

# JUVENILE JUSTICE: A PROGRESSIVE ALTERNATIVE OR OPPORTUNE CONFORMISM?

A REVIEW OF MARY MCAULEY'S *CHILDREN IN PRISON*

**Victoria Shmidt**

MERI MAKOLI [MARY MCAULEY]. *DETI V TIUR'ME* [CHILDREN IN PRISON]. MOSCOW: OGI, 2008. TRANSLATED FROM THE ENGLISH BY E. MISHKINIUK. 216 P. ISBN 978-5-94282-462-4.

**Note.** *The book reviewed has only been published in Russian. A comparative English-language study by the same author is forthcoming with Bloomsbury Academic (London) under the title Children in Custody: Anglo-Russian Perspectives.*

Mary McAuley is the author of several books on the Soviet Union. In particular, she has written about rights protection. Her new book *Children in Prison*, published in March 2008, deals with the problem of juveniles in conflict with the law, past and present. The book has the same title as a series of edited volumes published by the Moscow Center for Prison Reform. Like that series, the book includes extensive quotes from inmates. The author addresses her book to those who decide on the future of the institutions that deal with juveniles in conflict with the law. The aim of the book is to persuade them of the need to reform the juvenile justice and penal systems. McAuley's view on the problem of juvenile justice is informed by her previous research and her conviction that individuals play a significant role in history. She remains faithful to the historical method employed in her earlier work and adopts an interdisciplinary and participatory approach. This makes it all the more difficult for me to agree with her surprising conclusions.

## SOCIETY OR THE AUTHORITIES: WHO ENSURES REFORM?

The state is the main actor of social policy, and it needs to shoulder its responsibility. Such is the main premise of McAuley's book. Analyzing the Khrushchev era, she notes that instead of creating professional agencies, surveillance functions were transferred to pseudo-non-governmental organizations. For McAuley, this was one of the reasons why juvenile policy failed (p. 71–2). McAuley also notes that, despite the current efforts of non-governmental organizations, the non-profit sector cannot solve the task of integrating juvenile offenders on its own. In the book, society appears primarily as a side whose voice needs to be heard—since, in McAuley's interpretation, ordinary people have long been prepared for a humanization of measures directed at juveniles in conflict with the law.

McAuley therefore believes that Russia should “look to countries with a welfare-state orientation, and preferably with what we can call a bureaucratic-statist tradition” (p. 138).

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Address for correspondence: Victoria Shmidt, Faculty of Social Studies, Department of Sociology, Gorkého 7, 602 00, Brno, Czech Republic. [scmidt@yaho.com](mailto:scmidt@yaho.com). The author thanks Mary McAuley and Asmik Novikova for their thoughtful comments and overall support.

Oddly, given these criteria, the author does not discuss the case of France, where, until recently, the juvenile justice system differed significantly from the adult criminal justice system and where the relevant agencies adopted a paternalistic position. Conversely, it is unclear why the author includes Germany in this type, given that the present organizational design of juvenile justice in that country developed through generalization from successful practice to legislative initiative (Dünkel 2004). Finally, it is not entirely clear why present-day Russia should be associated with a society-supporting outlook and a bureaucratic tradition.

The author contrasts restrictive policies centered on punishment with welfare-oriented policies. The translation uses the Russian loanword *velferism*, from the English “welfarism.” Since the book does not provide a detailed definition of welfare-oriented policies—policies that assess any political actions by their contribution to human welfare—it is very likely that Russian readers will equate *velferism* with *reabilitatsiia*, “rehabilitation.” What makes this all the more likely is that this is precisely how the translator, on p. 19, defines *velferism*: “Concerning criminal offenders, this means using ‘educational’ or other measures intended to inculcate goodness rather than provoke revenge. The goal of sentencing is not to traumatize, punish, or harm a person, but to help that person.” However, the alternatives to restrictive policies are more diverse than those discussed by McAuley. Scholars today distinguish between three alternatives to the punitive model of criminal justice: the decriminalization model actively promoted by UNICEF, restorative justice, and the classical model of juvenile justice that is based on the idea of state paternalism. Moreover, criminal justice in a modern sense not only comprises the police, the courts, and the penal system, but also includes all the informal and formal institutions that ensure the smooth functioning of the system. This prompts a question: Maybe criminal justice reform should target those institutions that could make the penal system more adversarial and transparent? After all, like any other alternative to the present system, the model McAuley proposes implies that supervision and probation services be actively developed. The lack or ineffectiveness of such services will inevitably doom any attempts to reform the juvenile justice system.

In any country, the formation of juvenile justice is embedded in the overall development of criminal justice and the social services. The international record shows that the more juvenile justice is out of step with criminal justice as a whole, and the more services for juveniles in conflict with the law are divorced from general family and child protective services, the earlier the juvenile justice system enters a crisis. In most developed countries, juvenile justice is closely coordinated with both criminal justice and the social services in general (Shmidt 2007). McAuley writes that imprisonment is not a solution to the problem of juveniles in conflict with the law. However, there are several significant contextual factors affecting criminal justice and the social services that she omits to analyze. For example, social work in present-day Russia typically ignores the needs of families, overly focuses on children, and treats children as public goods, in a phrase coined by Nancy Folbre (1994). Introducing a classical model of juvenile justice can only consolidate these unfortunate tendencies and limit the development of alternative forms of social support based on humanistic ideas (Shmidt 2006). Nor should we ignore the tendency toward reinforcing the restrictive orientation of Russian criminal justice. Against this background, the project to alleviate juvenile justice might have consequences akin to the crisis of juvenile justice in the United States in the 1960s and 70s. Had she paid more attention to these contextual factors, perhaps McAuley would have reached different conclusions concerning the scope for government action in changing the situation of juveniles in conflict with the law.

Stressing the role of the state, McAuley consistently argues that efforts on the part of society are not only insufficient, but often remain formal. This conviction is based on her belief in voluntarist state intervention: “There is nothing that obliges America to pursue punitive policies at present or Sweden to remain committed to welfare” (p. 134).

There is no need here to dwell on the fact that all welfare states feel the pressure of the liberal model and are therefore tempted to reinforce the restrictive model of justice, or on the fact that there is a diversity of welfarisms. Even so, there remains the important question of contexts: Is the state really free in choosing the trajectory of its social policy? And how boundless is the range of alternatives?

McAuley does discuss important contextual factors that affect the juvenile justice system, such as society's readiness to cast out the inconvenient, the flaws of the social services, and the various pressures of liberalization. However, she underestimates the significance of even this limited number of factors. Thus, McAuley sincerely believes that the state (more precisely, top officials) can change the course of social policy at will. Yet the scope for such acts of will remains unclear. Would they concern only prisons, suspect detention centers, and special schools for juvenile offenders, or is the state free to change all of its social policy? Since the author discusses the problems of juvenile justice outside the systemic context of social policy, the book fails to answer this question.

The book offers many direct quotes, both from inmates and from those trying to make sense of the problem of juveniles in conflict with the law. The quotes are refreshing at times, and tiresome at others. Sometimes they are curious, from a researcher's point of view. For example, I would like to know what question one needs to ask a respondent in order to obtain the following reply: "In principle it is unjust, unjust when a kid must answer in court for committing a crime, that's already unjust. Therefore, it seems to me, the supreme aim of justice is to create a society in which a kid cannot commit a crime, where he has no incentive to do so..." (p. 169).

The corpus of quotes that McAuley operates with provides promising material for the study of various expressions of paternalism toward juveniles and their environment. However, the author does not comment on the obvious paternalistic spirit of most of these pronouncements. This prompts another question: What are the risks of juvenile justice reform in a country that is so permeated with paternalistic attitudes toward children? And why isn't the author alerted by the concerted acceptance of paternalistic attitudes by the authorities, juvenile justice professionals, and independent experts that is so obvious in reading these interview excerpts? McAuley herself, drawing on research by pre-revolutionary Russian criminologists, notes that there are no societies that never provide opportunities for unlawful actions (p. 43). In other words, the author is aware that no reforms can substantially reduce levels of crime. Yet that is precisely the objective of paternalistic reform.

It is easy to rely on the authorities, especially when you do not depend on them, or do so only as an external expert. For such experts, the adoption of their ideas by other people—ideally those endowed with power and prominence—is a mark of distinction and a measure of the effectiveness of their expert work. But do such experts share full responsibility for the consequences of the reforms they propose?

#### JUVENILE JUSTICE PROFESSIONALS: STATE SERVANTS OR INDEPENDENT EXPERTS?

McAuley sets her hopes on the authorities and professional agencies, such as probation services, social services, or the reorganized Commission on Minors and the Protection of their Rights (*Komissiiia po delam nesovershennoletnikh i zashchite ikh prav, KDNZP*). It remains somewhat unclear where one would find professionals to staff the new and renewed agencies that would be created by the reforms. On the one hand, McAuley mentions in passing that it might be possible to retrain experienced penal colony staff such as educators, psychologists, and social workers. On the other hand, she considers it possible to transform the existing KDNZP system by giving the Commission authority in matters of coordination and prevention. The book does not explain clearly how the agencies as a whole should be redesigned, how different professionals will interact with each other, and what may impede their cooperation. Yet the development of probation services in the United Kingdom, which has been based on the idea of bringing the police together with social workers, provides food for thought on what happens when one tries to link professionals with different attitudes and different work experiences.

McAuley evidently thinks that, if the state chooses the right path, nothing will keep professionals from becoming enthusiastic executors of a progressive policy. But isn't their independence one of the conditions that the public interest will be taken into account? Thus even in present-day Russia there are professionals who

do not support the classical conception of juvenile justice, and usually advocate a restorative system. Furthermore, in the USA the negative consequences of classical juvenile justice were counterbalanced by the involvement of an independent judicial community that devoted much attention to analyzing violations of children's rights within the juvenile justice system. In Russia, there is no such force. If McAuley's proposals for juvenile justice reform were implemented, there would be no-one to offset its negative effects. No social policy is free from flaws and gaps that need to be counterbalanced by social movements. Where no such movement exists, any reform will be doomed to thoughtless implementation and failure.

If McAuley believes that what is most important is to remove juveniles from the system of criminal justice institutions, then why does she not analyze the sphere where she thinks these juveniles should be sent? Why, for example, does she not discuss the reach and limits of the system of formal and informal institutions that have been put in charge of rehabilitation? Why does she think that it is enough to provide a critical analysis of the penal system? After all, it is not the penal system that she proposes to reorganize, but the system of alternative agencies; yet the latter remains largely unexamined in the book. McAuley convincingly shows why she favors a child-centered approach. However, the book does not deal with themes that are important for her topic such as the need to work with a juvenile's family, or the need to transform the system of quasi-judicial organs such as public guardians and trustees as well as the medical-psychological-pedagogical commissions that single-handedly decide on children's lives. These omissions render McAuley's position on the Commissions on Minors somewhat ambiguous. She points out that it is possible to transfer to the KDNZPs some of the functions of the probationary agencies—relating to the monitoring of juveniles on suspended sentences or those recently released. However, she does not refer to the other components of the system of agencies and institutions in charge of juveniles. It remains unclear how the author views the landscape of social services—surely not as a wild prairie where separate regional projects skip about on their own? If that is indeed her view (p. 111), then what are the prospects for decriminalization, which McAuley argues is a pressing task?

#### NEGATIVE PUBLICITY: CONVINCING ARGUMENTS OR A SOURCE OF STIGMA?

Her research leads McAuley to the conclusion that society will support juvenile justice reform. One of her arguments is that people disapprove of penal colonies and believe that imprisonment irrevocably ruins a person's life (p. 182–3).

We may draw an analogy between popular attitudes to orphanages and penal colonies (and their respective inhabitants). Both are viewed as terrible institutions, and those who enter them and spend some time in them as irretrievably lost to normal life. However, while they may stigmatize these institutions, laypeople display no desire to help those who find themselves inside them. Opinion polls show that negative attitudes toward orphanages do not increase people's willingness to assist in the integration of children from orphanages into society. The worse an institution looks to the man in the street, the more he is prepared to consider its inhabitants as irrevocably lost. If tomorrow we stop sending a juvenile to jail for stealing a cell phone, how will his neighbor react? He will probably say that in the old days the kid would have been put away and in any case he will end up behind bars sooner or later. It is unlikely that he will help the juvenile, if only by adopting a more understanding attitude. The survey that supports McAuley's conclusions lacks a question on what people are personally prepared to do for those in jail, or what they have already done for juvenile inmates or those at risk of breaking the law, and why. Without such control questions, it is difficult to gauge people's level of activity. Support for change is not limited to opinions, however thoughtful; it must also include actions.

Advertising campaigns that promote the institution of foster care for orphans are largely built around stigmatizing orphanages. The record of this kind of advertising shows that an institution's negative image extends to those who work and live in it. The (repeated) realization that a penal colony or orphanage is not the best place on Earth will not automatically prepare people for alternatives. Such alternatives require the construction of a new framework, such as day centers for problem teenagers, more active community support for

at-risk families, and agencies that would adopt a thoughtful attitude to the needs of families rather than viewing families as simply a resource or limitation on a child's rehabilitation. Therefore, when McAuley formulates the mission of her project as getting "more young people out of the clutch of the criminal justice system" (p. 190), it remains unclear who will want to deal with those who have been squeezed by that system.

#### HISTORICAL EXCURSIONS: TOURISM OR ARCHEOLOGY?

The material in the book is largely organized as a historical survey because the author believes that history progresses. McAuley insists that arguments showing imprisonment to be harmful and useless were already being made in Russia a century ago. However, the turn to the past is also a highly attractive choice for most of those working at Russia's "power institutions." Like many other official theorists of social problems, they prefer to start their study of social aid and criminal law with Kievan Rus'. Surely McAuley is aware of this academic tradition and understands that the arguments advanced in favor of reform need to be intelligible and acceptable to the main potential agents of reform. Yet what is the practical outcome of the historical excursions that occupy a large part of her book? In particular, she argues in favor of new social norms, based on David Garland's (2001) observation that liberalization contributes to reinforcing the punitive approach. In most European countries, liberalization has avowedly strengthened the punitive element in juvenile justice, and consequences such as these undermine the idea that juvenile justice advances progressively. On the contrary, juvenile justice has experienced all sorts of crises and regular throwbacks to a restrictive model. To me this means that McAuley's analysis of the past development of criminal justice bears no relation to her subsequent study of present-day Russian norms. If the past has vanished without a trace, why spend so much time on history?

That juvenile justice—or any social institution—develops progressively is largely a myth. This means that the emphasis of retrospective analysis should be different. For example, it should ask how the problems of juveniles in conflict with the law came to be stigmatized, how this stigma has persisted through different time periods, and how public opinion on the problems of juveniles has changed over time. This kind of analysis would enable us to correlate the macro-level of policy on juveniles in conflict with the law with professionals' everyday behavior. This type of historical inquiry could be a highly useful means to focus the thinking of Russian juvenile justice professionals, who do not usually reflect on how the reforms have shaped their own professional thinking.

McAuley, however, turns to history in search of arguments that would support her own position—which consists of urging the state to make decriminalization the cornerstone of juvenile justice reform. For example, she justifies her idea that it is imperative to develop professional agencies rather than social initiatives by stating that welfarism has taken root in the minds of state-employed professionals, whereas non-governmental organizations in Russia have remained formal ever since the time of Khrushchev's reforms. However, taking the continuity of a historically constituted position into account requires studies of a different kind. One example is Sarah Fishman's (2002) work on the history of juvenile justice in France, which is based on a comparative analysis of documents from different periods in terms of both content and application.

#### AN AMBIGUOUS GENRE

The book's tensions are largely due to its ambiguous genre. Is it an independent study or a policy paper, a well-founded appeal to decision-makers? Combining the two genres is a difficult task. What makes an independent position valuable is precisely that it is independent. Promoting specific proposals requires that one take political interests into account. McAuley is in favor of decriminalization. She believes that it is necessary to extricate efforts aimed at juveniles in conflict with the law from the juvenile justice system. This position underlies the actions of organizations such as UNICEF and UNESCO. Indeed there are few current proponents of the decriminalization model who do not work for one of these organizations. (Adopting the position supported by these bodies seems to increase the risk of abandoning the position of an independent

analyst.) Thus McAuley argues in favor of a position that international organizations have already tried to implement in Russia, failing in the attempt for a number of reasons. She consistently criticizes many international norms as untenable—but does not critique the alternative, which is supported by international organizations. At the same time, McAuley states that the book represents her personal position, based on her own experience, on juveniles in conflict with the law. Why, then, does she not offer a critical analysis of the decriminalization model and its implementation—if only in places where that model has been most successful (such as New Zealand)?

McAuley evidently wrote her book in support of the idea of decriminalization (which should have made it all the more important to discuss criticisms of that model). She sets her hopes on a strong government and on the prospect that advanced approaches may be introduced by its top officials. Fittingly, the book's conclusion is addressed to the president. The final pages outlines a plan for the public promotion of the decriminalization model in Russia:

Supposing the President states that he is committed to the closure of the SIZOs and colonies, the VTsSNP for younger children and secure special schools. Detention on remand and as a sentence should be reserved for use in exceptional cases for that small minority of violent and unstable children, who will remain close to their homes... Suppose that the task he sets before government and society is to produce proposals to achieve this, and he stresses that he expects new ways of thinking... To ensure that ministries and agencies respond, he should set up a *small* commission, headed by, for example, a respected and retired judge, and including three or four well-known individuals with expert knowledge but not themselves proponents of one particular approach. The commission's task, on behalf of the President, would be to request the law and order ministries, the Supreme Court, the Procurator's office, the KDN, NGOs and experts for their opinions and concrete proposals. How would they envisage their role (and should they still have a role) in a system designed to reserve detention for a handful of exceptional cases? Who should take responsibility for offending youth (and should the concept of youth crime be redefined)? The commission would sum up the results of the enquiry and debate for the President, and make its recommendations.

A fantasy? Not at all, other societies have managed such a re-thinking (p. 200–1).

This conclusion inspires optimism, but unfortunately it leaves no room for the critical thinking for which there is such great need at a time of reform.

McAuley's book deals with a serious topic, but it leaves an unpleasant aftertaste. Is it intended as a reverent gesture to Russia, in the hope of obtaining a similar gesture in return? If so, I ask that this review be treated as such as gesture of respect, if only by a single individual interested in improving Russia's approach to integrating juveniles in conflict with the law.

*Authorized translation from the Russian by Mischa Gabowitsch*

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