed, one way of reducing the category of 'crime' for children, or of keeping them out of the

criminal justice system, is to take a range of actions out of the statute books or classify them as administrative misdemeanours rather than crimes. This can be done in Russia or in France, whereas in America or the UK this in-between category does not exist.

2. Raising the age of criminal responsibility

The simplest and most radical strategy to ensure that children do not fall into the jaws of a justice system devised to treat and punish adults is to pass legislation that fixes the age of criminal responsibility at 18. Children younger than this cannot 'commit crimes' and be dealt with by courts. In Belgium, we noted, there are no 'criminals' under the age of 18. Most societies have opted for a younger age, and the range indicates just how differently societies approach this issue.

3. Creating agencies that are responsible for dealing with unacceptable behaviour

The 1912 authors suggested that police and social services should play a key role in treating such behaviour and diverting children from the criminal justice system. Here the range of solutions tried by different societies has been as wide as the age of criminal responsibility: police, social services, welfare agencies, charitable organizations, probation officers, community boards and residential institutions, all make their appearance at different times and guises in different countries. The creation of alternative bodies or approaches to address youthful offending – and the role left for criminal justice institutions remains perhaps the key issue today. It is closely tied to perceptions of how the justice system can or should operate.

4. Where young people are held responsible for 'crimes', changing the procedures and practices of the criminal justice system

Gernet and his co-authors argued that, with its assumptions of responsibility, complex procedural rules, its focus on the offence rather than the offender, and on sentencing a guilty person, the criminal justice system is not appropriate for dealing with children's actions. It should be adapted: new juvenile courts should operate according to different principles. Although the 'crimes' (theft, burglary, assault, murder, etc.) would remain on the statute books, when the accused was a child the court's task would be a

different one. No longer should the judge focus on whether the offence had been committed and on awarding the appropriate sentence, rather he or she should seek to discover what had led the child to commit the crime, and impose a sentence that would help the child to overcome the difficulties that had prompted the behaviour. The court would be concerned with the welfare of the child, with 'offenders' rather than 'offences'. This meant a court where procedures would be simplified, and be comprehensible to the child; the judge would need detailed information from social workers or child experts on the personality and circumstances of the child; the judge (maybe a doctor or teacher) would talk to the child, and would endeavour to find a member of the community (voluntary 'social' workers) to take responsibility for the youngster or to place him or her in care.

During the twentieth century many societies have tried the institutional variant of a youth court, operating according to different principles. Some have favoured a juvenile court that adopts civil proceedings and focuses on the needs and welfare of the child, whether a child in need of protection or an offender. This approach, that of a 'socialized juvenile tribunal', was reflected in the first 'juvenile court' set up in Chicago in 1889, and that in St Petersburg in 1910. In Scandinavian countries today, and in Scotland, welfare commissions or children's hearings deal with all cases involving under-15 or 16-year-olds, whether the issue is care or an offence; older children come before adult courts. In some other countries (England, for example) a youth court operates as 'modified criminal court', dealing with less serious offences, while a higher adult court deals with all grave offences for children aged 10 and over (Bottoms 2002: 415). In Germany a youth court will deal with offences for 14–20-year-olds; in the USA offences by children as young as 15 (depending upon the state) may be passed from the juvenile criminal court to an adult court. A juvenile court or juvenile magistrate, while remaining within the criminal justice system, may still be charged with recognizing the welfare of the child as the priority.

The two different approaches – that of a 'socialized juvenile tribunal' versus a 'modified criminal court' – do not automatically lead to different outcomes. It is not only, as we shall see from the English example, that so many factors influence the way in which juvenile justice agencies work but also that, despite the stated commitment to the welfare principle, competing claims – of rights, of crime prevention, community safety, victims' rights and justice – continually jostle for attention, regardless of the institutional

framework. At times, in a society or societies, particular claims are voiced more vigorously, command attention and influence policy. While there is as yet no resolution of these issues, past history and comparative experience tells us that there are better and worse strategies or options – both for the child and for the community.

The most we can say is that the modified criminal court approach (regardless of whether it is under English common law or the continental system of justice) holds out the danger that criminal law principles (focus on the offence, a tariff of sanctions, punishment) can outweigh the principle of attending to the child's needs and welfare. England and Wales have continued to rely upon a modified criminal court approach from 1908 until today. Russia moved back to using adult courts in the mid-1930s. The Scandinavian countries have a higher age of criminal responsibility (15) and no juvenile courts, only adult. However, a socialized juvenile tribunal can impose institutionalized and secure 'child care' that may be as damaging as detention in penal custody. As we shall see, while the 'system' of juvenile justice is relevant, more important may be the way legislators and practitioners flesh it out.

The final issue, and the one that we are most concerned with, is:

5. Using a variety of sanctions and keeping detention as a measure of last resort

The death penalty for children was abolished in most societies in the northern hemisphere during the first half of the twentieth century, in Russia after the revolution, in England and Wales in 1933. Corporal punishment was abolished by many societies (in 1948 in England and Wales) but detention of young people continued, sometimes in Borstals or reformatories, rather than prisons, and usually advocated as part of an educational, rehabilitation, strategy. The Russians opted for labour, correctional or educational colonies. To different degrees in different societies, over the next half-century detention or custody gradually, over time, gave ground to fines, repayment of damage, community service, compulsory training, curfew or territorial limitation and suspended sentences. But, from time to time, detention comes back into favour, and length of a custodial sentence continues to differ widely from one society to another, as do rules on parole.

Following the revolution, Russia was the most ardent advocate of a 'welfare' as contrasted with a 'punitive' approach. By the mid-1930s, although the

rhetoric was retained, harsh punitive policies and extensive use of custody had been reintroduced. Under Khrushchev the pendulum swung back, slightly, towards welfare but then stuck, and since 1990 reform has only inched forward. Meanwhile, in other countries in the northern hemisphere, over the past century there have been a great variety of approaches to crime by young people. More often than not they have been based on a welfare approach, and detention has come down. In England and Wales prison for under-14-year-olds was ruled out in 1908; a welfare philosophy was reflected in legislation, culminating in the Children and Young Persons Act of 1969, which aimed to phase out penal custody for 14–16-year-olds. But by the 1990s policy was changing – in favour of, not against, the use of custody for children – and since then the numbers have steadily grown.

While welfare ideology still dominates thinking and policies in most European countries, since the 1980s politicians in North America, England and Wales, and in Holland, have turned to a new (older) more 'punitive' philosophy. This sees the young person (not society) as responsible for his/her actions, criticizes 'the excuse-culture', believes that sanctions are salutary, that punishment is deserved and will serve as a deterrent for the individual and others. While this more punitive approach is not shared across all of Europe, 'the main trend in juvenile justice in many of our countries is tending towards an ever more repressive, but not necessarily more effective, system' (Junger-Tas 2006: Introduction). What accounts for this more punitive trend in some societies? How is it that today gains and reforms made in the first half of the twentieth century seem to have been lost, tossed aside, and repressive and ineffective policies either left in place (Russia) or reintroduced (England and Wales)? We begin with Russia.

CHAPTER 2

Russia 1890–1990: Radical Welfarism, Revanche, Failed Reforms

In 1881 K.V. Rukavishnikov, the wealthy founder of the Moscow refuge for boys named after himself, brought together representatives of the colonies' management boards to hold a Congress and form an association. While in 1895 the tone of the IVth Congress (attended by representatives of the city authorities, the clergy, professors and judges as well as the colony representatives) was quite upbeat, and the arrival of a telegram of appreciation from the Tsar met with a standing ovation, the mood of the VIIth Congress, in 1907, was much more subdued. During the 1905 revolution few colonies had escaped rioting or violence by the young inmates. For lack of funding not all colonies could send a representative to the Congress; the city government made a miserly contribution and the federal government nothing. There was no telegram from the Tsar. A debate over corporal punishment (with the majority against) was bad-tempered. The issue of how to respond to the small number of girl offenders: house them alongside the boys (not desirable) or group them together, far from home (also not desirable) was not resolved. The delegates' main concerns were the lack of funding, both from government and from charity, the unwillingness of state and society to recognize that if the poverty of working families meant parents were unable to bring their children up properly then the responsibility became theirs. The Congress resolved that the state should take a lead, introduce a system of earmarked taxes, and work together with local authorities and private charities to care for the abandoned and neglected children (Труды IV, VII съезда 1898, 1909; Дрил 1908).

Today, a century later, in Russia the colonies exist now as the only secure institutions within the penal system for those children (15 years and older) who are serving custodial sentences. An extensive system of state children's homes exists for the abandoned and abused children. However, despite the state's having accepted formal responsibility for society's needy and neglected children, the complaints and concerns voiced at the Congress of 1907 have a contemporary ring to them. Provision by the state is manifestly inadequate, and participation by society in the form of charitable organizations and wealthy benefactors is minimal, much less than that of a century ago.

In other respects too today's reformers voice the concerns of their predecessors a hundred years before.

The principle that detention should be used solely in the interests of the child does not guide sentencing policy. Even the issue of how to treat the small number of girl offenders is still under discussion. The age of criminal responsibility has risen – to 14 or to 16 depending upon the offence – but young people still come before adult courts, where adult criminal procedures operate. Young people are no longer sentenced to prison, nor do they serve custodial sentences together with adult prisoners (although they may share cells while awaiting trial or closed railway cars during transportation to the colonies), but they serve long sentences in colonies where conditions may be little better than prison. Before the revolution, those placed in the colonies could serve indeterminate sentences, but the majority of custodial sentences passed during 1910–15, particularly for the under-17s, were for less than three months, and those sent to the short-term 'arrest houses' were out in less than a month. Today many of their counterparts linger for months in detention awaiting trial, serve a three-year sentence in detention, and are cast adrift when they are released. No funding for 'arrest houses' has been forthcoming. Belyaeva, as did her counterparts before 1917, argues that among the causes of recidivism is 'the state of uncertainty, social defencelessness and helplessness' in which the youngster find himself, either when given a suspended sentence or when released from a colony. 'At the present time it is difficult to identify state or non-governmental organizations which are able to offer real social support to such people' (Беляева 1995: 43). There is no system of patronage, government or voluntary, no probation service or specialist social workers.

> The teenager committed a crime … because his parents paid no attention to him, because the teachers paid no attention to him, because the police put him on the police record and told him to come once every six months, to report. He came, the form was ticked, and that was that. When shall we understand, no one paid any attention to the boy, and then gave him a sentence to serve in a colony where he'll pick up criminal experience, where he'll learn criminal ways of surviving, and when he comes out he'll only be able to live like that because, again, no one will pay any attention to him. Our legislation is not concerned with these kinds of questions. So we, and our legislation, are producing crime. (Psychologist, SIZO)

Compared with most of its western neighbours the compass needle of Russia's policy towards its young people, during the twentieth century, swung violently between the extremes of welfare and punishment. In 1991 when Communist party rule ended, the Soviet Union fell apart, and the Russian Federation emerged as an independent country, the arrow lay, stuck, somewhere right of centre, pointing towards harshness. Today, writing seventeen years later, it wobbles uncertainly around this same point. In this chapter we trace the dramatic history of policy towards youth crime in the hundred years preceding the end of Communist party rule. We focus on the interaction between the ideology of the rulers, the nature of the political system, the views of professionals (academics and practitioners) and penal reformers, and the criminal justice system. We want to understand the legacy that the Soviet system bequeathed to the reformers, anxious to see changes in the 1990s. To what extent can it be held responsible for the slowness of change in the new, post-Soviet, environment? What kind of a shadow does history cast over the present?

The beginning of the twentieth century

At the time of the First World War, with the age of criminal responsibility still at 10, prison remained the dominant sanction for children convicted in Russia. Tagantsev, a leading reformer, had insisted that 'the basic principle which underlies criminal sentences . . . is education and the preparation [of young people] for a honest working life, it's not retribution or punishment',[1] but it was rare for more than 20 per cent of those sentenced to be sent to a colony rather than to prison or an arrest house: places were simply not available. On average during the years 1910–15 only 4,300 children were in the colonies, compared with 15,400 in the prisons or arrest houses, and nearly half of these were housed together with adults (Люблинский 1923). In a few cities, new 'special' courts with simplified procedures began to deal with the more minor cases involving youngsters. In perhaps a third of these cases the children were simply acquitted, or the case closed; children could be placed under the supervision of a guardian; and those convicted could be sent to a colony in place of prison (Отчет мирового судьи 1912; Беляева 2005).

It was officially recognized that both in lieu of detention, and when a young person was released from detention, a system of social supervision, or 'patronage', organized either by the colony or the community, was desirable.

But it was 1912 before any government funding was provided to support the voluntary patronage societies. Within the charitable community the view that the government should take the lead was strong. Only after official recognition did the patronage societies begin to play an active role whereas in some (not all) European societies, including the UK, they did not wait for state support.

Revolution – rampant welfarism

> … data relating to crime by children, no matter where and when, is always an indictment of those who catch, judge and imprison them – an indictment of society itself. (Якубсон 1924: 213)

With the revolution, welfare philosophy triumphed and, throughout the 1920s, it had a secure basis in the ideology that inspired the new regime. This held that, with the abolition of capitalism (the private ownership of the means of production), a new society would come into being, where all would have equal access to resources; hunger and poverty would fade away, and society collectively and harmoniously would engage in the distribution of goods and services. Social relations, it was argued, have the power to transform individuals. Once the still appalling poverty, the damage caused to families by the war, once bourgeois attitudes towards property or towards prostitution, and the still uncultured attitudes of some of the toilers became part of the past, children would grow up as fully rounded individuals, able to realize their potential. Once socialism had been built, youth crime would disappear.

The arguments of the pre-revolutionary reformers found radical expression in new institutions. Neither courts nor prison were considered appropriate for young people. Instead, under a law of 1918, commissions for youth affairs, initially under the Commissariat for Social Care and composed of representatives of the commissariats of enlightenment, social welfare, and justice, who should include among them a doctor, were to deal with all cases involving children under the age of 18 who were in need or had committed offences. Where necessary they would place them in care.

The commissions' task was to determine:

> the extent of the social and pedagogic neglect or abandonment of the juvenile and, in keeping with this, adopt one or other measure of a medical–educational nature. The legislator who devised the law on the

> commissions was guided less by a concern with the damage to the state caused by the offender than by a concern with the damage an offence does to the child himself, damage which is caused by the lack of effective state policy. (Куфаев 1924: 39)

Until 1935, when they were abolished, the commissions dealt with all cases involving under-14-year-olds, and the great majority of cases, criminal or otherwise, involving the 14–17-year-olds. Most involved theft, of food in the first place, followed by clothes. Throughout the 1920s, in a third of the cases the children simply received a talking to, about a quarter were placed under parental or social supervision, perhaps 12 per cent were placed in children's homes, 'work communes', or colonies, and less than 10 per cent were sent to the peoples' courts (Люблинский 1923; Куфаев 1964).

In 1920, faced with the post-war and civil war wave of youthful crime, the courts had been brought back – for the cases the commissions could not cope with. The peoples' courts organized a separate room with its own judge for these, the more serious cases involving older children. Changes came and went until in 1926 a new Criminal Code laid down rules that governed practices until the mid-1930s. Reformers such as Kufayev continued to argue against using the criminal justice system for children. Pre-revolutionary parents, he argued, had had rights, children had none; Soviet codes had given them rights but did not sufficiently provide for the defence of these rights. It was wrong to consider 14–17-year-olds as though they were adults, and therefore as 'criminals'. The concept of crime should not be applied to them. Instead their actions should be seen as 'acts which, similar to people's illnesses, are to be cared for by society' (1924: 61), but this attitude was falling out of favour as regards more serious offences. While the commissions (now under the Commissariat for Education and afforced with a people's judge responsible for youth affairs) remained the institution responsible for dealing with all youngsters under 14, and with the majority of those aged 14–17, they could refer cases to the courts if they involved 14–17-year-olds for whom the members deemed medical–pedagogical measures would be inadequate. Those convicted would be dealt with under the Criminal Code: for 14–15-year-olds custodial sentences were to be half, and for 16–17-year-olds two-thirds of the severity of those for adults; the death penalty could not be used.

Representatives of the Commissariat for Enlightenment opposed the idea of describing secure institutions as 'educational institutions', arguing that

the very fact of closed doors would give them a prison-like character and prevent them from providing a pedagogic environment, but they lost the battle. Since the Code provided for detention, the task, it was argued, was to create secure institutions, which (unlike prisons) could educate seriously depraved children. The labour homes of 1922, now run by the Commissariat of Justice, became the key institution for detention, and the commissions could place those awaiting trial in these homes. But there were few of them – ten in all of Russia in 1927 – which meant that the 16–17-year-olds sentenced to detention (although they remained few in number) could find themselves in ordinary prisons. The reformers' fears that secure institutions, whatever they were called, would come to resemble prisons were all too often realized (Люблинский 1923; Утевский 1927, 1932). Today's advocates of secure residential facilities for the under-14s would do well to bear this in mind.

Hence elements of a traditional criminal justice system were grafted on to the new system. A number of different institutions were established, some open, some closed – children's homes, work homes, labour communes, colonies – to which children could be sent either by the commission or by the court (Утевский 1927; Пантелеев 1927). They were under different commissariats – education, justice and, in the early years OGPU – but the ideology was strongly that of education (*vospitaniye*) through labour in a collective. The underlying assumption, voiced by all, was that society – the social environment – was responsible for youth crime.

The criminologists stressed the role that the war, the revolution and poverty had played in producing the homeless children, among whom alcohol and cocaine dependency was high.

A wealth of sociological data was collected with a view to identifying and classifying the young offenders. 'To love a child-offender, you have to know him, and that requires studying him,' argued Kufayev. The majority, he suggested, were the 'accidental' offenders who included the socially neglected and the psychologically weak; the dangerous were a much smaller group, usually older, with no family; the mentally ill made a third small contingent. By the late 1920s hooliganism was under study. Liublinskii argued that if healthy protest by 14–17-year-olds against authority and old ways of doing things is denied expression, it can take unhealthy forms. He contrasted the more focused actions of the homeless street kids with the often meaningless behaviour of better-off children, but in general he advocated using the term 'hooliganism' for the actions of an older age-group: the 18–23-year-old

factory workers with money who would bust up clubs, damage police stations, and among whom groups from different villages would settle scores (1929).[2] And this was part of the problem: as industrialization and collectivization smashed the basis of capitalism and 'the socialist society' came ever nearer, its youth, particularly proletarian youth, seemed to be behaving in a quite uncontrollable fashion.

Lessons for today

The attempt to introduce full-blown welfarism provides useful lessons for us. First, the new Soviet government was right to suggest that we should attempt to minimize the usage of the concept 'crime' in relation to children, even if we cannot dispense with it altogether. The new rulers made a brave attempt to limit the activities that came before the criminal justice system. But they were mistaken in thinking that 'crime' is solely a response to the poverty and inequality within society. This led them to neglect the question of how society (any society) deals with its deviants and the question of order that preoccupies society's rulers.

The Bolsheviks were half right, and half wrong. They were correct in recognizing the links between a criminal justice system and the powerful, its relevance as one instrument in an armory of social control weapons, and the connection between 'crime' and social deprivation. They were wrong in thinking that under social ownership (and how that was to be realized proved far from clear), conflicts over appropriate behaviour, resources and rights would fade away.

On ideological grounds, the criminal justice system should have outlived its day. But there was a legal system, with its Codes and practitioners, and all kinds of 'conventional' crime continued to exist – theft, robbery, violence against the person – thousands of acts between individuals. How else to resolve these conflicts? New social mechanisms were either weak or non-existent. The consequence, given the Bolshevik view that courts were bourgeois, temporary instruments, was that those with political power took on more and more responsibility for maintaining order and dealing out sanctions. Yet, at the same time, one of the uses of a criminal justice system to the rulers is that it can operate as a mechanism for imposing sanctions on antisocial behaviour. The Stalinist solution was to retain the system, in formal terms, but bring it under political control, bending its rules and conventions, and use it as one weapon in an arsenal of instruments for

controlling socially undesirable activities. Not surprisingly, it had no remit to prosecute the powerful, and even lower party members were dealt with separately.[3]

A criminal justice system assumes a compromise between rulers and other powerful interests in society (among which ownership of property plays a key part), one that allows for a division of responsibilities, shared but still a separation of powers. Where the rulers dispose of society's wealth (gathered into their hands as state property), where they are all-powerful, and accept no constraints on their power, devising and changes the rules as they think fit, then independent judges, observing rules, judging evidence, following procedures are oddly out of place. Other mechanisms are needed to deal with society's deviants. Rulers, with this ideological perspective, who announce that they have solved the underlying causes of conflict in society have a problem. It becomes difficult to categorize those who break the rules. *They ought not to be there*. Their appearance belies the claim on which the rulers' legitimacy rests.[4]

The distinction between criminal behaviour and anti-state behaviour becomes blurred. In many societies the state reckons it appropriate to deal with 'enemies of the state' in special courts or tribunals, separate from the criminal justice system. In the Soviet Union, the view of the state under threat took hold, and Stalin reacted by using the clumsy instruments of the NKVD and the GULAG, which came to serve as both a reserve of labour and a huge equalizer.

Ironically the Bolsheviks, in their belief that the criminal justice system would fade away, allowed its most negative features to perpetuate themselves (the implementation of harsh rules) while denying it a role as a check on rulers' arbitrary behaviour. The accompanying belief that the state too would wither away contributed further to a lack of concern with checks and balances and also, paradoxically, to the strengthening of the state apparatus. This was to have negative consequences for what began as an impressive attempt to realize the pre-revolutionary reformers' claims that the state has a responsibility to care for its children. The attempt to make government institutions responsible for catering for children's needs, at a time when the environment is one of poverty, homelessness and social conflict, while laudable in itself, carries dangers. While, in the 1920s, there was scope for experimentation, the attempts to impose order, the imposition of harsh, discipline-oriented methods of education, and the refusal to countenance

independent social initiatives meant that while children's lives were saved they were often subject to repressive and regimented institutional regimes. Without the involvement of society (elected representatives, voluntary organizations) and of judges who can withstand pressure from rulers or state officials, government institutions begin to work as they see fit, begin to develop a life of their own. If the rulers are all-powerful, the consequences may be dire indeed – as they were for defenceless children who, it was now claimed, were led into crime by 'the remnants of capitalism' and the existence of the bourgeois world.

Stalin's intervention – punitive vengeance

By 1932, with a new wave of hungry vagrant children pouring into the cities, stealing and robbing, the commissions were struggling to cope while the factories were seeking a disciplined labour force. The work homes were closed, and new custodial factory schools to which 15–17-year-olds could be sent for two and a half years on the basis of a court order, and then progress to the factory itself, were established. Something like a moral panic seized the authorities: if sections of youth, the harbingers of socialist society, were endangering the new order, they must be taught that such behaviour was unacceptable. But how should the authorities respond? Although some still insisted that: 'For the first time in the history of the struggle with child crime the commissions operated on the basis of the principle that there is no difference between youngsters who have and who have not committed crime' (Утевский 1932: 11), the mood was changing in favour of a greater role for the criminal justice system, albeit in the form of youth courts.

By 1934 a draft decree proposed giving youth courts the right to hear cases against 14–17-year-olds without prior approval from the commissions; further, for some of the more minor crimes, the judges would be able to choose between imposing medical–educational measures and punishments. Under the existing law priority had to be given to medical–educational measures. Here then was compromise between the existing welfare approach and a more traditional criminal justice approach – a slight shift along the scale towards punitive measures.

But at this point Stalin made a critically important and revealing intervention. He personally edited the draft decree, to produce a document at the far end of a welfare–punitive spectrum. The age of criminal responsibility

in the decree of 1935 was reduced to 12 for an enlarged list of crimes (for the less serious the age of 14 remained in force); the youngsters should come before adult courts, which were responsible for applying 'all measures of criminal punishment'; medical–educational measures were abolished. By the autumn the commissions had gone, and the principle of mitigated sentencing for age abolished in Russia. The NKVD (the Commissariat for Internal Affairs) became responsible for the now-named 'corrective-labour colonies' for the 12–17-year-old offenders (and for 14–16-year-old vagrants). Quite separate from the courts, a new institution, the NKVD troika, began to act as a sentencer: sending youngsters to the labour colonies. But there were not enough labour colonies, so some were sent to adult colonies, and some to prison.[5] By the end of the 1930s, it has been calculated, perhaps 13,000 to 15,000 young people were receiving custodial sentences annually, and a further 80,000 (for the USSR as a whole) had been detained by the NKVD troika. Youth was caught up in the wave of repression that swept the country although, as far as is known, the death penalty was not applied to the under-18s. Further punitive measures (more severe sanctions) were introduced in 1941 and again after the war, when, as would be expected, the country again experienced a wave of homeless destitute children, seeking to survive by whichever means they could. Only after Stalin's death, in the late 1950s, with the new Fundamental Principles of Criminal Law did official policy change – and back in a less punitive direction.[6]

Now, as we know, a criminal justice system can include extremely punitive arrangements. A century earlier Stalin's decree would have passed with few murmurs. However, by the mid-1930s, the legal practitioners had taken on board a raft of attitudes that ran counter to the thinking behind the decree. They believed that children were not responsible for their actions in the same way as adults; that the focus should be on the offender, not the offence and, since offenders needed to be treated differently from one another, proportionate sentencing made no sense; if the aim was to help them to become good adults, education should take priority over punishment. This welfare ideology, with its assumption that society was responsible for the behaviour of its young people, had struck deep roots. The judges were not as well educated as their pre-revolutionary predecessors but they had absorbed the arguments of the reformers, and they now found themselves struggling. They struggled to reconcile their task as 'impartial executors of punishment' and their feelings that the age and circumstances of the offender should matter,

and that *vospitaniye* should come before punishment. Some of them fought a rearguard action to soften the most punitive aspects of the new decree. The RSFSR Supreme Court, in 1935, encouraged lower courts to use educational measures and condemned the practice of extending the 1935 decree to include actions similar to but legally different from those listed by Stalin. This met with a rebuff from the USSR Supreme Court, which included the statement that it was wrong 'to counterpose educational measures to imprisonment, as if imprisonment were not educational'. Judges continued to use suspended sentences in large measure, while favouring corrective labour at the place of work (for the older children) over sentencing them to custody.

A quiet practice of creating juvenile chambers within the courts was introduced but, in 1938, they were abolished. In 1943 the Commissariat of Justice reintroduced the idea, but in 1948 the experiment was again ended. Raising the age of criminal responsibility was publicly posed in 1940, and the 1949 Draft of the Criminal Code (subsequently abandoned) proposed returning it to age 14. However, even within the Soviet system, practitioners could influence the implementation of legislation: a savage hike in the penalties for theft, introduced in the post-war period, had the effect (not foreseen by the law-maker) that theft cases involving under-16-year-olds unaccountably disappeared from the courts (Solomon 1996; Файвуш 1965). This, the role played by justice officials in any system, is something we return to in later chapters.

The post-war generation of practitioners – the judges, prosecutors, police and prison staff – must have contained some but not many who had survived the purges and the Great War. They had seen their colleagues arrested as enemies of the people or die during the war. The newcomers were drawn from all ranks and backgrounds, given elementary education and training, and then jobs in the vertical, hierarchical institutions, where instructions came down from above and implementation was the task. They had party instructions to follow, the secret police was a silent presence, and all were aware how insecure they as individuals were. Maintaining law and order, as defined from above, was the task, and it was a major and important one, even if shared with the security forces. Justice officials constituted a significant part of the state apparatus controlling society; they issued orders to those who broke the rules. Political prisoners, the prisoners of war (both foreign and soviet returnees), ordinary criminals, the fraternity from the criminal underworld, and the young offenders – together they made up a huge and largely exiled

section of society, labouring in camps; some came back, others remained in Siberia, others hovered at the edge of the 100 km limit.[7] And countless children had been left homeless, lived in barracks, moved from one children's home to another, and then to hostels. Arresting, sentencing and shipping off to faraway colonies had become part of the everyday life of justice officials.

What were the consequences of this punitive, arbitrary policy, partly executed by the criminal justice system, in part (extra-judicially) by the police? It did not result, as the post-war years showed, in the reduction, let alone eradication, of youth crime. What, though, were its consequences for those who were involved in dealing with youth crime, its causes and its perpetrators? It is very hard to say. So much else was happening during this period: mass repression, the great fatherland war, the struggle to survive and to rebuild the country. We largely base our answers on the responses that came once Stalin died and Khrushchev gave the signal for reforms. Again the political leadership gave the signal but this time the expert community designed the policies.

The 1960s – welfare resurgens

The age of criminal responsibility was still 12 at the time of Khrushchev's secret speech to the XXth Party Congress in 1956, and sentences of corrective labour or long terms in military-style labour colonies were being meted out by adult courts. But now, in the period of the post-XXth and XXIst Congresses, a period when 'breathing and consciousness returned', reforms became possible. Khrushchev spoke of society working with governmental institutions, of society gradually taking over from government, until – by 1984, as announced in the new party programme – communism would be reached and, under communism, crime would be no more.

However, as Khrushchev dismantled the GULAG, conflicts between citizens or between citizens and the state did not become less. It seemed the criminal justice system was still needed. But how could this be reconciled with Khrushchev's claim that crime would fade away? The choice by rulers of criminal justice as an instrument for settling some of the conflicts within society carries with it certain assumptions about society: most importantly, that within society there will always be disagreement over the appropriate rules of behaviour, and that the distribution of wealth will never be seen by all to be fair. Designing categories of crime and procedures to deal with it is the answer. A criminal justice system implies that 'crime' will always be present.

But, for the moment, this issue could be quietly ignored. There was a cautious optimism that the worst times were over. The talk was of catching up and overtaking America, of rapid advances in every sphere of life. At last the sacrifices of the war and the post-war years would bear fruit.[8]

> Together with a rise in the standard of living, and of morality, with the development of the culture of the soviet people and other important factors, a preventive system will play a decisive role in guaranteeing an end to the existence of abandoned children and the steady decrease in and final eradication of offences by juveniles. (Болдырев 1964: 366)

What interests us here is the legal community's response to the opportunities presented by the new political environment. When politicians allow the opportunity for policy change, what matters is how those with professional expertise and access to the policy-makers respond. At this point in time, perhaps surprisingly, the reform lobby turned out to have its representatives among Supreme Court judges and academics, both young and old. Given the chance, they unfurled the flag of welfarism and pushed through quite radical changes of policy towards young people. Rereading, now, the discussion in the law journals and the newspapers of the early 1960s, one is aware of an active reform lobby that included individuals from different institutions and levels in the hierarchy. It was a much stronger group than that which emerged in the heady, free, environment of the 1990s.[9]

Articles published in the leading legal journals put forward different arguments. For example, one by Tadevosyan gave a brief account of the arguments and policies of the 1920s, bringing back names and facts long suppressed, suggested that the ineffective policies of 'no punishment' had justified the tougher measures introduced since 1935, which, in any event, were never based primarily on punishment, but that now was the time, given the economic and cultural progress, to review the situation. Others were more positive about the welfarism of the 1920s, and Kufayev reappeared in print with an article on the youth commissions of the early 1920s (Болдырев 1964; Куфаев 1964). Once the new legislation appeared articles discussed the work of the commissions and judges' behaviour, and produced data from sociological research on young offenders, data of a kind that that had not been in the public arena since the 1920s.

The key changes were the following. The new Fundamental Principles of Criminal Law of 1958 raised the age of criminal responsibility to 16 (14 for specified serious crimes), which made a whole range of 'crimes' no longer applicable to youngsters; they gave judges the right to impose compulsory educational measures for offences by under-18-year-olds that did not present a serious danger to society, measures that would not qualify as criminal sanctions. A ruling from the Supreme Court of the USSR of the following year obliged judges in all cases to consider compulsory educational measures in place of criminal sanctions. The Principles set the maximum length of sentence at ten years (to be served in a corrective-labour colony), and stated clearly that the death penalty could not apply to juveniles.[10]

In 1961, as part of the new emphasis on bringing society into governance, commissions for youth affairs were reintroduced. Now under the local authorities, they were to include representatives of local departments and social activists (for example, from the *komsomol*), and to have one paid staff member. Their brief was wide: to deal with all cases of the under-14s, the cases of the 14–15-year-olds that did not qualify for criminal responsibility, and cases of 14–17-year-olds that the courts 'closed' and sent to the commissions. The KDN (the youth affairs commission) could:

- require the individual to make a public apology, or one privately to an individual;
- issue a reprimand or a severe reprimand;
- issue a caution;
- oblige repayment of damages by a 15-year-old, up to 20r (perhaps two weeks' wages);
- place a child under the supervision of parents, school or the collective;
- place in a special medical institution;
- place in a secure educational institution if 11 years old;
- send the case to the procurator.

We referred in chapter 1 to five critical factors that determine the response to deviant behaviour by children: the list of 'crimes', the age of criminal responsibility, the existence of welfare measures for dealing with non-criminal deviant behaviour, the type of criminal justice system, and the range of sanctions. Changes in all of them during this reform period shifted the pendulum quite significantly away from Stalinist punishment towards a much more welfare-oriented position. But

the words 'correctional' and 'compulsory' remained a key part of the lexicon, and no one argued that punishment should have no place.

Can we identify the philosophy that underpinned the new system? It was much cloudier than the welfarist beliefs of the 1920s. Some tried to revive the assumptions of the pre-Stalin period. Boldyrev's description of corrective labour institutions (for adults and for children) as being based on the principles of democracy, humanism, respect for the personality and the belief that 'any criminal, in conditions appropriately organized so as to re-educate him, can be wholly reformed and become a valuable member of our socialist society' (1964: 272–3, quoting from Emel'yanov) offered an idealized picture to be realized. This allowed him to argue for using educational/psychological measures, appropriate for the offender. For children, and here he quotes Kufayev, it is important to develop 'by means of educational methods all the child's hidden capabilities and to destroy the seeds of any harmful traits'. Given that the labour colony's task is to prepare morally upright members of a society building communism and that a radical change in outlook is, for many, achieved within one or two-five months, it would, he argued, be appropriate to send them home to their parents, or to put them under a 'supervisor' (*shef*), or to establish new special open institutions of a transitional type. There should be no obligatory minimum to be served, nor should parole depend on the seriousness of the offence; rather the administration of the colony, together with representatives of society, and from the KDN where the young person lived, should decide when s/he should be released. This is straight welfarist talk. Boldyrev then claims that unfortunately anything that the youth colony achieves is rendered worthless if, at the age of 18, the offender is transferred to an adult colony. (There, by implication, all the good work is undone.) As far as young people are concerned, punishment should only be used as Makarenko advocated: only as a measure of last resort, it should be short, and then the slate should be wiped clean again.

But far more common was a kind of mixed reasoning. Lukanov, the deputy chair of Moscow city court, in an article on youth cases, reminded his fellow judges that:

> the court should be guided by the principle that a sanction is not only retribution for the crime that was committed, but also is aimed at correcting and educating the convict in the spirit of an honest attitude towards work, a meticulous observance of the laws, and respect for the

> rules of socialist life, and the deterring both the convict and others from committing further crimes.

Punishment, deterrence for an individual and others, re-education… there they all are, presenting any judge with an impossible problem, a judge who, in any event, must sentence according to the Code book which, in many cases, does not allow for flexibility.

In the 1960s, with Khrushchev's insistence that society was moving (rather rapidly) towards communism, when crime would disappear, all had to echo the claim that socialism could not breed crime. But, the political atmosphere allowed sociologists such as Sakharov to argue (Сахаров 1967: 41–7):

> With the victory of socialism in the USSR the key social factors, which inevitably give rise to crime, were annihilated and there is now the objective possibility of finally getting rid of this burdensome inheritance from past times. But this does not mean that crime in our country has no causes at all… there are conditions and circumstances which either facilitate or directly encourage crime… these causes can be removed and, consequently, so can crime itself.

As regards these causes, he continued:

> the traditional reference to the remnants of capitalism in people's consciousness as being the cause of crime, while largely correct, is at the same time too general and too vague because it does not explain what is responsible for these remnants, when and why they lead to the committing of crimes… including crimes by youngsters.

There were several features of Soviet society, he suggested, that were not yet socialist and which were responsible for youth crime. The results of a study of 1,000 young offenders, divided between those on police record, those with a suspended sentence and those sentenced to detention, produced (not surprisingly): a small percentage of persistent offenders, broken homes, alcoholic parents, father in prison, poor performance or opting out of school, 15-year-olds unable to find work, unsupportive work collectives, the influence of the street, especially of adult criminals, films, unorganized leisure, alcohol… a third of youth crimes were committed during holidays. Sakharov and others

laid the blame on an array of social institutions, from the family, through schools, work collectives, to local authorities, and more than one author picked out the influence of foreign films (90 per cent of the kids had seen *The Magnificent Seven* compared with only 10 per cent for *Chapaev*) or unhealthy music (Миньковский 1964, 1965; Болдырев 1960, 1964).

When sociological research returns in the 1990s, the findings are depressingly similar. By 2004 *Brigada* and beer have replaced *The Magnificent Seven* and vodka, and the criticisms of the institutions are harsher but the same factors are cited.

How well, however, was the new system working?

First the commissions, the KDN. They were dealing with all the cases involving under-14-year-olds, those for the under-16s that did not qualify as crimes, and all for the 14–17-year-old age group that were passed to them either by the prosecutor at the stage of preliminary investigation or by the court. The majority of cases involving the younger children, and the older, were petty theft and hooliganism or, as the commentators now chose to call it, pranks. By the early 1960s the procurators were diverting half the cases brought to their attention to the KDN, and the judges were doing much the same. Not surprisingly, the commissions struggled: the members had full-time jobs in local authority departments, there was only one paid staff member, and *komsomol* activists could not be relied upon to undertake responsibilities. The commissions were criticized for not engaging properly with schools and work collectives, for not undertaking any serious work with potential or repeat offenders. But then how could they? They had no staff, few opportunities for follow-up, no probation service or social workers to whom they could turn for assistance. The reformers might write of the need for 'social guardians', for real *sheftsvo* on the part of society, referring to the example of East European colleagues, who had professional social workers for young people.

> Our Bulgarian friends are correct when they say that each young person before the court is a living reproach not only to the state institutions involved in the struggle with youth crime but also to each and every member of society. (Миньковский и Мельникова: 25)

However, although in 1967 the KDN received some additional staff support, enthusiasm for community involvement in running local affairs was already waning.

The courts received less criticism, perhaps because they had support in high places, and both the police and prosecutors remained above criticism. Terebilov, himself the deputy-chair of the Supreme Court of the USSR, in 1963 provided an overview of court practice and failings. He favoured making one of the more experienced judges responsible for youth cases, argued that court proceedings for 14–15-year-olds should be like a 'strict teachers' council', without too many formalities, and in a low-key atmosphere. Judges must check that the child had had a defence lawyer from the moment charged, and that the investigator had properly established his age. Judges did not, he suggested, pay sufficient attention to establishing the nature of the home environment, and they should always include an individual ruling directed at removing the causes of the behaviour. Sentences should reflect the aims of correction and re-education (it was absurd to give a 14-year-old an eight-year sentence for attempted rape), and should take into account the time spent in remand. Judges, he argued, must be concerned with the consequences of their actions. Very few of them visited the colonies, whereas it would be instructive for them to do so. And they should consider parole cases, and transfer of 18-year-olds, very carefully (Теребилов 1963).

By 1965 most courts had established a youth section. As we suggested, judges were diverting maybe half the cases to the KDN. Of the remainder, the judges awarded corrective labour at place of work in roughly 10 per cent of the cases, a suspended sentence[11] (custody for a second offence) in 30 per cent, and custody in perhaps 60 per cent of the cases. The options of imposing fines or requiring an apology or recompense for damage were rarely used (Панкратов 1965).

Boldyrev (1965) produced a comparison that showed that a much greater variety of sanctions had been used in the 1920s with the aim of correction, *vospitaniye* and prevention of further offending

Opinion on the length of custodial sentences was divided. Some argued for short sentences, others that they were useless – half the period would have been served in remand and en route to the colony – and it was better to use suspended sentences. One author gives the length of average sentence in 1968 as three years, but this may refer to sentences as opposed to time served, given parole (МООП 1968). All agreed that transferring an 18-year-old to an adult colony merely created recidivists. A statute of 1968 tidied up the colonies: they were to be of two kinds – or of two regimes – 'general' for first-timers, strict for recidivists. Eighteen-year-olds could stay longer. But by now the reform period was over.

While the new 'welfare' environment (albeit still trailing clouds of punishment) looked reasonable on paper it lacked any real substance. Despite Khrushchev's vision of society gradually taking over governance, the reality was that of an entrenched system of ministerial control, one in which departments vied with each other for resources and where too many were responsible for aspects of children's lives. The emphasis under Khrushchev on bringing 'society' in – in the person of the officially organized voluntary organizations (trade unions, *komsomol*) – both had the consequence that this took on a formal, organized, character *and* was damaging because it implied that this could substitute for trained professional agencies to fill the 'social' slot. Government agencies remained understaffed, and there was no development of professional social services, nor, of course, of voluntary charitable activity. The pseudo-social organizations became less and less active while, by their presence, they denied a role for others and gave social activism a bad name.

Brezhnev – the rhetoric of welfare

The pendulum had moved away from extreme repression back cautiously towards welfare but now, in the stagnant years under Brezhnev and his successors, it stuck. Under Stalin, the language of welfare had become distorted by its accompanying a repressive and punitive reality. Under Khrushchev the reformers were able to use it to press for changes, but not for long. With Brezhnev in power, the words drooped again, lost their colour, became merely a pale rhetoric in a still harsh environment.

Under Soviet rule, the top political leadership opened or shut the windows. The opening allowed those who were prepared to do so to advance their case, and hence the importance of the arguments and positioning of the reform community at a moment when there was a window of opportunity. Victories could be won. But if the leadership lost interest or changed tack, initiatives for further reform faded from the printed page and out of the policy field. Many of the reformers' proposals and criticisms would appear again on the reformers' agenda in the 1990s. But it was not until 2000, nearly forty years later, that the Supreme Court of the Russian Federation produced an echo of Terebilov's criticisms and proposals of 1963.

The raising of the age of criminal responsibility and the introduction of the KDN had sent numbers of recorded crimes rocketing down in the 1960s: all offences of the under-14-year-olds, and a sizable proportion of

those of the 14–17-year-olds, were no longer included in the crime statistics. Here is a good example of how crime rates reflect changes in policy rather than anything to do with behaviour itself. Recorded youth crime then rose sharply in the first half of the 1970s and continued to rise steadily but not dramatically during the 1980s. The authorities showed no signs of perceiving this to be a threat to the maintenance of social order and control (perhaps the rise in alcoholism was more worrying). As with so much else the Brezhnev–Chernenko leadership preferred to simply close its eyes.

The theoretical question of punishment was raised, and briefly discussed, in the 1960s and 1970s, but in relation to all criminals, not specifically the young, and the issues of proportionality, or of indeterminate sentencing, have never received the attention that penal theorists in the west have given them. The discussion revolved around the effectiveness of sentencing. Shargorodskii correctly argued that one could only assess the effectiveness of sentencing if the aim (the purpose) of sentencing was specified. He suggested that there might be different aims: punishment (*kara*) or retribution (*vozmyezdiye*); the restoration of violated rights (justice); *vospitaniye*; deterrence – either for the individual or for others. In his view, as contrasted with those of some others, punishment for its own sake had no place in Soviet law, whose aims were correction and *vospitaniye* in order to deter future crime. Summarizing this discussion in a publication of the mid-1980s devoted to a large-scale survey of public attitudes to crime, the authors suggested that sentencing in the Soviet criminal justice system contained elements of all these aims. They themselves preferred the idea of correction *(ispravleniye*) compared with that of 'complete re-education' or *vospitaniye* but, they argued, the key aim should be that of creating a healthy and useful member of society. Two-thirds of their respondents agreed with this, but other aims that received significant support were: punish and thus restore justice; isolate the guilty for the safety of society; deter others (Ефремова и др 1984). We shall come back to today's attitudes towards crime and punishment in chapter 5. Here we draw attention to the variety of aims that sentencing is meant to be achieving, aims that would require different sentencing strategies and cannot be combined within one type of sentence. Not a problem, we remind the reader, that is peculiar to the Russian criminal justice system.

There was no serious discussion of youth crime either in the media or academic journals, either by academics or justice officials. Officially and publicly, crime had been taken off the public agenda, together with

sociological studies. Only a few studies of the psychology of young offenders, always accompanied by the statement that there is no biological basis to criminal behaviour, made their appearance. The social environment remained responsible for the 'deformed' personality of the young offender, but no in-depth analysis of this, or of the role played by the institutions responsible for treating deviant behaviour, was undertaken.

Where could the criminologists seek their explanation for the continued, constant, rise in youth crime? If you are compelled to find your answer within a framework that assumes that crime is socially determined, that the essential social and political contours of your society cannot give rise to crime, and crime will therefore gradually disappear, you have a problem. The claim that the remnants of capitalism in people's minds was responsible was wearing thin by the 1960s. As we saw, the political environment at that time had allowed the reformers to mount quite a substantial criticism of social arrangements and to touch upon institutional failings. Under Brezhnev this was no longer possible. As the date for the arrival of communism came and went, it was clear that the original framework could not explain Soviet developments nor offer a perspective for the future. The small criminological community, which attracted few newcomers, could only mark time, intellectually, and had few contacts with its western neighbours. It was very isolated.

Today some look back to the pre-perestroika period as one in which all the institutions from schools to police to social welfare agencies or social organizations worked together, providing opportunities for and engaging in preventive work with errant children, but, if this was true, it did not prevent rising crime rates nor the inhumane treatment of young people by the criminal justice system. The KDN had settled into a routine, and there is no reason to think that the right to defence meant anything very much for the majority of the children who found themselves before prosecutor and then judge. The severe criminal codes and lack of alternative sanctions ensured that the almost routine practice of sending young people away to colonies, often for minor offences, continued. The officials who staffed the criminal justice system had grown accustomed to acting as one arm of a political system, sorting out those who broke the rules established by the ruling Communist Party. The legacy of twenty years of stagnation would have consequences when, with startling rapidity, the political barriers fell and social problems became a matter for public discussion.

CHAPTER 3

England and Wales 1900–1990: Welfare Advances and Retreats

The idea of the tariff for the offence or making the punishment fit the crime dies hard; but it must be uprooted if reformation rather than punishment is to be – as it should be for young offenders – the guiding principle.
Molony Committee 1927: 48

For most of the twentieth century England and Wales, in contrast to Russia, held to a remarkably steady course in its policies towards young law-breakers. From the beginning of the century until the 1980s one of the guiding principles remained the gradual abolition of custody for young people. Yet, as the century progressed, both the strategies employed and the thinking about young offenders began to change. By the 1980s welfare principles, as advanced by earlier generations of reformers and policy-makers, were under challenge, and disagreement over the use and value of custody had emerged as an issue. Protecting society became a priority. Punishment, it began to be argued, had a part to play. Yet, oddly enough, the custody figures declined steadily in the 1980s. In the 1990s the picture changes – both the policies and their impact on custody – and thereafter the figures begin to rise. Was this a result of lessons learnt over the previous half-century, or an ignoring of them, or was it a response to a quite different situation? In chapter 7 we attempt an answer. Here we look at the pre-history, both to assess the strategies, which, it was hoped, would gradually lead to the ending of custody, and to discover what influenced the making and implementation of policy.

First, a comment, with relevance to any comparative work. The choice of comparators influences the features that stand out. Reading the committee reports, politicians' statements and Acts of Parliament, I became aware that the Russian picture was shaping my view of English developments. I was looking at English experience from a 'Russian' perspective, discovering similarities and differences that I had not always expected and noting aspects of the way things were done in England that stood in sharp contrast

to Russia. Had I been looking at England and Wales against a background of, for example, developments in Germany or the United States, other aspects would surely have commanded attention.

Perhaps most striking are the shared assumptions, in the two countries, particularly in the inter-war years, of the causes of youth crime, and of the need to rehabilitate or re-educate the young offender. However, the English policy-making environment, with its input from a wide variety of actors – political, governmental, judicial and social (voluntary and professional) – emerges as very different. Policy-making moved slowly, open to public scrutiny, and often resulted in compromises. Some of the same issues – most notably the role of criminal justice agencies versus social welfare institutions, and the tension between welfare and punishment – rear their heads. Yet the implementation of policy, because of the variety of agencies or institutions involved, and competition between them, seems in England much less straightforward. Legislators may have intended one thing, outcomes were another. We noted this too in Russia, but in England and Wales the gap between legislative intention and the use of custody as a sanction by those who implemented the law is more noticeable, and widened as time went on.

In England, throughout the period, certain issues dominated debate and policy: the age of the juvenile, the role of magistrates vis-à-vis higher courts or local authorities, forms of institutional 'care' or detention, and the attempt to find alternatives to prison. But first, as background: three Acts, passed before the First World War, embodied principles that continued to exert a major influence on the treatment of young offenders throughout the period.

The 1907 Probation of Offenders' Act allowed courts to suspend sentencing or discharge an offender under a probation order, which entailed supervision, for a specified period, by a volunteer 'officer of the court' or probation officer.

The 1908 Children Act, while retaining the age of criminal responsibility as 7 (together with the principle of *doli incapax* for ages from 7 to 14), introduced juvenile courts for those under the age of 16 (except on a charge of homicide). The juvenile court was a court of summary jurisdiction, but with a special juvenile magistrate. Crown courts dealt with serious offences, even for young children. No child under 14 was to be sent to prison, and 14- or 15-year-olds only with a special certificate justifying the decision. If an institutional response was required, the child should be sent to an industrial school or a reformatory.

For an older group (16–20-year-olds), who would come before adult courts, the Children Act and the Crime Prevention Act 1908 confirmed the use of Borstal training.[1]

Reclaiming and re-educating the unfortunate

In 1925 the government, concerned that it was time to review the workings of the 1908 Act, set up the Molony Committee to 'inquire into the treatment of young offenders and young people who, owing to bad associations or surroundings, require protection and training and to recommend any changes needed in law'. The committee reported in 1927. Reforming, rather than punishing the offender, the Committee noted, had become a key principle of penal policy and this was even more relevant in the case of the young offender 'whose character is still plastic and the more readily molded by wise and liberal treatment'. Although, the Committee continued, the law draws a distinction between the neglected and the delinquent, 'in many cases the tendency to commit offenses is only an outcome of the conditions of neglect, and there is little room for discrimination either in the character of the young person concerned or in the appropriate method of treatment' (pp. 5–6).

While favouring the retention of juvenile courts as part of the criminal justice system, the Committee spelt out the qualities needed in a magistrate: 'love of young people, sympathy with their interests and an imaginative insight into their difficulties'. The words 'conviction' and 'sentence', the Committee recommended, should disappear because they stigmatized young people. (A key concern at the time was that if a young person received a conviction it barred him from joining the army or starting a new life in the colonies. The point is still being made today: a conviction can end a young person's chance of employment or, as happened in 2008, jeopardize acceptance by a university.)

Further, the Committee argued (p. 48):

> It is not always recognized that many offences committed by lads and young women between 17 and 21 are equally due to bad surroundings or defective home training and that the remedy there is to be found not so much in the punishment for the offence as in the provision of the right sort of training for the offender … the idea of the tariff for the offence or making the punishment fit the crime dies hard; but it must be uprooted

> if reformation rather than punishment is to be – as it should be for young offenders – the guiding principle.

Reading the Report I find myself back in the familiar world of the Russian texts of the 1920s. At first this seems a little surprising. The committee, after all, was an upper-class and establishment group of individuals, who surely viewed revolutionary developments in Russia with abhorrence. But ideas or assumptions in a historical period, the *zeitgeist,* sometimes linked to particular generations, can transcend boundaries. This does not mean that there were no differences between the Russian penal reformers and their English counterparts or that their politicians behaved similarly. We shall look in more detail at both these issues in a moment. But certain ideas, which emerged in the late nineteenth century, continued to exert their hold on those seeking to find strategies to prevent juvenile crime and to minimize cruelty to children; more than once they prompted similar responses, although their advocates were unaware of each other. We note this in relation to England and Russia in the 1920s and again in the 1960s.

The Committee, and those who gave evidence to it, as did their counterparts in Russia, clearly believed strongly that the appalling conditions that many children experienced (poverty, squalor and abuse or neglect) led to crime: deprived children became depraved children. Such children should be seen as one category – children in need of care – and they could and should be 'saved' – though education, care, example and discipline. 'Reclaiming the Young Offender', the subtitle of Bailey's study of the inter-war period, captures the ethos of the time. The task was to 'reclaim' the boy or girl, and provide them with their rightful place as a 'healthy' member of society. In an influential study, Cyril Burt, child psychologist, wrote of 'the susceptible mind' of the child:

> The typical delinquent is a child with a dull, uneducated mind, struggling to control an emotional and impulsive temperament, both housed in a weak, afflicted body and living with a demoralized family in an impoverished home. (quoted by Bailey 1987: 14)

Yet, like their Russian colleagues, the English reformers did not romanticize the young offender nor underestimate the task. Society, family and the child all played a part. Imprisonment could not effect a cure. The Committee was

much impressed by the unanimity with which prison staff opposed custody for young people, and with their arguments that young people are 'plastic and impressionable', that the prison environment 'contaminates', it does not provide time or space for training, and it 'loses its deterrent effect' (p. 79). Supervision by probation officers, less and better institutional education, wider use of Borstal, and further reduction in custody for the age range 14–20 were all recommended by the Committee. Furthermore:

> Any court which passes a sentence of imprisonment upon a person between 17–21 should be required to give a certificate to the effect that it is satisfied that the offender cannot properly be dealt with except by committal to prison. *We hope that before too long some alternative methods may be devised which will avoid altogether the use of prisons for persons under 21*. (Molony Committee 1927: 80, my emphasis – MM]

While both Russian and English reformers saw the child in need of care and protection and the young offender as one category – the child in need of help – they parted company over the issue of age, and this is still true today. It was not just that the age of criminal responsibility in England remained very low compared with Russia (7 in 1908, only raised to 10 in 1963, where it still stands) but that concern with the 'juvenile' in Russia ended at 18. The English were concerned with a much larger age-group – 7 to 20 – and tended to make dividing lines at 14, and again at 16 or 17, referring to 'children' and to 'young people'. Although the Russian Criminal Code distinguishes between age (14 or 16) depending upon the seriousness of the crime, and although, at different times, over-18s have been allowed to remain in the juvenile colonies, the English approach for much of the last century was for younger children between 7 and 16 to come before juvenile courts, except in homicide cases when they went before an adult court; 16–20-year-olds came before adult courts, and there were special institutions (Borstals) to cater for them. Both the minimum and the maximum age of the youth category are important, as we shall see when looking at other countries.

However, as regards the need to re-educate the young offender, and the type of re-education, the approaches had much in common. The Children and Young Persons Act of 1933 (Article 44, 1), which remains on the statute book today, stipulated:

> Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the young person, and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

The English continued to use industrial schools and reformatories for the younger children (under 16) until replacing them with approved schools (state and charitable) in 1933. By the 1920s, and throughout the rest of the inter-war years, Borstals became the key institution for 'reclaiming' 16–20-year-olds. Many English reformers had set up and worked in boys clubs. The Borstal experiment of 1902, a secure institution for boys aged between 16 and 21, based in the Borstal prison in Kent, provided training, education and sport in a highly disciplined environment, based on a house system, with house masters and codes of honour. With a minimum sentence of two years, a maximum of three, for those who would otherwise have been sent to prison, good behaviour could result in earlier parole. In 1932 the first 'open' Borstal was set up; by 1938, of the eight Borstals three were open. One closed Borstal remained for young women. It was one of the responsibilities of a Borstal to find employment and shelter for the young person leaving, and to follow up his or her progress. Not surprisingly, this was difficult at times of high unemployment but, it was claimed, recidivism remained relatively low among those released.

The ethos of the Borstals (albeit with its English frills of houses, masters and corporal punishment) had its Russian counterpart in the colonies, and in Makarenko's methods in the 1920s. The correctional-labour colonies for 14–17-year-olds, which came to dominate the scene from the mid-1930s, relied pretty crudely on labour as the corrective, and for those of their inmates serving long sentences, the next stage was to move on to an adult colony. In this respect the English Borstals were more similar to the secure special schools, introduced under Khrushchev and still in existence today. However, by the 1940s and 1950s the Borstal system had run into trouble: its expansion and use of unqualified staff made it a less and less effective tool for 'training' young people. In 1961 the age for entry into Borstal was dropped to 15, and it became easier to transfer Borstal inmates into the prison system. As with the Russian secure educational institutions, both of the earlier period and today, the Borstal 'experiment' bears witness to

the difficulty of educating within a secure institution, which so easily can became a place of punishment for vulnerable young people.

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Six years elapsed before some of the Molony Committee's recommendations found a place in the Children and Young Persons Act of 1933. The jurisdiction of the juvenile courts was extended to include 16-year-olds. Remand homes, under the local authority, should cater for 14–16-year-olds committed for trial, and also for those given a one-month sentence, but 'unruly' younger children and 17–20-year-olds could still be held on remand in prison. Sentencing the 16–20-year-olds to Borstal, or to prison, was the prerogative of the higher courts.[2]

In 1938 and again in 1948 the government returned to the issue of custody for young offenders.[3]

Both Labour and Conservative parties produced reports on the treatment of young offenders, in agreement that crime by young people 'is mainly the outcome of conditions, social, economic, and to some extent hereditary, for which they themselves cannot be blamed. The blame … rests largely upon society' (*Youth Astray*, Conservative Party report, 1946, quoted by Bailey 1987: 290). When presenting the bill to Parliament, Chuter Ede referred back to the 1927 report, and stated that one of the main aims of the bill was to effect an immediate reduction in the numbers of young people received into prison (that is, either on remand or sentenced) and to move towards the abolition of imprisonment for all sentenced by a magistrate's court.[4]

The 1948 Criminal Justice Act seemingly confirmed this. Prison should only be used for anyone between the ages of 15 and 21 if the (Crown) court believed no other method to be appropriate. Magistrates could still send offenders to approved schools, the favoured option, but there were to be new (tougher) detention centres under the Home Office, with a maximum stay of three months, for anyone between the age of 14 and 21, and magistrates were not given the right to send older children to Borstal (seen as a non-prison option) in lieu of these. This surely did signify a departure from the principle that training and education should be part of any 'sentence' or measure. Despite the wording 'detention centre', it is difficult not to see this as the first move to introducing a 'prison' for young people, a vain attempt to find an alternative.

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The belief that society was responsible for producing its deprived and depraved children, that a deprived child could all too easily become a depraved child, and that attention to the *needs* of all these children should be of paramount concern, led many early reformers to advocate treating young offenders outside the criminal justice framework. The English reliance upon a juvenile court, operating as a summary court, dealing with young people as criminals, did not go unchallenged. There were those giving evidence to the Molony Committee who wanted the juvenile courts to drop the use of criminal proceedings, which, the Committee recognized 'rests upon the proposition that to vindicate society and the law, the accused must be punished' (1927: 18). However, the Committee came out in favour of continuing with the court as a 'law' court rather than giving it the role of a welfare tribunal as had the Americans or the Russians with their juvenile courts. It did, however, emphasize the need to improve the choice of magistrates, to have a panel of magistrates with the appropriate qualities, and to simplify the procedures, measures that the 1933 Act attempted to put in practice. Thereafter the English system has struggled to reconcile the demands of criminal justice and the priority of the child's welfare, redrawing the roles of magistrate, probation officers, police, local authorities and social workers.

The magistrates, since 1933 nominated by their colleagues, had no legal training. During the period from 1908 to 1988 they were dealing with both criminal offences and civil cases requiring care and protection. Their powers were, however, limited. First, they dealt only with the age-group 7–16, and not with homicide cases. If they felt a case should warrant a Borstal sentence, they had to refer it on to a higher court. After 1948, with the introduction of detention centres, magistrates faced an unwelcome choice between the lengthy procedure of handing over the case to a higher court, which could impose Borstal, or sentencing the offender to a detention centre. Throughout the period the magistrates argued, unsuccessfully, for the right to sentence to Borstal.

How did the juvenile magistrates interpret their brief – to address the welfare of the child – during the period from 1920 to 1948? While the numbers they dealt with rose sharply from the late 1930s onwards, and the 16-year-olds were now included, sentencing policy did not change dramatically. Roughly a third of those convicted continued to receive 'nominal penalties' – dismissals or binding over; probation moved up to become the most favoured measure – from perhaps a quarter in 1920 to 40 per cent in 1948;

fines dropped to single figures in the 1920s and 1930s but were back at 14 per cent in 1948; whipping had fallen out of use by the late 1930s. Custodial measures (which includes sending to industrial schools, reformatories, then to approved schools, remand homes and prison) accounted throughout for about 10 per cent of sentences. By 1948 approved schools (of which there were 145 in 1946) were the favoured option for custody (Bailey 1987: 316).

As we see from the above figures, magistrates were anxious to make use of the services of probation officers. The Molony Committee favoured their further involvement with young people released from Borstal and reformatories. The 1948 Act reaffirmed that the role of the probation service, originally a charitable agency of volunteers, now under Home Office control, and with its own hostels, was to 'advise, assist and befriend' those issued with probation orders. Yet by this time others were entering the field. There always had been a large number of private or charitable approved schools (the inheritance of Victorian philanthropy), and local authorities too had set up schools, and remand homes. The 1948 Criminal Justice Act established attendance centres (under the police) and detention centres while in the same year the Children's Act established the profession of social workers, employed by local authorities.

Serious crimes, even by young children, fell under the brief of higher courts. The magistrates could not sentence to Borstal, nor could they take up any case involving a youngster over the age of 16. Hence, the system made a distinction: magistrates were to deal with children, and children whose offences were not grievous. 'Young people' (17–20) and children, who committed serious crimes and could understand what they had done, came before the adult courts.

1960s – the peak of welfarism

In retrospect it is remarkable that, despite the conviction that young people's crime has its roots in social deprivation, measures to reclaim and reform young offenders occupied the law-makers far more than strategies to alter the environment in which they lived. Only in the post-war period did government begin to address these issues. By the 1960s, the need for society to address the causes of delinquency was on the agenda. The Ingleby Committee (set up in 1956), which reported in 1960, again emphasized the link between delinquency and social deprivation. It advocated channelling more resources to poorer neighbourhoods; there were families, it reported,

that, for one reason or another, fell between the existing services and for which family advice centres should provide support.[5] In an atmosphere of 'decentralization, preventive intervention, decriminalization, and treatment' (Pitts 1988: 7), and the election of a Labour government in 1964, this was followed in 1965 by a government White Paper, *The Child, the Family and the Young Offender*, which invited discussion 'of possible measures to support the family, forestall and reduce delinquency, and revise the law and practice relating to young offenders in England and Wales' (1965: 3).

Among the measures proposed were:

- raising the age of criminal responsibility to 16;
- replacing juvenile courts by family panels of social and psychiatric experts and social workers, to whom young people would be referred and who, in turn, would refer them on to specialized agencies;
- ensuring that no one under the age of 18 should enter an institution run by the prison service.

In Russia, in the reform atmosphere of the 1960s, the 'welfare' or 're-educating philosophy' gained a new lease of life, and the commissions were reintroduced. They would take the youngest and less serious offenders out of the criminal justice system. In England and in Scotland the reformers, who included the government, moved in the same direction. Following the Kilbrandon Report, in 1968 Scotland introduced Children's Hearings, panels of lay representatives of the local community, to hear all cases concerning under-16s, but in England and Wales the government, after initial enthusiasm, backed away.

Subsequent discussion and opposition persuaded the government to present a modified document, *Children in Trouble*, to Parliament in 1968, and this became the Children and Young Persons Act of 1969, often described as the most welfare-oriented piece of legislation passed by Parliament during the twentieth century.

> Juvenile delinquency [it argued] has no single cause, manifestation or cure. Its origins are many, and the range of behaviour which it covers is equally wide. At some points it merges almost imperceptibly with behaviour which does not contravene the law. A child's behaviour is influenced by genetic, emotional and intellectual factors, his maturity,

> and his family, school, neighbourhood and wider social setting. It is probably a minority of children who grow up without ever misbehaving in ways which may be contrary to the law. Frequently such behaviour is no more than an incident in the pattern of a child's normal development. But sometimes it is a response to unsatisfactory family or social circumstances … or a symptom of a deviant, damaged or abnormal personality. Early recognition and full assessment are particularly important in these more serious cases. Variety and flexibility in the measures that can be taken are equally important…

The authors recognized that, 'An important object of the criminal law is to protect society' against the consequences of delinquent behaviour, which range from 'minor nuisance to considerable and suffering for the community'

> … but the community also recognizes the importance of caring for those who are too young to protect themselves. … The aims of protecting society from juvenile delinquency, and of helping children in trouble to grow up into mature and law-abiding persons, are complementary and not contradictory. ….
>
> The criminal law, in its application to juvenile offenders [it continued] has for many years recognized the welfare of the individual as an important criterion, and has made provision for special forms of treatment. (Points 6–8)

The 1969 Act incorporated criticisms made of the original 1965 White Paper. Raising the age of criminal responsibility to 16 or abolishing the juvenile courts were forgotten, although the Act did aim at ensuring that, 'as far as possible, juvenile offenders should be dealt with outside the courts with the agreement of their parents' (para. 11) and, in a significant change, laid down that an offence by a 10–13-year-old would not in itself be sufficient to bring him or her before the court; only if it could be established that the child was in need of care, protection or control would the offence be considered, and then only as part of care and protection (civil) proceedings.

The Act emphasized both 'diversion from courts and the provision of welfare in courts' (Gelsthorpe and Morris 1994: 965; Morgan and Newburn 2006). For 14–16-year-olds (except for a charge of homicide), referral to court should only be used in the last instance. Only if mandatory prior

consultation between police and local services had not produced an alternative, and the magistrate agreed, could a case come to court. The magistrate's range of options was limited: supervision of children under the age of 14 passed to the local authority (which was to provide community homes in lieu of approved schools); for 14–16-year-olds care orders and supervision should be used wherever possible. The local authority (social worker) working together with the probation service was to devise new types of Intermediate Treatment for this age group. Attendance centres and detention centres would be phased out, as would Borstal for under-17-year-olds. Penal custody for 14–16-year-olds would gradually disappear.

Yet the results of this most radical piece of legislation were far from those the drafters of the Act had envisioned. The reasons for this lie in the complexity of the relationships between magistrates, local authorities, the probation and prison service, in police practices and sentencing policy. Compared with the Russian, the English system resembles a battlefield of competing parties, at every level, whether that of policy-making or implementation. It is to this aspect we now turn.

Policy-making and implementation

All the major legislative changes (1933, 1948, 1969) were preceded by drawn-out inquiries, discussion, white papers and/or draft legislation, and compromises in the final stages. The period between the Molony Committee's report in 1927 and the Children and Young Persons Act was six years, and the passage of the 1969 Act was the result of a process begun more than ten years earlier with the setting up of the Ingleby Committee. This contrasts sharply with the Russian experience, where legislation moved much faster, with little public discussion or overt opposition and, as we saw, with direct intervention by the political leader, Stalin, in 1935. In Russia an alliance between reformers and the political leadership was critical, not, as in the UK, the marshalling of evidence and arguments against other interested parties (in the judiciary, police, penal service, the House of Commons and the House of Lords, or in the voluntary sector), or in finding allies among them. Rearguard action by the House of Lords could save whipping or stall the abolition of capital punishment. If the 1933 Act was a compromise, so too was the 1948 Criminal Justice Act. The magistrates, now with years of experience, could in the 1960s ward off the proposal to abolish juvenile courts. Interested parties, it was assumed, had a right to be consulted, and compromises were needed to get measures through parliament.

Another feature of the period was the seriousness and professionalism with which the committees collected evidence, assessed it and made their recommendations. The Molony Committee, which took two years to gather evidence and views from a wide range of professionals, experts, judges, prison staff and probation officers, produced a report that a home secretary, taking up office today, would do well to read. Not only are some the arguments advanced still relevant but the report stands as an example of the kind of investigation that a responsible government should commission (and expect) before embarking on changes in policy towards young offenders.

The government, and the wider political environment, of course mattered. Changes in government delayed the 1933 Act, the war delayed the 1948 Act (and it was important that a Labour government was in power), and it is difficult to imagine the 1969 Act without the influence of the social reformers around Harold Wilson (yet by 1974 they were strangely silent). Unfortunately, the Act's allowing for a gradual introduction of some of the new measures, and its vagueness over IT (Intermediate Treatment) allowed for caution, and for its emasculation. The incoming Conservative government under Edward Heath made no attempt to close the attendance and detention centres, nor to phase out Borstal. Magistrates retained the option of sentencing to detention or passing the cases on to a higher court for a Borstal sentence; the social workers had greater powers to determine the content of care orders and supervisory orders, but this, inadvertently, could lead to those who infringed the conditions coming back to court for detention. Mandatory consultation did not occur. Intermediate Treatment developed slowly.

Children in Trouble had referred to:

> juvenile courts … voluntary organizations … the probation service [which] has played a pioneering role … in developing the concepts of diagnosis and treatment … the approved schools [which] have done much to develop the concept of social education … juvenile liaison officer schemes in some areas [the police contribution to crime prevention] … the children's departments of local authorities… (point 8)

and suggested that, in cooperation with each other, all had an important role to play. But, understandably, their views and their interests did not necessarily coincide, and this made implementation far from straightforward.

Results were very different from those the drafters of the Act had envisioned. Against all expectations, custodial sentencing rose. And this was during a period when crime was rising slowly, and the police were making increasing use of cautions or informal warnings to divert young people away from the courts. In 1970 the police were cautioning a third of known young offenders; by 1979 this had risen to a half. The number of boys aged 14–16 sentenced to custody rose from 3,200 in 1971 to 7,700 in 1981. Magistrates, it seems, were opting in favour of custody and against care orders (Gelsthorpe and Morris 1994; Allen 1991: 31; on custody vs care orders, Bottoms 2002: Table 15.4). Yet they continued to discharge, to award fines or community (supervisory) orders in much the same proportions as before. No one was satisfied. The Right argued that not enough was being done to reduce crime, the Left was dismayed that despite the talk of treatment, incarceration was increasing. Borstal was no longer reducing the pool of reoffenders. With the return of the Wilson government in 1974 one might have expected action, but other issues were deemed more important, and nothing was done.

The 1982 Criminal Justice Act, which we come to in a moment, bore the strong imprint of a Conservative government appealing to the nation as a 'law and order government'. Yet it is striking that from turn of the century through until the 1980s, despite the differences within the political and policy-making elite, there was a broad consensus that punishing or locking up children was not the answer to juvenile crime, and that society had a responsibility to step in with education and support (albeit in institutions) for those whose parents or society was failing. *The Times*, a strongly establishment newspaper, suggested that the 1948 Act was the product of 'a common stock of liberal thought to which men of all parties and of none have contributed' (5 November 1947, quoted by Bailey 1987: 303), and even the 1982 Act contained elements that emphasized the use of custody as a measure of last resort.

1980s – short, sharp shocks

The Conservative government returned to power in 1979, with a bid to act as a law-and-order government. It favoured the detention centres as administrators of short, sharp shocks, and child care services were now described as part of 'the national pattern of law-and-order services' (Patrick Jenkins, Secretary of State for Social Services, quoted by Davies 1982: 34). The process of preparing and passing legislation was speeded up. By 1980

the Home Office had produced a White Paper, and by 1982 the Criminal Justice Act, which included provisions for young people, was on the statute book. The Home Office and the government continued to insist that the aim was to reduce custody for young people, but this had begun to sound like a piece of obligatory rhetoric, rather than a deeply held conviction.

Borstal was abolished, and replaced by Youth Custody Centres where 15–20-year-olds would serve determinate sentences (with a maximum of 12 months for under-17-year-olds). Magistrates could also send 15–20-year-olds to detention centres, for short, sharp sentences (a minimum of three weeks) under a tougher regime. However, Section 1(4) of the Act specified that a custodial sentence should only be passed if

i) the offender appeared unable or unwilling to respond to non-custodial sentences;
ii) a custodial sentence was necessary for the protection of the public;
iii) the offence was so serious that a non-custodial sentence could not be justified.

This, it seems was the one concession the opponents of custody had wrung from the government. Both the Probation Service and the prison governors expected and feared an increase in custodial sentencing (Allen 1991: 36). There was little evidence, from the preceding period, that magistrates and social workers would work together to devise alternatives to custody.

However, and to the surprise of practitioners and specialists, the next decade saw the number of 14–16-year-olds sentenced to custody decline back to the level it had been at the beginning of the 1970s.[6] While the fall in size of age cohort by nearly 20 per cent in the 1980s almost certainly contributed, it cannot be held responsible. The crime rate continued to rise, albeit slowly, until 1985 before moving down (Gelsthorpe and Morris 1994). Despite the government's 'tough on crime' rhetoric, none of the practitioners seemed anxious to pursue a more punitive agenda. The police continued to extend cautioning – up to 70 per cent in the cases of known boy offenders between the age of 14 and 16 (Bottoms 2002) and thus diverted cases from court. Social workers had become increasingly wary of interventions that might result in detention, and worked more closely with magistrates, police and probation officers to find measures to treat offending behaviour within the community. In this more cooperative environment, Section 1(4) and Section 2(2), which

required a Social Enquiry report before a custodial sentence be imposed, influenced court practice.

A major injection of funding in 1983 for the Department of Health and Social Services to support IT at last bore fruit in local projects, involving both government and voluntary bodies, and suggested to magistrates that alternative workable measures were available. Perhaps most important the magistrates, now with greater powers to sentence (Borstal had gone), felt more secure in their role as 'criminal justices'. But they disliked the government's insistence on tougher regimes in detention centres, when the evidence showed that this had no effect, and showed their disapproval by using other sanctions (Rutherford 1989; Allen 1991).

In 1988 the government introduced a Green Paper, which seemed to herald a change of direction, back to an earlier philosophy:

> Most young offenders grow out of crime as they become more mature and responsible. They need encouragement and help to become law abiding. Even a short period of custody is quite likely to confirm them as criminals, particularly as they acquire new criminal skills from the more sophisticated offenders. They see themselves labeled as criminals and behave accordingly. (*Punishment, Custody and the Community*, paras. 2.17–2.19, quoted by Morgan and Newburn 2006: 1028)

David Faulkner, Head of the Home Office Crime Department (1982–90), suggested that 'the visible reduction of known juvenile offending' should be attributed to the use of alternatives to custody, and in 1990 a Home Office circular stated:

> There is widespread agreement that the courts should only be used as a measure of last resort, particularly for juveniles and young adults; and that diversion from court by means of cautioning or other forms of action may reduce the likelihood of reoffending. These factors would support a policy within which cautioning is used for a wide range of offences and offenders. (Home Office Circular 59/1990, cited in NACRO 2005: 28)

Yet, at the same time, a line was being drawn between criminal and care cases. The 1989 Children Act abolished care orders in cases of offending behaviour. Family courts were to deal with cases of care and protection; the

juvenile courts (renamed Youth Courts in 1991, with their brief extended to include 17-year-olds) were to deal with criminal offences. Children had been reclassified into two separate categories: those in need of care, and offenders.

By the end of the 1980s, the industrial schools, reformatories, approved schools, remand homes and Borstals, which had dominated the landscape for most of the previous eighty years, had gone. The probation service had lost ground, the social workers had gained. The role of charitable, non-professional institutions had declined, although they were still there for children in need of care and protection. Perhaps IT could bring local authorities and the other players together, although it was not clear whether the projects were directed at youth at risk more generally or aimed at offering alternatives to custody (Davies 1982). Custody was now firmly back as part of the landscape in the form of Youth Custody Centres under the prison service, to which youngsters could be sent, on remand, or to serve sentences of up to 12 months.

What are the lessons that might be learnt from the history of youth policy in England and Wales?

First, that a concern with the damage done by and the ineffectiveness of prison can produce a faith in alternatives, which may set out to be different, but, when they fail, 'prisons' return. Why do they fail? Because attempts to reclaim or re-educate young offenders without tackling the (recognized) causes of offending – poverty, neglect, abuse – can only succeed in individual cases. The cards remain stacked against the child.

Second, a modified criminal justice system that demands that its magistrates make the welfare of the offender their priority, and abjure punishment, will find its officers struggling. A separate system of higher courts to deal with serious offences and those by older children reinforces the perception of children as belonging to one or other category: either in need or criminal.

More positively, there are lessons to be learnt from the way governments went about seeking expertise, opinions and recognizing interests. There is also evidence that those involved (magistrates and police) did not hold rigid views or attitudes on how best to respond to young offenders, and that law and order agencies can cooperate with social workers and voluntary agencies (even if with difficulty) to find solutions that work to young people's advantage.

Rethinking penal policy: The wider context

By the 1980s the thinking about juvenile crime and responses to it had changed in more than one country, and not only in one direction. The welfare consensus was evaporating. Some countries (Scotland, as we saw, and Scandinavia) opted for decriminalization. In the United States, and in England, the opposite occurred.

While one of the assumptions underlying the welfare approach is that society, pursuing policies that produce poverty and social injustices, is largely responsible for creating its criminals, the neo-liberalism of the 1980s saw it differently. For Thatcher or Reagan the individual was responsible. If crime exists in a society in which opportunities are open to all, we cannot lay the blame on society. Whereas the welfare approach – taken to extremes – sees 'crime' as disappearing in a society of equals (remember the Communist Party programme?), neo-liberalism views crime as a normal part of society. The assumption is that individuals will seize opportunities, if offered to them, to better themselves or pursue their own interests. The aim then becomes one of lessening the opportunities for crime (more cameras, more police, no wearing of hoods), of isolating the offenders and setting up safe 'gated' communities. The focus moves away from trying to change those features in the environment that, it is thought, breed crime – poverty, unemployment, deprivation in a wealthy society – to one of safeguarding the existing environment. Crime, like unemployment, becomes a 'fact of life', part of a normal society, and the criminal justice system should deal with it.

In America concerns that welfarism was not working began to be voiced, insistently, against a background of rising crime rates in the 1970s. The professionals – police, judges, prison staff, welfare workers – were under attack for failing to counter crime. And sentencing was seen partly to blame. Now here children were not the target. Adults account for 80–90 per cent of convicted criminals in all our societies and, not surprisingly, it is the adult criminal who is the main focus of criminal justice. However, policy towards adults usually exerts a strong influence on youth justice. In theory the policies could be sharply different – retribution for adults, restorative justice for children – but in reality it rarely, if ever, works like that.[7] Among the factors that influence responses towards unacceptable behaviour, age is only one, though it may play a greater role in some cultures or societies than in others, and even within one society this may change over time. We shall

come back to this when we compare Russian and English attitudes towards young offenders.

In the US, criticism of welfare and a new concern with 'rights', initially directed towards the treatment of adults, was to influence the treatment of young offenders. Lawyers had argued that sentencing the offender rather than the offence, the practice of indeterminate sentencing, and policies of parole undermined the individual's right to fair and equal treatment for a particular offence. These arguments had particular relevance for children. The observance of the right to a fair trial and defence of the individual's rights was questionable in a youth court. Youth courts tended to adopt less stringent procedures to safeguard the defendant's legal rights; judges were expected to focus on the needs of the particular child, not his or her rights; a judge might dismiss the case against one individual, give another a suspended sentence for the same offence, and send a third to prison. Making parole dependent upon 'good behaviour' could result in one young person serving twice as long as another, and he or she had little chance of challenging parole board decisions. In other words, procedures that had been intended to focus on the well-being of the child could and, in some cases, were undermining the child's rights. Hence, some argued, a young person would be better protected in an adult court, and given a fixed sentence for the offence, not made to serve until his or her behaviour was deemed to be satisfactory.

In themselves such claims correctly address injustices that a paternalistic system of youth courts and flexible sentencing can produce. But they had unfortunate consequences in an environment in which it was becoming popular to argue that the individual rather than society is responsible for crime. The arguments of lawyers arguing for 'just deserts' struck a chord with those anxious to reassert the values of individual responsibility. The idea of a juvenile court as a youth tribunal faded. Some of those arguing for tighter sentencing guidelines may have wished to see guidelines that laid down milder sentences. However, the opposite occurred. Tightening sentencing guidelines at a time when the list of crimes was extended, with some being reclassified as more serious, combined with new guidelines for transferring minors to adult courts, and imposing custody without parole, has had frightening consequences in a society where the age of criminal responsibility remains as young as 10 in some states. More have been sentenced to custody, and limiting the arbitrariness of parole decisions has led to less parole (Snyder and Sickmund 2006).

There is no evidence that these developments influenced the shift in English policy towards young offenders in England in the 1980s. It was rather that the English system had built in features that could embrace a more punitive approach, should the legislators favour one. This was not happening across Europe and, simultaneously, the 1980s witnessed a new emphasis on human rights and the adoption of international conventions or rules that relate to children, including those in trouble with the law.

The most important were the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) of 1985, followed by the Convention on the Rights of the Child (1989). The Beijing Rules do not specify the type of justice system appropriate for children (other than that it should be concerned with the well-being of the child, and measures should be proportionate to both the offender and the offence), but they emphasize the importance of observing the child's legal rights, on involving the community and applying the principle of restitution wherever possible; they state clearly that remand should only be used in extreme cases, as should detention (only in violent, or repeat cases), and that sentences should be short; alternatives to detention should be sought. Neither the death penalty nor corporal punishment is permissible.

The Convention on the Rights of the Child, adopted in 1989, reaffirmed several of these, some in stronger form. Article 37 states:

> (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

and Article 40, clause 3(b) requires governments to strive to create laws, procedures and institutions, which should establish the minimum age of criminal responsibility, and 'whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected'.

Subsequent rulings or guidelines, while basing themselves on these general principles, elaborated different aspects. The Vienna Guidelines of 1997 advocated the setting up of juvenile courts, and emphasized the need to find alternative measures to deal with law-breakers to keep them out of the court system. The Tokyo Rules for the protection of juveniles deprived of

their liberty (1990) laid detailed guidelines for their protection and welfare while in detention.[8] And detention is defined as:

> 11(b): The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

Again the insistence upon its being seen as an exceptional measure is present:

> 2. Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases.

The role of the conventions in influencing policy is quite limited. Although states may sign them, and their performance is monitored, the UN Committee's reports are only of recommendatory character. They are not enforceable. The increased use of detention by some countries is witness to that. Conventions may help NGOs to back their criticism with reference to international standards, but governments know that no one is going to use sanctions against them for the way they treat their children, and that international bodies can do little. The 2002 report of the UN Committee, which criticized the UK's record, had no effect upon government policy in England and Wales (see chapter 6). Yet at least the Committee compels a government to provide extensive (public) documentation regarding the treatment of its children, and to respond to criticisms or recommendations.

The Council of Europe, with its Court of Human Rights, has more teeth: the court's rulings are obligatory for the member states involved. The UK joined the Council of Europe in 1949, ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) and accepted the Court's jurisdiction in the Human Rights Act of 1998. Russia joined the Council of Europe in 1996, and in 1998 ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and subsequently the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The latter allows for a Committee to visit any place of detention, and to report. The requirements

that must be met for an individual case to be accepted for review by the Court are stringent, and so far no cases from Russia have involved children.[9]

Probably all that international conventions can do is to set out some basic minimum standards. In their present form those that relate to young offenders reflect the mixed message that, by the end of the twentieth century, had come to dominate the treatment of young offenders: 'welfarism' is accompanied by a new concern with legalism. While conventions reaffirm the central importance of the welfare of the child, at the same time they refer to the importance of 'proportionality' (the response as appropriate for the offence) and advocate the setting up of youth courts. This, it has been argued, reflects 'a fundamental ambivalence'. It is easy to say that the response should be proportionate to offender and offence, but how can the response be both? The statements in the Beijing Rules, Walgrave argues, are 'a pleasing rhetoric that hides the language of feasibility' (2004: 548).

UK politicians were little interested in the conventions. However, for Russian reformers, emerging out of their isolation in 1990, and for politicians who wished to join the international community, they were seen as important.

CHAPTER 4

Post-Soviet Russia: Creeping Change

Today's Russian justice system retains traces of a medieval justice system which perceived a child as a miniature copy of an adult.
Pashin (Judge and scholar) 2001: 14

The penal system cannot change on its own, separately from society as a whole. Its reform is possible only as part of a wider range of measures aimed at creating a democratic state and the introduction of legal and judicial reforms.
Kalinin (Head of the prison service) 2002: 3

By the end of 1991 Russia, an independent federal state, had a new political leader and a new system of government. The changes were far greater than those which had occurred when Khrushchev or Brezhnev had assumed the leadership of the USSR. Now the political rules were changing all the time, and slots opened – at all levels – for people who previously had had no part in decision-making. Professionals, academics and activists (drawn from different strata) found themselves occupying places in a new policy-making arena. Yet, at the same time, most officials in the ministries and criminal justice system remained in their posts, surrounded by swirling, intense discussion and criticism of past and present features of the society that had evolved under Soviet rule. For the first time in decades, censorship disappeared and the media took up buried or neglected issues. A small number of voluntary non-governmental organizations emerged to argue the case for penal reform and prisoners' rights, including those of children.

When, at the beginning of the 1990s, Russian policy-makers, experts, practitioners and activists came out of their isolation, the western world of penal policy and juvenile justice was filled with voices talking different languages. The common ground shared by reformers a century earlier had evaporated. At first sight, it looked as though this was a world where all were guided by 'welfare' principles. For a start there were the International Conventions. Yet, at the same time, a more punitive approach had come

to the fore in the USA and in England and Wales, while a new approach – 'restorative justice' (which we discuss in this chapter) – was claiming adherents.

To the new Russian government, it seemed clear that changes should be made to their harsh system, whether for adults or children. Yuri Kalinin, the minister responsible for the prison system since the mid-1990s, speaking in 2002 before a London audience on the changes since 1991, referred to the legacy of:

> the sadly notorious Stalinist GULAG … with its labour colonies set up mainly in remote areas,with harsh climatic conditions, where major construction projects could be undertaken, minerals mined or timber felled. … The regime under which those serving their sentences lived was so organized as to cause prisoners hardship and suffering: for this reason it was very harsh and constituted an unnecessary curtailment of a large number of the prisoners' rights. This is why the health of many convicted prisoners deteriorated sharply while they were serving their custodial sentences, why family ties broke down, why many prisoners' attitudes became more negative and they were drawn into the prison sub-culture. At the same time, they lost many of the useful social skills which were essential for life at liberty. … An excessively harsh criminal system had given rise to an unjustifiably wide use of restrictive measures, which had led to convicted prisoners who did not need to be isolated from society being detained and then deprived of their liberty…
>
> For many progressively inclined people [he continued], it became obvious that the system simply could not continue to exist in its previous form. It had to be changed fundamentally … priorities were set for the reform of the penal system. Its normative-legal basis was to be improved, the pace of judicial and legal reform were to be accelerated and, as a result, the numbers of convicted persons in prisons and colonies were expected to decrease, as were those for persons detained in remand establishments. (Kalinin 2002: 1–2)

Kalinin was speaking of the penal system as a whole but his arguments carried even greater weight as regards young offenders. While the target of the reformers was the treatment of both adults and young people, some

emphasized, in particular, the harshness of the criminal justice system towards children. Their criticisms were directed against the high rates of detention on remand (and the appalling conditions in the remand centres), the length of time spent in remand (months, if not years), the lack of proper legal defence, the inappropriateness of the adult court system for young people, the lack of alternatives to custody, the harshness and length of sentences, and the brutal conditions in the colonies.[1]

In 1997 a group of academics published a concept paper on policies aimed at reducing youth crime. The paper reflected the emphasis in the international conventions on defending the rights and interests of the child. The authors stressed the need to recognize that the young are a vulnerable group whose interests require greater safeguards, and the importance of involvement by both state and non-state institutions in combating negative aspects of the environment in which children were growing up. Funding preventive work, the authors suggested, should be seen not as an expense but as an investment in society's future. The paper proposed a whole series of measures aimed at 'the step by step creation of a complex justice system for young people' in which new legislation and specialized officials (investigators, prosecutors, judges) would focus on preventive measures and the defence of children's interests.

> A wide variety of alternative measures should be used with the aim of ensuring the observance of the principle that restricting or depriving a youngster of liberty, whether before trial, during a trial or afterwards, should only be used as an extreme measure; elements of a restorative justice approach should be designed and introduced.

Government and social organizations should both participate:

> however, unlike in those countries where civil society takes upon itself the important task of devising preventive measures in regard to youth crime, in Russia, because of the weakness of civil society … the state must take responsibility for almost all these tasks. (Забрянский 1999: 7–9)

Yet sadly the state was not equal to the task.

Today, writing seventeen years after the end of Communist Party rule, the treatment of young people suspected of committing a criminal offence is only marginally better than it was in the early 1990s. Essentially the existing

system has remained in place, although its harshness has been softened and, as a result of an amnesty in 2002 and legislative amendments, the numbers of children in the remand centres and colonies did fall substantially. The changes are to be welcomed, but Russia still locks up a sizable number of its young people and for long periods.

No major discussion of the principles and practices of a youth justice system has taken place, neither at the top of the policy-making hierarchy, nor by the judges, nor in the pages of the professional journals. Nor has there been good public analysis of the way in which the present institutions work. Despite a reform-minded minister, Kalinin, despite a new criminal code and a new code of criminal procedure, very little has changed for either adults or children charged with criminal offences. Kalinin, in the late 1990s, continued to try to convince his fellow-countrymen that:

> Only 12–16% of the whole prison population consists of people who are really dangerous, with a corresponding set of moral attitudes. 50–60% are apathetic. … They are not part of the criminal world but under certain conditions they can find themselves in it. It is these people it is worth taking care of, otherwise society will only be working on behalf of its prisons. … The prison population ought to be reduced to the minimum by using alternative sanctions… (Помните узников 1999: 10)

but it was 2002 before, in the words of the deputy-chair of the Duma committee on legislation, Aleksandr Barannikov, '… the President understood that our prisons are overcrowded not because there are more criminals in Russia than in other countries but because something is wrong with our legislation' (Время МН, 12 March 2003), and Russia's prison population dropped below that of the United States into second place in the world league table.

Why has there been such a reluctance to change the system? In this and the following chapter we describe the change and continuity in policy towards young offenders. This enables us to offer an answer.

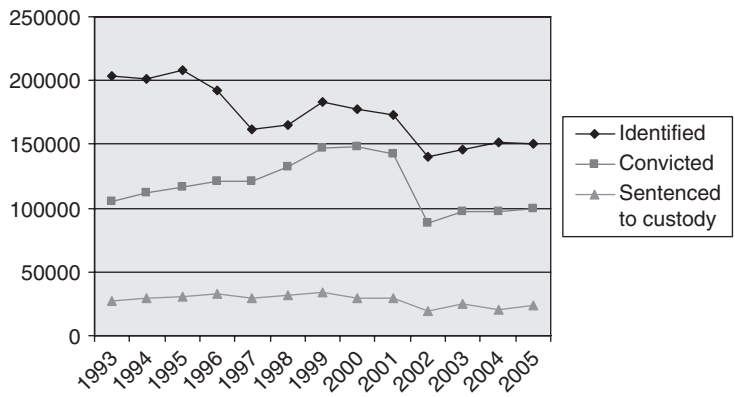
A decade of depressing statistics

From the beginning of the 1990s crime rates began to rise, rapidly. The application of the new Codes of 1996 did nothing to halt the increase in the already huge prison population, living and barely living in inhumane conditions in labour colonies across Russia. At the beginning of 1992 there were 745,000

prisoners; by 1995 929,000; numbers peaked at 1,060,000 at the beginning of 2000. Conditions worsened with appalling overcrowding in remand prisons, shortage of food, an epidemic of TB, the ending of work opportunities in the colonies, and delays in inadequate pay for prison staff. Despite claims made to the contrary, the youth crime rate rose less fast than that for adults, but it rose too, and with it the numbers sentenced to custody in the *vospitatelnye* colonies. They peaked at more than 34,000 in 1999 (see Figure 7).[2]

Figure 7 shows the numbers of all 14–17-year-olds identified (выявленные)[3] by the police in connection with crimes for the years 1993–2005, the numbers of those who were convicted, and those who received a custodial sentence. Numbers of those identified by the police climbed between 1991 and 1995, then began to fall, only to rise sharply again in 1999 (following the financial crisis). But by the early years of the new millennium the police were identifying fewer young people in connection with crimes than they were in the early 1990s. Were there perhaps fewer young people between the age of 14 and 18 by the early 2000s, I wondered? The census data show the opposite to be the case: between 1991 and 2002 the size of the (14–17) age cohort rose from 8.3 to just over 10 million; then it began to decline – to a little over 9 million by 2006, and by 2008 to 7 million.[4]

Figure 7: Fate of 14–17-year-olds identified by police in relation to a criminal offence, Russia, 1993–2005



Source: Data from MVD statistical handbooks, 1996, 2002, 2004, 2006; Забрянский 1997.

When we look at data on *the number of crimes* committed by 14–17-year-olds, or with their participation, set against the size of the age cohort, we see the same pattern – rapid rise in the early 1990s, slowdown, upsurge in 1999, then decline until, by 2002, the 14–17 age group's crime record is lower than it was for their predecessors in the late 1980s. Whereas in the early nineties we can picture 200 teenagers committing about 5 crimes a year, ten years later an equivalent group was committing about 3 crimes a year. Today's youngsters, taken as a generation, are no more criminally inclined than were their older brothers and sisters ten years ago.[5]

Yet Figure 7 also shows us that as many are being convicted today as in the early 1990s. Conviction *rates* have gone up (in 2005 two-thirds of all those identified by the police were subsequently convicted – a high percentage in comparative terms), and they show signs of rising again. Although the increase in violent crime, referred to in chapter 1, could be a contributory factor, it could not by itself account for the trend. The percentage of those given a custodial sentence is also, in comparative terms, very high – about 25 per cent – and again we note that during the period it barely changes.

A reminder. Our focus is: how can custody become used as a measure of last resort? We are not attempting to provide answers to the much wider and more complex question: how can we reduce or prevent juvenile crime? However, we should look at the measures taken, or not taken, by the state to assist those most at risk of becoming offenders and ending up behind bars.

Support for children at risk

In every country children who grow up without parental support and, in particular, are passed from one institution to another, are more likely to become society's misfits. In Russia the old structures continue to operate although the environment, already breeding social problems before perestroika, has since changed in ways that sharply exacerbate them. Many of today's inadequate parents grew up in families that were drowning in the rise of alcoholism of the early 1980s. The stresses of the past fifteen and more years (unemployment, new forms of poverty and of social stratification, demoralization and impoverishment of budget workers, lack of institutional resources, consumer abundance for the affluent) have had a further damaging impact on the family, schools and social agencies. The opportunities for the young who can afford them are far greater than anything their parents experienced, but the numbers of those deprived and at risk show little sign of decreasing.

Although politicians claim to be concerned about Russia's children, substantive policy and funding to support those at risk has been minimal. The mid-1990s witnessed a flurry of national plans or programmes to improve the situation of Russia's children, and in 1994 the government set up an interdepartmental commission on youth affairs.[6] However, in 2001, seven years later, Russia had between one and two million children homeless, or taken into care, and of the more than a million offences registered by the police in that year, a quarter had been committed by neglected children.

> This is what happens: a youngster finds himself in difficulties over a really trivial matter, his family doesn't help him to solve them, the school takes no notice and then simply forgets about it. As a result instead of going to school he starts spending time on the streets. And what will he find there? He'll find friends with whom to commit crimes, he has absolutely no other options. If a youngster isn't studying, it means he'll be committing crimes. That's indisputable. (Judge)[7]

Yes, almost certainly so, if no effective system of social and individual support for the child exists. English experience tells the same story.

> … I didn't like my foster home and I started being trouble at school – showing off and that. They kicked me out of the foster home and school at around the same time. I was put in a care home I really liked and I settled at school and was doing okay. But then the local authority said I shouldn't be their responsibility and I was moved again. … I got into fights at school and I disrupted class. In time they excluded me. It was when I was out on the street with other excluded kids, some of them older, that I felt I'd found my family. They were good to me so when they wanted me to do crime with them of course I agreed. We did lots of burglaries and shoplifting and I forgot about school. (Jules, 17: quoted in Neustetter 2002: 89)

According to Valentina Matvienko, deputy prime minister at the time, the youth commission was working energetically in 2001 to find a mechanism for coordinating the activities of the different government agencies. 'Today the Government's main task is to ensure not only that interdepartmental commissions are set up at all levels within the government but *that these commissions actually begin to work*' (Питомцы призрения 2002: 26;

emphasis added – MM). Three years later, with little evidence that the federal authorities had managed to work together, and with new legislation devolving responsibility for social and welfare issues to the regional authorities, the commission was abolished, and the Ministry for Health and Social Welfare given the responsibility for producing a national plan for children to run from 2006 to 2010. In 2006 the Minister, Zubarov, suggested to the Duma that the number of neglected children had fallen by 157,000 over the past two years, but a report on the round table discussion that followed suggested:

> Different estimates claim that from 100,000 to 4 million neglected children exist. Around 50,000 run away from home each year because of abuse by their parents, and about 20,000 don't go to school at all. And this is despite the fact that eight different government departments and around 20,000 specialist institutions are working with problem or difficult children. (Gazeta ru, 22 February 2006)

The chair of the Moscow region's KDN (Commission for Youth Affairs) suggested,

> there is at present a very large number of organizations which work with youngsters and, if you were to add up their staff, the number would in all probability exceed the number of children whose interests we are defending. (Тропина 2004: 21)

We take it for granted that the government needs to apply resources and imagination to tackle both the social problems that exist and the malfunctioning of the government agencies. These are topics in themselves; all we can do here is to draw attention to certain aspects of the government/welfare system that directly relate to the likelihood of young people ending up behind bars.

First, there are too many different departments or agencies with poorly defined responsibilities. In some cases their functions overlap.

> A study of the relevant departmental statutes revealed that the tasks of the criminal inspectorate and the police department responsible for youth overlap, their functions are unclear and are not demarcated.

> Unsurprisingly, in practice, as the research showed, individual files contain documents which have been duplicated. (Бланков 2003: 68)

> Today's system of working with young offenders, in the judgment of the experts, is ineffective because different institutions duplicate each others' work, and some of them do not have the qualified staff or the material and technical resources to carry out the tasks that are assigned to them. In the first instance this refers to the police inspectorate for youth, and to educational institutions. The former is doing the work of the criminal investigators and the KDN, the latter in their turn finish work that the police inspectors do not have the time or resources with which to cope. (Summary by interviewers: Interview project)[8]

At the same time officials in one department are often not aware of data and activities of other departments. The sociologists report:

> One receives the impression that the representatives of the various departments in the MVD and the Ministry of Justice have a very fragmented picture of crime as a whole, limited to their district or their own work: 'we don't know what is being done, for example, by the police there or somewhere else'. (Staff member, SIZO)... The difficulties mount up: families cannot cope on their own with so many socio-economic problems, the schools are being restructured and refuse to be responsible for *vospitaniye*, the police inspectors are swamped with work, as are the handful of social workers and, as a result, 'because everyone has their own problems', the children are left uncared for. 'It's as the proverb says: when there are seven nannies no one looks after the children', commented one of the experts (Defence lawyer). More than that, the child isn't even wanted by these 'seven nannies' because their own problems come before the need to care for children.

The professionals emphasize that until the child 'has been ejected from society no one takes up his case. All are occupied with their own problems, while he, as it were, is thrown into the gutter' (Governor of colony). The consequence of the child's being unwanted by his family or school, and then neither the inspectorate nor the KDN's having the capacity [to deal with his case] is that:

> the youngster finds himself outside the sphere of influence of both state institutions, and social structures and family. As a rule, he will again fall in with a criminal set and again commit crime. (Defence lawyer)

Moreover there is no independent external check of the work of a department or institution. Monitoring remains the prerogative of the higher levels within the same institution or ministry.

> Ministries, departments, and other executive structures of the government which are called upon to solve these problems, are themselves responsible for exercising 'control' over their own work, including 'control' over the observance of children's rights in the children's institutions which their sub-departments administer. (Жилкина 2005: 15)

Without serious attention to these problems, the pool of deprived and potential law-breakers will of course not shrink. This goes without saying. However, our focus is on the need for an effective system of welfare agencies (both government and non-governmental) that responds to deviant behaviour when it occurs, and thus offers an alternative to using the criminal justice system. Unfortunately, the only legislative attempt to change the system for treating young children outside the courts has been punitive rather than preventive and accentuates the problem.

A law of 1999, 'The basic principles of the system of preventive work with neglected children and young offenders', amended cosmetically in 2003 after criticisms from a Council of Europe team,[9] did little more than provide institutional regulation of a quite repressive nature for a social problem. Under this law children under the age of criminal responsibility, who commit a non-serious, socially dangerous act, can be held by the police for up to three hours before, by a court order, being sent to the now renamed Temporary Holding Centre (TsVSNP); at night-time, weekends or holidays the police do not require the court order. Children can be held in the centres, which are under the MVD, for up to maximum of 45 days. The centres are for offenders only (not for abandoned children), a first place of detention, before some of them will move on to the secure special schools. Some move up the ladder of detention – from TsVSNP to a secure school to a colony (Головизнина 2005). Although we lack a detailed analysis of this group compared with others who are spared detention,

evidence suggests that even short-term detention increases the likelihood of recidivism. Approximately half of those who spend time in the secure schools or technical schools go on to commit a crime (Альтернативный доклад). It is difficult to see how such institutions differ from a penal institution, except in name. Not all who work in such institutions find the present situation praiseworthy.

> [We need to] improve and increase the number of rehabilitation centres. Prison never improves anyone. There should be restraints on freedom, but not in the way we do it. You can do it in a special school, but the groups must be of small size. No one is insured against committing a crime. The law includes reference to institutions of an open type, but there's only three in all of Russia. There you could work with speech therapists and so on. (Deputy director, VTsSNP)

In deciding on educational measures, whether for an under-age offender or an older child, the judge notifies the KDN, which should then step in and take responsibility. This is logical in that the KDN is in theory responsible for coordinating the preventive work of the different government agencies, and for working together with the court to decide on the most appropriate measures to assist the child and safeguard his or her interests. A Supreme Court plenum in 2000 recommended that a KDN representative should be present at court hearings, and that the court should hold the KDN responsible for implementing 'individual rulings' (*chastniye opredeleniya*) and should check on their implementation. However, both judges and KDN members recognize that this does not happen, and the KDN, now renamed the Commission for Affairs of Youth and the Defence of [their] Rights, remains an institution with little authority and almost no staff.

> The Commission is a social organization, nominally chaired by the head of the local government administration who is responsible for a huge number of things. The only work-horse is the administrative secretary, who is unable to cope with all the paperwork, to type things up, to see that reports are there, and so on. This only happens if the secretary is really committed, and such people are becoming fewer and fewer. (Police inspector, member of KDN)

The sociologists report:

> Our analysis suggests that the KDN's activity at present comes down to that of keeping control by 'accounting', and this is reflected in all the KDN's procedures. The KDN's main activity takes place within the framework of its regular meetings. Procedurally the format of the commission's meetings continues to replicate the old Soviet procedure for meetings, when the KDN exercised functions similar to those of the courts. The composition of the commission, unchanged since Soviet times, both has a stabilizing effect upon the work of the KDN, and reproduces old ways of responding to youngsters and to their parents.

Both previously and today the KDN has at its disposal certain tools/means of influencing the youngster: reprimand, severe reprimand, fine, transfer of the case to court for a decision to be taken on whether the youngster should be placed in a Holding Centre, a special school or technical school.

> As a result, as the members of KDN whom we interviewed themselves recognized, the KDN, as an institution which is required to aid and to defend the rights of young people, in practice can only exercise these functions to a very limited extent. A police inspector, who has served on the district KDN for twenty years, summed up its work tools as follows: 'The commission's basic tools are envelopes and summonses which parents respond to or not, as they wish. If only the commission had some means of offering material support. There are report forms for the commission to fill up when they have given out some humanitarian aid. But the commission is not able to provide any aid at all: it has no money, bandages, vitamins. Even when at a meeting we see that the child does not have enough to eat, we can't give him any help at all.'

Members of the public and parents, who have had first-hand experience of the KDN, are even more critical.

> All they do there is to frighten and intimidate [children]: 'you'll be sent there and your mother…' That's the sum total of their work with a child. What can you expect from a child after that? (NGO worker)

Others feel even more strongly:

> The KDN ought be abolished. It was set up with other kinds of rules, with other aims in mind. Today society is different, life is different, children are different. It should be reviewed in its entirety. Its methods have long ceased to work. They only frighten, nothing more. (Social worker)

There has been no attempt on the part of the federal authorities to restructure the KDN: to turn it into an active, well-funded organization, with a clear remit, and the authority to act. The outdated law of 1967 still operates. In most places, its members view their participation in what is essentially a disciplinary committee with few powers as an extra burden. Yet in some places, active individuals have persuaded the regional authorities to adopt new statutes or rulings on the KDN.

Today's reformers are well aware that the welfare and educational systems need attention. They believe, as do most who work with delinquent children, that society and the state are to blame for youth crime. In this they share common ground with their predecessors of a century ago, with their Soviet colleagues of the 1920s and 1960s, and with many social democrats of today. Unlike their colleagues in the 1920s (and maybe some in the 1960s), they do not believe that society can ever abolish crime. They think that society and government can reduce it (by reducing homelessness, the numbers of abandoned and neglected children, and by providing job opportunities, etc.) and they believe a punitive system will only increase crime by isolating and turning children into criminals. State and society ought to take responsibility for their children. Here they are straight welfarists of the most usual kind.

> In principle it is unjust, it is unjust when a youngster has to answer in court for committing some crime or other, that is already unjust. Therefore, it seems to me, the highest aim as regards justice is to create a society in which a youngster cannot commit a crime, where he won't have any motives for doing so. ... While we often talk, at meetings of the commission, when reviewing a case and deciding to penalize a youngster and his parents, we try to be as just as possible towards the youngster, but more often than not we recognize that he's a hostage ... a victim. ... That, if you like, is the most frightening aspect of what is happening

> today. Therefore, of course, justice is, and has to be, defending the rights of the child in any situation. (Member of KDN)

Among the most active of those arguing for new legislation on the KDN are L. Tropina, chair of the KDN of Moscow region, now with a new regional statute, designed with support from Gromov, the governor; V. Chernobrovkin, chair of the KDN of the Saratov region, and Boris Altshuler, leader of the NGO The Rights of the Child. Saratov, Perm and Nizhninovgorod have all adopted new regional statutes and, at the time of writing, Moscow city has decided it should too. Chernobrovkin receives requests for advice and information from KDN representatives in other regions. A commission under Tropina has drafted a new law.[10] It would give the KDN responsibility for a new professional social work service. While the social workers would work with the courts, attaching them to the KDN would, it is argued, give them ready access to all the social services and municipal agencies. A much stronger emphasis on using non-judicial methods to deal with law-breaking youngsters, including that of mediation, is advocated.

> With its focus on punishment, the traditional system of criminal court procedure relates to criminals as 'people who should be removed from society'. Restorative justice recognizes the offender must be given the opportunity to make good the damage or harm done and to regain his place in society both in the eyes of society and in his own eyes. If such an opportunity is not given him, he pays for it, but so will a series of victims, and society itself. (Чернобровкин 2005: 12)

It is both encouraging and depressing to read of the experiments and attempts at local level to create workable new structures. Encouraging because it indicates the awareness at local level of the need for new thinking. Depressing because, despite the suggestions and calls to the federal authorities for legislative action that would encourage the emergence of authoritative local bodies, the federal authorities appear singularly deaf or simply uninterested. The relationship between action at federal level and local or regional initiatives is, however, not as simple as this suggests. We shall come back to it in the final chapter.

Neither a professional social work service nor a probation service for young people has been introduced. The only new institution, which only

exists in 18 regions, is an ombudsman for children or a commissioner for the rights of children.[11] In rare cases, energetic individuals at local level have persuaded regional authorities to set up a committee for children's rights. NGOs, frequently with only volunteer support, and minimal if any assistance from local authorities, try to help the most needy and destitute children. Instead of receiving help from professional social workers, young law-breakers are destined for a criminal justice system, designed with adults in mind.

Crime and the criminal justice system

The political leadership was influenced by Russia's position as a member of the international community and by concerns expressed by international bodies. To meet its obligations under the UN Conventions, and to gain membership of the Council of Europe, Russia needed to make changes to its existing Codes and its institutions. It set up a Ministry of Justice to take responsibility for the prison system, away from the MVD, but there was no real discussion of the rationale for such a move, and what it was intended to achieve. (Nor, ten years later, was the British government's decision to observe Council of Europe requirements and to create a new Ministry of Justice, which would run the prison service, accompanied by a discussion of the reasons for the Council of Europe's position.)

The new Criminal Code of 1996 included articles that reflected a new philosophy: the rights of the individual were paramount, and both it and the new Code of Criminal Procedure contained sections on young offenders that sounded quite progressive. But, in practice, because the Codes are primarily directed at adult behaviour, they did little to mitigate the harshness of the system. Theft (which everywhere accounts for the majority of youth crime) remained a serious crime. And that means it continued to carry severe sanctions. The Codes of the mid-1990s were recognized to be unduly harsh, even for adults, but not until 2002 did the new President react. A working group was set up to prepare proposals for the Duma. By this time it was hard for the political leadership not to pay attention. With Russia's accession to the Council of Europe in 1996 and subsequent signing in 1998 of the Convention on Human Rights, and the Convention for the Prevention of Torture, the issue of the overcrowded prisons, inhumane treatment and harsh sentencing for adults and children was continually raised by UN and Council of Europe delegations. In December 2003 the Duma passed

a comprehensive packet of legislative amendments to the Codes. Those most relevant for young people were the reclassification of less serious acts of 'hooliganism' as 'administrative offences' (and hence excluded from the criminal code), the laws on drug possession were softened (although retightened in 2005), and a number of crimes were reclassified as 'average' rather than 'serious', which, in its turn, had consequences for sentencing.

Legislation, conceived with adults in mind, can have unforeseen and damaging consequences for children. Legislators may favour harsh treatment for organized crime but there is a qualitative difference between the operations of a group of adult criminals and an often spontaneous action by a group of kids. We draw from the interview materials.

> It's a well-known fact, they don't act on their own, it's rare when they act on their own. And our judges, qualified or unqualified, classify it as a group crime rather than as robbery with violence. But there's a qualitative difference between a group of adults, who have planned something, and then carried it out, and [kids] who, in principle, can't act on their own, they have to have the support of a group. And not because they are members of a gang but simply because they always go around together. Psychologically that's simply part of being an adolescent. (Member of Memorial society)

> Our criminal code, there's no doubt about it, is unjust, particularly as regards youngsters. … As a psychologist I consider that punishment must be related to the individual. We have Article 158 – theft – and sentences which range from suspended to 3 years, but they hand out 4 years. Why, because it's for more than one offence, or the youngster committed the crime as a member of a group, he didn't actually do anything, the only reason he's involved is because he was in that group. (Psychologist, SIZO)

> There is a difference between an adult and a child stealing a car.

> So he was convicted for stealing a car. When you talk to him, he says 'I love driving a car' but he's got no opportunities to drive. 'I saw the car, and I wanted to try it out.' 'But how did you open the door, and how did you start the engine? You're only 14.' 'But I know how to start cars.

> I help the men in the garages. I've repaired a carburetor, I can adjust the clutch.' In other words, he's got an education, but a garage education from the men who work there, not one from a school. And he's scared to go to school, because of his past experience, maybe it'll be the same all over again. Here they praise him and say 'my word, but you've got clever fingers!' And those kind words, which suggest he has got talent embolden him. He begins to think that he's already a professional. And so – during a moment when he's slightly drunk, and he sees the car, he says to the other kids 'I could easily start up the engine and take you all for a drive. I've got the skills, and you haven't.' So he opens the door and goes off for a spin. The idea of stealing the car never came into his head, he just wanted to take his friends for a drive and impress them. (Court social worker)

However, while a more child-oriented approach to the definition of crime where children are concerned, and the reclassification of certain actions as administrative offences will help to keep unprotected and minor offenders out of the criminal justice system, its contribution towards reforming the treatment of young offenders will, *on its own*, be very limited.

As a signatory to the United Nations Convention of the Rights of the Child, the Russian Federation reports to the Committee on the Rights of the Child at five-yearly intervals. These reports cover a wide range of issues affecting children. We focus on those that involve young law-breakers. The Committee's key concerns have been police brutality, the absence of youth courts, high rates of detention on remand and custodial sentences, and conditions while in detention.

In 1999 the Committee, while welcoming progress in some directions since 1993, noted that:

> The area of juvenile justice is a matter of persistent and serious concern to the Committee, in particular regarding the insufficient implementation by the State party of the Committee's 1993 recommendation on the need to set up a system of juvenile justice, including the adoption of a law on juvenile justice and the establishment of juvenile courts.
>
> The Committee expresses its concern over reports of police brutality and torture committed against detained juveniles during the investigation of their alleged acts, and its concern over the extended periods of pre-trial detention of juvenile detainees at the discretion of the

> Procurator. The Committee is also seriously concerned at the treatment of juvenile offenders living in educational colonies, places of pre-trial detention or in special educational establishments, and at the poor conditions of detention and in prisons in general.[12]

In 2005 the UN Committee, while welcoming the amendments to the Criminal Procedure Code in July 2002 'which … had resulted in a reduction in the number of minors brought before the criminal justice system and the number of minors sentenced to deprivation of liberty'[13] and the appearance of several regional ombudsmen for children's rights, was 'concerned that persons under 18 allegedly continue to be subjected to torture and cruel treatment, in many cases when in police custody or during the pre-trial stage of legal proceedings', and that there had been no move forward on a juvenile justice system.

We look first at the police. Given that the police are the first point of contact for young offenders, their powers and their practices are of critical importance. Their actions can determine the future fate of young children to a very great degree. The issue of police brutality during the arrest and questioning of suspects, including children, deserves a separate treatment of its own, as does the role of the police in monitoring the behaviour of those on the police record. Here we simply draw attention to the fact that police brutality is serious, and possibly a worsening problem. The evidence comes not just from the children themselves, and their parents, but also in a survey carried out in towns from the first aid ambulance teams (48 per cent of whom) and the staff of accident and emergency centres (62 per cent of whom) put drunks and teenagers as the most frequent victims of police brutality. Despite presentation of the evidence to the Procurator General, the procuracy remains unwilling to prosecute in the great majority of cases, and the President's administration gives no evidence of being troubled by the Procuracy's monopoly on overseeing the legality of its own and the police activities (Альтернативный доклад 2005: 38–41).

While brutality is one issue, the tasks set before the police, and the shortage of resources is another. All criticize the police for not engaging in any preventive or rehabilitative work.

> There's no preventive work, it's all eye-wash on the part of the police, you understand? We don't see any inspectors, we don't see them in the

> precinct, we don't see them when the kids are being held, we don't see them. (Defence lawyer)

The inspectors themselves stress the tasks set them from above.

> We are meant to be doing preventive work. But they tell us 'the best kind of prevention is to solve a crime'. And to solve a crime you've got to spend not just one day, not even just two on it. It can take us a week. (Senior police inspector)

> … at present they constantly demand that we solve crime, solve crimes. No one asks us to do any preventive work … of course they require some kind of a report on prevention – how many neglected children we've detained, how many protocols we've drawn up, but no one demands to know the results of preventive activities. (Police inspector)

> Because the whole system has recently become more and more bureaucratic and formal, they [new inspectors] have understood that what is most important is to present indicators: how many were charged, how many parents held responsible for administrative offences, how many children were sent somewhere or other… (Police inspector)

In 2000 the Supreme Court at last turned its attention to the question of youth courts. It recommended that courts of general jurisdiction appoint a specialized judge to deal with cases involving young offenders, and referred to the need for such judges to have not only a legal training but some psychological, pedagogic and sociological background. It emphasized the requirement for judges to play particular attention to international norms and standards when dealing with young people, both regarding preventive measures and ensuring that the interests of the child were pursued (Ruling No. 7, 14 February 2000). But only in individual cases has this been realized. The majority of courts do not have the capacity to release one judge to concentrate on youth affairs, and the judges have neither appropriate training nor time to devote to a careful analysis of a case. They 'approach the court hearing very simplistically, aware that a guilty verdict will satisfy the procurator, and that a suspended sentence will satisfy the convicted, his legal representative, and defence lawyer' (Воронова 2005: 23).

Although there are judges who consider the present system quite inadequate for young people – '... it is we, we, adults who don't care, who are raising a generation which will present us with crimes, and new crimes. We need a caring attitude towards everything – it's our future, ours and yours' (Judge) – there has been no pressure for reform from within the judges' community. In the eyes of police, of KDN and FSIN[14] (Prison Service) representatives, judges are too often poorly trained, indifferent or conservative in their response to young offenders.

> We have a procurator who deals with youth cases, specializes in them, we've got a judge who specializes in youth cases, only takes youth cases, and yet we don't have a [youth] system. The way they approach cases, as do the youth police, is one and the same. They simply do not understand the word 'child'. For them he's a criminal. They ought to write the word 'child' in large letters on the walls of their offices to remind them that they are dealing with a child. But they simply do not and cannot think in that way because they are working within a system, which is already formed. We need a new system, a principally new – a juvenile system. (Deputy chair, KDN)

> You attend court, and it's an absolute farce. Sometimes it makes you wish you weren't there. The judges are so incompetent, unprofessional. They ask such naïve, stupid questions. You find yourself thinking 'Oh God, what are you asking that for?' ... They are concerned that everything has been properly written down, including the key points. And nothing else, it seems to me, bothers them. What will now happen to the child? Who will work with the youngster? That doesn't concern them! For them what is most important is that the case went smoothly, that there won't be a protest or an appeal. I consider that their aim is simply that – to ensure a clean case. (Head of police department for youth)

We come back to judges' attitudes when we look at sentencing policy. Here we are more concerned with the structure of the system – the absence of courts for young people – while recognizing that the ability of judges to respond to new institutions will be crucial for their effectiveness.

Juvenile courts

If in the 1960s reformers drew their inspiration from the 1920s, today it is the late-Tsarist period that attracts them – not the colonies and the idea that punishment should have no place – but the setting up of juvenile courts and the introduction of probation or social workers. The focus on human rights that found expression in international conventions has provided a lexicon and an international authority to quote. While also used by the government, the conventions provide the reformers with a language in which they can press their demands for a humane treatment of children but, at the same time, they have encouraged the tendency to seek a judicial solution.

Although there are differences between them, all share the ideas that:

> First of all, because of their immaturity youngsters are not able to comprehend, sufficiently, their actions and to be responsible for them, and, second, youngsters are susceptible to influence and can be re-educated in such a way that in future they will not have the motivation to commit offences. This means that juvenile justice replaces the value system of court procedures with one where the young offender becomes more important than the offence itself. (Жилкина 2005: 17)

Here we see a classic statement, one that would be clear to reformers of a century ago. The editors of a collection, 'The Movement for Juvenile Justice in Russia' (Движение 2003), although themselves advocates of a restorative justice approach, devote most of the articles to the difference between 'a criminal justice system' and 'a juvenile justice system in which judges still play a key role':

> When we speak of juvenile justice, we have in mind not criminal but a specific 'children's justice'. The latter includes, as does the everyday system, judges and courts authorized by the state, who use their judicial powers to resolve legal conflicts and respond to criminal events. However the essence of juvenile justice lies in its subordinating the functions of judicial power to the resolving of tasks which previously courts did not address ... the tasks of socializing young people and ensuring for them a future as law-abiding members of society. (Движение 2003: 104)

A minority of reformers believe these principles would be best realized through a reformed judicial system with a juvenile court and specialized justice officials, including investigators and procurators, and children's advocates. Most emphasize the importance of a more comprehensive approach. The preface to the new journal *Questions of Juvenile Justice*, brought out by the NGO NAN, explains to its readers that 'We do not view juvenile justice exclusively as specialized court procedures, we recognize and perceive juvenile justice as a legal basis for designing social policy in relation to young people in the Russian Federation.' NAN, under its energetic leader, Oleg Zykov, originally focused its work on narcotics and youth, but has moved on to spearhead a campaign to introduce a comprehensive juvenile justice system. It has been active in prompting and contributing to draft legislation. While the introduction of juvenile courts forms the basis, NAN representatives include:

> the aggregate of state institutions, local self-government institutions, state and municipal institutions, officials, non-governmental non-commercial organizations, which carry out activities, in accordance with the law, aimed at realizing and guaranteeing the rights, freedoms, and legal interests of the child. (Article 2 of a draft law, 'Basic Principles of a System of Juvenile Justice')

The draft continues:

> Within the framework of a juvenile justice system, programmes, projects and measures of a social, pedagogical, juridical, psychological and medical character, aimed at preventive measures and rehabilitating the child (juvenile), are undertaken.[15]

In the words of Maksudov, the supportive, but critical, leader of The Centre for Legal and Judicial Reforms:

> The ideology of the activists of the NAN foundation and many experiments view the link 'juvenile judge – social worker – rehabilitation programmes' as the most important technological knot in juvenile justice. This link constitutes the main thrust (in the sense of its being visible and having results) of the lobbying efforts of activists working together with the NAN foundation to introduce legislation. (2003: 1)

Pressure from the human rights community finally resulted in a draft law to introduce juvenile courts into the court system. This passed its first reading in the Duma in February 2002. However, with the receipt of a discouraging letter from the President two months later, and again in 2004, neither it nor drafts of legislation on accompanying elements of a juvenile justice system made any further progress (Альтернативный доклад). In its reply in 2005 to the UN Committee, when asked to list its priorities regarding children's rights, the Russian government listed a series of educational and social issues but excluded any mention of the justice system. It merely noted that a draft law on youth courts would in due course move up the legislative agenda, and that some experiments in restorative justice were under way.

The Committee was not satisfied. It urged the Russian Federation, 'as a matter of priority', to expedite its work on reforms of the system of juvenile justice. This should include the introduction of juvenile courts, the development of an effective system of alternative sentences to include community service; restorative justice; and the provision of ongoing training for judges and law enforcement officials.[16] There the matter rested until, suddenly, in the spring of 2006, the President's administration suggested it was time to move forward. In March a round table on 'The Establishment of Juvenile Justice in Russia: Experiments, Problems and the Future', was held in the Duma, chaired by Ekaterina Lakhova, of the Duma Committee on Women's Affairs. She suggested:

> … we have addressed this problem more than once: we discussed it during the previous session of the Duma, and during this session there was an enlarged meeting of the Committee, we held parliamentary hearings. … Bearing in mind that during recent years evidence from experiments has accumulated, that sufficient experience has been gained in the Rostov region, where juvenile technologies have been gradually introduced and have yielded results, we very much would want to set up a system of juvenile justice. And we would very much welcome real understanding on the part of the executive, the legislature and courts – the three branches of power, as stated in the Constitution – that this is the only mechanism which can help to defend a child.
>
> We do not need to discuss with you how court reform is progressing. It is a very complex, difficult process, and now we are talking of defending

> the rights of children, and there is little enthusiasm for introducing juvenile courts on the basis of courts of general jurisdiction.[17]

The origins of the Rostov experiment lay in a UNESCO-supported project, which, in 1999, was launched in Moscow, St Petersburg, Saratov and Rostov. The project, drawing on French experience, introduced social workers as court aides: they were to assist judges specializing in youth cases by working with the offenders before and after trial. Despite the project showing positive results – fewer children held in remand, fewer sentenced to custody, and less recidivism – only in Rostov, with support from Voronova, the chair of the regional court, did it take hold. By 2008 all 61 district courts had a specialized juvenile judge; 15 of these are assisted by a social worker; three districts have a 'model' juvenile court, based on Montreal practices. Judges make use of 'individual rulings', which specify the particular programme to be followed by the youngster, and include reporting back to the court. The emphasis shifts from one of punishing or repression to education and rehabilitation (Воронова 2005; <www.juvenilejustice.ru>). The use of custody has fallen, and so has recidivism (to below Russian averages). Following the positive comments made at the Duma round table, others began to follow the Rostov example.[18]

Yet it is interesting to enquire why it did not flourish in the other original sites, and why some initiatives have faded. In Saratov the judges were less than supportive:

> The lawyers with whom we discussed the idea, when we started, said, well, but, nowhere is something about 'social' written down or registered in a document, so who are you, actually you aren't anyone, and we cannot even give you a name. … That's the inadequacy of our legislation. Because if the legislation had included reference to juvenile specialists or juvenile justice in the court system, then they would be there in the courts, but they are not. And there's still no law. We are running a little in front of the steam engine, but someone must always be running ahead of the engine in order to introduce a good idea. (Court social worker)

In St Petersburg, despite support from some individual district court judges, the project faded from a lack of interest on the part of the part of the city government's departments for children and for social services.

Unwilling to fund extra and dedicated social workers, they chose instead to devote resources to an unimaginative and ineffective 'work' programme for young offenders, whose organizing enterprise benefited while the children did not (Головизнина 2007). In Krasnoyarsk and in Vladimir, despite discussions in the spring of 2007 on measures to establish juvenile courts (<www.juvenilejustice.ru>), the topic seems to have fallen off the agenda. In April 2007 the commissioner for children's rights in Moscow, Aleksei Golovan, announced that agreement had been reached with three Moscow district court that, as of June, they would be working out 'juvenile technologies' (Новые известия, 19 April 2007) yet the initiative was successfully blocked by Egorova, chair of Moscow city court.

In 2006 the round table was followed by further meetings, organized by either Duma committees or ministries, to discuss the proposals and projects that had been ignored for the past four years. Both the Supreme Court and the Procuracy suddenly discovered that they were in favour of the introduction of a juvenile justice system. Lakhova suggested that the law on juvenile courts might pass during the present session. Something had persuaded the political leadership that it was time to move forward. However, nothing happened.

Oleg Zykov of NAN, and now a member of the Public Chamber (*Obshchestvennya Palata*) and the Inter-ministerial Government Commission on Juvenile Affairs and Defence of their Rights, has been tireless in keeping the issue of juvenile justice, and in particular the courts, before the federal authorities. In the spring of 2008 letters from the Government Commission, headed by the new Minister for the Interior, R.G. Nurgaliyev, to both B.V. Gryzlov, chair of the Duma, and V.M. Lebedev, chair of the Supreme Court, reminded them of their undertakings to hasten the introduction of the appropriate legislation on juvenile courts, and referred positively to the regional experiments. These letters were not answered. A letter from the Public Chamber to President Putin, urging progress on the legislation, also went unanswered. In the summer of 2008 NAN, with support from Canadian colleagues and CIDA (Canadian government funding) organized the First All-Russian Conference on Juvenile Justice in the prestigious President's Hotel in Moscow.

However, V.N. Pfligin, chair of the Duma Committee on Constitutional Legislation and State Structure, is said to have stated that he sees no chance of the legislation passing a second reading without support from the

President's administration. Many consider that L.I. Brycheva, assistant to the President, and head of the State-legal Administration of the President, is responsible for blocking its progress. In 2007, in conversation, she agreed that the law on juvenile courts should be passed. However, again, nothing happened. While President Medvedev, upon taking up office, has emphasized the need for court and legal reform, his appointment of Brycheva to the chair of the new working group on court and legal reform is seen as a setback for court reform, including juvenile justice reform. If there is no progress on court reform in general, there is no scope for introducing juvenile courts. The working group had not met by the end of the year (2008).

Originally an opponent of juvenile courts, and possibly still so, the Supreme Court has prevaricated. Lebedev is said to have recently criticized the Rostov experiment but, more significantly, a meeting of the Presidium of the Council of Judges of the RF on 26 December 2007 supported the introduction of (specialized) administrative courts but referred to the 'development of juvenile justice' in the most general terms with no reference to juvenile courts. Yet in early 2009 the Court issued a memo, drawn up by its department for the analysis and summary of court practice in August 2008, which reported favourably on the number of different experiments or models introduced at regional level, including those with a juvenile court. If among those who influence policy, the Duma is no longer relevant, the Supreme Court surely can carry some weight. The Procuracy too, should not be underestimated. With Putin's accession to the presidency, it regained attention and prestige. There is no evidence it wishes to see any changes to the present system of charging and trying young people, and its leadership is particularly hostile to any mention of restorative justice.

We have dealt with the interplay of actors at federal level in a little detail because it brings out aspects of policy-making that, at least in this field, are relevant. We return to this in our Conclusion.

Restorative justice

By the early 1990s a new approach to youth crime was gaining adherents in a number of countries. Studies from the 1970s onwards had begun to suggest that 'juvenile crime in general represents normal behaviour'. In other words, that the great majority of youth engage in what is called 'crime' and most grow out of it; a very small proportion engages in serious and

persistent offending. Further, 'official criminal law-based interventions' seem to target particular groups – marginal and deprived boys – and have the effect of further marginalizing them. Writing about Germany, Albrecht commented:

> These research findings suggest that formal interventions do not make a difference with respect to exiting from criminal lifestyles, but, on the contrary, formal interventions add to juvenile offenders' difficulties in adjusting to societal demands. (2004: 465–7)

The use of informal sanctions by family, school, community, it began to be argued, should be used wherever possible. These, which used to play a greater role in socializing young people, or rather in correcting deviant behaviour, itself part of growing up, should be brought back in. Simultaneously, maybe partly linked with the view of the offender as a culpable individual accountable for his actions, the harm caused to either an individual or to the community began to receive more attention. The rights of the victim – to an apology, to restoration of the damage done – acquired a new importance. If we compare the discourse at any international gathering of scholars and practitioners, discussing juvenile justice today, with that of thirty years ago, a concern with the victim stands out as a new and key component.[19]

Traditionally the criminal justice system has been little interested in the victim, its focus being the offence and, as regards the young, the offender. Retributive responses focus on the offence, inflict punishment on the perpetrator, and tend to ignore the victim. Rehabilitation focuses on the offender, provides treatment, but also tends to ignore the victim. (If the treatment is solitary confinement reading the Bible or a spell in a boot-camp, the difference between rehabilitation and retribution may be difficult to maintain.) In contrast, restorative justice (itself a broad term covering as many different applications or practices as does 'rehabilitation' or welfare) starts from the premise that the response to crime 'should be neither to punish nor to rehabilitate the offender but to set the conditions for repairing as much as possible the harm caused' (Walgrave 2004: 553; Weitekamp 2001). This is the most significant development in thinking about the response to crime since the 'welfare' approach of a century ago. Its radicalism lies in its questioning the political philosophy that

underlies the use of a criminal justice system. Under a criminal justice system (including welfare variants), the state takes over the conflict between two parties, 'manages' it for them, with the purpose of protecting the public by denouncing and punishing (or 'helping') the offender, and keeps the victim out of the proceedings, except as a witness. Restorative justice sees 'conflict' as something to be resolved by the parties themselves, offender and victim, maybe with community involvement or an impartial mediator. The aim is to persuade the offender to recognize what s/he has done, pay for the damage done and be reintegrated into society. The 'state' loses its role. Debate revolves round whether restorative justice can complement criminal justice or whether its principles are too different to be accommodated; whether it can be employed for both lesser and more serious offences.

The restorative justice approach laid the groundwork for a wide variety of experimental projects, often under the heading of mediation. For some of its advocates, recognition by the offender of the wrong caused, apology and reparation, and reintegration into the community are critical. Advanced most cogently by John Braithwaite, an Australian criminologist, and introduced in a variety of forms in Australia and New Zealand, mediation practices are now used in many countries. Walgrave offers a good overview. Although victim–offender mediation and other restorative justice approaches at present, in any of our societies, only occupy a minor role in the treatment of young offenders, in almost all they play some part, and more of a part than they did twenty years ago. In Russia the Centre for Legal and Judicial Reforms has introduced psychologists and justice officials, in several cities, to mediation techniques – bringing offender and victim together to repair the damage done. Its members do not consider that the core of juvenile justice should necessarily be legal procedures, rather 'a means which is oriented towards the resocialization of the youngster' (Движение 2003: 106). According to the Centre's experts in 2006:

> More than 300 restorative justice programmes aimed at helping the victims, getting youngsters away from a life of crime, overcoming the risks associated with living a homeless street life, resolving conflicts. Local groups in Moscow, Dzerzhinsk, Tiumen, Urai, Novgorod Veliki, Perm, Lysby, and Petrozavodsk are working together with courts, juvenile commissions, and social services.

By 2008 the list included Kazan, Vologograd, Tomsk, Dagestan and Samara.

But many of these groups are very small, consisting of one or two groups operating at district level within a city, and the Centre recognizes that:

> The broader circle of experts, consultants and academics who design criminal policy in Russia are insufficiently informed of the ideas, the technology of restorative justice, the Centre's materials and of the results of the work of the local groups. The basic idea (together with the idea of restorative justice) which we need to get across to that community is the idea of a partnership between society and the state. Without such an idea being accepted as one of the principles of our work it is impossible for restorative justice to move forward in Russia. (Максудов 2004: 3)

As a strategy aimed at using non-judicial means to deal with offences, restorative justice has met with a lukewarm and sometimes hostile reaction from judges and in particular from prosecutors, who may agree to its being used for administrative offences but not for anything more.

> … behind the initiatives of the Centre for Legal and Judicial Reforms the leadership of the Procuracy General sees 'an initiative' of the criminal community, aiming at avoiding punishment. This interpretation was voiced on 12 May [2004], at a round table focusing on joint activities of the procuracy and social organizations, by a procuracy official who had prepared a letter for the signature of Deputy General Procurator, Zvyagintsev. (Максудов 2004: 1)

> In the document, prepared at the initiative of the given department, and sent to all the procuracy offices throughout Russia under the signature of the Deputy General Procurator of the Russian federation, A.G. Zvyagintsev, the argument is advanced that participation by public [social] organizations infringes Article 118 of the Constitution of the Russian Federation because justice in Russia is carried out by courts. This ignores Clause 4, Article 15 of the Constitution of Russia which states that the norms of international law, reflected in documents, signed in the name of the Russian Federation, are part of the legal system of Russia (Convention on the Rights of the Child and others). The document also ignores the fact that social organizations, working with young offenders

> in the framework of either the Centre's projects or those of partner organizations of the Centre in the localities do not involve themselves in the work of the police, procuracy or courts, do not influence evidence, do not decide the sentence. But representatives of the given department for juvenile cases are not interested in discovering what is that the Centre actually does and the work it carries out... (Максудов 2004: 3)

It is indicative of the degree of cynicism of the Russian government that, at a time when restorative justice was receiving not only no support but positive discouragement from the procuracy, the government's official response to the UN Committee on the Rights of the Child was to cite, as an example of its progressive views, the introduction of restorative justice in some regions. In 2007, with juvenile justice back on the legislative agenda, the Ministry of Economic Development set up a working group under its Department for the Strategy of Social-economic Reforms to promote the idea and practice of restorative justice. The group included lawyers who favour restorative justice, NGO representatives and officials. One of its tasks was the preparation of a draft of a model law on mediation services, supporting the work of the justices of the peace (Вестник восстановительной юстиции 2006). But as the President's administration cooled towards any legislative change regarding juvenile justice, the initiative died a quiet death.

While the Centre emphasizes the importance of juvenile courts and a new role for a juvenile judge, their leaders emphasize:

> The narrow departmental character of the work done by the criminal justice institutions. In their activities judges, procurators, and police do not focus on following the standards for observing human rights, but on departmental indicators for solving crimes and convicting those who have fallen into the hands of the court system.

And they are concerned that:

> Many of today's changes in legislation and the practice of implementing the changes take place in a context of etatism. According to this paradigm, only the state has a complete monopoly on the response to criminal offences. Today we observe the beginnings of a process of reproducing, albeit in a softer variant, the type of etatism that prevailed in the Soviet

> state. In such a variant, different kinds of prohibitions are placed upon attempts by society to take upon itself some of the functions of the state, and to carry out humanitarian tasks and [the observation] of human rights standards in criminal justice. (Максудов 2004: 2)

We come back to this in our Conclusion. Next we look at sentencing, custody and its consequences.

CHAPTER 5

Post-Soviet Russia: Sentencing, Custody and its Consequences

In principle they constitute our problem – a problem for our society. They are people who are with us for a while and then they return to society. Unfortunately this is not always understood or recognized. I wish people would grasp this: that we are talking about people who have only dropped out of society for a while and will return there.
Deputy governor of colony

Before looking at sentencing, we need briefly to consider pre-trial detention, an issue that concerned the UN committee, and one that is no less important than custodial sentencing. Figure 2 in the Introduction shows the figures for those held in the SIZOs at the beginning of each year. In the 1990s this rarely fell below 15,000. In 2002 an amendment to the Code of Criminal Procedure required a judge's approval for police detention for more than 48 hours, and amendments to Article 108 of the Code of Criminal Procedure (July 2002 and December 2003) limited the use of detention on remand to cases of serious and particularly serious crimes, and only in exceptional cases when a youngster is suspected of a crime of less than serious gravity. Numbers are less than they were, as we see from Figure 2 (around 8,000), but then so are numbers detained by the police. Furthermore, Ministry of Justice data for 2003 and 2004 suggests little change in policy by investigators and judges. It is still more convenient to have the suspects in detention while the investigation continues, even though the majority of them will not be sentenced to custody. They will, however, in effect have served a sentence: the average length of time in remand in 2005 was 7 months (Альтернативный доклад 2005).

There is little public support for such a policy. The representative survey of adult opinion on youth crime in the three cities (St Petersburg, Saratov, Ulyanovsk) in the spring of 2004 included a series of different questions aimed at mapping opinions on the existing system and, in particular, the use of custody, both on remand and as a sentence. The question: *It is well*

known that the SIZO for juveniles often are overcrowded. In your view, which of the following would be the best measure to take in order to reduce overcrowding? produced the following response:

1 Make no use at all of detention while awaiting the court hearing: 10%
2 Only keep a juvenile in detention while awaiting trial if he represents a threat to society: 63%
3 Build additional SIZO for juveniles: 18%

Conditions in the SIZOs are, by and large, worse than those in the colonies. In many cases children are kept crowded in a cell for most of the day where, as can be imagined, bullying is the norm.

> I stood in the entrance: I didn't want to go into that dark, damp room 2.5 by 3.5 metres in size, and smelling of cigarette smoke and damp. But the door clanged shut – it sounded like a cannon shot. I turned to stone, it was so frightening, it felt as though these were the last few seconds of my life. Six kids were looking at me with hungry eyes. I had the feeling that they would tear me to pieces, each of them was thinking about which part of me he would tear off … (Sasha Vasilkov, Shakhovskaya VK)

But they may find themselves with adults.

> I spent a whole year in the in the SIZO, I saw a lot, lots of things happened. At the start I was together with women, then they made a cell for us kids. The staff did not like us, the kids, there were times when they beat us. Those who work in the SIZO were really nasty, treated us worse than stray dogs. (Veronika, Novooskolskaya VK)

> The worst that I saw and experienced was when I was locked up in the tuberculosis section of SIZO no. 1. I spent eight months there. I saw how people suffered. They don't cure them, they die a long, excruciating death, and no one deals with them. Everyone says 'Why pity them, they're prisoners!' But they are people too. And although I was the only kid there, I understood that. (Mikhail Popov, Permskaya VK)

A census of 1999 found that half of the 14–15-year-olds and two-thirds of the 16–17-year-olds in the SIZOs had had no visits (neither from a relative nor a lawyer) during the previous three months (Михлин 2000).

Sentencing

Eventually the child reaches the court, with or without a defence lawyer. What are the guidelines for a judge to follow, and which are the options open to him or her when sentencing an under-18-year-old?

A Criminal Code can encourage (or oblige) a judge not to convict an offender if certain circumstances are present; to take particular circumstances into account when sentencing; to apply non-punitive sanctions. In all these respects the new Criminal Code and Code of Criminal Procedure, and amendments introduced in 2002 and 2003, provided the judges with greater flexibility. According to Part 3, Article 20 of the Criminal Code, if, as a consequence of his or her psychological or mental development, the child cannot fully recognize the actual character and socially dangerous nature of his actions, s/he is not to be held criminally responsible. This should take a substantial number of children out of the criminal justice system, but it does not appear to be working. A study by the Ministry of Internal Affairs Research Institute in 1997 put the percentage of children *in the colonies* with mental disorders at 30 per cent, the most recent FSIN data suggests 25 per cent, and any director of a colony today will quote a figure of a third for those with serious psychological problems (Забрянский 1999; Воронова 2005; Альтернативный доклад 2005; FSIN website: <www.fsin.ru>).

When sentencing, the judge is required to take into account the young person's living conditions, psychological health and any influence from adults. Further, in accordance with Part 2, Article 87, compulsory measures of an educational kind in lieu of a punishment may be used for youngsters who have committed a crime. This does not have the strength of the 1920s' ruling that punishment should only used if educational measures would not work but, according to some lawyers, the wording suggests that educational measures should take first place. The judge can require a first-time offender of a minor crime or one of a serious but not very serious nature to undergo compulsory educational or correctional training (in the form of a warning, parental supervision, repayment of damage or restrictions on leisure activities) (Part 1, Article 90). For a first offence of

a serious crime, a judge can choose to send the young offender to a secure special school or technical school rather than giving him or her a criminal conviction.

Procedures laid down by Codes are vitally important but so are judges' attitudes in interpreting them. Sadly, there is little evidence that judges have been anxious to make use of these provisions. As we saw from Figure 7, numbers convicted are no less than they were in the early 1990s, when the crime rate was higher. Of course, there are judges who welcome the new possibilities.

> There's something called mediation. It's not accidental that earlier we could not even mention it, but now I can close the case if the victim has been recompensed and says – don't punish the lad, he's sorry for what he did, and I don't want to see him locked up – so why not act accordingly? Before we could not do that, now we can reconcile the two sides. (Judge)

In some regions (for example, Arkhangelsk) where neither special schools nor treatment centres exist, it is perhaps not surprising to find that judges use compulsory educational measures in less than 2 per cent of the cases (Жилкина 2005). This draws our attention to a more serious, underlying problem: the absence of services (social, probation or even police) that should come into play when judges give a youngster a suspended sentence. He will be registered with the police but, essentially, that is all. This makes the heavy use by the judges of the suspended sentence both absurd and counterproductive. In effect they are simply delaying a custodial sentence because the youngster will, in all probability, commit a further crime, and that will guarantee a custodial sentence.

> It seems to me that the sentencing system ought to be expanded, so that sentences could be more effective, so that we could use criminal legislation in the struggle with these offences. It's really not right that there are only two alternatives in our list of sentences – either lock up or give a suspended sentence. (Defence lawyer)

With some justification judges may feel that they are between a rock and a hard place.

> You see, whatever the decision we take – if we give a custodial sentence, prison does not correct anyone, it doesn't resolve the problem of re-educating and correcting the individual, in today's words. During the period of a suspended sentence, he commits a new crime – the court should have foreseen this, you are responsible. Give him a suspended sentence, it doesn't have any effect. He stands in front of me, wiping away the tears from his face 'I really do understand now' and outside the door his little friends are waiting, a whole crowd of them, all anxious. Out he goes – that's it, they let him off, all right it's suspended, but then again comes another new crime. I am strongly convinced that a juvenile should be given a sentence that includes detention. Then he'll know what detention means, it's not a visit to a sanatorium… (Judge)

> What does a suspended sentence mean? It means that police inspectors should visit the family, regularly, keep an eye on the child and on his behaviour. I ask, why did you commit a further offence when you had already got a sentence? Did anyone from the police, from all these various inspectorates, visit you – no, no one ever came. They write up fake reports, fake reports. It's such a heartless attitude. (Judge)

Some judges do not agree that that they do not care about the future fate of the youngsters whom they convict, while at the same time they object to their being required to exercise a preventive role. In general they define their task as one of 'awarding a sentence proportionate to the crime, taking everything into account – what was done, and the individual, and all circumstances surrounding the act' (Judge), and this often means custody. The suggestion that 'many criminal investigators, procurators and judges consider youth to be the most criminal section of society, the devil incarnate, and believe that, for the good of society, children who fall into the net of the criminal justice system are best sent to prison' (Альтернативный доклад 2005: 108) may be a little but not greatly exaggerated.

> More than anything else I remember the moment when my sentence was passed. It was my birthday and the judge gave a spiteful smile and said 'Well then, best wishes for your birthday! And here's my present for you – three years in custody! I think you'll be pleased.' And, smiling,

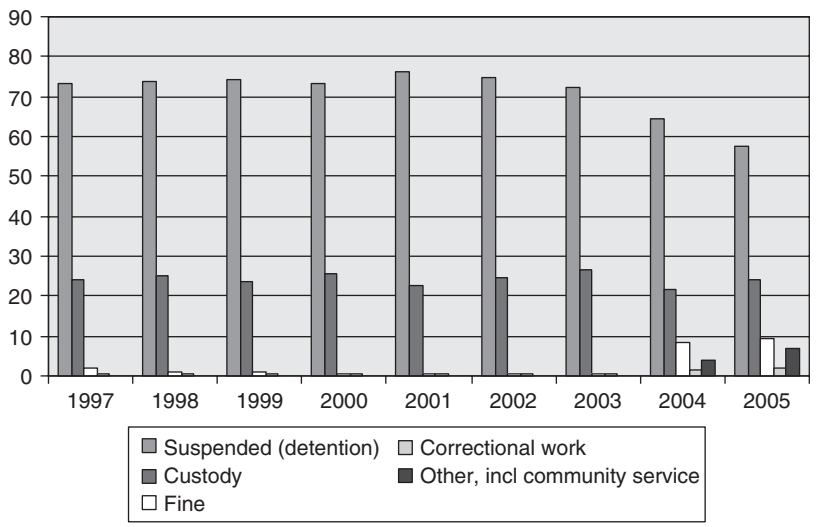
she left. That was one year and two months ago, but I can't forget that day. (Roman Sh, Mozhaiskaya VK)

And it is disquieting to hear the following (from an interview with a judge who specializes in youth cases):

Interviewer: And as part of your practical training did you visit a colony, a SIZO?
Respondent: In Germany we visited several.
Interviewer: But in St Petersburg?
Respondent: No, no.

Judges continue to convict the great majority of youngsters brought before them and to sentence a quarter to custody (see Figure 8). The 1996 Code had increased the length of the minimum sentence to six months (with a

Figure 8: Sentences imposed upon 14–17-year-olds, Russia, 1997–2005



Source: Data from MVD statistical handbooks, 2002, 2004; statistics of the Supreme Court RF, 2004, 2006.

maximum of 10 years, compared with 20 years for adults) to be served by first-time offenders in a colony with a general regime as contrasted with one with a strict regime for recidivists. In 2001 the distinction was abolished. In 2001 an amnesty for short-term offenders and a new ruling allowing earlier release cut the colony population nearly in half – from 19,000 to 10,000, and the 2002–3 amendments to the Code of Criminal Procedure and the Criminal Code raised the reformers' hopes. The amendments allow the judge to take changed circumstances into account and be more flexible when sentencing for first offences. The minimum sentence has been reduced to two months, and the maximum for under-16s set at six years. The judge is obliged to give reasons for believing that an offender could not be 'corrected' without depriving him or her of their freedom (Article 88). For a whole series of crimes, alternatives to a custodial sentence are now listed: correctional work (not only at the individual's place of work), fines and 'compulsory service' or, in English terms, 'community service'. Applications for parole have been made easier.

Yet nothing changed in sentencing policy until, in 2004, the judges cautiously began to impose fines, and compulsory (community) service was introduced. However, as we see, they applied these sanctions in lieu of suspended sentences, while continuing to sentence a quarter or more of the children to custody.

Custody and the colonies

Let's refresh our memory. During the 1990s the numbers of juvenile offenders in the colonies at any point in time hovered around 20,000; the numbers plunged suddenly in 2002 to less than 11,000 as a consequence of the amnesty and early release rulings; by 2006 they were back up to 15,000; at the beginning of 2008 they had dropped sharply to around 10,000 (FSIN website). To explain the 2008 figure, we would need data (which we do not have) on whether more had been released on parole, or fewer sentenced. Certainly the age cohort is now smaller than it was in 2003, which may be playing a part. The figure for January 2009 will almost certainly show a further fall because of a new policy of transferring 18+ offenders to adult colonies.

Thirty-five regions have no colonies, and many of them are in faraway places. While most of the boys at least remain in their own region (albeit hundreds of miles from home), 80 per cent of the girls travel hundreds if not thousands of miles to one of the three colonies for girls. Following sentencing,

they may stay in the SIZO for up to a further two months, waiting for a transfer to a colony. They may spend days or even weeks travelling under appalling conditions, and sometimes together with adult prisoners.

> To be honest, I was scared of the thought of the journey. They took us under guard, with dogs, to the Stolypin railway cars. They were coarse and cruel, shouted at us, insulted us, pushed us around, and even kicked us, those damn guards. But we were lucky, the boys really got it. They beat them, much more and worse, humiliated them every which way, it was awful to watch. The boys cried and begged for help, but nobody can help them, there's no one to turn to. They took them into an adjoining car and beat them, we heard the sounds, and then saw their bloody faces. It's awful to remember. (Veronika)

> I left Ekaterinburg at 4 in the morning. There were six of us kids and a 19-year old girl. The prison van took us to the station, to the Stolypin railway car. The convoy gave orders: out quickly, no looking to the right or left, run across the rails. We dragged our suitcases and got into the railway car … after a day and a half we got to Ulyanovsk. After being searched we spent two days in a horrible cell, filthy, cold, damp and dark. Then on to Ryazan which took less than 24 hours, there they sent us up to a cell – it was awful. There were 40–50 people in it, 10 were kids, the rest were women, some really hardened criminals, others were like men. Thank goodness we were only there for three days, and then they sent us to the colony … (Girl, Ryazanskaya VK)

By comparison conditions in the colonies may be substantially better. Changes introduced in the Code on the Implementation of Sentences (1997) regarding the treatment of young people stipulated significant improvements, and there are progressive governors who have tried to implement them. There are increased entitlements to both short- and long-stay visits by relatives, to the receiving of parcels, to telephone calls and to holidays. For the three months preceding release children can be housed by the colony in a hostel on the perimeter. Children have a right to legal aid, and rules governing the use of punishment (which should not include withholding parcels) make punishment a measure of last resort. Unfortunately, the realization of these rules is far from guaranteed. A census/survey conducted in 1999 found that

only 30 per cent of those in a colony situated outside their own region receive even a short visit from a relative, compared with 63 per cent of those who remain in their own region. Even this figure is hardly encouraging. Some children ask repeatedly, 'Does my mother know where I am?', others are from children's homes or have been abandoned by their parents. Only 18 per cent of all made use of the telephone – not every colony has an accessible phone for the kids, it's expensive (most have no money in their account), or there's no one to ring. Nearly 30 per cent receive no parcels (Михлин 2001). And, as for going home on holiday, most colonies acknowledge this as simply infeasible. Legal aid is usually simply not available – only if student lawyers manage to get permission to visit to hold a legal clinic. And, remember, many of the colonies are in inaccessible places.

In 2001 the Ministry of Justice abolished the distinction between general and strict regime colonies (for recidivists or particularly dangerous youth). This made it possible to retain more young people in their own region; restrictions on receiving parcels were lifted and release procedures simplified. In 2006 new rules on the regime in the *vospitatelnye* colonies introduced further improvements, but sentences remain very long. In 1999 the average length of sentence for those in the colonies was just over four years; over 60 per cent of the inmates were serving sentences of three years and above. At the beginning of 2005 the situation was worse: two-thirds were serving sentences of three years and above, with the average around four and a half years (Михлин 2001; *Penal Systems in Russia*; RF Report 2005).

Towards the end of 2007 FSIN issued instructions on transferring more 18–20-year-olds to adult colonies. This can be a sensitive issue for the young person, anxiously awaiting an appearance in court for a decision on parole (early release for good behaviour). An adult colony maybe nearer home, it may be much further away. In the Introduction we referred to the riot that ensued with loss of life in one colony. Two further colonies, one of them the Kolpino colony for boys outside St Petersburg, witnessed serious unrest in 2008. In this case some among the prison staff were blackmailing boys – either the boys paid them monthly amounts in cash, or they would receive bad references and be shipped out with them; some who refused were beaten. Others were not given time to appeal a court decision on transfer. The Kolpino case received sufficiently wide publicity to warrant a visit from a commission from Moscow, which found that fourteen of the older inmates had been hurriedly dispatched to a hospital for infectious diseases.

A subsequent visit by a group of respected St Petersburg human rights representatives brought results: the governor was removed, and a new one appointed.[1]

The key factors that influence the chances of a child ending up in detention are, we remind the reader: the legislation defining what is a 'crime' and its seriousness; the age of criminal responsibility; the use of a criminal justice system as contrasted with social-welfare measures to deal with deviant behaviour; and the variety and type of sanctions employed. The more extensive the legislation, the lower the age of criminal responsibility, the greater the use

Boy and prison officer, Russia

of a criminal justice system rather than welfare agencies, and the fewer the alternative sanctions to detention – all increase the chances of a youngster ending up behind bars. The high Russian figures at the beginning of the 1990s stemmed, in part, from the coding of certain actions such as relatively minor theft as serious or very serious offences. But the main reason for high custody figures was the extensive use of a criminal justice system, designed for adults, and the severity and limited choice of sanctions. As regards the age of criminal responsibility (14 for serious, 16 for less serious crimes), Russia is no different from several of its European neighbours. Yet in other respects, the treatment of children differed little from that towards adults.

Boys practising in colony yard, Russia

Alternatives to custody

Codes may have made mention of alternatives to custody (for adults as for children), but the rulings that specified their implementation have been slow in coming. The government has shown great reluctance to produce the legislation, to provide any financing to support the introduction of alternative sanctions (which require programmes and proper supervision to be effective). Originally slated to appear no later than 2001, in January 2002 the date for 'compulsory service' was set back to 'no later than 2004'; that for 'restrictions on freedom' to no later than 2005, and that for 'arrest' (short-term detention) for no later than 2006. In haste, on 30 December 2004, legislation on 'compulsory service', defined in the Criminal Code as 'unpaid socially useful work carried out by the convict in his or her free time', was adopted. It can be used when sentencing such crimes as hooliganism, theft, fraud, damage, etc., but no provision is made for it to be different if the offender is a young person. The type of work is to be decided by the local authorities with the agreement of the Inspectorate of the Prison Service.[2] It can be awarded for between 60 and 240 hours, with a maximum of four hours a day on weekends, and usually two hours on work or school days; it can be no more than 12 hours a week.

The new measures would seem to be primarily directed towards the adult population (see Альтернативные санкции 2003). How extensively they will be used for young offenders remains to be seen. Again, the judges' response to the opportunities offered them in the legislation will be crucial. It would be unwise to be too optimistic. By the beginning of 2006 the Prison Service (FSIN) reported:

> An analysis of the first results of applying and implementing this type of sanction allows us to draw the conclusion that community work is not yet being used as much as it should. For example, last year 17,300 convicts received such sentences. This constituted 1.5% of the total number of people passing through the Inspectorate's books (more than 1.1 million persons). On 1 January 2006 7,500 convicts were recorded by the Inspectorate as serving such a sentence, *of which one in ten was a juvenile*. [emphasis added – MM]

In other words, we are talking of 750 youngsters on a community service order at the beginning of the year, compare with 14,700 serving time in the colonies. Moreover, the courts in ten regions account for almost all

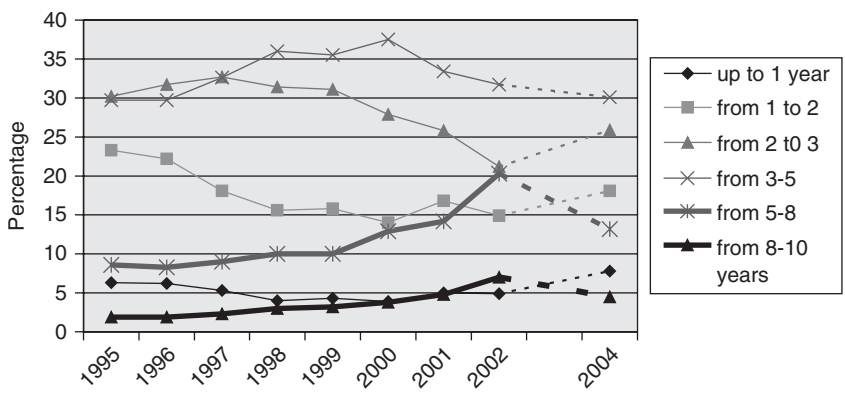
the community work sentences, some regions not using it at all. There is no agreement at local level, further complicated, FSIN suggests, by the legislation and other factors:

> In its turn on the basis of Part 1 of Article 49 of the Criminal Code of the Russian Federation community work is carried out in places specified by the local self-government departments in agreement with the Inspectorate. Furthermore, at the present time the only enterprises that are used are those of the housing and communal services sector, which are being auctioned off this year. Because of this it has become quite problematic to identify work for the convicts. (ФСИН: <www.fsin.ru>)

None of this bodes well for the introduction of the other alternative sanctions: arrest and electronic monitoring. No money has been forthcoming for short-term 'arrest houses', and a large European Commission project on tagging and bracelets has, it seems, run into difficulties.

While the changing pattern of crime – a rise in violent crime, a fall in theft and hooliganism – may bear some responsibility for the continuation of a harsh sentencing policy, it cannot be considered a significant factor. Most are sentenced for theft, and the length of sentence has not decreased (see Figure 9).

Figure 9: Length of custodial sentences for 14–17-year-olds, Russia, 1997–2004



Source: Data from Максудов 2006: 18; Supreme Court statistics 2004 (data for 2003 is lacking).

The effects of custody

In the Introduction we cited views of the children themselves and of those who work with them. Here we expand a little on this, first by completing one of those statements.

> Although the colony, I tell the kids, is called educational, we don't re-educate you here. Honestly, we can't educate or re-educate anyone here.... What are we? What is our institution called? A correctional-labour establishment. The system is one of implementing orders, and we are implementing a court decision. The court decided everything, where the sentence should be served, for how many years. The court weighed it up, and isolated the person from society. Because society has worked out these kinds of arrangements: A person should be isolated from society. The penal system implements court decisions, and does the convict become re-educated while here or not? Well, that's another question... (Director of school and technical school in a colony)

> ... while they are in the correctional institution the youngsters, in principle, are all like pioneers. Because they educate them there under a quite harsh regime. But the institutions do not set themselves any far-reaching aims. They simply set themselves the aim of making sure the youngsters stay there ... they move around in ranks, greet everyone, follow basic rules on how to live. But in the long term the system does not work. Psychologists do not work with them. Basically it's blokes with truncheons. And it brings no real results, only a kind of appearance of real work. (Criminal investigator)

> For us, in the colony, listening in, spying and tale-telling is most important. So he runs to me to complain about someone and sits there spilling the beans. And I look at him and think – whom are we re-educating? (Governor of colony)

> I do not think that prison corrects people; on the contrary it makes us angry, after all, you know, it's so hard to remain, locked up, in prison. The surroundings get on your nerves, in the prison camp it's like being in a cage, only it's a huge cage. They keep you there like animals in a cage, and when people have recognized their errors, they still have years and years to serve, some as much as 9–10 years. When someone is

Boys marching and singing in colony yard, Russia

> released, all that anger that has swelled up inside him, spills out in the form of new crimes, for which he receives another sentence, and again he's back in the zoo. The people who hand out these sentences to us sit at home drinking coffee and eating cakes … they don't know, they have not lived here, they haven't seen how we live, for them it's just words, savage sentences. On that note I end, in the hope that people will take notice and draw some conclusions. (Sergei, Kazanskaya VK)

Not all who work in the law and order agencies would agree with Abramkin:

> Our children and young people leave our penitentiary institutions as moral and physical cripples. With broken ribs, damaged kidneys, tuberculosis, with tattoos and scars all over their bodies. With sexual perversions and damaged psyches. … A human personality is destroyed here. Beings emerge, incapable of living at liberty. (Дети в тюрьме 2001, 1: 22)

Boys in colony classroom, Russia

Indeed, it would be odd if they, its practitioners, did hold such views. But it is striking how little enthusiasm they can muster for the colonies. From one of the regions, the sociologists report:

> As a whole, the respondents emphasized not the pluses but the minuses which accompany imprisonment. For all that, the views of those who work in the colonies or visit them as part of their job differ somewhat from the views of those who never come in touch with the realities of prison life. Colony and SIZO staff comment on the negative consequences of destroying ties with family and friends. In a colony a youngster does not have opportunities to interact with people close to him, in the first instance with members of his family: '… never-ending homesickness, it's there in the letters, in conversations. Of course they want to go home …' (Governor of SIZO)
>
> Psychological effects, character change as a consequence of either being in a colony or of getting sent to one are usually mentioned by those who have dealings with a youngster before he gets sent to prison. 'I don't want

Girl in colony hall, Russia

> to say that once you've ended up in prison, that's it, you are finished as a person. No, that's not what I want to say at all. But the fact of the matter is that such individuals do have warped psyches.' (Defence lawyer)

Other negative consequences of spending time in a colony that these professionals mentioned included: the wasted years of a child's life, worsening health, the holding back of personal and cultural development. Among the positive consequences, people mentioned good living conditions, getting an education in school. However, hardly anyone spoke exclusively of positive aspects and, as a rule, professionals who mentioned positive consequences also referred to negative ones. Governors, recognizing that they cannot combat recidivism but only encourage it, honestly admitted that their present capabilities are limited to giving the law-offending youngster an education and some kind of professional skill.

In the other regions the responses were more critical:

> All the experts without exception, including colony staff, recognize that as the final instance [in the chain] a colony, both because of its organization and by definition cannot exercise an educational function. Time spent

> in a colony leads only to one outcome: it operates as a mechanism for reproducing juvenile crime.
>
> Time spent in a colony produces the ability to adapt [your behaviour] to that of your immediate circle and, after release, it is difficult to build relationships with people who are not like your fellow inmates. It becomes more difficult to find mutual understanding with others, and some of the youngsters seek out familiar ways of interacting – in gangs where they will be understood and accepted. When they are released, they already behave in such a way in civilian life, they want to recreate the environment, make it similar to that, which they knew in colony. (Criminal investigator)

The professionals echo the words of the children, quoted in the Introduction, and their views are shared by the majority of the general public. People may repeat the proverb 'The place for a thief is prison', but they do not actually think so when the thief is a child. Respondents in the survey in St Petersburg, Saratov and Ulyanovsk were asked to identify up to three positive (and negative) aspects to detention in a colony. Just under 10 per cent identified more positive aspects than negative, 40 per cent emphasized the negative. But which did rate highly as positive? *'Finish school, get a skill'* (67 per cent) led the field. *'Safeguarding society from the threat of recurring crimes'* was identified by 25 per cent; '*isolating the youngster from unsuitable parents', 'punishment and deterring others',* and *'curing drug addiction, alcoholism and psychological disorders'* were all noted by less than 20 per cent. In contrast several negative aspects received higher ratings: *'risk of TB, AIDS'* topped the list (56 per cent), followed by *'the high risk of creating a recidivist'*, and *'the risk of becoming a victim of prison brutality'* (both over 50 per cent), *'damaging the juvenile's psyche and his personality'* (44 per cent), *'depriving the offender of any future perspective of living a normal life'* (32 per cent), and *'causing moral suffering from the separation from relatives and friends'* (20 per cent). Russian adults have few expectations that a custodial sentence will deter or rehabilitate a youngster, and little stomach for this kind of punishment.

The similarity between the views of the general public and those of the professionals is striking. The general public is fairly evenly divided between those who think that there is a high likelihood of recidivism because of a young person's coming under criminal influences while in detention

(52 per cent), and those who are not persuaded of this (48 per cent) but, in answer to further questioning on *the causes* of recidivism, *'the lack of social support for those who are released from a colony'* led the list (70 per cent identified this), followed by *'acquiring prison skills'*(64 per cent) while only 18 per cent thought certain children have *'an inborn criminal inclination'*.

The sociologists report:

> The majority of the experts … commented on one of the negative aspects of life 'behind bars', that of criminal socialization. It is in the colonies that new acquaintances are made, with those who have criminal experience and are far from being positive models, inclusion into a criminal subculture occurs, and new criminal expertise is acquired. As a result of this the youngster '… will get a theoretical grounding in all aspects … will know how and what, all the basic principles will be explained to him either in prison or in the juvenile colony, and that's it'. (Governor of SIZO)

> And even if he wants to, the juvenile convict is often simply not able to withstand the influence of the environment and of the criminal authorities, facing as he does physical and psychological violence, hazing: '… there no rules of any kind exist, no system of order, and all the rest. And what to expect from their fellow inmates, they also don't know'. (Criminal investigator)

> In reality the experts, including those who work in the correctional institutions, view the sending of [a youngster] to a colony as the equivalent of placing him in an organized criminal fraternity. First, because the colonies contain inmates convicted for the most part for serious and especially grave offences, and secondly because prison culture is imbued with its own particular type of order, which is stronger than the discipline and control imposed by the prison officer. Even such a plus, as regards a colony, as the good living conditions compared with those which some of the kids had while free, works in favour of recidivism, because they get used to life in a colony. Among the inmates of a children's colony there are those who find it attractive to live according to the principle 'served my time – was released – back in again'.

Yet simultaneously the professionals 'are inclined to ascribe a great deal of the responsibility for recidivism on the environment in society, the situation in the colonies, and on the immediate circle around the ex-prisoner rather than on the youngster himself, his strength of will and his wish to change things in his life'.

The sociologists conclude:

> Without the overall reform of the system of preventive work with homeless children, without help in reintegrating those released from the colonies into the community, without a system of social services to support families and to find employment for youngsters, the liberalization of individual clauses of the criminal law will not bring about a change in the system as a whole, or a decrease in youth crime and recidivism but, on the contrary, will only increase the negative influence of the immediate environment and produce more recidivists.

Good analyses of recidivism, which attempt to distinguish the different factors that influence the rate of reoffending, are in short supply. Data from some other countries, including from England and Wales, suggest that reoffending is higher among those sentenced to custody than among those engaged in community service, and there is scattered evidence from Russia that those in the colonies (some of whom start their careers in secure special schools) are more likely to reoffend than those treated more leniently (Вопросы ювенальной юстиции № 1). Colony staff often have a pretty good idea of which youngsters they will see again, after a short time out, but they have no knowledge of the future careers of those who leave, aged 18 or older, either to return to society or to complete their sentence in an adult colony. Surely the resources should be found to finance a proper study of the consequences of spending society's money on locking up young people? Is detention not only costly and damaging for young people, but does it also create future costs for society by setting some of these children (how many?) on a career of crime that could have been avoided? Or does the evidence suggest that other factors (family influence, homelessness, lack of work or of community support…) are the more important in determining a young person's future behaviour?

All recognize that, even for those not damaged by their time in a colony, the future is bleak.

Nowhere to go…

> Today, to leave prison and find work, find a place to study, is difficult, practically impossible, no one will take you on … (Head of department of education)

As Pertsova, the ex-head of the GUIN department for juvenile colonies, argued in 2002, 'the majority of them have nowhere to go, even those who have parents. No one is waiting for them at home, nor in the factories' (2002: 47).

The lack of cooperation between the agencies of the justice system and social welfare agencies, including educational institutions or employment agencies, accentuates the problem. 'In general we simply interact – from time to time,' said the Governor of a colony. An example of this interaction is the exchange of information and the supplying of documents. A representative of the youth police noted that they receive information from the correctional institutions after substantial delays: 'Sometimes we are notified six months [after the release], and sometimes we never receive anything…' (Head of youth police department).

There is only the undermanned and under-resourced Inspectorate of the Prison Service. In a few cities or towns, enterprising NGOs have stepped in to try to fill the hole left by the government. They work with the colonies, police or local authorities to support the kids on police record or released from colony. Projects include programmes to counter the isolation of the children in the colonies and prepare them and local institutions for their return to society. One of the most developed and successful of these is run by staff and students from Krasnoyarsk State University, who, with support from the regional leadership of FSIN, work with small groups of inmates both before their release and afterwards.[3] Much depends upon the willingness of the governor of a colony or of the regional FSIN leadership to embrace innovations, and all involved recognize that such projects cannot do more than help small numbers of children. It seems that among the professionals and experts who work in or with FSIN, to a much greater extent than among their colleagues in the procuracy or courts, there is a recognition of how dysfunctional the reliance upon detention is, and of the need to reform the system as a whole. And this view is shared by

the majority of the public: children require a different treatment from adults.

> I think that if we are talking of justice, we must have adults in mind: you committed a crime, you must bear the punishment. But in relation to children … when they commit a crime, they are the ones who suffer most of all. In my view, they are the prime sufferers. (Deputy head for education in a special school)

> A child … even if he is a nasty little liar, steals and does all kinds of objectionable things, all the same we are seeing the results of someone else's work. What happens – at first something goes wrong in the nursery or in the family, the parents of course are ticked off, but it's the child who is locked up, it's he who has to serve a sentence. It turns out that as well as loading it all on him, he has to answer for it all as well. No one wants to help him, but to make him answer for it – all are willing to do that. (Activist, Memorial)

The view of the child as the victim of society is coupled with a strong state-welfare orientation.

> Society is responsible for not giving youngsters legitimate ways of earning self-esteem. For example, through sport, success at school, etc. You can get top marks for an essay in school, you can stand out for your knowledge, and you can gain self-esteem on the street, you can gain self-esteem through being one of a gang of youngsters, you can gain self-esteem as a criminal. And why do it that way? Because there are no other ways open to you. (Psychologist, SIZO)

Public support for sentencing policy?

Present policies enjoy little public support. Again we draw from the 2004 survey.[4] In answer to the question: *'In your view, ought one to impose such a sentence as detention upon a 15-year-old who has committed a non-violent crime? If you think one should, then what, in your view, ought to be the maximum period of detention for such a teenager?'* nearly half the respondents said detention should *not* be used, a quarter advocated for no more than three months, and a further 15 per cent for a maximum of one year.

The very limited support for custody was confirmed when respondents were presented with a series of individual cases (we cite a few examples), and a card of measures to choose from:

- A 15-year-old entered an apartment and stole money, valuables, a video-audio centre, and food. Which measures, in your view, should one adopt towards this teenager?
- A 15-year-old took a mobile phone and money off another. How, in your view, ought one to treat this young offender? And what if the 15-year-old is under the influence of alcohol or drugs?
- A 15-year-old boy attacked a pensioner returning from the Savings Bank, and made off with her handbag with money in it.
- A 15-year-old was arrested for selling drugs in school? Don't consider whether they were hard or soft drugs – the important fact is the selling of drugs in school.

This was the choice of measures:

1 Have a talk with the teenager and parent
2 Fine the parents, oblige them to repay the cost
3 Place on police register
4 Place in special school
5 Give a suspended sentence – custody for a further offence
6 Sentence to custody in a juvenile colony
7 Other measures (which?)

The results are tabulated in the accompanying table.

We note that the only offence for which even a quarter of the respondents would favour detention in a colony is that associated with drugs (but sending to a special school pushes the numbers up), and we see the anxiety about alcohol reflected in the two mobile phone cases. Maybe, when faced with this list of options, some people find an option they positively favour while others proceed by eliminating those that that they positively *do not* favour (for example, detention) or that they think will not work (parental intervention) and end up choosing the police register because, after all, they think that *something* must be done. This could suggest that, if alternative measures were available (community service, reparations for damage, and a better use of fines) they would receive support. But Russian adults know

Preferences for action: five cases involving a crime by a 15-year-old who:

Appropriate action?	Sells drugs in school	Burgles flat	Attacks and robs pensioner	Robs youngster of mobile/ money when drunk	Robs youngster of mobile/ money when sober
Talk to child/ parents	4	3	2	3	7
Fine parents/ repay	–*	17	20	16	42
Put on police register	24	24	40	37	35
Special closed school	16	13	18	22	7
Suspended sentence (further offence will carry detention)	25	29	14	14	7
Detention in a colony	28	13	6	4	1
Other/difficult to say	3	2	2	4	2
Total	100	100	100	100	100

Note: * The 'fine' option was not included for this question, which may skew the results.

little of such measures: few had heard of juvenile justice, or restorative justice, and even in the two cities where there have been projects involving social workers working with judges, very few knew of them.

Respondents, given a list of options, were asked: *'In your view, which are the* most important aims of today's *justice system for young people? Choose, please, no more than three answers*.' They were then asked: *'And what in your view,* ought *to be the* main aims *of the justice system in relation to young people? A maximum of three answers…*'

They were also asked for their ratings of the institutions of the criminal justice system and the KDN: '*In your opinion how well or badly do you think the following institutions exercise their responsibilities towards young people?*' All were rated very poorly, with the police doing worst of all (62 per cent considered that they do a poor job), followed by the SIZO (46 per cent). The assessment of almost any government institution today is poor.

Russian views on the criminal justice system in relation to young people

Aims of today's justice system for young people:	Are:	Should be:	Disparity
To punish an offence	61%	40%	–19%
To isolate the offender from society	47%	19%	–28%
To deter the offender and others	26%	15%	–9%
To ensure that justice is done	25%	55%	30%
To show society's disapproval of the crime	20%	32%	12%
To re-educate the offender	24%	55%	31%
To compensate the victim for loss of property/damage	16%	30%	14%

These attitudes are distributed fairly evenly among the Russian population and do not depend upon standard social characteristics. How can we explain the support for a softer approach to young offenders? Are Russians simply reacting against what is still a harsh system (long sentences served far away from home) and have a low opinion of today's institutions, or do they think very differently about the virtues of punishment or about holding a child responsible for his or her actions? We take this up in chapter 7.

The majority of the Russian public would prefer softer, alternative sanctions. This should encourage reformers. Too uncritically, we suggest, politicians and academics have assumed that the public's punitive response to adult criminals extends to young offenders. But, as far as the treatment of children is concerned, it seems that it is the legislator who is lagging behind.

Explaining the stalling on reform

The post-Soviet government inherited a system whose procedures and practices inevitably send large numbers of children to serve sentences in colonies. Although damaging to the children and to society, the reluctance on the part of the political leadership, whether under Yeltsin or Putin, to introduce anything other than cosmetic reforms has been striking. Yeltsin placed a moratorium on the death penalty for adults but, with no personal commitment to reducing the level of incarceration, was not disposed to take up an issue that would do little for his popularity. Under Putin, amendments to the Codes initially promised lower custody figures, and Putin has himself

shown interest in juvenile justice reform, only to then back away, effectively stalling the process. How do we explain this?

In the early post-Soviet years, so many issues demanded attention, many higher up the list than justice for juveniles. The Soviet economy had stagnated, while capitalism in the west had forged ahead. The aspirations were for a better standard of living, travel abroad, open information, better social services, an end to party control over all activities, while retaining welfare provision. These issues took priority, and their realization proved unmanageable. Although the new 'democrats' and the 'communists' claimed to possess platforms for action, there were too many different, ill-thought-out ideas, and the political elite splintered, regrouped and took up different issues in an often erratic fashion. Yet this cannot suffice as an explanation. Reform has remained painfully slow or simply been blocked under the Putin presidency.

Almost everywhere the treatment of adult criminals, who are considered a far greater social danger, dominates decision-making on criminal policy. Russia is no exception. Policy towards young offenders has been driven primarily by policy towards adults, where a conservative attitude prevails. Despite occasional statements from political leaders, reform of the criminal justice system and the introduction of alternative sentencing policies have never been high on the political agenda. The young have, in the main, only benefited, marginally, from changes that had the adult population as their main focus.

In the 1990s, as crime rates rose, the public registered its concern with law and order, a majority believed harsh measures would deter crime or put criminals out of action, and the death penalty still enjoyed strong support. There were no leading politicians or Supreme Court judges anxious to make juvenile justice for children an issue. The new Codes (Criminal and Criminal Procedure) passed by the Duma in 1996 were sadly disappointing. The Supreme Court was cautious, the Ministry of Internal Affairs and the Ministry of Justice engaged in inter-ministerial infighting over the transfer of GUIN (the prison service and inspectorate) to the Justice Ministry, and serious budget delays or simply non-payment of assigned funds occurred. By 1998, with the transfer over, and Kalinin in charge, the GUIN leadership began to appear on shared platforms with the NGOs to argue the case for less imprisonment, but this received no support from the other law and order ministries. The majority of the justice officials – from police and prosecutors to judges and prison officials – continued to carry out their departmental roles in the ways to which they were accustomed, and with less funding.

In this inauspicious environment a small number of penal reformers have struggled to make themselves heard. Among them are activists, some with prison experience but not themselves lawyers, a few academic lawyers and criminologists. The reform community, and this is also relevant, is small and scattered. It cannot count among its members leading professors from Moscow and St Petersburg state universities (as could the pre-1917 reformers) nor Supreme Court judges. The sociological data are not there, nor an active community of criminologists. And, perhaps most disappointing of all, neither the corpus of judges nor representatives of the KDN have demonstrated any particular interest in reforming the system. Those among them who take up the cause can be counted on the fingers of one hand.

How much weight should we place upon the inheritance of the past? And which parts of the past? Russia's Stalinist past when labour colonies became part of the social landscape and children lost their entitlement to different treatment from adults or the stagnation of the Brezhnev period? The shadow of the past still lies over the present. It is not so much, I would argue, that the Stalinist Gulag bequeathed a system of labour colonies, long sentences and harsh conditions, which continued to exist throughout the Khrushchev, Brezhnev and Gorbachev periods as part of society. It is rather that the long period of Soviet rule produced a public, used to its exclusion from participation in decision-making ('I never thought,' said one the respondents to the survey, 'that anyone would be interested in my views on how to respond to juvenile crime') and which acquiesces in the continuation of harsh policies. The absence – since the period of Stalinist repression – of a tradition of political and social activism has allowed the conservatism of the government and judicial apparatus, which became ingrained in the Brezhnev period, to go unchallenged. In their turn the bureaucratic ministerial institutions find it almost impossible to conceive of a role for social or informal organizations outside of their control. Yet, at the same time, the Soviet past has bequeathed a belief in welfare as part of the state's responsibilities – a responsibility that it did not meet but one that it ought to – and this is particularly relevant in the case of children.

Had a stronger and more united community of experts and activists existed, possibly it could have persuaded political leaders and won parliamentary support for a change of direction in the reforming period of the early 1990s. However, the content of the Codes indicates that powerful conservative lobbies existed. The ministries, and the courts and procuracy, institutions in a system that has a bureaucratic core, settled firmly into their entrenched

positions and fended off unwelcome change. Voices calling for a properly funded system of social workers for young people and a probation service, for a follow-up system of reintegration into the community, and for the use of restorative justice approaches tend to hear their own echoes. The media has shown little interest in the topic.

Does this mean, to return to Kalinin's statement at the beginning of chapter 4, that the chances of introducing a more just and humane response to young law-breakers are receding into the distance? Not necessarily, we shall argue. The relationship between penal reform and the political environment is less straightforward than he implies. Kalinin is right if he wishes to emphasize that without free and open discussion, without expert input into policy-making and independent control over ministerial behaviour, an unaccountable and unenlightened government is more likely to drag its feet. Why, after all, should an executive act progressively and take on the inbuilt conservatism of the law and order ministries, especially if there is no pressure from below for change?

But, even in a democratic environment with an independent criminal justice system, and active campaigning organizations, elected politicians may pursue punitive policies. We have seen this happen in the United States and in England and Wales. If, in one environment, populist agendas from politicians fearful of losing elections may override expert and professional opinion, in another they may push forward a reforming agenda, sometimes with popular support or at least consent. The relationship between politicians, professionals and the public – in a democratic society – can take different forms, with different consequences. In Russia, however, reforms have come in undemocratic environments. The issue then becomes a rather different one. Does the present Russian policy-making (or political) environment have the potential for reform of the existing juvenile justice system? We turn to this in the final chapter.

CHAPTER 6

England and Wales: Return to Custody

For these are things being done to children by the State – by all of us – in circumstances where the State appears to be failing, and in some instances failing very badly, in its duties to vulnerable and damaged children.
The Honourable Mr Justice Munby: Judgment, Article 172, 2002

If, since 1990, Russia has done little to reduce the reliance upon custody, England and Wales have favoured the increasing use of it. In 1991 the United Kingdom had a Conservative government, in 1997 new Labour swept to power and, ten years later, is still in office. During this period policy towards children who break rules has changed dramatically. The pendulum has swung sharply towards punishment and the use of custody. This at a time when UK governments have signed up to international conventions on the rights of the child and pursuing the welfare of children who break the law, and when other countries in Europe have brought down the numbers of children held in detention. In 2008 a new *Youth Crime Action Plan* appeared, the latest statement on government thinking and intent, an ambivalent or even contradictory document, reflecting different views. In this chapter we outline the contours of these more punitive policies; in the next, we attempt to find an explanation for this puzzling and depressing policy shift. In the final chapter, assisted by evidence of other countries' successes, we address the question: what can be done?

During the 1980s, we remind the reader, the custody rate remained stable – but diversion meant fewer cases coming to court and fewer custodial sentences. The numbers of those under-17 held on remand or sentenced to custody fell by more than two thirds during the decade.[1] However, despite Home Office continued support for alternatives to custody, within a few years there was a sharp reversal of policy. From John Major's 'we should condemn a little more and understand a little less' to Tony Blair's 'tough on crime, tough on the causes of crime' and Jack Straw's criticism of the 'excuse culture' the message from politicians in recent years has been that Michael Howard was

right when he claimed that 'prison works' and that we need more prisons. The result has been a steady climb in the numbers of young people in custody (see Figure 3 in the Introduction). If, in Russia, the penal reform community has struggled, unsuccessfully, to persuade politicians to introduce policies which would result in a substantial reduction in numbers of children behind bars, in England and Wales the combined expertise of Home Office experts, of professionals who work with young people, and of a much stronger and long established penal reform community has failed to prevent politicians producing policies which ratchet up the numbers.

In both countries crime by adults has been of primary concern to politicians. However, if in Russia this meant that youngsters received relatively little attention from the legislators – and it was their neglect that left them victims of a harsh system designed primarily for adults – in England and Wales the Conservative and then Labour government's new approach to tackling crime in general (that is, by adults) included a series of punitive measures directed exclusively towards children. Politicians and some sections of the media consciously strove to make children a target, and to argue for tough, punitive measures, to make them behave.

While in Russia the shadow of the past may carry some weight as an explanation for the slow change (albeit, as we have argued, in terms of a passive acceptance of harsh policies, the absence of a tradition of political and social activism, and the conservatism of the government and judicial apparatus) it is difficult to see a historical inheritance in any way influencing policies at the end of the century in Britain. Earlier governments of all political persuasions had followed, maybe cautiously, a welfare-oriented approach, and had emphasized the importance of reducing and eventually abolishing the use of custody for under-17 or 18-year-olds. The Conservatives may have talked of law and order but, even under Thatcher, diversion and cautioning had occupied centre stage. If we cannot look to history for help in understanding the curious shift that took place at Westminster in the 1990s, then how can we explain it? But, first the new thinking.

New thinking, new policies

In 1991, under Michael Howard's guidance, the Criminal Justice Act extended the brief of the (now renamed) youth court to include 17-year-olds and set the court's maximum custodial sentence at 12 months. Grave crimes still came before a Crown (adult) court. But in 1994, the Criminal

Justice and Public Order Act, passed in the aftermath of the Jamie Bulger murder, lowered the age for indeterminate sentences for grave crimes from 14 to 10 years, raised the maximum youth court sentence for 15–17-year-olds from 12 to 24 months, and created a new Training Order to be served in a private jail (STC) for up to 24 months. This marked the start of a veritable bonzana of criminal justice acts, subsequently introduced by successive Labour Home Secretaries.[2]

The secure estate for children included, at that time, the local authority children's homes (for those under a welfare order and those sentenced for a criminal offence), the Young Offender Institutions for boys (until 1988 known as Detention and Youth Custody Centres), and places in women's prisons for girls. There were now to be five new Secure Training Centres for persistent offenders, run by private companies. The rationale for such a policy move is difficult to grasp. As Rob Allen notes, Tony Blair, at the time, argued that the idea was 'fundamentally wrong' because 'the last thing you want to do with those persistent young offenders is to put them alongside 40 or 50 other persistent young offenders and lock them up for a considerable period of time'. It was, Blair suggested, 'insane to set up these new centres at the same time as the local authorities are having to close some of their facilities for disturbed young people in communities throughout the country' (Allen 2006: 28).

Yet, once in power, this was forgotten. None had been built by 1997, but under the Labour government four STCs have been built, while local authorities continue to struggle. Until very recently, girls continued to be housed with women; now, in most cases, they are at least in a separate unit in an adult prison.

New Labour's first foray into the field of youth justice came in 1996 with a policy paper from Jack Straw and Alan Michael, 'Tackling Youth crime, Reforming Youth Justice', in which they questioned the claim that most children grow out of crime and argued that fundamental change was needed. This was followed by a White Paper, *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales*, presented to Parliament in 1997 by Jack Straw. We quote from the White Paper at some length because it allows us to see the shift in thinking that has dominated policy-making ever since. The Preface states:

> Today's young offenders can too easily become tomorrow's hardened criminals. As a society we do ourselves no favours by failing to break the

> link between juvenile crime and disorder and the serial burglar of the future. For too long we have assumed that young offenders will grow out of their offending if left to themselves. The research evidence shows this does not happen.
>
> An excuse culture has developed within the youth justice system. It excuses itself for its inefficiency, and too often excuses the young offenders before it, implying that they cannot help their behaviour because of their social circumstances. Rarely are they confronted with their behaviour and helped to take more personal responsibility for their actions. The system allows them to go on wrecking their own lives as well as disrupting their families and communities.
>
> This White Paper seeks to draw a line under the past and sets out a new approach to tackling youth crime. It begins the root and branch reform of the youth justice system that the Government promised the public before the Election. It will deliver our Manifesto pledge to halve the time it takes to get persistent young offenders from arrest to sentencing.
>
> All those working in the youth justice system must have a principal aim – to prevent offending. That will be the statutory aim we set out for them in the new Crime and Disorder Bill. With Final Warnings instead of repeat cautions, a new action plan, reparation and parenting orders, and a new national network of Youth Offending Teams providing programmes to stop offending behaviour, we are putting in place the means of delivering this aim. To give more strategic direction, set standards and measure performance, the Government will set up a new Youth Justice Board for England and Wales.

Now, in itself, 'prevention' can include almost anything: tackling the poverty, abuse and neglect that encourages criminal behaviour, adopting new approaches to drug use by adults that will have repercussions for youth, or new policies on guns and knives, encouraging the use of home and street security systems, or of new strategies (community service, restorative justice) for young offenders, mentoring schemes, or imposing tougher penalties on those caught breaking the law. The question is: which of these strategies, or combination of them, is effective in reducing crime and at the same time helps, rather than damages, child offenders?

The government saw no problem here:

> Children need protection as appropriate from the full rigour of criminal law. Under the UN Convention on the Rights of the Child and the European Convention on Human Rights, the United Kingdom is committed to protecting the welfare of children and young people who come into contact with the criminal justice process. The Government does not accept that there is any conflict between protecting the welfare of a young offender and preventing that individual from offending again. Preventing offending promotes the welfare of the individual young offender and protects the public.

How, though, do you achieve this? Does it not depend upon what kind of offending, and offender, you are concerned with? The White Paper took issue with the claim that most young people commit offences at some point in their youth, and most grow out of it, offering instead a picture of a generation of future serial burglars. Yet it was disingenuous when it claimed: 'For too long we have assumed that young offenders will grow out of their offending if left to themselves. The research evidence shows this does not happen.' The research evidence shows that there is a small hard core of persistent offenders who do not grow out of crime, and may well become the more serious young adult offenders. Further into the White Paper, the authors noted that 'about 3% of young offenders commit 26% of youth crime'. Why then not focus on these? Instead the government included all young offenders under one umbrella.

The White Paper referred to: 'The consultation paper Tackling Youth Crime [which] explained the scheme':

- a first offence might be met by a police reprimand, provided it was not serious. Any further offence would have to result in a Final Warning or criminal charges: in no circumstances should a young offender receive two reprimands;
- if a first offence results in a Final Warning, any further offence would automatically lead to criminal charges, except where at least two years have passed since the Final Warning and the subsequent offence is minor; and
- for any offence the police would have the option of pressing charges.

> The **action plan order** will combine punishment, reparation and rehabilitation. If community intervention does not work, and for young

> offenders found guilty of serious crimes, custodial penalties are necessary to protect the public. Public protection is best served if punishment is combined with rehabilitation so that young offenders are equipped to lead law-abiding and useful lives once they are released from custody. . . . The Government will also give courts clear powers to remand juveniles to secure accommodation where this is necessary to protect the public and prevent further offending.

The Crime and Disorder Act of 1998 followed. The 1994 Act had introduced tougher sentences, and the 1998 Act increased the chances of a youngster being sentenced. Police discretion to issue warnings or cautions following an arrest was reduced; the use of a caution was replaced by a reprimand and final warning – two strikes and you're out; and a new ASBO (a civil order), with the condition that its infringement automatically resulted in imprisonment, was introduced. The aim seemed to be increase the use of at least short-term imprisonment for a greater number of offences. The Training Order became the Detention and Training Order for 12–17-year-olds, to be operational from 2000; for non-grave offences magistrates could impose a sentence of four to 24 months, half to be spent in penal custody, half in the community. The long-held common law principle of *doli incapax* for children aged 13 and under was abolished.

The government's commitment to using the criminal justice system to deal with even non-serious crimes by children was further reflected in the 2001 Criminal Justice and Police Act. This permitted the use of detention on remand for 'repeated' breaking of the law, irrespective of the seriousness of the offence (shoplifting, petty theft, etc.). 'Repeated' has come to be interpreted as 'more than once'. This, in Goldson's words, in effect, 'replaced the long-established "seriousness" threshold with a "nuisance" test: a perfect exemplar of "institutionalized intolerance"' (2006: 144). Two years later the Anti-social Behaviour Act introduced the use of dispersal orders, giving the police powers to return home any under-16-year-old walking the streets, and allowed for the publication of ASBOs, while the Criminal Justice Act introduced longer sentences for dangerous offences.[3]

The results of the policies

The Labour government accompanied the increased use of the criminal justice system with the creation of new 'youth justice' institutions, aimed at

ensuring an effective and participatory system. The 1998 Act introduced, at central level, a Youth Justice Board, a public body to monitor and oversee the workings of the youth justice system and, from 2000 onwards, to be responsible for the purchase of places within the secure estate for young offenders. At local level, Young Offender Teams, including representatives of social services, police, the probation service, housing departments, and drug addiction agencies were to be set up by local authorities to work with young people who were given non-custodial sentences. The results have been very mixed.

Some YOTs are working well, providing programmes, supervision or support for young people and/or their parents. But the public is largely unaware of their existence.

Three-quarters of the respondents in a national survey in 2004 had not heard of YOTs (Hough and Roberts 2004: 24), and there is no evidence that their activities are denting the prison numbers. It might be possible to argue that the fall in the youth crime rate owes something to YOT activity, but the crime rate began to decline before YOTs were introduced and there is no evidence of their having an impact. Perhaps even more disappointing, while the leadership of the Youth Justice Board has struggled to improve the system it has been powerless to prevent numbers of custodial sentences rising, to reduce the overcrowding or to stem the incidence of suicide by children in custody.

The variety of sentencing options increased over the period, including, in the government's words, 'new and innovative community penalties' – the Intensive Supervision and Surveillance Programme (the increased use of curfews and electronic tagging); Intensive Fostering; the use of restorative justice as part of a range of community orders; the Youth Restorative Disposal, piloted in eight areas of England and Wales; Referral orders; Reparation orders. (In 2008, under the Criminal Justice and Immigration Act, nine of these different community sanctions or orders were grouped together under a Youth Rehabilitation Order to simplify the system.) Reoffending rates for community orders were running at 69 per cent by 2006 and, the government suggested, where magistrates had little faith in community sentences, they tended to use custody.

Rod Morgan, chair of the Youth Justice Board from 2004 to 2007, was arguing in 2006 that:

> It's my belief, on the best available evidence, that we would better protect the public from being victims of further crimes if we were locking up

> fewer children. We have some very serious offenders in the system, who have to be there, but it does not amount to the 3,000-odd that we've currently got. … *We are prosecuting too many young people*. [my emphasis – MM] They have to be brought to account if their behaviour is concerning, but we don't have to do it by criminalizing them. (*Guardian* 16 August 2006)

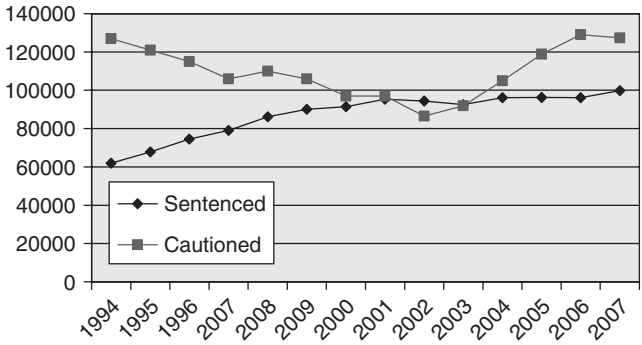
Although it must be well known in Home Office circles that diversion away from the court system is a critical first step, it took two years of pressing by Morgan, on behalf of the YJB, before the Home Office in 2006 expressed a willingness to introduce 'some pilot schemes for looking at greater flexibility in the way the police deal with young offenders'. Had the experience of the 1980s simply been forgotten? In 2008, came the first acknowledgement. The Criminal Justice and Immigration Act of 2008 (referred to in the *Youth Crime Action Plan* of that year as marking 'the biggest reform to the youth justice system since 1998') reintroduced 'the emphasis on out of court diversions by legislating for the Youth Conditional Caution which will reduce the number of young people being taken to court for relatively low-level offences'. It proposed a Youth Conditional Caution, for 10–17-year-olds, to be piloted initially for 16- and 17-year-olds in 2009.

Between 1994 and 2004 the number of youngsters detained by the police in connection with an offence remained stable, but the new legislation meant that an increasing proportion came to be prosecuted (see Figure 10). If at the beginning of the decade the police were diverting two-thirds of the cases involving youngsters out of the system (using cautions, warnings, etc.), in 2004 in roughly half of the cases the child received a court sentence.[4]

By 2006 police reprimands had continued to rise but sentencing figures changed little. How did the judges respond to the increasing number of cases coming before them, and to the changes in sentencing guidelines? And, in particular as regards custody, the most serious sentence, the one that should be used as a measure of last resort where children are concerned? Figure 11 shows custodial sentences rising steadily until 2002 and then dipping slightly, although the 2004 figure is still a third above that of 1994, and by 2006 there was little change.[5]

The custody *rate* during the period hovered between 7 and 9 per cent of all sentences but the greater number of cases before the courts meant that substantially more children were committed to detention (remand and

Figure 10: Cautions and sentences of 10–17-year-olds, England and Wales, 1994–2007



Source: Data from Morgan and Newburn 2006:1044; YJB website.

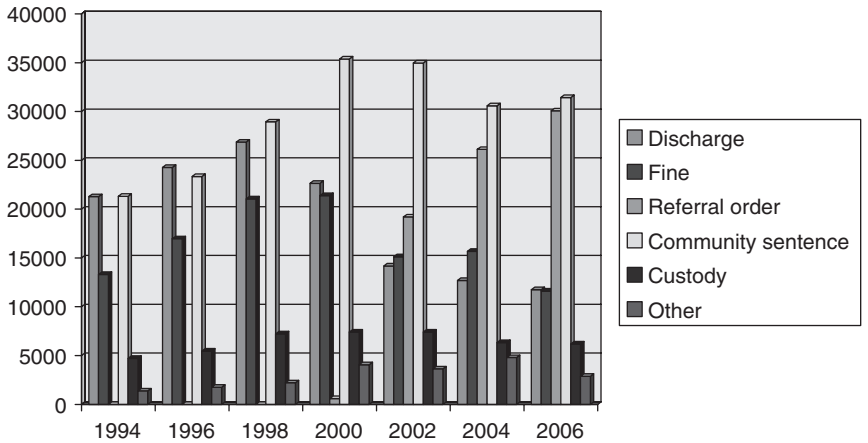
custody). The percentage of custodial sentences related to violent offences showed no increase between 1996 and 2006, hovering around 14 per cent; by 2007 nearly as many young offenders were receiving custodial sentences for breach of a licence or order as for a violent offence. A measure of last resort? The average length of sentence rose too: from 3.9 months to 6.1 months between 1993 and 2003 (Bateman 2006: 74; *Sentencing Statistics* 2006).[6] Sentencers, it seems, have become more severe:

> This greater severity undoubtedly reflects, in part, a more punitive legislative and legal framework of sentencing. Legislation, guideline judgements and sentence guidelines have all had an inflationary effect on sentences passed. At the same time, the climate of political and media debate about crime and sentencing has become more punitive, and is also likely to have influenced sentencing practice. (Hough et al. 2003, quoted by Goldson 2006: 144)

The UK government claimed: 'Our juvenile sentencing policy aims to limit the number of young people who are in custodial provision' (*Justice for All*, Home Office, 2002). Yet the UN Committee on the Rights of Child reported critically:

> The Committee is deeply concerned at the high and increasing numbers of children in custody generally, at earlier ages for lesser offences, and

Figure 11: Sentences of 10–17-year-olds, England and Wales, 1994–2006



Source: Based on Morgan and Newburn 2006: 1045; *Sentencing Statistics* England and Wales 2006: Table 2.4, passim.

> for longer custodial sentences imposed by the recent increased court powers. … [I]t is the concern of the Committee that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37(b) of the [United Nations Convention on the Rights of the Child].

As NACRO commented (2003):

> In the same month as the Government reaffirmed its commitment to keeping young people out of custody, the number of children (people under 18) detained through the youth justice system reached a level not seen for at least twenty years. … The contrast between the Government's aspirations for its juvenile remand and sentencing policies and the United Nations Committee's assessment of the current use of custody within the United Kingdom, could hardly be more stark.

Five years later the Committee's assessment of the situation as regards the use of custody was as critical.[7]

The failings of custody

> But what is so bad about having a high number of young people locked up? The underlying reason for the international community's emphasis on a sparing use of custody lies in the fact that, despite the best efforts of staff, locking up children and adolescents is fraught with ethical, social and financial problems as well as proving singularly ineffective in reducing re-offending. (Allen 2006: 22)

Rob Allen, a member of the Youth Justice Board, continues:

> The Prison Service, which accommodates 83 per cent of the juvenile custodial population, is particularly poorly suited to locking up young people. In 1996, Chief Inspector of Prisons, Sir David, now Lord, Ramsbotham recommended that they should relinquish responsibility for all children under the age of 18. Children represent less than five per cent of the prison population. An organisation whose key priority is to prevent the escape of dangerous adult criminals cannot be expected to provide the level of care, supervision and support required by teenagers.
>
> Instead of implementing Ramsbotham's recommendation, the Labour government gave the Youth Justice Board responsibility for purchasing secure places. It was hoped that the Youth Justice Board's role would lead to a transformation of the service. Thanks to substantial investment, particularly into education within Young Offender Institutions, there have been improvements. The Children's Rights Alliance for England, normally a stern critic of conditions for detained juveniles, concluded in 2002 that 'results have been great, in some cases near miraculous' (RCP/CRAE 2002). The regular survey of young people's views conducted for the inspectorate makes for a more sober assessment. The 2004 report found that a third of young people felt unsafe at some time, eight per cent said they had been assaulted by staff and 24 per cent assaulted by other trainees. (2006: 28–9)

> We cannot guarantee their safety if we are honest. We fulfil a function for society, I suppose, in holding them until the courts decide what they want to do but, in honesty, we do a very limited job. (Senior prison officer)

Lord Ramsbotham's findings and those of the Commission headed by Chief Justice Munby have been echoed by Rob Griles, the Commissioner for Human Rights for the Council of Europe, who, in 2005, concluded that the prison service is failing in its duty of care to children (Goldson 2006: 149), and he repeated his criticisms in October 2008 at the III International Juvenile Justice Observatory Conference in Valencia.[8] In 2007, the report of the Children's Rights Alliance for England highlighted the continued use of controversial powers of restraint by staff in the STCs (from which one child has died). While the suicides constitute the worst indictment of the system, the youngster's first experience of prison can be harrowing. Even travel there can be degrading. Private firms are now responsible for the transport, and use vans with small cubicles.

> It was a long journey, a very long journey. I was locked in a box the same size as that (pointing to a filing cabinet]. There is no toilet on the van. You can't have a piss, you have to wait. If you can't wait I suppose you just have to piss yourself. (Boy, aged 16)

> … recent inspections have given us cause for concern … at one establishment we spoke to juvenile prisoners who had experienced journeys of up to eleven hours, during which they claimed they were expected to relieve themselves in plastic bags as no comfort breaks were provided. (Her Majesty's Chief Inspector of Prisons, 2000; Goldson 2003: 133)

The conditions under which a youngster travels to the place of detention cannot compare with the suffering experienced by some of the Russian children, but that does not excuse them.

> We have been very lucky here. We have only had one suicide and not many attempted suicides. Bearing in mind the way that they are treated on the first night, this is more by luck than design. (Prison officer)

> There is no real first-night support. We might say that there is but it's all about back-covering really … if it says check every fifteen minutes and I do, I've done my bit, so it's not my fault if it [self-harm] or suicide does happen. That's hardly support though, is it? (Prison officer)

> I was crying, crying about my Mum and that. My Mum is being treated for cancer like I said, and I was worried about my little sister. She is only seven, and if my Mum dies she will grow up with no Mum. (Boy, aged 16)

> The worst part was pulling out of Scunthorpe. It was horrible as I realized I was getting miles and miles away from my family. I was shaking and scared. When the van got here I saw all the razor wire and stuff and I just wished I could run away from it all. I was frightened. Really frightened. (Boy, 15)

> We have already mentioned the bullying. And there is the racism.

> I was scared stiff when I first arrived with no idea what to expect. And my first night there were these other boys leaning out of their windows yelling abuse at me … dirty Paki and a lot worse. I knew that if I just put up with it I'd be seen to be weak so next morning I went up to the ring-leader and just had a go at him and we had a fight. I got into trouble for that and lost privileges but I had to prove I wasn't going to lie down and take it. (Suliman aged 17; quoted in Neustatter 2002: 41)

> You just know you're going to have to put up with racism. You can't go into prison and get treated same as whites because they don't think you are the same. When I was on the induction wing of one YOI I was subjected to racist abuse non-stop – shouting out of the windows, attacks when I went to the shower, this and that… (Jack, now 17; quoted in Neustetter 2002: 63)

> In 1997 Her Majesty's Chief Inspector of Prisons had commented:

> In recent years the massively increased numbers of children sent to custody have been dumped on prison service establishments, in a prison system that has not, traditionally, recognized that it has a role in caring for children in need of care, development, care and control. Within this system children are, quite frankly, lost. (Cited by Goldson 2002: 65)

The government, in presenting *No More Excuses* seemed to take this on board: 'The Government wants to see constructive regimes, including

education and a high standard of care, to help give young offenders a better chance of staying out of trouble once released.'

Yet, even as regards education, where provision varies enormously from one institution to another, education and personal development schemes in 2000 averaged out at only seven hours a week. By 2006 the Youth Justice Board (YJB) had managed to increase this substantially – to over 26 hours. But for those on short sentences (or arriving in the middle of course) education cannot help them. Many have special needs. In 2003 the YJB reckoned that over a quarter of school-aged children in custody had literacy and numeracy levels of a seven-year old, while mental health problems, including personality disorders, are present in a majority of cases (*Youth Crime Action Plan* 2008; *Bromley Briefings* 2008).

As a Senior Prison Officer commented:

> I would say that looking around the prison as a snapshot on any day there is probably quite a lot of kids in here who could be dealt with better outside in the community. Are we the right people to look after these lads without any specialist training? I doubt it, because I think there is a real need for specialist training. We are expected to be parents, child psychologists, and nurses, all without training. I don't know what the alternative is, it's all down to cost and we [YOI] are more cost effective than secure units, but it doesn't necessarily mean that this is the right place for them to be. Yes, they have committed crimes, but in all my experience I can tell you that prison is not a deterrent. We are just locking them up and keeping them off the streets for a few months, but they go straight back out to exactly the same situation that they have left. We had the perfect example today: a sixteen-year-old lad left here this morning with nowhere to live and no money. He'll soon be back in here. I don't think it does them any good to be in here – if anything, it changes them for the worse.

In 2008 the *Youth Crime Action Plan* addressed some of these issues:

> Children in custody are amongst the hardest to reform. But we need to continue to work to improve custody so it is as effective as it can be in reducing re-offending and addressing underlying problems. While children are in custody the focus must be to change their behaviour,

Boys (models) in YOI workshop, England

improve their educational attainment, and prepare them for their return to the community. We must also do more to help them on release so that they are equipped to lead law abiding lives.

In particular, we will address …

- under-achievement in education and the development of relevant skills and qualifications;
- we will also prepare young people for their return to the community from the very beginning of their sentence;
- we will promote the well-being of young people in custody, keeping them safe and protecting them from harm;
- young people should be supervised and cared for by staff who are committed to working with under-18s and who are properly trained for that role; and
- to promote family links and a stable environment for young people in custody, we will seek to avoid unnecessary transfers between establishments.

But concrete measures to achieve these aims, most of which were referred to ten years earlier in *No More Excuses*, are not listed, apart from transferring education provision to the local educational authorities. This cannot be sufficient to address the problem. Either the authors of the plan are simply unaware of the failure of prison as a re-educator or they recognize that, despite its having a marginal effect, it is important to suggest it can solve problems.

The government's claim that its policies are directed towards making children more law-abiding does not stand up to scrutiny. Were it the case that the STCs and YOIs had a successful record of releasing their young inmates back into the community as law-abiding, capable young citizens, the government could at least use that argument. But in 2000 half of those released from the STCs were arrested within seven weeks, two-thirds within 20 weeks of release. A direct comparison with figures for the YOIs is not possible, but the pattern is depressingly similar: of the boys released in 2001 roughly 80 per cent were reconvicted within two years, and just over half received a new custodial sentence (Goldson 2006: 150; NACRO 2005: 10). The figure for reoffending within one year by those released from the secure estate was 77.0 per cent for the first quarter of 2006 (the latest available data) compared with that of 39.7 per cent for young offenders as a whole (*Reoffending of Juveniles* 2008). There has been some improvement in recent years in reconviction rates for those originally sentenced to *lesser* penalties but, as regards the use of custody, the opposite is the case (Morgan and Newburn 2006: 1047).

Prison staff and experts agree: in the great majority of cases, prison does not deter a child from future offending or set an example to others. Instead it damages a child, and makes it more likely he or she will become locked into a future life of crime.

> Prison doesn't work – it doesn't ensure the young people will come out of the system decent, law-abiding citizens. It creates anger and resentment, it makes low esteem worse, and it produces a lack of respect for anyone in authority. Many of these kids haven't even been found guilty. (NRRI Practitioner)

> Custody has proved an expensive failure: it is incapable of addressing the far-reaching welfare needs of most of the young people whose offending

> leads to them being locked up; it does incalculable damage to children who are already amongst the most disadvantaged and vulnerable in society, and it is spectacularly ineffective at reducing youth crime. (NACRO 2005: 52)

> We lock them up and send them out less not more able to cope, more not less angry and more likely to be violent. This way we feed the prisons of the future. (Chris Tchaikovsky, founder of Women in Prison, quoted in Neustatter 2002: 113)

Nowhere to go…

Sending a child to prison is, in the majority of cases, the equivalent of sticking a plaster on top of a bleeding sore. While in prison, the wound will not heal, on the contrary it will fester. The child comes out with a suppurating wound and is back where he started – maybe with no family, no shelter, and almost certainly no job. Prison staff in English institutions recognize, as do their Russian colleagues, that without these minimal supports, the child does not stand a chance.

In 1997 *No More Excuses* had suggested that

> A supervising officer – a member of the Youth Offending Team – would be appointed at the start of the sentence. He or she would be responsible for supervision after release from custody and would also be involved in the planning and supervision of the custodial element.

More than ten years later, the Action Plan favoured consultation

> on a more *comprehensive package of support for children leaving custody* [whose] key elements should include:

- identifying a lead professional to take responsibility for each child during and after their sentence;
- developing a 'pathway plan' that is reviewed regularly and sets out all aspects of provision that will be made during the sentence, for immediate resettlement and their longer term success … ; and
- providing more intensive support immediately following release from custody.

This does not sound very different.

The Action Plan also recognized the importance, for reducing reoffending, of:

> a stable lifestyle, especially having strong family support and suitable housing and ensuring health needs (including mental health or substance misuse problems) are addressed. … A significant proportion of children leaving custody do not have anywhere suitable to live on release and many have wider family, health and personal needs.

Some of the more enlightened YOI institutions, working together with local authorities, try to ensure at least part of a support package for the leavers. The YO in Belfast and the Open YOI at Thorn Cross both had programmes focused towards this.[9] While we can only commend the efforts put by governors and staff into designing such programmes, there is at the same time something deeply depressing to hear prison staff say 'we have come to realize that without having somewhere to live, a job, and family or other support, the youngster will be back on drugs and stealing to pay for them … and we shall see him back again'. Surely we have known this for a long time? If the problems are lack of shelter, family or other support, and no job, and the Action Plan recognizes this to be so, why are they not tackled *before* a child ends up behind bars? To expect the prison service to work with the local authority to address them, in the unsuitable prison environment, seems a quite inappropriate strategy, as well as being extremely costly.

Finally, this brings us to the question of cost. In England and Wales the costs of custodial provision are prohibitive and the system of financing encourages its use. Local Youth Offending Teams, and social services, face a situation in which a child who remains in the community, whether on bail or serving a sentence, will be far more costly to the community than one who is placed in custody: the central government pays for custody. The YOIs and the private STCs are funded centrally whereas the local authorities are responsible for their children's homes (where available places fell from 450 in 2000 to 400 in 2005).

The Youth Justice Board, through its budget, is responsible for buying places at the relevant institutions – and ends up spending more than three-quarters of its budget on custody provision. The costs of placing a child in

a local authority home (with their higher staff–child ratios) are roughly three and a half times the cost of a placement in a YOI; costs in the Secure Training Centres are similarly high, and the Board does not have resources to buy them.[10] While the YJB pursues a policy of placing under-15s in local authority homes, the shortage of places and costs encourages the transfer of 15-year-olds to YOIs, and the cost of places in the STCs has resulted in a similar policy of transferring 16-year-olds, who are no longer considered as vulnerable, to YOIs. Proposals exist (including changing the central funding of secure institutions) that would provide financial incentives for YOTs to find alternatives to custody, and encourage local authorities, schools and magistrates to take responsibility for their own young people (NACRO 2003, 2005).

The Action Plan took a cautious step forward here, suggesting consultation on whether local authorities should bear the cost of court-ordered secure remand, and how to make the costs of custody more visible as part of a debate on whether, in the long term, the local authorities should be responsible for and fund placements in custody.

Reassessing the policies

So what has the radical new approach of *No More Excuses* achieved? More than ten years later the government could point to declining crime figures (but it did not claim that this was because of these policies), and to a speeding up of the time between arrest and sentencing for persistent offenders, but more young people were coming before the courts (was that a good thing?), double the number of children were in custody, and recidivism upon release remained in the order of 75 per cent.[11] The policies of the previous ten years had swept up all into the criminal justice system. Ten-year-olds and 17-year-olds, first-time offenders and persistent offenders, serious offenders and 'pranksters': all in the eyes of the government, could 'too easily become tomorrow's hardened criminals'. Yet the fact that a small percentage of offenders were responsible for a disproportionate amount of crime had not changed. In 1997 the government had estimated that 3 per cent of young offenders were responsible for 26 per cent of youth crime; in 2008 the estimate was that 5 per cent of young offenders were responsible for 50 per cent (*Youth Crime Action Plan* 2008). The minority of persistent offenders was still very much there.

In 2007 the news was dominated by the shooting of 11-year-old Rhys Jones, as he walked home from football practice. This appalling murder brought a summit at No. 10, emotional statements from the Home Office minister that those responsible will 'be put away', and promises of a rapid legislative response in yet *another* Criminal Justice bill. Rhys Jones's death stands out among a wave of teenage killings that rolled forward through 2008. The other victims of gun or knife crime were older, many of them caught up in gang warfare, some just in the wrong place at the wrong time, and the murders are highly concentrated in particular districts of London, Liverpool, Manchester and Birmingham. The figures, set against an overall decline in the murder rate, are alarming and indicative of a vicious circle of deprivation and drugs that traps a section of youth, and not only youth, living in deprived areas of cities whose economies have been booming over the past ten years.

Again the Labour government felt it must act. For adults the answer was to follow the American example and build new Titan prisons to house an expanding prison population. For youth, the response was more ambivalent. On the one hand the Criminal Justice and Immigration Act of 2008 reintroduced 'the emphasis on out of court diversions' but simultaneously it affirmed:

> When sentencing a young offender under the age of 18 the Court must have regard to the following:
>
> - the principal aim of the youth justice system (to prevent offending and reoffending)
> - the welfare of the offender
> - the purposes of sentencing, which are: punishment; reform and rehabilitation; protection of the public; reparation to persons affected by offences.

The message for the judge is surely confusing. The evidence of the past ten years (and more) is that custody does not prevent offending or reoffending, it does not further the welfare of the offender, it does not reform and rehabilitate the offender, nor allow reparation to victims. So should we expect to see less use of custody? Or does punishment and, perhaps, temporary protection of the public, count for more?

Two months later the new strategy paper, the *Youth Crime Action Plan* 2008 with a ministerial foreword by Jacqui Smith, Home Secretary, Ed Balls, Secretary of State for Children, Schools and Families, and Jack Straw, Lord Chancellor and Secretary of State for Justice, was published. We have referred in the preceding pages to some of its findings and recommendations. Here we place it in a wider context, and try to assess whether it heralds change.

Government papers or Acts produced between the beginning of the last century and the 1990s all emphasized the link between the social environment (deprivation) and youth crime, and the welfare of the child was seen as a priority. By the 1960s the importance of support from social services for children at risk and their families was a key theme; the use of cautioning by the police, and supervision in the community, whether by social services, probation officers or charitable agencies was emphasized as an alternative to using the criminal justice system. Until the 1980s, the ending of custody was seen as the longer-term aim, but there was a strong commitment to institutional care, with education and training. *No More Excuses* signalled a change. It did not deny the connection between deprivation and crime but its focus was not on how to be 'tough on the causes of crime', rather on how to be 'tough on crime', and its instruments were the courts and tougher sanctions. Custody 'as punishment' was to be combined with education and rehabilitation of serious and persistent offenders; new local panels, which included police, social services and community representatives, would assess and work with less serious offenders, who would serve a variety of sentences in the community.

The authors of *Youth Crime Action Plan* were faced with an unenviable task. The government was anxious to argue that its radical and tougher approach, initiated in 1997, had been successful, and the Plan needed to emphasize this. At the same time, the results were far from encouraging, and this could not be wholly ignored. Yet, a serious change of course, when sections of the media were clamouring for tougher, not softer, sanctions, was considered not to be politically feasible. The result is a disappointing document, which relies on tough language to cloak its cautious content. It lacks the conviction and clarity of earlier Papers, including that of *No More Excuses*, whose recommendations are easy to follow. Perhaps its contradictory messages reflect the different views of the three ministries, and ministers, involved. It is hugely repetitive; long on sometimes cloudy statements of intent, short on concrete measures. It reads like a consultancy

report, a new style of writing that has come to dominate reports or assessments demanded by government departments and international agencies. While it revives some earlier beliefs or ideas on how to keep children out of the criminal justice system, and slips in some welcome counters to media-fanned public fears, it simultaneously uses tough language to placate the punishers. Implicitly it recognizes that the last ten years have failed the children who have been locked up. They have not been re-educated, retrained or sent back into the world with skills and support. Yet it contains no new ideas.

The opening paragraphs set the tone.

> The Youth Crime Action Plan is a comprehensive, cross-government analysis of what further we need to do *to tackle youth crime*. It sets *out a 'triple track' approach of enforcement and punishment* where behaviour is *unacceptable*, *non-negotiable support and challenge* where it is most needed, and better and earlier prevention. It makes clear that *we will not tolerate* the behaviour of the minority which causes *misery and suffering* to others, especially their victims who, more often than not are other young people. [my emphasis – MM]

The key elements in this triple-track approach are enforcement and punishment, prevention, and support. The analogy is unfortunate. These cannot be tracks that run parallel because they feed into each other. Perhaps blocks, building blocks, where one begins with support, which in itself supports prevention, and this is topped by a smaller and lighter enforcement set of measures?

The Plan claims that the reforms since 1997

> have had positive effects on youth crime and its causes. The frequency of youth re-offending has fallen and we have halved the average time from arrest to sentence for persistent young offenders from 142 days in 1997 to 58 days in April this year.

As we noted (see n. 11) the decline in reoffending, and then only for certain categories of offenders, has been very slight since 2000, while reducing the time between arrest and sentencing, laudable in itself, is surely not as important as bringing down numbers in custody.[12]

The achievements that the Action Plan cites are very modest. There can be no claim that custody has reduced reoffending. Instead the claim is for '*significant* improvements' to the juvenile secure estate. The Youth Justice Board has:

- provided more accommodation in the South East for boys aged 15–17; and
- built a new unit for more vulnerable 15–16 year olds boys at Wetherby Young Offenders Institution (YOI) which is due to open in October to ensure they receive the specific support they need.
- announced plans for a new YOI at Glen Parva in Leicestershire which will increase provision in the Midlands and enable young people to be accommodated in smaller living units.[13]

Success, it seems, is measured in terms of building more secure accommodation. Yet, also, in identifying persistent offenders at an early age:

> But a minority of young people continue to blight their communities by breaking the law and behaving in an anti-social way. We estimate that 5% of young people are responsible for over half of youth crime. We believe that we are increasingly able to identify these young people early and can intervene to address the root causes of their behaviour, which includes supporting and challenging their parents to meet their responsibilities.

The Plan makes a strong pitch for resources and efforts to be put into targeting and supporting failing families:

> This should involve schools, health services and specialist services, sharing information and working together for young people at risk, young people already drawn into crime or anti-social behaviour and parents in need of support and challenge.

It states that

> all of the 110,000 families with children identifiably at risk of becoming prolific offenders will receive a targeted intervention as a result of these measures

but, later on, we are told:

> By 2010 we aim to have reached 20,000 families across the country, and .... Our systems for identifying and intervening early to tackle problems need to be much more robust.

It is going to need more than this to help young people defend themselves against adult influences and criminal behaviour (often drug-related), but at least it recognizes that young people need help. Even more encouraging, perhaps, is the recognition that steps need to be taken to reduce numbers entering the criminal justice system. We have already mentioned the Youth Conditional Caution, to be piloted in 2009. The Action Plan argues:

> Reductions in youth crime will principally come about if we reduce the flow of young people entering the criminal justice system. Each year around 100,000 young people aged 10–17 enter the criminal justice system for the first time. Our new goal is to reduce the rate by one fifth by 2020.

Local area agreements are seen as the clue:

> Local authorities and their partners can help reduce the numbers of young people entering the criminal justice system and *the demand for custodial places*. [My italics – MM] Courts can also help shape local provision and improve outcomes by requesting welfare assessments and requiring information on the services and support they have in place locally.

So now we talk of 'the demand for custodial places' as though this was similar to 'the demand for university places' or 'the demand for hospital beds'? Who is doing the demanding? What determines the level of demand? Yet in the following sentence, we hear an echo of the principle underlying the 1982 Act:

> no young person should be sent into custody unless the court is able to specify why dealing with him or her within the community is not appropriate.

But then comes a swift reminder:

> as the Lord Chief Justice has made clear, anyone caught using a knife should expect to receive a custodial sentence; and those caught carrying one are also increasingly likely to receive a custodial sentence (three times more likely than ten years ago).

In chapter 3 we suggested that the legislation that reached the statute books was often a compromise, arrived at after hard bargaining between a variety of interested parties, and that could present problems. The Action Plan is only a statement of intent, yet the reader is left with the impression of listening to discordant voices, even at this stage. There seem to be no guiding principles, instead an attempt to include a range of measures, based on very different assumptions, a post-modernist credo.

> In summary, we are proposing immediate action through a package of measures to be rolled out in all areas across England and, for certain measures, Wales. It includes:

- more searches and search equipment to help take weapons off our streets, and now for the first time, everyone over the age of 16 who is found carrying a knife can expect to be prosecuted and those under 16 can expect to be prosecuted on a second offence;
- increasing the proportion of ASBOs accompanied by Parenting Orders;
- expanding provision of youth centres at times when young people are likely to offend, including Friday and Saturday nights;
- using existing police powers more, including measures to tackle anti-social behaviour and underage drinking;
- making permanent exclusion from school an automatic trigger for a Common Assessment Framework (CAF) assessment of needs;
- encouraging the expansion of Safer Schools Partnerships which link police officers with schools;
- increasing the take-up of parenting support by parents of young offenders, including using parenting orders if this does not happen voluntarily;
- giving the public the chance to identify what reparation work they would like young people on community sentences to carry out; and
- closer working between Neighbourhood Policing Teams and young people. . . .

There is nothing that, in the short term, will bring down numbers sentenced to custody. Most European governments, as did the UK government until the 1990s, accept that custody should be used as sparingly as possible for children. How then can we explain the cruel, ineffective and costly policies of the past fifteen years?

CHAPTER 7

English Exceptionalism?

The study of youth justice ultimately tells us more about social order, the state and political decision-making than it does about the nature of young offending itself.
Muncie 1999: 302

Under Mrs Thatcher the Conservatives emphasized their traditional commitment to law and order, but it was under her successor, John Major, that the shift towards punitive policies came. By this time the mood in US politics was one of 'tough on crime', although youth crime rates, including for violent crime, were falling. Under Bill Clinton, more severe sentencing guidelines, the greater use of penal custody and less parole set in train the alarming trend of increasing numbers in prison and secure institutions that has continued ever since. Tony Blair's visit to America in 1993 persuaded him that if they 'worked' for Clinton, such policies would work for New Labour. He returned from the USA with his new line 'tough on crime, tough on the causes of crime' – both at the level of rhetoric and, once New Labour came to power, as policy. (Or rather as policy that was tough on offenders, but never really tackled the causes of crime.)

The British government, as the American, has been primarily concerned with policy towards adult offenders. But policy towards adults reverberates down to children and sometimes, as we see in England, they are singled out for extra special attention. Michael Tonry, puzzled by the Labour government's commitment to costly and damaging polices in relation to crime (send more adults and children to prison, build more prisons), has attempted an explanation. Policy-makers, he suggests, may adopt bad policies for one or for a combination of reasons. They may receive poor information or advice; they may act out of ignorance, or from an ideological commitment, or out of self-interest. In the case of the UK, he argues, we cannot assume 'poor information' or ignorance. The Home Office research departments, he suggests, are among the most sophisticated in the world and their senior staff, together with highly skilled policy specialists, have long

presented the evidence against the effectiveness of prison as a deterrent. The Home Office and the judges know that the insistence on tougher and tougher sentences with each repeat offence where minor repeat offenders are part of landscape makes no sense. But, since New Labour took office:

> focus groups, tabloid front pages and political advisors have had more influence on government proposals and policies than have criminal justice professionals, systematic evidence or subject-matter experts. (Tonry 2004: 3)

While conceding that some low-level technical issues are handled well in the legislation, Tonry argues that the treatment of 'emotive issues' has been 'repressive and only politically expedient', and this leads him to conclude (2004: 12) that ideology and/or political self-interest must be held responsible. Yet, traditionally, Labour has defended welfare principles against the Conservatives' commitment to law and order and, until the 1990s, neither party was concerned to politicize criminal justice. Tonry quotes Downes and Morgan's suggestion that this was because of 'a belief that crime, like the weather, is beyond political influence' (2004: 51). Yet, once in office, Labour has not only followed the Conservative shift to retribution but positively championed the new line. Beginning with *No More Excuses*, young people have been targeted as being dangerous and out of control, and the government has adopted a rapid response strategy.

Politicians, Tonry suggests, must believe that it is in their self-interest to act punitively – although they know such policies are ineffective, they 'work' in the eyes of the electorate. 'Populist punitiveness' (Morgan and Newburn 2006: 1029) wins the day.

Tonry's argument allows for two different scenarios. One has the public as traditionally punitive but ignored by the politicians until the 1990s: it is the politics that changes. The other sees the electorate becoming punitive, and the politicians responding. Let's take the latter hypothesis first. What evidence is there that American and English publics have altered their perception of criminal behaviour and how it should be dealt with? Tonry does not address this directly but, in referring to David Garland's claim that a 'late modern' society has affected attitudes, clearly gives it some weight. Garland argues that patterns of urban living, greater wealth for the middle classes coupled with increased deprivation felt by those unable to take

advantage of the new consumer lifestyle, the changing family and weakening social controls, accompanied by rising crime rates in the 1970s, all produced feelings of social insecurity. These found a ready niche for themselves within the neo-liberalism or neo-conservatism of Reagan–Thatcherism. 'The respectable middle-classes' became tired of 'paying for the welfare state', strong on 'moral individualism'. The view of the criminal began to shift, no longer a 'feckless misfit or needy delinquent', he became a 'crackhead, predator' (Garland 2001: 100–1).

However, as Garland notes, not all late modern societies are adopting more punitive polices. The critical factor is the politicians' willingness or eagerness to echo claims that 'welfare justice' does not work; that punishment is deserved and works; and that prison is the place to segregate the problem populations. In a world in which national politicians are more and more subject to influences from outside, and less able to solve social problems, they still need to show (and to convince themselves) that they can deal with those who threaten society, either from outside or internally. Some will seek measures to reassure themselves and their public that they are coping with, if not solving, the problem of crime. Politicians believe that they can bolster their legitimacy by raising the profile of crime as a political issue – and receive support. But whether politicians will respond in this way very much depends upon the society and its politics. Politicians' responses, Garland suggests, 'are shaped by political institutions and cultural commitments. They are the products of a certain style of politics, a certain conjuncture of class forces, a particular historical trajectory . . . ' (2001: 201).

So, for Garland, a shift in culture has taken place and politicians have responded. Yet we should note that the heyday of Thatcherism was not marked by a punitive agenda; only when the economic agenda began to wobble did the Conservatives turn back to law and order. And why should American and English politicians react in this way, and their European counterparts not? Although Tonry partly grants the argument that there has been a culture shift associated with late modern society, he feels there must be something specific to English culture to evoke such a response. Here he turns to a study by Whitman (2003), who asks: 'Why should a liberal society and state such as that in the USA act so punitively towards its offenders?'

Whitman argues that 'modernity' does not help as an argument, and that while levels of violence, racism and the dominant form of Christianity in a society will play a role, other factors are more important in explaining recent

divergent trends in the USA and France or Germany. In the US penal policy has introduced a harsher, more degrading treatment of the offender, while in France and Germany there has been shift towards less punitive sanctions, better treatment of prisoners. The lack of an aristocratic tradition in the United States, he argues, led to the absence of privileged treatment for high-status offenders, and political prisoners who, under autocratic regimes, were always treated as a separate privileged category, have traditionally been few and far between. In a society of equals, there should be no distinctions within the prison population. But, unfortunately, a commitment to 'no respect for rank' can lead to 'no respect for prisoners'. All too easily they can be seen as all deserving low-status treatment – degrading treatment – especially if it is important to indicate that they have transgressed society's codes of good behaviour. In France and Germany, in contrast, where social hierarchy remains strong, there has been a tendency to 'level up'.

If we include Russia in the comparison, we might suggest the following: until the revolution Russia had a very clear hierarchy of treatment for its offenders, based on social and political status; this was replaced by a savage policy of levelling-down, one whose bequest today is that of 'no respect for the prisoner'. Although the paths have been different, the end results in this respect in the United States and in Russia are similar.

English attitudes towards prisoners, and their treatment, Tony argues, have more in common with American attitudes than with European. Yet, is Tonry correct? In England, with its very strong traditions of social hierarchy, we might well expect to find distinctions in the treatment of prisoners. (Remember the Jeffrey Archer incident?[1]) Perhaps Whitman's other argument – on the role of the state – would help to make sense of recent policies? In the continental tradition, Whitman emphasizes, the state plays a greater role, and in regard to justice acts as the granter of pardons, or amnesties. It is seen as a merciful as well as a harsh sovereign, a participant in the system of justice,[2] whereas in the Anglo-American tradition elected politicians and the criminal justice system occupy centre stage. The bureaucratic state apparatus, Whitman argues, in France and Germany has always lessened the impact of democratic politics by allowing less room for populist justice to be reflected in penal policy while, in the USA, the limited 'liberal' government apparatus stands aside, and politicians respond to popular demands. 'Harshness and democratization go hand in hand' (Whitman 2003: 55).

Yet here too, I would argue, the UK, with its tradition of an elite civil service and a strong central government has more in common with its European counterparts than with the American. As regards Russia, although it has a continental 'bureaucratic state' system, the state apparatus has not acted as a bulwark against politicians' actions. In Russia politicians and the state apparatus overshadow the justice system and exclude the public from direct influence on policy-making – yet another configuration.

If English politicians have started behaving differently, there must be other reasons. Tonry concludes that something 'in English political and popular culture conduces to sustained media and public overreaction to horrifying events that can be blamed on someone' (Tonry 2004: 122). It is this, he argues, against a background of 'postmodernist angst aggravated by too much crime prevention' and a culture that favours 'the debasement of prisoners, and a taste for punishment' that has helped to make Labour's strategy successful as a vote-winner (2004: 69–70).

I remain unconvinced. We have no real evidence that the English public has become more punitive in its attitudes over the past thirty years. The public is certainly concerned about crime. There is evidence that the British public is more anxious about crime than many of its European neighbours and, in a comparative study of an appropriate response to a second offence by a young burglar, 50 per cent of the English respondents favoured custody compared with 19 per cent in Finland and 12 per cent in France (NACRO 2005: 13). But we cannot disentangle the extent to which popular concern with crime is a product of politicians' public obsession with crime prevention and the media's emotive handling of individual horrific crimes. The role of the media cannot be emphasized too much and, in this respect, sections of the media lead the campaign for retribution. Attempts by politicians, anxious to respond in ways that they feel the electorate wants, may produce a vicious circle of increasing anxiety, despite the falling levels of crime (NACRO 2005: 14).

Cultural differences

I am not arguing that culture does not influence politics or attitudes towards the treatment of offenders. Of course not. Let's take Italy, which presents an example of a society whose politicians feel no need to make crime an issue. According to Melossi (2000), political power lies in the hands of elite groups who, in the north, may operate through corruption and, in the south, through organized crime, but both are characterized by 'softly authoritarian

paternalism' and a Catholicism that is tolerant of sins (or deviance) as long as it does not threaten the political or church hierarchy. The Codes may be severe but their application to individuals is lenient. Law and order campaigns attract few followers. Melossi contrasts this '"soft" authoritarianism linked to low levels of penal repression' with 'the democratic rhetoric in North America, which goes together with very high levels of penal repression' (Melossi 2000: 151). The political structures and tolerance of minor wrongdoing that characterizes Italian society, he suggests, have little in common with American attempts to create a society which, based on theories of self-governing individuals, insists that citizens, many of them newcomers, must fit the paradigm; deviants threaten the social order because they deny society's claim to be one of free, equal individuals; they are best dealt with in the penitentiary, excluded. However, as we shall see in the next chapter, the Italian approach may differentiate between Italian and immigrant children, for reasons that we need to explore.

Moreover, attitudes towards children may vary between cultures. It is in North America that one finds most support for the view that 'a crime is a crime' whatever the age, a view based on a belief that children are as aware as adults of the consequences of their actions. A Canadian survey (2000) found that half the respondents agreed with the statement that '12-year-olds know exactly what they are doing when they commit a crime', and a further survey indicated that nearly 90 per cent of Canadians favoured 25 years without parole for murder by a 12-year-old, the same as an adult sentence (Roberts 2004: 508, 516). Although support for the death penalty for children drops when people are given individual cases to consider, nearly half the adult American public are in favour of execution for 12-year-olds convicted of murder (Roberts 2004: 534). In Russia, in contrast, only 18 per cent of the respondents in the three cities favoured the death penalty for 14–17-year-olds, compared with the national figure of 60–70 per cent who support the death penalty in general.[3]

Only one out of a hundred professionals interviewed in Russia supported the death penalty:

> It seems to me that a sentence of 10 years is also unjust. He'll serve eight or maybe five–six of them and then he'll be released. But you'll never bring that family back. I think that in some cases one can go as far as applying the death penalty. … Society should get rid of people like that. (Judge)

The great majority of Russians, as we have seen, think children require a different treatment from adults. How does the British public respond to youth crime?

In 1998 the British Crime Survey contained a small block of questions on youth crime. In 2004 Hough and Roberts carried out the first national representative survey of public attitudes towards youth crime and the treatment of young offenders in England and Wales.[4] The first, important finding, confirmed in both surveys is that the public is very poorly informed or, truer to say, ignorant of the extent and type of youth crime, and of sentencing policy. The majority, wrongly, think young people are responsible for a considerable proportion of crime, think that the majority of youth crime is associated with violence, and that crime has increased in recent years. In both 1998 and 2004 the majority felt that courts were too lenient or much too lenient in their sentencing. In 2004 three-quarters of the respondents had not heard of YOTs (Hough and Roberts 2004:.24).

Yet, when the 2004 survey probed more deeply, it became clear that 'people did not expect to find solutions to youth crime primarily in the criminal justice system' (Hough and Roberts 2004: 28). Only 17 per cent of respondents thought that tougher sentencing would be an effective strategy to reduce crime (although 'deterring crime', together with 'justness' led the list on the purpose of sentencing); 42 per cent preferred introducing tougher discipline in schools.

The answers in the Russian survey are not directly comparable because the respondents were not asked to identify a single measure that they thought would have most impact on crime. The most favoured options, chosen by nearly all, were: 'Expand the work of leisure centres in organizing leisure activities for youth' and 'Strengthen the work of schools in organizing leisure activities for children (clubs, sports, etc.)'; just over half the respondents favoured 'Use other, softer sanctions, such as community work, supervision by a social worker, and so on, instead of imprisonment for young offenders'; 40 per cent included 'Use other, harsher than today's measures, for young offenders'.

The English surveys reveal that people may be critical of lenient sentencing, but further questioning reveals that they think sentencing policy is softer than it is. Also, when asked general questions on sentencing preferences, most people think in terms of 'the worst kind of crimes committed by offenders with the worst records', or of recent media cases that highlighted a

soft sentence or a repeat offender. However, when presented with individual cases, people begin to think differently, in terms of a real individual rather than a faceless young offender. Given an individual case, or options to choose that include non-custodial actions, or when costs of the different sanctions are introduced, preferences shift away from custody to other options or a combination of them. If the clearly preferred purpose of prison for a young person is to provide education and job training (38 per cent) – and note that this topped the Russian list too – then it is not surprising to find support for better ways to achieve this within the community. Other studies bear this out (see Roberts 2004: 513; Esmée Fairbairn: ch. 2, and 45–6). What starts out looking like a punitive mind-frame begins to dissolve into a less coherent and partly welfare-oriented set of attitudes.

Some sections of the representative survey of Russian adult opinion in the three cities were modelled on the Hough and Roberts survey. The results revealed both interesting similarities and differences in attitudes. In both societies, despite differences in media reporting and politicians' behaviour, despite differences in past history and social contexts, the majority of the adult population shares a similar set of misperceptions regarding the extent and types of criminal behaviour among its young people. Russians too think that crime has increased, that youth is responsible for far more crime than is the case, and that the majority of youth crime is associated with violence. That women and older people tend to be the most ill-informed in both England and Wales and in Russia may simply reflect their greater anxiety about themselves and about what is happening in society. Survey data, in this respect, support Cohen's argument that young people have to carry 'a peculiar burden of representation'; their condition is seen as being 'symptomatic of the health of the nation, or the future of the race, the welfare of the family or the state of civilization as we know it' (Philip Cohen, quoted by Muncie 1999: 11).

If both the western and Russian data demonstrate that there is a tendency for tough answers to soften when the researcher digs deeper, it still seems that Russians are more lenient in their attitudes towards children than their North American and English and Welsh counterparts. The western surveys show stronger support for custody, even for young children. With the age of criminal responsibility in Russia at 14, custody is not an option for younger children. They may be sent to closed special schools but, as we saw in the previous chapter, only 16 per cent of the respondents favoured

this option for an 11-year-old robbing a pensioner, and even fewer for one who participated in beating up a homeless street person. The 1998 BCS survey, in contrast, found that custody was the preferred British option for violent offenders, whether 10 or 15 years old. But while English and Welsh respondents are certainly more in favour of custodial sentences, they may be thinking of a three-month or six-month sentence ('short, sharp . . . '), the Russians of a three-year sentence in a colony hundreds of miles from home.

In Russia we noted how similar are the responses from the public and the professionals. In England and Wales, Hough and Roberts suggest, the responses of criminal justice officials are less judgmental from the start because they work with individual offenders, not categories such as 'violent offenders' (Hough and Roberts 2004: 45). One further difference. Although both the 1998 and 2004 surveys found low opinion of the work of the youth courts in England and Wales, the 1998 survey found that opinion on the work of the police (in relation to the general public) was very positive. In Russia, as we saw, this is far from being the case.

While fear of crime, of deviant behaviour, and adult society's doubts about its ability to educate its children properly, may colour perceptions regardless of media attention, Hough and Roberts are surely right to conclude that there is a pressing need to improve the dissemination of information, to counter and correct the media concentration on the worst cases. Interestingly, the *Youth Crime Action Plan* of 2008, which draw upon this research, refers to the need

> to tackle perceptions that the youth justice system is too lenient. When members of the public are given the full facts of a case and asked to choose their own sentence, they tend to be less severe than sentencers. This suggests that improved information to communities on what happens to young people in the justice system could improve their confidence.

All the more reason, one might say, for politicians to behave responsibly.

> If public opinion is not so steadfastly opposed to a more lenient approach to children in trouble as is often supposed, then Government utterances that go out of their way to reinforce the punitive agenda are both unnecessary and, at the same time, influential in propping up current

> levels of detention. Indeed, breaking the vicious cycle, by abandoning rhetoric which demonises young people, and adopting a commitment to an approach based on welfare, rights and evidence-based proactive, could command popular support. (NACRO 2005: 17)

What are our conclusions from the study of attitudes? Yes, societies do differ in their views of the child and appropriate responses to offending behaviour, but in neither Russia nor in England and Wales does government policy 'fit' with popular preferences. In neither case can we attribute changes in government policy to popular attitudes. They provide no answer to the questions with which we started: 'why is Russia still locking up so many of its children?' and 'why has the government of England and Wales adopted policies that lead to more and more young people finding themselves behind bars?'

For Russia, the answer turns out to be the more straightforward. Because of:

- reliance on a criminal justice system designed primarily with adults in mind, a system that includes harsh penalties for crimes that in some other countries are not considered as serious when committed by children and, most important, a system that relies heavily on custody as a sanction;
- reluctance on the part of policy-makers to introduce reforms. The politicians lack political will while the senior echelons of the police, prosecutors and judges are conservative. Their voices prevail, and the active reform community is still small, while the media is more interested in sensational cases than in a campaign for reform.

For England and Wales, the answer is different. Although here too the use of a criminal justice system designed primarily for adults plays some part, until the 1990s this was accompanied by strategies that kept large numbers of children out of the courts, and out of custody. Then policy was reversed, and the voices of experts and the penal reform community ignored. British politicians came to believe that punitive policies would win votes. The government has allowed itself to be swayed by a vocal media minority, and shown no sign of being influenced by evidence that the majority of the public does not believe that harsh measures solve crime or that custody is the appropriate response. In responding to populist demands for punitiveness, there is a very real danger

that politicians end up becoming its advocates. Labour politicians seem to have become prisoners of their own rhetoric. It only needed David Cameron to make an unguarded (but correct) statement that we should pay more attention to the environment in which hoodies grow up (something Labour politicians used to say) for there to be rejoicing at his gaffe in Labour ranks.

Scottish politicians (where both late modern society and cultural attitudes are very similar to those south of the border) have continued successfully to defend a youth justice system that keeps anyone under the age of 16 out of the criminal justice system. Under their new-found independence, some among them are now advancing a tough-on-crime agenda. Maybe this adds weight to Garland's argument that politicians anxious to bolster their legitimacy seek to present themselves as guardians of the nation's security.

History suggests that culture allows for a variety of choices, and old practices are discarded and new introduced. The experience of the UK tells us that that is so. There is nothing that obliges America and England to pursue punitive policies at present. A hundred years ago in the debates in the Russian Duma over the introduction of a probation service and of parole, some argued that Russia was different, that the experience of other countries was of little relevance to Russia. Today too there are such voices. Such a position contains one important element of truth. While the history of youth justice suggests that policy-makers can and do act with a considerable degree of autonomy – changing policy quite radically – youth justice schemes cannot be devised as though they were self-standing. They need to be thought of in the context of state–society relationships, of attitudes towards law and order, and towards youth within a particular society, although they may then play their part in changing such attitudes. Social changes, be they 'late modern' or others, will influence public opinion, may influence the criminal justice system, and will present politicians with new issues but, we suggest, governments can respond in different ways.

In the next chapter we look at policy towards youth crime in Germany, Italy and Finland, and this confirms our finding that we should hold the politicians responsible. Democratically elected governments in very different cultural contexts can pursue policies that benefit children, if they are guided by their own convictions, and evidence produced by experts and practitioners. While in Italy a soft paternalistic culture (towards one's own children) may be present, it would be hard to argue this for either Germany or Finland. All can be described as late modern societies too. Yet all three

have adopted policies (in the case of Finland quite recently) that are in sharp contrast to those in Russia or in England and Wales. Their politicians do not seem to feel their electoral chances rest on being tough on children. Lappi-Seppala, writing about Finland, suggests that a combination of factors 'may mitigate against unfounded repression' that has resulted in 'the rise of mass imprisonment in the United States and England and Wales' in recent years.

> Social equality and the demographic homogeneity of Finnish society … less racial and class tensions/distinctions, less fear and less frustration to be exploited by marginal political groups … the welfare state was never openly discredited in Finland. … The social and economic security granted by the Nordic welfare state can still function as a social backup system for a tolerant criminal justice policy … trust in, and legitimacy of, the legal and political system may also play an important part. … The political culture still encourages negotiations and appreciates expert opinion. And, regarding especially juveniles, in Finnish public policy juvenile crime and 'children in trouble' are still viewed as problems arising from social conditions; and that these problems should be addressed by investing more in health services and in general child welfare – not in penal institutions. (Lappi-Seppala 2008)

Yet the conclusion we draw from this is that several of these (favourable) conditions are also present in the UK. The welfare state has not been discredited, despite the criticisms; the political system has legitimacy, and the political culture favours negotiation. The major difference would seem to be less social homogeneity, and the presence of greater social and racial inequalities. Without doubt immigration into Europe is changing the social landscape in many countries, and juvenile justice systems need to be able to respond in positive ways. We return to the issue of ethnic minorities in the following chapter. Here we simply make the point that, whatever subsequently may have been the consequences, there is little evidence that the issue of race and social inequality prompted the shift towards penal repression of children in England and Wales.

To understand the punitive shift we need to think of governments, initially convinced that this was to their electoral advantage, and then making an ideological move to the right. While sections of the media surely played and

still play their part in convincing members of the government that it would be foolhardy to ignore this part of the public, politicians themselves have fanned public fears of crime. Instead of focusing on causes, they turned to the criminal justice system to solve the problem. The political system, and political culture, as in Finland, traditionally allowed for negotiation and expertise. However, as Tonry suggests, under New Labour expert advice and research has been ignored in favour of a slicker, rapid response to old or new problems. This style of policy-making could be reversed (the instruments for negotiation, participation and expert advice or criticism of government policy are still there), as could the policies themselves.

Just as reformers or policy-makers should pay attention to both the constraints and the opportunities their own society offers, they also need to be aware of the successes and failures of different approaches, of trends, of shifts in thinking that appear to resonate across boundaries and influence developments in very different societies. And often it is by looking at others that one gains insights into one's own practices.

CHAPTER 8

Lessons from Other Countries: Germany, Italy and Finland

Diversion, depenalization, and decarceration.
Albrecht 2004: 449

From the nineteenth century onwards, in all our societies, the three key institutions responsible for dealing with young offenders have been the criminal justice system, state welfare agencies, and charitable or voluntary organizations. It is the mix between these three, and the scope of their responsibilities, that differs from country to country. Yet this is a complicated relationship because the criminal justice systems themselves, while sharing some common features, also vary in ways that make a substantial difference to the treatment of young offenders. The role of the state, and the way authority is distributed between central and local agencies, also has consequences. The type and role of non-governmental organizations may be very different. This variety of combinations frustrates attempts to classify juvenile justice systems, and attempts to do so on the basis of their underlying principles (retribution, welfare, etc.) proves equally hard (Muncie 2004).[1]

No single set of ways exists to be emulated or copied. Nor are international conventions or guidelines for action at their most helpful when they offer too detailed prescriptions for institutional arrangements or procedures. They are better thought of as documents setting out aspirations and/or minimum standards against which governments should measure their achievements or failings, and which can be employed by NGOs, experts and by international agencies to try to hold governments to account for their actions.

In the original book, written for a Russian readership, I argued that, if the experience is to be relevant to Russia, it made little sense to look to societies where the legal system and the state–society configuration is markedly different from that in Russia. Rather, we should look to countries with a continental (civil) legal system, a welfare-state orientation, and preferably with what we can call a bureaucratic-statist tradition. It would be unhelpful, I argued, to choose countries with a very strong voluntary sector, or those

where there are strong traditions of individual responsibility and individual rights. Their experience is unlikely, in the near future, to resonate in Russia. This left quite a range of countries, and I chose three which, for different reasons, should be of particular interest to Russian policy-makers and reformers: Germany, Italy and Finland. They are three societies, with very different histories and state–society relations, but each with some elements in common with Russia. Each has a continental criminal justice system and emphasizes concern for the welfare of the young. In Germany and Italy the age of criminal responsibility is 14, in Finland it is 15, while in Russia it is 14 for more serious, 16 for less serious crimes. Younger children are the responsibility of local government social welfare agencies, or local boards. The main differences come in the institutions, procedures and practices of the criminal justice systems, the relationship with state or non-governmental agencies, and the type of sanctions employed.

Germany and Italy both have low detention rates, and Finland's was high but is now together with its Nordic neighbours at the bottom of the league table. Russia is very near the top, as are England and Wales. How then do the others achieve this? There is no evidence that their young people are more law-abiding than their Russian or English peers. The overriding conclusion – or finding – is that while the ways in which they limit the numbers held in detention are quite distinct, all three countries share a commitment to certain basic principles or strategies, and it is these that are responsible for their success in keeping custody low. And such strategies, I began to realize, are as relevant for the United Kingdom (or for the United States). The differences in legal systems, and state–society relations, do not make them unworkable. There are lessons here both for Russia and for England and Wales.

Germany

Those who today write on juvenile justice in the Federal Republic still quote approvingly from Franz von Liszt, a leading figure of a century ago: 'If a juvenile commits a criminal offense and we let him get away with it, then the risk of relapse into crime is lower than the risk we face after having him punished' (1905) (quoted by Albrecht 2004: 444; Dunkel 2003). The Youth Welfare Law of 1922 and the Youth Court Law of 1923 laid the foundations for a system in which imprisonment was only to be used as 'a measure of last resort to implement education within the juvenile justice system' (the first youth court

was set up in Germany in 1908) and this has remained a key principle (Albrecht 2004: 447). Apart from a short period under Nazism when the age of criminal responsibility was lowered and harsher penalties introduced (1943), the system has remained largely unchanged since the early 1920s. The 1943 amendments were abolished shortly after the war; further amendments, introduced in 1953 and in 1990, re-emphasized the priority to be given to welfare measures through education, including, for example, community service. The reunification of Germany in 1990 has not presented any particular problems for the working of the system – something we shall return to later.

The key features of the German system today are the following:[2]

- Young people between the ages of 14 and 18, suspected of committing offences, after investigation by the police are referred to the prosecutor. The prosecutor can adopt one of several measures: dismiss the case with or without setting conditions (educational training, parental or school supervision, the involvement of welfare agencies), or file a formal charge.
- If a formal charge is filed, the youth court aide (a trained social worker employed by the local municipality) must be notified, and s/he prepares a report for the judge on an appropriate sentence.
- Remand is only used in exceptional cases (attempts to escape or no fixed residence). These amount to 500–700 cases a year (and probably include a disproportionate number of foreign nationals, that is, children without fixed residence – see below for the Italian example).

Most marked is the practice of diversion, that is, action by the prosecutor to divert cases out of the criminal justice system. Recorded crime rates by young people, stable during the 1980s, rose throughout the 1990s (initially largely owing to a sharp increase in the five new Federal states) before levelling off at the turn of the century. Crimes of robbery and violence have, however, shown an increase (Albrecht 2004; Dunkel 2003; Jehle 2005). However, regardless of the trends in the 1990s, prosecutors have steadily continued to dismiss more cases, either with or without imposing conditions: from 22 per cent of cases in 1981 to 55 per cent in 1999. The basis for such action is the belief that the overwhelming majority of crimes committed by young people are not serious, and are not repeated, and this is borne out by the data.

Perhaps one in ten of 14–17-year-olds will attract police attention, but less than half of these will come before a judge. Judges too dismiss perhaps a further 15–20 per cent of cases. These policies have meant that the rise in recorded offences, particularly marked in the 1990s, has not led to increased adjudication and sentencing by the courts.

- Cases for which the maximum sanction is one year's imprisonment will be heard by a single judge in a youth court. More serious cases will be heard by three judges, and two lay assessors. The accused has the right of defence, and the hearings are closed (except to parents, and court aide). There is only one right of appeal.
- The judge is obliged to consider, first, educational measures (educational training, community service, mediation, supervision by a social worker, etc.). Disciplinary sanctions (a formal caution, fine, community service, probation or short-term arrest of up to a maximum of four weeks) should be imposed only if educational measures are deemed insufficient. Youth imprisonment (minimum six months, maximum five years, but 10 years for offences for which an adult serves more than 10 years) can only be a measure of last resort. Sentences of up to two years can be suspended.

Perhaps 1 in 100 children of the 14–17-year-old age group will receive a sentence, but the emphasis in sentencing is depenalization. By the end of the twentieth century, community service was the most popular sanction used by the judges (in over a third of the cases), followed by cautioning (30 per cent), then fines and educational training (each 20 per cent); short-term arrest, that is, up to four weeks' detention (18 per cent), suspended prison sentences, increasingly used also for those cases where the maximum sentence was two years, accompanied by probation (12 per cent), and imprisonment (7 per cent).[3]

Here a word of caution. Under the German system 18–20-year-olds can be prosecuted as juveniles, through the youth court system, and sentenced accordingly. The majority of young adults are dealt with in this way. Hence when the statistics refer to youth court decisions they include judgments for 14–17-year-olds and 18–20-year-olds. Young adults, including those up to the age of 24, may serve prison sentences together with the younger offenders. This can lead to a misunderstanding, in comparative terms, of the numbers of young

offenders sentenced to or serving prison sentences in Germany. For example, in 2003 7,023 received prison sentences in a youth court but only 758 of these were aged 14–17 and less than fifty of these were girls (Jehle 2005: Table 19a, p. 49; Albrecht 2004; Dunkel 2003). Germany's population is approximately 82 million, compared with that of 53 million for England and Wales.

The German system has a strong welfare orientation, but welfare within a strong criminal justice system. The punitive mood and policies that are making their appearance in some of its western neighbours have not made ground here. The German approach to its young offenders clearly ought to be looked at carefully by those who believe that 'welfare' and 'justice' should and can be pursued simultaneously. We shall come back to other issues (regionalism, changing a penal culture, and the use of mediation) after an initial comparison with Italy and Finland.

Italy

At first sight the Italian system looks similar to the German, and it is inspired by the same welfare ideology, but there are marked differences in the roles played by its officials and in the ways young offenders are treated. Juvenile courts were introduced in Italy in 1934, but the relationship between the justice system and local government bodies has changed more than once. Today's arrangements date from legislation in the 1970s and in particular from the Juvenile Justice Procedure Act of 1988, which has reasserted the role of the Justice Ministry as the key institution. 'The main aim' of today's procedures, it is suggested, 'is to limit exposure of minors to the system of justice' (Maurizio 2003: 42). 'The judge takes into account the prejudice the trial can cause to the minor and, case by case, considers if it is appropriate to go on with the proceedings or if it is better to interrupt them, with a view to educational purposes' (Ciappi, Brutto and Padovani 2008). If we understand by this bringing youth cases to trial in court, this certainly seems to be true.

Under the 1988 Act juvenile courts or tribunals are linked together with their own police, prosecutors and juvenile services departments, sometimes housed together in the same building, and responsible for civil, administrative and criminal cases involving minors. The local reception centres (for short-term remand) and juvenile prisons (for detention while awaiting trial, or serving sentences) also come under the Ministry of Justice. The legislation of the 1970s had established that the implementation of civil and administrative decisions should be the responsibility of the local social

services departments. These local agencies are expected to work closely with the youth services departments attached to the courts. Given that the judge 'shall give the offender specific orders aimed at his/her educational and cultural growth' (Maurizio 2003: 42), which may require the provision of education, training, therapy, or family support, both local government and justice services departments should be involved.

- Young people between the ages of 14 and 18, suspected of committing an offence, can be held for up to four days at a reception centre. Within 48 hours the prosecutor must bring the youngster before the juvenile magistrate who, at this stage of preliminary investigation, can dismiss the case either for lack of evidence or because the offence was trivial, or refer the case on for a future preliminary hearing.

A much smaller proportion of youngsters between the ages of 14 and 18 are reported to the police in Italy than in Germany (whether this is because they commit fewer offences or because they are not reported we cannot say). Youth crime is not high on the list of the public's concerns and there has been no support for tougher sanctions. During the 1990s the absolute numbers of young offenders declined to their lowest level in 2000, before beginning to rise slightly and then to level off. These figures, however, need to be looked at more closely. The size of the juvenile population declined significantly before it too stabilized in recent years. The rate of offending among the age group rose but, now comes a further complication: the percentage of foreign nationals in the age group increases, and this affects the crime rate. The difference between indigenous and immigrant, and their treatment, is an important one, which we shall come back to later in the chapter. For the moment we are talking of the young offenders as a whole. Throughout the 1990s between 65 and 80 per cent of the suspects faced prosecution; by the new millennium this had fallen to around 55 per cent.[4] Presumably prosecutors and magistrates were dismissing more of the cases or passing them to the social services.

Where the case is referred on to the next stage – the preliminary hearing – the magistrate may order the youngster to be detained in the juvenile prison, if the offence is one that could carry a prison sentence of two years. In Italy there are the two institutions: the reception centres and the juvenile prisons. Between 3,000 and 4,000 children, annually, spend the four days

in the Reception Centres and, of them, approximately 750 will go on to pre-trial detention in the juvenile prisons. They will be joined there by a smaller number, also awaiting trial but previously at liberty, and by an even smaller number who have received a custodial sentence following their conviction. All these figures show a decline since 2000. If in 1991 the total number entering juvenile prisons was 1,954, by 2003 it had fallen to 1,581. We note that these figures (remand and custody combined) are higher than those for Germany, and for a smaller population (the German population is approximately 82 million compared with 58 million for Italy). If, however, one includes short-term arrest in the German figures, they become more comparable.

- The preliminary hearing, which may not take place for several weeks or months after the offence was committed, is conducted by one magistrate and two lay assessors in a youth court. The magistrate may dismiss the case on the grounds of 'diminished responsibility', or grant 'a judicial pardon' (if he considers the accused is not likely to reoffend), or 'suspend the proceedings for a trial period' (which can be for as long as three years) during which the individual must follow a programme devised for him by the Justice Ministry's youth services department and those of the local authority. This measure '*messa alla provo*' is not the equivalent of a suspended sentence because no 'trial' and 'sentencing' has taken place. The great majority of cases are disposed or, or diverted away from the criminal justice system, at this stage.
- Of the minority that finally comes to trial, only perhaps 20 per cent end in a conviction, perhaps because the only real sentence is imprisonment. Again the magistrates (now two of them acting together) prefer to use judicial pardons, and 'suspension' under probation. Custodial sentences (usually one-third of an adult sentence) have fallen from between 300–500 per annum to less than 200 since 2001. Very few of these are girls. The juvenile prisons, as we mentioned, house both those awaiting trial and the small number of convicted: taken together the average daily figure for the number of inmates has ranged between 356 in 1991 to 551 in 1995 to 474 in 2000 (Ministero della giustizia web site). In 2005 it stood at 279 (Italians) and (479 foreign nationals), the majority on remand (Ciappi, Brutto and Padovani 2008).

When we compare the process and outcomes with the German system, we find that both employ the practice of dismissing or diverting cases, and passing them on – in one way or another – to their own and local social services' departments. In Germany it is the prosecutors who play this 'gatekeeper' role, getting rid of 50–60 per cent of all those suspected or charged. In Italy it is the prosecutor and magistrate who, either at the preliminary investigation or at the preliminary hearing, will dispatch even more. And in both countries they propose measures involving education, training, social services support, etc. The difference at this stage is that the Italian magistrates can 'suspend proceedings' for a lengthy specified period, which in effect, although not legally, is the equivalent of a suspended sentence.

If we look at judges' responses to those cases that finally make it to court, we note that again, in both cases, the judges use diversion measures, but the Italians more so than the Germans. The German courts are dealing with a far larger number of cases and use a far greater array of sanctions: community service, cautioning, fines, short-term arrest, suspended prison sentence; perhaps only 700 youngsters will receive an unconditional prison sentence. In Italy, where there are fewer sanctions at the magistrate's disposal, suspension under probation and the 'judicial pardon' come into play; a higher proportion of those convicted may receive a prison sentence but in terms of numbers this will be less than 200. But then we have to remember that the Italians use pre-trial detention more frequently, and perhaps as a way of punishing an individual who has not and probably never will be convicted of a crime.

How do the Finns organize their response?

Finland

Finland, similar to its Nordic colleagues has no juvenile courts.

> One can argue that there is no special juvenile criminal system in Finland – in the sense that this concept is understood in the continental legal systems. There are no juvenile courts and the number of specific penalties only applicable to juveniles has been quite restricted. (Marttunen 2003: 170)

It also, until the reforms of the 1970s, had a rigid sentencing framework for adults and for juveniles. This, and a traditional disposition to view detention

as a normal measure for adults and for young people, had resulted in high detention rates. In the 1960s Finland, with crime rates very similar to its Nordic neighbours, was locking up three to four times as many of its adults and young people. The question then that faced experts and policy-makers was: why should this be? Why are we doing this, when we know that prison is damaging for the individual and does not deter him or others from offending? In the 1970s certain measures were introduced that slowly began to bring detention rates down, and further measures in the late 1990s have introduced more flexibility into the system.

Finland's justice system is similar to the Russian. It is then of particular interest that, in a relatively short span of time, policies were introduced that have dramatically replaced detention by alternative sanctions. Lappi-Seppala has identified the following as relevant players: the political leadership, experts, members of the judiciary, and the media. The 'experts' – the professionals, criminologists, and experts working within the criminal justice system – had a critical role to play in persuading politicians and civil servants that locking up young people will have adverse consequences for the society. They were helped by the fact that a Nordic group of countries existed of which Finnish politicians and others felt themselves a part – and here obvious and unattractive comparisons could be made (see our Figure 6 above). The question: 'why are we locking up four times as many of our citizens as our Nordic neighbours while our crime rates are similar?' could not simply be dismissed.[5]

It was also important that the Minister for Justice has tended to be drawn from the research community, and this allowed the influence of research to be felt at a high level. Finnish politicians respond to research. In addition, civil servants, judges and prison authorities all recognized that change was needed. And not least important, the way the Finnish media is structured, without short-term competition for readers, meant there was no sensational and sustained 'crime' reporting to support an anti-reform campaign (Lappi-Seppala 1998). A sudden spate of homicides by teenagers between 1999 and 2002 brought cries in the media for a lowering of the age of criminal responsibility but, as the numbers fell again, so did the campaign (Lappi-Seppala 2008).

Over the past two decades reported crime rates for young people have remained relatively stable. Theft by 15–17-year-olds has declined, while assaults increased in the 1990s (although the data here reflected a change

in the definition of assault) but have shown a slight decrease since 2000. The same is true of robbery and drug-related crimes for this age group (Marttunen 2003; Lappi-Seppala 2005, 2008).

- The police can only question a 15–17-year-old in the presence of parent or guardian and a welfare officer. They should either dismiss the case, or turn it over to the social welfare agency, or issue an arrest, within 24 hours. If they wish to press charges, the case is referred to the prosecutor, who in turn can choose to dismiss it or pass it to social welfare, while simultaneously cautioning the youngster.
- If the prosecutor decides to press charges, and the action could result in a sanction more serious than a fine, the case must be referred to the welfare officer or the probation officer to prepare a report on the young person. (This also applies to 18–20-year-olds, who can be placed under supervision until the age of 21.) The probation officer draws up an appropriate programme for the young person (similar to the role of the juvenile aide in Italy) but in Finland too the judge takes the final decision on sentence and conditions. In very few cases are youngsters held on remand.

In Finland, age is used to divert cases, then both police and prosecutors employ diversion (in perhaps 20 per cent of cases). Referral to mediation is also employed (see below). The judge's ability to divert or dismiss was, until the 1990s, very limited, as was the range of sanctions he could choose between: a fine, a suspended custodial sentence or custody. The new measures of the 1970s made it easier to dismiss and divert cases, and to use conditional sentences, and ruled that custody should only be used for under-18s if 'extraordinary reasons demanded it'. For first-time offenders, any sentence of up to one year is suspended. However, the reforms, which substantially reduced the adult prison population (changing the sanctions for drunken driving, and introducing community service in lieu of a custodial sentence of up to eight months), had few consequences for young offenders. Since custody should only be used as a measure of last resort for youngsters, and community service could only be imposed in lieu of a custodial sentence, it was impossible to apply the new community service sanction in any but a few cases.

In 1997 an experiment was introduced – to insert 'juvenile punishment' into the ladder of sanctions, to come after a suspended sentence and before

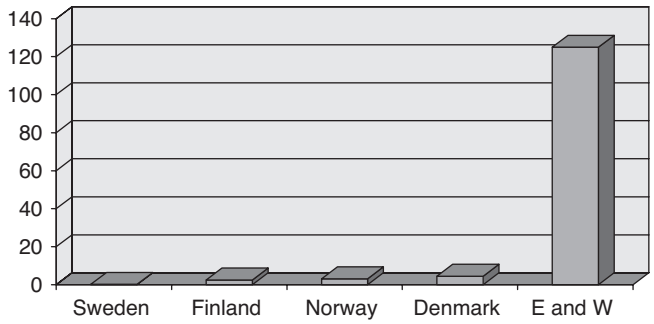
custody – a young person could be sentenced to complete from 10 to 60 hours of unpaid work and/or to attend training under supervision for a 4–12 month period (Marttunen 2003a). In 2005, following a review of the experiment, the Juvenile Punishment Act attempted to find a compromise between the arguments in favour of punishment and those defending a welfare approach.

If the judge decides that a fine is too lenient a sentence, and custody is not warranted, he can either impose a suspended sentence, under supervision by the probation service, or he can impose 'juvenile punishment' for a period of 4–12 months. This, under a probation officer, 'consists of supervision, different activities and programmes to promote coping in society, and an orientation to working life and work, to occupy at most 8 hours per week' (Kriminaalihuoltolaitis: <http://www.kriminaalihuolto.fi/16935.htm> and <www.rikosseuraamus.fi/16918.htm>).

It remains to be seen how the judges will respond to choosing between the juvenile punishment sanction and a suspended sentence (in 2004, still an experimental year, the figures were 57 to 219). During the 1990s and today the fine continues to dominate (around 65 per cent of sentences), suspended sentences hover just above 20 per cent, and custody has dropped from about 4 per cent to less than 2 per cent. By 2006 some 60–70 15–17-year-olds were being sentenced to imprisonment each year. They can be sentenced for as little as 14 days to a maximum of 12 years, but with parole coming in after a third of the sentence has been served. The usual sentence span is between six months and four years. Between the mid-1980s and the early years of the new millennium, the numbers of 15–17-year-olds held in detention fell from between 35 and 45 to single figures; in 2007 there were five in prison. They accounted for 1 per cent of the prison population, and are held in adult prisons (Kriminaalihuoltolaitis n.d.; Marttunen 2003a; Seppala 2008). The population of Finland is slightly more than 5 million. If in England and Wales there was the same percentage behind bars, the custody figures would come out at 50, rather than over 2,500 (see Figure 12).[6]

Finland is more similar to Italy in that the system gives the judge few options when sentencing a young person who has finally made it to trial. The Italians have chosen to avoid custodial sentencing by giving the magistrate the power to 'suspend a sentence' for a long period (without a conviction); the Finns have introduced what elsewhere would probably be called 'community service' under a new heading 'juvenile punishment'. Given the

Figure 12: Numbers of 15–17-year-olds in custody, various countries, 2002– 2006



Note: all figures per 100,000 of age cohort. *For* the Nordic countries, average figures for the five-year period; for England and Wales 2006 data.

Source: Lappi-Seppala, presentation, International Juvenile Justice Conference, Valencia, 2008.

similarity of the Finnish system with the Russian (state welfare agencies, adult courts, limited sanctions, previously high detention rates), the Finnish reforms should be of particular interest. Here, at a minimum, are measures that could be adopted. But there may be better solutions.

In all three countries, although the routes followed are different, the figures for those held in detention are low and roughly comparable, given the size of the populations. All employ strategies to keep young people out of the criminal justice system, either by charging justice officials with the task of passing miscreants on to others (local government, social welfare or probation agencies, mediation services) or by giving a greater role to these agencies in the first place. In all instances the role of their representatives – social workers, juvenile court aide, probation officers – who may or may not be under the Ministry of Justice is critical. Even where the judges sentence, they rely heavily on these agencies to implement their rulings.

'Diversion, depenalization, and decarceration', the three characteristics chosen by Albrecht to describe the German system, describe all three countries. But, then, is there not something odd? It seems the societies are engaged in devising a strategy for dealing with children's behaviour that is based on *negating* key features of a system for adults. Should one not start by trying to create one based on principles that are relevant for children? We do not construct an educational or health system for children by adapting those that we think are appropriate for adults. We recognize children need something different.

Restorative justice?

Restorative justice, we remind the reader, aims to shift the focus away from that of either punishing or rehabilitating the offender. The central person in a restorative framework is the victim, not the offender. The concern is with 'appropriate compensation' for the harm done, 'restoring rights' to the victim. Only where the victim feels that either an apology or punishment of the offender will make him or her feel better would sanctions come in. Yet, in practice restorative justice programmes in Europe are as much focused on the offender as on the victim, and have a strong educational component. One reason is that restorative justice offers a more humane approach to young offenders than traditional approaches and in this lies a good part of its appeal (Weitekamp 2001).

We have seen Albrecht's observation that '… formal interventions do not make a difference with respect to exiting from criminal lifestyles, but, on the contrary, formal interventions add to juvenile offenders' difficulties in adjusting to societal demands' (see Ch.4) repeated by many of the professionals who work with young offenders in Russia, and in the UK. An awareness of this, Albrecht suggests, leads current research to focus 'on the feasibility of replacing formal juvenile court responses with restitution and victim–offender reconciliation schemes' (2004: 465–7). These differ depending upon whom is administering them. In Germany, for example, mediation programmes were started by parole or probation services whose focus was the offender, and the emphasis, consequently, is on rehabilitation. Germans refer to 'offender–victim mediation', not 'victim–offender mediation'. But even here three different models are found:

- The juvenile aide worker, or the probation officer, already responsible for the child is in charge of the mediation. This, Weitekamp argues, is the worst kind of programme because 'mediator' and 'juvenile aide' are simultaneously playing two roles, and the mediator cannot be neutral.
- A juvenile aide worker or probation officer administers mediation programmes for those children for whom he or she is not primarily responsible, and does not know.
- Specialized 'mediation officers' who are not employed as juvenile aides or probation officers are responsible for the programmes.

Albrecht refers to reconciliation and restitution schemes receiving 'strong support outside and inside the criminal justice system', and Dunkel suggests that the 1990 amendments to the Youth Court Act offered 'many opportunities for arranging mediation or damage restitution', which are taken up by the prosecutors. It is difficult to judge how widely they are used, and mediation cannot be imposed by a judge as a compulsory educational measure because it is intended to be voluntary. From data provided by Dunkel (2003: 127, 132) it seems to occupy a modest place in the work of the youth welfare departments in both the older and newer German states.

In Finland the Criminal Code now allows the court to waive or mitigate a sentence if the two sides have agreed on a resolution of the case. In 2006 a Law on Mediation was passed, which extended the practice to the whole country. As in Germany, the prosecutor can pass the case to social welfare, which is responsible for organizing a mediation office whose members are unpaid volunteers, with 30 hours' training. Most cases come to the office from police and prosecutors; they usually relate to minor offences. Approximately 2,000 cases a year involving juveniles are handled in this way (Marttunen 2003; Lappi Seppala 2008).

In contrast mediation is little used in Italy, and compensation to victims can assume a largely formal character: a written apology to the victim, a token donation to a charitable organization. The first mediation programme was set up in the juvenile prosecutor's office in Turin in 1995, and by 2000 eight such services existed. The programmes tend to be funded by the regional authority, sometimes with help from the Ministry of Justice; magistrates play the key role in their setting up and organization; they are staffed by court and municipal social workers, most of whom require some elementary training. Magistrates may recommend that the youth services department or the local social welfare department engage in mediation, but only a very small proportion of cases are referred in this way. In 2000 a mediation service was dealing, on average, with fewer than ten cases a year, and an attempt to set up an independent, non-government funded, mediation service in Rome failed – from lack of financial support and a 'silent boycott' by magistrates and court social workers (Mestitz 2002). However, Ciappi (2008) suggests, 'Many mediation offices have been constituted, relatively independent from the Court, composed of educators, psychologists and criminologists', and there is scope for its expansion. The law allows for mediation at any stage: during preliminary investigations, during preliminary hearing or while under probation.

The Italian case is relevant for Russia:

> experience seems to suggest the non-written rule that a strong agreement with juvenile magistrates, as well as the agreement and collaboration of court social workers, are needed – at least in the phase of implementation – to launch functioning VOM services in Italy. (Mestitz 2002)[7]

The relevant actors may be different in Russia but, without support for these alternative procedures from those who play the key roles in the criminal justice system, mediation and restoration will be relegated to the sidelines, or left off the field altogether. We come back to this in the final chapter.

Key issues raised by the case studies

1. Why the emphasis on diverting cases out of the criminal justice system?

Is it because criminal justice systems, even with youth courts, are not appropriate for dealing with young people? The answer is – yes – if one wants to exclude punishment and the stigmatizing of young people. Try as you might, if you use a criminal justice system for young people, you will include punishment as part of your sentencing strategy. You may insist that the emphasis be on rehabilitation, but punishment will come in.

Both Germany and Italy make strong claims that their youth criminal justice systems are focused on the welfare of the individual and education or rehabilitation. When, during the 1960s and 1970s a debate took place in Germany over the benefits of taking cases of 14–15-year-olds out of the criminal justice system and transferring them to the welfare agencies (as, for example, was done in Scotland), the welfarists in Germany lost to the criminal justice professionals. The argument that the criminal justice system can focus on the offender rather than the offence, make individual deterrence the sole sentencing goal, and education the key 'sanction' won the day. But, suggests Albrecht, if the aim of the sentence is to deter the individual from reoffending, then any educational measures that are intended to go beyond 'an individual relapse into crime' can be argued to infringe an individual's rights, and 'in practical terms [this approach] overestimates the capabilities of any justice system' (Albrecht 2002: 176–7). The Youth Court Law itself refers to 'educational measures' and to 'punishment', which allows for different interpretations. Despite the claims, he suggests, sentencing really

imitates the aims it follows when dealing with adults, which include general deterrence and punishment (Albrecht 2004).

And the Italian response? All the agencies believe that 'in principle the juvenile criminal proceedings should be governed by the goal of imparting some sort of moral education to people under age', but this does not exclude punishment. Punishment and welfare are pursued 'in the traditionally paternalistic, informal and confidential style of the juvenile judiciary' (Mestitz 2000: 226–7), which happens to be not particularly punitive. The magistrate has a high degree of discretionary power and may well consider that, after a short spell in detention while awaiting trial, the more serious offenders may be sent back to the business of growing up in the community. Any further punishment would seem inappropriate, apart from in exceptional cases.

Can one conceive of a criminal justice system in which punishment has no place? The evidence suggests not. The idea of punishment is so deeply embedded in criminal justice that even the most welfare-oriented system will not be able to dispense with it altogether.

But does one want to exclude punishment? This is a question that has to be answered by anyone seeking a response to youth crime. If the answer is in favour of punishment *in certain cases* (in which? and why?), then an argument for using a criminal justice system for this limited number of cases can be advanced. The Finns more readily accept this as an issue. Given that punishment is part of criminal justice, the Finns reckon that 14-year-olds are too young to be treated as 'criminals' but punishment should be administered to 15–20-year-olds when the offence is truly serious. Punishment should be softer, and used less frequently for 15–17-year-olds than for 18–20-year-olds, the majority of whom are also best treated by educational and support strategies, but it is an appropriate sanction.

2. If criminal justice systems threaten children by their tendency to punish, might they provide for fairer treatment or a better defence of rights than social welfare agencies?

Some argue that a criminal justice system offers certain safeguards to the individual ('fair and equal treatment', the right of defence, of appeal). Criminal justice systems have rules that ensure 'fairness' in treating like with like. The problem with this argument is that criminal justice requires a set of institutional actors: police, courts, prosecutors and bar associations,

and the practices, conventions and attitudes of those who staff them will affect outcomes.

Let us take the police as an example. All criminal justice systems rely upon a police force as the body, at grassroots level, that is responsible for maintaining order and making arrests. The police are the first point of contact for young people suspected of causing trouble. As those responsible for maintaining order, the police have a great deal of discretion on when to stop and search, when to bring someone in, when to respond to reports of a crime being committed. This means that their attitudes, and the resources they can command, will influence the identification of crime.

The majority of criminal acts are never recorded. Most school children admit to having committed an offence at some time, but the vast majority of these will leave no official trace. Ask an audience of law-abiding adults whether they, during the past year, have done anything illegal and, if they are honest, they will have to admit that, well, yes, there was a small matter of not declaring x … If the police actually arrested everyone who committed a crime, the system would collapse, and society come to a halt. In every sphere there will be far more 'illegal' activity occurring than the police can ever cope with.

So whom will the police target and why? They will be influenced by instructions from on high (drug-dealing or child pornography is to be a priority), or by their own views on whom are the most likely to be engaged in criminal activities (it may be young black youths or Azerbaijani traders), or their own chances of catching the offender and getting a conviction. All will influence 'the picture' of crime that emerges and the chances of 'fair treatment'. If the Russian police stops and searches twice as many young people from the Caucasus as their Russian peers, the statistics will suggest that Caucasians are more heavily into narcotics, whereas equal treatment might have revealed quite the opposite. If the police in England and Wales stop a disproportionate number of black youths, they automatically appear as more criminal in the statistics (Muncie 1999).[8] If the police are rewarded on the basis of crimes solved, they will record far fewer of those that are unlikely to be solved; and, as we suggested in chapter 1, they may respond in different ways to changes in the legislation.

In England there are marked differences in policing – and hence in the subsequent fate of young offenders – in *adjacent counties*. Cautioning rates before 1998 varied substantially between police forces in ways that could

not be explained by differences in crime profiles, and research suggest these persist under the new reprimand system. In 2001 the diversion rate for indictable offences for 12–14-year-olds ranged from 68 per cent in Northamptonshire to a low of 50 per cent on Merseyside. In 2002, only 32 per cent of the 15–17-year-olds in Merseyside received a reprimand or final warning rather than a prosecution compared with 72 per cent in Surrey (Muncie 1999; Bottoms and Dignan 2004: 98; NACRO 2005: 29).

Just as the behaviour of the police may vary, even within one society, so will that of prosecutors and judges, and of doctors, teachers, social workers. The difference is that the three last professions are focused on treating the individual, the former on the offence. In England judges in different parts of the country interpret legislation and their role differently. Between October 2000 and September 2001 in some parts of the country the ratio of custodial sentences to community service orders was one in three, in others one in twenty-six, and differences in sentencing practice do not seem to relate to patterns of crime (Bottoms and Dignan 2004: 107–8; NACRO 2005).

In Germany too regional patterns are clear: the sentencing/discharge ratios are higher in the southern than in the northern states; the four-week arrest is more popular in the north, a two-year suspended sentence and probation more common in the south. In Italy there are marked differences in the judicial practices between regions (with the magistrates in the north-east rarely resorting to detention, those in the central regions and the south much more inclined to place children in custody, even if only for short periods). In Canada, too, there are differences between police practices and judges' behaviour in different states (Mehlbye and Walgrave 1998; Dunkel 2003; Ministero della giustizia website; Tonry and Doob 2004 for Canada).

Despite the claims it begins to look as though, far from being an impartial and fair arbiter, the criminal justice system is subject to a variety of influences. Criminal justice officials are part of their society, and their attitudes will reflect some of those attitudes. Which ones, however, is a key question. In many countries, but most marked in Italy, it is the disproportionate number of immigrant ethnic minority youth who are charged and proceed through the system to end up in detention.

The immigrant children coming to Italy are mostly from Eastern Europe, particularly from Romania, the former Yugoslavia and Albania, and from North Africa. Their environment is one of illegal immigration, incomplete families and poverty, which together encourage criminal behaviour; further,

these circumstances increase their chances of ending up in detention once they have been detained by the police (Gatti and Verde 2002). Only 2 per cent of Italian children before the court will be sentenced to detention, but for immigrant children the figure varies between 8 and 12 per cent, despite the proportion of their crimes that are linked to serious violence being significantly less. They find themselves behind bars for theft and violation of drug laws. 'In other words, if a prison sentence is justifiable for an Italian minor for serious offences, for foreign minors, even a predatory crime is enough to open the door to juvenile detention' (Ciappi, Brutto and Padovani 2008).

Why? One reason is that the use of alternative sanctions (community orders) is dependent upon a home and family environment that will be supportive. But this is precisely what the young immigrants lack. Holding them on remand is a way of holding on to them. The welfare services have no provision for them. 'Imprisonment', suggests Ciappi, 'continues to be a social deposit and a place to contain people when alternative solutions are either absent or fail.' Hence the juvenile prisons become a place for marginalized immigrant youth, as borne out by the dominance of their numbers. In one of the largest juvenile prisons, Milan's 'Cesare Beccaria', the percentage of foreign occupants, for some years, has reached – and at times exceeded – 85 per cent of the total of detained minors. Hence, Ciappi argues, drawing upon Gatti and Verde, incarceration is used as a sort of emergency response to social situations that are difficult to handle. Measures such as diversion and probation seem to be available to the more fortunate sector of the target population, while prison ends up as a receptacle for those minors who are less fortunate, like foreign juveniles.

The role of social structural causes is clear (unemployed, homeless, lack of identity papers), plus a welfare system that has no funding for them. But maybe too police and justice officials interpret their role as one of defending a host community against newcomers?

In England and Wales, where a disproportionate number of young black children find themselves behind bars, research studies have attempted to disentangle the reasons for this. In addition, the House of Commons Select Committee on Home Affairs focused its Second Report in 2007 on the overrepresentation of ethnic minorities in the crime and justice figures for young people. Black people constitute 2.7 per cent of the population aged 10–17, but represent 8.5 per cent of those of that age group arrested in England and Wales. As a group, they are more likely to be stopped and searched by

the police, less likely to be given unconditional bail and more likely to be remanded in custody than white young offenders. Is this because they commit more, and more serious, crimes? The Select Committee concluded that:

> The evidence we received suggests young black people are overrepresented as suspects for certain crimes such as robbery, drugs offences and – in some areas – firearms offences. … [but] We can say with greater certainty that the patterns of offending vary between different ethnic groups than that the level of offending varies significantly.

The black and Asian children are not recent immigrants but, the Select Committee recorded, 'Eighty per cent of Black African and Black Caribbean communities live in Neighbourhood Renewal Fund areas, those identified as England's most deprived areas.' Features of the Italian environment reappear:

> Social exclusion is a key underlying cause of young black people's overrepresentation as both victims and suspects. Not only does it fuel involvement in crime directly, it makes young people vulnerable to a host of other risk factors, such as living in neighbourhoods where crime is high and underachieving at school. … The association between socio-economic disadvantage and involvement in crime among people of all ethnic groups is well-established.

Leaving aside the disproportionate use of stop-and-search for black boys, once they have been charged, the criminal justice system does seem to respond more punitively towards them than to young white offenders. Young black and young Asian offenders are more likely to be remanded in custody than their white counterparts. In 2004/05, the figures were 8.1 per cent for black youngsters, 5.1 per cent for Asian and 4.4 per cent for white people of the same age group. It is difficult to see the response as one prompted by the absence of a welfare system or the need to keep track of them, as in Italy. Perhaps more significant, a greater proportion of those remanded do not receive a conviction, for want of sufficient evidence.

Young black offenders accounted for 6 per cent of youth offences in 2004/05, and received 11.6 per cent of all custodial sentences. Again this could be because of the kind of crimes they were involved in. The Select Committee found no direct evidence of discrimination as regards

sentencing to custody; other research has suggested that black boys may be no more likely to receive a custodial sentence for an equivalent offence than their white peers, but it will be for longer. They are nearly seven times more likely than whites to get custodial sentences of more than 12 months. Asian boys are more likely than their white peers to be sentenced to custody. Further, all minority ethnic groups had a slightly higher chance of being committed to the Crown court than white males – which increases the chances of a custodial sentence (*Young Black People and the Criminal Justice System* 2006–7 [Second Report]; Youth Justice Board study (n.d.) reported by Select Committee; Feilzer and Hood, quoted in Morgan and Newburn).[9]

As of now, in Russia, this is not an issue, but it is one to be aware of as immigration increases and right-wing groups adopt racist positions. It suggests that using a criminal justice system for youth will not equally defend the rights of all the children: it may result in some of the most disadvantaged suffering worst of all. Prison becomes the place for those children society, and families, cannot cope with.

Yet, while institutions develop their own practices and cultural traditions, they can change. It is particularly interesting, in this respect, to compare the treatment of young offenders in the former West German and East German states after reunification. Here the assumption was that police, prosecutors and judges in East Germany, accustomed to operating in a more severe and repressive penal culture, would continue to act differently from their counterparts in the West. However the statistics show that diversion rates in the new federal states are as high, and in some cases higher, than in the western states. (This could, as Dunkel suggests, in part reflect a higher reporting rate for petty offences in the former East German states, offences that the prosecutors then dismiss.) A comparison of the rates of unconditional detention for robbery convictions by young people (in 1997) indicated a lower rate in the former East German courts; the behaviour of youth welfare departments in the new and old federal states as early as 1993 was remarkably similar in their use of alternative sanctions: mediation was least used, then care orders, followed by social training courses (but less used in the new federal states), and finally, in both cases, the measure far outweighing all the rest combined, community service (Dunkel 2003).

Any attempt to reform the justice system for young offenders in Russia should therefore look seriously at the attitudes and conventions of those

who operate the system. Some have made their appearance in previous chapters. The more punitive the attitudes of justice officials, the more important it is to divert children out of the justice system. Judges and procurators, in particular, will need to adopt a new way of thinking if the system is to move in a new direction, but the examples of both Finland and Germany suggest that this can happen.

In England and Wales, experience suggests, both police and judges respond to policy directions from above, yet bring their own views to bear on implementation. Their behaviour of the 1970s and 1980s compared with that of the recent past is witness to that. It would be naïve to discount evidence of racism, but there is no evidence that police and judges share a particularly punitive view of how best to respond to youth. There is no reason to suppose they would not adjust to new directives.

3. Using social welfare services, a probation service, voluntary or specialist organizations in place of a criminal justice system?

Without a good system of social welfare support, even a more enlightened criminal justice system is helpless – it cannot serve the interests of the child or the community. For there to be a real alternative to custody, there have to be agencies, individuals or institutions to take responsibility for the errant young person.

In Germany a probation service emerged after the Second World War, in different guises in different regions, but today, in many regions, it operates under the jurisdiction of the Higher Regional Court. Its officers are responsible for young people, both those serving suspended sentences, community service or released on parole, and they work closely with local government welfare departments. In Italy the juvenile court services should work together with social services departments to devise and supervise the programmes ordered by the magistrate. Their effectiveness varies from region to region and in poorer regions, where funding is very limited, social services' ability or willingness to provide certain programmes will influence the measures a magistrate can impose.[10] Both magistrates and local authorities may turn to the church or political youth organizations to take charge of troublesome young people. Ciappi suggests that non-governmental organizations are important for providing post-release support, running community service programmes

and providing job assistance and training for those convicted to non-custodial sanctions.

In Finland, a voluntary association offering assistance to prisoners was reorganized in 2001 to form a Probation Service. It was brought, together with the Prison Service, under the Ministry of Justice as part of a new Criminal Sanctions Agency, and is now staffed by professionally trained probation officers. They are in charge of the supervision and enforcement of community sanctions or juvenile punishment, the supervision of conditionally sentenced young offenders and of parolees. Hence here a government agency, of professionally trained individuals, who work with the social welfare agencies, employers and voluntary, sometimes specialist organizations, is responsible for the majority of young offenders.

This draws our attention to the existence of different state–society relations. In Germany local government authorities have the resources and power to act with a great deal of autonomy. In Finland funding is more centralized, and a centralized Ministry (of Justice) plays a more important role. In Italy a centralized Ministry of Justice, controlling part of the funding, may be competing with local interests, whose patronage will decide the allocation of posts. In one society, religious, voluntary organizations and local private business may constitute an active community, as important as the local government (perhaps truest in Italy), in another they may be weak and the elected local government take far more responsibility for local 'community' affairs: 'Germans' unwillingness to pass responsibility to non-state organizations appears to reflect a continuing faith in the Rechtstaat' (Lacey and Zedner 1998: 12).

Social welfare may be well developed, and state-funded, as in Finland, and accompanied by a network of voluntary associations, or be subject to considerable regional variations (Italy). Of course, these relationships may change over time, but it is important that reform projects assess the present constellation that will influence the feasibility of reforms. This is not an argument for no change. As we have seen, governments make radical changes to their youth justice systems, with clear consequences. It is rather an argument for identifying those features in the present environment that offer opportunities for change, and, at the same time, recognizing where the problems are likely to arise. The new federal states in Germany may not have favoured social training courses simply because they had no one to implement them and few resources for them. In localities in Italy, where

welfare services are poorly developed, the judges' ability to order educational and support programmes is limited.

If criminal justice agencies are poor at treating children, welfare agencies may cater no better to the child's needs. We have no space to deal with this here but any system of compulsory secure residential care for children must be sparingly used and closely monitored. Germany has had its scandals over children's homes. In both Finland and Germany children may be placed in foster or residential care (open or closed) for shorter or longer periods. Finland operates an extensive network of foster care, residential homes and has six reformatories for 12–18-year-olds whom, it is reckoned, are in need of particular treatment and attention. When the figures for these placements (sometimes in secure institutions) are included in the statistics, the Finnish figures rise substantially.

The dividing line between the treatment of (and consequences for) young people being put under 'care' in a residential institution and sent to a 'young offender' institution may, in some cases, be wide, in others barely distinguishable. Those in a reformatory, a special school, a children's home will not appear in the prison statistics of that country, although their treatment may be little different from that experienced by their peers in their own or another country who are serving a sentence. The importance of independent monitoring and control either through non-governmental bodies or by independent although state-appointed commissions cannot be overstated.

Russia has a tradition of state welfare that could surely be drawn upon, but selectively, and with attention to today's dysfunctional features – too many institutions seeking to control social activities while remaining themselves immune from social control. The seeking of solutions in the detaining of more young children in state institutions is an example, while the reluctance on the part of authorities at central or local level to encourage or even tolerate activist social organizations is worrying. The very strong 'statist' tradition makes the need for social control even more imperative. At all stages (from attention by the police, to placement in a special school, to sentencing to custody and then release) the child, in any society, requires a defender or guardian.

England and Wales too has a tradition of state welfare but a more robust set of institutions, better-funded, and monitoring mechanisms, plus an active voluntary sector. The Inspector of Prisons issues hard-hitting reports. Prison visitors carry out inspections, without warning. The Youth Justice

Board issues reports. Here the question seems to be whether the government is interested in listening.

4. Alternative sanctions?

The recognition that criminal justice systems are not good at treating young people's behaviour has led law enforcement officials in Germany, Italy and Finland to try to ensure that only a minority of offenders actually face trial. Yet, while all seek to make diversion out of the criminal justice system the key tactic, they recognize that there will always be some who will be convicted as criminals and receive a sentence. Hence, at this stage, if one is serious that custody only be used as a measure of last resort, there must be realistic alternatives for the judge to use. The Germans approach this by giving the judge a wide variety of alternative sentences and favouring community service; the Italians have far fewer alternatives but resort to allowing long 'probationary periods' or suspended sentences; the Finns use fines, and suspended sentences, and have recently adopted community service as an option. In all three countries judges make wide use of suspended sentences, but accompanied by educational or training programmes.

The Finnish case would seem to offer most to Russian reformers but it shows only too clearly, as do the other two cases, that alternatives to detention must be buttressed by a comprehensive system of local/community support whether organized by local government, the ministry of justice (probation) or voluntary organizations. The role of local agencies – government welfare departments, probation services or voluntary organizations – is critically important both for young people serving sentences in the community and for those released, either on parole or unconditionally, from detention. It is difficult to overemphasize this. Again they play different roles in the three societies and interact differently, but are an integral part of the juvenile justice system. Yet here, and in England and Wales, the main lesson seems to be that what is needed is a government prepared to advance a new agenda, one that recognizes that a criminal justice system cannot and should not be called upon to repair the damage done by adult society to its children.

CHAPTER 9

What Should be Done?

Public opinion does not demand harsher punishment for child crime, but does require something that works. … child crime can only be cut effectively if we are courageous enough to recognize the failings of present provision and look for the widest range of non-custodial alternatives, with custody only when no alternative is realistic.
Lord Carlile of Berriew QC (NACRO 2005: 3)

Both society and government officials ought to have information to reflect upon … the preparation of draft legislation on juvenile justice, and on juvenile courts, is under discussion at present but there's still a lack of understanding and opposition to the idea.
Judge, Russia

A humane and effective approach to youth crime, we suggest, should aim:

> To create an environment in which people recognize that the great majority of children break rules and grow out of it, one in which informal mechanisms treat misdemeanours, and 'crime' is reserved for a small minority of acts by 16-year-olds and older which cause serious damage to other individuals or the community; an environment where measures exist to help the individual recognize the offence, restore damage, and learn strategies not to reoffend; where detention is used as a measure of last resort, for serious or violent offenders who are a danger to the community, and during which they are decently treated; and where ways exist to reintegrate the offender into the community, psychologically and practically.

While not easy to achieve, such an environment would include several elements that Russian and English scholars and politicians deemed feasible a century ago. There is nothing here that the Russian or the English inheritance rules out as impossible. Neither does today's twenty-first-century environment make such an aim any less achievable. There may be new

problems but there is a century's experience to draw upon and opportunities to realize strategies that did not exist before. Some of these practices exist in countries that share features in common with Russia, and some have been successfully applied in England and Wales in the recent past. There is new thinking, and a creative reform community in both countries.

We must start by recognizing that the economic depression will raise levels of poverty for the disadvantaged families and children in both societies. Youth crime will surely rise. Hungry children steal food, clothes, and anything they can sell. They may come under greater pressure to work for the drug dealers or pimps. What is important is that society has mechanisms for responding to this that do not include detention. A test for all our societies will be how well their youth justice systems stand up a rise in youth crime.

In this final chapter we address the second of our questions: 'how can the present system be changed to ensure that few end up behind bars?' How best to limit the use of detention because it is so damaging to children and to society as a whole? And to answer this, I begin by taking up the findings of the comparative exercise.

Priorities in a reform agenda to reduce detention

What have we learnt from others who use detention sparingly? How do they achieve it? The crude answer is: by restricting the role of the criminal justice system, diverting as many cases as possible away from it, while making social services, specialized youth agencies and/or voluntary organizations the key institutions for dealing with troublesome or law-offending youth and, for the minority who come before the courts, by using a variety of sanctions. This does not 'solve' crime – but, as Lord Carlile, chair of NACRO's Committee on Children and Crime, observed in his conclusions, limiting custody and replacing it by other measures is one effective measure to reduce crime. His statement above would be echoed by many professionals and members of the public in Russia. We group our suggestions under three main headings.

1. Amendment of the Criminal Code (Russia) or of criminal justice legislation (England and Wales) as regards crime when the offender is a child

The Russian reformers are right to recognize that the existing criminal justice system, designed for adults, is inappropriate for children. But the provision

of juvenile or youth courts does not necessarily bring down numbers sentenced to custody. For that other measures are required. Certainly, for those cases where a child should come before a court, it is preferable to have a court, where procedures are simplified, where the judge specializes in cases involving children and works closely with the child's social worker. From this point of view, the draft legislation on juvenile courts, and the experiments in Rostov and other cities are only to be welcomed. However, there is a danger that legislation on juvenile courts, backed by social workers, may be seen as 'solving the problem', rather than as only one piece is a much more far-reaching agenda of reform, which would curtail the role of the criminal justice system.

The lesson, over the past hundred years from several societies, is that juvenile courts do not hold the key to a humane and effective response to young people's criminal behaviour. As we have argued, and seen in the German and Italian cases, judges, juvenile or otherwise, *sentence.* Judges are not doctors or teachers; they are playing by rules that include deterring, punishing, compensating for damage, as well as helping an offender to improve his ways. If one thinks that a juvenile judge ought to be behaving like a doctor or a teacher (as did the early reformers), then, logically, it would make sense for the police to refer all cases to the local polyclinic or school. In other words, inherent in the use of a criminal justice system for children, regardless of whether it has a youth justice section or not, is the assumption that 'a crime is a crime' and that penalties follow if the guilt is proved.

Restricting the role of the criminal justice system can be achieved in different ways or by a combination of strategies:

- remove less serious actions from the Criminal Code (and, if there is one, transfer some of these to the Administrative Code) or from criminal justice legislation;
- raise the age of criminal responsibility.

The Scandinavian or Scottish approach, which excludes anyone under the age of 16 from attention by the criminal justice system, and then uses adult courts for the older children, may achieve the aims of reformers more successfully than a system of youth courts. As we saw from our country studies, even where there is a youth court system it is critically important that police, prosecutors and judges strive to divert as many as possible

young people away from coming to trial and sentencing. Perhaps this, more than anything, indicates the flaw in trying to adapt criminal justice to serve other aims. It should not be used to correct the failings of other agencies: families, schools, social services, or the government's policy towards social deprivation. Yes, one needs a court system for a small minority of very serious offences where detention may be necessary for the sake of the public and where the youngster must be assured of professional defence by a well-trained advocate specializing in youth cases. With a more limited and focused role, the courts could work better. This, we argue, holds equally for Russia and for England and Wales.

Unless one can count on police, prosecutors and judges to divert young people from the criminal justice system (either because they are obliged to or because they see that as their role), it is best to focus on strategies that will keep youngsters out of their reach from the start. Russia is fortunate in having an Administrative Code. This could be used to much greater effect for the kind of actions that children engage in but grow out of: theft and vandalism for a start. As first priority, the focus in Russia should be on changing, quite radically, the existing legislation on what constitutes a crime (and its seriousness) when the offender is a child. Raising the age of criminal responsibility to 16 for all crimes would also help. The aim would not simply be to get more young people out of the grasp of the criminal justice system. Of equal importance would be the effect on the way all those involved think about youthful misbehaving. Radically amending the Codes would be the first step in a strategy to persuade police, prosecutors and judges to rethink their present roles.

We have drawn attention to the importance of the attitudes or ethos of those who staff the justice system. This too makes one sceptical that creating juvenile courts in Russia today will signal much change. Yes, judges would need to be retrained (and their responses quoted in chapter 5 are not encouraging), but much more than that would be required to reduce substantially the number of young people convicted and sentenced. Police and prosecutors would need to behave differently. It is not the case that the police in Russia detain more children than do their colleagues in neighbouring countries. Rather it is that most of those charged remain trapped within the criminal justice system, the great majority stand trial, and are convicted. In both the Italian and German cases we saw how prosecutors and/or magistrates devoted most of their attention to *dismissing* cases, passing

them to social services; in Finland how the social services are brought in, and mediation used. Without a change in attitude on the part of police and prosecutors, the courts in Russia, juvenile or not, will continue to be overloaded with cases that never should have been there in the first place.

With alternatives in place, the police in Russia would have fewer responsibilities – not the present confused set of tasks, which include maintaining order, detaining, arresting, investigating, reporting and engaging in preventive work for a great number of children. Prosecutors and investigators would have far fewer cases to deal with, far fewer children would be held on remand, investigations could proceed much more quickly, and the judges (now juvenile judges) could pay more attention to the (serious) individual cases. All would benefit.

In England and Wales the age of criminal responsibility should be raised to 16 for all crimes, and a return made to the pre-1994 procedures regarding police use of cautions or equivalent powers to divert cases out of the system. Perhaps the new Youth Caution will help but it could be introduced more quickly and widely. Legislation on custody for the breaking of conditions of an ASBO, and on 'automatic' custody (including on remand) for repeat offences should be repealed. England and Wales have the advantage of recent experience of effective alternatives to present policies and, despite evidence of racism and regional differences, the police force has a reputation, in the eyes of the public, that is at present out of reach for the Russian police. What is needed, as in Russia, is the making of a statement loud and clear – through radical amendments to the legislation on crime by young people and appropriate measures to deal with it – that will send a message to judges, media, the public (including young people themselves) that there is to be a drastic change in attitudes and policies towards children.

2. The creation of alternative services or institutions to assume responsibility for law-breaking by children

In both Russia and England and Wales the existing arrangements between social services and schools fail to support young people who are at risk of slipping into drugs and crime. Russia has, relative to its size, far more 'social orphans' than do England and Wales. Its social services are woefully inadequate and underfunded; its children's homes can be appalling. Neither the police youth inspectorate nor FSIN's Inspectorate for the Implementation of Sentences have the personnel or resources to work with young people;

their case loads, and those of poorly trained social workers, are simply unmanageable. There is no probation service. Charitable organizations are few and far between. In England and Wales the situation is different: a variety of institutions, both state and volunteer (charitable) exists; all – from schools to the police – are better funded; qualified social workers, psychologists, youth workers, probation officers are part of the landscape. From a Russian perspective, it is difficult to understand why, given this, damaged children in England and Wales are ending up in prison. And this perspective is important: why is that, despite an infrastructure that should be able to support children at risk, we have opted for imposing a punitive, exclusionist, framework that works against its efforts? It is difficult to find excuses for a rich society, with highly skilled professionals, and a wealth of voluntary experiences, treating its children in this way. The responsibility lies with a government that believes tough policies will cure youth crime, or that such policies are popular, rather than addressing the causes (deprivation in a rich society, social exclusion, adult violence and drugs), and seeking alternatives.

In its turn, the English and Welsh experience holds out a lesson for Russia: it is not simply a question of a society's spending more resources on its state institutions, on skilled professional employees, and its members being prepared to support charitable organizations and engage in voluntary work. While the Russian government could (and should) spend part of its oil money on improving its social services, children's homes, on providing professional training for all who work with children, and should encourage, not hinder, the non-governmental sector, this has to be accompanied by restricting the use of the criminal justice system. The KDN exists, and in England and Wales the YOTs. In neither case do they perform the role they could. In England and Wales the YOTs, little known by the public, have not come to play a significant role as institutions, offering an alternative to the criminal justice system. Indeed, how could they, given the ever more extensive use of criminal justice legislation to 'deal' with youth crime? But, if the role of the courts was sharply reduced, and the funding system revised, YOTs could begin to emerge as alternative community-based institutions – given a wider brief, backed by greater resources. The *Youth Crime Action Plan* suggests the YOTs should play a more significant role but stops short of any commitment to replacing the present emphasis on punishment with, for example, mediation and

restorative justice measures that include recompense for damage and compensation for the victim.

The absence of a network of welfare agencies, social workers or probation officers, voluntary organizations or foster parents persuades some in Russia that it is preferable to stick with the procuracy and courts as they are, and encourage them to work better, provide them with aides. But why should they work better? If they are left with their present roles and responsibilities, and their present understanding of youth crime, while being told to 'work differently', very little will change. The present *system* is punitive; unless it is changed, you cannot expect its practitioners to follow a new set of principles. But, even if its contours are softened, why try to improve a system that is inherently unsuitable for dealing with the great majority of children's offences rather than devising a better alternative?

In part because of the ineffective way in which welfare agencies and government departments operate today in Russia, there is a potential for change. Discontent among those who work in schools and government departments with the present system is audible. It is not simply that they are poorly paid and continually subject to new demands from above, but that they cannot do what they feel they ought to be doing. We have tried to provide a representative sample of their views in our account. The tendency to blame inadequate families, the incompetence of other agencies, and policies designed at federal level, is both quite marked and what one would expect. These are the kinds of complaints or justifications to be expected from underpaid and undervalued professionals, unable to see any positive results from their work. Their dissatisfaction with the present system and with the role they are expected to play comes out very clearly in the interviews.

There is a strong tradition in society and government, inherited from the Soviet period, of paternalistic state welfare. This, at times, leads to systems of control from which there is no escape and which are damaging to young people, but it provides a basis on which to create a slimmed-down, more focused and integrated system of state welfare agencies to work with children who have fallen foul of the law. Welfare ideology is alive and well among governmental employees, working on the ground, and among the general public. It should be drawn upon. To imagine that, at present, voluntary organizations could take on the role that they do in some societies is not realistic, as the authors of the 1997 concept paper recognized. But this makes it all the more important that they should be encouraged, not hindered in

their activities. The NGO sector has shown itself to be far more innovative in devising programmes or new models for working with children, either at risk or in trouble with the law, than has its state counterparts. At times charitable or voluntary organizations are described, approvingly, as organizations who fill in gaps left by state institutions but, as we have seen from the work of the NGOs involved in the juvenile justice area, their efforts to change the way state institutions work are no less important. This may take the form of proposing legislative changes but it may be by monitoring and checking practices and procedures of government institutions, in particular closed institutions. The absence of *independent* commissions to review the work of government agencies or institutions makes this even more important. The procuracy has shown itself sadly inadequate as a guardian of legality, in many areas, not only those where the citizen is in trouble with the law. Unless, as an institution, it is subject to a major overhaul, it should be kept as far away as possible from issues involving children. The strong statist tradition in Russia can be drawn upon – to society's benefit – but it has to be tempered by oversight and control by society itself, both through elected representatives, independent media, courts and non-governmental organizations and associations.

Effective cooperation between different ministerial agencies, in any system, is difficult to achieve, and the vertical hierarchies and narrow departmentalism inherited from the Soviet period still dominate. However, at least there exists a candidate, the KDN, to whom schools, or police, could turn in the first instance. It would need to be radically restructured, be afforced with professional staff and resources, have the authority to enlist local government departments as providers of services or programmes. It could take the lead in communicating with the courts for the serious cases, and act, with authority, for all the lesser cases and those involving the younger children. It would be responsible for organizing mediation, choosing different types of services, and encourage the using of restorative justice techniques where possible. It would need to develop close ties with the voluntary organizations in the town or district, involving them in the processes of rehabilitation or education. Whether the KDN should be responsible for those older children, sentenced to 'community service' or serving a suspended sentence, or whether they should be the responsibility of a much-strengthened Inspectorate (under FSIN and hence the Ministry of Justice) is debatable. More important than jurisdiction (except of course that the police should not be made responsible) is that any such service be

professional, and well-trained, able to organize and supervise youngsters serving sentences in the community and those on parole.

The Finns created a professional probation service, with these responsibilities, placed under the Ministry of Justice. There is no reason why the Ministry of Justice could not do the same. Where are the resources and staff to come from, and what of the cost? The answer is straightforward. The cost, in Russia as in other countries, of locking people up is very high compared with giving them support or monitoring their activities when they remain in society. Quite apart from the cost of buildings, facilities and upkeep, at present there is roughly one adult employee in a children's colony for each child. There are also the costs of the SIZO (facilities and staff), and the guards responsible for transporting prisoners. It was calculated, in the early years of the new millennium, that each prisoner (adult) was costing the budget $400 a year while only $4 was being spent on those on suspended sentences or on parole (Уткин 2000). Of course, this is partly explained by the derisory funding of the Inspectorate compared with that of the prison system, and figures have risen substantially since. But the point holds. A child in a colony costs the country several times that of his or her peer who is serving an alternative sentence in the community. The savings from cutting numbers of those in remand and in custody would more than allow for a new, properly funded Inspectorate, for a social work service, and for alternative programmes for young people. Such programmes would not be cheap but, even if they were as costly as detention, they, in contrast, would benefit both the individual and society.

It would be illuminating to have a proper estimate of the average cost involved in detaining a child on remand, sentencing, transferring to a colony, and stay in colony, followed by an estimate of the cost for a young offender having a professional social worker, maybe attending an open special school, participating in a mediation or a community service programme, organized by a properly staffed KDN, and, in the case where it is appropriate, being monitored by a professional parole officer. Some of the colony staff, who have considerable experience of working with the children could be redeployed for retraining for such tasks.

In England and Wales the costs of custodial provision are exorbitant and, as we saw in chapter 6, the system of funding encourages its use. It is strange that a government that claims to be concerned to find alternatives to custody

supports a system that places obstacles in the path of finding and making use of alternatives. They should come high in a government agenda.

3. The introduction of a varied and effective array of alternatives to detention

In introducing the issue of the cost of detention, I am not suggesting that the case for restricting the use of custody rests on this. Quite the contrary. All that has been said previously on the damaging consequences of detention for the child and for society holds. Does it need repeating?

> Our children and young people leave our penitentiary institutions as moral and physical cripples … here they become beings who cannot adapt to a life of freedom. Russian 'crime factories' do not correct an individual but make him someone who destroys life. Not only his own, but others' too. (Абрамкин 2001: 22)

> At worst, detaining damaged and difficult young people 24 hours a day, seven days a week for weeks, months or even years can interrupt the normal process of growing up, reinforce delinquent attitudes, and create the ingredients for bullying, intimidation and racism. (Allen 2006: 22)

The moral case for limiting detention to a small minority of violent, mentally ill, offenders remains the strongest argument. The consequences for society provide further arguments against its use: rather than reducing crime custody encourages recidivism, it creates a group among the future generation who cannot integrate into society, it creates a contingent of adult guards, overseers, themselves locked into, and part of, a harsh system. Financing schemes to compensate individuals or society for the damage caused, schemes to help children to recognize the damage, and to learn to live in society will not be cheap. They have to include providing job opportunities, the prospects of an adult life that looks attractive, and tackling – by new measures – an adult and school environment that puts a minority of young people at constant risk.

There is no ready package of measures to adopt when dealing with law-breaking by children. Responses differ from one society or community to the next. But we can say that where children are committing trivial crimes or

stealing to assuage hunger, many, if treated with a proportionate response, will grow out of it. Help from social services, from school, a ticking-off from police or parents, may be all that is needed. For many offences, some trivial some more serious, the KDN or YOT should be able to recommend mediation, compensation for damage, attendance on a youth programme or at school, counselling, supervision by a social worker, a spell of community work. The guiding aim should be one of enabling the young person to recognize that such behaviour is damaging to others, to feel he or she has paid a fair price for anti-social behaviour and now is back on equal terms with others. Such measures would not end youth crime but they would almost certainly reduce it while, more importantly, they would begin to alter the perception of policy-makers and law and order officials of their own young people and of how they should be treated. They would have the support of many professionals working on the ground. They would be welcomed by the majority of the adult public in Russia and by at least a sizable proportion of the public in England and Wales.

Persistent young offenders need unremitting care and supervision. Those on drugs do too. Systems of curfew for young offenders, the use of ASBOs and of electronic tagging still have to prove their worth. More attractive alternatives include open residential institutions where the inmates get work qualifications and gradually learn the skills needed for living in society, without recourse to drugs and crime. But, whatever the sanction, most important of all is that it includes measures that increase the youngster's ability to cope with the world around him or her. Certain critical supports must be put in place: a roof over his or her head, employment or education and, if adequate family support is lacking, community support.

Now for the really serious cases: the persistent repeat offender, the violent unstable offender, or where a youngster, for any one of a number of reasons, commits a serious and damaging offence. These are the cases that will come to court. The guiding principle would be the same. A small minority will have to be isolated, at least for a while, from society. The judge should be able to recommend mediation, and to impose a combination of sanctions, if this seems appropriate. Fines, compensation for the damage done, community service, accompanied by monitoring of attendance on youth programmes – all these and more, tailored to the individual case, should be available to the judge. In Russia the use of suspended sentences,

which, on their own, do nothing to lessen the chances of a further offence, and thus lead, automatically, to custody next time should be drastically reduced.

In Russia the availability and effectiveness of the sanctions will depend upon the creation of new services, the willingness of government departments to rethink their roles and to cooperate with each other and with non-governmental organizations, and, most important, the willingness of all the law and order institutions – from police and prosecutors to judges and FSIN – to aim at changing their present level and type of involvement in young people's lives. In England and Wales many of the institutions, services, and means that could be used to implement new strategies already exist, but the existing criminal justice legislation, and the 'bang them up' rhetoric of leading politicians, which finds its echoes from some within the police and judiciary, prevents their appearance. In both cases political leadership is the critical factor.

Building support for a reform agenda

Political leadership, with a new vision, is what is needed most of all. With Putin's creation of a pliant legislature and judiciary, a reform agenda that happens to attract the President's attention stands a greater chance of being translated into legislation. But Putin blew hot and cold, and policy-making takes place according to criteria that are not made explicit and not based upon a coherent agenda. Kalinin hoed a lonely row as a reformer among the law and order agencies, but recently has adopted a more conservative position. However, Russia now has a new President, Medvedev, who claims to favour legal and court reform, a minister of internal affairs, R.G. Nurgaliev, and a new minister of justice, A.V. Konovalov, both of whom have recently supported the idea of juvenile courts. While the Supreme Court has been alarmingly indifferent, and the procuracy unenthusiastic, there are the regional experiments, there are ombudsmen, the Commissioners for Human Rights, experts and professionals, many with considerable experience, who, given support and media backing, could engage their conservative opponents from the law and order agencies in serious discussion. Compared with the situation ten years ago, there is a stronger community of reformers. In Russia an open debate would draw in the professionals, of all ranks, who could contribute their criticisms of the present system and proposals for change.

However, is an open debate relevant to the making of policy in today's Russia? Should one not recognize that all that really matters is to catch the ear of the President or those who advise him? This, I hear from many, is the way policy has always been made in Russia and still is today. It makes better sense, some argue, to use the Public Chamber, a selected, coopted body, chosen by the political leadership to act as an 'opinion-leader' of the non-governmental sector, even if one disapproves of the way it has been created. Zykov, from NAN, has opted for this. Others, for example Abramkin, use the Presidential councils or commissions to try to attract the attention of the President.[1] Without a doubt, it is the President who matters and, if there are channels of access to him, reformers should use them. However, participation in the Public Chamber raises a troubling issue. If one believes an independent non-governmental sector is vital for a healthy society and polity, then a coopted chamber is damaging for both present and future developments in Russia. Why? Because it suggests that the state has the right to determine 'which society' it will speak to or interact with. Its existence underlines the fact that the state–society 'partnership' is *not* one of equals. Zykov may be able to use his position to push a reform agenda forward, but at a cost to the future of a healthy state–society relationship. There's no easy answer here.

If support from the President is crucial, equally crucial is his vision or understanding of what can and should be done. This, I would argue, is why an open debate is needed. I do not believe that today's political leadership, or those who head the law and order agencies, their deputies and advisors, have a clear view, backed up by evidence, of reforms and how to achieve them. I do not believe the Supreme Court judges do either. From none have we seen any evidence of this. Surprising and puzzling is the lack of authoritative and imaginative research from the institutes and academies attached to the law and order ministries. To take but one example: surely a priority for the Ministry of Internal Affairs (MVD) should be the in-depth review of the role of the police and police practices as regards children? A candidate (PhD) dissertation is defended for each day of the year at the MVD Academy in St Petersburg. How many of these focus on reforms to the present system for dealing with young offenders? More generally there is shortage of good research on youth crime and the existing system for dealing with it.

But, neither do I believe that any one NGO has the answers. Catching the President's ear – whether it is by the Procurator General, a professor or an

NGO activist – is a strategy for poor policy. For well-thought-out reforms, which will work, a discussion must range. How else can political leaders make informed decisions? Deputies in the Duma may vote in line with the wishes of the Kremlin but they could and should involve themselves in a debate, a debate that should include the voices of those who work with young offenders. Many working at local level in the justice agencies, as we have shown, are frustrated and critical, well aware of present shortcomings. It is difficult in hierarchical, almost military, institutions such as FSIN or the MVD for the voices of the lower ranks to be heard. But they need to be included in the debate, and not only because they will be responsible for implementing changes. Encouraged by Zykov, an association of governors of the *vospitatelnye* colonies has recently been created. This is a very welcome initiative. Professional associations should speak for their members and contribute their expertise.

And what of a role for public opinion? Many today insist that the government in Russia is not and never has been interested in what its people think. This does not mean it should not be. Any who are advocating a reform agenda, I would argue, should constantly try to enlist support from sections of the public, and professional communities, and to find ways to make politicians listen. It is not easy in Russia: there is no widely read 'campaigning' section of the press, serious television documentaries are out of fashion. Deputies, governors, political leaders do not see themselves as obliged first to learn and then represent the views of their constituents. And, among the reformers there are those who think that, on issues such as juvenile justice or the defence of rights, legislators have an obligation to lead, to be in advance of public opinion. The public, they argue, is badly informed and may hold very punitive views (although, as we saw, in relation to young offenders this is not so). Better to change public opinion by introducing progressive measures whose implementation will then influence attitudes within society.

> In order not to be rejected or not understood, a legislator cannot be quite out of touch with the legal consciousness of the people but he should be ahead of it and exercise an educating, humanizing influence upon it. (Марогулова 1992: 20)

A majority of members of the UK parliament vote consistently against the use of the death penalty, while aware that a majority of the public is

in favour, but they do this in the knowledge that their electors, if they feel strongly enough about the issue, can vote them out next time. Yet, when it comes to juvenile justice policies, it seems that the same politicians respond to the demands from a vocal section of the public, supported by some sections of the media, for tougher measures. Anxious to garner support, and with an eye on their rivals, politicians fear that 'soft' policies may affect their electoral chances. This is a sad reflection upon the politicians, the media and society more generally, but it does not justify removing the accountability of politicians to the public. How much easier it would be if wise, progressive, politicians were not obliged to listen to the public. But there is plenty of evidence that politicians are not usually wise nor progressive and that publics need to control those who hold power and influence their lives.

For these reasons, I would argue, the public in Russia needs to find its voice, and reformers and politicians should listen. And, if they listened, they might be surprised. While neither Medvedev, nor police and prosecutors, may be aware of it, Russia's adults, as we have seen, would prefer a more humane system, and much less use of detention, for young offenders. Today's system does not enjoy the support of the Russian public. On the contrary, it is seen as damaging to children and to society.

And in England and Wales? Here the topic of youth crime features high up the agenda of both leading political parties, and the media pays considerable attention to violent acts committed by young people. But can we say that an informed debate is taking place or has taken place over the past fifteen years? The puzzling fact is that, despite a great deal of data and analysis of different aspects of youth crime, of young offenders, and of the consequences of adopting different strategies to deter offending – data that are readily available to politicians and their advisors – there is no such debate. The government pays far less attention to falling crime rates than to the need to bring more children before the courts. Very little attempt is made to provide accessible information on the state of youth crime, or to understand the public's anxiety over crime and to find strategies to allay those fears where they are unfounded. There has been no serious investigation into the use of prison for either adults or children. Yet, in the words of Professor David Wilson, chair of a Commission on English Prisons Today, set up in 2007 by the Howard League of Penal Reform:

> There is an urgent need for a proper discussion about the purpose and context of prison. Through such a discussion people can truly have a choice about what kind of criminal justice system and the role that prison should play in that system – and what kind of society – they want in twenty or thirty years' time.[2]

Despite falling crime levels, the crisis in the prisons has been accompanied (or caused) by the enactment of 'more criminal justice legislation in ten years than was passed in the previous hundred', the introduction of 'over 3,000 new criminal offences since 1997' and the spending of 'proportionally more money on law and order than just about any other country'. The government's lack of interest in setting up a Royal Commission to review the situation prompted the Howard League's action. The unofficial Commission set its own terms of reference:

1. To investigate the purpose and proper extent of the use of prison in the 21st Century.
2. To consider how best to make use of the range of community sentences that currently exist, the principles that should guide them and to explore new ideas.
3. To consider the role of the media – both broadcast and print – in helping to re-shape the debate about the reform and proper use of imprisonment.
4. To investigate those issues which drive up the prison population in an age of globalisation.
5. To place any recommendations within the broader workings of the criminal justice system of England and Wales, giving due consideration to international development.

At the time of writing it has still to report. In Wilson's words, one of its themes will be the importance of moderation,

> [of] caution and restraint when we talk about and deliver punishment. It is about cultivating tolerance; a sense of fair play; and other qualities that we recognise as being characteristics of 'Englishness'. It recognises that prison as a form of punishment is destined to disappoint – that prison is, in the words of commission member Professor Ian Loader of

> Oxford University, 'a perennially failing social institution'; one which is 'destined to disappoint because the levers that conduce individuals to conform lie mainly beyond its control'. In other words, prison may punish but it does not address the underlying causes of crime – indeed it can exacerbate these causes, from mental health needs to drug addiction.

Although the Commission's focus is primarily on prison for adults, these comments apply equally well to children. Whether the present government will pay heed to the Commission's findings remains to be seen. New Labour, picking up the cue from its Conservative predecessor, seems to have convinced itself that tough policies towards youth are good for its image, and that informed debate is not needed. This is irresponsible government, and the irony (or the tragedy) is that the politicians' reading of electoral preferences may not be right. There is no evidence that the majority of Labour Party supporters approve of the government's criminal justice policy towards children, or that the majority of the British public believes that building more prisons is the answer to criminal behaviour. Again, what is needed is an informed debate.

Conclusion

A vision is the starting point for reforms: a vision of Russia and of England and Wales with a few secure institutions for the small number of violent and unstable children who are a danger to society and who need special attention; institutions that are accessible, and monitored. A problem for Russia is its size. The idea of locally based and accessible institutions for those young people who really need to spend time in detention is difficult to implement – particularly when their numbers may be very few (girls are a case in point) or the young offenders come from rural areas. But such an idea should lie behind planning for the future, and some other use be sought for those colonies, far from anywhere, and hundreds or thousands of miles from their inmates' homes. In England and Wales priority should be given to local authority homes, and to local communities taking responsibility for any use of custody. The number of YOI and STCs should be drastically reduced. A variety of open and semi-open institutions should be experimented with.

For the other offenders, the great majority, a variety of programmes and sanctions should exist, administered by local agencies – in Russia welfare

departments with professional social workers, a youth inspectorate under the Ministry of Justice, mediation services and voluntary organizations; in England and Wales 'more effective partnerships between schools and families, and between schools and police' (Carlile, in NACRO 2005; *Youth Crime Action Plan* 2008), better coordination between local agencies, and funding for community programmes and for open children's homes. In both countries local authorities should give much greater priority to identifying and responding to children with problems before they become victims of a hostile environment.

Should the political leadership decide that changes are imperative, a rigid system can change – as we saw in the case of Finland – and a few well-designed policies could bring numbers of young people in detention tumbling down. But they must be preceded by a debate, and by action from the political leadership. In this respect the political system in Russia today, with its strong emphasis on the President, has its advantages. If it is left to the government to organize yet another commission to report on the state of Russia's children or, even more narrowly, on improvements to the current system for dealing with young offenders, nothing will happen. Each ministry, agency, justice institution (courts and procuracy) will defend its bailiwick, while proposing a few minor changes. The strength of the government bureaucracies must not be underestimated. Only clear and insistent leadership from above (coupled with support for those seeking change) can compel these lumbering institutions to change course. This is why the President is so important. There is a danger that federal legislation, in the strongly hierarchical Russian system, could stymie or create obstacles for local initiatives. Some argue that the gaps in or lack of federal legislation encourage regional legislative initiatives and that this movement from below will gradually change the landscape. The problem is that local experiments are dependent upon local heroes, and sympathetic governors, while the present Codes remain in place. At some point action from above will be needed to effect change.[3]

Supposing the President states that he favours the use of custody on remand and as a sentence only in exceptional cases and for that small minority of violent and unstable children. (In stating this, he would only be confirming the obligations that Russia has incurred in its signing of UN and Council of Europe conventions.) The President sets a date by which he should receive innovative and concrete proposals from key ministries, courts, justice agencies and social organizations. He sets up a *small* commission, headed by, for example, a

respected and retired judge, and including three or four well-known individuals with expert knowledge but not themselves proponents of one particular approach, whose task would be to request evidence and proposals, to ensure that all relevant institutions respond to them and that the debate reaches the public. The law and order ministries, the Supreme Court, the Procurator's office, the KDN, NGOs and experts will all be asked how they would envisage their role (and should they still have a role) in a system designed to reserve detention for a handful of exceptional cases. The commission would sum up the results of the inquiry and make its recommendations.

A fantasy? Not at all, other societies have managed such a rethinking. The time for a policy initiative is ripe in Russia today, and the need for new thinking will be accentuated by the economic crisis. Is the same true in England and Wales? We have a Prime Minister who states he has a vision he wishes to realize, which includes social justice. The government claims that it is important to keep children out of prison whenever possible and, like the Russian government, has signed international conventions to this effect. An (official) Commission for Prisons in Scotland, which reported recently, started with the statement that '[t]he Government refuses to believe that the Scottish people are inherently bad or that there is any genetic reason why we should be locking up twice as many offenders as Ireland or Norway'. Should not the government in Westminster have the courage to ask why Germany and France lock up far fewer of their children than do England and Wales, set the Home Office and academic community the task of devising an alternative agenda based on evidence, and campaign for change?

Expert opinion, and this includes the voices of leading judges, is strongly in favour of moving away from the policies of the past fifteen years, which continue to swell the numbers of prisoners, adult and children. In NACRO's words, there is 'a window of hope in a period of contradictory potential'. The politicians still seem to prefer 'punitive posturing' to a recognition that present policies are ineffective and damaging (NACRO 2005: 2; Goldson 2006; Morgan and Newburn 2006), but there are glimmers of change in the 2008 Act and the *Youth Crime Action Plan*. Perhaps the economic depression, which is already compelling a rethinking of some New Labour principles, will allow for a breathing space – now is not the time to claim that another Criminal Justice Act can tidy up the situation. Now is time for reflection, for new thinking on the state of English (and Welsh) society, and on the use of resources to ensure that custody moves off the agenda for children, as did

hanging in its time. Otherwise we shall have more children in prison, and in the future more adults, and an anxious and punitive society. All this could be avoided, if the politicians demonstrate sense and courage.

We leave the final word with the children.

> Some of us have done bad things but I don't think it's right that we are locked up in here. Bad things are done in here as well. What's the point in just doing bad things to us 'cos we've done bad things? Some kids can't handle it and can't cope. The ones that cope just get worse, like. What good is that? (Boy aged 16, Eng)

> . . . It seems to me that locking up children is terrible. Replace it by some sort of compulsory work or something else, but don't use imprisonment. After all a child's psyche is weak, even if s/he is a criminal. It can leave a child deeply scarred. . . . And afterwards – where can they go – back to stealing potatoes, and back behind bars. I don't want to say that everyone is locked up for nothing. But there's not many of the others. Some steal a couple of thousand rubles, and people who steal millions, carry on living contentedly. So it seems to me that the justice system is not just. I wish so much that everything could be as it ought to be. (Ekaterina)

Appendix: Secure Institutions for Young Offenders

Russia

1. Centres for temporary isolation (holding) of young offenders (TsVSNP) of the Ministry of Internal Affairs (MVD)

The centres of temporary isolation (holding) of young law-breakers were set up in 1999 under a law that reorganized the existing system of children's reception and distribution centres of the MVD. Children aged between 11 and 18 may be held in the centres. Children who have committed an offence or a socially dangerous act but are under the age at which they can be held responsible for such an act are directed by a judge to a TsVSNP for a period of up to a maximum of 45 days, until a decision is taken (by the court) on a future placement or programme of action.

2. Special schools and special technical colleges of the Ministry of Education

The secure educational institutions hold children who have committed a 'socially dangerous offence of medium gravity', or a second such offence while still under the age of criminal responsibility for such an action. The secure schools hold those aged 11–14 years, the trade colleges those between the age of 14 and 18. The court can send a child to a secure educational institution for a period not exceeding three years.

There are 34 special schools and 16 trade colleges in 39 regions of the country (four of the schools and two of the colleges are for girls). In the 1990s the number of children in these institutions varied between 5,000 and 15,000. In terms of their conditions, secure regime, the social microclimate and the compulsory nature of the work, the majority of these institutions differ little from the colonies. The children are subject to round-the-clock observation; they cannot leave the institution without permission; the territory is guarded; their belongings, correspondence, packages and parcels are inspected.

The special schools and colleges are under the Ministry of Education, the department of special educational institutions of the Chief Administration for rehabilitation and special education.

3. Investigative isolation centres for juveniles (SIZO) under the Federal Service for the Implementation of Sentences of the Ministry of Justice

The institutions are designed to hold in remand those between the ages of 14 and 18 who have been arrested, and who are awaiting trial.

4. Educational colonies (VK) under the Federal Service for the Implementation of Sentences of the Ministry of Justice

These are institutions for young prisoners (aged between 14 and 18 years) who have been sentenced to custody. The new Criminal Code makes provision for the judge also to send convicted 18–20-year-olds to a VK. In addition, the colony administration can, for good behaviour, retain those up until the age of 21. However, in 2008, under new instructions, those aged 18+ began to be moved to adult colonies.

Types of regime: a standard regime for those serving a first sentence, and for all girls, regardless whether they are serving a first or repeat sentence; a tougher regime – for those serving a second or further custodial sentence. In 2008 there were 62 VK of which three were for girls. The number of prisoners in a colony varies from 200 to 700.

England and Wales

1. Secure Children's Homes (LASCH) run by local authority social services departments, overseen by the Department of Health and the Department for Education and Skills

Secure children's homes are generally used to accommodate both children at risk (under a court order) and young offenders, either on remand or sentenced to custody, aged 12–14; girls up to the age of 16; and 15–16-year-old boys who are assessed as vulnerable. As of 2006 there were 235 places for these children in SCH, housed in small house units, holding from six to 36 children.

2. Secure Training Centres (STCs) run by private operators

These are purpose-built centres for young offenders up to the age of 17, run by private operators under contracts with the Home Office, which set out detailed operational requirements. There are four STCs in England.

They may hold boys and girls, aged 12–14, on court-ordered remand or sentenced to custody; vulnerable boys aged 15–16; girls aged 15–16, and vulnerable girls aged 17.

They consist of units of 58–87 places, with a maximum of eight places per house within the STC. The staff-to-child ratio is a minimum of three staff members to eight 'trainees'.

As of 2006 there were 305 places available.

3. Young Offender Institutions (YOIs) under the Prison Service

These are facilities run by both the Prison Service and the private sector and can accommodate 15–20-year-olds, either held on remand or sentenced to custody. They house non-vulnerable children aged 15–17, although girls aged 16 and above (approximately 70) may be held in units attached to a women's prison. A child may be reallocated or moved up from an STC to a YOI.

The 15–17-year-olds are held in units (accommodating 30–60 children) that are separate from those for 18–20-year-olds. A YOI may accommodate from 60 to 360 young people. The child-to-staff ratio is high, and they generally accommodate large numbers in conditions similar to prison.

As of 2006 there were 2,820 places, of which 90 were for girls.

Notes to the Text

Preface, pages xii–xi

1 Мэри Маколи, Дети в тюрьме. ОГИ, Москва, 2008.

2 Scotland has a different juvenile justice system. Hence, throughout this book, I am referring to that which operates in England and Wales, not the UK as a whole.

3 The adult survey was conducted through face-to-face interviews by trained interviewers in March 2004 with a sample of 500 of the adult population (18–70 years) in each of St Petersburg, Saratov and Ulyanovsk, identified on a random walk principle. The Levada Centre, the leading survey research centre in Russia, carried out the survey. The sample, taken as a whole, was representative demographically of the cities' population with slight under-representation of single householders and over-representation of those with higher education (a usual feature of this type of survey). The young people (547 in all, aged between 12 and 17), who included those attending school, technical school, on police record and in the colonies, completed questionnaires during meetings with the sociologists. The views of 100 professionals were sought through in-depth interviews and in focus groups.

Introduction: Russia and England, pages 1–26

1 From the interview project conducted in March–April 2004, described in the Preface.

2 There is no good English translation for '*vospitatelnaya*' – it means 'to educate' but in the sense of teaching someone to behave properly, to be well brought up. It is softer than the term 'corrective' or 'correctional'. VK is the abbreviation for a *vospitatelnaya koloniya*, SIZO for a remand centre. The Appendix provides more detail on the different institutions.

3 The detention of younger children or of those whose anti-social behaviour is felt to warrant treatment in a secure educational institution is a subject in its own right. Goloviznina (2005) has made a study of Temporary Holding Centres for young children. Throughout the book any reference to 'aged 15–17' or '10–17' is inclusive, that is, includes 17-year-olds; it therefore refers to the same group as 'children between the age of 15 and 18' or 'between the age of 10 and 18'.

4 See Appendix for more details.

5 From Goldson's interview project, described in the Preface.

6 <http://www.crimeinfo.org.uk/topicofthemonth/index/jsp> [accessed 20 October 2004].

7 The essays are published in full in ДТ 2001, ОТ 2005, СВ 2001. See Bibliography.

8 Goldson (2002): see Preface.

9 We return to the issue of transfer to an adult colony in chapter 5.

10 Comparisons must be treated with great caution, given differences of definition. For example, in the USA the age at which a juvenile is considered an adult varies between states (in some as low as 15) and hence children above this age would be classified as adults. In Germany sentences of 'arrest', maximum four weeks, are not considered custodial; if included here, the German figure would increase; if Finnish reformatories were included, the figure would increase. Approximately 20 per cent of those held in juvenile colonies in Russia had reached the age of 18 (we have excluded them here), but we have included the average figures for those held in the Temporary Holding Centres and the closed special schools at any point in time during the year. This allows a better comparison with England and Wales, and the USA. At most the figure allows us to see the differences in order of magnitude between countries.

11 We come back to this in later chapters. Walgrave (2004: 550) provides references to recent literature on this issue.

12 Numbers include up to 25 per cent of 18–20-year-olds who were not transferred to an adult colony. The change of policy in 2008 will be reflected in (1 January) 2009 figures.

Chapter 1, Criminal Justice: pages 27–49

1 See interview project cited in the Preface.

2 The issues raised by the gender composition of those detained, arrested and subsequently convicted are complex and a matter of debate. We do not attempt to deal with them in this book. Throughout the text, unless specifically referenced otherwise, the category young offenders/children includes boys and girl. We frequently use 'he' rather than 's/he' in the text because boys outnumber girls nine to one and hence, in the great majority of cases, it makes more sense to visualize a boy rather than a girl.

3 Or take another example: the police in Russia may respond to the 2003 decision to make 2,500r (approximately £50) the minimum amount for 'theft' either by registering these petty thefts (whereas before they did not) and the theft statistics rise, or by ignoring them because the penalties seem to them out of all proportion to the crime, and the statistics remain unchanged.

4 The presumption was abolished in the 1998 Act for England and Wales.

5 Michael Howard, Tony Blair, and now Jack Straw, Jacqui Smith, Alan Johnson and David Cameron, are you listening? This was Winston Churchill in 1910.

6 'An outside chance', *Children in Scotland*, February 2007: 10.

7 P.I. Liublinskii, a leading St Petersburg criminologist, writing before and after the revolution, writes of the 'positive' aspects to law-breaking, and of the need for young people to question authority (1914; 1929).

Chapter 2, Russia 1890–1990: pages 50–70

1 Tagantsev was reporting to the IVth Congress (1898: 64) on discussions with the Ministry of Justice for a project to expand the powers of the new colonies for young offenders. The regulations had still not been adopted by 1907 but Tagantsev reported to the VIIth Congress that he was hopeful that the Duma would pass them that year; he again referred to the debate over punishment versus *vospitaniye*, which had been resolved in favour of *vospitaniye* (1909: 13).

2 An interesting comparison can be made with Valeri Ronkin's account of disorderly behaviour at the factory youth clubs in Leningrad in the 1950s (Ронкин 2003).

3 A rule with a long history in Russia and in Europe found a new life. Traditionally the status of the offender determined the nature of the penalty: aristocracy – execution, lower class – hanging; nobility were exempt from flogging, lower classes were not. Hence it was important to determine the status of an offender and, in specific cases, if so demanded, an individual might be stripped of his status in order to qualify for a more severe punishment. In the Soviet period, in a similar twist, a party member would be expelled from the party, and only then brought to trial. This allowed the Party's name to remain unsullied.

4 The ideological belief that society offers opportunities to all, that all can make it if they wish to (USA) also presents problems: criminals must be morally bad people, they have not behaved as they could/should. This can also lead to a very punitive response too … through the criminal justice system. We return to this in chapter 3.

5 In 1935 came the liberating announcement that children were no longer responsible for the sins of their fathers, hence no longer barred from educational opportunities, jobs or careers because of their class origin. But then this meant that they were responsible for themselves. They, and the children of the working class and peasantry, all became responsible individuals – and should be treated as such. (Of course, during the Great Purge, class origin often came in, but increasingly in an arbitrary fashion … *anyone* could be found guilty.)

6 The section on the Stalinist period draws heavily on Solomon (1996).

7 It was not uncommon for released prisoners, who had come from Moscow, to be banned from returning there. The consequence was that many settled just outside the 100 km limit.

8 The author spent 1961–3 as a graduate student at the law faculty of Leningrad State University.

9 In the 1990s it was the economists who emerged as the most active reformers; in the 1960s it was lawyers and sociologists. It would be interesting to explore the reasons for this.

10 Where not otherwise referenced, Boldyrev (Болдырев 1964) is the source for the description of the legislation. In 1943 *vospitatelnye* colonies had been introduced for young children committing minor crimes. In the mid-1960s these became the secure special schools for 11–14-year-olds, and the secure special FZU for the older children, both under the Ministry of Education. These children received no criminal conviction but were sent, under civil law, as in need of care and attention. The MVD (Ministry of Internal Affairs) retained the corrective-labour colonies, now renamed *vospitatelnye*-labour colonies, which had a stricter regime, for 14–17-year-olds convicted of a criminal offence, and also the reception centres – DPR – for younger children.

11 The Russian term is *uslovnoye*, for which a closer translation is 'conditional'. We use both suspended and conditional. The important point is that for a second offence within the period of 'suspension' the sanction is custody.

Chapter 3, England and Wales 1900–1990: pages 71–92

1 Industrial schools and reformatories (residential, often with a secure regime, run both by local authorities and voluntary agencies, supported by charity) where children were to be trained in a simple skill and in good behaviour, dated from the nineteenth century. The 1908 Act authorized the sending of 7–14-year-olds to the industrial schools and 12–16-year-olds to a reformatory (if convicted).

2 The Committee was divided on the question of retaining whipping as a sanction; it remained on the statute book until 1948 but was very little used by the late 1930s. The 1908 Act had set a minimum age of 16 for capital punishment; the 1933 Act raised this to 18 but the last death sentence on an under-18-year-old had been in the 1880s.

3 A bill, prepared in 1938 was abandoned because of the war; it provided the base for the 1948 legislation.

4 This section draws very heavily on Bailey (1987: 289–303).

5 Does this have a familiar ring today?

6 The rules on remand: under-17s should be held in a LA home but, if unruly, could be held in a remand centre/prison establishment. Numbers remanded remained pretty constant during the 1980s, around 1,500 per year (Allen 1991).

7 Scotland is an exception that perhaps proves the rule.

8 The UN Standard Minimum Rules for the Administration of Justice in Relation to Children (the Beijing Rules, 1985); the Vienna Guidelines for Action on Children in the Criminal Justice System (Resolution of the UN Economic and Social Council, 1997); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Tokyo Rules, 1990); the Convention on the Rights of the Child (1989). <www.ohchr.org/english/law>

9 The Council of Europe's Committee of Ministers adopted a set of new recommendations 'European Rules for Juveniles Subject to Sanctions and Measures' in November 2008.

Chapter 4, Post-Soviet Russia: Creeping Change: pages 93–123

1 The websites of the following NGOs (non-governmental organizations) provide references to these early publications: Центр содействия реформе уголовного правосудия: <www.prison.org>; Центр «Судебно-правовая реформа»: <www.sprc.ru>; НАН: <www.nan.ru>; ПРИ (Пенал реформ интернашнал): <www.penalreform.org>.

2 Juveniles accounted for 17 per cent of all those convicted in 1991; 12 per cent in 1995 and between 10 and 13 per cent since. We should remind ourselves that 'crime figures' may refer to very different things: number of crimes, number of individuals detained or numbers convicted.

3 The MVD statistical handbooks refer to numbers выявленных совершивших преступления (identified as having committed crimes) before they have even been charged, let alone tried, which is not formally correct. We have used 'in connection with' or 'in relation to' a crime.

4 Data provided by Sergei Zakharov. The age cohort will continue to decline to a low of 5 million in 2015, and then start rising again.

5 Although, of course, the pattern of criminal activity may change between generations. And, very important: at any point of time there is a difference between a situation when one out of 200 kids is committing five crimes and another in which 5 kids are each committing one crime. They call for quite different responses.

6 Decree of 5 June 1994, No. 646.

7 Unless otherwise cited, quotations by the Russian professionals who work with young offenders, and summaries of their views, are from the 2004 interviews in Saratov, St Petersburg and Ulyanovsk referenced in the Preface.

8 See n. 7.

9 Federal Law No. 120 of 24 June 1999; Federal Law No. 111 of 26 June 2003. Originally known as 'isolation' centres, which the Council of Europe experts found troubling, they were obligingly renamed 'holding' centres in 2003.

10 For the model law, see Тропина, Альтшулер and for examples of projects/experiments under way, Организация работы… (2003) и Комплексный подход… (2004).

11 Ombudsmen or commissioners for children's rights are elected by the regional or city council for a period of five years; children or adults can turn to them. They have the right to request information from any government department, to send proposals or request changes in practices to which the department must reply; they prepare an annual report for discussion by the council and the city or regional administration. A probation service project, spearheaded by the NGO Grazhdanskii kontrol, is under way in St Petersburg.

12 Concluding observations of the UN Committee on the Rights of the Child: review of the submission from the Russian Federation. The meetings were held on 23 September and 8 October 1999. See Актуальные проблемы 2000, приложение.

13 An amendment to the Code of Criminal Procedure required a judge's approval for police detention for more than 48 hours. This initially had an impact on numbers of adults and children held on remand.

14 In 2004 GUIN (the Prison Service – or more correctly the institution for implementation of sentences) was renamed FSIN – the Federal Service. It remains under the Ministry of Justice (whence it was transferred from the MVD in 1997) and its responsibilities remain unchanged.

15 See the journal *Вопросы ювенальной юстиции* and the NAN website <www.nan.ru> for the draft legislation.

16 The Committee considered the third periodic report of the Russian Federation (CRC/C/125/Add.5) at its 1076th and 1077th meetings (see CRC/C/SR.1076 and 1077), held on 28 September 2005, and adopted, at its 1080th meeting (CRC/C/SR.1080), held on 30 September 2005, its concluding observations. See <www.ohcr.org/english/bodies/crc/crcs40.htm>.

17 Stenogramme of the round table, 20 March 2006, pp. 1–2 <www.juvenilejustice.ru>.

18 At the time of writing, the following towns or districts are said to have introduced juvenile technologies in the court system: Angarsk, Abakan, Yelets (Lipetsk obl.), Bryansk, Kolchugino (Vladimir obl.), Kingisepp (Leningrad obl.), Cheboksar and Orenburg.

19 This was very noticeable at the International Juvenile Justice Conference at Valencia, October 2008.

Chapter 5, Post-Soviet Russia: Sentencing: pages 124–151

1 The radio programme *Oblaka* (Clouds), put out for prisoners by Abramkin's organization, played a key role in bringing this to public attention. <http://www.hrights.ru/text/b24/Chapter9%202.htm>.

2 This is the department of FSIN (the Federal Service for the Implementation of Sentences), which is responsible for those convicted and given non-custodial sentences.

3 IIIаг на встречу. (Krasnoyarsk State University has been renamed Siberian Federal University.) Both PRI and the INDEM foundation have supported or initiated projects of this kind.

4 We include material that has appeared in McAuley and Macdonald (2007).

Chapter 6, England and Wales: pages 152–177

1 Morgan and Newburn (2006: 1027) and NACRO (2005) reproduce a table that shows the drastic difference in numbers for the years 1965–2005 but, given the difference in the age cohorts pre- and post-1992 (when the 17-year-olds were included), we focus on data from 1992 onwards when dealing with recent trends.

2 The White Papers and Acts can be found in the UK Statute Law Database <www.statutelaw.gov.uk>.

3 By 2005 the policy of imposing conditions under an ASBO for two years, with the penalty of imprisonment if the terms were broken, was recognized to be so counterproductive that a review after one year was introduced.

4 Bottoms and Dignan (2004: 35) present data broken down by age and gender to show change in cautionary rates over the period from 1970 to 2000.

5 NACRO (2005: 6) suggests that since 1992, despite the fall in crime, custodial sentences for under-18s rose by nearly 90 per cent and, for the sub-group of under-15s by 400 per cent.

6 The variety and presentation of statistics (and changing classifications) by the Home Office, Ministry of Justice and Youth Justice Board make it difficult to trace recent developments with confidence. Sometimes a table stops one short: 10–17-year-olds sentenced to life imprisonment. The figures peak at 29 in 2001, 16 in 2006. See also the Prison Reform Trust website for publications that include data on a number of key issues relating to custody.

7 Concluding Observations of the UN Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland, October 2002, cited in NACRO (2003: 6). For the 2008 Observations, see the website <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>. We remind the reader that Scotland operates a different juvenile justice system from that of England and Wales.

8 For the Valencia conference, see the website <www.oijj.org>. At the time of writing, the papers have not yet been published.

9 Thorn Cross was the only open YOI. As of spring 2008 the YJB decided it would no longer purchase places there: 'We currently purchase 60 places at Thorn Cross. For the past few years, at least a third of the places have been vacant on a regular basis. We believe that this represents relatively poor value for money, especially at a time of budget constraints and pressures on the secure estate. Our decision will not affect the remaining 240 places for 18 to 21-year-olds at Thorn Cross and we anticipate that the decommissioned places will also be used for 18 to 21-year-olds once there are no more younger people held there. Individual plans will be drawn up for the under-18-year-olds currently placed in Thorn Cross to ensure that the impact of the withdrawal from the unit is minimised.
Though these places represent the only open conditions currently available in the secure estate for young people, our decision does not reflect any change in our commitment to ensuring that the secure establishments that hold young people are best suited to addressing their offending behaviour and meeting their individual needs.
As part of our secure estate strategy, we are examining nationally what benefits open conditions provide for young people and how the secure estate can best be configured to deliver these benefits, recognising that, if open conditions are appropriate for young people in custody, a relatively large establishment in a single location may not be the best solution. If you have any questions or concerns, contact *Louise Goodwin* on 020 7271 2994.'

10 In 2003/4: £50,800 for a YOI, £164,750 for a STC, and £185,780 for a SCH (NACRO 2005: 11). Numbers for May 2008 give an indication of the institutions' relative weight in the penal system: 239 children were serving custodial sentences in the STCs, 217 in the children's homes, and 2,550 in the Young Offender Institutions. See YJB website.

11 Between 2000 and 2006 reoffending (within one year) for all young offenders fell: in 2000 40.2 per cent reoffended, in 2006 38.7 per cent. But when the offenders are split into groups (age, gender,

number of previous offences, type of sentence) the differences make this 'overall figure' meaningless as far as future action or effectiveness of crime prevention measures is concerned. For example: reoffending climbs steadily with age; girls reoffend much less than boys; those who are dealt with by out-of-court disposals – no change over the period – only 28 per cent reoffend; over 80 per cent of those with 10 or more previous offences reoffend compared with 54–42 per cent of those with 1–2 previous convictions and 24 per cent of those with no previous conviction; with severity of sentence reoffending rises and shows no decline during the period: highest of all is for those released from custody – this increases from 75.7 per cent in 2000 to 77 per cent in 2006 (*Reoffending of Juveniles: Results from the 2006 Cohort England and Wales*, Home Office, 2008).

12 The Plan is remarkably short on data. There are no appendices with data on crime statistics, sentencing, custody, reoffending, etc., nor even references to the statistical sources; no mention is made of Select Committee inquiries, Inspector of Prisons reports, etc.

13 See n. 9 for the shutting down of the one open YOI for boys.

Chapter 7, English Exceptionalism?: pages 178–190

1 And how does it work in Russia? When Gusinsky, the TV oligarch, was arrested, the remand prison governor was quoted as saying to journalists: 'Gusinsky is being held in a cell with only two others, and both are *intelligentnye* people, one is in for fraud, the other for forgery, and he has a TV.' But this and subsequently the Khodorkovsky case were politically so high profile that their treatment (of whatever kind) should not be taken as a norm.

2 *Recht ohne Grade ist Unrecht*, quoted by Whitman (2003: 147).

3 A recent poll, by the Levada Centre, suggests support for the death penalty has fallen from 79 per cent in 2002 to 65 per cent in 2005, with those opposed up from 17 per cent to 25 per cent.

4 See Hough and Roberts (2004) for the British Crime Survey. The discussion here reproduces some of the analysis in McAuley and Macdonald (2007), referred to in the Preface.

Chapter 8, Lessons from Other Countries: pages 191–215

1 For further discussion, and different typologies, see the results of the AGIS project, led by Professor Frieder Dunkel of Greifswald University, which included 34 European countries, forthcoming in F. Dunkel, J. Grzywa and I. Pruin (eds), *Juvenile Justice Systems in Europe – Current Situation, Reform Developments and Good Practices* (Monchengladbach: Forum Verlag, 2009).

2 The key sources for our account are Albrecht (2004), Dunkel (2003) and Weitekamp (2001).

3 These add to more than 100 because sanctions can be combined. See Albrecht (2004: 479) and Dunkel (2003: 116) for a rather different presentation.

4 Both Gatti (2002) and Nelken (2006) (who takes his table from Gatti) show lower figures for prosecution through the 1990s, but this is because their figures for 'juvenile suspects' include 'under-14s'. We have taken them out because they would not proceed to prosecution in any event. Ministero della giustizia: <www.giustizia.it/statistiche/statistiche_dgm/organigramma.htm>.

5 This is similar to the question Abramkin posed to himself in Russia, in the 1980s, when with dismay he observed the profile and fate of his fellow prisoners. The great majority were people who had committed small criminal acts. They were, he noted, no different from people outside but now they were sentenced to spend several years in prison, subject to a regime that destroyed their lives, with damaging consequences for society. Why is the government locking up so many people, he wondered, when there is no reason to believe that Russians are inherently more criminal than other people? Should not UK politicians ask themselves the same question as regards English children?

6 In England and Wales there are also the under-15s, held in custody, who do not appear in these figures.

7 VOM – Victim Offender Mediation. Weitekamp et al. (2001) hypothesize that where traditionally there have been strong 'victim' support groups (as in the UK and Netherlands), mediation tends to have fewer supporters, and where these are absent the new attention to the victim finds a ready response. Yet it would be a brave individual who would advance a convincing structural explanation for the differences throughout Europe in the use of mediation. Why should Norway be one of the leaders, Sweden not? Catalonia is in favour, Madrid is hostile… The activities of a committed group, it seems, can make all the difference.

8 And the same 'act' may be seen differently by police and judges depending upon whom it is who commits it. Winston Churchill, in his speech of 1910, referred to the injustice that may lie within the application of the law: 16-year-old working-class boys, he reminded his fellow Members of Parliament, may be sent to prison for behaviour that in Oxford undergraduates would be considered as rowdyism. Representatives to the Russian Duma made the same point: behaviour by privileged youth (stripping a girl in a restaurant and painting the walls with mustard) would be forgiven but similar acts by working-class youth would be considered 'hooliganism' (Утевский 1929).

9 Allen (2006: 22) gives the following figures: about one in 40 young white offenders is sentenced to custody, the figure is one in 12 for black young people and one in 10 for those of mixed race. This whole discussion (and of Italy) needs a gender dimension. Young immigrant girls involved in prostitution (and victims of trafficking) may receive different treatment. The Select Committee was concerned primarily with ethnic minority boys.

10 Although a government-supported probation service was set up in the 1930s, under the Ministry of Justice, its activities are limited to supervising adults (Gatti 1997).

Chapter 9, What Should be Done?: pages 216–235

1 Abramkin (Moscow Center for Prison Reform) devotes a great deal of attention to disseminating information about life in prison to a wide public: 'It is our misfortune that during the Soviet period prisons ceased to be part of popular awareness … one of the tasks of our Center can be expressed most simply as: return prison to the people. This is the main change that must take place within society. While attitudes towards children, towards those who suffer, to the poor, and to prisoners – attitudes of state officials, of the president, and of ordinary people – do not change, it will be very difficult to do something good for Russia, very difficult to hope for a future for our children that is worthy of them' (Abramkin 2006: 30). Unfortunately, in the twenty-first century it is not only in Russia that prisons, and also hospitals for the mentally ill, are places where people are not only isolated from society but also cut off from public awareness.

2 Quoted from a lecture by David Wilson, 'Scotland the Brave: Reflections on the Prison Commissions of Scotland and England and Wales', 16 November 2008: see <www.prisoncommission.org.uk>. The further references to the Commission are taken from this lecture.

3 For an interesting suggestion that one way forward would be legislation to encourage local initiatives for a period of years, and then legislation based on 'best experience', see Shchedrin, forthcoming, in the Bibliography.

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