

Change in Juvenile Justice Policy:
Implications For Rights and Responsibilities

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Abstract

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Changes in juvenile justice are often attributed to increases in offending and media attention to crime. A “cycle” of reforms, which alternate between punitive and treatment type responses, has been identified. This study explores the possibility that wider socio-political events also have implications for reforms. Nations in which welfare and juvenile justice systems are highly integrated, may exhibit different patterns of policy change than those observed elsewhere. Changes in juvenile justice policy in New Zealand and Sweden are examined. The implications of policy change for the rights and responsibilities of those involved in the juvenile justice system are also examined. This includes the State, juvenile offenders and their parents and the victims of crime. Particular attention is given to the status of parental rights.

Keywords: *Juvenile Justice, Parental Rights, Rights and Responsibilities, Welfare State Reforms, New Zealand, Sweden*

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Chapter 1: Introduction

1.1 Introduction

Juvenile justice, crime and deviance have received a great deal of academic attention. Reforms or changes within juvenile justice systems are less often addressed. These studies offer either causal explanations of reforms or an examination of the outcomes that particular changes have produced.

Causal explanations of reforms tend to provide either very broad historical accounts or focus specifically on single events within a particular country. Whilst this approach provides some insight into the impetus for reforms, the explanation appears limited to the context in which a particular juvenile justice system operates.

Studies which examine outcomes also appear to have a narrow focus, and predominantly provide an assessment of particular reforms. These studies usually examine outcomes in relation to specific groups such as offenders and are often linked to the introduction of specific programmes aimed at reducing juvenile offending. Studies which have examined outcomes in terms of rights and responsibilities are also focussed on specific groups, such as the victims of crime (see for example Aertsen & Willemsens, 2001), or juvenile offenders (see for example Maxwell, Robertson, & Kingi, 2002) and are necessarily context specific. Understanding how reforms impact on rights and responsibilities in other contexts is therefore limited as a result.

Literature offering a causal explanation for juvenile justice reforms shows the observation of a pattern or cycle, such as that proposed by Bernard (1992). “There is a cyclic pattern in juvenile justice policies in which the same sequence of policies has been repeated three times over the last 200 years.” (Bernard, 1992, p.3). The changes are regarded as being from treatment type responses to punitive measures (Bernard, 1992). Bernard’s study is based on observations of the American juvenile justice system and the cycle is also identified in other studies (see for example Bradford & Morgan, 2005; Jensen & Howard, 1998).

Commenting also on the American system, Jensen and Howard (1998) refer to an oscillation between rehabilitative and punitive approaches. Bradford and Morgan (2005) identify a similar pattern in the British juvenile justice system. The authors characterise the pattern as involving major pendulum swings between “welfarist” and “punitive” policy. Bradford and Morgan (2005) identify a political move towards more punitive justice. They attribute this shift to an upward trend in crime and the response by politicians to reassure a concerned public that crime will be prevented (Bradford & Morgan, 2005).

Jenson and Howard, who utilise Bernard's theory, claim that public concern over juvenile crime reached an unprecedented high in the United States during the 1990s, occurring alongside a change toward stricter sanctions and an emphasis on incarceration. Jenson and Howard (1998) further claimed that "The extent to which policy with young offenders has emphasised rehabilitation versus punishment has changed intermittently over the last thirty years." (p. 324).

The studies by Bradford and Morgan (2005), Jenson and Howard (1998) and Bernard (1992) all demonstrate the interactions between public perception of crime rates and shifts between the provision of treatment and harsh penalties. While this aspect is important, the prevalence, or perceived prevalence, of juvenile delinquency is a key factor in explaining the "cycle" of approaches. In academic studies, delinquency is often expressed in quantitative terms as crime rates. Trends or changes in the amount of crime are then, theoretically, amenable to examination within a comparative framework, either within a given society over time, or as a comparison between two or more locations.

Close examinations of crime trend studies have revealed, however, that there are significant methodological issues in the interpretation of crime trends. Crime statistics are sensitive to changes in both reporting and classification practices. This presents an array of statistical complications when analysing data over time or between nations (Estrada, 2001; I. M. Schwartz, Rendon, & Hsieh, 1994). Media attention to violence further produces problems in the utilisation of trend statistics. Media coverage of violent crime has been identified as a causal variable in the increased propensity to report crime; distorting the interpretation of trends (Bradford & Morgan, 2005; Estrada, 2001). In discussing this aspect, Jenson and Howard (1998) concluded that empirical evidence for trends in youth crime is "not only limited, but fails to account for demographic, social and political factors." (p. 331).

The importance of wider social influences on juvenile justice has also been stressed by Weijers (1999). In offering a critique of the observation of a cyclic pattern in reforms, he states "Looking back over a century of the juvenile court in the Anglo-American world the picture is less clear and equivocal than the proposition of a cyclic pattern would have it." (Weijers, 1999, p. 334). Weijers (1999) further claims that there is a distinction to be made between Anglo-American systems and those in continental Europe once the wider context is appreciated. These distinctions become apparent when attention is focussed on the interaction between justice and welfare. "There are two relevant dimensions: the relationship between welfare and justice within the juvenile system itself, and the socio-political - that is the welfare - structure within which the juvenile court operates." (Weijers, 1999, p. 334).

This interaction between welfare and juvenile justice is of paramount importance when reforms are considered. The focus on changes between welfare and punitive approaches to juvenile offenders, however, can obscure the wider view of changes in the socio-political environment which affect the provision of and adjustments to welfare services.

Moreover, reforms within either welfare or the juvenile justice system have implications for rights and responsibilities. Recent trends towards restorative justice and the introduction of parental responsibility laws represent changes in the responsibilities which have historically fallen on the State.

Restorative justice practices emphasise the rights of both offenders and victims. These include victim-offender mediation and the use of Family Group Conferencing. Victim-offender mediation emerged in Canada and is now widely used in the U.S. and Europe. Family Group Conferencing emerged in New Zealand it has since been used in Australia, Canada and the U.S, and some European nations have experimented with this approach (Aertsen & Willemsens, 2001).

Parental responsibility laws accentuate parental accountability for juvenile offending and are now widely used throughout the U.S (Schmidt, 1998) and Australia (Hil & Bessant, 1998). These reforms illustrate the interaction between rights and responsibilities in juvenile justice. They are also linked to the wider socio-political environment in which they take place. It is this dynamic interaction between rights, responsibilities and the contexts in which reforms occur that form the main focus of the study.

1.2 Aims and Objectives

The overall aim of this study is to examine factors in the wider socio-political environment which may impact on changes in juvenile justice policy. The study then aims to explore the implications that policy changes have on rights and responsibilities, and in particular, those ascribed to parents. Recent international trends toward parental responsibility legislation highlight both the need to understand the relationship between rights and responsibilities and the status of parental rights.

This study incorporates information on the wider socio-political environments in both Sweden and New Zealand from an historical perspective. It is divided into seven main chapters, with background information being presented in Chapter Two. The background chapter presents historical and theoretical information and contains five sub-sections. A broad theoretical overview of the welfare state is presented first and is followed by specific developments in the Swedish welfare state. Historical developments in the New Zealand welfare state are then presented. This sets the scene prior to the 1970s against which later

welfare reforms in both countries can be considered. The fourth sub-section examines theoretical considerations of rights and responsibilities, while the fifth explores rights and responsibilities in the historical context of juvenile justice.

Chapters Three and Four of this study constitute the data collection stage. Chapter Three provides chronological data for Sweden and is broken down into ten year timeframes. Sub-sections on economic, political and welfare reforms, along with crime and reforms in juvenile justice are presented, and the data are then summarised. Chapter Four presents data for New Zealand and follows the same format.

Chapter Five begins the analysis stage of the study, discussing changes within each welfare state, in light of the previously presented theoretical accounts of welfare state change. Both broad and narrow conceptions of the welfare state are applied to an evaluation of changes within Sweden and New Zealand. Policy changes are also considered, where theoretical material guides the analysis of reforms.

It is this chapter that identifies the potential causal variables which contribute to the formulation of truth tables utilised in the analysis. While the data presented are predominantly qualitative, the comparative method of Boolean algebra¹ can be applied in order to identify combinations of causal factors (Ragin, 1987). In this instance, combinations of variables which influence reforms in juvenile justice can be identified. The technique involves the development of truth tables and step-wise analysis which uses algebraic computations to simplify the complexity involved with analysing events which have multiple causal factors (Ragin, 1987).

Chapter Six provides an in-depth account of rights and responsibilities from a theoretical perspective. The account provides a discussion of different types of rights and the complex relationship between rights and responsibilities. Because shifts in rights and responsibilities produce multiple outcomes they have not been included in the Boolean analysis. However, these shifts are examined in relation to policy changes in each country. The status of parental rights is then considered in broad terms and then with a specific focus on parental rights in the realm of juvenile justice.

Chapter Seven provides a discussion of the main findings. Results from the analysis are considered first. Differences and/or similarities between the reforms in Sweden and New Zealand are noted. Changes in rights and responsibilities resulting from the reforms are then considered and conclusions regarding the status of parental rights in juvenile justice are then drawn.

The remainder of this chapter provides an introduction to the connection between juvenile justice and welfare. Rights and responsibilities are also covered briefly and this is

¹ See Chapter 5, Section 5.3 Pages 61-62.

followed by an outline of the rationale for selecting Sweden and New Zealand for this study. An introduction to the selected methodology is then given.

1.3 Welfare and Juvenile Justice

Sweden and New Zealand offer an opportunity to examine two countries in which the provision of welfare services are closely linked to the juvenile justice system and further, have undergone economic reforms which have impacted on the provision of welfare services.

While nations differ in the approach to welfare, Esping-Andersen (1990) identifies similarities between Sweden and New Zealand, particularly in the post war period. In part, these similarities were due to the use of Keynesian economic management within small economies. Furthermore, both nations were characterised as social-democratic during this period. The role of the State in providing for social security is a key feature in Keynesian theory and a cornerstone in social democratic approaches (Esping-Anderson, 1990). The political ideology prevailing in both nations during the post-war period is indicative of the relationship between the State and its citizens. Both economic and political views clearly laid out the State's obligations and the social rights of the citizens of each nation.

The relationship between the State and its citizens in the realm of juvenile justice is embodied in two separate institutions, those of justice and welfare. While the justice system serves the primary function of imposing sanctions on those who fail to observe laws, it further serves the interests of other members of society in that it safeguards their right to be protected from the effects of criminal behaviour. Welfare services also fulfil the function of ensuring rights are upheld, and have become increasingly oriented towards the rights of the child. This is evident both historically and in current practice, particularly in nations which have adopted and ratified the United Nations Convention on the Rights Of the Child (UNCROC). The Convention lays out children's rights and the obligations of the State to protect those rights (Robertson, 1994).

More formalised relationships between the State and children can occur in juvenile justice and child welfare where the State assumes guardianship of a child. This is generally done under the principle of *parens patriae*², with the State acting in *loco parentis*, effectively supplanting the parents (Hil & Bessant, 1998). The dominant assumption is that in particular circumstances, parents are unable to fulfil their obligations to provide appropriate care for the child. As a result of these measures, the State becomes responsible for the provision of resources, services, institutions and specialists to support these obligations (Schmidt, 1998).

² See Chapter 2, Section 2.5 Pages 19-20.

Nations where children's rights are recognised in welfare and family policy may take a distinctly different approach to juvenile justice than nations less willing to make family policy a political priority. Family policy, however, encompasses the recognition of all members of a family³ unit. Primarily, this study focuses on the rights of parents which lie within the wider realm of family policy but also in the recognition of the significant role of parents in providing for and protecting the rights of their children.

Sweden has been acclaimed as a nation where family policy and the rights of the child occupy the top level of the political agenda (Durrant, 2006) and as a nation which values social rights and provides a comprehensive range of social protection through the welfare state (Esping-Anderson, 1990). This range includes provisions for juvenile offenders under the umbrella of welfare services. The approach taken to juvenile justice in Sweden is both formally and explicitly stated as primarily a welfare matter. "Swedish child welfare legislation makes no strict distinction between child protection and youth justice. Asocial behaviour of young people under 20 is a child welfare problem, outside the realms of criminal justice." (Hessle & Vinnerljung, 2006)

As with Sweden, New Zealand also upholds the welfare approach to juvenile offenders and the rights of the child and the family are also given formal recognition in the *Children Young Person's and Their Families Act, 1989* (Morris & Maxwell, 1993). The Act was strongly influenced by the United Nations Convention on the Rights of the Child (Morris, 2004) and ratification of the convention has also taken place in Sweden. The New Zealand legislation also gave recognition to the cultural distinction between Maori and pakeha family units by including the Maori concept of *whanau*.⁴

While these reforms in the rights of children have clearly been influenced by the UNCROC, they serve as illustrative examples of the importance of recognising that wider, in this case international events, have provided an impetus for changes within the welfare and juvenile justice arenas in both nations. Given the academic coverage of changes in the rights of the child in juvenile justice, the almost complete absence of studies which mention the *rights* of parents is surprising. Conversely, parental *responsibilities* are well addressed academically, as international trends are increasingly oriented toward parental accountability for juvenile offenders. In the United States, these developments have occurred since 1992, with over 40 States passing laws which impose direct consequences on the parents of juvenile offenders

³ The changing structure and subsequent definitions of families is beyond the scope of this study. For a New Zealand specific account see Swain (1990) in Spoonley, Pearson & Shirley (Eds.) *New Zealand Society*. Dunmore Press Ltd.

⁴ The term denotes the Maori concept of family which encompasses intergenerational ties and is further connected to kinship *hapu* and tribal *iwi* affiliation.

(Schmidt, 1998). Australian reforms toward parental liability emerged in 1989 and have since taken place in various States across the country (Hil & Bessant, 1998).

1.4 Rights and Responsibilities

As mentioned above, rights and responsibilities go hand in hand. Where the rights of the child are recognised, a reciprocal obligation or responsibility is created through the necessity to fulfil and/or protect these rights. In turn, this further necessitates access to the resources to ensure the obligations can be met. Where responsibility lies with the State, these obligations are primarily met through welfare services; hence changes in the provision of welfare have implications for rights and responsibilities.

The 1980s period of reform in New Zealand generated both legislative and structural changes in welfare and the provision of services. Triggered by events in international markets during the 1970s, the Keynesian-based domestic economic policies produced both public and foreign debt (H. Schwartz, 1994). Structural changes in welfare coinciding with the *Children Young Person's and Their Families Act, 1989* included decentralisation and the introduction of competitive market practices into State services (H. Schwartz, 1994).

The extent to which economic crises in the late 1980s and early 1990s altered welfare services in Sweden is less clear. Keynesian ideology was also being replaced by liberal-market economic practices, such as decentralisation. Hessle and Vinnerljung (2006) describe the effects of decentralisation as producing diversity in services between municipalities. Youth unemployment was regarded as rampant during this period and social workers were experiencing difficulty accessing services for youth with asocial behaviour. However, the authors further claim that decentralisation was limited to operational responsibility and not financial resourcing (Hessle & Vinnerljung, 2006).

Against the wider context of social, political and economic factors, changes in juvenile justice appear to represent a more complex interaction of forces than the cyclic explanations offered by Bernard, Jensen and Bradford and Morgan. The issue of reform is further complicated by the necessity to consider the potential impact on rights and responsibilities. An adequate exploration of rights and responsibilities in juvenile justice would not only need to accommodate theoretical explanations of wider socio-political environments and changes in welfare services, but must also incorporate an account of the changes in the rights of citizens and the responsibilities of the State.

1.5 Comparing New Zealand and Sweden

A comparative study provides the opportunity to examine these changes in both nations. It further allows for an understanding of how events give rise to particular outcomes in different contexts. This can assist the researcher in identifying key causal variables. Using an extended time-frame provides a balance between a broad historical account and a specific case study; a thirty year time span has been selected.

Nineteen Seventy marks a period in the history of both Sweden and New Zealand where development of the social democratic welfare state was continuing and the political landscape was relatively stable. It has therefore been selected as an appropriate starting point. Later developments in both nations led to some divergence between the two socio-political environments. The 1980s and 1990s mark a distinctive era where New Zealand's political and social environment was radically transformed. Swedish reforms were both later and less pronounced. The thirty year timeframe therefore provides an opportunity to examine reforms in juvenile justice under relatively stable and similar conditions in both nations throughout the 1970s. Divergent developments can also be explored as changes in the 1980s and 1990s provide a contrast to the previous decade, within and between the two countries.

1.6 Methods

This study covers a range of academic disciplines. It compares socio-political changes alongside developments in welfare and juvenile justice, juvenile crime and social rights. Given this range, Qualitative Comparative Analysis (QCA) has been selected as this allows for a systematic and consistent assessment of the data. The technique can be applied to small sample sizes and accommodates the complexity of causal conditions in social phenomena (Ragin, 1989).

The application of Boolean algebra allows for a holistic examination of causal conditions because it has been developed from a case-oriented approach. Variables are not examined in isolation, but in conjunction with all other causal factors. The main advantage of this technique is that it preserves the in-depth understanding of social phenomena gained by qualitative research, while at the same time employing a quantitatively based analysis which is logical, systematic and consistent (Ragin, 1987).

The methodology is a break from main-stream social science research techniques. It attempts to integrate the specificity of a case-oriented approach with the broader generalisations that can be made from a variable-orientated approach (Ragin, 1987). A more detailed account

of Boolean algebra is presented in Chapter Six. The application of this method to this study is experimental. This study therefore includes a discussion of the merits and limitations of adopting this methodology, and this is given in the final chapter.

Chapter 2: Background

2.1 The Welfare State

Although debate and criticism surround a definition of the welfare state, both juvenile justice and the rights of citizens within a society are closely linked to State activities generally regarded as welfare functions. Lack of a precise definition for the term “Welfare State” arguably impacts on academic studies. Lack of consensus over defining characteristics and relevant evaluative criteria generate methodological issues for most comparative studies (Veit-Wilson, 2000).

In order to overcome these issues, this study makes use of a broad definition which refers to State or government involvement in welfare activities. In this sense, the extent of government involvement and the functions of the welfare system are of primary concern. Characteristics of the New Zealand and Swedish welfare states serve a descriptive purpose, providing a fairly generalised account of both welfare systems. The objective is to describe two welfare states and examine if and how changes within them interact with changes in the juvenile justice system. The focus, therefore, is not on an evaluation or typology of welfare states, but on the consequences of change within them.

In the initial stage, this study draws on the typological work by Esping-Andersen (1990), which provides a detailed account of welfare provision in eighteen nations, including Sweden and New Zealand. While the criticisms by Veit-Wilson (2000) are relevant to Esping-Andersen’s work, his study has been utilised by many scholars exploring welfare and social policy (Clasen, 2003; Cox, 1998; Hill, 1996) and has further formed the theoretical basis of other comparative studies (see for example Hölsch & Kraus, 2006; Korpi & Palme, 2003).

Esping-Andersen compares the construction of traditional social welfare policies. The work focuses on the structural and institutional features of welfare states. The theory proposes three different types of welfare capitalism: conservative, liberal and socialist. According to this theory, clusters of countries can be identified and differentiated on a range of variables. The three different types of regimes produce different outcomes in terms of social stratification. Differences also emerge between arrangements with the State and the market and the extent to which working class mobilization occurs.

Countries with conservative welfare systems are described as strongly “corporatist,” the State plays a minimal role in redistribution, but private insurance is also minimal. In this way, social divisions are maintained. According to Esping-Anderson, conservative models would differentiate and segment social insurance into occupational and status-based programmes,

producing large variations between top and bottom benefits. Conservative regimes are concerned with avoiding class conflict through maintaining the hierarchy of social order and the preservation of authority. Democratic mass participation is regarded as a threat to authority and social rights are predominantly status-related. Germany, Italy and Austria are considered to belong to this conservative cluster (Esping-Anderson, 1990).

In the liberal cluster, countries combine minimal redistribution with private arrangements. The use of means-tested assistance provides only for those in the most need, while other universal transfers such as social insurance plans are modest. The United States is the most readily recognisable in this cluster, especially in the provision of health care, where private insurance is necessary (Esping-Anderson, 1990).

By contrast, welfare states exhibiting socialist attributes operate welfare systems based on principles of universalism and extended social rights. The social stratification outcome pursued by socialist labour movements placed solidarity at the forefront. This was intended as a broad class unity for the purpose of long-term collective mobilisation. The intended outcome was to reduce the extent or degree of social stratification. The desire for broad class unity and parliamentary majorities meant "... socialists were compelled to adopt a genuinely universalistic idea of solidarity, a universalism that helped unify what in reality was a substantially differentiated and segmented working class." (Esping-Andersen, 1990, p.67).

While both New Zealand and Sweden are included in the socialist cluster, Esping-Andersen (1990), cites differences between the New Zealand and Swedish labour movements, claiming that the New Zealand labour movement never fully embraced the universalistic ideal. Further differences include the extent of social rights between the two countries. Sweden is ranked "strong" in socialist attributes, while New Zealand is ranked as "medium." In fact Esping-Anderson (1990) regards New Zealand as a nation where "social rights are underdeveloped." (p.75).

Broadly, Esping-Andersen's work addresses the various arrangements between the State and the capitalist market. These variations produce different outcomes in terms of social divisions and the provision of welfare. While the State may take a highly active role in the market, this is generally an attempt to address the class divisions and inequalities produced by capitalism.

The variations in State and market arrangements have also been examined from an economic perspective. One approach to the problem of inequality was developed by the economist John Maynard Keynes. In the period prior to, and including the early 1970s, economic ideas in both Sweden and New Zealand were of Keynesian orientation. The view behind active involvement was that governments could and should control the national

economy. Proponents argued that the market could not deliver the best social outcomes and that without intervention, the capitalist business cycle would create mass unemployment. The State was perceived as having a duty to "...socialize the conditions of investment to minimise the inherent instability of the business cycle and associated unemployment." (Blyth, 2002, p.5).

Adherents to Keynesian economic management maintain that fiscal policy is a more effective economic tool than monetary policy. They therefore advocate that fluctuations in the business cycle can be managed through government variation in the purchase of goods and services and variation in taxes which would smooth the potential for inflationary and unemployment effects (Mc Taggart, Findlay, & Parkin, 1999). This is in contrast to other economic theories which propose the use of monetary policy in economic management and therefore suggest changing the amount of money in circulation, altering interest rates and the foreign exchange value of the domestic currency, in order to control inflation (Mc Taggart et al., 1999). Different approaches to economic management have different implications for expenditure on welfare services, particularly where levels of unemployment increase or available State funding is decreased. These give rise to both social and political consequences, both of which have received theoretical attention.

Controlling for unemployment is not only a welfare issue but is also strongly connected to crime in society. A New Zealand study found that the total rate of crime is significantly affected by the unemployment rate (Papps & Winkleman, 2000). Although the analysis did not separate juvenile offenders from adults, the types of crime affected by unemployment included theft, car conversion, receiving and burglary (Papps & Winkleman, 2000). New Zealand-based longitudinal research found that the length of time people were unemployed had a significant effect on participation in criminal offending and was further associated with mental health problems, substance use disorders and suicidal behaviours. Youths who were unemployed for six months out of a year experienced rates of psychosocial problems that were between 1.4 and 8.4 times higher than their non-unemployed peers (Fergusson, Horwood, & Woodward, 2001).

In studies of the welfare state, the issue of unemployment is often approached as a macro-economic consideration. However, economic perspectives are only one possible approach to welfare state theories. Social and political perspectives may also be adopted which in turn give rise to varying definitions of what constitutes the welfare state (Esping-Anderson, 1990). Furthermore, different perspectives utilise different levels of, and units for, analysis (Korpi & Palme, 2003).

In very general terms, studies may be regarded as incorporating either a "broad" or "narrow" account of the welfare state. In the broad view, interest is focussed on the State's larger role in macro-economic management; therefore issues such as employment, wages and

aspects of industrial relations are included (Esping-Andersen, 1990; Korpi and Palme, 2003). The narrower conception is generally formulated as an interest in social insurance, income transfers and social services, or what Esping-Andersen refers to as "...the traditional terrain of social amelioration." (Esping-Andersen, 1990, pg. 2).

Examples of this "traditional terrain" include studies of specific welfare schemes such as pensions or childcare, such as that undertaken by Blomqvist (2004). Studies which encompass the broader conception may entail examination of economic management, ideological change (see for example Nygård, 2006) institutional change (see for example Svensson, 2002) or the effects of political cleavages, such as Bergman's (2004) analysis.

For the purposes of this study, both the broad and narrow conceptions of the welfare state are relevant. The political environment is closely associated with ideology surrounding economic management, attitudes to redistribution and the provision of welfare services. The added dimension of a fully enfranchised or democratic nation has a bearing on political stability for governments interested in reforms.

"Macro" issues such as economic management have an impact on the government's financial position, either enhancing or restricting welfare policies. While periods of growth may facilitate the government's ability to initiate new programmes or expand existing welfare services, fiscal crises may lead to decisions to reform welfare services.

As Bassett (1998) explained, in times of high inflation and high unemployment, big spending in a small economy increases demand for scarce foreign exchange. Borrowing, either from overseas or domestically, becomes necessary. Devaluation of the domestic currency may be used in conjunction with borrowing, in order to stimulate the economy. Alternative reform measures, such as retrenchment, may be used, but this leads to increased unemployment (Bassett, 1998).

Although welfare regime theory offers a means of classifying welfare states, it does not aim to predict changes. Further theoretical accounts regarding welfare states include a range of predictive theories which attempt to explain the direction of change in welfare State reforms under certain global conditions. The "globalisation" thesis and the "hollowing of the State" thesis fall into this category (Lindbom, 2001).

Adherents to the globalisation thesis argue that small, open, economies, such as Sweden and New Zealand, are heavily dependent on exports, and are therefore less competitive in the globalised market. Different interest groups may also apply pressure to governments advocating monetary policy to protect export competitiveness. The way in which competing interests are represented in Sweden and New Zealand offers a further point of comparison as ideological shifts are played out in the political and economic arena in both nations, during the

period under study. Because internal budget deficits also put pressure on governments to adjust spending, the globalisation thesis regards welfare cuts as a more likely alternative than increased levels of taxation to maintain social protection (Lindbom, 2001).

In a similar vein, the hollowing of the State thesis describes a diminishing of the role and power of national governments caused by global economic or financial markets. This is referred to as hollowing from above, while control over public services is hollowed from below, by a tendency to shift provision of State services to the private sector. This process leads to a weakened government and reduced levels of social service provision (Haines, 1999).

Alterations to the way in which the State administers welfare services are regarded as major reforms. Changes or reforms which introduce cutbacks in welfare spending do not alter the distinctive characteristics of a particular welfare state. However, major reforms which alter the basic structure are referred to as dismantling or as a process of retrenchment (Lindbom, 2001). Both globalisation and the hollowing of the State theses predict that retrenchment would occur in small, open, economies faced with financial crises.

By contrast, welfare regime theory claims that global influences would not lead to retrenchment or any other major structural change and that an existing welfare state would still remain identifiable as a particular type. The typologies of welfare states presented by Esping-Anderson, (1990), Korpi and Palme, (2003) and Castles and Mitchell, (1992, 1995) fall within this category. Although the latter authors build on the work of Esping-Anderson and identify a further regime type, which is used to describe the New Zealand welfare state, there is consensus on the basic characteristics of Swedish welfare presented by Esping-Anderson.

In building on Esping-Anderson's typology, Castles and Mitchell (1992, 1995) added another "world of welfare" which characterised New Zealand as "radical" on the basis of features such as low taxation and low social expenditure combined with high benefit equality (Castles and Mitchell, 1992, 1995, cited in Svallfors, 1997, p. 283). In agreement with Esping-Anderson, Sweden was again characterised as social democratic, and along with Norway, was found to be the most egalitarian among the nations studied (Svallfors, 1997).

It is important to note that the study by Castles and Mitchell (1992) post-dates Esping-Anderson's (1990) findings and while it may be a more accurate description of the current situation, this study is concerned with the period beginning in the 1970s. The description by Esping-Anderson is therefore considered as an appropriate starting point.

Nordlund's (2000) approach to examining developments in welfare states is highly compatible with that developed by Esping-Anderson. In a similar fashion, Nordlund (2000) regards social expenditure as an essential but fraught instrument for assessing change in welfare states (Nordlund, 2000). He advocates that attention to Nordic welfare states requires

consideration of the three main welfare programmes: unemployment, old-aged pensions and sickness insurance. Although the same three programmes were utilised in Esping-Andersen's typology, Nordlund (2000) adopts a less complex analysis and further combines this with other criteria for examining programme changes.

While changes within specific programmes, such as benefit rates, are regarded as indicative of reforms, Nordlund (2000) categorises these as "first order" changes. The formulation of social policy is categorised into three separate orders. Minor changes to benefit rates, waiting days and entitlement rules are regarded as changes to the settings of the policy instruments. Changes to these instruments, involving changes to the programmes themselves, are categorised as second order changes (Nordlund, 2000).

First and second order changes, while significant, do not impact on the overarching goals of welfare programmes. A third order change, however, is one where the adoption of totally new goals is brought about through events such as a change in ideology and a programme is altered in accordance with the goals of the new ideology (Nordlund, 2000).

A distinct advantage in incorporating both Esping-Andersen's (1999) and Nordlund's (2000) accounts of welfare reforms, is that both broad and narrow conceptions of the welfare state are included. Hence, both accounts contribute to the theoretical framework utilised in the analysis of welfare reform in this study.

2.2 The Swedish Welfare State

The Swedish welfare state described by Esping-Andersen is one which serves a protective function. As mentioned above, Sweden is widely acknowledged as an egalitarian society (Bergmark, Thorsland, & Lindberg, 2000; Esping-Anderson, 1990; Lindbom, 2001; Nygård, 2006) and one which has traditionally protected its citizens from the inequalities produced by the free market. This protective function is guaranteed by the provision of social citizenship rights. These are granted to all citizens on the basis of citizenship alone and are therefore universal in nature (Esping-Anderson, 1990).

In the early 1970s, the Keynesian approach to economic management was still being deployed in Sweden (Blyth, 2002). Economic management and welfare policies were combined to promote full employment but also offered citizens some freedom from total reliance on the labour market. This freedom is termed "decommodification"; it entails both the protected right and the ability of individuals to maintain an adequate income during periods when they are unable to work, regardless of the causes (Esping-Anderson, 1990). The ability to elect either option is connected to the State provision of welfare services. "...it is not the mere presence of

a social right, but the corresponding rules and preconditions, which dictate the extent to which welfare programmes offer genuine alternatives to market dependence.” (Esping-Andersen, 1990, p.22).

The Swedish system emerged from moves in the 1940s and 50s towards providing universal benefits for all citizens. Previously available only to white collar workers through the private sector, these benefits included compensation for loss of income and flat-rate pension benefits, made available to all workers and salaried employees (Olsson Hort, 1997).

The universal nature of welfare services meant that groups who would normally be disadvantaged by free market activity in society were guaranteed the same rights as every other citizen. In later developments, women were emancipated from the necessity to work while raising children through the receipt of cash payments, but were also provided with services such as adequate, affordable childcare (Hessle & Vinnerljung, 2006), which allowed participation in the work-force if this was chosen.

Views on egalitarianism permeated both employment and wage policies. This was a goal espoused and actively pursued by the Swedish Social Democratic Party (SAP)⁵ (Blyth, 2002; Castles, 1978). A centralised system of wage bargaining combined the interests of capital and labour with the State. The political body was known as the Labour Market Board, and included government representatives, the SAF⁶, which was the dominant employers’ organisation, and the LO⁷, representing workers (Castles, 1978; Mishra, 1990).

This combination of support from diverse political interest groups was one of the factors contributing to the prolonged domination of Swedish politics by the Swedish Social Democratic Party⁸. While other factors also contributed, the success of the SAP provided both political stability and active expansion of welfare programmes during the early 1970s (Blyth, 2002).

The dominant social democratic approach to welfare in Sweden has now been outlined and should provide a background against which later changes are discussed. It also serves as a point of comparison for the New Zealand welfare State.

2.3 The New Zealand Welfare State

As discussed above, although both the Swedish and New Zealand welfare states were regarded as socialist systems by Esping-Andersen, some differences are apparent between

⁵ Sveriges Arbetarparti: Swedish Democratic Party

⁶ Svenska Arbetsgivareforeningen: SAF

⁷ Landsorganisationen I Sverige: Swedish Labour Organisation

⁸ For a full account of the history of the SAP and the dominance of social democratic government, see Castles (1978)

them. Boston (1993) regards the New Zealand welfare system as less comprehensive than Sweden's. He further describes welfare policies as "...a mixture of social democratic and liberal principles with the balance shifting over time and from one government to the next" (Boston, 1993, p.65). This is evident in the combined use of universal and means-tested or targeted benefits. Boston's (1993) reference to the shift in government illuminates a key difference between the Swedish and New Zealand political landscape at the time. While the Swedish political arena was dominated by the SAP, New Zealand experienced governmental changes between the two major parties, Labour and National.

The Labour Party was founded by the trade unions and traditionally dedicated to social democratic principles (McCraw, 1994). The National Party traditionally enjoyed support from the farming and business communities. Regarded as conservative, National has traditionally supported free enterprise and its political principles were liberal in orientation (McCraw, 1994).

In the early 1970s, the New Zealand approach to economic management was not unlike that taken by Sweden. Keynesian ideology prevailed and both Labour and National governments took an active role in the economy. Although the emphasis was slightly different for each party, welfare state expansion continued under both governments. Economic management initially included a centralised wage fixing system aimed at equality. This approach came to be replaced by a greater emphasis on graduated taxation as a means of economic redistribution (Boston, 1993). Although the economy had been through an extended period of growth prior to the 1970s, New Zealand, along with other industrialised capitalist economies, was beginning to struggle with internal inflation and external pressures.

Despite the aims of creating a more egalitarian society, both gender (Rosenberg, 1977) and racial disparities were evident (Lashley, 2000). While women and Maori were over-represented in unemployment, Maori were further recognised as underachieving in the education system, and over-represented in welfare assistance (Rosenberg, 1977). Labour forged an early alliance with Maori and was actively involved in attempts to address disparities. National was less committed to this cause and aimed to promote the interests of its key stakeholders (Rosenberg, 1977).

Differences between the Swedish and New Zealand approaches to welfare were not particularly striking at this point in time. The extent to which these differences were accentuated by subsequent changes in the socio-political and economic environment will be examined in the following chapters. The implications of welfare reforms are also considered in relation to rights and responsibilities in both nations and will also be considered in later chapters. Background information relevant to rights and responsibilities is now addressed.

2.4 Rights and Responsibilities

While the above discussion has made general references to the existence and character of social rights in both countries, closer attention is required. The context surrounding social rights is of major relevance, as shown by the variations among Esping-Andersen's three regime types. Social rights, in Esping-Andersen's account, are shown to be advanced by citizenship, which entails eligibility for social rights. Klausen (1995), however, points out that those requirements for citizenship are variable across time and both within and between nations. Klausen (1995) further maintains that it is a fallacy to regard social citizenship as granting social rights which are equivalent to civil rights. The distinctions between civil and social rights are important.

Room (1979) distinguishes between the two, maintaining that civil rights are essentially permissive and granted to the individual (Room, 1979). While civil rights are guaranteed and protected by the courts, social rights rarely share this distinction. "Their substantive content is, rather, a continuing political decision" (Room, 1979, p. 58).

Klausen (1995) further characterises civil rights as being indivisible and non transferable, while social rights imply redistribution of income between social groups. Although the main focus is on social citizenship, Klausen (1995) sees this as a suggestive metaphor for political mobilisation. In fact the above descriptions portray social rights as firmly placed in the political sphere.

Consideration is therefore given to the political influences, such as international conventions, which may impact on social rights in juvenile justice. This aspect is not treated in isolation, however, and the interaction between rights and responsibilities is also explored. Shifts or changes in both rights and responsibilities are of key importance and information pertaining to these areas is relevant to this study.

In examining these changes, the specific nature of the interaction between rights and responsibilities can be considered and analysed. The relationship between rights and responsibilities is less than clear. Klausen (1995) regards this as reciprocal, where the State upholds and maintains social rights, social obligations are created. This, however, does not equate to a simple State/society relationship. As Klausen (1995) points out, while citizenship defines the relationship between the individual and the State as one of belonging, it increases the level of obligation on the part of the State to maintain a socially acceptable standard of living for all members of that society. It is the redistributive policies which generate a

reciprocal obligation on the part of the better off, who must be willing to contribute in order to provide this standard (Klausen, 1995).

In the context of Swedish justice, ethical principles identified as playing a prominent role are the Principle of Autonomy, the Harm Principle and the Principle of Care (Nilssen, 2007). While the Principle of Autonomy has theoretical foundations in classic political liberalism emphasising the right of individual freedom and self-determination, the State's role in securing the autonomy of the individual is acknowledged. The Principle of Autonomy is generally invoked in arguments against coercion in social law. By contrast, the Harm Principle and Principle of Care are both utilised in support of coercion. This has been particularly relevant to the treatment of drug abusers in Sweden.

Within the juvenile justice arena, some rights are accorded legal status, but in many instances this has emerged through historical developments. Perhaps the most significant of these was the gradual recognition of adolescence/youth as distinct from adults. It is to this aspect that the discussion now turns.

2.5 Rights, Welfare and Juvenile Justice

The imprisonment of juveniles has its broad international history in the advent of prisons and penitentiaries. Britain, for example, imprisoned an estimated 10,000 youths aged 16 or younger in 1840 (Trépanier, 1999). The emergence of separate institutions for youth took place in America and in many European countries. Some were intended as houses of refuge, while others were labelled reform schools, industrial schools or youth prisons. Despite the distinctive names and intended focus, these early institutions made no real distinction between offenders and neglected children (Trépanier, 1999; Weijers, 1999).

Established children's aid societies, such as St Vincent-de-Paul, were often involved as sponsors for the houses of refuge. The refuge movement was generally concerned with youth who were regarded as salvageable; these were children from poor backgrounds who may or may not have been guilty of an offence. The prevailing views on delinquency at the time held that this type of behaviour was the result of genetic factors, family environment and social surroundings. Thus, removal of children was regarded as a preventative and protective measure for the child. Institutionalisation further served the public's interest in protecting society from crime. For the courts, however, legal sanction for removing poor and neglected children from their homes was lacking (Trépanier, 1999).

With the establishment of a separate court for children, this omission was overcome. In Britain, State intervention for orphaned children was justified by invoking the principle of *parens patriae*, which was upheld by the Chancery Court. The principle provided for State care

of the child in the event of the death of the parents and further, that measures taken would be in the best interests of the child. In establishing a children's court as a Chancery Court, the problem of justification for removal of poor and neglected children was overcome. The *parens patriae* principle could now be invoked for the purposes of "...removing children from family situations which might lead them to criminality" (Trépanier, 1999, p. 306).

The Swedish tradition of child welfare had its roots in the moralistic and authoritarian purpose of upholding social order. Preventative measures were not introduced until the *Child Welfare Act, 1924* established child welfare committees. These consisted of specified professionals, were based in the municipalities and became part of the Swedish social welfare system after World War II (Janson, 2004).

The current system is predominantly the domain of the Swedish social services, with judicial involvement being determined by the age of the offender. For those aged under fifteen years, responsibility lies solely with the social services. For those aged between fifteen and seventeen, responsibility is shared with the judiciary. In certain circumstances this can be extended to include young people up to the age of twenty. Where youths are aged between eighteen and twenty, responsibility predominantly lies with the judicial system, but social services are still involved (Sarnecki & Estrada, 2004).

Historically, New Zealand followed the British model and operated industrial schools which served both punitive and protective functions (Dalley, 1998). Early operation of these homes was under the control of the Child Welfare Division of the Board of Education. Later, an amalgamation between social security and child welfare evolved into the Department of Social Welfare. The situation changed in the 1970s when a clear distinction between juvenile justice and care and protection cases was made (Dalley, 1998).

In both Sweden and New Zealand, legislation for juvenile justice sanctions is typically embodied in the court system while care and treatment come under the jurisdiction of the respective social welfare bodies. The interactions between these two occur on a case by case basis. However, although the department of welfare may operate in cases outside of juvenile justice, the reverse is not the case. Legislation in both New Zealand and Sweden makes welfare involvement in juvenile justice mandatory.

As State services both justice and welfare departments may be subjected to reforms during economic recession. Economic and political changes are therefore relevant to the provision of juvenile justice services. Despite this connection, however, few studies place juvenile justice in the wider socio economic or political context (Haines, 1999; Weijers, 1999).

Examining both political and economic aspects over time will enable a more in-depth understanding of how changes impact on the provision of services to juveniles. Furthermore,

economic, political and social factors all have implications for rights and responsibilities and the way these are reflected in the interactions between the State and the family.

In the following chapter, information pertaining to the wider context in which the Swedish system of juvenile justice operated during 1970 to 1999 is presented. Information on the New Zealand context is provided in Chapter Four. A summary of the main events in each nation is given at the end of each chapter. This precedes the analysis in Chapter Five.

Chapter 3: Sweden 1970 -1999

3.1 Sweden 1970 – 1979

This chapter begins the data collection stage of this study. It presents chronological data for Sweden in three ten-year time frames. The sub-sections are divided into information pertaining to the socio-political environment, welfare, crime and changes in juvenile justice policy. These divisions present the data in accordance with the categories used for the later analysis. The chapter concludes with a summary of the main findings for the thirty years covered.

3.1.1 The socio-political environment

Between 1970 and 1979, the Swedish economy operated at a low current account deficit, averaging 0.7 % of GDP⁹ while the central Government's fiscal deficit averaged 2.8% of GDP. Although foreign accounts operated at a surplus for 1973 (6.8% of GDP) Sweden's economic position was periodically strained during the 1970s (H. Schwartz, 1994). Oil shocks in 1973 and 1976 generated problems in various industries, necessitating intervention from government in the form of loans and subsidies to avoid the potential for unemployment and redundancies (Mishra, 1990).

GDP growth during this period was highly variable. In 1970 this rate was 6.5%, exceeding the OECD average of 2.7% in the same year. Although average rates were much lower between 1971 and 1975, GDP was still positive. Between 1976 and 1979, Sweden's growth rate of -1.6%, was below the OECD average and put the economy into a recession in 1977 (Mishra, 1990).

Fluctuations in GDP growth, however, did not produce extended periods of either boom or bust (Oyer, 2006). Deficits were short in duration, and comparatively low, re other OECD countries (Mishra, 1990). Overall, the economy still showed a pattern of steady GDP growth for most of the period and while tax rates increased, so too did labour force participation, while unemployment remained low (Oyer, 2006).

The SAP was actively involved in both labour market policy and wage bargaining. Extensive training and relocation programmes served to redeploy workers from low paid positions in declining businesses and increased employment in the public sector also helped stem potential unemployment (Mishra, 1990).

⁹ Gross Domestic Product.

Goals of full employment and wage solidarity¹⁰ were achieved, in part, through extensive negotiations with both labour and employers' organisations. This occurred at the national level, through the Swedish Labour Market Board. The process was highly centralised and the board included government representatives, the SAF, which was the dominant employers organisation, and the LO, representing workers (Castles, 1978; Mishra, 1990). This strategy was coupled with some controls over business profits, in order to counteract cyclical unemployment and encourage firms to set aside profits as reserves for periods of recession (Mishra, 1990).

Increased Government intervention in the economy, aimed at controlling business, led to tensions in labour relations. This in turn created a period of unrest, resulting in over 250 separate instances of strikes and militant action in 1970 alone (Blyth, 2002). The previously strong alliance (Blyth, 2002; Oyer, 2006) that had existed between the State, labour and business was now strained and support for the SAP began to wane.

By 1976, the 44 years of SAP Government was broken (Olsson Hort, 1997). The bourgeois¹¹ parties gained a majority in the lower house and a coalition government came to power (Castles, 1978).

Although public sector expansion aided in stemming unemployment, it also added to increasing fiscal payments. Expansion, along with unemployment compensation expenditure and subsidies for industries hard-hit by the oil-shocks, strained fiscal accounts. The financial situation was of primary concern for the Centre-Right coalition and matters such as welfare spending raised concerns but were not targeted for major change (Blyth, 2002).

3.1.2 Welfare

The Swedish Social Democratic Party adopted an official stance of using welfare policies to reduce differences in conditions of life (Olsen, 1974), a stance that can be seen as reflecting egalitarian principles. However, research from the early 1970s indicates that there were three distinct social classes evident in Sweden at this time and furthermore, that a majority of the research respondents were highly aware of the differences in social status. Upward mobility was enhanced by education for those in the middle and upper groups but was hampered for those in the bottom social strata (Olsen, 1974). Final conclusions drawn by Olsen (1974) show that while income differences had the potential to be extreme, high taxation rates at the upper end and extensive system of welfare benefits at the lower end, both served to moderate class distinctions (Olsen, 1974).

¹⁰ Mishra (1990) defines this concept as an attempt to reduce the gap between the highest and lowest-paid blue collar workers.

¹¹ The term is used by a number of authors to denote non-socialist parties.

Recipients of welfare payments for unemployment during the early 1970s are not discussed by Olsen, but given that unemployment averaged 1.9% (Mishra, 1990), this is not surprising. The proportion of the population regarded as being in poverty¹² at this time is also low, with figures reported at 3.5% (Mishra, 1990).

Employment conditions for women were improving throughout this period. State provision of child-care and anti-discrimination legislation in 1974 both improved opportunities for participation and, further, made working a more attractive alternative. Educational opportunities had also been opened prior to 1970 with women being able to attend higher educational facilities (Edin & Richardson, 2002). Employment for women was also high in the expanding public sector, while wage differentials between males and females were legislated against in 1977 (Edin & Richardson, 2002).

Employment prospects for immigrants also remained relatively favourable. Sweden had opened up immigration to fulfil labour market demand during the post war boom period and immigration was relatively unrestricted (Martens, 1997). This peaked between 1969 and 1970, with a total of 142,000 people entering Sweden (Janson, 2004). A 1975 electoral reform gave immigrants voting rights for the first time, provided they had been resident in Sweden for at least three years (Bäck & Soininen, 1998).

The welfare system in Sweden was still expanding during the early 1970s, a trend which began early in the period of Social Democratic leadership. Described as “the foremost defenders of the Nordic welfare model” (Nygård, 2006, p. 357), the SAP’s stance was both dominant and popular. Although the Centre-Right parties held power from 1976 to 1981, they did not attempt to alter the welfare system. To do so would have meant high costs in political popularity as forty years of social democratic ideology would not be easily undone (Blyth, 2002).

Reluctance to change the welfare state did not prevent criticism and both legislative and structural aspects came under attack. Described as “oppressive” and “unresponsive” to individual needs (Olsson Hort, 1997), the coalition government began early discussions on privatisation, but did not initiate any national-level reforms.

Reorganisation of welfare services took place at the local level in 1970 with municipalities being enabled to co-ordinate a single committee, rather than the three separate committee’s for child welfare, social welfare and temperance (Janson, 2004).

The operation of child welfare committees in each municipality had become a national requirement as a result of the *Child Welfare Act, 1924* and began with a moralistic and authoritarian approach. By the 1950s, these attitudes had been influenced by the behavioural

¹² As defined by the OECD as persons in households with less than 2/3 of the average disposable income.

sciences and treatment options were readily being developed (Janson, 2004). Political divides were evident as attitudes toward coercive measures for treatment were expressed. The political “right” regarded compulsory intervention as justified by the Principle of Care and the Harm Principle. These views were supported by radical members of the temperance movement (Nilssen, 2007).

Residential institutions were State run during the 1970 - 1979 period. These broadly consisted of three types including assessment centres, treatment centres and the larger, more traditional, institutions. Commitment to these institutions could be based on specific conditions laid out in the 1980 *Care of Young Person's Act* (LVU) (Hessle & Vinnerljung, 2006). Reference to the requirement to maintain these homes is made in Section 12 of the LVU (Ministry of Health and Social Affairs, 1990) and these later came to be referred to as “Paragraph 12” homes.

3.1.3 Crime

Categories of criminal behaviour in 1970 included the more typical acts, such as theft, violence and property damage, and youths committing these offences could be sentenced to reformatory schools. Although the less typical category of “incurability” had been removed in 1968, sentences for “being shy of working” remained through-out the 1970-1979 period (Janson, 2004). Statistics for males committed to reformatory schools show an increase in car theft during the late 1970s, but the vast majority, around 70%, were committed for property crimes. Commitments for property crime are somewhat lower for females, ranging between 18 and 31%. The figures for drug abuse, however, show that this accounts for around half of the female commitments. In terms of violence, the figures for boys range from 17% to 30% (Janson, 2004). The data for girls however, does not include a category for commitment for violence.

Estrada's (1999) study of crime trends in post-war Europe points to debates in the analysis of national data for the 1970s period. While some authors claim an upward trend for the first half of the 1970s (Von Hofer, 1985; Ward, 1998, cited in Estrada 1999), Estrada shows that, when separated from adult crime statistics, crimes committed by juveniles show a relatively stable pattern (Estrada, 1999). (Data are based on both self-reported studies and victim reports for both theft and violence.)

The age of criminal responsibility, established in 1905, remained at 15 years. The sanction system incorporated three separate age categories and these determined the options available for prosecutors (Janson, 2004). While youths under the age of 15 were dealt with exclusively by welfare services, those between 15 and 18 years old could be dealt with by the

courts. Referral to welfare services was, however, mandatory. For those aged between 18 and 20, the law allowed for welfare involvement under certain circumstances, such as youths who were already in welfare care, or those identified as having alcohol or drug problems and requiring treatment (Janson, 2004).

The abuse of alcohol became increasingly problematic during the early to mid 1970s, with an increase in young offenders being sentenced for drunken driving. To counteract this trend, the middle-strength beer, popular with young people, was prohibited in 1977 (Janson, 2004).

Issues surrounding immigrants emerged during the 1970s. Official crime statistics showed immigrants to be overrepresented among those both suspected and convicted of crime. The patterns were denied by some administrators and the topic itself was regarded as politically sensitive. The debate faded but arose again in the early 1980s (Martens, 1997).

3.1.4 Policy/Law change in juvenile justice

Practices in juvenile justice during the 1970s demonstrate the integration between juvenile justice and welfare services. The *Child Welfare Act, 1964* designated the two principal conditions under which the State-operated Child Welfare Board could intervene in the lives of children. The first, parental neglect, is a complex issue and definitions of abuse and neglect vary between countries and across time. The other cause for intervention was on the basis of misbehaviour of the child. In the 1970s, both the police and social workers held extensive discretionary powers where youths, whose behaviour was illegal, were concerned (Sarnecki & Estrada, 2004; Sundeen, 1976).

For minor offences, youths could be cautioned by police and no further action taken. Although an incident would be recorded, a report would not be filed. For more serious misbehaviour, a youth under 15 could be questioned but not detained by police unless identified as a runaway from a home or institution (Sundeen, 1976).

Concerns for the welfare of the child during this period were evident in police practices. Police were prohibited from taking a young person to the police station in the instance of minor offences. This concern, and the close relationship with welfare services, was also highly evident in the presence of social workers at the police station (Sundeen, 1976). The role of these social workers was to provide assistance to all youths under the age of 20 who had been arrested. The assistance could take various forms, but courses of action, including notification to parents, were also at the discretion of the social worker, depending on the seriousness of the offence (Janson, 2004).

Although the police could pursue prosecution, this line of action was restricted to those over the age of 15. For youths under 15, the individual would be referred to the Child Welfare Board while those over 15 were referred to the public prosecutor (Janson, 2004; Sarnecki & Estrada, 2004; Sundeen, 1976). The public prosecutor could then have the youth detained for up to six hours, during which time the youth could be interrogated by police, with legal counsel present. If further detention was required, this could be extended for a period of five days. During this time, the prosecutor would decide whether to hand the youth over to the Board or to have the case tried. In the event of a trial, the youth could be detained for up to four weeks in police cells, or in a training school, where separate quarters were available (Sundeen, 1976).

If prosecution was pursued, the types of sanctions imposed were guided by what was considered best for the child. Requests to the Child Welfare Board to investigate the youth's circumstances and recommend action were routine in the case of those aged between 15 and 18. Although prosecution for those over 18 was a legal requirement, the Board could still be involved under a range of circumstances. These included prior involvement, drug or alcohol abuse or youths who were considered "immature" (Sundeen, 1976, p.112).

Available data on sanctions during this period are sparse and do not provide information on the duration of commitments to care or youth prison (Hessle & Vinnerljung, 2006). Sundeen (1976), however, provides an outline of sanctions imposed by the court and the percentage of offenders receiving various sanctions for 1972.

In the 15-17 year old group, a total of 14, 592 youths were sentenced by the courts in 1972. Eleven of these offenders were sentenced to prison, while 17 were sentenced to youth prison, a total of 0.2% of offenders. The tendency to utilise prison as opposed to youth prison stems from the requirement for a minimum sentence length for youth prisons. Legislation during this period specified that those aged between 15 and 18 must serve a minimum of one year, with the maximum term being three years. Prison, rather than youth prison sentences, therefore allowed for more flexibility in sentence length (Sundeen, 1976).

The more frequent sanctions included summary penalties and fines, which together accounted for almost 94% of sanctions. Youths committed to care under the *Child Welfare Act* accounted for 4.3%¹³, or 634 individuals (Sundeen, 1976). For those who avoided the prosecution process, or were sentenced to Child Welfare care, a range of possible outcomes existed. In instances of court ordered care, the Child Welfare Board would present the court with a specific plan of intervention. Statistics on institutional placements by Stockholm's Welfare Board are available for 1973. These are also limited in regard to time periods specified

¹³ Sanctions total over 100% as these could be imposed in conjunction with each other.

for care. Of the 5,733 youths about whom the Board made decisions in 1973, just under 20% were held in institutions (Sundeen, 1976).

The use of compulsory intervention for substance abusers was a highly politicised issue, stemming from earlier criticism of the *Temperance Act, 1954*. In the 1970s, the political divide strengthened as social workers' organisations and clients' representatives united with the political "left" in their views that compulsory measures were repressive. On the right, the Harm Principle and the Principle of Care were being invoked by the Conservatives, Liberals and the radical temperance movement in defence of compulsory intervention. The debate led to the Social Policy Committee¹⁴ (SPC) being given the task of elucidating the topic of coercion in social law. A second parliamentary committee, the Social Policy Preparation Committee¹⁵ (SPPC), continued the work and presented the resulting bill to parliament in 1980 (Nilssen, 2007).

3.2 Sweden 1980 – 1989

3.2.1 The socio-political environment

The coalition government, elected in 1979, continued in power until 1982. The alliance was dominated by non-socialist parties including the Centre, the Liberals and the Moderates. Although power had shifted slightly from the Liberals to the Moderates, by 1982 the Social Democrats were re-elected but the conservative (Centre) criticism of the welfare state continued and public support gave them increased seats in parliament (O'Connor, 1998).

Schwartz (1994), argues that although the Social Democrats campaigned on a platform of public sector reform, an eroding support base meant that a cautionary approach had to be taken. Reforms in welfare were managed in light of the continued public support for the existing welfare State making direct cuts politically unviable (Bergmark, 1997; H. Schwartz, 1994; Svallfors, 1997).

The economy continued to stagnate in the early 1980s. In 1982, Sweden's foreign debt was 21.8% of GDP while the fiscal deficit averaged 9.3% of GDP for the first three years (H. Schwartz, 1994). Economically, Sweden was now highly integrated into the international economy and exports were a major source of GDP. Investment in outward bound tradable goods rose from 4.6% between 1971 and 1980, to 11.4% between 1981 and 1988. This is in stark contrast to investments in inward goods which rose from 0.9%, to 2.0% over the same

¹⁴ Socialutredningen: Social policy committee

¹⁵ Socialberedningen: Social policy preparation committee

period. The Krona was devalued in both 1981 and 1982, in efforts to allow export industries to expand and increase short term competitiveness (O'Connor, 1998).

Further efforts to protect the competitiveness of international trade were aimed at wage bargaining. The SAP established the Civildepartment, which became responsible for public sector employees. In keeping with Keynesian bridging strategies to maintain full employment during the economic recession, Sweden's public sector employment had been increased. By the early 1980s this had peaked at 39.2% of the labour force. Due to the previously centralised nature of wage bargaining, increased wages in the public sector led to increases in the private sector, making export prices less competitive internationally. The Civildepartment's creation aimed at separating public and private sector wage talks and wage setting for public service employees was devolved to local governments (Lindvall & Rothstein, 2006; H. Schwartz, 1994).

Inter-ministerial conflict followed this move as control over the Civildepartment was contested by members of the SAP who sought to reorganise the welfare state along the line of private enterprise, pursuing efficiency. Although this did not occur until the 1988 election, the conflict within the SAP remained. Further conflict arose between the SAP and the LO over wage bargaining and within the LO between different unions (H. Schwartz, 1994). Prior to the conflict, members of the LO and the SAP had served on numerous county administrative boards. Representation at the national level had also been strong for other interest groups, such as the Federation of Swedish Farmers and the Confederation of Professional Employees. With the intensifying conflict, the Employers Federation decided to withdraw from public boards (Lindvall & Rothstein, 2006). The withdrawal is described as leading to the demise of the system of central administrative institutions and a decline in the legitimacy of national agencies (Lindvall & Rothstein, 2006).

Changes evident in national administration were not reflected in economic management at this time and although anti-Keynesian ideas were being expressed, policy makers were not prepared to surrender the goals of full employment. Expansionary fiscal policies were still being utilised to prevent job loss (Lindvall & Rothstein, 2006). However, Ryner (2004), maintains that economic policy in 1985 represented a move away from the Rhen-Meidner model to Neo-Liberal measures (Ryner, 2004).

The four main goals of the Rhen-Meidner model were low inflation, low unemployment, high growth and equality of income or equal pay for equal work. These aims were achieved by containing average profit rates in economic upturns and stimulating the economy during downturns. "If this was done the wage earner collective could be kept unified around the redistributive wage norm of equal pay for equal work." (Ryner, 2004, p. 99). The

solidaristic wage policy, coupled with low unemployment and high wage levels helped maintain welfare programmes by decreasing the demand. (Ryner, 2004)

The aim of employing Neo-Liberal measures was to curb inflation, but the capital market was deregulated although the Rehn-Meidner model would have prescribed that low interest rates should be maintained. The full extent of these measures became increasingly evident in the early 1990s (Ryner, 2004).

Economically, Sweden's situation showed an improvement during the mid to late 1980's. By 1983, unemployment¹⁶ had reached 2.9% but fell back to 1.6% by 1988 (Mishra, 1990). The fiscal deficit was reduced to 1.4% of GDP between 1984 and 1989 (H. Schwartz, 1994). Tax reforms were concluded in 1981 and implementation began in 1983. These aimed to reduce marginal tax rates for both average and high income earners. The full benefits of the reforms did not take effect until the 1990s (H. Schwartz, 1994).

3.2.2 Welfare

The beginning of the 1980s is characterised as a stable period in regard to social protection although government expenditure on welfare, as a proportion of total expenditure, declined (O'Connor, 1998). Increases in the child allowance in 1983 provided additional assistance to households with many children, and increases in housing allowances were also made. Both measures were aimed at avoiding the uneven distribution that would have otherwise resulted from the tax reforms (Aronsson & Palme, 1998).

The *Social Services Act 1980* introduced means-tested economic assistance from local social services. The measure was intended as temporary emergency relief and around 6% of the population received this form of assistance (Hessle & Vinnerljung, 2006). Martens (1997), reports that social assistance payments increased in almost all types of households by 25% between 1985 and 1993, but that fixed costs over the same period increased by 65%. The difference in increases between Swedish and immigrant households, however, is particularly striking, with payments to Swedish households increasing by 35%, while those for immigrants rose by 140% (Martens, 1997). While not all of the increased reliance on social assistance occurred during the 1980s, Martens (1997) notes that increases were partially due to the presence of larger households among immigrant families and increased unemployment (Martens, 1997).

The increase in unemployment during the 1980s was more marked for immigrants than had been the case in the 1970s (Gustafsson & Zheng, 2006). In 1980, immigrants totalled 8% of the population, but by 1986 this figure had reached 10% (Janson, 2004). Furthermore, along

¹⁶ Figures are expressed as a percentage of the labour force.

with the increase in unemployment rates, the early to mid 80s was characterised by a substantial rise in the duration of unemployment, with the proportion of those unemployed for a year or more increasing from 6.0% in 1981 to 11.4% by 1985 (O'Connor, 1998). Although official policies attempt to integrate immigrants on equal terms, evidence suggests that this did not always occur in practice. Between immigrants and native born Swedes who were employed, a considerable earnings gap developed over this period (Gustafsson & Zheng, 2006).

While the latter half of the 1980s was a period of considerable expansion in the social services sector, much of the increased expenditure was the direct result of pensions and child-care. Individual and family services, which include child and youth welfare, treatment of substance abusers, youth at risk and means tested assistance, account for a relatively small proportion of expenditure in this sector. Bergmark (1977) reports this as being 18% of annual municipal expense while child-care and pensions account for 32% and 49% respectively (Bergmark, 1997).

3.2.3 Crime

Developments occurred in both the sanctioning of offenders and the criminalisation of drug and alcohol abuse during the 1980s. Trends in crime, however, do not appear to be the main influence on these changes, which seem to have been the result of political developments.

While data from official statistics indicate an increase in the number of youths convicted for assault between the mid to late 1980s, Estrada's analysis of victim surveys suggests that the trend is not of a simple linear increase. Estrada reports an increase in the subjective experience of threats and violence during the mid-1980s but that a reduction in the late 1980s is also evident (Estrada, 1999).

The sanctioning system shows a reduction in the number of cautions issued to young offenders, but these are variable between municipalities (Janson, 2004). Of the 746 offenders taken into social services care, 413 were placed in reformatory schools. By 1981, only 18 of the original 25 schools were still operating (Estrada, 1999; Janson, 2004). The vast majority of juveniles being sanctioned in the court received fines or summary fines although many offenders were not prosecuted. The most common offences, resulting in social services care between 1981 and 1982, were property crime on the part of boys and drug or alcohol abuse among girls (Janson, 2004).

The *Social Services Act* took effect in 1982, making it possible to use coercive intervention with alcohol and substance abusers (Janson, 2004; Nilssen, 2007). Further developments in this area came about in 1987, when the "war on drugs" was intensified by political debate. The 1982 Act was criticised for being "too soft." New measures included the

extension of periods of detention from two to six months, and the right to enforce detention for a further six months (Nilssen, 2007).

Also in 1987, victim-offender mediation was introduced on a one-year trial basis in some municipalities. The approach was primarily aimed at use with juvenile offenders as an alternative sanction, or for use in conjunction with another sanction. Initially, this approach was applied to specific types of crime, including shoplifting or damage to a business. In one-third of these cases, the offender was under 15 years of age. The primary target group was the 15-17 year olds and these constituted half of the cases which trialled victim-offender mediation (*Victim - offender mediation: Final report on a Swedish experiment. English Summary*, 2000).

3.2.4 Policy/Law change in juvenile justice

The new *Social Services Act, 1982* emphasised the need to base youth welfare on principles of voluntary commitment and mutual understanding (*The sanction system for young offenders*, 2000). However, the Act made it possible to use coercive intervention with substance abusers (Janson, 2004; Nilssen, 2007). Although the (SoL)¹⁷ claimed assistance offered was always voluntary (Janson, 2004), this reflects the change in attitudes toward substance abuse that was taking place at the time.

Forced care was also still governed by the *Care of Young Persons Act*, (LVU). Provisions stipulated that this was to be done on the basis of what was best for the child, but decisions were stipulated by the social services and subject to review every six months. In the case of the SoL, compulsory care is decided by the court and the duration of care is for the term of the sentence (Sarnecki & Estrada, 2004)

In 1989, the Commission on Prison Sentencing prompted changes in the emphasis on society's intervention with young offenders. The need for care was no longer the basis for decision-making. The principles of equality before the law and proportionality replaced those of voluntary commitment and mutual understanding (Janson, 2004). Sarnecki and Estrada (2004) further report that the penal law principles of proportionality, predictability and consistency guided the Government's directives in juvenile justice (Sarnecki & Estrada, 2004).

Further developments in intervention came about in 1987, when the "war on drugs" was intensified by political debate (Nilssen, 2007). Despite emphasising individual self-determination in other aspects of social policy, Nilssen (2007), claims that when compared to other Scandinavian countries, "Sweden practices the most extensive application of coercion towards substance abusers." (Nilssen, 2007, p.20). What is particularly striking is that while

¹⁷ Socialtjänstlagen: Social Services.

the Social Democratic Party had previously opposed coercive interventions, the 1987 bill was promoted and passed by the Social Democratic government (Nilssen, 2007).

3.3 Sweden 1990 – 1999

3.3.1 The socio-political environment

Between 1991 and 1993, Sweden's economy experienced negative growth. Unemployment¹⁸ rates in 1990 were 2.1%, rising dramatically to 12.5% in 1993 (Lindbom, 2001). These two factors continued to put strain on the domestic economy and pressure on public expenditure. The coalition government was strongly represented by the Centre-Right or bourgeois parties during this period and the New Democracy party, which had firm views on crime and immigration, was active for the first time.

Although globalisation theory would predict retrenchment as the most likely reaction to the deficit, Nygård (2006) argues that the Centre-Right parties did not engage in retrenchment and that welfare State expansion positions were maintained (Nygård, 2006). This argument is further elaborated by Lindbom (2001) who claims that although cuts were made in welfare spending, taxes were also increased and by 1996 the economy had shown a remarkable improvement. The trend of an increasing budget deficit was completely halted and by 1996 was showing a surplus (Lindbom, 2001).

The financial crisis, however, did provide an impetus for changes in the handling of the State budget (Bergman, 2004; Lindbom, 2001). Rather than deciding each item individually, by 1996 parliament moved to a top-down process. Spending targets were now to be set by the Riksdag and apply for the next three years (Bergman, 2004). More immediate responses to the crisis included tax reforms and budgetary constraints, which were announced in October 1990 (Vihriala, 1991). Cuts in central government administration budgets and sickness benefits which coincided with some deregulation in areas such as transport, were all regarded at the time as a departure from traditional Swedish economic policy (Vihriala, 1991). Ryner (2004) argues that the austerity measures represented the full impact of the neo-Liberal approach to wage determination and price stability, introduced in 1985 (Ryner, 2004).

The extent to which these changes can be regarded as major reforms, however, is still strongly debated. The characteristic “universality” of Sweden's welfare State is a key feature in Esping-Andersen's typology and according to Bergh (2004), this remained fairly constant. Bergh's analysis incorporates an examination of universal entitlement to welfare services

¹⁸ Figures based on open unemployment rates.

according to both groups and income levels and analyses policies in relation to universal intent and outcome (Bergh, 2004).

Universality, however, is only one of many dimensions according to which welfare state change can be examined. Institutional and policy changes, according to Lindvall and Rothstein (2006), had serious implications for the production of public policy in the 1990s. Central administrative institutions, including the Board of Health and Welfare, the Board of Education and the Board of Housing had played a pivotal role in public policy up until 1990. Main responsibilities included leading the implementation of national level programmes. Lindvall and Rothstein (2006) claim that the institutional strength of the State was weakened by either closure, such as the Board of Education in 1991, or significant decentralisation, as in the case of the Board of Health and Welfare (Lindvall & Rothstein, 2006).

As a result of decentralisation, steering functions within the Board of Health and Welfare altered significantly. Rather than controlling nationally based programmes, Health and Welfare became increasingly controlled by decisions made at the county and municipal level. Further changes included the new found ideological function of these Boards, with research and information dissemination roles being incorporated (Lindvall & Rothstein, 2006). Policies were now being established through public, semi-public and private networks, away from the direct influence of the Riksdag and cabinet. Where previously, social problems had been addressed via a government commission of enquiry, with reform efforts being implemented at the national level, the 1990s saw the introduction of local control and local variations. By 1991, the municipalities were free to organise social welfare services at will.

Although the economic situation showed an improvement, the 1997 National Report claims that in terms of the social conditions in Sweden, the 1990s were a period of increased difficulty for many sub-groups of the population. These included the unemployed, single parents and immigrants (*National Report on Social Conditions in Sweden Summary*, 1997). In terms of political representation and active involvement in the political process, immigrants fared worse than any other sub-group of the Swedish population (Bäck & Soininen, 1998).

3.3.2 Welfare

Socio-economic divisions were beginning to widen early in the 1990s. While those who were already well off saw an improvement in their situation, the economic resources and socio-economic status of youth, single parents and immigrants declined. For single parents, financial insecurity was found to be a significant factor. Youth struggled to establish themselves in the labour market and immigrants struggled to fit into society in general. In most cases, youth and immigrants did not qualify for unemployment benefits. Stricter criteria applied and stand-down

periods were increased to 26 weeks (*National Report on Social Conditions in Sweden Summary*, 1997).

Immigrants were restricted to remaining in the housing originally assigned to them (Martens, 1997), participation rates in the political process declined (Bäck & Soininen, 1998) and the New Democracy Party campaigned for more restrictive immigration policy, citing immigrants involvement in crime as a recurrent theme (Martens, 1997). By 1993, those escaping the war and seeking asylum from the former Yugoslavia were required to produce a visa. In 1994, a law was passed making it easier to expel foreign citizens convicted of an offence, including relatively minor offences (Martens, 1997).

Although the proportion of families in poverty did not increase during this period, the level of poverty experienced had deepened. Unemployment was a major cause, with approximately 18,000 children in 1990 living in families where neither parent worked. This figure escalated to around 100,000 by 1995 (*National Report on Social Conditions in Sweden Summary*, 1997).

The implications of both decentralisation and cut backs were reflected in resource allocation within social welfare. Municipalities faced two types of cut backs. National subsidies were cut back as a result of direct budgetary constraints while income from local taxation was heavily reduced as a result of increased unemployment. Between 1992 and 1995, aggregate income for municipalities was reduced by 11% (Bergmark, 1997).

Bergmark (1997) identifies two strategies for dealing with income loss - dilution and focussing - both of which were utilised by municipalities during this period, though the strategies were targeted in different areas (Bergmark, 1997). Dilution was predominantly used in child care services and elder care. Although the same number or proportion of people were granted assistance, the quality of the services was diminished or services were provided at a decreased level. In the instance of child care, this was reflected in a drop in staffing levels, while in elder care, reductions were made in home-help services (Bergmark, 1997).

“Focussing” refers to a narrower conception of eligibility. The level of assistance generally remains constant or can even improve, but fewer people are eligible for that assistance. This measure was most widely applied to individual and family services (Bergmark, 1997).

What is most relevant here is that although these measures significantly affected welfare services, their impacts would not be readily identifiable as decreased universalism using Bergh’s (2004) analysis. While focussing on eligibility in terms of groups and income levels, Bergh’s analysis overlooks the quality of services provided, and he therefore draws the

conclusion that the universal character of the Swedish welfare state remained relatively constant.

Blomqvist (2004) argues that while quantitative analysis portrays Sweden as having survived the economic crisis, it is “...*the fashion in which* social services are provided that shows far reaching changes.” (Blomqvist, 2004, p. 140). One quantitative study which provides an exception to this was conducted on health care. Primary health care is one of the avenues through which those in need of social services are identified (Hessle & Vinnerljung, 2006). Decentralisation resulted in control over patient charges being transferred from government to individual county councils in 1991 (Eloffson, Undén, & Krakau, 1998). Eloffson, et al. (1998) demonstrated that patient charges increased significantly and led to four groups being unable to access primary health care as a direct result of financial circumstances. “Not surprisingly, the unemployed, students, foreign nationals and single mothers...were strongly over-represented among those who had forgone care.” (Eloffson, Undén, & Krakau, 1998, p.1374). The authors also claim that patient charges which are too high lead directly to more unequally distributed health care.

Trends in poverty were now showing distinct geographical features, particularly where immigrants were concerned. Within large cities, immigrant density is greatest in neighbourhoods where social problems are more prevalent, including crime (*National Report on Social Conditions in Sweden Summary*, 1997). Further to this, employment prospects and resulting social mobility in Sweden have been found to be affected by neighbourhood. Although the effects of neighbourhood on social mobility were found to be moderate, Musterd & Andersson (2006) report that when other variables were controlled, neighbourhood had a clear impact on employment prospects (Musterd & Andersson, 2006). The study covered the 1991 to 1999 period, and although the data cannot be matched specifically to high crime areas, the authors cite low socio-economic locations, with high density of immigrant populations, as those where neighbourhood effects on employment are evident (Musterd & Andersson, 2006).

The changes within welfare services resulted in increased segregation, lack of standardization of services (Blomqvist, 2004) and increased hardship for youth, immigrants and single parents (*National Report on Social Conditions in Sweden Summary*, 1997). In terms of Esping-Andersen’s (1990) analysis of social stratification and decommodification, characteristic of Sweden prior to the 1990s, changes were now evident.

Research utilising Esping-Andersen’s concepts of decommodification and stratification revealed that migrants and ethnic minority households showed low rates of poverty when compared to similar households in other welfare regime types (Morissens & Sainsbury, 2005).

While the authors note the limitations of utilising decommodification, which assumes labour-market attachment, the results within Sweden's social democratic regime were anticipated.

Unexpectedly, however, when compared to other social democratic welfare regimes, differences were apparent (Morissens & Sainsbury, 2005). Data for this study covered a limited time period and may not be readily comparable to other poverty studies conducted within Sweden. However, Morissens and Sainsbury (2005) provide some evidence that social stratification within Sweden is addressed through the use of income transfers more effectively than in other regime types.

3.3.3 Crime

The same groups who experienced a decrease in living standards are also identified as those who experienced an increase in criminal victimisation. Single parents, youth and immigrants were compared to the remainder of the Swedish population, for whom victimisation reports remained stable during this period. Analysis based on income levels revealed that the low income group experienced the highest levels of victimisation, while the high income group experienced the lowest levels (Nilsson & Estrada, 2003).

In terms of crimes committed, immigrants showed a higher tendency toward violence than native born Swedes. Explanations for this difference range from cultural differences, particularly in domestic violence, to the situation of immigrants as soldiers escaping war and suffering from post-traumatic stress disorder (Martens, 1997). However, further analysis also reveals that second generation immigrants, those born in Sweden, have offending patterns similar to those of Swedish nationals. These trends are even more evident in youth offending patterns (Martens, 1997).

3.3.4 Policy/Law change in Juvenile Justice

Moves in juvenile justice do not seem to mirror changes in decentralisation evident in other areas of welfare. For the most part, responsibilities which were moved to the local level remained there. However, the Paragraph 12 homes seem to be an interesting exception to this trend.

In 1990, a Government Bill was passed revising the legislation governing children at extreme risk. This group included teenage girls, immigrants and youth who showed signs of mental disturbances. The *Care of Young Person's (Special Provisions) Act* or LVU, gave broader application to taking young people into care without parental consent (Hague, 2004).

Concerns prompting the new legislation centred on the adequacy of care being provided under local control. By 1991, the Paragraph 12 homes were placed back under State authority

(Janson, 2004). This move has been linked with the compulsory care of drug and alcohol abusers which was given a great deal of political attention during the 1980s, resulting in the 1988 legislation criminalising drug abuse.

The provisions for imprisonment of drug abusers were strengthened in 1993. The legislation further empowered police to take a blood or urine specimen where there are reasonable grounds to suspect drug use (*The criminalisation of narcotic drug misuse - an evaluation of criminal justice system measures. English summary*, 2000). The year 1993 also saw the establishment of a National Board of Institutional Care, SiS¹⁹ which began operating the Paragraph 12 homes on April 1 1994. The secure units were in high demand and by 1994, 51% of all cases handled by the LVU²⁰ were detained in lockable spaces (Janson, 2004).

Prior to this, each municipality had been permitted to organise social welfare committees at the district level and had responsibility for the care, costs and treatment of juveniles under social services. Following the new legislation, county administrative boards retained responsibility for the institutional treatment of children and youth within the three main types of institutions, including the Paragraph 12 homes. The Board continued in its supervisory role and reported directly to the government (Janson, 2004).

For those youths remanded to alternative institutions, decentralisation had important implications. In many local authority areas, the number of youths committed to care was very low, averaging one youth every six months. This meant that local authorities struggled to provide a broad range of measures to deal with offenders and this further detracted from social workers' ability to gain experience and competence in dealing with these youths (Bengtsson & Holmberg, 2005).

Changes affecting the discretionary powers of the police were introduced in 1990. Officers could no longer make the decision to report or not report offences by youth. This was now a mandatory requirement (Sarnecki & Estrada, 2004). A commission on juvenile crime also led to the alteration of rules regarding sanctions. Punitive requirements for proportionality and consequences were to be given more space in consideration of sanctions, replacing the previous principles of voluntary commitment and mutual understanding (Sarnecki & Estrada, 2004). The LVU no longer emphasised that commitment to care was to be based on what was best for the young person, but continued to reflect the principle of equality before the law that had been prioritised in the late 1980s.

Other concerns raised by the Commission in 1993 saw the passing of Acts in 1995 which advised prosecutors to avoid delays in case handling. Advice on remissions for recidivist

¹⁹ Statens institutionsstyrelse: National Board of Institutional Care

²⁰ Lagen om vard av unga: Care of Young Persons (Special Provisions) Act.

offenders was also given and these were only to be issued in exceptional cases. Interrogations of juvenile offenders were to be conducted in the presence of parents and social workers more frequently. In 1993, the average time taken for sanctions processing was 40 days. By 1998, this had been reduced to 25 days (*The sanction system for young offenders*, 2000). In 1994, changes were made regarding the rights of public prosecutors. The issuing of waivers had been at the discretion of the prosecutors, who were now restricted and unable to waive prosecution for youths with prior convictions.

3.4 Sweden in Summary 1970 - 1999

The fiscal situation remained relatively stable throughout the 1970s and Sweden's political situation did not alter until 1976. The right wing coalition, however, did not represent any major ideological change in welfare. Although there is some evidence of social stratification, this was well moderated by the taxation system. Adjustments in the administration of welfare, through the merging of the welfare committees, did not appear to have a significant impact. Despite the introduction of means-testing in 1980, this was only applied to the newly created emergency benefit and would have been unlikely to decrease the potential for de commodification. Juvenile offending also appeared to be relatively stable throughout the 1970 - 1979 period.

A return to power by the Social Democrats in 1982 did not represent any major change in political ideology and in 1983 new benefits were introduced along with increases in some existing benefits. These initiatives were aimed at reducing the potential for increased social stratification that would have otherwise resulted from the tax-reforms which took place at the time. However, a number of studies point to an increase in stratification between immigrants and native born Swedes for the first half of the decade.

Fiscal difficulties in the following decade, however, seem to have had a more pronounced effect on Swedish welfare. Tax-reforms and benefit cuts during the 1990s, coupled with decentralisation in many areas, represent a significant shift in Swedish welfare ideology. While income transfers remained effective in comparison to other nations, many authors cite an increase in social stratification during this period.

Juvenile crime showed an increase in the early 1970s but remained constant between 1976 and 1984. Increases in both offending and media attention in the latter half of the 1980s is linked to the introduction of coercive measures in the treatment of drug abusers. Although this change represents a significant shift in ideology, it was targeted to a specific group of offenders. Furthermore, the change did not signify a move away from treatment-based

interventions towards more punitive measures, but rather an emphasis on compulsory intervention.

Changes in the provision of welfare 1970 - 1999 period do not appear to have impacted on the social rights of Swedish citizens. Although some services were diluted and eligibility criteria were tightened during the recession, these changes were not linked to ideological change. Rights to assistance for juvenile offenders and their families were not altered, although the provision of services was affected. Victim's rights underwent minor changes but responsibility for upholding the rights of offenders, victims and their families remained entirely with the State.

By contrast, changes in New Zealand were marked and impacted on welfare, juvenile justice and social rights. The following chapter presents information from the New Zealand context during the same period.

Chapter 4: New Zealand 1970 - 1999

4.1 New Zealand 1970 – 1979

This chapter follows the same procedure as that used in Chapter 3. The data is again presented in ten-year time frames. The same categories are employed and information is divided into sub-sections on the socio-political environment, welfare, crime and juvenile justice policy. The main findings are then summarised prior to beginning the analysis stage of the study – Chapter Five.

4.1.1 The socio-political environment

The 1970s opened with a National government and an unhealthy economy. The country faced rising inflation, unemployment and overseas debt. Various measures were used to control inflation, but two oil shocks during this period placed additional strain on an economy with very little growth. Government spending on welfare and investment in industry did little to stem the tide of rising unemployment, and Maori were the main victims of the economic crises.

In 1970, inflation was at 10% while growth averaged 2.8% over the next four years. Although price freezes were introduced in 1970 and again in 1972, the combination of slow growth and inflation was debilitating (Bassett, 1998). Direct controls over wage-bargaining were introduced in 1971 and maintained into 1972, along with general interest controls (Goldfinch & Malpass, 2007).

In 1972, Norman Kirk brought the Labour Party to power for the third time. Kirk campaigned on the need to increase economic growth in order to improve the living standards of all New Zealanders. Described as “Keynesian to the core” (Bassett, 1998, p. 327), Kirk pursued the expansion of welfare and introduced new schemes and benefits. Kirk’s speech reflected the aims of the Labour Party to provide “... a social system that would take proper care of the young, the old, the handicapped and the sick as a matter of right and justice, not as a matter of charity.” (Cited in Bassett, 1998, p. 326.)

Most welfare benefits were increased; spending on education was increased by 14% and health by 19% (Bassett, 1998). Nevertheless, expenditure on health was modest by comparison to other OECD countries. In 1975, for example, spending on both health and benefits amounted to 11.8% of GDP, while Sweden’s State spending was 21.2% in the same year (Boston, 1993). Labour further introduced a new benefit for separated, divorced and widowed mothers and fathers, known as the Domestic Purposes Benefit (DPB) in 1973 (Bassett, 1998; McClure,

2004). The rate of uptake for this benefit increased over the next few years and further added to welfare expenditure.

Price and interest controls were continued under Labour and some of the agricultural subsidies were reduced (Goldfinch & Malpass, 2007). Restrictions on exports were also introduced in efforts to curb inflation, although increases in government spending continued (Bassett, 1998). Costly exercises included the creation of the Shipping Corporation, which lost \$12million in the first two years, and the establishment of the Accident Compensation Commission (ACC). The ACC publicly provided a system of no-fault personal accident insurance. By 1974 when Rowling replaced Kirk as Prime Minister, following Kirk's death, inflation had reached 15.7% (Bassett, 1998). The dollar was devalued but the budget deficit was estimated at \$500 million. Despite these factors, a standard tertiary bursary and additional housing loans were added to the 1974 budget (Bassett, 1998).

The National government of 1975 consequently inherited an overseas debt of almost \$1billion (Bassett, 1998). The National Government's rhetoric of liberalisation, prior to their election, saw a number of changes by 1976. Price freezes were removed and subsidies on basic items, flour, bread, eggs and butter, were abolished. Various interest rate controls were relaxed or abolished and liberalisation of the financial system was well underway (Goldfinch & Malpass, 2007).

Although retrenchment was not regarded as an option by National, due to its potential to increase unemployment, public sector employment was capped. (State employees at the time accounted for around 20% of the total labour force (Bassett, 1998)). State spending continued and was generally directed at investment in industry. Welfare was maintained rather than expanded, but pension reforms were an exception (Bassett, 1998).

During the first three years in office, National introduced a variety of assistance measures for targeted industries and segments of the population. While the majority of these were aimed at farmers, a new superannuation scheme provided generous support to the elderly population (Bassett, 1998).

Throughout the 1970s, New Zealand's economic situation continued to deteriorate and both main parties lost political support. Although two other contenders, the Values Party and the Social Credit League, both gained from this, neither offered a serious threat and National was re-elected by a slim majority in 1978. Under the leadership of Robert Muldoon, National continued in office until the end of the 1970s and into the first half of the 1980s (Kelsey, 1995). By the end of the 1970s, business associations had withdrawn support for the Keynesian policy regime and were advocating neo-Liberalism (Roper, 2005).

4.1.2 Welfare

Despite the egalitarian ethos still being recited, New Zealand was a nation marked by social stratification. Inequality existed on a range of dimensions. In terms of income distribution, large differences existed between males and females. Gaps between the top and bottom of the occupational ladder were maintained by access to private education and the resulting advantageous employment prospects for the top level. While those in low status occupations could be socially mobile, this was not always in an upward direction. Research reported by Baldock (1977) concluded that male occupational mobility was upward for 37% of the sample but downward for 40% (Baldock, 1977). Factors that would normally enhance upward mobility, such as educational attainment, were seldom realised for younger members of the population. It was also recognised that for 50-60% of young people experienced social immobility (Baldock, 1977).

Inequality of access to education, housing and health were all issues of concern for many New Zealander's during the 1970s, but Maori fared particularly poorly. In 1970, nearly 78% of Maori school leavers were without qualifications; for non-Maori, the figure was 37% (Trlin, 1977). The main victims of poverty were identified as social security beneficiaries, a category where Maori were over-represented. Although surveys taken at the time indicated that young families were in most need, family benefits had devalued. Superannuitants were no longer means-tested, and those without dependents, who owned their own homes, now received the higher rates of benefit (McClure, 2004).

Over four years, the new superannuation scheme accounted for half of all spending on social security, coupled with long-term benefits such as the domestic purposes benefits and prolonged unemployment, which affected 50,000 people by 1978. Expenditure on welfare was becoming increasingly seen as unaffordable (McClure, 2004). Despite National Party rhetoric, Robert Muldoon, who was Minister of Finance as well as the Prime Minister, was a classic interventionist.

Although the family benefit was universal in 1970, its value had degraded as the cost of living increased. Neither National nor Labour carried any reference to families in their 1975 manifestos, despite estimates that one-quarter of New Zealand children and their parents lived in poverty (Webster & Williams, 1977).

Until the introduction of the DPB, much of a social worker's time was devoted to the function of following up ex-nuptial births, a practice that was predominantly fuelled by moral concerns (Dalley, 1998). The practice had done little more than add to the workload, as prior to

the benefit, financial assistance for single parents was not only severely limited, but was also at the discretion of social workers (Dalley, 1998).

The moral climate had a profound impact for DPB recipients, but judgement passed on single mothers was particularly intense. McClure (2004) states “Public criticism of sole parents on the benefit was strengthened by superannuitants who diverted attention from their dominance of benefit spending by pointing to the scandal of the DPB.” (McClure, 2004, p. 151). In reference to the social divisions, McClure further remarks, “The sectionalism which developed in the 1970’s – with the rivalry of old and young, working families and beneficiaries – highlights the importance of rights being shared equitably.” (McClure, 2004 p. 151).

4.1.3 Crime

Property crimes and offences against the person dominate the statistics for juvenile offenders in the 1970s. The disproportionate representation of Maori youths was evident. Maori boys were apprehended five times more frequently than Pakeha boys and Maori girls were seven times more likely to be apprehended than their Pakeha counterparts (Dalley, 1998). The increase in juveniles in contact with Social Welfare also showed that this was disproportionate to the growth in the juvenile population, which had doubled between the 1940s and early 1970s (Dalley, 1998).

The police continued to exercise their wide powers of discretion in decisions to prosecute and liaison with social workers was common practice. The juvenile crime section of the police, established in 1957, was still operational and maintained its purpose to keep the welfare of children at the forefront in decision making (Morris, 2004).

The range of sanctions for young offenders included fines, restitution, supervision and commitment to care. Although counselling for youths and parents could also be ordered, this option was seldom practised (Morris, 2004). The age of criminal responsibility had not been raised since 1961, and remained at ten until the passing of the *Children and Young Person’s Act, 1974* (Morris, 2004).

Police were a major source of admissions to residential institutions and the country operated a total of twenty-six residential units providing over 900 beds. Secure units were widely utilised during this period and overcrowding meant police cells were often used for remanded youth. These practices raised concerns among children’s rights activists and Maori during the mid 1970s, sparking investigations into the treatment of children in residence. As a result, the rights of young people were addressed to a limited extent. The main concerns for the State, however, were the problems of overcrowding, understaffing and the increasing number

of juveniles in residence. The two assessment centres were also frequently being used for remand purposes and short-stay accommodation (Dalley, 1998).

The Department of Social Welfare handled 12,000 court appearances between 1971 and 1972. Over 10,000 youths were under preventative supervision while another 5,515 were in residential institutions or fostered out. While supervision was a common sanction, understaffing meant this amounted to little more than around nine visits with each youth in the course of a year (Dalley, 1998).

Courts were also overloaded; the lack of distinction between young people as victims and those who were offenders, meant youth courts heard both types of cases. In 1973, a youth court in Otahuhu, for example, processed 71 cases in one day (Dalley, 1998). The *Children and Young Person's Act, 1974*, however, formalised the distinction between victims and offenders. Jurisdiction was split between two courts, and the Family Court would now be responsible for children involved in care and protection issues. The age of criminal responsibility was lifted and youth courts now processed cases of juvenile delinquency involving 14 to 17 year olds (Dalley, 1998; Morris, 2004).

4.1.4 Policy/Law change in Juvenile Justice

The 1974 Act was probably the most significant in terms of juvenile justice policy during the 1970s. Prior to the Act, legal representation was not integrated into the juvenile justice process. The new legislation allowed for a duty solicitor. However, the service not only varied in quality, but also in availability (Dalley, 1998).

Measures affecting parental rights and responsibilities were also included in the Act. It became mandatory for magistrates to receive social workers' reports and these became available for the young person and their parents (Dalley, 1998). The Act also made it an offence to leave children without reasonable supervision and care and further empowered police to remove a child from public places if they were found to be "...associating with known criminals or drug addicts or in an environment which is detrimental to his physical or moral wellbeing." (CYP Act 1974 s12, cited in Webster and Williams, 1977, p. 92).

The establishment of Children's Boards was also the direct result of the 1974 legislation. These were comprised of a police officer, a social worker, a member of the Department of Maori Affairs and a community representative (Dalley, 1998; Morris, 2004).

Although the Boards heard cases, their powers were limited and they could not make decisions regarding guilt. The main aim or function of the Board was to reduce the number of cases going to court. For a variety of reasons, including social workers dissatisfaction, the

Boards were underutilised, and many cases went directly to court anyway. The Boards were short lived, and their role was reconsidered in the early 1980s (Dalley, 1998).

Changes in practice took place in 1974. These coincided with the Act but did not appear in the legislation. These involved directives issued by the Department of Social Welfare regarding treatment of youths in residence. Staff were required to provide daily showers and changes of clothes, access to reading material and recreation and to allow regular visits with family. Depriving residents of food was no longer allowed (Dalley, 1998).

Inquiries into allegations of cruel and inhumane punishment took place in 1978, precipitated by the Auckland Committee on Racism and Discrimination (ACORD). The matter came to the attention of the Human Rights Commission (HRC). Although ACORD charged the Department of Social Welfare with violating several articles of the United Nations Covenant on Civil and Political Rights, the HRC did not report on the matter until 1982. By this time, most of the alleged practices had ceased (Dalley, 1998).

4.2 New Zealand 1980 – 1989

4.2.1 The socio-political environment

In the wake of economic crises in the 1970s, the New Zealand economy faced further strain in the 1980s. Extensive reforms took place, with Keynesian macro-economic policies being replaced by a focus on micro-economic functions. Political upheavals included a snap-election in 1984 and, consequently, a change in ideology swept through government and the welfare state, as Labour resumed the Treasury benches for a fourth time.

Despite measures aimed at increasing New Zealand's competitiveness in international markets, during the 1970s both foreign and public debt had accumulated. Foreign debt was 57% of GDP between 1983-1984 and the fiscal deficit averaged 7.8% of GDP in the first three years of the 1980's (H. Schwartz, 1994). Inflation had approached 16%, by 1982, annual borrowing had been \$1.524 billion in 1981 and reached \$3.1 billion by 1984. Trade agreements with Australia began to replace the traditional British market and the Closer Economic Relationship Agreement (CER) with Australia was signed in 1982 (Bassett, 1998; Goldfinch & Malpass, 2007). The move was part of the overall trend towards liberalising industries and attempts to become more competitive in the changing world economy (Goldfinch & Malpass, 2007).

During the early 1980s, speculation over the price of oil prompted high expenditure on the part of the National government, led by Muldoon. A range of energy plans were introduced,

which aimed to make New Zealand self sufficient for at least half of its petroleum products. The strategies and resulting plant schemes came with the promise of new employment and the creation of 410,000 new jobs. The schemes came to be known as “Think Big” and according to Bassett (1998), aided National in returning to power in the 1981 election (Bassett, 1998).

Economic decline coincided with political instability. The Labour Party had been fraught by internal conflicts. Bill Rowling stood down as Leader of the Opposition in 1982 and was replaced by David Lange. A newly created New Zealand Party, led by Bob Jones, took votes away from the traditional National and Labour supporters in the snap election of 1984. So too, did the Social Credit Party, and Labour, with only 43% of the vote, but a sixteen seat majority in a “first past the post” electoral system, came to power and retained office for the remainder of the 80s (Kelsey, 1995).

Upon its election, Labour set about making a number of far reaching changes. The newly elected government received briefing papers from Treasury and these “...laid out specific steps for deregulating the economy and introducing market mechanisms into the public sector.” (Schwartz, 1994, p. 546). Treasury opposed the Think Big schemes (Bassett, 1998; Kelsey, 1995), the high value of the New Zealand dollar, and protectionism on trade which created costs for exporters. It argued that a comprehensive change to economic management was needed (Kelsey, 1995; H. Schwartz, 1994). It found a very sympathetic reaction from the new Minister of Finance, Roger Douglas, whose commitment to introducing thorough-going liberalisation of the New Zealand economy earned this policy the label “Rogernomics.”

Expenditure on the Think Big projects had amounted to \$5.64 billion dollars, and Labour set about trying to recoup some of the loss. Treasury’s recommendations had included separating commercial State operations from non-commercial ones and establishing trading enterprises as private businesses. Heads of departments from the railways, coal mining, forestry and postal services were to be replaced by boards of directors, and enterprises were to be managed and run on the basis of profit generation (Kelsey, 1995; H. Schwartz, 1994).

A total of nine State operated enterprises were immediately affected by a single piece of legislation. The *State Owned Enterprises Act, 1986*, meant that shares were sold in what had previously been State assets. The previous agreements relating to employment and redundancy were withdrawn. New shareholders were under no obligation to retain existing staff, nor was redundancy payable. Effective opposition was creatively diverted, by both the speed and secrecy of the introduction of the Act (Schwartz, 1994).

In the same year, a 10% tax on goods and services was introduced along with other forms of indirect taxation. This move increased government revenue from tax from 22.5% to 33.2%. Although the deficit had declined slightly, removal of wage, price and interest rate

freezes in 1987, saw inflation escalate again. The structural adjustment to income tax was set at two statutory rates of 24 and 33% from 1988. A low-earner rebate meant that actual rates were 15, 28 and 33% in practice. GST was increased to 12.5% the following year (Kelsey, 1995).

Tax reforms, however, fuelled internal conflict within the Labour Party. Opposition also emerged as a result of the issue of unemployment, which doubled between 1987 and 1989. Unskilled workers and public employees were among those most severely affected. Workers and union representatives who no longer supported the Labour Party when it embraced “Tory” economic measures, established the “New Labour Party” in 1989 (Schwartz, 1994).

Deregulation of the economy and the introduction of market mechanisms into the public sector were uncharacteristic of traditional Labour policies. Reference to public choice and agency were frequently made as the change in political ideology was manifested in social policy throughout Labour’s six year term (Kelsey, 1995).

4.2.2 Welfare

The change in philosophy surrounding the approach to the economy and the welfare state has drawn extensive comment. Schwartz (1994) observes “The effort to introduce market pressures into the welfare state parallels economic deregulation in this regard, aiming to extricate the State from the management of social problems.” (Schwartz, 1994, p.553).

Reforms in welfare included increased stand-down, or waiting periods for unemployment beneficiaries, from one to two weeks. The unemployment benefit became taxable in 1982 and this effectively reduced the rate for recipients (McClure, 1998).

Later tax reforms effectively redistributed income to the hands of the well off. The highest earners were eligible for various tax breaks which effectively reduced tax from 40.3% to 34.9%. Those on an average income with two children, now faced an increase from 18.7% to 24.1% and GST, as a “flat” tax, affected most those who could least afford it. Because basic necessities, such as food and clothing, were not exempt, the poor again fared worse with the second increase in GST (Kelsey, 1995). By 1985, a surtax had been introduced to the superannuation scheme. The move was part of the overall trend towards means-testing or targeting benefits. Previously universal entitlements were being subjected to means testing, including healthcare, housing and family assistance, while the universal family allowance was abolished (Boston, 1999).

An increase in the incidence and severity of poverty and financial hardship began in the mid 1980s due in part to the increased reliance on targeting, increased unemployment and family breakdown, which further contributed to the deterioration in living standards for the poor (Boston, 1999). The moves also highlighted increasing inequality, exacerbated by the flat

rather than progressive nature of the tax reforms. Podder and Chatterjee (2002) report that between 1986 and 1991 “The (income) tax expenditure policies of the government have evidently contributed to greater, not less, inequality in New Zealand income distribution over this period of the reform.” (Podder & Chatterjee, 2002)

In 1988, the Royal Commission on Social Policy sought to use the notion of “wellbeing” to formulate desirable social outcomes from policy. This included improvement of both the level and distribution of wellbeing (Geiringer & Palmer, 2007). This concept, while not explicit, denotes entitlement on the basis of “need” rather than on “rights.” To define entitlement in this way does not establish an obligation or duty in the same way that rights do (Geiringer & Palmer, 2007).

4.2.3 Crime

Sentencing of juvenile offenders was profoundly changed by the introduction of the *Children, Young Persons and Their Families Act, 1989*. The specific requirements were to divert young people from the court system and into Family Group Conferences (FGC’s). Between 1986 and 1989, the average rate of appearances in youth court was 630 per 10,000. In the year immediately following its introduction, the Act reduced this average to 160 per 10,000 (Morris, 2004).

Media attention about youths in gangs continued into the 1980s and by 1981 an inter-departmental Committee on Gangs was established with the explicit purpose of finding solutions. Publicity on youths involved in solvent abuse and living on the street reached its height in 1985. The problems, however, were regarded as issues of care and protection, rather than youth justice (Dalley, 1998)

Although police arrests of 14-16 year olds declined by approximately 2,000 between 1987 and 1989, the figure fell significantly after the introduction of the *Children, Young Persons and Their Families Act, 1989*. Reasons for arrest were predominantly to assure the young person’s appearance in court or to prevent re-offending. Cases prosecuted in court in 1987 totalled 11,327, with the vast majority being sentenced to community work and a fine. Maxwell, Robertson and Kingi (2002) note that there did not appear to be any change in the seriousness of the offences being committed in the latter part of the 1980’s (Maxwell et al., 2002).

4.2.4 Policy/Law change in juvenile justice

In 1983, the use of secure care in residential facilities became subject to review if the young person was detained for a period of 72 hours. Where juveniles were detained for more

than 14 days, notification to the Head Office was required. This practice was again altered in 1989, by the *Children, Young Persons and Their Families Act*, which set more rigid parameters around the use of secure care for juveniles (Dalley, 1998).

The Criminal Justice Act, 1985, also impacted on residential facilities. An annual increase of 500 admissions was expected. Fifteen and 16 year olds, previously held in penal institutions, would now be held in residential facilities. The increase coincided with a doubling of 16 year olds over the 1984-1985 period, but these trends were later reversed by the *Children, Young Person's and Their Families Act, 1989* (Dalley, 1998).

Strongly influenced by the 1986 report *Puoa Te Ata Tu*, the new legislation began moves towards addressing concerns of Maori. The developments of bicultural policies were reflected in residential programmes, which now focused on Maori culture. However, concerns over the use of secure care and a growing awareness of the need to establish alternative measures for Maori and Pacific Island youths also led to the planned closure of residential facilities. Funds would be diverted to the Maatua Whangai programme, which aimed to reintegrate children into their whanau and iwi (Dalley, 1998).

The *Children, Young Persons and Their Families Act* also emphasised the use of community-based care and the residential principals' conference had independently recommended the closure of institutions. A total of five residential homes closed during 1987 (Dalley, 1998). The numbers of admissions were reduced through a range of diversion policies and practices; by 1989 the average numbers had dropped from 202 a month to 75. This resulted in a review of residential services which took place in 1990 (Dalley, 1998).

The *Children, Young Persons and Their Families Act, 1989* laid out a set of general principles governing both State intervention in the lives of young people and the management of youth justice (Morris & Maxwell, 1993). Emphasis was placed on accountability and proportionality in sanctioning, along with a stated preference for diversion from formal proceedings. The Act further stressed the shifting of resources from State agencies to the voluntary and private sector in order to accommodate community-based penalties (Morris & Maxwell, 1993).

The 1989 legislation was a move which also required the initiation of a Family Group Conference (Dalley, 1998; Morris & Maxwell, 1993). The Family Group Conference (FGC) is a decision-making process involving the offender, the victim and their extended family, the police prosecutor, social workers and any health professionals involved with the child (Levine, 2000). In terms of parental rights and responsibilities, the changes were significant. Parents' and extended families' rights to be included in decision making were acknowledged and incorporated into the process.

Although the previous *Children and Young Persons Act, 1974* had allowed for guardianship orders under the Youth Justice provisions, under the *Children, Young Persons and their Families Act, 1989* this was no longer available. Proceedings to place youths under guardianship of the Director-General could only be initiated through Care and Protection provisions (Spier, 2000).

Under the *Official Information Act, 1982* requests could be made to government departments to view information held on another person. Effectively, this gave parents or guardians legally protected rights to view Child, Youth and Family files on their children. However, in many instances, the child's right to privacy is weighed against the request. A further legal perspective, the "Gillick principle" is also included in the decision to release or withhold information. This principle argues that guardianship rights diminish as the child matures and the child's right to determine the passage of information about themselves increases (Bartlett, 1999). Given the age of accountability in juvenile justice, this would seem to have significant implications for the release of information to parents or guardians. Release of information to parents was also further restricted by the *Privacy Act, 1993*.²¹

The *Victim of Offences Act, 1987* introduced a range of considerations for the rights of victims. These included access to welfare, health and legal services and the right to be informed about processes and outcomes. The Act further included reference to treating victims with dignity, courtesy and compassion (Morris, 2004).

4.3 New Zealand 1990 – 1999

4.3.1 The socio-political environment

The beginning of the 1990s was characterised by the continued contraction of the economy and increasing unemployment. Reforms begun by the previous Labour Party were continued under National and mounting deficits saw the introduction of The Economic and Social Initiative in December, 1990 (Boston, 1993). The newly elected National Government announced benefit cuts amidst the contracting labour market and record levels of unemployment (Boston, 1993; Larner, 2000). The introduction of the *Public Finance Act, 1990* created a range of budget constraints for welfare services (H. Schwartz, 1994) and an increasing focus on community and voluntary based services dominated the welfare arena (Crack, Turner, & Heenan, 2007).

²¹ See Chapter 4, Section 4.3.4 Page 55.

Treasury advised the incoming Government that estimated deficits would increase from \$3.7 billion to \$5.2 billion over the next three years unless changes in policy were made. The fiscal crisis prompted Treasury to argue for drastic cuts in social spending and reformation of unionised industrial relations (Roper, 2005).

Upon election, the National Party introduced a number of reforms beginning in 1990 with The Economic and Social Initiative which cut benefits and tightened eligibility criteria (Roper, 2005). In 1991, the controversial *Employment Contracts Act* was introduced and effectively decentralised the wage bargaining system that had previously operated through the *Industrial Arbitration and Conciliation Act, 1984* (Kelsey, 1995; Roper, 2005). The move was supported by employers who benefitted from the new regulations, gaining power over wage setting and employment conditions. Union power, collective agreements and strike action were severely curtailed through the act which forced workers to negotiate individual employment contracts with their employers. Whereas 47% of the total labour force had been unionised in 1989, this number decreased to 17% by 1999 (Roper, 2005).

Under the new restrictions for benefits, those who were unable to negotiate adequate employment contracts were faced with a six-month stand-down period for unemployment income assistance (Boston, 1999; Roper, 2005). However, by 1993, a cyclical recovery had begun and real GDP²² growth was experienced between 1993 and 1996. Unemployment rates decreased from 10.6% in 1992 to 6.2% in 1996 (Roper, 2005).

Despite the economic recovery, public dissatisfaction with both major parties had continued to grow and electoral reform profoundly impacted on the political terrain during this period. The existing system of First Past the Post (FPP) was replaced by Mixed Member Proportional Representation (MMP). A referendum held in 1992 showed a high level of public support for the change and was therefore followed by a binding referendum held in conjunction with the 1993 election.

While support for change was demonstrated by an 85.2% participation rate in the election, and with 54% of voters in favour of the new system of proportional representation, the need for reform was made glaringly obvious with the outcome of the election (Kelsey, 1995; Roper, 2005). Of the 99 seats in parliament, National retained 50 and hence won the election although their share of the votes had been 35.1%. Although Labour had received 34.7% of the votes, they held 45 seats while the Alliance with 18.2% of the vote held only two (Roper, 2005).

²² Whereas GDP measures the production of goods and services, real GDP indicates that the effects of inflation on the measure have been taken into account.

National's second term in office in the 1990s was characterised by a slower pace in neo-Liberal reforms, which Roper (2005), attributes to increased political activism. Support from the business sector strongly favoured neo-Liberal reforms.

The 1999 election saw the introduction of a coalition government between Labour and the Alliance Party. Helen Clark, leader of the Labour Party and Jim Anderton, who had left the Labour Party in 1989 to form the Alliance, established a good working relationship and both had emphasised this aspect in pre-election campaigns (Vowels, 2002).

4.3.2 Welfare

In 1990, Labour's Minister of Social Welfare announced that the cuts to benefits had equalled \$800 million a year. These included, among others, a 24.7% reduction in the unemployment benefit, a range of 9% to 16% reduction in the DPB and widow's benefits and the abolition of the universal family benefit (Kelsey, 1995).

Eligibility criteria for social assistance were again tightened in the early 1990s. Both financial and non financial criteria were being applied to the vast majority (71%) of social assistance. These included age, marital status, number of dependent children, length of residency and health and educational status. Many forms of social assistance were subjected to multiple criteria. Boston (1999) observed that policy changes led to complexity and inconsistency in welfare assistance. Different definitions of "income" were used for different forms of assistance, which were subjected to differences in annual measurement. Variations also existed in abatement rates, definitions of marriage and units of assessment such as individual or joint income (Boston, 1999).

Total expenditure on income support and social services, including education and health care, during 1998/9 approximated 73% of total central government spending. In NZ dollar terms, this amounted to approximately \$26 billion, with just over \$15 billion on support which was not subject to means testing (education, health and superannuation) (Boston, 1999).

While the welfare of those dependent on the State for income continued to decline, those who were employed also faced the rising tide of income and employment inequality. Stemming from the 1984 reforms, inequality continued into the 1990s. By 1996, the bottom 80% of income recipients had experienced reductions between 1984 and 1996 while the top 5% gained a 25% increase over the same period. In terms of employment, labour market inequality in wage and salary incomes increased significantly over the same period (Podder & Chatterjee, 2002)

Increasing hardship was particularly evident among Maori, with 30.8% of those aged between 15 and 19 years old unemployed in 1991. Trends in benefit reciprocity continued with

49% of Maori men and 58% of Maori women being dependent on income support during the twelve months prior to the 1991 Census (Kelsey, 1995).

The 1990s in New Zealand was further characterised by the increased incidence of poverty. Waldergrave, Stephens and King (2003), used a relative measure of poverty which indicated that around 19% of households were below the poverty line between 1993 and 1998. Findings also demonstrate that around one third of New Zealand children lived in poverty and over 70% of single parent families were below the line. Housing costs contributed significantly to the experience of poverty for many New Zealanders and deepened levels for those already on low incomes (Waldergrave, Stephens, & King, 2003).

In the midst of poverty and sweeping changes to welfare provision, the National Government attempted to initiate a public discussion on social issues. Entitled “Towards a Code of Social and Family Responsibility,” the document was distributed to all households in 1998 (Larner, 2000). The rhetoric contained in the document mirrored the views espoused by neo-Liberal reformers. The stated purpose of the code was to make it clear how people are expected to meet their responsibilities. Larner (2000) further notes that the introduction of the code clearly sets the neo-Liberal emphasis on community rather than social responsibility and reduces the citizenship to political participation rather than social citizenship. Critics of the document located a number of methodological issues, the punitive aspects of the code and the implication that “...State monitoring of familial relationships is required to ensure that family members fulfil their responsibilities to each other.” (Larner, 2000, p.256).

4.3.3 Crime

Police apprehensions, of 14 to 16 year old youths for this decade show varying trends according to offence types. Although apprehensions for drug and anti-social offences remained stable, property damage showed a dramatic 155% increase. Similarly, apprehensions for violent offences in 1999 were 118% greater than those in 1990 (Spier, 2000). Property crimes, which include burglary, theft, arson, wilful damage and car conversion, account for the majority of apprehensions throughout the 1994 to 1999 period. The number of 14 to 16 year olds apprehended range from 18,550 to 21,006 for property crimes while apprehensions for violent crimes range from 2,389 to 2,708 for the same period (Spier, 2000).

Sentencing of young offenders throughout the period showed a decrease in the use of corrective training; however, this occurred alongside an increase in the use of “Other imprisonment.” Supervision orders placing youths under CYFs care also showed a steady increase during the 1990s, while monetary sanctions remained relatively stable (Spier, 2000).

Although the use of FGC's continued to increase throughout the 1990s (Morris & Maxwell, 1997), the number of cases involving 14 to 16 year olds coming before the courts increased by 80% between 1990 and 1999 (Spier, 2000).

The period is also notable for the increasing influence of American youth gang culture in New Zealand, with the emergence of "Crips" and "Bloods" which followed the names, behaviour and culture of American gangs and whose African-American roots found favour among disaffected, urban, Maori and Pacific Island Polynesian young people (Eggleston, 2000).

4.3.4 Policy/Law change in Juvenile Justice

The New Zealand Police Association had pressed for some amendment to the *Children, Young Persons and their Families Act, 1989* and a review was commissioned in 1991.

The right to access information on CYFs files was effectively curtailed by the *Privacy Act 1993*. Section 29(1)(a) of the Act gives CYFs, and other agencies, the right to refuse access to information under two criteria. The first of these are circumstances under which disclosure of the information would disclose the affairs of another person. The second is that such a disclosure would be unwarranted under the circumstances. (Office of the Privacy Commissioner). This would indicate that even though legislation may grant both parents and young people the right to view information held by CYFs, these rights are not full and exclusive, nor are they guaranteed in law (Bartlett, 1999).

An amendment which took effect in 1995, further addressed the effectiveness of FGCs for victims. Concerns were generally related to reasons for non-attendance by victims, often due to lack of notification or inadequate consultation. The amendments aimed at ensuring consultation with victims over time and venues for FGCs (Morris & Maxwell, 1997).

The mid-1990s was also marked by attempts to impose curfews in a number of small communities around the country. Predominantly, these were aimed at youth under the age of 17 and police effectively enforced a ban on young people in public spaces at night (Collins & Kearns, 2001). This strategy received widespread media attention and was promoted as a means of controlling juvenile crime. In some areas, the curfews remained in place for more than two years. The lifting of the curfew in one location was negatively portrayed in the media, although police guidelines issued in 1997 made it clear that blanket sweeps and curfews to remove children from the streets were illegal (Collins & Kearns, 2001).

The 1990 review of residential services emphasised the legislative changes that were recommended in the *Children, Young Persons and Their Families Act, 1989*. The services provided by institutions was regarded as inappropriate and surplus to requirements and five

more institutions were closed, while the remaining four provided 12 beds for care and protection cases and 39 for secure care (Dalley, 1998).

Reduced provision of residential facilities meant job losses and a reduction in the proportion of social workers employed by the Department of Social Welfare (Dalley, 1998). Morris and Maxwell (1997) note that the total budget for youth justice dropped from \$34.5 million in 1991 to \$27.5 million in 1994. The amount allocated for operational expenditure decreased even more dramatically, from \$11.5 million to \$4.5 million during the same period (Morris & Maxwell, 1997).

4.4 New Zealand in summary 1970-1990

New Zealand's political climate was not as stable as that experienced by Sweden in the 1970s. The change to a Labour government in 1972 resulted in increased potential for decommodification²³, through the introduction of new benefits. In 1975, The National Government introduced pension reforms but these did not reduce social stratification, which was particularly marked between Maori and European citizens and also between pensioners and other recipients of welfare benefits. Liberalisation of the economy was emerging at this point with the removal of subsidies, relaxed interest rate controls and capped public sector employment. Support for Keynesian economic management was beginning to wane.

More extensive reforms and liberalisation took place in 1984 with another Labour Government. The period is punctuated by various changes to benefits, the introduction and wide application of means testing, the abolition of the universal family allowance and the reduction of benefit rates which all served to significantly reduce the capacity for decommodification. These measures all represent the significant ideological change occurring at the time.

Social stratification increased during the first half of the 1980s as a direct result of these changes. Further increases resulted from the introduction of GST and its later increase. The shift to a National government in 1990 did not signify a significant change in ideology. The previous Labour government had adopted traditionally right-wing policies and National continued the existing trends in welfare. Further benefit cuts and tightened eligibility criteria served only to continue the widening gaps between different segments of the population and decrease the potential for decommodification.

Attention to juvenile offenders was focussed on concern for the conditions in residential institutions and the use of police cells. Legislation during this period marked an improvement

²³ See Chapter 2, Section 2.2 Pages 15-16.

in the rights of offenders and an increase in the age of criminal responsibility. Distinguishing between juvenile offenders and victims was formalised through the separate court system for those in need of care and protection.

By the 1980s, youth gangs were receiving widespread media attention but these were regarded as care and protection matters. Juvenile offenders were now being diverted from youth court through the use of FGCs. Community based sanctions represented the shift from State responsibility.

The State was also withdrawing from the provision of welfare, universal benefits were abolished or subjected to means-testing. The new ideology had permeated social policy as entitlement on the basis of need overtook a rights based approach. These trends were well entrenched by the 1990s and cuts to welfare benefits continued. Juvenile offending increased dramatically, coinciding with the increased use of residential orders. Social stratification continued to increase while social rights were eroded.

New Zealand's welfare state underwent significant reform during the 1980s. Ideological change was obvious and juvenile offending increased. Media attention to offenders fluctuated during this time period. The question still remains however, as to whether or not these events gave rise to the reforms in juvenile justice. The next chapter addresses this question and identifies the events which led to reforms in both New Zealand and Sweden.

Chapter 5: Analysis

This chapter begins the analysis stage of the study. The potential causal variables are identified first. A discussion on the application of Boolean Algebra then follows. Data from the preceding chapters is then used to construct a truth table. Results from this analysis are presented and these are considered in the final chapter along with the implications for rights and responsibilities.

5.1 Preliminary Analysis: Identification of Causal Variables

Following Weijer's (1999) observations that a strong connection between welfare and juvenile justice is evident, it should now be possible to analyse whether changes in welfare have an influence on changes in juvenile justice. In order to explore this possibility, changes within the system of welfare in both countries must be addressed.

The approach taken here is to systematically apply two theoretical accounts of welfare state change to the data presented in the two previous chapters. To begin with, Esping-Andersen's (1999) account applies a broad definition of the welfare state and presents a typological classification. As mentioned previously, the typologies are based on what are regarded as the "salient" characteristics of welfare states. These include the extension of and capacity for, decommodification in social rights and the extent of social stratification evident within a welfare regime.

Described as a composite indicator combining benefit levels, eligibility criteria, waiting periods and consideration of means testing (Mabbett & Bolderson, 1999), decommodification accounts for subtle changes in specific welfare programmes (Castles, 2002). Although originally constructed from an empirical basis, the indices for decommodification are difficult to reproduce. This is due, primarily, to the lack of routinely produced data pertaining to welfare programmes. Current data are available only on an occasional basis (Castles, 2002).

Furthermore, Castles (2002) maintains that aggregate expenditure measures, although commonly utilised, are "...misleading indicators of the nature and extent of welfare activity." (Castles 2002, p.614). He suggests that decommodification provides an alternative approach to measuring welfare State change and reform (Castles, 2002).

For these reasons, evidence from the research already presented is used to provide indicators of increased social stratification and reduced decommodification.

Indications of the reduced capacity for decommodification are evident in extensions of waiting days for benefits, tightened eligibility criteria and benefit reductions (Esping-Anderson, 1990).

In an approach highly compatible with Esping-Andersen's, Nordlund (2000) utilises changes in benefit levels, entitlement and waiting days to categorise "first-order" changes (Nordlund, 2000, p.33). These are regarded as minor changes in welfare state developments. Second order changes go beyond the precise settings of policy instruments, to changes in the choice of policy instruments being utilised. While this may involve the abolition of a particular welfare programme and its subsequent replacement, a "second-order" change does not necessarily alter the overarching goal of welfare policy. Changes in ideology, impacting on policy goals, are regarded as "third-order" changes (Nordlund, 2000).

Combining both Esping-Anderson's and Nordlund's approach to assessing welfare reforms allows for a synthesis of specific programme changes along with structural and ideological change. This allows for a consideration of welfare decline, in relation to social rights, as described by Esping-Anderson (1999). An improvement in welfare can also be accounted for where social rights are extended. This may occur through the introduction of new welfare programmes, particularly those that are universal, or increases in benefit rates. Changes which increase the capacity for decommodification or those which reduce the extent of stratification, such as tax-reforms, also extend social rights.

As discussed previously, changes in political ideology are also an important consideration. While Nordlund's analysis provides the main theoretical framework for the following evaluation, a change in Government from "left" to "right wing," for example, is also regarded as an indication of ideological change for measurement purposes. Given that in New Zealand, elections occur in November, triennially, an election resulting in a change of ideology is considered to be influential for the following year. (Swedish elections were also held triennially up to 1994, when this changed to four yearly (Madely, 1995)).

The three factors - welfare improvement, welfare decline and changes in political ideology - are potentially causal variables in juvenile justice policy change. However, the major influences on juvenile justice policy identified by Bernard (1992), must also be incorporated into the analysis. Media attention to crime or crime trends results in public pressure on politicians to alter juvenile justice policy. Media attention to crime and crime trends are therefore included in the analysis.

Studies specifically addressing media attention to juvenile crime in New Zealand have been difficult to locate. The approach taken by McGregor (2002), for example, was to examine press coverage of crime news as a percentage of "hard" news. No distinction was made

between juvenile and adult offenders. However, the media predominantly focus on violent crime and this is particularly evident in television coverage (McGregor, 2002). Although New Zealand gangs and street kids featured in media reports in the late 1970's (Dalley, 1998), and the imposition of youth curfews received attention in the 1980's (Collins & Kearns, 2001), the topic appears to be under researched.

Swedish media coverage of juvenile violence is examined by Estrada (2001) and, although it covers an extensive time-frame, the focus is on how the media portrays the juvenile offender, rather than the extent of media attention.

Limitations brought about through the lack of specific data on media attention to crime are somewhat overcome by including a more generalised description of media attention to crime. Various authors identify an increase in media attention to crime during election campaigns, creating political pressure to bring about change. (See for example, Jenson and Howard (1988), Estrada (2001) and Bradford and Morgan (2005)). Hence, an election year in either New Zealand or Sweden is included in the analysis as indicating the presence of media coverage of crime. Political pressure to alter juvenile justice policy may also arise through less publicised events such as official inquiries. These are also included under the same category as media attention to crime (See Section 5.2).

Trends in crime are also recognised as having the potential to influence juvenile justice policy. While Bernard (1992) maintains that it is the public perception of an increase in crime rather than an actual increase that influences juvenile justice policy, a clear distinction may not always be evident.

Comparative studies on juvenile justice are often hampered by differences in classification and recording of crime. The terms "minor", "juvenile" and "child" are subjected to different linguistic interpretations and may differ in their operationalisation between countries. Further constraints arise from the variation in classifying penal custody, especially where treatment facilities, detention centres or closed care institutions hold young people against their will, but are not regarded as prisons (Muncie, 2006).

Crime statistics also present difficulties for comparative purposes. Within New Zealand, for example, conviction and sentencing statistics are comparable for a limited time-frame only. Significant changes were made to the way charges were formed into cases, meaning case-based figures for the period 1990-1999 were not generally comparable to earlier figures (Spier, 2000).

The analysis of crime statistics has therefore been based primarily on a single study from each country. Crime trend data for Sweden is calculated from an extensive analysis of self-reported victimisation, hospital admissions and official crime statistics (Estrada, 2001).

However, data for 1995 have been based on a reported increase in convictions of 15-17 year olds for both theft and assault (Estrada, 1999).

Crime trend data for New Zealand between 1986 and 1991 is based on the number of proven cases involving 14-16 year olds appearing in youth court. Figures for police apprehensions cover the period from 1988 - 1997 (Triggs, 1997). These figures have been considered in conjunction with the observations made in the literature (See for example Spier 2000, Dalley 1988) to provide a general trend.

The variables identified from the literature are incorporated into the following analysis using Qualitative Comparative Analysis software (See Table 1). The first, coded as media, covers both public and political attention to issues associated with juvenile justice. The second, crime, is based on trends in juvenile offending. Changes in ideology, or third order changes are accounted for, particularly where these have a direct bearing on welfare policy. The fourth and fifth categories denote welfare improvement and decline respectively. Both of these categories take changes in indicators of de commodification and stratification into account. These variables are assessed in relation to the various configurations that occur between 1970 and 1999 in both New Zealand and Sweden. The outcome, changes in juvenile justice policy can then be regarded in light of the configurations of causal variables. An explanation of how these variables were coded for the construction of the truth table is now given. This is followed by an account of Boolean methods and the process of analysis.

5.2 Constructing the Truth Table

Construction of the truth table involves identifying each variable as present or absent in a given year. The Raw Data Matrix for each country (see Appendices) was constructed and data was then coded for inclusion in the truth table. The criteria used for the identifying the presence or absence of each variable is now discussed.

1. Media Attention to Juvenile Crime: Specific references from the literature were used to include media attention to juvenile crime as present for each year in which this occurred. Where official inquiries were conducted and the literature indicated public attention to these inquiries, the variable was also recorded as present. Election years were recorded as indicating the presence of media attention to juvenile crime in accordance with the accounts provided by Jenson and Howard (1988), Estrada (2001) and Bradford and Morgan (2005). Where data did not indicate the presence of media attention to juvenile crime for any given year, the variable was recorded as absent.

2. Reported Increases in Juvenile Crime: Where available, official crime statistics indicating an increase in juvenile crime were utilised. Rather than focussing on increases in

specific offenses, overall trends were examined. If crime rates showed an overall increase for a given year, the variable was recorded as present.

3. Changes in Political Ideology: This variable was recorded as present where elections resulted in a shift in ideology, for example from a right to left wing party, or where a party altered its traditional political orientation in its approach to welfare. Nordlund's (2000) analysis was also applied. Where policy change was identified as a "third-order" change, this variable was also recorded as present.

4. Welfare Improvement: Criteria for assessing welfare improvement included increased capacity for decommodification, decreased social stratification, new welfare programmes or benefits and increases in benefit rates. Where two or more of these conditions occurred in any given year, welfare improvement was recorded as present.

5. Welfare Decline: Decline in welfare was recorded as present where increased social stratification and decreased capacity for decommodification coincided with a reduction in benefit rates or the abolition of a benefit. Tightened eligibility criteria for benefits were also regarded as a decrease in the capacity for decommodification.

The Truth Table presents these variables as configurations for each year between 1970 and 1999 in both New Zealand and Sweden. The outcome, changes in juvenile justice policy, can then be regarded in light of the configurations of causal variables. An explanation of Boolean methods and the process of analysis now follow.

5.3 Boolean Analysis

Although comparative case studies offer an in-depth account of specific phenomena, many researchers are faced with the difficulty of small sample size. This poses limitations for qualitative analysis. Because Qualitative Comparative Analysis (QCA), can be applied to small sample research, it provides a system of analysis for complex causal conditions, generally associated with case studies (Ragin, 1989).

QCA is utilised to study different combinations of causal conditions through the application of Boolean Algebra. The process involves identification of both necessary and sufficient conditions for the outcome of interest. A raw data matrix, or truth table, is constructed from the major causal conditions and positive and negative instances of the outcome are analysed. Through this method, all logically possible combinations of the causal conditions are included in the analysis and the various combinations producing the outcome are identified (Ragin, 1989).

Because the process uses Boolean logic, variables are first transformed into nominal-scale measures. These appear as columns in the truth table. In order to use Boolean algebra, variables are coded as present or absent and a 1 or 0 is used to represent this in the truth table. The number of rows in a truth table is calculated from the number of variables, which become the exponent. Where four variables are present, for example, the number of rows will be sixteen.

$$2^4 = 16$$

The number two in the equation represents the logical possibilities of presence or absence, (0 or 1) for each variable. The outcome of interest is also coded in the same manner and the number of instances recorded (Ragin, 2008).

The following truth table (Table 1) represents the independent variables identified in the preliminary analysis. Each row represents the particular configuration of variables present or absent in each year. Cases, or rows, with identical combinations of values are pooled for the analysis. Data for both New Zealand and Sweden are analysed from a single truth table.²⁴

The first column of the table indicates the row number and is not utilised in the analysis. Similarly, the second column provides a label for each case. “S” denotes Sweden and “N” denotes New Zealand while the number beside indicates the particular year. Columns 3-7 represent each of the causal variables, while the final column is the outcome of interest, policy change.

Key to Variable Labels:

- media:** Media attention to juvenile crime.
- crime:** Reported increase in juvenile crime.
- ideol:** Change in political ideology.
- welimp:** Welfare Improvement.
- weldec:** Welfare decline.
- polchge:** Change in juvenile justice policy.

Row	case	media	crime	ideol	welimp	weldec	polchge
1	S 70	1	1	0	0	0	0
2	N 71	0	0	0	1	0	0
3	S 71	1	1	0	0	0	0
4	N 72	1	0	1	1	0	0
5	S 72	1	1	0	0	0	0
6	N 73	0	0	1	1	0	0
7	S 73	1	1	0	0	0	0

²⁴ Some years have been omitted due to inadequate data.

8	N 74	1	0	0	0	0	1
9	S 74	1	1	0	0	0	0
10	N 75	1	0	1	1	0	0
11	S 75	0	1	0	0	0	0
12	N 76	1	1	1	1	0	0
13	S 76	1	0	0	0	0	0
14	N 77	0	0	0	1	0	0
15	N 78	1	0	0	1	0	0
16	S 78	1	0	0	0	0	0
17	S 79	1	0	0	0	0	0
18	N 80	1	0	0	0	0	0
19	S 80	0	0	0	0	1	0
20	N 81	1	0	0	0	0	0
21	N 82	1	0	0	0	0	1
22	S 82	1	0	1	0	0	1
23	N 83	1	0	0	0	0	1
24	S 83	0	0	1	1	0	0
25	N 84	1	0	1	0	1	0
26	N 85	1	0	1	0	1	0
27	S 85	1	0	1	0	0	0
28	N 86	1	0	0	0	0	0
29	S 86	1	1	0	0	0	0
30	N 87	1	0	0	0	0	1
31	S 87	1	1	0	0	0	1
32	N 88	0	0	1	0	0	0
33	S 88	1	0	0	0	0	0
34	N 89	0	0	0	0	0	1
35	S 89	1	1	0	0	0	1
36	N 90	1	0	1	0	1	0
37	S 90	1	0	0	0	1	1
38	S 91	1	0	0	0	1	0
39	N 92	0	1	0	0	0	0
40	S 92	1	0	0	0	1	0
41	N 93	1	1	0	0	0	0
42	S 93	0	0	0	0	1	1
43	N 94	0	1	0	0	0	0
44	S 94	1	0	0	0	0	1
45	N 95	1	1	0	0	0	1
46	S 95	1	1	0	0	1	1
47	N 96	1	0	0	0	0	0
48	S 97	1	0	0	0	1	0
49	N 99	1	0	0	0	0	0

Table 1: Truth Table.

The data from each row can be expressed as a simple equation, thus row 46, for example, would become $Y = M + C + i + w_i + WD$. In the equation, Y denotes the outcome, a change in juvenile justice policy. Each other letter symbolises each of the causal variables, M,

for example, represents media attention to juvenile crime. Lower case letters signify the absence of a variable, while upper case indicates its presence. The equation provides a summarised account of the data in row 46 which can be read as “A change in juvenile justice policy occurred where media attention to crime, an increase in crime and welfare decline were present, while ideological change and welfare improvement were absent.”

All rows are expressed as an equation and rows which are logically equivalent are minimised through Boolean addition. Further minimisation is carried out, using Boolean multiplication, and this reduces the algebraic expressions down to a single equation.

5.4 Applied Methodology

The data were analysed using fs(QCA) 2.2 software and the listing from the truth table was obtained. The software enables the user to specify different combinations of variables as necessary for the outcome to occur (Ragin, 2008). The first analysis was undertaken where all variables were specified as necessary. The analysis provides a summary of the truth-table, a listing of the various solutions obtained and complex, parsimonious and intermediate solutions.

Table 2 presents the summary. This provides a tally of the different types of configurations or combinations of causal variables and indicates whether these combinations were associated with a positive, negative or contradictory outcome. “0 Terms” represent negative outcomes, or instances where policy change did not take place. Positive outcomes are represented by “1 Terms”, and “C Terms” indicate contradictory configurations, which yield both positive and negative outcomes.

	Configurations	% of configurations	Cases	% of all cases
0 Terms	8	53.3	17	34.7
1 Terms	1	6.7	1	2.0
C Terms	6	40.0	31	63.3

Table 2 Truth Table Summary

Table 3 presents the solutions or equations for each of these configurations. The number of cases is given and also expressed as a percentage. Outcomes are expressed as negative, where policy change did not occur, or positive where change did take place. Variable labels are consistent with those presented in the truth-table and again, the use of upper-case characters denotes the presence of a variable, while lower-case denotes the absence.

Solution	Configuration	Cases	%	outcomes
MEDIA crime ideol welimp weldec	Contradictory	13	26.5	Neg. = 8 Pos = 5
MEDIA CRIME ideol welimp weldec	Contradictory	8	16.3	Neg = 5 Pos = 3
media CRIME ideol welimp weldec	Negative	5	10.2	
MEDIA crime IDEOL welimp WELDEC	Negative	3	6.1	
media crime ideol welimp WELDEC	Contradictory	3	6.1	Neg = 2 Pos = 1
MEDIA crime ideol welimp WELDEC	Contradictory	3	6.1	Neg = 2 Pos = 1
media crime ideol WELIMP weldec	Negative	2	4.1	
media crime ideol welimp weldec	Contradictory	2	4.1	Neg = 1 Pos = 1
media crime IDEOL WELIMP weldec	Negative	2	4.1	
MEDIA crime IDEOL WELIMP weldec	Negative	2	4.1	
MEDIA crime IDEOL welimp weldec	Contradictory	2	4.1	Neg = 1 Pos = 1
MEDIA CRIME IDEOL WELIMP weldec	Negative	1	2.0	
Media crime IDEOL welimp weldec	Negative	1	2.0	
MEDIA CRIME ideol welimp WELDEC	Positive	1	2.0	
MEDIA crime ideol WELIMP weldec	Negative	1	2.0	

Table 3: Listing of Truth Table Solutions.

As shown in Table 1, 63.3 % of cases were contradictory. These included cases where media attention to crime was present, while all other variables were absent. A total of 13 (26.5%) cases were in this category and in 8 of these, no policy change occurred. The 8 negative cases are listed below.

Sweden: 1976, 1978, 1979, 1988

New Zealand: 1980, 1981, 1986, 1996, 1999

Positive cases, where media attention to juvenile crime was present and policy change did occur, took place in New Zealand in 1974, 1982, 1983 and again in 1987. For Sweden, this took place in only one instance, in 1994.

In cases where media attention to crime was coupled with an increase in crime rates, the results were again contradictory. This category covered 16.3% of the total cases. Negative cases occurred in Sweden in 1970, 1973, 1974 and 1986. The negative outcome for New Zealand occurred only in 1993. Of the three positive cases, two occurred in Sweden in 1987 and 1989. The other positive case occurred in New Zealand in 1995.

Configurations featuring an increase in crime rates, where all other variables were absent, represent 10.2% of cases. The results show these cases as having negative outcomes.

These occurred in Sweden in 1971, 1972, and 1975. In New Zealand these occurred in 1992 and 1994.

Of the 49 cases examined, changes in juvenile justice policy occurred without contradictory results on only one occasion. This case represents policy change in Sweden in 1995. In this instance, media attention to crime was combined with an increase in crime rates and a decline in welfare, while all other variables were absent.

These preliminary results were subjected to further analysis and both complex and parsimonious solutions were also obtained. These are presented in the following tables.

	Raw Coverage	Unique Coverage	Consistency
MEDIA*CRIME*ideol*welimp*WELDEC	0.076923	0.076923	1.000000
Solution Coverage: 0.076923			
Solution Consistency: 1.000000			

Table 4: Complex Solution

	Raw Coverage	Unique Coverage	Consistency
CRIME*WELDEC	0.076923	0.076923	1.000000
Solution Coverage: 0.076923			
Solution Consistency: 1.000000			

Table 5: Parsimonious Solution

Complex solutions are based on assuming the most complex configurations of causal conditions. Parsimonious solutions show which conditions are essential to distinguishing between positive and negative cases (Ragin, 2008). Tables Four and Five also include measures of coverage and consistency for solutions as a whole. Consistency measures the degree to which the solution is a subset of the outcome. The Solution Coverage measures how much of the outcome is covered or explained by each solution term and by the solution as a whole (Ragin, 2008).

Although the results show two different paths to policy change, the solution coverage is minimal for both. In the complex solution, the presence of media attention to crime, increased crime rates and welfare decline, combined with the absence of ideological change and welfare improvement produced a change in juvenile justice policy. However, the solution covers only 0.076% of positive outcomes.

Results from the parsimonious solution are again limited to the same (0.076%) coverage. Although these results indicate that both crime and welfare decline are essential variables in distinguishing between positive and negative cases, the coverage is too low to assume that this provides an adequate explanation of policy change in juvenile justice. Possible explanations for the low coverage are given in some detail in the final chapter of this study.

The implications of these results are considered in light of Bernard's theory of a cycle of juvenile justice policy change. This is given consideration in Chapter Seven, along with a discussion on welfare state change and its implications for juvenile justice policy. The final chapter also draws conclusions regarding parental rights and responsibilities. This topic is first given more theoretical attention in the next chapter.

Chapter 6: Rights and Responsibilities

This chapter considers rights and responsibilities with a particular focus on the juvenile justice system. It begins with a discussion of the emergence of rights and related theories. The interactions between rights and responsibilities within the juvenile justice system are then considered. Specific policy changes, identified in Chapters Three and Four are then discussed and the implications these changes have for the rights of victims, offenders and parents are explored. The chapter concludes with a consideration of the status of parental rights within the realm of juvenile justice.

6.1 Rights and Responsibilities

As discussed previously, there is a distinction between civil, social and political rights.²⁵ Civil rights emerged during the 18th Century and promoted individual freedom such as the liberty of the person; the right to free speech, thought and faith; the right to own property and engage in contractual agreements; and the right to justice (Marshall, 1964). Civil rights are most directly associated with courts of justice as the administrative institutions. Political rights include the right to participation in the exercise of political power, either in the capacity of a member of a political body or as an elector of such members. Increasing recognition of political rights occurred during the 19th Century. Institutions associated with political rights include parliament and local council bodies (Marshall, 1964).

In T.H. Marshall's (1964) conception, civil, political and social rights are described as the three elements of citizenship. Historically, social rights were associated with the individual's class status, but gradually became associated with citizenship as ideas associated with national citizenship developed. Social rights incorporate a range of entitlements including "...the right to a modicum of economic welfare and security to the right to share in a full social heritage and to live the life of a civilised being according to the standards prevailing in the society." (Marshall, 1964, p. 9). The institutions most frequently associated with social rights are educational and social service departments (Marshall, 1964).

Marshall's account of developments in Britain includes the original source of social rights as membership in a community, which later developed into the nationally based conception more readily recognisable today. As elements of citizenship, rights were originally blended and not formally regarded as separate spheres. Marshall attributes this to the amalgamation of the institutions which dealt with rights (Marshall, 1964).

²⁵ See Chapter 2, Section 2.4 Page 18.

Taylor (1986), provides an account of the emergence of a system of personal rights and the interaction between the State and the individual. The original “contract” was based on the sovereignty of individuals and society had legitimate power only because those individuals had agreed to invest it with that power. This account is referred to as the “natural law” tradition and is based on the fiction of an “original state of nature.” Theorists such as Locke are associated with this tradition and its emphasis on the individual and his or her ability to legitimately claim personal rights (Taylor, 1986).

An alternative view, such as that shared by Kant and J.S. Mill, places less emphasis on the origins of civil society and more on the aims or ideals that civil society could achieve. For these theorists, society exists to promote the well being of the individual (Taylor, 1986).

The difference in emphasis is also reflected in different political cultures among Western societies. In some cases, the freedom of the individual does not take precedence over the collective social aims or objectives. These may include such aims as full employment, guaranteed income and education. Taylor raises the criticism that in many of these cultures the liberty rights of the individual may be compromised as a result (Taylor, 1986).

Regardless of whether a political culture emphasises the individual or collective social aims, the provision of rights goes hand in hand with corresponding responsibilities. Waldron (2000) describes a correlative relationship between two different types of rights.

“A right *in personum* is correlative to a duty peculiarly incumbent on an assignable person: the most familiar example of this sort of correlativity is the relation between rights and duties arising out of a contract. Claim rights *in rem*, on the other hand, are correlative to duties in principle incumbent on everyone.” (Waldron, 2000, p.6).

Griffin (2004) explains the ethical principle behind the duty to assist those in need as being based on an ability to do so. The burden to help has historically shifted from one group to another over time. During the late Middle Ages, welfare responsibility fell on the clergy. The introduction of the Poor Law in 1572 saw this shift to local civil entities such as boroughs and hamlets, with funds being raised through local taxes. With the emergence of the welfare state the burden of fulfilling social rights shifted to a national level (Griffin, 2004).

Contemporary arrangements for social rights rely on the redistribution of income between citizens, who have a duty to contribute. Klausen (1995), claims that social citizenship is a prominent feature in many areas of modern social policy. And while this prominence implies an obligation on the part of the State to adopt redistributive policies, this is a complex issue. Redistribution is dependent on the fiscal capacity of the State and further dependent on the fulfilment of obligations by tax-payers within the State. Political and civil rights are more

straightforward. The granting of political rights, although often dependent on citizenship, does not imply an obligation on the part of fellow citizens (Klausen, 1995).

Civil rights have a narrower focus and conflict is generally played out in the legal arena rather than the socio-political sphere. Civil rights impose an obligation on the State to provide and maintain a system of justice, whereby rights can be protected. A criminal justice system performs a similar function in that the rights of citizens are protected but further imposes sanctions on those whose actions fall outside of the law (Ashworth, 2002).

Although a range of issues are evident when political and civil rights are considered on the basis of citizenship, social rights introduce further complexities in terms of the basis for entitlement and reciprocal obligations. The situation becomes more intricate, however, when rights are considered in conjunction with juvenile justice systems.

The unique combination of welfare and justice in the juvenile justice system amalgamates rights and duties among the State, the juvenile offender, the victim, the parents and wider society. Both civil and social rights and corresponding duties or obligations are incorporated in juvenile justice.

6.2 Rights and Responsibilities in Juvenile Justice

In reference to the obligations of the State in juvenile justice, Ashworth (2002) maintains that establishing and maintaining a system of law and order requires the consistent application of general principles (Ashworth, 2002). These serve to protect the rights of both the victim and those of the offender. Recent trends towards restorative justice practices have resulted in some of the State's responsibilities being delegated to the "community." The risk, in Ashworth's view, is that the use of processes such as family group conferences, for censuring an offender, may lead to inconsistency in the application of these general principles. "The State surely owes it to offenders to exercise its power according to settled principles that uphold citizens' rights to equal respect and equality of treatment." (Ashworth, 2002, P.581). The State is further responsible for ensuring victims' rights to compensation. The nature and extent of these rights, however, must be balanced against those of the offender (Ashworth, 2002).

In the argument proposed by Hil and Bessant (1998), the State is again regarded as having an obligation to uphold the rights of the offender. This is specifically applied to those who are State wards. The authors maintain that when acting *in loco parentis*, the State should be subjected to the same requirements as those imposed on civil society. Parents, claim the authors, are obliged to meet a range of legal requirements in relation to the provision of care and welfare of children (Hil & Bessant, 1998). They further acknowledge that changes occur in

the normative expectations of parenthood and that these are affected by wider influences. “The concept of parenthood is mediated through a complex range of socio-political, economic and cultural factors.” Furthermore, “...the implications of the rate and nature of prevailing socio-economic changes on parenting are yet to be fully appreciated.” (Hil and Bessant, 1998, p.116).

While this aspect of the argument highlights some of the difficulties in establishing expected standards of parenting in civil society, the main point is that there are no equivalent expectations placed on the State. “...there are discrepancies between the laws imposed on the parents and guardians in civil society and those accepted by the state in its capacity as the responsible parent/guardian... the obligations, responsibilities and sanctions currently being placed on parents and guardians have not been equitably applied to the state when it assumes the role of parent.” (Hil & Bessant, 1998, p.115). Hil and Bessant’s (1998) argument arises in an Australian context, but is also relevant to the situation in New Zealand. The level of State responsibility in Sweden, however, is somewhat different.

6.3 Sweden

State responsibility in the Swedish juvenile justice system was well established by the 1970s through the Child Welfare Boards. The first response to juvenile offending is a referral to the local social worker. The social worker then has the power of discretion over filing an incident report which is reviewed by the board. Where the offending is of a serious nature, or the juvenile has previously offended, an investigation is carried out and a plan developed (Sundeen, 1979).

If a report is filed, the parents have a right to read and respond to it before a meeting with the child welfare board takes place. Parents also have the right to legal services subsidised by the State. The meeting is conducted in an informal manner and takes place in a conference room. It may be attended by family, legal counsel and social workers but the offender does not face the victim (Sundeen, 1979).

The State has an obligation to provide assistance to the juvenile’s family as a first step. This is likely to include assisting the family to obtain financial aid or a family therapist who works in the family home to provide practical training. Where a family seeks financial assistance, the State, through each municipality, has an obligation to provide a reasonable standard of living. These rights are enforceable in the courts (Bradley, 1990).

The services, such as family therapy, although regarded as voluntary, can be refused but a court order can be obtained to carry out the plan²⁶. In the event that the plan is unsuccessful, a

²⁶ In the case of drug abusers the Principle of Care and the Harm Principle are generally invoked.

child can be taken into State custody. The parents have the right to have this decision reviewed by the County Court for Social Questions.²⁷ Under these circumstances, an independent investigation is conducted and the decision may be changed (Sundeen, 1979).

Alternatively, the child welfare board may provide a residential treatment programme for the family. These are unlocked communities where an emphasis is placed on interpersonal relationships rather than the individual offender (Sundeen, 1979).

Although the rights of the child appear to be amalgamated into the rights of the family as a whole, the approach stems from the view that juvenile offending is primarily a welfare problem. Furthermore, social services in Sweden are aimed at improving the wider social environment through structural reforms (Bradley, 1990). Initiatives have included parenthood education, and active participation is a main objective. "Social services are intended to focus on the social environment as much as on the individual, and thus provide more than a temporary palliative." (Bradley 1990, p. 438).

The rights of juveniles in State care are outlined in the *Social Services and Care of Young Persons (Special Provisions) Act, 1982*. These rights provide for overarching objectives to ensure that measures taken are in agreement with the young person and his or her parents or guardians. Furthermore, these measures are carried out with respect for human dignity and the integrity of the young person. The Act also provides for specific rights pertaining to visitation, telephone and mail contact, and leave from institutions or foster homes. The young person's need for contact with parents or guardians is the responsibility of the social welfare committee which must ensure that the greatest possible provision is made.

Within the civil law system, victims' rights in Sweden are covered by a variety of Acts. These include the right to have concerns addressed directly in the criminal justice process. These are generally presented through a prosecutor. Compensation is awarded for damage and harm caused by crimes against persons, but compensation for property damage is subjected to maximum limits. Since 1994, offenders who commit crimes which carry a penalty of imprisonment have contributed, via fines, to a Victim Support Fund (Kelly, 1995).

Victims of juvenile crimes may be given the opportunity to attend victim-offender mediation. However, this is an experimental process adopted by a few municipalities but by 2000 had still to be adopted at a national level (Kundtjänst, 2000).

It appears that victims' rights are addressed in a more specific manner in the New Zealand system, which also emphasises the role of the family in juvenile justice. An account of rights and responsibilities in the New Zealand juvenile justice system is now given.

²⁷ Länsträtt: County Court for Social Questions.

6.4 New Zealand

State responsibility for juvenile offenders in New Zealand underwent extensive change as a result of the *Children Young Persons and their Families Act, 1989*. Prior to its introduction, juvenile offenders received inadequate legal representation, were held in custody with adult offenders and were not part of any decision-making process (Dalley, 1998).

The Act profoundly altered the rights of offenders, victims and their families and as a result the obligations of the State were also altered. Since 1989, victims have had the right to attend Family Group Conferences which now form part of the sanctioning process for juvenile offenders. They have the right to be fully informed of the outcome of such a conference should they choose not to attend. Compensation is negotiated among those present, and the victim has an active role in this process (Morris, 2004).

Unlike the Swedish case, parents in New Zealand do not have the right to legal services in juvenile justice and although they are recognised as an integral part of the decision making process, they may not always be fully informed. A parent's right to access information on CYF's files is not full and exclusive, but governed also by the *Privacy Act 1993*. Section 29(1)(a) of the Act gives CYF's, and other agencies, the right to refuse access to information under two criteria. The first of these are circumstances under which disclosure of the information would disclose the affairs of another person. The second is that such a disclosure would be unwarranted under the circumstances. (Office of the Privacy Commissioner).

Rights to financial assistance are also limited, and while the Act clearly states that the duties of the Governor General of Social Welfare include assisting parents to meet their obligations (Angus & Gray, 1994), this is hampered by what Maxwell refers to as "funding starvation." (Maxwell, 1994). The rights of the child are also clearly outlined in the *Children Young Persons and their Families Act, 1989* and include the right to due process, minimal intervention and alternatives to institutional care (Maxwell, 1994).

Offenders and their families have a right to culturally appropriate services and facilities in the community, but these are not always provided due to insufficient funding (Maxwell, 1994). While this aspect shows a discrepancy between practice and what the law provides for, non-compliance is also an issue where the provision of separate institutions for youths is concerned (Maxwell, 1994).

As is the case with Sweden, the welfare of the child is inextricably linked with the welfare of the family, but primary responsibility for meeting the needs of the child rests with the family (Angus & Gray, 1994) rather than the State.

Family responsibilities are clearly stated in both New Zealand and Sweden, although the role of the State in supporting parents to fulfil these obligations differs between the two nations. In both cases the family unit is seen from a holistic perspective and the rights of the child are integrated into that unit. In both cases, the rights of the child are also given recognition independent of the family unit; this in turn highlights the reciprocal obligation to provide for those rights.

Victims' rights are also given similar status and although more specifically stated in the New Zealand juvenile justice system, reciprocal obligations on the part of the State are explicit. By contrast, parental rights are encapsulated in the rights of the family and not accorded independent recognition. The moral debates surrounding this anomaly are now addressed.

6.5 Parental Rights

Debate over the issue of parental rights covers many facets of the parent/child relationship. Authors such as Montague (2000) argue that parental rights should be rejected in favour of parental obligations, while Howe (2001) claims that parental rights are conditional rather than fundamental and "...are connected to their obligations to provide for the rights and best interests of their children." (Howe, 2001, p. 61). These obligations arise from the status of children as "...persons with inherent rights" they are therefore entitled to make claims whilst "...the parents and the state have obligations to provide for those rights." (Howe, 2001, p.68)

Montague's (2000) argument draws on extreme cases of abuse and neglect, such as parents who have denied their child life-saving medical intervention on the grounds of their right to freedom of religious expression. Similarly, the children of cult members are used to highlight situations where parents, arguably, have not acted in the best interests of their children. The use of extreme cases, however, represents a fallacious, although common stand.

Under the UN Convention, primacy is given to the rights of the child and Howe (2001) argues that it is children who have fundamental rights, while parents' rights are contingent and dependent on the fulfilment of their obligations to their children (Howe, 2001).

The idea of pursuing parental responsibility laws would follow Montague's (2000) claims that parental obligations, not rights, should be of primary importance. However, the most important distinction between Howe's (2001) argument and the stand taken by Montague is that Howe's claim incorporates the role of the State in the debate over parental rights. By contrast, Montague's claims are based on cases where the parental rights and the rights of the child are the only rights in conflict.

Westman (1999) raises the point that parental rights have no basis in law but children's rights do. "Competent parenting is a legal right in the negative sense that incompetent parenting

is a cause for State intervention and the possible termination of parental rights.” (Westman, 1999, p. 317). This denotes the current legal status of parental rights; accordingly, there are no reciprocal or corresponding obligations to support those rights.

In the context of juvenile justice, parental rights are not being contested against the rights of the child. The interaction between rights and responsibilities incorporates multiple relationships, particularly that between the State and its citizens. Acknowledgement of the role of the State, as Howe (2001) notes, is exemplified by core principles of public policy and law, particularly in nations where UNCROC has been ratified.

Within the juvenile justice system, the State’s role is not simply to secure the best interests of the child but to balance the rights of all citizens to live in a society where justice acts as a deterrent to crime. The rights of the child must also be integrated with the rights of the family, while still further, being balanced against the rights of victims.

In order to fulfil these multiple obligations, the State has a number of resources at its disposal. A range of facilities and services are available, although as mentioned, funding may inhibit the utilisation of these resources. Furthermore, the State, through legislation, has the ability to defer responsibility to families.

Parental responsibility laws bear closer resemblance to a claim right made by the State against parents in order to hold them accountable for failing to meet their obligations in acting in the best interests of the child. The argument stems from the un-stated premise that children who commit offences are the victims of parental abuse or neglect. This is strikingly clear in Swedish legislation and justifies the provision of welfare services aimed at the family unit.

The situation in New Zealand was similar, as is demonstrated by policy prior to 1974, which made no distinction between neglected and abused children and those who were offenders (Dalley, 1998). Arguments against granting parents rights are based on cases of neglect and abuse. Although some abused or neglected children do commit offences, there are children who commit crimes and who are not the victims of abuse or deliberate neglect on the part of their parents. The categories are not mutually exclusive, and youths may well belong to one or the other or both.

The principle of *parens patriae* is also based on the assumption that parents, for whatever reason, have failed to act in the best interests of the child. The principle is invoked in New Zealand law and applied to the juvenile justice arena whenever a custody order is made. Where the State assumes guardianship under the principle of *parens patriae*, the rights of the parent are being contested against the rights of the State. Where the State decreases its role and guardianship remains with the parents, State responsibility is diminished. The corresponding increase in parental responsibility is not supported by increased access to the resources

necessary to fulfil those obligations, nor are corresponding rights to assistance recognised in law.

The issue of parental rights and responsibilities was recently addressed in the U.K. in response to the increased focus on parental responsibility and the appropriate role of the State. It has been suggested that there is a need to explicitly identify rights and responsibilities in government legislation (Henricson, 2008).

6.6 Parental Rights in Juvenile Justice

The status of parental rights in juvenile justice is not distinct from the status of parental rights in the wider context. Arguments to establish a claim for parental rights are fraught with difficulties in that they have the potential to be pitted against the rights of the child. Parental rights specific to the juvenile justice arena may be less problematic in that they equate to social rights, rather than civil rights.

In order to fulfil the obligations parenting entails, society must support parents. Both Sweden and New Zealand recognise this obligation and the needs of families are addressed through the welfare state. The specific needs of children in juvenile justice are also recognised in both nations. Neither nation isolates the role of parents or addresses parental rights outside of the family unit. Sweden and New Zealand differ, however, in that State responsibility to support the family is well recognised in Sweden. The approach to social services did not alter during the time frame covered. By contrast, the New Zealand juvenile justice system underwent extensive reform in 1989, changing the level of State support.

Chapter 7: Conclusions

This chapter presents a discussion of the use of QCA for this study. Limitations and advantages are considered. The extent to which changes in juvenile justice policy in New Zealand and Sweden can be explained by the “cycle” proposed by Bernard (1992) is also given consideration. The alternative explanation of a connection between welfare reforms and juvenile justice policy, is then presented. This is followed by a discussion on parental rights. The chapter concludes with recommendations for further research.

7.1 Limitations and Advantages of Selecting QCA

The choice to select QCA for this study was based on the wide range of academic disciplines that were covered. Utilising Boolean algebra provided a systematic analysis of the theory related to welfare State reform, changes in political ideology and theory pertaining to juvenile justice policy. This technique had the advantage of being able to examine a range of other possible causal factors, such as welfare decline or welfare improvement, alongside those identified by Bernard (1992). QCA enabled a holistic approach to the data where potential causal variables were examined as combinations rather than isolated phenomena. As discussed previously, the main advantage is that the technique preserves the in-depth understanding of social phenomena that is gained by qualitative research but is often lost with a quantitative approach. The method also has the advantage of being logical, systematic and consistent (Ragin, 1987). Although this study does not clearly show that there is a link between changes in political ideology and juvenile justice policy, it does allow for an evaluation of the different combinations of causal variables that may lead to change in different nations.

The results from the truth table listing provide an insight into the various combinations of causal variables that have led to juvenile justice policy change in New Zealand and Sweden. The contradictory nature of these results indicates that the solutions identified thus far do not provide a full explanation of change in juvenile justice policy. Further research would be necessary to identify other possible causal variables.

Results from the secondary analysis showed low solution coverage (0.076). This is interpreted as the extent to which juvenile justice policy change can be explained by the causal variables. The main factor contributing to this minimal result stems from the dichotomous variables being examined. Secondary analysis is based on “fuzzy-sets” where boundaries between membership in a set or class are blurred (Ragin, 1987). Dichotomous variables do not share this feature and the boundaries between them are referred to as “crisp.”

The software package fs(QCA)2.2 allows for the user to specify numeric values that would identify cut-off points for fuzzy boundaries. This data is then used to define a variable as present or absent in a given row on the truth table. In the course of this research, the truth table was generated manually and did not utilise the fs(QCA) software package. Primarily this was due to a lack of formal training in using fs(QCA) and the manual construction of the truth table was guided by the application of theory. This produced what is referred to as a “crisp-set” of data with dichotomous variables (Ragin, 2008). Consequently, secondary analysis was not based on a “fuzzy” data set and this appears to have had a significant impact on the secondary results.

Results from the initial analysis, however, do allow for some understanding of the various factors contributing to changes in juvenile justice policy. In assessing these changes, the implications for rights and responsibilities could not be analysed using the same technique. The main reason for this lies in the reciprocal nature of the relationship between rights and responsibilities. Where rights exist, reciprocal obligations are also present; however, these obligations may lie with the State, a specific group or an individual.

Altering rights may produce multiple outcomes, such as a decrease in State responsibility and a corresponding increase in community responsibility. Boolean algebra did not appear to be an appropriate method for assessing multiple outcomes. Causal complexity, however, is simplified by this method and the technique enabled an assessment of the factors contributing to juvenile justice policy change.

7.2 Juvenile Justice Policy: A “cycle” of Reforms?

The relationship between changes in juvenile justice policy and the theoretically causal variables was examined. Bernard’s (1992) theory of a cycle of policy change is given consideration in light of the results. The causal variables identified by Bernard (1992) are perceived increases in crime and media attention to juvenile offending. The results from this study indicate that the observed “cycle” is not clearly evident in New Zealand or Swedish juvenile justice policy reform.

In the context of Sweden, the configuration of media attention to crime and an increase in the crime rate does not account for policy change prior to 1987. After this point, two instances of policy change occurred within Sweden, under this set of circumstances. The apparent contradiction is explained by the Swedish “war on drugs” which was intensified by political debate and directly influenced the use of coercive intervention.

In the 1987 reforms, a particular type of offender, the drug abuser, was targeted for intervention. In the later reform of 1989, the emphasis was placed on a more punitive response

to all juvenile offenders. Although Bernard's theory would predict this particular reform, it does not provide an adequate causal explanation of the previous changes in juvenile justice policy. This is particularly evident in the period between 1970 and 1986, where media attention to crime and increases in the crime rate failed to bring about any reform in juvenile justice policy.

The time frame covered in this study may not be adequate to assess the theories (Bernard, 1992; Bradford and Morgan, 2005; Jensen and Howard 1998) that juvenile justice policies alternate between treatment and punitive responses. However, the 1989 reforms may be indicative of an emerging trend in Sweden.

Within the New Zealand context, media attention to crime and increased crime rates did not bring about policy change. However, this particular configuration of variables occurred only once in the New Zealand data. While insufficient data precludes drawing any conclusions regarding this case, media attention without an increase in crime produced highly contradictory results, in both New Zealand and Sweden.

As mentioned above, the majority (26.5%) of contradictory cases were those where media attention to crime was present and all other variables were absent. The Swedish context is simplified by again looking at trends over time. Prior to 1994, the results indicate that media attention did not produce changes in juvenile justice policy. However, events during the early 1990s are a continuation in the trend towards coercive intervention with drug abusers. Policy changes in 1994 included the administration of paragraph 12 homes and the rights of public prosecutors, both aimed at a more punitive response to offenders.

The New Zealand data is far more complex and does not indicate changing trends over time. Careful consideration of each of the positive instances is therefore required. The 1974 policy change saw administrative changes as a result of the overloading in the juvenile court system. While the *CYP Act* also introduced changes in the rights of offenders and parents, much of these alterations were the result of long awaited change. The policy change did not aim to alter the sanctioning of juvenile offenders.

The second case, in 1982, represents a change in policy connected to, but not directly influential in, juvenile justice policy. *The Official Information Act, 1982* had a bearing on parental rights in relation to information on juvenile offenders and was therefore incorporated into the analysis.

The third instance represents the policy change in 1983 pertaining specifically to the use of secure care facilities. Media attention to juvenile crime at this time was focussed predominantly on "street-kids" and youth gangs. The two groups were often housed in residential facilities and this may have sparked media attention, resulting in a change of policy.

The final positive case in New Zealand occurred in 1987 and again represents an instance of related policy. The *Victim of Offences Act, 1987* did not alter the approach taken to juvenile offenders.

From these results, it appears that media attention to juvenile offending does not clearly produce policy change in New Zealand. Bernard's (1992) theory offers only a partial explanation for the time period covered. Within the New Zealand context, media attention to juvenile offending is extensive throughout the period but appears to have a limited influence on policy change in juvenile justice.

One possible explanation for the difference is that while events such as the emergence of youth gangs received nation-wide coverage in New Zealand, similar events in a large, highly populated country, such as the U.S., may not be regarded as news-worthy. The prevalence of violent crime committed may also have some relevance to the potential for influencing juvenile justice policy, and this rate would differ between New Zealand and the United States.

Further considerations must also be taken into account when examining the applicability of Bernard's theory of cyclic change to the New Zealand and Swedish contexts. These include the time-frame presented in this study. While Bernard's findings were based on juvenile justice policy over two centuries; this study covers only three decades. However, the observations made by Jenson and Howard (1998) also covered a thirty year time span. (The observed changes between rehabilitative and punitive policies were again based on observations of the juvenile justice system in the United States.)

The study by Bradford and Morgan (2005) was based on observations of policy change in Britain. This study attributes policy change to an upward shift in crime and the response by politicians to reassure the public that crime will be prevented. Although the role of the media is not explicitly stated, it can be assumed that political responses are conveyed through the media. Again, the explanation offered by Bradford and Morgan does not fully explain juvenile justice policy change in either New Zealand or Sweden.

The possibility that other factors contribute to juvenile justice policy change was examined. Changes in political ideology were examined alongside improvements and decline in the provision of welfare. Conclusions are now drawn from the previous results.

7.3 Welfare Reforms and Juvenile Justice Policy

The influence of welfare reforms on juvenile justice policy was examined in the preliminary analysis. Both improvements and declines in welfare services were included in the truth table and produced contradictory results in most cases. Positive cases, where a decline in welfare was associated with policy change in Sweden occurred on two occasions. Although this

occurred in conjunction with media attention to crime in 1990, the policy change was targeted at youths who were considered to be at extreme risk.

On the second occasion, in 1995, welfare decline, media attention to crime and an increase in juvenile offending were all present. The reform introduced slightly more punitive responses to recidivist offenders where prosecutions could no longer be waived. This occurred in the midst of high unemployment and budgetary constraints. Given that a combination of causal variables contributed to policy change, the effects of a single cause cannot be identified.

The presence of welfare decline alone produced contradictory outcomes. Policy change did not occur in Sweden in 1980 but did take place in 1993. The presence of welfare improvement was associated with negative outcomes. This was consistent with all combinations of causal variables. These results do not clearly indicate that welfare reform produces policy change, but do indicate that welfare decline may influence policy change when combined with media attention to crime and increased crime rates.

Changes in political ideology were associated with policy change when combined with media attention to crime. However, the results were again contradictory and limited to two cases. A lack of data precludes drawing any firm conclusions regarding the possible influence of political ideology on juvenile justice policy. Similarly, contradictory outcomes regarding welfare reforms also prohibit strong claims.

The results indicate that policy change in New Zealand and Sweden is not fully explained by the presence of welfare reform or changes in political ideology. These factors contribute a partial explanation for the changes in juvenile justice. The explanation offered by Bernard does not fully account for policy change in New Zealand, but may be more applicable to the Swedish context. Contradictory cases involving media attention to crime and increased crime rates were less frequent in Sweden, but still provide evidence that other factors also contribute to policy change.

A concise causal explanation was not produced by this study. Contradictory outcomes provide a clear indication that understanding reforms in juvenile justice requires further research. This may be particularly relevant to nations where juvenile justice is integrated with welfare services.

The implications of reforms in juvenile justice for rights and responsibilities were also considered in this study. Conclusions are now drawn regarding the status of parental rights in juvenile justice.

7.4 Parental Rights

Parental rights are not given the same legal recognition as the rights of offenders or victims. In New Zealand, the rights of parents were amalgamated into the rights of the family or whanau through the *Children Young Persons and Their Families Act, 1989*. In Sweden, this connection is recognised in the *Care of Young Person's Act*. Legislation in both countries is governed by the respective welfare organisations involved with juvenile offenders and their families. Although the provision of welfare services is based on the social rights of citizens, juvenile justice further incorporates civil rights for victims and offenders. These are given legal recognition and are enforceable in law.

A key difference between the Swedish welfare system and that operating in New Zealand is the status given to social rights. State responsibility for the provision of welfare services remained intact during economic recessions in Sweden. By contrast, budgetary constraints in New Zealand had a significant effect on the provision of welfare and State responsibility was devolved to the community level for many services. This change included services for juvenile offenders and their families.

Juvenile offenders' rights to appropriate treatment are recognised in law. Where previously the New Zealand State had provided treatment and care for juveniles, parents were now responsible for providing for their needs. However, these responsibilities were not followed by an increased right of entitlement to assistance in providing these requirements. Furthermore, the State did not provide adequate funding to ensure that these needs could be met at the community level.

In Sweden, juvenile offenders and their families are entitled to welfare services. These are State funded and each municipality is responsible for ensuring the provision of services. Although parental rights are not recognised as civil rights in either nation, there is some recognition of the social rights of families. In Sweden this recognition forms the basis for entitlement to assistance and the State's responsibility to provide. In New Zealand, increased parental responsibility does not form the basis for entitlement to assistance.

Parental rights are not given recognition as being independent of the family unit in juvenile justice. However, this reflects the status of parental rights in the wider social context. Parental rights in both nations do not equate to civil rights, but do equate to social rights. The difference between Sweden and New Zealand may be the result of the status accorded to social rights in each nation. These are highly regarded in Sweden and well protected; social rights in New Zealand are less well developed.

7.5 Recommendations for Future Research

Inconclusive results from this study indicate a need for further investigation into factors contributing to change in juvenile justice policy. Questions remain as to whether or not causal factors differ between large and small countries. Furthermore, countries may differ considerably in the extent to which welfare services and juvenile justice systems are integrated. Scotland, for example, includes juvenile justice within social work services and is regarded as unique in Europe for this approach (Aldgate & Hill, 1995). Turkey operates a less protective system in youth criminal justice (Irtis, 2009) and the Romanian system is described as operating between welfare values and neo-liberal tendencies (Balahur, 2009). The possibility that these variations may have implications for policy change could be explored. Comparative research utilising a larger sample size may provide an opportunity to explore this possibility and may provide some insight into what other factors influence policy change.

A lack of research into media attention to juvenile crime prohibited a full examination of this as a causal factor in the New Zealand and Swedish contexts. A detailed analysis of the extent to which media coverage of juvenile crime alters during election years would also be invaluable to unpacking this as a contributing factor in policy change.

The use of QCA enabled an understanding of how combinations of causal variables contribute to a specified outcome. In this regard, QCA provides a method of simplifying causal complexity without the loss of data that often occurs with conventional statistical methods. The method is well suited to small sample sizes and research into complex social phenomena (Ragin, 1987). The method is applicable to welfare-related research especially where variables are not clearly defined and “fuzzy-set” analysis can be utilised. The possibility of using QCA to understand phenomena with multiple outcomes, however, was not evident to the researcher at the time this study was conducted.

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Appendices

Appendix A – Raw Data Matrix New Zealand

Year	Change in Ideology	Media Attention	Crime Increase	Welfare Improvement	Welfare Decline	Policy Change
72	Yes	Yes		Yes		
73				Yes		
74		Yes				Yes
75	Yes	Yes			Yes	
77						
78		Yes				
79						
80						
81		Yes				
82		Yes				Yes
83		Yes			Yes	Yes
84	Yes	Yes				
85		Yes			Yes	
86					Yes	
87		Yes			Yes	Yes
88						
89		Yes			Yes	Yes
90		Yes			Yes	
91						
92			Yes			
93		Yes	Yes			
94			Yes			
95		Yes	Yes		Yes	Yes
96		Yes				
97						
98						
99		Yes				

Appendix B – Raw Data Matrix Sweden

Year	Change in Ideology	Media Attention	Crime Increase	Welfare Improvement	Welfare Decline	Policy Change
70		Yes	Yes			
71		Yes	Yes			
72		Yes	Yes			
73		Yes	Yes			
74		Yes	Yes			
75		Yes	Yes			
76	Yes	Yes				
78						
79	Yes	Yes				
80					Yes	
81						
82	Yes	Yes			Yes	Yes
83				Yes		
84						
85	Yes	Yes	Yes			
86		Yes	Yes			
87		Yes	Yes	Yes		Yes
88		Yes	Yes			
89		Yes	Yes			Yes
90	Yes				Yes	Yes
91	Yes	Yes				
92						
93					Yes	Yes
94		Yes				Yes
95		Yes	Yes		Yes	Yes
96						
97		Yes				

