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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/topicofthemoth/index/jsp>> [accessed 20 October 2004].
- 7 The essays are published in full in ДТ 2001, ОТ 2005, CB 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 *uslovnnoye*, 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>; ППР (Пенал реформ интернационал): <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.hrighs.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 Шаг 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 rowdiness. 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.