McAuley, Mary. "English Exceptionalism?." *Children in Custody: Anglo-Russian Perspectives*. London: Bloomsbury Academic, 2010. 178–190. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781849661027.ch-007>>.

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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 policies 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 Tony 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 'detering 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.