



# N JUVENILE JUSTICE REFORM AND THE AIMS OF EXPERT DEBATE

A RESPONSE TO VICTORIA SHMIDT

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I am grateful for the opportunity to respond to Victoria Schmidt's review but find myself in a quandary. It is such a hostile review (there is nothing in the book that attracts a positive mention) that it is difficult to know where to begin. Even more difficult, I simply do not recognize my book, and the positions or arguments attributed to me, from the review. If Schmidt had provided the reader with a brief summary of the aims of the book, the questions I set out to answer, and the way I attempted to do this (which would explain the structure of the book), then—I would argue—some of her criticisms or comments would have no place, while others would rightfully stand out as justified.

It is for the reader of the book to judge Schmidt's interpretation. Maybe, I ask myself, others share her interpretation? Then I am to blame for not expressing myself clearly enough. So perhaps the best response is to provide a brief summary of the book that I thought I had written.

## CHILDREN IN PRISON

*First, for whom am I writing?* No, it is not addressed to top policy makers, as I make clear in the Introduction:

My aim is to present information and ideas that may be useful both to reformers and those who need convincing, and to those who have never thought much about these issues. It is for policy makers, professionals, journalists, and the general public. (p. 25)

It is nonsense to suggest that I am addressing it to the president, or that I am a foreign expert who expects to influence policy-makers. As I state in the conclusion, the book is offered as a contribution to a wider discussion which, I argue, should take place before there are any policy initiatives. Where the book fails, in my view, is that it is too dry, too academic, to appeal to a wider audience. I wanted to write a *nauchno-populiarnaia kniga*, a book for the general reader, but, alas, the book remains a scholarly, if polemical, attempt to discover better ways of responding to delinquent behaviour by children than with incarceration.

*So, how did I set about it?*

My initial question: *Why is Russia still locking up so many of its children?* led me to look at changing policy towards youth crime in Russia in the twentieth century and today. Attitudes towards crime and punishment, and the roles the state, the criminal justice system,

and society have taken up in relation to each other all emerge as important. And, in order to understand the particularities of the Russian system, it becomes necessary to set Russia within a comparative context. After all, what is different about Russia?

The second and more important question, the one posed by Ekaterina's: *'I so wish that everything could be as it should'* is *How can the present system be changed—and in which directions—in order that fewer children find themselves behind bars?* To answer this involves a change in emphasis: how do some other societies make detention a measure of last resort? Are there responses that could be used by Russia's government and society to achieve this? To answer this, we must look at both comparative experience and the specifics of the Russian environment. (p. 23–4)

These are the topics that I needed to research, and they form the basis for the chapters of the book: criminal justice systems as controllers of errant behaviour; the emergence of reform movements, based on new views of the child and of the state and society's responsibilities towards children (the 'welfare' approach); juvenile policy in Russia during the course of the 20th century; the new thinking on approaches to juvenile crime that emerged by the end of the century; the slow pace of reform in Russia today and the reasons for this; contrasting successful strategies on keeping the use of custody low which could be relevant for Russia (determining my choice of Germany, Italy, and Finland), and the strategies proposed by reformers in Russia. Based on my findings, I offer my thoughts on a strategy for reform.

Shmidt suggests that my 'view on the problem of juvenile justice is informed by her previous research and her conviction that individuals play a significant role in history'. I do not know which previous research she can have in mind, and it is the first time anyone has suggested that I am in favour of emphasizing the role of personality in history. Do I think personalities can play a role in history? Undoubtedly, and there have been times in Russian history when they have, but my position has always been that, in order to understand political developments (whether at policy making level or their implementation), we need to look at *the relationship* between the structures of the state (and their occupants), economic and social actors, the cultural and ideological context. In that sense my approach in this book follows earlier work. However, here, for the first time, I take up a theme in which criminal justice plays a central role, and hence its relationship to state and society features as a critical component.

'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.' Yes, I do see the state or rather *the government* as a key actor; after all, governments make policy, whether it is social policy or foreign policy. And I do think the government has a responsibility to see that the neglected, abandoned, and children at risk are cared for when family or society fails to do so. Of course what matters are the influences upon government, the relationship between government structures, judicial, municipal, charitable and other non-governmental organizations, the degree and type of society's participation in policy-making and implementation. And it was this complex of factors—in relation to the incarceration of children (historically and comparatively)—that I set to research before I could come to any conclusions on what might be done.

Shmidt continues with the assertion:

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 of the debate whose voice needs to be heard.

This is not what I argue. On the contrary:

The importance of independent monitoring and control either through non-governmental bodies or by independent—although state-appointed—commissions cannot be overstated.

Russia has a tradition of state-welfare which could surely be drawn upon, but selectively, and with attention to today's dysfunctional features—too many institutions seeking to control social activities while remaining themselves immune from social control. The very strong 'statist' tradition makes the need for social control even more imperative. The seeking of solutions in the holding of more young children in detention in state institutions is an example, while the reluctance on the part of state authorities at central or local level to encourage or even tolerate activist social organizations is worrying. At all stages (from attention by the police, to placement in a special school, to sentencing to custody and then release) the child, in any society, requires a defender or guardian. (161–2)

*Finally, based on the findings of the research, I try to identify the resources that could be drawn upon to advance an agenda that would reduce the use of custody.* These include an activist NGO community, social-welfare orientations of the public and professionals and also, oddly enough perhaps, the strength of presidential power. Without intervention from the president, legislation will not materialize; the conservatism of the law and order agencies will prevail. But for it to be 'good' legislation, I argue, there has to be an informed public discussion among policy-makers, specialists, practitioners, and NGOs (who have contributed more fresh thinking on the subject than any of the government institutions).

My suggestion that reformers will need to get presidential support is hardly novel, but my argument that, much as one may find fault with Russia's tradition of strong executive power, it can sometimes be used to advantage, is more debatable. It is a conclusion that surprised me, and not one that I welcome, but it emerged from my research into past and present policy-making on juvenile crime, both in Russia and other countries. The picture, in this policy area, is one of a remarkable degree of 'voluntarism' on the part of politicians. Sometimes this works to the advantage of children, more often (probably) against. Further, there is little evidence that 'democratic' policy-making works to children's advantage. These are uncomfortable conclusions, which I address more directly in my forthcoming comparative study of Russian and English policy towards young offenders.

What is the alternative? To wait, and to work from below, with grass-roots initiatives, and through research and teaching, in the hope of gradually changing the social landscape until there is both a degree of organized professional support for change and a political environment into which this can be fed? It is encouraging that local initiatives are spreading. Support from regional authorities—governor or chair of the court—is critical but, since I wrote the book, there is greater use of the gaps in federal legislation to introduce innovations at regional or city level. Perhaps this long-term strategy is the better one?

## THE USE OF HISTORY

Schmidt seems to assume that I 'knew' the answer to my second question—what should be done?—before I started. She suggests:

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.

What can I say? Simply plead not guilty. I turn to history to try and discover (a) how it may have influenced the present and (b) whether there are lessons which can help us not repeat mistakes. Knowledge of past history, particularly if it is forgotten history, and if policy goes through cycles, is something we ignore at our peril. For me the most interesting and unexpected discovery was the contrast between the (reforming) academics and judges of the Khrushchev period and their (conservative or simply apathetic) colleagues of the 1990s. This

led me to the conclusion that it was the consolidation of the state apparatus and the judicial system into a stable, conservative, bureaucratic hierarchy during the Brezhnev and post-Brezhnev period that has had the greatest effect upon post-Soviet developments in legal and institutional reform.

This raises wider issues (which I do not address in the book): is it right to trace many of today's social and political problems back to the impact of 1937 (and if so, which?) or, in order to understand developments in the 1990s and today, do we need a much better understanding of 'the last Soviet generation' (Yurchak 2006). Or is it that the answers will be different, depending upon the policy sphere?

I *nowhere* argue for the development of professional services in place of independent social initiatives. I argue that both are required. One of the tragedies of the Khrushchev approach was the emphasis on pseudo-social initiatives as replacements for state services, which simultaneously damaged professional development and gave social activism a bad name.

### JUVENILE JUSTICE TODAY

It seems that Shmidt and I hold different views on the organization and state of juvenile justice in the developed world today, but that is not surprising: it is a very complex subject. There is considerable debate over the punitive trend noticeable in the USA and some European countries, not necessarily in the majority (why does Shmidt constantly use the strange word *restrictive* rather than *punitive*?). There is no 'agreed' or 'accepted' view (thank goodness) on the challenges to or fate of welfarism. Scholars and specialists disagree over the typology of 'models' and whether the model approach can obscure more than it illuminates because of the mixed nature of juvenile justice systems. Precisely because of this, a major project which includes 34 countries (Dünkel et al. forthcoming) is struggling to slot the results into five models or types—the justice model, the welfare model, the minimum intervention model, the restorative justice model, and the neo-correctionalist model. Shmidt refers to other typologies. Fine. This confirms the point: scholars researching comparative developments are producing different answers.

What is new, if we compare the discourse at any international gathering of scholars and practitioners with that of thirty years ago, is *the concern with the victim*. In part this stems from the 'restorative justice' approach. This is the most significant development in thinking about juvenile crime since the 'welfare' philosophy of 100 years ago, and hence I spell out its key features here for those who will never read my book. Its radicalism lies in its questioning the political philosophy that underlies the use of a criminal justice system. Under a criminal justice system (including welfare variants), the state takes over the conflict between two parties, 'manages' it for them, with the purpose of protecting the public by denouncing and punishing (or 'helping' the offender), and keeps the victim out of the proceedings, except as a witness. Restorative justice sees 'conflict' as something to be resolved by the parties themselves, offender and victim, maybe with community involvement or an impartial mediator. The aim is to persuade the offender to recognize what s/he has done, pay for the damage done, and be reintegrated into society. The 'state' loses its role. Debate revolves around whether restorative justice can complement criminal justice or whether its principles are too different to be accommodated<sup>1</sup>.

Unfortunately, this concern with the victim is also being used by some politicians (in England, for example) to argue for greater punishment for the offender.

### DESERVED CRITICISMS

While I do write of alternatives to custody, I should spend more time on this. I should also devote more attention to the scope for and importance of preventative work with families, children at risk, the reform of social services, and the whole issue of probation, an approach and term that is fast falling out of use in many

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<sup>1</sup> I would recommend Maksudov 2008 as an introduction to the approach and its practical application in Russia. On the treatment of crime more generally, Christie 2004 is the most thought-provoking book of recent years.

countries. However I repeatedly argue that, without reform of the social services and policies towards children, limiting custody is meaningless.

Shmidt is right that I should have tackled head-on the question of paternalistic attitudes towards children, and the dangers this may hold for juvenile justice reform. Perhaps I did not because I am not sure where I stand on it. On the one hand, the paternal protectionism of Russians towards children which strikes Western observers encourages a degree of intervention and control that can be damaging, and grossly infringe a child's rights; on the other hand, it can include a more lenient attitude towards transgressions, a softer attitude than that found in some other societies (in this respect Russia is more like Italy than like England). Hence, I would like to argue, it can provide a basis for a more humane system, as long as there are very clear safeguards or counters to intrusive adult control. I do not know how one achieves that.

## IN CONCLUSION

Had Shmidt spelt out her views on how to achieve reforms which would better integrate young offenders into society (which surely would include reducing the use of custody), perhaps a dialogue between us could have taken place. As it is, I feel we are speaking different languages.

It still puzzles me that she should be so hostile. Surely the fact that I am a Western scholar, writing about Russia, can play no part? That would be a truly depressing thought. Perhaps then scholarly reviewing is a different art in Russian and in Western academic journals? I am very uncertain that my response is one that she or readers expect or will find interesting. One way of testing whether reviewing styles cross borders is to see how academic reviewers in England respond to my forthcoming attempt to find answers to the same questions, but this time addressed to the use of custody in England and Wales. Another test would be for *Laboratorium* to publish a Russian scholar's review of Svetlana Sidorenko-Stephenson's excellent book (Stephenson 2006) on homelessness in Russia. Perhaps, even better, *Laboratorium* could publish an exchange of views between scholars from different academic communities (in Russia and abroad) on the purpose of reviewing.

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