Multiple Streams in Russian Penal Policy Making:
The Case of Sanctions and
Sentencing Reform

by

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Abstract

This research aims to address the relative scarcity of comparative studies of policy analysis in the area of criminal justice by looking at a familiar problem (prison overcrowding) in a less familiar comparative context (Russian policy environment) through the theoretical lens of Kingdon's Multiple Streams framework.

It presents a systematic record of the processes, which led to the significant changes in Russian penal policy, resulting in an overhaul of its sanctions and sentencing system. Based on a documentary review and legal analysis, an historical record, beginning in the late 1990s and progressing to 2003, is laid out. The record systematically describes events in the policy, problem, and political stream as they related to the creation of a policy image of prison overcrowding and Russian sanctions and sentencing policy in need of reform. Specifically, in the policy stream, there was an emergence of interest in non-custodial sanctions and liberalization of sentencing rules as a long-term legislative solution that could constrain the growth of prison population. In the problem stream, the magnitude of the overcrowding crisis demanded more radical and lasting solutions to the problem. In the political stream, changes in political leadership echoed national demands for stability and order and led to further consolidation of political power by the President and Presidential Administration. The administration seized the opportunity to couple all three streams together and successfully created a policy image of sanctions and sentencing system in need of correction. Acting on behalf of the President, it was able to enact its vision of policy change with virtually no resistance from the closely controlled parliament.

This research expands the applicability of Kingdon's Multiple Streams Model beyond the scope of the public policy setting for which the model was originally designed (i.e., American public policy agenda-setting). It has confirmed the existence of all the domains of Kingdon's Multiple Stream Model supporting the utility and value of the MSM in examining penal policies of polities with different political structures and regimes.

Keywords: Penal policy; multiple streams; Russia; Criminal law

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chekist	the term "*chekist*" is often referred to Soviet secret police - Cheka (*chrezvychaynaya komissiya*, Extraordinary Commission) throughout the Soviet period, despite official name changes over time. For example, President Vladimir Putin has been referred to as a "chekist" due to his career in the KGB
CPSU	Communist Party of the Soviet Union
FC	Federal Council of the Russian Federation (*Federalnoe Sobranie Rossiyskoy Federatsii*)
FSB	*Federal'naya sluzhba bezopasnosti Rossiyskoy Federatsii* (Federal Security Service of the Russian Federation) is the successor agency of the Soviet Committee of State Security (KGB) responsible for

	counter-intelligence, internal and border security, counter-terrorism, and surveillance.
FSIN	*Federalnaya Slyzhba Ispolneniya Nakazanii* (Federal Service of Corrections)
GCM	Garbage Can Model
GKU	*Glavnoe Kontrolnoe Upravlenie* (main monitoring department of the Presidential Administration)
GPU	*Glavnoe Pravovoe Upravlenie* (main legal department of the Presidential Administration)
GTU	*Glavnoe Territorialnoe Upravlenie* (main territorial department of the Presidential Administration)
GUIN	*Glavnoe Upravlenie Ispolneniya Nakazanii* (former FSIN)
ITK	a corrective labour colony (*ispravitelno-trudovaya koloniya*)
KGB	*Komitet Gosudarstvennoi Bezopasnosti* (former FSB)
MCPR	Moscow Centre for Penal Reform
MDR-TB	Multiple-Drug resistant tuberculosis
MSM	Multiple-Streams Model
MVD	*Ministerstvo Vnutrennikh Del* (the Interior Ministry of Russia)
Nomenklatura	a category of people within the Soviet Union eligible for leading administrative positions in all spheres of government, industry, agriculture, education, etc., whose positions were granted only with approval by the communist party.
PA	Presidential Administration (*Administratsiya Presidenta Rossiyskoy Federatsii*)
RGB	*Rossiyskaya Gosudarstvennaya Biblioteka* (Russian State Library)
SC	Security Council
siloviki	people from the security or military services, often the officers of the former KGB, the FSB, the Federal Narcotics Control Service and military or other security services who came into power
SIZO	*sledstvennui izloyator* (detention centre, jail)
TB	tuberculosis
UIK	Penal Enforcement Code (*Ugolovno-Ispolnitelnui Kodeks*)
UIN	*Upravlenie Ispolneniya Nakazanii* (regional offices of corrections)
VTK	a corrective labour colony for juveniles (*vospitatelno-trudovaya koloniya*)

1.   Introduction

For decades, criminologists have been increasingly interested in the content and impact of penal policies. These content-related policy issues have dominated empirical research, largely at the expense of systematic analysis of the origins of such policies (Jones & Newburn, 2002). However, the making of penal policy is a complex dynamic phenomenon consisting of many decisions by numerous individuals and organizations that in itself requires theoretical exploration. Although criminologists traditionally did not pay much attention to the process of policy-making, this subject has not entirely escaped from the research agenda. The field of political science has undertaken detailed empirical analysis of policy-making in a variety of spheres. However, little of this attention has been concentrated on policy-making issues in the field of criminal justice and penal policy. As a result, our knowledge of what shapes criminal justice policy still remains relatively limited (Tonry & Frase, 2001).

Michael Tonry's observation that criminal justice policy-making has been neglected is not a new one. The Canadian political scientist Peter Solomon identified this same knowledge gap in 1981. He encouraged researchers to study the policy process in criminal justice to facilitate an understanding of how the political process negotiates change, to explore the constraints the process places on the translation of ideas and analysis into action, to describe the degree to which various actors influence the movement of criminal justice proposals through the policy process, and ultimately, to provide insight into how politics determines what is and can be implemented (1981, p. 5). Solomon believed that research of this kind would illuminate how criminal justice policy differs from other policy realms, uncover whether crime policy tends to change more slowly than others, provide insight into whether there are greater obstacles to innovation in criminal justice, and describe how political structure and cultural traditions affect the policy process and account for variations between nations (1981, p. 6).

In the years following the publication of Solomon's article, criminal justice policy

has matured into a separate subfield within criminology. As this subfield of public policy leads more criminologists to engage in policy analysis, understanding the policy-making environment in all of its complexity becomes more central to criminology.

The context of modern penal policy-making is constantly changing as well. Globalization, increasing cultural diversity, global shifts in political culture, and new ideas about governance are altering key social and political systems in both industrialized countries and the developing world. A policy analysis that fails to consider these forces and their implications for policy and governance is "doomed to irrelevance" (Pal, 2006, p. 45). It becomes imperative to think about contemporary criminal justice policy analysis in terms of global interdependence, mobility of knowledge and institutions, "policy transfer" (Stone, 1999) and "policy convergence" (Bennet, 1991). Comparative studies in criminal justice have just started providing some answers to the questions about 'what is going on?' What also remains to be examined is how the forces of globalization might have accelerated these processes of exchange and altered national penal policies in recent years. A fuller understanding of penal-policy changes also requires a more detailed exploration of the purposive actions of key agents on the policy arena, and the constraints and opportunities provided by the political regimes within which they operate. Although some work has begun to address this gap (Howlett, Ramesh & Perl, 2009; Jones & Newburn, 2002), to date, it has not been linked to the broader structural constraints that shape the frameworks, agendas and decisions of policy-makers and ultimately determine which policy solutions should be attached to particular policy problems.

It is also vital that we continue to explore the degree to which important national differences in penal-policy outcomes can be related to distinctive national cultural traditions (Melossi, 2001). To advance this enterprise, policy-oriented criminologists must look at specific cases of penal policy development through theoretical and conceptual lens that have established histories in the political and policy sciences. Case studies that unpack particular "policies" and examine the essentially political processes that shape them can help us to explore the ways in which the tensions between globalizing and localizing trends play themselves out in the agendas and decisions of key actors (Jones & Newburn, 2005). The individual case studies of penal policy development in specific jurisdictions serve as a foundation for a more rigorous

comparative public policy analysis. Building a theoretical infrastructure that supports the accumulation and transfer of knowledge about criminal justice policy analysis not only could advance an important field of inquiry (comparative criminal justice policy analysis), but also may help researchers to better understand the dynamics that have contributed to the "politicization of crime" and enhance the influence of criminologists that has significantly declined during this highly politicized era (Beckett, 1997; Garland, 2001).

1.1. Purpose of the Study and Research Questions

1.1.1. *Main objectives*

The main objective of my dissertation is to address the relative scarcity of comparative studies of policy analysis in the area of criminal justice by looking at a familiar problem (prison overcrowding) in a less familiar comparative context (Russian policy environment) through the theoretical lens of policy analysis.

Over 30 years have passed since Peter Solomon argued the importance of studying penal policy development. Over these years, penal policy-making came into the spotlight in many North American and Western European countries, largely as a result of greater politicization of issues of law and order. Many observers found it difficult to explain the nature of penal populism; others expressed nostalgia for the good old days, when criminologists seem to play a more active role in shaping national penal policies (Roberts, et al., 2007; Beckett, 1997; Windelsham, 1998; Tonry, 2007; Lacey, 2012). While, in the UK and the U.S., such critical views have led to increased attention to the policy development process that was not the case in the Russian Federation.

In 2010, a Russian legal scholar - Alfred Zhalinsky - called for the pursuit of what he called the "criminal political science." From his point of view, this new area should be a broad venture, comprising non-governmental organizations within the criminal policy domain and grounded in political science and economics (Zhalinsky, 2010). Researchers should be seeking answers to questions such as: Who is determining the vectors of criminal policy? What is the basis of penal policy? What are the political processes involved and who is competing for influence? In his recent publication, now with a particular focus on Russia, Peter Solomon (2012) is again calling to strengthen research

efforts needed to gain insight into how paradigm shifts or policy changes occur in general, and specifically, what major changes in the Russian policy environment could have triggered or facilitated shifts in its penal policy. Such an analysis is not readily available in the academic literature and this dissertation is seeking to fill the void in the research on penal policy-making in Russia.

The secondary purpose of this study is to assess the effectiveness of the Multiple Streams framework in exploring penal policy development, in general, and Russian penal policy processes, in particular. In other words, the dissertation sought to answer the following question: did the policy adoption process undertaken in Russia contain all the elements described in the Multiple Streams Model (MSM) developed by Kingdon (2010)?

The educational goals for my thesis include gaining an overall understanding of the penal policy cycle in the Russian Federation as well as a comprehensive insight into the workings of political, policy and problem streams as they have played themselves out in Russian sentencing reform. I was interested in exploring the policy environment in which the system was functioning, how it had evolved and con/diverged throughout the past decades, and how it has affected the system of sanctions and sentencing in Russia.

1.1.2.   *General assumption*

My general assumption was that, consistent with Kingdon's (2010) framework of policy process, a particular policy solution to the problem of prison overcrowding in Russia had been made possible as a result of convergence of three distinct streams of policy processes. The following section will briefly outline the key features of the selected analytical framework, which will be explored in further detail in the theory chapter of this dissertation.

1.1.3.   *Kingdom's Multiple Streams Framework*

Kingdon's general approach to public policy-making suggests that the policy cycle consists of a set of processes, including (at a minimum) agenda setting, alternative specification, authoritative choice and implementation (Kingdon, 2010). Kingdon also emphasizes that policy-making does not proceed in a neat set of sequential stages.

Instead, he argues that there are three distinct "process streams" that can be identified within the system:

- the problem stream (the generation of problems requiring attention by policy-makers);
- the policy stream (the generation of policy ideas and problem solutions); and
- the political stream (the change of *régime*, the outcome of elections, developments in the "public mood", interest-group campaigning, etc.).

These distinct streams of policy processes operate independently of each other for much of the time. However, they converge at critical times, once "solutions become joined to problems, and both of them are joined to favourable political forces" (1995, p. 20). From time to time, "policy windows" (i.e., opportunities for promoting certain proposals or conceptions of a problem) are opened by developments in the political stream, or the emergence of particularly compelling problems. Such windows provide an opportunity for what Kingdon calls "policy entrepreneurs" to link problems and proposed solutions to the political stream. The success of policy entrepreneurs depends upon their ability to respond quickly to these "windows of opportunity", before other "solutions" become favoured. Thus, a significant development in policy is most likely when problems, policy proposals and politics are linked together into a clear package.

There is a general consensus in the policy analysis literature that the Multiple Streams framework developed by John Kingdon (2010) "reinvigorated agenda research" (Baumgartner & Jones, 1993, p. 11). Although it has limitations that have been pointed out (Rochefort & Cobb, 1994; Sabatier, 2007; Zahariadis, 2003), it is often used to portray how policy change occurs (Longest, 2002). In penal policy research, the Multiple Streams framework has been successfully employed by Jones and Newburn (2002, 2005). They have used Kingdon's framework in their comparative penal policy study investigating growing similarities between the criminal justice systems of western industrialized countries. They compared three high-profile examples of British penal policy developments in recent years with similar changes in the USA. Those included privatized corrections, 'zero tolerance' policing strategies and the registration of sex offenders. Cross-examining each of the three streams of policy processes, the authors explored some aspects of the apparent convergence of crime control policies and cultures in the USA and the UK. The authors call for more detailed case studies of the

concrete changes that are occurring, convinced that examining the processes that lead to change, can significantly add to our knowledge and understanding of the determinants of penal policy. In advancing this argument, they relied on Kingdon's MSM to develop their own framework for policy analysis focusing on the two major dimensions of policy: the policy process and policy substance levels. Applying this approach to three substantive areas of policy change, and possible policy convergence, they suggested, first of all, that the 'streams' of influence in each case differed both between policy areas and between nation states. That is, even in the area where there was a significant level of similarity in policy 'outcome' (prison privatization), the nature of, and relationships between, the political, policy and problem streams differed.

1.1.4. *Research Questions*

The primary research question of this study is: what could have triggered the first wave of dramatic changes in sanctions and sentencing policy in modern Russia? The following sub-questions are used to answer the primary research question:

Problem stream: was there evidence of an emerging penal policy problem preceding the adoption of the selected policy solutions?

Policy stream: what were the characteristics of the policy alternatives that existed at the time the problem emerged and how were these alternatives considered?

Political stream: what were the characteristics of the political currents at the time of significant changes of penal policy in Russia?

Policy window: was there evidence of convergence of process streams?

The secondary research question of this dissertation is: how useful is the Multiple Streams Model for the purpose of exploring the factors and events that shape the development of penal policy beyond the scope of the public policy setting for which the model was originally designed (i.e., American public policy agenda-setting).

1.2. **Importance of the Study**

For several reasons, this research is important to the criminal-justice-policy-analysis field as well as to comparative penal studies.

First, the research provides an historical record of the factors and events, which led to the first major shift in sanctions and sentencing policy in modern Russia. Criminal law is often described as being extremely reactive and conservative. It is not uncommon to find criminal laws, which have been enacted decades and even centuries ago, to be not only valid and actively applied on a daily basis but also serving as a cornerstone for the entire criminal justice system. Reform efforts in criminal law are rarely coming about lightly. It is, therefore, particularly striking to come across such changes in criminal laws that are so substantial in scope that they should only be viewed as a decisive turn of the vector in the country's penal policy. This is the case of the 2003 Russian sanctions and sentencing reform. Prior to it, Russian *Criminal Code* had undergone few changes since its inception in 1996. In 2003, Russia experienced a revolution in sentencing reform - the changes have had a profound impact on the form and shape of the Russian system of sanctions and sentencing. Although since that time the *Criminal Code* has become subject to many amendments including systemic ones, the 2003 reform still remains the most comprehensive of its kind. The analysis of changes in the *Criminal Code* shows that a total of 1328 amendments to the *Criminal Code* (as of September 1, 2011) have been introduced. Almost half of all the changes (508) came as a result of the 2003 Criminal law reform - (61 - in the general part, 447 - in the special part of the *Code*). To put it into perspective, during the first 7 years of its existence there have been 255 amendments to the *Criminal Code.* The next most prolific year in terms of amendments to the *Code* was 2009 with 261 changes (34 - in the general part, 227 - in the special part), followed by 2011 with its 162 amendments.

Although documenting the process was important for historical purposes alone, the research also can be used to provide guidance to others in advocating for a particular policy. Specifically, this research highlights the importance of raising the awareness of a problem through focusing events and indicators coupled with changes in the leadership positions, ideology, mood and political pressure in tying a policy option to the formal agenda regardless of the political regime. Further, the analysis indicates how

the institutional arrangement and political *régime* can still effect policy formation altering some of the key features of the Multiple Streams model and connects it with other theories that explore the link between policy development and political *régimes*.

Second, this research assesses the value of Kingdon's Multiple Streams model in exploring how penal policy ideas come about, expanding the model's applicability to the policy-making process that takes place outside the policy context of mature democracies, thus filling a gap in academic knowledge in this regard.

2. Research Design and Methodology

2.1. Introduction

This chapter describes the research design and methodology used to conduct the policy analysis of Russian penal policy during the time of the first sanctions-and-sentencing reform in the history of modern Russia. This chapter presents the analytical framework employed to design and guide this study as well as justifying the choice of this framework. It explains how this framework has been applied to the study, providing operationalized definitions of each of the main conceptual components of the framework and describing how they were used to analyze the data.

2.2. Research Design and Methodology

This research employs qualitative methods to answer the research questions. Qualitative research represents a distinct method of developing a contextual understanding and/or explanation of a problem, event or situation in narrative format (Creswell, 2009; Denzin & Lincoln, 2011; Erlandson et al., 1993). Denzin & Lincoln (2011) define it as "the studied use and collection of a variety of empirical materials ... that describe routine and problematic moments and meanings in individuals' lives" (p. 3). Qualitative research is often used to help illuminate the process and context of the problem, event, or situation. It is also considered invaluable in theory building, identifying trends, and establishing contextual meaning of data in research areas where it is not always possible to do so using other methods of inquiry (Sofaer, 1999).

Qualitative research has a number of major traditions of inquiry, which stem from a diversity of disciplinary perspectives with varying methodologies. One such tradition of qualitative inquiry is a case-study approach. It requires a detailed analysis of one or a

few examples of a particular event or phenomenon in order to obtain a thorough understanding of it (Stake, 1994; Yin, 2008).

The case-study method has been viewed as a systematic approach to gather data that would otherwise be difficult to obtain. Though case studies have historically been the object of criticism (Huberman & Miles, 2002; Yin, 2008), more recently case-study research has achieved an improved reputation and the use of case studies is common in inter-disciplinary studies. Yin (2008) argues that case studies are not simply a data-collection tactic or design feature, but rather a comprehensive and all-encompassing research strategy. Furthermore, the author suggests that a case study "allows an investigation to retain the holistic and meaningful characteristics of real-life events" (2008, p. 3) and argues that case studies are an appropriate approach in various areas of research — including studies of policy.

Critics often suggest that case-study research lacks rigour, provides little basis for scientific generalization, results in massive, unreadable documents, and is particularly vulnerable to subjective biases (Yin, 2008; Isaac & Michael, 1995). Case-study research is nevertheless an appropriate option when it is used to investigate complex phenomena and develop theory out of a rich contextual framework. The use of single-case studies is a longstanding practice in the areas of public administration and policy, contributing to the growth of knowledge along with quantitative approaches (Agranoff & Radin, 1991; Pressman & Wildavsky, 1984; George, 1980, 1993). White (1986) agrees that well-done case-study research provides an important contribution to the growth of scientific knowledge over time. Bailey (1992) also defends the case-study approach to research of public policy. Her premise is that case-study research can address many research questions in public administration, and that it is possible to design case studies to pass tests of scientific rigour.

Yin (2008) maintains that the case-study method is preferred when "how" or "why" questions are posed and investigators have little control over behavioural events. Indeed, the case study might be the only method that can capture data, given the situational complexity of the penal policy-making process. A case study is an empirical inquiry that "investigates a contemporary phenomenon within its real-life context, when the boundaries between phenomenon and context are not clearly evident, and in which

multiple sources of evidence are used" (Yin, 2008, p. 23). Yin (2008) outlines two criteria for determining when a single-case study design is appropriate:

1. the case provides all the conditions to evaluate a model

2. the researcher is able to reveal phenomena that investigators otherwise would find inaccessible.

The proposed study applies a case-study design to explore Russian penal policy development. The case involves the policy-making process in the area of criminal justice, and its context, in the Russian Federation. The case focuses on a particular penal policy matter – the policy response to the problem of prison overcrowding. It is considered to be an appropriate tradition to employ in this research effort for several reasons.

First, the research uses the case to determine the extent to which Kingdon's Multiple Streams framework is useful in explaining the policy process in the policy domain of criminal justice and its outcome. Choosing a single-case design allows the research to reveal the detail needed to fully assess the analytical robustness of the framework in question. The Russian national penal policy is an area that offers an exceptional opportunity to explore the value and limitations of the Multiple Streams analytical framework as a means of exploring the policy-making process. This policy subsystem is vast, with a large number of participants from across a wide range of public organizations engaged in different aspects of policy making. Political interaction, conflicts over goals and solutions, compromise, and manoeuvring have characterized the history of penal policy making during the time of political transformation since the 1990's culminating in the transition of political power in Russia from President Yeltsin to President Putin. The policy issues involved are of national importance and choices about the vector of penal policy are sensitive to domestic as well as foreign pressure. Thus, this single case provides all the elements needed to evaluate Kingdon's Multiple Streams framework.

Second, there is an established tradition of using single-case studies to assess the value and limits of the Multiple-Streams framework (for example, Cobb & Primo, 2003; Travis & Zahariadis, 2002; Zahariadis & Allen, 1995; Jones & Newburn, 2005,

2007). The above-mentioned studies share a common understanding that the public policy process, in general, and the penal policy process (Jones & Newburn, 2007), in particular, are especially well suited to investigation by the case-study method. Penal policy issues compel decision makers to weigh abstract values and goals with tangible solutions and finite resources. The nature of criminal justice problems is not always clear. Frequently, solving one problem creates others. Policy solutions are also often based on past policy decisions and thus consider history and prior experience. Further, the participants in penal policy making are many and varied. Frequently, it is impossible to identify clearly who are the dominant actors and "... observers often overlook the fairly open networks of people that increasingly impinge on government" (Heclo, 1974 as cited in Hessing, Howlett, & Summerville, 2005, p. 115). Thus it appears unwise to separate the policy process on individual penal matters from its rich and diverse context. The issue of prison overcrowding, in particular, is a complex penal policy matter. A detailed case study offers the best means to investigate this complex situation.

Finally, the case-study investigation of penal policy-making in the Russian Federation meets both of the criteria suggested by Yin (2008). First, the case meets all of the conditions needed to evaluate the framework. Second, the researcher's direct background in Russian criminal law and experience as a member of the Russian academic community at the time of the reform provide the opportunity to reveal special insights.

The following section further explains the qualitative research approach and application of the single-case study design to the selected area of inquiry.

2.2.1.   *Application of the Qualitative Research Approach to the Proposed Study*

Patton (2002), Huberman and Miles (2002), Denzin and Lincoln (2011), Marshall and Rossman (2010), Morse (1994), and Ritchie and Lewis (2003) provided guidance on the proper conduct of qualitative research. Key features of the sound qualitative research plan should include the collection of evidence from multiple sources; the creation of an explicit chain of evidence linking the research question, hypotheses, data collected, and findings; and use of a separate case-study data base (Bardach, 2000; Yin, 2008). Additionally, the Multiple-Streams model of the policy process (Kingdon,

2010) guided the research plan by identifying the features or domains of interest. As a disciplined case study, this research rigorously applied the methods described in the following sections to maintain objectivity and to allow replication of the findings by others.

The underlying assumption of this research is that the selected case of Russian penal reform provides all of the conditions to adequately assess the utility of Kingdon's analytical framework and helps to specify its propositions and expand the explanatory value of the Multiple Streams framework beyond Western countries' policy-making. This inquiry applies a mix of research strategies to the case. It looks first at the history of penal reform to gain insight into the key features of the penal policy-making process in Russia. It then presents the findings from history through the analytical constructs developed by Kingdon. This research then considers the results of a documentary and legal analysis. It evaluates whether observed and/or reported features of the policy process in a pattern-matching mode are consistent with the characteristics developed within the Multiple Streams framework. Description and analysis of the past policy decisions show the influence of external factors and the nature of information used by decision makers. The phasing of policy-making activities and the pace of policy change is not particularly well documented in the history of penal reform in Russia.

2.2.2. *Unit of Analysis*

Ragin (1989) and Rihoux & Ragin (2009) explained that to determine the unit of analysis, one must distinguish between observational units (the unit used in data collection and the data analysis) and explanatory units (the unit that is used to account for the pattern of results obtained). As an observational unit, the unit of analysis can be used to mean a data category; and as an explanatory unit, the unit of analysis can be used to refer to a theoretical category.

The observational unit of analysis is the content of policies, laws, and programs created in response to the problem of prison overcrowding, as well as the content of public policy statements of key policy-makers and political actors referring to the problems in Russian penitentiary system. The explanatory unit of analysis for this research is the penal policy development processes in the Russian Federation, grouped

into several categories consistent with theoretical domains developed within the analytical framework. The focus on the issue of prison overcrowding binds the effort of the research. To further bind the research, the interval of interest is the period of policy-making activity surrounding the first reform of the sanctions-and-sentencing system in the history of modern Russia.

2.3. **Multiple Streams Model as the Framework of Analysis**

Analytical frameworks are developed to facilitate collecting, organizing and interpreting the data in a systematic and meaningful way. The present study employs Kingdon's Multiple Streams Model (2010). This section provides a brief overview of its key propositions, which form the basis of this study's analytical framework.

Kingdon's model is based on the assertion that public policy is formed as a result of convergence taking place in three independent streams of processes: the problem stream, the policy stream, and the political stream. The problem stream represents a variety of policy issues that are waiting for the governmental attention and/or intervention. The policy stream consists of possible solutions to these problems. The political stream describes on-going political processes in and around the government, as well as the country's national mood and political climate. The logic of the model dictates that each of the above mentioned streams should converge with the other two at some point in time. This point is defined as a policy window that opens briefly and gives an opportunity to the policy entrepreneurs to link problems and solutions in a politically acceptable package and help to tie it to a formal governmental agenda.

Kingdon's model serves as an appropriate toolkit to unfold the complex process of penal policy change for a couple of reasons. First, the case study method that Kingdon used when he developed the model is consistent with the primary objective of this study - to document and understand the internal dynamics of the changes in sanctions and sentencing policy in Russia. Second, the examined public policy literature indicated that the model has been successfully used to examine similar developments in a variety of policy domains and jurisdictions. It has not yet been used to explore penal policy change outside the policy context of a Western democracy. Therefore, the

secondary objective of this study is to determine the model's effectiveness and applicability beyond its original purpose.

The Multiple Streams Model serves as the foundation of the analytical framework for this study. Each of its key conceptual parts has been translated into the integral parts of the framework of analysis as described in Figure 1.
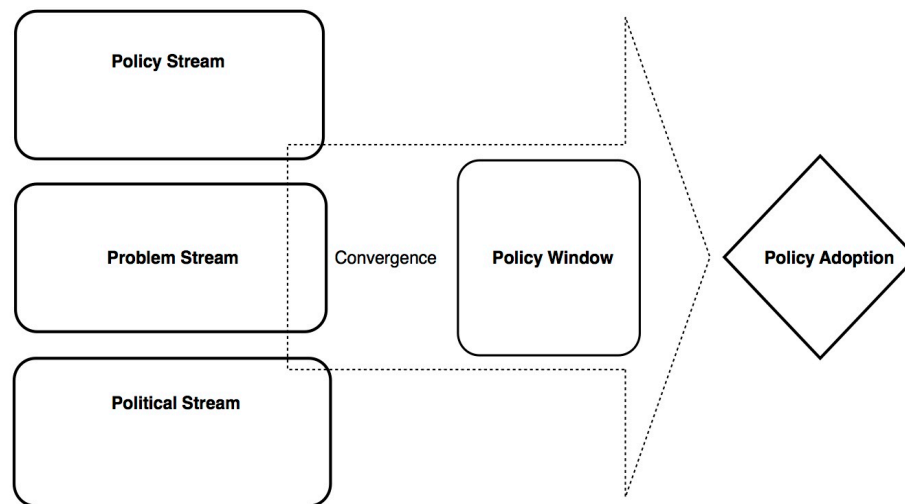
Figure 1 Framework of analysis

For the purposes of this study, the problem stream has been defined as the key negative issues manifested by the penitentiary system in Russia since the original version of the *Criminal Code* was passed in 1995 and up until the first comprehensive package of the *Criminal Code* amendments was adopted in December of 2003. It was anticipated that the critical issues would become evident in the documentary analysis conducted, as part of this study and the majority of them should revolve around prison overcrowding.

The policy stream includes ideas on how to resolve the policy problem. The original model also includes policy communities as its integral part. However, given the closed nature of the Russian policy environment and its lack of transparency in decision-making, it was anticipated that little information on the policy community involvement

would be publicly available. The nature of the problem stream suggests that the policy stream should consist of solutions to the problem of prison overcrowding that were floating in the policy community and either have been employed or considered to be employed in the 1990s. It was anticipated that these solutions should become evident through the documentary and legal analysis. Consistent with the MSM, the feasibility of these solutions has been assessed.

The political stream is conceptualized through changes in and around the government and in the national mood that together either raise or lower the chances for adoption of the policy solutions. The original model was developed to examine American public policy and hence it does not pay sufficient attention to the institutional setup of the political system under analysis. Translating the model to serve as an analytical framework for this study necessarily required including this missing component. It also addressed a common point of criticism of the model – its failure to properly deal with structural factors (Schlager, 1999). Schlager, acknowledging the strength and viability of Kingdon's model, specifically suggested, that "paying attention to institutional arrangement would provide greater structure and consistency to the multiple streams theory" (1999, p. 247). Therefore, the present study sought to enhance understanding of the political stream with a detailed examination of the existing constitutional framework that shaped political processes in Russia at the time of the first sanctions-and-sentencing reform. It was anticipated that legal and documentary analysis should reveal what events in and around government played a role in making the changes in sanctions and sentencing policy possible, as well as how changes in the national mood could have affected this process.

Finally, for the purposes of this study the policy window is defined as the point in time when the amendments to the *Criminal Code* (that substantially changed the vector of sanctions and sentencing policy) were passed as an alternative to the previously considered policy solutions. It was anticipated that the study should reveal how the changes in either the problem stream or the political stream or both have affected the opening of the window and made the change of sanctions and sentencing policy in Russia possible. In his original Multiple Streams Model (MSM), Kingdon argues that policy ideas are brought to the formal agenda with the help of a policy entrepreneur. For the purposes of this study the policy entrepreneur is defined as an advocate of the

selected policy alternative who pushed it to the governmental agenda. While the important role of a policy entrepreneur in the highly diverse and competitive policy environment of a modern democracy is undeniable, that might not be that case in more closed political systems. It was anticipated that given the lack of transparency of the policy-making process in Russia, such information might not be readily available from the documentary analysis.

The following section explains the procedures that will be used in the proposed dissertation to collect, code and analyse the data that describes the case of penal reform in Russia.

2.4. **Data Collection**

Qualitative data collection is defined as a series of interrelated activities to capture information necessary to answer an emerging research question (Creswell, 2009). Creswell (2009) developed a Data Collection Wheel to illustrate the pattern of activity involved. This wheel begins with locating the data source, and progresses to gaining access, sampling, collecting data, and to recording information, and concludes with the storing of data. A similar process will be undertaken in the course of the proposed study.

There are a number of sources of data that can be used in a case study. These include documentation, archival records, interviews, direct observations, participant observations, and physical artefacts (Stake, 1994; Yin, 2008). Yin (2008) and Stake (1994) both advocate for the use of data from more than one of these data sources in order to triangulate findings. Triangulation refers to the use of multiple data sources and collection methods to corroborate results and to ensure valid qualitative research findings (Barbour, 2001; Creswell, 2009; Ritchie & Lewis, 2003).

This research used two sources of data, namely documentation and legal sources that provided insights into the development of penal policy in the Russian Federation. Yin (2009) describes documents as being devices of communication (e.g. letters, memoranda, etc.), relating to meetings (e.g. agendas, minutes, notices, etc.), relating to administrative matters (e.g. internal documents), relating to other research on

the same subject under study (journal articles), and media accounts (e.g. newspaper clippings). The documents used in this study were primarily journal articles, administrative documents, and communication documents, supplemented with media accounts and published interviews of key policy actors. The use of several types of sources served the purposes of providing sufficient detail, triangulating, and confirming obtained information.

The sample for this study is defined as documents and legal sources that described the development of the penal reform in Russia and/or contain information directly related to the key theoretical domains of the selected framework of analysis.

A specific sample size was not pre-determined for this research effort but was not expected to be very large because only a few key documents could provide sufficient information about the development of penal policy in Russia. Unlike quantitative research, which typically requires large sample sizes to ensure representativeness and to generalize the findings, qualitative research sample sizes are often relatively small (Neutens & Rubinson, 2010). Additionally, in qualitative research, the point of satiation in the information being obtained can determine the sample size. Satiation refers to the point when most information on the subject has been obtained and that expenditure of study resources to generate any additional information cannot be justified. These principles have guided the sample size in this research effort.

The first phase of data collection consisted of a thorough literature search: gathering records, accounts, and information on the penal reform in Russia and looking at the political situation, government organization, policy-making process and its participants, and official policy. The record of policy decisions and outcomes provided an important source of historical data about key activities and events.

A systematic search has been used to identify and collect documents, records and legal sources. To collect documents, several rounds of searches have been performed. The first search involved published academic literature available and sought to locate bibliographies, literature reviews, and other publications that reported or proposed policies or practices related to the subject using the key words. Using the several combinations of search terms related to the research questions, the available library electronic databases, such as JSTOR, LexisNexis, Google Scholar, and

ProQuest have been searched for articles published in academic journals. RGB (*Rossiyskaya Gosudarstvennaya Biblioteka*) catalogue of Russian journal articles, dissertations and summaries has been accessed online. The search terms have been further specified as the search unfolded aiming to be narrow enough to target material likely to contain information about the historical development of Russian penal policy in the 1990s-2000s, in general, and the problem of prison overcrowding in Russia specifically.

The second round of searching involved published books containing relevant information. Using the key terms, "Russian penal reform", "Russian criminal justice", etc. the WorldCat, the catalogue of books and other materials in libraries around the world, has been searched. The search was limited to books and reports published between 1991 and 2011 in English and Russian.

The third round of searching involved online documents and legal sources. In addition to laws in effect, this search sought "non-academic" policy-oriented documents such as communication documents and administrative documents. Legal sources were accessed through online Russian databases "Consultant-Plus" and "Garant". Searches of the official websites of the government agencies responsible for penal policy development in Russia have been conducted. Additionally, websites of nongovernmental organizations that were likely to be engaged in penal policy reform have been examined. Specifically, the websites of Amnesty International, Human Rights Watch, Moscow Helsinki Group have been searched.

All documents identified through these three series of searches have been compiled into a single list to remove duplicates. All documents have been saved electronically and tagged. A final search was conducted by reviewing the reference sections of all the documents that were identified through the initial three sets of searches. Documents with titles related to Russian penal policy-making or the ones by authors who have written other articles about Russian penal policy-making or Criminal Justice reform in Russia were reviewed. Copies of all identified documents were retrieved from libraries, electronic databases, and websites. All of these documents then were reviewed for content about the process that led to the adoption of a specific policy response to the problem of prison overcrowding. The ones not containing relevant

content were excluded from the study. Relevancy was defined as information relating to one of the key features of the analytical framework. The aim was to collect information on events, policy activities, policy statements, policy proposals, and policy alternatives, as well as to identify potential policy actors, actively engaged in the development of penal policy in Russia. The resulting data included Presidential addresses and press releases, testimony before and reports of legislative committees and subcommittees, Ministry of Justice and its agencies' reports, programs and published materials, drafts and passed legislation, prepared policy statements by governmental and non-governmental policy actors, media articles and public interviews of the key policy actors, Internet documents, and research publications.

2.5. **Data Analysis**

A number of approaches and methods exist for analyzing the various forms of qualitative data. The methods described by Miles and Huberman (1994) were employed for the analysis of data collected for this study. The analysis plan described below applied to all types of the collected data, including archival documents, legal sources, media accounts and published interviews of the key policy actors. First, each collected document was read for overall content. Second, they were re-read and coded based on the domains of the analysis framework. According to Huberman and Miles (2002), codes represent labels for sorting text into different categories of meaning associated with a study. The codes that have been developed for this study related to the key domains of the analysis framework (i.e., the Multiple Streams) to label text related to each of the key domains plus one "catch-all" code (called "Other") to label important and/or interesting text unrelated to the other domains. For example, within the problem stream, possible codes were: "problem stream", "feedback", "focusing event", "indicator", etc.; in the political stream – "political stream", "government changes", "national mood"; in the policy stream – "policy stream", "policy alternative", "policy community", etc. The codes were applied to the excerpts and documents by blocking out (marking) passages of the excerpts and documents containing information defined by one of the domains. Third, coded data from each data source was gathered in a data-analysis form. The form provided space to insert quotes or information relevant to each of the study

domains. See Appendix A for a copy of a data analysis form. After completed coding of all data sources and developing a data analysis form for each document, a domain data analysis folder for each domain for all the documents has been created. For example, all coded data related to the policy stream domain were saved in a single folder. Subfolders were created to keep data with related codes. This folder was used to review all data on each domain from all the excerpts and from all the documents.

The general analytical strategy for this research followed the theoretical propositions of Kingdon's policy streams model in order to focus attention on certain data, organize the case study-data base, and seek evidence that supports or refutes each of the individual research hypotheses (Yin, 2008).

Additionally, this analysis involved aspects of historical analysis to place the penal policy topic in context and pattern matching of data to the analytical constructs offered by the selected framework. It traced actual events in penal policy over time, placing them in an ordered chronological sequence. Starting with efforts made by the government before the collapse of the Soviet Union, it helped to establish the history and context of this policy issue. Items of interest to the historic analysis included both external events (e.g., the efforts of international organizations to humanize penitentiary institutions and to abolish capital punishment) and key activities by members of the policy community (e.g., speeches, testimony, legislation, publications, conferences, or political platforms). Shifts in political elites' dominance of the presidency or Parliament were also noteworthy as well as descriptive data on the critical conditions in Russian penitentiaries and the response of the federal government in terms of investment, technology, programs, and suggested policy alternatives.

2.6. **Ensuring Research Quality**

As qualitative research, is drawn largely from the results of documentary and legal analysis, precautions are appropriate to remove bias, assure the basic quality of the data, ensure that the results make sense, and enable generalization of the findings to the theory (Huberman & Miles, 2002; Yin, 2008; Patton, 2002). In particular, the closeness of the researcher's background to the Russian penal policy community

demands special care to ensure objectivity in both the collection and interpretation of data. Another researcher, using the same methods, should be able to replicate the research results. This section describes the procedures used during data collection and analysis to enhance the quality of this research.

Guba and Lincoln (1987) asserted that qualitative researchers should aim to achieve the trustworthiness of a qualitative inquiry and demonstrate that the inquiry's findings are "worth paying attention to" (Guba & Lincoln, 1987, p.290). They proposed four criteria for assessing the soundness of qualitative research. These are often considered as an alternative to more traditional quantitatively-oriented criteria and include credibility, transferability, dependability, and confirmability.

2.6.1. *Credibility*

The credibility criterion requires ensuring that the results of qualitative research are believable from the perspective of the participant in the research. Since from this perspective, the purpose of qualitative research is to describe or understand the phenomena of interest from the participant's eyes, Lincoln and Guba argue that, in order for qualitative work to meet the required standard of research quality, it should provide a sufficiency of rich and thick description regarding the setting, program, procedures, data, etc. In other words, in credible qualitative research, "the data speak to the findings."

The present research aimed to determine how effective the selected policy analysis framework was in its explanation of the policy process and whether its utility could be broadened beyond the Western policy-making arenas. The research sought to show that the particulars of the policy-process features led to the observed conditions of the policy-making process rather than exhibiting a spurious relationship. As described in the section above on data analysis, this research used content analysis to identify the key penal policy processes and historical analysis to establish the timing and relationship among them. The research also employed pattern matching to compare the observed and/or reported features of the policy processes with the logic of the selected policy model. In general, prolonged engagement with the topic, both as a professional and as a researcher, has also helped to ensure the credibility of the findings.

2.6.2. *Transferability*

In quantitative-oriented research, external validity has to do with establishing whether the research findings can be generalized beyond the extent of one case study. In qualitative research this is captured by the notion of transferability. The later implies generalizability of the findings and results of the study to other settings, situations, populations, circumstances, etc. From a qualitative perspective, transferability is primarily a 'burden' that is placed not upon the original researcher, but upon whoever is considering applying this original work to his/her own circumstances. In other words, the person who wishes to "transfer" the results to a different context is responsible for making the judgment of how sensible the transfer is. However, the qualitative researcher should seek to enhance transferability by doing a thorough job of describing the research context and the assumptions that were central to the research.

This single-case research relies on analytic generalizability. Yin (2008) made an important distinction between "statistical generalization" (the projection of quantitative findings across broad populations from which an experimental-type sample was randomly drawn) and "analytic generalization" (the more customary qualitative objective of obtaining a greater depth, richness, detail and understanding of some phenomenon). This study generalizes the results to broader theory of the policy process rather than to other specific case studies, much as a scientist generalizes from experimental results to theory (Yin, 2008). The detailed description in this dissertation of the theoretical propositions, research methods, data analysis, and interpretation of results enables others to decide whether they can apply the findings to other cases and situations. Rich descriptions helped to establish the transferability of the research work to other situations. Disciplined data collection, thorough records of methods and sources, and consistent treatment of the data should permit others to consistently repeat the work with other nations or policy topics.

2.6.3. *Dependability*

The traditional quantitative view of reliability is based on the assumption of replicability or repeatability. Reliability has to do with whether another researcher, applying exactly the same methods to the same case, would achieve the same findings and conclusions. In qualitative research this is captured by the notion of dependability.

This criterion is satisfied by showing that the findings are consistent and could be repeated. Reliability can be sensitive to alterations in methodology, and shifts in hypothesis or constructs. The qualitative view is not as strict on the condition of stability. Changes in methodology and construction are expected products (Guba and Lincoln, 1987), but any changes should be traceable to ensure dependability of research inquiry. In this study, it has been achieved by means of the carefully documented logic of the research process.

2.6.4.   *Confirmability*

The findings must clearly flow from the facts and process of the research and not from factors unique to the researcher. Qualitative research tends to assume that each researcher brings a unique perspective to the study. Confirmability refers to the degree to which the results could be confirmed or corroborated by others. There are a number of strategies for enhancing confirmability. Steps to minimize errors and avoid bias in data collection and analysis contribute to objectivity. These steps included closely following the detailed case-study protocol documented in the above sections on data collection and data analysis. Developing and maintaining a separate case-study database were also deemed important for enhancing the confirmability of the research. Taking care to describe the logic connecting findings and conclusions to their sources should further help to remove biases and establish the neutrality of the researcher.

2.7. **Limitations of the Research**

The central limitations of this research stem from the essential nature of a qualitative research approach itself and a single-case study design. This limitation is justified by the complexity of the policy-making process, dependence on documentary data, and the limited resources available to a single researcher as described below.

2.7.1. *Complexity of the Policy-Making Process*

It is not possible to explore the policy-making process by conducting experiments under controlled conditions as would be typical for explanatory social science research. Thus a case-study methodology was appropriate. Further, this research focused on solely one area of the policy process, penal policy making. Discipline in data collection and analysis ensured scientific rigour, enhanced generalizability, and controlled research biases.

2.7.2. *Research Resources*

The resources available to a single researcher working independently, coupled with the complexity of the policy process for penal reform and the absence of the culture of transparency in Russian policy-making in general, limited the scope of this research. However, choosing a case in the Russian penal policy domain enabled the researcher to apply his expert knowledge of Russian criminal law and penal policy; to exploit resources within the policy community; and, thereby, to complete the research efficiently. Discipline in research design and conduct helped to control the researcher's potential bias and ensure objectivity. Choosing to research a single case also permitted exploration in the detail necessary to properly evaluate the utility of the Kingdon's framework. Follow-on research can apply replication logic to comparable penal policy studies in other countries.

3.   Analytical Framework

3.1. Introduction

Public policy-making is often described as "complex, messy and ill-understood" (Paquet, 1999, p. 42). Given the multi-dimensional nature of the phenomenon, a wide range of definitions of public policy can be found in the literature on policy-making. Depending on the levels of conceptualization they range from fairly broad ones – "public policy is whatever governments choose to do or not to do" (Dye, 2012, p. 2), to more specific definitions which emphasize significant structural elements of the policy process. Public policy can be defined as an intentional course of action or inaction chosen by the governments with an objective to achieve a certain end.

This definition emphasizes the importance of choice as a cornerstone of policy-making. It also captures the two-dimensional nature of this concept: policy can be viewed both as a process and as a substance. Separation of the two allows for two distinctive kinds of public policy analysis. The purpose of the first one is to determine which of various alternative public or governmental policies can most effectively achieve a given set of goals in light of the relations between the policies and the goals. Substantive policy analysis is essentially an assessment of the chosen course of action or inaction. The objective of the second kind of policy analysis is to illuminate the process of policy formation and how it affects the output of policy-making. It seeks to explain how and why the specific course of action or inaction has been chosen. Each in its own way contributes to further understanding and improving public policies and is an integral part of public policy analysis as "a process of multidisciplinary inquiry designed to create, critically assess, and communicate information that is useful in understanding and improving policies" (Dunn, 2004, p. 1-2).

This dissertation is an exercise in the second kind of policy analysis that aims to advance theoretical understanding of penal policy as a set of processes clustered as a whole in series of actions. It attempts to build on the extensive public policy literature that reveals a bourgeoning and thriving theoretical field of policy analysis. Over the past few decades this field has demonstrated tremendous growth potential extending its scope and methodology in response to broader epistemological debates in social sciences. This fruitful cross-disciplinary debate around questions, such as structure and agency, the relationship between the state and civil society, and the significance of interests vs. ideas, has provided a strong impetus for theory development.

3.2. **Evaluating analytical models**

There has been no shortage of analytical models designed to capture essential aspects of policy-making. Sabatier (2007) identifies seven potential frameworks that have already stimulated empirical application, and are considered to be the most intellectually robust, having been subject to sustained critical evaluation.

Sabatier (2007) has suggested four criteria against which policy analysis frameworks should be evaluated. The first and most important one is the their capacity to explain both policy stability and change. Given that, depending on the policy area, policy development can be rapid, gradual, or static and comprehensive, a viable framework needs to accommodate it all. The second criterion is whether the given framework is able to shed light on various facets of policy making. Many models focus exclusively on one specific aspect of the policy process, such as the role of the state, the role, played by a policy entrepreneur or policy communities, or on a particular stage of the policy process. It is important, however, to approach the subject from a holistic perspective recognizing the complexity of policy-making and its various facets. The third criterion is the potential of a given approach to explain policy-making in a variety of policy areas. A model with broader applicability allows for comparison of policy areas. Comparative policy studies in turn can provide further impetus for theory building as well as for the examination of policy phenomena that concern more than one policy field, such as a "spillover effect". The final criterion is that the framework should be capable of capturing the dynamics of policy change. Given a typical policy life span of five to ten

years, the framework needs to serve as a tool that allows for a medium-term historical analysis of the selected policy process. Anything shorter than the suggested period would result in what essentially could be considered a snapshot of policy, which would preclude the researcher from distinguishing subtle changes in policy development. The following discussion of the available analytical frameworks suitable for penal policy analysis will continue with the above four criteria in mind.

Policy as a process has traditionally been examined by dividing it into distinct stages. The stages model dominated policy analysis between 1970 and the late 1980s. In such approaches, policy stages are conceptualized as separate sets of problem-solving processes: problem definition, structuring, and formulation of alternative solutions, agenda setting, considerations of implications of alternatives, experimentation with the preferred choice. Hogwood et al. (1984), for example, identified nine stages: deciding to decide (agenda setting), issue filtration (deciding how to decide), issue definition, forecasting, setting objectives and priorities, options analysis, policy implementation, evaluation and review, and policy maintenance, succession or termination.

Howlett *et. al*., (2009) describe policy-making as a cycle of sequential logical stages of problem solving, wherein each stage is informing the next. Typically, the policy cycle consists of the following stages: agenda setting, problem definition and analysis, policy tools selection, implementation, enforcement and evaluation (Howlett *et. al*., 2009). The government's formal or institutional agenda has been distinguished from a broader public or systemic agenda. Actors within - and outside -the government are constantly seeking ways to bring particular issues to the focus of governmental attention, shaping and reshaping the agenda. The crucial step in this process is the transition of an issue from being recognized as worthy of attention to the formal governmental agenda. Agenda-setting assumes a number of forms depending on the role played by the public and actors, actively involved in this process. Following Cobb, Ross, and Ross (1976), Howlett *et. al*. (2009) identify four patterns of agenda-setting based on the nature of public involvement: the outside-initiation pattern, the inside-initiation pattern, mobilization, and consolidation. The outside-initiation pattern describes the process wherein an issue is placed on the formal agenda by powerful social actors who force the government to consider a particular issue as worthy of governmental attention. Adolino

and Blake (2001) stated: "Organized interest groups attempt to raise the profile of an issue on the systemic agenda. Interest groups form allegiances with other groups, raise citizen awareness, and lobby the government to get their concerns onto the institutional agenda" (p. 12). A group outside the governmental structure articulates a grievance, which may be translated into specific demands. Cobb, Ross and Ross (1976) identified four groups that can be involved in issue expansion. The identification group is the group that initially identified the problem. Attention groups are aware of the problem and can be quickly mobilized when the problem is in their realm. The attentive public is "a minority of the population and includes those people who are most informed about and interested in public issues" (p. 129). The general public is the last to be involved in an issue. It is hard to sustain the interest of the general public.

The inside-initiation agenda-setting pattern is characterized by the absence of significant public input – issues are being placed on the formal agenda by the interest groups that have direct access to the government agencies. The issue is initiated within government and is aimed at a particular group. Influential groups with special access to decision-makers initiate a policy change and do not want it to be expanded and contested in public.

> [I]nfluential interest groups seek to pressure the government to address particular concerns without expanding the visibility of the debate on the systemic agenda.... interest groups do not engage in advertising campaigns and public rallies but instead attempt to influence government policy makers almost entirely in private meetings (Adolino & Blake, 2001, p. 13)

Mobilization describes the pattern whereby agenda-setting is accomplished exclusively within the government itself, which gathers support among the public after the issue has already become part of the formal governmental agenda. This is a government initiative that is brought to the public.

> [The] government constitutes the group interested in agenda setting. In these situations government officials agree that an issue not currently visible in the systemic agenda needs to be addressed. The government works to get the issue onto the systemic agenda to increase public support for subsequent policy decisions and, often, more crucially, for the implementation of those policies once created (Adolino & Blake, 2001, p. 13).

Finally, the consolidation pattern describes agenda-setting whereby government actors initiate an issue that already enjoys substantial public support.

Breaking the policy-making cycle into distinct stages, whilst not necessarily reflecting the real world, has provided policy analysts with a useful analytical tool for empirical exploration of the processes involved. This approach has proved to be successful in conceptualizing particular elements of the policy process and has resulted in a number of important studies such as those focused on specific stages, e.g., agenda setting (Kingdon, 2010), implementation (Pressman and Wildavsky, 1984), and evaluation (Guba and Lincoln, 1987). Although the analytical importance of identifying such stages is obvious, such an approach also implies a rather mechanistic and sequential model of the policy-making process. Policy-making in practice rarely looks like the textbook discussions of the "policy cycle" and, in particular, it is rarely as rational as many analytical models imply (Nelson, 1998). The substantive content of policies is clearly shaped, not only by the latter stages of political decision-making, but negotiated continuously in the earlier problem definition, legislation, regulation and court decisions, and again in the subsequent decisions made by practitioners and street-level bureaucrats. The stages model, implying a false degree of rationality in the policy process, fails to capture the 'messiness of policy-making' (John, 1998, p. 25). Sabatier (2007) criticized it for being overly simplistic in its understanding of policy-making as a neatly sequential and linear or cyclical process. The stages framework has outlived its usefulness and required replacement.

Applying the above mentioned criteria for a robust analytical framework of policy analysis to the stages model produces mixed results. The model clearly lacks the capacity to provide an adequate explanation of stability and change. Where change is acknowledged the model is hampered by its neo-positivist/rationalistic assumptions, raising the concern that what is being described and analyzed is the presentation of policy rather than the exercise of power that underpins the process. The stages model does illuminate a broad range of various facets of the policy process. Nevertheless, it implies a sequential relationship between them disregarding messiness of the policy process and thus limiting the researcher's field of vision. Being one of the major frameworks, the stages model proved to be applicable to a variety of policy areas and has prompted an extensive body of literature in many policy areas, all of which, however,

is subject to the same strong criticism noted here. The stages model is not sufficiently effective in identifying patterns of influence and outcomes over a sustained period as its focus is placed mainly on specific moments in the policy process.

Undoubtedly, the conceptual language of discrete stages is still useful, as De Leon (1999, p. 29) cautions, "before we discard a useful friend ... we need to make sure ... that we have a better, more robust framework on which to rely." There is, however, a clear need for a more theoretically sophisticated and holistic framework.

Another framework has been developed within the tenets of institutionalism. The growing dissatisfaction with behaviourism characteristic of American political science in the 1960s has instigated an interest in institutions as important stimuli of political as well as policy change. Steinmo et al. argue that institutions "shape how political actors define their interests and … structure their relations of power to other groups" (1992, p. 2) and thus could be seen as significant constraints and mediating factors in politics, which "leave their own imprint" (1992, p. 8).

Institution as a central concept in the given approach is defined in a wide variety of ways. These can be reduced to two broad positions that could be deduced from the literature: the first, organizational institutionalism, emphasizes the significance of institutions as organizational entities (agencies, departments, parliaments, etc.), and the second, cultural institutionalism, focuses on shared institutional values, norms and beliefs. Both have a historical dimension, which highlights the "relative autonomy of political institutions from the society in which they exist; … and the unique patterns of historical development and the constraints they impose on future choices" (Howlett and Ramesh, 2003, p. 27). Institutional framework shapes policy-making through its capacity to constrain policy-makers' choice of both critical issues and options to resolve them. Taking into account organizational structures helps to overcome the tendency of much pluralist theory to treat organizations as arenas in which politics takes place rather than as independent or intervening variables in the process. Cultural institutionalism, with its emphasis on values, norms and beliefs, focuses on the social construction of meaning and "how interest groups, politicians, and administrators decide their policy preferences" (Fischer, 2003, p. 29). For Ostrom et al. (1999), policy is made within "action arenas" that develop operational rules which are nested within other more deeply rooted rules,

namely, collective choice rules and, at a deeper level, constitutional choice rules which are more resistant to change.

An important advantage of institutionalism is its capacity to capture both the behaviour of policy actors as well as larger institutional structures within which they operate (Hall, 1986). It broadens applicability of analytical frameworks bringing attention to institutional context that varies across countries and political regimes. Nevertheless, institutionalism falls short of a fully articulated comprehensive analytic framework. Among its weaknesses is its treatment of policy dynamics. Focussing on organizational structures, it tends to gravitate to an implicit rational actor model which depends on a vague ideational formulation, or which collapses into a crude form of institutional determinism. Another related concern is the tendency to substitute ideas for interest and the assumption that institutions strongly influence interests (Pontusson, 1995). It fails to clearly identify sources of institutional dynamics and leaves unspecified the forces that drive change in the policy environment. Therefore, based on the first criterion for analytical framework evaluation institutionalism has limited potential to explain institutional stability/change. It also has limited value as a tool to explore various aspects of policy as a process since it focuses mainly on institutional structure. Nevertheless, institutional analysis can contribute to better understanding of policy areas as it spotlights both organizational and cultural structures for public policy and emphasizes the value of placing institutions in their historical context.

3.3. Kingdon's Multiple Streams Model

One model that seeks to deconstruct the policy process whilst paying due regard to its apparently somewhat chaotic character is that developed by Kingdon (2010). Kingdon's framework is a powerful critique of rational models of policy-making, and also challenges the ones developed under the broader heading of institutionalism. The Multiple Streams approach to explaining public policy formation has gained prominence in 1990s and was considered a major theoretical breakthrough in public policy analysis (Sabatier, 2007). John Kingdon introduced the original model in 1984. In his *Agendas, Alternatives and Public Policies,* Kingdon seeks to explain why some ideas and not others make their way into the governmental agenda. He suggests that an ''idea whose

time has come, captures a fundamental reality about irresistible movement that sweeps over our politics and our society pushing aside everything that might stand in its path'' (1984, p. 1). Kingdon tries to capture this process by introducing the notion of policy streams. He conceptualized the policy process as a function of three streams: problems, policies, and politics. The stream metaphor was first introduced by Cohen, March & Olsen (1972) the authors of the garbage-can model (GCM) of organizational decision-making that served as a basis for Kingdon's multiple stream framework.

Cohen *et al.* identified four independent streams flowing through organizations: problems, solutions, participants, and choice opportunities. They viewed every organization as "a collection of choices looking for problems, issues and feelings looking for decision makers, ... solutions looking for issues, ... and decision makers looking for work" (p. 2). Once all these items in the can assemble into the right mix, organizational decisions can be made. Cohen *et al*. describe this process of assembling the appropriate set of problems, solutions, participants and choice opportunities as coupling. Unlike other approaches that viewed policy-making as an inherently rational process, Cohen et al. argued that decisions are not necessarily reached in a rational way. Organizations operate under conditions of tremendous ambiguity (Cohen *et al.* refer to them as "organized anarchies"). This ambiguity, combined with limited attention resources, essentially removes the rational element from the process of decision-making. Rather than acting out of rational self-interest, organizations tend to act haphazardly based on the confluence of separate streams of problems, solutions, participants, and choice opportunities.

Cohen and March (1986) suggest that "a key to understanding the processes within organizations is to view a choice opportunity as a garbage can into which various problems and solutions are dumped by participants" (p. 81). Their model implies inherent uncertainty of the decision-making process. It is hardly possible to predict beforehand how the various streams will combine. Organizations' options to restrict the dynamics of each of the streams are limited. Hence, various streams are conceptualized as independent processes coming together at some point and becoming a choice opportunity. Only once the above-mentioned streams converge on a choice opportunity can a decision result.

While Cohen et al. focused their attention on organizational decision-making, Kingdon adapted the model to national policy-making processes. In analysing US federal policy-making, Kingdon (2010) asked four overarching questions:

• How do subjects come to officials' attention?

• How are governmental agendas set?

• How is the list of public policy alternatives narrowed to the ones that actually receive serious consideration?

• Why does an idea's time come when it does?

Adapting the original GCM to the national policymaking context, Kingdon made a few modifications to it. He presented the entire American political system as a large organization that itself makes a series of decisions on policies. Kingdon based his model on the assumption that decision-making involved coordination of three relatively independent "streams" of decision processes: streams of problems, politics, and policies. The problem stream represents the series of issues vying for public attention. Typically, a number of systemic ways exist to deliver information to policymakers in the form of feedback, indicators, and focusing events. The policy stream represents the series of concrete policy proposals that may address actual or potential problems. Potential policy solutions become part of the policy-making agenda by means of natural selection mechanisms of eliminating the unfeasible options. The politics stream then represents the general policy environment and decision opportunities. It includes elections and public "mood" (Kingdon, 2010). Elections can reshape the policy environment by injecting new participants and setting new limits for policy choices. The decision-makers must also account for changing public "mood" — the tendency of the public support to fluctuate between the ideological extremes. This stream reflects the long-term evolution of ideology and its impact on the political environment, which often becomes evident during the specific institutional windows for political choice — notably national elections. While the last stream is unique to MSM, the model includes other key elements of the garbage-can model – "policy communities" and "policy entrepreneurs". According to Kingdon (2010) problems and policies are both identified and championed by participants in the system. Policy entrepreneurs specialize in advancing certain

issues to the formal agenda by focusing the attention of policymakers on a limited set of problems. They could be found among political officials who are responding to public demands for action and among other participants who specialize in identifying specific policy proposals that may be applied to a variety of public problems and formulate policy options. There seems to be little discussion of public participation. Instead, policy entrepreneurs within a relatively closed policy community dominate the process.

Let's examine each of the three streams more closely.

3.3.1.   *Problem stream*

Problems are at the heart of most debates and policy decisions, thus the role of problem definition has become an area of increased study in recent years (see for example, Rochefort & Cobb, 1994; Stone, 1999; Dan Wood & Doan, 2003). Studies of problem definition in agenda setting have focused on a variety of issues, including the amount of visibility and political support which problems receive (Portz, 1996), as well as on whether the causes of the problem can be made easily recognizable to decision makers (Stone, 1999). Despite different conceptions of how problems come to be defined, scholars agree that there are numerous problems that can gain the attention of policy actors. With so many possible problems that people in and around government can focus on, Kingdon (2010) sought to better understand why some problems receive attention and others do not. Within that problem stream, he suggests that problems are defined and receive attention in three ways, through fairly systemic indicators, from more dramatic focusing events, and from feedback about existing programs.

3.3.1.1.   **Indicators**

Indicators of problems are seemingly straightforward owing to the fact that policy actors both in and out of government continually monitor activities, events, and current policies. In addition, academics and governmental researchers routinely conduct studies of particular problems. Kingdon (2010) identifies the budget as a prominent indicator of problems with the use of governmental expenditures. For example, many of his interviewees cited the rising cost of Medicaid and Medicare in the federal budget as important indicators of the health care problem. He argues that policymakers do not use indicators solely to determine the issue, but rather to assess the magnitude of an already

existing issue that suggests it has grown into a problem requiring governmental attention. Indicators of problems that are countable or quantifiable have perhaps the most power. In mass transit, for instance, Kingdon (2010) found that interviewees have noted indicators such as low ridership numbers, while indicators such as quality of service did not receive much attention. Although such countable indicators are within the realm of fact, they do not seem to serve as straightforward recognition of the magnitude or change in a problem. Instead, the way indicators are interpreted and transformed by policy actors are of critical importance.

3.3.1.2. **Focusing events**

Focusing events constitute another way of bringing governmental attention to an issue. Sometimes, objective indicators of the critical nature of the issue are not sufficient and a push, such as a crisis, disaster, powerful symbol, or even personal experience, may be needed for the issue to gain the attention of policymakers. Airplane crashes will address concerns for air safety, for example. Focusing events highlight policy deficiencies and may have significant potential to bring about policy change. Under certain conditions they have triggered even some the most drastic shifts in policy.

Focusing events are usually characterized as sudden, uncommon, and harmful. Generally they are directed at a particular issue, community, or area of interest, and become known to the public and policy makers at the same time (Birkland, 1998, p. 54). Thus, the media coverage of these focusing events instantly makes the existing policy defects obvious and demands adequate solutions. These events become 'focussing' in the sense that they alone may almost immediately prompt the government to respond by revising the previous public policy or by bringing a new policy issue on its agenda.

Focusing events certainly do not automatically or mechanically lead to policy changes. Many other factors are at play. One cannot underestimate the impact the media has on how this process unfolds. Its ability to provide wide and unhindered coverage of the evens is instrumental to generating social mobilization around the problematic issue. How this information is received and perceived by the policy actors within the effected policy domain is also important. Thomas Birkland explains this point further:

"An event is more likely to be focal if an interest group or groups are available to exploit the event in their quest for policy change. Focusing events will also stimulate some institutional attention to an issue if there is only one advocacy coalition that actively seeks change. If no advocacy coalitions react, events will gain little more than passing attention. When two well-matched advocacy coalitions exist, an event is unlikely to change the relative balance between the two coalitions if the harms supposedly revealed by the event are ambiguous and therefore hard to summarily define" (1998, p. 72).

Depending on the subject, focusing events may or may not be crucial. For example, Kingdon found that his respondents in transportation often mentioned dramatic focusing events, while those in health care did not. He offers three possible explanations for these discrepancies. First, as a rather stable item on the agenda, health care may not require a focusing event to gain the attention of policymakers. Transportation, on the other hand, is not sufficiently present on the agenda and, unfortunately, it takes disasters for those in and around government to take notice of problems. A second possibility for the difference is the fact that crises maybe more aggregated in areas such as transportation. Disasters or shutdowns in transportation services affect large numbers of people. On the other hand, since the unit of exchange in healthcare is usually patient-provider, if something goes wrong, it is usually not seen as a major crisis. Therefore, it takes a series of similar programs to create a crisis. The criminal justice policy domain is quite similar to health care because it is a fairly consistent agenda item and may not require a disaster to gain recognition. However, when items such as crime rates are aggregated, the issue can quickly be raised to a crisis level.

Kingdon (2010) identifies two other variations of focusing events: personal experience of policy makers and powerful symbols. Problems may reach the attention of policymakers since they have had personal experience with the problem. He uses the example of the serious health problems of members of Congress helping to raise biomedical research to the agenda. Symbols "capture in a nutshell some sort of reality that people already sense in a ... more diffuse way" (Kingdon, 1995, p. 97-98). In other words, a symbol can increase attention to the problem that may be on the minds of people anyway. While important, the use of personal experience is not as prominent in comparison with disasters or crises as far as focusing events. In general, focusing events cannot carry a topic to the agenda single-handedly. Instead, they usually bring

attention to a problem that already exists, or serve as an early warning of a future problem.

3.3.1.3. **Feedback**

According to the multiple streams framework, feedback "brings problems to [policymakers'] attention; programs that are not working as planned, implementation that does not square with their interpretation of the legislative mandate, new problems that have arisen as a result of the program's enactment, or unanticipated consequences that must be remedied" (Kingdon, 1995, p. 100-101). Feedback may come systematically to the monitoring and evaluation studies, but often comes to officials informally through citizens' complains, as well as from bureaucrats who receive feedback from the day to day administration programs.

In sum, the problem stream is comprised of the numerous possible problems that may seek to engage policy makers' attention. Problems are seemingly everywhere and from the problem stream those in and around government learn about the magnitude of change through indicators, focusing events, and feedback. For penal reform, the problem stream may also consist of numerous potential indicators, focusing events, and feedback. For example, rising numbers of inmates per cell increases in budget expenditures on corrections and rising rates of violence in prisons may bring governmental attention to the problem of prison overcrowding. Focusing events may also influence the problem stream in this area: riots in prisons or highly publicized cases of violence that took place in prison. There can also be examples of feedback influencing the problem stream (e.g., monitoring of effectiveness of offenders' rehabilitation programs, reports on physical conditions in prisons, etc.).

3.3.2. *Political stream*

The second independent stream is the political stream. Operating concurrently, it also explains how certain issues are drawn into the governmental agenda. Like the problem stream, it has its own mechanism: swings of national mood, efforts and positioning of organized political forces, and administrative turn out.

3.3.2.1. **Mood**

This concept can be defined in a number of ways. Mood describes the socio-political climate of the country, public opinion, and broad social movements. Those in and around government can judge the mood and their perceptions of the public mood: this helps to place some items higher on the agenda and to restrain others. Kingdon (2010) believes that experts and politicians can sense the mood but do not necessarily consider the entire general public when assessing it. Instead, politicians judge their constituents' moods from a selected few, but highly visible, instances: letters, town meetings, small gatherings, as well as delegations or even individuals who come to talk with them. On the other hand, non-elected officials sense the national mood from what they hear from politicians. This link is of particular importance as it means that the mood should not be measured by broad public opinion surveys, but instead the focus should be on identifying a pattern in the public speeches of key policy-makers. Based on the perceived mood, those in and around government make decisions as to whether or not it will be appropriate to promote certain items.

Durr (1993) analysed Kingdon's (2010) conception of mood or what he termed, "domestic policy sentiment" and concluded that the mood is driven by both economic and political phenomena. Specifically, when the public views the economy pessimistically, conservative policies gain favour. Conversely, when the economic outlook is more optimistic, there is support for more liberal proposals. According to the multiple streams model, the mood is not a random phenomenon, but rather explicitly linked with economic factors and conditions. Durr's analysis supports Kingdon's conception of mood and strengthens it by providing evidence of what factors help to shape the mood.

3.3.2.2. **Organized political forces**

The second component of the political stream deals with what Kingdon (2010) describes in traditional political science terms of interest-group pressure, political mobilization, and the behaviour of political elites. They contribute to the way people in and around government perceive the degree of consensus or conflict among specific organized interests. According to this concept, political leaders must estimate the level of support and opposition for particular ideas or proposals and the "perception that the

balance of support is tilting against the proposal may not necessarily prevent that item from being seriously considered, but it does indicate the price that will be paid for attempting to push the idea forward" (p. 150). Therefore, the perception of level of support assists those in the policy community in deciding whether or not promoting specific change is worthwhile.

3.3.2.3. **Administrative turn out**

Numerous events within government itself affect agenda setting. These events include changes in priorities among incumbents, a turnover of key personnel, or an administration change. The multiple streams model suggests that, when turnover happens, not only can it make agenda items possible, but previous items once thought deserving of attention may suddenly become impossible.

When a new administration comes to political office, they bring with them the key to pet issues that they would like to pursue. On the other hand, when an administration leaves office, it is likely that their pet issues will lose the opportunity to reach an agenda. Events within government often indicate the precise moment, or policy window, when the streams may come together to place items on the decision agenda.

3.3.3. *Policy stream*

Equating the policy stream with the process of biological natural selection, Kingdon (2010) contends that, like molecules floating around in the primeval soup before life began, ideas and proposals float around within communities of specialists, researchers, legislative staffers, evaluation, planning or budget offices, academics, and interest group members. He suggests that the policy community remains independent of political events and its members spend their time softening up policymakers, introducing bills, making speeches or drafting proposals. In addition, the actors in the policy community are constantly reworking their ideas and, as with natural selection, where the strongest species survive, only the most viable ideas ultimately survive. That is the primary area where alternative specification takes place.

Here, numerous alternatives can be found and any number of proposals is possible. Therefore, Kingdon (2010) argues that the process of developing alternatives

and proposals is far from a rational process in which a few proposals are developed to combat specific problems. Instead, the policy stream contains a long list of ideas and alternatives that may - or may not - be related to particular problems. Although there is a multitude of ideas and proposals within the policy stream, Kingdon (2010) notes, "there is nothing new under the sun" (p. 141). By this, he means that, rather than a dramatic new idea surfacing, the alternative specification process is more akin to a continual recommendation of old ideas packaged and discussed in new ways.

Since the policy stream is largely independent from the other streams, Kingdon (2010) finds it is full of solutions looking for the right problem to be resolved. In addition to the proposals themselves, the key component in the policy stream is the people creating or promoting these alternatives – the policy entrepreneurs.

3.3.3.1.   **Policy entrepreneurs**

The role of an individual policy entrepreneur is vital to the policy stream. Kingdon (2010) describes policy entrepreneurs as people in or out of government who share one defining characteristic: their willingness to invest their resources – time, money, reputation, etc. – in the hope of future return. He separates them into three categories. First, policy entrepreneurs may have personal interests at stake such as political influence, or keeping their job. Second, they may have specific values they would like to promote. Third, policy entrepreneurs may simply be "policy groupies" (p. 123) who like being part of the political action.

Whatever their disposition may be, the role of entrepreneurs is to persuade others in the policy community to support certain proposals. They do so in a lengthy process of "softening up".

3.3.3.2.   **Softening up**

Kingdon (2010) separates the idea of softening up from theories that consider power and influence as the primary strategies for ensuring that proposals are accepted. In other words, instead of lobbying, softening up involves the art of persuasion. Policy entrepreneurs introduce bills, hold congressional hearings, make speeches, issue studies, reports or papers, and hold conferences. At other times, they simply push trial balloons in order to estimate receptivity to their ideas. The information received from

this process is important as the proposals often land back into the pool of ideas for re-configuration. Kingdon asserts that softening up is necessary before any proposal can be seriously considered and, without it, proposals will not be successful - regardless of their merit.

The process of persuasion and softening up must bring to the surface the specific qualities of the proposal that make it acceptable. To be acceptable, Kingdon suggests they need to meet specific criteria for survival.

3.3.3.3. **Criteria for survival**

Proposals must meet three criteria for survival: technical feasibility, value acceptability, and anticipation of future constraints. Technical feasibility concerns the practicality of an idea. Details must be worked out before anything can be seriously considered. Questions that must be answered about feasibility include, "are we willing to actually accomplish what we want it to accomplish?" and "can it actually be administered?" According to Kingdon, policymakers must believe that the proposal will work if it is enacted.

Value acceptability means whether or not the values of the specialists making the proposal are compatible with those of other members of the policy community. The values not only deal with traditional liberal/conservative ideologies but also with equity and efficiency. Proposals that address inequities, imbalances, or unfairness often reached the governmental agenda. On the other hand, proposals that are deemed unfair or inequitable are often vigorously argued against.

Finally, efficiency is a key for proposal survival and the persistent question over whether the benefits of a proposal justify the costs is important for government officials to consider.

Future constraints are also important to the success of any proposal. There are numerous constraints to any proposal; the two most prominent are budget constraints and public acceptance. Proposals that are simply too expensive will not be acceptable within the policy community. Therefore, specialists spend a considerable amount of time reworking and paring down proposals to make them more manageable in terms of costs. If the proposal cannot be made affordable, it will not be, no matter how important it

maybe. Furthermore, the policy community must take the public into consideration when developing proposals. If that proposal is not deemed acceptable to the public, then it will not be acceptable to the policy community. In sum, the policy stream is made up of a policy community comprised of specialists in a given area who are constantly developing proposals or alternatives – often in the absence of specific problems. After a period of softening up by entrepreneurs and reconfiguration by specialists, the policy community shortens the list of possible proposals. The chance for survival of the alternative agendas depends on their technical feasibility, value acceptability, and consideration of future constraints.

These are the key concepts of the framework, which describe the problem, political, and policy streams. However, like the four streams found in the garbage can model, each of the three streams exists largely independently from another, converging only briefly when a choice among various policy directions becomes possible. Only when a prominent problem can be linked to a viable policy consistent with national mood at a time when elected officials can make a decision will policies emerge (Kingdon, 2010). Kingdon re-conceptualizes such choice opportunities as "policy windows". The latter is critical to the framework and is another distinctive feature of the Multiple Streams model.

3.3.4. *Policy windows and the coupling of streams*

In MSM, a policy window is a point in time when the opportunity for policy appears. According to Kingdon (2010), an open policy window is critical for action to take place on certain initiatives. It provides any group involved in policy-making with a chance to mobilize support for a particular set of policies. These windows occur infrequently and stay open for only a short period of time. Therefore, participants must be ready to take advantage of the window or face having to wait for the opportunity to present itself again. Some windows open predictably, such as when a program is up for renewal or budgets are approved. Other windows open less predictably and policy agents must have their pet proposals ready. Policy windows can be created by triggering or focusing events, such as accidents and disasters, as well as by changes in government and shifts in public opinion.

A policy window usually opens owing to an event in the political stream, such as a change in administration, shape of the national mood, shifts in ideology within the legislature. Much less frequently, the window can open into the problem stream, especially in the case of dramatic focusing events. Therefore, Kingdon (2010) defines two separate policy windows: political windows and problem windows. A problem window occurs when a problem appears which creates an opportunity for a solution to be attached to it. The more frequent political window occurs when an event in the political stream, such as an administration change or shifts of national mood, create an opportunity for entrepreneurs to push specific problems and proposals. Michael Howlett (1998) has further developed this concept by creating a typology of four different kinds of policy windows: routine political windows, discretionary political windows, spillover problem windows, and random problem windows. The first type of window is triggered by broad political events, such as budget proposals, national elections, etc. These are usually predictable changes in government priorities that bring different issues into the formal agenda. Discretionary political windows are usually triggered by "the behaviour of individual political actors", which "leads to less predictable window openings" (Howlett, 1998, p. 500). These types of window happen less frequently. Spillover problem windows open when additional issues are being pushed into already-open windows. Random problem windows open because of "random events or crises" (Howlett, 1998, p. 500). Their critique of Hewlett's typology includes the fact that Hewlett offers evidence only for the existence of discretionary, spillover, and routine policy windows in Canada and not for their relative frequency (Rex and Jackson, 2009). Hewlett's typology is also weak owing to the fact that his suggested categories, although conceptually distinct, are not mutually exclusive. The utility of Hewlett's typology for public policy analysis has most recently been demonstrated by Rex and Jackson (2009) in their study of Internet gambling in Canada.

A policy window can close for many reasons. The window can close if participants feel the problem has been addressed, or if participants fail to get action and decide to focus on something else. The event that opened the window may pass from the scene, particularly in the case of windows that open in the problem stream. Kingdon (2010) illustrates the focusing events with an airplane crash. By its nature, such an event is sure to grab the focus of attention and may not allow the associated problem – airline safety, for instance – to stay on the agenda long. Finally, the window may close

owing to further changes of personnel or a lack of available alternatives in the policy stream. Kingdon contends that, if policy entrepreneurs want to affect the agenda, they must recognize the window of opportunity and successfully couple them.

Agenda is another concept critical to understanding Multiple Streams Model. Kingdon (2010) defines it as "the list of subjects or problems to which governmental officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time" (p.3). He further makes an important distinction between two types of agendas: the governmental agenda and the decision agenda. The former is defined as all items attracting governmental attention, and the latter includes only those that are ready for an active decision leading to policy formation. This distinction is extremely important because Kingdon argues that an item may reach the governmental agenda based on activity taken in a single stream. However, only when the streams come together and are coupled will items reach the critical decision agenda.

Coupling is a key theme in Kingdon's (2010) framework. Successful policy change occurs when all three separate streams come together: the problem is recognized, and a viable solution is available, and the political stream is agreeable to the policy change. The process of attaching of these three streams to one another is coupling. Coupling, along with the opening of a policy window, determines the likelihood that the issue will become a policy agenda item. Without this coupling, no policy can emerge. Problems remain unresolved; solutions may exist or be promoted by stakeholders, but there is no receptivity to them. The national mood or current ideas cannot be capitalized on because there are no recognized problems or solutions. But, when a window of opportunity appears in the problem or policy streams, a policy entrepreneur will do everything possible to couple these streams in order for a public policy to emerge.

In sum, Kingdon's framework suggests that distinct streams of policy processes operate independently of each other for much of the time. However, they converge at critical times, once "solutions become joined to problems, and both of them are joined to favourable political forces" (1995, p. 20). From time to time, "policy windows" (i.e., opportunities for promoting certain proposals or conceptions of a problem) are opened

by developments in the political stream, or the emergence of particularly compelling problems. Such windows provide an opportunity for what Kingdon calls "policy entrepreneurs", whose "defining characteristic, much as in the case of a business entrepreneur, is their willingness to invest their resources, time, energy, reputation, and sometimes money, in the hope of future return" (1995, p. 122). Policy entrepreneurs not only push their "pet" proposals and problems, but also are responsible for linking problems and proposed solutions to the political stream. The success of policy entrepreneurs depends upon their ability to respond quickly to these "windows of opportunity", before other "solutions" become favoured. Thus, a significant development in policy is most likely when problems, policy proposals and politics are linked together into a clear package.

3.4. **Criticism and limitations**

The Multiple Streams approach has challenged the rationalist assumptions of other policy analysis frameworks and has been employed in a wide variety of policy studies across a broad spectrum of policy areas. Although Kingdon's model has been highly regarded (Sabatier, 2007), it has also been subject to criticism. Zahariadis (2003) has noted one criticism of the Multiple Streams framework is that it is ahistorical. In other words, the impact of past problems and policy solutions on current policy discussions are not incorporated into it. However, it seems that Kingdon's model, although it may not explicitly mention the role of history, can account for history - especially in terms of how policies are combining and recombining in the policy stream. In addition, he notes that conditions in the problem stream can come to the attention of policymakers through feedback, which includes information about past programs. Both of these examples illustrate how history is accounted for in Kingdon's model. Another weakness of the framework has to do with the opening of policy windows. Kingdon (2010) states that these windows rarely open up. In contrast, Rochefort and Cobb (1994) have given at least one example (drug policy) in which the window is constantly open. However, the duration of the policy window being open does not limit the applicability of the components of the model to the policy process. Finally, Kingdon's model has been criticized for its research methods, which limit its generalizability

(Baumgartner & Jones, 1993). However, the framework is offered as a way to understand the policy process (e.g., see Sabatier (2007) on the distinction between a model and a theory). The utility of Kingdon's multiple streams approach is not so much in predicting the outcome of a prominent issue but rather, in explaining how policy issues emerge. Kingdon's Multiple Streams model serves to warn policy scholars that easy predictions about the timing and content of policy processes are not likely.

When judged against the four criteria suggested by Sabatier (2007) the model proves to be a helpful and expandable framework, although not without weaknesses. The model does capture stability and change in policy making: it draws attention to the role of chance and the actions of policy entrepreneurs. However, it does open the door to the danger of partial analysis owing to its disregard of structural factors and institutionalized power. The weakness in the framework's underlying theory of power is especially important, given the prominence attributed to ideas in the policy process, where the significance of ideas in relation to interests and power is under-theorized. Second, an obvious weakness lies in its preoccupation with agenda setting at the expense of considering the policy process as a whole. At the same time, the multiple streams model is clearly applicable across a range of policy areas including criminal justice, as has been successfully demonstrated in several studies on criminal justice policy analysis, where the MSM served as theoretical lens for the analysis. It is arguable though whether it is easily transferable across political systems and whether it is more or less illuminating in more centralized political systems such as France and the UK or in less democratic political regimes. Finally, and also more positively, the model allows analysis over the medium term, although it is not a specific requirement of application. There is much in the multiple streams framework that is attractive in addition to its challenge to the rationalist assumptions of other frameworks. Of particular value is that it can be integrated with other concepts, such as that of the 'policy community', and it is explicitly concerned with explaining change. Kingdon's framework is adaptable and expandable which helps to address existing criticism. There is a general consensus in the policy analysis literature that the Multiple Streams framework developed by John Kingdon (2010) "reinvigorated agenda research" (Baumgartner & Jones, 1993, p. 11). Although it has limitations that have been pointed out (Rouchefort & Cobb, 1994; Zahariadis, 2003), it is often used to portray how policy change occurs (Longest, 2002).

The MSM is abstract and sufficiently powerful to serve as an analytical tool that could be useful beyond the scope of the policy areas for which it was originally developed. Explaining the key features of the Multiple Stream framework, Kingdon conducted several case studies of health maintenance organizations, national health insurance, the Carter administration's de-regulation of aviation, trucking and railroads, as well as waterway user charges. Subsequently, Kingdon (2010) conducted three additional case studies including President Reagan's 1981 federal budget, *Tax Reform Act* of 1986, and the failed health-care reform efforts of the Clinton administration.

In penal policy research, the Multiple Streams framework has been successfully employed by Jones and Newburn (2002, 2005). They have used Kingdon's framework in their comparative penal policy study investigating growing similarities between the criminal justice systems of western industrialized countries. They compared three high-profile examples of British penal policy developments in recent years with similar changes in the USA. Those included privatized corrections, 'zero tolerance' policing strategies and the registration of sex offenders. Cross-examining each of the three streams of policy processes, the authors explored some aspects of the apparent convergence of crime control policies and cultures in the USA and the UK. The authors call for more detailed case studies of the concrete changes that are occurring, convinced that examining the processes that lead to change, can significantly add to our knowledge and understanding of the determinants of penal policy. In advancing this argument, they relied on Kingdon's model to develop their own framework for policy analysis focusing on the two major dimensions of policy: the policy process and policy substance levels. Applying this approach to three substantive areas of policy change, and possible policy convergence, they suggested, first of all, that the 'streams' of influence in each case differed both between policy areas and between nation states. That is, even in the area where there was a significant level of similarity in policy 'outcome' (prison privatization), the nature of, and relationships between, the political, policy and problem streams differed.

There have been successful attempts to challenge the assumption of the model's limited value in explaining policymaking in more centralized polities. In *Ambiguity and Choice,* Zahariadis has addressed important question of whether Kingdon's conclusions

could be generalized to parliamentary systems as well as other stages of the policymaking process.

Zahariadis extends the MSM's generalizability to explain policy formation in parliamentary systems, which are substantively different from the American presidential system upon which Kingdon's model was built. The American system is decentralized and anarchic in its nature, with numerous entry points and levels of power. It allows for simultaneous access to decision-making centers by various interest groups and political as well as public actors. Parliamentary systems imply less fluidity in policymaking, tighter control over decision-making centres, and fewer participants. Typically, in a parliamentary democracy executive power is backed up by legislative majority, the heads of government are also the heads of the party in power, who form their cabinets from the members of the ruling party. All the participants are usually seasoned politicians with often life-long political careers in their respective parties and who have an established set of agenda items and a clearer view of what works and what does not.

Zahariadis made two modifications to the original MSM. First, he shifted focus from examining several problem issues in favour of the analysis of a single issue at a time. Where Kingdon viewed the entire system as a "giant receptacle of problems, solutions, and politics covering many issues", Zahariadis suggested that focusing instead on the dynamics of a single issue did not in any significant way alter the model as a whole. The second modification was aimed to disregard the differentiation between the processes and participants. Zahariadis suggested that participants seem to be intrinsic parts of processes in each of the three streams; hence, the said distinction was of little value to the integrity of the model. He also expanded the original framework to capture the entire policy formation process and not only the pre-decision processes as captured in the Kingdon's notion of agenda setting. It enhances the explanatory value of the framework providing a holistic view of policy formation.

4. Problem Stream

4.1. Introduction

This chapter will present a narrative of findings describing the problem stream. Kingdon (2010) defined it as all the issues that might require governmental attention. For the purposes of this research, the problem stream has been operationalized to include information about all the major critical issues in the Russian penitentiary complex that were vying for governmental attention at the end of the 1990s - early 2000s. These issues were brought to governmental attention by means of indicators, focusing events, or feedback (or all of the above) and revealed in penitentiary statistics (indicators), official and media accounts of prison riots (focusing events), or program and policy evaluations (feedback). The findings are preceded by a brief overview of the general state of the Russian correctional system. This background information provides the meaningful context that is necessary to fully understand the relevancy and magnitude of the problem issues.

4.2. Problem background

Assessing the scale of the problems the Russian penitentiary system was facing in the late 1990s and early 2000s requires basic understanding of the nature and shape of the system itself. Ambassador William J. Burns summarized it well:

> The Russian prison system combines the country's emblematic features - vast distances, harsh climate, and an uncaring bureaucracy - and fuses them into a massive instrument of punishment. Russia imprisons a greater portion of its population than almost any other country in the world (second only to the U.S.). Recent prison riots, new prisoner shock tactics, and smuggled videos of prison mistreatment have highlighted the cruelties and corruption in the system. Health conditions

in Russian prisons are poor and infection rates for contagious diseases
are much higher than in the general population (Wikileaks, 2011, para. 1)

The ambassador's comments refer to the year 2008, yet they are characteristic of the state of the Russian penitentiary in general. In fact, a decade ago the severity of the problems was dramatically worse, amplified by the financial and social-economic crisis the country faced in the 1990s. The rise of the Russian prison population has been repeatedly characterized as "unprecedented." An increasing prison population, combined with continuing underfunding of the corrections system, has resulted in severe prison overcrowding. It placed extreme pressures on correctional facilities, which by that time had already been under immense stress owing to the continuing slow process of structural transformation. Short of the excesses of the gulag past, the situation in Russian prisons could be justifiably called a human rights crisis. A United Nations inspector visiting a pre-trial detention centre in Moscow in the mid-1990s commented that he would need the literary skills of Dante or the artistic skills of Hieronymus Bosch to describe fully the horrors with which he was confronted (Stern, 1999).

Since the mid-1990s, the Russian penitentiary complex has been on a slow path of transforming itself from a purely repressive apparatus of militarized, soviet-type Gulag into a modern civil penal system operating under the Ministry of Justice. The transfer of all institutions and agencies administering the punishment from Russia's Ministry of the Interior to the Ministry of Justice was one of the conditions for Russia's admission to the Council of Europe (Kalinin, 2002). In addition to the core penal functions, the system was involved in manufacturing, operational and investigative activities, health care and preventive work among the convicts.

The structure of the Russian penitentiary system was as follows:

1. Institutions that perform administrative and managerial functions:

a) the central authority of the correctional system - Chief Office of
   Corrections (GUIN) in the Justice Ministry;

b) the territorial (regional) authorities - Offices of Corrections (UIN),
   established in the territories of the Russian regions. The latter
   included those managing the so-called forest correctional institutions,

created without regard for the administrative and territorial division. The Offices' main function was to manage correctional colonies and prisons, detention facilities (SIZO) and other entities that support the functioning of the system.

2. Institutions that perform custodial functions:

a) prisons;

b) correctional and educational colonies;

c) jails;

d) criminal-executive inspections with special conditions for economic activities (e.g., involved in forest industry).

3. Supporting institutions that are included directly in the penal system by decision of the Government of the Russian Federation:

a) research and development institutes,

b) medical facilities (serving staff, and inmates) including specialized tuberculosis hospitals;

c) educational institutions for education and training of personnel of the penal system, including universities, specialized secondary schools and training centers;

d) educational institutions (serving the inmates), including the evening elementary schools and educational counselling.

It's important to keep in mind, however, that Russia in fact has two penal systems: one is the general prison system operated by the Federal Service for the Execution of Punishments (FSIN), part of the Ministry of Justice, and the other one is the military prison system operated by the Ministry of Defence. Henceforth, the focus on the general prison system would be justified, as its state was representative of the problems in the Russian penal system at large.

There were several *types of penitentiary facilities* operated by the Ministry of Justice:

- temporary police custody facilities for those held pending charges and pre-trial detention facilities (*sledstvennue izolyatoru* - SIZOs) for those charged with crimes;
- low-security colonies-settlements (*kolonii poseleniya*);
- correctional colonies (*ispravitelno-trydovue kolonii* - ITKs);
- high-security prisons;
- "educational labour colonies" (*vospitatelno-trudovue kolonii* - VTKs) for convicted juveniles (*UIK,* Part 17);
- specialized facilities for offenders suffering from tuberculosis, disabled inmates and former law enforcement officers. The administration of the correctional colonies and pre-trial detention centres decided whether to send inmates to a specialized unit or a prison hospital.

As of January 1, 2004, the *Russian correctional system's capacity* was 791,212 and it comprised 760 correctional facilities, 192 pre-trial facilities, 62 juvenile colonies and seven prisons. Of the 760 correctional facilities, 37 were for women. As of January 1, 2004 pre-trial facilities were operating at 105.6% over capacity (102.7% as of January 1, 2003) (FSIN, 2003; Index, 2003).

Colonies-settlements were half-closed institutions, for either the first-time offenders convicted of non-premeditated crimes and incarcerated for up to five years or inmates who had been transferred by court decisions from minimum- and medium-security colonies to maximum-security colonies (*UIK*, S. 128). Offenders who could not be transferred to open-prison settlements included inmates sentenced to death or life imprisonment whose sentence was later commuted due to a pardon, inmates from special-regime institutions, and those who had been sentenced to compulsory treatment for alcoholism, drug addiction, venereal disease and tuberculosis. Inmates who had not given their written consent could not be transferred to open-prison settlements. They resided in specially designed dormitories. Some of them were allowed to stay with their families on their own in rented apartments, located within a settlement colony or a municipality where a colony-settlement was located. Those convicts must register with the colony-settlement up to four times per month. Men and women were kept in the same settlements. In colonies-settlements, inmates were forbidden to leave the boundaries of the facility, leave the dormitory between "lights out" and reveille. At other

times, however, they had the right to move freely within the settlement colony without supervision as well as outside the settlement colony, but within the boundaries of a municipality where a colony-settlement was located (if necessary by the nature of their work or in connection with training). They were allowed to wear civilian clothing, keep money and valuables, use their funds without restriction, receive packages and parcels, means of personal transportation, and photographic and copying equipment, and to have access to their passports or other identification documents other than the inmate card issued by the administration. Inmates were allowed to study at institutions of higher and secondary vocational education, located within a municipality where a colony-settlement was located (*UIK*, S. 129).

Correctional colonies were isolated institutions enclosed by barbed wire, fenced with alarm systems and patrolled by armed guards and dogs. Low-cost and high-volume, they were modest upgrades of the camps of the 1930s to 1950s. The number of inmates in one colony ranged from 500 to 3,000 (normally between 1,500 and 2,000) (*Tsentr Sodeistviya Reforme Ugolovnogo Pravosydiya*, 1998).

Correctional colonies were divided into several types of security regimes:

- Minimum-security (general regime) colonies for nonviolent, first-time male offenders and for all female offenders except those found to be especially dangerous repeat offenders by the court;
- Medium-security (strengthened regime) colonies for males convicted for the first time of serious crimes;
- Medium- to maximum-security (strict regime) colonies for males and females who were deemed especially dangerous repeat offenders;
- Maximum-security (special regime) colonies for especially dangerous repeat offenders and offenders, who have been sentenced to life imprisonment or death but pardoned (*UIK,* S. 74).

Fences into several sections or zones, including the work zone, residential zone, punishment sections, hospital, school and administrative sections, divided the colonies. Fences and rows of barbed wire maintained a division between living and industrial zones. The living section was separated into a few local quarters in which the dormitories also known as the barracks were located. Inmates were housed in dormitories. Sleeping accommodations in dormitories were planned to house 20 to 50 inmates, and beds were two to three tiers. Additionally, every 150 to 200 inmates who

formed a "detachment" were given access to a storage room for their personal belongings; a cloakroom for outer garments; a room for meals, which had cupboards and a device for boiling water; and the "red little corner," formerly called Lenin's room, where political, educational and cultural events were held. It was equipped with tables, bookshelves, a radio, and sometimes a television set and toilet (sewage systems were rare in colonies). In maximum-security colonies, inmates were held in locked cells that housed 20 to 50 people each (*Tsentr Sodeistviya Reforme Ugolovnogo Pravosydiya*, 1998).

Normally, the living quarters also included a canteen, library, school, medical unit (it could be a small hospital for 10 to 30 patients), bathing house, and headquarters for administrative officers. There were also rooms for short-term (from two to four hours) and long-term visits. In colonies of all security levels, except maximum-security colonies, there was a small fenced yard for walks that was designed to handle between 200 and 600 people (Hill, 2003). In the daytime, inmates were allowed to spend their leisure time there. As to the rest of the territory of the colony, inmates could move across it only in formed lines with the administration's permission and while wearing uniforms (women did not wear uniforms).

The internal rules in colonies did not allow inmates to keep money, their passports or other identification documents other than an inmate card, or items and products on the list of banned items. They could be searched at any time, and their letters, printed materials, packages and parcels were censored or checked (Aleksandrov, 2003).

Every colony contained units designed for different types of treatment or *regime*. General *regime* was for newcomers and inmates transferred from strict and light *regime*, light *regime* was for inmates with no disciplinary violations in the last six to twelve months, and strict *regime* was for persistent violators of the colony's internal regulations. Inmates were transferred from one treatment level to another upon the decision of the institution's commission, which might have included representatives from the local authorities. Only inmates on light *regime* were subject to conditional or early release. Also, the prison administration could permit inmates on light *regime* to live outside the colony for up to six months before the end of their terms. Inmates on strict *regime* were

held in locked cells and were released for up to an hour a day to exercise. Transferring an inmate to strict *regime* was not considered a punishment but a security procedure. Punishments included reprimand, disciplinary fine of up to two minimum monthly wages, confinement in a disciplinary cell for up to 15 days, transfer to a disciplinary unit within the colony for up to six months (up to three months for women) or transfer to a disciplinary unit in a correctional colony in another town for up to one year (for men only) (Hill, 2003).

Prisons held inmates, sentenced to imprisonment for a term exceeding five years to be served partly in prison, and who were convicted, transferred to jail for up to three years for violations in the penal colonies of general and especially strict regimes (*UIK,* S. 130).

Inmates, sentenced to imprisonment in the prisons, were locked in shared cells. Where necessary, convicts could be kept in solitary confinement. There were separate units for different groups of inmates such as those engaged in prison service, those from a less secure facility being punished or those working in production areas.

Prisons had two types of *regime*: a strict one for newcomers or persistent violators of internal regulations and a general regime for offenders who had committed no disciplinary violations or had been transferred from strict *regime* after a year spent in prison.

Convicts serving time in the general regime, were allowed limited monthly spending on food and basic necessities (up to 800 rub.); two short and two long visits during the year; two parcels and two packages for the year; an hour and a half-day-long daily walk. Walks were carried out during the day in a specially equipped open-air part of the prison. Convicts serving time on a strict regime were allowed very limited monthly spending on food and basic necessities; two short visits during the year; one parcel and one package for the year; a short one-hour-long daily walk. Walks were carried out during the day in a specially equipped open-air part of the prison. (*UIK*, S. 131)

4.3. **Problem issues**

All the examined accounts that contained passages relating to the problem stream in one way or another referred to the Russian penal system at the time of the transfer to the Ministry of Justice as a system in crisis. The majority of these accounts addressed the poor condition of the correctional facilities which were found to be "in a most dilapidated and neglected state" (Walmsley, 2005, p. 14) owing to chronic underfunding. The following excerpts provide illustrative examples.

From a lecture delivered by the then-Deputy Minister of Justice of the Russian Federation and the Chief of GUIN, Y. I. Kalinin, in November 2002, at King's College of the University of London:

> The majority of the buildings and the technical equipment needed to guard prisoners, including weapons and communications had not been appropriately maintained nor updated for decades. The situation was made worse by chronic underfunding. Over a number of years the penal system had been allocated funds from the state budget on a scale, which only covered 60 per cent of its actual requirements. Some items of expenditure, such as health care for inmates, were covered for less than 20 per cent of the required amount. During the three months prior to the transfer of the penal system to the Ministry of Justice in August 1998 no funds at all were made available from the Russia's Ministry of the Interior for the upkeep of penal institutions and agencies (2002, p. 11).

From the 2001 report of the Commissioner for human rights in the Russian Federation, the following passage is significant:

> About 60 percent of the buildings in Russian corrections were built before 1917. Another 20 percent - were built before World War II. Many of them have never been thoroughly repaired. Meanwhile, the federal program for the construction and reconstruction of the detention centers and prisons, as well as housing for staff of institutions, approved by the Government of the Russian Federation on November 3, 1994 No. 1231 was financed by less than 5 percent (Doklad, 2001, para. 403)[1].

From Bobrik et al.:

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[1] Quotation in English is the author's translation

The effects of overcrowding in detention centers were
exacerbated by the poor state of many buildings, some over a century
old. Reports on physical conditions catalogue inadequate ventilation, with
high humidity, and poor lighting. While penitentiaries had lavatories,
many pre-trial detention centers lacked flush toilets so that detainees had
to use buckets. Virtually all penitentiaries have showers or bathhouses,
but some are subject to frequent interruptions of water supply and many
have no hot water in living areas (2005, p. 7).

Even after the financial situation had somewhat improved in the early 2000s,
many colonies struggled to keep up with paying their bills as evidenced by the following
news media report. In January 2002, prison guards interfered with the efforts of the
regional energy sector workers to shut down electricity at a high-security colony in
Borovichi. The incident was caused by the institution's debts for electricity, which had
exceeded 1 million rub., and the breakdown of the negotiations for the settlement of the
debt. According to RIA "Novosti" the prison lieutenant colonel of internal forces, Igor
Pronin, gave personal orders to put gunmen at the entrance to the energy station.
According to Pronin, the colony contained more than 1,100 prisoners, most of them sick
with tuberculosis, and de-energizing the colony would have resulted in riots (RIA
Novosti, 2002).

This massive - and routinely underfunded - repressive complex contained one of
the world's largest prison populations. Since 2000, the Russian rate of imprisonment
has been second only to that of the USA. Official GUIN statistics (2003) further
highlights the magnitude of the problem: by the end of 2002, correctional facilities in
Russia housed 877,000 people (a rate of 670 per 100,000 population). It was just
slightly lower than the world's highest imprisonment rate in the USA (702 per 100,000
population) (Mauer, 2003, p. 2). This number was an improvement since the mid-1990s,
when Russia topped the world league for rates of imprisonment, but it still exceeded the
final year of the Soviet regime when the prison population stood at around 762,000
(Terrill, 2012). If we take into account the average prison terms, it appears that about
two million people remained incarcerated in any year, which would be three percent of
the working-age population (Bogdanov, 2003).

Table 1 The number of prisoners in institutions in GUIN 1993-2003

Years	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Total in thousands	772	876	929	1017	1052	1010	1014	1060	924	961	877
Total in thousands in jails	200	234	253	295	285	279	275	282	236	212	145
Total per 100,000 population	520	590	630	690	710	690	690	730	640	670	600
Total males >18 per 100,000 males in general population	1448	1677	1765	1959	2000	1930	1934	2000	1765	-	-
% of juveniles	4.3	4.3	3.9	4	3.6	3.3	3.4	3.8	3.2	3.1	2.2
Tuberculosis per 1000 inmates	-	-	48	53	71	82	97	91	91	90	98
HIV per 1000 inmates	-	-	0.008	0.013	0.023	1.44	2.3	3.9	16.3	33.6	42.4

Quantitative indicators of the overcrowding problem in Russian corrections are frequently mentioned in NGOs' reports and expert discussions. The Moscow Helsinki Group prepared a comprehensive table to illustrate the dynamics of prison population growth in Russia (see Table 1). From 1993 to 1996, the total number of inmates has grown by approximately 30%, and prisoners in jail by 50% (Abramkin, n.d.).

Statistical data were sometimes supplemented with vivid imagery and references to personal experiences. For example, consider the following excerpt from a roundtable discussion on "Reducing the prison population of Russia as a possible way of overcoming the crisis in the penal system" that described the situation in pre-trial detention centers (SIZO). Until 1998, the law stipulated a minimum living space of 2

square metres per person, which later had been raised to 4 sq. m. per person. However, even that modest standard could not be maintained – in 1998, the SIZOs were 1.7 times over capacity based on the 2 sq. m. standard.

Quoting from the roundtable transcript:

Kudrov V. N. (Ministry of Justice): This is only the first level of statistics, but if you dig even deeper into statistics, in these pre-trial detention centers in Moscow and St. Petersburg even though there are quite a lot of places, but still in such regions, they are filled in 3 times the old norms, or 5 times the new ones. But if pregnant women and women with children are taken into consideration, who are also kept separately in cells for 2 people, as a result, 120 adult male detainees may be sharing spaces designed for 40 people. […] Imagine a train during rush hour, when all seats are full, the rest are in the aisle - that's exactly how the detainees are being kept in their cells in jail, i.e., the smaller part of them sitting on their bunks, hardly anyone can lay down, the rest are standing in the aisle. If you do not see it with your own eyes, it is impossible to comprehend, and this is exactly what is happening. 90,000 people do not have their own beds, and sleep by turns, in 3 shifts[2].

Available resources were insufficient to provide for the physical survival of hundreds of thousands of prisoners, let alone to ensure compliance with the penitentiary standards guaranteed by domestic laws and international treaties. The opportunities for inmates to participate in self-improvement and rehabilitative programs, such as employment, academic, and vocational training, were further curtailed. In fact, prisoners around the country still routinely left prison and returned lacking basic skills. In addition, prisoners in overcrowded correctional systems often were placed on long waiting lists to obtain prison jobs, and some never did.

Deputy Minister of Justice of The Russian Federation, Yuri Ivanovich Kalinin, reported, in 2002:

Of the 752,000 convicted prisoners serving custodial sentences 86,000 are without employment or are only able to work part of the week. Meanwhile, for many prisoners who are not receiving material assistance from their families, the money they would earn while deprived of their liberty is their only source of income. Without work they are virtually deprived of any opportunity to acquire additional food products in their

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[2] Quotation in English is the author's translation

prison or colony and everyday personal items. They are unable to subscribe to newspapers and journals, make international telephone calls or to have access to any medical procedures over and above those that are free of charge, and so on[3].

Essentially, the effects of overcrowding and the inability to work created a vicious cycle for the inmates. The lack of work or work opportunities acknowledged by Kalinin also led to inmate idleness. Prolonged inmate idleness often results in destructive behaviour and increased violence within institutions. Moreover, idleness-related frustration has been reported to increase the incidents of interpersonal conflict and assaults in prison (Haney, 2006, p. 275).

Crowding resulted in more stress and that, in conjunction with other factors in a prison setting, further heightened the adverse effects of crowding. There have been several incidents of mass disobedience in correctional colonies across the country, some of them dramatic enough to be picked up by the national and international media serving as focusing events, which brought the existing problems of the penal system into the national spotlight.

The riot in the Kolosovka penal colony for juvenile offenders in Kaliningrad Region was caused by a group of 80 teenagers, who barricaded themselves into one of the buildings, broke windows and tried to start a fire. According to Vladimir Malenchuk, head of prisons directorate of the Russian Ministry of Justice, the organizer of the disorder was one of the inmates, who was due to be transferred to be an adult colony (Channel One TV, 2003). Another riot happened in a juvenile colony in Kazan. According to authorities, inmates were dissatisfied with the tightening of internal regulations. Approximately 50 young people during the riot started to deliberately inflict injuries on each other; eight people cut their wrists (RBK, 2003). A more troubling case had unravelled in Adygea region where a riot broke up because of a case of corporal punishment by a colony's mistress.

From a media news report, we learn that:

It happened on a May holiday, by a casual coincidence, on the jubilee of the Head for Adygea's Management for Penalty Execution. A

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[3] Quotation in English is the author's translation

colony's mistress, having flown into a fury by an inappropriate conduct of a boy, beat the teenager. The youth, who was the leader in his group, called upon his friends to revenge for the offense. Teenagers decided to beat the woman but she managed to run away. The inmates captured an employee of the guard duty, dragged him into the hostel and barricaded the doorway. Having understood that for beating a colony employee they might get another sentence, the teenagers covered the guard with a blanket and slashed their victim till he fainted. The security detachment called the police and tried to persuade the rebels to open the door and let the guard out. But the minors demanded that Adygea's President Khazret Sovmen should come to the colony. Head of the Management for execution of penalties Aliya Samogov agreed to satisfy their demands and punish the woman for corporal abuse. The teenagers warned their educators that in case if they failed to fulfill what they wanted they would cut their stomachs. The Management for execution of penalties quickly settled the situation, having fired the woman and having concealed the fact of disobedience in the colony, as it stood for the best colony in the Russian Federation[4] (Regnum, 2003).

Another riot happened in institution 244/911, a colony of strict regime in Perm region. It contained 400 inmates convicted mainly for theft and robbery. 140 of them complained that during a routine inspection a local riot police team had tortured the inmates without cause within a few days in August 2001 (NTV, 2001).

Similar events were reported to have taken place in the Petropavlovsk-Kamchatskii, Tolyatti, Kaliningrad, Novgorod, and Sverdlovsk regions. These were only the officially confirmed incidents. Given the sensitive nature and lack of transparency regarding the topic of prison riots in Russia, obtaining official records and estimates is problematic. It is possible that some incidents are never publicized. For example, the RBK news agency reported the incidence of riots among the HIV-positive inmates in the Magnitogorsk colonies. To suppress the riots in Magnitogorsk, a detachment of riot police was urgently sent in. The news about the riots was obtained through unofficial channels: through the inmates' relatives. However, the correctional officials denied any accounts of the disorderly conduct. Meanwhile, families have been prohibited from meeting prisoners. Their requests to clarify the information remained unanswered (UralPolit.RU, 2003).

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[4] Quotation in English is the author's translation

The shortages combined with severe overcrowding affected every part of the system, including nutrition, prison health care, sanitation and hygiene leading to further problems such as the development of the epidemic of tuberculosis and HIV in prisons. As is often the case everywhere else, in both rich and poor countries, prison inmates were drawn primarily from the poor and the marginalized, often already in poor health, and thus highly vulnerable to health risks. That has added yet another critical dimension to the problem stream and was mentioned in several of the examined accounts. For example, the Moscow Helsinki Group presented a detailed account of the tuberculosis situation in Russian prisons in 2003. The first mention of the issue dated back to 1991 when the incidence of tuberculosis in prisons was 17 times, and the mortality rate 8 times higher than in the general population (Abramkin, n.d.). Those alarming figures remained out of the spotlight for a while. The federal program aimed at fighting tuberculosis initially did not even include correctional facilities. In 1993, the number of inmates with tuberculosis increased to 35,000 people (45 per 1,000 people). By 1999, the number of tuberculosis patients in prisons had reached record levels – 9.7%: the incidence of tuberculosis was 58 times, and the mortality – 28 times, higher than in the general population.

The topic of tuberculosis in Russian prisons has been actively discussed in the academic community as well (See, Bubochkin, 1995; Russkih & Polushkina, 1998; Vezhnina et al., 1999; Anohin et al., 2000; Kankov, 2002; Nechaeva, 2000; Barnashov et al., 2002; Rybkina & Belov, 1993). The recurring themes in all the examined publications were the exceptionally high incidence of tuberculosis, low cure rates and high mortality in penal institutions compared to the population at large.

Additionally since the mid-1990s, a lack of funds, as well as the constant movement of prisoners from one institution to another, resulted in the emergence and rapid spread of multi-drug-resistant tuberculosis (MDR-TB). The problem of rapidly spreading MDR-TB in prisons was brought into the spotlight when international organizations had conducted extensive microbiological investigations in Russian jails and prisons. This strain of the disease was then diagnosed in 25-30% of tuberculosis patients in prisons. Rates seemed to vary considerably between regions, with one study in Orel reporting a rate of multi-drug resistance of 12%, although this was still twice as high as in the general population in that region (Spradling et al., 2002). Drobniewski et

al. (2002) reported "rifampicin resistance in 80% of isolates from a sample of Russian prisons," while another study reported rates of multi-drug resistance in 34% of new cases and 55% of previously treated cases (Toungoussova et al., 2003 as cited in Bobrik et al., 2005). The situation is further complicated because of the HIV crisis in Russian corrections. HIV infection provokes a rapid development of multi-drug-resistant tuberculosis. Moreover, in HIV-infected patients, tuberculosis often develops in an asymptomatic, undetectable form.

The number of prisoners with HIV/AIDS was growing as well. HIV cases in Russia were first officially registered in 1987. By the mid-1990s, there were approximately 1,000 HIV cases recorded (Frost & Tchertkov, 2002, p. 7). In 2001, there were over 103,000 cases (Frost & Tchertkov, 2002, p. 7): among them were 36,000 HIV-positive prisoners. By November 2001, the total number had risen to 160,970 (Frost & Tchertkov, 2002, p. 7) and an approximately 15-20 per cent of all registered patients were inmates (Alexandrova, 2003). Although as difficult as it could be to prove that the majority of HIV infections found among prisoners had actually occurred in prisons, there is sufficient evidence to conclude that prisons in general should be considered environments that increase the risks of disease transmission (Frost & Tchertkov, 2002).

As reported by Frost & Tchertkov (2002), over 90% of HIV infections in Russia were attributed to injection drug use. The number of drug-dependent persons within the penal system was also growing. More than 102,000 prisoners have been registered as drug users by the psychiatrists specializing in substance misuse and who were working in the penal system (Kalinin, 2002). Most of these prisoners were obliged to undergo treatment as laid down in the *Criminal Code* of the Russian Federation. In recent years, the number of people whom courts have obliged to undergo this treatment has been constantly on the increase, yet the overstretched correctional system in Russia was unable to keep up with increasing demands in treatment services. Besides, apart from those whom the courts oblige to receive treatment, the system itself is constantly identifying drug addiction among various other prisoners who are already serving their sentences in custody. The number of such individuals was also on the increase. While, in 1998, approximately 30,000 such prisoners were identified, in 2001, the number was over 47,000 and, in the first six months of 2002, it was already more than 35,000 (Kalinin, 2002). The number of injection-drug users and the local practice of mixing

drugs with blood facilitate the spread of blood-borne viruses, as does the high rate of unprotected sexual intercourse. The potential for HIV infection to overlap with tuberculosis is heightened within prison environments.

In the early 2000s, despite a certain improvement in the level of the penal system's financing, the state of the system still did not allow it to carry out its core functions. It also has created new problems outside of the system itself, such as increasing criminalization and a deteriorating epidemiological situation. Prison overcrowding was often perceived as being at the roots of the majority of problem issues in the corrections system in Russia. Annual reports on the activities of the Commissioner on Human Rights of the Russian Federation in 1999, 2000, 2001 serve as illustrative examples.

In the special section of the 2001 report "On the violation of civil employees of the Ministry of Internal Affairs of the Russian Federation and the penitentiary system of the Ministry of Justice of the Russian Federation", the following passage appears:

> Budget financing of the correctional system in 2001 was increased almost twice. However, due to overcrowding of the system has still not solved many problems in ensuring the rights of convicted persons and detainees. Among them - the right to work on material for residential and medical care, providing food, basic necessities, medicines and others[5].

The Commissioner also attributed the overflow of prisoners to harsh sentencing practices in Russia, blaming the courts for imposing unduly long sentences in criminal cases:

> The tendency to increase the number of convicts suggests that the judicial practice continues to focus on the application of the most severe forms of criminal punishment especially imprisonment. For example, during a visit to the detention center in Yoshkar-Ola, the Commissioner for Human Rights in the Russian Federation and the Chairman of the Moscow Helsinki Group L. M. Alekseeva drew attention to citizen Z., who was convicted for stealing a watch worth 2700 rub. (approximately $100), and sentenced to four and a half years in prison. As it turned out, that woman had six children, including two adopted.

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[5] Quotation in English is the author's translation

Theft was a consequence of the fact that she could not earn enough money to feed them.

Previously convicted T. stole a block of chewing gum from the market stalls worth 80 rub. [less than $4]; he was sentenced to imprisonment for a term of nine years in the colonies of special regime, with confiscation of property. The superior courts, having considered the petitions of the Commissioner in the exercise of supervision of these criminal cases, did not find grounds for a protest and change of penalties[6].

The Moscow Center for Prison Reform (MCPR), also directly attributed the failures of the system to comply with national and international standards to prison overcrowding:

The situation regarding medical care for tuberculosis patients, as it has shaped out in the penal system's institutions, is assessed as extremely tense. Every year from 35 to 40 thousand convicts contract tuberculosis for the first time and some 30 thousand tuberculosis patients enter pre-trial detention centers. The medical institutions of the penal system are overcrowded and lack normal conditions for maintaining the patients; requirements for feeding, medicines and medical equipment are met by only 20-25 percent. Because of the shortage of places in stationary tuberculosis institutions about 15 thousand tuberculosis patients are maintained in isolated sectors of corrective institutions, and some 2,000 — among healthy convicts. Medical service for detainees and prisoners did not comply with international and national standards of medical service in penal institutions. About 95% of medical institutions were situated in unsuitable buildings; due to lack of space it was impossible to open necessary laboratories and departments. Medical personnel were unable to make correct diagnosis and treat without modern equipment. For these reasons, planned operations were postponed in many hospitals. It was more difficult to render qualified medical help due to the insufficient number of medical staff with 75% more doctors needed[7] (MCPR, 1998).

4.4. **Conclusion**

This chapter described the findings related to the problem stream domain. Regularly reported indicators, crises/focusing events, and policy feedback drive the problem stream. Documentary content analysis of these sources revealed that,

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[6] Quotation in English is the author's translation

[7] Quotation in English is the author's translation

throughout the 1990s and early 2000s, several critical issues formed the problem stream:

First, up until the early 2000s, the Russian penitentiary complex continued to suffer from chronic underfunding when allocated budget funds only covered 60 per cent of its actual requirements.

Second, the majority of corrections facilities were in poor state and required urgent upgrades and repairs, yet available resources were insufficient even to provide for the physical survival of hundreds of thousands of prisoners.

Third, incidents of mass disobedience, destructive behaviour and increased violence within institutions were common occurrences in prisons and correctional colonies across the country.

Fourth, the poor state of prison health care, sanitation and hygiene led to the epidemics of tuberculosis and HIV in prisons.

Fifth, the Russian penal system contained one of the world's largest prison population. Prison overcrowding was perceived as a root cause or contributing factor to the above mentioned negative traits that characterized the system. Overpopulation itself was attributed to excessively severe sentencing practices.

According to Kingdon (2010), within the problem stream, focusing events and crises when attached to a pre-existing problem can often act as a catalyst for a further re-defining of the problem. However, in this case it is hardly possible to identify a single focusing event, which alone would have propelled prison overcrowding into the governmental agenda. The examined discourse revealed that all sources were instrumental to creating the overriding impression of a correctional system which remained in the state of despair and unable to carry out its core tasks, becoming a severe burden for the state budget and, at the same time, served to discredit the state administration in the eyes of the population at large. System indicators, feedback, and local crises were used in the examined accounts of problematic conditions in the country's penal complex to draw attention to the dire state of the Russian penitentiary as a system that massively overused imprisonment to an extent that it became impossible

to afford. In other words, altogether they shaped a process stream presenting a penal

policy problem in need of urgent solutions.

5. Policy Stream

5.1. Introduction

Kingdon (2010) defined the policy stream as a "primeval soup" of all the existing policy alternatives that could be potentially used to address a selected policy problem. Any of these policy ideas could become an integral part of an adopted policy solution, given that it successfully matches the three survival criteria: technical feasibility, value acceptability, and anticipation of future constraints. The first criterion relates to the practicality of the idea; whether or not the solution will work once adopted. The second test requires that the policy community at large can accept the solution. Finally, the policy alternative should take into consideration possible future constraints such as budget constraints and public acceptance. Rarely, a policy proposal can automatically pass all the above-mentioned tests. Usually it is a result of a long process of "softening up" that accentuates the key features of the proposal to make it seem acceptable.

In this dissertation, the policy stream is described through the examination of the various approaches that were contemplated as potential solutions for the overpopulation crisis in Russian corrections that has continued to escalate since the 1990s. Several mechanisms to bring down the prison population will be discussed, starting with the traditional *ad hoc* approach rooted in the Soviet practice of executive clemencies, following with the mix of ideas revolving around the use of non-custodial sanctions that surfaced in the 1990s, and concluding with the ideas that have actually taken the form of the *Criminal Code* amendments in 2003.

5.2. *Ad hoc* solutions

Traditionally, the Russian government has regulated prison population growth mainly through two mechanisms: by declaring periodic amnesties and, to a lesser extent, by granting individual pardons. Both methods were deeply rooted in the Soviet practice of executive clemencies. Zile (1976) reported over 180 instances of clemency since the birth of the Soviet state in 1917. The modern Russia, facing an unprecedented surge in crime and prison population, initially resorted to familiar means. Between 1994 and 2000, the State Duma announced seven amnesties. The Russian state struggled to keep up with the ever-increasing numbers of inmates. In 1997, Russian prisons were scheduled to release about 40,000 inmates (The Times, 1997). Alexander Zubkov, Deputy Director of Correctional Services, reported that, in 1998 alone, the prison population grew by nearly 60 percent, undermining the effects of an earlier amnesty for 15,000 prisoners. In February 1999, he proposed freeing 94,000 of the nation's 1 million prisoners. In July 1999, the Justice Minister announced a plan to release as many as 300,000 inmates over the next 18 months (The Associated Press, 1999). The amnesty that was announced a year later, in 2000, has reportedly triggered the release of approximately 150,000 inmates from prisons and 50,000 from pre-trial detention centres (Foglesong, 2001, p. 113). This massive release was followed by yet another amnesty in November 2001.

Each amnesty addressed categories of unnamed persons and of indeterminate size by describing them in terms of general characteristics, usually targeting specific categories of offenders deemed worthy of mercy. For example, the 2001 amnesty targeted juvenile and female offenders. The Act covered various categories of women who had not committed an offence punishable by more than six years in prison: pregnant, disabled, elderly (over 50 years of age), single mothers, wives of disabled war veterans, or widows whose husbands perished in defence of the homeland. Other eligible categories included women who had served at least half of their sentence and had no prior custodial sentences. The Act of amnesty also applied to all juveniles who had not committed an offence punishable by more than six years in prison and to juveniles who had committed more serious offences but who had already served either half or one-third of their sentences (depending on the category of crime). As is often the

case, the amnesty contained the traditional restrictions. It excluded serious offenders, dangerous recidivists and ill-behaving inmates. Nevertheless, it appeared that large numbers of women and juveniles could potentially be released. The Ministry of Justice estimated that the amnesty would cover 10,000 juveniles and 14,000 women (RBC, 2001). Given that, as of December 1, 2001, 45,900 women and 18,900 juveniles were in custody, the estimated release would have accounted for 37 percent of the population of incarcerated women and children.

Amnesties, however, rarely reached their estimated targets. The consideration of conduct, for example, often gives the penal authorities, responsible for final decisions in individual cases, wide discretion in applying the amnesty statutes. The Ministry of Justice suggested that the 1999 amnesty would reduce the number of prisoners by 94,000. Yet, less than a quarter of them were released (Foglesong, 2001, p. 114). Besides, despite their decade-long record of being essentially the only regulator of the prison population in Russia, amnesties rarely target exclusively offenders sentenced to incarceration. In fact, amnesties usually release more persons sentenced to any form of punishment other than deprivation of liberty. Given that amnesties typically target offenders serving sentences for less serious crimes, often it appears that the majority of those "amnestied" are people on probation. For example, the 1997 amnesty was designed to affect about 400,000 people, yet only one tenth were to be actually released from prisons (The Times, 1997). The vast majority of the amnestied were on probation or parole.

Pardons, granted under the auspices of the President, have long provided another - albeit less effective - mechanism to reduce the prison population in Russia. Under the provisions of the 1993 Constitution, a special institution for the administration of pardon policy within the executive has been set up - the Presidential Commission on Pardon. While amnesties do not refer to any specific individuals, pardons, on the contrary, focus on the conduct of the individual or individuals in question. In its classical definition, "pardon represents an act of freeing one or more precisely described, concrete persons from punishment or criminal prosecution, of mitigating their punishment, or of expunging their criminal records" (Romashkin as cited in Zile, 1976, 38). Previously, the power to pardon was vested in the Supreme Soviet. Yeltsin staffed his commission with liberal intellectuals, well-known writers, journalists, human rights

activists, and former prisoners. The Commission was criticized for the lack of transparency of its proceedings. Since its foundation, the Commission has rarely produced annual reports, describing its procedures and decisions. Limited insight into the work of the Commission could be gained primarily through the analysis of public statements and interviews given by its members. Although pardon by its definition should be tied to the exemplary conduct of the guilty persons following their conviction, the late Russian practice seemed to confirm that it was yet another option to release prisoners *en masse*. Reportedly, it was not uncommon to see more than 300 cases being handled during one session. The volume of pardons became so great that the commission served, in effect, as a regulator of the prison population. Between 1995 and 2000, at least 25,000 people were released from prison by Presidential pardon. The number of pardons doubled in the period 1997-2000—that is, in the years during which prison overcrowding became most acute. According to Anatoliy Pristavkin, who served as a head of Commission in the preceding decade, it has pardoned 57,000 people (RIA Novosti, 2002). The Commission itself mentioned that, between January and August of 2000 alone, nearly 12,000 individuals received pardons (AFP, 2001). Valeriy Borshchov, a member of the Moscow Helsinki Group and an expert from the Office of the Ombudsman on Human Rights in the Russian Federation, reported in 2009 at the EU-Russia Forum, that the abolished Clemency Commission "used to make positive decisions on 10,000-12,000 convicts annually" (Borshchov, 2009, p. 12). Although some members of the commission approached their work as a way of retroactively mitigating excessive sentences, it appears that pardons have often been applied indiscriminately to whole groups and classes of offenders. The new Presidential Administration viewed the Commission as having been too lenient in their evaluation of the prisoners whom they recommend for release and this reappraisal of the Commission's operation eventually led to an informal moratorium on pardons in September 2000 and, shortly thereafter, the dismemberment of the "*apparat*" of the Commission, effectively stopping its work. For a year, Pristavkin lobbied fitfully, and ultimately unsuccessfully, for the resurrection of the Commission. In December 2001, Putin issued a decree disbanding the Commission and ordered the creation of regional commissions in each of Russia's 89 regions under the direction of local governors. The newly designed commissions were to be made up of unpaid members "enjoying the respect of the community and having an impeccable reputation" (The Moscow Times, 2002). They were supposed to review applications and

make "recommendations" to the governor, who then could publish the names of prisoners seeking pardons and forward them to the President for consideration. Decisions to pardon, as well as the deliberations and recommendations of the regional commissions, are to be made public.

The regional commissions have immediately produced a dramatic change in pardon practices, effectively shutting it down as an alternative technique to curb prison population growth. As early as spring 2002, it became clear that the rate of recommendations for release produced by the regional commissions was markedly low compared to their predecessor's practices.

Foglesong wrote:

> … a report from Novgorod indicated that, of 13 applications considered at the first meeting of the regional pardon commission, not one prisoner was recommended for release. The first meeting of the commission in Saratov yielded positive recommendations for two of 21 petitions. An interim report in March found that, in only 14 of 148 cases, were prisoners recommended for release (2002, p. 7).

The change in pardon practices could have been initially attributed to the novelty of the commissions, and the promised transparency of their deliberations, which would result in closer public, and especially journalistic, scrutiny. The fact that their decisions must be published could have made the commissions more cautious about granting pardons in closely debated cases. However, a more plausible explanation seemed to be that the conservatism of the new commissions was to be expected and was clearly aimed for, given the more-than-clear messages sent by the Putin Administration. Almost since the beginning of his presidency in 2000, Putin has been reluctant to grant pardons. According to Pristavkin, since August 2000 "only nine people had been released under pardon <…> out of 3,000 cases <the Commission> had recommended," compared to tens of thousands the year earlier (AFP, 2001). A few months prior to the abolition of the Commission, it had been subjected to harsh criticism from the Presidential Administration for its excessive liberalism. The President also sent one of his deputy chiefs of staff to a Ministry of Justice meeting in order to warn against the "uncontrolled release" of prisoners. The Ministry of Justice, which endured great criticism in the wake of the abolition of the Presidential Commission on Pardon, had at that point an extra

incentive to be very cautious about promoting pardons as an organizational tool by which to shape the penal policy.

Shifting responsibility for making recommendations for pardons to the regions indicated that this mechanism was no longer consistent with the dominant value-based system of the penal policy-makers: neither was it a feasible solution. A loosely controlled liberal pardon policy might seem to be in-line with the federal government's objectives since the federal government alone was responsible for financing prisons and hence had a fiscal interest in reducing the prison population. In practice, however, it placed all the burden of costs of post-release treatment of prisoners on local governments at a time when those services were not funded and the vast majority of the Russian regions lived off the federal transfers. In short, continuing the liberal pardon policy, in the form in which had existed in the 1990s, would in essence be contrary to the national fiscal interests.

Neither amnesties nor pardons could be considered feasible solutions to the problem of prison overcrowding especially when juxtaposed with the mere scale of it. Russia's Justice Minister announced that the goal should be to reduce the prison population by one-third. "About 300,000 to 350,000 prisoners in pre-trial detention centres, penal colonies and prisons needed to be released", Chaika told the Interfax news agency (Associated Press, 2001). More sustainable solutions were sought.

5.3. **Contemplating a lasting policy alternative**

5.3.1. *Non-custodial penalties*

The terms, 'prison alternatives' and 'non-custodial penalties', often used interchangeably to reflect the common characteristic of an array of sanctions that are executed outside the prison realm, have long been part of the penal policy discourse. The emergence of interest in these concepts coincided with the massive increase in prison population and expenditure in virtually all Western countries. Coupled with the generally worsening economic climate in the 1970s, it led to a broad recognition of the need for new sanctions. The consensus was reflected in Resolution 76 (10) adopted by

the Committee of Ministers of the Council of Europe on 'Some Alternative Penal Measures to Imprisonment'. Based on the available research at the period, it was concluded that imprisonment has a higher unit cost than almost any alternative measure of punishment, while non-custodial sanctions were deemed to be far more cost-effective (Sevdiren, 2011, p. 31). During the course of the 1970s, a wide variety of alternative penalties and measures began to be introduced. These new sanctions and measures included the conditional dismissal of cases at the prosecution stage; sanctions of restricting and withdrawing rights, compensation and notably public work at the sentencing stage, and intermittent custody and house arrest at the execution stage (Rentzmann and Robert, 1986).

The use of non-custodial sanctions and measures has become a key element of prison reform efforts, both at the national and international levels. In 1980, the VI Congress of the United Nations on Crime Prevention and Criminal Justice adopted Resolution No. 8, recommending its members to expand the use of alternative sanctions and to actively search for new types of alternative punishments. In 1985, the VII Congress of the United Nations called for a reduction in the number of persons sentenced to imprisonment and for increased use of alternative measures of criminal punishment (resolution number 16) (United Nations, 1999).

The United Nations Office on Drugs and Crime emphasized the role of prison alternatives in national penal policies:

> While building new prisons can temporarily decrease overcrowding, practice shows that trying to overcome the harmful effects of prison overcrowding through the construction of new prisons does not provide a sustainable solution. In addition, building new prisons and maintaining them is expensive, putting pressure on valuable resources. Instead, numerous international instruments recommend a rationalization in sentencing policy, including the wider use of alternatives to prison, aiming to reduce the number of people being isolated from society for long periods (2012, para. 20).

In Russia these ideas have been incorporated in the *Criminal Code* enacted on January 1, 1997. It brought a larger number of alternative punishments, increased the range of their application and offered better legal regulation for their implementation. International recommendations on alternative measures and sanctions to imprisonment

were also taken into account. Article 44 of the *Criminal Code* listed ten types of non-custodial punishment. To a certain extent, some of them have been applied in the past in Russia (like fines, deprivation of the right to occupy certain positions, disqualification, corrective labour[8]), but others were new to the Russian criminal legislation (compulsory works[9] similar to community service, deprivation of a special and military rank or honorary title, class rank and of government decorations, limitation of freedom[10], arrest[11]).

Even during the discussion and adoption of the *Code,* it was clear that the introduction of such punishments as compulsory works, limitation of freedom and arrest would require substantial budget allocations. For this reason, the federal law enacting the *Criminal Code* included a provisional section, maintaining that the new types of punishment would be enforced as soon as the necessary conditions were established, but not later than 2001. That deadline was defined arbitrarily, without any social and economic substantiation, without any programs or plans, so the enforcement of new punishments within the fixed period did not take place. On December 13, 2001, the State Duma passed Federal Law No. 4, further delaying the enforcement of compulsory works by 2004, limitation of freedom by 2005, and arrest by 2006.

Delays in enforcement of the alternative sanctions had a negative impact on the implementation of the criminal policy as a whole. Since originally the system of criminal sanctions was developed with the assumption that all types of punishments would be applied, such a prolonged deferral of their implementation undermined the internal logic of the sanctioning system and resulted in the general loss of its efficiency. For example, the Criminal Code (Articles 46, 50) stated that, in case of continuous avoidance of payment, a fine could be replaced by compulsory works or arrest; and in the case of

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[8] Convicts who have no permanent employment are assigned work by the relevant authorities at their place of residence

[9] Convicts who have a permanent place of work and residence are to perform work for the benefit of the community in their free time

[10] Limitation of freedom or restricted liberty consists of the maintenance of a convicted person in a special institution without isolation from the society during the supervision over him.

[11] Arrest consists of the maintenance of a convicted person in conditions of strict isolation from society, and shall be imposed for a term of one to six months.

continuous evasion of corrective work, the remaining serving time could be replaced proportionally by a limitation of freedom. Besides, the system of sanctions in the Special Part of the *Criminal Code* also assumed the existence of compulsory works, limitation of freedom, and arrest as punitive measures. These punishments, particularly limitation of freedom, were aimed to be alternatives to imprisonment. The lack of possible alternatives limited the courts' choice of sanctions and forced them to disproportionately rely on imprisonment. Sentencing practice at the time reflected a disturbing trend. In 1997—2000, the proportion of sentences with non-confinement punishments diminished gradually (59.4% in 1997, 56.5% in 1998, 58.3% in 1999, and 51.3% in 2000). Only in 2001, some increase was observed — up to 59.9%, which is only 0.5% more than in 1997 (Moscow Helsinki Group, 2002).

It should be noted, however, that probation[12] was dominating among those measures (in 2001, it constituted 54.9% of non-custodial measures). Yet, probation was a conditional sentence (Article 73) and not a criminal punishment as such, but rather an exemption from punishment. The actual non-custodial sentences made up only 5%. In 1997, deprivation of the right to occupy certain positions, or disqualification, was applied to 3000 people (0.3%) as an additional sentence and to 80 convicts (0.008%) as a main punishment. In 2001, these measures were imposed as an additional punishment in 200 cases (0.01%) but they were never imposed as the main sentence. In 1997, fines were applied to 79,800 persons (7.9% of all convicts) and in 2001, to 73,200 persons (5.9%) (Moscow Helsinki Group, 2002).

As a result, in the first five years since the enactment of the *Criminal Code* the proportion of custodial sentences remained virtually unchanged. While, in 1997, imprisonment was applied to 32.7% of all convicts, in 2001, the corresponding figure was 29.6%. However, taking into account the growth of the total number of convicts (from 1, 013, 400 in 1997 to 1, 233, 700 in 2001), the absolute number of persons sentenced to imprisonment did not go down but increased by nearly 34, 000 persons — from 331,000 in 1997 to 364,900 in 2001) (Moscow Helsinki Group, 2002).

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[12] Probation or conditional sentence, conditional conviction (*uslovnoey osyzhdenie)* is not categorized as a criminal punishment in Russian criminal law doctrine.

These concerns reached the top official level and were expressed in the Address of the President to the Federal Assembly of the Russian Federation on April 18, 2002, where Putin stated:

> And finally, it is extremely important to humanize the criminal law and punishment system. Today, in essence minor crimes mandate the same penalties as the grave ones. This does not reduce crime and people just become embittered. In the meantime, under current law, the courts have the option to use fines and other, more humane types of sanctions instead of imprisonment. However, they rarely use these options. I believe that the application of penalties not involving deprivation of liberty - where, of course, it is justified, where there is a reason for it - should be our default legal practice. Our main goal - and this we have said many times, all this is well known - to achieve the inevitability of punishment, not its excessive severity (Poslanie, 2002).

Similarly, top officials in the Ministry of Justice started calling for a wide use of non-custodial sentences.

The Deputy Minister and the Head of GUIN Kalinin stated that:

> Some alternatives to deprivation of liberty which are provided for in the Criminal Code, in particular, compulsory work, restricted liberty and "arrest" (that is, short sentences of between 2-6 months of the short-sharp-shock variety), have not yet been implemented...On 10 January 2002 President Putin signed Federal Law No. 4-FZ, according to which punishments in the form of compulsory work will come into effect no later than 2004, of restricted liberty no later than 2005, and of "arrest" no later than 2006 (2002).

The Commissioner on Human Rights argued that there was no need to even pass the *Criminal Code* amendments in order to shift penal policy towards greater use of prison alternatives. He reminded his audience that:

> It would be sufficient to execute the law currently in force, since the Criminal Code has already provided for such alternatives to prison as compulsory work or restriction of freedom, and as an alternative to lengthy terms of imprisonment - a penalty of arrest. In accordance with federal law "On introduction of the Criminal Code of the Russian Federation" (Article 4) and "On introduction of the Penal Code of the Russian Federation" (Article 5), the provisions on penalties in the form of compulsory work, restriction of freedom, and arrest should be administered by a separate federal law as the necessary conditions for the execution of these penalties, but no later than 2001.

Both national and international NGOs were among the policy actors involved in the extensive efforts of softening up. Since September 2000, Penal Reform International (PRI) had been running a pilot project, entitled "Alternatives to the Imprisonment in the Russian Federation" aimed to cut down on imprisonment by wider and more efficient application of alternative sanctions.

The project was carried out in cooperation with the Chief Department for Penalty Execution (GUIN), a number of educational institutions, regional departments of punishment enforcement and public organizations. The Office of Eastern Europe and Central Asia of the UK Department of International Development provided financial support for the project.

Among the first regions to test the proposed initiative were Tomsk, Ryazan and Samara, followed by six more regions in 2002 - Novosibirsk, Kemerovo, Saratov, Nizhniy Novgorod, Oryol and Kaluga.

Under the guidance from Chief Department for Penalty Execution (GUIN), at the edge of 2000—2001, regional enforcement inspectorates together with educational institutions (Academy of Law and Management in Ryazan, Juridical Institute in Tomsk State University, Samara Juridical Institute) studied the regulatory, organizational and psychological aspects pertaining to the activities of enforcement inspectorates. Alterations were introduced into the regulatory acts, new mechanisms of work related to the functioning of the enforcement inspectorates and to the psychology of employees were proposed. Nine months of studies resulted in two books, one combining all existing regulatory acts, the other one presenting results of studies and new ideas. The books were distributed to all the enforcement inspectorates in Russia.

After a study of the regulatory framework, the conclusion was reached that compulsory (public) works can be used with the potential provided by current *Criminal Code* and *Criminal Implementation Code* (Paragraph 5, Article 73 of the *Criminal Code*) as a specific condition of probation "if their execution contributes to the correction" of the convict. In this case, they are called "free (non-paid) works in public interest" and are regarded as a duty rather than a punishment. In Tomsk and Saratov regions, where this ongoing experiment was started, several dozens of such sentences have been enforced.

Work done by convicts for the municipality included the cleaning of territories, repairs, construction work, etc.

The proposed solutions did not fully meet Kingdon's survival criteria for a successful policy alternative, primarily technical feasibility and value acceptability.

The implementation of alternative punishments would require increasing expenditures for the strengthening of enforcement infrastructure. At the same time, allocations to the local authorities would have to be increased, as they have to provide jobs to convicts as stated in Paragraph 1, Article 25 of the *Criminal Implementation Code.* Enforcement of the suggested alternatives to imprisonment would become the responsibility of the enforcement inspectorates. The inadequacy of these inspectorates was one of the main obstacles on the path to widening the application of alternative punishments. The inspectorates lacked the resources and trained specialists required to fully implement the proposed solution. None of the educational institutions in the penitentiary system trained specialists directly for the enforcement inspectorates. At the time, the existing workload per employee in the inspectorates had already exceeded the "acceptable" level at least twofold. Enforcement inspectorates were under-equipped, lacked motor vehicles and adequate office space. The new solutions would require a substantial administrative effort to set up correctional centres across the country, raising the social status of the enforcement inspectorates' staff, developing educational programs for the training, retraining and upgrading the qualifications of corrective centres' staff, recruiting of tutors and psychologists, and establishing liaison with municipal employment agencies, educational institutions and other stakeholders.

The new alternatives also were seemingly at odds with the dominating public views on crime and punishment in Russia. The relationship between the penal system and Russian cultural norms has been carefully studied by Seliverstov (1997). He concluded that:

> Because of historically established social, political and ideological traditions and moral norms, forming the basis of Russian legal praxis, the use of imprisonment has been considered the most efficient response of society to a committed crime. To pass an alternative non-custodial sentence, for instance to impose a fine, is in everyday Russian thinking, as research shows, identified as releasing the offender from punishment. (As cited in Roberts and Hough, 2002, p. 107).

The attitude of judges and attorneys towards non-custodial penalties was dubious too, reflecting the view of the Russian public at large.

These constraints were in fact recognized and addressed in the above-mentioned PRI pilot project. It proposed the education and training of specialists and existing staff for the enforcement agencies:

> During the two years of the project, training sessions for the staff of enforcement inspectorates were carried out in all pilot regions. They covered different aspects of alternative punishments, starting from the relevant international standards and resolution of conflicts inside the enforcement inspectorates and between the inspectors and the convicts. The training program was very practical and directly linked to the everyday work of an inspector[13] (Moscow Helsinki Group, 2002).

PRI coupled these efforts with a media campaign to raise public awareness and acceptance of alternative sanctions. It designed and carried out workshops for regional journalists in an effort to attract local mass media attention and to recruit them in advocacy for non-custodial punishments. These workshops familiarized the targeted audience with the appropriate terminology and explained the essence of prison diversion as well as its various forms. Additionally, since the beginning of the project, it organized two international conferences, several working meetings and regional missions. A media campaign was launched in partnership with the Fund of Independent Radio-Broadcasting (FIR) and the Agency of Social Information (ASI). ASI news banners featuring information on the project were sent to all central and regional print media. FIR arranged broadcasts on Radio Rossii featuring the advantages of alternative sanctions, which included interviews with the project staff, judges, attorneys, inspectors and inmates. During PRI's missions to the regions, press conferences and round tables were organised for representatives of local authorities, judges and the public at large. Extensive information on the project was provided on the Internet.

Although the urgency of the problem faced by the Russian correctional complex required immediate solutions, the examined policy stream revealed a preference for a more systemic and lasting approach. Alternative sanctions had the long-term potential to ease prison overpopulation and combined with other measures could also address the

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[13] Quotation in English is the author's translation

urgency of the crises in the short term. Given the existing fiscal, administrative and value constraints, it was debatable whether non-custodial sanctions as a stand-alone policy alternative at the time could be considered a feasible and acceptable solution. Its proponents recognized these concerns and articulated the need to address them in their proposals. Their softening up efforts to advance non-custodial measures as a viable penal policy alternative could be considered instrumental to pushing the systemic solutions to prison overcrowding to the forefront of the penal policy agenda. Ultimately, the systemic approach has prevailed as becomes evident from the analysis of the 2003 *Criminal Code* amendments that follows.

5.3.2. *The Criminal Code amendments of December 8, 2003*

On November 21, 2003, the State Duma of the Federal Assembly of the Russian Federation adopted the Russian Federation Federal Law, *On Amendments to the Criminal Code of the Russian Federation.* The law was introduced by the President and has become known as the "Presidential amendments." The law was approved by the Council of Federation on November 26, 2003 and signed by the President of Russia on December 8, 2003. Amendments to the *Criminal Code* of the Russian Federation officially came into effect on December 16, 2003, when they were published in "Rossiyskaya Gazeta".

The amendments were few in number but so substantial in scope that it would perhaps be more appropriate to speak about a new edition of the Russian *Criminal Code*. Their stated purpose was to "humanize" the Russian system of sanctions and sentencing by decriminalizing less serious offences, reducing the severity of sanctions, and introducing alternatives to imprisonment.

The Russian *Criminal Code* consists of two parts: a General Part, containing general principles of criminal liability and sentencing, and a Special Part, listing various offences and sanctions. The Presidential amendments affected both of them.

Major conceptual changes and additions were made to the General Part of the *Criminal Code*. These included a complete overhaul of the *Criminal Code* sections on

the plurality of offences[14]. Article 16 of the *Criminal Code* called "Repeated offences" has been removed in full. Consequently, the commission of two or more crimes provided for in a single article or part of articles of the *Criminal Code*, ceased to be an aggravating circumstance, which would have otherwise allowed it to be considered a crime of a more serious nature and, thereby attract a more severe punishment.

The amendments also substantially tightened the provisions of Article 18, which defines "recidivism" in terms of the repetition of any criminal behaviour by someone with a record of a previous conviction and provides for harsher sentencing rules if the defendant has a criminal record. The new version of Article 18 narrowed the grounds for the recognition of the prior criminal record of dangerous or highly dangerous recidivists, provided a significant reduction in the minimum threshold for penalties for all types of recidivism and gave courts more discretion to take into account mitigating circumstances that would result in the imposition of more lenient sentences for any kind of recidivism. Article 68 that outlined sentencing rules in cases of recidivism has also been changed. After the amendments, it was the law that a criminal record in itself should not play a crucial role in sentencing, and the number of previously committed crimes should not be taken into account at all. Only the specific nature and seriousness of a newly committed crime, as well as the assessment of the circumstances that prevented re-socialization of an offender, could justify a harsh sentence. The last condition must, according to its literal meaning, orient the courts, to consider alternatives to imprisonment.

These changes, together with the changes made in specific articles of the *Code,* were aimed at helping to reduce the number of habitual petty thieves and other minor criminals assigned to strict regime camps designed for violent offenders.

Another notable change in the general provisions of the *Criminal Code* was redefining the bounds of self-defence. The notion of self-defence is one of the circumstances excluding criminal liability in Russian criminal law. According to it, when

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[14] Plurality of offences (*mnozhestvennost prestupleniy*) is a concept in Russian criminal law that does not have a direct equivalent in Canadian criminal law. It refers to a general category that captures the notions of concurrence of offences (i.e., a single conduct may be constituting several offences, e.g., arson and homicide), recidivism (special type of plural offences which implies an offender has been previously sentenced for a similar offence) and repeated offences (two or more offences conducted by the same offender who has not been yet sentenced for any of those, e.g., two robberies, two homicides, etc.).

an attacking person is harmed in the state of self-defence, it is not considered a crime if a defending person has acted within the limits prescribed in Article 37 of the *Criminal Code*. The amendments added a new point 2.1 in Article 37, expanding not only the scope of the defence but also the grounds for excluding criminal liability.

One of the primary goals of the 2003 amendments was to reduce or limit the imposition of prison sentences. To achieve it, the most broadly applicable change made by the amendments was not only a reduction in available prison sentences, but rather a significant restructuring of property sanctions by shifting the emphasis to fines.

A fine was introduced as an alternative to imprisonment in a number of articles describing common offences. Consider Parts One and Two of Article 166 (illegal occupancy of a car or other vehicle without intent to steal). Previously, the only sanction that could be imposed in this case was the deprivation of liberty. In the new edition, penalties were complemented by a fine - 2,500 to 120,000 rub. for the offence described in part one of the article, and 2,500 to 200,000 rub. for the offences described in the second part. Such a broad "fork" should take into account a variety of circumstances, including the financial situation of the convicted. Given the fact that a fine as a penalty for this crime according to the new edition was reserved not only for adults and minors, having their own income, but also for minors who were not earning their own living (in such cases a fine was paid by his/her parents), this crime commonly committed by teenagers would be much less likely to result in imprisonment.

Another example was the first part of Article 228 (illegal purchase, possession, transportation, manufacturing, processing of narcotic drugs, psychotropic substances or their analogues), which too was amended to include a fine as a penalty. In the old edition the only sanction was imprisonment for a term of up to 3 years. The amended version made it possible to impose a fine ranging from 2,500 to 40,000 rub.

An important amendment that was supposed to play in favour of a broader implementation of fines was the option of paying fines by instalments. In addition, when determining the amount of the fine, the court should take into account the financial situation of offenders as well as their families. To ensure the greater efficacy of the fine as a sanction, it was supported with a wide range of penalties that would follow in cases of wilful evasion of payment (Article 46).

While criminal fines were insignificant prior to the amendments, the *Code* did provide for the sanction of confiscation of property for grave or especially grave crimes when they were committed out of mercenary motives. Confiscation of property could be applied to all of a convicted person's property, except for certain items of daily necessity and items necessary to allow the person to earn a living. Like the fines, however, confiscation of property was also rarely used. The December 2003 amendments eliminated the punishment of confiscation of property entirely, with an explanatory memo citing its "low effectiveness" as the reason for removing it from the *Code*. At the same time, they eliminated the use of the minimum monthly wage as a measure for fines and vastly expanded the range of available fines for all offences. The basic range for fines was raised from 2,500 up to 1,000,000 rub., applying both to fines imposed as a primary sanction and to fines imposed as a supplementary sanction to another form of punishment. The new provisions also addressed the problem of meaningful fines for the wealthy, providing an alternate measure in the form of "the salary or other income of the convicted person" for a defined period (up to five years), which could exceed 1,000,000 rub.. The intention was for these provisions to lead to the imposition of criminal fines far more frequently than had yet been the case.

Changes made to Article 50 and certain other articles of the *Code* sought to revive another penalty – corrective work. The former rule allowed the court to apply this kind of punishment only to those offenders who had already had a permanent place of work. With the amendments, however, corrective work became another sentencing option for the unemployed who should be placed to work with the help of local authorities and in coordination with the local criminal-executive inspections (i.e., federal administrative agencies set up specifically to enforce the execution of corrective work; they are responsible for keeping track of the persons sentenced to corrective work, explain and resolve any issues involved in the administration of the sanction, find alternative employment options, conduct an initial search for the persons sentenced to corrective work, who fail to report to work). This increases the variety of available sanctions. Corrective work was designed as an alternative not only to imprisonment but also to fines, if the latter were unenforceable (e.g., part 1 of Article 228). Corrective work was included as a sentencing option in a number of articles, which previously did not contain it (e.g., part 2 of Article 159 (fraud), part 2 of Article 160 (embezzlement),

Article 224 (negligent storage of firearms), Article 282 (incitement of hatred or enmity, as well as denial of human dignity).

The new version of Article 56 reduced the minimum term of imprisonment from six to two months. Given the fact that the amendments eliminated the lower limit of the sanction for many crimes of medium gravity, courts thus were given greater discretion to sentence offenders to a shorter term.

The amended Article 73 provided that a person's sentence could be suspended - but only for up to eight years. The previous version of this article did not contain any limitations, which (in theory) could be interpreted to allow conditional imprisonment terms of 25 and even 30 years. However, in the absence of specified restrictions, the court rarely resorted to a conditional sentence for a period exceeding 5 years. Imposing conditional sentences for serious and grave crimes was considered to be almost unthinkable. Thus, setting such a high limit (up to 8 years) was thought to signal that conditional sentences for serious and even grave crimes should be considered normal practice.

Significant changes were brought into section V of the *Code* with an aim to create a more lenient yet effective juvenile justice system. First, the amendments permitted the sentencing of a minor to a fine even in cases where s/he had no personal income or assets. In such instances, parents or other legal representatives could be given the option of paying the fine (Article 88). These changes allowed greater use of fines as a punishment to minors – a policy which was aimed at reducing the number of minors sent to prisons.

Juvenile sentencing practices were also changed to restrict the use of imprisonment in favour of conditional/suspended sentences and compulsory educational measures. Article 93 in its amended edition relaxed the conditions for parole for juveniles.

The amended versions of Articles 97 and 99 eliminated compulsory treatment for alcoholism and drug addiction. According to the majority of drug experts working in prisons, and especially with drug addicts, this measure of criminal medical coercion was ineffective. Compulsory treatment in the penal colonies was, in fact, a means of

impeding the prospects of eligible convicts to obtain parole or to be subject to amnesty or pardon. In reality, compulsory treatment had very little to do with treatment, but rather was an additional punishment.

The Special Part was also revised: some of those changes were of a general nature and affected each section of the Special Part that was updated. First, throughout the entire Special Part, one of the particularly aggravating features - the presence of two or more previous convictions for identical or similar crimes - was removed. The mere presence of it used to lead to a substantial increase in the length of prison terms. Second, a number of behaviours were decriminalized and imprisonment was purged from the list of available sanctions for a number of crimes. In other instances where imprisonment remained an available sentencing option, prison terms were reduced (by one-third to one-half of the term). A number of articles were revised to exclude a lower limit of the term in prison. As a result, a minimum prison term of 2 months set in the General Part of the *Code* should apply instead. This change even affected some of the serious offences.

For many offences, the terms of imprisonment remained unchanged; yet, the updated edition included additional sanctions that could serve as alternatives to incarceration (e.g., fines, corrective work, community service).

Chapter 21 (offences against property), containing the most common crimes, underwent significant changes. The amended version of articles 158, 159, 160, 161, 162, 163, and 165 dropped any reference to an aggravating factor, which was part of their earlier versions, i.e., previous conviction for property crimes. For many years, the mere existence of such circumstances led to lengthy periods of incarceration, regardless of the amount of stolen or embezzled property: 5 to 10 years in prison for theft and fraud, 6 to 12 for robbery, 7 to 15 for extortion, and 8 to 14 for armed robbery. The second important change was the differentiation of the severity of punishment based on the amount of property damage (e.g., large or extra-large) resulting from a committed crime. The amended version set higher thresholds for property crimes to be considered large or extra-large, effectively placing such offences in the less serious crime category, thereby mandating lighter sanctions.

The new versions of articles describing many other offences became significantly less repressive (e.g., tax evasion offences, organized crime, hooliganism, offences involving illegal transfer of firearms and explosive materials, drug related offences, prostitution, negligence offences, escape from prison, etc.)

There were a few instances where the new amendments resulted in increased repression: one of the most significant being increasing the age of consent from 14 to 16 years; others – criminalizing the sex industry with the exception of prostitutes themselves (who are still subject to administrative sanctions) and increasing sanctions for offences related to money-laundering. Nevertheless, overall, the nature and scope of the 2003 Amendments signalled a substantial change in the vector of Russian penal policy towards liberalization of its sanctions and sentencing system. The substance of the adopted changes support the declared aim of humanizing the system and relieving the pressures on the Russian penitentiary aiming for a more stable and permanent solution that could bring down the numbers of incarcerated offenders in Russia.

5.4. **Conclusion**

This chapter described the findings related to the policy stream. It consisted of various policy alternatives contemplated as potential solutions for the overpopulation crisis in the Russian corrections in late 1990s and early 2000s. All the examined approaches to bring down the prison population fall into two categories: the *ad hoc* solutions rooted in the Soviet practice of executive clemencies, and the lasting, long-term solutions that became part of the "Presidential package" of amendments to the *Criminal Code* passed in December, 2003. Given the scale of the problem, amnesties and pardons could no longer serve as feasible solutions to the problem of prison overcrowding. The amended version of the *Criminal Code* has substantially reshaped the system of sanctions and sentencing. The new provisions decriminalized less serious offences, reduced the severity of sanctions, widened the scope of mitigating circumstances, and introduced alternatives to imprisonment.

6. Political Stream

6.1. Introduction

Like the problem and policy streams, the political stream shapes the agenda-setting processes. Political currents within it could create a political climate, which is more or less receptive to certain policy solutions. Changing balance of political forces, legislative and administrative turnover, shifts in national mood – all of these factors need to be carefully examined to identify the area that would have made coupling of all three process streams possible.

For this analysis, the political stream was thought to contain political currents, conducive to the adoption of the solutions that became part of the 2003 *Criminal Code* amendments. It included shifts in the Russian political climate, reflected in dominating themes in political discourse; changes in configuration of the Russian power elites and the relationship between the government branches. The original Multiple Streams framework does not directly factor in institutional environment within which political activity takes place, nor the resulting political regime. Kingdon looked only at what he called the United States' Presidential "organized anarchy" form of government. Applying Kingdon's framework to any other polity requires supplementing it with institutional analysis of the country's political system and its political regime. Hence, this chapter begins with a discussion of the Russian political system and the distribution of political power among its major policy actors as established in the Russian Constitutional law.

6.2. Institutional framework and major policy actors

The groundwork for the modern political order in Russia was laid in the early 1990s. After the demise of the USSR in December 1991, under President Yeltsin's

leadership, Russia declared its commitment to become an open society, with a competitive market economy, a civil society, and a law-governed state. The transition was not seamless. The results of his neoliberal reforms launched in January 1992 were felt immediately as prices skyrocketed, government spending was slashed, causing widespread hardship.

Fernando reported:

> <…> many state enterprises found themselves without orders or working capital. A deep credit crunch shut down many industries and brought about a protracted depression. (2010, p. 494)

Bohlen reported:

> With prices up by an average of 350 percent since Jan. 2, and standards of living falling along with production, Mr. Yeltsin's Government is under attack from both the right and the left. (1992, para. 5)

Around the same time, Russia's parliament (the Supreme Soviet) became the hub of a national populist opposition. The speaker of the Supreme Soviet, Ruslan Khasbulatov, joined Russia's vice President, Aleksandr Rytskoi, in accusing the Yeltsin's government of pursuing the policy of "economic genocide" (Gray, 1992, para 25). Throughout 1992 and 1993, tensions between Yeltsin and the parliament over power sharing kept increasing and led to the dissolution of the parliament in October 1993, followed by a violent uprising of the pro-parliament forces, and subsequent suppression of popular resistance by the military (Sakwa, 1995). Using force to dissolve an elected parliament, Yeltsin signalled the end of any hope of governance by national consensus and pushed Russia in an authoritarian direction. The 1993 Constitution that came out of those turbulent events has cemented the structural power imbalances which have been shaping the political stream in Russia ever since (Khasbulatov, 1993).

The new Constitution that was promulgated by a national plebiscite in December 1993 sought to prevent a repetition of the conflict between the executive and legislative branches in Russia. The pressure to get the Constitution adopted has raised questions about its legitimacy as whole.

According to Sakwa:

In the weeks leading to the plebiscite Eltsin[15] warned party leaders against criticizing the constitution, and leading government officials like Vladimir Shumeiko insisted that the constitution is non negotiable and the politicians were barred from campaigning against its adoption under threat of being banned from the election altogether (1996, p. 127).

Despite its endorsement of a separation of powers, the constitution created not just a Presidential system, but rather a super-Presidential system founded on three pillars: a strong executive presidency, a weak legislature and a poorly developed judiciary. To justify a drastic shift from the soviet model of parliamentarism to the super-presidency it has been argued that a strong presidency was required in order to push through reforms and to establish a stable transition. A strong and largely irremovable President was to act as the locus of stability, while the government was largely removed from the control of parliament. Additionally, the institutionalized hegemonic presidency was designed to fill the perceived power vacuum created by the dissolution of the Communist Party and the disintegration of the USSR.

6.2.1.   *Strong President and the subordinate executive branch*

The omnipotent federal presidency in Russia was placed at the head of a vast bureaucracy composed of dozens of agencies and thousands of administrators. A cabinet system coexisted with a Presidential one, with the constitution effectively making the President head of government. This was a bifurcated executive system: on the one hand, the President and Presidential administration working from the Kremlin and on the other, the prime minister and the government based primarily in the White House (the Government of Russia).

The 1993 Constitution granted the President extensive powers in forming governments, law- and policy-making. The President is the head of the state, commander-in-chief of the armed forces, and "the guarantor of the constitution". The Russian people directly elect the President for a four-year term and no individual may serve more than two consecutive terms in office (art. 81). The President determines the guidelines for the domestic and foreign policies of the state and "represents the Russian Federation domestically and in international relations" (art. 80) and has additional

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[15] Eltsin is an alternative spelling of President Yeltsin's last name

powers, such as the right to declare a state of emergency and suspend civil freedoms until new federal laws are adopted (art. 88), call a referendum (art. 84), dissolve the Duma (arts. 111 and 117) and issue decrees that do not have to be submitted to either parliament or the people (art. 90). The President nominates the prime minister, proposes to the State Duma the director of the Central Bank, appoints Security Council members, nominates to the Federation Council members of the Constitutional, Supreme and Supreme Arbitration Courts, and also nominates the Procurator-General. The President can also preside over sessions of the government (art. 83) and dismiss the government. The President is also head of the Security Council, confirms Russia's military doctrine, appoints the commander-in-chief of the armed forces, and exercises leadership of the foreign policy of the Russian Federation (art. 86). The President can veto laws passed by the State Duma. Under extreme circumstances the President has the right to dissolve the Duma: if it rejects the President's nomination for the post of prime minister three times, it is deemed to have dissolved itself. The President reports annually to a joint meeting of the two houses of the Federal Assembly on the government's domestic and foreign policy. The President has the right to issue binding decrees (*ukazy*), which do not have to be approved by parliament and that have the power of law; they must not, however, contradict the constitution; and they are superseded by legislative acts. The power of the presidency, therefore, is based on a combination of appointment powers and policy prerogatives.

The President is not untouchable and may be impeached on the initiative of the State Duma. Impeachment is extremely difficult, requiring a joint Supreme and Constitutional Courts ruling on demand of a Duma commission (set up with at least 150 votes out of the total 450), which should be confirmed by two-thirds of both the State Duma and the Federation Council. It can be initiated only if the President commits treason or is accused of some other grave crime (art 93.1). In an important provision to support Duma independence the President is not allowed to dissolve the Duma once it has started impeachment procedures (art. 109.4).

The post of a vice-President was abolished after the 1993 constitutional crisis. Should the President become incapable of carrying out his functions or resign, the power is temporarily transferred to the prime minister and new Presidential elections must take place within three months. The powers of the acting President are limited. The acting

President cannot dissolve the State Duma, schedule referendum or initiate constitutional reform.

The President forms Presidential Administration (PA), which itself has no formal constitutional standing, yet it has often been seen as the only authoritative source of strategic decisions that affect the society as a whole. PA is reminiscent of the apparatus of the Central Committee of the Communist Party of the Soviet Union (CPSU) in the late Soviet period. It has the same number of staff (about 1,500) (Izvestiya, February 25, 2009, p. 2), and it is even located within the same complex of buildings on Old Square in central Moscow. It is not accountable to elected representatives in any way, and yet it exercises broad responsibilities over the activity of all the other institutions of state, including the legal system. Not surprisingly, it is the PA leading members who come highest on the monthly lists of the country's most influential politicians, above ministers and until 2008 above the prime minister. In February 2008, at the end of Putin's second term, the list was headed by Putin and his chosen successor, Dmitriy Medvedev, followed by Vladislav Surkov and Sergey Sobyanin, with Igor Sechin (also, at this time, a leading member of the PA), sharing the fifth position. The prime minister at the time, Viktor Zubkov, was no higher than eleventh (Nezavisimaya gazeta, February 29, 2008, p. 11).

This office is the core of the presidency, consisting of about forty specialized agencies through which the vast bulk of state management is achieved. One of the main agencies is the State-Legal Directorate (GPU), formed on 12 December 1991 to prepare decrees and draft laws for the President. The functions of the latter are shared with the Ministry of Justice. The main monitoring administration (GKU) was established on 5 August 1991 to oversee regional and republican administration, later becoming the main territorial administration (GTU), responsible for overseeing regional affairs. There were also foreign affairs and domestic policy departments. Many of those departments duplicated the work of the government, acting in effect as a shadow cabinet.

The President also "forms and heads" the Security Council (SC). The first SC was established soon after Yeltsin's election as President in June 1991. It was then designed mainly as a consultative body as part of the Presidential apparatus and operated in parallel with the government. When he took over direct control of the

government, Yeltsin dissolved SC, yet in 1992 it was reconstituted again as a body chaired by the President with functions that included drafting basic policy guidelines and determining the key issues facing the President. Its form and role have been preserved under the 1993 constitution. The council was designed as an alternative policy-making mechanism on national security issues. Its role and place in the political system however changed often reflecting the character and status of its successive directors and secretaries. For example, Putin briefly headed both the FSB and the SC while on his track to become a President. Thus, the SC has become one of his main institutional support structures where he was made responsible for an ever-wider range of tasks. At that time, the SC responsibilities extended much more widely than military or security matters; it was required to advise the President on "questions of the strategy of development of the Russian Federation, guaranteeing the security of the vital interest of the individual, society and the state from internal and external threats" (art. 1), including environmental matters, energy and transport, drug trafficking, science and technology, information, and antiterrorism. It was during the Putin presidency that the SC became the dominant agency within the leadership, taking responsibility for the geopolitical strategy of the state as a whole.

Membership of the SC is drawn from the heads of the security, law enforcement and judicial agencies, and its staff is part of the Presidential administration. The Council is headed by the President, who presides over its meetings *ex officio* and is responsible for directing its activities (arts. 5, 6). The Council itself has permanent and ordinary members. In size and composition it is in fact remarkably similar to the CPSU Politburo.

Meetings of the President and the permanent members of the Security Council take place, "as a rule," once a week; the whole Council meets, "as a rule," once every three months (Polozheniye o Sovete, 2004, arts. 11, 7). Its decisions are carried into effect in the form of Presidential decrees or directives, or as "assignments of the President of the Russian Federation." These arrangements were first set up in 1992, shortly after the Council itself had been established. There is also a complex network of inter-agency commissions, formed at the national or regional level, and of a permanent or temporary nature (Polojenie o Mezhvedomstvennoj komissii, 2011, 2005; Voprosy, 2011).

The Security Council has its own Secretariat, located for administrative purposes within the Presidential Administration, and drawn from the leading ranks of the armed forces and security services (Polozheniye o Sovete, 2004, art. 27).

The Russian government is an expanded version of its predecessor - the RSFSR Council of Ministers. Its bureaucratic apparatus has swelled in the post-Soviet years, bringing the number of its departments to two dozen and its full-time employees to over 1000 people.

Government is headed by the Chair of the government. Deputy prime ministers (their numbers vary) report to the Chair (Prime Minister) and are responsible for a bloc of ministries, and federal ministers. At the sub-ministerial level there are a variety of special agencies, state committees, and federal services. Their role is usually technical and they lack direct access to the government but report through vice-premiers. Like most other post-Soviet institutions, the government has been subject to endless reorganization (Huskey and Obolonsky, 2003).

The constitution states that the President with the consent of the State Duma appoints the prime minister. Formally, the government does not have to represent the majority party or coalition in parliament, although the President needs to present a candidate that the Duma will endorse. Given the fact that the President appoints the prime minister and endorsed by the State Duma it is, in principle, accountable to both. However, the parliament's checking power is rather limited. If the Duma objects to the candidates nominated by the President and three times declines them, it is deemed to have dissolved itself and the President's candidates are deemed to be confirmed. The Duma cannot veto a nomination either. A prime minister's resignation is tendered to the President rather than to the Duma. The prime minister usually resigns following Presidential elections, yet the cabinet always survives after the parliamentary elections.

The State Duma can initiate a no-confidence vote in the government at any time. It is designed as a form of parliamentary control over the government. The right to express confidence in the Government of the Russian Federation is provided by the Constitution (Part 4 of Art. 117). At the same time the Constitution does not indicate the specific grounds for the State Duma to invoke the no-confidence clause. In practice it often reflects a sharp deterioration in the socio-economic sphere, strong opposition to

the directions and/or the results of policies pursued by the Government, improper execution of federal laws. Regulations of the State Duma set complex requirements for a motion to be brought to vote, and a number of procedural conditions for the vote itself. Such a proposal must be motivated, set forth in writing, made by at least one fifth of the total number of State Duma deputies and reviewed within a week. According to the Rules of the State Duma (Article 151), a resolution of no confidence is considered to be rejected, unless it gained a majority of deputies. The decision of the State Duma does not entail an automatic resignation of the Government. The decision to accept the resignation rests with the President. Within three months, the State Duma may express no confidence in the Government again. In this case, the President must accept one of two decisions - to announce the resignation of the Government or dissolve the State Duma. This decision must be taken within seven days of the vote.

Once appointed by the President, the premier forms his or her own cabinet, which then is approved by the President and the two share executive authority. According to Art. 110.1 executive power in Russia belongs to the government, but the head of the government works closely within the President. The President has the right to preside at meetings of the Government. He accepts the resignation of the Government of the Russian Federation at the request of the latter, and on his own initiative. The President has the right to appoint and dismiss any member of the Russian Government at any time, at the suggestion of the Prime Minister (the latter in practice has always been only a formality). The government acts as a relatively autonomous centre of political authority only in the sphere of the economy, yet even there the President sets the overall direction for policy. Like in the Soviet and Tsarist times, the President maintains control over foreign and security policy as well as the main directions of domestic policy. In many areas, the prime minister therefore exerts only partial control over his/her own ministers, and has no control over the so-called power ministers responsible for domestic security.

The Duma is supposed to act in a supervisory capacity. Government requires the State Duma's approval of the federal budget. It is also required to report on its implementation. Any member of the Russian Government has to answer the questions of any member of the State Duma. However, as has been discussed earlier, the State Duma has limited capacity to enforce government's accountability.

Russia's presidency in effect acts as a duplicate government, with the functions of ministers often shadowed by agencies under the presidency, such as the Presidential administration and the Security Council.

The office of prime minister, although overshadowed by the presidency in normal times, carries enormous advantages of incumbency, advantages that are greatly enhanced in the event of pre-term elections. As it has been discussed earlier, when the incumbent President is unable to perform his/her responsibilities or resigns, the prime minister takes over and new elections are held within three months. This constitutional clause was used to ensure a seamless transition of power from Yeltsin to Putin in 1999/2000. The Presidential elections were initially due to have been held in June 2000: however, following Yeltsin's resignation on December 31, 1999, they were brought forward to March 26, 2000. Meanwhile, Putin who was the incumbent Prime Minister at the time became an acting President.

6.2.2. *The legislative branch*

Another key institutional actor in the Russian political life is a bicameral Federal Assembly. The Federal Assembly is a bicameral parliament of the Russian Federation, its permanent representative and legislative body. It consists of two chambers - the State Duma and the Federation Council. The State Duma is formed from the number of deputies elected by the entire population, the Federation Council is formed by the representation from each constituent entity of the Russian Federation[16]. At the time of the reforms, the Federation Council (FC) was the upper house of the Russian parliament and it was made up of 178 representatives from Russia's 89 federal components (Figure 2). The lower house, the State Duma, consisted of 450 deputies elected for a four-year term (1996, 1999, 2003, and 2007 Dumas). The constitution defines Federal Assembly as the legislative authority of the Russian Federation, which also performs other functions balanced by countervailing powers of the executive. It has the prerogative to

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[16] Russia is a federation that consists of 83 (89 until 2008) constituent entities or members (subyekt federalist) that have equal federal rights yet different levels of political autonomy. They include republics (states), *oblast* (regions), *krai* (districts), federal cities (Moscow and St. Petersburg), *avtonomnui krai, oblast* (autonomous region and district). For the purpose of this research a term province is used to refer to constituent entities of the Russian Federation.

address many important questions of state administration, including the state budget, formation of the federal government, and limited parliamentary control over the executive power.

A significant amount of the State Duma of the Russian Federation accounts for lawmaking, organizing and conducting parliamentary hearings, and otherwise implementing the provisions of the Constitution and other federal laws. In Russia, the right of legislative initiative (under Part 1 of Art. 104 of the Constitution of the Russian Federation) belongs to the President, the Federation Council, the members of the Federation Council, deputies of the State Duma, the Russian government, the legislative (representative) bodies of subjects of the Russian Federation. The right of legislative initiative belongs also to the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation Supreme Arbitration Court of the Russian Federation on issues within their jurisdiction. Although the President also has the right to issue laws by decree, legislative acts take priority over Presidential decrees. The State Duma and the Federation Council together can override a Presidential veto by a two-thirds majority.

The State Duma's prerogatives include giving consent to the appointment of the Russian Prime Minister by the President, the question of confidence in the Government of the Russian Federation, the appointment and dismissal of the Chairman of the Central Bank of Russia, the appointment and dismissal of the Chairman of the Accounting Chamber and half of the auditors; appointment and dismissal of the Commissioner for Human Rights, acting in accordance with federal constitutional law, amnesty, and bringing charges against the President of the Russian Federation for his impeachment.

For a limited period (1993-1999), the Duma seemed capable of independent initiatives despite its limited powers. Although formally the Duma lacks the power of interpellation, the work of ministers has been monitored through the committee system, and the Duma devoted the last hour of every Friday to examine the work of ministries. One of the most important instruments of parliamentary control in Russia is the hearing of the annual report of the Government on the implementation of the federal budget. But overall, the Duma lacks sufficient powers to monitor the observance of the laws it passes.

During the Soviet times, the two chambers of the Supreme Soviet, the Council of the Republic and the Council of the Nationalities, were in effect two parts of a single political structure, often meeting together and with a single presidium. Unlike the Supreme Soviet, the Federal Assembly is a genuinely bicameral body. Both houses meet separately in different buildings, except for ceremonial occasions. Although the main function of both chambers is the implementation of legislative powers, each plays a distinct role in the lawmaking process. The difference in functions between the two chambers was considered a major advance in the development of constitutional order in Russia. However, certain functions that might properly be considered the prerogative of the Duma, like the right to introduce a state of emergency or the decision to send troops abroad, are granted by the constitution (Art. 102) to the FC rather than to the Duma as a result of the convulsions of 1991-3.

The jurisdiction of the Federal Council, in addition, includes the approval of changes in borders between subjects of the Russian Federation, the appointment of Presidential elections in Russia, impeachment of the President of the Russian Federation from office; appointment of judges of the Constitutional Court, Supreme Court, the Supreme Arbitration Court, the appointment and dismissal of the prosecutor General, the appointment and dismissal of Deputy Chairman of the Accounting Chamber and half of the auditors.

Additionally, the Federal Council is responsible for a range of national issues, but is especially concerned with ethnic issues and bears special responsibility for the monitoring of regional affairs. Essentially it was modelled after the Senate in the United States, with two representatives apiece from Russia's 89 constituent political-administrative entities, representing the executive and legislative branches (Art. 95.2).

Federal Assembly

Federation Council (178)	State Duma (450)
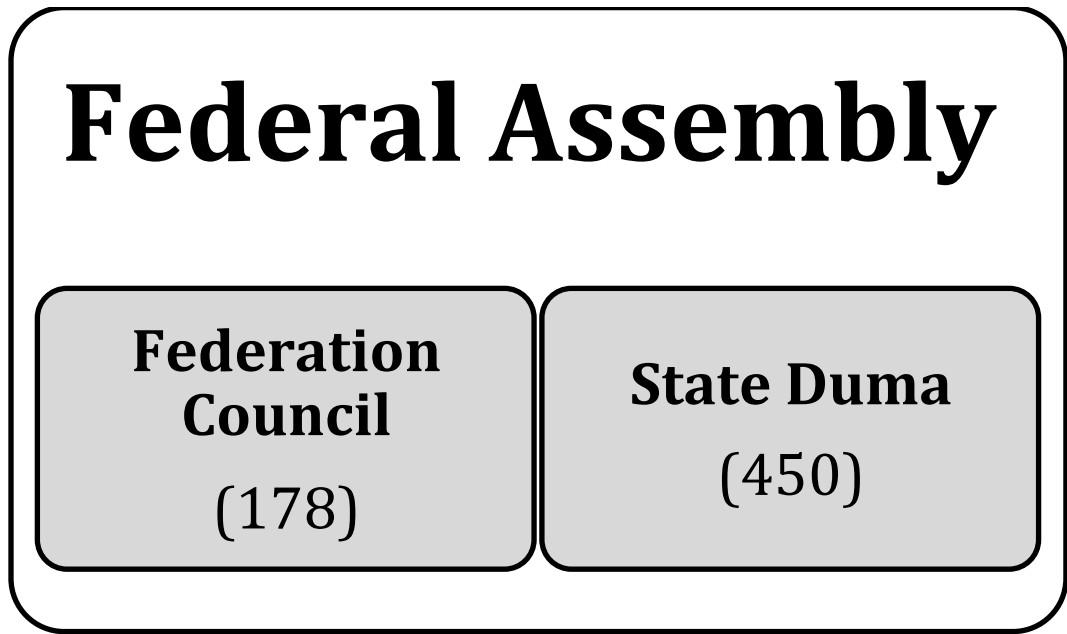
Figure 2 Legislative branch: bicameral Federal Assembly

While the constitution stipulates that the Duma is to be elected, it does not specify a mechanism for the formation of the Council. According to the constitution (Art. 95.2), the FC "consists of two representatives from each member of the Russian Federation; one each from the representative and executive bodies of state power", but the detailed procedure for forming the FC was to be regulated by federal law (Art. 96.2).

At first, it was envisaged that this body should consist of two deputies from each province, elected by the majoritarian system of binominal electoral districts, and formed within the administrative boundaries of the regions. Elections were held on December 12, 1993 and the first elected FC functioned from January 11, 1994 to January 15, 1996. In practice, it appeared that it did not always fully comply with the role of a Presidential "filter" in the legislative process as the authors of the Constitution envisioned; moreover, it often voted with the State Duma to overcome Presidential vetoes.

Head of the provincial legislative branch

Head of the provincial executive branch

FC
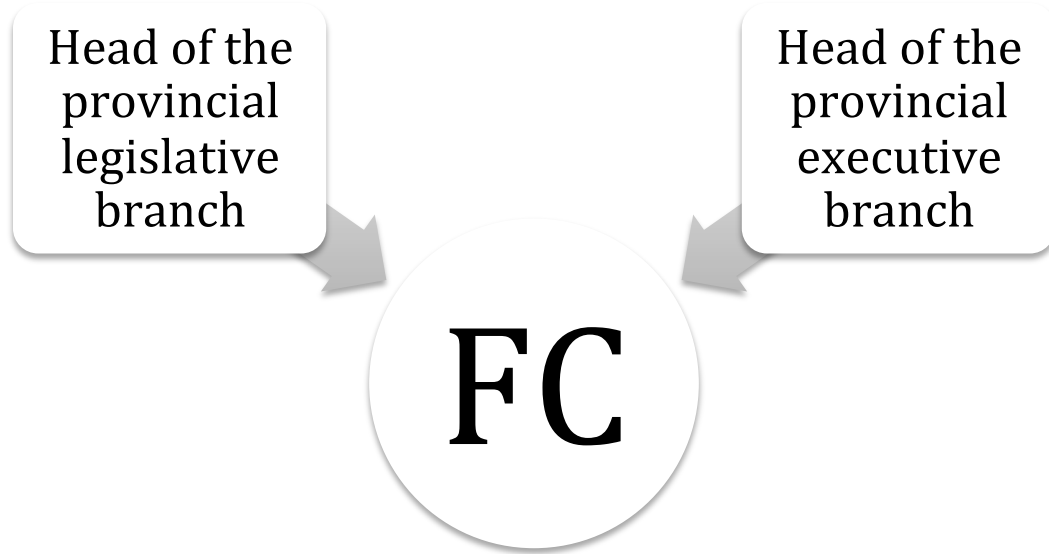
Figure 3 Federation Council 1996-2000

In an effort to bring the Federation Council politically closer to the executive power, it was reformed. According to a new federal law, "On the procedure of forming the Federation Council of Federal Assembly of Russian Federation", the Council should be composed of two representatives from each province: the head of the legislative (representative) and the head of the executive bodies. All members of the Federation Council combined their duties of the member of the upper house of the Federal Parliament with their responsibilities on the provincial level (Figure 3).

It was in 1996-2000, when the FC became a "house of the regions" - the guarantor of political stability in the country. However, owing to the nature of its composition, it could not work on a professional basis, but only met in regular sessions in Moscow. To compensate, the FC's apparatus was strengthened to increase the turn-around of legislation. At that time, the FC acted as a counterweight to the Duma, moderating conflict between the President and the lower house, especially when the latter (as with the Sixth Duma) was dominated by the Communists. The Council was able to reject draft laws that would inevitably have been vetoed by Yeltsin, thus lowering the political temperature.

In 2000, President Putin proposed another reform. According to the new Federal Law, "On the procedure of forming the Federation Council of Federal Assembly of Russian Federation", the governors and heads of the provincial legislatures were replaced by their designated representatives, who must work in the FC on a permanent and professional basis. One of them should be appointed by the governors, and the other one - by the legislative (representative) body of the province. Thus, each province was represented in the Federation Council by two appointees of the provincial executive and legislative structures. Many of them did not come from the province they represented, but were Moscow-based, and so their links to their respective province were relatively weak and their independence limited. Their links to the Kremlin administration were often much stronger. The Federation Council has become an even less independent organ. To further strengthen the ties between the PA and FC, a pro-Putin group called *Federatsiya* was formed. Approximately 100 senators (out of a total of 189) became its members.
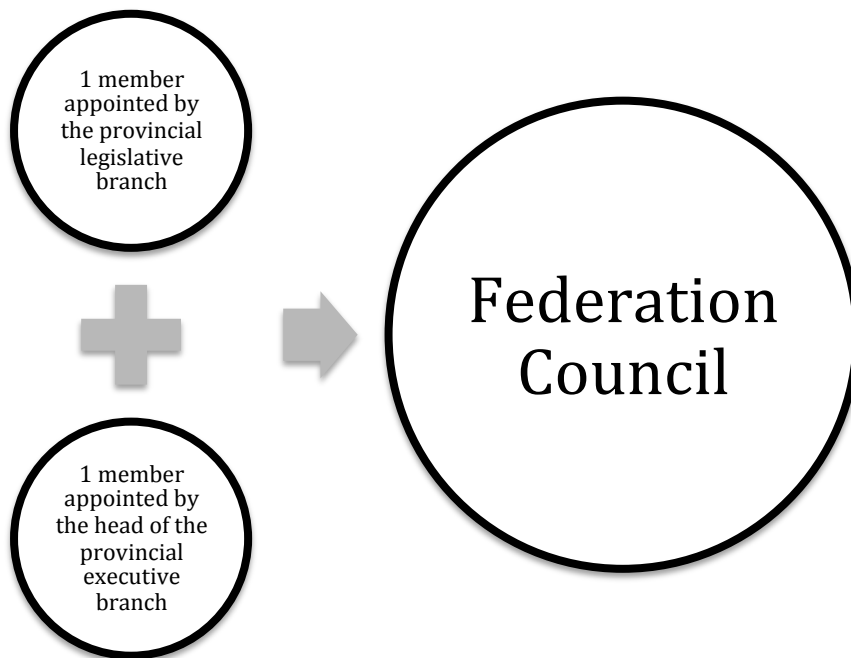
Figure 4 Federation Council since 2000

6.2.3. *Legislative process*

The main mode of legislating in Russia is federal lawmaking conducted by the Federal Assembly. Federal laws are considered in the State Duma in three readings and are adopted by a majority vote of all deputies of the Duma. During the next 5 days the adopted bills are transferred to the Federation Council. If it does not approve the law, both chambers may form a conciliation commission. If the State Duma does not agree with the opinion of the Federal Council, it can still enact it by a vote of two thirds of the total number of deputies of the Duma. All the passed bills require promulgation by the Russian President. Within 14 days, the President can veto the law. In this case, the State Duma and Federation Council will reconsider the law. The veto can be overridden by an approval of not less than two-thirds majority in both houses. Only in this case the law the President is required to sign the bill and publish it within seven days.

An alternative (though not equivalent) mode of legislating is the promulgation of a Presidential decree (Art. 90). Under the Russian constitution and the Russian Constitutional Court decisions, the President may issue a decree to fill a gap in law or to resolve inconsistencies in law. Decrees must be consistent with the Constitution and existing law and may not be used in some two dozens policy areas that the Constitution reserves exclusively for law, except to fill a gap in existing legislation. Subject to these constraints, decrees may be issued at any time, and, when threatened as alternative to law, these give the President an important source of leverage over parliament.

The outlined constitutional provisions yield a policy-making game with the following key features: an omnipotent President, dominance of personalized power and a tendency towards centralization, and a limited role for the civil society. Political power and administrative resources were concentrated in the hands of a national leader standing above society. Hence, there is a common view of the Russian political history as "a succession of leaders and their regimes" (Shvetsova, 2007, p. 1), which dominate political landscape. Basic principles of governing have persisted despite all attempts of political reform. The most recent of the very few efforts to challenge the traditional state of autocracy were made, in the late 1980s, by Mikhail Gorbachev with his ambitious program of political and economic restructuring - "Perestroika". His tentative efforts to liberalize the country have largely failed despite forcing the Russian political elites to

reject some of the basic principles that had governed the perpetuation of power and state in Russia for centuries. It became evident in the early years of Yeltsin's presidency when the regime remained committed to legitimize itself through elections rather than through ideology, communist totalitarianism, or czarist succession to the throne. Yeltsin succeeded in abolishing the dominant role of the Communist Party of the Soviet Union, included several liberally oriented politicians into his government, and ensured the survival of a number of freedoms, most importantly freedom of press and association. At the regional level, the emergence of local elites with their growing demands for control over economic and political resources also signalled the decentralization of power.

All of the above still has largely failed to transform the autocratic nature of his regime. A wave of democratic enthusiasm had brought Yeltsin and the new elites into power. Yet, the Kremlin itself has done little to promote the development of civil rights and liberties, but rather systematically obstructed the process, undermining the democratic system and discrediting the ideas of liberal democracy among the public.

In Shvetsova's view:

> The survival during the Yeltsin's presidency of a number of freedoms, particularly freedom of mass media, is no testimony to the democratic credentials of his regime. It was instead a form of elite pluralism and often reflected the vested interests of oligarchic groups close to Kremlin. The participation of democratic-minded politicians and journalists in the political struggles of the Yeltsin era created an illusion of freedom and competition, but these players had little influence on the Kremlin's decision making (2007, p. 25).

Russian civil society was too weak and inexperienced to develop independently. It remained conservative, lacking a developed culture of democratic thinking. Political elites inherited the value system of the Soviet past and the President himself, owing to his own *nomenkltaura* upbringing, continued reproducing the traditional political matrix of personification of power and centralized control in his decision-making. His predilection for using power to further his personal goals left Yeltsin and even the most liberal members of his entourage unable to see the value of liberal democracy as a system of government. The governing elites legitimized their rule through elections, accepted the freedom of press, proclaimed the rule of law, and yet rejected transparent and predictable governing, as well as the idea of a system of checks and balances. Even

those who were considered to be part of the liberal wing of the political elite often chose to back Yeltsin personally rather than the development of a civil society.

Hence, the political stream in Russia during the Yeltsin years still preserved some basics of the Russian traditional model of governing with the principle of indivisibility remaining key. Power remained personalized and monopolistic - a principle, which was entrenched in the constitutional notion of super-presidency. The 1993 constitution, which set the super-Presidential power in stone, was instrumental in pointing the country toward authoritarianism after the constitutional crisis ended with the victory of the pro-Presidential forces. It established that the President was not one branch of power but was above all branches determining the basic direction of the state's domestic and foreign policy and personally guaranteeing constitutional rights and freedoms of individuals and citizens. The Yeltsin constitution has, therefore, established the institutional framework for an authoritarian, neo-patrimonial regime. Interestingly, Yeltsin's own assistant for legal issues, Mikhail Krasnov, acknowledged, "This constitution prevents any development of democracy... It liquidated a system of checks and balances, making the President omnipotent; and that is a tragedy.[17]" (2007, para 11, 19)

6.3. **Russian politics in late 1990s – early 2000s**

As the overview of the Russian constitutional framework demonstrated, there had been little dispersing of authority among the branches of government. The 1993 Constitution ensured that the Russian leader continued to retain control over virtually all policy spheres. The tendency towards centralization of power and political resources in the hands of the President was reflected in many aspects of the emerged political system that functioned on the basis of conflicting and irreconcilable principles: state authorities were elected, but candidates to elective office were appointed from above, and elections were manipulated; the rule of law was enshrined in the constitution, but surreptitious deals were the order of the day; although society had a federal structure, the center dictates policy to the regions.

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[17] Quotation in English is the author's translation

Interestingly, the creation of hyper-presidency did not produce the expected consolidation of Yeltsin's power and the stability it was designed to achieve. Yeltsin's government could be described as anything but stable. It was particularly evident in Yeltsin's unpredictable appointment decisions and his propensity for sudden firings of top officials most notably the continuous reshuffling of prime ministers in his second term. In part, it was explained by Yeltsin's lack of confidence in his appointments, especially those placed in charge of the top power ministries – the FSB, procuracy, MVD, and Ministry of Defence. The average director of the FSB under Yeltsin served only 14 months, and his longest-serving appointment served only two years. Similarly, Yeltsin had great difficulty finding a General Procurator with whom he felt comfortable, and was deadlocked with the Federation Council for more than a year in 1998-1999 over his attempt to fire Yuriy Skuratov (Taylor, 2011, p. 55). Partly, it was a due to the general political instability and questions about the President's physical ability to perform his functions as the head of the state. Beginning in 1995, Yeltsin became increasingly physically incapable of carrying out his functions and even of fully understanding what was happening. The power of the presidency was usurped by Kremlin "court", a few members of the Yeltsin family, and its favourites.

Yeltsin's second term made a farce of national politics and was commonly perceived as chaotic (Ostrow et al., 2007). At the time of Yeltsin's departure, 46% of the Russian public could not see anything positive that the years of Yeltsin's government had brought, 56% believed that his resignation would lead to overall improvement of the situation in the country, 26% and 15% respectively believed the new President will bring "strict order" and political factions would consolidate around the new leader to work more effectively. Society was compelled to hand power to a single individual on trust. This vision — a strong state that cares for its citizens but not interfering in private life — matched the basic paternalistic ideal of Russians. According to most opinion polls, this ideal had not significantly changed since the 1950s, but was even strengthened as a result of the failed "liberal" reforms of the 1990s (Lukin, 2009, p.75).

In late 1999, President Yeltsin unexpectedly announced his resignation. The way the power was transferred to his successor was typical of Yeltsin's impromptu style of governance. Yet it was a calculated political decision. By announcing his resignation and the following hasty departure from the Kremlin on the eve of the New Year, Yeltsin

artificially brought forward the Presidential elections in an attempt to guarantee the succession of political power and to ensure continuity of his policies.

However, the shift in public mood had already happened by then. It became evident in the changed political landscape shortly before the 1999 parliamentary elections. By the end of 1999, only two politicians had a real chance to succeed Yeltsin: ex-Prime Minister Yevgeniy Primakov and Prime Minister Vladimir Putin.

Medvedev wrote:

The electoral campaign for the election of the President ends almost without a struggle, and it is much quieter than the Duma elections. And Zyuganov and Yavlinsky have been unable to make a serious competition to Putin, and his chief rival - Yevgeny Primakov - withdrew his candidacy early in the campaign, not wanting to waste time and effort. At the same time, Primakov expressed his sincere respect for Putin. This is understandable; in the end they both are statists, patriots and centrists, "law and order" people (2000, para. 2)[18].

Indeed, despite being *de facto* political opponents, they had strikingly similar agendas. Both were known for their KGB background. Despite being part of the Yeltsin political circle, both were dissatisfied with the results of his liberal reforms and wanted to restore stability and "order" in Russia. Both understood "order" not as the supremacy of law, but as the strengthening of the state and limiting the influence of oligarchs and business groups. Both of them enjoyed support of powerful post-Soviet clans: Putin was supported by the Yeltsin "Family" group, while a union of Moscow City and several regional elites supported Primakov. Given the backgrounds of both candidates, the election of either would mean further evolution toward authoritarianism.

The "Family" group succeeded in its bid to bring Putin to power. After vicious attacks by the "Family"-controlled mass media and the subsequent humiliating defeat during the parliamentary elections, Primakov decided not to stand for President. Though a colourful political performance, this political battle between two powerful political clans hardly could have changed the main trend of the country's political stream – public urge for political stability and order. Both clans were unions of bureaucrats fighting against the deranged and unruly "society." Both enjoyed strong support from the "siloviki" cohort,

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[18] Quotation in English is the author's translation

indicating a shift towards increasing militarization of the elite. Voters strongly supported this shift in both parliamentary and Presidential elections in 1999 and 2000. The majority agreed that democratization had caused a terrible mess and that the country, grown tired of the turbulent neoliberal reforms, needed a change towards order and a restoration of state control.

President Putin has sensed and capitalized on the changed public mood. Political stabilization, order, and centralization became the main themes of his presidency. Most political and economic policies adopted under Putin's leadership were aimed towards strengthening the centralized bureaucratic apparatus and revealed his administration's preference for controlled political environment, structural reforms and lasting systemic solutions as opposed to the more liberal and highly volatile policy-making style of the late Yeltsin's administration.

Since the early days of the Putin's presidency, political analysts have emphasised the increasing importance of the *siloviki* in Russian politics. For example, Rivera and Rivera reported that Novaya gazeta warned about "the 'chekist' clan from St. Petersburg, having all the signs of a domestic junta, numbers up to 6,000 representatives, occupying various governmental, public, and commercial posts" (2006, p. 126).

This pattern, however, had started earlier – during Yeltsin's second term, when the security and military personnel filled a variety of civilian positions throughout regional and federal government. Yeltsin's last three prime ministers – Yevgeniy Primakov, Sergey Stepashin, and Putin – had Power Ministry ties, and the Presidential administration also became populated with higher numbers of the *siloviki*. For example, the former KGB officer Nikolay Bordyuzha headed both the Security Council and the Presidential administration in 1998-1999. Yeltsin himself believed that society was yearning for a leader who was not only a "new-thinking democrat" but also a "strong military man" (Taylor, 2011).

Olga Kryshtanovskaya and Stephen White published a comprehensive study on Russian elites in Putin's Russia — "Putin's Militocracy" (2003). Their report revealed a 25.1 percent increase of *siloviki* in the Russian elite under Putin in 2002, compared to an increase of 11.2 percent in 1993 under Yeltsin. The authors conclude:

If it were only a few generals who had moved into politics there would be no reason to attach a larger significance to their recruitment. But what has been taking place is not a small number of individual movements, but a wholesale migration that now accounts for 15 to 70 percent of the membership of a variety of elite groups (2003, p. 303).

The militarization took place not only at the top level, but also at intermediate and lower levels. For example, many deputy ministers in multiple non-military agencies, such as the Ministry of Economic Development and the Ministry of Communications, also came from the power ministries. The same process also took place at the regional level.

What effect has this change in composition of the Russian elite had on political environment and policy-making? There are good reasons to believe that such a large concentration of law-enforcement officials in and around the government would influence the nature of the Russian politics. A change in quantity must necessarily lead to a change in quality, according to the dialectical understanding of the concept of historical development. Taylor argues that the sociological logic of this approach points to the importance of the organizational culture of these agencies:

If this group is just a collection of individuals, and not a true cohort, then their shared background is perhaps not that important. But, if their collective backgrounds led to similar socialization, then the expansion of the siloviki cohort had important implications for Russian politics (2006, p. 61).

Other authors and Russian politicians have raised similar concerns about increasing concentration of the *siloviki* in the Russian government and the changing nature of political *regime* in Russia since Putin came to power in 2000. For example, the leader of the Communist Party of the Russian Federation, Gennadiy Zyuganov, acknowledged that the overrepresentation of bureaucrats and military and security officers in the pro-Presidential party, Unified Russia, suggested that it was "not a political bloc, but a kind of commandant's office that smells of a police state" (RFE/RL Newsline, December 8, 2003).

Similarly, a long-time observer of the Russian military expresses the view that:

"[v]irtually all of Putin's major initiatives for reform of Russia's state structure have been designed in line with the theory that the best way to govern a country such as Russia is by means of a strictly hierarchical, military-style command system" (Golts and Putnam, 2004, p. 150).

Kryshtanovskaya and White also conclude that the Russian political *regime* under Putin has morphed into a "well-ordered police state" (2003, p. 304). Kryshtanovskaya identified several features of the *siloviki* sub-culture, such as patriotism, strict discipline, and hierarchy that forced more liberal ideas and democratic procedures out of the Russian political culture.

In her 2007 interview to *Kommersant Vlast*, Kryshtanovskaya described *siloviki* culture in the following way:

> [...] soon after Vladimir Putin came to power, he made a revealing remark: "Wherever you look, it's all like Chechnya." What he meant was disorder. But what is "disorder" to someone from a military or state security background? It's the absence of control. If there's no control, there are opportunities for independent influence. And the presence of alternative centers of power is perceived by the siloviki as a threat to Russia's integrity. Does the Duma refuse to take orders from the presidential administration? That's disorder. Gazprom is led by Vyakhirev [Rem Vyakhirev, former director of Gazprom from 1992-2001] and not the Kremlin? Disorder. Are some parties making demands, are the media talking about something or other? It's all disorder - it needs to be eliminated. And they have eliminated it. Over the past seven years, the chekists have changed Russia's political system entirely - without changing a single letter of the Constitution (Nikolsky, 2007, p. 42).

Kryshtranovskaya's account of *siloviki* sub-culture is well supported by other Russian and foreign scholars who study the FSB and the Russian ruling elite. For example, Taylor similarly confirms that "the desire for control predominates among former *Chekists* (secret police personnel), the most important group within the *siloviki* cohort and the Putin team" (2011, p. 62). He cites others who also tend to agree that the dominant culture of the *siloviki* cohort emphasizes order, control, and the primacy of the state over any other values. For instance, memoir accounts by former KGB and FSB personnel suggest an organizational culture that values statism and order and is sceptical of, if not hostile, to liberalism and democracy. Yusif Legan, who was a member of the KGB and FSB for over thirty-five years, reveals in his 2001 memoirs that "attempts to introduce Western reforms and values into Russia are pernicious and that Russians value collectivism over individualism" (as cited in Taylor, 2011, p. 62).

Another top KGB officer and Putin's closest colleague from this organization, Victor Cherkesov, published the so-called *Chekist manifesto* in two newspaper articles,

the first in December 2004 and the second in October 2007. Both appeared during the times of rising internal tensions between *siloviki* clans. Cherkesov argued for *chekist* unity given their unique role in the history of the Russia. He suggested that the *chekists* were "a hook that society was clinging to in order to avoid plunging into an abyss". If the "comradely solidarity" of the Chekists was broken, it could not carry out its historic mission. In that case, he concluded, Russia's fate itself was at risk:

> Having lost the state, [Russians] will be cast into a whirlpool of social, military, criminal, demographic, and even anthropological disaster. As a result, we may expect the fate of many African nations - in fact, a complete annihilation, diving into the chaos and the multi-ethnic genocide (2004, para. 24).

Thus, the existing accounts tend to support the argument advanced by Kryshtanovskaya, Taylor and others that the *siloviki* are more likely than elites from other backgrounds to uphold the ideas of a strong state, political order and stability achieved by means of reinstalling the Soviet-style style of governance. Given that the majority of the Russian ruling elite and Putin himself apparently shared these views, the expansion of the *siloviki* cohort had important implication for Russian policy-making.

It has become evident in Putin's appointment style. Compared to his predecessor, Putin clearly aimed for greater "stability in cadres" – the average tenure of the top four power ministry officials was noticeably longer under Putin than under Yeltsin. This contrast was particularly obvious in the case of the FSB head. A director of the FSB under Yeltsin served on average slightly more than a year, while his longest-serving appointment lasted only two years. Putin kept the same director, Nikolay Patrushev, throughout his entire presidency. Similarly, Yeltsin had a greater problem finding a General Procurator, whereas Putin's first General Procurator, Vladimir Ustinov, stayed in office for over six years before becoming a Minister of Justice. In terms of the Ministry of Internal Affairs, Yeltsin changed four different ministers in eight years, whereas Putin only changed the ministers twice in the same period of time. Putin clearly leaned towards greater constancy in defence-minister appointments as well, putting one of his closest allies, Sergey Ivanov, in charge of the military for the first six years of his presidency, before making him First Deputy Prime Minister.

Another important development that has become evident in the political stream

was the narrowing inter-branch distance brought up by the 1999, 2003 parliamentary election outcomes. The Putin-era Dumas replaced the Yeltsin-era State Dumas. Many observers notice that as a result President Putin's domination of the political system has extended to both chambers of Parliament (Remington, 2001, 2006; Chaisty, 2005; McFaul, Petrov, and Ryabov, 2004; Hale, 2006; Fish, 2005; Smyth, 2006). The 1999 Duma election has produced a cooperative Duma. Clearly the changes were due to the composition of the Duma itself, with pro-president forces holding the majority, as well as greater Presidential control over the legislators. The President and his Administration ensured that the Duma would be internally controlled by the Unity (later United Russia) faction. Pro-Putin's Unity has acquired a substantial majority of seats in the Duma as a result of electoral manipulations. It should be stressed that aside from administrative resources the United Russia's success was also largely dependent on President Putin's personal popularity and patronage that propelled it to a commanding heights in the Duma. Naturally, it was not interested in challenging the President for control over policymaking.

There also is little doubt that the underlying ideological distance between the President and the Duma was much smaller in the Putin era than in the Yeltsin era. It becomes evident when we look at the striking difference in veto rates between the Yeltsin and Putin eras revealed in a study of Russian lawmaking conducted by Haspel et al. (2006). They reported that Yeltsin vetoed over a third of passed bills in both State Dumas that operated during his terms as President (Haspel et al., 2006, p. 260). In the third Duma, Putin's first parliament, less than five percent of bills were vetoed, and virtually every bill passed in the first year of the forth Duma was signed. This trend becomes even more pronounced when we look at the agreement rates of the Presidentially-backed legislation (Haspel et al., 2006, p. 260).

Haspel et al. argued that the higher agreement rate for the legislation initiated by the President or government was not as indicative of a reduced policy distance between the President and the Duma as was the case for legislation initiated within the Duma:

> The sharply reduced policy distance between the Duma and the President in the Putin era has resulted in higher levels of success for all categories of sponsors, but most notably for legislation introduced by members of the Duma. To be sure, one cannot determine from the available data whether Putin's success comes from his influence over everyday votes on the floor of the

Duma or more indirectly through his supporters' control over the agenda-setting mechanisms of the Duma (2006, p. 261).

Other accounts support their view that control over the Council of the Duma, the agenda-setting steering committee of the Duma, was a critical part of the story (Chaisty, 2005; Remington, 2001, 2006).

Another proxy for the sharply lower policy distance, separating President from the State Duma during the Putin era was the amount of Presidential-parliamentary bargaining that was required before bills were finally signed into law. Haspel et al. reported the following figures:

> For those bills that were eventually signed in the first and second convocations under Yeltsin, between a third and a half were vetoed at some point at least once by the Federation Council or President. This percentage fell to less than 10 percent under Putin (2006, p. 261).

Finally, the use of Presidential decrees in policy-making provides yet another indicator of the observed shifts in the political stream. The Russian President can initiate policy change either by proposing a law or by issuing a decree. Decree-making power is a compelling tool that the President can use to influence the ongoing presidential-parliamentary dynamics. For example, when a bill is sent to the President, he may choose to sign it into law, or veto it and issue a decree. Given that the President has an option to use a decree to advance a particular policy solution in the absence of a properly passed law, the State Duma often finds itself forced to negotiate harder. Of course, the President's decree-making power is not absolute, since there are policy areas where changes must be adopted through law and not by decrees. Therefore, Presidential bargaining power is more limited in those policy areas than in others, but it nevertheless remains a significant advantage.

Yeltsin used his decree powers with great zeal, issuing over 1500 policy-relevant decrees during his term in office (Sakwa, 2008). In the second Duma, Yeltsin's decrees vastly outnumbered laws in the areas of political structure and national security policy, and were a little overshadowed by legislation in the judicial and foreign policy realms — areas where the Constitution required the adoption of policy changes through laws. The number of decrees roughly equalled the number of signed laws in the social and

economic policy domains, where the rates of vetoed legislation were high, suggesting that decrees tended to substitute for laws in high-conflict issue areas.

There have been well-documented strong election-related pressures on the use of Presidential decree making under President Yeltsin (Remington, Smith, and Haspel, 1998). President Yeltsin was particularly prolific initiating policy change through decrees in the months leading up to the 1996 Presidential election. Haspel et al. (2006) reported a rise in decrees from about 64 per quarter to 165 in the second quarter of 1996.

President Putin's decree-making pattern was entirely different. Although Putin continued to rely on presidential decrees, clearly legislation has become his preferred method of introducing policy change. He issued fewer decrees than did Yeltsin. In the first years of his presidency he used decrees to reshape the political structure that he inherited from Yeltsin. Essentially, it was more of a parallel instrument that allowed him to quickly reform the executive branch in such a way as to reinforce his control over the political processes, including elections. Later, he was able to use legislation whenever he had to act in a policy area that was the subject of federal legislation.

Strong election-related pressures on the use of Presidential decree making have nearly entirely vanished under President Putin, a trend continued well into Medvedev's presidency. In contrast to Yeltsin's vigorous use of the decree powers during the election campaigns, under President Putin, the number of Presidential decrees actually fell in the last quarter before his two Presidential elections (Haspel et al., 2006). Thus, under Putin, election time had little effect on the use of Presidential decree power, and, with the exception of the first years of his Presidency, decrees had a rather modest effect on the overall rhythm of lawmaking.

6.4. **Conclusion**

The ideological and political currents floating through the political stream changed substantially at the time preceding the sanctions and sentencing reform. During this time frame, the national political leadership was changing - from the Yeltsin presidency to the first term of Putin presidency. These presidencies were characterized

by different positions on the role of state in public sphere, different governing styles, and different levels of political support.

Public opinion data showed that Russian society was ready to hand power to a single individual on trust in return for political stabilization and security. President Putin, sensitive to public demands, capitalized on the changing public mood. Since Putin's rise to power in late 1999, the Russian government has become largely dominated by the *siloviki* cohort, which had important implication for Russian policy-making. The desire for control predominated among former Chekists who formed the basis of the *siloviki* cohort and Putin's team. Hierarchy, strict discipline, intolerance of alternative centres of power - all the features of *siloviki* culture - were shared by the President himself. Political stabilization, "order", centralization became the main themes of his presidency. These changes have become evident in Putin's appointment style. Compared to his predecessor, Putin clearly aimed for greater "stability in cadres". A similar trend was at play in the relationship between the executive and legislative branches. Since the 1999 Duma election, owing to changes in its composition and greater administrative patronage of its work by the PA, the State Duma has become more cooperative and unlikely to challenge the President for control over policymaking.

Putin's leadership was aimed towards strengthening the centralized bureaucratic apparatus and creating controlled political environment that would be instrumental in carrying out structural reforms and adopting lasting systemic solutions as opposed to the less controlled and highly volatile policy-making style of the late Yeltsin's administration.

7.   Opening of a Policy Window

7.1. Introduction

The purpose of this chapter is to present the analysis of the data reported in the previous three chapters and to apply the findings to the study's analytic framework. The analysis framework is based on Kingdon's Multiple Streams Model. The model is used as a tool to describe how policy ideas become adopted as policy solutions through the convergence of policy, problem, and political streams. The convergence is also known as a policy window or window of opportunity.

A policy window is defined as an opportunity for policy change provided by the successfully coupled political, policy and problem streams. Policy actors seize this opportunity to build up support for a particular set of policies. Kingdon asserts that this opportunity is fleeting and the period while a policy window remains open is short. Policy windows occur infrequently and close as fast as they open. Therefore, participants must always be ready to take advantage of the window or face a possibility of having to wait for another opportunity to present itself again.

For the purposes of this analysis, the policy window was conceptualized as an opportunity for the passage of the 2003 *Criminal Code* amendments, which opened as a result of favourable convergence of policy, problem, and political streams. All three process streams have been examined to identify salient themes, reflective of changes in each or all of them, that would have made adoption of the amendments a more preferable solution to the problems faced by the Russian penitentiary system.

In the following sections, the findings are summarized by the domains of the analytical framework.

7.2. **Problem stream**

The way the problem issue is framed is "critically important to the success of the issue on the public agenda" (Milward and Laird, 1996). Throughout the 1990s and early 2000s, several critical issues crystallized in the problem stream. Up until the early 2000s, the Russian penitentiary complex continued to suffer from chronic underfunding when allocated budget funds only covered 60 per cent of its actual requirements. The majority of corrections facilities were in a poor state and required urgent upgrades and repairs, yet available resources were insufficient even to provide for the physical survival of hundreds of thousands of prisoners. Incidents of mass disobedience, destructive behaviour and increased violence within institutions were a common occurrence in prisons and correctional colonies across the country. The poor state of prison health care, sanitation and hygiene led to the epidemics of tuberculosis and HIV in prisons. Finally, the Russian penal system at the time contained one the world's largest prison populations.

According to the MSM, within the problem stream focusing events and crises can often act as a catalyst for bringing the attention of the decision makers to the critical issue. However, in this case it was hardly possible to identify a single focusing event, which alone would have propelled prison overcrowding into the governmental agenda. The examined discourse revealed that all sources were instrumental to creating the overriding impression of a correctional system which remained in a state of despair and unable to carry out its core tasks, becoming a severe burden for the state budget and, at the same time, served to discredit the state administration in the eyes of the population at large. System indicators, feedback, and local crises were all used to draw attention to the dire state of the Russian penitentiary system as an institution that massively overused imprisonment to an extent that it became impossible to afford.

Most importantly, prison overcrowding was presented as a root cause or the major contributing factor to the above-mentioned negative traits in the corrections system. Overpopulation in turn was attributed to excessively severe sentencing practices. Thus, a problem issue was defined in a way that made it easier to match it to the legislative solution in a consistent policy image.

7.3. Policy stream

The policy stream in this analysis consisted of various policy alternatives contemplated as potential solutions to the overpopulation crisis in the Russian corrections in late 1990s and early 2000s. All the examined approaches to bring down the prison population were grouped into two major categories: the *ad hoc* solutions rooted in the Soviet practice of executive clemencies, and the lasting, long-term solutions that became part of the "Presidential package" of amendments to the *Criminal Code* passed in December, 2003. Given the scale of the problem, amnesties and pardons could no longer serve as feasible solutions to the problem of prison overcrowding. More lasting policy alternatives were sought, including changes in the Russian sanctions and sentencing system. Introduction of non-custodial sanctions as alternatives to imprisonment gained particular attention and eventually became part of the proposed Criminal Code amendments. The amended version had substantially reshaped the system of sanctions and sentencing. The new provisions decriminalized less serious offences, reduced the severity of sanctions, widened the scope of mitigating circumstances, and introduced alternatives to imprisonment.

7.4. Political stream

The examined political stream revealed that substantial changes in ideological and political currents preceded the sanctions and sentencing reform. During this time frame, the national political leadership had changed - from the Yeltsin presidency to the first term of the Putin presidency. Putin's administration had a different position on the role of state in public sphere, different governing style, and enjoyed a much higher level of elites' and public support.

Public opinion data showed that Russian society was ready to hand power to a single individual on trust in return for political stabilization and security. President Putin, sensitive to public demands, capitalized on the changing public mood. Since Putin's rise to power in late 1999, the Russian government has become largely dominated by the *siloviki* cohort, which had important implication for Russian policy-making. The desire for

control predominated among former Chekists who formed the basis of the *siloviki* cohort and the Putin's team. Hierarchy, strict discipline, intolerance of alternative centres of power - all the features of *siloviki* culture - were shared by the President himself. Political stabilization, "order", centralization became the main themes of his presidency. These changes became evident in Putin's appointment style, narrowing inter-branch distance, and the President's choice of available policy-making tools. Compared to his predecessor, Putin clearly aimed for greater "stability in cadres". A similar trend was at play in the relationship between the executive and legislative branches. Since the 1999 Duma election, owing to changes in its composition and greater administrative patronage of its work by the PA, the State Duma has become more cooperative and unlikely to challenge the President for control over policymaking. Finally, the use of decrees in policy-making has declined reflecting increased preference for more permanent legislative solutions as well as ability to get them enacted by the supportive State Duma and Federation Council.

Putin's leadership was aimed towards strengthening the centralized bureaucratic apparatus and creating controlled political environment that would be instrumental in carrying out structural reforms and adopting lasting systemic solutions as opposed to the less controlled and highly volatile policy-making style of the late Yeltsin's administration.

7.5. **Policy window**

According to the MSM, policy windows are created as a result of successful coupling of the process streams in response to changes in any of them. The likelihood of a particular policy solution becoming adopted depends on how well it resonates with the main themes in both the problem and political streams. Although the precise timing of a policy window opening is often difficult to predict, it is possible to trace it back and confirm in retrospect. In the case of the Russian sanctions and sentencing reform of 2003, the opening occurred owing to changes in the political stream, specifically changes within the ruling elites and shifts in the national mood, including growing demand for stability and order. Existing penal policy issues that were floating in the problem stream since the 1990s finally gained sufficient attention and were re-constructed in a way that matched them to the available solutions. Changes in the

political stream in addition to reviving attention to the correctional problems, also created a favourable climate that allowed for the policy solutions, which previously were unattainable due to political constraints. Changes in all the described process streams were coupled together into a cohesive policy image that supported the adoption of a new penal policy on sanctions and sentencing.

In the original MSM model, coupling of streams is done by policy entrepreneurs. Kingdon defined policy entrepreneurs as "advocates for proposals or for the prominence of an idea". Owing to the highly competitive nature of American policy-making and the active involvement of a large number of participants in this process, policy entrepreneurs occupy a prominent place in the MSM. Since the opportunity for policy change presented by the opening window is short-lived and there are numerous competing policy ideas backed up by their own advocates, active efforts are required for a particular policy idea to enter the governmental agenda. Hence, without a policy entrepreneur, a joining of the streams may never take place and many worthy policy alternatives could never make it to the decision-making agenda. That was not the case in Russia, given the differences in political systems. In contrast to the American, the Russian policy environment at the time was much less pluralistic and more controlled. Even though transparency in public policy is an increasing trend in many countries, Russian policy-making continued to be conducted behind closed doors. The lack of openness in the Russian policy-making context makes it extremely difficult to identify policy actors involved in advocacy, especially on a personal level. In this way, the Russian political context is an important factor that impacts policy related operations and significantly limits the influence of any actors who are not directly engaged in the process by the interested government agencies. In a competitive policy environment, policy entrepreneurs can come from any segment of the policy community and are defined by their willingness to invest time, energy, and reputation in the advancement of a policy. Within the more controlled Russian policy environment, outsiders' influence is limited to raising public awareness of certain issues, i.e. by delivering the results of independent policy analysis. In such conditions, it is extremely difficult to assess whether any of outside advocates can have a say in the policymaking process at all. It is more appropriate to talk about institutional policy entrepreneurs such as the President and/or PA. Defined at this level, the concept adequately captures the realities of Russian penal policy-making.

As described in the policy stream chapter, advocates of the Presidential proposal have successfully linked changes in sanctions and sentencing policy to the problems experienced by the Russian penitentiary reducing them to a single issue of prison overcrowding as a result of inadequate sanctions and sentencing policy. They were monitoring the problem stream bringing attention to the issues that highlighted the extent of the problem. They assessed and interpreted the results of the policies that were previously in place, demonstrating their inadequacy in fighting the overpopulation crisis in Russian prisons. Policy entrepreneurs, thus, softened up the specialist and police-making community as well as educated the broader public by raising awareness about the issues in the correctional system. As a result, they had created a coherent problem story that required a comprehensive legislative solution and it was also well aligned with the dominant vector of the existing political stream.

The coupling process varies slightly depending on the conditions that lead to the opening of the policy window. In any case, advocates of policy alternatives have to sense the existence of an open window and be willing to actively seize the opportunity before it closes.

A policy window can close for many reasons. The window can close if participants feel the problem has been addressed, or if participants fail to get action and decide to focus on something else. Hence, in the original MSM, the transient nature of a policy window is one of its defining characteristics. A policy window in a rapidly changing and highly competitive policy environment is brief by definition. However, it's not clear whether that would still be the case in a less competitive policy environment with a limited number of participants and greater governmental control of agenda-setting. Political system configuration can affect the timing and duration of policy windows just as it affects agenda-setting patterns, which in liberal democracies differ significantly from those observed in stable autocracies.

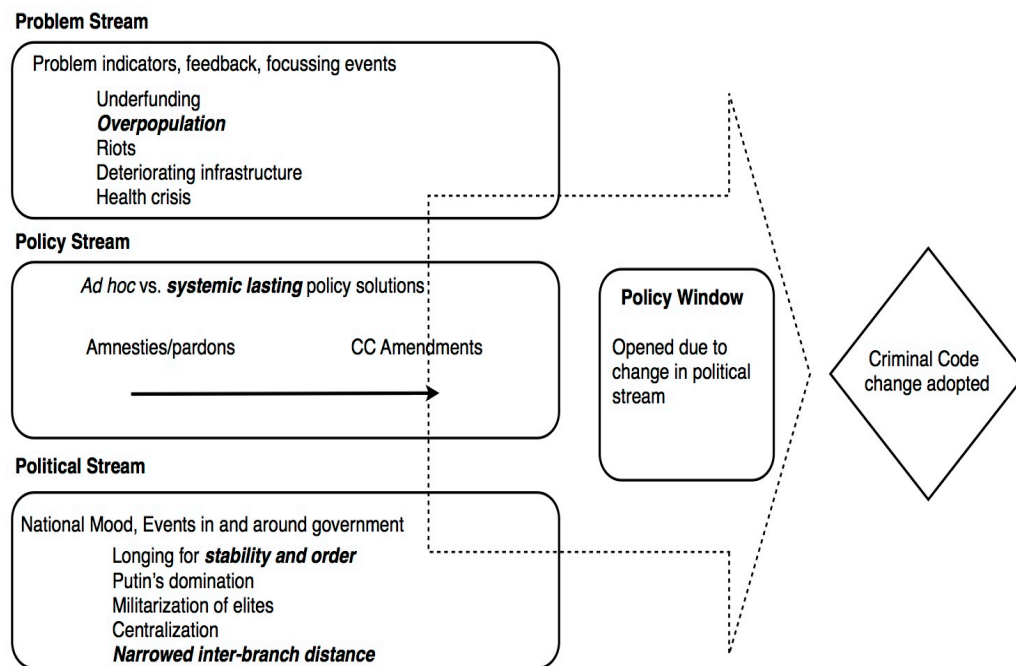In a liberal democracy, public issues were typically viewed as moving from the systemic to the institutional agenda. However, examination of agenda-setting processes in other countries often reveals alternative patterns. For example, agenda-setting in totalitarian regimes has been characterized by a mobilization pattern (Cobb, Ross & Ross, 1976). Decision makers initiate issue expansion to obtain the support of the

public; therefore, the issue moves from the formal agenda to the public agenda. Generally, a political leader is the source of the issue. Initial policy announcements have few details; however, the policy is made clearer as the issue progresses. The attentive public is targeted when leaders want to expand the issue to the larger public. In authoritarian bureaucratic regimes agenda-setting assumes inside-initiation pattern the public is excluded from. The issue attains "formal agenda status" automatically due to the privileged place of those desiring a decision (Cobb, Ross & Ross, 1976, p. 136).

Since Cobb, Ross, and Ross initially developed this model it has been recognized that these different patterns of agenda-setting could be found within each regime type. Agenda-setting styles could vary by sector just as much as by the type of political regime. Nevertheless, the distinction remains relevant as it highlights how institutional arrangements and the configuration of political system in general can profoundly alter the agenda-setting dynamics. Kingdon's original MSM does not adequately address the existence of agenda-setting stability. Yet, it is common in authoritarian polities where greater governmental control of political processes extends to agenda setting. Agenda setting is monopolized by government policy makers who, given their privileged position within the political system, have the ability to control the vector of the prevailing policy discourse and to some extent its timing. State control media may under-report or downplay the significance and extent of the critical issues in the problem stream. As noted earlier, opportunities for actors outside the government to publicize a problem are either extremely limited or non-existent. In these conditions, the surge of government attention to the issue does not necessarily correspond with increasing public concern or even awareness of the problem unless government itself decides to publicize the issue to ensure public support for its policy.

As the description of the problem stream demonstrated, critical issues in the corrections remained unresolved for a long period of time and could be even characterized as chronic. The chances of a problem window opening under these conditions are low especially in less salient and publicly visible sectors such as the penitentiary system. In autocratic political regimes, policy windows have a greater chance to open owing to changes in the political stream, as was the case with the sanctions and sentencing reform. Political windows can also stay open longer than in liberal democracies.

Figure 5 provides an illustration of the application of the findings (as described in Chapters 4-6) to the analysis framework. The horizontal oval boxes in it represent the three streams of the model and contain the main themes that emerged within each stream that were related to the criminal law reform of 2003. The highlighted characteristics of the streams and their timing provided opportunity for a convergence of the streams and the opening of a policy window. A window of opportunity opened largely owing to changes in the political stream. The described convergence of process streams enabled the *Criminal Code* amendments to become the policy solution of choice.

Problem Stream

Problem indicators, feedback, focussing events
- Underfunding
- ***Overpopulation***
- Riots
- Deteriorating infrastructure
- Health crisis

Policy Stream

Ad hoc vs. ***systemic lasting*** policy solutions

Amnesties/pardons   CC Amendments

Political Stream

National Mood, Events in and around government
- Longing for ***stability and order***
- Putin's domination
- Militarization of elites
- Centralization
- ***Narrowed inter-branch distance***

Policy Window

Opened due to change in political stream

Criminal Code change adopted

Figure 5 Application of the findings to the analysis framework

7.6. Answering the research questions

This study was initiated to answer a primary and secondary research questions. The primary research question of this study was: what could have triggered the dramatic change in sanctions and sentencing policy in Russia in 2003? The following sub-questions were used to answer the primary research question:

Problem stream: was there evidence of an emerging penal policy problem preceding the adoption of the selected policy solutions?

Policy stream: what were the characteristics of the policy alternatives that existed at the time the problem emerged and how were these alternatives considered?

Political stream: what were the characteristics of the political currents at the time of significant changes of penal policy in Russia?

Policy window: was there evidence of convergence of process streams?

The secondary research question of this dissertation is: how useful is the Multiple Streams Model in exploring the factors and events that shape the development of penal policy beyond the scope of the public policy setting the model was originally designed for (i.e., American public policy agenda-setting).

The research conducted answered the primary research question by developing a historical account of the development of the sanctions and sentencing reform. Chapters 4-6 include excerpts from the document review, providing findings to detail the factors and events leading to the adoption of the new amendments.

In addition to answering the primary question, this research made an attempt to confirm the utility of Kingdon's MSM and its applicability to Russian penal policy environment. The study could not make any claims about the MSM predictive power. The closed nature of the Russian policymaking and its lack of transparency currently make it impossible to empirically evaluate Kingdon's theoretical propositions. In the absence of direct access to key policy makers this study has relied on documentary and legal analysis. It lacks the required degree of specificity that only interviews with the policy actors could have provided.

This research has confirmed that MSM can be used as a valuable toolkit to explore and systematically present the dynamics of penal policy development in Russia. It was possible to describe the process of sanctions and sentencing reform using the language of the framework. MSM has proved to be a useful analytical tool to examine and describe how factors and events come together to support the adoption of a policy, thus answering the secondary research question. Its key conceptual elements have

easily translated into the reality of Russian penal policy-making. For example, the concepts of the streams clearly have universal meaning and are applicable to Russian policy-making environment despite the differences in the political regime. The model was effective in unpacking and presenting the events that took place. It described how activities were occurring independently in three streams from the mid-1990s to 2003. Around 1999, activities in the political stream started to merge with the problem stream. Transferability of other conceptual elements was more problematic. For example, the concept of a policy entrepreneur appeared to be artificial given the tightly controlled policy environment in Russia. Clearly there was less space if any at all for any kind of political entrepreneurship within the system. The idea of political entrepreneurship implies the existence of personally identifiable individuals willing to take risks to advance certain ideas and doing it independently from the state and other actors. It also implies that someone outside the government could bring issues to the agenda. That was not the case with the sanctions and sentencing reforms.

Nevertheless, with the noted limitations in mind, the study has demonstrated that the MSM framework is a useful analytical model that transcends the borders and can be fruitfully used in comparative policy studies. The study has, thus, advanced the MSM's analytical and descriptive capabilities.

7.7. Conclusion

This chapter has integrated the findings from the document review and subsequent research into the penal policy development in 2003 to describe the factors and events, which led to adoption of the new sanctions and sentencing policy. In addition, these findings were applied to the analysis framework. The findings provided a historical account of the penal policy reform, thereby answering the primary research question. In addition, the application of the findings to the analysis framework indicated that the model could be used in examining these factors. The following chapter will conclude the study, providing a summary of the findings, detailing the implications of these findings, noting limitations, and making suggestions for future research in this area.

8. Conclusions

8.1. Introduction

This chapter will provide concluding remarks for the inquiry into the factors and events that preceded and contributed to the enactment of the 2003 Criminal Code amendments, that transformed Russian sanctions and sentencing system. Specifically, it will summarize the findings, note its limitations, outline alternative explanations, and make suggestions for future inquires. It will conclude with a summary of contributions of this research to the field.

8.2. Summary of findings

This research was started with two explicit purposes. The primary purpose was to conduct a policy analysis of the circumstances that preceded and led to shifts in Russian penal policy. The secondary purpose of this study was to assess the effectiveness of Kingdon's Multiple Streams Model in conducting penal policy analysis in a non-western political context.

The primary purpose was achieved as the dissertation provided a systematic historical record of the factors and events, which led to the first major shift in sanctions and sentencing policy in modern Russia. It revealed how, and why, a particular policy option became a preferred policy solution, being based on a genuine policy problem and matching general trends in the existing political climate.

Specifically, through the examination of the content of the problem stream, the dissertation identified several critical issues that were characteristic of the Russian corrections throughout the 1990s and early 2000s: chronic underfunding, increased

violence within institutions, epidemics of tuberculosis and HIV in prisons. It explained how prison overcrowding was presented as a root cause and/or the major contributing factor to the above-mentioned negative traits in the corrections system. Overpopulation in turn was attributed to excessively severe sentencing practices.

The dissertation examined the content of the policy stream, which consisted of various policy options aimed at mitigating the crisis in the Russian corrections. All the examined approaches break down into two major categories: the *ad hoc* solutions rooted in the Soviet practice of executive clemencies, and the lasting, long-term solutions that became part of the "Presidential package" of amendments to the Criminal Code passed in December, 2003. The examined policy stream revealed a preference for a more systemic and lasting approach that involved amending the Criminal Code, thereby changing the Russian sanctions-and-sentencing system. The introduction of non-custodial sanctions as alternatives to imprisonment gained particular attention and eventually became part of the proposed Criminal Code amendments. The amended version had substantially reshaped the system of sanctions and sentencing. The new provisions decriminalized less serious offences, reduced the severity of sanctions, widened the scope of mitigating circumstances, and introduced alternatives to imprisonment.

The dissertation also examined changes in political configurations that preceded the sanctions-and-sentencing reform of 2003; specifically, the effects of the changes in the national political leadership – from the Yeltsin presidency to the Putin presidency. Putin's administration had a different position on the role of state in the public sphere, a different governing style, and enjoyed a much higher level of support from both elites and the general public. The examined events in and around government manifested several interconnected themes: political centralization, militarization of political elites, and further strengthening of the role of the President and the Presidential Administration. All of them matched the rising importance of "stability and order" in the national mood. The dissertation showed how the changes in the institutional configurations appeared in line with the above mentioned trends and affected the nature of relationship between the executive and legislative branches: the State Duma has become more cooperative and unlikely to challenge the President for control over policymaking. The described changes opened a policy window that allowed for a structural reform of the Russian

sanctions and sentencing system as a more lasting systemic solution. Existing penal policy issues that were floating in the problem stream since the 1990s finally gained sufficient attention and were re-constructed in a way that matched them to the available solutions. Changes in the political stream in addition to reviving the attention paid to the correctional problems, also created a favourable climate that allowed for the policy solutions, which previously were unattainable due to political constraints. Changes in all the described process streams converged allowing for the creation of a cohesive policy image that necessitated the shift in penal policy on sanctions and sentencing.

The secondary purpose of this study was achieved as the above-mentioned historical record confirmed the existence of all the domains of Kingdon's Multiple Stream Model, which served as the analytical framework for this research. The Multiple Streams framework helped to explore the factors and events driving the changes in the Russian penal policy on sanctions and sentencing. Complexity and ambiguity are facts of the penal policy development process in many countries including Russia. This study confirmed that Kingdon's model could offer a fruitful way to make sense of this ambiguous area. The Multiple Streams lens brought a sufficient degree of clarity and allowed for a more comprehensible and systematic examination of the penal policy process in Russia. While Kingdon designed the model primarily to explain the American public policy agenda-setting, this study has shown that the framework can be profitably used to examine the entire process of policy making outside the policy context of mature democracies. It adequately captured the specifics of Russian penal policy making, albeit not without certain limitations. With the exception of policy entrepreneurs, all the key structural elements of the framework were clearly identifiable in the historical record that was presented of the 2003 Russian sanctions-and-sentencing reform. In the original MS model, the coupling of streams is done by policy entrepreneurs who must successfully employ various manipulation strategies to accomplish their goal of coupling the three streams of processes. The role of individual policy entrepreneurs in making particular solutions more preferable than the others is quite prominent in Kingdon's account of public policy agenda-setting. Yet, given the closed nature of the Russian policy environment identifying policy actors involved in advocacy, especially on a personal level becomes an extremely difficult task. The study suggested that this shortcoming could be overcome by redefining the concept of policy entrepreneurs. In the Russian policy-making context, it is more appropriate to talk about institutional policy actors, such as the

President and/or the Presidential Administration. Defined at this level, the concept adequately captures the realities of Russian penal policy-making.

The study supports the utility and value of the MSM as an analytical tool to systematically examine and describe penal policy development in a non-western country.

8.3. **Limitations**

As noted in the chapter on methodology, research efforts are often constrained. Several important constraints have been identified and should be considered when reviewing and interpreting the findings. First, research is affected by conscious and unconscious biases and preferences of the researcher. To minimize this influence it was useful to acknowledge the researcher's background.

Second, some limitations were the consequence of the study design and its reliance on documentary analysis. Although saturation in data was achieved, the sampling technique that was employed might have limited the identification of persons who could have unique information about the factors and events surrounding the development of the penal policy in Russia. This could be especially true, given the limited data discovered concerning the role and identities of the policy entrepreneurs who were involved in this process.

Third, the resources available to the researcher limited access to other data sources for this study. Specifically, the researcher was limited to documents that were available from public sources. Internal resources (e.g., minutes of PA meetings or transcripts of President's meetings with his advisors) were neither available nor accessible through any means (e.g., they could not be obtained through Freedom of Information requests as would be the case in Canada). In the absence of internal documentary sources, the findings necessarily relied on secondary accounts.

Fourth, the study was limited in terms of the time frame selected for this analysis. The factors under examination refer to events that happened over a decade ago. Although the majority of sources were still available, many could be missing or

inaccessible in digital format. This limitation did not affect the results of the legal analysis. Moreover, the passing time has provided a larger number of secondary analyses available for the purposes of triangulation.

Despite these limitations, there is sufficient evidence from multiple sources to support the findings. In particular, a sufficient degree of redundancy was achieved from data sources to indicate that the key factors and events, which led to the sanctions and sentencing reform, were captured. In addition, enough detail was obtained and confirmed from multiple sources to achieve triangulation.

8.4. **Alternative explanations and recommendations for future study**

Chapter 7 presented a comprehensive picture of Russian penal policy making based on the applied Multiple Streams analytical framework. MSM provided a useful toolkit to explore and systematically describe the process of penal policy reform in Russia. The present case study of penal policy development can serve as a foundation for a more rigorous comparative policy analysis that would ultimately link it to the larger themes of globalization, mobility of knowledge and institutions through policy transfer, and the role played by the changing macro-economic conditions that could have shaped national penal policy agendas. Despite being a viable analytical framework capable of guiding policy makers and researchers through the complexities of Russian penal policy-making, MSM cannot adequately address the issues of global interdependence as well as macro-level socio-economic factors. Therefore, it remains to be examined whether the forces of globalization might have accelerated the processes of knowledge exchange and affected the timing of national penal policy change in recent years or, perhaps, the timing of the reform was largely a result of economic necessity and the need of the political regime to maintain its legitimacy as a means of ensuring social control.

The latter question could be effectively addressed within the political economy of punishment - a powerful paradigm for critical sociology of penality. It refers to a neo-Marxist approach to penal policy analysis. According to the historical materialist perspective, processes of social change, including penal policies and their vectors, are

being shaped by the structural relationship between modes of production and legal/political institutions. As early as 1939, Georg Rusche and Otto Kirchheimer asserted in Punishment and Social Structure:

> Every system of production tends to discover punishments, which correspond to its productive relationships. It is thus necessary to investigate the origin and fate of penal systems, the use or avoidance of specific punishments, and the intensity of penal practices as they are determined by social forces, above all by economic and then fiscal forces (p. 5).

Taking this perspective, the historical dynamics of penal policies, their persistence in a particular age, as well as sudden changes in their vectors can be examined by situating them within a specific socio-political structure and by analyzing the role they play in the reproduction of its hierarchies of class and power. In this sense, the origin, timing, and ultimate fate of penal policies has less to do with the configuration of the process streams and the skills and/or resources of a policy entrepreneur than with the 'utility' of penal policy solutions for the preservation of a given economic system and the re-enforcement of its relations of production.

The materialist paradigm has an established record of informing both past and contemporary discussion on penality. First, the 'revisionist histories' of punishment in the 1970s and 1980s linked penal policy developments, such as the invention of the prison, to the emergence of the factory as the main site of capitalist production (Melossi and Pavarini, 1981). Later, neo-Marxist criminologists such as Ivan Jankovic, Dario Melossi, Steven Box, Chris Hale, David Greenberg and Katherine Beckett, applied these critical tools to offer materialist interpretations of penal policy shifts to mass-incarceration and the 'war on crime' evident in late-capitalist societies (Giorgi, 2007). These authors have operationalized the nexus between punishment and social-economic formations by analyzing the relationship between rates of unemployment (as an indicator of the 'situation of the lowest significant proletarian class' in capitalist economies) and rates of imprisonment (as a valid indicator of penal severity).

Most recently, Neo-Marxist theorists of the political economy of penality argue that the systemic rationalization of penal policies aimed at efficient management of 'dangerous' classes has been the hallmark of a new penality that emerged in several Western jurisdictions in the early 1970s (Beckett and Herbert, 2008; Young, 2007). The

new penality replaced the Foucauldian, discipline–oriented penality of the industrial era, which operated as a mechanism of social control designed to transform marginal groups into a productive workforce in order to bolster capitalist accumulation. In line with Antonio Gramsci's theory of hegemony, it has been argued that the social cohesion of the modern nation-state is maintained not primarily by the forces of coercion or the state (the police, military, and courts) but by the forces of persuasion. Gramsci stressed that "though hegemony is ethico-political, it must also be economic, must necessarily be based on the decisive function exercised by the leading group in the decisive nucleus of economic activity" (1988, p. 423). Arguing that the fall of Fordist capitalism requires new forms of penal regulation, Giorgi (2007, p. 251) posits that in an increasingly globalised post-industrialised world characterised by production processes that are less amenable to the panopticon-style Taylorism of the industrial era, a surveillance-oriented penal framework that can transform marginal groups from 'un-knowable individuals' into 'actuarially produced 'dangerous classes' has emerged as the prevailing mechanism of control. The objective of contemporary penal regulation in advanced capitalist societies is not to respond to the individual offender but to identify, control and exclude 'dangerous' groups. Feeley and Simon (1992) point to the emergence of a risk-focused penal policy agenda that has, since the 1980s, reinforced the shift from transformative ideals, such as the rehabilitation of the offender, towards the 'warehousing of risk populations' (see also Wacquant, 2009). Feeley and Simon (1992) also argue that the risk-focused penality is exclusionary and driven by actuarial justice principles that complement the quest for the cost-effective management of select groups categorised according to levels of actuarial risk.

The historical materialist logic implies that penal policy change is an economically-driven phenomenon and could be triggered merely by economic necessity and the neo-liberal ideal of cost-efficient managerialism. Indeed, developments in contemporary penal policies reflect such pragmatism that is rooted in considerations of systemic rationalization. In wider criminal justice policy, the attempt to secure systemic rationalization has been evident in the pragmatic replacement of cost-intensive populist solutions with cost-effective managerialist ones. Managerialism appears to be the key vehicle driving the formulation of strategies devised to ensure that enforcement action complements diversionary ideals. Central to the penal-policy-reform agenda is the effort to reduce the fiscal costs of managing a large prison population and a wider population

identified as 'risks'. In wider criminal justice policy, managerialism (a central plank of the modernization project of contemporary British governments) has been an important element in the effort to centrally steer public service policy towards politically defined penal ideals of cost-effective management of 'risks' (Senior et al, 2007). Indices of managerialism include the marketization of public sector services to introduce competition and reduce costs. The introduction of private sector principles of practice such as performance targets (for instance enforcement targets) represents yet another key strand of the managerialism.

In sum, echoing the views of the Neo-Marxist theorists concerned with the political economy of punishment, contemporary policy developments reveal a risk-focused efficiency-driven penal agenda that has been formulated to facilitate the cost-effective management of 'risk' populations.

It remains to be seen whether penal policy changes actually result from a comprehensive process of economic neo-liberalization, yet this could be a promising direction for future research. Adopting a macro-level perspective, some criminologists already have been focusing upon the fundamental structural and cultural conditions that shape policy making in different countries (Christie, 2000; Garland, 2001). They view fundamental shifts in economic and social structures and/or changes in cultural 'sensibilities' as key forces that have pushed political actors towards the adoption of certain forms of penal policy solutions.

Another alternative strategy is to continue with the tradition of a mezzo-level approach that has largely informed the present case study and focusing upon the more direct forms of international influence in the policy process. In particular, it could be illuminating to explore whether penal policy changes and their timing have been the result of deliberate policy imitation and policy transfer between jurisdictions. The focus of these arguments, although not always explicit, is upon the purposive actions and decisions of key actors in the policy process (see Nellis, 2000; Jones and Newburn, 2002). After all, 'economic forces' and 'social structures' do not lobby for penal innovations, frame legislation, pass sentences or vote in elections; people do (Hudson, 1996).

Within the field of crime control in general and sentencing policy in particular,

there has been a significant body of scholarly work that is consistent with the themes of policy transfer and knowledge sharing. A number of authors have, in different ways, acknowledged increasing convergence in penal policies between the USA and other western industrialized countries, and explained it as a relatively straightforward form of Americanization, attributing such developments to conscious imitation and voluntary policy transfer by countries seeking to emulate US policy innovations. For example, Nellis (2000) has examined the development of electronic monitoring of offenders as a sentencing option in the UK and concluded that 'a process of policy transfer indisputably took place' (p. 115). Others have described a more indirect form of policy transfer, related to the activities of multinational corporations. For example, Lilly and Knepper (1992) viewed the privatization of penal systems in many western countries as an indicator of the ongoing expansion of many US-based private corrections corporations into overseas markets.

Overall, given the growing interest in both the process of knowledge sharing across jurisdictions and the increasing evidence of similarities in policy responses among industrialized countries, there is now a substantial body of multidisciplinary literature devoted to this subject. Along with established concepts such as policy transfer (Dolowitz & Marsh, 1996, 2000; Stone 1999), policy convergence (Bennett, 1991), policy diffusion (Eyestone, 1977) and lesson-drawing, the surge of interest in this field has brought with it a proliferation of other labels including 'policy band-wagoning' (Ikenberry, 1990), 'policy borrowing' (Cox, 1993), 'systematically pinching ideas' (Schneider & Ingram, 1988) 'penetration' or what is also known as 'external inducement' (Ikenberry, 1990) and 'exporting ideas' or 'policy pusher' (Nedley, 1999).

The policy-transfer paradigm assumes that similar ideas become adopted in a jurisdiction other than its place of origin as a result of conscious, planned and active transmission of policy solutions from an exporter jurisdiction to an importer. Although this process has been described from a number of perspectives, a classic approach is the one developed by Dolowitz and Mash (1996) who used it in one of the first models of policy transfer. Dolowitz and Marsh define it as "a process in which knowledge about policies, administrative arrangements, institutions etc. in one time and/or place is used in the development of policies, administrative arrangements and institutions in another time and/or place" (1996, p. 344). They note that it is a "transfer of specific policies as a result

of strategic decisions taken by actors inside and outside government" (1996, p. 343). They suggest approaching the subject by answering a set of consecutive questions about the nature of policy transfer. Their most recent model is organized around six questions: Why do actors engage in policy transfer? Who are the key actors involved in the policy transfer process? What is transferred? From where are lessons drawn? What are the different degrees of transfer? What restricts or facilitates the policy transfer process? Each question, therefore, forms a basis for its own broader set of sub-areas of consequent investigations that together lay a foundation for Dolowitz and Marsh's comprehensive framework for policy transfer analysis. As a result, the framework developed by Dolowitz and Marsh incorporates a vast domain of policy-making activity by classifying all possible occurrences of transfer (i.e., voluntary and coercive, temporal and spatial, etc.). The Dolowitz-Marsh framework could guide future research efforts towards establishing a more detailed account of the role, played by international governmental and non-government institutions in facilitating the Russian penal policy reform. The present case study revealed that foreign penal policy solutions were indeed used to justify the use of non-custodial sentences in combating the crises in Russian corrections (e.g., expert support provided by the UK Department of International Development and Penal Reform International). However, whether that was indeed an example of policy transfer, its type (i.e., voluntary or coercive), extent and impact on the Russian penal policy remains to be examined.

The investigation confirmed the utility and value of the MSM in penal policy analysis. However, the inquiry stops in 2003 with the adoption of the Presidential package of amendments. Since that time, additional significant changes in the policy stream have occurred. Unfortunately, the time has shown that the 2003 sanctions-and-sentencing reform has not brought many of the desired results. Of course, the total number of prisoners in Russia temporarily decreased: between 2003 and 2005, the numbers dropped from about 788,000 to 630,000. Nevertheless, a few years later they went back up to the original level, partly as a consequence of the changes that reversed the measures passed in 2003. At the time when Dmitry Medvedev was elected to succeed Vladimir Putin as President, the Russian corrections were facing similar problems and the task again was to reduce the number of prisoners. Interestingly, the most acceptable solutions were again believed to be a major overhaul of the Criminal Code as part of the new program aimed at "humanization of the criminal law."

At the beginning of his presidency, Medvedev announced that Russia's system of crime and punishment was too harsh and too expensive, and called for its humanization. In his annual Presidential Address to the Federation Assembly in 2009, Medvedev outlined the measures that he believed should be considered as part of the humanization of the criminal law program (Poslanie, 2009). A number of draft proposals stemming from the humanization initiative were circulating in and around government in 2009 and 2010. In one form or another, they promised to broaden the range of non-custodial alternatives to imprisonment, limit the use of pre-trial detention of the accused, expand the range of options for early release and decriminalize a number of less serious offences. Some of those proposals (e.g., decriminalization of minor income tax offences and a ban on the use of pre-trial detention for those suspected of business crimes) materialized in 2009 and 2010 Criminal Code amendments. Others became the first part of the broader 'humanization of the criminal law' campaign launched in 2011. In Spring 2011, the first package of changes to sanctions-and-sentencing system was passed into law. In the summer of the same year, the State Duma quickly passed the remaining second and third packages of the presidential 'humanization programme'. The later essentially became the second major sanction-and-sentencing reform in the history of modern Russia. Interestingly, it appeared to be very similar to the first one, focusing on the alternatives to imprisonment, further decriminalizing minor offences (e.g., insult and defamation, violations of equal rights of citizens, illegal trade in precious metals and violations of the rules of customs) and removing the lower limits of sanctions for a large variety of offences (Kulikov, 2011). The amendments became law in December 2011.

Needless to say, political and problem streams were also changing. The trend for greater transparency in public policy making has been growing, which can eventually make it possible to gain access to more sources that could expand our knowledge of the processes and actors at play. Unlike its predecessor, Medvedev at least initially made a point of increasing the transparency of the reform process by involving the community of experts in the process of agenda-setting and policy formulation. In 2009, Medvedev commissioned a group of experts from the Centre for Legal and Economic Research (LECS) to examine the issue of over-regulation of business activity in Russia (LECS, 2011). Leading a team was retired First Deputy Chairman of the Supreme Court of Russia, Vladimir Radchenko. The group also included distinguished jurists, such as

retired Supreme Court justice Zhukov, retired Constitutional Court justice Morschakova, top criminal law scholars Lopashenko and Naumov, leading lawyers such as Reznik and economists such as Grigoriev and Novikova. The work of the Centre became an important source of ideas for the Medvedev's humanization program. The Centre clearly recognized the importance of publicizing its solutions and raising awareness about its proposals, both within the general public and the relevant groups of experts (Radchenko, 2008, 2009). Whether the trend towards increased public involvement continues with the return to the presidency of Vladimir Putin remains to be seen. It is already clear, however, that the stream of penal policy changes continues unabated. In the first months of his presidency, there have been a number of penal policy initiatives that came directly from the president or his team. Vivid examples included the sudden return of criminal defamation (just one year after its excision from the Criminal Code), and the expansion of the concept of treason so that it has become conventional to include political activities. Probably with the support of the officials, the Orthodox Church introduced a bill to add a crime of 'offending religious feelings' (a reaction to the "Pussy Riot" case[19]).

Conducting a case study of the adoption of another comprehensive package of criminal code amendments in Russia may help to further enhance the MSM analytical utility. These new developments can provide further insight into the penal policy process in Russia and give additional details highlighting the areas that were given limited exposure in the present research. One set of such issues concerns the role of the policy actors whom Kingdon refers to as policy entrepreneurs. Increased transparency and more extensive access to the sources can help reveal, for example, the impact that the individual State Duma deputies (MPs) have on the penal policy agenda-setting and policy formation in general. It is necessary to know which of the deputies initiated changes in criminal law and in whose interests; the extent to which they were personally committed to reform; and whether or not they felt the need to appeal to their constituents. Without access to the internal sources, we can only speculate about the

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[19] Three Russian female punk activists were sentenced to two years camp imprisonment for hooliganism and insulting the patriarch of the Orthodox Church and President Putin inside Moscow's biggest Orthodox cathedral out of "religious hatred." For a detailed account of this case see the summary prepared by the Russian Legal Information Agency available at http://www.rapsinews.com/judicial_analyst/20120820/264341551.html

role played in the 2003 and 2011 reforms by the chairmen of key committees of the State Duma, including Pavel Krasheninnikov (ex-Minster of Justice), and his relationship with those in the Bush administration. It is clear that the Presidential Administration played a key role in penal-policy-agenda setting and policy development - both as a filter of incoming proposals and as their source. However, we do not know whether this activity was concentrated exclusively in the Chief Legal Department of the PA, and to what extent it was controlled by the leading figures in the president's circle. These issues require further research, including access to the working papers and interviews with key policy actors who could provide greater detail than was possible within the existing constraints.

Finally, although the findings provide additional evidence of the utility and value of the MSM, the findings are neither generalizable to all penal policy making in developing democracies, nor to all instances of penal policy making in Russia. A next step in this research area could be to conduct comparative case studies of penal policy making in the polities with similar political regimes.

For example, Cavadino and Dignan (2006) examined a link between penal policies and political regimes in a comparative study of punishment in 12 industrialized countries. The selected countries included the US, the UK, Australia, New Zealand, South Africa, Germany, the Netherlands, France, Italy, Sweden, Finland and Japan. These are all modern industrialized countries, yet with idiosyncratic political setups affecting their individual policy dynamics. Employing Esping-Andersen's (1990) typology, Cavadino and Dignan divided 12 countries into four categories of nations: neo-liberal, conservative-corporatist, social-democratic corporatist and oriental-corporatist.

The first category includes neo-liberal states, wherein 'neo-liberalism' is understood as the politically conservative revival of 19th-century economic liberalism, based on free-market capitalism. Here, the general ideology is dominated by individualism vs. communitarianism or collectivism. In neo-liberal countries, the role of the state in ensuring the social welfare of its citizens is limited, offering mainly means-tested welfare benefits, entitlement to which is heavily stigmatized. The place of an individual in society is highly dependent on his/her ability to succeed in the free-market economy. Despite the proclaimed egalitarianism of neo-liberal societies, this economic

system results in an increasingly widening income gap between the rich and the poor. Among the 12 countries selected for the study, the US can be considered an ideal-type neo-liberal society followed by other English speaking countries such as the UK and New Zealand, as they have also manifested typical features of a neo-liberal society.

The second category includes corporatist countries, based on the conservative version of 'corporatism' where, in contrast to neo-liberalism, "important national interest groups (notably organizations representing employers and workers) are integrated with the national state and granted a degree of control over those they represent on condition that this control is exercised in line with a consensual 'national interest'" (Cavadino & Dignan, 2006, p. 443). As a result, individuals belonging to those groups are guaranteed welfare benefits, which, in contrast to neo- liberal societies, are often treated as a social right. The overall ideology of conservative corporatism is based on collectivist and communitarian values emphasizing social inclusion of all citizens within the nation under shared belief in the priority of 'national interests' over the individual ones. Unlike neo-liberal society, the conservative corporatist state is less egalitarian, as its strong welfare system tends to reinforce the traditional social hierarchy, but it also tends to exhibit a significantly lesser divide between the rich and the poor than does neo-liberalism. A typical example of the conservative corporatist state is Germany, followed by France and Italy. The Netherlands is slightly more difficult to place within the typology.

The third category includes Northern European countries and is often referred to as the "Scandinavian model". It is based on the 'social democratic' version of corporatism — simultaneously more egalitarian and more communitarian. Its public policy is a product of consensus between a powerful trade union movement committed to the principle of 'universalism' and employers willing to accept high levels of investment in return for wage restraint by the unions. In the Scandinavian model, the state itself assumes a much more active role in providing for the basic needs of its citizens. As Cavadino and Dignan (2006) describe it, "this model goes furthest in acknowledging unrestricted rights of social citizenship, and also in assuming the direct responsibility of the State for the care of the very young, the elderly and the infirm" (p. 445). As follows from the name of the model, the countries included in the category are Sweden, Finland, Denmark and Norway.

Japan combines distinctive features of at least two of the above-mentioned models and therefore is placed in a category of its own — the oriental corporatist society. Cavadino and Dignan describe Japanese capitalism as a form of "bureaucratized corporate paternalism with some distinctive features" (2006, p. 445). One of these features, that impact its penal policies most, is the highly valued social inclusiveness of the Japanese institutions of all kinds, which strive to preserve social relationships where possible. Japanese citizens too are exhibiting a much greater sense of social responsibility with respect to their families, teachers, class and work-mates, friends and social superiors.

The authors argued that countries within the same category exhibited significant similarity in penal policies, while variation in policy responses might still exists across the four categories. The Cavadino and Dignan's research so far has been limited to a comparison of the penal policy responses. It was focused on examining and contrasting the content of penal policies. It remains to be seen whether similar logic could be applied to contrast penal policy-making as a process.

The results of the present case study suggested that the political environment (e.g., greater governmental control of political processes, lack of transparency, limited number of actors involved) could affect the dynamics of the penal policy-making process. A larger cross-national comparative study could examine the function of the political regime in penal policy-making as well as the nature and degrees of convergence and/or divergence with respect to the penal policy processes within each category of countries, according to Cavadino and Dignan's typology (i.e., neo-liberal, corporatist, "Scandinavian", and oriental corporatist).

8.5. Conclusion

This research was undertaken to develop a systematic record of the processes, which led to the significant changes in Russian penal policy, specifically reshaping its sanctions and sentencing system. It also examined the utility of Kingdon's Multiple Streams Model in explaining how Russian penal policy changes. Both of these research purposes were accomplished. Specifically, the factors and events described in this

research confirmed the presence of all the key elements of Kingdon's MSM, suggesting that his model is indeed an effective analytical tool to describe how a particular policy idea come about.

A number of important contributions to the field of penal policy analysis can be obtained from this research.

It presented a systematic record of penal policy change in Russia. Based on the documentary review and legal analysis that were conducted, an historical record, beginning in the late 1990s and progressing to 2003, was laid out. It revealed how, and why, a particular policy idea was selected and became a preferred policy solution, being based on a genuine policy problem and matching general trends in the existing political climate. The record systematically described events in the policy, problem, and political streams as they related to the creation of a policy image of prison overcrowding and Russian sanctions and sentencing policy in need of reform. Specifically, in the policy stream, there was an emergence of interest in non-custodial sanctions and the liberalization of sentencing rules as a long-term legislative solution that could constrain the growth of prison population. In the problem stream, the magnitude of the overcrowding crisis demanded more radical and lasting solutions to the problem. In the political stream, changes in political leadership echoed national demands for stability and order and led to further consolidation of political power by the President and Presidential Administration. These institutional actors seized the opportunity to couple all three streams together and successfully created a policy image of the sanctions and sentencing system being in need of correction. Backed up by the President, a particular vision of policy change was enacted with virtually no resistance from the closely controlled parliament.

Specifically, this analysis demonstrated that, in the process of selecting a new policy alternative, factors that increase the chances of its survival, especially its technical feasibility have played a role. Most importantly, it showed how changes in the political stream could indeed make the adoption of selected solutions possible.

This research is believed to be the first attempt to utilize Kingdon's Multiple Streams Model as a framework for Russian penal policy analysis. This model suggests that a policy idea comes to the forefront based on the convergence of three streams –

the policy stream, the problem stream, and the politics stream – during a short period when a policy window opens - usually with the help of policy entrepreneurs who use their resources to take advantage of the favourable conditions in all the streams to push their policy ideas into the governmental agenda. The findings in this study confirmed the presence of the four key elements of the selected model – problem stream, policy, stream, political stream, and policy window – in the adoption of the new sanctions and sentencing policy in 2003. Furthermore, the analysis raised questions about the role played by institutional policy actors in Russian penal policymaking, given the closed nature of its political environment.

The utilization of the Multiple Streams Model as an analytical stream also helped to reveal the unique characteristics the streams have assumed to facilitate the successful passage of the legislative proposals. The emergence of multiple issues that could be redefined to match a single legislative solution allowed the problem stream to overflow into the concurrent policy stream. The mixing of problems and possible solutions allowed a problem and policy to attach to one another. This merger was triggered and further strengthened by a political stream in which trends toward centralization and consolidation of presidential control over political life in the country cleared the way for fast and smooth adoption of many policy proposals that were made on behalf and in the name of the President.

In this study Kingdon's Multiple Streams Model served as a solid basis for a simple, yet comprehensive analytical framework that revealed an intriguing story of how a fairly liberal penal policy proposal could have been so smoothly adopted in what proved to be an increasingly authoritarian political climate. The study provided further support for Kingdon's model as applied to penal policy making beyond the polities for which it was initially designed, suggesting that the policy adoption process in developing democracies could have the same basic elements, as does the policy adoption process in developed democracies where the MSM had been previously applied.

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Appendices

Appendix A.

Data Analysis Form

Data Source:		
Problem Stream	indicators	
	feedback	
	focussing event	
	other	
Political Stream	mood	
	changes	
	other	
Policy Stream	alternatives	
	community	
	other	
Window of Opportunity		
Other relevant information		