Transplanting Canadian Juvenile Probation Into The Ukrainian Context: A Comparative Analysis And Policy Framework Development For Juvenile Justice Reform

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A dissertation submitted to the Faculty of Graduate Studies

In Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy

Graduate Program in Socio-legal Studies

York University

Toronto, Ontario

July 2026

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Abstract

This dissertation examines the formation of juvenile probation in Ukraine through the lens of legal transplantation, focusing on the Canadian-supported juvenile justice reform initiatives that influenced its development. Situated at the intersection of juvenile justice and legal transplantation scholarship, the study explores how and why Canadian juvenile probation practices were introduced into the Ukrainian legal system, how they interacted with Ukraine's historical, institutional, and cultural context, and what factors shaped their practical outcomes.

Drawing on a broad range of sources, including legislative acts, parliamentary debates, doctrinal scholarship, historical materials, and previously unpublished primary documents obtained through an Access to Information request to Global Affairs Canada, the dissertation provides the first comprehensive analysis of the Canadian–Ukrainian Juvenile Justice Reform Project and its juvenile probation component. The research traces the evolution of juvenile justice in Ukraine from the Russian imperial period, through the Soviet era, and into the post-independence reform process, highlighting how inherited punitive and centralized legal traditions conditioned the reception of the community-based probation model.

The study demonstrates that juvenile probation in Ukraine did not emerge through organic institutional development, but as a reform embedded within broader juvenile justice reforms supported by Canada, alongside a separate, domestically driven general probation reform. While the transplantation introduced important rehabilitative principles and professional practices, its effectiveness has been constrained by structural factors, including the absence of a comprehensive juvenile justice framework, limited judicial and professional specialization, formalistic application of probation tools, and weak inter-agency coordination.

By empirically assessing the transplantation process, the dissertation confirms that the success of legal transplants depends not merely on legislative adoption but on historical compatibility, institutional readiness, professional capacity, and sustained internalization. The findings contribute to broader debates on legal transplantation by illustrating how transnational reform initiatives operate in transitional legal systems and by identifying conditions under which borrowed systems can be adapted, transformed, or limited in practice.

The dissertation concludes by proposing reform pathways to strengthen juvenile probation in Ukraine and reflects on the implications of these findings for Canada and other donor states engaged in justice reform assistance. It also outlines directions for future research on juvenile justice, probation, and transnational legal reform. Overall, the study offers both a theoretical contribution to comparative legal scholarship and a practical assessment of juvenile probation as a rehabilitative response to youth offending in a post-Soviet legal context.

Acknowledgements

I sincerely thank my supervisor, Annie Bunting, for her guidance, support, and generosity throughout this project. I am grateful to my committee members, Amelie Barras and Jessica Braimoh, for their thoughtful feedback, time, and careful engagement with my work. It has been an honour to learn from and work with such exemplary socio-legal scholars.

I thank my husband for each and every sacrifice he has made for me, including making this work possible.

I dedicate this work to priests persecuted for following their conscience against the system; to those who serve quietly in kitchens and feel lonely in their prayers for peace.

"Blessed are those who are persecuted for righteousness' sake, for theirs is the Kingdom of Heaven."

- Matthew 5:10

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List of Abbreviations

ATIP	Access to information and privacy
Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
Byelorussian SSR	Byelorussian Soviet Socialist Republic
CDA	Critical Discourse Analysis
CIDA	Canadian International Development Agency
CPC	Criminal Procedure Code
Empire	Russian Empire
EU	European Union
GAC	Global Affairs of Canada
IMF	International Monetary Fund
IP	Intellectual property
JDA	Juvenile Delinquents Act of 1908
JJRP	Juvenile Justice Reform Project
KGB	*Komitet Gosudarstvennoy Bezopasnosti* or Committee for State Security of the Soviet Union
MCCSS	Ministry of Children, Community and Social Services
MDGs	Millennium Development Goals

MP	Member of Parliament
NEP	New Economic Policy
NGO	Non-governmental organization
OECD	The Organisation for Economic Co-operation and Development
PSRs	Pre-sentence reports
RSFSR	Russian Soviet Federative Socialist Republic
SFMS	State Financial Monitoring Service of Ukraine
Tokyo Rules	United Nations Standard Minimum Rules for Non-custodial Measures
Transcaucasian SFSR	Transcaucasian Soviet Socialist Republic
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom
Ukrainian SSR	Ukrainian Soviet Socialist Republic
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child of 1989
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund of 1985
US	United States of America
USSR	Union of Soviet Socialist Republics

Verkhovna Rada	Verkhovna Rada of Ukraine
WTO	World Trade Organization
YCJA	Youth Criminal Justice Act of 2003
YOA	Young Offenders Act of 1984
1716 Statute	Military Statute (*Voinsky Ustav*) of 1716
1742 Decree	Senate Decree of August 23, 1742
1765 Decree	Decree "On the Conduct of Criminal Cases Committed by Youth and on Differentiation of Punishments According to the Age of Offenders" of June 26, 1765
1832 Digest	Digest of Laws of the Russian Empire (*Svod Zakonov Rossiiskoi Imperii*) of 1832
1833 Law	Law of 28 June 1833
1842 Digest	Digest of Laws of the Russian Empire (*Svod Zakonov Rossiiskoi Imperii*) of 1842
1845 Penal Code	Penal and Correctional Code (*Ulozhenie o nakazaniiakh ugolovnykh i ispravitelnykh*) of August 15, 1845
1864 Judicial Statutes	Judicial Statutes (*Sudebnye Ustavy*) of November 20, 1864
1897 Law	Law "On the Change of Forms and Rituals of Judicial Proceedings in Cases of Wrongful

	Acts Committed by Youth and the Procedure for Their Punishment" of June 2, 1897
1910 Law	Law "On Changes to the Forms and Rites of Judicial Proceedings in Cases Involving Unlawful Acts of Youth and the Procedure for Their Punishment" of 1910
1918 Decree	Decree "On Commissions for Juvenile Affairs" of January 14, 1918
1920 Decree	Decree "On the Responsibility of Youth" of June 12, 1920
1922 Criminal Code	Criminal Code of the Ukrainian Soviet Socialist Republic of 1922
1935 Decree	Decree of the Central Executive Committee and the Council of People's Commissars of the USSR "On Measures for Combating Juvenile Delinquency" of April 7, 1935
1958 Fundamentals	Fundamentals of Criminal Legislation of the USSR and the Union Republics of 1958
1960 Criminal Code	Criminal Code of the Ukrainian Soviet Socialist Republic of 1960
1960 CPC	Criminal Procedure Code of the Ukrainian Soviet Socialist Republic of 1960
2001 Criminal Code	Criminal Code of Ukraine of 2001

2008 Concept	Concept of Reforming the Criminal Justice of Ukraine, was approved by Presidential Decree No. 311/2008 of April 8, 2008
2008 Shvets Draft	Draft Law of Ukraine "On the Probation Service" (reg. No. 3412) registered on November 26, 2008
2008 Feldman Draft Law	Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (Regarding the Humanization of Criminal Legislation through the Implementation of Probation)" (reg. No. 3413-1) registered on November 28, 2008
2010 Judiciary Law	Law of Ukraine "On the Judiciary and Status of Judges" of 2010
2012 CPC	Criminal Procedure Code of Ukraine of 2012
2015 Law on Probation	Law of Ukraine "On Probation" of 2015

Introduction

Relevance and Motivation

Youth[1] have long been recognized as one of the most vulnerable groups in society. They are not yet adults, lack full autonomy, and are still developing cognitively, emotionally, and socially. Their capacity to protect their own interests is constrained, and their behaviour is strongly shaped by adults and by the social environments in which they grow up (Steinberg & Scott, 2003, p.1011; National Research Council, 2013, p.19). For these reasons, modern legal systems have increasingly accepted that youth require special protection. Nowhere is this need more acute than in the criminal justice system (National Research Council, 2013, p.19).

From the eighteenth and nineteenth centuries through the early twentieth century, youth in most legal systems were frequently processed within the ordinary criminal justice framework and were often subject to sanctions similar to those imposed on adults (Platt, 1969). By the late nineteenth and early twentieth centuries, reform movements in Europe and North America began to challenge this approach, emphasizing youth's developmental differences and the need for distinct legal responses. In Canada, this shift was reflected in the Juvenile Delinquents Act ("**the JDA**") of 1908, which focused broadly on "delinquency" understood as misbehaviour or moral risk rather than strictly criminal law violations, and treated youth through a welfare-oriented *parens patriae* model (Carrigan, 1998; Bala et al., 2009). In contrast, in the territories of present-day Ukraine – first under the Russian Empire, later within the Soviet Union – although legal distinctions between youth and adults existed from the nineteenth century onward, juvenile justice

[1] In this dissertation, the term youth refers specifically to individuals who have reached the age of criminal responsibility under applicable law but have not yet attained full legal adulthood. In the Ukrainian context, this generally includes persons aged 14–18 under the Criminal Code of Ukraine, while in Canada it corresponds to individuals aged 12–17 under the Youth Criminal Justice Act.

remained embedded in centralized and predominantly punitive systems that did not develop community-based supervision or probationary mechanisms (Solonnikova & Bondar, 2020; Santashov et al., 2024).

From the mid-twentieth century, and especially in the late twentieth and early twenty-first centuries, interdisciplinary research in law, psychology, and criminology increasingly demonstrated that youth differ from adults in judgment, impulse control, and risk assessment, and that they respond differently to punishment and supervision (Steinberg & Scott, 2003, p. 1011; National Research Council, 2013, p. 19). These insights contributed to the consolidation of modern juvenile justice systems grounded in the recognition that youth in conflict with the law must be treated differently from adults. Across the twentieth century in Canada – culminating in the Young Offenders Act ("**the YOA**") of 1984 and the Youth Criminal Justice Act ("**the YCJA**") of 2003 – and much later in Ukraine during post-independence reforms beginning in the 1990s and continuing into the 2010s, juvenile justice increasingly developed around the principles of reduced culpability, heightened capacity for change, and the prioritization of rehabilitation and reintegration over repression (Doob & Tonry, 2004).

One of the key instruments through which juvenile justice seeks to achieve these aims is probation. Probation allows the state to respond to criminal behaviour without isolating individuals from society through imprisonment, relying instead on supervision, support, and structured interventions in the community (Cullen et al., 2011). For youth, this approach is particularly significant. Empirical studies show that youth have a strong capacity for behavioural change and that community-based interventions are among the most effective means of reducing reoffending while avoiding the long-term harms associated with custodial sanctions (Lipsey, 2009; Aizer & Doyle, 2015). My interest in this topic is shaped by a concern for how youth are treated within

the Ukrainian criminal justice system. Ukraine is my native country, and over time, I became increasingly aware of a profound institutional gap in the response to youth offending: until 2015, Ukraine had no probation system, and juvenile probation as a distinct legal and institutional mechanism did not exist. In a country facing persistent challenges related to youth offending, social vulnerability, and the long-term effects of social and political instability, this absence was not merely a technical shortcoming but had harmful consequences for youth who came into contact with the law.

This gap cannot be explained simply as legislative delay. It reflects the broader legacy of a centralized and punitive legal system inherited from the Soviet period. Soviet criminal law was embedded in a totalitarian governance model that prioritized state control, uniformity, and disciplinary responses over individual rights, autonomy, and reintegration (Mishina, 2017). Although formal distinctions between adults and youth existed, the system as a whole was not designed to support community-based responses, individualized assessment, or rehabilitative supervision. Non-custodial measures were weakly developed, and legal responses to youth offending were shaped more by administrative control than by principles of proportionality or child-centred justice (Anisimov, 2011; Solonnikova & Bondar, 2020). Following independence in 1991, Ukraine entered a prolonged and uneven period of legal and institutional transformation. While significant reforms were introduced in various spheres, juvenile justice reform developed in a fragmented and inconsistent manner. Soviet administrative approaches to youth deviance continued to influence practice, particularly in the treatment of youth identified as socially problematic or at risk. During this period, the absence of a probation system meant that courts relied predominantly on custodial sentences, without any structured mechanism for community supervision, rehabilitation, or coordinated social support for youth (Solonnikova & Bondar, 2020,

pp. 48–50). Against this background, the introduction of probation in 2015, explicitly including juvenile probation, represented not merely a legislative reform but a qualitative shift in how the Ukrainian state conceptualized responsibility, correction, and social reintegration for youth.

Within this broader transformation, Ukraine's historical and institutional connections with Canada created a distinctive pathway for reform. Beginning in the early 2000s, Ukrainian judges, prosecutors, and justice officials increasingly engaged with Canadian counterparts, seeking guidance on the organization and functioning of Canada's juvenile justice system (CIDA, 2005, p.4). This cooperation expanded into comprehensive reform initiatives supported by Canadian expertise and funding, including projects aimed specifically at introducing probation and juvenile probation as alternatives to custodial responses. These initiatives were driven by a shared understanding that youth are particularly responsive to rehabilitative interventions and that community-based supervision can reduce reoffending while avoiding the long-term harms associated with incarceration. Legal transplantation is a familiar feature of reform processes in transitional states. Borrowing foreign legal models is often viewed as a means of accelerating institutional development and breaking with punitive or authoritarian legacies (Kahn-Freund, 1974). At the same time, comparative legal scholarship consistently warns that transplantation is a complex and uncertain process. Imported institutions interact with existing legal cultures, professional practices, and social expectations, often producing outcomes that diverge significantly from the original design (Legrand, 1997b; Siems, 2018). For juvenile justice, where institutional practices directly shape youth's life trajectories, these risks are particularly acute.

It was precisely this tension between ambitious reform goals and the realities of institutional practice that motivated this dissertation. My decision to focus on juvenile probation is driven not only by its recent introduction in Ukraine, but also by a deep concern for the fate of

youth who come into contact with the criminal justice system during this period of transition. Juvenile probation is still in the process of formation and consolidation, and many of its legal, organisational, and practical dimensions remain unsettled. In practice, this has translated into uneven implementation, limited professional capacity, and persistent difficulties in coordinating the work of courts, probation officers, schools, and social services. These shortcomings matter profoundly because they shape the daily experiences of youth whose futures may be decisively influenced by how the system responds to them. At the same time, this early stage of development presents a rare opportunity: to study a reform while it is still taking shape and to identify its weaknesses before they harden into enduring institutional patterns. The central task of this dissertation is therefore to examine the transplantation of juvenile probation from Canada to Ukraine, to assess its outcomes, and to identify which elements of the Canadian model proved effective, which were ineffective or resisted, and why. By analysing the transplantation process in detail, I seek to understand how Canadian juvenile probation principles, such as individualized assessment, community engagement, and rehabilitation, interacted with Ukraine's legal traditions, institutional constraints, and post-Soviet legacy. On this basis, the dissertation proposes ways to strengthen and enhance the juvenile probation system in Ukraine so that it better fulfils its protective and rehabilitative objectives for youth in conflict with the law. At the same time, this research is relevant beyond Ukraine. Because the reform was funded and supported by Canadian institutions, evaluating its results is essential for understanding the real impact of Canadian justice-export initiatives. Moreover, some of the challenges observed in Ukraine reflect underlying tensions within the Canadian juvenile probation system itself. By examining these issues comparatively, the dissertation contributes both to Ukrainian debates on juvenile justice reform

and to Canadian scholarship on probation, international legal assistance, and the conditions under which legal transplants succeed or fail.

Accordingly, this dissertation is guided by a single, overarching research question:

> *How and why did Ukraine develop its juvenile probation system under the influence of Canadian government actors and policy-makers, and what factors shaped the relative success or failure of this legal transplantation within Ukraine's juvenile justice framework?*

This research question reflects the core concern of the study: understanding juvenile probation not simply as a legislative reform, but as a complex process of institutional transfer that unfolded within a specific historical, legal, and social context.

The first element of the question – how and why Canadian influence shaped the development of juvenile probation in Ukraine – focuses on the process of legal transplantation. It examines how domestic reform efforts interacted with external expertise and support. Particular attention is given to international cooperation, professional exchange, and development assistance, and to how these factors influenced legislative and institutional choices. This approach places juvenile probation within a broader pattern of reform in transitional legal systems, where foreign models are often adopted to support change and to address inherited institutional weaknesses. The second element – which factors contributed to effective or ineffective transplantation – shifts the focus from formal adoption to practical functioning. Drawing on socio-legal scholarship, the dissertation explores how transplanted legal institutions are influenced by historical trajectories, legal culture, institutional capacity, and professional practices. Rather than treating success as a binary outcome, the study evaluates the transplantation of juvenile probation as a spectrum of partial adaptation, modification, and structural constraint. Finally, the research question has a practical orientation grounded in concern for youth in conflict with the law. By analysing how juvenile probation operates in practice and identifying the obstacles that limit its rehabilitative

potential, the dissertation aims to contribute to a more effective and youth-centred juvenile justice system in Ukraine. At the same time, because the reform was shaped through Canadian involvement, the findings also speak to broader debates about the export of legal institutions and the responsibilities of donor states in supporting justice reform abroad.

Research Objectives

The research question formulated in this dissertation is guided by the following objectives, each of which addresses a specific dimension of the Canadian–Ukrainian juvenile probation reform process. First, the dissertation analyzes the development of juvenile justice reforms introduced in Ukraine through the Canadian-supported Juvenile Justice Reform Project (the "**JJRP**"), with particular attention to juvenile probation. This objective focuses on identifying the role of Canadian governmental and professional actors and examining the mechanisms through which Canadian legal ideas, probation practices, and institutional models were introduced, adapted, and embedded within Ukraine's legal framework.

Second, the study examines the theoretical and practical dynamics of legal transplantation by using the introduction of Canadian juvenile probation in Ukraine as an empirical case study. This objective situates the reform within broader comparative law debates and explores how transplanted legal institutions function when transferred across jurisdictions with different legal traditions, institutional capacities, and historical legacies.

Third, the dissertation assesses the cultural, legal, political, and socio-economic factors that influenced the transplantation of Canadian juvenile probation practices into Ukraine. This objective reflects the premise that the success or failure of legal transplants depends not only on legislative design but also on context, including legal culture, professional practices, institutional coordination, and broader social conditions.

Finally, the dissertation develops grounded recommendations for improving the operation of juvenile probation within the Ukrainian juvenile justice system. Building on the analysis of both effective and problematic aspects of the transplantation process, this objective aims to identify ways to enhance juvenile probation so that it better fulfils its legislatively defined rehabilitative, protective, and reintegrative functions, while also offering lessons relevant to future international justice reform initiatives.

Conceptual Foundations

It is necessary to clarify the core conceptual foundations on which this dissertation is built. In particular, the analysis that follows is grounded in three core areas of inquiry: juvenile justice, probation (including juvenile probation), civil and common law legal systems, and the sociology of aging, which informs the analysis of youth legal subjectivity. These concepts provide the analytical framework through which the Canadian–Ukrainian juvenile probation reform is examined, allowing for a coherent assessment of legal transplantation, institutional design, and the treatment of youth within the criminal justice system. Clarifying how these terms are understood and applied in this dissertation is essential for ensuring conceptual consistency and for situating the subsequent analysis within its broader theoretical and socio-legal context.

Juvenile Justice

There is no universally accepted definition of juvenile justice in either legislation or academic literature (Doob & Tonry, 2004, p.1). Some jurisdictions define it statutorily, while others rely on doctrinal interpretations grounded in legislative practice. Despite the absence of a single, authoritative definition, a widely shared historical understanding exists: juvenile justice refers to the distinct legal responses, institutions, and procedures created to address the conduct, welfare, and needs of youth (Doob & Tonry, 2004, p.5).

The contemporary juvenile justice system emerged in the late nineteenth and early twentieth centuries from efforts across Western jurisdictions, European states, and the Russian Empire to manage delinquent, neglected, and dependent youth (Roberson, 2010, p.1). Today, although national systems differ widely, juvenile justice across the world generally encompasses the mechanisms by which the state responds to youth crime, misconduct, and related developmental concerns (Doob & Tonry, 2004, p.5). As Doob and Tonry (2004) note, countries vary significantly in how they conceptualize the goals of youth justice, and no cross-jurisdictional consensus exists beyond one foundational principle: youth must be treated differently from adults, with age serving as a mitigating factor and with institutional separation maintained between young and adult offenders (p.1).[2] Smith (2005) similarly emphasizes that modern systems remain torn between two competing views – whether youth should be treated as youth requiring guidance or as responsible actors deserving sanction – resulting in a constant institutional negotiation of this tension (p. 182).[3]

Youth justice is often used interchangeably with juvenile justice. While "juvenile justice" is the standard term internationally, some common law jurisdictions – such as the United Kingdom and Canada – use "youth justice" in legislation and policy (e.g., the YCJA, 2003). As demonstrated in Chapter II, the Canadian use of "youth justice" is substantively equivalent to the broader international concept of juvenile justice; the distinction is largely terminological. Accordingly, this

[2] For example, in Canada this principle is expressly codified in the YCJA, which requires that young persons be held separately from adults when detained or sentenced, subject to limited exceptions (YCJA, s. 92). Comparable requirements of institutional separation between youth and adult offenders exist in other jurisdictions, including England and Wales under the *Youth and Young Persons Act 1933* and Germany under the *Youth Courts Act* (*Jugendgerichtsgesetz*), reflecting a shared baseline commitment to differentiated treatment in youth justice systems.
[3] A clear example is the evolution of Canadian youth justice legislation: the JDA (1908) reflected a welfare-oriented, rehabilitative model; the YOA (1984) shifted toward a more punitive, responsibility-based approach; and the YCJA (2003) represents a hybrid framework seeking to balance accountability with recognition of youths' diminished culpability.

dissertation employs the term juvenile justice, except when referring to Canadian statutory terminology.

In this dissertation, the term juvenile justice is used in its narrow sense, referring specifically to the legal system's response to youth rather than to all youth who come into contact with state institutions. At the same time, the analysis necessarily situates juvenile probation within the broader institutional framework – including schools, social services, and non-governmental organizations – and the operative environment of restorative justice practices, as these actors and mechanisms have been integral to the development and functioning of juvenile probation in both Canada and Ukraine.

Probation

Probation, like juvenile justice, lacks a universally accepted definition. Its meaning differs across legal systems and scholarly traditions, and in many jurisdictions it is defined not through a single statutory provision but through the broader legislative and institutional framework governing community-based sanctions. Etymologically rooted in the Latin *probare* (to test or prove) the term originally referred to a period during which an individual demonstrates their suitability or fitness, a usage still seen in non-criminal contexts such as employment "probationary periods" (Canton & Dominey, 2017, p. 8). When adopted into criminal justice, however, the concept evolved differently across legal traditions. In Anglo-American systems, probation has historically been understood as a community-based alternative to custody, where offenders remain in the community under supervision and are required to comply with behavioural, rehabilitative, or restorative conditions. By contrast, in many civil law jurisdictions, probation developed more directly from the conditional suspension of punishment, with emphasis placed on suspending the execution of a custodial sentence rather than on ongoing supervisory work (Harris, 1995; Canton

& Dominey, 2017, p. 9). These distinct trajectories have resulted in varied models of probation that blend elements of supervision, social assistance, rehabilitation, and state control. Scholarly debate has long centered on whether probation should be understood primarily as a penal sanction or as a rehabilitative intervention. Some authors emphasize its coercive character, noting that probation imposes enforceable obligations backed by the threat of revocation and incarceration (Bottoms, 2001, p.91). Others underscore its welfare-oriented origins and the central role of guidance, social support, and reintegration in probation practice (Canton, 2024; McNeill, 2012, p.30). Most contemporary accounts view probation as inherently hybrid – a flexible sanction combining surveillance with assistance in ways that vary by jurisdiction and by historical moment (Skeem & Manchak, 2008, p.222; Breno et al., 2023, p.1141; Logan, 2003, p.172; Piehowski & Phelps, 2023, p.489)

Because of these divergent traditions, statutory definitions of probation also vary. In Ukraine, which is a civil law country, probation has a formal and unified legal definition. Article 2 of the 2015 Law of Ukraine "On Probation" (the "**Law on Probation**") defines probation as a system of supervisory and socio-educational measures applied by court decision to individuals serving non-custodial sentences and includes the preparation of pre-trial reports and the execution of specific criminal penalties not related to imprisonment. This legislative definition captures both the supervisory and social-educational dimensions of Ukrainian probation and applies to adults and youth alike. Canada, by contrast, does not provide a single codified definition of probation. Instead, the Criminal Code defines probation functionally, specifying when a probation order may be imposed (s. 731) and enumerating mandatory and optional conditions (s. 732.1). Thus, in the Canadian context, probation is understood through its legislative purpose – managing offenders in

the community under court-ordered conditions – rather than through a statutory conceptual definition.

Because this dissertation examines how Canadian juvenile probation practices were transplanted into Ukraine, juvenile probation is the central focus of the study. Building on the general concept of probation, juvenile probation uses the same basic mechanism of non-custodial supervision but adapts it to the developmental needs of youth. Research in psychology and youth justice has long demonstrated that youth differ from adults in cognition, psychosocial maturity, and capacity for change (National Research Council, 2013; Steinberg & Scott, 2003). As a result, juvenile probation includes elements that are far less central in adult probation: individualized case planning that accounts for developmental needs, active engagement with families, schools, and community organizations, and access to educational, counselling, and cognitive-behavioural programming (Indel et al., 2023; Corrado et al., 2024). These features reflect a broader international shift toward evidence-based youth interventions aimed at supporting rehabilitation and reintegration rather than enforcing punitive control (Vincent et al., 2012). For this reason, juvenile probation is not simply "probation for youth," but a distinct institution grounded in principles of youth protection, proportionality, and developmental responsiveness.

These conceptual characteristics are reflected in the legislative frameworks examined in this dissertation. In Ukraine, juvenile probation is expressly defined in Article 12 of the Law on Probation, which establishes a separate mechanism for youth and requires individualized correctional programs, socio-educational supervision, and close cooperation with families, schools, and non-governmental organizations. Canada's youth probation operates entirely under the YCJA. As detailed in Chapter II, the YCJA embeds probation within a comprehensive set of principles – including proportionality, rehabilitation, meaningful consequences, and restraint in the

use of custody – and requires that all probation conditions be youth-appropriate, minimally intrusive, and tailored to the young person's needs, abilities, and level of maturity. While the YCJA establishes both mandatory and optional conditions, optional conditions must be individually justified and connected to the young person's specific circumstances. Canada's strong emphasis on non-custodial, community-based measures has made probation the most frequently imposed youth sentence in the country, serving as the primary mechanism through which YCJA principles are applied in practice (Bala, 2012).

Because this dissertation examines the transplantation of Canadian juvenile probation practices into Ukraine, understanding juvenile probation both conceptually and legislatively is essential. Juvenile probation lies at the intersection of two systems: probation as a community-based sanction and juvenile justice as the state's response to youth. These foundations guide the comparative and transplantation analyzes in later chapters and form the basis for evaluating how Canadian principles – such as individualized assessment, community engagement, and rehabilitation – were adopted, adapted, or reshaped within Ukraine's evolving juvenile justice framework.

Civil and Common Law Legal Families

The distinction between civil law and common law legal families provides an important structural context for understanding legal transplantation in the field of juvenile justice. Legal families differ not only in sources of law but also in institutional logic, judicial roles, and approaches to legal reasoning, all of which shape how transplanted institutions function in practice.

Civil law systems, which historically developed from Roman law and later codification movements in continental Europe, are characterized by comprehensive legislation, hierarchical legal sources, and a comparatively limited law-making role for judges (Merryman & Pérez-

Perdomo, 2019). Legal development in civil law jurisdictions typically occurs through statutory reform and administrative implementation, with courts primarily responsible for applying rather than creating law. Ukraine belongs to this legal tradition, having inherited both the codified legal structure of the Russian Empire and the centralized legislative model of the Soviet legal system (David & Brierley, 1985; Zweigert & Kötz, 1998).

Common law systems, by contrast, evolved through judicial precedent and adversarial procedure. Courts play a more active role in shaping legal doctrine, and legal norms often develop incrementally through case law rather than comprehensive codification (Zweigert & Kötz, 1998; Glenn, 2014). Canada represents a mixed legal environment but operates predominantly within the common law tradition in criminal justice and youth justice governance. This tradition has encouraged the development of discretionary, community-based responses to youth offending, including probation supervision, restorative justice practices, and individualized sentencing frameworks (Bala et al., 2009).

These structural differences are significant for the present study because legal transplantation rarely involves transferring rules alone; it involves moving institutions and practices between systems with different legal cultures and professional expectations (Watson, 1974; Kahn-Freund, 1974). Transplanting juvenile probation from Canada into Ukraine therefore required adapting an institution shaped by common-law judicial discretion and community-based service networks to a civil-law environment historically oriented toward codification, centralized administration, and formal procedural compliance. Recognizing these differences helps explain why transplantation outcomes depend not only on legislative adoption but also on institutional compatibility and professional culture.

Sociology of Aging

Although this dissertation focuses on juvenile probation, it is set against a broader issue that has shaped juvenile justice since its beginnings. This issue concerns how the law should treat youth and the age at which they should be held legally responsible. Long before the formal emergence of juvenile justice systems, societies struggled to decide whether youth were primarily vulnerable persons in need of guidance or developing agents capable of criminal responsibility (Weijers & Grisso, 2009, p.45). Chapters II and III of this dissertation trace how these tensions unfolded historically in Canada and Ukraine – how each jurisdiction determined that youth should be treated differently, how their legal status evolved within criminal proceedings, and how the minimum age of criminal responsibility shifted over time. While not the central subject of this study, this conceptual foundation underpins the entire dissertation by explaining why juvenile probation exists as a distinct legal institution in these two societies.

A central concept in this field is youth legal subjectivity, which refers to the recognition of youth as subjects of law with rights, agency, and obligations (Gillespie, 2015). There is a widespread consensus that youth below a certain age are too young to be held criminally responsible due to their inability to understand the consequences of their actions. It is affirmed in international standards such as the United Nations Convention on the Rights of the Child (the "**UNCRC**")[4] of 1989 and the United Nations Standard Minimum Rules for the Administration of

[4] The *United Nations Convention on the Rights of the Child* (the "**UNCRC**"), adopted by the United Nations General Assembly in 1989 and entering into force in 1990, is the principal international treaty governing youth's rights. It establishes that youth are entitled to special protection in legal proceedings and requires states to develop justice systems that prioritize dignity, rehabilitation, and reintegration. Article 37 limits the use of detention to a measure of last resort and for the shortest appropriate period of time, while Article 40 recognizes the right of youth accused of criminal offences to treatment consistent with their age, sense of dignity, and potential for reintegration into society. The Convention also encourages the use of diversionary measures and alternatives to judicial proceedings. Ukraine ratified the Convention in 1991, and Canada in 1991, making its principles a shared normative framework for juvenile justice reform in both countries.

Juvenile Justice (the "**Beijing Rules**")[5] of 1985. While these instruments require states to establish a minimum age of criminal responsibility below which youth are presumed incapable of infringing the criminal law, they deliberately avoid fixing a uniform age, acknowledging the complexity of developmental and cultural factors involved (Weijers & Grisso, 2009, p. 47). Globally, the minimum age of criminal responsibility varies widely, ranging from as low as 7 or 8 years in some jurisdictions to 15 or 16 years in others (UNICEF Regional Office for Europe and Central Asia, 2022, p. 9). Sociologically, this area is marked by a persistent tension between two perspectives. One view emphasizes youth's agency, treating them as capable decision-makers whose voices, choices, and legal rights must be respected (Mason & Hood, 2011; Abebe 2019). The other underscores their vulnerability, dependency, and limited capacity for foresight – characteristics that justify heightened protection and reduced criminal responsibility (Herring, 2023; Scott & Steinberg, 2008). The orientation a society adopts shapes its youth justice approach, influencing minimum age thresholds, procedural guarantees, sentencing principles, and the role of state intervention (Hollingsworth, 2013). These perspectives are reflected in the literature as contrasting orientations. One orientation conceptualizes youth as autonomous legal actors, prioritizing due process, equality before the law, and meaningful participation in proceedings, but often linking autonomy to earlier criminal responsibility (Hollingsworth, 2013). The other frames youth as particularly vulnerable within legal processes, historically supporting parens patriae approaches that prioritize treatment and reform over punishment, sometimes at the expense of procedural

[5] The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the "**Beijing Rules**"), adopted by the UN General Assembly in 1985, establish internationally recognized principles for the treatment of youth in conflict with the law. The Rules emphasize proportionality, the best interests of the child, diversion from formal judicial proceedings where appropriate, the use of detention only as a last resort, and the importance of rehabilitation and social reintegration. They also encourage the development of specialized juvenile justice institutions and trained personnel capable of addressing the needs of young offenders. Although not legally binding, the Beijing Rules have become a foundational reference point for national juvenile justice reforms and international technical assistance initiatives.

rights (Bazemore, 1996; Ward, 2012). Both orientations contain risks: one may overestimate youth's autonomy and expose them to punitive sanctions, while the other may disregard their rights in the name of protection (Hollingsworth, 2013, p.1046).

Contemporary systems rarely adopt either pole fully. Instead, they fluctuate between paternalistic and punitive models, often without fully acknowledging youth's rights or their evolving capacities (Hollingsworth, 2013). A growing body of scholarship argues for an integrated approach that recognizes both agency and vulnerability. Hollingsworth (2013) proposes grounding youth justice in youth's foundational rights, with an emphasis on rehabilitation and restorative practices. Bazemore (1996) similarly contends that debates framed around "punishment versus treatment" are inadequate unless rehabilitation remains a central guiding principle. These sociological perspectives are reinforced by developmental research showing that adolescents differ from adults in reasoning, judgment, impulse control, and risk-taking. Neurodevelopmental studies demonstrate that these differences are not merely social or cultural but grounded in identifiable developmental trajectories of the brain (Sansone et al., 2023; Shulman et al., 2016). This evidence supports the principle of reduced culpability, whereby youth are held less responsible than adults because they are still developing the emotional and cognitive capacities relevant to legal decision-making (Bala et al., 2009; Swardh & Rampersaud, 2025).

For the purposes of this dissertation, these sociological insights matter for two reasons. First, they explain the historical emergence of juvenile probation as a distinct institution: probation developed as a response to the recognition that youth require supervision, guidance, and structured support rather than purely punitive sanctions. Second, they illuminate why transplanting juvenile probation from Canada to Ukraine required sensitivity to how each society constructs childhood, adolescence, and youth responsibility.

Methodology and Methods

This section follows a two-step approach to explain the evidence base and methods used to assess multiple dimensions of the legal-transplantation process. It begins with a discussion of legislation, because statutory change represents the most visible outcome of legal transplantation – the point at which foreign legal ideas become formally embedded in the receiving legal system. The analysis of Canadian and Ukrainian legislative frameworks, therefore, establishes what was transplanted and how it was expressed in binding legal rules. The section then turns to the internal project documentation obtained through the Access to Information request. While legislation shows the formal results of reform, these documents reveal the process behind legislative change: how Canadian actors conceptualized juvenile probation, Ukrainian institutions negotiated reform proposals, and specific legal solutions were adapted, modified, or resisted during implementation. Examining these materials makes it possible to move beyond "law on the books" and reconstruct the institutional pathway through which transplantation occurred.

Then, the section explains how these two bodies of evidence – legislation and project documentation – are interpreted through the dissertation's methodological framework. Critical discourse analysis is used to examine how reform goals and assumptions were framed in project and parliamentary materials; doctrinal analysis clarifies the legal structure and meaning of legislative reforms; and comparative analysis evaluates the relationship between the Canadian donor model and its Ukrainian adaptation. Together, these steps provide the analytical foundation for assessing both the transplantation process and the results it produced.

Legislation Analysis

The introduction of juvenile probation in Ukraine did not occur through policy discussion or professional exchange alone; it required the incorporation of new concepts, practices, and institutional responsibilities into binding legal rules. For this reason, legislation is treated in this

dissertation as the primary visible site where the transplantation of juvenile probation can be observed and evaluated. Examining legislative acts makes it possible to assess how Canadian probation principles were translated into Ukrainian law, how they were adapted to existing legal structures, and how the receiving system reshaped the transplanted model.

In Canada, the legislative foundation of the juvenile probation model is found in the YCJA (2003). To understand the normative development of this model, the analysis also considers earlier statutes, particularly the JDA (1908) and the YOA (1984), which illustrate the historical evolution of Canadian approaches to youth responsibility, state intervention, and community supervision. In Ukraine, the central legislative outcome of the transplantation process is the Law on Probation (2015), which introduced probation as a unified national institution and formally incorporated juvenile probation into the criminal justice system. The functioning of juvenile probation is also shaped by the Criminal Code and the Criminal Procedure Code (the "**CPC**") of Ukraine, which define criminal responsibility, sentencing options, procedural safeguards for youth, and the preparation of pre-trial reports. These acts together form the legal framework within which the transplanted probation model operates. To understand how this legislative change became possible, the dissertation also examines earlier legal regimes governing juvenile responsibility in the Russian Empire, the Soviet Union, and independent Ukraine prior to 2015. This historical legislative analysis helps explain the institutional conditions into which juvenile probation was introduced and the constraints that shaped its reception.

Legislative Debates Analysis

To complement the analysis of statutory texts, I examined all publicly available transcripts of parliamentary debates in Ukraine related to two key reforms: the CPC of 2012[6] and the Law on

[6] Main debates took place on 2nd February 2012, 10th April 2012, 11th April 2012, 12th April 2012, and 13th April 2012.

Probation of 2015.[7] In Ukraine, verbatim scripts of all discussions in the Parliament, "**Verkhovna Rada**", are published on the Parliament's official website, providing full access to word-for-word exchanges among lawmakers. This open-access record offered a valuable methodological resource, as it allowed me to follow not only the legislative outcomes but also the reasoning, disagreements, and political dynamics that shaped them. Through these debates, it became possible to identify which principles were considered domestically driven priorities, which reforms met resistance, and how policymakers framed the role of youth justice within broader criminal justice transformation.

Documents Analysis

An assessment of how the transplantation occurred, its mechanisms, goals, successes, and limitations, could not be conducted solely through secondary sources and public statements. Thus, access to primary documents was essential for examining the process of legal transplantation of juvenile probation from Canada to Ukraine. The core evidence lies in the internal records of the Canadian-funded JJRP, which transplanted the probation model to Ukraine. These materials document how Canadian actors conceptualized the reform, how Ukrainian partners responded, and how the practices were adapted, negotiated, or resisted throughout the project's lifespan. However, the very nature of the initiative posed a methodological obstacle.

Request for the Documents

The JJRP (Project No. CA-3-Z020624002), implemented in Ukraine from January 8, 2010 to September 30, 2017 under the leadership of Global Affairs Canada (the "**GAC**"), was an interstate development project. As such, its internal documents – proposals, evaluations, correspondence, implementation reports, and briefing notes – are not publicly available. This lack

[7] Main debates took place on 20th September 2013 and 5th February 2015.

of public access makes a thorough study of the transplantation process impossible without relying on one of the few legal mechanisms that allow researchers in Canada to obtain unpublished federal records: the *Access to Information Act* (RSC 1985, c. A-1). The *Access to Information Act* grants Canadian citizens, permanent residents, and individuals present in Canada the right to request and receive copies of documents held by federal institutions, unless a statutory exemption applies. In practical terms, it is the only legal avenue through which it is possible to access internal project files, correspondence, evaluations, and reports generated by the GAC during the implementation of the JJRP.

To respond to this challenge, in February 2025, I initiated a formal request for records under the *Access to Information Act.* Following the Government of Canada's recommended procedure, the first step was reviewing the database of previously released Access to information and privacy ("**ATIP**") requests. This review confirmed that no prior request had ever sought documents relating to the JJRP, or Canadian involvement in juvenile probation or juvenile justice reform in Ukraine more broadly. This indicates that these documents have not previously been examined in academic research, underscoring the originality of this project and strengthening the contribution of the study. The absence of existing materials required the submission of an original and comprehensive access request.

Identifying which federal institution held the records was relatively straightforward. Based on the departmental mandates listed on the Government of Canada website, the GAC – the lead department responsible for administering the project – was the custodian of the relevant documents. With this confirmed, I prepared a written request in accordance with section 6 of the *Access to Information Act*, which requires that the applicant describe the records with enough detail for an experienced employee to locate them "with a reasonable effort."

A substantive methodological challenge concerned the scope of the request. Juvenile probation did not enter Ukraine through a single intervention; it emerged from a wider program that included judicial training, development of attendance centres, youth rehabilitation initiatives, and school–police collaboration programs. To situate juvenile probation within this entire ecosystem, I drafted a request that sought not only project-specific documentation but also wider records reflecting Canadian involvement in juvenile justice reform.

A second consideration involved choosing the appropriate timeframe. While the project officially began in 2010, tracing its origins required going further back. I selected 2001 as the starting point – the year Ukraine, for the first time, changed criminal legislation after the collapse of the Soviet Union and adopted a new Criminal Code. Even though public sources did not indicate that Canada played a role in these earlier reforms, beginning in 2001 allowed me to identify any possible early contacts or influences on the evolution of juvenile justice in Ukraine. This strategy proved to be successful, as through the received documents, I found out that the first contact happened in 2004. From here, I was able to trace the collaboration efforts that took place even before the project officially launched in 2010. The end date of 2017 reflected the official termination of the project as listed in the Government of Canada records.

Based on these considerations, I submitted the following initial request:

> "All records and information related to the Juvenile Justice Reform project (Project number CA-3-Z020624002), including but not limited to project proposals, agreements, evaluations, reports, presentations, briefing notes, correspondence, and any other documents concerning the project's execution and results. Also include documents related to the juvenile justice system in Ukraine – juvenile probation system in Ukraine – criminal justice system in Ukraine – Ukrainian criminal law (Criminal Code) – Ukrainian criminal procedure (Criminal Procedure Code) – social services provided to Ukrainian youth – restorative justice in Ukraine before the start of the project – procedures/training/National school-police program/rehabilitation program for youth. Timeframe: January 1, 2001 to December 31, 2017."

After submitting the initial request, I received a follow-up message from the GAC analyst responsible for processing the file. They noted that my request captured a very large volume of records spread across multiple internal divisions. They explained that the initial search had identified over 14,500 pages of records, confirming the substantial scale of documentation associated with the project. The GAC representative also advised that the department was neither obliged nor technically able to provide translations of materials in Ukrainian and Russian. I responded that I am fluent in both Ukrainian and Russian, so translation was therefore unnecessary. Despite this clarification, the department maintained its position and declined to produce any documents in Ukrainian or Russian, as well as translate them into English. Ultimately, after the request was refined and duplicates were excluded, 5,360 pages of material were released for review.

Thus, the ATIP request formed a core methodological tool. It allowed this dissertation to reconstruct, for the first time, an evidence-based account of how Canada conceptualized, exported, and implemented juvenile probation in Ukraine, and how these efforts interacted with Ukraine's own legal environment. Without these primary documents, an accurate or complete assessment of the transplantation process would not be possible.

Processing of the Documents Received

When the documents arrived, I began the long process of working through them. My first step was simply to familiarize myself with the overall structure of the files, noting recurring themes and identifying which categories were most relevant to juvenile probation specifically. This made it possible to move from a mass of information to a set of coherent analytical units.

As I worked through the documents, certain patterns began to emerge: how Canadian officials framed the goals of the project, how Ukrainian institutions responded, and how both sides

navigated administrative and political constraints. Other files illuminated the practical difficulties of introducing new probation practices into a system shaped by Soviet legal legacies. Each document added another layer to understanding how ideas travelled, how they were interpreted, and how they were reshaped in practice. These materials allowed for a grounded, evidence-based assessment of how the Canadian model was adapted within Ukraine's legal environment, and how the process of transplantation unfolded across institutions, cultures, and professional communities.

Situating the Documents Received within Broader Literature Discourse

The disclosure of 5,360 pages of internal records relating to the JJRP offered unprecedented insight into the mechanics of Canada's technical assistance. Yet, these materials could not, on their own, provide a complete basis for evaluating the transplantation of Canadian juvenile probation to Ukraine. As the broader literature consistently emphasizes, legal transplantation is never a merely technical or documentary process. It is a multidimensional socio-legal phenomenon shaped by the interaction of historical legacies, institutional capacities, political environments, and prevailing legal cultures (Kahn-Freund, 1974; Graziadei, 2009). Consequently, situating the received documents within this scholarly discourse was essential for constructing a methodological framework capable of assessing how, and to what extent, the Canadian model was absorbed, adapted, or transformed in Ukraine. Placing the project documents alongside the broader scholarly literature on legal transplantation, juvenile justice and probation in Canada and Ukraine, and parliamentary debates in Ukraine on the adoption of the CPC and the Law on Probation made it possible to see where the formal design of the Canadian initiative diverged from how the reforms were actually absorbed within the Ukrainian legal system. I saw these documents as instrumental in filling in the gap between planned reform and real institutional practice, which is central to understanding any legal transplant.

Translation from Ukrainian into English

Given the methodological framework outlined above, a substantial portion of the primary sources used in this dissertation – legislative acts, parliamentary transcripts, policy documents, and historical materials – was available only in Ukrainian, and in some cases in Russian. This included not only contemporary documents such as the CPC, the Law on Probation, and verbatim parliamentary debates, but also archival or historical sources relevant to the analysis of juvenile justice and its institutional evolution. For the purposes of accuracy and transparency, all translations of these materials were carried out by me. I am fluent in Ukrainian, Russian, and English and trained in law, which has allowed me to translate legal terminology, procedural concepts, and contextual nuances without relying on secondary intermediaries. Where direct citations from Ukrainian- or Russian-language sources are included in the dissertation, I provide the original text and specify the language of origin in the corresponding footnotes.

Methods

In this section, I describe the specific methods I use to analyze the materials collected for this dissertation and to answer my research questions about how Canadian juvenile probation was transplanted into Ukraine. I explain how I read and interpret the documents using Critical Discourse Analysis (the "**CDA**"), how I examine legal concepts and scholarly debates through doctrinal analysis, and how I compare the Canadian and Ukrainian systems using comparative methods. Each method helps me focus on a different dimension of the transplantation process, and together they allow me to study not only what was written in the documents and laws, but also how ideas were framed, how legal principles developed, and how both systems evolved in relation to each other. This section describes how I worked with the materials and why these particular methods were appropriate for this dissertation.

Doctrinal Analysis

Doctrinal analysis is essential to this dissertation because the primary sources obtained through the Access to Information request, although extensive, do not provide a complete picture of how legal transplantation occurred. The documents illuminate implementation practices, interactions between stakeholders, and administrative decision-making, but they do not explain the conceptual foundations, legal traditions, or theoretical assumptions underlying either the Canadian model or the Ukrainian reception of juvenile probation. To address these gaps, doctrinal analysis of scholarly work, legislation, and jurisprudence forms a central methodological pillar throughout the dissertation.

This method is particularly important given the subject matter. Legal transplantation is not governed by a single statute, doctrinal framework, or universally accepted definition. As explored in Chapter I, scholars offer competing views on what constitutes legal transplantation, what makes a transplant viable, and which socio-legal factors influence its success or failure (Watson, 1993; Legrand, 1997b; Teubner, 1998). Doctrinal analysis allows these different perspectives to be systematically compared and integrated, forming the conceptual lens through which the Canadian–Ukrainian case is examined. In Chapter II, doctrinal analysis is applied to the development of Canada's juvenile probation system. This includes reviewing statutory reforms, policy debates, and scholarly evaluations that explain how the Canadian model took shape, which challenges it addressed, and which structural issues persisted (Bala, 1997; Doob & Cesaroni, 2004; Corrado, 2016). Understanding these doctrinal foundations is necessary because the Juvenile Justice Reform Project drew directly on Canadian principles, terminology, and institutional practices. Chapter III requires doctrinal analysis of the historical evolution of juvenile justice in Ukraine and, earlier, within the Russian Empire and the Union of Soviet Socialist Republics (the "**USSR**"). Because juvenile probation did not exist historically as a separate legal concept, its antecedents must be

reconstructed through scholarly interpretations of juvenile responsibility, child welfare, and criminal procedure (Anisimov, 2011; Chepurko & Lysenko, 2007; Solonnikova & Bondar, 2020). Here, doctrinal writings help illuminate the shifting philosophical and institutional foundations that conditioned Ukraine's ability to receive a probation model. In Chapter IV, which examines the development of juvenile probation in independent Ukraine, doctrinal analysis is again indispensable. The reform process produced not only legislation but also extensive scholarly debate on appropriate models, the influence of European standards, and the extent to which foreign experience should be integrated (Yatsyshyn, 2010; Yagunov, 2020; Shportiuk, 2020). These doctrinal discussions explain why probation was adopted as part of a single unified national system, why policymakers rejected a standalone juvenile probation statute, and how competing visions of youth justice shaped the final legislative outcome. Finally, in Chapter V, doctrinal analysis underpins the assessment of the transplantation process itself. Here, evaluating scholarly critiques of legal transplantation – its limits, risks, and patterns of adaptation – allows the dissertation to situate the Canadian–Ukrainian case within broader theoretical debates (Buhaiets et al., 2023; Omarova & Vlasenko, 2022). These doctrinal insights are essential for identifying which elements of the Canadian model were successfully received, which were modified or resisted, and why certain features proved incompatible with Ukrainian legal culture and institutional practice. Taken together, doctrinal analysis strengthens each stage of the dissertation by providing the theoretical, comparative, and interpretive context that primary documents alone cannot supply.

Critical Discourse Analysis

Critical Discourse Analysis (the "**CDA**") is used in this dissertation as one of the methods for interpreting key textual sources that shaped juvenile justice reform in Ukraine, including the transplantation of juvenile probation. The CDA helps to examine how ideas, priorities, and

assumptions were expressed in the documents produced by Canadian officials, Ukrainian policymakers, and other institutional actors involved in the reform process. This method is particularly appropriate given the nature of the materials used in the study. The internal documents obtained from the GAC describe the goals, challenges, and planned activities of the JJRP. Legislative materials from Ukraine – including explanations to draft laws, committee reports, and the verbatim transcripts of parliamentary debates published on the official website of the Verkhovna Rada – outline how reforms were justified and discussed domestically. The CDA allows these texts to be read not only for their content, but also for how they frame the problems of the existing juvenile justice system and the pathways toward its improvement. In practical terms, the CDA is applied most in Chapter IV, where the dissertation reconstructs the Canadian-supported JJRP and the legislative path toward the CPC 2012 and the 2015 Law on Probation reforms.

Comparative Analysis

The comparative analysis constitutes one of the core methodological pillars of this dissertation and represents the central analytical method applied in Chapters III and V. Building on established approaches in comparative law (Zweigert & Kötz, 1998; Siems, 2018), this method allows for a systematic assessment of the Canadian juvenile probation system and the Ukrainian juvenile justice framework across multiple dimensions, including socio-economic preconditions, historical development, institutional evolution, and the practical outcomes of the transplantation of Canadian probation practices into Ukraine.

First, comparative analysis is employed to evaluate and compare the historical trajectories of juvenile justice in Canada and Ukraine. This includes an examination of Canada's shift from the JDA (1908) to the YOA (1984) and ultimately to the YCJA (2003), contrasted with Ukraine's path shaped by imperial legislation, Soviet ideological frameworks, and post-independence

reforms (as detailed in Chapters II-IV). This element of the comparative method clarifies how distinct political, ideological, and institutional environments shaped each system's approach to juvenile accountability, the role of rehabilitation, and the institutional position of probation.

Second, the comparative method enables an assessment of the socio-economic and political preconditions that influenced juvenile justice reform in both countries. As Chapter V demonstrates, Canada's long-standing socio-economic stability, established welfare institutions, and strong tradition of community-based alternatives to custody stand in contrast to Ukraine's transition from authoritarian governance, economic instability, and fragmented institutional capacity. Employing a comparative lens highlights how these different conditions impact the feasibility of adapting foreign legal institutions, supporting Kahn-Freund's (1974) suggestion that legal norms are deeply shaped by the politico-economic environment of the receiving country.

Third, comparative analysis provides the methodological foundation for evaluating the viability and effectiveness of the legal transplantation process. Drawing on transplantation theory (Watson, 1974; Legrand, 1997b; Birnhack, 2012), this dissertation uses comparison to assess whether the Canadian probation model retained functional coherence once introduced into the Ukrainian legal culture and bureaucratic structures. Comparison allowed for the identification of mismatches, such as the absence of specialized juvenile judges, formalistic sentencing practices, or insufficient inter-agency coordination, that restricted the transplanted model's effectiveness in the Ukrainian juvenile justice system (see Chapter V).

Finally, comparative analysis facilitates a structured examination of outcomes, enabling the dissertation to determine to what extent the Canadian model has been absorbed, adapted, transformed, or resisted within Ukraine. By integrating doctrinal, historical, and socio-institutional comparison, this method illuminates why certain elements of the Canadian system (e.g., pre-

sentence reports, restorative justice initiatives) proved more translatable, while others struggled to take root due to systemic constraints or cultural incompatibilities. Thus, the comparative analysis employed in this dissertation is not limited to identifying similarities or differences but functions as a comprehensive methodological framework that connects the broader theoretical discussion of legal transplantation (Chapter I) with the empirical-historical exposition of Canadian and Ukrainian juvenile justice (Chapters II–IV) and the evaluative assessment of transplantation outcomes (Chapter V). It allows the dissertation to situate Ukraine's juvenile probation reform within a wider comparative context and to critically assess both the opportunities and the challenges associated with borrowing foreign legal models.

Limitations

A key limitation of this dissertation arises from the mismatch between the scope of the Canadian reform initiative and the narrower focus of this study. The Canadian project addressed juvenile justice broadly, whereas this dissertation examines specifically the legal transplantation of juvenile probation from Canada to Ukraine. These two areas, however, cannot be cleanly separated for several reasons. First, juvenile probation in Ukraine never emerged as an isolated institution. As shown in Chapter III, early developments in youth governance, criminal responsibility, and diversion formed part of a wider juvenile justice framework. Probation – both conceptually and institutionally – was only one element within these broader reforms.

Second, the same dynamic continued after the independence of Ukraine. International assistance, including Canadian involvement, consistently framed its objectives in terms of juvenile justice reform as a system, not the creation of a stand-alone juvenile probation service. Documents received through the ATIP request confirm that Canadian experts approached probation as one component within a comprehensive suite of youth justice initiatives.

Third, during the Ukrainian legislative process, policymakers deliberately chose to embed juvenile probation inside a unified probation law applicable to both adults and youth. The Law on Probation (2015) therefore merged institutional structures, terminology, and procedures, making it impossible to analyze juvenile probation without reference to the general probation framework. The rationale and consequences of this legislative choice are examined in Chapters IV and V. Given these structural realities, although the dissertation's analytical centre remains the transplantation of juvenile probation, the discussion often expands to the broader fields of juvenile justice and general probation. However, this is not a departure from the topic but an analytical necessity, as the transplantation of juvenile probation can only be fully understood when situated within the wider legal and institutional environment in which it was introduced.

An additional limitation concerns access to source materials. Although the Canadian-supported JJRP operated extensively within Ukraine, the GAC disclosed only English-language records in response to the ATIP request. Materials originally produced in Ukrainian or Russian, including any correspondence with Ukrainian authorities, internal Ukrainian policy papers, and domestically drafted documents, were not disclosed. As a result, this study is necessarily limited to the English-language materials released by the GAC and does not include direct analysis of Ukrainian-language project documentation that exists alongside the disclosed records.[8]

A further limitation concerns the decision not to conduct interviews. Interviews were considered as a potential source of insight into how key actors understood and experienced the

[8] The absence of Ukrainian- and Russian-language materials means that the analysis relies primarily on English-language records produced by Canadian institutions and project participants. As a result, the dissertation cannot fully reconstruct how Ukrainian policymakers, judges, or administrators internally discussed and interpreted the reform in their own policy memoranda, correspondence, or working drafts of legislation. Nor is it always possible to trace how key legal concepts were formulated in their original linguistic and doctrinal context within Ukrainian law. This limitation reduces the visibility of local debates, disagreements, and reinterpretations that accompanied the transplantation process, particularly where these were documented only in Ukrainian-language institutional records.

Canadian-supported reform initiative. Ultimately, however, this dissertation prioritizes documentary evidence. Interviews were assessed as less reliable for reconstructing the reform process because they would depend on retrospective recollection of communications and decision points. Conducting interviews with participants involved in reforms that began in the early 2000s would have required extensive fieldwork across multiple jurisdictions and institutions and would have significantly expanded the scope of the dissertation. In addition, there are significant logistical constraints on interviewing participants in the current context: the research is conducted during the ongoing war in Ukraine, and many potential interviewees may have left the country due to the humanitarian crisis or may be living and working in conditions that would make participation in interviews difficult and burdensome. For these reasons, the dissertation relies on documentary, legislative, doctrinal, and comparative analysis, while recognizing that future research could use interviews to complement this record and further nuance understanding of how this transplantation unfolded in practice, surfacing undocumented dynamics, such as points of disagreement, misinterpretations across institutions, informal bargaining, shifts in priorities, and the roles of personalities and capacity constraints.

Positioning the Dissertation Within Existing Literature

This dissertation is situated at the intersection of two bodies of scholarship. The first comprises theoretical and comparative work on legal transplantation and transnational legal reform. The second includes studies on juvenile justice and probation in Canada and Ukraine, encompassing both analyzes of their contemporary operation and scholarship tracing their historical development in each jurisdiction. While each of these literatures addresses important dimensions of juvenile justice reform, none traces a sustained comparative perspective on Canadian and Ukrainian juvenile justice and juvenile probation systems, nor examines the Canadian-supported development of juvenile probation in Ukraine as a single, integrated object of

analysis. This study brings these strands together by analyzing juvenile probation both as a juvenile justice institution and as a product of cross-jurisdictional legal transplantation.

Legal Transplantation in the Scholarly Literature

Legal transplantation is a well-established subject in comparative legal scholarship, concerned with how legal rules, institutions, and practices move across jurisdictions and how they function once transferred. The classic account is associated with Alan Watson, who described legal development largely as a process of borrowing, arguing that legal rules can travel relatively independently of their original social context (Watson, 1974; 1993). Watson emphasized professional imitation, authority, and historical continuity, portraying transplantation as a common and often effective mechanism of legal change.

This view has been widely contested. Kahn-Freund (1974) warned that legal transplants are highly sensitive to political and institutional context, particularly in areas such as criminal justice that are closely tied to state power and social control. From a more radical position, Legrand (1997; 2006) rejected the possibility of meaningful legal transplantation altogether, arguing that law is inseparable from culture, language, and legal consciousness, and that transplanted norms inevitably change their meaning in the receiving system. Teubner (1998) similarly emphasized that transplanted laws often act as "legal irritants," producing unexpected institutional effects rather than replicating the original model. Damaška (1997) likewise demonstrated that differences in state organization and procedural traditions fundamentally shape how legal institutions function, suggesting that transplantation outcomes depend on deeper structural features of legal systems rather than formal legal borrowing alone.

More recent scholarship has shifted from abstract debates toward identifying concrete factors that shape the viability of legal transplants. Graziadei (2009) and Birnhack (2012) highlight

the role of authority, prestige, and professional networks, while Siems (2018) offers a structured framework for analysing transplantation by reference to historical legacies, legal families, political incentives, and socio-economic conditions. Berkowitz, Pistor, and Richard (2003a) further argue that the effectiveness of transplanted legal institutions depends on "receptive transplantation," meaning the degree to which imported rules are adapted to local institutional capacity and legal culture (p.179). Twining (2005) expands the discussion beyond bilateral borrowing, emphasizing the complexity of legal diffusion in a globalized world shaped by development assistance, international organizations, and transnational professional communities. Michaels (2006) and Frankenberg (2013) similarly stress that modern legal transfers often occur through hybrid processes of translation, negotiation, and reinterpretation rather than direct imitation. Örücü (2002) and Nelken (2001) further emphasize the importance of legal culture and institutional environment in shaping the reception of transplanted rules, while Cotterrell (2006) highlights the role of social institutions and professional communities in determining whether legal change becomes embedded in practice.

This literature pays particular attention to transitional and post-authoritarian states, where legal transplantation is frequently driven by external assistance and reform agendas aimed at breaking with punitive or discredited legal traditions (Graziadei, 2009; Birnhack, 2012; Siems, 2018; Berkowitz et al., 2003a). Comparative studies of post-socialist legal reform, including Pistor (2000), Ajani (1995), and deLisle (1999), demonstrate that externally supported reforms often produce institutional hybridity, in which imported legal models coexist with inherited administrative practices. Carothers (2006) and Trebilcock and Daniels (2008) similarly show that rule-of-law assistance projects frequently encounter implementation gaps when professional training, institutional incentives, and legal culture are not transformed alongside legislation.

These discussions are directly relevant to the present dissertation. Juvenile probation is not merely a legal rule but a complex institutional practice embedded in professional cultures, inter-agency cooperation, and normative assumptions about youth, responsibility, and rehabilitation. Existing transplantation scholarship provides the theoretical tools necessary to analyze whether and how such an institution can be transferred across legal systems. However, this literature has largely focused on private law, constitutional reform, economic regulation, or commercial law harmonization (Watson, 1993; Twining, 2005; Siems, 2018), leaving criminal justice – and juvenile justice in particular – comparatively underexplored. Although criminological scholarship has examined probation and youth justice institutions (Garland, 1985; Bottoms, Gelsthorpe & Rex, 2001), these studies rarely analyze probation through the lens of legal transplantation or donor-supported institutional reform. This dissertation addresses that gap by examining juvenile probation simultaneously as a component of juvenile justice and as a product of cross-jurisdictional legal transplantation, offering the first systematic analysis of the Canadian-supported juvenile justice reform project in Ukraine.

Therefore, this dissertation applies transplantation theory to the empirical study of juvenile justice reform in a post-socialist context, using archival project materials, legislative analysis, and institutional practice to examine how a donor-supported reform was translated into a functioning legal institution. In doing so, the dissertation contributes to emerging empirical approaches to transplantation that emphasize implementation and institutional adaptation (Berkowitz et al., 2003b; Merry, 2006; Twining, 2005; Siems, 2018).

More specifically, the dissertation contributes to transplantation scholarship in three ways. First, it extends transplantation analysis into the field of juvenile justice, which remains largely absent from comparative transplantation studies. Second, it provides the first systematic academic

examination of the Canadian-supported JJRP in Ukraine as a process of institutional transplantation rather than simply international cooperation. Third, by combining doctrinal, comparative, and archival analysis, it demonstrates how legal transplantation unfolds not only through legislation but through training, pilot programs, professional adaptation, and institutional negotiation – processes emphasized in socio-legal accounts of legal diffusion (Merry, 2006; Twining, 2005; Cotterrell, 2006). The dissertation's central theoretical contribution is the concept of "layered reception analysis," which I develop and apply here. Rather than treating transplantation as a single legal event, it examines how the Canadian juvenile probation model was filtered through successive layers of the Ukrainian system: the historical layer, shaped by imperial and Soviet legacies; the legislative layer, where reform was translated into statutory form; the institutional layer, where new structures were embedded within existing bureaucratic arrangements; the professional layer, where judges, probation officers, and other actors interpreted and applied the reform; and the practical layer, where the model encountered everyday implementation constraints. Accordingly, the concept dictates the questions that must be asked in assessing transplantation: how the transplant interacts with historical legacies, how it is translated into legislation, how it is embedded in institutions, how it is understood by legal professionals, and how it functions in everyday practice. This layered approach reflects the structure of the dissertation and helps explain why different elements of the transplant were received with different degrees of depth and effectiveness. By grounding the Canadian–Ukrainian juvenile probation reform in broader theoretical literature, the dissertation demonstrates that the transplantation of probation to Ukraine represents a historically contingent process of selective adaptation shaped by institutional capacity, legal culture, and external reform assistance.

Literature on Juvenile Justice and Probation

The Canadian context

The Canadian literature on juvenile justice and probation is extensive and can be grouped into several interrelated strands: (1) historical formation and ideological foundations; (2) legislative evolution and legal regulation; (3) probation as a core juvenile justice instrument; and (4) structural critiques and contemporary challenges.

A substantial body of historical scholarship traces the emergence of a distinct juvenile justice system in Canada from the late nineteenth century onward. Scholars such as Carrigan (1998), Finlay (2008), Sangster (2002), and Bullen (2001) situate early juvenile justice within the broader "child-saving" movement, emphasizing the shift from punitive criminal law to welfare-oriented and reformative approaches. This literature highlights how informal probationary practices developed through cooperation between courts and youth's aid societies well before their formal codification, establishing community supervision as a central feature of Canadian youth justice. At the same time, critical historians caution that these early reforms were embedded in moral regulation and class- and gender-based social control, particularly affecting working-class, immigrant, Indigenous, and female youth (Kline, 1992).

Another major strand of scholarship focuses on the legislative evolution of juvenile justice, examining the transition from the JDA (1908) to the YOA (1984), and ultimately to the YCJA (2003). Doob and Cesaroni (2004) and Bala (2012) provide detailed doctrinal and policy analyzes of these reforms. The literature generally agrees that the JDA embodied a welfare-based *parens patriae* model that prioritized treatment over due process, often at the expense of youth's procedural rights. In contrast, the YOA is described as introducing a rights-based, accountability-oriented framework influenced by the Canadian Charter of Rights and Freedoms, though scholars criticize it for inconsistency, overuse of custody, and the absence of coherent sentencing principles

(Doob & Cesaroni, 2004; Corrado & Markwart, 1994). This doctrinal literature explains how probation became embedded in Canadian youth justice legislation, but it does not examine how these legal concepts might function when introduced into different legal systems.

The YCJA has generated the most extensive contemporary scholarship. Authors such as Bala et al. (2009), Doob and Sprott (2006), and Latimer (2011) analyze the YCJA's explicit commitment to proportionality, restraint in the use of custody, rehabilitation, and community-based responses. This literature consistently identifies probation as the most frequently used and strategically important youth sentence under the YCJA. Particular attention is paid to statutory innovations such as extrajudicial measures, pre-sentence reports, reintegration planning, and structured community supervision, which collectively position probation as the primary mechanism through which rehabilitative ideals are operationalized (Bala, 2015; Doob & Cesaroni, 2004). In this scholarship, probation is treated primarily as a domestic sentencing tool within Canadian criminal justice policy rather than as a transferable institutional model.

A further body of research examines probation practice and its limitations. Empirical and socio-legal studies reveal persistent tensions between rehabilitation and control in probation officers' roles. Latimer (2011), Haqanee et al. (2015), and Umamaheswar (2013) document how probation work has increasingly shifted toward risk management, administrative compliance, and service brokerage, often limiting meaningful relational engagement with youth. Scholars also highlight uneven access to community programs, regional disparities, and weak inter-agency coordination as structural barriers to effective probation (Sangster, 2002a). These critiques demonstrate that even within Canada, probation functions as a hybrid institution balancing rehabilitative ideals with managerial realities, which is relevant to evaluating probation as a transplanted model.

Taken together, Canadian scholarship offers a rich, theoretically informed, and empirically grounded account of juvenile justice and probation as evolving institutions shaped by shifting legal philosophies, social values, and political pressures. However, while this literature thoroughly examines Canada's internal development and critiques its ongoing challenges, it does not consider Canadian juvenile probation as an exported legal model, nor does it assess how Canadian principles function when transplanted into a different legal, historical, and institutional context. This gap matters because transplantation is a practical stress test: it shows which elements of the Canadian model are essential and which depend on Canadian conditions. Studying probation in a recipient jurisdiction can therefore deepen understanding of the Canadian system itself by revealing its strengths and weaknesses, identifying what travels well, and exposing assumptions that remain invisible at home. It can also surface unexpected local adaptations and hybrid practices that suggest new ways the model might be improved. More broadly, this inquiry advances scholarship on juvenile justice reform by explaining how legal ideas are interpreted, negotiated, and implemented across contexts, and by clarifying the limits and dynamics of legal transplantation.

This dissertation builds on Canadian doctrinal and socio-legal analyzes of probation by examining how the Canadian juvenile probation model functioned when introduced into a post-Soviet legal system through international technical assistance. In doing so, the dissertation shifts the analytical focus from the internal evolution of Canadian youth justice to the external circulation of its institutional practices. More specifically, the dissertation contributes to scholarship in three ways. First, it connects Canadian juvenile justice literature with comparative legal transplantation theory, fields that have not been studied together. Second, it provides the first systematic academic analysis of the JJRP, drawing on archival materials obtained through the ATIP request and

legislative analysis of probation reform. Third, it offers an empirical case study of probation as a transplanted institution, demonstrating how training programs, pilot projects, legislative drafting, and institutional negotiation mediated the transfer of Canadian youth justice principles into Ukrainian law and practice. By situating Canadian juvenile probation within the broader circulation of legal institutions across jurisdictions, the dissertation reframes probation not only as a core juvenile justice instrument but also as a legal transplant whose meaning and effectiveness depend on institutional context. In this way, the study contributes both to Canadian youth justice scholarship and to comparative research on legal transplantation in criminal justice reform.

The Ukrainian context

The scholarly literature on juvenile justice in Ukraine is extensive but fragmented and is best systematized across three broad historical periods: the Russian Empire, the Soviet period, and independent Ukraine. Each body of literature addresses distinct institutional logics and reform trajectories, yet none examines juvenile probation as a transplanted institution or analyzes Canadian-Ukrainian cooperation in juvenile justice reform. Taken together, these studies provide important historical and doctrinal context, but they remain largely descriptive and internally focused, leaving the international dimension of Ukraine's juvenile justice reform underexplored.

First, literature on juvenile justice under the Russian Empire is generally evaluative and historically affirmative. Legal historians emphasize the gradual recognition of youth as a distinct legal category and the emergence of differentiated criminal responsibility, mitigated sanctions, and early institutional specialization (Santashov et al., 2024; Shyshkov et al., 2020; Chepurko & Lysenko, 2007; Romanyuk, 2021; Sidorkin, 2009; Zubov, 2004; Kanchabala, 2020). Scholars highlight the role of conscience courts, judicial reforms of the nineteenth century, and the establishment of specialized juvenile courts in the early twentieth century as evidence of an

evolving, albeit incomplete, rehabilitative orientation (Anisimov, 2011; Kaminska, 2022). This literature frames the imperial period as one of legal experimentation and humanization, interrupted rather than fulfilled (Solonnikova & Bondar, 2020; Chenkova, 2014). While these studies document early differentiation of youth within criminal law, they do not connect imperial practices to later institutional developments such as probation or to broader comparative debates about the circulation of youth-justice models across jurisdictions.

Second, the literature on juvenile justice during the Soviet period is predominantly critical. Scholars describe Soviet juvenile justice as embedded in a centralized, punitive, and administrative governance model, where legal responses to youth offending prioritized state control and discipline over rights-based adjudication (Zorkina, 2017; Atamanov, 2019). Although formal distinctions between adults and youth existed, authors consistently argue that Soviet juvenile justice failed to develop community-based supervision or probationary mechanisms and relied instead on institutionalization and administrative discretion (Omarova, 2023; Kaminska, 2022; Ryndzyunskyi & Savinska; Nesynova, 2023). This body of literature explains the absence of a probationary tradition in Ukraine and the persistence of custodial and bureaucratic approaches to youth offending. However, these works typically analyze Soviet juvenile justice as a closed institutional system and do not examine how this legacy later shaped Ukraine's capacity to receive foreign reform models in the post-independence period.

Third, literature on juvenile justice in independent Ukraine focuses on post-1991 reform efforts, particularly the introduction of procedural safeguards, alignment with international standards, and the adoption of the Criminal Procedure Code (2012) and the Law "On Probation" (2015). Ukrainian scholars analyze institutional design, legislative debates, and implementation challenges of probation and juvenile probation (Husak, 2025; Yatsyshyn, 2010; Yagunov, 2020;

Shportiuk, 2020; Ivchuk, 2019; Dufeniuk et al., 2021). While international influence is frequently acknowledged, it is usually framed in relation to European standards and donors rather than transatlantic cooperation (Yagunov, 2020; Shportiuk, 2020). References to foreign experience remain general and descriptive, without comparative or analytical depth. In this literature, probation reform is typically presented as part of Ukraine's broader penal modernization or European integration process, rather than as a case of legal transplantation involving specific donor institutions and reform mechanisms.

I was unable to locate any scholarly work that treats the Canadian–Ukrainian experience in juvenile justice reform as a distinct object of analysis. Despite an extensive review of Ukrainian- and English-language literature on juvenile justice, probation, and post-Soviet legal reform, no study examines Canadian–Ukrainian cooperation in juvenile justice reform in a systematic or sustained manner. Likewise, no research analyzes juvenile probation in Ukraine through the lens of legal transplantation, nor reconstructs or critically assesses the JJRP as a coherent reform process with identifiable objectives, mechanisms, and outcomes. More broadly, the literature does not engage in a comparative analysis of the developmental trajectories of Canadian and Ukrainian juvenile justice or juvenile probation systems. In these accounts, Canada's role remains largely invisible: it is neither theorized nor critically evaluated, and juvenile probation is presented as a domestically driven institutional innovation rather than as a product of cross-jurisdictional legal influence. This absence in the existing literature underscores the need for the present dissertation and leads directly to the delineation of its conceptual contribution.

This dissertation builds on Ukrainian doctrinal and historical studies by situating probation reform within a broader comparative and institutional framework, while extending transplantation scholarship into the field of juvenile justice reform in post-Soviet legal systems. More specifically,

the dissertation contributes to the literature in several ways. First, it provides the first systematic academic reconstruction of the JJRP in Ukraine, drawing on archival materials obtained through the ATIP request and legislative analysis of probation reform. Second, it conceptualizes juvenile probation in Ukraine not merely as a domestic policy reform but as a historically conditioned legal transplant shaped by international technical assistance, institutional legacies, and local adaptation. Third, it introduces a comparative perspective that connects the evolution of Ukrainian juvenile justice with Canadian probation practice, thereby linking two bodies of scholarship that have previously developed in isolation. By addressing these gaps, the dissertation expands the analytical scope of Ukrainian juvenile justice scholarship beyond doctrinal reform and institutional description, situating probation reform within the broader dynamics of legal transplantation and international rule-of-law assistance. In doing so, it contributes an empirically grounded case study demonstrating how foreign justice models are translated, negotiated, and reshaped within post-Soviet legal systems.

Conceptual Contribution

This dissertation makes a distinct conceptual contribution at the intersection of juvenile justice scholarship and legal transplantation theory. First, it reconceptualizes juvenile probation in Ukraine not merely as a domestic institutional reform, but as the outcome of a cross-jurisdictional legal transplantation process, shaped by foreign expertise, donor priorities, and local reception. By doing so, it shifts the analytical focus from formal legislative change to the movement, adaptation, and transformation of legal ideas and practices across legal systems. Although Ukrainian scholarship discusses probation reform, juvenile justice development, and international assistance in general terms, the Canadian contribution to the introduction of juvenile probation in Ukraine has not been studied as an independent object of analysis. Existing literature typically mentions international support for probation reform only briefly. It does not examine juvenile probation

specifically. It also does not analyze the JJRP as a coherent donor initiative. Moreover, the introduction of juvenile probation in Ukraine has never been examined through the lens of legal transplantation. As a result, the processes through which Canadian legal ideas, institutional practices, and professional models were transferred, adapted, and embedded in the Ukrainian legal system remain unexplored.

Second, the dissertation develops and applies "layered reception analysis", which disaggregates reception into distinct historical, legislative, institutional, professional, and practical layers and thereby offers a transferable analytical framework for explaining why different components of a single transplant are absorbed with differing degrees of depth and effectiveness.

Third, the dissertation extends legal transplantation theory into the field of juvenile justice, which has remained largely peripheral to transplantation debates traditionally focused on private law, constitutional reform, or economic regulation. It demonstrates that juvenile justice institutions – because of their deep social embeddedness, reliance on professional discretion, and sensitivity to historical and ideological legacies – constitute a particularly revealing site for examining the limits, risks, and conditions of viable legal transplantation. Our application of "layered reception analysis," which structured the methodological approach and dictated the questions asked regarding the impact of each layer, demonstrated that the viability of the Canadian juvenile probation model depended not on the formal borrowing of legal rules alone, but on the interaction of historical legacies, legal culture, institutional capacity, professional discretion, and political conditions. Therefore, this dissertation provides empirical confirmation of that multi-factorial account in the field of juvenile and, more broadly, criminal justice, in which legal transplantation has rarely been tested. It also analyzes a transfer mechanism of donor-funded technical assistance,

through which the legal model was transplanted by professional exchange, training, pilot projects, and institutional learning (Spamann, 2009; Siems, 2018).

Fourth, the study develops a comparative socio-legal framework that places Canadian and Ukrainian juvenile probation systems in dialogue, not to assess formal convergence, but to explain why certain elements of the Canadian model were adopted, reshaped, resisted, or even rendered ineffective in the Ukrainian context. This approach moves beyond descriptive comparison and offers a contextual explanation of how legal transplants operate in transitional, post-authoritarian legal systems. In doing so, the dissertation emphasizes the multi-factorial character of legal transplantation. It shows how historical legacies, legal culture, institutional capacity, professional practice, and political context interact to shape transplant outcomes.

Finally, by reconstructing and analyzing the JJRP Project in Ukraine as a coherent reform trajectory, the dissertation fills a clear gap in the literature. No prior study has reconstructed the Canadian-supported juvenile justice reform initiative in Ukraine using primary project documentation. It provides the first systematic, evidence-based assessment of this reform initiative and situates it within broader debates on transnational legal reform. The dissertation therefore, contributes to legal transplantation scholarship by showing how donor-supported justice reforms operate as negotiated processes of translation, adaptation, and institutionalization rather than one-directional transfers of legal models. In doing so, the dissertation not only identifies the structural, institutional, and cultural problems that emerged during the transplantation process, but also examines why these problems arose, how similar challenges might be avoided in future reform initiatives, and how the juvenile probation system in Ukraine can be strengthened and improved. Through this dual analytical and normative contribution, the study aims to inform both scholarly debate and practical policy-making in the field of juvenile justice reform.

Structure of the Dissertation

This dissertation is structured to move progressively from theory to history, from domestic legal development to transnational reform, and finally to evaluation and prescription. Each chapter builds on the previous one, allowing to follow the legal, institutional, and conceptual trajectory that culminates in the transplantation of Canadian juvenile probation into Ukraine.

Chapter I establishes the theoretical foundation of the dissertation by examining the concept of legal transplantation. It introduces the key definitions, classifications, and interdisciplinary dimensions of legal transplants and explains why states borrow foreign legal models. The chapter then critically engages with competing scholarly views on the viability and success of legal transplantation, identifying the historical, ideological, social, and economic factors that shape transplant outcomes. This chapter provides the analytical framework used throughout the dissertation to assess whether, how, and under what conditions the Canadian juvenile probation model could be meaningfully received in Ukraine.

Building on this theoretical base, Chapter II turns to the donor system and examines the development of juvenile probation in Canada. It traces the historical evolution of Canadian youth justice from the early probation practices prior to 1908 through the JDA (1908), the YOA (!984), and the YCJA of 2003. The chapter situates juvenile probation within Canada's broader youth justice philosophy and explores persistent challenges, including gender-specific issues, the impact on marginalized groups, and the tension between care and control in probation practice. This chapter is essential for identifying which elements of the Canadian model were later selected for transplantation and why they were viewed as desirable.

Chapter III shifts the focus to the receiving context by examining the historical development of juvenile justice in Ukraine prior to 2003. It traces the evolution of juvenile

responsibility and procedural treatment from the Russian Empire through the Soviet period and into early independence. By analysing imperial reforms, Soviet centralization, and post-Soviet transitional arrangements, the chapter demonstrates that juvenile probation did not emerge organically in Ukraine. Instead, the legal culture remained shaped by custodial, administrative, and corrective approaches. This historical analysis explains the structural conditions that made Ukraine both receptive to foreign reform and vulnerable to transplantation difficulties.

Following this historical groundwork, Chapter IV examines the concrete process through which juvenile probation was introduced in independent Ukraine from 2004 onward. It focuses on the JJRP and traces how international cooperation, pilot programs, training initiatives, and legislative reforms culminated in the adoption of the 2015 Law on Probation. The chapter analyzes the legislative debates, institutional design choices, and post-adoption developments, including the integration of restorative justice. This chapter shows how juvenile probation entered Ukrainian law not as a standalone reform, but as part of a broader and externally supported transformation of juvenile justice.

With the empirical foundations established, Chapter V undertakes a comparative and evaluative analysis of juvenile probation as a legal transplant. Using the framework developed in Chapter I, the chapter compares Canadian and Ukrainian juvenile justice trajectories, paying particular attention to differences in legal families, and contrasting political and economic environments. It classifies the Canadian–Ukrainian juvenile probation reform as a specific type of legal transplant and assesses whether institutional preconditions necessary for viable transplantation were present.

Finally, Chapter VI evaluates the practical outcomes of the transplantation process. It examines how transplanted legal and institutional structures function in practice and identifies the

key structural and operational barriers undermining effectiveness. These include the absence of specialized juvenile judges, formalistic judicial practices, weak individualization in pre-trial reports, fragmented inter-agency cooperation, regional disparities, and the impact of martial law. The chapter concludes by assessing the overall effectiveness of the transplant and proposing ways to overcome identified barriers, offering concrete recommendations for strengthening juvenile probation in Ukraine and avoiding similar shortcomings in future reform initiatives.

Taken together, the chapters advance the central argument of this dissertation: that Ukraine's juvenile probation system developed not simply through domestic legal reform, but through a complex process of legal transplantation shaped by Canadian governmental involvement, domestic institutional constraints, and historical legal legacies. The study argues that the relative success or limitations of the transplantation depended less on the formal adoption of foreign legal rules than on the interaction between donor-driven reform initiatives and Ukraine's existing legal culture, institutional capacity, and justice traditions. By answering how and why juvenile probation developed under Canadian influence, the dissertation demonstrates that legal transplantation in the field of juvenile justice operates as a negotiated and context-dependent process rather than a straightforward transfer of legal models.

Chapter I. Legal Transplantation

Introduction

The practice of legal transplantation – the process of borrowing and adapting legal norms from one jurisdiction to another – has become an increasingly prevalent method of legal reform in the globalized world. This phenomenon is driven by the recognition that domestic legal systems often face challenges that might be effectively addressed by incorporating successful foreign legal practices. As noted by Michaels and Frankenberg (2013) and Zweigert and Kötz (1998), nations frequently turn to the legal solutions of others to remedy deficiencies within their own legal frameworks.

However, the transplantation of laws is not without its complexities and controversies. While the potential benefits of adopting proven legal frameworks are considerable, the process is fraught with challenges. A critical point of contention, as highlighted by commentators and practitioners alike, is that legal rules successful in one context may not necessarily yield the same results in another due to differing social, economic, historical, and institutional contexts (Jupp, 2014; Damaška, 1997, p.839). These tensions are particularly evident in Ukraine's post-independence legal reforms, where foreign-inspired justice policies have been introduced into a legal system shaped by Soviet legacies, institutional fragmentation, and ongoing political transformation. The reception of probation-based youth justice measures in Ukraine therefore reflects a process of translation and negotiation rather than straightforward adoption. Reviewing these contextual factors is essential for understanding why Canadian juvenile probation could not be simply transferred to the Ukrainian legal system, and why its outcomes diverged from those achieved in Canada. A law that functions effectively within a stable and coherent institutional environment may be interpreted, applied, or even resisted differently in a system shaped by entrenched ideological views, historical experiences, or conflicting legal values. Likewise,

economic limitations, institutional incapacity, or administrative underdevelopment may hinder implementation irrespective of the quality or design of the transplanted rule. Social resistance – especially when reforms challenge dominant cultural norms, professional hierarchies, or political interests – creates additional layers of complexity that cannot be resolved merely by introducing foreign legal language into domestic law. The critique often levelled at legal transplantation centers on the inadequacy of imported laws to mesh seamlessly with the local legal environment. What functions well in one country's well-established context may not suit another's unique legal, social, or economic landscape.

Despite these challenges, the practice of legal transplantation continues to be widely employed (Graziadei, 2009; Siems, 2018; Berkowitz et al., 2003a), underscoring a crucial aspect of modern legal systems' evolution in an interconnected world. A common criticism is that these transplanted laws, while perhaps theoretically sound, may not fit the practical or cultural realities of the adopting country, leading to questions about their appropriateness and adaptability (Legrand, 1997a; Berkowitz et al., 2003a; Siems, 2018). This chapter will explore the dynamics of legal transplantation, examining the factors that contribute to both its successes and failures.

This chapter begins by defining the concept of legal transplantation and clarifying its object, before outlining key classifications and situating transplantation as an interdisciplinary analytical approach. The chapter then examines the reasons legal transplants occur, distinguishing between general patterns of legal borrowing and specific drivers such as authority, prestige and imitation, imposition, chance and necessity, expected legal efficacy, and political, economic, and reputational incentives. It subsequently reviews competing scholarly views on legal transplantation and identifies the conditions associated with successful or viable transplants. The final part of the chapter contextualizes transplantation by analysing historical, colonial,

ideological, linguistic, economic, and legal-family factors, and concludes with a discussion of malicious legal transplants, thereby providing a nuanced framework for assessing legal transfer in practice. To connect this broader theory to the empirical case study developed later in the dissertation, the chapter also lays the groundwork for what this dissertation describes as a layered reception analysis. In simple terms, this means examining how a transplanted institution is received through several layers of the receiving system, including historical legacies, legislative choices, institutional structures, professional practices, and practical implementation. This idea is introduced here only briefly as an analytical orientation and is developed more fully in the later chapters on the Canadian–Ukrainian juvenile probation reform.

Methodologically, the chapter relies primarily on doctrinal and comparative analysis of legal transplantation scholarship in order to clarify key concepts, map competing theoretical positions, and identify the analytical criteria used later in the dissertation to evaluate the Canadian–Ukrainian probation reform. Elements of the CDA are also used to examine how transplantation is framed in legal scholarship and reform narratives, particularly in relation to claims about legal efficacy, institutional transfer, and adaptation. Together, these methods establish the conceptual foundation for the empirical and comparative analysis that follows in subsequent chapters.

The Concept of Legal Transplantation

Definition

The notion of legal transplantation has evolved significantly since its introduction in the latter half of the 20th century, becoming a cornerstone concept within the field of comparative law. This concept, primarily brought to the forefront by Alan Watson (1974), underscores the dynamic processes through which legal systems across different jurisdictions influence and shape each other. Mattei (1994) aptly notes that changes in legal systems are frequently attributable to legal

transplants, highlighting the extensive impact this phenomenon has had on global legal practices. At the same time, later scholarship has clarified that transplantation involves not simply the movement of isolated provisions, but an act of legal migration shaped by the interpretive choices of institutional actors, cultural reception, and structural compatibility (Ngugi, 2007; Geller, 1994).

Alan Watson is widely regarded as the pioneering scholar behind the concept of legal transplantation. His seminal work, "Legal Transplants: An Approach to Comparative Law" (Watson, 1974), introduced this concept, emphasizing the mobility of legal rules, institutions, and structures across different legal systems (Mańko, 2024, p.95). Watson's innovative approach challenged the traditional views of comparative law, which often focused more narrowly on the distinctions between legal systems rather than on their interconnections and mutual influences. His insistence that "borrowing (with adaptation) has been the usual way of legal development" (Watson, 1974, p. 5) explicitly rejected the idea that legal evolution is driven primarily by endogenous needs. Instead, he foregrounded external sources as the dominant drivers of doctrinal change.

Watson argued that legal systems are not insular entities but are profoundly interconnected. Defined by Watson (1993) as "the moving of a rule or a system of law from one country to another, or from one people to another," (p.21), the concept of legal transplantation underscores the portability of legal norms across jurisdictions. Wise (1990) also described legal transplantation as "the movement, the continual flow, of legal paradigms and ideas across national frontiers" (p.1). Subsequent comparative scholars have further refined and contextualized this definition, noting that a legal transplant is "a body of law or individual legal rule that was copied from a law or rule already in force in another country, the host country, rather than developed by the local legal community, the receiving country" (Ngugi, 2007, p.464). Similarly, Geller (1994) defines it as

“any legal notion or rule which, after being developed in a ‘source’ body of law, is then introduced into another, ‘host’ body of law” (p.199), emphasising the asymmetry between origin and reception.

Watson observed that laws often operate in contexts far removed from their origins, suggesting that the transplantation of legal norms from one jurisdiction to another is both a natural and effective process. To substantiate his arguments, he provided detailed historical examples, including those from Ancient Roman law, demonstrating the long-standing practice of legal borrowing and adaptation across different eras and societies (Watson, 1994, 1995; Goldbach, 2019, p.586). Watson further attributed the prevalence of transplants to professional epistemology: he argued that lawyers often prefer to imitate laws and principles from other jurisdictions rather than react directly to solve societal problems with an ‘original’ rule or principle (Watson, 1974, p.95). This tendency reflects not only institutional conservatism but also the status of foreign law as a source of doctrinal prestige, which was later echoed by Mańko (2024) in his analysis of legal survivals and revivals.

In his later works, Watson further refined the definition of legal transplantation. He described it as “the moving of a rule or system of law from one country to another” (Watson, 1994, p.3) and posited that legal rules and concepts “can survive without any close connection to any particular people, any particular period of time, or any particular place” (Watson, 1996, p.81). As Watson (2000) put it: “A society makes law; the society changes, politically or economically, but the law remains the same or little changed” (p.1). This formulation highlights the relative stability of legal norms and their persistence across changing social conditions. However, as contemporary commentators note, Watson’s account tends to overemphasize doctrinal continuity and understate

the reshaping that transplanted norms undergo once situated within new institutional, political, or cultural environments.

Legal transplantation involves more than the mere copying of laws from one system to another; it encompasses the adaptation and integration of these laws into the receiving legal system. This process is influenced by various factors, including the compatibility of the transplanted law with existing legal principles, the socio-political context of the receiving jurisdiction, and the mechanisms through which the law is introduced and implemented. Since Watson introduced the concept, the study of legal transplants has flourished, becoming a standard methodological approach within comparative law. Samuel (2012) references the concept in his book on comparative law methodologies, highlighting its significance in the discipline. Despite some scholars suggesting that the study of legal transplants may have reached a saturation point (Cohn, 2010, p.583), the ongoing discussions and debates in scholarly literature indicate that the concept continues to evolve and resonate (Goldbach 2019; Wang 2024). The shift in scholarship from celebrating transplants to analyzing their socio-cultural constraints underscores that transplantation is not inherently successful; rather, it is contingent upon the interpretive environment into which the borrowed rule is inserted.

By the beginning of the 21st century, the term “legal transplant” had transitioned from being a novel concept introduced by Watson to a universally recognized term within legal scholarship. This evolution underscores the relevance and utility of the concept in understanding the complexities of how legal systems develop, interact, and adapt in an increasingly interconnected world. Legal transplantation, as defined and developed by Alan Watson and subsequent scholars, offers a profound insight into the dynamics of legal change and development

across jurisdictions. It provides a framework for understanding how legal ideas migrate and adapt, shaping and reshaping legal landscapes around the world.

Object of Legal Transplantation

As the preceding discussion demonstrates, the concept of legal transplantation is interpreted broadly within the scholarly literature. This breadth raises an important analytical question: what exactly constitutes the object of a legal transplant? According to Watson (1974), "receptions and transplants come in all shapes and sizes" (p.21). Watson (1978) also offers one of the earliest and most influential attempts to define this. He notes that what is transplanted is often not the full legal system but rather "very often the idea" behind a particular legal rule (p.315). Building on this conceptualization, Watson later refined his definition by specifying the types of legal elements that can be transplanted. According to Watson (1994), the objects of transplantation include "rules – not just statutory rules – institutions, legal concepts and structures that are borrowed, not the spirit of the legal system" (p.2). Through this formulation, Watson clearly demarcates between what is transferable (rules, institutions, structures) and what fundamentally is not (the "spirit" of the legal system). This distinction is significant because it clarifies the limits of legal borrowing: while discrete legal rules and institutional models may be adoptable across jurisdictions, the underlying normative foundations and socio-cultural assumptions that give them meaning in their original context remain non-transferable. This asymmetry becomes a central point of critique in later scholarship and forms the basis for arguments about the risks and complications of legal transplantation across differing legal traditions.

Case-studies show that the object of legal transplants can be diverse (Siems, 2018, p.104; Ng, 2014), it ranges from a text of a particular statute (Zweigert & Kötz, 1998, p.51) to citations to foreign judgments in court decisions (Gelter &Siems, 2014, p.35). Moreover, contemporary

research expands this understanding even further by recognising that legal transplantation may involve the transmission of broader policy frameworks and conceptual constructs. For example, the spread of Western human rights concepts to other parts of the world illustrates the transplantation not just of legal rules but of normative ideas (Halpérin, 2009). Furthermore, even legal culture, expressed through legal education, methods, and mentalities, can be transplanted (Twining, 2009, p.279). There is no restriction as to the branch of law where legal transplantation is observed: it could equally be present in criminal or civil law. The recognition of hierarchy of transplantability, where some legal elements move more easily across borders than others, has been a core theme of critical scholarship. Kahn-Freund's classic analysis is particularly instructive in this regard. He argues that not all areas of law are equally receptive to transplantation because some fields are organically and deeply rooted in domestic institutional practices. According to Kahn-Freund, procedural law constitutes "a highly organic species of law, whose enduring force results not from a broad constituency among the population, but from a highly committed, albeit relatively small elite group of stakeholders comprised of judges and lawyers" (Kahn-Freund as cited in Richardson, 2018, p.103). This observation highlights that certain objects of transplantation, such as procedural rules, derive their authority, legitimacy, and functionality from the internal professional culture of the judiciary and legal practitioners rather than from society at large.

The implication is twofold:

1) Because procedural law is sustained by a specialized interpretive community, its transplantation requires not only the transfer of textual rules but also the transfer (or reconstruction) of the interpretive practices, professional norms, and institutional

routines of those elites. Without these, the transplanted procedural rule risks losing its operative effectiveness (Legrand, 1997a; Goldbach, 2019).

2) The more "organic" and system-embedded a legal object is, the less likely it is to survive transplantation without distortion. Unlike statutory provisions, which can be implemented through formal legislative adoption, procedural norms are embedded within patterns of judicial behaviour, legal education, advocacy cultures, and institutional hierarchies. Thus, their transplantation faces significantly greater constraints (Wang, 2024; Carvalho, 2019).

This directly challenges Watson's assumption that rules, institutions, and legal concepts can be transplanted freely while maintaining functionality. Whereas Watson emphasizes the technical portability of legal rules, Kahn-Freund stresses the sociological embeddedness of certain types of law, suggesting that rules cannot be meaningfully separated from the professional and institutional setting that sustains them. One prominent voice in this area is Pierre Legrand (1997), who has been critical of the assumption that legal transplantation is merely about moving rules from one system to another. Legrand's insights point to a deeper, more fundamental challenge: the transferability of the underlying philosophical and cultural dimensions of law. According to Legrand (1997), while legal rules themselves (the statutes, codes, and regulations) can be physically relocated, the "epistemological theories and legal cultures" that underpin these rules do not so easily make the journey (p.117). He argues that a "crucial element of the ruleness of the rule – its meaning – does not survive the journey from one legal culture to another" (Legrand, 2006, p.523). Legrand's critique suggests that a legal rule, far from being a neutral technical instrument, is deeply conditioned by the historical practices, interpretive traditions, and cultural assumptions of its place of origin. Legal systems are not merely collections of rules but are deeply rooted in

the specific epistemological frameworks and cultural practices of their societies. These frameworks provide the context through which legal rules are interpreted and applied. When legal norms are uprooted from their original context and placed into a different one, the foundational beliefs, habits of thought, and societal norms that give these rules their meaning and effectiveness may not accompany them. Thus, while the text of the law can be moved, the contextual understanding that informs its application often cannot.

The interpretation of legal rules can vary significantly between different jurisdictions due to differing judicial philosophies, precedents, and interpretations of legal principles. What might be considered a straightforward application of the law in one culture could be contentious or interpreted entirely differently in another. This variability underscores the interpretive instability that accompanies transplantation and challenges the notion of functional equivalence between legal systems. Transplanted laws must be integrated into the existing legal frameworks of the new jurisdiction, which can be fraught with complexity. The new system may have fundamental legal principles that conflict with the imported rules, or there may be existing laws that cover similar territory but from a different angle. The process of making the foreign law fit within the local framework often requires adaptations that can alter the law's original purpose or effectiveness.

There is often a degree of resistance to foreign legal norms from within the recipient legal culture, which can stem from a perceived threat to national sovereignty, local traditions, or the established legal order. This resistance can hinder the full adoption and effective implementation of transplanted laws, leading to situations where the law exists on the books but is rarely enforced or respected in practice. Thus, while the physical forms of legal rules – such as statutes and codes – can be transferred across jurisdictions, the deeper epistemological theories and cultural nuances that give these rules their meaning and power often remain behind. This complexity reveals that

the object of legal transplantation cannot be treated as a neutral unit of legal knowledge; its transplantability depends on its degree of embeddedness within the original legal culture (Birnhack, 2012, p.35). In this sense, Watson's conceptualization must be qualified through the insights of Kahn-Freund, Legrand, and others who stress the contextual, interpretive, and institutional conditions upon which legal rules depend.

Classification of Legal Transplants

The concept of legal transplantation reflects a diverse set of methods through which legal systems across different jurisdictions influence each other. Watson (1994) suggested that no general classification of legal transplants could be adequately formulated due to the varied contexts and nuanced nature of each case (p.30). Despite this, some broad categories have been identified by scholars to help elucidate the types of legal transplants and the dynamics of their adoption.

Legal transplants are broadly classified into voluntary and involuntary types (Friedman, 2001, p.93). Voluntary legal transplants occur when a receiving country chooses to adopt a legal rule or institution from another jurisdiction, driven by the perceived effectiveness of the foreign law and a desire to replicate its success. It is also called borrowing (Birnhack, 2012, p.26). This type of transplant is often motivated by the cost-effectiveness of adopting existing frameworks rather than creating new laws from scratch, and it typically aligns with the internal preferences, cultural norms, and interests of the adopting country (Miller, 2003, p.845, p. 849).[9] In contrast, involuntary legal transplants happen under external pressures or through imposition (Birnhack, 2012, p.26), often during colonial rule or through modern economic or political coercion.[10] These

[9] An illustrative example of voluntary legal transplantation is Japan's reception of German civil law in the late nineteenth century, particularly in the drafting of the Civil Code of Japan (1896–1898). This borrowing formed part of a state-led modernization effort and reflected a conscious choice to draw on a foreign legal model perceived as suitable for domestic reform, rather than the result of external coercion.

[10] Involuntary legal transplantation is classically illustrated by the imposition of English common law and colonial legal institutions in British colonies such as India, where core legal frameworks, including criminal law, criminal

transplants are influenced significantly by the power dynamics between the originating and the receiving countries, where the degree of sovereignty maintained by the receiving country over the transplant decision can vary greatly (Siems, 2018, p.105, p.109). Additionally, legal transplants can be categorized based on motivations and mechanisms, such as prestige-driven transplants where countries adopt laws from jurisdictions considered more advanced or reputable to enhance their global standing or align with modernity and success (Graziadei, 2009, p.739). Transplants can also occur as part of transnational commitments, including treaties or requirements set by international organizations, reflecting a form of soft power or legal imperialism by the originating country.[11] For instance, international reports like the World Bank's Doing Business Reports often drive legal reforms in various countries, especially in transitional and developing economies, indicating how global institutions can shape national legal systems to align with international economic standards and practices (World Bank, 2019) .While Watson's reservations about over-classification underline the complexity of legal transplantation, the categories identified by later scholars provide valuable insights into the general trends and motivations behind these transplants.

Legal Transplantation as Interdisciplinary Approach

Legal transplantation represents a crucial intersection of legal studies with various other disciplines, including history, sociology, political science, and economics. This interdisciplinary approach enriches our understanding of how legal systems evolve, adapt, and influence each other across different cultural and national contexts. Historical research plays a pivotal role in

procedure, and court structures, were introduced through colonial administration rather than domestic choice. A more contemporary example can be seen in post-conflict settings such as Iraq after 2003, where significant elements of the legal and institutional framework were shaped under external political and economic pressure, limiting the scope for endogenous legal development.

[11] An illustrative example is the adoption of intellectual property laws by the World Trade Organization (the "**WTO**") member states pursuant to the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (the "**TRIPS**"), which required states to align domestic legislation with externally defined standards as a condition of participation in the global trading system. Such transplants are formally consensual but reflect asymmetrical power relations and limited regulatory autonomy for receiving states.

understanding legal transplantation. Watson's seminal works on legal transplants emphasized the importance of historical context in the study of comparative law. For instance, Watson (1974) stressed that legal rules are often detached from their original cultural and temporal settings, demonstrating this through examples from Ancient Roman law to modern European codifications (p.6). This historical perspective helps in tracing the origins and trajectories of legal norms and institutions as they move across different legal systems.

Sociology contributes significantly to the study of legal transplantation by focusing on the societal and cultural factors that affect the adoption and adaptation of foreign legal systems. It explores how legal norms are integrated into different societies and how they interact with existing cultural values and social structures. For example, sociologists might analyze how voluntary legal transplants are influenced by internal preferences and interests within a country, as described by Miller (2003), who noted that lawmakers often select foreign legal models based on their alignment with domestic cultural norms and the interests of powerful groups within the country (p.849). Political science provides insights into the power dynamics and governmental structures that facilitate or hinder legal transplantation. The role of political factors in legal transplantation is well noted by Siems (2018), who discussed how power relations between countries influence the nature of legal transplants, ranging from voluntary adoption to imposition (p.109). This discipline helps in understanding the motivations behind legal changes, especially in cases where legal systems are used as tools of soft power or as mechanisms of international influence and control. Economics offers a perspective on the financial aspects and incentives behind legal transplantation. The economic impact of adopting foreign legal systems can be significant, as countries may choose to adopt foreign laws to attract foreign investment, improve their standing in international trade, or streamline their economic policies to align with global standards. As noted by Miller (2003), the

cost-effectiveness of adopting an existing legal framework can be a compelling reason for legal transplantation, providing a practical alternative to developing new laws from scratch (p.845).

The interdisciplinary approach to legal transplantation also involves methodological innovations. By combining methods from law, history, sociology, political science, and economics, scholars can gain a more comprehensive understanding of how legal systems are shaped by a multitude of factors. In today's globalized world, the study of legal transplantation remains highly relevant. It provides critical insights into how nations navigate the complex interplay of maintaining sovereign legal traditions while engaging with the global legal environment. For instance, international economic assessments like the World Bank's Doing Business reports influence legal reforms in various countries, reflecting a form of neo-imperialism where global institutions shape national legal systems to align with international standards (Siems, 2018, p.109). The JJRP exemplifies this dynamic: although the adoption of the Canadian model was formally voluntary, Ukraine was nevertheless motivated by the prestige associated with Canadian practices and by the necessity to conform with international human rights and to harmonize with European Union (the "**EU**") practices. These pressures encouraged Ukraine to engage in a reform project that otherwise might not have been pursued with such intensity. Drawing on this literature and as the subsequent chapters will demonstrate, the JJRP highlights both the promise and the limitations of legal transplantation in a system still shaped by inherited structures and contemporary constraints. In conclusion, legal transplantation, as an interdisciplinary approach, enables a multifaceted examination of how legal systems develop through interactions with social, political, economic, and institutional contexts. This perspective not only enriches our understanding of law as a dynamic and adaptive field but also highlights the interconnectedness of legal changes with broader societal, historical, political, and economic developments.

Reasons of legal transplantation

General Trend of Legal Transplantation

Common widespread proliferation of legal transplantation is attributed to globalization (Valderrama, 2004, p.264). Globalization has profoundly influenced the process of legal transplantation, serving as a catalyst for the exchange and adaptation of legal norms across different jurisdictions. As Gerber (2001) points out, globalization brings laws and legal cultures into closer, more frequent, and often more complex interactions. This increased contact fosters a dynamic environment where legal systems are constantly exposed to new ideas, practices, and challenges, leading to the transfer and transplantation of legal principles across borders (Gerber, 2001, p.950). One of the key impacts of globalization is the changing role and expectations of legal professionals. In a globalized world, lawyers, judges, and policymakers are no longer confined to understanding only their own domestic laws; they must also be knowledgeable about foreign legal systems and how they operate. This need for broader legal knowledge arises because globalization often involves cross-border transactions, international treaties, and multinational disputes that require an understanding of different legal frameworks. As a result, legal professionals increasingly seek out and integrate foreign legal concepts, leading to the transplantation of these ideas into their own legal systems (Slaughter, 2004, p. 69; Mistelis, 2000, pp.1055-1056; Cohn, 2024).

Moreover, globalization affects how legal information is transferred, acquired, and processed. The ease of communication and the availability of legal resources online mean that legal professionals can access a vast array of foreign legal materials more readily than ever before (Germain, 2012; Chung et al., 2007). This access facilitates the borrowing and adaptation of legal principles that are perceived as more effective or suitable for addressing emerging challenges within a different legal context. However, this process is not always straightforward; the

integration of foreign legal norms often requires careful consideration of how these norms fit within the existing legal culture and the specific socio-political context of the receiving country. Globalization also influences decision-making processes within legal systems (Slaughter, 2004; p.69). As legal professionals are increasingly exposed to global standards and practices, they may feel compelled to align domestic laws with international norms to enhance legal compatibility and cooperation across borders. This can lead to the adoption of legal principles that have been successfully implemented elsewhere, with the goal of improving the efficiency, fairness, or modernity of the domestic legal system. However, this transplantation process can also create tensions, particularly when foreign legal concepts clash with deeply entrenched local traditions or values (Legrand, 1997b; Teubner, 1998; Berkowitz et al., 2003b).

Given these complexities, the field of comparative law is becoming increasingly focused on understanding globalization's impacts on law and developing strategies to manage them. Comparative legal scholars are tasked with analyzing how globalization drives the movement of legal ideas, what factors influence the success or failure of legal transplants, and how legal systems can adapt to the pressures and opportunities brought about by this global interconnectedness (Berkowitz et al., 2003b; Legrand, 1997b). They explore not only the technical aspects of legal transplantation but also the cultural, political, and economic dimensions that shape how foreign legal norms are received and implemented. In summary, globalization acts as a powerful force in the process of legal transplantation by facilitating the exchange of legal ideas across borders, shaping the knowledge and practices of legal professionals, and influencing the decision-making processes within legal systems. As legal cultures come into closer contact, the challenges and opportunities of integrating foreign legal principles become more pronounced, making the study of globalization’s effects on law a critical area of focus in comparative legal scholarship. These

dynamics are examined empirically in this dissertation through the case of the Canadian-supported juvenile probation reform in Ukraine. This reform provides a concrete example of how globalization, professional exchange, and international cooperation drive the movement of legal ideas, while also revealing the structural and cultural limits of legal transplantation in a post-Soviet legal system.

Specific Reasons for Legal Transplantation

In practical terms, scholars have identified several key factors that drive the phenomenon of legal transplantation – the process by which laws, legal principles, or institutions are adopted from one jurisdiction and implemented in another. These factors shed light on why certain legal norms are borrowed and transplanted across borders, offering insights into the complex interplay of motivations behind this legal practice. These reasons can be broadly categorized as follows: (i) authority, (ii) prestige (imitation) and imposition, (iii) chance and necessity, (iv) expected efficacy of the law, and (v) political, economic and reputational incentives from the countries and third parties (Valderrama, 2004, p.265; Goldbach, 2019, p.590).

Authority

Authority plays a central role in the phenomenon of legal transplantation, influencing the way laws and legal norms are transferred from one jurisdiction to another. This influence typically comes from powerful entities such as colonial powers (Birnhack, 2012, p.26), international organizations, or dominant states that exert control or significant influence over other jurisdictions (Spamann, 2009, p.1845). The mechanisms of authority in legal transplantation can be understood through the ways these authoritative bodies mandate or encourage the adoption of specific legal norms, often shaping the legal landscapes of less powerful or dependent territories. Legal transplantation driven by authority often occurs when an authoritative entity, through colonial imposition or international directives, sets legal standards that are then adopted by the receiving

jurisdiction (Deng, 2022). This form of legal influence is evident in historical and contemporary contexts, particularly in post-colonial states or countries aiming to align with global legal frameworks. For instance, during the colonial era, European powers imposed their own legal systems on colonies, fundamentally reshaping the indigenous legal practices to mirror those of the colonizer (Birnhack, 2012, p.27). These impositions were often justified as efforts to "civilize" or bring "order" and "governance" to the colonized regions, but they also served the interests of the colonizers in administrating foreign territories more efficiently (Birnhack, 2012, p.28). In modern contexts, international organizations and multinational alliances often set legal standards that member countries are encouraged or required to adopt (Birnhack, 2012, p.26).[12] These standards might be related to economic regulations, human rights, environmental protections, or trade laws. The adoption of these legal norms is sometimes a condition for membership or for receiving economic benefits, such as loans or developmental aid (Morin & Gold, 2014, p.783). Thus, authority in this sense is not merely exertive but also persuasive, as it involves a complex interplay of incentives and directives.

Alan Watson's (2002) observations about the role of authority in law making further elucidate how authority underpins legal transplantation. According to Watson (2002), in the absence of explicit legislation –particularly in the realm of private law –lawmaking often falls to judges and jurists who do not have explicit power to create law. These legal professionals are

[12] For example, the EU requires candidate states to harmonize domestic legislation with the *acquis communautaire* as part of the accession process, including in areas such as competition law, consumer protection, public procurement, and judicial independence (Schimmelfennig & Sedelmeier, 2005). Similarly, the WTO obliges its members to implement binding trade-related legal frameworks, including the TRIPS Agreement, which establishes minimum standards for the protection and enforcement of intellectual property rights and has required many states to amend their domestic intellectual property laws (World Trade Organization, 1994). International financial institutions also exert normative pressure through conditionality. The International Monetary Fund frequently links financial assistance to policy and regulatory reforms, including reforms concerning governance, anti-corruption, financial-sector supervision, and public financial management (International Monetary Fund, 2024).

compelled to justify their decisions by appealing to authority rather than personal preference or subjective reasoning. They cannot simply state, “This is my decision because I like the result”; instead, they must anchor their rulings in recognized legal principles or precedents (Watson, 2002, p.2). A critical dimension of this phenomenon is highlighted by Spamann (2009), who observes that even when legal transplantation occurs under the guise of neutral foreign technical assistance, the process remains deeply saturated with the authority and bias of the donor state. In his words, “In theory, foreign advice need not favor the advisor’s native legislative models. In reality, however, foreign legal consultants’ recommendations are generally, at least strongly, influenced by their home law. The reason need not be legal imperialism. Even the most well-meaning consultant will have difficulties working with a foreign model, and the familiar home model will usually seem as good as any other to the consultant” (Spamann, 2009, p.1845). This insight exposes the pervasive impact of authority, showing that transplanted norms are rarely neutral or context-free (Birnhack, 2012, p.35). Rather, they tend to reflect the epistemic comfort, methodological assumptions, and interpretive habits of the authoritative source. This creates a structural asymmetry: the receiving jurisdiction does not merely import a legal rule but absorbs the normative mindset embedded within the authoritative legal tradition. This effect is magnified when local institutions lack the interpretive autonomy or technical capacity to indigenize the transplanted norm. In such circumstances, the prestige of the authoritative source effectively overrides local legal logic, leading judges, lawmakers, and legal practitioners to defer to the imported model even when it diverges from local socio-legal realities.

The transplantation of legal systems under the aegis of authority can have profound implications for the receiving jurisdictions. While it can introduce more structured or “modern” legal frameworks, it can also displace traditional laws and may not always harmoniously align

with local cultural values and social norms (Kahn-Freund, 1974; Berkowitz et al., 2003a). The success of such transplantation depends significantly on how these foreign laws are perceived by the local population –whether they are seen as legitimate and beneficial or as impositions that need to be resisted or adapted. Moreover, the authority-driven approach to legal transplantation often necessitates ongoing interpretation and adaptation. As new legal challenges arise, local judges and jurists must continually interpret these transplanted laws, sometimes bending them to fit more comfortably within the local context (Slaughter, 2004; Nelken, 2001). The mismatch between authoritative expectations and local realities can lead to doctrinal fragmentation, selective implementation, or even symbolic compliance (Birnhack, 2012, p. 35). In such cases, transplanted norms may be formally incorporated into domestic legislation yet remain weakly enforced or unevenly applied in practice, as legal actors navigate between external obligations and internal constraints. Courts, administrators, and practitioners may comply with the transplant only at a surface level, while informally preserving pre-existing practices or reinterpreting new rules to fit local institutional routines. Over time, this gap between formal adoption and practical operation can undermine legal coherence, erode trust in reform initiatives, and produce hybrid legal arrangements that differ substantially from both the original model and the receiving system's prior traditions. This dynamic process can lead to a gradual evolution of the law, where the original authoritative intent of the transplanted law is balanced against local needs and realities. Thus, authority plays a crucial and complex role in the process of legal transplantation. Whether through colonial legacies, international mandates, or the persuasive power of prestigious legal systems, authority shapes how laws are adopted and adapted across jurisdictions.

This dynamic is explored in this dissertation through the transplantation of juvenile probation from Canada to Ukraine. The JJRP shows how authority works not only through formal legal

requirements, but also through professional expertise, donor influence, and the prestige of the exporting legal system. Ukrainian institutions did not simply copy Canadian probation norms; instead, they adapted them within their own legal and institutional environment. This case demonstrates that authority-driven legal transplantation leads not to simple imitation, but to a negotiated process in which foreign models are reshaped by local realities.

Prestige (Imitation) and Imposition

In broad terms, it could be said that a legal transplant arises whenever the law of a foreign country is considered superior and the benefits of its introduction are believed to outweigh not only the social and economic costs but also the risk of incoherence within the recipient system, which must integrate the incoming legal transplant (Mańko, 2024, p.106). As Alan Watson (2003) put it: "Borrowing is much easier than thinking. It saves time and effort. Not only that, it helps the new law to become acceptable because it has a recognized pedigree" (p.607). Watson's observation captures the pragmatic and sometimes instrumental motivations behind legal transplantation, where imitation often substitutes for innovation, and the perceived prestige of foreign models serves to legitimize reform.

The concepts of prestige and imposition are pivotal in understanding the reasons behind legal transplantation, a phenomenon where legal principles, norms, or entire legal systems are adopted by one jurisdiction from another (Goldbach, 2019, p.590). These concepts, as articulated by legal scholar Rodolfo Sacco (1991), offer a lens through which we can examine the underlying motivations that drive societies to either impose their legal frameworks on others or to adopt foreign laws due to their perceived superiority (p.398).

Imposition refers to the process by which a dominant culture or power compels other societies to adopt its legal institutions (Friedman, 2001, p. 93). Sacco (1991) argues that any culture

with a strong sense of self-belief naturally seeks to expand its influence, and when this culture has the power, it tends to impose its institutions on others (p. 398). This imposition is often seen in the context of colonialism, where colonial powers imposed their legal systems on the countries they colonized (Birnhack, 2012, p. 27). The underlying motivation here is not just a desire to control but to extend the cultural and legal hegemony of the dominant power. The imposed legal systems are often seen as tools to reshape the social, economic, and political landscapes of the colonized regions in ways that align with the interests of the colonizers. In this sense, imposition represents the coercive end of the transplantation spectrum – where legal borrowing is less a matter of pragmatic adaptation, as Watson envisioned, and more an assertion of geopolitical dominance.

However, Sacco (1991) also notes that legal transplants driven by pure force are inherently unstable and reversible (p.400). When the force that facilitated the imposition is withdrawn (such as when a colonial power leaves a territory) there is a strong possibility that the imposed legal system will be rejected or significantly modified. This reversibility is rooted in the fact that the imposed legal norms often fail to resonate with the local culture, traditions, and needs. As a result, once the external pressure is removed, societies may revert to their original legal practices or seek to develop a hybrid system that better reflects their indigenous values. This fragility highlights the limitations of transplantation by coercion: without cultural anchorage or institutional congruence, even formally entrenched laws risk erosion once external power wanes.[13]

[13] After independence, Ghana and Kenya formally reinstated customary law alongside or above British-imposed common law in family and land matters through constitutional and statutory reforms in the 1960s–1970s (Ghai & McAuslan, 1970; Woodman, 1996). In India, although the Indian Penal Code (1860) and Criminal Procedure Code (1898) were retained, their colonial logic was substantially reshaped by constitutional jurisprudence after 1950, particularly through the expansion of due process and fundamental rights review by the Supreme Court (Austin, 1999; Sathe, 2002). In the post-Soviet context, Ukraine, Lithuania, and Georgia repealed or fundamentally restructured Soviet criminal and administrative codes in the 1990s, replacing centralized punitive frameworks with constitutional, rights-based systems (Ajani, 1995). These cases demonstrate that coercively transplanted legal regimes often survive only through deep transformation or are partially rejected once the authority that imposed them is removed.

In contrast to imposition, prestige operates as a more subtle but equally powerful motivator for legal transplantation. According to Sacco (1991), societies often imitate the legal systems of others not out of coercion but due to the perceived prestige associated with those systems (p. 401). Prestige, in this context, refers to the admiration and respect that a particular legal system commands on the global stage (Graziadei, 2009, p. 739). When a legal system is regarded as particularly advanced, just, or effective, other jurisdictions may seek to emulate it, believing that adopting its principles will confer similar benefits.

This imitative process often arises when states perceive foreign legal models as embodying ideals of efficiency, modernity, or legitimacy. The adoption of prestigious legal frameworks is thus rarely neutral, it reflects both internal aspirations and external signalling. For instance, Grande (2000) demonstrated that Italy's adoption of aspects of the U.S. adversarial criminal procedure was not only driven by its perceived procedural superiority but also functioned as a political signal of democratic openness. This dynamic is also evident in Turkey's adoption of the Swiss Civil Code in 1926. Following the establishment of the Turkish Republic, the wholesale reception of the Swiss Civil Code was a deliberate nation-building strategy under Atatürk, aimed at breaking with the Ottoman–Islamic legal tradition and signalling Turkey's alignment with Western, secular, and "modern" legal systems. The transplant was therefore not motivated solely by the technical quality of the Swiss model, but also by its symbolic and political value as a marker of civilizational reorientation (Atamer, 2008). In post-socialist contexts, Ajani (1995) observed that the prestige of Western legal models often guided ad hoc reforms, where the authority of foreign experts or institutions substituted for coherent domestic design. Such cases suggest that prestige-driven imitation frequently operates as a form of reputational performance, a way for states to align

themselves with internationally respected norms while signalling reformist intent. In this light, prestige becomes a tool of both domestic legitimation and international positioning.

This form of legal transplantation is driven by a voluntary desire to appropriate the successful elements of another system. Unlike imposition, where the adoption of foreign laws may be met with resistance, prestige-driven transplantation is often embraced by the receiving society as a means of enhancing its own legal, social, and economic structures (Friedman, 2001, p.93). The prestige of a legal system can stem from various factors, such as historical significance, the perceived sophistication of legal doctrines, or the global influence of the country where the system originated. However, as Lienau (2017) notes, prestige-driven borrowing also operates through mechanisms of signalling and reputation in the international sphere. States are aware that adopting particular legal norms may enhance their standing before global audiences, including donors, investors, or peer governments. As Davis and Trebilcock (2008) argue, such "law-on-the-books" reforms often function as symbolic gestures designed to communicate intent rather than to effect substantive transformation. Thus, the adoption of prestigious laws can create the illusion of convergence while leaving local institutional realities largely unchanged.

A prime example of prestige-driven legal transplantation is observed in the adoption of the Napoleonic Code by many civil law countries, particularly in Latin America. The Napoleonic Code, which emerged from France in the early 19th century, was widely regarded as a model of legal clarity, rationality, and modernity. Its adoption by several Latin American countries was not merely a matter of borrowing legal principles but was also a recognition of the prestige that French legal thought had garnered. These countries saw the Napoleonic Code as a symbol of progress and sought to align their own legal systems with what they perceived as the pinnacle of legal development at the time (Valderrama, 2004, p.266).

While imposition and prestige are distinct drivers of legal transplantation, they often interact in complex ways. In some cases, a legal system initially imposed by force may later acquire prestige, leading to its voluntary adoption in other regions. Conversely, a legal system that is adopted due to its prestige may later be imposed on others through colonial or political influence. The distinction between these two forces is crucial for understanding the motivations behind legal transplantation and the long-term success or failure of transplanted legal norms. For instance, while the Napoleonic Code was initially adopted in several countries due to its prestige, its continued influence in those countries also reflects the historical power dynamics and the cultural influence that France exerted globally during that period. Over time, the adoption of the Napoleonic Code became a marker of legal sophistication and modernity, further reinforcing its prestige and encouraging other nations to follow suit.

Understanding the roles of imposition and prestige in legal transplantation highlights the importance of context in the process of adopting foreign legal norms. Legal transplants that occur through imposition may face significant challenges in terms of acceptance and sustainability, particularly if they are not well-suited to the local cultural and social context. On the other hand, transplants driven by prestige are more likely to be embraced and integrated into the receiving legal system, especially when the transplanted norms align with the values and aspirations of the local society. Yet, the imitation of prestigious legal models may also foster what Goldbach (2019, p.591) terms a “symbolic compliance” dynamic, where legal change serves more to display alignment with global norms than to transform local realities. The reputational logic underlying such transplants complicates the assumption that prestige equates with progress. Instead, it reveals that prestige can function as a double-edged force: capable of catalyzing modernization, but also of entrenching superficial convergence when domestic structures are unprepared or unwilling to

internalize the borrowed norms. However, the prestige of a legal system can also be double-edged. While it may inspire emulation, it can also lead to the uncritical adoption of foreign legal norms that may not be entirely compatible with local needs. [14]This underscores the need for a careful and context-sensitive approach to legal transplantation, where the benefits of adopting foreign legal norms are weighed against the potential risks of cultural misalignment and the loss of indigenous legal traditions.

In conclusion, the dynamics of imposition and prestige play crucial roles in shaping the landscape of legal transplantation. Whether through the exertion of power or the allure of prestige, legal systems continue to influence each other in profound ways, contributing to the ongoing evolution of global legal practices. Understanding these forces provides valuable insights into the motivations behind legal transplantation and the challenges involved in successfully integrating foreign legal norms into diverse legal systems.

Chance and Necessity

Sometimes, legal transplantation happens by chance or out of necessity. This can occur when a country faces a sudden legal challenge or crisis and looks to other jurisdictions for ready-made solutions that can be quickly adopted. In such cases, the transplanted law might not be the most suitable or ideal, but it is chosen because it offers an immediate solution to a pressing problem. The element of chance can also play a role, where the availability of certain legal models

[14] For example, Romania's creation of the National Anticorruption Directorate and adoption of EU-mandated judicial governance reforms after 2007 formally aligned its legal framework with European standards, yet persistent political interference and weak enforcement revealed deep institutional incompatibilities (Mendelski, 2012). In Japan, the 2015 Corporate Governance Code introduced U.S.-style board independence and shareholder-oriented duties, but core decision-making continued to follow insider consensus practices, limiting the reform's practical effect (Financial Services Agency & Tokyo Stock Exchange, 2015). Likewise, Rwanda's formal adoption of common law procedures and adversarial trial models after joining the Commonwealth in 2009 signaled international alignment, but courts continued to operate through civil law reasoning and centralized administrative control (Beswick, 2010; Palmer, 2012). These cases show how prestige can prompt formal adoption of foreign norms that remain misaligned with domestic legal culture and practice.

or the influence of key individuals can lead to the adoption of foreign laws without a thorough evaluation of their suitability (Valderrama, 2004, p.267) .Chance and necessity play pivotal roles in the process of legal transplantation, often dictating the movement and adoption of legal norms in ways that transcend the straightforward application of legal theory. This reality is vividly illustrated in the work of Esin Örücü (2002), who highlights how the adoption of legal systems in Eastern Europe, particularly after the fall of communism, was as much about external pressures and serendipitous influences as it was about deliberate choice (p.9).

The concept of chance in legal transplantation refers to the unpredictable elements that influence the adoption of foreign legal systems or norms. These elements might include historical accidents, personal connections between legal scholars and practitioners across borders, or the random exposure to a foreign legal system that happens to provide a timely solution to an emerging legal issue (Valderrama, 2004). Chance plays a significant role when legal systems or reforms are adopted not because they are the best or most efficient solutions, but because they are conveniently available and visible at the crucial moment of legal reform (Valderrama, 2004, p.267). An example of this can be seen in the influence of the New Dutch Civil Code in Central and Eastern Europe. The adoption of this code was not solely a calculated decision based on its intrinsic merits; rather, it was also a result of the geopolitical and social upheavals following the end of communism. The countries in this region were undergoing significant transformations and were in urgent need of legal frameworks that could support their new social and economic realities. The Dutch Civil Code, known for its modernity and comprehensive approach to private law, was readily available and had already demonstrated its adaptability in integrating elements from German, French, and English law. This made it a particularly attractive model for countries looking to quickly overhaul their legal systems (Valderrama, 2004, p.267). Importantly, however, the New Dutch Civil Code

was not formally adopted as a national civil code in Central and Eastern Europe. Rather, in the 1990s it functioned selectively and indirectly as a model, template, and drafting source in post-communist private law reforms, which is precisely why it illustrates the role of chance in legal borrowing rather than straightforward legal reception (Valderrama, 2004, p. 267; Hartkamp, 2002).

Necessity, on the other hand, refers to the more compelling, often urgent needs that drive jurisdictions to adopt foreign legal systems. Legal transplantation out of necessity occurs when existing legal frameworks are inadequate to address current problems or when there are external pressures, such as the requirements for international integration or economic aid conditions, that mandate specific legal reforms (Spamann, 2009, p.1845). For Eastern European countries, the necessity of aligning their legal systems with those of the EU was a significant driver of legal change. The EU sets specific legal standards and practices that candidate countries must meet to gain membership, which often requires these countries to undertake substantial legal reforms. Örücü's (2002) observations underscore how these nations, in their bid to join the EU during the pre-accession period (from the mid-1990s through the early 2000s, culminating in the 2004 and 2007 enlargement waves), were compelled to adopt legal norms and practices that would align with EU standards (p.10). This process was not just about choosing the most theoretically sound or culturally aligned legal system but about meeting the practical necessities dictated by the geopolitical aspirations of these countries. The urgency of these reforms often meant that the choices were limited to those legal systems that were already perceived as compatible with EU norms, such as the Dutch Civil Code, which offered a blend of market economy principles and social Rechtsstaat (rule of law) that was appealing to both domestic policymakers and EU evaluators (Örücü, 2002, pp.11-12).

At this point, the distinction between chance-driven and necessity-driven transplantation becomes even clearer when considering the motivational foundation behind necessity reception. As Luts-Sootak (1997) notes, “different motivation is the basis for necessity reception which occurs where there is an apparent need for a change of legal system in one culture and another existing culture provides an opportunity to satisfy the need” (p.4). She highlights that necessity reception is not merely reactive but purposive: it arises from a recognized structural deficit or institutional failure within the domestic system. Necessity becomes a catalyst for strategic transformation rather than accidental borrowing. The receiving jurisdiction identifies a gap or dysfunction and actively seeks out foreign models that can fill this void. Crucially, this process presupposes that the foreign legal culture offers a feasible and accessible solution – thus linking necessity to opportunity. Unlike chance-based adoption, which may involve the arbitrary or opportunistic selection of models, necessity-based transplantation is grounded in the logic of problem-solving, albeit still constrained by what is available and politically acceptable.

The interplay between chance and necessity in legal transplantation creates a dynamic where legal changes are often the product of both deliberate planning and serendipitous circumstances. While necessity drives the urgent need for legal reforms, chance influences which specific models are adopted, based on their availability, perceived success, or the presence of advocates familiar with these systems. This combination can lead to the adoption of legal systems that may not be a perfect fit but are deemed “good enough” for the immediate needs (Watson, 1993; Valderrama, 2004). Over time, these transplanted laws may evolve or be further reformed as the jurisdiction adapts them to local conditions or as the initial conditions of necessity change

(Teubner, 1998; Örücü, 2002).[15] In conclusion, understanding the roles of chance and necessity in legal transplantation helps explain why certain legal systems are adopted over others and highlights the complex, often unpredictable nature of legal evolution in a globalized world.

Expected Efficacy of the Law

One of the most pragmatic reasons for legal transplantation is the belief in the superior efficacy[16] of the foreign law (Valderrama, 2004, p.267; Schauer, 2000, p.2). When a legal system is seen as particularly effective in addressing specific issues, other jurisdictions may seek to transplant these laws to achieve similar results. This is often the case when countries are looking to reform outdated or inefficient legal systems, and they turn to jurisdictions that have successfully implemented legal solutions that align with their goals. The expected efficacy of the law becomes a compelling reason to adopt it, especially when the evidence suggests that it will bring about desired outcomes (Valderrama, 2004, p.268). The expected efficacy of the law as a motivating factor for legal transplantation explores the rationale that legal systems are often adopted across national boundaries with the hope that they will bring about specific, beneficial outcomes in the recipient country (Valderrama, 2004, p.268, Schauer, 2000, p.2). The research conducted by Daniel Berkowitz (2003a), Katharina Pistor, and Jean-Francois Richard significantly contributes

[15] A well-documented example is Turkey's reception of the Swiss Civil Code (1926), which initially served as a rapid modernization tool but was gradually amended through judicial interpretation and legislative reform to accommodate local social practices, particularly in family and inheritance law (Atamer, 2008; Örücü, 1992). Similarly, post-Soviet civil codes adopted in the 1990s were repeatedly revised in the 2000s as institutional conditions stabilized and reform urgency declined (Berkowitz et al., 2003b)

[16] In this dissertation, an intentional distinction is drawn between "efficient" and "successful" legal transplants. By *efficient* transplant, I mean a legal institution's demonstrated operational effectiveness and stability within the *donor* system. This idea draws on the literature concerned with the efficiency and effectiveness of transplanted rules (see, for example, Mattei, 1994; Schauer, 2000). By *successful* transplant, I mark the borrowed institution that functions successfully within the *recipient* system. "Success" requires not an identical reproduction of the foreign model, but that the transplant operate in practice, fit local institutional structures, and is accepted and used by legal actors. Thus, success is measured by integration and adaptation over time, not by formal similarity to the original. This understanding of success reflects the socio-legal view that a transplant's worth depends on its assimilation within the receiving system (see, for example, Kahn-Freund, 1974; Teubner, 1998; Legrand, 1997a; Berkowitz et al., 2003b; Birnhack, 2012; Miller, 2003).

to our understanding of the expected efficacy of legal transplantation. Their findings, as summarized by Catherine Walsh (2000), emphasize that "the way in which a formal legal order incubated in Europe was transplanted into other countries was a far more important predictor of the effectiveness of legal institutions than the association of that transplant with any particular legal family." (p.10). This insight shifts the focus from the mere content of the transplanted laws to the quality of the transplantation process itself. According to Berkowitz and his colleagues (2003a, p.188), the effectiveness of legal institutions in the transplant jurisdictions is less about the specific legal traditions or families from which these laws originate, and more about how these laws are integrated into the new legal environment. The quality of the transplantation process – how well the transplanted laws are adapted to fit the local conditions, cultural norms, and existing legal frameworks –plays a crucial role in determining their efficacy.

The concept of expected efficacy is not just theoretical but has practical implications, as demonstrated in various transitional and developing countries. For instance, Esin Örücü (2002) discusses how systems in Eastern Europe had to adapt to changes in anticipation of joining the EU (p.11). The drive for legal changes was often propelled not by grassroots needs but by the desires of the elite or external pressures, reflecting a top-down approach where the efficacy of the law is envisioned as a tool to meet specific political and economic objectives. The case of Colombia's adoption of the French legal code serves as a cautionary tale of expected efficacy not fully realized. Despite the anticipation that the French legal models would enhance Colombia's legal system, the transplantation was carried out "voluntarily, but almost blindly," (Valderrama, 2004, p.268) without adequate consideration of how these laws would interact with local conditions. This hasty and unconsidered adoption led to the establishment of legal institutions that were less effective

than intended, demonstrating a misalignment between the expected and actual outcomes of legal transplantation (Valderrama, 2004, p.268).

The challenges of legal transplantation based on expected efficacy are manifold. A key issue is the assumption that a law's effectiveness in its original context will automatically translate to a new jurisdiction. This overlooks the crucial factors of local legal culture, economic conditions, administrative capabilities, and societal norms, which can all significantly alter how a law functions in practice. Furthermore, the adoption of foreign legal systems often involves complex negotiations between the adopting country's own legal traditions and the incoming laws. The success of these legal transplants thus heavily depends on thoughtful integration and adaptation strategies that consider both the strengths of the foreign system and the unique characteristics of the local context.

To summarize, the expected efficacy of the law as a reason for legal transplantation offers a lens through which to evaluate the motivations behind adopting foreign legal norms and the factors that influence their success or failure. While the hope for improved legal outcomes is a powerful driver, the actual efficacy of transplanted laws hinges on a nuanced understanding of both the source and the recipient legal cultures. The findings by Berkowitz and colleagues (2003b) remind us that successful legal transplantation is less about the wholesale importation of laws and more about their careful adaptation to meet the specific needs and conditions of the host country.

Political, Economic, and Reputational Incentives

Finally, political, economic, and reputational incentives play a significant role in the transplantation of laws. Countries may adopt foreign legal norms to foster economic growth, attract foreign investment, or strengthen trade relationships (Goldbach, 2019, p.591). Additionally, legal transplantation can be motivated by the desire to improve a country's international standing or to

signal alignment with global standards and practices. For example, adopting laws that conform to international human rights standards may enhance a country's reputation on the global stage and lead to better diplomatic relations or trade deals.[17] Similarly, economic incentives, such as the need to create a favourable business environment, can drive the adoption of foreign commercial laws (Valderrama, 2004, p.269). This complex interplay of incentives shapes the global legal landscape, often independent of the intrinsic value of the legal ideas themselves (Valderrama, 2004, p.269). Political factors play a crucial role in the spread of legal norms and practices across borders. The motivations behind legal transplantation can often be traced back to political agendas and strategies that extend beyond mere legal reform. Governments might adopt foreign legal systems or norms to align with more powerful allies, to comply with international human rights standards, or to facilitate entry into supranational entities like the European Union (Schimmelfennig & Sedelmeier, 2005; Dimitrova, 2010). Political incentives may also arise internally from a desire to stabilize or legitimize a regime, particularly in transitional states where new governments seek to establish credibility and authority through comprehensive legal reforms (Teitel, 2000; Carothers, 1998).

Frederick Schauer (2000) elaborates on this phenomenon, suggesting that the transnational and cross-border spread of law is not merely about the power or value of the legal ideas themselves. Instead, it is "substantially dependent, both on the supply side and on the demand side, on political and symbolic factors" that often have more explanatory power in determining law migration than the intrinsic or instrumental value of the law itself (p. 2). This perspective highlights how political

[17] For example, Poland and Hungary's rapid adoption of EU competition and company law standards in the late 1990s was driven in part by the desire to attract foreign investment and demonstrate market readiness before EU accession (Schimmelfennig & Sedelmeier, 2005). Georgia's post-2004 legal reforms, including U.S.-inspired anti-corruption and administrative law changes, were used to signal transparency and reliability to international donors and investors (World Bank, 2012). Likewise, Mexico's 2011 constitutional human rights reform, which incorporated international human rights treaties, was widely interpreted as an effort to strengthen its global reputation and trade credibility (Carbonell, 2013).

contexts and motivations can drive the adoption of foreign legal systems, even when they may not be the most suitable or effective solutions for the recipient country.

Economic incentives are another significant factor influencing legal transplantation. Countries often adopt foreign legal norms and practices to attract foreign investment, enhance trade relations, or improve their standing in the global economic system. The integration of specific legal frameworks, such as those pertaining to intellectual property rights, corporate governance, or bankruptcy laws, can make a country more attractive to international businesses and investors by creating a more predictable and familiar legal environment. For instance, the influence of American legal concepts like leasing, factoring, and franchising on international contract law is a testament to the US' significant role in shaping global economic and legal practices. This Americanization of certain legal sectors illustrates how economic relationships and the desire to facilitate smoother international trade and finance operations can lead to the adoption of American legal concepts in other countries' legal systems (Valderrama, 2004, p.269).

Reputational incentives also play a crucial role in legal transplantation. Nations often adopt laws from jurisdictions that are perceived as more developed or reputable in order to enhance their own international standing. This can be seen in the widespread adoption of legal norms from countries like the US, Germany, or the UK. Adopting such laws can signal a country's commitment to modernization, rule of law, and global integration, thereby improving its international image and prestige. The reputational benefits of legal transplantation can extend to enhancing a country's diplomatic relationships and increasing its soft power on the international stage (Goldbach, 2019, p.591). By aligning their legal systems with those of globally respected jurisdictions, countries can foster stronger bilateral and multilateral relationships, which are crucial for political cooperation and economic development . For example, Georgia's post-2004 legal reforms, including U.S.-

inspired anti-corruption and administrative law changes, were widely framed as a signal of alignment with Western governance standards to strengthen diplomatic ties with the US and the EU (Dezalay & Garth, 2002). Estonia's adoption of German- and EU-based administrative and commercial law frameworks in the 1990s served to demonstrate its readiness for European integration and to build trust with Western partners (Schimmelfennig & Sedelmeier, 2005). In Japan, the introduction of U.S.-influenced corporate governance reforms through the 2015 Corporate Governance Code was explicitly presented as a way to signal compliance with global market standards and improve international investor confidence (Kanda, 2016).

Thus, political, economic, and reputational incentives are powerful drivers of legal transplantation, often overshadowing the intrinsic value of the laws themselves. As Schauer (2000) suggests, the spread of legal norms is deeply intertwined with these broader socio-political and economic contexts, making the study of legal transplantation a multidimensional inquiry into how legal systems evolve in response to external pressures and internal ambitions.

These political, economic, and reputational incentives are clearly reflected in the transplantation of Canadian juvenile probation into Ukraine. This reform was not only about finding a functioning model for working with youth. It was also part of Ukraine's broader legal transformation and its long-term goal of aligning with European standards in support of EU membership aspirations. The JJRP therefore served both a practical and a symbolic purpose: it introduced new probation practices, while also signaling Ukraine's commitment to rule of law, human rights, and modern justice standards. As this dissertation demonstrates, the choice of the Canadian model cannot be understood without this wider context. The reform was shaped by the desire to appear legally modern and internationally compatible, while still facing domestic legal,

institutional, and political constraints. This perspective helps explain both the achievements and the limits of the juvenile probation transplant in Ukraine.

Successful (Viable) Legal Transplantation

Successful legal transplantation is a nuanced process (Birnhack, 2012; Nelken 2001), akin to the integration of a transplanted organ into a human body, which must adapt and become an integral part of its new environment. Alan Watson (1993) captures this idea by stating, "a successful legal transplant – like that of a human organ – will grow in its new body, and become part of that body just as the rule or institution would have continued to develop in its parent system" (p. 27). Similarly, Feldman (1997) suggests that the pursuit of legal transfers can be analogized to the search for a suitable donor, intended to provide support and offer hope to "ailing members of the world community" (p.215).

This analogy underscores that for a legal transplant to be successful, it must not only take root but also evolve within its new legal environment (Goldbach, 2019, p. 590). As Goldbach (2019) asserts, the success of transplantation depends crucially on compatibility between the donor and recipient systems, as discussed above. Goldbach emphasizes that "mismatches between donor and recipient cultures (their living bodies and systems) result in failed legal transplants" (p.592). Together, these biological metaphors establish the central premise of this section: transplanted laws cannot operate independently of the institutional and cultural environment into which they are introduced. Watson (1993) further clarifies that the evolution of a legal transplant in its new environment does not necessarily follow the trajectory it might have had in its original setting. As he points out, "subsequent development in the host system should not be confused with rejection" (p. 27). This process of adaptation and evolution highlights the complexity of legal transplantation. It is important to recognize that the differences between legal systems, which might lead to various

adaptations of the same legal transplant, do not inherently imply inefficiencies or ineffectiveness. Contrary to what might be assumed, these differences do not necessarily make one system less efficient than another. Often, different legal traditions develop distinct yet equally effective solutions to similar legal problems. These solutions reflect the unique cultural, social, and historical contexts of each legal system (Mattei, 1997, p. 11).

However, the success of a legal transplant can also be hindered by a range of factors. For instance, when a legal system is particularly closed off or deeply rooted in specific legal doctrines, it may resist considering alternative legal norms or rules, even those that have proven successful in other contexts. This resistance can be due to a lack of awareness of alternatives or a deliberate choice to disregard them. Such a monopolistic stance can lead to the persistence of inefficient legal rules, not because they are the most effective, but because the legal system is insulated from competing ideas (Mattei, 1997, p. 11; Berkowitz, et al., 2003b, p. 167). For example, scholars have pointed to the transplantation of Western corporate and commercial law into post-Soviet states during the 1990s, where formal adoption of foreign legal rules often failed to produce expected economic or institutional outcomes because supporting legal institutions, professional practices, and enforcement mechanisms were underdeveloped (Berkowitz et al., 2003b). Similarly, attempts to transplant adversarial criminal procedure models into civil-law or post-authoritarian systems have sometimes produced hybrid practices in which formal procedural reforms coexist with inherited judicial cultures that limit their practical operation (Damaška, 1986; Pizzi & Marafioti, 1992). These examples illustrate how legal rules may be formally adopted yet remain only partially integrated into the receiving legal system. Such limitations will be discussed in greater detail in the following subsection.

In light of these challenges, scholars argue that successful transplantation depends on recognizing that legal change is not merely a formal or technical process, but is shaped by local legal culture and institutional context (Birnhack, 2012, p.24). In this vein Birnhack (2012) stated:

> A legal transplant does not end when the authoritative body enacts a law which had originated in another jurisdiction. The new (borrowed) law needs to be assimilated within existing legal and cultural systems that include other laws, the structure of the legal system (the relationship between legislature and judiciary, for example) and many other social and political factors (p.24).

Damaška (1997) similarly argued that for a transplant to be successful, the transplanted law must "fit" with the "institutional context in which justice is administered in a particular country" (p.839). Graziadei (2009) emphasizes that legal transplants are not merely the movement of abstract legal rules across borders but rather involve complex social dynamics and individual agency. As he puts it, "legal transplants as social acts performed by individuals call for a study of the 'micro' level of engagement with legal change" (p. 723). To explore this micro dimension, he adopts the concept of "mediated action," which refers to action "performed by individuals making use of features of the environment as tools to interact in a specific setting" (p. 736). Pierre Legrand (1997), on the other hand, takes a more skeptical stance, arguing that legal rules are deeply embedded in cultural and epistemic contexts, making transplantation inherently problematic. He contends that "anyone who takes the view that 'the law' or 'the rules of the law' travel across jurisdictions must have in mind that law is a somewhat autonomous entity unencumbered by historical, epistemological, or cultural baggage. Indeed, how could law travel if it was not segregated from society?" (p. 113).

Recent scholarship has attempted to bridge this divide by developing integrated models. Morin and Gold (2014), for example, propose a multidimensional model identifying mechanisms such as coercion, socialization, and emulation as pathways through which legal norms travel and

adapt. Their case study on intellectual property law in developing countries illustrates that success often depends on how these mechanisms interact with domestic legal culture (Morin & Gold, 2014). Birnhack (2012) proposed a more practical view on the success of legal transplants. It was argued that "legal transplant succeeds and is effective when there is a local demand for the law and intermediaries respond to the demand" (Birnhack, 2012, p.25). Birnhack (2012) also made an important distinction in measuring success, according to him, success could be assessed differently under technical and political criteria (p.25).

This understanding of "successful" or "viable" legal transplantation provides the analytical lens for examining the transplantation of juvenile probation from Canada to Ukraine. Rather than asking whether Ukraine copied the Canadian model in an identical way, this dissertation evaluates success in terms of institutional fit, local acceptance, and practical operation within the Ukrainian legal system. The Canadian juvenile probation model is therefore assessed not as a fixed template, but as a reform that had to be translated, adapted, and mediated through Ukraine's existing legal culture, post-Soviet governance structures, and professional practices. By applying the criteria of compatibility, local demand, and intermediary engagement developed in this section, the study demonstrates how the Canadian model was reshaped in practice and why its outcomes reveal both the potential and the limits of legal transplantation in transitional legal systems.

Factors Affecting Viability of Legal Transplantation

Drawing on the widely used analogy between legal transplantation and human organ transplantation, a central question emerges: if a legal transplant is to survive, it must be viable. Yet what *constitutes* viability in the legal context? Unlike medical transplantation, legal borrowing does not occur in a sterile environment; it unfolds within a dense matrix of cultural, institutional, political, and socio-economic conditions. As Kahn-Freund (1974) critically asks: "Do these

questions of adjustment and rejection arise in the situation in which we are interested here, the transplantation or transfer of foreign institutions?" (p. 6). His question highlights the core tension underlying all legal transplants: the success of the transfer depends not solely on the technical quality of the borrowed rule but on the receiving system's capacity to absorb, adapt, or reject it. Kahn-Freund (1974) further elaborates this dynamic by emphasizing variability in outcomes:

> "In most cases one must ask what chances there are that the new law will be adjusted to the home environment and what are the risks that it will be rejected. The chance and, inversely, the risk, may be smaller or larger, and the magnitude of this chance and of this risk determines the point on the scale at which we have to place the foreign law." (p.6).

This formulation foregrounds viability as a spectrum rather than a binary, supporting that legal transplants are continuously negotiated, interpreted, and reshaped in light of local conditions. Thus, assessing viability requires more than surface-level observation. It demands a deeper examination of the historical legacies, ideological structures, institutional configurations, and socio-economic realities that condition how foreign norms are received, interpreted, and operationalized. The following subsections analyze these contextual determinants, demonstrating the ways in which they shape both the immediate reception and the long-term evolution of transplanted legal norms.

Colonial context

Historically, one of the most significant drivers of large-scale legal transplantation was imperial expansion, during which colonial powers exported their legal frameworks to territories they governed. As Friedman (2001) notes, the global spread of common law cannot be understood without acknowledging the reach of the British Empire (p. 94). Such transplantation was rarely neutral. As Lin (2009) argues, early colonial transplants were explicitly designed as instruments of governance and control (as cited in Birnhack, 2012, p. 34). Consequently, a colonial legal

transplant must always be understood as context-dependent, shaped by political domination, administrative priorities, and the strategic interests of the imperial power rather than by the functional needs of the colonized society (Birnhack, 2012, p. 35).

Across different empires, the imposition of foreign law often conflicted with long-standing indigenous legal traditions. The Ottoman Empire, for instance, implemented a uniform legal system through the 19th-century Tanzimat reforms but allowed limited pluralism by preserving personal-status adjudication by religious courts (Birnhack, 2012, p. 27). British imperial expansion in Africa and Asia produced even more dramatic frictions. In sub-Saharan Africa, the introduction of British property and contract law clashed with customary land-tenure systems that emphasized communal ownership and lineage-based stewardship. This conflict remains visible today: in Zimbabwe and South Africa, ongoing attempts to reconcile statutory land regimes with customary tenure reflect structural tensions created by colonial transplantation (Cotula, 2007, p.10; Siems, 2018, p. 103; Murisa, 2023).

Further instructive cases appear in South and Southeast Asia. In India, the *Indian Penal Code* of 1860, overtook diverse indigenous criminal traditions and remains in force (with modifications) across India, Pakistan, Bangladesh, and Myanmar. Scholars note that although the Code became deeply institutionalized, its uniformity often masked the suppression of region-specific norms and created enduring gaps between formal criminal law and social practices (Halpérin, 2010, p.25). In Burma (Myanmar), the British transplantation of common-law courts and codified evidence rules conflicted with precolonial Buddhist legal traditions. After independence, the newly formed state retained much of this transplanted structure but introduced hybrid reforms blending socialist, customary, and common-law elements, illustrating how transplants can be preserved yet progressively indigenized (Crouch, 2017, p.33). Taken together,

these examples demonstrate that colonial transplants frequently operated as instruments of political domination, suppressing local legal authority through the creation of centralized, imperial legal regimes. As Birnhack (2012) observes, the study of colonial transplantation requires attending to inequalities of power and to the ideological work performed by the rhetoric of "technical" or "neutral" legal reform (p. 39).

The long-term trajectories of colonial legal transplants vary widely. Many imperial statutes and institutions survived far beyond independence, though often transformed through local practice. In East Africa, for example, postcolonial states retained transplanted land and commercial laws but reinterpreted them to accommodate customary norms, creating hybrid systems that diverged significantly from the original colonial designs (McAuslan, 2013). In India and Pakistan, courts have reinterpreted the *Indian Penal Code* through contemporary constitutional principles, thereby layering modern rights frameworks onto a 19th-century colonial statute (Halpérin, 2010, p.25). In contrast, Vietnam replaced colonial-era civil codes with socialist reforms, illustrating that transplanted law may be abandoned when it lacks cultural resonance or contradicts political developments (Gillespie, 2014). These patterns confirm what Benton (2002) describes as the colonial borderlands of empire – spaces where transplanted law was continually negotiated, resisted, adapted, or hollowed out in practice (p.29). The fate of colonial transplants is thus neither uniform nor predetermined: some persist as dominant legal forms, others become hybridized, and many are gradually displaced by systems more aligned with local histories and legal consciousness.

Historical context

The historical context of a legal system plays a critical role in shaping the success or failure of legal transplantation. Far from being neutral, this context acts as a factor that can either facilitate

or obstruct the reception, integration, and adaptation of foreign legal norms. Understanding a jurisdiction's legal history is, therefore, essential to explain why some legal transplants thrive while others encounter resistance or undergo significant transformation.

Legal systems are products of layered historical developments shaped by distinct social, political, and economic trajectories. As Legrand (1997) asserts, law is embedded in culture and rooted in the histories of its communities (p. 114). Legrand (1997) reinforces this point even more forcefully when he writes:

> "A rule is necessarily an incorporative cultural form. As an accretion of cultural elements, it is buttressed by important historical and ideological formations. A rule does not have any empirical existence that can be significantly detached from the world of meanings that defines a legal culture; the part is an expression and a synthesis of the whole: it resonates" (p. 116).

This underscores the analytical premise of this section – that the historical environment into which a rule is introduced determines whether the transplanted norm will harmonize with existing meanings or remain alienated from them. This embeddedness explains why transplanted norms may resonate in one legal system but clash in another. For instance, as was discussed above, post-colonial legal systems often carry the legacies of imposed legal orders, which may provoke backlash against perceived legal imperialism.

A successful example can be seen in Japan's deliberate adoption of the German Civil Code during the Meiji Restoration. This move, part of a broader modernization and nation-building effort, was carefully tailored to align with Japan's goals of industrial development and centralized governance. Crucially, the Meiji elites did not merely import foreign legal form; they integrated it into a pre-existing political and cultural project, demonstrating how historical intentionality shapes

transplantation outcomes.[18] The success of this transplant in Japan, and its influence on legal systems in South Korea and Taiwan, illustrates that historical openness to reform can facilitate deep and effective legal integration (Mattei, 1997, p. 10). Historical continuity also explains outliers like Louisiana, whose civil law system, based on the Napoleonic Code, persists within the broader U.S. common law framework. The state's unique colonial history as a French and Spanish territory shaped a legal identity that continues to distinguish Louisiana jurisprudence (Goldbach, 2019, p.586; Watson, 1993). As Palmer (2001) observes, this "enduring hybrid legal tradition" reflects how historical layering, rather than simple substitution, often defines transplanted legal systems (p. 317). Here, transplantation operated less as a mechanism for domination and more as a gradual merging process shaped by demographic, linguistic, and political patterns, demonstrating that not all transplants follow the homogenizing logic reproduced by colonial projects.

Post-Soviet legal reform provides another instructive case. In the early 1990s, newly independent states lacked basic legal frameworks for private property, contracts, and foreign investment, making rapid legal transplantation a practical necessity rather than a purely ideological choice (Solomon & Gadowska, 2018). Following the collapse of the USSR, numerous states undertook rapid legal overhauls to enable market liberalization and foreign investment. These reforms were often drafted by small groups of legal experts working under tight political and economic deadlines, with limited institutional capacity and little opportunity for broad public debate. These reforms included new civil and commercial codes, privatization laws and investment statutes, and often occurred under strong pressure from domestic elites and international actors (Berkowitz et al., 2003a, p.189). In many cases, Western legal models were used as templates

[18] For example, while they adopted German-style legal concepts and court structures, they changed family and inheritance rules so that the traditional household system and patriarchal authority would remain intact. Japanese scholars who had studied in Germany then reinterpreted these rules in local courts and legal education (Mattei, 1997).

because they were readily available and perceived as internationally legitimate, even when they did not fully align with existing legal traditions (Kholmirzaev & Kudrativ, 2025, p.72). Ukraine's legislative path to a market economy, including early 1990s foreign-investment and commercial laws and later code reforms, has been documented as a protracted but substantial legal transformation shaped by domestic politics and international advice (Åslund, 2009). Similar patterns appear across the region: Kazakhstan adopted pro-investment legislation alongside resource-sector reforms, while the Baltic states (notably Estonia) pursued very rapid liberalization and comprehensive legal modernization to re-orient toward Western markets (Pomfret, 2005; Feldmann, 2001). However, even here, the language of "transferring technical rules" risks masking geopolitical asymmetries and donor-state agendas that shaped the reform packages. Yet, the varied outcomes of commercial law reforms across the region demonstrate how historical differences in institutional development and legal culture influenced the success of these transplants (Pistor et al., 2000, p. 240). In countries with stronger pre-Soviet legal traditions or better institutional continuity, reforms were more durable and coherent (Chernielevskyi, 2019, p.169). For example, Estonia's pre-war legal heritage and early administrative stability helped sustain its commercial law reforms, whereas Kyrgyzstan and Tajikistan, with weaker bureaucratic capacity and politically fragmented transitions, struggled to implement the same investment and commercial rules effectively (Frye, 2010). As Waelde and Gunderson (1994) noted,

> [I]n times of dramatic change, there is no time to carefully craft 'organic,' home-made legislation. Particularly with regard to legislation of a more technical, less political character (as traditional core contract law) **it makes sense not to try to reinvent the wheel**; indeed it may seem that 'technical' or 'formal' rules, i.e., those that do not have a strong linkage with the prevailing social and political beliefs, interests and institutions, can be transplanted quite easily (pp. 368–369, emphasis added).

This observation underscores that in transitional or post-crisis settings, such as post-Soviet Eastern Europe, the urgency and technicality of reform can override the need for contextual

adaptation. While this expedites legislative modernization, it also risks superficial transplantation, where imported "technical" rules fail to integrate with domestic institutional realities. Still, the success of such reforms depends on their compatibility with local histories, political structures, and legal cultures. Thus, although these technical reforms appear efficient on paper, Legrand's (1997) insight reveals that the underlying cultural frameworks remained unaddressed; the transplanted norms lacked historical resonance and therefore failed to meaningfully transform legal practice. Moreover, framing such rushed reforms as "technical" depoliticizes what are, in reality, deeply political interventions shaped by international financial institutions and donor agendas – representing another instance where transplantation discourse performs the function of masking asymmetrical influence behind a façade of technical neutrality.

Thus, historical context is a fundamental determinant of how legal transplants function within a given system. Whether in the form of colonial legacies, codification movements, or systemic overhauls, historical trajectories shape legal receptivity and institutional compatibility. This underscores the importance of assessing not just the substance of foreign legal norms but also the historical terrain into which they are introduced. A transplant's success depends as much on its alignment with historical experience as on its legal design.

Ideological context

Ideological context[19] plays a critical role in shaping how transplanted legal norms are adopted, interpreted, and applied in different jurisdictions. Legal transplantation does not occur in a vacuum; it is filtered through deeply embedded ideological frameworks that can either reinforce or resist the integration of foreign legal principles. As Mattei (1994) illustrates through a

[19] Ideological context is understood as the system of shared political values, cultural beliefs, and institutional assumptions that shape how a legal system understands authority, justice, rights, and social order - and therefore how it receives or resists foreign law.

comparative analysis of French and American property law, ideological commitments can produce divergent, and sometimes inefficient, legal outcomes, even when addressing similar legal problems (p. 15). In both the French and American systems, private property is ideologically revered, yet the solutions to disputes involving encroachment on another's land reveal stark contrasts. French law, grounded in the civil law tradition and the sovereignty of property ownership, restrictively interprets Article 555 of the Civil Code in favour of the original landowner. The unauthorized builder is denied rights over the improvement, as French courts emphasize the inviolability of property lines. This rigid application reflects the ideological principle that any tolerance of private expropriation undermines legal certainty and public order (Mattei, 1994, p. 14). By contrast, the American common law system, shaped by utilitarian reasoning and the Fifth Amendment's takings clause, often permits the encroaching builder to retain the structure, provided that demolition would be wasteful. Nonetheless, courts avoid awarding substantial compensation to the dispossessed landowner, fearing that it would resemble an impermissible taking for private use. Here, ideology manifests not only in judicial reasoning but in the political limitations imposed on redistributive outcomes (Mattei, 1994, pp. 14–15). These examples demonstrate that legal transplantation is not merely a matter of importing efficient rules. Ideology acts as a filter that shapes both the acceptability and interpretation of transplanted laws. Even when transaction costs are low and negotiated settlements could yield efficient results, ideological resistance may impede reform. As Graziadei (2009) emphasizes, legal transplants are not neutral acts of policy transfer; rather, they are "social acts performed by individuals" and must be understood within the broader socio-cultural and ideological settings that shape their reception and transformation (p. 730). Graziadei (2009) further clarifies that "ideologies as forms of action-oriented beliefs respond to the need to build consensus or resistance to the transplanted law. They transform power into

influence" (p. 738). This observation is crucial for understanding why transplanted laws often undergo substantial reinterpretation: acceptance or rejection of a transplant is not determined solely by formal legal doctrine, but by the ideological mobilization of actors who can legitimize or delegitimize the foreign norm. In post-Soviet settings, ideological structures embedded within state institutions became mechanisms of resistance, transforming formal patronage networks and bureaucratic power into influential tools shaping how or whether transplanted juvenile justice norms would be received.

This dynamic is evident in various legal systems shaped by distinct ideological foundations. In post-socialist countries, for instance, reforms inspired by Western liberal models often struggled against entrenched ideological legacies. In Ukraine, the post-independence legal reforms aimed at aligning with European standards faced resistance due to institutional inertia and the lingering influence of Soviet legal formalism (Goldbach, 2019, p.587). As Popova (2012) notes, judicial independence remained limited in practice despite constitutional reforms, in part because of the entrenched bureaucratic culture and legacy of executive control over the judiciary (pp. 114–115). Similarly, Solodkyy (2016) argues that while Ukraine adopted numerous legislative frameworks to harmonize with EU law, the implementation gap persisted due to resistance within law enforcement agencies and judicial institutions shaped by Soviet-era ideological norms. As Hendley (2004) explains in the Russian context, legal transplants frequently appeared on paper but failed to influence actual practice, as lawyers and judges continued to operate within the ideological constraints of the prior regime (p. 393).

These challenges echo Kahn-Freund's (1974) famous warning about ideological incompatibility:

> "The first and foremost of these is of course the gulf between the communist and the non-communist world, and that between dictatorships and democracies in the capitalist world. The ways people earn their living may be similar, but not the role played by pressure groups such as independent trade unions and employers' associations" (p.11).

This insight is essential for understanding the ideological barriers that constrained the transplantation of Canadian juvenile probation into Ukraine. Canadian juvenile justice operates within a democratic, rights-based environment where strong civil society actors, independent courts, and a tradition of policymaking collectively support rehabilitative models. Ukraine's post-Soviet context, however, inherited deeply authoritarian legal thinking, weak civic pressure groups, and a punitive institutional culture, making the ideological environment fundamentally misaligned with the ethos of Canadian rehabilitation.

Ideological influence also emerges in international development law. Santos (2002) critiques the global diffusion of neoliberal legal models, arguing that they frequently ignore the ideological commitments of the recipient legal culture, resulting in failed or hollow reforms (p. 436). Likewise, Tamanaha (2011) warns that transplanting rule-of-law packages without addressing underlying ideological divergence often leads to superficial compliance rather than genuine institutional transformation (pp. 143–144). Thus, ideology serves as both a lens and a boundary for legal transplantation. Not only it frames the interpretation of foreign norms, but it also determines what is politically and socially acceptable. In the context of juvenile probation reform in Ukraine, the ideological gulf identified by Kahn-Freund proved particularly consequential: the rehabilitative, community-based logic of Canadian probation entered a system ideologically predisposed toward punitive, state-centric control. As a result, successful transplantation required far more than institutional or technical compatibility – it required

ideological resonance and the capacity to navigate deep-rooted normative tensions, a condition that Ukraine struggled to fulfil as will be discussed in further chapters.

Legal family

The concept of legal families also plays a role in the process of legal transplantation, often serving as either facilitator or irritant in the integration of foreign legal norms into new jurisdictions. Legal families –such as common law, civil law, Islamic law, and socialist law – represent distinct legal traditions, each with its own principles, structures, sources of law, and interpretive practices. As Zweigert and Kötz (1998) define legal families as "groupings of legal systems which share a common historical origin and similar structural characteristics" (p. 64). These shared characteristics shape how easily a legal rule can be transferred and received in a new jurisdiction.

The notion of legal families as a source of friction in legal transplantation is evident in the varying degrees of compatibility between the source and recipient legal systems. For instance, common law and civil law systems differ fundamentally in their approach to precedent, the role of judicial decisions, and the degree of abstraction in legal texts. As Glenn (2010) notes, civil law systems emphasize codified statutes as the primary source of law, while common law systems prioritize judicial reasoning and case law as authoritative (p. 133).

A practical example of this divergence is seen in the transplantation of the U.S. Sarbanes-Oxley Act into civil law jurisdictions in Europe. The Act's requirement for independent audit committees posed significant challenges to civil law companies, particularly those operating under two-tier board systems. As Coffee (2002) observes, this reform was "a revolutionary reform for corporations incorporated under civil law regimes," which traditionally lacked the board independence required by the Act (p. 1825). He further explains that codetermination laws in

countries like Germany, which require supervisory boards to be composed partly of labor representatives, made it "particularly threatening" for European firms to comply with U.S. mandates that assigned oversight responsibilities to audit committees (p. 1825).

In this vein, Grande (2000) attributed the generally unsuccessful transplant of U.S. adversarial-style criminal procedure into Italy to "the resistance of a different institutional context, coupled with a civil law mentality" (p.256). This example underscores how the deep-seated logic and procedural orientation of a legal family can impede the assimilation of foreign legal concepts, even when reformers seek to emulate models perceived as modern or prestigious. The civil law tradition's emphasis on written codes, judicial passivity, and hierarchical legal reasoning proved resistant to the adversarial structure characteristic of common law systems, demonstrating that transplantation success depends not only on formal adoption but also on cultural and institutional fit.

In the post-socialist context, Siems (2018) highlights that legal reforms influenced by Western models were often shaped by the recipient country's legal heritage. While many Eastern European states formally adopted elements of the *acquis communautaire* to join the EU, these transplants interacted with entrenched local legal cultures. As Siems puts it, "legal change did not always mean legal transformation" (p. 104), emphasizing that legal family affiliation continued to shape institutional practices and interpretations.

Therefore, legal families significantly impact the process of legal transplantation. They are not just classifications but living traditions that condition how laws are interpreted and implemented. Policymakers and reformers must consider these dimensions to ensure that foreign legal norms are not merely copied, but are meaningfully adapted to resonate within the recipient system.

Social context

The social context of a jurisdiction significantly influences the process of legal transplantation, often serving as a critical factor that impacts the acceptance, adaptation, and functionality of imported legal norms. Social context encompasses the cultural values, social norms, demographic characteristics, and societal structures of the recipient country. These factors shape how transplanted legal norms are interpreted, resisted, or transformed. Cultural values and societal norms are among the most immediate and visible components of the social context. As Legrand (1997) emphasizes, "law is not context-free; it is a cultural phenomenon" (p. 114). Legal norms that resonate with existing values and worldviews are more likely to be internalized and complied with, while those that conflict with prevailing social expectations often face adaptation or outright resistance. For example, Merry (2006) notes that human rights norms introduced into communities through legal transplants are often reinterpreted to align with local moral systems –a process she calls "*vernacularization*" (p. 39).

An illustration of the role of social context in legal transplantation is the difficulty of introducing gender equality norms into patriarchal societies influenced by Islamic legal traditions. Otto (2007) explains that in many Muslim countries, the relationship between national legal systems and Islamic law is highly context-specific, shaped by political developments, historical arrangements, and societal values. He provides case studies demonstrating that while some countries incorporate sharia selectively within secular frameworks, others maintain more comprehensive Islamic legal systems. This variation reflects the challenge of introducing foreign legal norms such as those based on international human rights law – into societies where religious doctrine and social norms may not align with transplanted legal concepts. In such contexts, social and ideological resistance may inhibit both the adoption and the effective implementation of

transplanted norms. Demographic factors also play a crucial role. Youth-dominated populations in rapidly urbanizing societies may be more open to foreign legal models, especially those promising individual rights and access to global economic networks (Inglehart & Welzel, 2012). A clear illustration of this dynamic is the Revolution of Dignity (Euromaidan) in Ukraine (2013–2014), which was driven largely by urban youth and students mobilizing around demands for European integration, human rights, and rule of law. Surveys and sociological studies show that youth constituted the core of the protest movement and framed the uprising as a struggle for dignity, legal rights, and access to a European political and economic space (Kulyk, 2016). In contrast, societies with aging populations or entrenched traditional leadership structures may be more resistant. As Siems (2018) points out, the success of legal transplants depends not only on legal compatibility but also on the "social readiness" of the receiving society (p. 108).

Social stratification and power dynamics further influence legal transplantation. Elites may resist reforms that threaten their position, particularly when transplants promote redistribution or increased accountability. The experience of post-socialist states in Eastern Europe further demonstrates that the social and institutional context determines whether transplanted laws can take root. Waelde and Gunderson (1994) observed that while technical or formal legislative provisions could be transferred quickly in periods of systemic transition, these reforms often faltered when the necessary institutional and social structures were absent. They argued that legal change must be accompanied by the development of organizations and institutional environments capable of sustaining a corresponding legal culture. Without such foundations, even well-designed laws risk remaining ineffective or purely symbolic (pp. 360-361). This observation underscores that transplantation is not merely a legislative exercise but a broader social process requiring the

simultaneous evolution of norms, institutions, and professional practices. Thus, the social context of a jurisdiction operates as a vital determinant in the outcome of legal transplantation.

Economic context

The economic context of a recipient jurisdiction plays a pivotal role in shaping the success or failure of legal transplantation. Legal norms are not only social constructs but also economic instruments, governing transactions, property rights, labor markets, and corporate behavior. For a legal transplant to be effective, it must correspond to the prevailing economic structures and policy objectives of the host jurisdiction. Economic factors such as the level of development, market infrastructure, regulatory capacity, and macroeconomic stability condition the functionality and acceptance of transplanted laws. According to Dam (2006), legal reforms that are out of sync with local market conditions risk becoming "legal fictions" – laws that exist on paper but have no traction in practice (p. 11). The level of economic development strongly influences the kinds of legal frameworks that can be meaningfully integrated. Advanced economies with formal institutions and diversified markets are more likely to benefit from sophisticated commercial codes, while developing countries often require foundational legal infrastructure. Siems (2018) notes that transplanting laws from high-income to low-income countries frequently results in gaps between legal form and economic function, particularly in areas such as intellectual property ("**IP**") and corporate regulation (p. 120).

A salient example is the transplantation of complex IP laws into jurisdictions with weak enforcement systems and limited innovation capacity. Maskus (2000) observed that in many developing countries, strong IP regimes were adopted in response to international pressure but lacked meaningful domestic application, leading to high compliance costs with minimal economic benefits (p. 38). The regulatory environment and good governance are equally decisive. Countries

with well-functioning legal and executive systems are more likely to implement and enforce complex legal norms effectively. In contrast, weak institutions often undermine transplanted legal frameworks. As La Porta et al. (1999) demonstrates, good government has been shown to contribute to the economic development of European countries (p. 222).

Economic volatility also affects legal transplantation. In times of economic crisis, countries may turn to foreign legal models to restore confidence and stabilize markets, often under pressure from international donors or financial institutions. However, urgency may come at the cost of context-sensitive reform. For example, in the post-Soviet space, economic turmoil in the 1990s spurred the rapid adoption of Western-style corporate and commercial laws, including privatization, corporate governance, and bankruptcy frameworks. As Pistor (1999) explains, many countries adopted Western legal frameworks to attract foreign investment. However, without complementary reforms in regulatory oversight and judiciary independence, these legal norms remained underutilized or manipulated by economic elites (p. 93). For example, as Hendley (2004) points out, in Russia, these legal changes frequently failed to take root due to the persistence of informal norms, lack of administrative capacity, and widespread distrust in legal institutions. She also explains that “formal legal rules were routinely ignored by economic actors who relied on personal connections and extralegal methods to resolve disputes” (p. 393), undermining the effectiveness of the transplanted frameworks.

In conclusion, the economic context of a recipient country profoundly shapes the feasibility and impact of legal transplantation. A transplant that disregards local economic conditions may not only fail but also generate unintended harms. Thus, economic analysis should be central to legal reform strategies, ensuring that transplanted laws are pragmatically aligned with the institutional capacities, development needs, and policy goals of the host system.

Language

Language presents an additional layer of complexity. Legal meanings are not easily transferable because they are deeply embedded in the linguistic and cultural frameworks from which they originate (Carvalho, 2019). Carvalho (2019) critiques the assumption underlying many legal transplants that legal institutions can be transferred independently of their original context, stating: "Once legal institutions are decoupled from their original ground and resettled in different social emplacements, their intertextuality to the diffuse web of local practices will likely beget fundamental changes in their conceptual grammar" (p. 22). This insight reinforces the idea that transplanted legal norms undergo significant reinterpretation within the receiving system, shaped by its socio-linguistic practices.

Malicious Legal Transplants

Malicious legal transplants represent a distinct and troubling dimension of legal transplantation, in which foreign legal norms are introduced into a domestic legal system with an intent that undermines justice, entrenches inequality, or disproportionately benefits select interests. Unlike failed legal transplants – which falter due to poor adaptation, incompatibility, or institutional weakness – malicious legal transplants are marked by the purposeful imposition of rules designed to reshape legal orders in ways that serve narrow political, economic, or ideological goals.

Siems (2018) defines the "malicious transplant" as one whose introduction is "harmful to the, previously intact, social coexistence of different groups in society" (p.104). Siems (2018) addresses this category of transplants, suggesting that the intent behind transplantation matters significantly. Siems (2018) differentiates between neutral or benevolent legal reforms and those that, while formally lawful, serve to entrench power asymmetries or obstruct progressive legal development (p. 104). These types of transplants may exploit the legitimacy of international legal

harmonization or donor-driven reform to introduce rules that create barriers to access, empower elites, or erode institutional independence (Siems, 2018, pp. 104–107). One of the documented cases involves the transplantation of intellectual property regimes mandated under the WTO's TRIPS Agreement. Gervais (2003) and Sell (2003) have demonstrated that these frameworks, designed by and for advanced economies, were implemented in countries with limited institutional capacity, often to the benefit of multinational rights holders. In practice, these laws have restricted access to medicines and technology in low-income nations, serving private commercial interests rather than public development goals.

Post-socialist countries have also seen instances of transplants that could be considered malicious. As Pistor (1999) notes, privatization laws introduced across Eastern Europe and the former Soviet Union were framed in legal terms borrowed from Western market economies but were applied in a context of institutional vacuum and elite capture. These transplants, rather than distributing property broadly, facilitated the concentration of wealth among politically connected actors, undermining public trust and entrenching oligarchic structures (Pistor, 1999, p. 91). This outcome illustrates how the rapid adoption of foreign legal models, often under international pressure and in conditions of institutional fragility, can lead to unintended or even exploitative consequences. As Waelde and Gunderson (1994) observed, times of dramatic change frequently leave little room to craft "organic" legislation suited to local needs (pp. 368-369). What begins as an effort to import technically efficient norms may therefore result in the transplantation of laws that are formally sound but socially corrosive. In the absence of stable institutions and a culture of accountability, such reforms risk serving elite interests rather than broader societal goals, revealing the darker side of accelerated legal transplantation in post-socialist contexts.

Malicious transplants challenge the normative assumption that legal borrowing is inherently progressive or technocratic. They expose the ways in which legal reforms, particularly when introduced under external pressure or elite sponsorship, can serve exclusionary purposes. As Tushnet (1998) warns, legal transplants can function as instruments of ideological control, especially when imposed in transitional or dependent states lacking the institutional capacity to negotiate or reshape these reforms. Recognizing the phenomenon of malicious legal transplants requires a critical and interdisciplinary approach to comparative law.

Conclusions

Legal transplantation remains a widely used tool for reform, especially in countries aiming to modernize their legal systems or align with international norms. However, as this chapter has shown, the success of transplantation depends on a range of factors beyond the content of the transplanted law. Legal traditions, historical legacies, ideological structures, social attitudes, and economic conditions in the receiving country all play a central role in shaping how transplanted laws are received and implemented. Further, transplanted norms must interact with existing legal cultures, institutions, and beliefs and evolve within a new environment. A law that works well in one context may be interpreted differently or resisted in another due to entrenched ideological views, lack of institutional readiness, or conflicting legal values. Similarly, economic constraints or lack of administrative capacity can limit a law's effectiveness, regardless of its design. Social resistance – particularly when reforms challenge dominant cultural norms or power structures – can further complicate integration.

These challenges are particularly relevant in the Ukrainian context, transplanting juvenile justice reforms from Canadian practices. Yet, as described above, the success of such a transplant

requires more than copying policies – it demands careful assessment of how Canadian probation norms fit within Ukraine's legal traditions, institutional structures, and societal expectations.

The following chapters apply the analytical tools developed here to examine the transplantation of Canadian juvenile probation into the Ukrainian system. By evaluating how well this model aligns with Ukraine's specific conditions, this paper aims to identify both the opportunities and limitations of this legal reform. In doing so, it offers practical insights for designing a more responsive, sustainable, and locally adapted juvenile justice framework for Ukraine.

Chapter II. Canadian Juvenile Probation Practices

Introduction

This chapter examines how juvenile probation has developed in Canada and how it functions today within the broader framework of youth justice. Over the past century, and particularly in recent decades, Canada has shifted from punishment-oriented responses to an approach rooted in rehabilitation, community involvement, and restorative justice (Bala et al., 2009, p. 131; Doob & Cesaroni, 2004; Carrigan, 1998). The contemporary model prioritizes social support over incarceration, encouraging youth to take responsibility for their actions while reintegrating into society through education, counselling, and community work (Hogeveen, 2005). This shift reflects deeper transformations in how Canadian law and society understand youth crime, responsibility, and state intervention. It also parallels global developments toward more humane and evidence-based youth justice systems, as noted by Zavorine (2021). Canada's experience is therefore instructive internationally, particularly for countries such as Ukraine, where youth reoffending rates remain high and alternatives to custody are limited (Korenyuk, 2018, p.233). By analyzing the Canadian experience, this chapter traces how Canadian justice system balanced accountability with compassion and how lessons from this model may inform legal reform elsewhere.

The discussion begins by tracing the historical evolution of juvenile justice in Canada – from early welfare-based conceptions under the *Juvenile Delinquents Act* of 1908 (the "**JDA**"), through the rights-oriented framework of the *Young Offenders Act* of 1984 (the "**YOA**"), to the more balanced and community-focused system established by the *Youth Criminal Justice Act* of 2003) (the "**YCJA**"). These developments reveal a gradual but profound redefinition of probation – from a moral and corrective instrument to a structured, legally grounded, and rehabilitative measure tailored to individual needs. Building on this historical foundation, the chapter then

examines the operation and challenges of probation under the current YCJA. It considers how probation functions as one of the most frequently applied youth sanctions in Canada, how reintegration plans are coordinated through the role of youth workers, and how probation conditions are designed to support accountability and personal development.

At the same time, the analysis highlights persistent barriers, including uneven access to community programs, regional disparities, and tensions between rehabilitative ideals and practical implementation. By combining historical and contemporary perspectives, the chapter reveals how Canada's approach to juvenile probation has evolved and where it continues to face limitations. Understanding these dynamics provides essential context for assessing Canada's potential as a model for legal transplantation, and for exploring how its principles of community engagement and restorative justice might be adapted to improve youth justice outcomes in other jurisdictions.

To develop this analysis, the chapter first examines the early formation of probation practices in Canada prior to 1908, situating them within welfare-oriented approaches to youth governance. It then turns to the contemporary legal framework established by the YCJA (2003), which defines the modern structure and purpose of juvenile probation. The discussion subsequently considers practical and institutional challenges in probation practice, including the organization of probation services in Ontario, the interdisciplinary nature of probation work, and the tension between supportive and managerial roles in probation officers' daily practice. Finally, the chapter examines the impact of probation on marginalized youth, demonstrating how broader social inequalities continue to shape youth justice outcomes. Together, these sections explain both how the Canadian juvenile probation system developed and how it operates in practice today, providing the necessary foundation for the comparative and transplantation analysis that follows in later chapters.

This chapter examines Canadian juvenile probation using doctrinal analysis of youth justice legislation, particularly the YCJA and earlier statutory frameworks, together with comparative analysis to identify the elements of the Canadian probation model that later became relevant for transplantation to Ukraine. Engagement with academic and policy literature connects the legal framework to the practical functioning of probation, including the role of probation officers, interdisciplinary cooperation, and community-based supervision. Together, these approaches allow the chapter to explain both the legal structure of juvenile probation in Canada and its operation in practice, providing the necessary foundation for understanding Canada as the donor system in the transplantation examined in this dissertation.

General Overview of the Canadian Juvenile Probation System

The Formation of the Canadian Probation System Prior to 1908

The formation of Canada's probation system before the passage of the JDA of 1908 marked a decisive shift in legal philosophy and state-society relations. While the JDA is often cited as the formal beginning of a separate juvenile justice system, the roots of this development reach deep into the nineteenth century, when Canada's legal and moral order was still profoundly shaped by its colonial inheritance. Alongside evolving conceptions of childhood, morality, and state responsibility, the Canadian approach to juvenile offending gradually diverged from the harsh retributivism of early English law. The emergence of probation (initially informal and discretionary) was not a procedural innovation but reflected a deeper transformation in social thought: the recognition that youth required guidance, not punishment (Doob & Sprott, 2006a; Carrigan, 1998; Finlay, 2008).

In the early colonial period, the treatment of youth before the law reflected the severe orientation of English criminal justice. Under common law, youth under seven were deemed *doli*

incapax – incapable of criminal intent, while those between seven and thirteen could be convicted only if it was proven they understood the wrongfulness of their actions (Hogeveen, 2005). In practice, this principle offered little protection. Both in England and in its colonies, youth were frequently punished as miniature adults. The eighteenth-century "Bloody Code," which prescribed capital punishment for over 200 offences, left a deep imprint on early Canadian practice. Public whippings, imprisonment in fetid local jails, and even transportation-like sentences were imposed on youth for minor property crimes (Strange, 1996; Finlay, 2008). Archival records from the first half of the nineteenth century reveal the continuity of this punitive legacy. In Halifax, boys convicted of theft could receive up to thirty-nine lashes at the public whipping post, while in Upper Canada, youth were routinely sent to the Kingston Penitentiary, established in 1835, to serve multi-year sentences alongside adult criminals (Finlay, 2008). Such practices not only brutalized youth but also entrenched their criminal identities. As the 1849 Brown Commission later observed, imprisonment of youth completes the ruin of the unfortunate child, turning them into hardened offenders rather than reforming them. The Brown Commission's report marked a turning point in the colonial understanding of juvenile crime. Its authors urged that the battle should be fought with utmost warmth to reclaim youth through education and moral guidance (Department of Justice Canada, International Cooperation Group, 2004, p.7). The report proposed the creation of houses of refuge and reformatories, where neglected or delinquent youth could be re-educated under structured discipline rather than subjected to prison life (Carrigan, 1998; Finlay, 2008). This recommendation laid the conceptual foundation for the Canadian reformatory movement. By the mid-nineteenth century, a network of institutions designed to "correct" rather than punish youth began to emerge. The *Isle-aux-Noix Reformatory* (1858) in Quebec and the *Penetanguishene Reformatory* in Upper Canada represented early attempts to provide vocational and moral

instruction. Nova Scotia's *Halifax Protestant Industrial School*, established in 1864, introduced an even more progressive model that focused on prevention through education and work rather than punitive confinement. These schools reflected the growing influence of humanitarian and religious reformers, who viewed delinquency as a social rather than moral failing (Bullen, 2001; Comack, 2006).

Legislative change followed this intellectual shift. The *Industrial Schools Act* of 1874, adopted in Ontario, was among the first attempts to institutionalize child welfare principles. It allowed courts to commit "neglected and problem youth" to specialized institutions rather than prisons. Its 1884 amendment expanded judicial discretion, enabling magistrates to send convicted youth under fourteen to industrial schools rather than reformatories, thus formalizing a distinction between correction and punishment (Sangster, 2002b; Snell, 2002). These legislative measures effectively established a dual-track system, where delinquent and neglected youth were treated within a single welfare framework, which is a hallmark of early Canadian child-saving ideology.

At the same time, the conditions of confinement in reformatories and jails revealed the contradictions of this reformist vision. Reports from inspectors described overcrowding, inadequate sanitation, and physical abuse. In 1862, for example, an inspection of the Montreal Jail found little boys in rags commingling with adult offenders, underscoring the gap between legislative rhetoric and institutional reality (Finlay, 2008).

The *Criminal Code of 1892* – Canada's first comprehensive national codification of criminal law – played a pivotal role in crystallizing the legal differentiation of youth from adults. Building upon common-law presumptions, the Code codified the *doli incapax* rule, establishing that youth under seven were presumed incapable of forming criminal intent and thus exempt from criminal liability. For those aged seven to thirteen, liability could only attach if the prosecution

proved that the child possessed sufficient understanding to distinguish between right and wrong, this principle required affirmative evidence of moral comprehension (Doob & Cesaroni, 2004; Hogeveen, 2005). Furthermore, the Code required that proceedings involving accused persons under sixteen be conducted separately from those of adults, reflecting an early legislative attempt to mitigate the criminogenic effects of mixed detention and trial. The death penalty was explicitly barred for offenders under fourteen, and corporal punishment, while not abolished, was increasingly replaced by judicial discretion emphasizing reformation rather than retribution (Finlay, 2008).

A critical development in the formation of Canadian probation came with the *Act Respecting Arrest, Trial and Imprisonment of Youthful Offenders* (1894). This statute codified a series of reforms that had been evolving informally through local philanthropic and judicial initiatives. It required that youth be separated from adults during arrest and trial and that sentences prioritize reformation through education and vocational training rather than incarceration. Importantly, the Act introduced special provisions for Ontario that recognized the emerging role of children's aid societies as intermediaries between the courts and the community. Instead of imprisonment, the courts could commit youth to the care of homes for neglected or destitute youth or place them directly under the supervision of a local Children's Aid Society.[20] When any boy under twelve or girl under thirteen was charged with an offence, the court was required to notify an officer of the society to conduct an investigation and provide recommendations to the magistrate. After such consultation, the court could choose from a range of sentencing options, including placement in foster care, the imposition of a fine, suspension of sentence, or commitment to a reformatory or industrial school (Kelso, 1894; Finlay, 2008). These Ontario provisions were

[20] The first Children's Aid Society in Canada was established in 1891 in Toronto.

not merely procedural innovations but reflected a profound shift in the philosophy of youth justice. The collaboration between magistrates and children's aid societies institutionalized a model of community-based supervision that prefigured the modern idea of probation.

The intellectual and moral leadership behind these changes owed much to social reformers such as John Joseph Kelso, Ontario's first Superintendent of Neglected and Dependent Children. Kelso's work in the late nineteenth century pioneered informal probation practices. Through cooperation with police and magistrates, he arranged for convicted youth to be placed under family supervision or community guardianship rather than imprisoned. This innovation reflected a distinctly Canadian adaptation of emerging Anglo-American child welfare ideas that delinquency was curable through social and familial rehabilitation rather than deterrence (Bullen, 2001; Carrigan, 1998).

By the end of the nineteenth century, the convergence of legal reform, philanthropy, and social activism had laid the groundwork for a coherent juvenile justice philosophy. Yet, as Finlay (2008) and Comack (2006) observe, this "child-saving" movement was neither uniformly progressive nor free of contradiction. Reformatories and industrial schools often perpetuated class, racial, and gender hierarchies, disproportionately targeting working-class, immigrant, and Indigenous youth – as well as girls whose behaviour was seen as morally deviant or socially improper – for "moral improvement." These institutions sought to instil Anglo-Protestant virtues of discipline, thrift, and obedience at the expense of cultural identity and autonomy (Sangster, 2002b; Kline, 1992).

Nonetheless, the late Victorian decades transformed the landscape of youth justice. The creation of industrial schools, the gradual codification of protective legislation, and the emergence of informal probation practices collectively marked the transition from a punitive to a rehabilitative

paradigm. The state, once a distant enforcer of punishment, became an active moral guardian. When the JDA was enacted in 1908, it did not emerge as an abrupt innovation but as the culmination of a long moral and institutional evolution – a uniquely Canadian synthesis of British legal tradition and local humanitarian initiative. In this sense, the probation system that preceded the JDA represented more than a procedural reform; it reflected a deeper reconfiguration of state power and civic responsibility. This movement embodied the gradual moralization of criminal law, as the delinquent child was reimagined as a subject of care rather than control. Canada's pre-1908 experience thus stands as an early example of how transplanted legal ideas, filtered through local culture and institutional capacity, can evolve into distinct, enduring traditions of justice.

The Juvenile Delinquents Act of 1908

Towards the end of the nineteenth century, societal attitudes towards juvenile offenders had undergone a significant transformation. There was a growing recognition that "children should be treated differently and separately from adults" (Trepanier, 1999, p. 308). This shift in perspective was driven by a deeper understanding of child development and a growing belief in the need for a distinct legal framework to address juvenile delinquency. The efforts to differentiate the treatment of youths culminated in the adoption of the JDA in 1908, which fundamentally altered the juvenile justice landscape in Canada. The JDA introduced a blurred distinction between juvenile delinquency and deviance, embedding the concept of "*parens patriae*," a Latin term meaning "parent of the nation." This concept underscored the state's role in stepping in as a guardian for youth when their caregivers were deemed incapable (Oudshoorn, 2015). Kelly (2023) similarly describes the early juvenile justice model as "welfarist, rehabilitative, even 'familial,'" emphasizing that it rested on a different conception of the state's relationship to young people than the ordinary criminal law model (p. 88). The core idea of the JDA was expressed in Section 38,

which stated that the treatment of youth should resemble the care provided by parents. It emphasized that youth should not be seen as criminals, but as youth in need of help, guidance, and support (Juvenile Delinquents Act, 1970). This reflected a shift in thinking about juvenile crime. Instead of blaming youth for their actions, the JDA viewed their behaviour as shaped by their family and social environment. The goal was to rehabilitate rather than punish. Scholars note that this approach was based on the belief that early intervention and social support could redirect youth away from future offenses (Doob & Cesaroni, 2004; Bala et al., 2009). The JDA treated juvenile delinquency as a problem of misguidance rather than moral failing, setting the stage for a welfare-oriented model of youth justice (Tanner, 2001).

In keeping with this approach, the JDA provided for separate juvenile courts and required that all cases involving youth be brought before such courts rather than tried alongside adults. Proceedings were to be private, and neither the names of the accused nor their parents could be published. Young persons detained pending a hearing had to be placed in detention homes or shelters exclusively for youth. The JDA also introduced restrictions on the punishment of youth and prohibited their incarceration in any place where adults were or might be imprisoned. However, it allowed for the transfer of youth over the age of fourteen accused of serious indictable offences, such as murder or treason, to ordinary courts, at the discretion of a juvenile court judge. These provisions marked the institutional consolidation of the welfare model within Canadian criminal justice (Department of Justice Canada, International Cooperation Group, 2004, p.21).

The wording of the JDA further reinforced *parens patriae* philosophy. For instance, Doob and Cesaroni (2004) highlight the deliberate omission of the term “sentencing” within the JDA. Instead, the focus was on “treatments” rather than punishments, which reflects a fundamental shift in how juvenile justice was conceptualized (p. 192). This approach, while progressive in its intent

to rehabilitate rather than punish, also led to several significant issues. The indeterminacy of dispositions, the rejection of proportionality, and the erosion of youth' procedural rights were some of the key criticisms of this approach. As Trepanier (1999) observed:

> The judge's function was seen as one to establish whether the child convicted of an offence considered symptomatic of his needs was actually in need of assistance, and how in particular the factors deemed to be at the root of his delinquent behaviour could be neutralized. This was a protective model, where the fatherly and kindly judge was not one against whom the child had to protect himself. The normal guarantees offered by the due process of law appeared irrelevant. Since the emphasis was on the child's needs and the benevolent attitude of those taking charge of him, there no longer seemed to be a need to safeguard all his procedural rights
>
> (as cited in Doob & Cesaroni, 2004, p.134).

The idea that the state should act as a parent to protect and guide youth was not unique to Canada. This concept was also common in other welfare-oriented legal systems, including the US and the UK. The model positioned the state as a guardian responsible for the well-being of youth rather than simply punishing them. However, this approach often led to tensions between rehabilitation and the protection of individual rights. The U.S. Supreme Court in *Kent v. United States* warned that under this philosophy, "*the child receives the worst of both worlds. He gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children*" (as cited in Feld, 2000, in Doob & Cesaroni, 2004, p. 48). This criticism was also relevant in Canada, where the JDA of 1908 adopted a similar approach. Although the JDA aimed to treat youth offenders as misguided youth rather than criminals, in practice, the system often failed to guarantee basic legal protections such as due process and the right to appeal. According to Doob and Cesaroni (2004), the JDA blurred the line between care and control, frequently substituting judicial oversight with discretionary power in the hands of social workers and judges (pp. 49–51).

The broad legal definition of juvenile delinquency under the JDA encompassed not only criminal behaviour but also status offences – acts considered offences only because of the age of the offender. These included truancy, promiscuity, and defiance of parental authority. Such definitions opened the door to the disproportionate targeting of specific groups of youth, especially those already marginalized. Bala (1997) observed that girls, racial minorities, and working-class youth were significantly more likely to be charged with status offenses than their middle-class, white counterparts. This systemic bias also appeared in gender-specific patterns of intervention. Chesney-Lind et al. (2017) noted that girls charged with status offenses were frequently subjected to harsher penalties than those charged with criminal offenses, reflecting a moralistic view of female behaviour and the need to "correct" it (p. 174).

Additionally, the JDA limited the youth's ability to challenge their convictions. Appeals could be made only with special leave, which required judicial approval and was granted only in exceptional cases, such as when the appeal was deemed essential for public interest or proper administration of justice (Juvenile Delinquents Act, 1970, s. 37). The original 1908 JDA provided juveniles with no avenue to appeal a finding of delinquency; even after the 1929 amendments introduced a limited leave-based appeal, juvenile law remained strongly oriented toward expediency and finality (Kelly, 2023, pp. 91–92). The assumption behind this limitation was that courts always acted in the best interest of the child, rendering appeals unnecessary (s. 20.5). This paternalistic logic further restricted youth' access to justice. Some scholars saw the JDA as both a progressive and a problematic statute (Platt, 1977; Oudshoorn, 2015; Havemann, 1986; Bolton et al., 1993). On one hand, it aimed to keep youth out of adult prisons and introduced a separate system for addressing juvenile misbehaviour. On the other hand, it institutionalized a system of moral and social control. Platt (1977) observed that while the JDA helped humanize justice for

youth, it also created mechanisms that subjected more youth to formal interventions and state surveillance (p. 17). The McLeod Committee later identified inconsistencies in how the JDA was implemented across Canada. Since child welfare falls under provincial jurisdiction and criminal law under federal law, the JDA's hybrid nature created gaps and overlaps. Some provinces treated youth primarily as welfare cases, while others focused on penal approaches (as cited in Oudshoorn, 2015). This federal-provincial divide contributed to varied experiences for youth depending on their geographical location.

Disparities were also evident between urban and rural jurisdictions. Urban areas typically had better access to probation services, social workers, and psychiatric evaluations, while rural regions lacked such infrastructure. Sangster (2002) noted that this imbalance led to inconsistent applications of the law and different outcomes for similar offences based on available resources. The McLeod Report also criticized the JDA for using stigmatizing language like "juvenile delinquent" and setting age boundaries that were not developmentally appropriate. It recommended narrowing the age range of the Act to between 12 and 17, rather than 7 to 16, to align more closely with modern understandings of adolescent development (as cited in Oudshoorn, 2015).

One significant contribution of the JDA was the formalization of probation as a juvenile justice tool. Previously handled informally by children's aid societies, probation was now integrated into the court system. This shift reflected a growing belief in structured supervision as a means of rehabilitation. Probation officer numbers increased accordingly. In Toronto, for example, their number rose from four in 1912 to fourteen by 1952 (Sangster, 2002b). Despite its growth, the probation system faced challenges. Many officers came from adult courts and brought punitive attitudes with them. Their role under the JDA was unclear – they were expected to both

support the youth and represent the court, leading to role conflicts (Juvenile Delinquents Act, 1970, s. 30). This ambiguity often weakened the rehabilitative goals of probation. Further, while some view probation's expansion as a progressive shift toward community-based intervention, others criticize it as a tool of surveillance over marginalized youth. Sangster (2002) emphasized that such programs often reinforced societal norms rather than challenging the structures that contributed to youth marginalization.

In summary, the JDA reflected a welfare-based philosophy that sought to guide and support youth rather than punish them. However, in practice, it also facilitated discriminatory enforcement and limited legal protections. The formalization of probation under the JDA was both an innovation and a reflection of ongoing tensions between care and control, rehabilitation and discipline – issues that continue to shape juvenile justice reform in Canada and foreign contexts such as Ukraine.

The Young Offenders Act of 1984

The repeal of the JDA and the enactment of the YOA in 1984 marked a significant turning point in the development of Canada's juvenile justice system. The JDA, rooted in the welfare model and the philosophy of *parens patriae*, had aimed to treat youth not as criminals but as misdirected youth in need of guidance and care. However, over time, critiques emerged regarding its lack of procedural fairness, broad discretion given to the state, and its often paternalistic and arbitrary application. Scholars, policymakers, and judicial bodies began questioning the effectiveness and fairness of a model that emphasized treatment over legal accountability (Doob & Cesaroni, 2004).

Momentum for reform intensified with the adoption of the *Canadian Charter of Rights and Freedoms* in 1982. Enshrined within the Constitution, the Charter affirmed core legal protections such as the rights to life, liberty, and security of the person, as well as equality before and under the law. Its enactment exposed the incompatibility between the JDA's discretionary framework and the Charter's rights-based guarantees. Critics noted that the JDA's provincial disparities could contravene Section 15 of the Charter, which prohibits unequal treatment by the state (Department of Justice Canada, International Cooperation Group, 2004, p. 24). Against this constitutional backdrop, Parliament, supported by all major political parties, introduced the YOA, which came into force on 2 April 1984, replacing the 1908 JDA and initiating a new era of youth justice. This shift had earlier been foreshadowed by the McLeod Committee, which challenged the informality and broad discretion of the old juvenile court model and helped lay the groundwork for a more rights-based youth justice framework by insisting that the rehabilitative ideal could not justify ignoring young people's civil liberties (Kelly, 2023, pp. 95–96).

The YOA's central objective was to address the major deficiencies of its predecessor, especially related to legal rights and accountability. It preserved the principle that youth should be treated differently from adults, yet sought to ensure that such treatment respected their constitutional rights. The YOA extended to youth many of the same procedural guarantees available to adults, including the right to counsel, the right to a fair hearing, and the right to appeal a conviction. As Kelly observes, the YOA "ushered in a legalistic regime" of rights and responsibilities and marked a decisive turn away from child welfare toward criminal law, with greater reliance on judges, prosecutors, defence counsel, closed-custody institutions, and stricter procedural regulation (p. 97). However, the YOA did not fully equalize youth and adult appellate rights: while it expanded appeal rights generally, young people still required leave to appeal to the

Supreme Court of Canada, even in circumstances where adults had an appeal as of right (Kelly, 2023, pp. 97–98). It also established a new, uniform age framework for youth justice, setting the minimum age of criminal responsibility at 12 years and fixing the upper limit at 17 across all provinces; this change took effect on 1 April 1985 (Department of Justice Canada, International Cooperation Group, 2004, p. 25).

In line with its commitment to proportionality and accountability, the YOA introduced a new sentencing regime and a diversified set of sanctions. Courts were empowered to impose restitution, compensatory work for victims, or community service, emphasizing repair of harm rather than simple retribution. Detention terms were standardized: the maximum period of custody was set at two years, or three in cases where an adult conviction would have carried a life sentence. Although transfers to adult courts were permitted in exceptional circumstances, the law's intent was that most cases remain under the jurisdiction of youth courts. Amendments in the late 1980s and 1990s further refined these provisions, including extending maximum penalties for first- and second-degree murder to ten and seven years respectively (Department of Justice Canada, International Cooperation Group, 2004, p. 25)

Among the key innovations of the YOA was the removal of status offences from the domain of juvenile justice. This meant that behaviours considered non-criminal for adults, such as truancy or sexual activity, were no longer criminalized when committed by youth. This change was especially significant in addressing the gendered and class-based application of status offences under the JDA (Bala, 1997; Chesney-Lind et al., 2017, p. 174).

Another structural improvement under the YOA was the increased use of alternative measures and the encouragement of police and prosecutorial discretion. Section 3(1)(f) emphasized the principle of minimal interference in the life of the young person, suggesting that

formal court processes should be avoided unless absolutely necessary. However, this discretion was inconsistently applied. Carrington and Moyer (1994) found that the rate at which police laid charges against youth increased from 7% in 1980–1983 to 27% in 1986–1996, suggesting that in practice, diversionary measures were underutilized.

The sentencing regime under the YOA also came under scrutiny. While the YOA replaced the JDA's vague concept of "care and guidance" with structured sentencing provisions, these lacked coherent principles to guide judicial discretion. Doob and Cesaroni (2004) argued that, in contrast to the JDA's lack of process, the YOA risked becoming process-driven but devoid of substantive sentencing principles (pp. 192–195). Judges had broad latitude to assign different dispositions for similar offences, resulting in inconsistent outcomes across provinces and territories.

In terms of non-custodial interventions, such as probation, the YOA offered new opportunities but also posed challenges. Although the term "probation" remained a central disposition under the YOA, there was relatively limited research on its practical implementation. One of the few empirical studies – conducted by Pulis and Sprott (2005) –examined probation length under the YOA and found that neither the type of offence nor the offender's age or sex strongly predicted sentence duration. The most consistent factor influencing longer probation terms was a prior conviction. This finding pointed to a lack of coherence in how probation was applied, echoing broader concerns about inconsistency in YOA dispositions. Pulis and Sprott (2005) further showed that probation sentences for administration-of-justice offenses were longer than for other offenses, with nearly 70% extending beyond one year. By contrast, property and summary offenses resulted in significantly shorter probation terms. These disparities indicate that the use of probation under the YOA did not consistently reflect the principle of proportionality –

a key concern in the justice model. The YOA also introduced supervised reintegration following custody. In theory, youth released from custody were to receive structured support to facilitate their return to the community. However, as Doob and Cesaroni (2004) noted, only about half of youth benefited from such support, while the other half were left to navigate re-entry alone. This gap revealed ongoing weaknesses in the YOA's commitment to rehabilitation. More broadly, later reflection on the period suggested that youth custody under the YOA was often used for short terms and, in practice, could function as a substitute for social supports that were otherwise absent (Kelly, 2026).

Despite its reformative intent, the YOA generated considerable controversy. Critics argued that it resulted in an overreliance on custodial sentences and failed to significantly reduce youth incarceration rates. By the late 1990s, Canada had one of the highest youth incarceration rates in the Western world (Doob & Cesaroni, 2004). The government identified a number of deficiencies in the YOA, including excessive use of custody for non-violent crimes, inconsistencies in sentencing practices across jurisdictions, and an inadequate emphasis on rehabilitation and reintegration (Department of Justice Canada, 1998). The YOA also struggled to reconcile federal criminal law with provincial responsibility for child and youth services, a challenge inherited from the JDA. Provinces varied widely in their application of probation and other non-custodial measures. Cities were generally better positioned to deliver the YOA's rehabilitative measures due to stronger institutional capacity, while rural areas often struggled because of limited access to probation officers, social workers, and support programs (Sangster, 2002b). Importantly, this punitive turn developed even as youth crime was declining from its early-1990s peak. As later analysis has emphasized, public and media discourse in the 1990s increasingly focused on youth

violence, gangs, and public danger, generating political pressure for tougher responses that was not always consistent with the actual crime trends (Kelly, 2026).

Ultimately, the YOA was replaced by the YCJA in 2003. The YCJA was introduced to correct many of the YOA's shortcomings, aiming for a more balanced, evidence-based approach that emphasized accountability, proportionality, and the use of non-custodial sentences. However, the legacy of the YOA remains relevant to current juvenile justice reform, particularly in understanding the risks of over-legalization, inconsistent probation practices, and inadequate post-custody reintegration. The YOA is therefore best understood as a transitional statute: it corrected many of the due process failings of the JDA, but it also exposed the risks of a youth justice model that became more formalized and rights-conscious without developing a sufficiently coherent and restrained approach to custody and community supervision.

The Youth Criminal Justice Act of 2003

The YCJA, enacted in 2002 and implemented in 2003, marked a transformative moment in Canada's approach to juvenile justice. Responding to longstanding critiques of the JDA and the YOA, the YCJA sought to establish a coherent, principle-driven framework balancing accountability with rehabilitation. Unlike its predecessors, the YCJA explicitly outlined its objectives, purposes, and guiding principles, providing clear statutory direction for the administration of youth justice across Canada (Doob & Sprott, 2006a). As Kelly (2026) emphasizes, the YCJA was not simply another legislative adjustment but part of a major reorientation of Canadian youth justice after the punitive excesses of the YOA era. By the late 1990s, Canada had reached unusually high levels of youth incarceration, even though youth crime was already declining. In that context, the YCJA represented a deliberate attempt to reverse an increasingly carceral approach to youth offending.

Section 3(1) of the YCJA (2002) delineates its foundational principles, emphasizing the protection of society through proportionate accountability, the promotion of rehabilitation and reintegration, and the prevention of crime through community-based interventions. These principles embody a dual strategy: reducing the excessive reliance on courts and incarceration for minor offences while ensuring structured and proportionate responses to serious youth crime (Latimer & Desjardins, 2007). Kelly (2026) notes that one of the key achievements of the YCJA was that it did not merely express a new philosophy in general terms; rather, it reorganized decision-making at multiple stages of the youth justice process. In this sense, the YCJA was prescriptive, not merely aspirational: it sought to produce restraint through legal design, not only through changes in judicial attitude.

Importantly, the Act asserts that the youth criminal justice system must be separate from that of adults and founded on the notion of "diminished moral blameworthiness or culpability" (s.3(1)(b)), recognizing developmental differences in maturity and judgment. This legislative overhaul reflected extensive research and policy recommendations from the 1990s. Bala et al. (2009) argue that the YCJA's twofold structure – diverting less serious cases while targeting serious offences with graduated responses – was informed by empirical findings and evolving public attitudes. Earlier critiques of the YOA, including those by Corrado and Markwart (1994), identified its punitive drift and the lack of effective rehabilitative pathways, particularly for marginalized youth (Corrado & Markwart, 1994; Doob & Cesaroni, 2004). At the same time, as Kelly (2026) observes, the YCJA emerged in a politically difficult climate. Public debate in the late 1990s and early 2000s was shaped by media concern over youth violence and by broader "tough on crime" pressures. The Act therefore embodied a compromise: it entrenched restraint and

rehabilitation for most youth but also retained mechanisms for severe responses in cases involving the most serious violence.

A significant point of departure from the YOA lay in the treatment of sentencing. Whereas the YOA relied primarily on a general "Declaration of Principle" to guide interpretation, the YCJA delineated specific purposes, principles, and factors to be applied in sentencing decisions. The Act introduced distinct sections addressing sentencing (s.38), custody and supervision (s.39–40), and extrajudicial measures (ss.4–12), ensuring greater clarity and consistency in judicial practice (Department of Justice Canada, International Cooperation Group, 2004, p. 27). It also abolished the transfer of youth to adult court, replacing this with an adult sentencing system within the youth court framework, allowing, under defined circumstances, the imposition of adult sentences while preserving the procedural protections of youth court (Doob & Sprott, 2004). This redesign was significant because it moved away from the YOA's broad and often inconsistent discretion and instead created a more structured legal pathway for dealing with youth offending. As Kelly (2026) suggests, the YCJA attempted to ensure that the seriousness of some cases did not justify collapsing the distinction between youth and adult justice altogether.

The YCJA also institutionalized youth justice committees (s.18), empowering community members to advise on appropriate extrajudicial measures, facilitate reconciliation between victims and young persons, and coordinate community resources (Youth Criminal Justice Act, 2002).[21] This provision reflected a growing recognition of restorative justice as an integral element of youth justice, reinforcing the YCJA's rehabilitative and participatory approach (Barnhorst, 2004). In this

[21] The YCJA was also shaped by international and comparative influences. Its preamble expressly recognizes Canada's obligations under the United Nations Convention on the Rights of the Child, while the conference mechanism under ss. 18–19 was influenced in part by New Zealand's family group conference model and may also incorporate restorative practices found in Indigenous communities in Canada (Department of Justice Canada, 2022).

respect, the YCJA reinforced the idea that youth justice should not be reduced to punishment by the state alone, but should also involve communities, victims, and local support networks in the process of repair and reintegration.

A central component of the YCJA's sentencing structure is Section 38, which codifies sentencing principles emphasizing proportionality, regional consistency, and restraint in the use of custody. Youth sentences must be the least restrictive and most conducive to rehabilitation, with particular attention to the circumstances of Indigenous youth (s.38(2)(d)).[22] Sentences must also promote accountability and a sense of responsibility for harm done to victims and the community (s.38(2)(e)(iii)). These provisions align youth sentencing more closely with adult criminal law while maintaining youth-specific protections and objectives (Hirsch & Ashworth, 2012). The YCJA's committal to custody provisions (s.39) further narrowed the circumstances under which a young person could be incarcerated. Custody is permissible only in cases involving violent offences, patterns of prior offending, or exceptional aggravating circumstances. Courts must first consider all reasonable alternatives to custody and are explicitly prohibited from using detention as a substitute for child protection, mental health, or other social measures (s.39(5)). This statutory restraint underscores the shift away from the custodial reflexes that characterized the YOA era, embedding proportionality and social welfare considerations in custodial decision-making (Bala, 2012). Kelly (2026) stresses that this was one of the YCJA's most important innovations: custody was no longer treated as a routine response or as a stand-in for absent welfare supports. Instead,

[22] This youth-specific directive emerged in a broader Canadian policy and jurisprudential movement to reduce Indigenous over-incarceration in the **adult** system, most notably through Parliament's 1996 enactment of *Criminal Code* s. 718.2(e) (restraint in imprisonment "with particular attention to the circumstances of Aboriginal offenders"), later interpreted by the Supreme Court in ***R. v. Gladue*** (1999) as requiring sentencing judges to take judicial notice of the systemic and background factors shaping Indigenous offenders' circumstances and to consider reasonable alternatives to imprisonment.

the Act narrowed its lawful use and required decision-makers to justify it within a more structured and limited framework.

Of particular importance is the YCJA's formalization of the pre-sentence report (ss.39(6) and 40), which became a cornerstone of youth sentencing under the YCJA. Before imposing a custodial sentence, the youth justice court must consider a pre-sentence report and any sentencing proposals submitted by the young person or their counsel (s.39(6)). Section 40 elaborates on the purpose, content, and preparation of these reports, which are compiled by provincial directors. These reports include comprehensive information about the youth's age, maturity, character, family and community relationships, educational and employment history, prior interactions with the justice system, and willingness to engage in rehabilitative measures. They also incorporate victim perspectives and recommendations from youth justice conferences (Youth Criminal Justice Act, 2002, s.40). The pre-sentence report serves as a critical decision-making tool, ensuring that sentencing reflects not only the legal gravity of the offence but also the social and developmental context of the young person. It embodies the YCJA's commitment to individualized justice, balancing accountability with an informed understanding of the youth's personal circumstances and prospects for reintegration (Doob & Sprott, 2006b; Department of Justice Canada, 2013). The emphasis on multi-source information (including family input, school performance, and community service availability) also institutionalizes a multidisciplinary approach to youth sentencing, positioning probation officers as both evaluators and facilitators of rehabilitation (Pulis & Sprott, 2005).

The YCJA's structural innovations extended beyond sentencing to custodial and community supervision. Section 42(2)(k) explicitly identifies probation as one of the central sentencing options available to the youth court, permitting its imposition for a period not exceeding

two years. Probation, governed by Sections 55 and 56, operates as a flexible and rehabilitative tool intended to monitor compliance while facilitating reintegration. Under Section 55(1), probation orders must include mandatory conditions requiring the young person to keep the peace, be of good behaviour, and appear before the court when required. Section 55(2) further allows the court to impose discretionary conditions tailored to the youth's needs and "risk level", such as reporting to a youth worker, attending school, residing with a responsible adult, maintaining employment, or refraining from possessing weapons (YCJA, ss.42(2)(k), 55(1)-(2)). The YCJA thus provides courts with residual powers to impose conditions "*appropriate for securing the young person's good conduct and preventing the young person from repeating the offence or committing other offences*" (s.55(2); YCJA, 2002).

The significance of youth probation under the YCJA is further amplified by Section 90, which codifies the role of the *youth worker* as the primary agent responsible for implementing reintegration plans. According to Section 90(1), when a youth sentence involving custody is imposed, the provincial director must, without delay, designate a youth worker to plan for the young person's reintegration into the community, including the preparation and implementation of a reintegration plan that identifies the most effective programs to maximize reintegration prospects. Section 90(2) extends this role into the community setting, requiring the youth worker to supervise the young person during the community portion of the sentence, provide ongoing support, assist in compliance with court-ordered conditions, and help operationalize the reintegration plan. This statutory articulation of duties formalizes the youth worker's dual function as both *guardian of accountability* and *facilitator of rehabilitation*, bridging institutional custody and community reintegration (YCJA, ss.90(1) – (2)).

By embedding probation within this statutory framework, the YCJA elevates its role from a mere alternative to custody to a structured instrument of rehabilitation. It operationalizes the YCJA's emphasis on proportional accountability, requiring probation officers to bridge the domains of social support, behavioural intervention, and legal compliance (Smandych & Corrado, 2018, pp.215-217). Probation under the YCJA therefore represents the concrete manifestation of the YCJA's principle of "diminished moral blameworthiness," as it holds youth accountable through supervision and guidance rather than confinement. More broadly, Kelly (2026) suggests that probation under the YCJA should be understood within a wider decarceration shift: the Act did not simply create more non-custodial options, but changed the overall logic of youth justice by making restraint and community response central rather than secondary.

In Canada, youth probation represents the most frequently imposed community-based disposition and reflects the YCJA's emphasis on proportional accountability, rehabilitation, and community safety rather than punishment (Public Safety Canada, 2025; Statistics Canada, 2016; Department of Justice Canada, 2013). The YCJA applies to young persons aged 12 to 17 and mandates that court sentencing decisions consider the young person's maturity, needs, and potential for reintegration (s.2(1) of the YCJA). The probation process typically begins after a finding of guilt in youth court. Once the court determines that community supervision is appropriate, it may impose a probation order under section 42(2)(k) of the YCJA, for a period of up to two years. The order may require the youth to comply with specific conditions such as attending school, maintaining curfews, avoiding certain associations, residing at a specified address, or participating in counselling or treatment programs. These measures are tailored to the young person's developmental needs, with the dual objectives of accountability and reintegration (Doob & Sprott, 2004, p.229). Throughout the probation period, the youth worker maintains

regular contact with the young person, their family, and community service providers, serving both as a mentor and as a monitor of compliance. The role is rehabilitative at its core: the youth worker provides encouragement, addresses emerging challenges, and links the youth to constructive activities that support pro-social development and community engagement (MCCSS, 2024). Upon completion of the probation term, successful compliance typically results in discharge from supervision, though certain obligations (such as restitution) may persist. However, breaches of probation conditions can lead to further court proceedings and, in some instances, the imposition of custodial sanctions.

The implementation of probation and reintegration support also varies by jurisdiction. In Ontario, community-based sentences commonly include probation, attendance centres, and restorative justice programs (MCCSS, 2024). For Indigenous youth, culturally responsive services have been developed under the provincial youth justice framework, in which probation officers act as youth workers who deliver culturally grounded case management and reintegration supports (MCCSS, 2024). Similarly, in northern territories such as Yukon, youth probation integrates restorative and land-based approaches, reflecting Indigenous justice principles and community involvement (Yukon Government, 2024). Overall, the combination of structured probation, continuous supervision, and individualized reintegration planning demonstrates the YCJA's commitment to fostering restorative, rehabilitative, and developmentally appropriate responses to youth offending. The youth worker, whether operating within or beyond formal probation, remains the key figure in translating these principles into effective practice, ensuring that young persons are supported in their transition toward responsible and productive citizenship.

Despite these progressive reforms, the YCJA has not been free from criticism. Scholars such as Mann (2014) and Sprott and Doob (2008) question whether the Act can fully reconcile its

dual aims of public protection and rehabilitation, particularly amid fluctuating political rhetoric. The early 2000s saw a surge in populist "tough on crime" discourse, reflecting similar dynamics in other jurisdictions such as the UK, where youth justice became a site of political competition and moral panic (Drakeford & Vanstone, 2000; Tonry & Doob, 2004). Kelly (2026) likewise cautions against reading the YCJA as a complete break with punitive practice. She notes that the Act retained and, in some respects, strengthened harsh responses for the most serious violent offences. The continuing overrepresentation of Indigenous, poor, and racialized youth in custody suggests that the YCJA's achievements in decarceration coexist with persistent inequalities in who remains subject to the harshest forms of intervention. In addition, while sentenced custody declined dramatically, pre-trial detention did not experience the same degree of reduction.

Furthermore, several historical norms and logics found their way to the YCJA. For example, although status offences were formally abolished, probation conditions such as curfews and association restrictions often replicated the moralistic logic of the JDA, maintaining continuity with earlier welfare-based control philosophies (Latimer, 2011a). Kelly's (2023) analysis demonstrates that the older logic of trading procedural protection for speed has not disappeared as well. Another "historical artifact" of an earlier system is section 37(10), which requires young persons to seek leave to appeal to the Supreme Court of Canada even where adults would have an appeal as of right (Kelly, 2023, p.105).

In examining youth probation under the YCJA, a shift emerges from status-based judgments to offence-based evaluations. While the youth's social background remains relevant, sentencing now hinges primarily on the legal and moral character of the offence itself. At the same time, as Kelly (2026) argues, the Canadian youth justice system still struggles with a deeper tension: whether youth are treated differently because of developmental science alone, or because

of a broader recognition of their structural dependence, social vulnerability, and greater capacity for change. Nonetheless, probation officers must continue to navigate the inherent tension between support and control, balancing their rehabilitative mandate with the demands of judicial accountability. The next section of this dissertation will explore how these legislative and ideological developments have reshaped probation practice, focusing on the practical dilemmas officers encounter in operationalizing the YCJA's principles within complex social realities.

Issues of the Probation System for Juvenile Offenders in Ontario and Their Possible Solutions

Having examined the legislative efforts to improve the treatment of juvenile offenders and considered the primary causes of juvenile delinquency, this section focuses on specific issues within Ontario's probation system. This section synthesizes the challenges and proposes solutions to improve the effectiveness of probation practices, produced by the current research. The studies employ interviews with probation officers in Toronto and Ottawa, identifying common patterns that are generalizable beyond these cities. Additionally, this section draws on interdisciplinary research and international experiences to suggest potential improvements and highlights areas where further research is needed.

Probation and Interdisciplinarity: The Lack of Synthesis

A comprehensive analysis of the literature reveals that many promising scientific findings have yet to be implemented in Ontario's probation system. Researchers point out the lack of effective dialogue among various disciplines, which impedes the development of holistic and effective probation strategies (Burrell & Rhine, 2013; Norman & Ricciardelli, 2022). Interdisciplinary research has the potential to integrate relevant suggestions from diverse fields, ultimately enhancing the rehabilitation process for youth offenders.

Wacquant (2012) discusses the broader criminal justice context, arguing that the lack of interdisciplinary exchange is a pervasive issue. He states that the separation of 'social welfare' and 'criminal justice' in both academic and policy spheres is a result of historical misinterpretation, emphasizing that "penal policy cannot be tracked without reckoning with social policy; nevertheless, researchers of criminal justice, on the one hand, and welfare policy, on the other, paid no attention to each other's work" (p. 243). This siloed approach is evident across disciplines. For example, Polachek (2009) notes that changes in U.S. legislation were potentially ineffective because they ignored significant developments in psychology. In the Canadian context, Haqanee et al. (2015) found that probation officers in Toronto lacked psychological training, leading them to advocate for "initiatives that provide concrete training to probation officers around the implementation of the need and responsivity principles in effective case management of justice-involved youth" (p. 37).

Balancing Roles of Support and Management in Probation Officers' Practice.

Latimer's (2011) dissertation reveals significant insights into the evolving role of probation officers in Ottawa post-adoption of the YCJA. Many probation officers expressed that their roles had shifted away from providing direct support to youth, instead feeling like bureaucratic clerks (Latimer, 2011b). Probation officers are increasingly becoming "brokers of services," where their primary role is to assess youth, determine case management plans, and monitor compliance, rather than directly engaging in skilled rehabilitative work (Latimer, 2011b, p. 93). Over half of the youth on probation are referred to community-based programs to address their needs, leaving many without comprehensive support and relying on brief, often superficial interactions (Latimer, 2011b). This shift undermines the potential for a holistic, individualized approach to rehabilitation, as originally envisioned. This issue aligns with Smandych's (2006) critique of the YCJA, which he describes as a shift "from child-welfare to adulteration and risk management" (p. 24), reflecting

a neoliberal emphasis on managing risk rather than addressing individual needs (Priday, 2006). The shift towards management and risk assessment over personal engagement is detrimental to the probation system's effectiveness and the rehabilitation of youth offenders.

Globally, similar trends have been observed. McWilliams (1990) discussed the pervasive dominance of managerial thinking in probation systems, predicting that this trend would continue to grow. His predictions were validated by recent critiques, such as those by McNeill et al. (2017), who argue that "probation's honourable but imperfect traditions came to be traduced and diminished by misplaced faith in managerialism, by the preoccupation with risk and, more recently, by the ideologically driven, hasty and 'evidence-like' pursuit of privatization" (p. 99). This shift towards management, characterized by standardized procedures and a focus on risk rather than rehabilitation, undermines the fundamental goals of the probation system.

Impact on Marginalized Groups.

The impact of the probation system on marginalized groups, including female and Indigenous youth, is particularly concerning. Researches by Hogeveen (2005), Newell (2013), Oudshoorn (2015), Smandych and Corrado (2018), Priday (2006), and McCallum (2017) identify significant disparities in how these groups are treated within the probation system, necessitating targeted reforms. Female offenders often face unique challenges that are not adequately addressed by the current probation system, leading to ineffective rehabilitation. Despite an increase in female youth involvement in the criminal justice system gender-specific programs remain scarce (Malik, 2024, p.4).

Further, probation officers frequently express a preference for working with male offenders, finding female offenders more complex and challenging due to their emotional needs and traumatic experiences (Umamaheswar, 2013, p. 1170). This bias further exacerbates the lack

of appropriate support for female youth, as "standard" approaches to rehabilitation do not adequately address their specific needs. Research by Hubbard and Matthews (2007) similarly underscores the inadequacy of traditional correctional interventions, which are based on data insensitive to gender differences and fail to demonstrate equal utility in programming for girls and boys (p. 232).

The YCJA's promotion of community-based sentences aimed to be inclusive of Indigenous youth, but in practice, this inclusivity is limited. Hogeveen (2005) critiques the use of the term "community" in youth justice discourse, arguing that it often serves to exclude marginalized groups while maintaining the power dynamics of the status quo (p. 293). The failure to recognize the diversity among Aboriginal nations and their specific needs results in a one-size-fits-all approach that does not effectively address the unique challenges faced by Indigenous youth.

Addressing these disparities requires the development of specialized programs that cater to the unique needs of marginalized groups. For Indigenous youth, community-based programs designed and managed by Indigenous communities themselves could provide more culturally relevant and effective interventions. Oudshoorn (2015) emphasizes the importance of recognizing both individual and collective traumas, such as colonialism, patriarchy, and poverty, when designing these programs. However, as Hogeveen (2005) points out, the state has historically rebuffed such initiatives, undermining Indigenous communities' right to self-determination (p. 300). Similarly, for female youth offenders, adopting a gender-responsive approach is crucial. Programs should focus on creating environments that empower young women, reflect their specific needs, and promote healthy relationships. Rettinger (2010) outlines several principles for designing gender-responsive programs, including providing opportunities for girls to develop new

relationships, maintaining existing community connections, and addressing emotional and mental health issues (p. 22).[23]

Therefore, the current research suggests that a shift toward a more holistic, interdisciplinary approach is necessary in Ontario. Probation officers should be empowered to provide more direct support to youth, moving away from a purely managerial role. The system should also be more inclusive of marginalized groups, ensuring that gender-specific and culturally relevant programs are available and accessible. Finally, strengthening partnerships with community agencies and schools is crucial to expanding the range and quality of services available to youth on probation. While these reforms require changes in policy and practice, they are essential for creating a probation system that truly supports the YCJA priorities of rehabilitation and reintegration of juvenile offenders into society. Further research should continue to explore these issues, focusing on the long-term impacts of current probation practices and the effectiveness of proposed reforms in improving outcomes for all youth offenders.

Conclusions

This chapter has traced the historical and practical evolution of juvenile probation in Canada, illustrating how approaches to youth justice have transformed alongside shifting social attitudes, legal philosophies, and research on effective rehabilitation. From the welfare-oriented framework of the JDA (1908) and the rights-based principles of the YOA (1984) to the balanced,

[23] The issue of limited program availability and quality extends beyond marginalized groups. Haqanee et al. (2015) identify several areas where program offerings are lacking, including services addressing anti-social attitudes, support for higher-risk youth, and programs tailored for older youth. Furthermore, the availability of community-based programs is often constrained by long waiting lists, making timely intervention difficult. As one probation officer noted, “by the time the space becomes available, probation is done” (Umamaheswar, 2013, p. 1174). Additionally, probation officers face challenges in securing cooperation from community agencies and schools, which may be reluctant to work with challenging clients or those with a history of behavioural issues. One officer reported having to "fight with the schools to get their ward back there" (Haqanee et al., 2015). This resistance from community partners further complicates the delivery of effective rehabilitation programs.

community-centered model of the YCJA (2003), Canada's trajectory reflects a gradual movement toward integrating public safety, accountability, and rehabilitation within a coherent legal framework. A key theme that emerged throughout the chapter is the ongoing tension between rehabilitation and control. The transition from a welfare-based to a more structured, risk-management approach under the YCJA has professionalized probation work but also narrowed its focus. Probation officers are now primarily tasked with ensuring compliance and managing risk, often at the expense of individualized, relationship-based support. While this structure promotes consistency and accountability, scholars as Hogeveen (2005), Doob and Cesaroni (2004), and Bala (2015) have noted that it can reduce opportunities for meaningful engagement and weaken the relational foundation critical for long-term reintegration.

The chapter also emphasized the persistent inequalities in access to appropriate support, particularly for Indigenous youth, girls, and other marginalized groups. These populations often face distinct socio-economic and cultural barriers, yet the probation system continues to rely on standardized programming that may not reflect their lived realities. Without culturally relevant and gender-sensitive interventions, the promise of fairness and rehabilitation embedded in the YCJA remains only partially fulfilled. Another important finding concerns the gap between academic knowledge and practice. Although research in criminology, psychology, and social work provides clear evidence on what works in youth rehabilitation, these insights are not consistently integrated into probation policies or frontline practice. Strengthening this connection could enhance the effectiveness of probation by addressing the root causes of youth offending rather than merely its symptoms. Moreover, the chapter revealed how practical constraints – including high caseloads, limited community resources, and insufficient training – continue to challenge the implementation of the YCJA's rehabilitative principles. These structural limitations undermine the law's intent and

highlight the need for sustained investment in human resources, community partnerships, and evidence-informed training for youth justice professionals.

In sum, Canada's century-long evolution in juvenile probation demonstrates both remarkable progress and enduring challenges. The system stands as a model of reform that has advanced the rights and rehabilitation of youth, yet it still struggles to reconcile its ideals with the realities of practice. The Canadian experience offers a rich repository of lessons – both successful innovations and cautionary examples, that are invaluable for other jurisdictions, including Ukraine, as they seek to modernize their youth justice systems. The following analysis will assess how these Canadian experiences have been interpreted and adapted in the Ukrainian context, and whether the same tensions and shortcomings have been replicated through the process of legal transplantation.

Chapter III. Ukrainian Juvenile Probation Practices Before 2003

Introduction

The history of juvenile justice in Ukraine cannot be examined in isolation from the broader political and legal contexts in which it evolved. For most of its modern history, Ukrainian territories were not governed by an independent legal system but were instead integrated into larger imperial and supranational structures. Specifically, during the imperial period (18th century – 1917), Ukrainian lands were part of the Russian Empire, and from 1917 until 1991, they formed part of the Union of Soviet Socialist Republics (the "**USSR**"). Accordingly, the legislation, judicial practices, and institutional responses to juvenile crime that emerged in these periods were extensions of Russian imperial and Soviet legal frameworks, respectively, and applied uniformly to Ukraine, often with limited regional differentiation.

This chapter traces the evolution of juvenile criminal responsibility and justice in Ukraine across three major historical periods: the imperial era, the Soviet period, and the post-independence

era up to 2003. Each of these phases reflects distinct philosophies of youth delinquency and corresponding institutional and legal responses. The imperial period was characterized by a gradual and inconsistent development of juvenile-specific norms, embedded within broader criminal law and strongly influenced by the moral and paternalistic logic of the tsarist state. During the Soviet era, Ukraine adopted centralized Soviet legal codes and juvenile justice policies, which alternated between rehabilitative approaches and mechanisms of repression, exemplified by the experimentation of pedagogues like Anton Makarenko and the stark punitive turn of the 1930s.

The final period covered in this chapter begins with Ukraine's independence in 1991 and concludes in 2003, just before Canada began its formal support of Ukraine's juvenile justice reform. During these years, Ukraine struggled to transition from a punitive and custodial juvenile justice legacy to a more juvenile-sensitive, rights-based approach. Influenced by international legal standards and cooperation with global organizations, Ukraine began laying the groundwork for a probation-based model of juvenile justice. This meant gradually shifting from detention as the main response to youth offending toward community supervision, rehabilitation, and support aimed at helping youth reintegrate into society.

By examining these three historical periods – imperial, Soviet, and independent up to 2003 – this chapter offers a critical analysis of the shifting paradigms in Ukrainian juvenile justice and highlights how historical legacies continue to shape current reform efforts. Before turning to these periods, I briefly explain colonial legal transplants as the lens used in this chapter. Then, the chapter proceeds chronologically across the three periods identified above. It begins with an examination of juvenile criminal responsibility under Russian imperial rule, tracing the gradual emergence of age-based distinctions in criminal liability, the development of corrective institutions, and the eventual appearance of specialized juvenile courts in the early twentieth

century. The chapter then turns to the Soviet period, analyzing how centralized governance reshaped juvenile justice through alternating pedagogical and punitive approaches, including early rehabilitative experiments, the repressive policies of the Stalinist era, and the later partial humanization of juvenile justice in the post-1958 period. The final section examines the transitional period of independent Ukraine from 1991 to 2003, focusing on the gradual shift toward international legal standards, the influence of child-rights discourse, and early institutional reforms that prepared the groundwork for the later introduction of probation. By moving from imperial legal foundations through Soviet institutional transformation to post-independence reform efforts, the chapter demonstrates how successive legal regimes produced layered institutional legacies that continue to shape the development of juvenile justice in Ukraine and condition the reception of probation-based reforms discussed in subsequent chapters. This chapter is therefore also important for the dissertation's broader use of layered reception analysis, where a legal transplant is filtered through several layers of the receiving system. The present chapter deals mainly with the first of these layers - the historical layer. Its purpose is to show that when juvenile probation was later introduced into Ukraine, it entered a legal environment already shaped by long-standing assumptions about state authority, correction, discipline, and youth offending. In that sense, this chapter does not simply provide historical background; it helps explain why the later transplant was received in the way that it was. The chapter concludes by comparing the historical development of juvenile justice in Ukraine with the Canadian trajectory discussed in the previous chapter, highlighting differences in institutional evolution and preconditions for probation-based youth justice.

The historical analysis in this chapter is conducted using the methodological approach outlined earlier in the dissertation. Doctrinal analysis is used to examine imperial, Soviet, and post-

independence legislation, as well as relevant legal scholarship, in order to reconstruct the evolution of juvenile criminal responsibility and institutional responses to youth offending in Ukrainian territories. Critical Discourse Analysis (the "**CDA**") is applied selectively to legislative language, reform narratives, and pedagogical writings (including discussions of correction and rehabilitation) to examine how youth offending was conceptualized in different historical periods and how competing understandings of punishment, discipline, and social protection were framed by state and professional actors. Finally, comparative analysis is used in the concluding section of the chapter to contrast Ukrainian and Canadian historical trajectories and to identify the institutional and legal preconditions that later shaped the transplantation of juvenile probation. Viewed through the layered reception analysis developed in this dissertation, these methods make it possible to identify how the historical layer of reception was formed and why it remained relevant to later legislative and institutional reform. Together, these methods allow the chapter to connect historical legal development with the broader transplantation analysis that follows in the dissertation.

A Historical Analysis Through the Framework of Colonial Legal Transplants

Any assessment of historical preconditions for juvenile justice reform in Ukraine must begin with an acknowledgment of a fundamental reality: for most of the period under examination, Ukraine was not an independent state. Its institutional development of the juvenile justice system unfolded within the political, administrative, and legal systems of two imperial entities – the Russian Empire and, subsequently, the USSR. Although Ukraine's constitutional status, administrative autonomy, and nomenclature changed across these centuries (from Hetmanate, to guberniyas, to the Ukrainian Soviet Socialist Republic (the "**Ukrainian SSR**") none of these formations amounted to state independence in the modern, sovereign sense. Consequently, the evolution of juvenile criminal responsibility, procedural treatment of youth, and judicial

institutions on Ukrainian territory must be understood as part of the legal order of these dominant powers rather than as autonomous Ukrainian legislative developments. This raises a crucial theoretical question for the purposes of transplantation analysis: can the imposition and proliferation of Russian imperial laws and, later, Soviet legislation on Ukrainian territory be conceptualized as a form of legal transplantation? If so, it also invites further inquiry into how the imposed nature of earlier juvenile justice frameworks shaped Ukraine's capacity to implement Canadian reform. Did the absence of an organically developed juvenile justice tradition make it easier to adopt a new model, or did Ukraine instead inherit an institutional culture so deeply shaped by prior impositions that the Canadian transplant had to struggle against entrenched norms before it could begin to function? These questions cannot be answered without situating Ukraine's legal history within the broader framework of colonial legal transplants.

Before engaging with the historical material, it is essential to clarify the terminology surrounding colonies, protectorates, and other forms of dependent territories. As leading scholars emphasize, the term *colony* itself defies a strict legal definition (Distefano et al., 2025, p. 226). This ambiguity is not accidental; it historically enabled imperial powers to obscure the nature of their domination by adopting terms that suggested autonomy where none existed. Colonies, along with mandates and protectorates, belong to the broader category of dependent territories, yet they differ in their degree of imposed control and the mechanisms through which legal, administrative, and political authority is exercised (Distefano et al., 2025, p. 226). A protectorate, for instance, represents an intermediate type of subordination – created only where a pre-existing form of sovereign organization existed and preserved in name, but hollowed out in practice. Distefano et al. (2025) explain: "The protecting state concludes an agreement with the local chief for the purpose of conducting the external relations of the protected state… The protecting state keeps the

pre-existing organisation, and must safeguard the political independence as well as the territorial integrity of the protected state." (p. 226). In contrast, full colonies historically lacked even this nominal preservation of indigenous sovereignty; metropolitan authorities usually replaced existing legal orders with their own or imposed hybrid systems of administration designed to entrench imperial control. Against this conceptual background, the second central question emerges: what was the formal status of Ukrainian territories under Russian rule, and to what extent can this status be understood through the framework of colonial or quasi-colonial domination? Because the Russian Empire and the USSR differed profoundly in their constitutional structures, ideological justifications, and methods of legal imposition, the analysis of colonial legal transplantation must be conducted separately for each regime. The mechanisms by which law was imposed on Ukrainian territory, the extent of local autonomy, and the instruments through which criminal and juvenile justice systems operated diverged significantly between imperial and Soviet periods. Having clarified this conceptual vocabulary, the analysis now turns to how these imperial mechanisms operated concretely within the Russian Empire, where the earliest foundations of Ukraine's juvenile justice system first took shape.

Colonial Legal Transplantation in the Russian Empire

The Pereiaslav Agreement of 1654 stands in Ukrainian history as the only moment when relations between Ukraine (the Cossack Hetmanate) and Tsardom of Russia[24] were formally described as a protectorate. During the council at Pereiaslav, Bohdan Khmelnytskyi placed the Hetmanate under the protection of Tsar Aleksei Mikhailovich, thereby delegating external affairs to the Tsardom of Russia while preserving internal autonomy (Davis, 2009, p. 465). In legal terms,

[24] The Tsardom of Russia, also known as the Tsardom of Moscow, was the centralized Russian state from the assumption of the title of tsar by Ivan IV in 1547 until the foundation of the Russian Empire by Peter the Great in 1721.

this structure corresponded to the classical model of a protectorate: an agreement-based relationship in which an existing political entity retains internal governance while the protecting state assumes external representation (Distefano et al., 2025, p. 226). However, this arrangement proved ephemeral. The formal protectorate established in 1654 was effectively nullified within a short period, as the subsequent decades, marked by the political turmoil of the Ruina, produced a series of new agreements between the Hetmanate and the Tsardom of Russia. Each successive treaty altered the balance of authority, eroding autonomy and tightening Moscow's control (Piryh, 2011, p.13).

Although the *form* of the relationship continued to rely on bilateral agreements, which is characteristic of protectorates, none of the later arrangements employed the terminology of a protectorate, nor did they preserve the substance of internal self-rule envisaged in 1654 (Piryh, 2011, p.23). Without delving deeply into the complexities of seventeenth-century politics, it is sufficient to observe that over time the legal and political dependency of the Hetmanate on Muscovy consistently deepened. The Hetmanate's independent diplomatic capacity was restricted, its military subordinated, fiscal autonomy curbed, and its legal-administrative institutions progressively replaced or absorbed into imperial structures (Piryh, 2011, p.22). Throughout this entire period, Russian legal acts – including those governing criminal liability and the treatment of youth – applied directly to Ukrainian lands without requiring separate adoption, duplication, or approval by Ukrainian institutions (Kaminska, 2022). This direct applicability predated the formal abolition of the Hetmanate in 1764 and intensified thereafter.

By the late eighteenth century, the process culminated in the full abolition of the Hetmanate and the incorporation of its territories into the Russian Empire's (the "**Empire**") general provincial administration. This administrative reorganization erased the remaining institutional

distinctiveness of the Cossack state. The Hetmanate's autonomous offices, such as the General Military Chancellery, regimental administrations, and Cossack courts, were replaced by imperial governorships modelled on the standard Russian provincial system (Larchenko, 2014, p.85). These new units of governance were overseen by governors appointed directly from St. Petersburg, staffed by imperial officials, and incorporated into a centralized hierarchy designed to ensure administrative uniformity (Larchenko, 2014, p.86). In effect, Ukrainian lands were transformed into ordinary provinces (gubernii) subject to the Empire's bureaucratic, fiscal, judicial, and military structures, with no residual recognition of earlier autonomous traditions.

In the final decades of the eighteenth century, the imperial authorities completed the dismantling of all remaining Cossack-era institutions: the Zaporozhian Sich was liquidated in 1775, the Cossack regiments were converted into hussar units, and the last vestiges of regional self-government were eliminated (Larchenko, 2014, p.87). Concurrently, the partitions of the Polish–Lithuanian Commonwealth (1772, 1793, 1795) brought large western Ukrainian territories (Right Bank Ukraine, Volhynia, and Podillia) under Russian rule. As a result, most ethnic Ukrainian lands were consolidated within the Empire, although divided between several administrative regions that varied in their legal traditions and levels of development. During the nineteenth century, these territories underwent systematic integration into imperial economic, legal, cultural, and educational systems. Russian civil and criminal legislation was progressively extended, the Russian language imposed in administration and schooling, and a uniform hierarchical bureaucracy entrenched (Hrytsak & Shapoval, 2025). Yet, this period also revealed a paradoxical structure of imperial governance, shaped by the Empire's uneven development and the complex role of Ukrainian elites within it.

A crucial insight offered by Hrytsak and Shapoval (2025) is that Ukraine's incorporation into the land-based Russian Empire unfolded through contiguous colonialism expansion over neighbouring territories rather than overseas conquest. This created an ambiguous imperial relationship: from the Russian perspective, Ukrainian lands were often framed as inherent parts of the metropole, while from the Ukrainian perspective, the relationship increasingly resembled colonial domination. This ambiguity was reinforced by an unusual centre–periphery dynamic. Unlike classical empires where the metropole is more developed, the western and central Ukrainian regions historically had higher literacy, more educated elites, and stronger local economies than many Russian heartland provinces. As a result, the Empire relied heavily on Ukrainian elites for administrative and military governance. By the late eighteenth century, Ukrainians comprised a lion's share of the imperial ruling class (about 50%), including among lawmakers. However, this personal advancement did not translate into institutional empowerment at home. By the nineteenth century, the proportion of Ukrainians in the provincial bureaucracy of Ukrainian territories had sharply decreased, as governors imported officials from the imperial centre, displacing local administrators (Hrytsak and Shapoval, 2025). Thus, while Ukrainians could govern the Empire, they increasingly could not govern Ukraine.

Against this backdrop, the legal evolution of Ukrainian territories in the eighteenth and nineteenth centuries reflects a steady transplantation of Russian imperial law. Following the abolition of the Hetmanate, imperial civil, criminal, and administrative codes were imposed; Cossack customary law lost legal force; local courts were replaced with imperial judicial structures; and provincial governance was reorganized into standard gubernii under direct metropolitan oversight (Larchenko, 2014, p.87). By the mid-nineteenth century, virtually all Ukrainian lands were governed by uniform Russian imperial legislation, completing a process of

legal homogenization that functioned as a colonial legal transplant even if it was not labelled as such.

Although the term *colony* was never formally applied to Ukrainian territories under the Russian Empire, the absence of colonial terminology does not resolve the central analytical question: whether the imposition of Russian legal norms (including criminal and juvenile justice frameworks) constituted a form of colonial legal transplantation. Formally, the Empire presented Ukraine as historically and ethnically integral to the imperial polity; this rhetoric distinguished it from overseas empires and helped justify the non-use of terms such as *colony*, *protectorate*, or *dominion*. The brief moment in 1654 when the relationship was labelled a protectorate remained the sole instance in which Moscow acknowledged separate legal personality on the Ukrainian side. After the Hetmanate's autonomy was progressively dismantled, the imperial administration refrained from using any terminology implying distinct sovereignty or dependent status. Ukraine was redefined discursively as "Little Russia" (Malorosiya), an integral part of the metropole, despite undergoing processes typical of dependent territories (Larchenko, 2014, p.90).

Birnhack's (2012) framework, developed to theorise British imperial legal governance, offers a productive analytical tool for examining how the Russian Empire transplanted its laws into Ukrainian territories. Although originating in a different imperial context, the model captures the structural logic of legal domination: the mechanisms by which a metropole imposes its legal order on dependent lands. Birnhack (2012) distinguishes between crown colonies, where law is received automatically and local legislative capacity is minimal, and protectorates, where legal pluralism persists to some extent because rule is formalised through agreements with local authorities (p. 29). Importantly, imperial jurisdictions need not remain fixed: territories may shift

over time toward stricter or looser forms of metropolitan control, creating a dynamic spectrum of "hard" and "soft" imperial law-making (Birnhack, 2012, pp. 30-31).

Applied to Ukrainian history, this framework clarifies the evolution of Russia's legal relationship with Ukrainian lands. The brief 1654 Pereiaslav arrangement (where the Hetmanate recognised the Tsar's authority while retaining internal autonomy) can be analytically treated as resembling a protectorate. However, this arrangement was short-lived: throughout the so-called Ruina period and the subsequent eighteenth century, the institutional and legal autonomy of the Hetmanate was eroded through a sequence of imperial interventions that steadily deepened dependence on Moscow.

After 1764, when the Hetmanate was abolished, Ukrainian territories were integrated directly into the Empire's provincial administration (gubernii), marking a decisive shift from a protectorate-like relationship to a structure functionally analogous to a crown colony. From this point onward, the Empire treated Ukraine not as a distinct polity but as an internal possession governed through uniform imperial legislation. At this point that the most stringent form of legal reception described by Birnhack (2012) becomes visible. The abolition of autonomous Ukrainian courts, the liquidation of the General Military Court, and the replacement of Cossack customary law with imperial judicial institutions removed the foundational elements of the Ukrainian legal order. This wholesale elimination of an existing normative system corresponds directly to the form of colonial legal transplantation in which metropolitan law is received automatically and without negotiation, displacing all local sources of authority (Birnhack, 2012, p. 29). What occurred in Ukrainian lands was therefore not a gradual harmonization but a categorical legal rupture that aligned closely with the "hard law" endpoint of Birnhack's spectrum.

Subsequent imperial criminal legislation merely entrenched this transformation. After the erosion of autonomous Ukrainian courts, the introduction of the *Penal and Correctional Code* of 1845 and its later revisions (1866, 1903) no longer represented the moment of displacement (this had already occurred) but reinforced a legal environment in which Ukrainian norms had no institutional standing. Ukrainian territories had no legislative capacity to modify or adapt these norms: imperial criminal doctrine applied *ex lege* by virtue of Ukraine's status within the general provincial system, mirroring the pattern Birnhack (2012) associates with crown colonies where metropolitan laws apply automatically, and local initiative is eliminated (p. 31).

The imperial administrative system amplified this legal homogenization. Ukrainian lands were governed through gubernii identical to those in ethnically Russian regions, staffed by officials appointed from the centre and often originating from outside Ukraine (Hrytsak & Shapoval, 2025). Judicial hierarchy, procedures, and sentencing practices were likewise standardized across the Empire. This centralized administrative configuration, combined with the absence of any legitimate local legislative authority, corresponds to the hard-law model in which the metropole dictates legal norms, leaving little or no room for local adaptation (Birnhack, 2012, pp. 30–31). At the same time, Birnhack's insight that imperial governance is never entirely static (2012, p. 32) helps explain the complex socio-political landscape of Ukrainian territories under Russian rule. Ukrainian elites were historically overrepresented in the central imperial bureaucracy, sometimes occupying high positions in St Petersburg, yet their presence did not translate into local empowerment. Instead, as Ukrainian representation declined within provincial administrations over the nineteenth century, imperial legal institutions became even more detached from local social conditions. The dynamic interplay between centre and periphery thus takes on a paradoxical form: Ukrainians could participate in running the Empire, but could not influence the governance

of their own territories. This asymmetry is consistent with colonial models where elite cooperation at the centre masks the consolidation of metropolitan control over the colony.

Viewed through this integrated framework, I can conclude that although Russia did not employ colonial terminology and framed its relationship with Ukraine as internal consolidation rather than external domination, the mechanisms of legal control it exercised – abolition of local institutions, imposition of metropolitan courts, automatic reception of imperial codes, elimination of local legislative authority, and administrative homogenisation – correspond to the structural logic of colonial legal transplantation as described by Birnhack (2012). Thus, every imperial act that applied directly to Ukrainian lands without local involvement functioned, in substance, as a colonial legal transplant, regardless of the Empire's ideological narrative. With this broader legal context established, the analysis now turns to the legislative development of juvenile criminal responsibility within the Russian Empire as it applied to Ukrainian territories.

General Overview of the Ukrainian Juvenile Justice Acts under the Russian Empire Rule

The Ambiguity of Juvenile Responsibility in Early Imperial Law (1716 – 1742)

The period between 1716 and 1742 marked a transitional phase in the evolution of criminal justice in the Russian Empire, which, at that time, included Ukrainian territories. Despite the sweeping reforms initiated by Peter I to modernize state institutions and law, the issue of juvenile criminal responsibility remained largely unregulated. As scholars point out, the criminal law of early eighteenth-century Russia was virtually silent on the treatment of youth as a separate legal category (Shyshkov et al., 2020, p. 236; Chepurko & Lysenko, 2007, p. 3).[25] Only isolated legal

[25] Across much of Europe prior to the nineteenth century, youth were generally treated within the ordinary criminal law framework rather than as members of a distinct legal category. In France under the ancien-régime legal order (before the French Revolution of 1789), criminal law reflected Roman-law age classifications — *infans* (0–7), *proximus infanti* (7–10), and *proximus pubertati* (10–14) — while judicial responses to juvenile offending remained largely discretionary. Although punishment was often mitigated, youth from the age of seven could still face severe criminal penalties. Legislative reforms beginning in the late eighteenth and early nineteenth centuries, particularly the

provisions touched upon the subject – most notably Article 195 of the 1716 *Military Statute* (*Voinsky Ustav*) (the "**1716 Statute**"), which, although primarily a military code, exerted a broad influence on the application of criminal law more generally. The interpretive commentary to Article 195 stated: "punishment for theft is usually reduced or completely excused if the offender is mentally ill or an infant, who may, in order to be deterred, be punished with rods by his parents."[26] (*Voinsky Ustav*, 1716, Art. 195; see also Chepurko & Lysenko, 2007, p. 3)

Although the 1716 Statute formally acknowledged the diminished culpability of "infants", its ambiguity gave rise to interpretive challenges. It remained unclear what age threshold defined this term, or under what conditions punishment was merely to be mitigated versus fully waived. The vagueness of the formulation, as Chepurko and Lysenko (2007) point out, rendered the provision legally ineffective for establishing predictable standards of responsibility. More importantly, the 1716 Statute placed the burden of discipline squarely on the family, reflecting purely paternalistic logic. This approach was consistent with a broader European legal tradition rooted in Roman law, in which youth were not treated as a separate legal category and discipline was understood primarily as a matter of paternal authority. In France prior to the French Revolution of 1789, for example, the law recognized Roman-law age classifications of youth and preserved strong parental powers, including the "right of correction," which allowed parents to seek the imprisonment of their youth through judicial authority (Blatier, 1999). As Shyshkov et al. (2020) explain, when youth committed petty theft or similar offences, the state delegated punishment to

Penal Code of 1810, introduced the concept of discernment and acknowledged the importance of educational measures alongside punishment. These developments marked an important shift toward recognizing the distinct status of youth in criminal law, although youth were still not treated as a fully separate legal category within the justice system (Blatier, 1999).

[26] Originally in Russian: "*наказание воровства обыкновенно умаляется, или весьма отставляется, ежели… кто в лишении ума воровство учинит, или вор будет младенец, которых дабы заранее от сего отучить, могут от родителей своих лозами наказаны быть*". Translated by the author.

the parents – often in the form of corporal discipline. This informal delegation of penal authority from state to family signified an early prototype of extra-judicial correction, placing "probationary" functions within the household. Thus, the family was reinforced to be both the locus of moral formation and the executor of punitive measures – a pattern that would persist well into the modern era (Shyshkov et al., 2020, p. 236).

This period also illustrates a deep conceptual conflation between childhood and legal incapacity. The idea that youth lacked full volitional control over their actions led to their implicit categorization alongside the mentally ill. Karabasheva (as cited in Santashov et al., 2024, p. 121) notes that lawmakers treated minority as a mitigating factor, but only inconsistently. For instance, in offences against the state, such as treason, even youth could face torture, revealing that the protective principle of diminished responsibility was neither systematic nor uniformly applied. The duality of this approach – at once indulgent and punitive – reflects the broader contradictions of early imperial law. Ponyatovska (2006) argues that during this phase, leniency toward youth was not grounded in a coherent juvenile justice policy but reflected an ad hoc moral posture. Rather than establishing a separate legal regime for youth, the law vacillated between treating youth as morally blameless and as fully liable, depending on the nature of the offence and political considerations.

Notably, this ambiguity left a void in terms of legal guarantees or procedural protections for youth. As Santashov et al. (2024) emphasize, "the legislator considered the minor age of the perpetrator to be a mitigating circumstance," but the practical outcome could vary drastically – from parental discipline to state-sanctioned torture. The state's failure to define the legal boundaries of juvenile culpability meant that youth remained at the mercy of judicial discretion,

without institutional mechanisms for appeal or procedural fairness. A case will illustrate this in the next subsection.

In conclusion, the period of 1716 –1742 did not yet exhibit the elements of a juvenile justice system in a modern sense. There were no specialized legal norms governing juvenile responsibility, no separate courts or procedures for youth, and no institutions dedicated to their supervision. Youth who committed an offence were handled either through ordinary criminal justice mechanisms or through parental discipline, depending largely on circumstance and discretion rather than consistent legal standards. Still, legal sources like the 1716 Statute laid the groundwork for conceptualizing childhood as a factor in criminal responsibility. However, the reliance on family authority and the law's failure to define key terms such as *infants* rendered this conceptual progress largely symbolic. The tension between punishment and paternalism, and between law and discretion, would remain central to the development of juvenile justice in the Ukrainian territories for decades to come.

The 1742 Senate Decree: Institutionalizing Juvenile Criminal Responsibility in Russian Imperial Law

The year 1742 stands as a foundational milestone in the development of juvenile justice within the Russian Empire, including Ukrainian lands under imperial jurisdiction. For the first time, youth were recognized in legislation as a distinct category of offenders, prompting both a doctrinal and procedural shift in the treatment of youth in conflict with the law. This transformation was embodied in the landmark Senate Decree of August 23, 1742 (the "1742 Decree"), which formalized age-based differentiation and introduced age-specific punishments grounded in a mix of punitive, corrective, and preventive rationales (Anisimov, 2011, p. 11; Chepurko & Lysenko, 2007, p. 3; Shyshkov et al., 2020, p. 236).

The immediate impetus for the decree arose from a criminal case involving a 14-year-old peasant girl, Praskovia Fedorova, accused of the murder of two much younger youth (girls 2 and 6 years old). Fedorova went to the forest to collect birch sap, taking with her an axe. The two younger girls accompanied her. When the youth took willow branches from Fedorova and refused to return them, she struck the six-year-old with the blunt side of the axe, and then cut her neck with the blade. The two-year-old attempted to flee, saying she would report the incident to her mother. Fedorova caught up with her and killed her as well. During questioning, Fedorova claimed that the second killing was not intentional (Solonnikova & Bondar, 2020, p. 175; Shyshkov et al., 2020, p. 236).

Upon returning home, Fedorova told her mother what had happened. Her mother hid the bodies in the forest and instructed her daughter not to speak about the incident. The case was later uncovered. Fedorova was detained, interrogated, and brought to a formal confrontation with her mother, where she confirmed her previous confession (Chepurko & Lysenko, 2007, pp. 4 – 5; Shyshkov et al., 2020, p. 236).

The incident, investigated by the Yekaterinburg Zemstvo Office, revealed an extreme but legally ambiguous scenario: while the 1649 *Sobornoe Ulozhenie* demanded torture and death for such acts, the investigators were hesitant to impose the full force of adult criminal law on a minor. They concluded that the crime, though grave, was committed "due to foolishness and immature mind", and that "she would not survive torture due to her young age" (Solonnikova & Bondar, 2020, pp. 175 – 176; see also Shyshkov et al., 2020, p. 236). It was further contended that the ambiguity, as well as the perceived need for a divergent outcome, stemmed from the fact that the defendant in that case was female; had the defendant been male, the question of reconsidering the established rule might not have emerged (Solonnikova & Bondar, 2020, p. 175). The case was

ultimately referred to the Senate under the procedure outlined in Peter I's 1722 Decree, which required that unclear legal matters be resolved by the highest judicial body (Solonnikova & Bondar, 2020, p. 175).

The Senate's response went far beyond the specific case, issuing a general legal act that established a unified framework for dealing with juvenile offenders. As Chepurko and Lysenko (2007) point out, this was the first Russian legal act to delineate "a special jurisdiction of minority", creating what Anisimov (2011) aptly describes as "the first legal document with an explicitly preventive orientation" (p. 11).

Critically, the Senate defined youth as individuals of either sex under the age of 17 - a formal demarcation that had not previously existed in Russian law (Chepurko & Lysenko, 2007, p. 3; Solonnikova & Bondar, 2020, p. 176; Shyshkov et al., 2020, p. 236). By this time, age-based distinctions in criminal responsibility had already been recognized in several European legal traditions, particularly those influenced by Roman law, where legal capacity and culpability were increasingly connected to age and discernment (Blatier, 1999). Although Russian imperial legislation did not directly transplant Western European juvenile law models, the broader eighteenth-century process of legal codification and administrative reform in the Russian Empire increasingly reflected awareness of European legal concepts concerning responsibility and legal capacity. This marked a doctrinal shift from purely paternalistic logic, as it recognized youth not simply as objects of family discipline or moral weakness, but as differentiated legal subjects. As noted in contemporary legal historiography, Russia was late in distinguishing youth as criminal subjects compared to Western European legal systems. For example, French criminal law had already incorporated age-based mitigation and the concept of discernment by the late eighteenth century, later formalized in the Penal Code of 1810, which recognized that youth could be excused

or punished differently because of their age (Blatier, 1999). In England, the common-law doctrine of *doli incapax* had long distinguished youth from adults by presuming that youth under seven lacked criminal capacity and that those between seven and fourteen were incapable unless proven otherwise (McDiarmid, 2007). This delay often attributed to the absolutist character of Russian state-legal development, where rights and obligations of specific social groups were not prioritized in legislation (Solonnikova & Bondar, 2020, p. 175).

The 1742 Senate Decree classified juvenile offences into four categories, each linked to graduated sanctions based on the nature of the offence, age, and physical health of the youth.[27] The first category – encompassing capital crimes such as murder, arson, and sacrilege – was met with public flogging, shackling in iron leg restraints, and exile to distant monasteries for 15 years of hard labour. During this term, youth were compelled to attend all religious services, engage in manual labour, and perform daily acts of repentance (Solonnikova & Bondar, 2020, pp. 175– 176; Chepurko & Lysenko, 2007, p. 3).

The second category, consisting of repeated theft, robbery, and other capital crimes resulted in flogging and exile to monasteries for a seven-year correctional term. In the third category, crimes punishable by torture or flogging in adult law (but not death) led to public beatings (with batogs or whips) and conditional release without exile, depending on the offender's age and health. Lastly, all other offences were sanctioned by corporal punishment using rods, whips, or batogs, tailored to the offender's developmental stage and perceived moral culpability (Shyshkov et al., 2020, p. 236; Solonnikova & Bondar, 2020, p. 175).

[27] In the Russian Empire, references to the physical health of youth in sentencing reflected the continued use of corporal punishment within the penal system and the practical need to determine whether a child could physically endure such sanctions (Solonnikova & Bondar, 2020).

This classification system, while unquestionably harsh by modern standards, introduced for the first time a structured and age-sensitive penal regime. Notably, the decree explicitly prohibited the use of torture, whipping with the knout, and the death penalty against youth under 17 (Solonnikova & Bondar, 2020, p. 176; Anisimov, 2011, p. 11). As Shyshkov et al (2020) observe, the shift symbolized a transition from discretionary leniency to institutionalized differentiation – "youth could not be subjected to the same punishments as adults" (p. 236).

Further, the law implied a rehabilitative rationale: offenders sentenced to monastery exile were to be reintegrated into society upon completion of their term, with the hope that forced labour and religious observance would foster moral reform. The expectation was that the youth would "live permanently in their former place of residence" and "remember their offence for the rest of their life" (Chepurko & Lysenko, 2007, p. 3; Solonnikova & Bondar, 2020, p. 176).

This preventive and reformative approach anticipated modern principles of correction and social reintegration. As Solonnikova and Bondar (2020) argue, the 1742 Decree laid the conceptual foundation for future juvenile policy by insisting that punishment must take into account both the gravity of the offence and the personal characteristics of the offender, above all, their age (p. 176). Yet the 1742 Decree's lack of precision regarding lower age thresholds and procedural guarantees illustrates the limitations of 18th-century legislative technique and the enduring reliance on casuistic interpretation.

Despite these gaps, the 1742 Decree became the doctrinal cornerstone upon which subsequent imperial legislation regarding juvenile offenders would be based (Solonnikova & Bondar, 2020, p. 176; Shyshkov et al., 2020, p. 236). It affirmed a principle that would reverberate through later reforms: that juvenile crime should be addressed not only with proportionality, but with the intent to correct rather than destroy. In a society where the distinction between legal and

moral fault remained blurred, the decree's insistence on age-based leniency marked a departure from purely retributive justice and a move toward what we might today recognize as an early form of probationary reasoning.

The evolution of legal responses to juvenile offenders in pre-reform Russia was closely tied to the penitentiary practices of Orthodox monasteries, which played a unique role in the legal and moral framework of punishment. This institutional connection between the church and the state reflected a broader synthesis of religious and legal authority, especially in regard to the treatment of youth (Santashev et al., p. 122; Sidorkin, 2009, p. 118).

The very term "penitentiary", as often used in modern legal literature, originates from the Latin *poenitentiarius*, denoting a form of punishment grounded in repentance and correction (Kovalev, 2006, p. 53). In its original ecclesiastical context, the concept implied the moral transformation of the offender, whether within society or in conditions of monastic isolation. This model emphasized repentance and spiritual reform as necessary elements of punishment (Zubov, 2004; Sidorkin, 2009).

By the 18th century, particularly in the 1740s, the Russian state began to formally incorporate monastic exile into juvenile sentencing practice. The 1742 Decree – initially issued in response to the case of Praskovia Fedorova – was the first legislative act to distinguish legal consequences for juvenile offenders and to explicitly provide for monastic exile as a substitute for capital punishment, torture, or whipping (Chepurko & Lysenko, 2007, p. 4; Solonnikova & Bondar, 2020, p. 175). Under this decree, youth found guilty of serious crimes such as murder, sacrilege, or arson were to be flogged publicly, then exiled to remote monasteries for 15 years, during which they were required to perform physical labour and participate in daily church services (Shyshkov et al., 2020, p. 236; Santashev et al., 2024, p. 122).

Although monastic exile functioned as a punitive measure, its religious foundation provided a hybrid model of correction, combining elements of state-imposed discipline and ecclesiastical repentance. According to Sidorkin (2009), the historical analysis of such measures must take into account not specific legislative events alone, but the broader philosophical relationship between church and state, religion and law, and punishment and repentance (p. 118). In this sense, monastic exile was not simply a form of detention, but a mechanism for moral reformation, aligning with the penitential goals of the Orthodox tradition.[28]

The 1744 Synodal Correction: Regressive Turn in the Treatment of Juvenile Offenders

The relative progress introduced by the 1742 Decree in the legal conceptualization of juvenile offenders was soon destabilized. A new legal intervention in 1744, drafted jointly by the Governing Senate and the Most Holy Synod, reversed many of the protective mechanisms previously afforded to youth. Rather than continuing the shift toward age-sensitive penal policy, the 1744 Decree sharply contracted the legal boundaries of childhood and expanded the scope of harsh punitive measures applicable to youth (Chepurko and Lysenko, 2007, pp. 4-5; Shyshkov et al., 2020, p. 237).

The revision originated with a theological critique issued by the Synod[29], which invoked canon law, specifically the *Kormchaya Kniga*, to argue that the previously established age

[28] In the Orthodox Christian tradition, repentance (pokayanie) was understood as a process of moral correction achieved through confession, prayer, fasting, obedience, and manual labour under spiritual supervision. These practices were rooted in Byzantine canon law and monastic discipline, which strongly influenced the development of ecclesiastical institutions in the Russian Empire after the Christianization of Kiev Rus' in 988. By the eighteenth century, monasteries continued to function as spaces of spiritual correction, and exile to a monastery reflected the belief that wrongdoing could be addressed through religious repentance rather than purely secular punishment. This correctional logic was shaped by the long-standing integration of Orthodox ecclesiastical authority into imperial governance and legal culture (Shyshkov et al., 2020).

[29] The influence of the Most Holy Governing Synod on imperial legislation stemmed from the church–state reforms introduced by Peter I. After abolishing the patriarchal system of church governance in 1701, Peter established the Most Holy Governing Synod in 1721 as the highest authority for church administration in the Russian Empire. Members of the Synod were appointed by the emperor, and imperial oversight was exercised through the Ober-Procurator, a secular official representing the monarch. Until 1917, the Synod functioned both as a religious institution

threshold of 17 years contradicted the moral teachings and canonical traditions of the Orthodox Church. According to the Rules of the Holy Fathers, moral discernment and responsibility were expected to emerge at a considerably earlier age (Chepurko & Lysenko, 2007, p. 4). Citing this, the Synod concluded that full criminal responsibility should begin at the age of 13, thereby redefining youth as youth of both sexes from birth until the age of 12 (Chepurko & Lysenko, 2007, p. 4; Shyshkov et al., 2020, p. 237).

The 1744 Decree thus rendered youth over the age of 12 eligible for the full array of adult criminal sanctions, including torture, whipping with the knout, and the death penalty. Although the decision retained the structure of punishments from the 1742 Decree, it reduced the term of monastery exile for the gravest crimes (such as sacrilege or homicide) from 15 years to 7 (Chepurko & Lysenko, 2007, p. 4; Shyshkov et al., 2020, p. 237; Solonnikova and Bondar, 2020, p. 176). This reduction appears to reflect the Synod's view that monastic confinement functioned primarily as a temporary measure of spiritual correction rather than a long-term substitute for criminal punishment, and therefore did not need to extend for decades. By shortening monastic exile while simultaneously lowering the age at which ordinary criminal sanctions could be applied, the 1744 Decree shifted emphasis from ecclesiastical correction toward earlier integration of youth into the general penal system (Solonnikova and Bondar, 2020, p. 176).

This legal retrenchment had profound consequences. What had begun in 1742 as an attempt to insulate youth from the most brutal practices of criminal procedure now risked legitimizing their exposure to them at increasingly earlier ages. As Shyshkov (2020) notes, this move effectively returned youth aged 13 and above to the realm of adult penal policy, contradicting both the spirit

and as a state administrative body. This close integration of church and state allowed Orthodox doctrine to influence legal policy, particularly in matters of morality, family relations, and discipline (Chepurko and Lysenko, 2007).

and substance of the earlier decree (p. 237). The reform notably failed to introduce any procedural safeguards to accompany the lowered threshold of criminal responsibility.

Despite the severity of the 1744 amendments, the legal force of these Decrees remained ambiguous. Neither the 1742 nor the 1744 Decrees were formally confirmed by Empress Elizaveta Petrovna, though they were submitted for imperial approval on at least four occasions – in 1742, 1744, 1746, and 1750 – without response (Chepurko and Lysenko, 2007, p. 5; Shyshkov et al., 2020, p. 237). This lack of confirmation reflected the broader legislative practice of the mid-eighteenth-century Russian Empire, where Senate initiatives often operated provisionally without formal imperial ratification, particularly in areas of criminal policy that lacked immediate political urgency or clear consensus between secular and ecclesiastical authorities (Chepurko and Lysenko, 2007, p. 6). As a result, legal practice across the Empire became fragmented. Investigators and courts often exercised wide discretion in determining whether a particular youth should be subjected to torture or spared due to age, health, or other considerations (Shyshkov et al., 2020, p. 237).

This inconsistency is evident in numerous recorded cases. The Senate Decree of March 31, 1763, acknowledged the backlog of unresolved juvenile cases in prison, indicating systemic indecision and procedural stagnation. Later that year, in another Senate Decree dated September 18, cases involving individuals aged 18 and even 19 were classified under the category of juvenile offences, despite falling outside the frameworks established by either the 1742 or 1744 Decrees (Chepurko & Lysenko, 2007, pp. 4 -5). These administrative decisions reflected not only legal confusion but also a growing tendency to subsume juvenile criminal liability within broader social hierarchies.

Indeed, the application of juvenile law during this period was deeply entangled with class status. The divergent treatment of two 14-year-old offenders illustrates this starkly: one, a noble student named Grinev, was publicly flogged with birches in front of his classmates and returned to school for forging "thief passports", while the other, a peasant boy named Fedorov, was whipped publicly and sent to hard labor in Nerchinsk for life for a comparable act (Chepurko & Lysenko, 2007, p. 5). The principle of equal treatment under the law was conspicuously absent; class identity often outweighed both the legal category of age and the nature of the offence in determining outcomes.

Although the 1744 Decree formally redefined the age of criminal responsibility and established a narrower category of legal minority, it did so without building institutional capacity for specialized adjudication or correctional alternatives. It narrowed protections without enhancing procedural fairness. It is thus widely regarded by modern legal historians as a regressive moment in the evolution of Russian (and Ukrainian) juvenile justice (Chepurko & Lysenko, 2007, p. 5; Shyshkov et al., 2020, p. 237).

Legal Reforms Under Catherine II: The 1765 Decree and Conscience Courts

The second half of the 18th century marked a visible shift toward the humanization of Russian criminal law, particularly with regard to juvenile offenders. A major milestone in this process was the Decree issued on 26 June 1765 under the reign of Catherine II, titled *"On the Conduct of Criminal Cases Committed by Youth and on Differentiation of Punishments According to the Age of Offenders."* (the "**1765 Decree**"). The 1765 Decree introduced a structured age-based differentiation of criminal liability and explicitly addressed the treatment of youth in criminal proceedings (Shyshkov, 2020, p. 239; Chepurko & Lysenko, 2007, p. 5).

Under the 1765 Decree, the age of full criminal responsibility was again established at 17. This change was part of Catherine II's broader effort to humanize criminal law. Her reforms were influenced by Enlightenment legal thought and by growing criticism of torture and excessive punishment, ideas she later expressed in the Nakaz (Instruction) to the Legislative Commission in 1767 (Santashov et al., 2024, p. 123). Individuals under this threshold who committed capital crimes or those punishable by whipping were to be investigated without torture and then referred to the Senate, which was instructed to determine guilt and punishment "at its discretion and in proportion to their guilt," while taking into account "Her Majesty's maternal mercy toward her subjects" (Solonnikova & Bondar, 2020, p. 176; Santashov et al., 2024, p. 123). For non-capital crimes, local authorities were authorized to adjudicate cases without Senate intervention.

The 1765 Decree established a three-tiered approach to juvenile criminal liability. Youth under 10 were exempt from prosecution and were transferred to the care of their guardians or landowners for correction. Those aged 10 to 15 could be punished with birching, while those between 15 and 17 could receive flogging. Only in exceptional cases – such as murder, arson, rape, or counterfeiting – could corporal punishment be combined with exile to Siberia. In particularly serious instances, such as arson resulting in the destruction of an entire village or theft from a church, the use of batogs (heavy rods) was permitted (Shyshkov, 2020, p. 239; Chepurko & Lysenko, 2007, p. 5). This refinement reflected an increasing effort by the state to introduce preventive, rehabilitative elements into its penal policy rather than relying solely on retribution (Solonnikova & Bondar, 2020, p. 176; Kaminska, 2022, p. 43).

The 1765 Decree also contained a confidential directive advising judges to act with greater mercy rather than cruelty, with the dual aim of correcting offenders and deterring others without inciting public dissent or encouraging further misconduct among youth. The intended function of

punishment, according to the Decree, was correction and prevention of future harm, rather than vengeance or intimidation (Chepurko & Lysenko, 2007, p. 5). Although this approach cannot be regarded as welfare-oriented in the modern sense, it nonetheless signalled a notable shift in that direction.

Ten years later, in 1775, further institutional development followed with the establishment of *Conscience Courts*, which were granted jurisdiction over crimes committed by youth and the mentally ill. These courts were introduced by Chapter XXVI (Articles 395 –403) of Catherine's *Statute on the Administration of the Provinces of the Russian Empire* (7 November 1775). Each court consisted of a judge and six elected lay assessors – two from each estate (nobility, townspeople, and peasantry) – chosen for their knowledge of the law and moral standing (Shyshkov, 2020, p. 239).

The primary function of these courts was not only to adjudicate based on legal statutes but also on principles of natural justice – namely, humanity, compassion, and the capacity of the accused to understand the nature of their actions. These courts were expected to administer justice without causing unnecessary harm and to issue verdicts that were careful and merciful. Despite their theoretical emphasis on leniency and prevention, their practical implementation often lacked consistency and failed to deliver significant rehabilitative outcomes (Anisimov, 2011, p. 12). Data from local courts, such as the Brodsky Court in Poltava, show that in 1775, out of 71 criminal cases reviewed, approximately 6% of offenders were between 15 and 19 years old. While precise ages were often not recorded, this suggests some degree of juvenile involvement in the criminal justice system at the time (Kaminska, 2020, p. 43).

In 1787–1788, Catherine also proposed a draft law titled *"On the Organization of Prisons,"* which emphasized moral rehabilitation of prisoners, especially youth. However, the project was

never implemented due to a lack of financial and human resources in the Russian Empire at that time (Santashov et al., 2024, p. 123).

The Legal Codification Era: Juvenile Criminal Liability in the 1832–1845 Period

The first half of the 19th century marked a transitional phase in the development of juvenile criminal justice in the Russian Empire, culminating in the comprehensive codification of laws under the *Digest of Laws of the Russian Empire* (*Svod Zakonov Rossiiskoi Imperii*) of 1832 (the "**1832 Digest**"). This legislative consolidation preserved key elements introduced in the 1742 and 1765 Decrees, such as the age of criminal majority (17 years). However, it also introduced new technical refinements regarding the legal treatment of youth, including a clearer distinction between different age brackets and the role of mental capacity in determining culpability (Kanchabala, 2020, p. 194; Solonnikova & Bondar, 2020, p. 176).

Under the 1832 Digest, youth under the age of 10 were deemed absolutely exempt from criminal liability and could not be subjected to prosecution or punishment. For youth between the ages of 10 and 17, the question of understanding "*razumenie"* – the child's capacity to understand the wrongfulness of their act – was pivotal. If youth was found to have acted *with understanding*, penalties were imposed according to their age group and the seriousness of the offence (Chepurko & Lysenko, 2007, p. 5; Buklova, 2009, pp. 404-405).

The codified rules outlined the following age-based and offence-based distinctions:

- **Youth aged 10-14**, if convicted of *serious crimes*, were exempt from corporal punishment involving the knout or whip and were not subject to penal labour.
- **Youth aged 14-17**, while still exempt from corporal punishment, could be sentenced to penal labour, although the duration was subject to judicial discretion and could be reduced accordingly.

- For *less serious crimes*, those aged 10-15 were subject to birching, while those 15-17 could be whipped (Kanchabala, 2020, p. 194).

This system maintained continuity with the legislative principles of Catherine II while introducing more nuanced and standardized practices. Yet, legal instability persisted. 1823 Resolution of the State Council mandated that juvenile offenders, regardless of the crime, be sentenced to confinement in monasteries for ecclesiastical penance. This measure remained in force until the Law of 28 June 1833 (the "**1833 Law**") repealed it and reinforced that youth under 10 were entirely exempt from prosecution. (Buklova, 2009, pp. 404-405; Chepurko & Lysenko, 2007, p. 5).

The 1833 Law was later integrated into the second edition of the Digest published in 1842 (the "**1842 Digest**"). This version placed stronger emphasis on the *recidivism* of youth – recognizing repeated offences as aggravating circumstances – and reinforced the existing age-based distinctions. It explicitly stated that individuals who acted *without understanding* were not subject to punishment, whereas those who acted *with understanding* could be punished, though the sanctions were mitigated depending on their age and the gravity of the offence (Kanchabala, 2020, pp. 22-23, 194).

A notable feature of the 1842 Digest was the increasing sophistication in legal technique. Courts were directed to assess *intent* and *capacity to understand* before imposing any punishment. The Government Senate maintained jurisdiction over offenders aged 10-14 in *serious cases*, while local courts handled other matters. The classification between *major* and *minor* offences, and the corresponding legal consequences, introduced a precedent-based foundation for further reforms in Russian juvenile law (Solonnikova & Bondar, 2020, p. 176; Kanchabala, 2020, p. 194).

The 1845 Penal and Correctional Code: Structuring Juvenile Criminal Responsibility

The Penal and Correctional Code (*Ulozhenie o nakazaniiakh ugolovnykh i ispravitelnykh*) (the "**1845 Penal Code**") approved by Emperor Nicholas I on 15 August 1845 and entering into force on 1 May 1846, marked the first comprehensive penal codification in the Russian Empire focused exclusively on criminal and correctional law. This legislative milestone introduced a more detailed framework for juvenile criminal liability and differentiated measures of punishment based on age and mental capacity (Chepurko & Lysenko, 2007, p. 5; Solonnikova & Bondar, 2020, p. 177).

Compared to the 1832 Digest, which exempted youth under 10 from liability and made criminal responsibility for those aged 10 to 17 conditional on their ability to understand the wrongfulness of their act, the 1845 Penal Code offered a more systematic framework. By contrast, the 1845 Penal Code codified juvenile liability into a comprehensive scheme that blended age thresholds with mental capacity, reflecting a more comprehensive view of child development (Chepurko & Lysenko, 2007, p. 6; Solonnikova & Bondar, 2020, p. 177).

Under Articles 98, 100, 104, and 143 of the 1845 Penal Code, youth were divided into three principal age categories that roughly followed a seven-year interval logic rooted in ancient medical and philosophical thought, particularly the Hippocratic tradition. These age brackets were:

- **Childhood**: under 7 years – absolute legal incapacity;
- **Early adolescence**: 7 to 14 years – conditional legal capacity;
- **Late adolescence**: 14 to 21 years – presumed legal capacity, subject to mitigation (Chepurko & Lysenko, 2007, p. 6).

The approach to the first two groups was similar to previous legislation. For the 14 to 21 age group, the law assumed partial imputability. Criminal sanctions could be applied but were

reduced by one or two degrees compared to adult offenders. This age range, newly extended from the previous 17-year threshold to 21, reflected increasing recognition of developmental immaturity (Chepurko & Lysenko, 2007, p. 6). For example, those sentenced to lifelong penal labour could have it substituted with fixed-term servitude. Non-serious offences committed negligently by youth in this category were typically punished with home correction rather than imprisonment (Solonnikova & Bondar, 2020, p. 177).

Despite the move toward a differentiated and ostensibly more humane regime, legal scholars of the time voiced concern. Tagantsev, prominent Russian lawyer, criticized the lowering of the minimum threshold for criminal responsibility from 10 to 7 years as unjustified. Kistiakovsky, Feldstein, and Bogdanovsky also challenged the harshness of provisions that still permitted the death penalty or exile to Siberia for certain crimes committed by youth aged 14 and older (Tagantsev, 1903; Kistiakovsky, 1905).

The 1845 Penal Code also made a formal distinction between *criminal* and *correctional* penalties. Criminal sanctions included capital punishment, exile, and penal labour; correctional penalties included military conscription, assignment to clerical duties, or placement in disciplinary institutions. These measures were explicitly stratified based on social class, reinforcing the feudal structure of Russian penal law (Solonnikova & Bondar, 2020, p. 177).

By 1857, a revised version of the 1845 Penal Code clarified the age categories further, aligning them more closely with modern legal distinctions:

- **7-10 years**: Childhood (subject to home correction only);
- **10-14 years**: Adolescents with conditional imputability;

- **14-21 years**: Youth with presumed responsibility, subject to reduced sentences (Chepurko & Lysenko, 2007, p. 6).

It required that youth should be detained separately from adult offenders. Moreover, it permitted substitution of punishments: where monetary penalties could not be enforced, alternative punishments such as deprivation of liberty were allowed, albeit with mitigated severity (Chepurko & Lysenko, 2007, p. 6; Kanchabala, 2020, p. 194). Importantly, the Code introduced a principle of recidivism: if youth committed a repeat offence, they were to be punished as an adult, regardless of age or prior mitigation (Chepurko & Lysenko, 2007, p. 6). This created an internal contradiction in the otherwise reformist trajectory of juvenile criminal policy. In summary, the 1845 Penal Code laid the foundation for a tiered and context-sensitive model of juvenile responsibility, combining formal thresholds with discretionary judicial evaluation of mental capacity. While the 1845 Penal Code retained many punitive elements characteristic of its time, it simultaneously advanced a proto-modern approach to youth justice by institutionalizing age gradations, promoting correction over punishment, and codifying judicial mitigation based on individual circumstances.

The Judicial Reform of 1864 and the Evolution of Juvenile Criminal Responsibility

The landmark Judicial Reform of 1864, introduced by Emperor Alexander II, signified a pivotal turn in the development of Russian criminal law, particularly with regard to juvenile justice. While the 1845 Penal Code had already laid down the foundation for age-based differentiation of criminal responsibility, the Judicial Statutes (*Sudebnye Ustavy*) of 20 November 1864 (the "**1864 Judicial Statutes**") reinforced and refined this structure by advancing the concept of correctional education as the cornerstone of penal policy toward youth. The 1864 Judicial Statutes preserved and expanded upon the tripartite age classification that had begun to crystallize in the mid-19th century. In particular, the 1864 Judicial Statutes included 1864 Penal Statute and 1864 Statute of Criminal Procedure.

The explanatory note to the 1864 Judicial Statutes emphasized that criminal policy toward youth must pursue a primarily corrective and educational purpose, rather than retribution. It was closely aligned with the welfare-based philosophy that sought to guide and support youth rather than punish. As stated therein: “The law must aim not at punishing the child for the past, but at securing a better future punishment should be less a retribution than a means of moral education” (as cited in Anisimov, 2011, p. 12). In line with this philosophy, Article 6 of the 1864 Penal Statute introduced the possibility of sentencing youth aged 10 to 17 to special correctional and educational institutions instead of prison. This was a notable departure from earlier practices, which often subjected juvenile offenders to the same forms of deprivation of liberty as adults. These institutions, governed by the justices of the peace, were empowered to detain youth only until the age of 18.

In 1866, this corrective model was extended to the general courts, though more restrictively: it applied only to youth aged 14 to 17, and only where the court determined that the offender had acted without full understanding (Anisimov, 2011, p. 13).Despite these developments, prominent jurists of the time, including Tagantsev, criticized the lack of coherence across legislative acts and the overall inefficiency of juvenile criminal policy. Tagantsev noted that although individual statutes introduced rehabilitative measures, the overarching penal philosophy still rested on incarceration and punishment rather than genuine reform (Tagantsev, 1903).

The 1864 Statute of Criminal Procedure reinforced the importance of age as a procedural consideration, particularly in pre-trial measures. According to the 1864 Statute of Criminal Procedure, courts were instructed to consider the age, health, gender, and social status of the accused when selecting preventive measures (Kaminska, 2022, pp. 43-44). For example, Article 413 of the 1864 Statute of Criminal Procedure required that, if the accused’s age might affect the

classification of the offence or sentencing, it had to be verified using official birth records or, failing that, through judicial-medical examination. Notably, while the statute required accurate determination of age, it offered no automatic privileges or mitigation for youth – those had to be judicially determined on a case-by-case basis, depending on mental maturity and circumstances of the offence (Kaminska, 2022, p. 44). The progressive vision behind these reforms found expression in the writings of contemporary legal scholars. Tagantsev, upon being commissioned in 1871 by the St. Petersburg Agricultural Colony, argued that juvenile justice must differ fundamentally from adult criminal policy. He insisted that: "In the case of youth, we cannot speak of retribution; punishment must contain elements of education and correction." (Tagantsev, as cited in Anisimov, 2011, p. 13)

Tagantsev's work later influenced not only Russian reformers but also juvenile justice systems in parts of Europe. Nonetheless, by the 1890s, the liberalization of the regime had unexpected social effects, including a reported rise in juvenile delinquency and cases of indigent families deliberately pushing their youth into criminal behaviour to place them "on the state's budget" (Anisimov, 2011, p. 14).It is also essential to note that these reforms occurred against the backdrop of major societal transformations: the abolition of serfdom (1861), curtailment of corporal punishment, and judicial democratization through the introduction of jury trials and public proceedings. As Chepurko and Lysenko (2007) observed: "Among all branches of law, criminal law is the most sensitive to political and social upheaval. As life evolves rapidly, so do the reforms" (p. 9).

While fragmentation and inconsistencies remained a problem, the reforms of 1864 initiated a transitional phase from a punitive to a developmental and rehabilitative model of juvenile justice, which could be characterized as a prospective welfare model. Meanwhile, the new judicial ethos,

rooted in pedagogical correction and guided discretion, laid the groundwork for the scientific penology of the late 19th and early 20th centuries. The ideological shift reflected in the 1864 Judicial Statutes anticipated later theories of criminal responsibility that emphasized not only *actus reus* and *mens rea*, but also moral and developmental capacity. This conceptual foundation ultimately contributed to the emergence of juvenile courts and specialized institutions, both in Russia and internationally.

Despite the increasing legislative attention to juvenile justice following the 1864 reform, preventive measures targeting juvenile delinquency remained underdeveloped well into the late 19th century. It was not until 1882 that a significant attempt was made to institutionalize prevention: the Society for the Protection of Youth from Cruelty was established. Although this initiative originated within state circles, its operation was largely funded by public contributions, which resulted in inconsistent activity and limited geographic reach (Solonnikova & Bondar, 2020, p. 178). As noted by contemporary scholars: "By that time, the state had not yet developed a coherent policy for the prevention of juvenile delinquency, although the need for such was increasingly recognized" (Solonnikova & Bondar, 2020, p. 178).

Among the few notable efforts was the creation of Olgin Labour Charity Homes for Youth, which operated in major cities. These institutions sought to prepare "difficult adolescents" for independent life, offering moral and vocational guidance. While limited in scope, such initiatives reflected a growing societal awareness of the need to intervene before delinquency hardened into recidivism (Solonnikova & Bondar, 2020, p. 178). This nascent preventive movement, though far from systematic, marked the beginning of a gradual shift toward social pedagogy[30] and

[30] Social pedagogy refers to an educational and social-work tradition, originating in nineteenth-century continental Europe, that emphasizes holistic child development through the integration of education, social care, and community support. It focuses on the moral, social, and emotional formation of youth rather than purely disciplinary or punitive

rehabilitation, anticipating more structured state involvement in juvenile affairs in the early 20th century.

The 1897 Reform and the Formalization of Juvenile Criminal Procedure

The landmark Law of June 2, 1897, officially titled *On the Change of Forms and Rituals of Judicial Proceedings in Cases of Wrongful Acts Committed by Youth and the Procedure for Their Punishment* (the "**1897 Law**"), marked a major turning point in the development of juvenile justice in the Russian Empire. The 1897 Law introduced a specialized procedural framework for youth, significantly modifying several key legal codes, including the 1864 Statute of Criminal Procedure, and the 1864 Penal Statute (Kaminska, 2022, p. 45; Chepurko & Lysenko, 2007, p. 10).

The reform was prompted by the growing recognition – particularly among legal scholars and penal administrators – that youth required a distinct legal treatment. The Congress of Representatives of Juvenile Correctional Institutions, convened in the same year, emphasized the need to separate youth from adult offenders both procedurally and institutionally. According to Rubashova (1912), the new approach signalled a shift away from perceiving juvenile crime purely through the lens of legal culpability. Instead, it introduced a model focused on correction, education, and individualized assessment – an early resemblance of what would later be conceptualized as a welfare model of juvenile justice.

One of the 1897 Law's most consequential changes was the replacement of the vague term understanding (*razumenie*), previously used in the 1845 Penal Code, with the more systematic and defined criterion of criminal capacity (*vmenyaemost'*). This brought the definition of legal

responses. In the context of juvenile justice, social pedagogy informs rehabilitative approaches that seek to address the social environment of the child alongside individual behaviour (Hämäläinen, 2003; Lorenz, 2008; Petrie et al., 2006). Anton Makarenko, whose institutions for delinquent youth are discussed later in this chapter, is widely regarded as a leading figure in this tradition: his theory of upbringing through the collective is commonly read as an application of social pedagogy to the rehabilitation of young offenders (Halvorsen, 2014).

responsibility for youth closer to that for adults, while still preserving a differentiated approach based on age and maturity (Tagantsev, 1914, p. 317; Piontkovsky, 1906, p. 93).

When youth was deemed criminally incapable, the case was closed and the child could be released under the supervision of parents, transferred to another trustworthy family, or, in more serious cases, placed in a reformatory until the age of 21. This reflected a paternalistic approach, which had dominated Russian juvenile legislation since the early eighteenth century. For girls, confinement in monasteries of the corresponding confession was allowed, though no clear procedural regulation existed for such placements (Chepurko & Lysenko, 2007, pp. 10-11). Although earlier legislative acts had occasionally implied a degree of gender neutrality in the treatment of youth, in practice, there was always a division between boys and girls; the 1897 Law made this distinction explicit, introducing harsher and more burdensome measures for girls through the practice of monastic confinement (Kaminska, 2022, p. 45). This differentiation reflected prevailing imperial-era assumptions that female delinquency was closely linked to moral and sexual misconduct and therefore required religious supervision and moral correction rather than ordinary custodial discipline – a pattern observed in both Russian and broader European correctional practices of the nineteenth century (Chepurko & Lysenko, 2007, p. 12).

The procedure for youth was finally governed by strict safeguards. Court sessions were held behind closed doors, and parents or guardians had to be notified and allowed to participate. A defence attorney was required, either chosen by the accused or appointed by the court. Medical experts, teachers, and caregivers could be summoned to assess the minor's level of development and capacity for reform (Martens, 1905, p. 209). When youth was found guilty, the penalty was determined in proportion to both the offender's age and the gravity of the offence. For youth aged 10 to 14, imprisonment, exile, or corporal punishment were replaced by admonition, supervised

release, or placement in correctional institutions. For more serious crimes, confinement in juvenile colonies or monasteries was permitted. Youth aged 14 to 17 could receive prison terms, though these were reduced by two to three degrees relative to adult sentencing. Where the offense would have warranted the death penalty or penal labor for adults, the punishment for youth was commuted to prison terms ranging from 3 to 12 years or reformatory confinement (Chepurko and Lysenko, 2007, pp. 12-13).The 1897 Law also introduced a special mitigating circumstance: if it was proven that youth had been induced into committing a crime by an adult, the court was obliged to reduce the punishment by one or two degrees [31](Tagantsev, 1914, p. 328; Rubashova, 1912, p. 6).

Despite these progressive features, the legislation remained inconsistently applied, and some provisions lacked clarity or institutional support. Anisimov (2011) observed that the system continued to suffer from fragmentation and poor coordination between civil institutions, courts, and correctional facilities. Similar coordination challenges were observed in early juvenile court systems in Western Europe and North America prior to the institutional consolidation of probation services in the twentieth century (Platt, 1969). While the law introduced the concept of a "special status" for youth, many of its guarantees remained formal rather than substantive (Anisimov, 2011, p. 14).

[31] Under the 1845 Penal Code, punishments were organized into a hierarchical system of "degrees" (*stepeni nakazaniya*), ranging from the most severe sanctions to the least severe. At the upper end were capital punishment, penal labour (*katorga*), and exile to hard labour settlements; intermediate degrees included various forms of imprisonment and confinement in correctional institutions; and lower degrees included short-term detention, supervision, or admonition. Reducing punishment by one or two degrees meant moving downward within this statutory hierarchy - for example, from penal labour to imprisonment, or from imprisonment to correctional confinement. This grading mechanism allowed courts to mitigate sentences for youth or other offenders with reduced culpability (Tagantsev, 1914)

The Emergence of Specialized Juvenile Courts (1910–1917): From Imperial Repression to Institutional Reform in Ukraine and Russia

1910 year marked a critical turning point in the evolution of juvenile justice in the Russian Empire, including its Ukrainian territories. The Law "On Changes to the Forms and Rites of Judicial Proceedings in Cases Involving Unlawful Acts of Youth and the Procedure for Their Punishment" of 1910 (the "**1910 Law**") provided the legal foundation for the establishment of specialized juvenile courts. These courts were designed to replace the punitive norms of traditional adjudication with institutions oriented toward education, rehabilitation, and social integration of youth. While the first juvenile court was created in Saint Petersburg, similar institutions were soon opened in Kyiv (1912), Kharkiv, Odessa, Katerynoslav (modern-day Dnipro), Mykolaiv, and other major cities across Ukraine and Russia (Chenkova, 2014, p. 195; Kaminska, 2022, p. 45). The legal initiative was strongly supported by scholars and practitioners, such as Foynitsky (1907) and Lyublinsky (1909), who argued that trying youth alongside adults in regular courts desensitized youth to punishment and often reinforced deviant identities . The first judge in the Saint Petersburg juvenile court was Okunev, a legal scholar who had studied European models of juvenile justice and is considered the founder of Russia's juvenile court system (Anisimov, 2011, p. 16).

These courts were based on the recognition of the youth not merely as a legal subject, but as a social individual with the potential for reform. Three main categories of cases were handled by these courts: (1) crimes committed by youth; (2) cases in which youth were victims; and (3) cases concerning parental neglect, abuse, vagrancy, and child prostitution (Chenkova, 2014, pp. 195-196).

Distinct procedural features characterized these courts:

- Closed hearings to protect the youth's privacy;

- Investigation of the youth's social conditions and moral development prior to adjudication;
- Absence of formal legal representation, replaced by guardians;
- Informal, non-adversarial hearings modelled as conversations between the judge and the youth;
- Judicial decisions focused on educational or corrective measures rather than retributive punishment (Atamanov, 2019, p. 21).

The Kyiv juvenile court, for example, operated under locally adopted rules approved by the Kyiv Congress of Justices of the Peace in 1913. This included the "Rules for the Organization of a Special Court for Youth in Kyiv" and accompanying regulations on guardianship and shelter arrangements (Chenkova, 2014, p. 196).

Guardians played a vital role. Their duties extended to:

- Collecting detailed information about the youth's life and environment;
- Representing the youth's interests in court;
- Supervising the youth before and after court proceedings;
- Assisting in job placement or education;
- Cooperating with charitable organizations to support rehabilitation efforts (Chenkova, 2014, p. 197).

Despite limited state funding and support, many of these initiatives were financed by local city or regional councils, as well as private charitable societies. In Odessa, for example, juvenile shelters for boys and girls were established through lotteries and donations, with some municipal budget support (Chenkova, 2014, p. 196). The juvenile court system, however, faced persistent legislative uncertainty. Although various bills were drafted – including a bill on juvenile court

procedure and another on child welfare institutions – none were enacted by the State Duma before the collapse of the monarchy (Storozhenko, 2020, pp. 522-523). As a result, practice often outpaced legal codification, and many of the courts operated without a clear national legal mandate (Kaminska, 2022, p. 46).

Ukraine, as part of the Russian Empire, was central to these developments. Cities like Kyiv, Kharkiv, and Mykolaiv were not merely regional outposts but leading centers in the experimentation with new legal and educational models (Chenkova, 2014, p. 195). For instance, the juvenile court in Kharkiv was initiated by honorary justice Faist in 1912, while in Mykolaiv, the local court functioned from 1907 to the end of 1917, with a focus on both custody over orphaned youth and the protection of their property (Chenkova, 2014, p. 195). Legally, the juvenile courts derived their authority from the Judicial Statutes of 1864, particularly the sections related to justices of the peace. These judges were often educators or physicians with training in youth psychology, and their role was designed to promote restorative rather than punitive justice (Atamanov, 2019, pp. 20-21). The judiciary's approach emphasized that the youth was a product of social conditions rather than inherent criminality. This marked a fundamental shift in legal thinking, supported by jurists like Poznychev and Foynitsky who believed that combining official judicial mechanisms with societal, familial, and educational support was essential to effective juvenile reform (Anisimov, 2011, p. 16).

While juvenile delinquency remained high and not all courts functioned effectively, the juvenile court system of the 1910s became a visible symbol of humane legal reform in the late imperial period. Although many of these courts ceased operation during World War I, and particularly after the collapse of the Russian Empire, they laid the foundation for later Soviet juvenile justice models. Following the revolutions of 1917 and the subsequent civil war, Bolshevik

authority was gradually established over Ukrainian territories, which were incorporated into the Soviet state structure and eventually became the Ukrainian SSR within the USSR.

Colonial Legal Transplantation in the USSR

The position of Ukraine within the USSR presents a more complex and formally ambiguous case of legal dependency than under the Russian Empire. After the establishment of the Soviet Union in 1922 as a treaty-based federation of nominally sovereign republics, Ukraine entered the Union as a founding state with its own constitution, formal competences, and – crucially – its own international legal personality (Rudnytsky, 1972, p.237). The granting of separate membership to both the Ukrainian SSR and the Byelorussian SSR in the UN in 1945 further entrenched this façade of sovereignty (Rudnytsky, 1972, p.237). Yet, as virtually all scholarship confirms (Hrytsak & Shapoval, 2025), such external markers of statehood masked a profound and systematic subordination of Ukraine to the political, administrative, and ideological control of the all-Union centre, which was institutionally dominated by the Russian Soviet Federative Socialist Republic (the "**RSFSR**") [32] (Rudnytsky, 1972, p.238). The formal structure of the USSR as a federation should therefore not obscure the substantive reality that Ukraine exercised no independent legislative or executive authority beyond what Moscow permitted. This duality – sovereignty in form, dependency in substance – is central to understanding how legal transplantation operated in the Soviet period.

This ambiguous constitutional status directly shaped the mechanics of Soviet law-making. The USSR possessed a layered legislative hierarchy in which Union-level laws, All-Union codes, and decrees of central organs could exert direct effect across the republics. In theory, republics

[32] The Russian Soviet Federative Socialist Republic (the "**RSFSR**"), a socialist state from 1917 to 1922, was the largest successor of the Russian Empire. Before the creation of the Union of Soviet Socialist Republics (the "**USSR**") in December 1922, Ukraine was partly incorporated into the RSFSR's sphere of control, later becoming a founding republic of the USSR as the Ukrainian SSR.

maintained their own legislative systems; in practice, republican legislation primarily served to duplicate and implement all-Union norms (Rasskazov, 2014, p.11). Only a narrow category of Union acts, such as military conscription or foreign trade laws, applied directly without republican adoption. However, this distinction had little substantive meaning: republics were required to adopt conforming legislation immediately and without deviation, ensuring the uniformity of the Soviet legal order. The development of criminal and procedural law in Soviet Ukraine demonstrates this dynamic vividly. The Criminal Code of the RSFSR, adopted in 1922, set the doctrinal foundation for socialist criminal law: its general part articulated the principles of "social danger," "social defence," and class-based jurisprudence; its special part defined offences in accordance with the ideological categories of the new regime (Selivanovskaya, 2009, 80). That same year, the Ukrainian SSR adopted its own Criminal Code, which duplicated the RSFSR code almost verbatim, reproducing its structure, definitions, and system of sanctions. The situation was replicated decades later: the Criminal Procedure Code of the RSFSR adopted in October 1960 was followed by a Ukrainian SSR Code adopted in December of the same year, again with virtually complete textual duplication. (Petrushenkov, 2014, p.108)

These legislative patterns mirror precisely what Birnhack (2012) characterizes as the logic of colonial legal transplantation. In the British imperial system, crown colonies received metropolitan law automatically and possessed minimal legislative autonomy, whereas protectorates retained a degree of local legal continuity (Birnhack, 2012, p. 29). Although the Soviet Union framed its republics as equal subjects rather than colonies, the legislative process in the criminal justice sphere operated at the hard-law end of Birnhack's spectrum. The RSFSR functioned as the de facto metropole whose legal norms were transplanted to the Ukrainian SSR automatically, subject only to formalistic reenactment by republican legislatures. This mechanism

(where metropolitan law is replicated almost word for word and where local variation is structurally impossible) corresponds to the most rigid forms of colonial legal reception (Birnhack, 2012, pp. 30-31).

Thus, even though the USSR's constitutional architecture and international recognition of Ukraine as a UN member created the impression of statehood, the legal reality was one of pervasive and coercive transplantation of metropolitan norms. The RSFSR served as the model jurisdiction whose criminal and juvenile justice laws were replicated without substantive divergence; central Union organs dictated doctrine, interpretation, and enforcement; republican legislatures had only formalistic roles in adopting pre-determined norms; and local initiatives were structurally excluded. When evaluated through Birnhack's (2012) framework, the conclusion is unequivocal: the Soviet Union imposed on Ukraine a system of colonial legal transplantation, albeit masked by the rhetoric of socialist federalism. Legislative duplication, centralised doctrinal control, and the suppression of Ukrainian institutional autonomy collectively constituted a colonial system of legal reception in which metropolitan norms prevailed automatically, and republican legal identity was suppressed.

Taken together, the imperial and Soviet periods show a continuous pattern of legal domination over Ukrainian territory. Across both regimes, laws did not grow out of local needs or institutions but were imposed from the centre and adapted only superficially. As a result, Ukraine entered independence carrying a legal system shaped by long-term dependence on external models rather than its own legislative tradition. This historical background is crucial: when Ukraine later looked to Canada for juvenile justice reform, it did so with institutions and habits formed over centuries of receiving, rather than creating, legal norms.

General Overview of the Ukrainian Juvenile Justice Acts under the Soviet Union Rule

The Soviet Period: Centralization and Pedagogical Turn in Juvenile Justice (1918-1922)

With the Bolshevik Revolution and the establishment of Soviet power, Ukraine entered a new chapter in the history of juvenile probation and criminal justice. As part of the newly created Union of Soviet Socialist Republics, Ukraine became subject to the centralized policies and legal experiments of the Soviet regime. The dissolution of imperial institutions ushered in sweeping reforms, including the elimination of pre-revolutionary juvenile courts. On 14 January 1918, the Council of People's Commissars issued the Decree "On Commissions for Juvenile Affairs," (the "**1918 Decree**") which marked the beginning of a distinct Soviet approach to juvenile delinquency (Zorkina, 2017, p. 192; Atamanov, 2019, p. 22).

This 1918 Decree abolished judicial proceedings and imprisonment for youth under the age of 18 and transferred responsibility for all offences committed by youth to special commissions composed of educators, doctors, and judges. These bodies were created as pedagogical rather than judicial and were empowered to apply rehabilitative and educational measures, including placement in state-run shelters, youth's homes, or communes (Kaminska, 2022, p. 47; Zorkina, 2017, p. 192). The commissions also had the authority to review past court decisions involving youth, thus centralizing the power to determine legal consequences and emphasizing rehabilitation rather than retribution (Omarova, 2023, pp. 255-256).

The legal framework evolved with the 12 June 1920 Decree "On the Responsibility of Youth" (the "**1920 Decree**") issued by the Ukrainian SSR. The 1920 Decree established differentiated procedures for various juvenile categories. Youth who committed crimes jointly with adults remained under the jurisdiction of the courts, though commissions had to be notified in each case. For youth below the age of 14, institutional placement under the People's

Commissariat of Education was possible, while youth aged 14 to 18 could be placed in reformatories under the jurisdiction of the Commissariat of Justice if pedagogical measures were deemed insufficient (Kaminska, 2022, pp. 47-48).

In parallel, the Soviet authorities created an extensive network of social rehabilitation institutions, including youth's homes, reception-distribution centres, labour education institutes, and reformatories (Zorkina, 2017, p. 192; Utevsky as cited in Atamanov, 2019, p. 23). By 1920, 245 juvenile commissions operated across the RSFSR. Notably, the "Instruction to Commissions for Juvenile Affairs" of 30 July 1920 clarified their composition and procedure. If youth aged 14-18 was found unsuitable for pedagogical measures, the commission referred the case to a people's court, which was required to return the file within three days after conducting preliminary inquiries, leaving final judgment with the commission (Atamanov, 2019, pp. 22–23). The 1919 "Guiding Principles on Criminal Law" clarified that youth under 14 could not be tried or punished. If acting "without understanding", even older youth were not criminally liable. Only those found to act "with understanding" were eligible for criminal punishment upon judicial decision (Zorkina, 2017, p. 192).

In Ukraine, the application of these policies was significant. Reports from the All-Ukrainian Commission for Juvenile Affairs indicate that in 1921, over 15,000 juvenile cases were heard in Ukraine, with 10,000 in urban areas. The concentration of cases in cities was not only a result of larger populations but also reflected the fact that commissions and specialized juvenile institutions were primarily located in urban centres, where the necessary infrastructure and administrative capacity existed. Odessa province led in the number of juvenile offences with 2,670 cases, followed by Mykolaiv with 420 (Omarova, 2023, p. 256).

Juvenile Justice Reform under the New Economic Policy (1922–1935)

The period of the New Economic Policy (the "**NEP**") (1921-1928)[33] in the Soviet Union marked significant changes in juvenile justice legislation and institutional frameworks. Responding to both ideological imperatives and practical realities, the Soviet state redefined its approach to the treatment and prevention of juvenile delinquency. The transition from revolutionary idealism to pragmatic legal codification led to the enactment of key legislative instruments, organizational reforms, and procedural protections that affected youth and youth across the Ukrainian SSR and broader Soviet Union.[34]

The legal treatment of youth transformed with the introduction of the Criminal Code of the Ukrainian SSR in 1922 (the "**1922 Criminal Code**"). Article 18 of it stipulated that youth under 14 could not be subject to criminal punishment, while those aged 14-16 could avoid penal measures if medical-pedagogical intervention was deemed sufficient (Zorkina, 2017, p. 192). This framework established three tiers of juvenile criminal responsibility: no responsibility (under 14), conditional responsibility (14-16), and mitigated responsibility (16-18) (Omarova, 2023, p. 257; Ryndzyunskyi & Savinska, 2023).

The 1922 Criminal Code also introduced another shift: while most juvenile cases remained within the commission's purview, cases involving offenders aged 16 and above were transferred to people's courts. This marked the beginning of a rebalancing between pedagogical and punitive measures in Soviet juvenile policy (Atamanov, 2019, p. 23). This development coincided with

[33] The New Economic Policy (the "**NEP**"), introduced in 1921 and lasting until 1928, was a temporary economic strategy of the Soviet government that replaced War Communism. It reintroduced limited private enterprise and market mechanisms while maintaining state control over key industries, aiming to revive the economy after the devastation of the Civil War.

[34] The Soviet Union (the "**USSR**") was formally established on 30 December 1922 by the Treaty on the Creation of the USSR, uniting the Russian Soviet Federative Socialist Republic (RSFSR), Ukrainian SSR, Belarusian SSR, and Transcaucasian SFSR into a federal socialist state.

profound state and political transformations, intensified by the struggle for power, when populist measures lost relevance and the leadership increasingly pursued the construction of a totalitarian state.

The most severe penalty – capital punishment – was abolished for youth in Article 22 of the 1926 Criminal Code (Atamanov, 2019, p. 23). Likewise, procedural safeguards expanded. The 1922 Criminal Procedure Code of the Ukrainian SSR forbade court attendance for youth under 14, required mandatory legal counsel for youth (by 1929), and demanded that youth be tried separately from adults (Omarova, 2023, pp. 259-260). Further codifications in 1927 extended the powers of investigative bodies but failed to establish specialized procedures for youth, leaving room for legal ambiguity (Omarova, 2023, p. 260).

Comprehensive structures supported juvenile rehabilitation. The "Code of Laws on Public Education" delineated types of institutions: primary and auxiliary homes for offenders under 15, labour colonies for ages 15-18, reformatories for recidivists, and labour houses for delinquent or prostituted girls. Educational and vocational preparation, including agriculture, horticulture, and industrial trades, was central to rehabilitation (Omarova, 2023, pp. 259-261). The placement of delinquent and prostituted girls in separate labour houses also reflected the gendered orientation of Soviet juvenile policy. While boys were primarily channelled into colonies or reformatories, girls became subject to heightened scrutiny of their sexual behaviour and conformity to traditional expectations of obedience and morality. Running away from home, disobedience to parental authority, or suspected "immoral conduct" could be treated as seriously as theft or recidivism, bringing young women under the control of commissions and correctional institutions (Atamanov, 2019, p. 23). In this sense, the system extended beyond the regulation of criminal acts into the policing of female sexuality, making delinquency synonymous with social and moral deviance.

Such practices imposed a disproportionate burden on girls, transforming juvenile justice into a tool of social discipline that reinforced prevailing gender hierarchies and restricted female autonomy (Omarova, 2023, p. 260) . By July 1923, Ukraine had reformatories in Kharkiv and Odesa; by 1925, facilities had opened in Kyiv, Mykolaiv, Chernihiv, and Poltava (Omarova, 2023, p. 261). In 1929, commissions gained authority to send offenders to labour homes until age 18, strengthening administrative oversight (Atamanov, 2019, p. 23). State institutions also deployed a range of preventive and corrective tools. Reception centers and "collectors-distributors" (temporary diagnostic facilities) conducted medical and psychological evaluations of detained youth before referring them to the appropriate institution (Omarova, 2023, p. 260). The collector centers functioned as criminological laboratories (Nesynova, 2023), enabling individualized treatment planning. To address street delinquency and vagrancy, child inspectorates monitored urban gathering sites, while patronage and guardianship programs placed youth under the care of trusted adults or trained educators (Omarova, 2023, pp. 260-261). Reformatories for difficult cases combined forced discipline with educational and cultural development. Of particular note was the introduction of the role of the instructor-investigator, who not only prepared case files and conducted inquiries but also mentored youth, encouraging academic, vocational, and cultural development (Omarova, 2023, pp. 268-269). This position represented a hybrid of pedagogy and probation work.

Delinquency statistics underscore the increasing scope of the issue. Between 1925 and 1928, police referrals for youth under 15 surged from 3,145 to 3,875, and total juvenile apprehensions rose from 12,369 to 22,733 (Omarova, 2023, p. 262). The average age of offenders dropped significantly, with 87% of crimes in 1923 committed by youths aged 13-16. The sharp rise in youth crime can be attributed not only to stricter policing and increased reporting, but also

to the broader social context of the time. Widespread repression, economic hardship, deteriorating living standards, and the trauma of war and revolution that left many youths orphaned, all of which created an environment where youth, often out of necessity, were pushed into criminal behaviour. This combination of factors made them more vulnerable to delinquency.

Despite early NEP-era efforts toward rehabilitation, by the mid-1930s, punitive policies intensified. Commissions' pedagogical emphasis gave way to judicial repression, including a 1935 decree lowering the age of criminal responsibility. After this point, courts increasingly adjudicated juvenile cases, curtailing the role of commissions (Kaminska, 2022, p. 48). To sum up, the 1922-1935 period in Soviet Ukraine saw the development of a multi-layered juvenile justice system anchored in legal codes, specialized commissions, and a variety of institutional interventions. Though initially inspired by reformist and pedagogical principles, rising crime rates and shifting political priorities led to the gradual reassertion of punitive models. Yet the hybrid approach – legal, medical, and pedagogical – provides a rich case study in early Soviet experimentation with youth justice.

At the same time, these institutional and legal changes created the environment in which innovative pedagogical experiments could emerge. Among the most notable was the work of Anton Makarenko in the Ukrainian SSR, whose colonies for delinquent youth put into practice many of the principles that NEP-era legislation had only sketched out on paper. Makarenko's model bridged state juvenile policy and everyday educational practice, demonstrating how collective, work-based, and civic-oriented rehabilitation could function within the very system of commissions, colonies, and labour homes established during the 1920s. His approach, therefore, represents not a departure from but a concrete elaboration of the hybrid legal-pedagogical framework described above. (Yevtukh, 2014, p.7)

Anton Makarenko's Legacy and the Foundations of Pedagogical Rehabilitation

During the interwar period of the Soviet Union, particularly in the 1920s and 1930s, Anton Makarenko emerged as one of the most influential pedagogues in the sphere of juvenile rehabilitation. His work, carried out primarily in Ukraine, laid the groundwork for later developments in educational and correctional practices for adolescents in conflict with the law. Makarenko's legacy continues to resonate within contemporary theories of juvenile justice, particularly within rehabilitative and probation-based models.

Makarenko can be considered a precursor to modern probation officers. Although he had no formal probation training, he systematically adapted pedagogical techniques to meet the needs of delinquent youth. His achievements in reforming adolescents at the Gorky Colony and the Dzerzhinsky Commune in Kharkiv were widely recognized both domestically and internationally. German educational theorist Zünkel compared Makarenko's contributions to pedagogy with the impact of Einstein's theory of relativity on science. His inclusion in the International Pedagogical Encyclopedia (Folinov, 1994) and the foundation of the International Makarenko Association in 1991– bringing together scholars from 17 countries – further testify to the enduring relevance of his approach. From the perspective of legal transplantation theory, Makarenko's work may be understood as an early example of institutional borrowing and adaptation, in which educational and rehabilitative practices were translated into mechanisms of social correction that later informed probation-like models in other jurisdictions.

Makarenko (1986) emphasized that the re-education of delinquent adolescents was inherently time-sensitive, with the intervention window typically lasting no more than four years, often starting when the adolescent was already 14. He observed that fundamental aspects of personality were already formed between the ages of three and seven, thereby complicating later

resocialization. Thus, educators had a limited timeframe to intervene effectively, necessitating a holistic and purposeful approach to behavioural change.

Central to Makarenko's methodology was the formation of a socially competent, self-sufficient, and civic-minded individual. He outlined ten core competencies and personal attributes that educators were tasked with cultivating:

1. A sense of belonging and interdependence within the group;
2. Respect for collective norms and communal property (the notion of honour);
3. Discipline and the ability to conform to collective needs;
4. Readiness for civic duty and engagement;
5. Mutual respect, politeness, and interpersonal trust;
6. Strong work ethic and productivity;
7. Leadership and organizational skills;
8. Physical and mental health, including cheerfulness and sexual decency;
9. General literacy and formal education;
10. Civic education and active citizenship (Makarenko, 1986, p. 137).

Importantly, Makarenko argued against the selective or fragmented development of individual traits from the list. Instead, he advocated for the integrated formation of character through holistic engagement in collective life. Partial focus on talent development without

addressing antisocial behaviours, he warned, led to serious societal maladaptations (Makarenko, 1986, pp. 137–139).

This approach corresponds closely with contemporary rehabilitation frameworks. His emphasis on collective experience echoes Trotter's (1996) pro-social modelling and Scott et al.'s (2018) focus on a "healthy environment" as the core of effective probation practices. He conceptualized education as an inherently social process, one that should harness the power of the community to install civic responsibility, discipline, and mutual respect.

Education, in Makarenko's philosophy, was not merely about correction or prevention of reoffending, but about preparing a young person for meaningful participation in society. He stressed the importance of group solidarity, equality between educators and students, collective labour, and mutual accountability. His model included democratic self-governance, flexibility in labour structures, and dynamic team formations to simulate real-life social interdependence (Makarenko, 1986).

Furthermore, Makarenko offered detailed insights into the cultivation of discipline – not through coercion, but through internalized values and communal responsibility. He viewed consistent work, patience, and understanding of one's role within the community as fundamental drivers of behavioural change. According to him, work should not be framed as entertainment or extrinsic reward but as a vital contribution to the common good (Makarenko, 1986, pp. 143-144).

In a broader theoretical sense, Makarenko saw the community itself as an educational method – a dynamic, democratic structure capable of transforming character and integrating even deeply marginalized adolescents. He strongly criticized institutions that isolated youth by bedroom

groups or teacher silos, arguing that these fragmented environments bred moral anarchism and further alienated youth from societal norms (Makarenko, 1986).

Among the moral qualities Makarenko emphasized were conscious discipline, courage, responsibility, and will. His methodology included both positive reinforcement and carefully structured consequences, excluding physical punishment. He advocated for sincerity, care, attentiveness, and the importance of school traditions, public opinion, and the authority of mentors (Makarenko, 1959a, 1959b, 1959c).

Ultimately, the realism of Makarenko's pedagogical philosophy, acknowledging the complexity of modern society and the adaptive needs of delinquent youth, offered a pragmatic and deeply humane model of rehabilitation. His belief in the transformative power of education, rooted in respect, community, and personal responsibility, provided timeless guidance for modern juvenile justice systems, especially in the context of probation services.

Despite this broad influence, the form and freedom of Makarenko's practice were constrained by political shifts and institutional pressures. From 1928 onwards, Makarenko faced waves of criticism at home, staffing and political interventions limited experimentation, and by the mid- to late-1930s, the tightening political climate and the general move toward greater centralization and punitive control in juvenile policy reduced the space for pedagogical experimentation. After Makarenko's death in 1939, his methods were both canonized in Soviet pedagogy (often in an attenuated, bureaucratised form) and subjected to criticism for their stress on collective coercion; later scholars and practitioners debated whether his model had been instrumentalized by the system or could be read as a genuinely humane, pragmatic rehabilitation method (Yevtukh, 2014, p.5). In short, adoption was wide in institutional terms, but the original

experimental, situational character of his practice was curtailed as Soviet policy and politics hardened.

With the onset of the Khrushchev era (1953–1964), Makarenko's ideas about community living, shared labour, and moral-pedagogic education found renewed relevance in the expanding network of internaty (state boarding schools) for orphans, semi-orphans, and youth from low-income or dysfunctional households. Many of these institutions incorporated features reminiscent of Makarenko's colonies: youth lived together continuously, shared dormitory life, performed productive work in workshops or gardens, and took collective responsibility under the oversight of trained pedagogues (Yevtukh, 2014, pp.6-7). While these internaty were not always explicitly declared to be "Makarenko colonies," they represented an institutional channel through which his pedagogical model continued to shape practice.

Over time, however, especially from the late 1960s onward, these practices became more formalized and less experimental, as later Soviet policy increasingly emphasized uniform welfare provision over pedagogical innovation (Yevtukh, 2014, p.7). The boarding-school network survived, but the vibrant, community-based rehabilitation philosophy that Makarenko had pioneered was diluted by bureaucratic routines and the shift away from individualized or collective self-governance toward standardized care and control (Yevtukh, 2014, p.7) .

Stalinist Repression and the Repressive Turn in Juvenile Criminal Policy (1935–1960)

By the mid-1930s the Soviet Union had entered a new political phase marked by Stalin's consolidation of power and an increasing reliance on coercion to achieve rapid industrialization, collectivization, and ideological conformity. The upheavals of the First Five-Year Plans, mass arrests, forced labour, and the suppression of perceived "enemies of the people" transformed Soviet governance from the relative pluralism and experimentation of the NEP period into a highly

centralized and punitive system. The years 1936-1938, culminating in the Great Purge of 1937, became synonymous with mass repression, show trials, and an atmosphere of pervasive fear. In this context, the state framed social deviance (including juvenile misbehaviour) not merely as a social problem but as a potential form of political or moral subversion that had to be eradicated. Economic strains, urban overcrowding, and the dislocation of families caused by collectivization, industrial migration, and two holodomors (genocides) of Ukrainians further deepened youths' vulnerability, pushing them into youth "hooliganism" and crime, and reinforcing a punitive response (Zorkina, 2017, p. 192) .

Against this backdrop, the period from 1935 to 1960 marks a critical transition in the Soviet approach to juvenile justice in Ukraine. It is characterized by a dramatic shift away from pedagogical and rehabilitative models toward punitive and repressive mechanisms, reflecting broader Stalinist ideological and political transformations. The adoption of the April 7, 1935, Decree of the Central Executive Committee and the Council of People's Commissars of the USSR, entitled "On Measures for Combating Juvenile Delinquency," (the "**1935 Decree**") represents a turning point in Soviet criminal policy. The 1935 Decree not only declared the urgent need for the "elimination of juvenile crime as swiftly as possible" but also drastically lowered the age of criminal liability to 12 years (Atamanov, 2019, p. 23; Zorkina, 2017, p. 192). The 1935 Decree authorized the prosecution of youth aged 12 and older as adults for crimes such as theft, physical assault, grievous bodily harm, murder, and attempted murder (Kaminska, 2022, p. 49). Though Article 22 of the 1926 RSFSR Criminal Code limited capital punishment for those under 18, the state selectively used execution against youth via special decrees issued by the Presidium of the Supreme Soviet (Zorkina, 2017, p. 192; Atamanov, 2019, p. 23). This legislation marked a stark departure from prior juvenile protection norms. Former Soviet intelligence officer Orlov, who

defected to the United States in 1938, highlighted the international shock such policies caused. In his exposé, *The Secret History of Stalin's Crimes*, Orlov (1953) described the 1935 decree as historically unprecedented, noting that the Soviet government had introduced capital punishment for youth as young as 12 – a move he interpreted as illustrative of Stalin's moral character (Orlov, 1953, pp. 78-79).

In practical terms, the impact of the 1935 Decree was swift and far-reaching. Although overall prosecutions increased by 30% between 1935 and 1940, the number of youth prosecuted fell by half. Only about one-fifth of those convicted were responsible for serious crimes; the rest were prosecuted for minor infractions (Kaminska, 2022, p. 49). Officially, Soviet authorities attributed this decline to deterrence, claiming that the threat of harsher sanctions had frightened youth into lawful behaviour. In reality, however, the figures reflected a much more complex and repressive environment: many offences committed by youth were never formally recorded, and a significant share of juvenile cases were handled extrajudicially through informal or administrative measures. This under-registration and off-the-books prosecution was a typical feature of the punitive repression system of the late 1930s, which blurred the line between formal justice and administrative coercion.

Further consolidating this punitive shift, the June 20, 1935, resolution of the Council of People's Commissars and the Central Committee of the All-Union Communist Party (Bolsheviks) dissolved the commissions for juvenile affairs. Specialized People's Courts were temporarily created to adjudicate juvenile cases, but these too were eliminated by 1938. Jurisdiction over youth was transferred to district-level People's Courts, where one judge per district specialized in such cases (Kaminska, 2022, p. 49). The new policy direction was reaffirmed by the May 31, 1935, resolution, which permanently eliminated juvenile commissions, fully integrating youth offences

into the adult judicial system (Council of People's Commissars Resolution, 1935). Judges were now expected to apply the full array of criminal sanctions to youth. In 1941, a directive from the Presidium of the Supreme Soviet criticized courts for applying the 1935 Decree only to intentional crimes. It extended the law's application to include crimes committed through negligence, further broadening its punitive scope (Orlov, 1953; Zorkina, 2017, p. 192).

During the Second World War, the approach toward juvenile delinquency saw brief pragmatic adjustments. With the male population significantly depleted and the country in dire need of labour, the Soviet government occasionally prioritized rehabilitative measures over incarceration for youth aged 11-16 involved in petty theft or disorderly conduct. These youths were placed in closed educational colonies rather than prisons, not out of humanitarian concern but due to demographic necessity (Atamanov, 2019, p. 24). Postwar criminal legislation continued the punitive trajectory. In 1947, criminal responsibility for the theft of socialist property was formally extended to youth as young as 14, and to those as young as 12 if the crime involved robbery or assault. These provisions aligned with broader campaigns to safeguard state assets during the period of reconstruction (Atamanov, 2019, pp. 24-25).

The broader ideological and institutional landscape of this era was shaped by what Anisimov (2011) describes as the "repressive-preventive model." From the late 1920s onward, Soviet juvenile justice was increasingly centralized and bureaucratized. The role of civic and pedagogical institutions diminished, and the state's monopoly over corrective and punitive mechanisms became absolute. The educational rhetoric that had once underpinned the juvenile justice system was largely supplanted by coercive practices framed as necessary for protecting the socialist order (Anisimov, 2011, pp. 16-18). This duality – where youth were nominally viewed as capable of reformation but practically subjected to criminal sanction – defined the Stalinist legacy.

Legal provisions such as the possibility of transferring youth to relatives or correctional institutions continued to exist, but their application diminished under prevailing enforcement policies (Zorkina, 2017, p. 192). The 1935 Decree remained in force for 24 years. It was only repealed with the introduction of new criminal and criminal procedural codes in the USSR and its republics between 1958 and 1961. This legislative overhaul, part of Khrushchev's broader liberalization effort, would mark the beginning of a new era in Soviet juvenile justice.

The Consolidation and Humanization of Juvenile Justice in Late Soviet Ukraine (1958-1991)

After Stalin died in 1953, the Soviet Union gradually entered a period of political and social change commonly referred to as the "Khrushchev Thaw" (named after Nikita Khrushchev, who consolidated power between 1955 and 1957). This era, extending roughly from the mid-1950s to the early 1960s, was marked by a relative easing of censorship, the denunciation of Stalin's "cult of personality" at the 20th Party Congress in 1956, limited rehabilitation of victims of repression, and a cautious liberalization of criminal and administrative policies. While the state remained authoritarian, the harshest features of Stalinist rule, including mass terror and blanket repression, were curtailed. In the sphere of law and juvenile justice, these political shifts translated into a re-examination of earlier punitive measures and an effort to codify and humanize existing practices. The decades following the adoption of the 1960 Criminal Code of the Ukrainian SSR (the "**1960 Criminal Code**") marked a new era in the evolution of juvenile justice across the Soviet Union, including Ukraine. This period, though still characterized by elements of punitive ideology, introduced significant codification and partial liberalization of legal provisions concerning youth. The shift away from the hyper-repressive Stalinist practices of the 1930s and 1940s reflected broader political and social changes in the post-Stalinist USSR.

The 1958 Fundamentals of Criminal Legislation of the USSR and the Union Republics (the "**1958 Fundamentals**") laid the groundwork for the new criminal codes adopted across the republics. Article 10 of the 1958 Fundamentals raised the general age of criminal responsibility to 16 years, while allowing prosecution of individuals aged 14 to 16 only for the most serious offenses – such as murder, intentional bodily harm, robbery, rape, hooliganism, or the intentional destruction of property (Kaminska, 2022, p. 50; Zorkina, 2017, p. 193). This age-based differentiation became a foundational element of the Soviet juvenile justice system. Youth under 14 were completely exempt from criminal liability. For those between 14 and 18 who committed minor or socially non-dangerous acts, courts could apply coercive measures of an educational nature instead of criminal sanctions.

The 1960 Criminal Code of the RSFSR and its Ukrainian counterpart mirrored the 1958 Fundamentals. While maintaining the bifurcated model of responsibility at 14 and 16 years, the new codes explicitly prohibited the death penalty for youth and capped prison terms at 10 years (Art. 24 RSFSR Criminal Code, 1960). Article 63 introduced a list of non-custodial corrective measures: public apologies, formal warnings, compensation for harm, supervision by parents or guardians, and placement in educational or therapeutic institutions. These educational measures could be ordered by Commissions on Juvenile Affairs following referrals from judges, prosecutors, or investigators (Atamanov, 2019, p. 25).

Some procedural protections for youth were also codified in the 1960 Criminal Procedure Code (the "**CPC**") of the Ukrainian SSR. Chapter 36, added to the CPC, was dedicated to juvenile proceedings. It included key provisions such as the right of youth and their legal representatives to access case materials, mandatory legal representation in court, the participation of teachers or medical professionals during interrogations, and the ability to summon community representatives

from a school or workplace to assist in the proceedings (Atamanov, 2019, p. 25; Kaminska, 2022, p. 51).

Further improvements followed the 1971 amendment to the CPC, which added sixteen new articles clarifying investigative and procedural steps in juvenile cases. Article 433 of the 1960 CPC mandated that investigative authorities establish detailed personal and social information about juvenile suspects, including their age, health, developmental background, living conditions, influences of adults, and character traits. Courts were expected to evaluate this context when determining culpability and sanction (Kaminska, 2022, p. 51). Importantly, the revised 1960 CPC allowed for the dismissal of criminal cases against youth found capable of reformation through educational interventions. If a court concluded that youth could be rehabilitated without incarceration, the judge could terminate the case and assign the youth to compulsory pedagogical measures – effectively redirecting juvenile offenders into the jurisdiction of the Commissions on Juvenile Affairs. The revival of these commissions in 1967 through a decree, re-established a two-tier juvenile justice structure. Courts retained jurisdiction over serious crimes committed by youth aged 14 and older, while the commissions handled less serious antisocial behaviour by youth below that age threshold. This institutional dualism reflected the broader Soviet effort to balance state control with correctional ideology (Kaminska, 2022, p. 51).

In 1977, further reforms introduced the possibility of deferring the execution of prison sentences for first-time juvenile offenders sentenced to terms of up to three years. This legislative innovation signalled a growing recognition that incarceration might not be necessary or productive for all juvenile offenders, especially those capable of rehabilitation within society (Atamanov, 2019, p. 25). Despite these advances, justice for youth continued to be administered by general jurisdiction courts rather than specialized juvenile tribunals. Nonetheless, judicial practice

demonstrated increasing sensitivity to the specific circumstances of youth. Judges were instructed to consider the offender's background, family situation, and motivations, as well as whether the youth had acted under adult coercion. Interrogations of youth under 16 required the presence of educators, and courts were encouraged to seek educational or rehabilitative solutions wherever feasible (Kaminska, 2022, p. 51). Overall, the 1958-1991 period reflects a gradual balancing of punitive discipline with pedagogical aims. While the system remained centralized and ideologically rigid, it increasingly accommodated modern legal standards for child protection, due process, and differentiated sentencing.

Transitional Reforms in Independent Ukraine and the Introduction of Probation (1991-2003)

Following Ukraine's declaration of independence in 1991, the country faced the difficult task of transforming a juvenile justice system inherited from the Soviet period to bring it into line with international human rights standards and democratic values. Early reforms were slow and uneven, shaped by political instability and the absence of a coherent reform strategy. Nevertheless, the Ukrainian government gradually began to reconsider the predominantly punitive orientation of juvenile policy and to move toward more rehabilitative and child-centred approaches. This shift did not begin from a blank slate, but rather continued a cautious reorientation already reflected in the 1960 Criminal Code and the 1960 CPC of the Ukrainian SSR.

The Criminal Code of Ukraine of 2001 (the "**2001 Criminal Code**") reaffirmed the age of criminal responsibility at 16 years, while allowing prosecution from the age of 14 for certain grave offences such as murder, rape, robbery, or intentional bodily harm. Article 22 codified this age differentiation, while Article 104 emphasized the priority of reformation over punishment. Article 105 of the 2001 Criminal Code provided alternatives to incarceration for juvenile offenders, such as reprimands, supervised release, and referral to educational institutions (Vovk, 2015, p.28).

Procedural guarantees for youth, inherited from the 1960 CPC and supplemented over time, were retained throughout this period. These guarantees included mandatory legal representation for youth, the participation of a guardian or legal representative, and the right to have a teacher, psychologist, or social worker present during interrogations (Kaminska, 2022, p. 51; 1960 CPC, Art. 433). Amendments to the 1960 CPC between 1971 and the early 2000s further detailed the process of handling juvenile cases, including pre-trial detention safeguards, requirements to examine the child's social environment, and procedural protections during trial.

The Law of Ukraine "On Bodies and Services for Youth and the Special Institutions for Youth" (1993) established a framework for addressing child welfare and juvenile rehabilitation, setting the groundwork for interagency cooperation in juvenile matters.[35] Despite its broad social orientation, this law indirectly supported juvenile justice reform by providing a system for protective interventions (Shevchyshyn, 2024, p.47). However, practice often diverged from legal standards. Throughout the 1990s, the criminal justice system continued to rely on incarceration, with many juvenile offenders held in educational colonies managed by the State Department for the Execution of Sentences. These facilities were frequently characterized by poor conditions and limited rehabilitative programming (Council of Europe, 2004). In this context, the concept of early probationary practices began to emerge as a viable alternative to detention. The first formal proposal to establish a probation system in Ukraine was submitted in May 2002 by the State Department of Corrections following a study visit to Sweden's probation service. Sweden's

[35] While an analysis of neoliberal governance is beyond the scope of this dissertation, this Act illustrates a broader concern discussed in socio-legal literature about the convergence of welfare and penal systems. Scholars have observed that institutions originally designed for care or social support, such as child welfare and education, become mechanisms of monitoring and control that channel marginalized youth into the criminal justice system. This dynamic is often described as the "school-to-prison" or "care-to-custody" pipeline. See, e.g., Wacquant, L. (2012), Rampersaud, M. (2021).

rehabilitative and community-based approach served as a model for Ukrainian reformers seeking to reduce juvenile incarceration and enhance social reintegration.

On May 28, 2002, the Cabinet of Ministers of Ukraine issued Order No. 3974/84, mandating the State Department for the Execution of Sentences to coordinate efforts to introduce probation. The order launched a new phase of reform by requiring the development of a legal and institutional framework for probation, including legislative amendments and policy proposals. Multiple ministries and state agencies, including the Ministry of Justice, Ministry of Internal Affairs, Ministry of Labour and Social Policy, General Prosecutor's Office, and Supreme Court, collaborated with academics, public associations, and international donors to conceptualize and pilot probation. The initiative was supported by international organizations such as the United Nations Development Programme (the "**UNDP**"), the United Nations Children's Fund (the "**UNICEF**"), and the Council of Europe, all of which promoted restorative justice and child-sensitive procedures.

Despite the ambitious rhetoric and the broad coalition of state bodies, academics, and international organizations involved, these early efforts at introducing probation in Ukraine ultimately remained more declarative than substantive. The Cabinet of Ministers' order created working groups and pilot concepts, but did not produce a comprehensive and enforceable legislative framework (Shevchyshyn, 2024, p.47). In practice, the initiative functioned largely as a symbolic gesture of alignment with European standards and donor priorities rather than a transformative reform of the juvenile justice system. As a result, probation during this period existed more as an aspirational model than as a functioning alternative to detention.

Analysis of Historical and Institutional Preconditions for Juvenile Justice Reform in Ukraine and Canada

With this context in mind, the comparison between Canada and Ukraine takes on additional importance. Canada's juvenile justice system grew out of local debates, social reform movements, and gradual institutional experimentation, while Ukraine's evolved inside imperial and Soviet structures that limited local initiative. These different historical experiences shaped how each society understood youth, responsibility, and the purpose of correction. This contrast, however, should not be overstated. Canada's legal development was also shaped by imperial rule, and its legal order emerged through both French and British colonial frameworks. French civil law in Quebec survived the British conquest, while the *Constitution Act*, 1867, established a constitutional order modelled on the United Kingdom (Brierley & Macdonald, 1993; Hogg & Wright, 2024). Canada's juvenile justice system thus did not escape imperial history. Rather, the important distinction is that these imperial inheritances were gradually, over about a hundred years, transformed through domestic political development, responsible government, local reform movements, legal transplantation, and sustained institutional experimentation within Canada itself, including in the field of youth justice (Romney, 1999). By contrast, Ukraine's juvenile justice institutions evolved within imperial and Soviet structures that limited local initiative until Ukraine's independence in 1991.

Understanding the transplantation of Canada's juvenile probation model to Ukraine requires an examination of the distinct historical contexts from which each country's justice systems evolved (Legrand, 1997b, p.113). The comparison of their legal traditions, institutional development, and socio-political conditions reveals not only the differences in how each nation conceptualized juvenile responsibility and rehabilitation but also the structural factors that conditioned the success or limitations of transplantation. As Watson (1993) defined, a legal

transplant involves "the moving of a rule or a system of law from one country to another, or from one people to another," (p.21), yet such movement can never be divorced from its institutional and cultural setting (Damaška, 1997, p. 839). By analyzing the historical preconditions and development of juvenile justice and probation in Canada and Ukraine, this subsection identifies the deep-rooted institutional legacies, normative assumptions, and social conditions that shaped their respective approaches. This aligns with Graziadei's (2009) observation that transplanted laws operate as "social acts performed by individuals," and therefore their success depends on local agency and institutional fit (p. 723). As Goldbach (2019) further asserts, mismatches between donor and recipient legal cultures often lead to "failed legal transplants," particularly when reforms are imported without adjusting for the recipient's socio-political realities (p. 592). A comparison of Canada and Ukraine's early approaches to juvenile justice reveals two different civilizational and institutional trajectories.

Early Conceptions of Juvenile Responsibility: Divergent Paths in Canadian and Ukrainian (Imperial) Legal Tradition

In Canada, the emergence of youth justice in the nineteenth century was closely connected to broader developments in liberal-capitalist society, where youth offending increasingly came to be understood as the result of social environment rather than inherent moral defect (Leon, 1970, pp. 75–91). Reformers promoted institutional education, structured labour, and moral supervision as alternatives to punishment, reflecting the Victorian belief that deviant youth could be rehabilitated through discipline and socialization (Roberts, 1997; Sangster, 2002b). This orientation aligns with what Garland (1985) later described as the "penal-welfare" compromise, combining social reform with individual responsibility (Corrado, 2016; Doob & Sprott, 2006a). Canadian youth justice therefore developed first through social reform movements and civil-

society initiatives, and only later through legislation, culminating in the JDA of 1908 (Bala, 1997; Doob & Cesaroni, 2004).

In the Ukrainian territories under the Russian Empire, differentiation in the treatment of youth followed a different path. Rather than emerging from social reform movements, it developed primarily through state legislation and codification. From the mid-eighteenth century onward, imperial decrees and later legal codes gradually recognized reduced culpability and differentiated procedures for youth offenders (Anisimov, 2011; Chepurko & Lysenko, 2007; Solonnikova & Bondar, 2020; Shyshkov, 2020). Institutions such as monastic confinement, Conscience Courts, and corrective facilities reflected a hybrid model of discipline combining state authority, religious morality, and early reformative thinking (Sidorkin, 2009; Zubov, 2004). Although these measures operated within an autocratic legal order, they nonetheless demonstrated an emerging recognition that youth required different treatment within criminal law.

From a comparative perspective, these differences reflect not only political and social context but also the distinct legal-family traditions in which each system developed. The Russian imperial legal system belonged to the civil-law tradition, where legal development was typically driven by codification, centralized authority, and legislative articulation of legal categories. In this framework, the differentiation of youth responsibility emerged primarily through statutes and administrative institutions. By contrast, Canada developed within the common-law tradition inherited from England, where legal change often emerged incrementally through judicial practice, social reform movements, and professional discourse before being consolidated in legislation (Zweigert & Kötz, 1998; Glenn, 2014). This difference helps explain why the imperial system recognized youth as a distinct legal category relatively early in formal legislation, while Canada developed a broader philosophy of youth rehabilitation before codifying it in law.

By the mid-nineteenth century, imperial legislation had already codified age-based criminal responsibility and differentiated punishment for youth through instruments such as the 1845 Penal Code and the 1864 Judicial Statutes (Anisimov, 2011). In Canada, however, youth continued to be processed largely within the ordinary criminal justice framework until the late nineteenth century, with reform initiatives developing first through philanthropy, religious organizations, and social reformers (Leon, 1970; Sangster, 2002a; Bala, 1997). In other words, the imperial trajectory was legislative and state-driven, while the Canadian trajectory was social, professional, and doctrinal before becoming legislative.

These divergent trajectories shaped later institutional development. The imperial model produced corrective institutions organized around discipline and centralized supervision, whereas the Canadian model gradually evolved toward probation, community supervision, and restorative approaches. When Ukraine later encountered Canadian probation-based youth justice reforms, it was therefore not adopting an entirely unfamiliar idea of differentiated treatment for youth. However, the Canadian model depended heavily on community participation, interdisciplinary cooperation, and professional discretion elements that had not historically developed within the centralized legal culture inherited from imperial and Soviet governance. As a result, the transplantation of probation required not only legislative change but also deeper institutional and professional transformation.

Despite these different pathways, by the early twentieth century both systems had reached a similar conceptual point: youth were recognized as a distinct moral and legal category requiring education, supervision, and rehabilitation rather than purely punitive sanctions. Yet this convergence remained fragile. Canada's welfare-oriented approach evolved into a professionalized probation system grounded in community involvement and reintegration (Doob

& Greenspan, 1984; Oudshoorn, 2015). In contrast, the institutional foundations of youth justice in the Ukrainian territories were disrupted by the collapse of the Russian Empire and replaced by Soviet models emphasizing ideological re-education and centralized control (Zorkina, 2017; Omarova, 2023).

This divergence illustrates a core insight of comparative legal development: similar reformist ideas may emerge across jurisdictions, but their institutional expression depends on legal tradition, political structure, and social organization (Damaška, 1986; Mańko, 2024). The Canadian model developed through community-based reform and later legal consolidation, while the imperial model relied on legislative articulation and administrative authority. These distinct trajectories would later shape how probation and rehabilitative youth justice concepts were received and adapted in Ukraine.

The Soviet Period: Centralization and Regression in Comparison to Canadian Evolution

The Soviet period marked a decisive divergence in the development of youth justice in Ukraine and Canada. While Canada's system evolved through institutional continuity and gradual doctrinal reform, the Soviet legal order reorganized youth justice through centralized administrative control. The difference was not simply institutional but structural: Canada's youth justice system continued to develop within a pluralistic legal environment shaped by courts, communities, and professional practice, whereas Soviet Ukraine subordinated youth justice to ideological governance and bureaucratic administration.

Early Soviet reforms formally replaced judicial proceedings involving youth with administrative commissions (Zorkina, 2017). Although presented as educational and preventive, this institutional design concentrated authority in state-controlled bodies rather than independent courts. In contrast, Canadian juvenile courts and probation services expanded during the same

period through cooperation between the state and civil society (Trepanier, 1999; Bala, 1997). Probation officers in Canada functioned as intermediaries between courts, families, and communities, while Soviet inspectors and educators operated primarily within a system of administrative supervision.

The 1922 Criminal Code reflected this transformation by granting youth commissions broad authority to impose "educational measures," while keeping them subordinate to commissariats of justice and education (Kaminska, 2022). Centralization replaced earlier pluralism in youth justice institutions. At the same time, Canada continued integrating probation into professional practice supported by municipal and charitable networks (Doob & Cesaroni, 2004; Sangster, 2002a). The philosophical divergence became increasingly clear: Canadian youth justice emphasized social reintegration through community engagement, whereas the Soviet model prioritized state guardianship and ideological conformity.

Even within this centralized framework, pedagogical experiments such as Anton Makarenko's colonies in Kharkiv demonstrated alternative approaches to youth correction based on labour, collective responsibility, and moral education (Makarenko, 1986). These initiatives echoed reform-oriented traditions present in both Canadian and pre-revolutionary Ukrainian contexts and anticipated later probation theory emphasizing social integration (Trotter, 1996). However, such practices remained exceptional rather than systemic, as the institutional environment did not support their broader adoption. The consolidation of Stalinist criminal policy in the 1930s reinforced the punitive orientation of the system. The 1935 Decree lowering the age of criminal responsibility to twelve and reintroducing severe sanctions for youth represented a clear departure from earlier rehabilitative rhetoric (Atamanov, 2019; Kaminska, 2022). During the same decades, Canadian youth justice continued to develop procedural safeguards, professional

training, and reintegration-oriented interventions (Bala, 1997; Doob & Cesaroni, 2004). The contrast illustrates two different trajectories: one toward rights-based youth justice, the other toward administrative coercion.

Post-Stalinist reforms in the 1950s–1960s introduced elements of formal "humanization," including limits on punishment and expanded educational measures (Atamanov, 2019; Zorkina, 2017). The 1960 Criminal Code and 1960 CPC included procedural provisions concerning youth, such as mandatory legal representation and background inquiries. Yet these changes did not alter the institutional logic of administrative control (Kaminska, 2022). Participation by teachers, workplaces, or community representatives remained largely symbolic, and commissions on youth affairs continued to operate within executive structures rather than judicial ones. Canada's development during the same period followed a different path. The evolution culminating in the YOA of 1984 reflected a shift toward procedural fairness, legal rights, and balanced accountability for youth (Bala, 1997; Doob & Cesaroni, 2004). Youth justice became increasingly grounded in due process and individualized assessment, supported by probation services and community-based programs. Whereas Canadian reform was doctrinal and institutional, Soviet reform remained administrative and ideological.

From a comparative perspective, the Soviet period represents a structural interruption in the earlier trajectory of youth-specific justice in Ukrainian territories. While both Canada and pre-revolutionary Ukraine had recognized the importance of education and individualized treatment for youth, Soviet governance reoriented youth justice toward centralized supervision and political conformity. By the time Ukraine became independent in 1991, its youth justice institutions reflected decades of bureaucratic control, limited judicial specialization, and weak community participation. This divergence helps explain the challenges encountered when Ukraine later

attempted to introduce probation as a community-based institution. The Canadian probation model developed within a legal culture emphasizing professional autonomy, civic participation, and judicial discretion (Doob & Greenspan, 1984; Oudshoorn, 2015). Soviet youth justice, by contrast, institutionalized correction as an administrative function of the state. The transplantation of probation into post-Soviet Ukraine therefore required not only legislative change but also the reconstruction of institutional relationships between courts, communities, and social services.

Conclusion

The historical trajectory of juvenile justice in Ukraine reveals a layered interaction between legal ideology, institutional structure, and changing understandings of youth responsibility. Across the imperial, Soviet, and post-independence periods, approaches to youth offending shifted repeatedly, but these shifts did not follow a linear path toward specialization or rehabilitation. Instead, they produced a system marked by discontinuity, institutional rupture, and competing conceptions of correction and punishment. Viewed through the dissertation's layered reception analysis, this history represents the formation of the historical layer through which later probation reform would be received.

During the imperial period, youth-specific differentiation gradually emerged within criminal law through codification and administrative reform. Although these developments reflected early recognition of youth as a distinct legal category, they remained embedded in a paternalistic and hierarchical legal order. Correction was understood primarily as moral discipline administered by the state, with limited community participation and inconsistent institutionalization (Anisimov, 2011; Chepurko & Lysenko, 2007; Solonnikova & Bondar, 2020). The Soviet period interrupted this trajectory. Early revolutionary reforms replaced courts with administrative commissions and reframed youth correction as part of state-directed social

engineering (Zorkina, 2017; Kaminska, 2022). Although pedagogical experiments such as Makarenko's colonies demonstrated rehabilitative potential (Makarenko, 1986; Sidorkin, 2009), the consolidation of centralized governance transformed juvenile justice into an instrument of ideological discipline (Atamanov, 2019; Kaminska, 2022). Later procedural reforms in the 1960s introduced formal safeguards and educational measures but did not fundamentally alter the administrative and custodial orientation of the system (Zorkina, 2017; Atamanov, 2019). By the time Ukraine gained independence, juvenile justice institutions reflected decades of bureaucratic control, weak judicial specialization, and limited community involvement (Kaminska, 2022; Zorkina, 2017).

Following independence, Ukraine began to move gradually toward international child-rights standards and rehabilitative approaches (Korenyuk, 2018; UNICEF Ukraine, 2014; Kaminska, 2022). Legislative reforms in the early 2000s preserved certain procedural protections for youth and introduced educational measures as alternatives to punishment. However, the system remained structurally dependent on detention-based responses, and the institutional mechanisms necessary for community-based supervision were largely absent (Korenyuk, 2018; Dufeniuk et al., 2024). The early discussions of probation in the 2000s, therefore, represented not merely policy innovation but an attempt to address long-standing structural gaps in youth justice. This confirms the usefulness of the layered approach: before probation could function as a practical institution, it first had to pass through a historical layer already marked by incomplete specialization, strong administrative traditions, and limited experience with community-based responses.

Viewed comparatively, the historical development of youth justice in Ukraine differed fundamentally from the Canadian trajectory. In Canada, youth justice evolved through sustained interaction between courts, civil society, and professional practice, gradually producing a

community-based probation model grounded in rehabilitation and reintegration (Bala, 1997; Doob & Cesaroni, 2004; Oudshoorn, 2015). In Ukrainian territories, by contrast, youth-specific justice developed primarily through state codification and administrative control, with limited continuity of professional or community-based correctional practices (Anisimov, 2011; Chepurko & Lysenko, 2007; Kaminska, 2022; Zorkina, 2017). These differences reflect broader legal-family and institutional distinctions: Canada's common-law environment allowed probation to evolve incrementally through practice and doctrine, whereas the civil-law and later Soviet administrative tradition prioritized codified rules and centralized governance. As a result, by the early twenty-first century, the two systems approached youth justice reform from fundamentally different starting points. Canada possessed a mature probation tradition supported by professional specialization and community institutions. Ukraine, despite earlier historical recognition of youth-specific treatment, lacked a stable institutional framework for non-custodial supervision. This divergence helps explain both the appeal of probation as a reform model and the structural challenges associated with its later transplantation.

Taken together, the analysis in this chapter demonstrates that Ukraine's youth justice system entered the reform period of the 2000s with a complex institutional legacy: early juridical differentiation of youth responsibility, prolonged Soviet administrative control, and only partial post-independence transformation. These historical conditions shaped the environment into which probation would later be introduced. Understanding this institutional and conceptual starting point is essential for analyzing the transplantation of juvenile probation from Canada to Ukraine in the subsequent chapters. The comparison with Canada highlights that the reform did not involve transferring probation into an institutional vacuum, but into a legal culture marked by centralized governance, limited community participation in justice processes, and uneven professional

specialization. This historical context helps explain both the appeal of the Canadian probation model and the structural difficulties encountered during its implementation. By situating probation reform within these longer legal and institutional trajectories, the dissertation is able to assess transplantation not simply as legislative borrowing, but as a process conditioned by historical continuity, institutional capacity, and legal culture. More specifically, this chapter establishes the first layer of reception in the dissertation's analytical framework. Later chapters build on this by examining how the transplant was then filtered through legislative, institutional, professional, and practical layers.

Chapter IV. Ukrainian Juvenile Probation Reform From 2004

Introduction

As demonstrated in Chapter III, for decades, Ukraine operated without a separate juvenile justice system capable of addressing the specific needs of youth offenders. Under both imperial and Soviet rule, criminal justice institutions were shaped primarily by deterrence and social control rather than rehabilitation, and detention remained the dominant response to youth offending. After independence in 1991, this institutional inheritance persisted. Although Ukraine ratified the UN Convention on the Rights of the Child of 1989 (the "**UNCRC**") and gradually incorporated child-rights language into legislation, the justice system continued to function without a probation service, specialized youth courts, or a stable framework for community-based rehabilitation. By the early 2000s, the absence of these institutions created both a practical gap and a conceptual opening for reform.

It was in this context that international cooperation became a central driver of change. Beginning in the mid-2000s, Canada, through the Canadian International Development Agency (the "**CIDA**"), played a leading role in introducing modern approaches to juvenile justice and probation in Ukraine. The Canadian model – shaped by the Youth Criminal Justice Act of 2003 (the "**YCJA**") emphasized proportionality, reintegration, restorative justice, and individualized intervention. Through technical-assistance projects, professional exchanges, training programs, and pilot initiatives in cities such as Melitopol and Ivano-Frankivsk, Canadian partners promoted a rehabilitative philosophy that contrasted sharply with Ukraine's custodial tradition. At the same time, probation reform in Ukraine was influenced by European institutions, particularly the Council of Europe and the European Union (the "**EU**"), whose engagement focused on building a unified probation system, reducing incarceration, and aligning Ukrainian criminal justice with European human-rights standards.

An important turning point in this process was the Criminal Procedure Code of Ukraine of 2012 (the "**2012 CPC**"), which introduced procedural safeguards, individualized assessment requirements, and elements of specialization in cases involving youth. These reforms created the procedural foundation necessary for community-based alternatives to detention. At the same time, the practical realization of these procedural innovations depended on the creation of a probation service capable of preparing pre-trial reports, supervising youth in the community, and supporting reintegration. In this sense, procedural reform and institutional development were mutually dependent: the rehabilitative logic introduced by the 2012 CPC required probation to function in practice, while probation could not operate effectively without the procedural guarantees and youth-sensitive approach embedded in the 2012 CPC.

By the mid-2010s, these two reform trajectories – Canadian juvenile-justice assistance and broader European-supported probation reform – converged in the adoption of Ukraine's national probation framework. The resulting system reflected both external influence and domestic institutional continuity: juvenile probation was introduced within a general probation law rather than as part of a separate juvenile justice system. This produced a hybrid institutional outcome in which rehabilitative principles were formally recognized but implemented within administrative structures shaped by earlier legal traditions. Understanding how this outcome emerged requires examining not only legislative change but also the reform process itself. This chapter is particularly important in the dissertation's broader layered reception analysis. While Chapter III focused mainly on the historical layer, the present chapter turns mainly to the legislative and institutional layers, and secondarily to the political-economic layer insofar as it conditioned the reform process. It therefore examines how probation reform was converted into statutory form, embedded in

institutional structures, shaped by donor-supported projects, and prepared for later implementation in practice.

This chapter, therefore, traces the development of juvenile probation in Ukraine from the early reform discussions of the 2000s to the consolidation of the probation system after 2015. It begins by examining the socio-political and economic context that shaped reform conditions, followed by an analysis of the launch of the CIDA-supported Juvenile Justice Reform Project (the "**JJRP**"), including training initiatives and pilot projects. The chapter then turns to legislative change, focusing on the 2012 CPC reform, the introduction of pre-trial reports, and the legislative path leading to the Law of Ukraine "On Probation" of 2015 (the "**2015 Law on Probation**"). This legislative trajectory is analyzed through successive stages, including the first draft laws (2007–2009), the second draft laws (2010–2013), and the prolonged adoption process between 2013 and 2015, culminating in the adoption of the 2015 Law on Probation and the integration of juvenile probation into a general probation framework. The chapter concludes by examining post-2015 developments, including further legislative amendments, institutional development of the probation service, and the gradual institutionalization of restorative justice practices between 2019 and 2024. Viewed through layered reception analysis, this chapter shows how the transplant moved from reform idea to legal and institutional structure, and how each stage of that process shaped the form probation ultimately took in Ukraine.

Methodologically, this chapter combines doctrinal analysis, comparative analysis, and critical discourse analysis (the "**CDA**"). Doctrinal analysis is used to examine the legislative framework governing probation and juvenile justice reform in Ukraine. Comparative analysis helps situate these developments in relation to the Canadian probation model discussed in the previous chapter. Critical discourse analysis is applied to policy materials, parliamentary debates,

and project documentation to understand how reform goals, assumptions, and institutional roles were constructed during the reform process. A distinctive feature of this chapter is the use of primary project materials obtained through the Access to Information and Privacy (the "**ATIP**") request under Canada's *Access to Information Act*. These documents, including internal reports, training materials, evaluations, and correspondence related to the JJRP, provide rare insight into how probation reform was conceptualized, negotiated, and implemented. By analyzing these materials alongside legislative developments, the Chapter connects the formal adoption of probation law to the institutional processes and international partnerships that shaped its emergence in practice. Taken together, this analysis demonstrates that the introduction of juvenile probation in Ukraine was not a single legislative event but a multi-stage process of institutional adaptation shaped by international cooperation, domestic constraints, and competing reform priorities. In terms of the dissertation's layered reception analysis, this chapter explains how the legislative and institutional layers of reception were formed and why they became crucial for the later professional and practical functioning of juvenile probation.

Socio-Political and Economic Context

Before turning to the transplantation of juvenile justice reforms, and juvenile probation in particular, it is important to first consider the socio-political and economic context of Ukraine. As the following subsections demonstrate, this context profoundly influenced both the trajectory and character of the transplantation process. It also sheds light on why the adoption of the 2015 Law on Probation took more than a decade, how the reform process ultimately took shape within Ukraine's broader political and economic transformation, and why Canada adopted particular strategies and steps to advance the transplantation. As highlighted in the previous chapter, Ukraine entered the 2000s burdened by the institutional and conceptual legacies of the Soviet punitive justice model, lacking any functioning juvenile probation system and operating on outdated

criminal procedure frameworks. This legal inertia coincided with the country's broader struggle to consolidate democratic institutions and a market economy. These institutional weaknesses shaped the environment in which Canadian assistance had to operate.

The launch of CIDA's juvenile justice and probation support program in Ukraine took place against the backdrop of profound socio-political and economic turbulence: at the front end with the Orange Revolution of 2004-2005, then the global financial crisis of 2008-2009, and, at the back end, the Revolution of Dignity of 2014-2015. Between these crises, Ukraine experienced rapidly rising and then collapsing public expectations, with frequent elections, chronic parliamentary turnover, and intense political polarization. Canadian partners witnessed these changes first-hand. The CIDA observed:

> The uncertainties that accompany turmoil underscore some of the challenges of working in a newly democratizing, dynamic country **with a high literacy rate, enormous but poorly harnessed resource potential and a legacy of Soviet rule**. In weather forecast language we could talk of 'changing winds' (CIDA, 2011, p. 12 emphasis added).

Economically, Ukraine showed features typical of a middle-income country. There were large income gaps between rural and urban areas, many working poor living just below the poverty line, and a weak financial system vulnerable to crises. The Joint Poverty Assessment by the World Bank and Ukrainian experts in 2005 found that about 19% of the population lived in poverty in 2003, with rural poverty more than twice as high as in cities. Poverty among youth was widespread. Kyiv had the lowest poverty level in the country (World Bank & Government of Ukraine, 2005). These trends continued in later years. The Millennium Development Goals (the "**MDGs**") Ukraine National Report of 2010 confirmed that poverty was still one of Ukraine's main social problems. It reported that 19.9% of the population consumed less than the official subsistence minimum in 2008. Many people worked but still lived in poverty because of low wages. A large part of the

population lived just above the poverty line (Ministry of Economy of Ukraine, 2010). Ukraine could not be called a "poor" country, but deep regional poverty, especially in remote areas, and rising inequality created serious social risks and showed the need for international support (CIDA, 2011, p. 16).

This difficult economic situation was made worse by widespread corruption (Barchuk et al., 2024, p.1). In 2009, Transparency International ranked Ukraine 146th out of 180 countries on its Corruption Perceptions Index, placing it alongside Zimbabwe and Sierra Leone as one of the most corrupt and difficult business environments in the world (Transparency International, 2009; CIDA, 2011, p. 14). Corruption affected all areas of public life, including the courts, law enforcement, education, and social services. Bribes, nepotism, and misuse of public funds were common and reduced public trust in the state (Organisation for Economic Co-operation and Development [the "**OECD**"], 2015). Corruption also directly influenced the justice system (Yagunov, 2020, p.124). Court decisions were often inconsistent and could depend on personal connections or bribes instead of the law. Oversight bodies lacked independence and were often ineffective (Council of Europe, 2004). These problems created serious barriers to reform, as corruption remained pervasive throughout the entire reform period and continued to undermine institutional progress. Before the 2013-2014 Revolution of Dignity, the level of public trust in Ukrainian courts was among the lowest in the world - only 16% of the population expressed any confidence in the judiciary. The OECD findings from 2014 indicated that Ukraine ranked lowest among member and partner states in terms of confidence in courts, with only 12% expressing trust. The situation did not improve significantly after the Revolution of Dignity: according to 2015 polls, less than 1% of the population reported complete trust in the courts, and only 8% expressed partial trust (OECD, 2015). The persistence of systemic corruption even amid reform efforts, severely limited

public confidence in the rule of law and constrained the implementation of justice sector reforms (Barchuk et al., 2024, p.1).

Three key factors have historically shaped and continue to influence the current state of Ukraine's judiciary. First, Ukraine inherited its judicial system from the Soviet Union, where judges were not independent and acted under the direction of political authorities and the KGB.[36] Following independence, the judiciary was not fundamentally restructured, allowing judges with entrenched Soviet-era mentalities to retain their positions.[37] While political elites changed, the institutional culture of subordination persisted. Second, the selection and promotion of judges remained under political control, ensuring loyalty to the ruling authorities and perpetuating the Soviet model of judicial dependence. Third, oligarchs and politicians systematically exploited the courts and judicial governance bodies for personal gain and political protection, turning the judiciary into a tool for maintaining impunity. In addition, judicial institutions were manipulated by individuals and networks with ties to Russia to safeguard their economic and political interests (Barchuk et al., 2024, p.2). Political dependence and corruption within the judiciary reached their peak under President Yanukovych's regime, when courts were instrumentalized to suppress peaceful demonstrations during the 2013–2014 Revolution of Dignity (Barchuk et al., 2024, p.4). These events exposed the depth of the judiciary's politicization and underscored the urgent need for comprehensive judicial reform, revealing both the scale of systemic decay and the extent of public distrust toward the justice system.

[36] Komitet Gosudarstvennoy Bezopasnosti or Committee for State Security of the Soviet Union.
[37] The continuity of judicial personnel after regime change is a common feature of democratizing and post-communist states, where institutional stability and limited professional alternatives often lead to the retention of judges trained under prior regimes. Scholars describe this as a form of path-dependent legal development, in which inherited legal culture continues to shape judicial practice during political transition (Guarnieri & Pederzoli, 2002; Solomon, 2004)

These socio-economic challenges were institutional and administrative weaknesses rooted in Ukraine's Soviet legacy. The CIDA evaluation noted:

> Ukraine's administrative structures have ample, well-educated staff. However, years of working within a command economy have left the country deficient in both the technical skills and attitudinal requisites for effective transition to a democratic market economy. A legacy of inter-ministerial dysfunction, poorly delineated roles and responsibilities and lack of independent inspection or audit could significantly limit progress at the political and economic levels (CIDA, 2011, p. 2).

This environment made it challenging to effectively introduce juvenile probation. The system had to be built not only through new laws and institutions but also by changing attitudes and practices shaped by decades of the Soviet past. The main challenge was to protect new probation structures from the same corruption that weakened other state institutions (Yagunov, 2020, p.124). This was the environment in which Canadian-supported juvenile probation reforms had to be developed.

The Launch of the CIDA-Supported Juvenile Justice Reform Project

Canada acted through the CIDA, a federal agency established in 1968 to administer Canada's official development assistance, focused globally on poverty reduction, human rights, and sustainable development. The JJRP in Ukraine began in 2004 as a CIDA-supported initiative focused primarily on consultation, assessment, and professional exchange. This initial phase of cooperation continued until approximately 2011 and was oriented toward conceptualizing reform, introducing Canadian experience, and identifying areas where juvenile justice practices could be adapted to Ukrainian conditions. At the outset of Canadian-Ukrainian cooperation in in 2007, CIDA conducted an assessment of Ukraine's justice sector to assess the scope of need and identify the most effective avenues for Canadian engagement. The evaluation revealed significant systemic gaps, concluding that:

> Ukraine currently has no separate judicial system to address the particular needs of youth and youth. As a result, justice officials do not receive specialized training for dealing with juvenile issues and juvenile cases are considered within the regular court system where procedures can last from several months to several years. The focus of the legal and judicial system in relation to youth who are at risk, awaiting trial and convicted of crimes is punishment rather than prevention or rehabilitation. Police, social workers and judges have limited options in terms of responses they can make to juvenile offenders and often these responses revolve around incarceration (CIDA, 2005, p. 1).

It was in this context that Canada decided to support systemic reform. As of 2004, Ukraine had been independent for over a decade, yet its juvenile justice system remained largely rooted in the punitive logic of the Soviet Union. Even after independence in 1991, the country continued to operate under the 1960 CPC. While the 2001 Criminal Code introduced some elements of diversion and educational measures, in practice, juvenile justice institutions remained underdeveloped, and early attempts at introducing probation in the early 2000s had produced only fragmentary pilot initiatives with no legal or institutional framework to support them (Husak, 2025, p. 52). Youth within the criminal justice system were processed within the general court system, often subjected to lengthy pre-trial detention, and placed in overcrowded 'educational colonies' under the State Department for the Execution of Sentences (Yatsyshyn, 2010).

While Ukraine's juvenile justice system remained largely punitive and underdeveloped, the Supreme Court of Ukraine sought to guide lower courts toward rehabilitative principles even in the absence of a comprehensive legal framework. In August 2003, the Criminal Chamber issued "*Judicial Practice in Cases of Juvenile Crimes and Their Involvement in Criminal Activity*,"[38]

[38] In Ukraine, a summary of judicial practice does not constitute a normative legal act with direct and binding legal force comparable to a statute or subordinate legislation. Rather, it functions as an interpretative and coordinating instrument aimed at ensuring consistency and uniformity in judicial decision-making. Although such summaries carry significant persuasive authority and are routinely relied upon by courts, they are advisory in nature and do not replace statutory law. Through the generalization of case law, the Supreme Court provides interpretative guidance to lower courts, which are expected to take it into account; however, the final resolution of each case remains dependent on its specific factual circumstances and the applicable legal provisions (Law of Ukraine No. 1402-VIII, 2016, Art. 36; Kosovych, 2016).

which provided detailed guidance for judges handling cases involving youth. The document stressed that juvenile justice should be an integral part of national development and highlighted that international conventions ratified by Ukraine, including the UNCRC of 1989 and the UN Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (the "**Beijing Rules**"), require a distinct child-centred approach. Courts were instructed to consider the developmental characteristics of youth, prioritize rehabilitation over punishment, use diversionary measures, and ensure procedural safeguards, including careful assessment of health, intellectual development, and capacity to understand and control one's actions. The guidance emphasized that cases should be handled by the most experienced investigators and judges, with all interactions designed to have a preventive and educational effect, demonstrating the state's commitment not only to accountability but also rehabilitation of youth (Supreme Court, 2003).

While judicial practice is not an official source of law in Ukraine, as the courts do not formally have legislative powers, it functions as a quasi-legislative source of law. Judicial practices issued by the Supreme Court function to fill gaps in imperfect legislation, provide benchmarks, and influence the application of law across lower courts (Sokolova & Philippova, 2022). In this context, the 2003 guidance represents an early effort by the Supreme Court to guide judicial behaviour toward rehabilitative justice and procedural guarantees, promoting international standards and influencing court practice well before the formal adoption of the 2012 CPC and the 2015 Law on Probation.

As described in Chapter III, another early milestone toward changing the punitive approach was the Presidential Decree of Ukraine No. 92/2003, which approved the *Concept of State Policy on Reforming the State Penal Enforcement System for the Period until 2005*. This policy document formally endorsed the introduction of probation as an alternative to incarceration, emphasizing the

need to bring Ukrainian criminal justice into line with international standards. It highlighted the goal of moving away from purely punitive measures toward restorative, rehabilitative practices.

This raised an urgent question of where to find a viable model and technical support for reform. Acknowledging the importance of broad institutional participation, the Supreme Court established a working group that brought together representatives from all levels of the judiciary, the Ministry of Justice, the Prosecutor General's Office, the State Penitentiary Department, the Ministry of Youth and Family Issues, as well as two prominent non-governmental organizations active in the field. After consultations with domestic and international stakeholders, in the fall of 2003, the Supreme Court of Ukraine, through Deputy Justice Petro Pylypchuk, invited Canada to collaborate on developing a project aimed at reforming the country's juvenile justice system (CIDA, 2011, p.4).

The choice of Canada was a natural one, as the two parties had already established a working relationship through a few projects. In the juvenile justice area, Canada had a project dealing with disenfranchised youth. Importantly, it positioned itself as the actor that first brought the issue of juvenile justice to the attention of Ukrainian authorities. As the CIDA noted,

> Through its Canada Fund and Civil Society Fund, CIDA has also been dealing with disenfranchised youth, but on a smaller scale than the proposed program. These initiatives have led the Ukraine team to identify juvenile justice (JJ) as one of the key additional areas needing reform and where Canada would have a comparative advantage to provide assistance (CIDA, 2005, pp. 1-2).

This positioning reflected Canada's proactive role in defining juvenile justice as a reform priority rather than merely responding to a Ukrainian request.

The choice of Canada as a partner was further reinforced by the existing cooperation between CIDA and the Supreme Court under the earlier Judicial Reform Project[39], which had supported the separation of the Court's administrative and judicial functions and delivered training for judges (CIDA, 2011, p.24). The new juvenile justice initiative was thus shaped by CIDA and the Supreme Court of Ukraine as a complementary extension of that earlier cooperation (CIDA, 2005, p. 4), extending Canada's earlier rule-of-law efforts into an area that CIDA had identified as underdeveloped and strategically significant within Ukraine's justice sector (CIDA, 2005, pp.1-2). It was called the *Juvenile Justice Reform Project* (the "**JJRP**"). Importantly, the JJRP became the only Canadian international assistance project specifically designed to support the transplantation of a juvenile justice model from Canada to another country. In this sense, Canada acted not merely as a technical partner but as a donor of institutional design in the field of youth justice reform in Ukraine.

Shortly after the invitation, in December 2003, CIDA organized and funded a seminar in Kyiv attended by representatives of the Supreme Court of Ukraine, the Ministry of Justice, the Prosecutor General's Office, the State Department for the Execution of Sentences, the Ministry of Youth and Family Affairs, and several NGOs. This event confirmed a broad consensus among Ukrainian stakeholders that technical assistance from Canada was needed to support juvenile justice reform (CIDA, 2005, p. 2).

The next stage of this preparatory phase involved a study tour to Canada in November 2004. A Ukrainian delegation of judges, prosecutors, and juvenile justice specialists visited Ottawa and

[39] Judicial Reform Project (2004–2009), a CIDA-funded initiative launched following the Orange Revolution in Ukraine, aimed at strengthening judicial independence, improving court administration, and enhancing transparency and public confidence in the justice system. Within this broader reform effort, the first steps toward the legal transplantation of juvenile justice practices in Ukraine were undertaken through pilot initiatives focused on youth-specific procedures and alternatives to detention.

Regina for a two-week exposure to Canadian juvenile justice and probation practices. The goal of the visit was "to clarify the nature of the expected Canadian assistance" (CIDA , 2005, p. 2). By the end of the visit, the delegation reached a consensus that the CIDA-funded project should target three key areas: legislative reform, professional education, and court-related processes. Importantly, Appendix 1 to this dissertation reproduces "Annex A – Statement of Services," a project document outlining the scope of work for the initial phase of Canadian assistance to Ukraine's juvenile justice reform. As shown in Appendix 1, this stage of cooperation included a comparative analysis of the Canadian and Ukrainian juvenile justice systems, intended to identify which elements of the Canadian model could be transplanted into Ukraine's legal and institutional environment. This document is significant because it demonstrates that legal transplantation was envisioned from the beginning of the project as a process of selective adaptation of Canadian juvenile justice practices, rather than direct replication.

Upon their return, the Ukrainian delegation participated in a National stakeholder conference in late 2004, convened by the Supreme Court of Ukraine with CIDA's organizational support. At this conference, the Supreme Court of Ukraine presented a report on the proposed project, prepared with the assistance of Canadian partners (Appendix 1).[40] This conference gathered policymakers, practitioners, and civil society representatives to discuss and gain feedback from stakeholders on the feasibility of implementing the Canadian model of probation and restorative justice in Ukraine (Appendix 1). As the proposal was widely supported, the project proceeded to the next stage.

[40] This report was referenced in the English-language project documentation disclosed through the Access to Information request; however, the report itself was not included among the materials released. It appears likely that the document exists in Ukrainian or Russian and was therefore not disclosed, as Global Affairs Canada limited disclosure to English-language records and declined to release or translate materials originally produced in Ukrainian or Russian.

While the 2004–2011 phase of cooperation remained largely consultative (it focused on training, comparative analysis, and pilot experimentation), the project evolved after 2011 into a more structural and implementation-oriented initiative. At this stage, responsibility for the project shifted within the Government of Canada to what is now Global Affairs Canada (the "**GAC**"), with a maximum contribution of $10,047,346 allocated to the JJRP (2011–2017). Although CIDA remained operationally responsible for development programming during this period, the project increasingly emphasized practical institutional development, including pilot probation initiatives, legislative drafting support, and system-level reform.

This transition coincided with broader institutional changes within the Canadian government. In 2013, CIDA was formally merged into the Department of Foreign Affairs and International Trade, forming what is now GAC. Responsibility for ongoing development projects – including the JJRP in Ukraine – was transferred to the new department. The JJRP therefore spanned both institutional configurations: it began as a CIDA-led consultative reform initiative and continued as the GAC-administered structural reform project.

The next stage of the project proceeded simultaneously across three main areas. First, it involved training judges and court personnel to strengthen the capacity of the judiciary to implement juvenile justice in line with new approaches and international best practices. Second, it encompassed the implementation of pilot projects, based on juvenile probation models used in Alberta and Ontario, which emphasize community-based supervision and restorative interventions (CIDA, 2005 p. 5; Steyne, & Khudaverdyan, 2018, p.194; Embassy of Canada in Ukraine, 2014; Global Affairs Canada, 2023). Public education campaigns and a roadmap for scaling successful pilot practices nationwide were also foreseen (CIDA, 2011, p. 3). Third, it focused on reviewing existing legislation and policies, identifying gaps, and drafting a new law to establish a

comprehensive framework incorporating international standards, restorative justice principles, and both Ukrainian and global best practices. Notably, CIDA envisioned that this process would demand enhanced cooperation with domestic stakeholders. Legislative support was required to translate pilot initiatives and policy proposals into binding legal frameworks, while governmental coordination was necessary to align juvenile justice reform with broader criminal justice and social policy priorities. The project design thus assumed that reform would depend not only on external expertise, but also on the engagement, ownership, and institutional commitment of Ukrainian actors across all branches of state power responsible for shaping and implementing juvenile justice policy. (CIDA, 2011, p. 4)

Training

Training was a core element of the project. By 2013, over 471 judges, prosecutors, police officers, and social workers had received training on Canadian and international best practices in youth justice, including probation supervision, restorative conferencing, and community-based rehabilitation (Standing Committee on Foreign Affairs and International Development, 2012, p.54; Global Affairs Canada, 2013). These efforts aimed to create a new professional culture within Ukrainian justice institutions that treated youth in conflict with the law primarily as subjects of rehabilitation rather than objects of punishment.

However, the training was not able to produce a consistent shift toward a rehabilitative, individualized model of juvenile justice aligned with the Canadian-inspired probation approach promoted by international partners. This uneven outcome reflects one of the central challenges of legal transplantation: professional practices began to change before the supporting legislative and institutional framework had been fully established. As Yagunov (2018) noted, the juvenile justice system remained a hybrid of Soviet practices and emerging rehabilitative policies. Only

inconsistently did courts begin to consider the minor's age, level of development, family situation, and schooling when imposing sanctions.

One reason for this uneven implementation was that much of the professional training occurred before legislative reform had been enacted. Judges therefore continued to operate within the procedural and institutional logic of the Soviet-inherited criminal justice system, which remained largely intact during the early post-independence period (Solonnikova & Bondar, 2020; Yatsyshyn, 2010). While the 2003 Judicial Practice in Cases Involving Youth guidance encouraged courts to adopt more rehabilitative approaches, it did not have the force of legislation and could not fundamentally restructure sentencing practices or institutional responsibilities. As a result, judges were encouraged to apply new principles of individualized justice without the procedural tools, probation institutions, or legislative authority necessary to implement them consistently – a pattern that illustrates the difficulty of translating imported legal ideas into practice before formal legal change occurs.

Pilot Projects

At the same time, the project tested proposed principles at the local level. Regional pilots were launched in Ivano-Frankivsk in western Ukraine and Melitopol in southeastern Ukraine, where Attendance Centres[41] were opened to provide structured support and supervision to youth on probation. The geographic distribution of these pilot sites is significant, as it indicates that the reform was tested in two distinct regional contexts of Ukraine. These pilots introduced caseworker positions, national school-police prevention programs, and rehabilitation plans for youth on

[41] Attendance centres are community-based facilities designed as alternatives to detention, where young offenders participate in structured educational, counselling, and social-development programs under supervision. The model originated in youth justice systems in common-law jurisdictions, including Canada and the United Kingdom, as a way to combine accountability with rehabilitation while allowing juveniles to remain in their communities (Bala et al., 2009; Doob & Cesaroni, 2004).

suspended sentences. By mid-2013, around 300 youth in conflict with law had directly benefited from these programs, and courts began to impose non-custodial sanctions more frequently in the pilot regions (Global Affairs Canada, 2013; UNICEF Ukraine, 2014).

In parallel with these domestic developments in Ukraine, additional exchanges between Ukrainian and Canadian counterparts further deepened institutional cooperation and facilitated sustained knowledge transfer. Building on early project initiatives, visits served as a practical mechanism for transplanting Canadian experience into Ukraine's emerging juvenile justice framework. In October 2011, justice stakeholders from Melitopol travelled to Alberta to witness the organization of youth probation services and community-based rehabilitation programs. The following year, in June 2012, a delegation of justice stakeholdersfrom Ivano-Frankivsk undertook a similar visit, focusing on judicial coordination, the role of social services, and inter-agency cooperation in responding to juvenile offending.

In April 2013, members of the JJRP Judicial Working Group visited Alberta to explore Canadian models of youth justice administration and the integration of restorative practices into judicial proceedings. This growing network of institutional linkages culminated in August 2013, when Governor Mykhaylo Vyshyvanyuk of Ivano-Frankivsk returned to Alberta to sign a Letter of Understanding with the Government of Alberta and a Memorandum of Understanding with the City of Edmonton. These agreements symbolized not only formal recognition of the partnership but also a commitment to continue bilateral collaboration in the areas of juvenile justice reform, public administration, and governance innovation (Government of Alberta, 2014).

Legislative change

Finally, one of the most significant efforts was Canada's contribution to drafting the 2012 CPC, particularly its sections on youth (Maliarenko & Shapovalova, 2012, p.13). New provisions

introduced specialized prosecutors and investigators for juvenile cases, specialization of judges handling youth cases, procedural differentiation from adult trials, and enhanced guarantees for the rights of youth during investigation and trial (Ministry of Justice of Ukraine, 2012; Global Affairs Canada, 2013). Further, Canada also contributed to the adoption of the 2015 Law on Probation, which formally established probation as a component of the Ukrainian criminal justice system and created the legal basis for its juvenile branch. Taken together, these legislative changes represent the most visible manifestation of legal transplantation, translating Canadian-informed juvenile justice principles into binding Ukrainian legal norms. These legislative reforms will be examined in detail below.

Criminal Procedure Reform of 2012

The 2012 CPC, drafted with substantial input from Canadian experts involved in the JJRP, replaced the Soviet-era 1960 CPC, which had long governed criminal proceedings. This reform marked a break from Soviet punitive traditions and represented one of the most significant achievements of Ukrainian-Canadian cooperation. The 2012 CPC was the first Ukrainian law to embed a coherent and child-centred juvenile justice system within the national legal framework (Burukovska, 2013). The 2012 CPC introduced Chapter 38, *"Criminal Proceedings Concerning Youth,"* which institutionalized specialized procedures, roles, and protections aligned with international and Canadian rehabilitative standards (Dufeniuk et al., 2024, p. 79; Ilchenko & Tkachenko, 2024, p. 84).

One of the major safeguards introduced by the 2012 CPC was the obligation to investigate the personal and social background of the juvenile offender, an element absent from the 1960 CPC. Article 485 requires that investigators and courts collect comprehensive information on the minor's age, health, developmental level, social and psychological characteristics, attitude toward the

offence, and living conditions (Dufeniuk et al., 2024, p.116). This includes assessing family structure and relationships, parental supervision, school or workplace environment, peer influence, and any prior educational interventions. The provision also obliges authorities to determine whether adults played a role in inducing or involving the minor in the crime. In addition, Article 486 introduces mandatory psychological and psycho-psychiatric examinations of juvenile suspects whenever there are doubts about their mental development or ability to understand and control their actions. Beyond this, psychological assessments may be used to evaluate a juvenile's developmental level, emotional state, and social characteristics for the purpose of individualized sentencing and rehabilitation planning (Dufeniuk et al., 2024, p.117). This innovation reflects the Canadian and international principle of individualized justice, shifting the focus from the offence itself to the broader social context and rehabilitative potential of the child (UNICEF Ukraine, 2014; Kaminska, 2022). The adoption of the 2015 Law on Probation linked these procedural innovations to the new probation system by assigning probation authorities responsibility for preparing pre-trial reports, including social and psychological assessments of juvenile offenders. However, this reform was introduced as part of the general probation system, not as a separate juvenile justice law. At the same time, the 2015 Law on Probation was adopted as a unified legislative framework applicable to both adult and juvenile offenders. It was not conceived as a specialized juvenile justice act. Juvenile-specific regulation was introduced only in a limited and selective manner through Article 12 of the Law. The implications of this legislative choice are examined later in the dissertation in the context of the overall probation reform.

Equally significant were the reforms governing detention and pre-trial measures, which brought Ukraine closer to international and Canadian standards emphasizing that deprivation of liberty for youth should be an exceptional measure applied only when strictly necessary (Dufeniuk

et al., 2024, p.41). Article 492 of 2012 CPC stipulates that arrest and detention may be imposed on youth solely if they are suspected or accused of committing a "grave"[42] or "especially grave"[43] offence, and only when other preventive measures would clearly be insufficient. Parents or guardians must be immediately informed of any detention, ensuring transparency and the protection of the child's procedural rights. The 2012 CPC also introduced an entirely new preventive alternative - placement under the supervision of parents, guardians, or the administration of a child-care institution (Art. 493) - a measure entirely absent from the 1960 CPC (Dufeniuk et al., 2024, p.41). This innovation embodied the principle of minimum necessary intervention, prioritizing community-based supervision and social control over isolation. Most importantly, the 2012 CPC established legal mechanisms for diversion from criminal punishment altogether. Article 497 of the 2012 CPC authorizes prosecutors to apply compulsory educational measures, under Article 105 of the 20001 Criminal Code, to youth accused of first-time minor offences if their correction and rehabilitation can be achieved without punishment. When such measures are granted, the juvenile is exempted from punishment and does not acquire a criminal record, removing one of the greatest barriers to their future reintegration and rehabilitation (Dufeniuk et al., 2024, p.178). Through these provisions, Ukraine moved toward compliance with key international standards - including the UNCRC of 1989 and the Beijing Rules of 1985 - which require that pre-trial detention and imprisonment of youth be used only as a last resort and for the shortest possible period (Kaminska, 2022).

Further, the 2012 CPC introduced procedural safeguards designed to minimize the psychological burden of criminal proceedings on youth during a trial. Article 495 allows for the

[42] Ukr. – «тяжкий»
[43] Ukr. – «особливо тяжкий»

temporary removal of youth from the courtroom when testimony or facts may negatively affect their emotional or psychological state (Dufeniuk et al., 2024, p.173), while Article 484(2) requires judges to explain the meaning and purpose of each procedural action in clear, age-appropriate language (Dufeniuk et al., 2024, pp.114-115). These provisions ensure that youth not only participate formally in proceedings but also understand them, reinforcing the principle of meaningful participation enshrined in the UNCRC.

The 2012 CPC also strengthened confidentiality and procedural efficiency in cases involving youth. Under Article 27(2), proceedings may be conducted in closed court sessions to protect the child's privacy and dignity, while Article 28(4) requires that such cases be considered as a priority and without undue delay - a safeguard intended to prevent prolonged uncertainty and institutional harm. Finally, Article 494 introduces the principle of severance: when youth is accused alongside adults, their case must be separated and handled independently by specialized investigators and judges (Dufeniuk et al., 2024, p.74). This measure, directly aligned with Canadian best practices and international standards, marked a complete departure from Soviet-era practices, under which youth were tried and sentenced in the same manner as adults.

One of the most transformative innovations of the 2012 CPC was the introduction of mandatory specialization for justice actors handling juvenile cases (Dufeniuk et al., 2024, p.118). Under Article 31(10), criminal proceedings involving youth must be heard by judges specifically authorized to conduct juvenile proceedings under the *Law of Ukraine "On the Judiciary and Status of Judges"* (the "**2010 Judiciary Law**"). In cases heard by a panel, the presiding judge is required to hold such authorization. Similarly, Article 484 mandates that pre-trial investigations involving youth be carried out by investigators expressly empowered by their supervisors to handle such cases (Dufeniuk et al., 2024, p.79). This specialization aimed to cultivate a professional corps with

youth-sensitive expertise and to ensure that judges, prosecutors, investigators, and defence counsel consider the age, psychological development, and best interests of the child at every procedural stage (Rusanova, 2012, p. 253).

Building upon this structural specialization, the 2012 CPC also strengthened the procedural safeguards afforded to youth, ensuring that specialization was matched by substantive protection. It introduced a model of dual representation, requiring that youth be represented simultaneously by a defence lawyer and by their legal representatives (parents, guardians, or custodians) (Arts. 44, 448, 488 of the 2012 CPC). Participation of both is mandatory, and legal representatives must be present throughout the entire proceeding and may be questioned as witnesses if necessary (Art. 188(3)) (Dufeniuk et al., 2024, p.116).

The reform further enhanced child protection during investigative actions. Article 227 of the 2012 CPC requires the participation of a legal representative, teacher, or psychologist (and, if necessary, a doctor) during any investigative actions involving a minor. Article 491 extends this safeguard, stipulating that if youth is under 16 or has developmental or mental impairments, such specialists must participate in the interrogation. The purpose of these provisions is to minimize the psychological impact of criminal proceedings and to ensure that youth provide reliable evidence in a supportive, age-appropriate environment (Dufeniuk et al., 2024, p.41).

Another major innovation introduced by the 2012 CPC was the mandatory involvement of child protection services and juvenile police in proceedings involving youth. Article 496 of the 2012 CPC requires that courts notify these bodies of any hearing concerning youth and authorizes their participation to provide expert opinions and recommendations on appropriate educational or rehabilitative measures (Dufeniuk et al., 2024, p.117). This mechanism formally integrated social and community services into the justice process, ensuring that judicial decisions were informed by

the child's broader social and developmental context. In doing so, Ukraine moved closer to a multidisciplinary model of juvenile justice, where legal, psychological, and social dimensions are addressed in parallel, as a recognized best practice in Canada and internationally (Global Affairs Canada, 2013).

Taken together, the 2012 CPC introduced a fundamentally new legal regime for juvenile justice in Ukraine. While the reform did not immediately resolve all systemic shortcomings, it established the conceptual and institutional foundation for juvenile probation. For the first time, justice for youth was approached through the principles of protection, rehabilitation, and social reintegration rather than punishment; this shift clearly reflected the Canadian approach, which consistently promoted individualized, community-based, and preventive approaches to juvenile offending. The shift did not occur in isolation. Beginning in the early 2000s, Canadian-supported juvenile justice initiatives in Ukraine promoted practices such as social background reports, alternatives to detention, and interdisciplinary cooperation. Canadian experts and institutions also provided legislative and policy support during the drafting of juvenile-justice-related reforms, including work connected to the 2012 CPC and later 2015 Law on Probation. Training programs for Ukrainian judges, prosecutors, and social-service professionals introduced youth-justice principles drawn from Canadian probation practice and the YCJA, helping translate rehabilitative ideas into procedural reforms later reflected in the CPC 2012 and the 2015 Law on Probation. The reform represented one of the most tangible achievements of Ukrainian-Canadian cooperation in justice reform, embedding within Ukraine's legal system a rehabilitative, rights-based, and child-centred philosophy consistent with the UNCRC and the Beijing Rules (Global Affairs Canada, 2023; Ivchuk, 2019; Rusanova, 2012; UNICEF Ukraine, 2014).

The implementation of the 2012 CPC reform was not instantaneous. For the sake of legislative coherence, a number of related laws had to be amended to align with the 2012 CPC and ensure consistency across the justice system. This included adapting judicial legislation to the procedural changes introduced by the CPC 2012. In particular, amendments were required to the 2010 Judiciary Law to clearly delineate which judges were authorized to adjudicate cases involving youth and to formalize the new model of judicial specialization within the national court system. Accordingly, the reform was consolidated through the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of the Criminal Procedure Code of Ukraine" of 13 April 2012 (No. 4652-VI). This law amended Article 18 of the 2010 Judiciary Law, requiring that local and appellate general courts - including those of Kyiv, Sevastopol, and the Autonomous Republic of Crimea - designate judges (or panels of judges) specifically authorized to conduct criminal proceedings involving youth. These judges are elected from among sitting members of each respective court by the assembly of judges, based on nominations submitted by the court chair or, if the chair's proposal is not supported, by any judge of that court. They are appointed for a fixed term of up to three years, with the possibility of reappointment, and their number is determined individually for each court depending on caseload and jurisdiction.

To qualify, judges must have at least ten years of judicial experience, prior work in criminal proceedings, and a strong record of professional and ethical integrity (Verkhovna Rada of Ukraine, 2012; Rusanova, 2012, p. 250). Where no judge meets the ten-year threshold, the most senior judge may be appointed. Although judges authorized to handle juvenile proceedings continue to perform their regular duties, their specialization is prioritized in case allocation and formally recognized within the court's internal organization (Verkhovna Rada of Ukraine, 2012; Rusanova, 2012, p.

250). This legislative reform was conceived as an attempt to align Ukraine's judicial practice with the Canadian model, in which specialized youth courts and judges play a central role in ensuring rehabilitative, fair, and developmentally appropriate treatment of youth. By operationalizing Article 31(10) of the 2012 CPC, which requires that all criminal proceedings involving youth be handled by specially authorized judges, and reinforcing it through Article 32(10), which formally introduced the category of "judges authorized to conduct criminal proceedings regarding youth," Ukraine took an important step toward institutional specialization in juvenile justice (Global Affairs Canada, 2013). To ensure the effective implementation of these provisions, the President of Ukraine on 5 July 2012 issued formal instructions to the Minister of Justice and the leadership of the High Specialized Court of Ukraine for Civil and Criminal Cases to take urgent measures to increase the number of judges in local general courts, thereby enabling them to fulfil the newly introduced functions of investigative and juvenile judges (Rusanova, 2012, p. 250). This directive directly echoed recommendations advanced under the project, where Canadian experts had consistently underscored that the creation of a specialized judiciary was an essential precondition for a genuinely rehabilitative and rights-based juvenile justice system (CIDA, 2005, p.4).

Pre-Trial Reports

Building on the foundations laid by the 2012 CPC and the institutionalization of specialized juvenile judges, the next crucial step in Ukraine's justice reform was to ensure that these judges had access to comprehensive, child-specific information necessary for individualized and rehabilitative decision-making. This development directly reflected the logic of the 2012 CPC, which, for the first time, required the collection of detailed information about a juvenile's personality, background, and social circumstances (Art. 485) - a practice that would later evolve into the system of pre-trial probation (Dufeniuk et al., 2024, pp.123-126). This need was also consistently emphasized by Canadian experts throughout the JJRP. They argued that specialization

alone could not guarantee rehabilitative justice unless judges were supported by evidence-based social assessments similar to Canada's pre-trial reports prepared by probation officers (CIDA, 2011).

In direct response to these recommendations, the High Specialized Court of Ukraine for Civil and Criminal Cases issued Letter No. 223-1134/0/4-13 on 18 July 2013, approving the *Instruction on the Procedure for Preparing a Report on Youth Defendant in Criminal Proceedings Involving Youth* (Verkhovna Rada of Ukraine, 2013). The *Instruction* explicitly implemented Articles 485 and 487 of the 2012 CPC and was modelled on international instruments such as the Beijing Rules (1985) and the Tokyo Rules[44] (1990). For the first time in Ukrainian practice, it introduced a structured mechanism for preparing pre-trial reports on juvenile defendants. These reports were to be compiled by local child welfare services after the preparatory hearing, based on interviews with the minor, their parents or guardians, teachers, social workers, and police officers. Each report was required to include detailed information about the child's family situation, education, health, psychological traits, peer environment, behavioural history, and future aspirations, culminating in recommendations on suitable rehabilitative or educational measures (Dufeniuk et al., 2024, pp.130-133). The report would then be submitted to the specialized juvenile judge and attached to the case file to inform judicial decisions on liability and sentencing.

However, the 2012 CPC represented only one strand of a broader reform trajectory. While the *juvenile justice path* focused on procedural and institutional transformation within the criminal

[44] The *United Nations Standard Minimum Rules for Non-custodial Measures* (the "**Tokyo Rules**"), adopted by the UN General Assembly in 1990, provide international guidance on the use of alternatives to imprisonment at all stages of the criminal justice process. The Rules encourage states to develop community-based sanctions such as probation, supervision orders, mediation, and restorative measures, emphasizing proportionality, social reintegration, and the reduction of reliance on detention. They also highlight the importance of individualized assessment, professional training for probation personnel, and cooperation between justice institutions and social services. Although not legally binding, the Tokyo Rules have significantly influenced the development of probation systems and non-custodial sentencing policies worldwide.

process, the *probation path* evolved through separate legislative efforts aimed at building an entirely new correctional and supervisory system for both adults and youth. The two trajectories were conceptually distinct yet deeply interdependent. Juvenile probation could not exist without the procedural guarantees, specialization, and rehabilitative philosophy introduced by the 2012 CPC; conversely, the full realization of the juvenile justice model required the establishment of a probation service capable of implementing community-based supervision and reintegration. The intersection of these two paths - juvenile justice reform and probation introduction - was realized in the concept of *juvenile probation*.

Thus, the 2012 CPC reform not only modernized Ukraine's criminal procedure; it laid the necessary groundwork for the emergence of juvenile probation as a distinct institution within the justice system. The next stage, focused on translating these conceptual and procedural advances into a coherent legislative framework of probation service. This period, marked by competing draft laws, institutional debates, and international collaboration, culminated in the adoption of the 2015 Law on Probation, which consolidated the foundations laid by the 2012 CPC and completed the legislative architecture of Ukraine's modern probation system.

The Path to the 2015 Law on Probation

The First Drafts of the Law on Probation (2007-2009)

Before Ukraine's domestic policy framework on probation began to take shape, early groundwork had already been laid through international cooperation - particularly by UNICEF and Canadian experts. As described in an earlier subsection, Canadian experts worked on training and supporting probation workers and implemented pilot projects in two regions of Ukraine. Further, they monitored the results and summarized lessons learned in pilots to inform the national legislative and policy development process (Appendix 2).

As for UNICEF, in June 2007, it launched the project *"Developing a Legal Framework for the Establishment of a Probation Service as Part of a Preventive-Oriented Juvenile Justice System."* This initiative brought together a multidisciplinary expert group, including O. Betsa (International Renaissance Foundation), O. Lazarenko (Ministry of Internal Affairs), O. Lemeshko and I. Yakovets (Institute for the Study of Crime Problems, Academy of Legal Sciences), H. Ovcharova (Kharkiv civic centre "Youth for Democracy"), and D. Yagunov (Odesa National Law Academy), with additional input from P. Kocherhan (Ministry of Justice), A. Sanchenko (Institute of Legislation of the Verkhovna Rada), and V. Hatseliuk (parliamentary committee consultant) (Yagunov, 2011, p. 153). The group's first task was to develop a *Concept for the Establishment and Development of a Probation System in Ukraine for 2008–2018 ("Concept")*, presented at the Institute of Legislation of the Verkhovna Rada on 15 October 2007. On 20 June 2008, the Verkhovna Rada's Committee on Legislative Support of Law Enforcement held parliamentary hearings and a roundtable titled *"Ways to Improve National Legislation on Juvenile Offences in the Context of Harmonization with International Norms and Standards (on the Legislative Support for the Introduction of Probation in Ukraine)."* At these hearings, the updated Concept was presented alongside draft legislative amendments prepared by the UNICEF expert group (Yagunov, 2011, p. 153).

These early UNICEF and Canadian efforts thus predated and conceptually influenced the 2008 policy documents, promoting a child-centred, restorative vision of probation within the broader justice reform agenda. However, when Ukrainian policymakers began formalizing probation through national strategies later that year, the focus shifted sharply toward the adult correctional system. This shift marked an early structural divergence between the transplanted juvenile justice logic and the domestically driven penal reform agenda. The move toward a

legislatively enshrined probation system regained momentum in 2008, when the concept of probation was explicitly incorporated into two strategic state policy documents. The first, the *Concept of Reforming the Criminal Justice of Ukraine*, was approved by Presidential Decree No. 311/2008 on 8 April 2008 (the "**2008 Concept**"). This document marked the first official use of the term *probation* in Ukrainian legislation and the first attempt to define its meaning within the national legal framework. The 2008 Concept interpreted probation as a foreign law term used in two main meanings: (1) as a type of punishment and (2) as a specialized service. Probation services, according to the 2008 Concept, were to operate in two key directions: executing non-custodial sentences and preparing social background reports for courts to assist in determining preventive measures or types of punishment. The document emphasized the latter function - providing the court with social inquiry materials and recommendations prepared by a dedicated probation service functioning under the Ministry of Justice (Hamburg, 2021, p. 135).

Moreover, the 2008 Concept underscored the need to develop special juvenile justice procedures to protect youth' rights and interests, including collegial court hearings with lay judges or jurors. Importantly, this limited reference to youth reflected the growing influence of international cooperation - particularly the Ukrainian-Canadian technical assistance project *Reforming Juvenile Justice in Ukraine*. Canadian experts had already introduced models of youth probation and restorative justice focused on early intervention, community supervision, and rehabilitation. The inclusion of juvenile justice within the 2008 Concept thus represented one of the first institutional outcomes of this bilateral collaboration, signalling Ukraine's gradual shift toward a child-centred approach to criminal justice and the adoption of Canadian and international standards within its reform agenda.

Shortly thereafter, Presidential Decree No. 401/2008 of 25 April 2008 approved the *Concept of Reforming the State Criminal-Executive Service of Ukraine*, which further developed the national vision for probation within the broader penal reform agenda. The document set as its main goal the reorganization of criminal-enforcement inspections on the principles of probation and the creation of a new institutional model aligned with European standards. It emphasized rehabilitation, education, and social reintegration of offenders, as well as compliance with the European Prison Rules, and called for a legislative framework reflecting European approaches to probation (Ivchuk, 2019, p. 13; Yatsyshyn, 2010, pp. 161–162). Yet despite its progressive orientation, the *Concept* focused exclusively on adult offenders and made no reference to juvenile probation. This omission revealed a significant policy gap: probation was conceived as part of penal modernization, not as a child-centered reform (Yatsyshyn, 2010, p.162). While European partners influenced the general framework, it was Canada - through its Reforming Juvenile Justice in Ukraine project - that specifically financed and guided the creation of juvenile probation. Thus, Canada's role was crucial in addressing what the 2008 Concept overlooked, embedding rehabilitative and youth-oriented principles into Ukraine's emerging justice system.

Although the 2008 Concept lacked a distinct juvenile component, it nevertheless provided a structural roadmap for building a national probation framework. Unlike earlier fragmented statements of intent, these 2008 Concepts outlined a clear phased plan. The first phase (2008-2012) envisaged building a legal framework aligned with European rules, reducing the number of people in prisons and pre-trial detention, introducing European best practices, and creating research and training centres for probation staff. The second phase (2013-2017) aimed to reorganize penal institutions according to international standards and ensure the stable operation of a probation service (Yatsyshyn, 2010, pp. 161-162). The Ministry of Justice included the creation of a

probation service in its 2009-2010 legislative work plan (Yatsyshyn, 2010, p. 222). Thus, the emerging Ukrainian model was built upon European correctional standards emphasizing resocialization, proportionality, and community reintegration, but without a framework for youth in conflict with the law. The gap was gradually filled through Canadian-led initiatives introducing a parallel reform. In this mix, the European model provided the structural and legal foundation for probation in general, while the Ukrainian-Canadian partnership shaped its juvenile dimension, infusing the system with child-centred and community-based principles.

Building on the 2008 policy and conceptual foundations, Ukraine began translating its strategic commitments into draft legislation to institutionalize probation. On 26 November 2008, People's Deputy V. D. Shvets registered two draft laws in the Verkhovna Rada - *"On the Probation Service"* (reg. No. 3412) (the "**2008 Shvets Draft**") and *"On Amendments to Certain Legislative Acts of Ukraine (Regarding the Humanization of Criminal Legislation and Organizational Legal Prerequisites for the Introduction of Probation)"* (reg. No. 3413). Shvets's initiative was the first legislative attempt to formally introduce the concept of probation in legislation of Ukraine and, crucially, the first to propose that it be governed by a separate, comprehensive law rather than integrated into existing penal rules. These drafts sought to establish the legal, institutional, and procedural framework for a national probation service, defining probation not merely as an alternative to imprisonment but as a complex mechanism of rehabilitation, reintegration, and social support (Ivchuk, 2019, p. 13).

Significantly, the 2008 Shvets Draft introduced a distinct section on "Juvenile Probation" (Articles 21-25) – reflecting the direct influence of Canadian technical assistance under the *Reforming Juvenile Justice in Ukraine* project. The draft defined the purpose of juvenile probation as enhancing public safety through supervision, education, and social rehabilitation of youth in

conflict with the law. It outlined specific tasks, including psychological assistance, mediation between youth and victims, coordination with community rehabilitation centres, and motivation of positive behavioural change. Juvenile probation was to apply to youth aged 14-18 accused or convicted of minor and medium-gravity offences and included restorative and educational measures such as community service, counselling, vocational training, employment facilitation, and participation in social rehabilitation programs. Each case would be guided by a pre-trial social report prepared by a probation officer, ensuring individualized judicial decisions and targeted supervision (2008 Shvets Draft).

Almost simultaneously, on 28 November 2008, People's Deputy O. Feldman introduced an alternative draft law, *"On Amendments to Certain Legislative Acts of Ukraine (Regarding the Humanization of Criminal Legislation through the Implementation of Probation)"* (reg. No. 3413-1) (the "**2008 Feldman Draft Law**") In contrast to 2008 Shvets Draft Law, 2008 Feldman Draft Law did not envisage a separate law on probation. Instead, it proposed to insert the concept directly into the existing *Criminal* and *Criminal Procedure Codes*. This approach was conceptually inconsistent and overly narrow: it defined probation merely as a non-custodial punishment involving territorial restrictions, supervision, and social-educational obligations - effectively reducing it to a form of "house arrest with corrective measures." By listing probation among the penalties in Article 51 of the 2001 Criminal Code, 2008 Feldman Draft Law blurred the distinction between punishment and rehabilitation (Yagunov, 2011, p. 153). Moreover, it completely ignored the notion of juvenile probation, which had been a defining feature of the 2008 Shvets Draft Law.

These parallel drafts triggered intense debates in Parliament and among relevant stakeholders in the field over the nature, purpose, and institutional design of probation in Ukraine's justice system. At the same time, the issue had not yet acquired the status of a matter of national

importance, remaining largely confined to expert, institutional, and legislative discussion. The central disagreements in these debates concerned who would control and structure the new service. The State Department of Penalties argued that probation should remain within its jurisdiction as an extension of the existing penal apparatus, while reform advocates - including the Ministry of Justice and international experts - promoted the creation of an independent civilian service. This interdepartmental rivalry slowed progress and exposed deeper conceptual divisions: whether probation should function primarily as an alternative punishment or as a comprehensive system of supervision, rehabilitation, and social reintegration (Yatsyshyn, 2010, p. 223).

Amid these structural and jurisdictional disputes, the juvenile probation dimension was largely overshadowed. Parliamentary debates and expert reviews concentrated on institutional control and bureaucratic competencies, leaving aside the restorative, developmental, and child-focused aspects of probation. As a result, although 2008 Shvets Draft Law laid a forward-looking legislative foundation consistent with international best practices, its juvenile component failed to gain sustained political traction. The early stage of Ukraine's probation reform thus revealed a critical imbalance: while European partners influenced the general penal and adult-oriented framework, Canada's contribution remained the primary source of innovation in the juvenile sphere, embedding a rehabilitative and child-centred vision that the subsequent legislative process struggled to preserve.

The conceptual and institutional disagreements that characterized the 2008 legislative debates soon carried over into the formal law-making process, revealing the absence of a unified vision for probation and the marginalization of its juvenile dimension. After the initial registration of the draft laws in November 2008, they entered the standard legislative procedure of the Verkhovna Rada. On 2 December 2008, 2008 Shvets Draft Law, followed on 4 December by Draft

No. 3413 also authored by Shvets. The Committee convened a dedicated working group to prepare these drafts for parliamentary consideration. On 6 July 2009, this group held a formal meeting to evaluate their readiness for submission to the floor. The participants concluded that the drafts were still too raw and required substantial revision. As a result, they were returned to the State Department for the Execution of Sentences for further development (Bogatyreva, 2013, p. 84). Despite this, on 2 September 2009 the Committee adopted Protocol No. 48 approving Drafts No. 3412 and 3413 for consideration in the first reading and recommending that 2008 Feldman Draft Law be rejected, with its author invited to submit his proposals as amendments to the other two texts. The Committee's decision was followed by the registration of draft parliamentary resolutions to adopt Draft No. 3412 as a basis on 3 September 2009 and Draft No. 3413 on 7 September 2009. This signalled that the legislative process was formally advancing and that the Verkhovna Rada might soon consider the drafts. However, the apparent progress masked deep conceptual uncertainty. None of the drafts offered a coherent legislative framework for a probation service, nor did they define its institutional placement or operational mechanisms. The issue of juvenile probation remained entirely absent, and the debates continued to focus narrowly on administrative control and penal efficiency rather than on rehabilitation or child-centred justice.

The lack of conceptual clarity and legislative coherence soon drew criticism from key judicial and expert institutions (Yatsyshyn, 2010, p. 264). Several institutional actors subsequently issued highly critical reviews that effectively derailed this fragile momentum. The most influential came from the Supreme Court of Ukraine, supported by Canadian experts, whose conclusion underscored both legal and conceptual flaws in 2008 Shvets' Draft Laws, particularly regarding their misunderstanding of probation's purpose and their inconsistent treatment of youth. The Court identified fundamental contradictions with the Criminal and Criminal Procedure Codes, the

absence of procedural safeguards, and a lack of clear institutional design (Bogatyreva, 2013, p. 85). The Supreme Court noted that the drafts defined probation narrowly as "*a system of supervisory, social, educational, and preventive measures applied by court decision to persons accused or convicted of minor or medium-gravity crimes*" (Supreme Court of Ukraine, 2008). This approach, it argued, distorted the essence of probation, which, according to international standards, functions either as a conditional suspension of punishment or as a conditional release focused on rehabilitation, not merely as a collection of control measures. The Court emphasized that the true purpose of probation is to test whether an offender can be reintegrated into society without serving the imposed punishment, while supervision and educational work serve only as supportive mechanisms (Supreme Court of Ukraine, 2008).

Equally significant was the Court's critique of the juvenile probation provisions within the Shvets drafts. While these provisions were unprecedented in Ukrainian law, they reproduced a punitive and discriminatory logic. Under Article 97-1 of Draft No. 3413, youth could be granted probation only if they had never before been criminally prosecuted. By contrast, Article 44-1, governing adult offenders, imposed no such restriction. Thus, under the draft, an adult could receive probation for a minor or medium-gravity offence even after previous convictions, while a child could not. The Supreme Court regarded this as an unjustifiable worsening of youth' legal status compared with adults - an inversion of the principle that juvenile justice should be more, not less, focused on rehabilitation and second chances. In effect, this approach revived the recidivist logic of the 1845 Penal Code, under which a minor who reoffended was to be punished as an adult, regardless of age or mitigation factors (Chepurko & Lysenko, 2007, p. 6). The Supreme Court implicitly drew attention to this continuity, noting that such a rule contradicted both the modern principles of proportionality and the rehabilitative objectives embedded in international juvenile

justice instruments, including the Beijing Rules and the UNCRC. By conditioning access to probation on the absence of prior convictions, the draft transformed probation from a rehabilitative opportunity into a reward for first-time offenders only, thereby stripping it of its preventive and corrective potential.

The Supreme Court also rejected the idea of establishing a separate State Probation Service outside the penal system, arguing that the proposal risked bureaucratic fragmentation by creating overlapping executive bodies for imprisonment and probation. It stressed that probation should remain institutionally distinct from both law enforcement and corrections, focusing instead on social reintegration, pre-trial reporting, and preventive support. Further objections targeted vague obligations (e.g., "to lead a law-abiding life"), unrealistic coordination powers, and procedural inconsistencies that threatened judicial independence (Supreme Court of Ukraine, 2008). These criticisms were echoed - though more cautiously - by other institutions. The High Administrative Court of Ukraine endorsed the general intent of 2008 Shvets Draft Law but only with substantial revisions, while the Ukrainian Independent Centre for Political Research produced its own analytical critique in June 2010 (Bogatyreva, 2013, p. 85). Together, these assessments made it clear that the 2008–2009 drafts lacked a coherent legislative architecture and failed to meet international standards, particularly in the sensitive area of juvenile justice.

In the aftermath of these extensive critiques and amid a rapidly changing political environment, the issue of probation lost its earlier momentum.[45] The Supreme Court's conclusion, combined with conflicting institutional interests and the absence of consensus on the model of the

[45] The global financial crisis of 2008–2009 significantly weakened Ukraine's economy, while major gas disputes with Russia in 2006 and especially in January 2009 disrupted energy supplies to Ukraine and parts of Europe, increased public debt, and intensified political tensions between Kyiv and Moscow. These pressures coincided with the election of Viktor Yanukovych as President in 2010, which shifted political priorities and slowed justice-sector reforms, including probation initiatives.

future service, effectively stalled the legislative process. Despite several attempts to place the drafts on the parliamentary agenda, none were ever formally debated or adopted by the Verkhovna Rada of Ukraine. As political priorities shifted toward administrative consolidation and economic stabilization, probation reform - particularly its juvenile component - was sidelined. The years 2009–2010 thus marked a period of legislative stagnation: although the conceptual groundwork for probation had been laid, the lack of political will, institutional rivalry, and conceptual clarity prevented its transformation into law.

The Second Drafts of the Law on Probation (2010-2013)

By early 2010, Ukraine's progress toward establishing a national probation system - stalled since the failure of the 2008 legislative drafts - regained momentum as international cooperation resumed. The election of Viktor Yanukovych as President that year marked a shift toward more centralized governance. Although this raised concerns about democratic backsliding, it temporarily restored political stability and allowed for more systematic implementation of institutional reforms (CIDA, 2011, p. 13). The first area of renewal concerned the general probation framework, which formed part of the broader penitentiary and criminal-executive reform agenda. A major institutional step came with Presidential Decree No. 1085 of 9 December 2010, *"On Optimization of the System of Central Executive Bodies,"* which reorganized the State Department for the Execution of Sentences into the State Penitentiary Service of Ukraine. Officially, this was framed not as a simple renaming but as a shift in philosophy - from a punitive model toward one centered on correction and social reintegration (Ivchuk, 2019, p. 14). The reform created, for the first time, an administrative foundation capable of supporting a nationwide probation service aligned with European penal standards.

In parallel, a distinct and more specialized reform track emerged, focusing on youth in conflict with the law, driven and financed by Canada through its technical assistance project.[46] One of the project's most significant achievements was its contribution to the development of *the National Strategy for Reforming the Juvenile Justice System*, which was developed in partnership with the Cabinet of Ministers. The Strategy emphasized prevention, diversion, and rehabilitation rather than punitive isolation (Khmelevska, 2021, p. 95). It identified chronic deficiencies in Ukraine's system - such as the lack of preventive mechanisms, the overuse of detention, and the absence of specialized juvenile judges, prosecutors, and investigators - and called for inter-agency coordination, NGO participation, and expanded use of non-custodial sanctions (Standing Committee on Foreign Affairs and International Development, 2012, p. 54; Khmelevska, 2021, pp. 95–96). The groundwork for these child-centred reforms had been laid earlier that same year. By Order No. 491/7 of the Ministry of Justice of Ukraine dated 27 May 2010, a Task Force was established. This initiative was subsequently reinforced by the Concept on the Development of Criminal Justice for Youth in Ukraine, approved by Presidential Decree No. 597/2011 of 24 May 2011, and the Cabinet of Ministers' Order No. 1039-r of 12 October 2011, which adopted the plan for its implementation. Together, these policy documents marked the transition from abstract conceptual work to the first concrete institutional steps. They envisioned a justice system for youth, introducing juvenile probation as a mechanism to support courts with socio-psychological assessments, supervision, and post-release reintegration. The Concept further called for social assistance to youth leaving correctional institutions, including access to education, employment, and housing (Hamburg, 2021, p. 135).

[46] The Juvenile Justice Reform Project in Ukraine (the "**JJRP**") was funded by the Government of Canada through Global Affairs Canada, with a maximum contribution of CAD 10,047,346. The project was implemented between January 8, 2010 and September 30, 2017 and focused on strengthening juvenile justice institutions, professional training, and alternatives to detention for youth in conflict with the law.

Despite these policy advances, implementation throughout 2010–2011 remained slow and fragmented. Institutional competition, shifting political priorities, and limited administrative capacity delayed the translation of the new concepts into practice. It was only with the adoption of the 2012 CPC that the reform frameworks began to take legal form. The Code introduced specialized procedures for handling juvenile cases and embedded restorative and rehabilitative principles in criminal proceedings (Burukovska, 2013). This legislative shift reflected the growing influence of the Ukrainian-Canadian cooperation launched under the JJRP. In other words, the 2012 CPC provided the procedural architecture through which transplanted juvenile probation practices, especially individualized background inquiry and court-oriented assessment, could operate as part of juvenile proceedings rather than remain limited to pilots and training. While the juvenile justice strand of reform began to take shape, a parallel process unfolded on the broader institutional level. On 8 November 2012, Presidential Decree No. 631/2012 approved the Concept of State Policy on Reforming the State Criminal-Executive Service of Ukraine. This document directly addressed the chronic overcrowding of prisons and pre-trial detention centres, recognizing that these issues stemmed from the underuse of non-custodial measures. The Concept explicitly stated that the inherited Soviet-style system of punishment enforcement no longer met modern social and humanitarian standards, particularly in relation to human rights and freedoms in the execution of sentences (Husak, 2025, p. 67). Importantly, the Decree introduced a comprehensive state policy vision for probation as an alternative to imprisonment. It called for the development of pre-trial probation, enabling courts to receive social background reports on defendants; the expansion of non-custodial sanctions; the transformation of criminal-executive inspections into a

probation service; and the creation of specialized training programs for probation officers. [47]The Concept set a five-year implementation horizon and marked the first official acknowledgment of probation as a strategic state institution (Ivchuk, 2019, p. 14).

By 2013, the policy commitments outlined in the 2012 Concept began to translate into concrete legislative initiatives aimed at institutionalizing probation within Ukraine's criminal justice system. Two draft laws were introduced in the Verkhovna Rada: the Draft Law "On the Probation Service" (No. 1197 of 4 January 2013) and the alternative Draft Law "On Probation" (No. 1197-1 of 18 January 2013) prepared by the Cabinet of Ministers. The first proposed the creation of an entirely new public body dedicated to social work and individual supervision of offenders, whereas the second sought a more pragmatic path by transforming the existing network of criminal-executive inspections into probation offices with broadened powers and rehabilitative functions. Ultimately, Parliament rejected the first draft and adopted the second as a basis for further refinement (Ivchuk, 2019, p. 14). This step signified a decisive shift from conceptual policy frameworks toward the legislative consolidation of probation as a core institution of Ukraine's modern justice system.

The Prolonged Legislative Path to the Law on Probation (2013-2015)

Following the dual reform trajectories of the early 2010s - the *juvenile justice path* embodied in the 2012 CPC and the *probation path* aimed at establishing a community-based correctional system - the next phase of Ukraine's justice transformation focused on legislative consolidation. The 2012 CPC reform had already laid the conceptual groundwork for juvenile probation by embedding rehabilitation, social integration, and individual assessment into the treatment of youth.

[47] These proposed elements closely mirrored the Canadian probation framework, where probation services prepare pre-sentence reports for courts, supervise community-based sanctions, and operate through specialized professional training within youth justice systems established under the YCJA.

However, the institutional framework necessary to implement these principles through a national probation service was still absent. By early 2013, the long-standing debates surrounding probation reform had finally advanced into the legislative sphere. On 4 January 2013, two key draft laws were registered in the Verkhovna Rada: Draft Law No. 1197 *"On the Probation Service"* and Draft Law No. 1198 *"On Amendments to Certain Legislative Acts of Ukraine (Regarding the Humanization of Criminal Legislation and Organizational-Legal Preconditions for the Introduction of the Probation Service)."* These initiatives largely revived ideas that had circulated since 2008, signalling a renewed political commitment to institutionalize probation within Ukraine's criminal justice system (Ivchuk, 2019, p. 14). Shortly thereafter, on 18 January 2013, the Cabinet of Ministers submitted an alternative proposal - Draft Law No. 1197-1 *"On Probation."* Unlike its predecessors, this draft sought to synthesize prior developments and align Ukraine's approach more explicitly with international standards of restorative justice (Ivchuk, 2019, pp. 14-15).

The Committee on Legislative Support of Law Enforcement reviewed all three drafts and recommended adopting Draft No. 1197-1 as the basis for further parliamentary work. During both committee and plenary debates, the discussion centred almost entirely on the general establishment of a probation system as an alternative to incarceration and a step toward the humanization of Ukraine's criminal justice. The concept of juvenile probation, however, was not mentioned at all - neither as a separate component nor as a policy priority. This omission demonstrated a persistent disconnect between the broader reform discourse and the specific needs of youth, despite the recent progress achieved through the 2012 juvenile justice reforms.

In his speech to Parliament, MP Viktor Shvets, one of the authors of the earlier 2008 proposal, emphasized that Ukraine remained one of the few European states without a functioning

probation service, noting that "*in all other countries probation services have become an integral element of the criminal justice system, and the term 'probation' has gained international recognition*" (Verkhovna Rada, Stenogram, 20 September 2013). He explained that the draft sought to establish "a *system of supervisory and socio-educational measures applied by court decision… with the goal of democratization and humanization of the criminal justice system*." Yet, his remarks, and those of other MPs, focused exclusively on adult offenders, institutional design, and administrative structures, without addressing juvenile justice or the rehabilitative mechanisms essential for youth. At the same session, MP Ivan Popesku raised a practical concern that cut to the heart of Ukraine's reform challenges - the financial feasibility of implementing the new probation system. He asked: "*Have you calculated how much funding is needed to implement this service? And have you proposed these funds in the new budget? … If not, even if we adopt this draft law, it will come into force only in 2015*" (Verkhovna Rada, Stenogram, 20 September 2013). In response, MP Viktor Shvets conceded that the issue of funding was critical and that implementation could realistically begin only in 2015. He added, somewhat ironically, that the necessary resources could be found "*if there was an effective system of combating the embezzlement of state funds*" (Verkhovna Rada, Stenogram, 20 September 2013). His remark reflected a deep-seated structural problem in Ukraine's governance at the time: systemic embezzlement and corruption[48] drained public resources, eroded institutional capacity, and severely undermined the credibility of reform initiatives. Public administration and justice reforms were frequently underfunded, not because of an absolute lack of resources, but due to the misappropriation of state funds, weak accountability

[48] According to the 2013 Corruption Perceptions Index published by Transparency International, Ukraine ranked 144th globally, remaining in the "high-risk" group alongside countries such as Cameroon, Iran, Nigeria, the Central African Republic, and Papua New Guinea (Transparency International, 2013).

mechanisms, and pervasive political patronage networks that characterized the late Yanukovych era.[49]

While legislators broadly agreed on the normative and humanitarian value of probation, the debates exposed a significant gap between reform need and practical implementation. The absence of financial planning, administrative capacity, and public trust in state institutions made the proposed system appear aspirational rather than operational. Thus, despite consensus on the need for a probation service, the discussion remained abstract. It also failed to proceed deep enough to integrate the juvenile dimension or to connect the new probation framework with the child-centred justice principles already embedded in the 2012 CPC.

The prolonged legislative debates surrounding the 2013 drafts also revealed persistent conceptual and institutional disagreements. Some MPs and Ministry of Justice officials argued that it would be more expedient to reform and rebrand the existing Criminal-Executive Inspection, granting it broader supervisory and rehabilitative functions. Others insisted that probation required a fundamentally new institutional architecture, independent from the punitive structures of the penal system. The government's version of the draft law attempted a compromise: it proposed transforming the Criminal-Executive Inspection into a network of probation bodies operating under the Ministry of Justice (Ivchuk, 2019, p. 15). However, critics cautioned that such an

[49] The magnitude of corruption and embezzlement practices by the regime of President Yanukovych was later highlighted by the State Financial Monitoring Service of Ukraine (the "**SFMS**") "The SFMS of Ukraine prepared and sent to the law enforcement agencies 268 case referrals (72 case referrals and 196 additional case referrals) regarding financial transactions conducted by the former President of Ukraine Viktor Yanukovych, his family and high level officials of the former government, state agencies, local government. The total amount of financial transactions that could be related to the legalisation of proceeds from crime in these case referrals is 147.8 billion UAH, and the amount of financial transactions that could be related to the commission of other crimes is 11.1 billion UAH. As a result of taken measures the SFMS of Ukraine revealed 538 bank accounts of 93 individuals and 81 bank accounts of 32 legal persons connected with the aforementioned individuals, and blocked funds in the total amount of 1.73 billion UAH, 194.3 million USD, 18.1 million EUR and 21.7 million RUB, precious metals (gold and silver) valued at 3 million UAH, and securities on 2.6 billion UAH and 1 billion USD." (State Financial Monitoring Service of Ukraine, 2014, pp.16-17).

approach risked reproducing the old system under a new name, substituting bureaucratic continuity for genuine reform. Without an accompanying cultural and professional shift - from control and punishment to supervision, rehabilitation, and social integration - probation risked becoming merely an administrative relabelling exercise. Others raised practical concerns, noting that Ukraine lacked the necessary social infrastructure, trained personnel, and local reintegration programs to support community-based sanctions (Ivchuk, 2019, p. 16). These debates exposed the core challenge facing Ukrainian penal reform: the difficulty of translating international concepts into sustainable domestic institutions.

On 10 October 2013, the Verkhovna Rada adopted Draft Law No. 1197-1 "On Probation" in the first reading with an overwhelming 282 votes in favour, signalling rare cross-party consensus on the need to change the post-Soviet punitive approach of Ukraine's criminal justice system. Yet despite this strong initial backing, the bill made no further progress that year. Political instability and legislative inertia quickly overtook the reform agenda. Within weeks, the Euromaidan protests erupted in Kyiv, escalating into a nationwide movement that culminated in the ouster of President Viktor Yanukovych in February 2014. This was followed by Russia's annexation of Crimea and the outbreak of armed conflict in eastern Ukraine, events that fundamentally reshaped national priorities. Under these exceptional circumstances, criminal justice reform and, particularly, the creation of a probation service ceased to be a legislative priority. Parliament and the new transitional government redirected attention to constitutional reform, anti-corruption measures, national security, and emergency governance. Consequently, the probation bill, despite its earlier momentum, receded into the background (Ivchuk, 2019, pp. 15-16). This stagnation highlighted a deeper systemic weakness: while international partners, including Canada, had provided sustained technical and conceptual support, Ukraine's political elite lacked the institutional commitment to

convert reform rhetoric into practical implementation (Ivchuk, 2019, p. 16). The combination of political upheaval, administrative inertia, and conceptual fragmentation meant that, despite its early promise, the 2013 probation initiative remained unfinished. The Revolution of Dignity (2013-2014) had brought down President Yanukovych's administration, ushering in a new government and parliament that pledged to align Ukraine's institutions with European democratic and human rights standards. However, the country simultaneously faced Russia's annexation of Crimea, the outbreak of armed conflict in the Donbas, and an acute economic and fiscal crisis. Under these conditions, the establishment of a new probation system was not viewed as an immediate priority but rather as part of a broader strategy of European integration and legal modernization. Yet, as the next phase would show, the post-2014 reform environment, marked by renewed Western engagement and institutional restructuring, finally created the conditions for the adoption of the Law on Probation in 2015.The debates on probation reform resumed only in early 2015, when the renewed Draft Law "On Probation" was reintroduced for a second reading in the Verkhovna Rada (Husak, 2025, p. 52). By that time, Ukraine was emerging from a period of unprecedented political upheaval. The parliamentary debates of February 2015 revealed that, despite the changed political landscape, resistance to probation persisted. The opposition was no longer ideological but rooted in fiscal anxiety and bureaucratic inertia. During the plenary session, the rapporteur from the Committee on Legislative Support of Law Enforcement emphasized that probation was "*not merely a humanitarian innovation, but an international legal obligation that Ukraine has undertaken under the Council of Europe conventions*" (Verkhovna Rada, Stenogram, 5 February 2015). Yet several MPs questioned whether Ukraine could afford to create a new institution amid war and recession. One deputy warned that "*we are being asked to create a new service with unclear funding sources, while our courts and prisons are collapsing*" (Verkhovna

Rada, Stenogram, 5 February 2015). Others criticized the Ministry of Justice for submitting the draft without proper budgetary calculations, cautioning that the initiative might become a "*decorative reform that exists only on paper*" (Verkhovna Rada, Stenogram, 5 February 2015). These concerns reflected broader structural issues in Ukraine's governance at the time. Chronic embezzlement of public funds, administrative fragmentation, and weak institutional accountability remained major obstacles to reform.[50] These problems reveal a deeper and persistent reality: reform in Ukraine has repeatedly stalled not because reform ideas were unclear or inappropriate, but because existing power structures, governance practices, and institutional arrangements prevented those ideas from being effectively implemented.[51]

Substantively, the 2015 discussions also demonstrated that juvenile probation was not addressed separately, despite its prior prominence in donor-driven policy discourse. The parliamentary focus remained on the general architecture of probation - its institutional placement, financing, and relation to the existing Criminal-Executive Inspection. Some MPs and Ministry of Justice officials argued for simply rebranding and expanding the inspection, while others advocated for building an entirely new service. The adopted compromise - transforming the inspection into a probation system within the Ministry of Justice - reflected a pragmatic but risk-laden solution. Critics warned that this might perpetuate the punitive culture of the old institution under a reformist label, producing formal rather than substantive change. Despite skepticism and

[50] According to the 2015 Corruption Perceptions Index published by Transparency International, Ukraine ranked 130th out of 168 countries (Transparency International, 2015).

[51] Similar implementation difficulties are widely documented in countries undergoing democratic and legal transition. Comparative scholarship on post-socialist and post-authoritarian reform shows that new legal institutions often face resistance from existing bureaucratic structures, fiscal constraints, and entrenched administrative practices inherited from prior regimes. These dynamics can slow or distort reform implementation even where legislative change has occurred. See, e.g., O'Donnell (1996) on weak institutional accountability in new democracies; Carothers (2002) on the "rule-of-law reform" problem in transitional states; and Meyer-Sahling (2009) on administrative continuity and bureaucratic resistance in post-communist Europe.

political hesitation, advocates of the reform emphasized that further delay would damage Ukraine's credibility with international partners. The committee rapporteur stressed that "*postponing this decision again would signal that Ukraine is incapable of implementing even the reforms it has pledged to international partners*" (Verkhovna Rada, Stenogram, 5 February 2015). Under mounting external and domestic pressure, the Verkhovna Rada adopted the Law of Ukraine "On Probation" on 5 February 2015, with the law entering into force on 27 August 2015.

This drawn-out and hesitant path to adoption exposed persistent weaknesses in Ukraine's law-making and governance environment. Fragmented policymaking and the absence of long-term planning repeatedly delayed implementation. Despite years of expert work and foreign technical assistance, probation reform advanced only when political turnover and external pressure from international organizations and donors aligned. This episode underscores a key lesson: legal transplants require more than donor support and technical design; they depend on sustained political will and institutional commitment. As discussed in Chapter I, this dynamic reflects a broader insight in legal transplantation scholarship – that the success of borrowed legal institutions depends not only on the transfer of legal rules (Watson, 1993), but also on the compatibility between the transplanted model and the receiving system's institutional culture and administrative capacity (Kahn-Freund, 1974; Teubner, 1998; Graziadei, 2009). In the Ukrainian context, even the most well-prepared reforms risk stagnation in the absence of such will. The next subsection turns to the substantive content of the 2015 Law on Probation, examining how its provisions institutionalized the ideas developed through the previous decade's dual reform trajectory, mixing the general probation introduction and the juvenile justice reform, and how these paths finally converged in the concept and practice of juvenile probation.

The 2015 Law on Probation: Integrating Juvenile Probation into a General Framework

The adoption of the 2015 Law on Probation marked a historic milestone in the evolution of Ukraine's justice system, as probation was formally codified in national legislation for the first time. This achievement represented the culmination of nearly a decade of fragmented policy initiatives, donor-driven advocacy, and legislative stalemates that had begun in the early 2000s. It reflected not only the persistence of international partners but also the belated alignment of domestic political will after years of institutional instability and shifting priorities.

As Deputy Minister of Justice Denys Chernyshov emphasized, the new law signified not merely a technical reform but a transformation in penal philosophy:

> We see great potential in probation, both economic and social. Economically, it brings major budget savings, as we will no longer spend as much on maintaining prisoners. Socially, it enables the process that lies at the core of the penitentiary system – the offender's repentance. It is well understood how our penitentiary system has remained, since the collapse of the Soviet Union, a system of torture. There can be no repentance within such a system. The application of the principles of probation means a change of paradigm – of the system itself and of society's attitude toward those convicted. We will insist on proper staff training, because the success of probation depends on the people who implement it. (Chernyshov as cited in Bieliaieva, 2016)

Chernyshov's remarks captured the dual ambition of the reform: to humanize Ukraine's penal system and to redefine its moral and institutional logic. Probation was thus framed not simply as an alternative to incarceration, but as an ideological rupture with the punitive Soviet legacy - a shift from retribution to rehabilitation, from coercion to correction. This articulation of both economic rationality and humanitarian purpose reflected the broader discourse that accompanied Ukraine's justice reforms, in which European donors stressed efficiency and compliance with human rights standards, while domestic actors emphasized the moral renewal of the penal system. However, translating this vision into law required balancing idealism with

institutional pragmatism. When the 2015 Law on Probation was finally adopted, it reflected this tension between normative ambition and structural compromise.

Ukraine adopted a unified probation framework, regulating probation for both adults and youth under a single legislative act - the 2015 Law on Probation. Article 1 of the 2015 Law on Probation defined probation as *"a system of supervisory and socio-educational measures applied by a court decision and in accordance with the law to convicted persons, ensuring the execution of certain types of criminal penalties not related to deprivation of liberty, and providing the court with information characterizing the accused."* Article 4 defined the purpose of probation as *"ensuring public safety through the prevention of reoffending, correction of offenders, and provision of individualized information to the courts for sentencing"* (2015 Law on Probation; Yagunov, 2018, p.208). Article 5 enumerated probation guiding principles - justice, legality, human dignity, individualization, confidentiality, and cooperation with civil society. However, these provisions applied uniformly to both adults and youth, reflecting a legislative preference for procedural universality rather than the establishment of a distinct youth justice philosophy. From an analytical perspective, this design embodied both progress and compromise. On one hand, it aligned Ukraine with European penal reform trends, introducing non-custodial and community-based sanction that emphasized rehabilitation and reintegration. On the other hand, it fell short of creating the specialized, developmentally informed framework similar to Canadian and other Western systems. The result was a hybrid model - legally modern and internationally compliant, yet conceptually limited in addressing the particular needs of youth within the justice process.

Earlier justice reforms had already laid the normative foundation for this transformation by introducing principles of individualized assessment, reintegration, and social correction in place of punitive control. The 2015 Law on Probation sought to translate these principles into

institutional practice, establishing a national structure capable of supporting non-custodial sanctions and offender rehabilitation. To this end, Article 8 of the 2015 Law on Probation created a unified national probation system consisting of three interrelated forms of probation:

1. **Pre-trial probation** – preparation of social inquiry (presentence) reports providing courts with individualized assessments of an offender's background, risk factors, and rehabilitative prospects;
2. **Supervisory probation** – execution of non-custodial sentences under court-imposed supervision combined with socio-educational support; and
3. **Penitentiary probation** – reintegration of offenders after release from imprisonment, including post-release supervision and assistance (Ministry of Justice of Ukraine, 2015; CEP-Probation, 2020).

These mechanisms collectively embodied the rehabilitative philosophy underpinning Ukraine's justice reform. Within this general framework, specific provisions concerning youth were introduced only with regard to pre-trial probation**.** This leads naturally to an examination of how the general law regulates juvenile probation.

Unlike Canada, where youth probation operates under a distinct legal regime - the YCJA - with its own principles, procedures, and specialized institutions (Doob & Cesaroni, 2004, pp. 120-121), Ukraine adopted an integrated approach. This decision reflected pragmatic and institutional considerations: lawmakers sought legislative coherence and administrative simplicity after years of fragmented reform efforts. However, it also reflected a lack of substantive focus on juvenile probation as a policy priority. At the time, the primary political and legislative objective was to ensure the general adoption of a national probation framework - a step strongly encouraged by

European donors, who viewed probation as a core element of humanizing Ukraine's penal system in line with European standards. In this context, juvenile probation was not treated as an independent reform direction, but rather as a secondary, logical extension of the broader probation law. The Verkhovna Rada never discussed juvenile probation separately, and its inclusion in the 2015 Law on Probation was largely seen as a technical and inevitable consequence of the earlier procedural reforms and the Canadian donor community's insistence on embedding rehabilitative and child-centred principles within Ukraine's justice framework.

However, this choice also had significant conceptual implications. Within this unified framework, juvenile probation is regulated solely by Article 12 of the 2015 Law on Probation, titled *"Specific Features of Probation Concerning Youth."* This article constitutes the only provision devoted exclusively to youth, outlining several limited but meaningful distinctions from the general probation regime. Article 12 defines juvenile probation as the probation of persons aged 14 to 18 years, to be implemented with consideration of their age and psychological characteristics (Art. 12(1)) (Buhaiets et al., 2023, p.52). It sets out that juvenile probation is aimed at ensuring the minor's normal physical and mental development, preventing aggressive behaviour, motivating positive personal change, and improving social relationships (Art. 12(2)). In terms of pre-trial probation, pre-trial reports on youth must include not only information on the child's background and circumstances but also an assessment of criminogenic factors influencing their behaviour and recommendations for minimizing the risk of reoffending (Art. 12(3)) (Buhaiets et al., 2023, p.58).

This requirement represents a continuation of the individualized, child-centred approach first introduced under the 2012 CPC reform. Institutionally, Article 12 mandates that probation concerning youth be conducted jointly by probation authorities and child welfare bodies, as well

as special institutions and facilities engaged in social protection and crime prevention (Art. 12(4)). Probation officers are also tasked with assisting convicted youth in continuing or resuming education, ensuring that they attain a complete general secondary education (Art. 12(5)). Moreover, educational work[52] with youth may be conducted with the involvement of parents or legal representatives, thereby reinforcing family participation in the rehabilitation process (Art. 12(6)). At the programmatic level, probation authorities, in cooperation with the central executive body responsible for social policy, must implement probation programs specifically targeting youth under supervision or released on probation (Art. 12(7)). Finally, Article 12(8) stipulates that probation for youth must be applied in accordance with the general probation but with due regard for the special features of juvenile probation defined in Art.12 and described above. Despite these provisions, the regulation of juvenile probation in Ukraine remains narrow and subordinate to the general probation framework: the Law does not establish, for example, separate institutional structures, procedural safeguards, or a specialized category of probation officers working with youth. Instead, youth are supervised within the same organizational and procedural mechanisms as adults, with only limited adaptation to their developmental needs. Consequently, juvenile probation in Ukraine exists not as an autonomous subsystem, but as a marginal extension of the general probation law and limited continuation of the earlier child-centred justice reforms.

[52] In Ukrainian probation practice, "educational work" refers to structured social-pedagogical supervision and guidance aimed at correcting behaviour and supporting the minor's social reintegration, often involving counselling, school coordination, and family participation

Post 2015 Law on Probation Developments

Further Legislative Amendments to Align with the 2015 Law on Probation

The adoption of the 2015 Law on Probation marked a decisive milestone in justice reform, yet its enactment did not immediately translate into a functioning system. While the probation law established the conceptual and institutional foundations for probation, including its limited application to youth under Article 12, its implementation was delayed for two years by the absence of corresponding procedural and organizational mechanisms. The 2012 CPC still lacked the tools necessary to operationalize key provisions - particularly those relating to pre-trial probation and individualized social assessments. This legislative and institutional gap persisted throughout 2015 and much of 2016, as the state apparatus struggled to transform a declarative law into a practical system. Oleh Yanchuk, the then Director of the Department of Probation at the Ministry of Justice, openly acknowledged that the gap between 2015 and 2016 was not merely administrative delay but a necessary transition stage: "*Even when the Law on Probation was adopted, we asked Parliament to provide for a transition period so that we could train probation staff. A legislative act alone cannot turn a criminal-executive inspector into a probation officer - training and preparation are essential*." He explained that this interval was used productively: "*During this period, we formed the organizational and management structure, developed a methodological base, designed probation tools, and began training staff*." (Bieliaieva, 2016). In cooperation with EU experts, the Ministry of Justice established a dedicated probation training cycle at the Bila Tserkva Training College of the State Criminal-Executive Service and introduced two specialized educational programs implemented from June 2015 onward (Bieliaieva, 2016). This transition period reflected the broader dynamic of Ukraine's justice reform, where legislation often preceded capacity, requiring external technical support to bridge the gap between legal innovation and practical readiness.

Recognizing these constraints, Ukrainian lawmakers subsequently moved to harmonize procedural law with the newly established probation framework, setting the stage for the 2016 amendments to the 2012 CPC. On 7 September 2016, the Verkhovna Rada adopted the Law of Ukraine No. 1492-VIII "On Amendments to Certain Legislative Acts of Ukraine Regarding the Enforcement of Criminal Penalties and the Realization of the Rights of Convicted Persons." This act amended the 2012 CPC to introduce a new Article 314-1, thereby establishing a clear legal basis for pre-trial probation. Under this provision, courts are now required to order and consider pre-trial reports before determining a sentence, thus institutionalizing the link between the probation service and judicial decision-making. Article 314-1(1) provides that: "*With the aim of providing the court with information that characterizes the accused, and of enabling the court to determine the appropriate sentence, a representative of the authorized probation body shall prepare a pre-trial report by order of the court*." (Criminal Procedure Code of Ukraine, 2012, as amended by Law No. 1492-VIII, 2016). The new provision specifies that such reports must be prepared for accused persons charged with minor or medium-gravity offences, and for serious crimes where the lower threshold of the sanction does not exceed five years of imprisonment (Art. 314-1(2)) (Buhaiets et al., 2023, p.58). Crucially, for juvenile defendants aged 14 to 18, the report is mandatory regardless of the gravity of the offence, except in narrowly defined exceptional cases. This categorical inclusion of youth reflected a convergence with both Canadian approach and international juvenile justice standards, particularly those articulated in the Beijing Rules (1985) and the UN Committee on the Rights of the Child's General Comment No. 10 (2007, para. 83), which emphasize the necessity of individualized assessment in all cases involving youth in conflict with the law.

In effect, the 2016 amendments operationalized the conceptual principles introduced by the 2015 Law, transforming pre-trial probation from a normative abstraction into a functioning procedural instrument. By embedding pre-trial reports into criminal proceedings, Ukraine began to move away from the Soviet-era model - where sentences were determined almost exclusively on the basis of the offence and formal legal classification - and toward a more individualized, evidence-based sentencing practice that accounts for the offender's personality, environment, and potential for rehabilitation (Rusanova, 2012, p. 250; Ivchuk, 2019, p. 14). For youth, this reform was particularly significant. It provided a tangible mechanism to translate the rehabilitative ideals of the probation law into daily judicial practice, ensuring that each child's social, psychological, and family context would inform the court's decision. Yet, as the following section will demonstrate, the procedural innovation did not automatically translate into consistent or effective implementation. The institutional constraints of the probation service, limited training of personnel, and uneven judicial engagement continued to hinder the full realization of child-centred probation in Ukraine.

However, unlike Canada, where youth pre-trial reports are embedded within a distinct youth justice statute (the YCJA, ss. 34–40) and prepared by specialized youth probation officers trained in child psychology and restorative practices (Doob & Cesaroni, 2004, pp. 121–122), Ukraine integrated juvenile pre-trial reporting directly into the general procedural framework of the 2012 CPC. The only differentiation for youth lies in the mandatory nature of such reports, not in the establishment of a youth-specific institutional structure, methodology, or set of professional competencies.

The 2016 amendments to the 2012 CPC also revised related procedural provisions to integrate probation bodies functionally within the criminal process. Courts were formally

empowered to order pre-trial reports, probation officers were granted procedural standing as official providers of social and psychological information, and the completed reports became part of the case file, considered during sentencing (Law No. 1492-VIII, 2016; 2012 CPC, Art. 315). Yet, even with these amendments, the procedural system still lacked detailed guidance on the preparation and use of reports. This shortcoming was addressed in 2017, when the Ministry of Justice, with the support of Canada, approved the *Procedure for Preparing Pre-Trial Reports*, which outlined the methodology for collecting and verifying information, interviewing the accused, and structuring the report's conclusions (Ministry of Justice of Ukraine, 2017).

The development of specialized probation programs further demonstrated the system's maturing orientation. Pursuant to Cabinet Resolution No. 24 of 18 January 2017, Ukraine introduced structured behavioural intervention programs, including Prevention of Psychoactive Substance Use, Overcoming Aggressive Behaviour, and Changing Pro-Criminal Thinking (Cabinet of Ministers of Ukraine, 2017; Ivchuk, 2019, p. 18). These initiatives were adapted from Canadian and European risk-need-responsivity models, emphasizing "evidence-based" rehabilitation, behavioural correction, and long-term social reintegration. While these programs were not specifically tailored to youth, they nonetheless reflected an emerging awareness within Ukrainian probation practice of the need for targeted interventions addressing criminogenic factors - an approach central to juvenile rehabilitation.

Collectively, these legislative and procedural adjustments institutionalized the role of probation officers in court proceedings and created a procedural bridge between judicial decision-making and the rehabilitative objectives of the probation service. Yet, despite these advances, the reform did not amount to a full transformation of Ukraine's juvenile justice system. In contrast to Canada's youth-specific model, where probation officers operate within multidisciplinary teams

of psychologists, educators, and social workers, and where reports are guided by the rehabilitative and proportionality doctrines of the YCJA, Ukraine's integration of probation into the 2012 CPC remained largely formalistic. The reform modernized procedure, but it did not fundamentally alter institutional culture. In practice, this meant that judges, investigators, and prosecutors often continued to rely on familiar punitive approaches developed during the Soviet period, even when new rehabilitative tools became available (Solonnikova & Bondar, 2020). Changing laws proved easier than changing professional habits and expectations within the justice system, a challenge commonly observed in post-Soviet legal reforms. Courts gained access to better information, yet juvenile cases continued to be handled within the same bureaucratic and punitive logic that had characterized earlier Soviet-influenced practice (Buhaiets et al., 2023, p. 69).

Institutional Development of the Probation System

The implementation of the 2015 Law on Probation required not only new legal provisions but also a deep institutional transformation of Ukraine's criminal justice administration. The law provided the normative foundation, but its realization depended on the creation of an operational structure capable of delivering probation services at both national and local levels. In the immediate aftermath of its adoption, the State Criminal Executive Service of Ukraine - which had historically overseen the execution of sentences - was tasked with developing probation infrastructure under the supervision of the Ministry of Justice. Initially, six interregional departments for the execution of criminal sentences and probation were established (Ministry of Justice of Ukraine, 2016). However, this interim arrangement soon revealed systemic inefficiencies. The overlapping competences between penal institutions and probation supervision risked institutional fragmentation and blurred accountability. In response, the Ministry of Justice initiated a managerial reorganization, dissolving the State Criminal Executive Service as a separate entity and integrating its functions into specialized departments within the Ministry. While this

move modernized governance and reduced bureaucratic hierarchy, it also exposed the system to coordination challenges - particularly between correctional facilities, probation offices, and child welfare institutions responsible for youth. To strengthen central coordination, the Cabinet of Ministers adopted Order No. 655-r on 13 September 2017, establishing the State Institution "Probation Center" as the national body responsible for directing, supervising, and developing probation services across the country (Cabinet of Ministers of Ukraine, 2017; Husak, 2025, p. 53). Thus, by early 2017, a nationwide probation network had emerged (Buhaiets et al., 2023, p.52). The Ministry of Justice supervised 498 local probation offices employing around 3,300 professionals, including lawyers, psychologists, and social workers (Ministry of Justice of Ukraine, 2017).

A particularly significant development was the creation of specialized juvenile probation centers. Notably, the establishment of these centers was not explicitly provided for in the 2015 Law "On Probation." Their creation resulted instead from institutional design choices made during implementation, reflecting the direct influence of Canadian experts and the practical experience gained through earlier pilot juvenile justice projects conducted between 2007 and 2010 in Melitopol and Ivano-Frankivsk. Those pilot initiatives, also supported by Canada, had demonstrated the effectiveness of maintaining separate, youth-focused probation spaces that combined supervision with education, counselling, and social reintegration. Drawing on these models, Ukrainian reformers and Canadian advisors concluded that a specialized institutional environment was necessary to operationalize the principles of child-sensitive justice established by earlier reforms. As a result, the new centers were conceived as distinct units within the national probation system, designed to work exclusively with youth and to coordinate closely with child protection services, schools, and local communities. Although these centers did not have separate

legal status, their creation marked a practical adaptation of the general probation framework to the specific developmental and rehabilitative needs of juvenile offenders - a step that partially bridged the gap between Ukraine's unified legal model and the specialized Canadian approach.

The first such center opened in Kharkiv on 11 August 2017. The event, attended by Ukrainian and Canadian officials, symbolized the tangible results of over a decade of bilateral cooperation in justice reform (Ministry of Justice of Ukraine, 2017; Sanford Ammar, 2017). By 2025, fourteen juvenile probation centers were operational in major Ukrainian cities, including Dnipro, Kyiv, Lviv, Odesa, and Zhytomyr (Husak, 2025, p. 113). These centers function as specialized divisions within the broader probation service rather than independent entities, focusing on youth aged 14-18 under supervision or pre-trial reporting (Buhaiets et al., 2023, p.53). Their objectives include preventing reoffending, supporting education, and facilitating the social reintegration of juvenile offenders through individualized rehabilitative programs (Husak, 2025, p. 114). Despite this progress, juvenile probation remained institutionally dependent on the general probation framework. The juvenile divisions operated under the State Institution "Probation Center", without separate legal status or budgetary autonomy. This reflected the structural compromise at the heart of Ukraine's reform: while juvenile probation was conceptually distinct and donor-prioritized, it was administratively subsumed within the universal system. As a result, it often struggled to secure adequate staffing, training, and coordination with social services - elements critical for effective youth rehabilitation.

Institutionalization of Restorative Justice within the Juvenile Justice Framework (2019-2024)

The adoption of the *National Restorative Justice Program for Youth Suspected or Accused of Committing Criminal Offences* in July 2024 marked the latest and most conceptually advanced stage in Ukraine's gradual evolution toward a rehabilitative juvenile justice system. Approved

jointly by the Ministry of Justice of Ukraine, the Ministry of Internal Affairs, and the Office of the Prosecutor General on 22 July 2024 (Ministry of Justice of Ukraine, Ministry of Internal Affairs of Ukraine, & Office of the Prosecutor General of Ukraine, 2024), the program institutionalized restorative justice as a permanent element of the national juvenile justice framework. In doing so, it consolidated over a decade of incremental reforms that had progressively moved Ukraine away from the punitive and control-oriented legacies of the Soviet model toward a participatory and restorative paradigm. This development logically followed the trajectory established by the 2012 criminal procedure reform and the 2015 Law on Probation, both of which embedded the principles of individualized assessment, rehabilitation, and social reintegration into Ukrainian law. However, while those earlier reforms had focused on procedural and institutional structures - specialized judges, pre-trial reports, and probation mechanisms - the 2024 program introduced a restorative dimension, emphasizing dialogue, accountability, and the repair of harm as integral components of juvenile justice. In this sense, restorative justice represented the normative culmination of Ukraine's broader shift from punishment to rehabilitation (Buhaiets et al., 2023, p. 69).

Between 2019 and 2023, Ukraine had already been experimenting with restorative practices through the pilot project *"Restorative Program for Youth Suspected of Committing a Criminal Offence"*, launched by Order No. 172/5/10 of the Ministry of Justice and the Prosecutor General's Office on 21 January 2019. Initially implemented in six regions: Donetsk, Odesa, Lviv, Luhansk, Mykolaiv, and Kharkiv, the program was expanded nationwide in 2020 after demonstrating positive results (Legal Aid Coordination Centre, 2024, Buhaiets et al., 2023, p.53). Supported by UNICEF, the pilot aimed to introduce restorative principles primarily in cases of misdemeanours and non-serious crimes, focusing on early diversion, victim-offender mediation, compensation of harm, and social reintegration. More than 120 legal aid lawyers received specialized training in

mediation from the NGO *Institute of Peace and Understanding* (Bondarenko, 2024). According to official data, between 2019 and November 2023, prosecutors informed 1,254 youth about the possibility of participating in the program; 517 consent agreements were submitted; 495 participation decisions were issued; and 376 mediation agreements were concluded, with 352 youth successfully completing the program (Legal Aid Coordination Centre, 2024).

Despite these encouraging figures, the pilot revealed structural weaknesses that mirrored broader issues in Ukraine's justice reforms. Its conceptual link to restorative justice was often poorly understood by practitioners, many of whom viewed the program merely as a diversionary measure rather than a mechanism for restoring relationships between victims, offenders, and communities (Bondarenko, 2024). The scope of eligibility was also too narrow: participation was limited to juvenile *suspects* (not accused persons) and to misdemeanours or non-serious crimes, thereby excluding many youths, particularly after wartime amendments reclassified theft and robbery as serious crimes (Law No. 2117-IX, 2022). Furthermore, initiation depended exclusively on prosecutors and could occur only at late procedural stages, undermining its preventive and rehabilitative potential. The pilot also operated in a weak normative environment, as it lacked coordination with the newly enacted Law of Ukraine "On Mediation" (2021), which defined the status, qualifications, and ethical standards of mediators.

The 2024 National Program replaced the 2019 pilot and consolidated these developments within a coherent national policy framework. It aligned its terminology with both the Law on Mediation (2021) and the 2012 CPC, defining such key concepts as *restorative justice*, *resocialization*, *reintegration*, and *mediation agreement* (Ministry of Justice of Ukraine et al., 2024). Most importantly, it expanded eligibility to include both juvenile suspects and accused persons, as well as youth charged with certain serious offences - notably theft (Article 185) and

robbery (Article 186) of the 2001 Criminal Code. The program also broadened the range of initiating actors: restorative procedures can now be initiated not only by prosecutors but also by investigators, defence lawyers, or victims' representatives, and may occur at either the pre-trial or trial stage without statutory time limitations. In operational terms, the new framework formalized the interaction between probation services, legal aid centres, and mediation providers, integrating restorative interventions into the continuum of pre-trial and supervisory probation. It also authorized the involvement of two mediators in complex cases, strengthened the collection of social and psychological information on youth, and introduced monitoring and quality assurance mechanisms for mediation outcomes. These measures signalled a transition from a narrowly prosecutorial and diversionary scheme to a holistic restorative justice system, in which rehabilitation, accountability, and reconciliation are jointly pursued. Taken together, the 2024 Program represents not merely an administrative reform but a conceptual milestone in Ukraine's justice transformation.

At the same time, Ukraine's wartime experience demonstrates that juvenile justice and probation reforms were not driven only "from above" through legislation or national programs. Grassroots and practice-based adaptation also played a crucial role. After the full-scale invasion began in February 2022, the probation system was forced to adjust more quickly than the formal legal framework could evolve.

First of all, both probation officers and probation clients were displaced across Ukraine or fled abroad, while some clients remained in temporarily occupied territories. In these circumstances, remote communication became a practical necessity. Although remote supervision and service delivery were not contemplated by existing regulations, probation practitioners relied on digital tools to maintain contact with clients (Valsts probācijas dienests, 2022). This practice

was built on experience gained during the COVID-19 pandemic, when probation services had already begun experimenting with alternative methods of communication (Valsts probācijas dienests, 2022).

This wartime flexibility is significant for two reasons. First, it helped preserve continuity of support and supervision in conditions of mass displacement, occupation, and institutional disruption. Second, it revealed a broader potential for digital/remote probation services beyond the wartime context. The ability to maintain contact with clients in occupied territories or abroad suggests that use of these tools could later be used to improve access to probation services in remote rural areas, even in peacetime.

The same shift was seen in the use of social media and public-facing digital channels. Probation has used Facebook and official websites not only to disseminate information but also to make itself more accessible to clients (Valsts probācijas dienests, 2022). In practice, clients could and did contact probation authorities proactively through Facebook pages or through contact details published online (Valsts probācijas dienests, 2022). This reduced bureaucratic barriers and created a more direct channel of communication between probation practicioners and those under supervision. While such practices developed informally and unevenly, they show how wartime pressures encouraged a more flexible, client-oriented model of service delivery.

A few months into the war, Ukrainian probation also experimented with other adaptive measures. Given that many clients volunteered during the war, the probation service recognized that the scope of community service should be broadened to recognize this form (Valsts probācijas dienests, 2022). It also took steps to establish a 24/7 psychological hotline for both probation workers and clients (Valsts probācijas dienests, 2022). Although these and other measures require further study, they provide important signs of transplant's adaptation to societal needs.

These measures are significant beyond their immediate wartime function. They show that probation practice adapted to social realities more quickly than formal regulation. They also suggest an evolving understanding of rehabilitation and the probation officer's role beyond the originally transplanted model. In this understanding, rehabilitation is linked to civic participation, psychological support, and community resilience. Separately, the creation of psychological hotlines for probation staff reflects a recognition that probation officers are not merely case managers but professionals exposed to emotional strain who also require psychological support. These measures demonstrate how crisis-driven innovation may generate practical models for post-war reform.

Conclusion

The reform of juvenile probation in Ukraine since 2004 reveals a complex, multi-layered process shaped by competing logics of modernization, external influence, and domestic adaptation (Bieliaieva, 2016; Buhaiets et al., 2023; Husak, 2025; Ilchenko & Tkachenko, 2024; Kaminska, 2022; Krasyi & Levkonovych, 2025; Rusanova, 2012; Shportiuk, 2020; Vasilevych & Mykhailova, 2024). What began as a donor-supported experiment in juvenile justice gradually evolved into a component of a national probation framework. Yet, beneath this formal institutionalization lay persistent tensions between imported ideals and local realities.

Viewed through the dissertation's layered reception analysis, this reform did not unfold in a single step. Rather, the Canadian model was received through successive layers of the Ukrainian system: it first entered a historical environment shaped by punitive legacies, then moved through legislative translation, institutional embedding, professional interpretation, and finally practical implementation. This helps explain why the reform could appear coherent at the level of law and policy, while remaining uneven in operation. On one level, Ukraine's probation reform represents

a significant achievement. For the first time in its history, the state replaced the purely punitive logic of the Soviet criminal system with a rehabilitative and community-based approach. The creation of a unified 2015 Law on Probation, the introduction of pre-trial reports in 2016, and the institutional consolidation under the Probation Center from 2017 onward demonstrate clear progress in aligning Ukraine's penal policy with international standards. At the same time, the development of juvenile probation, stimulated primarily by Canadian cooperation, introduced the principles of individualization, education, and restorative justice into a system long accustomed to control and isolation. The opening of specialized juvenile probation centers, the establishment of social-psychological assessment procedures, and the gradual integration of restorative practices marked a historic break from the Soviet paradigm of detention-based correction.

However, these achievements must be viewed in light of the duality of reform trajectories that defined the process. European donors primarily pursued structural and procedural modernization, focusing on institution-building and legal approximation to EU norms. Canada, by contrast, concentrated on the normative and philosophical transformation of juvenile justice - promoting individualized rehabilitation and child-centred practice. This divergence created a reform that was, in many respects, coherent in form but fragmented in substance. Ukraine successfully adopted the external architecture of probation: laws, offices, and training programs, but struggled to internalize its underlying rehabilitative ethos. The integration of juvenile probation into a generalist probation law epitomizes this tension. Rather than developing a specialized youth justice subsystem, Ukraine opted for administrative simplicity and legislative coherence. This choice reflected both pragmatic constraints - limited financial and institutional capacity - and the dominance of European rather than Canadian reform logics after 2014. The result was a hybrid model: legally modern, internationally compliant, but conceptually shallow in its treatment of

youth. Juvenile probation exists as a procedural extension of adult probation rather than as a distinct developmental practice grounded in child psychology, social work, and restorative principles. In terms of layered reception analysis, this shows that the legislative and institutional layers of reception were stronger than the professional and practical layers. Ukraine was more successful in adopting the formal structure of probation than in embedding its deeper developmental and rehabilitative logic into routine youth justice practice.

Moreover, implementation challenges persist. Probation officers often lack specialized training in juvenile behaviour, and courts continue to approach sentencing with formalism rooted in Soviet legal culture. The rehabilitative ideals introduced through donor programs remain unevenly applied, contingent on local leadership, and vulnerable to political and budgetary fluctuations. While the establishment of restorative justice mechanisms in 2024 marked a notable step toward a more holistic system, these measures remain institutionally fragile and dependent on international support. Ultimately, the Ukrainian experience illustrates both the transformative potential and structural limits of externally driven justice reform. International cooperation - especially the dual influence of European institutionalism and Canadian humanism - enabled Ukraine to construct a probation system that did not exist twenty years ago. Yet, it also produced a model constrained by the very conditions of its creation: donor fragmentation, administrative dependence, and an enduring punitive legacy. The layered approach helps clarify this outcome. It shows that the later practical weaknesses of juvenile probation were not accidental or purely technical, but were linked to layers of reception that had not been fully transformed. Historical legacies, legislative design, institutional compromises, and uneven professional adaptation all accumulated and shaped the final form of the transplant. The evolution of juvenile probation thus

encapsulates the broader paradox of Ukraine's post-Soviet legal modernization - a state capable of adopting international norms in form, but still struggling to embody them in practice.

Chapter V. Preconditions and Typology of the Canadian–Ukrainian Juvenile Probation Transplant

Introduction

This chapter examines the transplantation of juvenile probation from Canada to Ukraine as a case study in contemporary legal borrowing and institutional adaptation. Having established the Canadian probation model and traced the development of juvenile justice institutions in Ukraine in the preceding chapters, the dissertation now turns to its central analytical question: how a rehabilitative legal institution developed in one legal system is translated into another with different legal traditions, institutional capacities, and socio-political conditions. More specifically, this chapter marks the point in the dissertation where the analysis moves from describing the separate Canadian and Ukrainian trajectories to examining how the transplant was received through different layers of the Ukrainian system. Legal transplantation has long occupied a central place in comparative law scholarship. Early work by Watson (1993) emphasized the mobility of legal rules across jurisdictions, while subsequent scholars highlighted the importance of institutional context, legal culture, and political economy in shaping transplant outcomes (Legrand, 1997b; Berkowitz, et al., 2003b; Teubner, 1998; Graziadei, 2009; Siems, 2018). Rather than viewing legal transplantation as either straightforward borrowing or inevitable failure, more recent scholarship conceptualizes it as a process of selective adaptation, negotiation, and institutional translation (Michaels, 2009; Frankenberg, 2013). This chapter builds on thùat body of literature by examining juvenile probation reform in Ukraine as an example of donor-supported institutional transfer in the field of criminal justice reform.

Although legal transplantation has been widely studied in areas such as constitutional law, commercial law, and development policy, comparatively little scholarship has examined the transplantation of juvenile justice institutions, particularly probation, in post-Soviet contexts.

Existing literature on Ukrainian criminal justice reform has primarily focused on democratization, penal reform, or international assistance more broadly (Kaminska, 2022; Yagunov, 2018; Husak, 2025). Studies of probation reform in Ukraine typically describe legislative developments or pilot initiatives but do not analyze them through the conceptual framework of legal transplantation or examine Canadian assistance as a structured donor-driven institutional transfer. By combining doctrinal analysis, comparative analysis, and Critical Discourse Analysis (the "**CDA**") of project documents obtained through the Access to information and privacy (the "**ATIP**") request, this dissertation situates the Canadian–Ukrainian juvenile probation reform within transplantation theory and contributes empirical evidence to debates about how legal institutions travel across jurisdictions.

This chapter relies on the same methodological framework introduced earlier in the dissertation. Doctrinal analysis is used to examine the legal structures that shaped the reception of probation within Ukrainian criminal justice law. Comparative analysis is used to identify institutional differences between the donor and receiving systems that affected the transplantation process. The CDA is applied to policy materials, reform documents, and project records to examine how probation reform was framed, justified, and implemented by reform actors. Within the broader layered reception analysis used in the dissertation, this chapter is especially concerned with the political-economic layer, the legal-family layer, and the classificatory layer of the transplant process. Its purpose is to show not only that context mattered, but through which layers of the receiving system the Canadian model was filtered and reshaped. Together, these methods allow the chapter to move from legal theory to institutional context and finally to the classification of the transplantation process itself.

The chapter proceeds in three stages. It begins with political and economic preconditions, focusing on how institutional capacity, governance conditions, and reform incentives shape what can realistically be implemented and sustained (Berkowitz et al., 2003a; North, 1990; Teubner, 1998). It then turns to the differences between civil-law and common-law legal families, explaining how sources of law, judicial organization, and the form of legal regulation affect the reception of transplanted institutions (Zweigert & Kötz, 1998; Damaška, 1986; Merryman & Pérez-Perdomo, 2007). Finally, the chapter classifies and describes the Canadian–Ukrainian juvenile probation reform as a transplantation process, identifying the actors, channels of transfer, and forms of institutional adaptation involved. The chapter therefore serves as the analytical bridge between the historical and doctrinal analysis presented earlier and the evaluation of reform implementation that follows. By situating juvenile probation reform within the broader literature on legal transplantation and institutional change, it provides the conceptual framework necessary to understand why the Canadian model could be introduced into Ukrainian law yet only partially reproduced in practice.

Context Matters: How Political and Economic Environments Shaped the Fate of Legal Transplantation

The success or failure of legal transplantation is shaped not only by the text of the transplanted law but by the political, economic, and social environment into which it is introduced. As scholars of comparative law emphasize, legal norms do not operate autonomously; they function within a broader socio-economic and political infrastructure that enables (or obstructs) their implementation. Watson's (1974) notion that legal rules can easily travel across borders without deeper structural adaptation has been extensively challenged by authors who insist that transplantation is conditional upon institutional compatibility and contextual capacity (Legrand, 1997b). As Berkowitz et al. (2003b) argue, reforms imported into states with weak governance

structures and limited administrative capacity tend to remain "on paper" because the receiving environment lacks the institutional and political conditions needed to internalize them. The Ukrainian case confirms this dynamic with particular clarity. Viewed through the dissertation's layered reception analysis, this section focuses primarily on the political and economic environment layer of reception.

From the moment Ukraine gained independence in 1991, the new state was beset by competing political elites, fragmented institutions, and a fragile economy struggling to transition from central planning to market principles. Political turnover was incessant: governments rose and fell with each new coalition, often amid accusations of corruption or elite capture. As Transparency International's Corruption Perceptions Index reveals, Ukraine persistently ranked among the most corrupt states in the world – 87th out of 90 countries in 2000, 134th out of 180 in 2008, 144th out of 176 in 2012, 142nd out of 175 in 2014, and still only 116th out of 180 in 2022 (Transparency International, 2022). Canada, by contrast, consistently ranked within the top 15 globally, illustrating the profound divergence in governance standards (Transparency International).

This instability reached a breaking point during the Revolution of Dignity in 2014. The ouster of President Yanukovych exposed staggering levels of financial mismanagement. Yet the Revolution did not create this crisis; it only made visible the institutional rot that had long undermined the effectiveness of public governance, including justice reform. What appeared as a sudden implosion in 2014 was, in reality, the inevitable exposure of a decades-long pattern of financial mismanagement and political irresponsibility that had shaped every stage of Ukraine's reform trajectory (Poshyvailo & Onyshko, 2020)

At the same time, the outbreak of armed conflict in the Donbas and the annexation of Crimea by Russia in 2014 further destabilized Ukraine's fragile political and economic system. These

events diverted public attention and fiscal resources away from social and institutional reform, including justice sector modernization. Yet it must be noted that the establishment of a national probation service had already been repeatedly delayed since 2008, long before the war began. The conflict merely compounded existing inertia. Political instability, lack of funding, and competing state priorities had already stalled implementation for years, and by 2014, the reform was largely symbolic – drafted in concept but lacking material support. When the 2015 Law on Probation was finally, it emerged less as a product of sustained strategic planning than as a formal requirement tied to Ukraine's commitments to international donors. Even donor-supported initiatives faced serious constraints: while international partners such as Canada, the EU, and the Council of Europe provided technical and financial assistance, there remained little transparency or public accountability regarding how these funds were allocated or used. As a result, the reform advanced in form but not in substance, illustrating how Ukraine's chronic governance deficiencies and crisis-driven policymaking undermined the practical transplantation of Western juvenile justice models. In terms of layered reception analysis, this shows that the political-economic layer was already unstable before the probation transplant reached the legislative and institutional layers. This instability helps explain why later reforms could be formally adopted but remained vulnerable in implementation.

From the early 2000s, Ukraine received substantial technical and financial support from international organizations, including the United Nations Development Programme (the "**UNDP"**), the Council of Europe, and bilateral donors such as Canada. The intention was to introduce community-based alternatives to incarceration and to align Ukrainian practice with European standards of rehabilitation and restorative justice. However, by the government's own admission, financial constraints became the constant refrain in parliamentary and committee

debates between 2008 and 2015. Officials argued that Ukraine "*did not have money*" to establish new institutions or hire qualified probation officers (Verkhovna Rada, Stenogram, 20 September 2013), even as millions of dollars were being provided by donors precisely for these purposes. The issue was not merely economic – it was systemic. Ukraine lacked transparent mechanisms for public accountability. No unified database or public reporting framework exists that would allow citizens or partners to track how international funds were allocated or whether reform projects achieved measurable results. The contrast with Canada could not be starker. In Canada, legislative innovation in juvenile justice evolved in tandem with institutional accountability: every reform was subject to public debate, independent evaluation, and parliamentary oversight. Fiscal transparency and policy continuity created a stable environment in which new ideas could take root and mature. In Ukraine, by contrast, reforms often served populist or symbolic ends. Legislation would be passed to satisfy donors or international observers, but implementation remained superficial, frequently disrupted by ministerial reshuffles or political crises. This pattern of "paper reform" became a defining feature of the post-Soviet Ukrainian legal landscape. Laws were enacted, pilot projects launched, and memoranda signed, yet the deeper institutional culture marked by bureaucratic inertia and political opportunism remained largely untouched. The repeated failure to translate external models into sustainable domestic practice reflected the deeper fragility of the Ukrainian state and its dependence on external funding cycles rather than internally driven governance reforms. This is why the layered approach is useful here: it makes clear that later institutional and professional weaknesses were not isolated problems, but were linked to earlier political and economic conditions that shaped the reception of reform from the outset.

Thus, Ukraine's experience between 1991 and 2022 illustrates how political instability, economic fragility, and weak accountability mechanisms can erode the effectiveness of legal

transplantation. International donors, including Canada, invested heavily in justice-sector modernization, yet the absence of transparent institutions and the dominance of short-term political interests prevented meaningful change. In Canada, juvenile justice reform unfolded within a stable and accountable system that nurtured long-term policy learning. In Ukraine, the same legal models were introduced into an environment of uncertainty, corruption, and fiscal crisis. Thus, the challenges of juvenile justice reform in Ukraine were not primarily conceptual or legislative – they were structural. The failure was not in the borrowed law but in the soil into which it was planted. The following chapter will explore how these political and economic preconditions shaped the effectiveness of Ukraine's probation and juvenile justice institutions.

Difference in Legal Families

Along with historical and political context, the deep structural characteristics of legal systems profoundly shape the trajectory and outcomes of reform. The transplantation of probation and juvenile justice models from Canada into Ukraine cannot be understood solely through the lens of political will or economic capacity; it must also be examined through the conceptual framework of legal families (Spamann, 2009, p.1813). Canada's common-law heritage and Ukraine's civil law system, further complicated by its Soviet administrative legacy, embody divergent legal cultures that have long produced distinct institutional logics, professional identities, and conceptions of justice. These differences have had a decisive influence on how each country developed its approach to juvenile justice and, later, on how Ukrainian institutions sought to adapt the Canadian model of probation. Geller (1994) emphasizes that the methodological difficulties of legal transplantation become most acute when transfers occur across fundamentally different legal families, because the underlying professional epistemologies, interpretive traditions, and institutional expectations are incompatible.

In the Canadian common-law tradition, the law has evolved through judicial interpretation, precedent, and the practical problem-solving of courts, probation officers, and community organizations. This framework fosters a high degree of professional discretion, decentralization, and collaboration between state and non-state actors. The juvenile justice system, as it developed in Canada throughout the twentieth century, reflected these features: its emphasis on rehabilitation, individualized sentencing, and community-based interventions grew out of a flexible, locally responsive institutional ecology (Smandych, 2005; Doob & Cesaroni, 2004). As Wise (1990) notes, common-law systems tend to generate legal doctrines through incremental practice-based reasoning, a mode of legal development that is not transferable into civil-law jurisdictions without significant modification because civil-law actors are socialized into codified, rule-bound legal logic.

Ukraine's legal trajectory could hardly have been more different. Rooted in the civil law tradition of codification and bureaucratic hierarchy, and subsequently moulded by the Soviet administrative model, Ukrainian law historically privileged formal compliance and centralized control over discretion and professional judgment. The judicial and prosecutorial systems were structured as vertical hierarchies within a broader apparatus of state administration, leaving little room for independent community-based actors or local experimentation. Even after independence in 1991, these structural patterns persisted, reinforced by bureaucratic inertia and limited institutional autonomy (Merryman & Pérez-Perdomo, 2007; Atamanov, 2019). The residual Soviet ethos continued to shape the everyday functioning of justice institutions: legal interpretation was formalistic, social problems were approached through administrative channels, and rehabilitation was often subordinated to control. Within such a context, probation could easily be reduced to a procedural formality rather than a substantive practice of reintegration. This dynamic aligns with

Deng's (2022) finding that legal transplants introduced into civil-law or post-socialist environments frequently undergo structural distortion because the host legal family's administrative-legal mentality reshapes the imported institution into conformity with bureaucratic and hierarchical traditions.

The transplantation of a Canadian probation model into this institutional environment thus required more than legislative drafting; it demanded a fundamental reconfiguration of professional culture and institutional relationships. In Ukraine, the lack of these enabling conditions repeatedly hindered reform, as will be discussed further in this Chapter. Although the 2015 Law on Probation was finally adopted, its implementation encountered significant challenges. The community networks, professional training systems, and accountability mechanisms that were needed to sustain probation were weak or absent. This outcome reflects Pierre Legrand's (1997) critique that legal rules cannot be meaningfully transplanted without the transfer of the "mentalité" or normative culture that gives them life. Legrand's position resonates particularly strongly in civil/common-law exchanges: he argues that civil-law jurisdictions are not simply different structurally but maintain distinct conceptual commitments regarding the nature of legal reasoning, thus making common-law practices (such as probation discretion and case-based adjustments) cognitively unintelligible to civil-law practitioners without extensive cultural transformation.

The contrast between Canada and Ukraine also illustrates how differences in procedural culture affect reform. The Canadian model, grounded in judicial discretion and local collaboration, assumes that social rehabilitation is achieved through relational, individualized engagement. Ukraine's administrative legal culture, by contrast, is predisposed to hierarchical command structures and standardized procedures. When Western experts and donor organizations introduced probation reforms in Ukraine, they implicitly assumed that these systems could operate within the

same normative framework as in common-law jurisdictions. In practice, however, Ukrainian institutions tended to interpret probation as an administrative mechanism for monitoring offenders rather than as a social service promoting reintegration. This conceptual slippage reflects a deeper mismatch between the transplanted model and the host legal culture (Zweigert & Kötz, 1998; Rose-Ackerman, 1999). As Feldman (1977) demonstrates in a different cultural context, transplantation efforts often stumble when reformers underestimate the cultural and legal-family based logics that shape institutional behaviour; he likens this to seeking a compatible donor organ, where formal similarity does not guarantee functional compatibility. Similarly, Wen-Chen Chang and other East Asian comparative scholars (referenced in Deng, 2022) show that civil-law legal families frequently absorb imported institutions only at the level of formal text, while preserving their original administrative logic in practice. This produces hybrid institutions that resemble the donor system in law but not in operation. This is what the layered approach helps to capture: the transplant may pass through the legislative layer successfully, yet still be reshaped by the legal-family layer before it reaches the level of institutional and professional practice.

The Ukrainian experience underscores a broader lesson in the legal transplantation field: transplantation is less about transplanting legal texts than about translating institutional meanings. The civil/common law divide does not make reform impossible, but it demands deliberate sequencing and capacity-building – starting with professional education, pilot programs, and the creation of protected spaces for discretion and innovation (Merryman & Pérez-Perdomo, 2007). Importantly, the Canadian project included capacity-building activities, such as professional training and pilot projects. However, as will be discussed further, these few attempts were not able to bring systemic change to the professional culture. Without such preparatory work, the adoption of a transplant risks becoming symbolic rather than transformative. Geller (1994) and Wise (1990)

both warn that without sustained adaptation work and contextual embedding, cross-family transplantation risks becoming a purely formal exercise, producing institutions that "look Western" only at the level of statutory wording while remaining functionally rooted in pre-existing legal culture.

The analysis of Canadian-Ukrainian transplantation demonstrates that legal transplantation across divergent legal families is inherently constrained by structural, epistemological, and professional asymmetries that are deeply rooted in Ukraine's civil-law tradition and further reinforced by its Soviet administrative heritage. These systemic differences were not peripheral but directly shaped (and ultimately limited) the transplantation of juvenile probation into Ukraine. Civil-law and common-law systems do not simply represent alternative doctrinal models; they embody distinct ways of producing, interpreting, and operationalizing legal norms, and these embedded divergences became highly consequential when Ukrainian institutions attempted to adopt a Canadian-based model grounded in judicial discretion, community engagement, and individualized assessment.

As Geller (1994) emphasizes, transplantation between contrasting legal families often results in methodological distortions because the receiving system inevitably reinterprets the transplanted rule through its own embedded assumptions. In Ukraine, this re-interpretation reduced Canadian-style juvenile probation to an administrative monitoring tool rather than a rehabilitative socio-legal practice, as will be discussed later in this chapter. Wise (1990) argues that legal patterns originating in common-law systems are inseparable from the interpretive logic of precedent, incrementalism, and discretionary reasoning, making their adoption into civil-law jurisdictions intrinsically problematic unless the underlying cognitive and institutional frameworks are transformed. This problem was acute in Ukraine, where judges, probation officers, and prosecutors trained in a

formalistic civil-law paradigm lacked the professional culture necessary to operationalize a Canadian-style rehabilitation-oriented model (Buhaiets et al., 2023, p. 69). Legrand's (1997) critique provides further explanatory power: legal rules from different legal families are not functionally commensurable because their meaning is inseparable from the "mentalité" and professional styles within which they operate. This insight helps explain why the Canadian emphasis on relational casework, community networks, and discretionary intervention "translated" poorly into Ukraine's hierarchical administrative system, where probation came to be understood through the lens of control rather than reintegration. Deng's (2022) empirical research on post-socialist jurisdictions confirms this dynamic, showing that legal institutions imported from common-law systems are systematically reshaped to conform to the hierarchical, codified, and bureaucratic logic of civil-law administrative structures. In Ukraine, this structural reshaping contributed directly to the drawbacks of juvenile probation reform, including limited professional autonomy, insufficient community involvement, and the dominance of surveillance over rehabilitation. Thus, the Canadian–Ukrainian case illustrates that differences in legal families were not abstract comparative-law distinctions; they were among the reasons why the transplantation of juvenile probation encountered substantive drawbacks. The transplantation was constrained not by legislative design alone but by entrenched divergences in legal mentality, institutional hierarchy, and interpretive culture that reshaped the imported model into a diluted, bureaucratized form.

Classification and Description of the Canadian–Ukrainian Juvenile Probation Transplantation Process

The transplantation of Canadian juvenile probation into the Ukrainian legal system represents a complex synthesis of voluntary partnership and externally induced necessity. While Ukraine's collaboration with Canada was voluntary in form, emerging from mutual initiative and professional respect, the broader impetus for introducing a probation system was shaped by

European conditionality. Following Ukraine's 2014 Association Agreement with the European Union, the state undertook binding commitments to harmonize its criminal justice legislation with EU standards, particularly regarding non-custodial sanctions, community supervision, and human rights compliance. Thus, while the Canadian–Ukrainian cooperation was driven by choice and prestige, the creation of probation itself was a legal and political necessity, a condition for European integration and compliance with Council of Europe recommendations. This configuration perfectly illustrates Watson's foundational argument that legal transplants often occur not through coercion but through structural opportunity, and that borrowing persists even across vastly different legal families when political or institutional conditions incentivize reception (Watson, 1993, pp. 21–27). Yet, the Ukrainian case also reveals the limitations of Watson's optimism: while legal ideas may travel easily, their internalization is constrained by local institutional cultures and ideological resistance, echoing Kahn-Freund's (1974) caution that the effectiveness of transplants depends on compatibility between donor and recipient contexts.

This dual dynamic – externally necessitated but voluntary in donor-recipient partnership – defines the nature of Ukraine's legal transplantation. On one level, the engagement with Canada was prestige-driven, aligning with Sacco's (1991) notion that societies often emulate foreign systems out of admiration for their legitimacy and perceived advancement (p. 401). Canada's juvenile justice framework, founded on the principles of rehabilitation, proportionality, and restorative justice, embodied precisely the kind of humane, democratic values Ukraine sought to adopt as it distanced itself from its Soviet penal legacy. On another level, Ukraine's broader probation reform was compliance-oriented, reflecting what Valderrama (2004) classifies as transplantation driven by expected efficacy and political incentives (p. 265). The establishment of probation was not merely an administrative choice but a Europeanization measure, essential to

demonstrate Ukraine's alignment with continental legal norms and its readiness for deeper political association with the EU. This interplay between admiration and necessity resonates with Graziadei's (2009) argument that ideological frameworks shape whether borrowed norms are internalized or resisted; imported juvenile probation principles were interpreted through Ukraine's post-Soviet ideological lens, where punitive justice historically dominated both legal thinking and societal expectations. Ideologies, as Graziadei (2009) stresses, "transform power into influence" (p. 738), meaning that Canada's rehabilitative narrative was persuasive precisely because it symbolized progressive, Western power structures, while EU conditionality made such ideological transformation institutionally viable.

The initiative was not externally imposed but rather originated from within Ukraine's own judiciary: in 2004, Ukrainian judges and justice officials themselves approached their Canadian counterparts, seeking to gain first-hand experience in the functioning of a modern juvenile justice system grounded in rehabilitation and restorative practice (CIDA, 2011, p.1). This proactive engagement underscored a genuine domestic aspiration for professional modernization and a desire to learn from Canada's well-established YCJA framework. Canadian juvenile probation offered a coherent model that united judicial discretion, social work, and individualized assessment – elements that Ukrainian practitioners found particularly relevant as they sought to move away from the rigid, punitive structures inherited from the Soviet penal system. Yet, while the partnership with Canada was voluntary and aspirational, its broader context remained structurally compelled by Ukraine's European integration agenda. The probation system's introduction was, in part, a legal and political prerequisite for harmonizing domestic criminal law with EU standards and Council of Europe recommendations. Thus, Ukraine sought out Canada not because it was coerced, but because Canada's probation philosophy provided an attractive, credible, and

internationally respected model that could simultaneously advance domestic reform goals and fulfil external European commitments. This blended motivation reflects Miller's (2003) observation that voluntary legal imports often occur during institutional crises, when policymakers seek stable external templates to accelerate state-building (pp. 845–849). Moreover, Kahn-Freund's insight that the risks of rejection depend on the degree of local compatibility becomes salient here: "the magnitude of this chance and of this risk determine the point on the scale at which we have to place the foreign law" (Kahn-Freund, 1974, p. 6). Ukraine's judicial elite perceived Canada's procedural model as sufficiently adaptable, yet the societal and institutional risks of rejection remained substantial due to deeply rooted punitive legacies.

According to Valderrama's (2004) typology, legal transplants can be motivated by prestige, anticipated effectiveness, and contextual urgency (pp. 265–268). The Canadian–Ukrainian juvenile probation reform exemplifies a transplant that reflects all three factors. First, Canada's reputation for progressive, humane, and community-based justice lent symbolic legitimacy to Ukrainian reforms and served as a benchmark of modernity. Second, the anticipated effectiveness of Canadian probation practices, particularly in reducing recidivism and promoting rehabilitation, resonated with Ukraine's post-Soviet need for practical and measurable change. Third, the reform addressed the contextual necessity of replacing defunct Soviet correctional structures with a system compatible with both international human rights obligations and EU integration requirements.

As Miller (2003) observes, voluntary transplants are often chosen because they offer ready-made frameworks for rapid modernization (pp. 845–849). In Ukraine's case, timing was important: the initiative took shape in the aftermath of political upheaval and systemic collapse, when institutional reconstruction became both an administrative and symbolic imperative. Ukrainian

judges and justice officials, recognizing their own system's deficiencies, actively sought Canadian expertise (CIDE Report, 2011, p.1). Although cooperation began earlier, the political rupture of 2004 served as a catalytic moment, dramatically accelerating reform efforts and creating a unique window in which foreign partnership acquired new urgency and political meaning. The cooperation that emerged during this period was thus not an act of passive reception, but a strategic pursuit of legitimacy and know-how, intensified precisely because the Orange Revolution reshaped expectations of democratic accountability and compelled the justice sector to demonstrate tangible reform initiatives. In this sense, the uptake of Canadian models aligned domestic reform ambitions with the expectations of European partners while simultaneously responding to new internal pressures for transparency, modernization, and institutional renewal.

However, as Kahn-Freund emphasized, not every object of transplantation is equally transplantable. Juvenile probation involves procedural norms - the category of law he calls a "highly organic species," sustained by a professional elite of judges and lawyers (as cited in Richardson, 2018, p. 103). This means that the reception of Canadian norms depended heavily on the willingness and capacity of Ukrainian legal professionals to internalize new practices, values, and interpretive habits. Procedural transplantation thus confronted entrenched ideological legacies, bureaucratic inertia, and differing professional identities between Canadian social workers and Ukrainian probation personnel. This is where the layered reception becomes visible: even after the model entered the legislative and institutional layers, it still had to pass through the professional layer, where the reform depended on the habits, training, and interpretive culture of those expected to apply it.

The transplantation unfolded through distinct, cumulative phases. The pilot stage (2004–2008), implemented in Melitopol and Ivano-Frankivsk with the CIDA support, introduced the

fundamental instruments of the Canadian model: pre-trial social inquiry reports, individualized rehabilitation plans, and community-based sanctions. The legislative stage (2008-2015) institutionalized these innovations through the 2015 Law on Probation, which formally codified probation as an alternative to incarceration. The procedural-institutional phase (2016–2017) followed, embedding probation mechanisms into the 2012 CPC and establishing a network of probation centers specifically designed for youth, reflecting Canadian influence. Finally, the cultural-consolidation phase (2017 onward) focused on training and professionalization, including the introduction of structured behavioural programs such as *Overcoming Aggressive Behaviour* and *Prevention of Psychoactive Substance Use* (Ivchuk, 2019, p. 18). Each phase deepened Canadian impact while gradually adapting imported practices to Ukraine's administrative and social realities.

At each stage, ideological mediation mattered. Graziadei's (2009) analysis underscores that action-oriented beliefs influence how legal ideas are translated into practice; Ukrainian legal actors selectively adopted elements consonant with their institutional preferences and rejected those perceived as in conflict with domestic legal culture. Social expectations and punitive traditions limited the extent to which rehabilitative approaches could penetrate judicial practice, demonstrating the friction Kahn-Freund predicted where borrowed norms clash with entrenched power structures.

Yet, as Watson (1993) famously argued, "a successful legal transplant – like that of a human organ – will grow in its new body and become part of that body" (p. 27). The Canadian "organ" did take root in Ukraine, but it grew into a distinct hybrid form. Instead of replicating Canada's specialized the YCJA, Ukraine opted for a unified probation framework that encompassed both adults and youth under the 2015 Law on Probation. This reflected practical adaptation rather than

conceptual resistance: limited funding, personnel shortages, and political instability necessitated a model that was efficient rather than differentiated. Moreover, the establishment of a probation system itself was a formal requirement of European donors and a precondition for aligning Ukraine's criminal justice framework with EU standards. The introduction of the probation service was, therefore, politically inevitable. However, Ukrainian legislators chose to integrate the juvenile component into the general probation law rather than creating a separate youth statute, thereby symbolically fulfilling their obligations under juvenile justice reform. The specific procedural guarantees for youth were instead incorporated into the 2012 CPC, embedding youth justice safeguards within the broader framework of criminal procedure rather than through a standalone legal regime. This divergence exemplifies Watson's notion of contextual adaptation, but it also highlights the constraints predicted by Kahn-Freund: the absence of compatible socio-legal infrastructure reduces the transplantability of specialized institutions. Juvenile probation, which in Canada relies on a network of social services, psychologists, and community programs, entered a Ukrainian environment with limited institutional readiness and insufficient financial support, as will be addressed in more detail later in this chapter. In layered terms, the Canadian model survived the transfer, but it was progressively reshaped as it moved through each receiving layer. By the time it reached the level of legal form in Ukraine, it had already been adjusted by political constraints, institutional compromises, and professional limits.

As Watson (1993) cautioned, "subsequent development in the host system should not be confused with rejection" (p. 27). This formulation aptly captures Ukraine's path. The reform evolved in response to local conditions. What emerged was neither a copy nor a deviation, but a negotiated hybrid. It achieved tangible transformation: a shift in legislative language, institutional design, and professional discourse toward rehabilitation and reintegration. The creation of

probation centers, the introduction of pre-trial reports, and the gradual professionalization of probation officers testify to the material success of the transplant. Yet, the reform's deeper cultural absorption remains incomplete, as will be demonstrated further. Judicial practice and public opinion still carry punitive legacies, and the unified framework blurs the developmental distinctions central to Canada's youth model. These shortcomings reflect scholarly warnings that transplanted laws may falter when institutional capacity, social norms, and ideological compatibility are weak. A law may be "well-designed" yet ineffective if the host system lacks administrative resources or if societal actors resist reforms, as earlier chapters discussed.

Still, the transplant's capacity to function, adapt, and persist signals a meaningful recalibration of Ukraine's penal philosophy. It stands as evidence that a legal transplant can succeed without full replication, provided it resonates with domestic reform needs and institutional capacities. While Canada supplied the normative framework and philosophy of rehabilitation, Europe provided the structural incentives and oversight that ensured its institutionalization. Together, they enabled Ukraine to move beyond its Soviet penal heritage toward a more humane, socially integrative justice model. The reform's significance lies not in perfect imitation, but in the creation of a contextually viable synthesis, where borrowed ideals were reinterpreted within Ukraine's own socio-legal realities. In this sense, the Canadian–Ukrainian juvenile probation transplant represents not a finished import, but a living legal hybrid, which continues to evolve.

Conclusion

This chapter has demonstrated that the transplantation of juvenile probation into Ukraine cannot be understood as an isolated or purely contemporary reform. Instead, it unfolded against a dense historical and institutional background that decisively shaped both its form and its limits.

The comparative analysis further demonstrated that differences in legal families, political organization, and economic conditions mattered not as abstract categories, but as concrete constraints on institutional reform. Juvenile probation was introduced into a system that lacked a comprehensive juvenile justice framework, specialized courts, and embedded rehabilitative practices. As a result, the Canadian model could not be transferred wholesale; it was necessarily filtered through existing institutional structures that favoured procedural compliance, administrative hierarchy, and formal legislative alignment over substantive individualization and community-based supervision (Berkowitz et al., 2003b; Siems, 2018; Kahn-Freund, 1974).

From the perspective of legal transplantation theory, this outcome reflects the distinction between the transfer of legal norms and the transfer of legal institutions (Watson, 1993; Legrand, 1997b; Graziadei, 2009). While the normative principles underlying probation (rehabilitation, reintegration, and community supervision) could be articulated in legislation and policy documents, their institutional realization depended on professional practices, organizational capacity, and legal culture that could not be created immediately through external assistance (North, 1990; Pistor, 2000). As Teubner (1998) suggests, transplanted legal concepts often undergo "irritation" when introduced into a different institutional environment, producing adaptation rather than replication. The Ukrainian experience illustrates this dynamic clearly: probation was formally integrated into the legal system, but its operational logic remained influenced by earlier administrative and custodial traditions (Solomon, 2015; Zorkina, 2017).

At the same time, the chapter shows that the transplantation did not fail. Rather, it took a hybrid and uneven form characteristic of donor-assisted institutional reform (Carothers, 2006; Dezalay & Garth, 2002). Canadian-supported initiatives functioned as mechanisms of conceptual and professional transfer, introducing new terminology, procedural tools, and rehabilitative

approaches into Ukrainian criminal justice practice. Training programs, pilot probation projects, and legislative drafting initiatives created what may be described as a "normative infrastructure" for probation – a shared understanding among reform actors that community-based supervision should replace detention as the primary response to youth offending (Doob & Cesaroni, 2004; Trotter, 1996; Bala, 1997). This confirms Watson's (1993) observation that legal borrowing often succeeds at the level of legal concepts before it succeeds at the level of institutional practice.

However, the transplantation process also revealed the limits of externally supported reform. Without parallel transformation of judicial specialization, inter-agency coordination, and community-based social services, probation remained partially dependent on the institutional logic of the existing criminal justice system. In this sense, the Canadian–Ukrainian juvenile probation reform process corresponds to what Berkowitz et al. (2003a) describe as adapted transplantation, in which imported institutions are modified to fit local constraints rather than reproduced in their original form (pp.189-190). The resulting model combined elements of Canadian rehabilitative philosophy with administrative practices inherited from Soviet legal governance, producing a system that was legally modernized but institutionally incomplete (Omarova, 2023; Kaminska, 2022).

The classification of the Canadian–Ukrainian transplantation process developed in this chapter therefore demonstrates that the reform operated simultaneously on multiple levels: as a transfer of legal ideas, as a process of institutional experimentation, and as a negotiation between donor expectations and domestic capacity (Twining, 2005; Merry, 2006). Legal transplantation in this context was neither purely voluntary borrowing nor externally imposed reform, but a collaborative process shaped by international assistance, domestic reform actors, and historically embedded institutional patterns. This confirms broader comparative-law insights that

transplantation outcomes depend less on the formal similarity of legal rules than on the compatibility of professional practices, governance structures, and legal culture (Legrand, 1997a; Siems, 2018; Frankenberg, 2010). Overall, this chapter confirms that juvenile probation in Ukraine is best understood as a historically conditioned legal transplant – one shaped by past experiences of centralized reform, constrained by institutional legacies, and gradually transformed through interaction with domestic legal culture and international assistance. The Canadian model functioned not as a blueprint to be replicated, but as a catalyst for institutional change whose effects were mediated by Ukraine's legal and administrative environment (Carothers, 2006; Berkowitz et al., 2003a).

These findings provide the necessary foundation for the next stage of analysis, which moves from conceptual and comparative evaluation to the practical operation of juvenile probation in Ukraine. The following chapter examines how the transplanted institution functions in practice, focusing on the structural limitations, professional challenges, and implementation gaps that continue to shape probation's role within the Ukrainian juvenile justice system.

Chapter VI. Structural Constraints and Practical Limits of the Canadian–Ukrainian Juvenile Probation Transplant

Introduction

The previous chapters demonstrated that juvenile probation in Ukraine emerged as a historically conditioned legal transplant, shaped by institutional legacies inherited from imperial and Soviet legal governance and by the selective reception of Canadian reform ideas. Building on that analysis, this chapter shifts from historical and comparative explanation to institutional evaluation. Its purpose is to examine how the transplanted model of juvenile probation has functioned in practice within Ukraine's legal system and to identify the structural and practical

factors that have influenced its implementation and effectiveness. In terms of the dissertation's layered reception analysis, this chapter moves to the final layers of the transplant process: the professional and practical layers. Earlier chapters examined the historical, political-economic, legal-family, legislative, and institutional filters through which the reform passed. The present chapter asks what happened once the transplant reached everyday operation within courts, probation services, and related institutions.

This chapter proceeds from a central insight in the legal transplantation literature: the adoption of legal institutions does not guarantee their functional integration (Watson, 1993; Legrand, 1997b; Berkowitz et al., 2003a; Siems, 2018). Comparative legal scholars have long emphasized that transplanted institutions are reshaped by existing administrative structures, professional cultures, and resource constraints (North, 1990; Teubner, 1998; Twining, 2005; Merry, 2006). Although these theoretical accounts explain why legal transplants often produce hybrid outcomes, empirical studies examining how specific justice reforms operate after transplantation remain limited, particularly in post-socialist youth justice systems. The layered reception analysis adopted in this dissertation provides a way of approaching that problem. It treats implementation not as a separate stage detached from earlier reform, but as the point where the effects of earlier layers become visible in practice.

Within this scholarly landscape, this dissertation occupies a distinct position. To date, no comprehensive academic study has examined the Canadian-supported juvenile justice reform project in Ukraine as a whole, and no research has analyzed the development of juvenile probation in Ukraine through the analytical framework of legal transplantation. Existing scholarship on Ukrainian criminal justice reform has focused primarily on procedural transformation, penal policy, and European integration (Solomon, 2015; Kaminska, 2022; Omarova, 2023), while

studies of probation reform have concentrated mainly on adult probation or legislative development (Yatsyshyn, 2010; Husak, 2025). By contrast, this chapter evaluates how the transplanted juvenile probation model operates in practice, drawing on legislative materials, institutional reports, and archival project documentation analyzed in earlier chapters.

Methodologically, the chapter relies on doctrinal analysis to examine the Ukrainian legal framework governing probation and youth justice practice, comparative analysis to assess how transplanted probation principles operate within Ukrainian institutions, and documentary and archival analysis of reform-project materials and institutional records to trace implementation. Critical discourse analysis (the "**CDA**") is used to examine how rehabilitative concepts are translated into judicial reasoning, probation documentation, and inter-agency practice. Together, these methods allow the chapter to evaluate juvenile probation as a functioning institutional transplant rather than merely a legislative reform.

The analysis unfolds in several stages. It begins by examining the legal and institutional structures through which juvenile probation was introduced into Ukraine, explaining how the transplanted probation model was embedded within the broader probation framework established after 2015. The chapter then turns to the structural and practical problems that emerged during implementation, demonstrating how the absence of a distinct juvenile justice legislative framework, the lack of specialized juvenile judges, and the persistence of formalistic judicial reasoning have affected the functioning of probation in youth cases. This institutional analysis is followed by a closer examination of probation practice itself, including the preparation of pre-trial reports, coordination between probation authorities and social services, and disparities between urban and rural regions. The discussion then considers how the conditions of martial law have further exposed institutional vulnerabilities within the juvenile justice system. Building on this

analysis, the chapter evaluates the overall effectiveness of the Canadian juvenile probation transplantation in Ukraine, assessing both its institutional achievements and its structural limitations. It concludes by identifying potential pathways for overcoming the barriers that continue to constrain the realization of probation's rehabilitative potential.

By moving from institutional design to institutional practice, the chapter demonstrates that the transplantation of juvenile probation in Ukraine produced a functioning but structurally constrained system. The findings reinforce a broader conclusion of the dissertation: legal transplantation in the field of youth justice depends not only on legislative reform or external expertise, but on the gradual development of professional specialization, inter-agency cooperation, and institutional trust necessary for community-based rehabilitation to operate effectively. This chapter, therefore, completes the dissertation's layered reception analysis by showing whether juvenile probation became a real rehabilitative practice in everyday operation or remained only partly implemented in practice.

Transplanted Legal and Institutional Structures of Juvenile Probation

The comparative examination of the transplanted legal and institutional frameworks of juvenile probation in Ukraine and Canada lies at the heart of assessing the effectiveness and depth of the transplantation process. While the preceding sections have explored how and why Canadian probation principles were introduced into Ukraine, this subsection turns to the 'what' – that is, what was actually transplanted, how it was legally structured, and to what extent it replicated or diverged from its Canadian model. In the terms used by Watson (1978), this comparison illustrates the "movement of rules" across borders without necessarily transferring the social context that originally gave them life. Conversely, in Kahn-Freund's (1974) analytical frame, the focus shifts to the degree of compatibility between the transplanted norm and the host environment, and

whether the institutional conditions in the receiving system provide the "chance" for acceptance or the "risk" of rejection (p.6). This analysis reveals a fundamental contrast between the integrated, specialized nature of Canada's youth justice system and the fragmented, hybrid form that evolved in Ukraine.

The comparison of the transplanted legal and institutional frameworks of juvenile probation in Canada and Ukraine exposes one of the central weaknesses of the transplantation process: the fragmentation and dilution of the original model's coherence. While Canada's YCJA represents an integrated system that unites philosophy, procedure, and institutional structure, Ukraine's model emerged as a fragmented adaptation, borrowing selected principles of the Canadian approach without replicating its legislative unity and logic. What was transplanted to Ukraine were primarily ideas and policies – rehabilitation, reintegration, proportionality – but not the structural and legal coherence that made those principles effective in the Canadian context. In Legrand's (1997b) terms, Ukraine received the "text" of the foreign law but not the "cultural practice" underpinning it, resulting in partial symbolic convergence without functional equivalence. This divergence highlights how selective or partial transplantation can result in the formal adoption of foreign norms without their substantive transformation of local legal culture. In layered terms, the transplant passed into Ukrainian law, but it was already being reshaped at the legislative layer before it could become a stable institutional practice.

Namely, no coherent or specialized legislative framework dedicated solely to youth was created in Ukraine. Instead, the reform was channelled through two general legal instruments that only partially incorporated youth-specific provisions. The 2015 Law on Probation was primarily aimed at adult offenders, with only a single article (Article 12) extending its application to youth. The law thus embedded juvenile probation within a general, non-differentiated structure,

prioritizing administrative efficiency over specialization. At the same time, the 2012 CPC introduced certain extended guarantees for youth, including mandatory legal representation, involvement of guardians or psychologists, and limitations on detention. It also remained a general procedural law rather than a dedicated juvenile act. This type of selective incorporation corresponds to what Ewald (1995) terms "incomplete legal transplantation," where the receiving system appropriates fragments of the model without restructuring its institutional architecture. This legislative configuration reflected a crucial transplantation choice: rather than establishing a unified Juvenile Justice Act akin to Canada's YCJA, Ukrainian legislators opted for pragmatic inclusion of juvenile elements within adult-oriented legislation. Thus, the model was filtered through the legislative layer in a way that narrowed its youth-specific character before it reached the institutional and professional layers. This decision shaped the entire course of the transplant's institutional development, setting the background against which all subsequent legislative and practical adaptations – probation centers, pre-trial reports, and rehabilitative programs – should be analyzed. The resulting framework, while progressive in intent, revealed the limits of adaptation within a transitional legal system where policy imitation took precedence over systemic reconstruction.

In Canada, the YCJA serves as a comprehensive and self-contained framework regulating all aspects of juvenile justice – from criminal responsibility and procedural safeguards to sentencing, probation, and reintegration. Sections 34 – 40 of the JCJA regulate pre-sentence reports, community supervision, and probation, explicitly grounding them in rehabilitative and restorative justice principles (Doob & Cesaroni, 2004, pp. 121–122). Youth probation officers function as part of interdisciplinary teams involving educators, psychologists, and social workers, emphasizing individualized support and long-term reintegration rather than punitive control. The

YCJA thus integrates the legal, procedural, and institutional dimensions of youth justice into a single coherent whole.

In comparative perspective, Canada's success lay in unifying all components of youth justice – law, policy, institutions, and professional practice – under a coherent philosophical and procedural framework. Ukraine, by contrast, achieved legislative compliance with international expectations but without building an integrated juvenile justice structure. Consequently, the rehabilitative essence of juvenile probation was diluted in translation. Adaptation to local conditions was so pronounced that an entire act was condensed into a single article.

Below, I will examine these structural divergences through a comparison of the specific legislative provisions regulating probation in both jurisdictions. By analyzing the legal architecture of the YCJA and the 2015 Law on Probation – together with the relevant articles of Ukraine's 2012 CPC– it will be possible to identify how and why Canada's cohesive youth justice framework transformed into a fragmented model in Ukraine, and what this reveals about the broader limitations of legal transplantation in transitional states.

In Canada, the YCJA represents a comprehensive legislative regime specifically tailored to youth justice, embodying the philosophy that young persons should be held accountable through measures that are "*fair, proportionate, and promote rehabilitation and reintegration*" (s.3(1)(b)). This act replaced the YOA and established a holistic system integrating community-based interventions, judicial discretion, and individualized accountability. Its foundational principles – rehabilitation, meaningful consequences, and the reduction of reliance on incarceration – directly shaped the Canadian model that informed Ukraine's reform trajectory through Canadian International Development Agency (the "**CIDA**") and Global Affairs Canada (the "**GAC**") projects between 2003 and 2017.

By contrast, 2015 Law on Probation constitutes a general statute encompassing both adult and juvenile probation within a single framework. Article 12, "Specific Features of Probation Concerning Youth," introduces limited provisions to accommodate the special status of youth, focusing on socio-educational support, cooperation with child welfare services, and reintegration (Buhaiets et al., 2023, p. 58). However, unlike the YCJA, the 2015 Law on Probation does not create a distinct youth probation system with specialized officers, institutions, or procedural safeguards. This structural unification, while administratively pragmatic, results in conceptual ambiguity: youth are subjected to procedures and supervisory methods designed primarily for adults, with minimal adaptation to their developmental needs. The legislative philosophy thus remains only partially aligned with the Canadian model, which clearly differentiates youth justice as an independent field grounded in child-specific criminology and restorative justice.

A critical distinction lies in the degree of procedural and institutional specialization. Under the YCJA, probation is embedded within a broader youth justice ecosystem that includes specialized youth courts, youth justice committees, and probation officers trained in child development and restorative approaches (YCJA, ss. 13–17, 40–42). The YCJA mandates that "*a youth justice court judge shall determine a sentence that is proportionate to the seriousness of the offence and the degree of responsibility of the young person*" (s.38(2)(c)), emphasizing developmental capacity and social reintegration as sentencing objectives (s.3(1)(b)(ii)). In contrast, Ukraine's 2012 CPC, although introducing judicial specialization under Article 31(10), limits such specialization to procedural authorization without corresponding structural reform. Judges handling juvenile cases remain part of general courts rather than operating within a distinct youth court system, and probation officers are not youth-specialized professionals (Rusanova, 2012, p. 253). This disjunction is especially problematic, according to Richardson (2018). He argues that

certain types of legal rules, particularly procedural ones, are deeply embedded in professional communities and therefore resistant to transplantation unless supported by specialist institutional cultures (p.103).

In the Ukrainian context, the absence of youth judges and probation officers prevented the emergence of such communities. While Canada attempted to address this gap through judicial personnel trainings delivered as part of the reform project, a limited number of training sessions was insufficient to cultivate the kind of enduring professional culture that supports stable interpretive practices, as will be illustrated later. Without practitioners whose day-to-day work is shaped by youth-specific expertise and shared professional norms, there is no stable interpretive community to absorb, internalize, and operationalize the transplanted rules. As a result, the reforms encountered structural resistance: they remain textually adopted but are not meaningfully implemented because the actors responsible for applying them do not share the specialized knowledge, values, or practices on which the Canadian model relies. Consequently, the Ukrainian model reproduces elements of the Canadian philosophy without replicating the institutional architecture that enables its practical realization. This illustrates how the institutional layer and the professional layer are closely connected: weaknesses at the institutional level narrowed the possibility of developing a professional community capable of carrying the transplant further.

Further, the Canadian system's procedural safeguards extend deeply into each stage of the process. For instance, the YCJA guarantees the presence of legal counsel, confidentiality of youth records (s.119), and mandatory consideration of extrajudicial measures before formal proceedings (s.4). These measures reflect international obligations under the UN Convention on the Rights of the Child of 1989 (the "**UNCRC**"). The 2012 CPC made significant strides toward similar guarantees. Chapter 38 introduced mandatory defence counsel, psychological assessment (Art.

486), and the possibility of diversion through educational measures (Art. 497), representing substantial progress over the Soviet-era punitive framework. Nonetheless, while the 2012 CPC embeds procedural safeguards, it lacks the operational mechanisms found in the Canadian model – such as structured diversion programs, community justice committees, and restorative conferencing – that would ensure consistent implementation of rehabilitative principles (Doob & Cesaroni, 2004, p. 122).

In sentencing philosophy, both frameworks reflect a shared commitment to proportionality and individualized response, but their application differs in scope. The YCJA's sentencing provisions prioritize non-custodial options, explicitly stating that custody should be reserved for serious violent offences (s.39(1)). Also, a youth sentence must not result in a punishment greater than that of an adult in similar circumstances (s.38(2)(d)). Probation orders under the YCJA are individualized, often accompanied by rehabilitative conditions such as counselling, education, or community service (s.42(2)(k)). 2015 Law on Probation parallels this approach in Article 4, defining probation's purpose as "prevention of reoffending and correction of offenders through socio-educational measures". However, the lack of differentiation between adult and juvenile probation limits its ability to reflect the developmental and rehabilitative nuances central to youth sentencing under the YCJA.

The YCJA also creates a continuum of rehabilitative probation ranging from pre-charge diversion to community supervision, anchored in the principle of least restrictive intervention. In Ukraine, by contrast, probation fully operates only as a post-sentencing mechanism within a fragmented justice system. While the integration of pre-trial probation through 2012 CPC and the 2015 Law on Probation represents progress, juvenile probation remains formal and dysfunctional

within the broader penal framework (Buhaiets et al., 2023, pp.68-69). This reflects a partial transplantation.

Institutionally, the YCJA entrusts implementation to provincial ministries and community organizations, enabling localized, multidisciplinary responses. Probation officers in Canada function as both supervisors and facilitators of social reintegration, guided by principles of "*fairness, proportionality, and restorative engagement*" (YCJA, ss. 2–3). Ukrainian probation officers, by contrast, remain primarily administrative enforcers, tasked with monitoring compliance and preparing reports rather than engaging in proactive social work (Yagunov, 2018, p. 209). Although Article 12 of the 2015 Law on Probation envisions cooperation with social services and schools, the absence of specialized training and dedicated youth probation departments limits its practical effectiveness.

Critically examined, the Ukrainian model demonstrates a formal rather than functional transplantation. The legislative architecture borrows extensively from the Canadian conceptual framework – rehabilitation, proportionality, diversion – but adapts these concepts into a unified, not-specialized structure that prioritizes administrative feasibility over systemic coherence. The result is a hybrid model that meets international formal standards while lacking the institutional density and cross-sectoral coordination. The transplantation, therefore, succeeded at the normative level – embedding rehabilitative justice into Ukrainian law – but remains incomplete at the operational level, where systemic specialization, interagency cooperation, and resource allocation are essential for sustaining the rehabilitative philosophy in practice.

Whereas Ukraine's 2016 amendments to the 2012 CPC introduced probation procedurally, the Canadian framework embeds probation as a central axis of youth justice, governed by distinct legal standards, professional specialization, and multidisciplinary collaboration. Under sections

34-40 of the YCJA, the preparation of pre-sentence reports is not an optional procedural supplement but a statutory precondition for individualized sentencing, reflecting a commitment to the principle of proportionality and the child's best interests. These reports are prepared by specialized youth probation officers trained in developmental psychology and restorative practices, often supported by teams of social workers, psychologists, and educators. This multidisciplinary structure ensures that judicial decision-making is informed not only by legal factors but by a comprehensive understanding of the child's psychological state, family dynamics, and prospects for reintegration (Dood & Cesaroni, 2004).

In Ukraine, by contrast, the 2016 amendment introducing Article 314-1 2012 CPC institutionalized pre-sentence reporting but, again, did so within a procedurally uniform framework that did not create youth-specific probation officers or methodologies. The reports themselves, while mandatory for youth, are prepared by general probation staff following guidelines issued by the Ministry of Justice in 2017 (Ministry of Justice, 2017). These reports, though modelled in part on Canadian social inquiry reports, remain constrained by institutional capacity, limited interagency cooperation, and a predominantly legalistic orientation. As will be illustrated further, courts tend to treat them as formalities rather than tools for tailoring rehabilitative measures. This practice stands in sharp contrast to the Canadian system, where pre-sentence reports serve as a central instrument of individualized justice and often determine whether a youth receives community-based supervision, restorative programming, or a custodial disposition. This is another example of layered reception analysis: a rule may be borrowed at the legislative layer, but if the institutional and professional layers are not transformed with it, its practical meaning changes.

Equally telling is the divergent treatment of custodial measures. The YCJA explicitly restricts the use of custody, requiring, under section 39(1), that it be imposed only when no

reasonable alternative is available, and emphasizing reintegration and proportionality as guiding principles. Canadian jurisprudence has consistently reinforced this statutory mandate, ensuring that probation and community sanctions remain the default response for youth offences (see for example, *R. v. B.W.P.* [2006] 1 S.C.R. 941). By contrast, although Ukrainian law implements this restriction on paper – particularly through Article 492 of the 2012 CPC, which makes detention of youth an exceptional measure – the implementation in reality remains inconsistent. Sentencing practice continues to reveal a residual punitive bias, with courts often defaulting to custodial or semi-custodial sanctions rather than community-based interventions (Buhaiets et al., 2023, p. 59). The absence of a coherent, youth-specific correctional and supervisory infrastructure further limits the judiciary's capacity to apply non-custodial measures effectively.

The contrast is also evident in the institutional configuration of probation services. In Canada, the administration of youth probation falls under provincial jurisdiction, allowing for contextualized and community-driven approaches. Probation officers are embedded within local justice systems and operate in close coordination with schools, mental health providers, Indigenous justice programs, and community organizations. This decentralization ensures responsiveness to local needs and facilitates restorative outcomes that are culturally and socially meaningful. Ukraine, conversely, has retained a centralized administrative model under the Ministry of Justice, with the State Institution "Probation Center" overseeing all national and local operations. Although specialized juvenile probation centers were introduced beginning in 2017 – with notable progress in major urban regions such as Kharkiv, Lviv, and Odesa – they remain administrative subdivisions of the general system, without statutory autonomy or independent funding. Their mandate and practices, while inspired by Canadian models, are limited by institutional dependency, insufficient

training, and uneven cooperation with educational and social protection agencies (Buhaiets et al., 2023, p.67).

Furthermore, Canada's youth probation is conceptually integrated with restorative justice mechanisms, which are not treated as separate or pilot initiatives but as foundational principles embedded in the statute itself. Sections 4(c) and 6 of the YCJA institutionalize extrajudicial and restorative measures as first-line responses to youth offending. Probation officers are therefore not merely agents of supervision but facilitators of reconciliation and rehabilitation, working within a framework that prioritizes community engagement and victim-offender dialogue (Bala, 2015; Doob & Cesaroni, 2004; Department of Justice Canada, 2017; Latimer, Dowden, & Muise, 2005).

In Ukraine, by contrast, restorative practices were introduced much later and largely outside the statutory framework – initially through EU funded donor-supported pilot projects (2019–2023) and only formalized through the *2024 National Restorative Justice Program*. While this development marks significant progress, it underscores a decade-long gap between legislative reform and its functional embedding into the justice process. In Canada, restorative practice operates as a default; in Ukraine, it remains a developing supplement.

A further point of divergence lies in professional specialization. The Canadian system mandates structured training and certification for youth probation officers, who are equipped to assess criminogenic risks, cognitive maturity, and psychosocial vulnerabilities using standardized tools such as the Youth Level of Service/Case Management Inventory. In Ukraine, no equivalent system of accreditation exists. Probation staff, though often well-trained in general criminal supervision, lack child-specific psychological and social work training. As a result, assessments tend to overemphasize and evaluate potential to comply rather than rehabilitate and reintegrate.

Nevertheless, despite these asymmetries, the comparison should not obscure the scale of Ukrainian-Canadian shared achievement. Within two decades, Ukraine has transitioned from a punitive, Soviet-inherited system to a framework that legally recognizes the centrality of rehabilitation, proportionality, and individualized justice. The procedural integration of probation, the introduction of specialized juvenile centers, and the institutionalization of restorative justice collectively represent substantial normative progress. Yet, when measured against the Canadian model, Ukraine's system still operates at the level of partial functional equivalence. It has transplanted the *form* of Canadian probation – its language, structure, and objectives – but not yet the *substance* – the systemic specialization, cross-sectoral cooperation, and cultural internalization of the rehabilitative ideal that define Canada's youth justice framework.

In sum, while both systems are formally aligned in their commitment to rehabilitation and community reintegration, they diverge sharply in implementation. The Ukrainian framework represents an incomplete transplantation, which successfully internalized the normative architecture of the Canadian approach but continues to struggle with the institutional, professional, and cultural transformation necessary to make probation a genuinely child-centred practice rather than a procedural formality within the criminal process (Buhaiets et al., 2023, pp.66-67). In terms of the dissertation's layered reception analysis, the transplant was strong at the level of legal language and formal objectives, but weaker at the institutional, professional, and practical layers that were necessary to make those objectives real.

Structural and Practical Problems in the Transplantation

Absence of a Distinct Legislative Act on Juvenile Justice and Its Impact on the Transplanted Probation Framework

A fundamental structural weakness of Ukraine's juvenile justice reform lies in the absence of a distinct legislative act devoted exclusively to youth. Unlike Canada, Ukraine has never enacted

a specialized *Juvenile Justice Act* or comparable statute that would consolidate the principles, procedures, and institutional arrangements for dealing with youth in conflict with the law. Instead, the relevant provisions are dispersed across the 2012 CPC and the 2015 Law on Probation, both of which primarily address adult offenders. As a result, juvenile justice in Ukraine operates not as an autonomous legal subsystem but as a derivative of the general criminal justice framework, which inevitably dilutes its developmental and rehabilitative orientation.

This structural absence is not merely a legislative deficiency but a transplantation problem. The unavailability of a unified juvenile code reveals how the legal transplant – Canada's integrated model of youth justice – was only partially absorbed into Ukraine's domestic system. As comparative law theory suggests, the success of a transplant depends not solely on the importation of rules, but on the ability of the receiving system to replicate the original law's institutional and philosophical coherence (Watson, 1974; Teubner, 1998). Without a legislative core to sustain the transplant, the borrowed ideas – rehabilitation, proportionality, reintegration – remained detached from the legal and professional infrastructure that gives them meaning. In this sense, Ukraine's experience exemplifies a "form-over-function" transplant, where the symbolic adoption of progressive norms substitutes for their systemic embedding. Layered reception analysis helps explain this more precisely: because the transplant was only partly consolidated at the legislative layer, later layers of reception had to operate without a clear youth-specific foundation.

This stands in stark contrast to comparative international practice. In Finland, the *Act Relating to Youth* (1943); in Scotland, the *Social Work (Scotland) Act* (1971); in Austria, the *Juvenile Court Act* (1989); in Germany, the *Juvenile Courts Act* (1953); in the Czech Republic, the *Act on the Responsibility of Youth for Criminal Offences and on Juvenile Justice* (2004); and finally in Canada, the *Youth Criminal Justice Act* (2003) each codify a distinct juvenile justice framework

grounded in welfare principles, specialization, and restorative practice. These jurisdictions recognize that youth require differentiated legal treatment, specialized institutions, and a coherent set of norms that reflect their psychological development and social vulnerability.

In Ukraine, however, despite the steady incorporation of the reforms, these principles remain fragmented across general legal instruments (Korenyuk, 2019, p.9). From a transplantation perspective, this fragmentation reflects what Kahn-Freund (1974) warned against: the assumption that legal norms can operate effectively outside the institutional contexts that produced them. A transplant stripped of its institutional "soil" (the specialized youth institutions and professionals that sustain it) cannot reproduce the intended outcomes. In Ukraine, the juvenile probation model was inserted into a general probation law designed primarily for adults, depriving it of the specialized framework that underpins Canada's YCJA. The result is a partial convergence of formal principles but a divergence in operational logic: the form of rehabilitation exists, but its institutional conditions are missing.

Efforts to remedy this gap have been sporadic. In 2018, UNICEF experts and the Interdepartmental Coordinating Council on Juvenile Justice in Ukraine prepared a draft *Law on Justice for Youth*, intended to codify existing procedural and institutional developments into a single legislative act. Yet, as of 2025, the draft has not been enacted, leaving the legal system without a comprehensive framework to regulate the status, rights, and treatment of youth within criminal proceedings (Korenyuk, 2019, p.9). This legislative void perpetuates inconsistencies in policy implementation and weakens the coherence of the transplanted model, where probation and restorative justice remain administratively and normatively disconnected. The stalled progress of this initiative illustrates a broader paradox of transplantation: while external models often inspire reform, their internalization requires domestic political will and institutional maturity. As Legrand

(1997) contends, transplanted law is not received as a "neutral technique" but filtered through the recipient's interpretive traditions, administrative habits, and ideological preconceptions. In Ukraine's case, the failure to codify a distinct juvenile law reflects not a lack of awareness but a persistence of inherited legal rationalities that prioritize procedural uniformity over substantive differentiation. This is exactly the kind of outcome that layered reception analysis is meant to capture: earlier legal and administrative habits continued to shape the legislative layer, limiting how far the transplant could develop.

The dual origin of Ukraine's probation reform further compounds this problem. Ukraine's juvenile probation regime evolved as a hybrid system shaped by two parallel but only partially compatible legal paradigms. The European dimension introduced institutional formalization and general probation structures, while the Canadian transplant provided the substantive rehabilitative content. However, without a single legislative act capable of unifying these strands, the system remains divided. Ultimately, the Ukrainian experience demonstrates that without a distinct legislative act to consolidate the transplant, even the most well-intentioned reforms risk remaining 'transplants without roots.' (Yagunov, 2018, p. 210) The following section explores how this structural duality manifests in judicial discretion, proportionality, and sentencing practices, where Canada's integrated youth justice model contrasts sharply with Ukraine's fragmented and procedurally constrained approach.

Absence of Specialized Juvenile Judges and Its Impact on the Effectiveness of the Transplanted Model

One of the most persistent institutional deficiencies undermining the transplantation of the Canadian juvenile justice model into Ukraine lies in the absence of a fully specialized juvenile judiciary . Although Ukraine's 2010 Judiciary Law formally introduced the category of "judges authorized to conduct criminal proceedings involving youth," the system falls short of establishing

a distinct corps of juvenile judges comparable to Canada's youth court judiciary. The Ukrainian approach represents a nominal specialization – an administrative allocation mechanism rather than a true professional and functional differentiation. Under the Ukrainian framework, specialization is regulated by Article 18 of the 2010 Judiciary Law, which provides that local and appellate general courts should designate judges authorized to handle cases involving youth. These judges are selected from among the sitting members of the court by the assembly of judges, based on nominations submitted by the court chair or any judge of the same court if the chair's proposal is not supported. They are appointed for a fixed term of up to three years, with the possibility of reappointment. The number of such judges is determined separately for each court, depending on caseload and jurisdiction. To qualify, a judge must have at least ten years of judicial experience, prior work in criminal proceedings, and high professional and ethical standards. If no judge in a given court meets the ten-year requirement, the most senior judge may be appointed to the role (Buhaiets et al., 2023, p. 68). From the perspective of the dissertation's layered reception analysis, this problem is situated at the intersection of the institutional and professional layers. The legislative layer formally recognized youth-sensitive adjudication, but the institutional and professional layers were not developed enough to turn that formal recognition into a specialized judicial practice.

However, in practice, this "specialization" remains superficial. As one district judge explained in an interview, the court's case distribution system does not provide for judges who work exclusively with youth. Instead, general criminal judges handle all categories of cases, including those involving youth, and cases concerning youth are merely assigned to the most senior or available judge within the court. The interview reveals that even these nominally "authorized" judges frequently retire, and their positions are filled by less experienced colleagues without

formal training or specialization in child-sensitive adjudication (Buhaiets et al., 2023, p. 69). This reflects a systemic failure to institutionalize expertise in juvenile justice – a failure that undermines the rehabilitative and individualized philosophy embedded in Ukraine's reformed 2012 CPC and 2015 Law on Probation.

Even more concerning is the persistence of adult-oriented judicial logic in cases involving youth. As one criminal defence lawyer working with youth clients observed, the absence of genuine specialization results in courts mechanically replicating the procedural and rhetorical formats used in adult criminal cases:

> "There is no juvenile specialization in our courts. This is clearly evidenced by the procedural documents prepared by prosecutors, such as indictments in cases involving youth, and by judicial decisions available in the public register of court rulings. These decisions are direct copies of those issued in adult cases – the same format is applied to juvenile offenders without consideration of the principles of child-friendly justice. Judges do not delve into the fact that the accused is a child; they apply to them the same procedural instruments as to adults. In some cases, they note that the offender is a minor, but as we know, judges form their conclusions based on internal conviction. And this internal conviction is not oriented toward the child. It is oriented toward concluding the case as quickly as possible – issuing a judgment, closing the proceedings, and sending the case to the archive. None of the judges or process participants seem concerned about the child's future" (Buhaiets et al., 2023, p. 69).

This testimony reveals a deeper structural disconnect between the transplanted rehabilitative philosophy and its domestic operationalization. In transplantation terms, the Canadian model's ideological and institutional "DNA" did not reproduce faithfully in the Ukrainian host environment. In Ukraine, judges authorized to adjudicate juvenile cases receive no regular or specialized training in child-centred justice, developmental psychology, or restorative practices training (Buhaiets et al., 2023, p. 68) that in Canada constitutes the backbone of the youth justice system's rehabilitative ethos. This institutional gap prevents the judiciary from internalizing the normative foundations of the transplanted model. Consequently, the transplant operates as a form of legal mimicry (Legrand, 1997b): a replication of the external linguistic and procedural forms of

Canadian justice without the interpretive practices that give them meaning. What results is not the integration of Canadian rehabilitative principles but their procedural imitation – formal adherence to progressive terminology without corresponding shifts in judicial reasoning or courtroom practice. The courts, constrained by caseload pressures and guided by procedural efficiency rather than individualized assessment, reproduce the logic of adult criminal justice under a juvenile label. In effect, the transplantation has yielded a cosmetic convergence rather than a functional one – its vocabulary has entered Ukrainian law, but its normative ethos has not.

By contrast, Canada's YCJA institutionalizes judicial specialization at both structural and normative levels. The YCJA envisions youth courts as distinct judicial entities, staffed by judges trained specifically in youth justice principles, child development, and restorative practices (YCJA, s. 13; Doob & Cesaroni, 2004, pp. 117–118). These judges exercise discretion within a legislative framework that explicitly requires consideration of the offender's age, maturity, background, and potential for rehabilitation (YCJA, ss. 3, 38). Moreover, judicial decision-making under the YCJA is complemented by an integrated network of probation officers, youth workers, and social service professionals who supply individualized assessments to inform sentencing. This multidisciplinary model ensures that the rehabilitative logic of the statute permeates every stage of the process.

Ukraine's model, by contrast, achieves only the appearance of specialization. While Article 31(10) of the 2012 CPC mandates that cases involving youth be heard by authorized judges, the absence of a separate judicial corps, specialized training, and institutional culture renders the provision largely symbolic. The three-year appointment cycle, combined with minimal oversight and no dedicated professional development requirements, precludes the formation of sustained expertise or institutional memory. As a result, the judiciary's approach to youth remains

fragmented and formalistic – marked by procedural compliance rather than substantive engagement with the child's circumstances.

In essence, Ukraine's transplantation of the Canadian rehabilitative model was structurally incomplete. The formal adoption of youth-sensitive procedures and the nominal creation of "authorized judges" did not produce a functionally specialized judiciary capable of translating these norms into practice. The Ukrainian courts continue to operate within the logic of adult criminal justice, where expediency outweighs individualization, and the child's welfare remains secondary to procedural closure. Without a permanent, specialized juvenile judiciary comparable to the Canadian youth court system, Ukraine's reforms risk remaining performative, fulfilling international and donor expectations on paper while failing to realize the rehabilitative objectives that inspired the transplantation in the first place. Ultimately, this partial absorption underscores a broader truth of comparative law: successful transplantation requires not only legislative adaptation but the cultivation of interpretive communities capable of sustaining the borrowed norm in practice. From the perspective of layered reception analysis, this section shows that the transplant remained weak because the institutional and professional layers were not transformed deeply enough to convert formal youth-sensitive rules into a functioning rehabilitative judicial practice.

Formalistic Judicial Approach in Juvenile Cases

A persistent problem that undermines the rehabilitative objectives of Ukraine's juvenile justice reform is the judiciary's formalistic approach to cases involving youth. Despite the introduction of individualized assessment mechanisms such as pre-trial probation reports under Article 314-1 of the 2012 CPC, many courts continue to adjudicate juvenile cases within an adult-oriented legal and moral framework. This tendency manifests in the judicial reasoning, sentencing

practices, and interpretation of procedural safeguards, where judges routinely treat youth as fully mature offenders and disregard the developmental and social dimensions central to child-friendly justice. In the dissertation's layered reception analysis, this problem appears primarily at the practical layer, but it also reflects weaknesses in the professional layer. The legal mechanism was formally introduced, yet in judicial practice it continues to be filtered through older habits of reasoning that are rooted in adult criminal justice.

The most illustrative example of this trend is the recent Supreme Court decision of 15 September 2025 (Case No. 720/1802/22), which involved four defendants – three adults and one youth – convicted under paragraph 4 of Article 189 of the 2001 Criminal Code (extortion accompanied by violence dangerous to life or health, committed during martial law). The district court of Novoselytsia sentenced the juvenile defendant to five years' imprisonment, while the adult co-offenders received only slightly higher sentences of five years and six months. During trial and appeal, the minor's defence repeatedly emphasized that the lower courts had failed to consider the pre-sentence probation report, which contained a positive characterization of the minor, evidence of compensation of damages, absence of prior convictions, and confirmation from the victim that he held no claims (Case No. 720/1802/22). The report explicitly recommended non-custodial rehabilitation measures, in line with Article 104 of the 2001 Criminal Code and the rehabilitative aims of the probation system. The defence also argued that the trial court had entirely omitted consideration of the accused's age, maturity, and educational status – factors that, under both Ukrainian law and international standards (UNCRC, General Comment No. 10), should be central to sentencing youth. However, both the Chernivtsi Court of Appeal (Decision of 19 February 2025) and the Supreme Court dismissed these arguments, affirming the lower court's judgment and rejecting the defence's request to apply Articles 75 and 104 of the 2001 Criminal Code (conditional

release with probation supervision). In its reasoning, the Supreme Court reiterated its entrenched position that:

> "With respect to the arguments concerning the courts' failure to consider the data contained in the pre-trial report prepared by the probation authority, the Supreme Court has repeatedly emphasized that such a report is of a **recommendatory nature** and **may be considered** by the court only in conjunction with other evidence, which the lower court – whose findings were endorsed by the appellate court – did." (Supreme Court of Ukraine, Criminal Cassation Court, Judgment of 15 September 2025, Case No. 720/1802/22).

Without any explanation of why the report was not taken into account, the Court simply formalistically rejected it on the ground that it has a "recommendatory character." This reasoning reflects a mechanical, box-ticking approach that empties the probation report of its intended substantive purpose – to guide the court toward individualized, rehabilitative sentencing. This pronouncement is deeply revealing. Ten years after the adoption of the 2015 Law on Probation, which explicitly embedded pre-trial reports as an instrument to support individualized, rehabilitative sentencing, the highest judicial authority in the country reaffirmed a discretionary interpretation of this mechanism. The pre-trial report, designed as a mandatory procedural safeguard for youth, was reduced to an optional advisory document. The Court's reasoning effectively neutralized the binding force of Article 314–1 of the 2012 CPC, which requires courts to order and consider such reports before sentencing. The case also highlights the deeper cultural inertia within Ukraine's judiciary. Despite the defendant's youth status and the absence of aggravating factors, the courts opted for a custodial sentence of the statutory maximum for the offence of such gravity. No discussion in the sentence was devoted to developmental maturity, psychological vulnerability, or reintegration prospects. The judicial logic was dominated by formal legality and proportional retribution, rather than by rehabilitative or restorative aims. Viewed through layered reception analysis, this is a clear example of how a transplant can survive at the

legislative layer but lose much of its meaning at the practical layer. The rule exists, but the way it is used in everyday adjudication deprives it of its rehabilitative function.

This outcome becomes even more striking when contrasted with Canadian jurisprudence on youth sentencing, particularly the Supreme Court of Canada's decision in *R. v. I.M.*, 2025 SCC 23. In that case, the Court considered whether a 17-year-old convicted of second-degree murder could be sentenced as an adult under section 72 of the YCJA. The facts were grave: I.M., together with several older co-accused, participated in a planned robbery that resulted in the fatal stabbing of another youth. Although I.M. was the youngest participant, the trial judge imposed an adult sentence of life imprisonment after finding that the presumption of diminished moral blameworthiness was rebutted. The Supreme Court of Canada upheld the sentence but engaged in a detailed, transparent analysis of the youth's developmental maturity, degree of participation, social background, and prospects for rehabilitation. Importantly, the Court reaffirmed that under section 72(3) of the YCJA, a sentencing judge "shall consider the pre-sentence report" before determining whether the statutory presumption of diminished moral blameworthiness has been displaced. The pre-sentence report in I.M. contained psychological and social evaluations, contextualizing his behavior within his family and community environment, and was explicitly discussed by the Court in assessing whether an adult sentence was justified.

The Canadian Court's reasoning stands in sharp contrast to the Ukrainian Supreme Court's approach. Whereas Ukraine's judiciary treats pre-trial reports as merely "recommendatory," Canadian law transforms the pre-sentence report into a mandatory and substantive evidentiary instrument. In *I.M.*, the Supreme Court emphasized that individualized information about the youth's development and background is indispensable to a just sentence, especially where adult punishment is at stake. The Court treated the report not as optional advice but as a central

mechanism for safeguarding the rehabilitative purpose of youth justice and ensuring that the presumption of diminished blameworthiness is rebutted only on rigorous evidence. This approach demonstrates how Canada's rehabilitative philosophy is embedded both procedurally and culturally: judges are institutionally obligated to consider, analyze, and justify how the report influences their sentencing reasoning. This comparison is especially important for the layered analysis because it shows that in Canada the professional and practical layers reinforce the legislative one, whereas in Ukraine the practical layer often works against the rehabilitative purpose formally stated in the law.

From a transplantation perspective, this contrast reveals the structural limits of Ukraine's reform. In Canada, the "shall consider" obligation under section 72(3) creates a legally binding expectation of individualized adjudication, supported by judicial training, multidisciplinary expertise, and appellate oversight. In Ukraine, by contrast, Article 314-1 of the 2012 CPC lacks equivalent enforcement and is interpreted as discretionary, allowing judges to disregard individualized findings without justification. The transplanted mechanism, therefore, operates symbolically rather than substantively: the form of the Canadian reform was imported, but its substance was not.

Although the 2025 Ukrainian Supreme Court decision represents the most authoritative and recent articulation of Ukraine's judicial stance on probation reports, it stands in stark contrast to several promising examples of localized judicial innovation that emerged in the aftermath of the Canadian-supported reform initiatives. These exceptions (though isolated) demonstrated an understanding of the rehabilitative philosophy underlying probation and juvenile justice, showing how Ukrainian courts could humanize criminal proceedings when judges engaged with the child's psychological and developmental condition rather than applying abstract legal formalism. One of

the most notable examples of such practice is the decision of the Malynovskyi District Court of Odesa of 20 October 2021 (Case No. 521/4558/21), which became emblematic of an emerging rehabilitative judicial discourse. The court dealt with two young defendants, one of whom had committed the offence as a minor. Rather than mechanically applying the statutory sanction, the court undertook a rare, in-depth assessment of their personal, educational, and emotional background. The judgment demonstrates a deliberate judicial effort to consider the social and developmental context of the offenders:

> "The accused is 19 years old (at the time of the offence, a minor). On June 11, 2021, he married and now has a child. He has no prior convictions or administrative penalties. He has only an incomplete secondary education, having started working immediately after school. He currently works as a labourer in an agricultural enterprise, supporting his family. He grew up in a family with his mother and stepfather; his biological father died when he was six." (Malynovskyi District Court of Odesa, 2021, para. 4.3.)

The court went further, explicitly acknowledging the developmental immaturity of the accused:

> "Interrogating the accused in court, it became evident that he is, in fact, still a child in terms of his development, even though he has reached the age of majority. In answering the court's questions, the accused clearly did not understand the full consequences of criminal responsibility for property-related offences. Their overall comprehension of ownership relations is fragmentary, reflecting an upbringing that lacked sufficient attention and moral guidance." (Ibid., para. 4.4.)

This reasoning marked a profound departure from the prevailing punitive and formalistic logic of Ukrainian courts. The judge assessed not only the offence but also the cognitive and emotional capacity of the offenders – an approach consistent with the principles of the YCJA in Canada, which mandates individualized sentencing based on maturity, background, and potential for reintegration (YCJA, s. 3; Doob & Cesaroni, 2004, pp. 116–120). In a remarkable and symbolically powerful passage, the court designed an educationally restorative sanction:

> "Considering the offenders' limited development, education, and understanding of moral and social values, imprisonment would be excessively harsh. Although the statutory

> sanction leaves no alternative, the court, while imposing a suspended sentence, finds it necessary to require the accused to read books as part of their probation obligations. As Dostoevsky said, 'to cease reading books means to cease thinking.' Reading certain works determined by the court, particularly those from the fifth-grade curriculum, will cultivate in the accused kindness, empathy, and respect for social rules and human values." (Ibid., paras. 4.12–4.13.)

The inclusion of literature such as *The Adventures of Tom Sawyer* by Mark Twain was not arbitrary. The court explained that these works were selected to foster moral reflection and empathy, underscoring the idea that genuine rehabilitation begins with internal moral development rather than punishment: "*Such books are meant to show how people coexist for many years not only without hostility and hatred but with respect for life's values and established societal norms.*" (*Ibid., para. 4.16.*) This judgment, inspired by rehabilitative ideals central to the Canadian model, exemplified how Ukrainian courts could creatively interpret the probation framework to achieve child-sensitive justice within the constraints of the 2001 Criminal Code. By emphasizing education, moral reasoning, and community reintegration over incarceration, the Odesa court effectively operationalized the spirit of restorative justice – an approach in harmony with international instruments such as the Beijing Rules (1985) and the UNCRC General Comment No. 10 (2007).

However, while such cases demonstrate that Ukraine's judiciary possesses the normative tools and intellectual capacity to apply rehabilitative principles, these remain isolated exceptions. The Supreme Court's 2025 decision, discussed above, undermines these progressive tendencies by reaffirming a formalist, discretionary interpretation of probation and by downplaying the binding value of pre-trial reports. The highest judicial authority thus signals to lower courts that individualized, child-oriented sentencing remains optional, not obligatory. In this judicial hierarchy, exceptions like the Malynovskyi District Court's judgment are vulnerable. Under the doctrine of binding cassation interpretation, such decisions can be easily overturned on

prosecutorial appeal, as the Supreme Court's current jurisprudence elevates procedural uniformity over rehabilitative justice. Hence, while local courts occasionally apply the Canadian-inspired philosophy of individualized, restorative probation, their progressive efforts are structurally fragile and easily neutralized by higher courts committed to formalistic reasoning. From the perspective of layered reception analysis, this section shows that the practical layer of reception remains unstable: although the transplant can sometimes operate in a rehabilitative way, its everyday meaning is still shaped by a stronger formalist professional culture and by higher-court signals that favour uniformity over child-sensitive justice.

Formalistic Preparation of Pre-Trial Reports and Lack of Substantive Individualization

In the previous subsection, the analysis demonstrated that Ukrainian courts often treat pre-trial reports merely as documents of *recommendatory character*, formally acknowledging their existence without engaging with their substance. This judicial formalism, however, is deeply reinforced by the quality of the reports themselves. The problem is not limited to judicial interpretation: it begins at the very stage of report preparation. In practice, pre-trial reports are frequently drafted in a perfunctory and bureaucratic manner, providing little meaningful insight into the child's background, developmental needs, or rehabilitation prospects (Buhaiets et al., 2023, p. 69). This results in a circular deficiency: formalistic reports lead to formalistic judgments, and the rehabilitative intent of the probation framework is lost in translation between institutions (Buhaiets et al., 2023, p. 70).

There is also a lack of mechanisms for monitoring the preparation of pre-trial reports concerning youth, which often leads to their formal drafting and, consequently, to the absence of adequate information for the court to make a well-considered, comprehensive decision regarding the child (Buhaiets et al., 2023, p. 66). There is also a problem of staffing with qualified personnel

who possess the necessary knowledge to work with juvenile offenders. This is particularly true for probation offices in the regions, leading to ineffective implementation of socio-educational work with youth. Cooperation between probation authorities and other juvenile justice actors, especially social services, police, and educational institutions, also requires improvement (Buhaiets et al., 2023, p. 67). This reflects the systemic and structural nature of the problem. Despite the formal introduction of pre-trial probation in 2016 and the Ministry of Justice's methodological instructions in 2017, the lack of institutional monitoring and staff specialization has left the process highly inconsistent across regions. Reports often replicate standard templates without any meaningful assessment of psychological, social, or educational factors, which are the elements central to individualized sentencing according to the YCJA (YCJA, ss. 34–40).

The interviews conducted with judges and prosecutors within the framework of a Council of Europe study illustrate how this formalism manifests in daily practice. One district judge explained:

> "How they work... well, I know our examples – sometimes it's formal, yes, that happens. Sometimes, those pre-trial reports that come in are just formal. Sometimes they [judges] don't even see them. There are positive examples with youth under supervision when the service actually works with families as much as they can. So, it's hard to say how it should be, but as for their effectiveness – it varies a lot." (Interview with a judge, Buhaiets et al., 2023, p. 62).

Another judge similarly described the inconsistency and resource constraints within probation offices:

> "They [probation officers] are now trying to organize themselves somehow. It's difficult for me to speak about their effectiveness. There are many differences – some officers I've met are real enthusiasts, carrying this on their shoulders, but there are also cases where they are neglected. Often, there's simply no resource or staff, and that's key – there aren't enough psychologists." (Interview with a judge, Buhaiets et al., 2023, p. 63).

Prosecutors echoed these concerns, confirming that the problem of formalism persists even under prosecutorial oversight:

> "Yes, we regularly conduct inspections of this body [probation service]. I want to say there are not many of them in the region; district prosecutors visit them regularly, check how they handle cases and maintain control. We issued prosecutorial responses this year, for example, pointing out that prevention measures were incomplete. I invited the head and said: let's move away from a formal approach, especially when it comes to youth – why do we need that? We need to talk to each child, examine their living conditions, and so on. Otherwise, our youth will repeat offences later. So, we don't need this formalism." (Interview with a prosecutor, Buhaiets et al., 2023, p. 64).

The prosecutor's plea to "move away from formalism" captures a core dysfunction of the Ukrainian probation model – its bureaucratic inertia and lack of human-centred engagement. While Canadian youth probation officers are required to possess specialized training in child psychology, developmental criminology, and restorative mediation (Doob & Cesaroni, 2004, pp. 120–122), Ukrainian probation officers often lack such expertise. The result is that pre-trial reports rarely go beyond basic biographical details and fail to provide the court with the psychological and social data necessary for a rehabilitative judgment.

At the same time, certain positive trends have emerged in recent years, as courts have begun to integrate probation programs directly into their sentencing decisions. As one prosecutor explained:

> "It's very good and important that courts have now started to include these programs directly in the judgment. They indicate which specific program is required. We don't force, but we ask probation officers to inform judges about such possibilities. We had cases in remote districts where judges didn't even know about the existence of programs like 'Overcoming Pro-Criminal Thinking' or those addressing psychoactive substances." (Interview with a prosecutor, Buhaiets et al., 2023, p. 62).

Currently, Ukrainian probation authorities implement four correctional programs for youth, aimed at behavioral change and social reintegration: *Changing Pro-Criminal Thinking, Overcoming Aggressive Behaviour, Preventing Psychoactive Substance Use,* and *Developing Life Skills* (Buhaiets et al., 2023, p. 61). These initiatives represent an important conceptual borrowing from the Canadian risk-need-responsivity (RNR) model. However, their inconsistent application,

lack of trained facilitators, and limited court awareness severely undermine their impact. These developments show that the practical layer of reception is not entirely closed: some elements of the transplant are beginning to function more substantively. However, because they remain uneven and dependent on local initiative, they do not yet overcome the broader formalism that continues to shape report preparation across the system.

Fragmented Inter-Agency Cooperation and Institutional Disconnection within the Juvenile Probation System

One of the most critical and persistent weaknesses of Ukraine's juvenile probation framework lies in the lack of effective cooperation among the multiple actors involved in the system. As demonstrated in the previous subsection, formalism at the level of pre-trial reporting and judicial consideration already undermines the rehabilitative logic of probation. Yet, this deficiency is further aggravated by institutional fragmentation – a structural disconnection between probation authorities, social services, educational institutions, and law enforcement bodies. According to Buhaiets et al. (2023), the problem is both administrative and professional:

> "There is a problem of staffing with qualified personnel who possess the necessary knowledge to work with juvenile offenders. This is particularly true for probation offices in the regions, leading to ineffective implementation of socio-educational work with youth. Cooperation between probation authorities and other juvenile justice actors, especially social services, police, and educational institutions, also requires improvement." (Buhaiets et al., 2023, p. 67).

This statement underscores the absence of a coordinated juvenile justice ecosystem. In theory, the 2015 Law on Probation and the 2012 CPC envisioned an intersectoral approach where probation officers, social workers, psychologists, teachers, and child protection specialists jointly contribute to rehabilitation and reintegration. In practice, however, these entities function as isolated bureaucratic units with weak horizontal communication. Ukrainian scholars have repeatedly emphasized this systemic fragmentation. As Sadovnikov *(*as cited in Husak, 2025*)*

observes there exists a clear disconnection among individual actors within the probation system, a lack of staff training, and the absence of systematic work, all of which render its functioning largely ineffective. Various institutions – educational establishments, rehabilitation centres, psychological assistance centres, social service agencies, and civil society organizations – require a fundamental reconsideration of how they organize their activities (pp. 42–43).

Ukraine's probation model is institutionally unified but functionally divided. The legal framework places all forms of probation – adult and juvenile, pre-trial and supervisory – under a single administrative hierarchy within the Ministry of Justice. However, this structural centralization has not translated into effective collaboration with external agencies responsible for education, mental health, or child protection. As a result, probation officers often operate in isolation, without access to the multidisciplinary expertise necessary for individualized interventions. As documented in field interviews, effective collaboration often depends on the initiative of individual probation officers or local judges rather than institutional mandates. While some regional probation centres have managed to develop partnerships with local NGOs, child protection services, or educational authorities, these arrangements lack uniformity and sustainability. The absence of statutory inter-agency protocols, shared databases, and joint case management mechanisms continues to impede systemic coherence (Buhaiets et al., 2023, p.66). In layered terms, this means that even where the transplant was received at the legislative and formal institutional levels, it remained weak at the practical layer because there was no dependable framework for everyday cooperation across agencies.

The consequences of this fragmentation are far-reaching. Without functional cooperation, rehabilitative programs cannot address the multifaceted needs of juvenile offenders, such as educational deprivation, family dysfunction, psychological trauma, and substance abuse. The

probation service, overstretched and under-resourced, remains focused on administrative supervision rather than developmental support. Meanwhile, social services and educational institutions often treat juvenile offenders as external to their mandates, perpetuating a cycle of institutional neglect. Ultimately, the failure to build a unified, multidisciplinary juvenile justice infrastructure reflects a deeper limitation of the Ukrainian reform model: its emphasis on legal transplantation over effective adaptation. While Canada's model integrates probation into a broader ecosystem of restorative and community justice, Ukraine's system remains trapped within administrative silos. Until inter-agency cooperation is institutionalized, juvenile probation will remain a fragmented and largely symbolic institution, unable to fulfil its rehabilitative mandate.

Urban–Rural Disparities in the Effectiveness of Juvenile Probation

Another notable dimension of Ukraine's probation practice concerns the uneven quality of probation services between urban centres and regional or rural areas. While the legislative framework of juvenile probation is unified at the national level, its implementation varies dramatically across regions. Empirical evidence shows that probation in large cities operates with greater professionalism, resources, and a more human-centred approach, while regional and rural departments often remain formalistic and adult-oriented in their treatment of youth. The Buhaiets et al. (2023) study captures this divergence through first-hand accounts from youth who had been under probation supervision. Youth also provided positive feedback on the overall work of juvenile probation sectors. At the same time, in their opinion, the probation units in the regions are less effective, where the juvenile aspect of their work is less pronounced. According to one juvenile interviewed in the framework of the Council of Europe study:

> "Well, I can compare the attitude that existed in my small town and the one that exists here – it is more interesting and diverse here. There are classes held with us on youth's rights and various topics – what is forbidden, why we acted as we did, and so on. And there – it was just: you came, signed in, and left. Maybe once a month, there would be a class. It's nice

> when you're met with a smile, even here, even though you've messed up in your life. But people here understand that you stumbled, did something wrong, made a mistake, but you can change. Probation in my district was for adults – there was nothing there, no psychologist, nothing. You just came, wrote down your attendance, left, that's all. It was boring, uninteresting. But later, when I entered college last year, I was transferred here according to my new place of residence. At first, it was strange, because there were teenage classes, individual sessions – it was something new for me, unusual. But over time, I got used to it, I felt good here. I like coming here because they pay much more attention to youth here than in my previous place, because there are psychologists and other staff who work with us and help us understand ourselves and our lives." (Interview with youth under juvenile probation supervision, Buhaiets et al., 2023, p. 65).

This detailed testimony reveals two systemic tendencies. First, it illustrates the geographical inequality in probation delivery: while urban centres possess access to trained psychologists, specialized programs, and inter-agency cooperation, rural areas continue to function as procedural checkpoints rather than rehabilitative environments. Second, it reflects the transformative potential of meaningful engagement – when youth are treated not as offenders to be monitored but as individuals capable of change, the rehabilitative goal of probation becomes achievable. The situation in Ukraine mirrors similar dynamics in Canada's youth probation system, where the YCJA mandates equal access to rehabilitative programs across the country, yet implementation varies depending on geography and resource allocation. Research consistently shows that urban youth justice programs in Canada benefit from greater availability of mental health support, community-based initiatives, and restorative practices, while smaller or remote communities, particularly Indigenous ones, face shortages of qualified personnel and programmatic diversity (Bala, 2015; Corrado et al., 2018).

The youth's testimonies from *Buhaiets et al. (2023)* reveal the consequences of the rural-urban asymmetry. In smaller communities, probation is reduced to a "come, sign, leave" routine. By contrast, urban centres create spaces for interaction, reflection, and behavioural correction. This contrast underscores a broader paradox of reform: while the legal transplant sought to universalize

rehabilitative justice, its implementation has amplified social and geographical inequalities. In effect, the Ukrainian experience confirms that legal transplantation cannot be limited to normative borrowing; it must be accompanied by contextual adaptation, ensuring equitable access to qualified personnel, resources, and community-based programs across all regions. Otherwise, the result is a two-tiered system – one that works in the capital and regional hubs but remains purely formalistic elsewhere, perpetuating the very injustices the reform aimed to resolve.

Juvenile Justice under Martial Law

The imposition of martial law in Ukraine [53]has significantly altered the operation of the juvenile justice system, reshaping both the categorization of offences and the availability of rehabilitative measures for youth, which is an important context for evaluating the effectiveness and adaptability of Canadian probation reforms. Since the introduction of martial law in Ukraine, any criminal act against property (such as theft, robbery, assault, or extortion) has automatically been elevated to the category of serious crimes. As a result, youth who commit such offences can no longer participate in restorative justice programmes. With the onset of war, the regime of martial law was declared, and subsequently, laws were adopted that amended the Criminal Code of Ukraine to increase criminal responsibility for a number of offences committed under martial law. Among these are the Laws of Ukraine "On Amendments to the Criminal Code of Ukraine regarding Strengthening Responsibility for Crimes against the Foundations of National Security of Ukraine under Martial Law" No 2113-IX, and "On Amendments to the Criminal Code of Ukraine regarding Strengthening Responsibility for Looting" No 2117-IX of 3 March 2022. From 7 March 2022, Law No 2117-IX introduced changes to the 2001 Criminal Code, increasing penalties for offences under Articles 185, 186, 187, 189, and 191 committed under martial or

[53] Martial law was introduced in Ukraine on 24 February 2022 following the full-scale invasion by the Russian Federation.

emergency law. These are the main property offences that have always made up a significant portion of criminal statistics in Ukraine – theft, robbery, assault, extortion, as well as misappropriation and embezzlement of property through abuse of office.

For example, theft under Part 1 of Article 185 of the 2001 Criminal Code was previously treated not as a serious crime but as a criminal misdemeanour, punishable by a fine or restriction of liberty for up to five years. Only in cases of repeat theft, theft by a group, or theft involving intrusion into premises or large amounts did the law prescribe imprisonment. Now, theft committed under martial or emergency law is automatically qualified as an aggravated offence under Part 4 of Article 185, punishable by imprisonment from five to eight years. Similar amendments, effective from 8 March 2022, were introduced for robbery, assault, extortion, and misappropriation or embezzlement of property when committed under martial or emergency law. These are now qualified under Part 4 of the respective articles (186, 187, 189, 191) as aggravated crimes.

This legal transformation has created a complex and concerning situation for youth. Offences that were once considered minor or eligible for restorative justice are now treated as grave crimes. The result is that youth lose access to diversion programmes, community supervision, and rehabilitative interventions that once formed the foundation of Ukraine's juvenile justice system. Courts now apply harsher legal classifications to youth, even in cases where the act was committed under the influence, peer pressure, or a limited understanding of consequences.

Evaluating the Effectiveness of the Canadian Juvenile Probation Transplantation in Ukraine

The transplantation of the Canadian juvenile probation model into Ukraine represents one of the most ambitious projects within the country's broader post-Soviet criminal justice reforms. While the reform succeeded in introducing the vocabulary and institutional structures of rehabilitative justice, its overall effectiveness remains compromised by structural incoherence,

bureaucratic formalism, and the absence of a coherent legislative, professional, and institutional foundation capable of sustaining the transplanted model. The result is a juvenile probation system that, though legally compliant with international standards, remains substantively detached from the social and developmental realities of the youth it purports to serve.

Whereas Canada's YCJA establishes a fully integrated system of youth accountability, balancing protection of society with rehabilitation and reintegration, Ukraine's fragmented framework lacks such conceptual unity. In Canada, the YCJA mandates that all youth sentencing decisions consider proportionality, diminished moral blameworthiness, and the least restrictive measures consistent with public safety. The YCJA's application is further supported by the use of pre-sentence reports (the "PSRs"), which courts are required to consider before imposing custodial sentences. Canadian courts, including the Supreme Court in *R. v. I.M.* (2025 SCC 23), have reaffirmed that pre-sentence reports and other contextual materials are central to achieving a rehabilitative outcome and cannot be treated as procedural formalities. By contrast, Ukrainian courts often regard such reports as non-binding and merely informative, stripping them of rehabilitative significance and reducing their role to bureaucratic compliance.

The institutional dimension of this problem is equally revealing. Ukraine's judiciary, despite the formal introduction of "judges authorized to conduct cases involving youth," has failed to develop genuine specialization or professional culture reflective of child-sensitive justice. Judges remain primarily generalists, appointed to handle juvenile cases as an administrative formality rather than as a function of dedicated expertise. The three-year rotational mechanism for assigning juvenile cases prevents the development of institutional memory or sustained professional competence. As a result, courts continue to reproduce adult-oriented reasoning, treating youth as fully responsible moral agents rather than as individuals whose cognitive development and social

vulnerability warrant differentiated treatment. This stands in sharp contrast to Canadian jurisprudence, where youth courts are guided by statutory and professional specialization, and where judicial training emphasizes developmental psychology, restorative approaches, and community-based intervention. Canadian probation officers collaborate closely with judges through continuous feedback loops, ensuring individualized plans reflect both criminogenic risks and social supports. The absence of such specialization in Ukraine transforms the notion of "juvenile justice" into a procedural formality rather than a transformation. The Ukrainian judiciary's continued adherence to formal legality, expediency, and punitive proportionality stands in direct contrast to the Canadian model, where judicial discretion is explicitly structured around diminished culpability, reintegration potential, and the best interests of the child. This demonstrates that the institutional and professional layers of reception were too weak to support the youth-centred logic formally introduced into Ukrainian law.

At the operational level, the promise of individualized justice embedded in Ukraine's probation framework has been largely neutralized by the formalistic preparation and interpretation of pre-trial reports. These reports, introduced as a cornerstone of the 2015 probation reform and modelled on Canada's pre-sentence assessment practice, were designed to guide courts toward rehabilitative and tailored sentencing. In practice, however, they are frequently drafted as perfunctory templates devoid of substantive analysis. Judges and prosecutors alike acknowledge that many reports consist of minimal biographical information, with little psychological or social insight into the child's circumstances. The resulting reports do not meaningfully inform judicial discretion, and courts often dismiss them as merely "recommendatory" documents, as illustrated by the Supreme Court's 2025 decision in *Case No. 720/1802/22*. By declaring the pre-trial report to be of non-binding character, the Court effectively stripped it of its normative force, reducing

what should have been a central rehabilitative mechanism to an optional bureaucratic formality. In Canada, by contrast, pre-trial sentence reports are regarded as critical evidence and frequently shape judicial reasoning in youth sentencing. The courts give them substantial probative value, particularly when assessing moral blameworthiness, prospects for rehabilitation, and appropriate community-based dispositions. The weight given to PSRs underlines the Canadian judiciary's trust in multidisciplinary expertise – psychologists, social workers, and probation officers – whose input is treated as integral, not ancillary, to sentencing. The Ukrainian jurisprudential resistance to this model reflects a deeper reluctance to displace the punitive rationalities inherited from Soviet legal culture. Here again, layered reception analysis shows that the transplant remained strong in legal form but weak in everyday operation, because the practical layer did not internalize the rehabilitative purpose of the borrowed mechanism.

The effectiveness of juvenile probation is further undermined by institutional fragmentation and weak inter-agency cooperation. Despite the formal creation of probation services under the Ministry of Justice, their integration with social services, educational institutions, and law enforcement remains sporadic and largely dependent on personal initiative rather than systemic coordination. The absence of statutory protocols for inter-agency communication and case management perpetuates a siloed approach, where each institution operates within its own bureaucratic boundaries. In Canada, however, probation operates as part of an interconnected network of agencies. Youth probation officers routinely coordinate with schools, mental health providers, and family support networks. Provincial probation structures are guided by mandatory cooperation protocols under the YCJA, ensuring continuity of care from the courtroom to community reintegration. Ukraine's probation system lacks such cohesion, operating instead as a series of administrative islands, formally unified but functionally isolated.

The deficiencies in Ukraine's probation practice are further exacerbated by pronounced urban–rural disparities. While juvenile probation centres in major cities such as Kyiv, Odesa, and Lviv exhibit elements of rehabilitative practice – often due to the presence of trained psychologists, access to donor-funded programs, and greater public awareness – regional and rural offices continue to function as administrative checkpoints. Testimonies from youth under supervision reveal that in smaller communities, probation is reduced to routine attendance and signature verification, devoid of psychological engagement or educational guidance. This two-tiered implementation echoes challenges observed in Canada, where youth probation in remote or Indigenous communities has also struggled with unequal access to support services (Bala et al., 2009; Truth and Reconciliation Commission of Canada, 2015). However, the Canadian system has gradually developed corrective mechanisms, including restorative circles, culturally grounded community programs, and funding support for youth justice committees, to mitigate these disparities. Ukraine, by contrast, reproduced elements of the probation model without institutionalizing comparable mechanisms to address uneven implementation. As a result, the reform replicated not only the model itself but also its structural asymmetries.

The reform focused on legislative approximation and institutional symbolism rather than on the deeper cultural and organizational transformation required for sustainability. Canadian technical assistance succeeded in introducing rehabilitative language and structures but failed to embed them within Ukraine's bureaucratic, judicial, and professional cultures. This failure, however, cannot be attributed solely to Ukraine. Canadian and other Western donors, while conceptually sophisticated, often underestimated the extent to which successful transplantation requires not just legal adaptation but also systemic alignment with the recipient country's institutional capacities, administrative ethos, and socio-political realities. The Canadian model was

transplanted into a system still governed by the logic of formal compliance and punitive retribution, without the sustained investment in training, professionalization, and inter-agency integration necessary to translate normative frameworks into daily practice.

Ukraine's juvenile probation demonstrates that the mere importation of progressive legislative models and institutional designs cannot generate substantive transformation without the corresponding evolution of judicial culture, professional specialization, and inter-sectoral collaboration. As comparative law scholarship emphasizes (Watson, 1978; Kahn-Freund, 1974; Mistelis, 2000), successful transplantation depends not on textual adoption but on functional assimilation within the recipient's institutional logic. The Canadian model provided Ukraine with an intellectually coherent and ethically robust vision of child-centred justice, but Ukraine's institutional and cultural context proved ill-prepared to internalize and operationalize that vision. The result is a juvenile probation system that exists in law but not in life – a system that mirrors Canada's rehabilitative rhetoric but reproduces Ukraine's bureaucratic reality. Until Ukraine develops a unified Juvenile Justice Act, establishes a permanent corps of specialized juvenile judges, ensures the professionalization of probation officers, and institutionalizes genuine inter-agency cooperation, the transplantation will remain incomplete. Its current state reflects not the failure of the Canadian model itself, but the failure of Ukraine's legal and political institutions to transform borrowed norms into lived practice. This is the core finding of the layered reception analysis: the transplant did not fail at one single point, but was progressively weakened as it passed through layers that were only partially prepared to receive it.

Nevertheless, despite these limitations, the establishment of juvenile probation in Ukraine constitutes a remarkable institutional achievement. The system was built entirely from scratch in a country where, after the collapse of the Soviet Union, no independent or child-oriented

correctional infrastructure existed. Under Soviet penal logic, rehabilitation was subordinated to social control, and youth were treated as offenders to be disciplined rather than individuals to be reformed. Against this background, the creation of a juvenile probation framework – however imperfect – represents a historic shift in both philosophy and practice. Empirical data support the view that the reform yielded tangible positive outcomes, particularly during its initial years. According to the State Statistics Service of Ukraine, between 2013 and 2018, the number of criminal offences committed by youth fell nearly by half, from 8,781 in 2013 to 4,750 in 2018 – while the number of convicted youths decreased from 5,911 in 2013 to 2,798 in 2018 (Korenyuk, 2019, p. 1). Equally important, recidivism among youth declined from 30.7% in 2013 to 16% in 2018 – a reduction that coincides directly with the introduction of the probation reform and the rollout of rehabilitative programs for youth. While broader demographic factors contributed to the overall decline in juvenile crime, the proportionate decrease in repeat offences reflects a measurable shift in justice outcomes, aligning with the Canadian model's emphasis on reducing reoffending through individualized, community-based interventions.

The data on juvenile incarceration rates is similarly encouraging. Between 2013 and 2020, the number of youth serving sentences in educational colonies fell dramatically – from 890 to just 63 individuals (Buhaiets et al., 2023, p. 42). This represents more than a tenfold reduction in youth imprisonment within less than a decade. At the same time, the number of youth held criminally liable remained stable at approximately 4,000–5,000 per year, indicating not a decline in accountability but a fundamental transformation in the way justice is administered. Increasingly, courts rely on Article 75 of the 2001 Criminal Code ("Release from serving a sentence with probation") and Article 76 ("Duties imposed on a person released on probation"), demonstrating a

growing preference for non-custodial sanctions consistent with international standards and Canadian influence.

Beyond the numbers, qualitative evidence from probation clients themselves testifies to the reform's humanizing impact. One juvenile who participated in a probation program shared a deeply personal account:

> "You won't hear anything bad because I'm here – everyone here loves me, and I love everyone, because from the very first day they treated me not as a criminal but as a person and helped me. I had problems with aggression; I was very hot-tempered and could easily get into a fight or anything like that. Here, they taught me how to suppress my aggression and control it. We had a lot of training sessions where we drew the curve of emotions – rising up, then an explosion, and then calming down." (Interview with youth under probation, Buhaiets et al., 2023, p. 62).

This testimony encapsulates what the reform sought to achieve: the transition from punitive supervision to empathetic engagement. For many youth, probation represents the first institutional experience where they are treated with dignity and guided toward self-awareness rather than stigmatization. The probation programs – "Changing Pro-Criminal Thinking," "Overcoming Aggressive Behaviour," "Preventing Psychoactive Substance Use," and "Developing Life Skills" – embody the Canadian *risk–need–responsivity* (RNR) framework, prioritizing behavioural correction, cognitive development, and reintegration.

However, these successes coexist with profound systemic weaknesses. The Ukrainian transplantation succeeded in importing the form of probation but failed to replicate its function effectively. As discussed in this dissertation, the reform primarily institutionalized procedural mechanisms – such as pre-trial reports and probation supervision –without fully embedding the rehabilitative philosophy, interdisciplinary practice, and community-based support structures that give probation its practical meaning in the Canadian system. The absence of a unified legislative act prevents coherence; judicial formalism reduces individualized reports to mere bureaucratic

appendices; and institutional fragmentation erodes the synergy between courts, probation officers, and social services. Regional disparities further deepen inequity: while youth in major cities benefit from psychologists and specialized programs, those in rural regions experience a purely administrative model of supervision – "come, sign, and leave." Moreover, the positive statistical trends, though promising, require cautious interpretation. The decline in juvenile crime correlates not only with probation reform but also with broader demographic decline and shifts in socio-economic dynamics. The overall juvenile population in Ukraine decreased from 1.37 million in 2013 to 1.08 million in 2018 (Korenyuk, 2019, p. 1). While the reform likely contributed to the reduction in recidivism and incarceration, its long-term sustainability remains contingent on addressing structural deficiencies in training, inter-agency cooperation, and judicial specialization.

In essence, the Ukrainian juvenile probation system demonstrates success in form, but only partial success in substance. The reform achieved impressive short-term outcomes – fewer incarcerations, lower recidivism, and humanized treatment – but its institutional fragility continues to undermine its transformative potential. What Canada achieved through decades of integrated policy development, Ukraine attempted to reconstruct within a decade, amid post-Soviet administrative inertia and limited resources. Ultimately, the transplantation of the Canadian juvenile probation model must be understood as an unfinished success – a reform that has laid essential foundations but remains deeply dependent on continued institutionalization, training, and contextual adaptation. Its early achievements prove that rehabilitative justice can function in the Ukrainian context, but only if the system evolves beyond formal imitation toward substantive internalization of the principles it sought to borrow. Layered reception analysis sharpens that conclusion: the transplant has not been rejected, but it has been received unevenly, with some

layers changing more quickly than others. Its future depends on whether the weaker institutional, professional, and practical layers can catch up with the reform already expressed in law and policy.

Overcoming Barriers to Effective Transplantation

The sustainability of the juvenile probation reform in Ukraine depends not merely on the continued borrowing of foreign legal models but on the genuine internalization of their underlying principles within Ukraine's legal, institutional, and social structures. To move beyond the current state of formal transplantation and achieve substantive transformation, reform efforts must shift from symbolic adoption toward systemic integration. This requires a set of concrete legislative, institutional, and practical interventions designed to realign Ukraine's justice system with the rehabilitative logic that underpins the Canadian model. In terms of the dissertation's layered reception analysis, overcoming the current barriers means strengthening precisely those layers of reception that remained weak during the transplantation process.

A foundational step must be the adoption of a comprehensive Juvenile Justice Act, which would consolidate the fragmented provisions currently dispersed across the 2012 Criminal Procedure Code, the 2001 Criminal Code, and the 2015 Law on Probation. The absence of such an act has created a vacuum in normative coherence, leaving juvenile justice to operate as a peripheral extension of the adult system. A unified legislative framework should define the principles, procedures, and institutional roles specific to youth in conflict with the law, explicitly grounding them in the best interests of the child, restorative justice, and proportional intervention. It should codify the mandatory use of individualized sentencing, pre-trial reports, and diversion measures, ensuring that these mechanisms are not left to judicial discretion but are legally binding obligations. Drawing on the Canadian YCJA, the Ukrainian statute should articulate clear thresholds for judicial intervention, prioritize community-based measures over custodial

sentences, and establish a normative hierarchy that places rehabilitation at the core of judicial reasoning.

Second, specialization within the judiciary must evolve from an administrative designation to a professional discipline. Ukraine's system of "judges authorized to consider cases involving youth" should be replaced by a permanent corps of specialized juvenile judges, trained through a dedicated certification program within the National School of Judges. Such judges should be selected based on demonstrated competence in child psychology, restorative practices, and non-adversarial adjudication. The rotation of appointments every three years should be abolished, allowing for the accumulation of institutional expertise and the development of a distinct judicial culture. This specialization would align Ukraine's practice with the Canadian approach, where youth courts operate with distinct mandates, procedures, and professional standards. Legislative amendments should explicitly provide for continuous training, mentoring, and peer review of juvenile judges, potentially supported through international cooperation with the Canadian Judicial Institute and UNICEF. This would strengthen both the institutional and professional layers of reception by ensuring that youth-sensitive norms are applied by a stable interpretive community rather than by generalist judges rotating through juvenile cases.

Third, to ensure that pre-trial reports become an effective rehabilitative tool rather than a procedural formality, their preparation and evidentiary weight must be legally strengthened. Legislative amendments should clarify that the pre-trial report constitutes a mandatory and binding element of the sentencing process, and that courts must explicitly justify any departure from its recommendations. The 2015 Law on Probation should be amended to require the inclusion of comprehensive psychological and social assessments, educational status, family context, and community ties within each report. A system of professional certification for probation officers

should be established, with training modules modelled on the Canadian *Youth Probation Officer Competency Framework*, ensuring officers are equipped with the skills to conduct meaningful evaluations and develop individualized rehabilitation plans. Regular peer audits and performance evaluations should be instituted to maintain quality and accountability. In layered terms, this would help reconnect the legislative, professional, and practical layers by ensuring that the formal legal requirement of individualized assessment is matched by the professional capacity to prepare meaningful reports and by a practical obligation on courts to engage with them substantively.

Equally critical is the establishment of formal inter-agency coordination mechanisms among the justice, education, social welfare, and health sectors. At present, cooperation between probation services and other institutions remains ad hoc, dependent on personal relationships rather than legal obligation. To address this, a National Coordination Council on Juvenile Justice should be created under the Ministry of Justice, bringing together representatives from relevant ministries, local governments, and civil society organizations. This body should be mandated to develop shared data systems, joint intervention protocols, and cross-sectoral training programs. Each juvenile probation case should be managed through a multidisciplinary team—including a probation officer, psychologist, social worker, and educator—operating under a unified case management plan. The introduction of such integrated mechanisms would mirror the Canadian model of "youth justice committees" and "community-based conferencing," fostering both accountability and holistic rehabilitation.

Practical implementation also requires the strengthening of local probation infrastructure and the reduction of regional disparities. A differentiated funding model should be introduced to allocate resources according to regional needs and case volumes, ensuring that rural and small-town offices receive targeted support for staffing, training, and facilities. Donor assistance –

particularly from Canada, the EU, and UNICEF – should be channelled into long-term institutional capacity-building rather than short-term pilot projects. This includes establishing regional centres of excellence for juvenile probation practice and training, linked to universities and social work programs to create a sustainable pipeline of qualified professionals.

Beyond structural and institutional reforms, Ukraine must confront the cultural and attitudinal barriers that continue to undermine the rehabilitative paradigm. Judicial and prosecutorial training should incorporate modules on adolescent development, trauma-informed approaches, and restorative dialogue, moving away from the punitive rationalities that dominate post-Soviet criminal law. Public education campaigns should seek to reframe societal perceptions of juvenile offenders – not as threats to social order, but as individuals in need of support and reintegration. The Canadian experience demonstrates that sustainable reform requires not only legislation and institutions but also a social consensus around the value of rehabilitation and the legitimacy of community-based justice. Finally, the monitoring and evaluation of juvenile probation outcomes must be institutionalized. Ukraine should establish a National Observatory for Juvenile Justice Reform, responsible for collecting disaggregated data on recidivism, educational reintegration, and social adaptation of youth under probation. Independent academic institutions and NGOs should be granted access to this data for evaluation and policy analysis. Regular reporting to the Verkhovna Rada and international partners would ensure transparency and adaptive learning, enabling continuous refinement of the system. These measures are especially important for the professional and practical layers of reception, because they would help shift not only rules and institutions, but also the attitudes, expectations, and routines through which those rules are applied in everyday practice.

In sum, overcoming the barriers to effective transplantation requires Ukraine to move from imitation to internalization – from importing institutional forms to embedding functional norms. Legislative consolidation through a Juvenile Justice Act, professional specialization of judges and probation officers, mandatory and substantive pre-trial reporting, institutionalized inter-agency cooperation, and sustained investment in training and evaluation together constitute the minimum architecture for genuine reform. The success of this next phase will depend not on the scale of external assistance but on Ukraine's political willingness to transform the borrowed model into a lived practice of child-centred justice – one that reflects both the spirit of the Canadian example and the realities of Ukraine's evolving legal culture.

Conclusion

This chapter has examined the Canadian–Ukrainian juvenile probation transplant not at the level of design or intention, but at the level where reform ultimately succeeds or fails: implementation. By tracing how the transplanted legal and institutional structures have operated in practice, the analysis has demonstrated that the effectiveness of juvenile probation in Ukraine has been constrained less by normative shortcomings than by persistent structural and systemic limitations.

It was shown that juvenile probation was integrated into a unified probation framework without the support of a distinct juvenile justice act. This legislative choice weakened the visibility and autonomy of juvenile-specific principles and diluted the rehabilitative logic that originally motivated the reform. In the absence of specialized juvenile courts and judges, probation has often functioned within a broader judicial culture that prioritizes formal compliance over individualized assessment. As a result, pre-trial reports and supervision plans frequently operate as procedural requirements rather than as substantive tools for understanding the child's circumstances, risks,

and needs. In layered terms, the transplant was weakened first at the legislative layer, where it was not given a unified youth-specific foundation, and then again at the professional and practical layers, where individualized mechanisms were treated formally rather than substantively.

Further constraints emerged from institutional fragmentation. Effective juvenile probation presupposes sustained cooperation between courts, probation services, schools, social services, and community actors. The analysis demonstrated that such coordination remains uneven and largely informal, limiting the system's ability to deliver coherent and continuous interventions. These weaknesses are compounded by pronounced urban–rural disparities, which shape access to professional resources, rehabilitation programs, and trained personnel. The pressures generated by martial law have further exposed these vulnerabilities, reinforcing reliance on routine practices and narrowing the space for individualized, child-centred responses.

Taken together, these findings confirm that the limits of the Canadian–Ukrainian juvenile probation transplant lie not in the transferred model itself but in the surrounding institutional environment. The transplant did not collapse, nor did it remain purely symbolic. Juvenile probation has become a recognized component of Ukrainian criminal justice and has introduced new concepts of rehabilitation and community supervision. Yet its transformative potential has been curtailed by the absence of complementary structural reforms capable of sustaining and deepening the transplanted practices. This chapter therefore reinforces a central conclusion of the dissertation: legal transplantation is not completed through legislation alone. Without judicial specialization, institutional coordination, professional capacity-building, and sustained post-reform support, transplanted institutions risk functioning in a reduced and procedural form.

Conclusions

Conclusions on Legal Transplantation

The analysis conducted in this dissertation demonstrates that the outcomes of the Canadian–Ukrainian juvenile probation reform are best understood through the conditions under which the transplant was received, rather than through the normative quality of the Canadian model itself. Juvenile probation did not encounter limitations because its underlying principles were unsuitable, but because its introduction interacted with a set of historical, legal, institutional, social, and economic factors that shaped the way it was absorbed and applied within the Ukrainian legal system. In this sense, the present study empirically confirms a central claim in the broader legal transplantation debate: transplantation is not a matter of transferring legal rules from one system to another, but a complex process whose results depend on multiple contextual preconditions. This conclusion reflects the "law-in-context" approach in transplantation scholarship, which argues that the effectiveness of a legal transplant depends on institutions, professional practices, and governance capacity - not only on the quality of the legal text itself (Kahn-Freund, 1974; Damaška, 1986; Nelken, 2001; Twining, 2005; Siems, 2018). It also supports the view that legal transplants are processes of adaptation and adjustment rather than exact copies of foreign models (Örücü, 2002; Graziadei, 2009; Frankenberg, 2013; Doornbos, 2023). Viewed through the dissertation's layered reception analysis, these conclusions can be stated even more precisely: the transplant was not accepted or rejected at a single point. Rather, it was filtered through successive layers of reception - historical, legal, institutional, professional, and practical - and its final form in Ukraine was shaped by the cumulative effect of those layers.

From a historical perspective, juvenile probation was introduced into a system whose prior experience with legal change had been shaped largely by externally driven reforms and centralized governance. Both the imperial and Soviet periods left a legacy in which new legal institutions were

typically implemented through administrative direction rather than gradual professional practice. This historical trajectory influenced how juvenile probation was perceived and applied: reforms were often understood as formal requirements to be implemented, rather than as practices requiring sustained professional discretion and local adaptation. As a result, juvenile probation was formally incorporated but only partially internalized as an independent mode of working with youth. This dissertation's analysis of the historical layer of reception has demonstrated how the transplant entered a system already shaped by earlier patterns of centralized reform, weak specialization, and punitive institutional memory. This shows the difference between formal adoption and practical internalization: laws can be enacted quickly, but professional culture changes more slowly (Watson, 1993; Cotterrell, 2006; Siems, 2018). It also illustrates what socio-legal scholars describe as "implementation drift," where new legal language is adopted but older administrative habits continue in practice (Nelken, 2001; Twining, 2005).

Differences in legal tradition further influenced the transplantation process. The Canadian juvenile probation model was developed within a common-law system that relies on judicial discretion, professional specialization, and strong community involvement. Ukraine's civil-law framework, by contrast, places greater emphasis on codification, procedural compliance, and hierarchical administration. This divergence meant that key elements of juvenile probation – such as individualized assessment, flexible intervention, and continuous engagement with families and communities – were more readily translated into formal procedures than into everyday professional practice. Comparative scholarship explains that when a legal system prioritizes written rules and central control, practical discretion and relational work are harder to institutionalize (Damaška, 1986; Merryman & Pérez-Perdomo, 2007; Zweigert & Kötz, 1998). As a result, the more visible elements of probation – statutory provisions, reports, and formal duties

– were adopted more easily than less visible elements such as professional judgment, sustained casework, and coordinated service delivery (Graziadei, 2009; Siems, 2018).

Institutional conditions also proved decisive. At the time of reform, Ukraine lacked a distinct juvenile justice framework capable of structurally supporting juvenile probation. The absence of specialized juvenile judges, courts, and probation units meant that juvenile probation was embedded within a general probation system that was not designed around the developmental needs of youth. Coordination between courts, probation services, educational institutions, and social services remained fragmented, limiting the coherence and consistency of implementation. As a result, the effectiveness of juvenile probation depended heavily on local capacity and individual initiative rather than on a stable institutional structure. Transplantation literature stresses that complex institutions require supporting structures – trained staff, funding, coordination mechanisms, and stable governance – to function effectively (Berkowitz et al., 2003a, p.171; Siems, 2018). Where these supporting institutions are weak, the transplant becomes uneven and fragmented, functioning well in some regions but weakly in others (Örücü, 2002; Teubner, 1998; Michaels & Frankenberg, 2013).

Socio-economic and political factors further shaped the transplantation outcome. Transplantation scholarship consistently emphasizes that the success of borrowed institutions depends not only on formal enactment but on the surrounding political economy and institutional capacity of the receiving state (Kahn-Freund, 1974; North, 1990; Berkowitz et al., 2003a; Siems, 2018). Twining (2005) and Cotterrell (2006) similarly stress that legal diffusion operates through institutional environments and professional communities rather than through legislation alone. Juvenile probation requires sustained investment in training, staffing, and community-based services. As comparative scholars have noted, criminal justice transplants are particularly sensitive

to administrative capacity because they rely on discretionary actors and inter-agency cooperation rather than self-executing statutory rules (Damaška, 1986; Graziadei, 2009).

In Ukraine, resource constraints, regional disparities, and periods of political and security instability affected the availability and quality of probation services, particularly outside major urban centres. These conditions illustrate what Berkowitz et al. (2003b) describe as "transplant effects," where institutional performance depends on compatibility with existing governance structures and incentives. These conditions made it difficult to ensure uniform standards and long-term continuity in practice.

Taken together, the findings of this dissertation demonstrate that the transplantation of juvenile probation was neither a simple legal borrowing nor a failed reform. In Watson's (1974; 1993) terms, the reform cannot be described as a straightforward instance of rule transfer detached from context; nor does it confirm Legrand's (1997; 2006) more radical claim that transplantation is impossible. Rather, it was a partial and uneven process of institutional adaptation, in which legislative change outpaced deeper professional, organizational, and cultural transformation. This pattern closely aligns with Teubner's (1998) concept of "legal irritants," whereby transplanted norms are absorbed but reshaped through the host system's institutional logic, and with Michaels' and Frankenberg's (2013) accounts of hybridization in comparative law. By grounding these conclusions in empirical analysis, the study reinforces the view that the success of legal transplantation depends on the interaction of historical legacies, legal structures, institutional capacity, and socio-economic context, rather than on the formal adoption of legal norms alone.

The dissertation's theoretical contribution is the concept of layered reception analysis, which I develop to explain how legal transplants are received, reshaped, and sometimes weakened across different layers of the recipient system. This concept moves beyond the binary question of whether

a transplant succeeds or fails. Instead, it asks a more precise set of questions: at which layer is the transplant received, where is it transformed, which actors reshape it, and why do some parts of the borrowed model become institutionalized while others remain symbolic or ineffective. Applied to the Canadian–Ukrainian juvenile probation reform, layered reception analysis shows that the transplant was not received uniformly. It entered a historical layer shaped by imperial and Soviet legacies; a legislative layer where rehabilitative ideas were translated into statutory language; an institutional layer where probation was embedded within existing administrative structures; a professional layer where judges, probation officers, and other actors interpreted the reform through inherited habits of practice; and a practical layer where implementation depended on resources, training, inter-agency cooperation, and local capacity.

This layered analysis, therefore, shows why the reform remained incomplete without reducing the explanation either to the weakness of Ukrainian institutions or to the limits of the Canadian model itself. The Canadian model was received unevenly: it was strongest at the legislative and symbolic levels, partially embedded at the institutional level, and weakest at the professional and practical levels. Overall, this case demonstrates that juvenile probation in Ukraine should be understood as a complex institutional transplant — one that was legally established but structurally constrained, and whose effectiveness depended on the broader institutional environment rather than on the borrowed model alone (Graziadei, 2009; Siems, 2018). In this sense, layered reception analysis offers not only a way to interpret this particular case but also a broader theoretical tool for legal transplantation scholarship. It shows that legal transplantation should be studied as a process of uneven reception across multiple layers, rather than as a single act of legal borrowing or a simple measure of success or failure.

Identified Structural Problems

The analysis in this dissertation reveals that the challenges facing juvenile probation in Ukraine are not incidental but structural in nature. These problems stem from the way the reform was embedded into the existing legal and institutional framework rather than from the idea of juvenile probation itself. A central structural issue is the legislative integration of juvenile probation into a unified probation system applicable to both adults and youth. While this approach facilitated the rapid adoption of probation as a general institution, it diluted the specificity of juvenile probation. The absence of a separate juvenile justice statute or a distinct juvenile probation framework has meant that youth-specific objectives – such as developmental assessment, educational orientation, and long-term reintegration – compete with adult-oriented managerial and supervisory logics. As a result, juvenile probation often operates within legal and administrative structures not designed for youth. This problem is compounded by the lack of institutional specialization within the judiciary. Ukraine has not established specialized juvenile courts or a stable corps of judges dedicated to youth cases. Juvenile matters are typically handled by general criminal judges alongside adult cases, which reinforces formalistic decision-making and limits the consistent application of rehabilitative principles. Without specialization, probation reports and recommendations risk being treated as procedural add-ons rather than as substantive tools guiding judicial responses to youth offending.

Another persistent difficulty lies in fragmented inter-agency coordination. Juvenile probation depends on cooperation between courts, probation services, schools, social services, and, in some cases, non-governmental organizations. In practice, these actors often operate in parallel rather than as an integrated system. Information exchange is inconsistent, responsibilities overlap or remain unclear, and probation officers frequently lack reliable access to external support services necessary to implement individualized intervention plans. This fragmentation undermines

the rehabilitative potential of probation and shifts its focus toward monitoring compliance rather than supporting change. Structural inequality between urban and rural areas further limits the effectiveness of juvenile probation. In larger cities, probation services are more likely to have access to trained staff, partner organizations, and social programs. In rural or remote regions, probation officers often work with minimal resources and limited institutional support. This disparity results in uneven application of probation standards and reinforces territorial inequality in how youth experience the justice system.

Finally, the operation of juvenile probation has been placed under additional strain by the conditions of martial law. The war has disrupted institutional routines, reduced access to social and educational services, and increased the vulnerability of youth affected by displacement, trauma, and family separation. Under these conditions, probation services are required to address more complex needs with fewer resources, intensifying existing structural weaknesses rather than creating new ones. At the same time, there is an almost paradoxical effect in practice: the war-related hardships youth face are not consistently treated as mitigating. Instead, wartime "security" framing makes youth acts more "dangerous", leading to longer sentences. This moves the system further away from rehabilitation at the very moment when probation and community support are most needed.

Taken together, these problems explain why juvenile probation in Ukraine remains unevenly implemented. They also demonstrate that improving its effectiveness requires not only refining legal norms but addressing deeper institutional design choices, patterns of specialization, and systemic coordination across the juvenile justice landscape.

Evaluation of Juvenile Probation in Ukraine

The preceding conclusions on transplantation set the frame for evaluating what juvenile probation has become in Ukraine in practice. The reform introduced a rehabilitative vocabulary and a community-based logic into a system that historically relied on custodial or formally suspended responses, and it created real space for socio-educational work, structured supervision, and reintegration-oriented programming. At the same time, the dissertation shows that juvenile probation remains an institution whose normative ambitions are stronger than its systemic delivery. Viewed through the dissertation's layered reception analysis, this evaluation shows that the transplant changed some layers of the system more successfully than others. The reform entered Ukrainian law and policy, and in some places it produced meaningful practical results, but weaker institutional, professional, and practical layers continued to limit its overall effectiveness.

First, juvenile probation continues to operate without a distinct juvenile justice framework capable of anchoring specialization across the system. Because juvenile probation was inserted into a unified probation law and implemented within a broader criminal justice structure that remains largely generalist, the "juvenile" dimension often lacks clear institutional boundaries, stable procedures, and dedicated actors. This affects coherence: youth-specific principles may be stated, but they are not consistently translated into youth-specific processes.

Second, the reform did not generate sufficient specialization among judges and probation personnel. Juvenile cases are typically handled by non-specialized courts and generalist judges, and juvenile probation practice is unevenly supported by personnel with youth-specific training and tools. The result is predictable: even where probation exists formally, its use and quality depend heavily on local initiative rather than on a standardized system of specialization.

Third, the dissertation identifies formalism as a recurring practical barrier, especially in the use of pre-sentence reports. In many cases, reports are prepared and filed as procedural attachments rather than treated as substantive instruments for individualized decision-making. Where courts do not meaningfully engage with the reports' analysis – or where reports themselves default to templates and minimal assessment – the rehabilitative promise of probation is reduced to paperwork that legitimizes outcomes without shaping them.

Fourth, juvenile probation's effectiveness is constrained by weak and inconsistent inter-agency cooperation. The model presupposes sustained coordination among probation services, schools, social services, mental-health providers, and, where relevant, community and non-governmental organizations. The dissertation's findings indicate that these links remain fragmented, often dependent on informal relationships, donor-funded pilots, or local capacity. This fragmentation produces the same systemic effect across multiple points of the process: individualized plans are harder to implement, services are harder to access, and supervision risks becoming compliance-focused rather than support-oriented.

Finally, implementation is uneven across territory and increasingly strained under wartime conditions. Urban–rural disparities affect access to trained staff and to programs that make probation meaningful. Martial law and related criminal-law changes also reshape the operating environment by increasing the legal and practical pressure toward more punitive outcomes for certain offence categories, thereby narrowing the space in which probation can function as a stable alternative.

Thus, the dissertation supports a conclusion: juvenile probation in Ukraine has introduced genuinely rehabilitative possibilities, but it often functions procedurally rather than substantively because the surrounding system still lacks a dedicated juvenile justice architecture, consistent

specialization, rigorous individualized assessment practices, and reliable inter-institutional coordination. In transplantation terms, Ukraine successfully adopted the legal form of probation but has only partially achieved its functional integration, illustrating how legal transplantation is ultimately determined not by legislation alone, but by institutional capacity, professional culture, and long-term political commitment.

Assessment of the Canadian–Ukrainian Juvenile Justice Reform Project

The emergence of juvenile probation in Ukraine cannot be understood without assessing the role played by the Canadian–Ukrainian reform project that accompanied broader juvenile justice reform. Canada did not seek to redesign Ukraine's probation system as a whole. Its involvement was more targeted and, at the same time, more influential in shaping the juvenile dimension of reform. Canadian expertise introduced a new way of thinking about how youth offending should be addressed: through community-based supervision, individualized assessment, and engagement with social and educational supports rather than routine reliance on custodial or symbolic sanctions.

The project's strongest impact was visible at the formative stage. Canadian partners helped articulate the normative logic of juvenile probation, supported the development of assessment tools and professional guidelines, and invested heavily in training. Archival materials obtained through the Access to Information request (including mission reports, training curricula, project planning memoranda, and draft methodological guidelines for pre-trial assessment) show that Canadian experts worked directly with Ukrainian judges, prosecutors, and social services to introduce risk-needs assessment principles, individualized case planning, and interdisciplinary cooperation models derived from Canadian probation practice. These documents demonstrate that the conceptual architecture of pre-trial assessment and probation supervision in Ukraine was discussed

and designed within the framework of the Canadian-funded Juvenile Justice Reform Project (the "**JJRP**") well before the adoption of the 2012 CPC and the 2015 Law on Probation. By systematically incorporating these archival sources, the dissertation documents the transplantation process at the level of institutional design and professional training. This dimension has not previously been examined in Ukrainian or comparative scholarship on probation reform. Pilot initiatives demonstrated that probation could function as a meaningful alternative in youth cases and that structured work with youth was possible within the Ukrainian legal environment. These efforts played a decisive role in legitimizing juvenile probation as a credible response to youth offending and in embedding it within Ukraine's evolving juvenile justice framework.

At the same time, the project's influence was uneven once reforms moved beyond pilots and formal adoption. While probation was introduced and legally recognized, its deeper institutional integration proved more difficult. Courts did not always internalize the rehabilitative logic promoted by the project, and probation practices often remained dependent on the attitudes of individual judges rather than operating as a consistently supported pathway. Training and guidance alone could not overcome entrenched habits of formalism or compensate for the absence of stable specialization within the judiciary.

Sustainability also emerged as a structural challenge. After the project concluded, the continued development of juvenile probation depended largely on domestic capacity and coordination. Where staffing was unstable, professional development limited, or local services underdeveloped, probation risked becoming a procedural requirement rather than a substantive intervention. These difficulties were especially visible outside major urban centres, where access to educational, psychological, and social programs remained uneven.

Another difficulty was the presence of competing donor priorities and reform agendas. While the Canadian-supported project focused specifically on youth justice, restorative approaches, and the development of juvenile probation practices, European partners emphasized broader penal reform, institutional harmonization, and alignment with European standards. As a result, juvenile probation was ultimately integrated into a general probation framework rather than developed as a fully distinct juvenile justice subsystem (Yagunov, 2020; Shportiuk, 2020). This overlap of reform streams sometimes diluted the original child-centred focus and redirected attention toward structural compliance and system-wide modernization.

Overall, the JJRP succeeded in opening space for juvenile probation and in introducing key principles, tools, and professional practices. Its limitations lay not in the reform vision itself, but in the depth of institutional change required to sustain that vision across the entire system. Juvenile probation was introduced, but its long-term effectiveness continues to depend on judicial culture, inter-agency cooperation, and the ability to address regional disparities that the project, by its nature, could only partially influence. The layered reception analysis developed in this dissertation helps explain the project's mixed legacy: it was highly effective in opening the reform process and shaping its normative and early institutional direction, but less able to secure the deeper transformation of the institutional, professional, and practical layers on which the full success of the transplant ultimately depended.

Proposed Solutions and Reform Pathways

The structural challenges identified in this dissertation do not suggest that juvenile probation in Ukraine should be reconsidered as a policy choice. On the contrary, the analysis demonstrates that the institution is normatively justified and socially necessary, but requires targeted reform to function as intended. The following reform pathways emerge directly from the findings of the

study and reflect the conditions under which juvenile probation could evolve from a formal legal mechanism into an effective rehabilitative institution.

First, legislative reform is essential. The absence of a comprehensive juvenile justice framework has left juvenile probation operating without clear normative guidance tailored to youth. Adopting a dedicated Juvenile Justice Act would allow the legislature to articulate the objectives, principles, and safeguards specific to youth justice, including the distinct role of probation. Such an act could clarify the relationship between probation, diversion, restorative justice, and custodial measures, while embedding child-centred standards such as proportionality, individualization, and the primacy of rehabilitation. This would address the current tension created by the inclusion of juvenile probation within a unified adult probation framework.

Second, judicial specialization must be strengthened. The dissertation shows that the effectiveness of juvenile probation depends heavily on how judges interpret and use probation tools. Introducing mandatory training in juvenile justice for judges handling youth cases, alongside the creation of specialized juvenile panels or designated juvenile judges, would reduce formalism and promote consistent application of rehabilitative principles. Specialization would also enhance the substantive use of pre-trial reports and probation recommendations, shifting them from procedural requirements to meaningful decision-making instruments.

Third, professional capacity-building within probation services requires sustained attention. While probation officers formally carry responsibility for individualized supervision, their ability to do so is uneven. Enhanced training in child psychology, adolescent development, risk and needs assessment, and restorative justice practices would strengthen professional judgment and improve the quality of intervention plans. This training should be continuous rather than project-based,

ensuring that skills acquired during reform initiatives are institutionalized rather than lost over time.

Fourth, institutional coordination must be formalized rather than left to informal practice. Juvenile probation cannot operate effectively in isolation from schools, social services, health providers, and community organizations. Clear legal and administrative mechanisms for cooperation – including defined roles, information-sharing protocols, and joint responsibility for outcomes – are necessary to transform probation from a supervisory tool into a genuinely supportive process. Without such coordination, probation officers remain structurally unable to deliver the interventions expected of them.

Fifth, quality control mechanisms should be introduced to ensure that probation operates substantively rather than procedurally. Establishing binding standards for the preparation of pre-trial reports, supervision plans, and progress evaluations would help prevent formalistic compliance. Regular review, supervision, and professional accountability mechanisms would further ensure that individualized assessment is not reduced to template-based documentation.

Finally, reform efforts must address territorial inequality. The uneven availability of probation resources across regions undermines both fairness and effectiveness. Targeted funding, regional supervision structures, and differentiated support for rural probation services are necessary to ensure that access to rehabilitative measures does not depend on geography. Decentralization in probation practice must therefore be accompanied by centralized standards and oversight to prevent fragmentation.

Together, these reform pathways reflect that juvenile probation in Ukraine can fulfill its rehabilitative promise only if legal reform is matched by institutional specialization, professional

development, and systemic coordination. Addressing these interconnected dimensions offers a realistic route toward strengthening juvenile probation and improving outcomes for youth in conflict with the law.

Implications for Canada and International Reform Assistance

The findings of this dissertation have implications that extend beyond the Ukrainian context and speak directly to the design of international justice reform assistance, particularly where donor states act as exporters of legal and institutional models. The Canadian–Ukrainian juvenile probation initiative illustrates both the potential and the limits of donor-supported legal reform when long-term institutional embedding is insufficiently addressed.

First, the analysis underscores that transplanted reforms require strategies that extend well beyond the adoption of legislation and the completion of pilot projects. While Canadian expertise played a decisive role in introducing juvenile probation concepts, tools, and professional practices, the reform process did not fully secure their integration into Ukraine's permanent institutional architecture. Sustainable reform requires early planning for post-project continuity, including domestic ownership, stable funding, and the gradual transfer of responsibility from external experts to national institutions. Without such strategies, reform achievements risk remaining dependent on the momentum of donor involvement rather than becoming self-sustaining (Berkowitz et al., 2003a; Siems, 2018).

Second, the dissertation reinforces that the success of legal transplantation cannot be assessed solely by reference to formal legislative outcomes. Although juvenile probation was successfully introduced into Ukrainian law, its practical operation revealed gaps between legal design and institutional reality. For donor states, this highlights the need to evaluate reform initiatives through their functional impact on professional practice, inter-agency cooperation, and

decision-making culture. Legislative enactment should be treated as an initial milestone rather than as evidence of substantive reform.

Third, the Canadian–Ukrainian experience points to the importance of integrating cultural adaptation and monitoring mechanisms into reform assistance. Legal institutions do not operate in neutral environments; they interact with pre-existing legal traditions, professional norms, and administrative habits. Reform assistance must therefore include continuous feedback loops that identify resistance, misinterpretation, or unintended consequences, allowing for adjustment while the reform is still unfolding. In the absence of such mechanisms, transplanted models risk being absorbed in form but diluted in substance.

Finally, the case highlights the importance of clearly defined exit strategies for donor-supported projects. International assistance that ends abruptly or without mechanisms for follow-up leaves domestic systems vulnerable to regression or formalization without substance. Transplantation scholarship has long emphasized that legal borrowing does not conclude with formal enactment but requires sustained institutional embedding and professional internalization (Kahn-Freund, 1974; Teubner, 1998; Twining, 2005). Where external actors withdraw before complementary institutions and professional routines are consolidated, transplanted norms risk remaining "thin" or symbolic rather than functionally integrated (Berkowitz et al., 2003a). In this sense, the Ukrainian experience reflects what comparative scholars describe as the problem of incomplete institutionalization in externally supported reform processes (Graziadei, 2009; Siems, 2018). Without phased withdrawal strategies, long-term monitoring, and structured integration into domestic training and governance systems, legal transplants may survive at the level of statutory form while weakening in practice (Örücü, 2002). For Canada, this suggests that future

justice reform initiatives would benefit from phased withdrawal plans, long-term monitoring arrangements, and structured partnerships with domestic training institutions to ensure continuity.

These implications suggest that international reform assistance, including Canadian initiatives, is most effective when it treats legal transplantation as a long-term, adaptive process rather than a finite intervention. The Ukrainian juvenile probation experience demonstrates that meaningful reform depends not only on what is transferred, but on how deeply it is embedded, monitored, and supported after formal implementation.

Directions for Further Research

The conclusions reached in this dissertation highlight that juvenile probation in Ukraine is still at an early and fluid stage of institutional development. As such, one of the most important directions for further research lies in examining the long-term outcomes of juvenile probation for youth who engage with the system. While this study has focused on institutional design, legal transplantation, and systemic effectiveness, it has not been possible to evaluate how probation shapes youth's trajectories over time. Future empirical research should therefore track youth placed under probation supervision across extended periods, examining recidivism rates, educational attainment, employment prospects, and social reintegration. Such longitudinal studies would allow researchers to assess whether probation, as currently implemented, fulfils its rehabilitative purpose or whether it risks becoming a procedural alternative to custody with limited transformative effect.

Another key area for further research concerns the internal operation of juvenile probation institutions and professional practices. This dissertation has identified problems related to formalism, limited individualization, and weak inter-agency cooperation, but these findings are largely derived from documentary and institutional analysis. Qualitative research involving in-

depth interviews with probation officers, judges, prosecutors, educators, and social workers would provide a more granular understanding of how juvenile probation functions in practice. Such research could explore how professionals interpret their rehabilitative mandate, how discretion is exercised in individual cases, and how conflicts between control and support are resolved in daily work. It would also be particularly valuable to examine how professional attitudes shaped by Soviet legal culture interact with newly introduced probation principles, and whether these attitudes change over time with training and experience.

Further comparative research would also be highly beneficial. While this dissertation has focused on the Canadian–Ukrainian transplantation of juvenile probation, similar reform processes have occurred in other post-authoritarian or transitional jurisdictions with support from different donor states or international organizations. Comparative studies examining juvenile probation reforms in Central and Eastern Europe, the post-Soviet space, or other transitional contexts would make it possible to identify which challenges observed in Ukraine are systemic and which are context-specific. Such research could also clarify how different models of donor engagement, levels of local ownership, and institutional sequencing influence the sustainability of juvenile justice reforms.

The relationship between juvenile probation and restorative justice represents another promising avenue for future inquiry. This dissertation has shown that restorative justice has been gradually incorporated into Ukraine's juvenile justice framework, yet its practical integration into probation supervision remains uneven. Focused research could examine whether restorative practices meaningfully influence probation outcomes, how victims and communities are involved, and whether restorative mechanisms genuinely enhance accountability and reintegration for youth. Understanding this relationship would be especially important for assessing whether probation can

move beyond procedural supervision toward more substantive forms of repair and social reintegration.

Finally, the findings of this study point to the need for further theoretical development in the field of legal transplantation. Juvenile probation demonstrates that transplantation in areas involving youth, social welfare, and criminal justice raises distinct challenges not always captured in general transplantation theory. Future research could build on the Ukrainian case to refine theoretical frameworks by incorporating factors such as specialization, professional socialization, child-centred safeguards, and institutional sequencing. In this way, the study of juvenile probation can contribute not only to national reform debates but also to broader comparative and theoretical discussions on how legal institutions travel, adapt, and transform across legal systems.

Final Observation

This dissertation began with a concern for youth who come into contact with the criminal justice system and with a question about how law, when borrowed from elsewhere, can meaningfully improve their lives. Following the trajectory of juvenile probation from Canada to Ukraine has revealed that legal reform is never simply a matter of adopting the "right" rules or institutions. It is a human process, shaped by history, professional cultures, institutional habits, and deeply rooted ideas about responsibility, punishment, and childhood itself.

The introduction of juvenile probation in Ukraine marked a clear normative turn away from isolation and repression and toward rehabilitation and community-based support. This shift matters. It reflects an acknowledgment that youth are capable of change and that the justice system carries a responsibility not only to respond to wrongdoing but also to protect development, dignity, and future reintegration. Yet the analysis has also shown that reform does not end with legislation.

Where specialization is weak, coordination fragmented, and professional roles underdefined, even well-intentioned reforms risk becoming procedural rather than transformative.

Seen in this light, juvenile probation in Ukraine is best understood as a work in progress rather than a finished institutional achievement. Its current form captures both the promise of reform and the weight of inherited structures. The Canadian–Ukrainian experience demonstrates that legal transplantation can open important pathways, but it cannot substitute for sustained domestic commitment, institutional learning, and cultural adaptation. Law travels, but it only takes root when the receiving system is prepared to nurture it.

This study closes with cautious optimism. Juvenile probation in Ukraine now exists. It has created space for new practices, new professional identities, and new ways of thinking about youth in conflict with the law. Whether it becomes a genuinely rehabilitative institution will depend on choices still to be made – by lawmakers, judges, probation officers, and society more broadly. In tracing how this institution arrived, evolved, and struggled to find its place, this dissertation hopes to contribute not only to academic debates on legal transplantation but also to the ongoing effort to ensure that justice systems treat youth not as problems to be managed but as lives worth investing in.

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Appendices

Appendix 1
Statement of Services

Appendix 2
Project Performance Framework

Appendix 3
Access to Information Request

All records and information related to the Juvenile Justice Reform project (Project number CA-3-Z020624002), including but not limited to project proposals, agreements, evaluations, reports, presentations, briefing notes, correspondence, and any other documents concerning the project's execution and results. Also include documents related to the juvenile justice system in Ukraine – juvenile probation system in Ukraine – criminal justice system in Ukraine – Ukrainian criminal law (Criminal Code) – Ukrainian criminal procedure (Criminal Procedure Code) – social services provided to Ukrainian youth – restorative justice in Ukraine before the start of the project – procedures/training/National school-police program/rehabilitation program for youth. Timeframe: January 1, 2001 to December 31, 2017.