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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. (Якубов 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 afforded 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; Кыфяев 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 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 sentence¹¹ (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 (МООИ 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.