

**Welfare States and Crime Rates: An Analysis of the Impact  
of Welfare State Inclusiveness on the Production of Youth  
Crime Statistics in Quebec & Ontario**

by

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## **Abstract**

This dissertation examines the role of welfare states in contributing to variability in crime rates over time and across space. Starting from the premise that crime statistics are determined, in large part, by when and how criminal justice systems are deployed in response to troublesome events, the general argument that is developed suggests that variability in the inclusive character of welfare states gives rise to differences in the size of the jurisdiction and in the approach to order maintenance of criminal justice systems thereby resulting in differences in official crime rates. Welfare states are conceptualized as being inclusive to the extent that they provide individuals and groups with economic and cultural resources that bring them into the identity of citizen by collectivizing their interests while doing so in a manner that casts them in a positive light, and that bring them into the role of citizen by creating opportunities for them to become involved in the public life of political communities. In shaping the substantive content of the identity and role of citizen, welfare states are argued to act upon the decision-making of those persons and agencies responsible for defining the jurisdiction and approach to order maintenance of criminal justice systems in ways that make inclusive and exclusive criminal justice system deployment patterns appear to be more natural or logical.

Welfare states defining the role of citizen more inclusively is argued to create stronger ideological barriers against criminal justice systems possessing larger jurisdictions in responding to troublesome events relative to other state and social institutions. Welfare states defining the identity of citizen more inclusively is argued to create stronger ideological barriers against criminal justice systems adopting approaches to order maintenance that favour criminalizing a wider range of those

troublesome events falling within their jurisdiction. When examined over the long-term, crime rates are therefore argued to likely, on average, be lower where and when welfare states are more inclusive in character.

Empirically, the dissertation undertakes a comparative analysis of the relationship between rates of youth crime in Quebec and Ontario and the inclusiveness of their respective provincial welfare states over the twenty year period covering 1981 to 2000. The Quebec welfare state is found to define both the role and identity of citizen more inclusively than its Ontario counterpart. Consistent with this result, the Quebec youth justice system is found to possess a narrower jurisdiction and a more tolerant approach to order maintenance compared to the Ontario system. Both the trajectory of, and the scale of differences between, rates of youth crime in the two provinces are found to closely correspond to the evolving nature of when and how the two youth justice systems are deployed in response to troublesome events. The results of the study therefore appear to largely support the argument of crime rates tending to be inversely related to welfare state inclusiveness.

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## List of Acronyms

CEGEPS	collèges d'enseignements général et professionnel
CFSA	Child and Family Services Act
CLSC	centres local de services communautaires.
JDA	Juvenile Delinquents Act
UCR	Uniform Crime Reporting (Survey)
YOA	Young Offenders Act
YPA	Youth Protection Act
YPD	Youth Protection Director

## - Chapter One -

### Introduction

A striking feature of contemporary societies is the existence of considerable variability in crime rates, including across societies which are similar in many other aspects. For example, in 2000, the rate of violent crime in the United States was approximately 2.1 times higher than in Canada, and the rate of drug crime was more than 4.5 times higher than in Canada.<sup>1</sup> Meaningful differences of this sort can also exist within the same nation. Using Canada as an example, the overall crime rate in 2000 in the North West Territories was approximately 2.2 times higher than in Saskatchewan and approximately 4.8 times higher than in Newfoundland.<sup>2</sup> Meaningful differences can also exist within the same society over time: the trajectory of crime rates throughout the vast majority of the West showed dramatic increases from the early-1950s until the early-1990s, at which point it stabilized and, in many cases, actually began to recede.<sup>3</sup> In Canada, despite having declined 35 percent since 1991, the overall crime rate in 2000 was still 2.8 times higher than in 1962.<sup>4</sup> The central question animating this dissertation is, why do such large differences and discrepancies in the crime rate exist? More specifically, what accounts for variability in official crime rates across both time and space?

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<sup>1</sup> Maire Gannon, "Crime comparisons between Canada and the United States," *Juristat*. 21(11, 2001).

<sup>2</sup> Ron Logan, "Crime statistics in Canada, 2000," *Juristat*. 21(8, 2001).

<sup>3</sup> See, for example, Ted R. Gurr, "Crime trends in modern democracies since 1945," *International Annals of Criminology*. 6 (1977), 41-85; Gary S. LaFree, Social institutions and the crime 'bust' of the 1990s," *The Journal of Criminal Law and Criminology*. 88(1998), 1325-1368.

<sup>4</sup> Ron Logan, "Crime Statistics in Canada, 2000."

This question is not new, of course. It is one of the oldest and most studied in all of the humanities. At present, the criminological literature cites numerous factors as playing important roles in contributing to such variability. The most common or prominent of these include the certainty of punishment, the severity of punishment, anomie, unemployment, social and economic inequality, the age structure of the population, cultural definitions of masculinity and femininity, the availability of criminal opportunities and the spacial concentration of disadvantage. Despite their centrality or dominance in the contemporary criminological literature, however, none of these have actually proved very reliable in accounting for differences in crime rates across time and space. That their respective impacts on crime rates are inconsistent and therefore remain the subject of much contention and debate can be attributed to the fact that these impacts manifest themselves through predicted influences on actual behaviour patterns: each variable is thought to influence crime rates by virtue of affecting the propensity of populations to engage in various kinds of deviant or troublesome conduct. Whereas these variables undoubtedly do influence human behaviour patterns in some manner, it is problematic to assume that crime rates capture or otherwise reflect this influence over behaviour patterns for the simple reason that such patterns are not the sole - nor even the most important - inputs of crime rates. Consequently, there is no direct correlation between official crime rates and actual behaviour patterns. Official crime rates may fluctuate without any corresponding changes in behaviour patterns ever taking place, reflecting instead changes in the functioning of criminal justice systems, that institutional complex responsible for actually defining and recording events as constituting incidents of crime.<sup>5</sup> Crime rates, in other words, are produced

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<sup>5</sup> See, for example, Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke & Brian Roberts, *Policing the crisis: Mugging, the state, and law and order*. (London: Macmillan, 1978); Jock Young, "The tasks facing realist criminology," *Contemporary Crisis*. 11(1987): 337-356; Albert J. Meehan, "Internal police records and the control

by criminal justice systems thus ensuring that they are profoundly shaped by when and how these institutional complexes are deployed in response to deviant or troublesome conduct.

This lack of correlation between crime rates and behaviour patterns is not a simple measurement problem which can be overcome by developing more rigorous and standardized practices for gauging the level of criminal conduct in a particular territory - i.e., practices which are unaffected by how the mandates of criminal justice systems are defined and subsequently carried-out - because the very process of defining or otherwise identifying certain behaviours and people as deviant or criminal is inherently subjective in nature. In the famous words of Howard Becker, "Deviance is not a quality of the act the person commits, but rather a consequence of the application of rules and sanctions to an 'offender.' The deviant is one whom the label has been successfully applied; the deviant behavior is behavior that people so label."<sup>6</sup> Deviance, in other words, has no underlying ontological basis, but is a social construction that does not exist independently of human evaluation. Crime, as a particular category of deviance, is therefore only crime when it elicits a societal reaction which defines it as such or, more precisely, when it is formally so defined by the criminal justice system.<sup>7</sup> Consequently, crime rates tend to reveal more about how societies organize

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of juveniles: Politics and policing in a suburban town," *British Journal of Criminology*. 33(4, 1993): 504-524.

<sup>6</sup> Howard S. Becker, *Outsiders: Studies in the sociology of deviance*. (New York: Free Press, 1963), 9.

<sup>7</sup> Similarly, this also implies that alternative methods of measuring the annual volume of criminal behaviour such as victimization surveys do not entirely avoid or overcome the subjectivity or social construction problem since perceptions about what constitutes a crime necessarily vary from person to person. Indeed, "Any crime rate, whether produced by the police, victim survey, self-report study or whatever, has to be *produced* by the inter-action of a number of elements including: a concept of crime, an operational definition of the concept, discovery methods, classification rules, validity checks, counting rules, together with a further set of procedures for linking an offender with an offence. Decisions about such definitions and procedures will differ according to the objectives of the exercise. Neither do the rules and procedures, however detailed, rule out the extensive use of practical reasoning and interpretive work to solve problems of classification." Keith Bottomley & Clive Coleman, *Understanding crime*

their responses to deviant or troublesome persons and conduct than about actual behaviour patterns. As Vold and Bernard suggest, "These data are at best a rough approximation of behaviour that violates social norms, but they are a very precise and accurate account of the social reactions of criminal justice agents."<sup>8</sup> This does not mean that crime rates are wholly unrelated to behavioural trends, only that they correspond more closely to when and how criminal justice systems are deployed in response to these trends.

The size of the role afforded to the criminal justice system relative to other institutions charged with responding to troublesome events (e.g., social welfare agencies, the community, the family) as well as how it approaches or undertakes this role is profoundly influenced by whether societal reaction or, more specifically, the broad deviance control strategy of the society, is organized around, or is otherwise informed by, a predominant logic of inclusion or of exclusion.<sup>9</sup> Whereas the logic of inclusion stresses assimilation, integration and absorption into society and its core institutions, the logic of exclusion stresses the temporary or permanent removal, isolation, and expulsion from society and its core institutions.<sup>10</sup> The centrality of these two logics in the

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*rates: Police and public roles in the production of official statistics.* (Westmead: Gower, 1981), 153.

<sup>8</sup> George B. Vold & Thomas J. Bernard, *Theoretical criminology*. (New York: Oxford University Press, 1986), 257.

<sup>9</sup> This is not to suggest that the role and approach of criminal justice systems are themselves inclusive or exclusive to varying degrees. They are not. Rather, as will be discussed in the forthcoming chapter, their roles tend to increase or decrease in size and their approaches to order maintenance tend to increase or decrease in tolerance of troublesome people and conduct depending on whether the larger deviance control strategy of the society is more heavily informed by the logic of inclusion or exclusion.

<sup>10</sup> Despite the fact that the logic of inclusion emphasises participation and equality whereas the logic of exclusion emphasizes segregation and inequality, the logic of inclusion does not necessarily give rise to practices - criminal justice or otherwise - which are inherently more tolerant or humane than does the logic of exclusion. As Cohen has observed, it is "by no means obvious that exclusion must be the more intensive and less tolerant mode.

organization of societal responses to troublesome events has been most forcefully demonstrated by Stanley Cohen in *Visions of Social Control* in which he concluded that, “The history of social control can be told in many ways, and one way would be to rewrite it as a choice between exclusion and inclusion.”<sup>11</sup> Whereas the logics of inclusion and exclusion are mutually exclusive, societal responses to troublesome events are never solely organized around one of these two principles; “Most societies employ both modes of control, constantly oscillating between one and the other.”<sup>12</sup> This oscillation is not random. Certain kinds of deviance tend to evoke inclusive responses and others exclusive responses, and certain categories of people tend to evoke inclusive responses and others exclusive responses. As Jock Young has noted, “not only do *societies* have both devices and differing *institutions* specialize, so to speak, in absorption or rejection, but different *sections* of the population can be subjected to predominant forces of inclusion or exclusion.”<sup>13</sup>

The welfare state, as a multidimensional institutional complex that revolves around the status of citizenship, a status which itself centres around the interconnectedness of the members of political communities, constitutes a powerful system of inclusion and exclusion in its own right. At the most basic of levels, it constitutes a system of inclusion and exclusion because it reinforces the simple binary distinction between members and non-members or insiders and outsiders of political

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We might separate a group only to ignore it completely, while inclusion might entail massive efforts to achieve normative or psychic change.” Stanley Cohen, *Visions of social control*. (Cambridge: Polity Press, 1985), 219. Both types of practices can be highly coercive.

<sup>11</sup> Ibid., 266.

<sup>12</sup> Ibid., 219.

<sup>13</sup> Jock Young, *The exclusive society: Social exclusion, crime and difference in late modernity*. (London: SAGE, 1999), 57, (emphasis in original).

communities. More fundamentally, however, it also constitutes a system of inclusion and exclusion because it defines the parameters of the identity of citizen and because it defines the parameters of the role of citizen or, in other words, of participation in the public life of political communities. Quite simply, through the character of the benefits and services it provides, the welfare state defines where the community of concern begins and ends, as well as where the public sphere begins and ends thereby creating insiders and outsiders to both. In so doing, the welfare state creates powerful signals as to the appropriateness of exposing various groups to inclusive and exclusive social practices. This in turn implies that, since the organization of societal responses to troublesome events revolves, in large part, around the influence of the logics of inclusion and exclusion, the inclusive character of welfare states might play an important role in shaping the social construction of crime statistics.

The idea that welfare states influence when and how criminal justice systems respond to troublesome events is in fact a central theme in the work of David Garland. He provides, first in *Punishment and welfare* and more recently in *The culture of control*, compelling historical evidence that the dynamics of criminal justice system deployment are profoundly influenced by the relative inclusiveness of welfare states.<sup>14</sup> Although he does not examine how this impacts the construction of crime statistics, and although there are problems with his model of the welfare state and with his understanding of what makes it more or less inclusive character, his analysis nevertheless suggests that the emphasis which welfare states place on inclusive and exclusive discourses and practices

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<sup>14</sup> David Garland, *The culture of control Crime and social order in contemporary society*. (Chicago: University of Chicago Press, 2001); David Garland, *Punishment and welfare: A history of penal strategies*. (Aldershot: Gower, 1985).

renders either inclusive or exclusive societal responses to troublesome events structurally more likely by virtue of affording them considerable ideological, social and political support to draw upon.

Using Garland as a point of departure, the general aim of this dissertation is to examine the role of welfare states in contributing to differences in crime rates across time and space. The argument put forth is that variability in the inclusive character of welfare states results in variability in the role and approach of criminal justice systems in responding to troublesome events and, by extension, in the social construction of crime rates. Working from the premise that welfare states are foremost instruments of social citizenship which differ in numerous and often fundamental ways, their inclusiveness is broadly conceptualized as pertaining to how they substantively define the content of the identity and role of citizen. They define the former inclusively to the extent that their benefits and services address the needs of a wide range of individuals and groups as well as cast both recipients and non-recipients of state support in a positive light. They define the latter inclusively to the extent that they create spaces for people to come together in their common capacities as citizens for the purposes of social and political action. Welfare states defining the role of citizen inclusively is argued to create ideological barriers against criminal justice systems possessing larger rather than narrower roles in responding to troublesome events relative to other state and social institutions. Welfare states defining the identity of citizen inclusively is argued to create ideological barriers against criminal justice systems developing or otherwise adopting approaches to order maintenance which favour criminalizing a wider rather than a narrower range of those troublesome events falling in their jurisdiction. Crime rates are therefore argued to likely decrease as welfare states become progressively more inclusive in character.

Empirically, this dissertation undertakes a comparative analysis of the relationship between crime rates and the inclusiveness of the welfare state in Quebec and Ontario. The specific focus of this comparative study is on youth crime over the twenty year period covering 1981 to 2000, a period in which rates in Quebec went from being more than double those in Ontario to consistently being approximately half those in Ontario. The reason for focussing on these two provinces is largely methodological. From a comparative research standpoint, these two jurisdictions are a strong match because, despite their obvious linguistic and cultural differences, they are very much alike on a number of important fronts. Both are located in highly industrialized central Canada. Both are highly urbanized (85 percent in Ontario and 80.5 percent in Quebec which, in both cases, exceeds the national average of 79.7 percent). Each province possesses a large metropolitan centre in excess of 3 million inhabitants. They both possess (though especially Ontario) large immigrant populations. They are similar in terms of the age distribution of their respective populations with the criminologically significant demographic group of 15-24 year olds consisting of roughly 13 percent of their total populations. They are similar in terms of labour market participation levels which tend to hover around 67 percent in Ontario and 62 percent in Quebec. Finally, both provinces possess roughly similar unemployment patterns which, on average between 1981 and 2000, was 3.5 percentage points higher in Quebec than in Ontario. This significant level of background similarity makes linking differences in the inclusiveness of their respective welfare states to differences in the role and approach of their respective youth justice systems and, ultimately, to differences in their respective patterns of youth crime somewhat less difficult or tenuous.<sup>15</sup>

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<sup>15</sup> Arthur L. Stinchcombe, *Theoretical methods in social history*. (New York: Academic Press, 1978); Arend Lijphart, "The comparable cases strategy in comparative research," *Comparative Political Studies*. 8(2, 1975): 158-177; Fred Eggan, "Social anthropology and the method of controlled comparison," *American*

Youth crime and adult crime are administered by separate justice systems in Canada. This is significant because it means that any attempt to account for temporal and spacial differences in the total crime rate would require two separate studies, one examining when and how the youth justice system is deployed in response to troublesome events and the other examining the deployment dynamics of the adult system. Consequently, any single study of the social construction of crime statistics in Canada must choose between focussing either on rates of youth crime or adult crime. There are two principal reasons why this dissertation has elected to concentrate on youth crime rather than on adult crime. First, the provinces exert far more influence over the administration of youth justice than over the administration of adult justice. To provide but one important example of this discrepancy, whereas the provinces administer the sanctions of all young offenders convicted in their territory, they only administer the sanctions of those adult offenders receiving sentences of two years less a day. This greater influence is important because it means that there is more room for provincial variability in the role afforded to and approach taken by youth justice systems in responding to troublesome events compared to their adult counterparts. As a result, provincial differences in welfare state inclusiveness should generate larger and therefore more visible differences in youth crime rates than in adult crime rates. The impact of provincial welfare state variability over rates of adult crime, in other words, is likely to be more muted than for rates of youth crime due to the greater role of the federal government in the administration of adult justice.

The second reason for focussing on youth crime is that, although there have been many changes to federal law in the fields of adult and youth justice throughout the course of the 1980s and

1990s, the changes to the latter have been far more fundamental in nature. Most significant in this regard is the fact that in 1984 the federal government repealed the 1908 *Juvenile Delinquents Act* in favour of the more punitive and legalistic *Young Offenders Act*.<sup>16</sup> How provincial justice systems respond to major changes in the legal framework within which they operate can highlight or otherwise bring to the fore important similarities and differences in their basic functioning and practices which might otherwise be difficult to detect. Consequently, given the purpose of the present study, there are very real and important advantages to focussing on youth crime rather than on adult crime.

The research design of this dissertation involves comparing the influence of the logics of inclusion and exclusion as organizing principles of the Quebec and Ontario welfare states, comparing the role and approach of the youth justice systems of both provinces in responding to troublesome events, and relating both sets of findings to the official patterns of youth crime in both provinces over the final two decades of the twentieth century. These assessments will be made on the basis of archival research on the construction and ongoing operations of both institutional complexes in each province, with particular attention paid to spending patterns, official discourses, and formal policy objectives and frameworks. This exercise poses two major challenges. The first lies in the fact that both welfare states and criminal justice systems are broad institutional complexes comprised of numerous semi-autonomous agencies and organizations operating across numerous differentiated domains. Accordingly, any attempt to characterize their overall orientations will inevitably result in oversimplifications, over generalizations, and to an under appreciation of their internal

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<sup>16</sup> Penny J. Jones, *Young offenders and the law*. (North York: Captus Press, 1997), 3

contradictions and diversity. Despite these limitations, the advantage of a design that calls for such a high level of abstraction is the potential of identifying important structural relationships which are otherwise imperceptible when examined from the perspective of a lower level of abstraction. Broad relationships between complex institutional networks are often blurred by conceptual instruments which bring into focus the details and nuances of their inner workings.

The second major challenge lies in the difficulty of attempting to compare the Quebec and Ontario welfare states given the greater involvement of municipal governments in the domain of social policy in the latter province. Much of this discrepancy resides at the level of funding where municipal governments in Ontario shoulder a significantly higher burden of the costs of many social programs and services than in Quebec, though some discrepancy also exists at the level of social policy development and implementation where municipalities are once again afforded a larger role in Ontario, especially in the fields of social assistance and community services. Whereas this makes straightforward comparisons of provincial social policy practices between these two jurisdictions somewhat tenuous, it certainly does not make it impossible because, even though the role of municipal governments in Ontario is large relative to in Quebec, this role is nevertheless quite small relative to that of the provincial government. Moreover, since there are areas of social policy in which the role of municipalities is very small in both provinces, identifying differences in the character of the two provincial welfare states can be facilitated by focussing on these areas when it is feasible to do so.

The second chapter of this dissertation develops the argument that variability in the degree

to which welfare states define the identity and role of citizen inclusively results in variability in when and how criminal justice systems are deployed in response to troublesome events and, by extension, in official crime rates. The chapter thus revolves around three central questions. First, how does the inclusiveness of broad deviance control strategies influence the production of crime statistics by criminal justice systems? Answering this question involves examining the degree to which the practice of criminalization is inherently inclusive or exclusive by nature. Second, what is the basis for assessing and ultimately comparing the inclusiveness of welfare states across time and space? Answering this question involves identifying those features of welfare states, as broad institutional complexes which apply numerous policy instruments (e.g., spending, taxation, regulation, exhortation) in various domains critical to human survival and development (e.g., health, education, income, employment, housing), which are most important with regards to influencing the inclusiveness of the identity and role of citizen. Finally, why is the inclusiveness of welfare states relevant to criminal justice system deployment patterns? Answering this question involves examining how the substantive content of the identity and role of citizen affects the jurisdiction and approach of criminal justice systems in responding to troublesome events and, by extension, the construction of crime statistics.

Chapter three assess and compares the inclusive character of the Quebec and Ontario welfare states. The evidence that is presented suggests that the Quebec welfare state defines the identity of citizen as it pertains to young people more inclusively than does the Ontario welfare state, both on the basis of better incorporating the interests of this group into its structure and of framing them more positively while doing so. The evidence that is presented also suggests that the Quebec welfare

state defines the role of citizen more inclusively than does the Ontario welfare state because it provides a wider range of support for collective citizen social and especially political action.

The fourth chapter assesses the size of the role and approach to order maintenance of the Quebec and Ontario youth justice systems in responding to troublesome events, and relates these findings to those of the previous chapter. The evidence that is presented suggests that the role of the Quebec youth justice system is more circumscribed than that of the Ontario system, and that the approach to order maintenance of the Quebec youth justice system favours criminalizing a narrower range of those troublesome events falling within its jurisdiction than that of the Ontario system. Because criminalization constitutes a form of extreme exclusion, these results suggest that there are stronger ideological barriers against the use of exclusionary deviance control practices in Quebec than in Ontario. These results are argued to be consistent with or to otherwise reflect the degree to which their respective welfare states define the identity and role of citizen inclusively.

Chapter five examines the official patterns of youth crime in Quebec and Ontario over the twenty year period covering 1981 through 2000, and relates them to the dynamics of criminal justice deployment in each province and, by extension, to the inclusiveness of their respective welfare states. The chapter therefore paints a detailed portrait of the official patterns of youth crime in both provinces, identifying major points of similarity and difference across both aggregate offence categories and individual offence types. The analysis of these points of similarity and difference in their respective patterns of youth crime reveals that they are consistent with the similarities and differences in the role and approach to order maintenance of their respective youth justice systems,

and ultimately in the inclusiveness of their respective welfare states.

Chapter six concludes with an examination of the implications of, and broader issues raised by, the findings of the dissertation. Three broad sets or categories of questions emerge from these findings. The first revolves around how the practice of classifying welfare states into distinctive clusters or regime types might be affected by the notion of these institutional complexes varying in their underlying inclusiveness. The second revolves around the potential influence of criminal justice systems over welfare state practices and discourses. The third and final set of questions revolves around the meaning of the concept of citizenship and how this meaning might be influenced by the operations of criminal justice systems.

- Chapter Two -

## **Crime Rates, Criminal Justice Deployment & the Welfare State**

The purpose of this chapter is to develop the argument that variability in the inclusiveness of welfare states contributes to variability in the role and approach of criminal justice systems in responding to troublesome events and, by extension, to variability in crime rates. The chapter is divided into four sections. The first examines the importance of the dynamics of criminal justice system deployment in shaping official crime rates, and discusses how these dynamics are impacted by the inclusiveness of broad deviance control strategies. The argument put forth is that, because criminalization constitutes an extreme form of exclusion, progressively more inclusive strategies tend to exert a downwards pressure on crime rates by restricting the jurisdiction of criminal justice systems relative to other institutions of order maintenance, and by rendering the operational culture of criminal justice systems tolerant of a wider range of troublesome events over which they have dominion.

The second section examines the insights and limitations of the existing literature on the relationship between crime and the welfare state, paying particular attention to the work of David Garland. Whereas this literature provides compelling theoretical and empirical reasons for believing that the inclusive character of welfare states exerts a strong influence over criminal justice functioning and practice, it provides few insights into how this influence relates to variability in crime rates. This limitation is largely due to the fact that Garland's account insufficiently fleshes out the inclusive dimension of welfare states in terms of systematically identifying its constituent components, and ignores how its individual components relate to the individual dynamics of criminal

justice system deployment.

The third section discusses the nature of the welfare state and conceptualizes its inclusive dimension. It addresses the issues of what it is that welfare states do and how it is that they go about doing so in ways that are variously inclusive and exclusive. Welfare states are defined as multifaceted institutional complexes that regulate human reproduction on both a daily and generational basis. Drawing primarily on the work of T. H. Marshall and Gosta Esping-Andersen, the degree to which they do so inclusively or exclusively is conceptualized as pertaining to the substantive quality they afford to the identity of citizenship and to the quality of opportunities they afford to populations to exercise the social and political dimensions of the role of citizen.

The final section ties the chapter together by addressing the relationship between the inclusive character of welfare states and the production of crime statistics by criminal justice systems. It examines how the inclusiveness of the content of the identity and role of citizen relates to when and how criminal justice systems are deployed in response to troublesome events. The argument put forth is that the inclusiveness of the role of citizen tends to expand or contract the jurisdiction of criminal justice systems, and the inclusiveness of the identity of citizen tends to increase and decrease criminal justice system tolerance of troublesome people and conduct.

### **Criminalization and the Logics of Inclusion & Exclusion**

Criminal events are comprised of two core elements. The first is an act that is both inconsistent with the moral standards of the community and socially damaging - that is, an act which

transgresses the moral boundaries of the society and which produces a victim who has been injured or otherwise harmed in some manner. Conduct that only fulfils one of these two criteria may be socially disapproved of, but tends not to be criminalized per se.<sup>17</sup> The second element is a motivated actor: the perpetrators of socially damaging and morally unacceptable conduct must be purposeful in their actions. Criminal acts, in other words, are intentional acts; “we do not hold people [criminally] liable, to put it crudely, for accidents.”<sup>18</sup> There is no purely objective standard by which to assess the harmfulness, morality and intentionality of conduct. Making such assessments requires subjective evaluations. As a result, there is much room for variability in what actually constitutes a crime: virtually all human conduct has the potential to be a crime - or not be a crime - depending on the subjective standards harm, morality and psychology employed. Crime rates are therefore social constructions with no underlying ontological basis.

Although crime is a social construction, and although the power to officially define troublesome events as crimes rests exclusively within the criminal justice system, crime rates are not solely criminal justice system constructs. Crime rates, in other words, are not exclusively determined by criminal justice functioning and practice. To begin with, even if crime is not an inherent property of behaviour but a quality bestowed upon behaviour through a process of subjective evaluation by criminal justice administrators, it is still rooted in actual events. It is their interpretation or

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<sup>17</sup> Even crimes for which there is no identifiable victim such as prostitution or narcotic consumption tend to nevertheless be characterized as socially damaging by, for example, hurting commercial interests, lowering property values, and fuelling other types of crime. Whether this is truly the case is a question that is open for debate. What matters for present purposes is that even ‘victimless’ crimes are said to produce victims, even if only indirectly.

<sup>18</sup> Nicola Lacey, “Legal constructions of crime,” in M. Maguire, R. Morgan & R. Reiner, eds., *The Oxford handbook of criminology*. (Oxford, Oxford University Press, 2002): 264-285.

characterization and not the events themselves which are subjective. This necessarily implies that crime rates are influenced by changes in behaviour patterns: if the object of evaluation evolves, so too will the character of the final evaluation itself. Crime rates are therefore products of a dyadic process involving both actions and reactions and, as such, are neither measures of objective social facts that exist independently of their 'discovery', nor pure ideological fabrications for which there is no basis or reference in the 'outside world'. As Young suggests, "The notion of a 'real' crime rate, independent of social reaction, - a simple measure of changes in criminal behaviour - is just as absurd as that of an epiphenomenal crime rate merely created by reactors."<sup>19</sup> Moreover, criminal justice systems rely heavily on the public to report incidents of troublesome or otherwise potentially criminalizable behaviour instead of directly observing it themselves. Despite their best efforts and even claims to the contrary, criminal justice administrators do not so much detect troublesome behaviour while it is transpiring as respond to public complaints about incidents of such conduct - usually after they have transpired - for which they would otherwise be unaware.<sup>20</sup> As a result, changes in public attitudes either towards various types of conduct or towards their perpetrators will influence the number of troublesome events reported to and therefore known to the police which, in turn, is likely to influence the crime rate.

The criminal justice system is therefore only one of a number of factors that influences the

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<sup>19</sup> Jock Young, "The tasks facing realist criminology," 339.

<sup>20</sup> Indeed, studies suggest that approximately eighty percent of all recorded crimes is first brought to the attention of the criminal justice system by the public. See Sarah McCabe & Frank Sutcliffe, *Defining crime: A study of police decisions*. (Oxford: Blackwell, 1978); A. Keith Bottomley & Clive A. Coleman, *Understanding crime rates: Police and public roles in the production of official statistics*. (Farnborough: Saxon House, 1981). In certain urban areas, this has actually been found to be as high as ninety-five percent. See Richard Kinsey, John Lea & Jock Young, *Losing the fight against crime*. (Oxford: Blackwell, 1986).

official crime rate. These are products of the actions of persons involved in troublesome conduct, the reactions of members of the community including persons adversely affected by such conduct as well as persons who witness its occurrence, and the reactions of criminal justice administrators including dispatchers, police officers, prosecuting attorneys and judges. Of these three major groups or sets of factors, however, criminal justice administrators are likely to leave the largest footprint on crime rates since they alone have the formal authority to define troublesome incidents as crimes. That is, since the pool of potentially criminalizable incidents or conduct is much larger than the actual number of recorded crimes, and since there are far more public reports of troublesome behaviour than officially recorded crimes, the criminalizing propensity of criminal justice systems is the most powerful determinant of crime rates. As such, differences in the role and approach to order maintenance of criminal justice systems will give rise to important or meaningful differences in official crime patterns.

How do the role and approach of criminal justice systems relate to the frequency with which these institutional complexes formally define troublesome events as crimes? The role of criminal justice systems pertains to the range of people and conduct over which they have dominion - that is, to the breadth or scope of their jurisdiction. In order to process some event as a crime, criminal justice administrators must be vested with the formal power or authority to do so: the event must conform to the legal definition of some specific type of crime otherwise it cannot be so labelled. Here, two distinct issues are involved: whether the behaviour in question violates or transgresses the criminal statutes of the jurisdiction, and whether the actor(s) involved can be held criminally

responsible or, in other words, subjected to formal criminal justice sanctioning.<sup>21</sup> When responding to troublesome events, the first major decision confronting criminal justice administrators is therefore whether these *can* in fact be criminalized.

The boundaries of the jurisdiction of criminal justice systems tend to vary considerably across time and space. For example, prior to the commencement of the twentieth century, Canadians generally could not be criminalized for the distribution and consumption of most narcotics including, very notably, opiates, cannabis and cocaine, behaviour that is now illegal and makes up approximately 3.4 percent of the total crime rate.<sup>22</sup> Similarly, whereas children as young as eight could be charged with an offence under Canada's *Juvenile Delinquents Act*, no child under the age of twelve could be charged with an offence under the more recent *Young Offenders Act* and under the even more recent *Youth Criminal Justice Act*. When the jurisdiction of the criminal justice system is expanded or contracted in such a manner, crime rates are invariably affected since expansion increases the number of opportunities for criminalizing responses, and contraction reduces the number of such opportunities.

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<sup>21</sup> Two groups generally fall outside the boundaries or jurisdiction of the administrative apparatus of criminal justice: the mentally ill and the very young (there exists a longstanding principle in common law that children under the age of seven are *doli incapax* and therefore unable to distinguish right from wrong thereby exempting them from criminal prosecution). If an illegal act is committed by either group, it will generally only count towards the overall crime rate if it is of a very serious nature. It will not count towards the rate of youth crime, however, for this is based solely on the number of youths charged with *Criminal Code* offences.

<sup>22</sup> In the year 2000, there were a total of 2,593,580 recorded crimes in Canada of which 87,945 were for drug related offences. Ron Logan, "Crime statistics in Canada, 2000. Canada's first major drug law, the *Opium Act*, which prohibited the sale and consumption of opium, was enacted in 1908. Legislation prohibiting most other narcotics, including cannabis, was enacted during the 1920's. See Robert R. Solomon & Melvyn Green, "The first century: The history of non-medical opiate use and control policies in Canada, 1870-1970," in Judith C. Blackwell & Patricia G Erickson, eds., *Illicit drugs in Canada*. (Scarborough: Nelson Canada, 1988), 88-116.

The approach of criminal justice systems pertains to the tolerance of their operational cultures for troublesome conduct and people or, in other words, to whether their approaches to order maintenance privilege or otherwise emphasize criminalizing versus non-criminalizing responses to those troublesome events falling within their jurisdiction. Just because the criminal justice system has the formal authority or jurisdiction to criminalize a particular troublesome incident does not mean that it will necessarily do so since its individual agents possess considerable discretion over when to exercise this authority. For an incident to be counted as an official crime, not only must it appear to fit the technical definitional requirements of what constitutes a crime, but it must also be deemed deserving of such a response by criminal justice administrators.

That such assessments are made speaks to the fact that, to label an incident criminal is not simply some abstract definitional exercise, but carries very real and important costs for all involved. For criminal justice administrators, the costs of counting an incident towards the crime rate are additional work in the form of more cases to clear and reports to complete.<sup>23</sup> For the broader criminal justice system, the costs of including an incident in the crime rate are the financial resources needed to formally process the act as well as its perpetrator if identified. In a world of limited resources, the criminalization of one troublesome incident may prevent the criminalization of another by virtue of depleting the system of the necessary resources for doing so.<sup>24</sup> For its perpetrator, the

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<sup>23</sup> On the nature of the paperwork involved in the Canadian context see Kevin D. Haggerty, *Making crime count*. (Toronto: University of Toronto Press, 2001). Indeed, the desire to avoid the work associated with recording the incident, particularly if there is little chance of ever clearing the case, is often an important deciding factor in whether it gets counted towards the crime rate. See Keith Bottomley & Clive A. Coleman, *Understanding crime rates: Police and public roles in the production of official statistics*. (Farnborough: Gower, 1981).

<sup>24</sup> For example, in the United States during the 1960s, with resources stretched to the limit and public demand for criminal justice intervention on the rise, criminal justice administrators adapted to their environment by

costs of counting an incident towards the crime rate are constraints on their liberal democratic freedoms as well as reductions in their life chances resulting from the possession of a criminal record.<sup>25</sup> An incident that appears to fit the definitional requirements of what constitutes some specific type of crime may simply be deemed too trivial to warrant assuming and imposing these various costs. When responding to troublesome events, the second major decision confronting criminal justice administrators is therefore whether incidents which *could* be criminalized *should* in fact be criminalized.

Criminal justice tolerance of troublesome events pertains to whether the benefits of criminalization tend to be perceived as high or low relative to its costs. If these benefits are believed to be high relative to associated costs then criminal justice systems will tend to develop operational cultures which favour criminalizing a wider range of troublesome events falling within their jurisdictions than if they are believed to be low. Whether the benefits of criminalization tend to be perceived as high or low relative to its costs largely revolves around whether troublesome events are seen as posing significant or insignificant threats to the ongoing stability of the rule of law: the higher the assumed severity of the threat posed, the higher the perceived benefits of criminalization. Numerous factors are taken into consideration by criminal justice administrators in assessing the

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criminalizing fewer minor offences. On this matter Garland writes, “[i]n the face of high crime rates and high caseloads criminal justice agencies began to limit the demands placed upon them by means of a variety of devices that effectively ‘define deviance down’. This reduction was achieved either by filtering complaints and cases out of the system, or else by lowering the degree to which certain behaviours are criminalized and penalized. This process occurs at the ‘shallow’ and hence less visible end of criminal justice and typically takes place over a period of time and by administrative fiat, well away from the gaze of the mass media and politicians”. David Garland, *The culture of control*. 117. How criminal justice systems are organized in terms of their goals and day-to-day practices influences their total ‘processing’ capacity.

<sup>25</sup> See, for example, John Braithwaite, *Crime, shame and reintegration*. (New York: Cambridge University Press, 1989).

seriousness of troublesome events including the status of the offender, the status of the victim, the attitude of the offender, the attitude of the victim, the setting or location of the event, the relationship between the offender and victim, the wishes of the victim, and the quality of opportunities for informally resolving the event.<sup>26</sup> Such factors are considered in order to determine two core issues: whether the type of conduct involved is likely to spread or otherwise become more common if the event is not criminalized, and whether the perpetrator is likely to continue engaging in troublesome conduct if the event is not criminalized. The perceived seriousness of troublesome events, in other words, revolves primarily around the threat they are believed to pose to the ongoing stability of the rule of law.

Whether troublesome conduct is thought likely to spread and troublesome people are thought likely to persist in their involvement in such conduct ultimately depends on how criminal justice administrators conceptualize the causes of crime and of criminality - that is, the causes of criminal conduct and criminal motivation. Criminal justice personnel tend to be tolerant of troublesome conduct insofar as it is perceived to be caused rather than freely chosen,<sup>27</sup> and tend to be tolerant of troublesome people insofar as their conduct is not perceived to be rooted in the possession of some enduring characteristic - whether biological, psychological or social - which differentiates them from

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<sup>26</sup> See Keith Bottomley & Clive A. Coleman, *Understanding crime rates: Police and public roles in the production of official statistics*. (Farnborough: Gower, 1981); Donald J. Black, "The production of crime rates," *American Sociological Review*. 35(August, 1970): 733-748; Eric C. Riksheim & Steven M. Chermak, "Causes of police behavior revisited," *Journal of Criminal Justice*. 21(1993):353-382.

<sup>27</sup> A fundamental principle of criminal law is that people are not to be made accountable or otherwise punished for behaviour over which they have little or no control. Such incidents are viewed, in short, as more accidental than criminal in nature. Nicola Lacey, "Legal constructions of crimes," in Mike Maguire, Rod Morgan & Robert Reiner, eds., *The Oxford handbook of criminology*. (New York: Oxford University Press, 2002), 264-285.

non-troublesome persons.<sup>28</sup> Whereas conceptualizations of the causes of crime and criminality will necessarily vary between persons occupying similar roles within the criminal justice system (e.g., between police officers, between judges) and especially between persons occupying different roles (e.g., between police officers and judges), insofar as the subjectivities of all human beings - though especially those occupying different structural positions - vary, criminal justice systems nevertheless possess overarching rationalities or working criminologies which serve to inform the decisions of their individual actors and thereby provide the broader system an important measure of coherence. Criminal justice systems, in other words, possess dominant working criminologies that outline the causes of crime and of criminality which serve to help inform - though certainly not determine - the perceptions of their individual actors as to the seriousness of the threat posed to the ongoing stability of the rule of law by troublesome events - that is, which inform their perceptions about the necessity or importance of criminalizing specific troublesome events.<sup>29</sup>

How does the inclusiveness of broad social control strategies influence the production of crime statistics by criminal justice systems? Crime, as noted above, constitutes a label denouncing behaviour as undesirable in terms of having predominantly negative social effects, and as foreign in terms of not conforming to the prevailing moral standards of a society. Moreover, insofar as crime constitutes a label that only applies to actors deemed capable of differentiating right from wrong, it also denounces the perpetrators of unlawful behaviour as being both undesirable and foreign. Since

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<sup>28</sup> If criminality is rooted in the possession of some stable characteristic, then troublesome behaviour is likely to repeat itself: such individuals represent an ongoing threat to the stability of the rule of law. See, for example, Stanley Cohen, *Visions of social control*; Mimi Ajzenstadt, "Crime, social control and the process of social classification: Juvenile delinquency/ justice discourse in Israel, 1948-1970," *Social Problems*. 49(4, 2002): 585-604.

<sup>29</sup> David Garland, *The culture of Control*. 21 & 24.

criminal behaviour is behaviour that is inconsistent with the social and moral standards of the society, and since such behaviour is inherently purposeful in character, then its perpetrators are intentionally transgressing both sets of standards, thus implying that they do not accept or recognize these standards. To label 'criminal' is therefore to symbolically cast people and conduct beyond the social and moral boundaries of the society: it denounces them as both 'bad' and 'other'. To criminalize, in other words, is to symbolically remove or otherwise exclude people and conduct from the community.<sup>30</sup> The practice of criminalization therefore inherently constitutes an extreme form of exclusion.

The role of criminal justice systems, as noted above, pertains to the size of their jurisdictions in responding to troublesome events or, in other words, to the range of categories of people and conduct that can or cannot be subjected to criminal justice sanctioning. Whereas categories of behaviour are subjected to criminal justice sanctioning insofar as criminal prohibitions are enacted against them, there are in fact two ways in which categories of people are subjected to such sanctioning. First, they may be deemed rational or otherwise inherently capable of differentiating right from wrong and therefore rendered subjects of the criminal law. That is, they are deemed capable of bearing criminal responsibility. Second, they may have criminal prohibitions enacted against forms of conduct with which they are closely associated. For example, the prohibition of opiate usage and sale in Canada received much of its original impetus from a public backlash against ethnic Chinese immigrants living in British Columbia as demand for their labour diminished in the

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<sup>30</sup> It should be noted that, in addition to such symbolic exclusion, criminalization may also result in the physical exclusion of individuals and groups from the community insofar as the courts often impose sanctions which involve removing or otherwise separating them - to varying degrees - from their social environments.

wake of declining railway construction and goldmining operations around the turn of the 20<sup>th</sup> century.<sup>31</sup> To enact criminal prohibitions against categories of conduct with which specific categories of people are closely associated therefore effectively involves transforming them into criminal classes, of criminally punishing them as a group. Because criminalization involves symbolically casting people and conduct beyond the social and moral boundaries of society, the size of the jurisdiction of criminal justice systems is therefore likely to diminish as broad deviance control strategies become progressively more inclusive in their basic orientations. This does not mean that the jurisdiction of criminal justice systems itself becomes more or less inclusive in character, only that its size varies in light of the emphasis that is placed on inclusive versus exclusive social practices as a result of criminalization constituting an extreme form of exclusion.

The approach of criminal justice systems, as noted above, pertains to the tolerance of their operational cultures for troublesome conduct and people in terms of whether they tend to favour criminalizing over non-criminalizing responses to those individual troublesome events falling within their jurisdiction. Because criminalization involves symbolically casting people and conduct beyond the social and moral boundaries of society, the tolerance for the operating culture of criminal justice systems for troublesome people and conduct is therefore likely to increase as broad deviance control strategies become progressively more inclusive in their basic orientations. Once again, this does not mean that the approach to order maintenance of criminal justice systems itself becomes more or less inclusive in character, only that its level of tolerance for troublesome people and conduct varies in

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<sup>31</sup> See Robert R. Solomon & Melvyn Green, "The first century: The history of non-medical opiate use and control policies in Canada, 1870-1970."

light of the emphasis that is placed on inclusive versus exclusive social practices as a result of criminalization constituting an extreme form of exclusion. Crime rates are therefore likely to be lower in contexts where greater weight is placed on inclusive deviance control practices.

### **The Literature on the Relationship between Welfare States and Crime**

The potential link between crime and the welfare state first gained prominence in the 1950s when, in the wake of the unprecedented hardships of the Great Depression as well as the devastation of the second world war, it was widely regarded as an important stabilizing force in terms of helping to contain the socially, politically and economically destabilizing tendencies of market capitalism. By virtue of stabilizing income flows over the peaks and valleys of the economic life cycle and providing an economic floor beneath which no person could sink, the welfare state offered the potential of promoting continuous demand for mass-produced consumer durables (the backbone of post-war, Fordist industrial economies), social cohesion by virtue of reducing class differences, and social solidarity by virtue of linking benefits to common citizenship.<sup>32</sup> When cast in this light, the expansion of the welfare state appeared to be an effective means of addressing many of what were - and still are believed by some - to be among most important 'root causes' of crime including unemployment, poverty, inequality and social exclusion, and therefore of preventing its occurrence. Indeed, one of the major forces driving the growth or development of social policy in the United States from the early-1950s until the early-1970s, including President Johnson's War on Poverty,

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<sup>32</sup> On these issues see Gosta Esping-Andersen, "After the golden age? Welfare state dilemmas in a global economy," In Gosta Esping-Andersen, ed., *Welfare states in transition: National adaptations in global economies* (London: Sage Publications, 1996), 1-31; John Myles, "Decline or impasse? The current state of the welfare state," *Studies in political economy*. 26 (summer, 1988): 73-107.

was its presumed mitigating influence on crime.<sup>33</sup> Proponents of the expansionist argument often point to empirical evidence indicating that crime rates tend to be higher in jurisdictions where welfare states are less developed and/or generous to validate or otherwise support their position.<sup>34</sup>

By the 1970s, with the Great Depression and second world war no longer fresh in public consciousness, with poverty, inequality and unemployment still prevalent in most societies, and with the state entering a deep fiscal crisis while simultaneously facing continued political demands for the further extension of social rights to various constituencies and the economy entering a period of prolonged stagnation, the very legitimacy of the welfare state began to be called into question in many sectors of society.<sup>35</sup> Some went so far as to argue that the welfare state had a predominantly negative social, political and economic impact. The benefits it distributes, combined with the taxes it relies on to finance those benefits, are argued to destroy the bonds of community by encouraging citizens to rely on the state instead of on each other in times of need and by transferring power and control over local systems of social support to bureaucratic agencies thereby usurping the role of the

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<sup>33</sup> See George B. Vold & Thomas J. Bernard, *Theoretical criminology*. 185-203.

<sup>34</sup> See, for example, Elliot Currie, "Market, crime and community: Toward a mid-range theory of post-industrial violence," *Theoretical Criminology*. 1(2, 1997): 147-172; Steven F. Messner & Richard Rosenfeld, "Political restraints of the market and levels of criminal homicide: A cross-national application of institutional-anomie theory," *Social Forces*. 75(4, 1997), 1393-1416; Jukka Savolainen, "Inequality, welfare state, and homicide: Further support for the institutional anomie theory," *Criminology*. 38(4, 2000), 1021-1039.

<sup>35</sup> This attack, it should be noted, came from both the right who challenged the economic rationality of the welfare state as well as the justness of taxation on which it was so dependent, and from the left who challenged the undemocratic nature of bureaucracy as well as the inequitable distribution of benefits which tended to privilege white male industrial workers over all other groups. For a discussion of these themes see Susanne MacGregor, "Welfare, neo-liberalism, and new paternalism: Three ways for social policy in late capitalist societies," *Capital & Class*. 67 (spring, 1999), 91-117; Desmond King & Stewart Wood, "The political economy of neoliberalism: Britain and the United States in the 1980s," In Herbert Kitschelt, Peter Lange, Gary Marks, & John D. Stephens, eds., *Continuity and change in contemporary capitalism*. (Cambridge: Cambridge University Press, 1999), 371-397.

voluntary sector, of promoting special interest politics by virtue of transforming recipients into narrow political constituencies, and of creating disincentives to both work and investment. When cast in this light, the expansion of the welfare state appeared not only to fail to prevent crime, but actually to contribute to its occurrence. Given its presumed corrosive influence on communities in terms of contributing to their disorganization and dis-aggregation, the welfare state was argued to undermine the capacity for as well as potency of informal social control. Retrenching or otherwise limiting the development of welfare states to a bare minimum is therefore seen to represent an effective crime prevention strategy.<sup>36</sup> Proponents of this argument often point to the fact that the period representing the zenith of welfare state expansion (from the early 1950s until the early 1970s) was also one of dramatic growth in crime rates across most Western nations as empirical evidence of the validity of their position.<sup>37</sup>

Neither of these rival positions have proven to be particularly effective in accounting for differences in crime rates over time and across space. Both positions are undermined by the existence of much empirical evidence contradicting their respective arguments. For the expansionist position, the damaging evidence is the exceptional growth in crime rates during the era of rapid welfare state expansion; and for the retrenchment position, it is the tendency for crime to be highest where welfare states are most residual and market-oriented. The result has been a rather fruitless

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<sup>36</sup> See, for example, Amitai Etzioni, *The spirit of community: Rights, responsibilities, and the communitarian agenda*. (New York: Crown Publishers, 1993); David Osborne & Ted Gaebler, *Reinventing government: How the entrepreneurial spirit is transforming the public sector*. (New York: PLUME, 1992); Charles Murray, *The emerging British underclass*. (London: Institute for Economic Affairs, 1990); Charles Murray, *Losing ground*. (New York: Basic Books, 1984).

<sup>37</sup> See, for example, James Q. Wilson, *Thinking about crime*. (New York: Random House, 1975).

debate that appears to have reached an impasse as neither side has been capable of reconciling a greater proportion of the total body of empirical evidence than when the debate first started. The basic problem with both positions is that they largely ignore the inherently subjective or socially constructed nature of crime and, as such, are incapable of putting forth adequate explanations of the causal mechanisms by which welfare states influence crime statistics. Consequently, although both positions suggest - albeit for different reasons - that welfare states contribute to variability in crime rates, neither provides a particularly solid foundation for developing this argument.

The work of David Garland does, however, provide a strong point of departure for developing this argument as it structurally links criminal justice functioning and practice to the broader political economy, in which the welfare state constitutes a major component. Garland contends that societal responses to troublesome people and behaviour - of which the role and approach of criminal justice systems represent among the single most important elements - constitute adapted solutions to the insecurities, risks and control problems posed by the dominant social relations and social practices of a society. These solutions - including those provided by the criminal justice system - tend to be moderately coordinated in terms of both complementing and reinforcing each other. That is, they tend to be underpinned by a common set of principles, objectives and methods such that specific groups are consistently subjected to either a predominant logic of inclusion or exclusion of stable intensity. Societal responses to troublesome people and conduct are thus said to collectively constitute a loosely organized and relatively coherent deviance control

strategy.<sup>38</sup>

According to Garland, deviance control strategies - and by implication the role and approach of criminal justice systems - are adopted largely on the basis of their compatibility with the basic social, cultural, political and economic arrangements of a society. Their overarching objectives, principles and methods are shaped less by perceived criminological effectiveness than by broad political economic forces; "Crime control strategies and criminological ideas are not adopted because they are known to solve problems. The evidence runs out well before their effects can be known with any certainty. They are adopted and they succeed because they characterize problems and identify solutions in ways that fit with the dominant culture and the power structure upon which it rests."<sup>39</sup> Certain kinds of solutions to the risks, insecurities and order problems confronting a society, in other words, are inherently more structurally attractive than others because of their ability to "mesh with the most powerful institutions, allocate blame in popular ways, and empower groups that currently command authority, esteem and resources"<sup>40</sup> Deviance control strategies therefore tend to "have a certain congruence, a certain 'fit' with the structures of ...society."<sup>41</sup>

In arguing that the content and character of deviance control strategies tend to be heavily

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<sup>38</sup> For Garland, the notion of 'strategy' does not refer to some well-defined and highly consistent blueprint which is imposed from above, but to "a pattern or logic inscribed within a network of apparatuses which operate in loose co-ordination around a series of common or complementary objectives." David Garland, *Punishment and welfare* 207-208.

<sup>39</sup> David Garland, *The culture of control*, 26.

<sup>40</sup> *Ibid.*, 26.

<sup>41</sup> *Ibid.*, 201.

informed by structural factors, Garland does not contend that they are fully determined by such factors.<sup>42</sup> Rather, as adapted solutions to the risks, insecurities and order problems confronting society, deviance control strategies are ultimately human creations. They are products of the constrained decision-making of individual and institutional actors. In Garland's own words, "It needs to be remembered that the emergence of structural phenomena such as rationalities, mentalities, and strategies is, in the first place, the outcome of problem-solving activity on the part of situated actors and agencies. There is no magical, automatic process of functional adjustment and system adaptation that exists apart from this."<sup>43</sup> Such strategies therefore emerge on the basis of perceptions of the nature and severity of the problems confronting society, as well as perceptions about the morally most appropriate and logically most feasible means of dealing with them. Garland contends that such perceptions are ultimately rooted in the very subjectivity or consciousness - that is, in their styles of reasoning, professional sensibilities and basic values - of situated actors and, as such, are never fully determined by political economic forces and are largely insensitive to changes in such forces over the short term. Not only does the subjectivity of individual actors adapt imperfectly to political economic forces in terms of mirroring their underlying values, beliefs and biases, but this adaptation only tends to occur over the medium to long-term.<sup>44</sup> Since history,

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<sup>42</sup> Indeed, he explicitly states that, "The general explanation that I set out here necessarily involves two kinds of accounts: a *structural* account that points to the general characteristics of a certain kind of organization, and a *conjunctural* account that identifies the choices and contingencies that shaped how particular social groups adapted to these structures and mediated their social consequences... I have tried to argue that the reconfigured field of crime control is structurally related to the conditions of late modernity, while emphasizing that 'structurally related' is not the same as 'strictly determined'." Ibid., 201.

<sup>43</sup> Ibid., 25.

<sup>44</sup> On this matter Garland writes, "The social and economic determinants of 'the outside world' certainly affect the conduct of penal agents (police officers, judges, prison officials, etc.), but they do so indirectly, through the gradual reshaping of the rules of thought and action within a field that has what sociologists call a 'relative autonomy'. Social trends - such as rising rates of crime and feelings of insecurity, economic crises, political shifts

Garland suggests, is driven by the problem-solving activities of situated actors and agencies, external forces invariably make certain choices or courses of action more favourable and therefore more likely than others, but they certainly never render them inevitable.<sup>45</sup>

Based on this general framework, Garland suggests that welfare states are relevant to the role and approach of criminal justice systems because they influence the character of dominant social, cultural, political and economic arrangements. In so doing, they act upon the decision-making of those individuals and agencies responsible for responding to troublesome events in ways that make certain approaches or courses of action appear to be both more legitimate and logical than others. As such, he argues that the greater the extent to which welfare states put forth or otherwise make use of inclusive discourses and practices, the more heavily that deviance control strategies are likely to be influenced by the logic of inclusion, and *vice versa* to the extent that welfare states make use of exclusive discourses and practices.

Through an examination of the genealogy of different order maintenance strategies in general and criminal justice deployment patterns in particular, Garland provides compelling historical

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from welfarism to neo-liberalism, changing class, race or gender relations, and so on - have to be translated into the folkways of the field before they have an effect there." Ibid., 24.

<sup>45</sup> Garland therefore describes order maintenance strategies as being "the outcome of a complex and fragmented process of struggle, within which the calculations of individuals and agencies play a crucial, but by no means controlling, part. Such strategies are always at a distance from the diverse points of calculation and programming that promote them. They presuppose multiple, but myopic, knowledges, not a single omniscience. They are calculated, but never directly or comprehensively. They are the outcome of struggles, but struggles which are to some extent directed, delimited and deliberate in their political direction. Strategy-formation is thus a matter of fragmentary lines of development crossing and intersecting, or else being lost as they go off implausible tangents. These lines are then transformed and finally officially inscribed into a strategic pattern in the operational discourses and practices of institutions." David Garland, *Punishment and welfare* 207-208.

evidence to support this argument. First, his analysis suggests that the repressive penal strategy which dominated criminal justice throughout much of the West during the nineteenth century drew considerable support from a network of social policies whose dominant ideology was both individualistic and exclusionary insofar as it encouraged self-reliance while stigmatizing state dependence, and whose agencies, most notably the workhouse, “enforced a line of repression against the lower sectors of the working class.”<sup>46</sup> His analysis also suggests that the correctionalist or rehabilitative penal strategy which dominated criminal justice throughout much of the West during the first three-quarters of the twentieth century drew considerable support from a network of social policies whose dominant ideology was, to varying degrees, moderately solidaristic, and whose programs and services worked to attach otherwise isolated individuals and groups to the institutions of civil society, most especially the labour market.<sup>47</sup> Finally, Garland also suggests that the recent shift towards increasingly punitive and segregative criminal justice deployment patterns throughout much of the West (though especially in Britain and America) during the last three decades of the twentieth century has been propelled, in part, by a fundamental shift in the underlying orientation of welfare states away from social justice and the collectivization of risks to consumer choice and

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<sup>46</sup> David Garland, *Punishment and Welfare*, 52. In this sense “poor relief was not an aspect of the normal rights of citizenship as it was to become in the twentieth century. It was instead a *denial* of citizenship, an alternative to it which involved the individual in a disavowal of the rights of freedom and franchise in exchange for the minimum necessities of life. To claim state aid was to relinquish private freedom, to quit the political community and choose the status of outcast or pariah.” *Ibid.*, 48.

<sup>47</sup> On this point, Garland writes, “Much of the effectiveness, and indeed the plausibility, of correctional practices such as custodial training, probation counselling, and parole supervision depended upon their ability to connect the offender with the world of work and domestic stability. In a period of full employment, expanding welfare services and relatively generous benefits, correctionalist practices of this kind came to be widely regarded as feasible and desirable.” David Garland, *The culture of control*, 48.

labour market flexibility.<sup>48</sup>

Garland appears to have provided a very compelling argument about why the inclusiveness of welfare states is relevant to criminal justice functioning and practice. In laying out this structural argument, he relies neither on the logic of mechanical causality, in which precise combinations of variables are assumed to always produce very specific outcomes, nor on the logic of functional adjustment in which abstract forces seemingly always produce the most efficient outcomes. It relies instead on the constrained decision-making of institutional actors thereby leaving room for both uncertainty and human agency. His argument is also empirically compelling because it appears to be capable of accounting for the broad historical pattern of welfare state and criminal justice development which has occurred throughout much of the West.

While providing a powerful explanation for why welfare state inclusiveness is relevant to criminal justice system functioning and practice, the framework developed by Garland unfortunately offers little insight into how such inclusiveness actually influences the dynamics of criminal justice

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<sup>48</sup> On this point Garland writes, "The institutional and cultural changes that have occurred in the crime control field are analogous to those that have occurred in the welfare state more generally. Talk of the 'end of welfare' and the 'death of the social' - like talk of the demise of rehabilitation - should be understood as a kind of counter-rhetoric, not as empirical description. The infrastructures of the welfare state have not been abolished or utterly transformed. They have been overlaid with by a different political culture, and directed by a new style of public management. In the process they have become more restrictive and means-tested, more concerned to control the conduct of claimants, more concerned to transmit the right incentives and discourage 'dependency'." *Ibid.*, 174. This, in turn, is helping to give rise to increasingly segregative and punitive criminal justice practices in the form of "Harsher sentencing and the increased use of imprisonment; 'three strikes' and mandatory minimum sentencing laws, 'truth in sentencing' and parole release restrictions, no frills prisons laws and 'austere prisons'; retribution in juvenile court and the imprisonment of children; the revival of chain gangs and corporal punishment; boot camps and supermax prisons; the multiplication of capital offences and executions; community notification laws and paedophile registers; zero tolerance policies and Anti-Social Behaviour Orders. There is now a long list of measures which appear to signify a turn in contemporary penalty." *Ibid.*, 142.

deployment. That is, his account gives little indication of how the inclusive character of welfare states shapes official crime statistics. In order to address the issue of how variability in the inclusiveness of welfare states translates into variability in crime rates, his account must be supplemented in two ways. First, it must be complemented by an adequate conceptualization of what it actually means for welfare state to be more or less inclusive in character. Whereas Garland indicates that welfare states are more or less inclusive on the bases of their discourses and practices, he does not specify which discourses and practices are most important in this regard, or even what makes them inclusive or exclusive in the first place. He simply does not flesh out the constituent components of the inclusive dimension of welfare state variability. Without an adequate understanding of what makes welfare states more or less inclusive in character, it is impossible to assess and compare the inclusiveness of reasonably similar welfare states like those of Quebec and Ontario.

Second, his account must be supplemented by an understanding of how the inclusive dimension of welfare states relates to when and how criminal justice systems are deployed in response to troublesome events. Because the focus of his analysis was on penalty and not the broader issue of criminalization, he offers little insight into how the constituent components of the inclusive dimension of welfare states relate to the individual dynamics of criminal justice system deployment, namely the size of their jurisdictions and their approaches to order maintenance. Without a proper understanding of how the various facets of welfare state inclusiveness influence the individual dynamics of criminal justice deployment most relevant to the social construction of crime statistics, it is impossible to accurately assess the role of welfare states in contributing to

variability in crime rates across jurisdictions. Addressing these two issues is the focus of the final two sections of this chapter.

### **The Inclusive Dimension of Welfare States**

Developing an adequate conceptualization of what it means for welfare states to be inclusive or exclusive in character necessarily requires having a well-developed understanding of what these institutions are to begin with. Although there exists a large body of literature devoted to the question of what institutions comprise the welfare state, there actually exists little agreement on where its boundaries begin and end.<sup>49</sup> For the purposes of this dissertation, the welfare state shall consist of those programs and institutions that provide individuals and groups with resources - be they financial, cultural or social - that are relevant to human reproduction, both on a daily and generational basis. According to Göran Therborn, the former refers to “maintaining already living human beings” and the latter refers to “maintaining given populations by creating new generations of humans.”<sup>50</sup> The welfare state therefore consists of all benefits and services in the domains of health, education, income assistance, housing, child protection, community services, and recreation. Whereas T. H. Marshall suggested that welfare states are inherently equality enhancing and rights affirming in nature, the definition advanced in this chapter suggests that this need not be the case.

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<sup>49</sup> See T. H. Marshall, *Citizenship and social class*. (Cambridge: Cambridge University Press, 1950); Claus Offe, *Contradictions in the welfare state*. (London: Hutchinson, 1984); Gary Teeple, *Globalization and the decline of social reform*. (Toronto: Garamond Press, 1995), 15-16.

<sup>50</sup> Göran Therborn, “Welfare states and capitalist markets,” *Acta Sociologica*. 30 (3-4, 1987), 239. He elaborates that, “the latter is, of course, above all a sexual act, but human sexuality and procreation may be, and often are, regulated or subjected to intended affectation by social policy, by allowances and other forms of family and parenthood support, by family planning. The connotation of the other meaning of human reproduction indicates that maintaining people alive is not only a question of providing subsistence, but also, often, of care, of health care, and of the broad range of helping and supportive activities usually called social care.” *Ibid.*, 239.

Punitive and stigmatizing practices can form part of the welfare state so long as they provide individuals and groups with resources that are relevant to their daily and generational reproduction. In this usage, the concept of ‘welfare state’ thus refers to a particular branch of the state rather than to a particular kind of state that is rooted in a ‘welfarist’ approach to social policy. Such a definition carries two important implications.

First, the notion that welfare states consist of benefits and services in the various domains critical to human survival and development implies that they do not merely operate in parallel to the major institutions through which individuals derive their well-being, namely markets, families and communities, but intricately weave themselves into their very fabric and therefore profoundly influence how they evolve over time. They help shape the character of class relations and the organization of economic production through, for example, the rules governing the minimum wage, working hours, child labour, the retirement age, collective bargaining rights, the ability of firms to engage in wage-cutting competition, the training of workers, and income supports which, in various degrees, enable workers to enter or exit the labour market without adversely affecting their standards of living.<sup>51</sup> They help shape the character of family relations and practices through, for example, the rules governing family formation and dissolution, biological reproduction (e.g., access to contraception, abortion), and the extent to which the qualifying conditions of benefits for individuals like income assistance are mediated by family relations.<sup>52</sup> They help shape the character of

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<sup>51</sup> Paul Pierson, “The three worlds of welfare state research,” *Comparative Political Studies*. 33(6/7, 2000), 791-821.

<sup>52</sup> Julia S. O’Connor, Ann Shola Orloff & Sheila Shaver, *States, markets, families: Gender, liberalism and social policy in Australia, Canada, Great Britain and the United States*. (New York: Cambridge University Press,

community relations and practices through, for example, the quality of their support for the creation and maintenance of public spaces, the quality of their support for community groups and organizations, the role they afford to the voluntary sector in the administration and delivery of social services, and the quality of opportunities they afford for local representation in the bodies which develop and administer social programs and services.<sup>53</sup>

Second, the notion that welfare states constitute a specific branch of the state that is concerned with ensuring human reproduction on a daily and generational basis rather than a specific approach to social policy implies that, not only do they play an important role in shaping how markets, families and communities evolve over time, but that the specific manner in which they shape these institutions can vary quite considerably. Such a conceptualization implies, in other words, that there is much room for variability in the basic character of welfare states: their discourses and practices may potentially be informed by social democracy, liberalism, neo-liberalism, conservatism or any other political ideology. This is significant because one of the most important insights of the comparative welfare state literature is that these institutional complexes are not all more or less alike in why and how they go about influencing human reproduction, but do in fact differ in numerous and often fundamental ways. They are often underpinned by different sets of principles, pursue different sets of goals, and employ altogether different methods to achieve their

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<sup>53</sup> Jan Bucek & Brian Smith, "New approaches to local democracy: Direct democracy, participation and the 'third sector'," *Government and Policy*. 18(2000): 3-16; Robert E. Goodin et al., *The real worlds of welfare capitalism*, 31-32. See also, Bo Rothstein, "Social capital in the social democratic welfare state," *Politics & Society*. 29(2, 2001), 207-241; Jon Van Til, ed., *Growing civil society: From nonprofit sector to third space*. (Bloomington: Indiana University Press, 2000).

goals such that they are said to fall into clusters of distinctive regime types. According to Goodin et al., “Different welfare regimes represent different ‘worlds of welfare capitalism’. They represent, almost literally, whole different ‘worlds’ - each world being internally tightly integrated, each being sharply differentiated from one another. Welfare regimes bunch particular values together with particular programmes and policies. Different sorts of welfare regime pursue different policies, and they do so for different sorts of reasons.”<sup>54</sup> By extension, this implies that welfare states likely differ, often considerably, in their basic inclusiveness, even if the constraints which act upon them intensify.

What determines whether and to what extent welfare states are inclusive or exclusive in character? The answer appears to revolve around the degree to which they either bring individuals and groups into, or keep them out of, the condition of social citizenship. Social citizenship is, at its most basic, a condition in which individuals and groups are ascribed high levels of social worth based solely on their legal status as members of political communities.<sup>55</sup> It is a condition, in other

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<sup>54</sup> Robert E. Goodin et al., *The real worlds of welfare capitalism*, 4-5. The welfare state literature seems to suggest that there are presently between three and five distinctive welfare state regimes operating in the OECD if not the entire capitalist world. For more on this debate see, Gosta Esping-Andersen, *The three worlds of welfare capitalism* (Princeton: Princeton University Press, 1990); Gosta Esping-Andersen, “After the golden age? Welfare state dilemmas in a global economy,” In G. Esping-Andersen, ed., *Welfare states in transition: National adaptations in global economies*. (London: Sage, 1996): 1-31; Francis G. Castles & Deborah Mitchell, “Worlds of welfare and families of nations”; Catherine Jones “The Pacific challenge,” in C. Jones, ed., *New perspectives on the welfare state in Europe* (London: Routledge, 1993): 198-221; Huck-Ju Kwon, “Beyond European welfare regimes: Comparative perspectives on East Asian welfare systems,” *Journal of Social Policy*. 26(4, 1997): 467-484; Stephan Leibfried, “Towards a European welfare state?,” in Z. Ferge & J. Verlag, eds., *Social policy in a changing Europe*. (Frankfurt: Campus Verlag, 1992): 245-276.

<sup>55</sup> That social citizenship implies high levels of social worth is a point that was first made by T. H. Marshall when he wrote that, “It is apparent from the events that I have briefly narrated that there developed, in the latter part of the nineteenth century, a growing interest in equality as a principle of social justice and an appreciation of the fact that the formal recognition of an equal capacity for rights was not enough. In theory even the complete removal of all the barriers that separated civil rights from their remedies would not have interfered with the principles of the class structure of the capitalist system. It would, in fact, have created a situation in which many supporters of the competitive market economy falsely assumed to be already in existence. But in practice the attitude of mind which inspired the efforts to remove these barriers grew out of a conception of equality which overstepped these narrow

words, whereby people are granted access to generous quantities of economic and cultural resources simply because they constitute official insiders of communities that are organized primarily around public involvement in their own governance. These resources constitute entitlements of formal community membership because their content is independent of the economic worth or contributions of their individual recipients.

Whereas welfare states are inclusive to the extent that they develop the condition of social citizenship by affording the members of political communities generous quantities of economic and cultural resources, they may of course distribute these resources in a highly uneven fashion. Certain categories of people, in other words, may be brought more fully into the condition of social citizenship than others, thus creating borders or divisions between and among the official members of political communities. To the extent that such divisions exist, certain categories of people are rendered 'ideal citizens,' others 'second-class citizens,' and others still 'third-class' or 'undesirable citizens' who effectively constitute internal outsiders. The inclusiveness of welfare states is therefore not only a matter of how well they develop the condition of social citizenship in terms of the maximum quantity of economic and cultural resources they make available to any single person or group, but also of whether they do so in a manner which tends to augment or diminish internal divisions between citizens.

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limits, the conception of equal social worth, not merely of equal natural rights. Thus although citizenship, even by the end of the nineteenth century, had done little to reduce social inequality, it had helped to guide progress into the path which led directly to the egalitarian policies of the twentieth century." T. H. Marshall, *Citizenship and social class*. (Cambridge: Cambridge University Press, 1950), 91-92.

There are two dimensions to the condition of social citizenship. First, it is an identity. It encodes representations of how individuals should see themselves as well as others, including both members and non-members of the political community.<sup>56</sup> The welfare state does not possess the power to establish this distinctively political identity, but it does define its content through its regulation of the daily and generational reproduction of individuals and groups. The inclusiveness of welfare states therefore partially revolves around how they define the content of the identity of citizen. All identities, including those of a political nature, are built around two core elements: a set of common or shared interests, and a set of identifiable traits or characteristics, be they biological (e.g., sex, race), social-structural (e.g., class, place of residence) or ideological (e.g., religion, language). Welfare states define the identity of citizen inclusively to the extent that it incorporates or is otherwise constructed around a wide range of individual and group interests, as well as identifies a wide cross-section of the population as possessing traits that are desirable without simultaneously identifying any negative or undesirable traits they might also possess or, to put it differently, insofar as it does not partially define desirability in the negative sense of an absence of certain specific traits. Welfare states bring individuals and groups into the identity of citizen, in other words, insofar as they define its content in a manner that is universalistic and affirming instead of particularistic and stigmatizing. By indicating whether the interests of various categories of people are important or unimportant to the wider political community and whether their traits are desirable or undesirable according to the prevailing standards of this community, whether and to what extent welfare states define the identity of citizen inclusively carries important implications for

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<sup>56</sup> See Jane Jenson & Susan D. Phillips, "Regime shift: New citizenship practices in Canada," *International Journal of Canadian Studies*. 14(Fall, 1996), 111-135; Trevor Purvis & Alan Hunt, "Identity versus citizenship: Transformations in the discourses and practices of citizenship," *Social & Legal Studies*. 8(4, 1999), 457-482.

the quality of social relations between members and non-members of these communities, and especially within and between categories of members. Most notably, it signals whether these relations should, to varying degrees, be solidaristic or antagonistic in nature.

Second, social citizenship is also a role. It involves a set of practices outlining when and how individuals should become involved in the public life of political communities. The welfare state does not possess the power to determine levels of citizen participation in public life, but it does play an important role in defining the potential parameters of such participation - of defining what it is that a citizen does with regards to the public sphere - through its regulation of the daily and generational reproduction of individuals and groups. The inclusiveness of welfare states therefore also partially revolves around how they define the content of the role of citizen. They define this role inclusively to the extent that it entails bringing individuals and groups into, rather than keeping them out of, the public sphere. Welfare states bring populations into the role of citizen, in other words, insofar as they define its content as involving active participation in instead of passive detachment from the public life of political communities. By indicating when and how individuals and groups should become involved in the public sphere, whether and to what extent welfare states define the role of citizen inclusively carries important implications for where this sphere begins and ends or, in other words, for the range of issues and problems that are brought into the public domain.

The inclusiveness of welfare states therefore revolves around how they substantively define

the content of the identity and role of citizen.<sup>57</sup> Specifically, welfare states are inclusive to the extent that they provide individuals and groups with economic and cultural resources that bring them into the identity of citizen by collectivizing their interests and by framing them positively, and that bring them into the role of citizen by creating opportunities for them to become involved in public affairs. How do they go about doing so? To put it differently, what do these resources actually look like? One of the earliest and best answers to this question was provided by T. H. Marshall in the early 1950s. He suggested that welfare states bring people into the identity and role of citizen on the basis of conferring equality enhancing social rights in the form of education and social services (i.e., cash and kind benefits in the domains of health, income, housing and so forth) upon them. The greater the value of these benefits and services, the greater the extent to which welfare states bring people into the identity of citizen because the more deeply they incorporate the interests of diverse social groups into the public sphere by collectivizing many of the risks and insecurities of the modern world, and the greater the degree to which they identify individuals and groups as inherently deserving and therefore of possessing valued traits. Moreover, the greater the value of these benefits and services, the greater the extent to which welfare states bring people into the role of citizen because the better able they are to participate in public affairs as a result of having more financial and cultural resources at their disposal for doing so, and as a result of reducing substantive inequality which serves to help animate or enliven basic civil and political rights, the two foundational elements of the public sphere.

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<sup>57</sup> In defining the content of the identity and role of citizen, welfare states constitute major components of what Jenson and Phillips have termed "citizenship regimes." See Jane Jenson & Susan D. Phillips, "Regime shift: New citizenship practices in Canada." According to Jenson, a citizenship regime pertains to "the institutional arrangements, rules and understandings that guide and shape state policy; problem definition employed by states and citizens; and the range of claims recognized as legitimate." Jane Jenson, "Fated to live in interesting times: Canada's changing citizenship regimes," *Canadian Journal of Political Science*. 30(4, 1997), 631.

The ideas developed by Marshall concerning how welfare states go about bringing people into the identity and role of citizen have been refined and extended most profoundly in the work of Gosta Esping-Andersen. He has done so in at least two ways. First, in arguing that the degree to which welfare states define the content of the identity and role of citizen inclusively or exclusively revolves around the strength of the entitlements of social citizenship, Marshall suggests that the strength of these entitlements is largely determined on the basis of their value or generosity. Esping-Andersen however suggests that this is only half of the equation. He argues that, whereas the strength of these entitlements is partially determined by their generosity, it is also partially determined by their qualifying conditions. In order for social citizenship rights to truly be rights, Esping-Andersen contends that they cannot be granted on the basis of need, contribution, family status or any other conditional grounds, but strictly on the basis of membership in the political community.<sup>58</sup> To truly be strong, in other words, social benefits and services must be characterized by an absence of conditionality. The importance of the universality of benefits was certainly touched upon by Marshall, but was clarified and brought to the fore by Esping-Andersen.

Second, whereas Marshall suggests that what is most important with regards to promoting participation in public affairs is for social programs and services to be highly redistributive, Esping-Andersen suggests that this in itself does not guarantee that individuals and groups will be in a strong position to undertake such participation. The reason is that involvement in the public life of political communities requires a high measure of economic independence. Without such independence, people will choose not to become involved in public affairs because other obligations crucial to their

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<sup>58</sup> Gosta Esping-Andersen, *The three worlds of welfare capitalism*, 21-22.

economic survival will always take priority. People will simply lack the necessary freedom to become involved. It is therefore less important for benefits to be redistributive to facilitate participation in public affairs than it is to provide an absolute economic floor beneath which no person or groups can sink. Without a guaranteed minimum of this kind other roles, especially that of worker, will always take priority over the role of citizen.

In light of the limitations he identifies with the answer provided by Marshall, Esping-Andersen suggests that welfare states define the content of the identity and role of citizen inclusively to the extent that they put forth a wide range of universal and decommodifying benefits. Universal benefits - that is, benefits which are made equally available to all citizens regardless of their particular traits or circumstances - render the identity of citizen inclusive by virtue of incorporating the interests of diverse categories of people into the public sphere, and of identifying these people as inherently deserving and therefore of being in possession of valued traits. Decommodification - that is, "the degree to which individuals, or families, can uphold a socially acceptable standard of living independently of market participation"<sup>59</sup> - renders the role of citizen inclusive by virtue of making individuals better equipped to become involved in public affairs in terms of enabling them to place their roles as citizens ahead of others - especially that of worker - without significantly hindering their economic well-being, and of making them more inclined to become involved in public affairs by virtue of rendering the public sphere more important to their overall well-being.

In suggesting that the inclusiveness of welfare states is determined by the universality and

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<sup>59</sup> Ibid., 37.

generosity of their social programs and services, Esping-Andersen clearly improves upon the ideas developed by Marshall. Despite its advancements, however, it appears upon close inspection that there are two important omissions in Esping-Andersen's conceptualization of the inclusive dimension of welfare states. He overlooks two facets of welfare state structure, in other words, that are also important as to whether and what extent they bring individuals and groups into the identity and role of citizen. This is not to suggest that the conditionality and generosity of social programs and services are irrelevant to the inclusiveness of welfare states, only that there are two additional facets of welfare state structure that are also relevant.

First, Esping-Andersen ignores the role of the discourses which surround both the welfare state and its individual programs. The inclusiveness of the content of the identity of citizen, as noted above, partially revolves around the extent to which welfare states represent individuals and groups as possessing positive attributes and not possessing inherently negative attributes. Esping-Andersen suggests that they represent individuals and groups as possessing positive and negative attributes based on the generosity of the benefits they afford: high levels of generosity imply deservedness while low levels of generosity imply undeservedness. This however is an oversimplification because, regardless of their level of generosity, state benefits may be afforded for many different reasons which may either be affirming of, neutral towards or stigmatizing of the social worth of recipients. For example, generous benefits may be afforded for reasons that frame recipients negatively and ungenerous benefits may be afforded for reasons which frame recipients positively. Benefits and services are affirming to the extent that they are justified on the grounds that recipients are fundamentally deserving by virtue of possessing certain valued characteristics, are neutral to the

extent that they are justified on grounds that are largely irrelevant to the deservedness of recipients such as promoting economic productivity, and are stigmatizing to the extent that they are justified on the grounds that recipients are fundamentally flawed and thus require state 'benevolence' to compensate for their 'failures' and 'inadequacies.' Consequently, since representations of the overall desirability of individuals and groups revolve in large part around the reasons why it is deemed necessary - or unnecessary - that they receive various benefits and services, then the inclusiveness of welfare states partially revolves around the quality of the discourses that surround individual social programs and services.

Second, Esping-Andersen's conceptualization of what makes welfare states more or less inclusive in character also overlooks the role of the public in developing, administering and delivering social programs and services. The inclusiveness of the content of the role of citizen, as noted above, partially revolves around the extent to which welfare states define this role as involving active participation in, rather than passive detachment from, the public life of political communities. Esping-Andersen suggests that welfare states define this role actively to the extent that individuals are afforded the ability to enter and exit the labour market without adversely affecting their well-being. This however is overly abstract since there is no straightforward relationship or link between income and participation: de commodification and civic engagement are logically distinct issues. Whether individuals and groups should or should not participate in public affairs largely depends on whether they are presented with direct opportunities for doing so - or, in other words, with conduits of access to the public sphere. Income replacement and support programs have little bearing on the availability of such conduits. These tend to exist, in large part, independently of

individual material well-being. Income transfers undoubtedly facilitate the ability of individuals to exploit opportunities for involvement in the public sphere, but do not create such opportunities in their own right. Decommodifying social rights, in other words, are only relevant to the ability of individuals to participate in public life so long as there are pre-existing opportunities in place for doing so. Welfare states create such opportunities only insofar as they create spaces for people to come together in their common capacity as citizens for the purposes of influencing some facet of the production and distribution of well-being throughout the political community. Consequently, since participation in the public life of political communities requires direct opportunities for doing so, the inclusiveness of welfare states partially revolves around the degree to which the development, administration and delivery of social programs and services is open to public involvement.

This section has argued that welfare states are inclusive or exclusive depending on how they substantively define the content of the identity and role of citizen. Building on the insights of Marshall and Esping-Andersen, it has also argued that whether and to what extent welfare states define this identity and role inclusively depends on the universality and generosity of the benefits and services they afford, the character of the discourses they employ to justify the provision of and limitations attached to these benefits and services, and the quality of the opportunities they create for individuals and groups to become involved in the development, administration and delivery of these benefits and services. If variability in welfare state inclusiveness does indeed contribute to variability in official crime rates, then what remains to be demonstrated at this particular juncture is how the inclusiveness of welfare state definitions of both the identity of citizen and the role of citizen respectively relate to and ultimately influence the process by which crime statistics are

produced by criminal justice systems.

### **Welfare State Inclusiveness and the Construction of Crime Statistics**

How are those dynamics of criminal justice system deployment most relevant to the social construction of official crime statistics affected by variability in the two facets of the inclusive dimension of welfare states? How are the size of the jurisdiction and approach to order maintenance of criminal justice systems influenced, in other words, by the degree to which welfare states define the content of both the identity and role of citizen inclusively or exclusively? The role or jurisdiction of criminal justice systems, it should be remembered, pertains to the range of categories of people and conduct over which they have dominion - that is, to the range of categories of people and conduct against which criminal prohibitions have been established. To enact criminal prohibitions against specific categories of people and conduct involves symbolically casting them beyond the social and moral boundaries of society. Moreover, it also involves an element of retribution: whether elevated to the foreground or pushed deep into the background, to enact criminal prohibitions against specific categories of people and conduct not only involves identifying them as undesirable and foreign, but also involves subjecting them to some measure of harm or punishment. To locate within the boundaries of the criminal justice system is not only an expression of symbolic exclusion, in other words, but is also an overt expression of hostility. According to David Garland, governing through crime - that is, subjecting categories of people and conduct to criminal sanctions - involves "the release of individual aggressions in the form of a 'functional' group hostility, dedicated to the

vanquishing of an enemy.”<sup>60</sup> Criminal prohibitions are therefore different from all other kinds of social and moral boundaries because they necessarily involve an element of retribution or punitive aggression. Because they involve both symbolic exclusion and retribution, criminal prohibitions constitute expressions of extreme intolerance towards specific categories of people and conduct: they deserve not only to be excluded, but also punished.

Societies are intolerant of categories of troublesome people and conduct to the extent that they value strict conformity over individual and group self-expression. The size of the role of criminal justice systems in responding to troublesome events should therefore generally be inversely related to the strength of ideological barriers against strict conformity or, in other words, to the strength of ideological support for expressiveness. Representations of political communities valuing active self-expression over passive compliance constitute such barriers. Welfare states put forth such barriers to the extent that they create opportunities for individuals and groups to become directly involved in the design, administration and delivery of social programs and services. By creating such opportunities, welfare states define the role of citizen as involving active participation in the shaping of public policy rather than mere passive acceptance of such policy. In creating such opportunities, in other words, they encourage individuals and groups to express and act upon their sentiments about social policy.

Welfare states defining the content of the role of citizen inclusively should therefore translate

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<sup>60</sup> David Garland, *Punishment and modern society: A study in social theory*. (Oxford: Clarendon Press, 1990), 77.

into criminal justice systems possessing narrower jurisdictions, and *vice versa*. To the extent that valuing self-expression implies or is otherwise consistent with the principle that all human beings possess moral worth by virtue of their inherent uniqueness, there does appear to be some support for this argument in the work of Émile Durkheim. He observed that the importance of criminal law as a source of social regulation - that is, the size of the jurisdiction of criminal justice systems - had steadily declined throughout much of the West during the nineteenth century. Durkheim argued that this decline had been precipitated in part by the growth of a complex division of labour whose functional interdependencies rendered individuals and groups more amenable to less coercive forms of control, and also by the rise in influence of the ethic of individualism or, in other words, by the growing popularity of the view that human beings possess inherent worth and dignity as rights-bearing creatures. Whereas criminal law punitively enforces the central moral prohibitions of a society, he argued that the ethic of individualism tends to reduce the number of such prohibitions to the point that the domain of criminal law increasingly becomes limited to those forms of conduct which undermine or otherwise threaten the dignity and worth of individuals.<sup>61</sup> In this sense, Durkheim's theory lends support to the argument that the degree to which welfare states define the role of citizen as involving active participation in the public life of political communities influences the size of the jurisdiction of criminal justice systems.

The approach of criminal justice systems, it should be recalled, pertains to the tolerance of their operational cultures for troublesome people and conduct - to whether the benefits of criminalizing troublesome events are perceived to be high or low relative to their associated costs.

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<sup>61</sup> See Émile Durkheim, *The Division of Labour in Society*. (New York: The Free Press, 1965).

Perceptions about the benefits of criminalizing troublesome events revolve around whether the type of conduct involved is believed to be likely to spread if the event is not criminalized, and around whether the actor involved is believed to be likely to continue engaging in troublesome conduct if the event is not criminalized. Since processing troublesome events as crimes involves subjecting their perpetrators to coercive sanctions for the purposes of general deterrence as well as for the prevention of recidivism by virtue of either specific deterrence, rehabilitation or incapacitation, such a response is of limited value if criminal conduct is perceived as non-contagious and criminality is perceived as a temporary or transient state of being. The tolerance of criminal justice systems for troublesome conduct and people therefore revolves around their working assumptions about the causes of crime and of criminality.

Crime is only likely to spread if its causes are seen to reside in the exercise of free will or, in other words, in rational calculus. If criminal conduct is caused by forces over which individual actors have little control, then the frequency of its occurrence will tend largely to be governed by the degree to which individuals are exposed or otherwise vulnerable to these forces irrespective of the likelihood of being punished for doing so. There is little benefit to the prevention of crime to be gained from attempting to deter its occurrence by punishing its perpetrators if it is precipitated by factors over which these persons have little control. Criminal justice system tolerance of criminal conduct should therefore generally be inversely related to the strength of ideological barriers against perceiving conduct as being primarily driven by rational calculus. Representations of individuals not being entirely responsible for their own well-being constitute such barriers because they imply that responsibility is more of a collective than individual matter. Welfare states put forth such

barriers to the extent that they incorporate the interests of individuals and groups into generous benefits and services: by addressing the needs of individuals and groups, welfare states collectivize well-being thereby implying that individuals are not entirely responsible for their own fates.

Welfare states placing greater emphasis on the collectivization of responsibility for well-being - that is, on collectivizing social problems like poverty, unemployment, mental illness, addiction and so forth - should therefore translate into criminal justice systems possessing operational cultures that are more tolerant of troublesome conduct. It should, in other words, translate into a criminal justice system with a working criminology whose assumptions about the causes of crime suggest that formal criminal justice processing will be beneficial to the maintenance of the stability of the rule of law in a narrower range of situations. There does appear to be some support for this argument in the work of David Garland. He noted that, as a working criminology which assumes that criminal conduct is caused by factors - be they social, psychological or biological - beyond the control of individual actors, the ascension and subsequent decline in influence of correctionalism in the United States and Great Britain was firmly rooted in the rise and subsequent decline of social programs and services which emphasized economic security and social solidarity. According to Garland, "The welfare state and post-war prosperity enhanced economic security and social solidarity in Britain and America, and it seems reasonable to suppose that these social arrangements provided an important cultural underpinning for the 'no-fault' correctionalist institutions that flourished in the post-war years."<sup>62</sup> With this dual emphasis on economic security and social solidarity, "crime and delinquency could be viewed not as a threat to social order but as

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<sup>62</sup> David Garland, *The culture of control*, 48.

lingering relic of previous deprivations.”<sup>63</sup> Insofar as economic security revolves around the aggregation of risk and social solidarity revolves around the aggregation of support, Garland effectively suggests that the rise and fall of rehabilitation as a dominant working criminology was precipitated in large part by the rise and subsequent decline in welfare state emphasis on the collectivization of responsibility for well-being. Consequently, there does appear to be some support for the argument that the degree to which welfare states define the identity of citizen inclusively in terms of collectivizing the interests of individuals and groups influences criminal justice system tolerance of troublesome conduct and, by extension, their approaches to order maintenance.

Criminal motivation or criminality is only likely to persist if it is rooted in the possession of stable characteristics - be they social, psychological or biological - that serve to differentiate criminal actors from non-criminal actors. It is only likely to endure, in other words, if it is rooted in the possession of some kind of ongoing deficiency or abnormality. If individuals and groups possess deficiencies which inherently predispose them to criminal behaviour, then criminal events involving such persons are unlikely to be singular or exceptional. Such behaviour is likely to repeat itself so long as they continue to possess these deficiencies.<sup>64</sup> Representations of normalcy constitute such barriers. If people are normal, then they cannot possess characteristics which foster criminality. If

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<sup>63</sup> Ibid., 48.

<sup>64</sup> By contrast, criminal events perpetrated by persons who do not possess these traits are likely to be dismissed as unimportant. Indeed, Garland suggests that this is precisely what occurred in Britain and America when the correctionalist paradigm was dominant during the 1950's and 1960's; “A basic feature of the correctionalist framework was a routine differentiation between ‘the normal’ and ‘the pathological’ followed by a more or less exclusive focus on the latter. Those individuals who offended, but who were judged to be essentially ‘non-delinquent’ or free of any real criminal disposition, became uninteresting for the purposes of criminological theory and penal practice. They could be dealt with minimally - by cautions or fines or, if the offence was serious, by deterrent penalties with no treatment component.” Ibid., 42.

people are normal, in other words, then their criminality must necessarily be a temporary state of being. Welfare states put forth such representations to the extent that they characterize individuals and groups as possessing positive traits while simultaneously not possessing any negative traits: the latter implies that they do not possess any known deficiencies whereas the former implies that they unlikely possess any unknown deficiencies. Stated differently, the latter inoculates them against known abnormalities and the former inoculates them against heretofore unknown abnormalities.

Welfare states defining the content of the identity of citizen inclusively by affirming rather than stigmatizing the character of individuals and groups should therefore translate into criminal justice systems possessing operational cultures that are more tolerant of troublesome people. It should, in other words, translate into a criminal justice system with a working criminology whose assumptions about the causes of criminality suggest that formal criminal justice processing will be beneficial to the maintenance of the stability of the rule of law in a narrower range of situations. Jock Young provides suggestive evidence to this effect in noting that the ascension and decline of correctionalism which, among other things, assumes that criminality is rooted in the possession of some stable biological, psychological or socioeconomic characteristic which differentiates offenders from non-offenders,<sup>65</sup> as the dominant criminological paradigm throughout the West during the 1950s and 1960s was propelled in part by the rise to preeminence of civic narratives which emphasized conformity to a closed or narrowly defined model of citizenship. That is, it was propelled by the rise to prominence of civic narratives which emphasized assimilation into the status

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<sup>65</sup> Garland notes that "The primary concern of correctionalist criminological research was to identify individual characteristics which differentiated 'delinquents' and 'criminal personalities' and to correlate these to other conditions that might provide clues to their aetiology and treatment." *Ibid.*, 42.

of citizenship, a status which had largely been forged around white, male, middle-class norms, and the eschewing of all other narrower social identities.<sup>66</sup> It was driven, to quote Young, by the rise of an “ethic that was intolerant of *diversity*”<sup>67</sup> and which therefore “demanded uniformity, a homogeneity of culture and identity. It concealed rank divisions between the sexes, between ethnic groups and between classes.”<sup>68</sup> Insofar as affording priority to the goals of assimilation and homogeneity implies that the unassimilated are somehow deficient, Young effectively suggests that the rise and subsequent decline of rehabilitation as a dominant working criminology was precipitated, in part, by the rise and decline of a citizen identity constructed around a narrow conception of normalcy. Consequently, there does seem to be some support for the argument that the degree to which welfare states frame individuals as possessing positive characteristics and of not possessing negative characteristics influences criminal justice system tolerance of troublesome people.

The first section of this chapter argued that criminalization constitutes a form of extreme exclusion and, as such, the greater the weight that a particular society places on inclusive social practices, the narrower the jurisdiction of criminal justice systems is likely to be, and the more

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<sup>66</sup> Citizenship is a universal status which claims priority over and therefore stands in tension with the various narrower identities arising from the heterogeneity of social life. Though citizenship claims priority over these other identities, its character is nevertheless informed, in varying degrees, by these social identities such that it may privilege certain of them over others - that is, it may be open to other otherwise embody certain social identities while remaining closed to others. Citizenship may therefore be “conceived as a project through which alternative identities vie for instantiation in the political institutions and discourses of society. This is a project which is never complete but remains open to contestation and supplementation...” Trevor Purvis & Alan Hunt, “Identity versus citizenship: Transformations in the discourses and practices of citizenship,” *Social & Legal Studies*. 8(4, 1999), 458.

<sup>67</sup> Jock Young, *The exclusive society*, 59.

<sup>68</sup> *Ibid.*, 148.

tolerant of troublesome people and conduct the operating culture of criminal justice systems is likely to be. The second section argued that, in contending that it acts upon the decision-making of those persons responsible for defining the jurisdiction and approach to order maintenance of criminal justice systems, Garland provides a strong account of why welfare state inclusiveness is relevant to the influence of the logics of inclusion and exclusion as organizing principles of broad deviance control strategies, but that his account must be supplemented in order to understand how the constituent components of welfare state inclusiveness actually relate to the individual dynamics of criminal justice deployment. The third section argued that the inclusiveness of welfare states revolves around how they define the substantive content of the identity and role of citizen. They define this identity inclusively to the extent that they are universalistic and affirming in terms of incorporating a wide range of interests and indicate that a wide range of people possess desirable characteristics without possessing any undesirable characteristics, and define this role inclusively to the extent that they create direct opportunities for participation in the public life of political communities. Whether this occurs depends on the universality and generosity of the benefits and services they provide, the character of the discourses employed to justify the provision of and limitations attached to these benefits and services, and the quality of the opportunities they create for individuals and groups to become involved in the development, administration and delivery of these benefits and services. The fourth section argued that the inclusiveness of the role of citizen tends to expand and contract the jurisdiction of criminal justice systems by virtue of contributing to an ideological climate that is either hostile towards or supportive of expressiveness, and that the inclusiveness of the identity of citizen tends to increase or decrease criminal justice system tolerance of troublesome conduct and people by virtue of contributing to an ideological climate which is either

hostile towards or supportive of the collectivization of responsibility and also of framing specific categories of actors as somehow abnormal. When put together, these four sections suggest that, by virtue of influencing the salience of the logics of inclusion and exclusion as organizing principles of broad deviance control strategies, crime rates are likely to be lower where welfare states are more inclusive in character. Variability in welfare state inclusiveness is therefore likely to contribute to differences in crime rates over time and across space.

To argue that the inclusive character of welfare states exerts a meaningful influence over crime statistics does not imply straightforward mechanical causality. That is, it is not intended to suggest that an increase or decrease of some specific amount in welfare state inclusiveness will always automatically translate into an increase or decrease of some fixed or otherwise predictable size in the crime rate. The relationship between welfare states and crime rates is both too complex and open-ended for this to occur for three reasons. First, as noted in section one, crime rates are not solely determined by criminal justice functioning and practice. They are also influenced, most notably, by behaviour patterns and the willingness of the general public to report perceived criminal events to the police such that, crime rates may very well increase as welfare states become marginally more inclusive in character.

Second, as also briefly alluded to in the first section, the impact of criminal justice systems on crime rates is not limited to the scale of their jurisdiction over, and tolerance of, troublesome people and conduct. These are not the only criminal justice system dynamics relevant to the social construction of crime statistics. Rather, such statistics are also influenced by numerous

administrative and technical considerations such as the professionalism of policing agencies as this relates to the diligence and competence of individual officers to properly complete and file the necessary paperwork as well as to the reliability of internal record keeping and data aggregation practices, the relationship between individual policing agencies and central statistical agencies, the diligence and competence of central statistical agencies, and so forth. Once again, this implies that differences in the inclusive character of welfare states both over time and across space may not be directly reflected in crime rates.

Finally, as noted in the second section, whereas the role and approach of criminal justice systems are based on the perceptions of situated actors about the nature of the risks, insecurities and order problems confronting society, such perceptions are rooted in individual consciousness and therefore can never be fully determined by external political economic forces, and are largely insensitive to changes in such forces over the short-term. Garland pointed out rather effectively that, not only does the subjectivity of individual actors always adapt imperfectly to the political economic environment in terms of mirroring its underlying values, beliefs and biases, but this adaptation only tends to occur over the medium- to long-term. For these three reasons, the influence of welfare state inclusiveness over crime rates is neither mechanical nor immediate. Nevertheless, when examined over the long-term, jurisdictions possessing more inclusive welfare states should on average have lower crime rates than jurisdictions possessing less inclusive welfare states.

**- Chapter Three -**

**The Inclusive Character of the Quebec and Ontario  
Welfare States**

The purpose of this chapter is to compare the inclusiveness of the Quebec and Ontario welfare states. Welfare state inclusiveness, as noted in the previous chapter, pertains to how these institutional complexes substantively define the content of the identity and role of citizen. They define the identity of citizen inclusively to the extent that their benefits and services incorporate the interests of a wide range of individuals and groups, and to the extent that they represent both recipients and non-recipients as possessing desirable characteristics without simultaneously possessing any undesirable characteristics. Social programs and services incorporate the interests of individuals and groups to the extent that they are generous and universal in character. Social programs and services represent individuals and groups as only possessing positive traits to the extent that the discourses which surround them affirm the worth of both recipients and non-recipients. Welfare states define the role of citizen inclusively to the extent that they create spaces for people to come together in their common capacity as citizens for the purposes of shaping some facet of the production and distribution of well-being in the political community. Social programs and services create such spaces to the extent that individuals and groups are afforded opportunities to participate in their design, administration and delivery.

The chapter is divided into three sections. The first section examines the institutional and ideological foundations of modern social policy in Quebec and Ontario. The welfare states operating in both provinces throughout the last quarter of the twentieth century were constructed, in large part,

during a massive wave of social policy reforms extending from approximately 1960 until around 1973. Most social programs and services operating in both provinces from the mid-1970s onwards were either established or given their modern characters during this roughly thirteen year window. The magnitude and direction of these reforms were not determined purely on the basis of some abstract process of rational calculation over the most effective means of addressing the major social needs confronting the populations of both provinces, but were profoundly influenced by the character of pre-existing provincial and federal social programs and services, as well as by pre-existing ideas about what these needs entailed and what role the state should play in addressing them. To understand the direction taken in social policy in Quebec and Ontario since 1960, it is therefore necessary to examine the institutional and ideological contexts within which social reformers in each province were operating. The remaining sections of the chapter are devoted to comparing the inclusiveness of the two welfare states during the modern era, an era which began roughly around 1960.

The second section examines the inclusiveness of the identity of citizen in both provinces over the period of interest. It argues that, where young people are concerned, the Quebec welfare state defines this identity more inclusively than its Ontario counterpart on the basis of providing benefits that are more generous and thus better incorporate the interests of this group, as well as being marginally more affirming of the inherent deservedness of young people thereby representing them as possessing a slightly wider range of positive attributes. The final section examines the inclusiveness of the role of citizen in both provinces over the period of interest. It argues that the Quebec welfare state defines this role more inclusively because, although both provinces provide

similar levels of support for public involvement in the delivery of social programs and services, Quebec creates more opportunities for involvement in their design and administration.

## **The Institutional and Ideological Foundations of the Modern**

### **Quebec and Ontario Welfare States**

Contemporary provincial welfare states were predominantly constructed during a large wave of social policy reforms which commenced sometime around 1960 and ended sometime around 1973. These programs and services did not emerge in a vacuum, however, but were developed in the context of a pre-existing network of provincial and federal social policies, as well as pre-existing sets of ideas about social justice, obligation and responsibility that were rooted in the collective experiences of earlier eras, particularly - though not limited to - those of the 1930s, 1940s and 1950s. Both sets of factors profoundly shaped the magnitude and direction of the social policy reforms of the modern era. Existing provincial social policies provided institutional legacies to build on as well as insights into what works and does not work, and federal social policies imposed certain constraints upon the provinces in terms of prohibiting certain practices while requiring others as well as created new possibilities by virtue of lowering the associated financial costs of various kinds of programs and services. Ideas about the social good and the role of the state in producing that good formed primarily in the collective experiences of the previous three decades provided direction about the kinds of social programs and services which should be introduced. This is not to suggest that these pre-existing policies and ideas wholly determined the course of future welfare state development in terms of creating some form of path dependence in which social programs and services become locked in some specific direction or, in other words, around some specific set of

principles and practices, but rather that they were very important factors in helping to inform expectations about what was both possible and desirable in the field of social policy.

### **Pre-1960s Social Policy in Quebec**

Prior to 1960, virtually every facet of Quebec society was organized through and controlled by the Catholic church. This was certainly true of social policy where the province had empowered church officials with almost complete authority over health care, education and social services including income assistance. The responsibility and authority afforded the church over provincial social policy was nicely captured in the following description from 1930; “aid is granted from municipal and provincial funds and some general supervisory authority is exerted accordingly; wherever religious communities of the Roman Catholic faith are concerned, the rights of the bishops over such communities cannot be prejudiced by any supervisory power of the state.”<sup>69</sup> Even for non-Catholics, the province tended to empower other kinds of private charitable organizations to address social need rather than take on this responsibility itself. Whereas authority over when and how to address the health, education and social needs of Quebecers rested with the church, it tended to assign responsibility for fulfilling these needs to families, stepping up only in those circumstances where this institution could not. While authority over the direction of social policy continued to rest primarily with the church right through until 1960, the state did begin to play an increasingly important role in social policy from the early 1920s onward, particularly with respect to financing. The nature of this role varied slightly across sectors, including between those of education and social

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<sup>69</sup> Margaret Kirkpatrick Strong, *Public welfare administration in Canada*. (Chicago: University of Chicago Press, 1930), 146.

welfare.

Public education in Quebec was established under French colonial rule, which placed authority over its content and delivery entirely in the hands of the Catholic Church, and began in earnest in the late eighteenth century when the government of Quebec first began to provide grants to schools. This system of operational-level domination by the Catholic Church, supplemented by grants from the provincial government, was reformed in a series of educational acts passed in the 1840s which created a number of new structures and practices which largely continued to shape the Quebec education system until the 1960s. Two reforms were especially important. First, at both the elementary and secondary levels, these acts divided the education system along religious lines, calling for the creation of Catholic and Protestant school boards. In so doing, they effectively entrenched the rights of non-Catholics to public education in Quebec. While these Acts made provisions for the creation of two permanent committees, one Catholic and one Protestant, to oversee educational policy in both systems, most authority was in fact decentralized to the level of local school boards, each being granted autonomy over "management, taxation and curriculum."<sup>70</sup> The Catholic system tended to be much more controlled by religious authorities than was the Protestant system, though both were similar in terms of fiercely resisting all forms of state involvement in education; "The Catholic system was dominated by the Church which did not want the State to interfere with its control of education. The Protestant system was not dominated by any central religious authority, but was equally adamant that the State not interfere with the existing

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<sup>70</sup> C. B. Sissons, *Church and state in Canadian education: An historical study*. (Toronto: The Ryerson Press, 1959), 135.

decentralized system that enabled the Protestant minority to maintain control of its schools.”<sup>71</sup>

Second, these Acts helped establish a stable funding formula for schools whereby the province provided grants to school boards based on the number of children between the ages of five and sixteen living in their districts. In order to qualify for these grants, however, school boards were required to raise an equal or greater amount of funds through taxation and/or user fees. This was rarely a problem since the value of provincial grants was quite low: in 1875 they constituted only about ten percent of public school budgets. This figure began to gradually and steadily rise during the Great Depression as the province increased its funding for all social services, reaching approximately thirty percent by 1960.<sup>72</sup> Even with this increase, provincial funding of education was insufficient to meet individual and societal needs. Despite some recent progress in urban areas, by 1950 most rural school boards in the province did not offer secondary education, and usually only the children of the elites of Quebec society ever attended university.<sup>73</sup> Indeed, by the late 1950s there were only six universities across the entire province, three of which were private English-language institutions.<sup>74</sup> Quebec’s highly decentralized, faith-based educational system was succinctly (and approvingly) described in 1956 by Joseph-L. Pagé, the Catholic Secretary of the Department of Public Instruction, as follows; “The state administers education but plays only a supplementary part.

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<sup>71</sup> William J. Smith & Helen M. Donahue, *The historical roots of Québec education*. (Montreal: Office of Research on Educational Policy, McGill University, 1999), 32.

<sup>72</sup> *Ibid.*, 17.

<sup>73</sup> Quebec, Ministry of Education, *Review of educational policies in Canada: Quebec*. (Quebec, Ministry of Education Planning Branch, 1975), 5.

<sup>74</sup> Paul-André Linteau, René Durocher, Jean-Claude Robert & François Ricard, *Quebec since 1930*. (Toronto: James Lorimer & Company, 1991), 248.

By laws and regulations it ratifies and sanctions the will and wishes of the parents and the Church, according to the particular faith of the parents. The state accords public grants and supervises the material situation of the schools. It goes no further than this; this is the limit, or nearly the limit, of its role in terms of the law.”<sup>75</sup>

The province of Quebec was more involved in the domain of social services - including income assistance - prior to the 1960s than in the domain of education. The roots of the social services system date back to the Municipal Code of 1871, which authorized municipalities to provide assistance to or establish houses of refuge for the helpless and destitute at their own discretion. Rather than directly provide assistance to the destitute themselves, however, most municipalities opted to channel whatever aid they were able and willing to offer through private charities administered by the Catholic Church. Consistent with this practice of minimizing their own direct involvement, houses of refuge were generally only established in municipalities with large numbers of non-Catholics who, because of their faith, might be unwilling or unable to receive assistance from the Catholic Church. Provincial government involvement in social services increased with the Public Charities Act of 1921 whose adoption was fuelled, in large part, by the growing inability of private charities and municipal houses of refuge to cope with the high levels of destitution brought about by increased urbanization combined with the onset of a deep recession.<sup>76</sup> Though it extended provincial funding of social services, control over the nature and delivery of these services remained

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<sup>75</sup> Cited in C. B. Sissons, *Church and state in Canadian education*, 129.

<sup>76</sup> B. L. Vigod, “History according to the Boucher Report: Some reflections on the state and social welfare in Quebec before the Quiet Revolution,” in Allan Moscovitch & Jim Alberts, eds., *The ‘benevolent’ state: The growth of welfare in Canada*. (Toronto: Garamond Press, 1987), 175-185.

the almost exclusive domain of private - namely Catholic - charitable organizations that decided how government funds were to be employed. Indeed, under this Act, no provincial or municipal agency could provide financial assistance directly to persons in their homes: assistance could only be disbursed through private charities or through municipal houses of refuge.<sup>77</sup> One exception to this rule was created in 1940 when the province adopted legislation allowing for the provision of direct, 'outdoor' relief to destitute mothers. Who qualified for this mothers allowance program however was often determined by Church officials. By 1960, social services in Quebec were primarily financed by the province, and still primarily provided through the Church. In the words of one observer, the social services system in Quebec could be described "as a partnership between the state and Church in which the state's financial resources were transferred to the Church to provide at-home relief to deserving recipients and institutional relief to nondeserving recipients."<sup>78</sup>

Based on the nature of the involvement of the Quebec government in the fields of education and social services from pre-Confederation through to the end of the 1950s, two features of the broad character of the institutional legacy inherited by the reformers of the 1960s were especially consequential for or relevant to their efforts. The first was that Quebec possessed a long tradition of involvement by voluntary organizations - even if predominantly religious in character - in the design, administration and delivery of social policy. Such organizations, quite simply, had always been afforded a privileged role with regards to shaping the production and distribution of well-being.

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<sup>77</sup> A. Grauer, *Public assistance and social insurance*. (Ottawa: Kings's Printer, 1939), 83.

<sup>78</sup> Gerald William Boychuk, *Patchworks of purpose: The development of provincial social assistance regimes in Canada*. (Montreal & Kingston: McGill-Queen's Press, 1998), 27.

The second is that, even if social programs and services in Quebec were considerably underdeveloped by 1960, the province nevertheless had a tradition of collectivizing the interests of the populace. The underdevelopment of social services, especially in the fields of health and education, in other words, did not imply that responsibility for well-being was strictly or even largely an individual matter. Quebecers had always been first and foremost members of communities of faith and, as such, did not sink or swim on their own, but worked through various Church institutions and organizations to fulfil many of their most basic needs. Most facets of Quebec society were indeed organized through the Church, a hierarchical though nevertheless ultimately collectivist institution.

### **Ideological Roots of post-1960 Social Policy Reform in Quebec**

In Quebec, the development of the welfare state subsequent to 1960 was part of a much larger process of institutional modernization - whose initial stages are commonly known as the "Quiet Revolution" - the scope and direction of which were heavily informed by the rise and convergence of two ideologies whose origins resided in the collective experiences of the 1930s, 1940s and 1950s.<sup>79</sup> These can be described as reform liberalism and Francophone nationalism. Beginning with the former, as a prominent ideology among emerging middle classes throughout the West, reform liberalism was characterized by two major tenets. The first was that social problems like poverty, unemployment and violence should be stripped of their moral overtones and be viewed as natural

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<sup>79</sup> The term Quiet Revolution is generally reserved for the political, institutional and social reforms undertaken by the Liberal government of Premier Jean Lesage between 1960 and 1966. Though the pace of these reforms slowed considerably after 1966, there has been much continuity in their direction right through to the present period.

or expected consequences of the functioning of modern societies. The roots of social problems do not reside in the moral character of individuals, but in abstract social forces which are beyond the control of any one person. The second major tenet was that social problems could be largely constrained, if not eliminated, through the careful application of scientific knowledge and rational administrative techniques: society could be improved through professionally designed and administered social programs and services. The basic logic of reform liberalism has been succinctly described as follows; "Liberals did not view the social problems as the bad deeds of people, but as manageable by-products of such natural occurrences as rapid social change. While the management of programs of social adjustment might be carried out by public servants and government officials, a central tenet of liberalism was that the diagnosis and planned solution of social problems were the responsibilities of specialized professional problem solvers."<sup>80</sup> Though it had little influence on provincial social policy before the 1960s, the ideology of reform liberalism nevertheless had roots in the province prior to the onset of the Quiet Revolution: the doctrine had many adherents, especially among the growing urban middle-class.

Francophone nationalism was a prominent ideology among the french speaking middle class that emerged out of the post-war economic boom. The central tenets of this doctrine were forged largely in reaction against the brand of Catholic or traditionalist nationalism which dominated the province prior to the 1960s, though especially during the sixteen year period from 1944 to 1960 when Quebec was governed uninterruptedly by the Union Nationale party. Given the relationship

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<sup>80</sup> Stephen J. Pfohl, *Images of deviance and social control: A sociological history*.(Toronto: McGraw-Hill, 1985), 142.

of Francophone nationalism to Catholic nationalism, it is therefore necessary to briefly examine the latter in order to properly understand the former.

That social policy in Quebec remained both woefully underdeveloped and primarily in the hands of the Church until early-1960 was largely due to the personal popularity of Maurice Duplessis who, as leader of the Union Nationale, was Premier of Quebec from 1944 until his death in 1959. Duplessis was a profoundly conservative man who strongly rejected state involvement in social and economic affairs, and who actively encouraged the province to retain its rural and Catholic roots. In the words of one observer, "He opposed the welfare state and increasing government intervention and defended the established order, resisting trade union militancy and labelling anyone who worked for social change a 'communist.' Relying on traditional elites and the clergy to keep the population in line, he sang the praises of old values and rural life in his speeches."<sup>81</sup> Though his stance on social policy was the source of much contestation and discontent within the province, he continued to receive strong support at the ballot box - especially from rural and small town Quebeckers - thanks in large part to his strong nationalist stance which involved vigorously resisting encroachments by the federal government into provincial matters. He appealed to the desire of Quebeckers to protect their language and culture from what he often described as the assimilating forces of the federal government. Whereas he was strongly committed to the idea that Quebeckers were a distinctive people or, in other words, a nation wishing to survive as a collectivity and therefore fiercely defended

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<sup>81</sup> Paul-André Linteau, René Durocher, Jean-Claude Robert & François Ricard, *Quebec since 1930*, 149.

their autonomy *vis-à-vis* the federal government,<sup>82</sup> the focal point of this autonomy for his Union Nationale government was the Catholic character of the province. The Church and its minion the patriarchal family were framed as the two principal institutions through which Quebec derived and maintained its distinct language and culture. His was therefore a fervently Catholic or traditionalist brand of nationalism. It was about sheltering Quebec from outside forces that could potentially erode the historically privileged position afforded to the parish and patriarchal family in Quebec society. This brand of nationalism gradually disappeared from the mainstream following his death, replaced in its stead by a brand of Francophone nationalism whose core tenets were forged in direct reaction against Duplessis nationalism.<sup>83</sup>

Three closely related tenets of Francophone nationalism are especially important with regards to social policy development, each rooted in the negative experiences of the French speaking middle class during the Duplessis era. First, this doctrine was and remains highly secular, its primary focal point being the protection of the French language instead of the Catholic faith. This shift in orientation was rooted in the perception among the French speaking middle class that the Church had become a predominantly repressive force in Quebec society in terms of having consistently inhibited the development of the civil, political and social rights normally associated with democratic citizenship. Many of the early proponents of Francophone nationalism “saw the Church’s hegemony

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<sup>82</sup> His nationalist pedigree is perhaps best symbolized by his creation of an official flag for Quebec in 1948, a flag that was explicitly intended to reflect the French and Catholic identity of the province. *Ibid.*, 251.

<sup>83</sup> Following the death of Duplessis in 1959, the Union Nationale received 46.6 percent of the popular vote in the provincial election of 1960, 42.2 percent of the popular vote in the provincial election of 1962, 40.9 percent of the popular vote in the 1966 provincial election, 19.6 percent of the popular vote in 1970, 4.9 percent in 1973, 18.2 percent in 1976, and 4.0 percent in 1981 after which the party shortly folded. *Ibid.*, 530.

in secular spheres, its dogmatism, its intolerance towards even the slightest expression of nonconformity, and its collusion with political power as constituting a grave threat to freedom and one of the major causes of Quebec's backwardness. Therefore, they demanded that society be secularized. This was the only way to achieve pluralism, make Quebec truly democratic and modernize its institutions."<sup>84</sup> Whereas the Church had historically played a primary role in organizing the public sphere, Francophone nationalism called for this sphere to be organized by secular agencies and institutions, with the Church playing little to no formal role whatsoever: even a secondary or support role in public affairs by the Church was viewed as undesirable.

Second, this doctrine stressed and continues to stress the democratization of Quebec society. This emphasis on increasing the opportunities for democratic participation emerged in reaction to the sense of powerlessness of the french speaking middle class during the Duplessis era: they had little control over economic affairs due to the domination of the economy by Anglophone elites and little control over social affairs due to their domination by the clergy.<sup>85</sup> This sense of powerlessness was reflected in the official slogan of the 1962 Liberal Party of Quebec election campaign: *Maitres chez nous* ('masters in our own house'). Democratizing Quebec society would ensure that the french speaking majority enjoyed greater control over the direction of economic and social affairs - the way to ensure that Francophone Quebeckers had more control over their day-to-day lives was by democratizing the state as well as civil society organizations like trade unions, community groups and political parties. Democratization, in short, was framed as the solution to the marginalization

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<sup>84</sup> Ibid., 256.

<sup>85</sup> Ibid., 308.

experienced by the Francophone middle class during the immediate post-war years.

Third, this doctrine identified and continues to identify the state as the most important instrument for effectuating positive social change; “The role of the government in the development of Quebec society was seen as that of a master builder.”<sup>86</sup> This position was partially derived from the fact that the state was more democratic, or at least possessed the potential to be rendered more democratic, than either markets or private organizations. This was also due to the fact that state building itself constituted a more tangible and positive expression of Quebec autonomy in terms of yielding something which all Quebeckers were connected to, could identify with, and be proud of than the negative or passive emphasis of Catholic nationalism of simply keeping outside influences at bay. For both these reasons, Francophone nationalism identified the state as the most effective and desirable instrument for achieving collective goals.

With the rise of the French speaking middle-class as the new dominant political elites of Quebec society following the 1960 provincial elections, reform liberalism and Francophone nationalism became the two dominant ideological doctrines within the province. The ascension of these two doctrines would seem likely to produce an ideological climate that would have at least two major consequences for the efforts of social policy reformers. First, since reform liberalism emphasizes its potential for contributing to social amelioration and Francophone nationalism

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<sup>86</sup> Ibid., 598. This sentiment was expressed most famously in 1961 by then Premier Jean Lesage who stated that Quebec is “our state, we cannot afford the luxury of not using it.” Deena White, “Harnessing a movement, taming an ideology on the state and the third sector in Quebec,” *Canadian Journal of Policy Research*. 2(2, 2001): 42

emphasizes its potential to render Quebec society more autonomous and democratic, the ascension of these two doctrines would seem likely to give rise to an ideological climate that is especially open to social policy expansion or development. Reform liberalism, to put it crudely, stresses the instrumental benefits of a large welfare state and Francophone nationalism stresses its symbolic benefits. This is significant since a large welfare state is logically more conducive to the development of generous and universal social programs and services than is a residual welfare state. Second, since reform liberalism emphasizes the naturalness of social problems and Francophone nationalism emphasizes the importance of democratic empowerment as well as the autonomy and uniqueness of Quebec society, the ascension of these two doctrines would seem likely to give rise to an ideological climate that is especially conducive to discourses which are highly affirming of the worth of citizens: whereas reform liberalism strictly opposes discourses which are stigmatizing of the moral worth of disadvantaged groups, Francophone nationalism is supportive of discourses which frame Quebec citizens positively.

### **Pre-1960s Social Policy in Ontario**

Prior to 1960, social policy in Ontario was, much like in Quebec, largely residual and stigmatizing in nature. The emphasis was on reducing destitution through the provision of forms of relief that were both means tested and which differentiated between the deserving and undeserving.<sup>87</sup> Even if both provinces took similar approaches to relief, however, social policy was considerably more developed in Ontario than in Quebec during this period. Whereas private charities, including

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<sup>87</sup> See James Struthers, *The limits of affluence: Welfare in Ontario, 1920-1970*. (Toronto: University of Toronto Press, 1994); Gerald William Boychuk, *Patchworks of purpose*, 33-35.

those with religious roots, did play a leading role in the provision of relief in Ontario as in Quebec, state involvement was nevertheless deeper and broader in Ontario. This was certainly true across the domains of education and social welfare, even if the nature of this involvement varied somewhat between these domains.

The provision of education in Ontario dates back to the early pioneer days of the late 1600s, and the provision of public education dates back to the passage of *An Act to Establish Public Schools in each and every District in this Province* in 1807. The passage of this Act constituted the beginning of public education in Ontario insofar as it established a system of annual grants of 100 pounds for the administration of elementary and secondary schools that were open to the public. This initiative proved to be only of relatively minor consequence however since only thirteen public secondary schools had been established across the province by 1839. The public education system in Ontario began in earnest following the appointment of Egerton Ryerson as Superintendent of education in 1844. Until his retirement from the position in 1876, Ryerson oversaw the implementation of numerous reforms - reforms which went well beyond those undertaken in Quebec during this period - which continued to shape the character of education in Ontario well into the 1960s. In the words of one government report, "It was he [Ryerson] who created the Ontario school system. He set up a strong central authority to prepare regulations, to draw up elementary courses, to enforce the use of a single set of authorized textbooks, and to control the qualifications of teachers."<sup>88</sup> The Quebec system, by contrast, was utterly devoid of any such central authority. In

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<sup>88</sup> Ontario, Minister of Education & Minister of Colleges and Education, *Review of educational policies in Canada: Ontario*. (Toronto, Queens Printer for Ontario, 1975), 5.

1863 he oversaw the passage of an act which entrenched the rights of Catholic separate schools across the province, and in 1871 he helped convince the provincial government to render elementary education free for all Ontario children. Important reforms of this nature continued to be made following his retirement. A unified secondary school curriculum was established in the 1890s, and compulsory school attendance was raised to the age of 16 in 1919.<sup>89</sup> The province also played a much greater role in post-secondary education than did Quebec in the pre-1960 period. While most colleges and universities in Ontario were founded by religious orders, public grants were made available to these institutions in the early 1800s. In 1849, this grant system was revised so that only secularized colleges and universities were eligible to receive public funds, a move that would have been inconceivable in Quebec.<sup>90</sup>

The roots of the social services system in Ontario date back to the 1830s when the province first began making relief available to the indigent. This early system of relief stratified recipients, providing limited outdoor relief to the deserving, namely the unemployable who were deemed to be of 'sound moral character', and institutional relief for the non-deserving.<sup>91</sup> The provision of both forms of relief was rendered a municipal responsibility, though municipalities enjoyed much discretion over when to provide such relief. This discretion was curtailed somewhat in the 1860s when the province made it mandatory for municipalities to establish workhouses for the undeserving poor. To complement this network of workhouses, numerous institutions were created for the

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<sup>89</sup> Ibid., 6-7.

<sup>90</sup> Ibid., 3.

<sup>91</sup> Gerald William Boychuk, *Patchworks of purpose*, 33.

unemployable indigent during the mid- to late-nineteenth century, including seventy-seven institutions for the aged and the handicapped as well as thirty-four orphanages.<sup>92</sup>

The basic structure of this network of social services remained virtually unchanged until the 1920s when the province began offering income maintenance programs - programs for which there were few equivalents in Quebec. The first such program was Mothers' Allowance, established in 1920. In keeping with the tradition of differentiating between the deserving and undeserving poor, the program limited eligibility to destitute women with two or more children who were widows, whose husbands' whereabouts had been unknown for seven years, or whose husbands suffered from total and permanent physical incapacitation, and who were 'fit and proper persons.'<sup>93</sup> The province, in conjunction with the federal government, introduced old age pensions in 1929. It was very much a residual program, offering low benefits while restricting eligibility to indigent persons over the age of seventy.<sup>94</sup> The province also began offering direct relief to unemployed employables in 1930 in response to the misery and turmoil caused by the Depression, though this practice was suspended from 1941 to 1958, a period during which the economy was exceptionally strong. To help administer these various programs, agencies and institutions, the province created the Department of Public Welfare in 1931. Plans were created within the department and by the federal government during the Second World War for an extensive network of social security programs, but wrangling

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<sup>92</sup> Clifford J. Williams, *A history of the Ontario Ministry of Community and Social Services 1930-1980*. (Toronto: Queens Printer for Ontario, 1984), 1.

<sup>93</sup> James Struthers, *The limits of affluence*, 34. Whether women were in fact 'fit and proper persons' was largely determined on the basis of the cleanliness of their homes and children as well as on their sexual conduct.

<sup>94</sup> *Ibid.*, 50-76.

between the two levels of government combined with a booming economy which made such programs seem unnecessary resulted in their being shelved until the 1960s. While minor adjustments were made to the existing social services network during the immediate post-war years, its basic structure therefore remained unchanged until the 1960s.<sup>95</sup>

Based on the nature of the involvement of the Ontario government in the fields of education and social services from pre-Confederation through to the end of the 1950s, two features of the broad character of the institutional legacy inherited by the reformers of the 1960s were especially relevant to their efforts. The first is that Ontario possessed a strong tradition of centralized social policy-making and development, and of decentralized social policy administration and delivery: whereas the province had historically dictated the content of social policy, often within very narrow or specific parameters as in the field of education where it set the curriculum, it was left to local governments and to locally-based voluntary sector organizations to actually administer and deliver these policies. The second is that Ontario possessed a strong tradition of stratifying the recipients of social services, particularly in the field of income assistance, into the deserving and undeserving: there was a strong hierarchical bent to Ontario's social services system.

### **Ideological Roots of post-1960 Social Policy Reform in Ontario**

In Ontario, the development of the welfare state subsequent to the late 1950s was heavily

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<sup>95</sup> In the words of one commentator, "What endured for Ontario's poor after the Second World War was not a rationalized and reformed public welfare system but, essentially, the old relief structure put together in the 1930s, with its inadequate allowances, incompetent municipal administration, and stigmatizing practices of moral regulation still intact." *Ibid.*, 181.

informed by the convergence of two ideologies: reform liberalism and conservatism. The roots of reform liberalism in Ontario date back at least to the economic collapse of the 1930s. Its influence over social policy in the province remained rather tenuous until the 1960s however, gaining strength during periods of economic crisis and then quickly dissipating as these crises receded. The doctrine only ever had modest traction, and only during harsh economic times.<sup>96</sup> The influence or traction of reform liberalism became more stable with the onset of the 1960s for two reasons. First, the post-war economic boom served to validate its two central tenets. The fact that the poverty had not only persisted but potentially even intensified during the post-war affluence suggested that the roots of social problems were structural rather than moral, and the unprecedented levels of economic growth combined with increased grants from the federal governments ensured that the province possessed sufficient revenues to develop the kinds of progressive social programs and services which had always been deemed too expensive in the past. Second, reform liberalism also gained much popularity within the province because of the American War On Poverty. Framed in the logic of reform liberalism, the rhetoric about ending poverty in the United States rendered this doctrine fashionable, particularly among the middle class and the poor. In the grudging words of Louis Cecile, the Conservative Minister of the Department of Public Welfare of Ontario, the President's War On Poverty and its accompanying ideology had "captured the imagination of the public."<sup>97</sup>

Ontario possesses a strong tradition of conservatism dating back to the time of pre-

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<sup>96</sup> This can be seen in the fact that many of the social reforms introduced when the economy struggled like direct relief to unemployed employables were quickly abolished once the economy began heating up again.

<sup>97</sup> James Struthers, *The limits of affluence*, 216. Cecile was fundamentally opposed to the War On Poverty specifically and to reform liberalism generally for a variety of reasons. See *Ibid.*, 216-217.

Confederation.<sup>98</sup> Three related tenets of this doctrine are especially important with respect to the development of social policy. First, it stresses that state intervention in general and state spending in particular should be limited to the greatest extent possible. This is not to suggest that conservatism is inherently opposed to state involvement in social and economic affairs, but rather that it should be limited to only those situations where it will positively contribute to social stability. While certainly having an important role to play, state interventionism is not an end onto itself as it is in Francophone nationalism.<sup>99</sup> Second, this doctrine stresses that individuals must assume responsibility for their lives, including with respect to supporting themselves and their families: individuals have a social obligation to look after their own needs as well as those of their families. These sentiments were embodied in the words of former conservative Premier John Robarts who, in response to a question about whether he believed that poverty could be eliminated through social policy reforms, stated that, "As long as we are concerned with maintaining an open and free society, we must continue to rely on individual initiative as the main antidote to poverty."<sup>100</sup> Third, this doctrine also stresses that certain individuals and groups are more deserving than others, whether because of age, sex, ability or any number of other characteristics: status hierarchy represents an important organizing social principle in this doctrine.

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<sup>98</sup> On the early history of conservatism in Ontario see S.F. Wise, "Upper Canada and the conservative tradition," in Ontario Historical Society, ed., *Profiles of a province: Studies in the history of Ontario*. (Toronto: Ontario Historical Society, 1967), 20-33; Paul G. Cornell, "The genesis of Ontario politics in the province of Canada (1838-1871)," in Ontario Historical Society, ed., *Profiles of a province: Studies in the history of Ontario*. (Toronto: Ontario Historical Society, 1967), 59-72.

<sup>99</sup> This bias towards non-interventionism and fiscal restraint was the main reason behind the Province's general reluctance to adopt Keynesian economic principles as well as the speed with which they were abandoned when the economic climate soured during the 1970s. Ramesh Mishra, "Public policy and social welfare: The ideology and practice of restraint in Ontario," in Jacqueline S. Ismael, ed., *The Canadian Welfare State: Evolution and transition*. (Edmonton: University of Edmonton Press, 1987), 327-346.

<sup>100</sup> James Struthers, *The limits of affluence*, 218.

With the onset of the 1960s, reform liberalism joined conservatism as the two most dominant political doctrines within the province, profoundly shaping all facets of Ontario society including public policy. The convergence of these two doctrines would seem likely to produce an ideological climate that would have at least two major consequences for the efforts of social policy reformers. First, since reform liberalism emphasizes the importance of social policy in reducing if not outright eliminating many of the social problems of advanced capitalist societies, and since conservatism emphasizes the importance of fiscal restraint, the convergence of these two doctrines would seem likely to give rise to an ideological climate that was only moderately open to social policy development, especially relative to Quebec. This is significant since it implies that the ideological climate in Ontario is likely less supportive of universal and generous social programs and services compared to that of its eastern neighbour. Social programs and services should primarily target the deserving and should be limited to those kinds of cash and kind benefits which impact positively on the economy by contributing to productivity growth by virtue of increasing the skills of workers, by increasing labour mobility and so forth. Second, since reform liberalism emphasizes the importance of expertise and conservatism emphasizes the importance of hierarchy, the convergence of these two doctrines likely gives rise to an ideological climate that is not supportive of public involvement in the design and administration of social programs and services. Neither doctrine, quite simply, is particularly democratic.

### **Federal Social Policy Initiatives**

Federal government involvement in the field of social policy began in earnest during the Great Depression, first by providing relief grants to the provinces and later, in 1935, by passing

legislation establishing a contributory unemployment insurance plan over which it assumed full administrative control in 1940 through a Constitutional amendment. This initial foray into social policy, which had primarily occurred in response to pressure from the provinces, was followed by numerous legislative initiatives throughout the 1940s and 1950s authorizing the creation of cost-sharing agreements with the provinces to provide a variety of specific services including family allowances in 1944, pensions for the elderly in 1951, income assistance for the blind in 1951, income assistance for the disabled in 1951, and universal hospital insurance in 1957. While these various initiatives necessarily impacted on social policy development within the provinces, two such initiatives were especially important with regards to contributing to and influencing the nature of the large wave of social policy reforms that swept across both Quebec and Ontario during the 1960s and early 1970s: the Unemployment Assistance Act of 1956 and the Canada Assistance Plan of 1966. What made these two Acts so important, though especially the latter, was that they transferred unprecedentedly large sums of money to the provinces for social programs and services without imposing onerous restrictions on how these programs and services were to be constructed. This was - and indeed remains - important because, under Canada's constitutional division of powers, legislative authority over most areas of social policy rests with the provinces, while fiscal powers tend largely to favour the federal government. Prior to the passage of these two acts, the provinces simply did not have the necessary resources at their disposal to establish the kinds of wide reaching social programs and services which emerged during the 1960s and 1970s.

Despite the flurry of programs that were introduced during and immediately following the Second World War, the role of the federal government in the field of non-contributory income

assistance remained quite limited by the mid-1950s. This state affairs changed with the adoption of the Unemployment Assistance Act of 1956, which committed the federal government to matching dollar for dollar the funds expended by the provinces on assistance for unemployed employables who did not qualify for unemployment insurance benefits. Previous to this, federal cost-sharing in the field of income assistance extended only to unemployables, namely the blind, the disabled and the aged. Whereas the Act stipulated that federal funds could only be accessed by the provinces as long as their social assistance programs subjected recipients to a means-test, benefit rates and eligibility criteria were left to the discretion of the provinces. Few restrictions were therefore placed on the provinces. The passage of this Act set the stage for the growth of wide-reaching social assistance programs in Quebec and Ontario which, up until this point, had never taken a strong hold in either jurisdiction.

Undoubtedly the single most important federal government social policy initiative of the time - if not ever - was the Canada Assistance Plan (CAP) of 1966 which both consolidated and significantly extended federal involvement in the field. The CAP consolidated federal social policy activity by virtue of replacing all existing individual cost-shared categorical assistance programs like Blind Persons Allowances, Disabled Persons Allowances, Old Age Assistance and Unemployment Assistance with a single non-categorical dollar for dollar cost-sharing agreement. The CAP extended federal social policy involvement by virtue of including provisions for sharing half the costs of assistance for needy mothers and needy widows, of residences for the aged, of residences for the mentally ill, of institutions for children, of adult welfare services, of child welfare services, and of healthcare. It consolidated and extended the federal social policy role, in other words, by committing

the government of Canada to subsidizing half the costs of virtually all provincial social programs and services, including their administrative costs, under a single legal agreement. While no ceiling was placed on the amount of money made available to each province, certain conditions were attached to these funds. The most important of these included that the provinces must provide assistance to anyone 'in need',<sup>101</sup> that no provincial residency requirements be attached to benefits, and that a right to appeal all decisions concerning benefits must exist for claimants. While these conditions were of relevance to how social programs and services were to be administered, they were of little relevance to program design. In the words of one observer, "despite its important accomplishments and the heady optimism that surrounded its passage, the Canada Assistance Plan ultimately failed to alter, in any fundamental way, longstanding approaches to the needs of the poor in Ontario or in other provincial jurisdictions."<sup>102</sup>

By virtue of effectively doubling the amount of funding available to the provinces for social spending and imposing few restrictions on how these funds were to be disbursed, the federal government helped precipitate a massive wave of social policy development in Quebec and Ontario whose basic structures are still largely in place to this day. Because of differences in the institutional legacies and ideological climates of both provinces, however, the wave of social policy development in Quebec was both larger than, and different in its basic orientation from, the wave which swept

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<sup>101</sup> Because the provinces decided what constituted need, this stipulation simply came to mean that there could not be discrimination between similar cases: assistance could not be provided to one person because they were deemed to be in need while denied to another in similar circumstances. This stipulation therefore did not commit the provinces to providing some minimum threshold of support for all citizens, but merely forced them to clearly articulate what constituted being in need so that this standard could be applied consistently.

<sup>102</sup> James Struthers, *The limits of affluence*, 231.

across Ontario. The final two sections of this chapter are devoted to examining these differences in size and orientation as they relate to the inclusiveness of both welfare states.

### **The Inclusiveness of the Identity of Citizen in Quebec & Ontario**

Welfare states define the substantive content of the identity of citizen inclusively, as previously noted, to the extent that their benefits and services incorporate the interests of a wide range of individuals and groups, and to the extent that they characterize both recipients and non-recipients positively. Social programs and services incorporate a wide range of interests to the extent that eligibility for benefits is not restrictive and to the extent that benefits are generous in terms of the degree to which they support recipients. Social programs and services characterize individuals and groups positively to the extent that the discourses which surround them are affirming of the deservedness of both recipients and non-recipients.

The degree to which the Quebec and Ontario welfare states define the content of the identity of citizen inclusively could potentially be assessed on the basis of the universality, generosity and framing discourse of any major social program in any one of the domains of operation of the welfare state, whether it be health, education, income assistance, housing, child protection, community services, or recreation. This dissertation has elected to examine the universality, generosity and discourses of the education systems operating in each province. The rationale for focussing on education is twofold. First, since the subject of this dissertation is the role of welfare states in shaping the social construction of official statistics on youth crime, it seems appropriate that any comparison of welfare states should give at least some consideration to how these institutional

complexes relate to young people. This is achieved by examining social programs and services that specifically target this segment of the population. Second, among youth-centred social programs and services, education is far and away the single most important. It is certainly the fiscally most important youth-centred program or service. During the fiscal year 1990/91, for example, nineteen percent of total provincial expenditures in Quebec and twenty-two percent of total provincial expenditures in Ontario were devoted to education compared to twenty percent of total expenditures in Quebec and twenty-five percent in Ontario for general healthcare, and fifteen percent of total expenditures in both provinces on combined adult and child welfare services.<sup>103</sup> It is also the most important in terms of the magnitude of its impact on the day-to-day lives of children and youth: school is where young people spend the better part of their day, most days of the year. For these reasons, the inclusiveness of the substantive content of the identity of citizen in Quebec and Ontario will be assessed on the basis of the extent to which the education system in each province incorporates the interests of and positively characterizes young people.

Before commencing any discussion of the Quebec and Ontario education systems, it is important first to specify what is meant by the notion of "education system." Since education is a life-long process which can be delivered through a wide variety of mechanisms, what exactly constitutes an education system - that is, where its boundaries begin and end - is not self-evident. Job training, government information websites and public libraries, for example, are all relevant to the range of knowledge and skills possessed by individuals and could therefore potentially be

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<sup>103</sup> Cited in Thomas J. Courchene, *Social Canada in the millennium: Reform imperatives and restructuring principles*. (Toronto: C.D. Howe Institute, 1994), 132.

included in a discussion of education systems. Since the purpose of the forthcoming discussion however is to discern to what degree the Quebec and Ontario welfare states define the content of the identity of citizen in a manner that is inclusive of young people, the focus shall be limited to the practices and discourses of those educational institutions which are most relevant to this group, namely primary schools, secondary schools, colleges and universities. Although the latter two kinds of institutions are not exclusively oriented towards young people and typically do not admit many individuals under eighteen years of age,<sup>104</sup> the majority of their students consist of young adults under twenty-five years of age, and their financing profoundly influences the decisions, life chances and social standing of persons who are under eighteen years of age. For these reasons, colleges and universities are included in the investigation of the Quebec and Ontario education systems.

### **Education in Quebec**

As Quebec entered the 1960s, "education beyond the elementary level remained primarily a matter of good luck or of privilege, rather than a public service to all."<sup>105</sup> Moreover, not only was the system lacking, but as noted in the *Report of the Subcommittee on the Coordination of the Various Levels of Education* submitted by the Catholic Committee of the Public Education Council in 1953, it was also inadequately integrated both vertically and horizontally insofar as there were wide variances in the curriculum across school boards, there was often much overlap in curricula between educational levels even within the same school board, there was a lack of uniformity in the

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<sup>104</sup> The notable exception is Quebec's system of community colleges known as CEGEP's (*Collège d'enseignements général et professionnel*) which, due to the absence of a grade twelve in the province's high schools, begins at seventeen for most students.

<sup>105</sup> Quebec, Ministry of Education, *Review of educational policies in Canada: Quebec*, 6.

admissions requirements between schools granting equivalent diplomas, and there was a general lack of correspondence between curricula and the aptitudes and interests of students as well as the needs of the wider society. Although the gross inadequacy of the education system was eventually acknowledged by the Union Nationale government as it began to increase and standardize educational funding in 1959, the modernization of this system began in earnest following the electoral victory of the Lesage Liberals in 1960.

Upon taking office, the Lesage government immediately transferred responsibility for education, which had previously been divided among a number of government departments, especially at the level of its financing, to a single Minister, the newly created position of Minister of Youth. This move was rapidly followed by the passage of a number of legislative initiatives - often collectively referred to as the *Magna Carta of Education (la grande charte de l'éducation)* - in 1961. The most important among them involved the establishment of the Royal Commission on Education (the Parent Commission), mandating all school boards to offer secondary education through grade eleven, rendering education and textbooks free of charge through grade eleven, raising the age of compulsory schooling to fifteen, increasing statutory grants for school boards, providing grants for the establishment of kindergarten, extending the right to vote in school board elections to all parents and not just property owners, increasing the funding of universities, introducing monthly allowances for mothers whose children were sixteen to eighteen years of age and were attending school, and introducing a system of bursaries and loans for college and university students.<sup>106</sup>

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<sup>106</sup> William J. Smith & Helen M. Donahue, *The historical roots of Québec Education*, 38-39.

Among these early initiatives, none was more important than the establishment of the Parent Commission whose recommendations would shape the direction of education reform not only during the remaining tenure of the Lesage government, but right through to this present day. The report produced by this Royal Commission became and remains the cornerstone of education policy in Quebec. Framing education as the foundation of both democratic national development and individual equality, the focus of the commission was on rendering education more democratic in terms of its accessibility (i.e., increasing its availability to individuals and communities), its content (i.e., adapting curricula to the needs and plans of both individuals and communities) and its governance (i.e., encouraging public participation in its planning and administrative structures). The Commission produced some 576 recommendations towards these ends in its five volume report, the first volume dealing with the structure of the education system at the provincial level, the second and third volumes dealing with the structure of the system at the pedagogical level, and the fourth and fifth volumes dealing with the administration and financing of the system.

In response to these recommendations, the province created the Department of Education as well as an accompanying advisory body, the Superior Council on Education, in 1964. Whereas the role of the department was to reform and coordinate the system, the role of the council was to serve as a check on the powers of the new ministry by virtue of being empowered to “inquire into any matter relating to education and make its recommendations public.”<sup>107</sup> In 1965, the province created comprehensive or composite secondary schools (*polyvalentes*) which integrated general, vocational and special education within the same building in order to promote greater interaction between

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<sup>107</sup> Paul-André Linteau et al., *Quebec since 1930*, 485.

different kinds of students. In 1967, collective bargaining by teachers was centralized at the provincial level, and a new network of general and vocational colleges known as CEGEPS (*collèges d'enseignements général et professionnel*) were established. These colleges were both rendered tuition free and introduced into every region of the province in order to ensure the greatest possible accessibility. Similarly, in 1968 the University of Quebec was founded and, in order to ensure that access was decentralized to the various regions of the province, campuses were established in Montreal, Hull, Chicoutimi, Trois Rivières, Rimouski and Rouyn-Noranda.<sup>108</sup> Moreover, during this same period, the three older Francophone universities operating in the province - the Universities of Montreal, Laval and Sherbrooke - underwent large expansions in order to further increase the number of opportunities for Francophones to gain higher educations.<sup>109</sup> In order to help render the primary and secondary levels more integrated, the province reduced the number of school boards throughout the late 1960s and early 1970s from over 1,500 to approximately 200. This process of amalgamation continued right through to the year 2000, albeit at a slower pace, such that there are now only 69 school boards operating across the province.

Finally, one of the central recommendations of the Parent Commission was to do away with denominational school boards in favour of linguistically-based school boards. Whereas the Lesage government shied away from acting on this recommendation in the face of fierce opposition from various religious groups, most especially Catholic bishops, the idea was resurrected in the 1980s and, in 1988, legislation was passed - the *Quebec Education Act* - which formally provided for the change

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<sup>108</sup> Quebec, Ministry of Education, *Review of educational policies in Canada: Quebec*. 72.

<sup>109</sup> Paul-André Linteau et al., *Quebec since 1930*, 489.

to linguistic-based school boards. This policy was not implemented immediately however, in part because doing so required that Quebec be exempted from Article 93 of the *Constitution* which provides for the right to denominational education across Canada. Quebec received this exemption by act of federal parliament in late 1997 and, on July 1, 1998, the province's 137 Roman Catholic and 18 Protestant school boards were replaced by 60 french language and 9 English language school boards. The net result of all of these reforms was to centralize authority over education within the Ministry of Education. In the words of one observer, even by the late 1970s, "the Government now controlled, funding, personnel and curriculum, three domains which represent the essence of educational governance."<sup>110</sup>

### **Education in Ontario**

As Ontario entered the 1960s, education at the primary, secondary and post-secondary levels was well established throughout the province: school attendance was compulsory until the age of sixteen, and there were numerous publicly funded colleges and universities. Nonetheless, as the 1960s began, educational reform became an important government priority for three reasons. The first was demographic: as the baby boom generation gradually became of school age, there was an urgent need to expand the system at all levels in order to accommodate rapidly rising numbers of students. The second was economic: there was a growing recognition that the province's continued economic prosperity and growth would be closely linked to the technical competence of its labour

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<sup>110</sup> William J. Smith & Helen M. Donahue, *The historical roots of Québec education*, 95-96.

force.<sup>111</sup> The third was ideological: the ascension of reform liberalism resulted in increased emphasis being placed on the importance of education to personal development and growth.<sup>112</sup> Collectively, these conditions produced a climate that was ripe for educational reform.

Ontario took numerous important steps towards modernizing its education system beginning in the early 1960s. In 1964, in an effort to increase the standardization of educational opportunities across the province, the government passed a motion requiring all school districts with a population of less than 1,000 or an average daily school attendance of less than 100 to amalgamate with adjacent school districts, resulting in the elimination of some 1,500 rural school boards: the number of school boards decreased from 2,419 to 1,037. In 1967, additional legislation was passed to further reduce the number of school boards such that, by 1974, only 200 remained.<sup>113</sup> This process of amalgamation has continued more slowly right through the year 2000 such that there are presently some 105 school boards operating across the province. The 1960s also witnessed increased level of choice for students over the kinds of courses they could take in obtaining their high school

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<sup>111</sup> This was one of the central conclusions of the *Report of the select committee on manpower training* submitted to the Ontario Legislative Assembly in February 1963.

<sup>112</sup> This view of education was central in the 1968 Hall-Denis Report, formally known as *Living and learning: The report of the provincial committee on aims and objectives of education in the schools of Ontario*. In the words of one observer, "This report was several things: an adoring tribute to the nature of the child; a statement of limitless faith in his potentialities if developed in an ideal educational environment under the guidance of inspired teachers; an assertion of his claim to an ideal education; ...a powerful condemnation of rigid, inflexible, outmoded, and reproductive activities and practices found in schools and school systems in Ontario..." He further elaborated that "The kind of school the committee envisioned was a happy place where each child found gratification and fulfilment in his own unending search for truth. He would work essentially for the rewards inherent in the process itself, not because of extrinsic motivation." W.G. Flemming, *Education: Ontario's preoccupation*, (Toronto: University of Toronto Press, 1972), 220. More will be said on this report in the pages to follow.

<sup>113</sup> Ontario, Minister of Education & Minister of Colleges and Universities, *Review of educational policies in Canada: Ontario*, 12 & 26.

diplomas as the range of courses offered at the secondary level was expanded and the previously rigorous divisions between educational streams were loosened. This choice was reduced somewhat and certain forms of segregation were reintroduced during the 1970s, though certainly not even close to approaching the same extent as existed during the late 1950s and early 1960s.<sup>114</sup>

While the above noted changes were certainly consequential, perhaps the most profound developments within the education system occurred at the post-secondary level. In 1965, the Minister of Education put forth legislation calling for the establishment of a system of colleges of applied arts and technology. At least one such college was to be operating in each of the provinces ten economic regional development areas, though due to varying population densities, some were to be served by multiple colleges. Twenty-five such colleges - including three french language colleges - have been created across the province since 1965, while authority over their operations was transferred from the Minister of Education to the Minister of Colleges and Universities in 1971. The 1960s also witnessed a large expansion of the university sector: not only was the capacity of existing universities expanded, but five universities were founded in the first five years of the 1960s, each being located in a different region of the province. Their creation - Laurentian in 1960, Lakehead in 1962, Trent in 1963, and both Brock and Guelph in 1964 - raised the number of provincially chartered universities in Ontario to fifteen.<sup>115</sup> To help ensure that students could

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<sup>114</sup> On the nature of these and more recent curriculum changes see Robert M. Stamp, *The schools of Ontario, 1876-1976*, (Toronto: University of Toronto Press, 1982). Esp., 203-248; Ontario, Royal Commission on Learning, *For the love of Learning*. (Toronto: Queens Printer for Ontario, 1994).

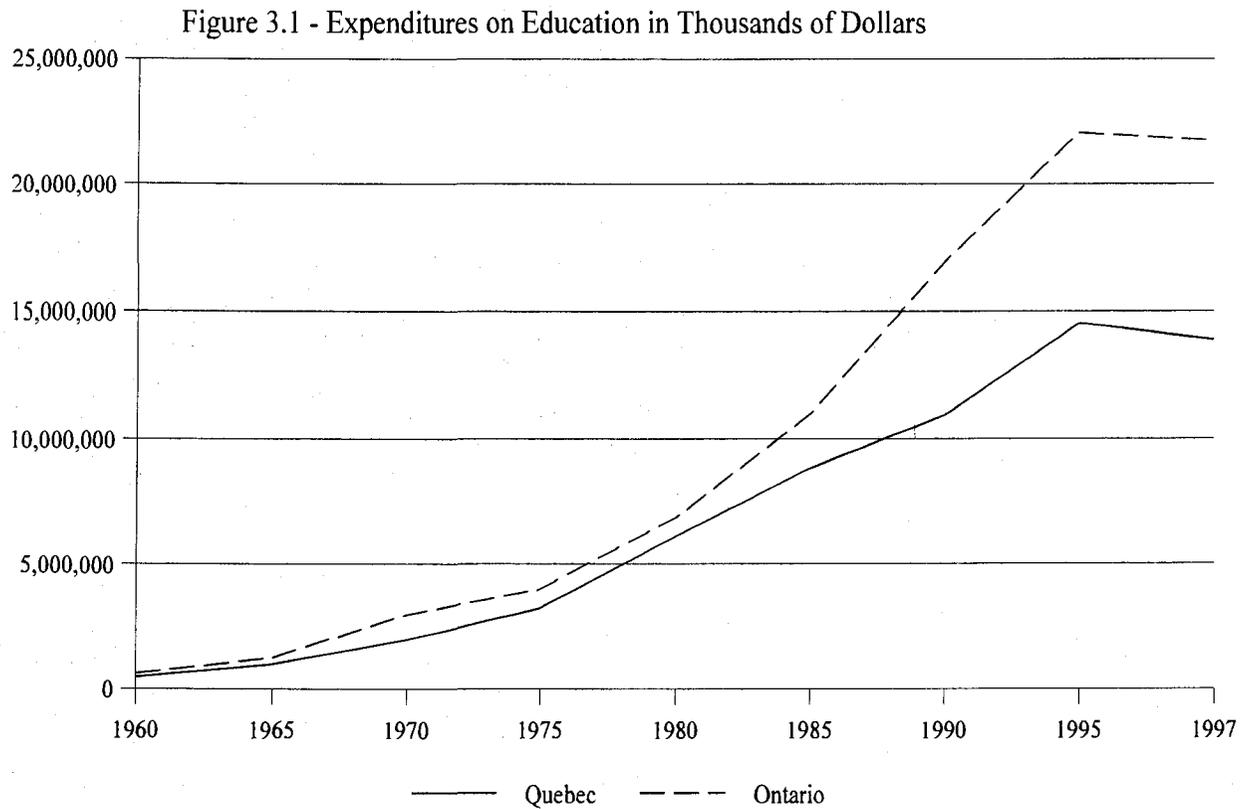
<sup>115</sup> There was a sixteenth university operating in the province - Royal Military College - which received all of its funding and regulations from the federal government. It should also be noted that three of the ten universities that existed in Ontario in 1959 - Carleton, Waterloo and York - only received their chartered status during the 1950s. Ontario, Minister of Education & Minister of Colleges and Universities, *Review of educational policies in Canada:*

properly access these new universities and colleges, the province significantly expanded its student loans and bursaries program in 1964.

### **The Universality and Generosity of Education in Quebec and Ontario**

There is very little that differentiates Quebec and Ontario with regards to the qualifying conditions of their respective education systems. Eligibility for education at the primary and secondary levels is universal in both provinces. Not only is it open to all, but education is in fact mandatory or compulsory in both jurisdictions until the age of sixteen. Eligibility for post-secondary education is more restrictive in both provinces: admission to colleges and universities is primarily determined on a competitive basis revolving around past academic performance. Since this dissertation is interested in the role of welfare states in contributing to differences in official rates of youth crime, and since the qualifying conditions of both education systems are virtually identical, there is little need to discuss this issue in any further detail.

To speak of the generosity of social programs and services is to speak of the quantity of resources which they confer upon individuals and groups. In the case of education, such generosity can best be determined on the basis of the amount of financial resources annually devoted to schooling at the primary, secondary and post-secondary levels. Global spending on education is in fact very similar in Quebec and Ontario, though the Quebec system may nevertheless be characterized as more generous in that young people in that province are not obligated to fund their own post-secondary educations to the same degree as young people in Ontario. The cost of post-

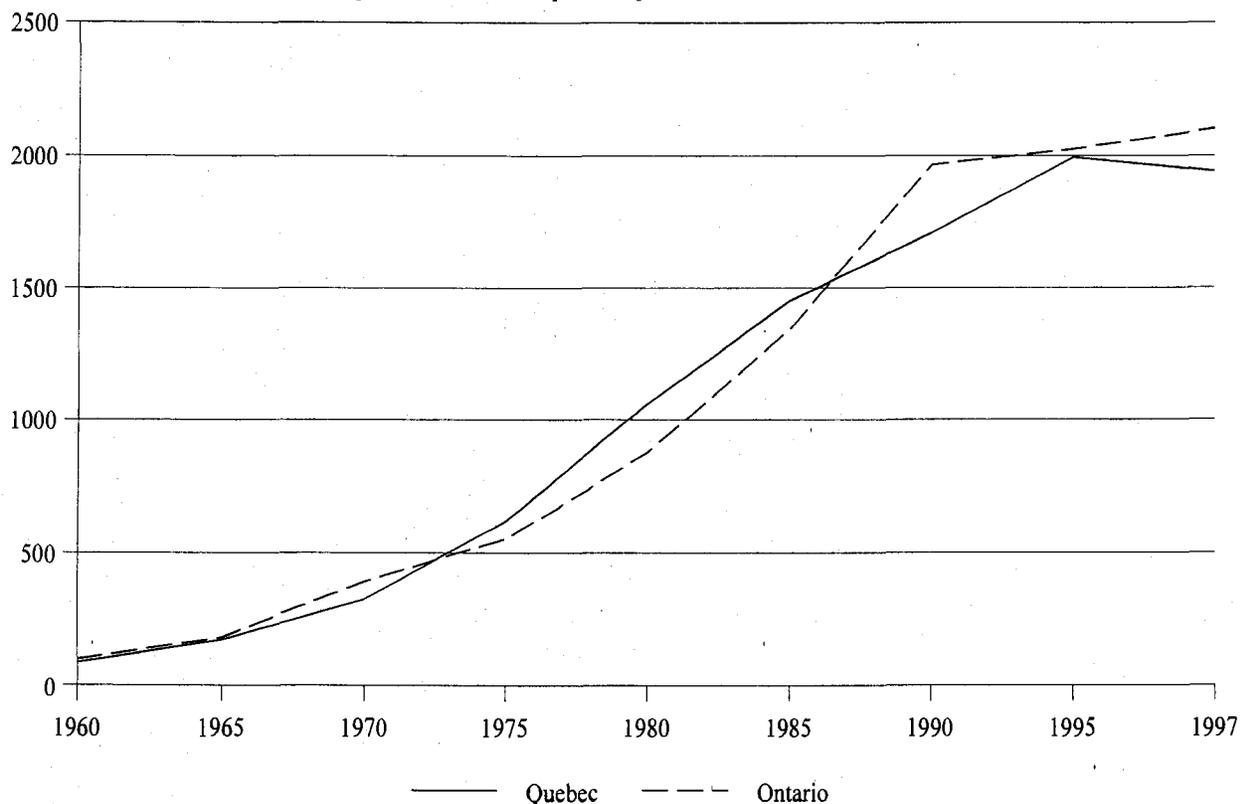


Source: Statistics Canada, *Education in Canada, 1973-2000*

secondary education, in other words, is collectivized to a far greater extent in Quebec than in Ontario.

Both the Quebec and Ontario education systems grew enormously over the course of the final four decades of the twentieth century, though most especially during an approximately twenty year span from the early-1970s until the early-1990s when both provinces were implementing their newly created community college systems, were greatly expanding their university systems, and were

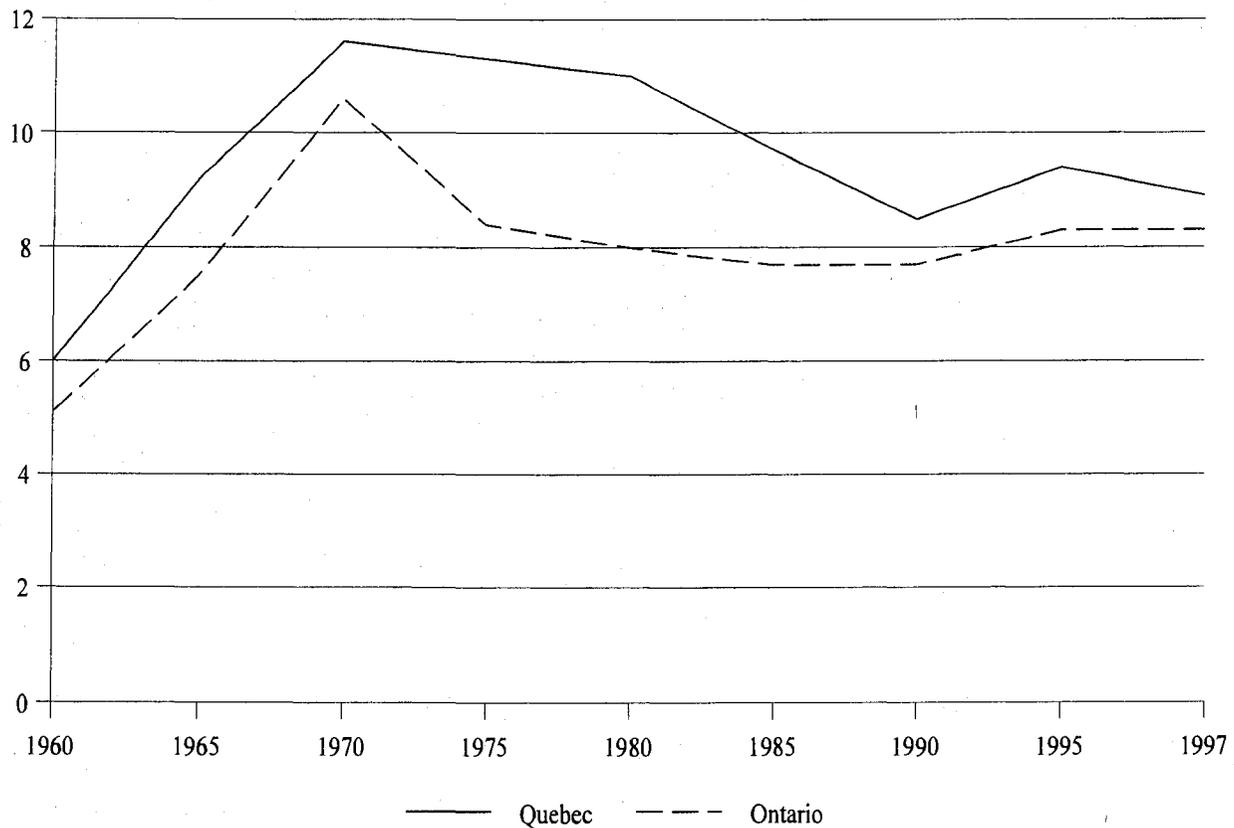
Figure 3.2 - Per Capita Expenditures on Education



Source: Statistics Canada, *Education in Canada, 1973-2000*

restructuring their high school systems. Not surprisingly, this growth resulted in significant increases in educational spending in both provinces as illustrated in figure 3.1. The data presented in this figure indicates that, from 1960 to 1997, there was approximately a 31.0 fold increase in educational spending in Quebec and approximately a 35.7 fold increase in Ontario. When population size is controlled for, spending on education was remarkably similar in both provinces over this same period as illustrated in figure 3.2. The data presented in this figure indicates that there was no consistent difference in per capita educational expenditures between the two provinces, each taking

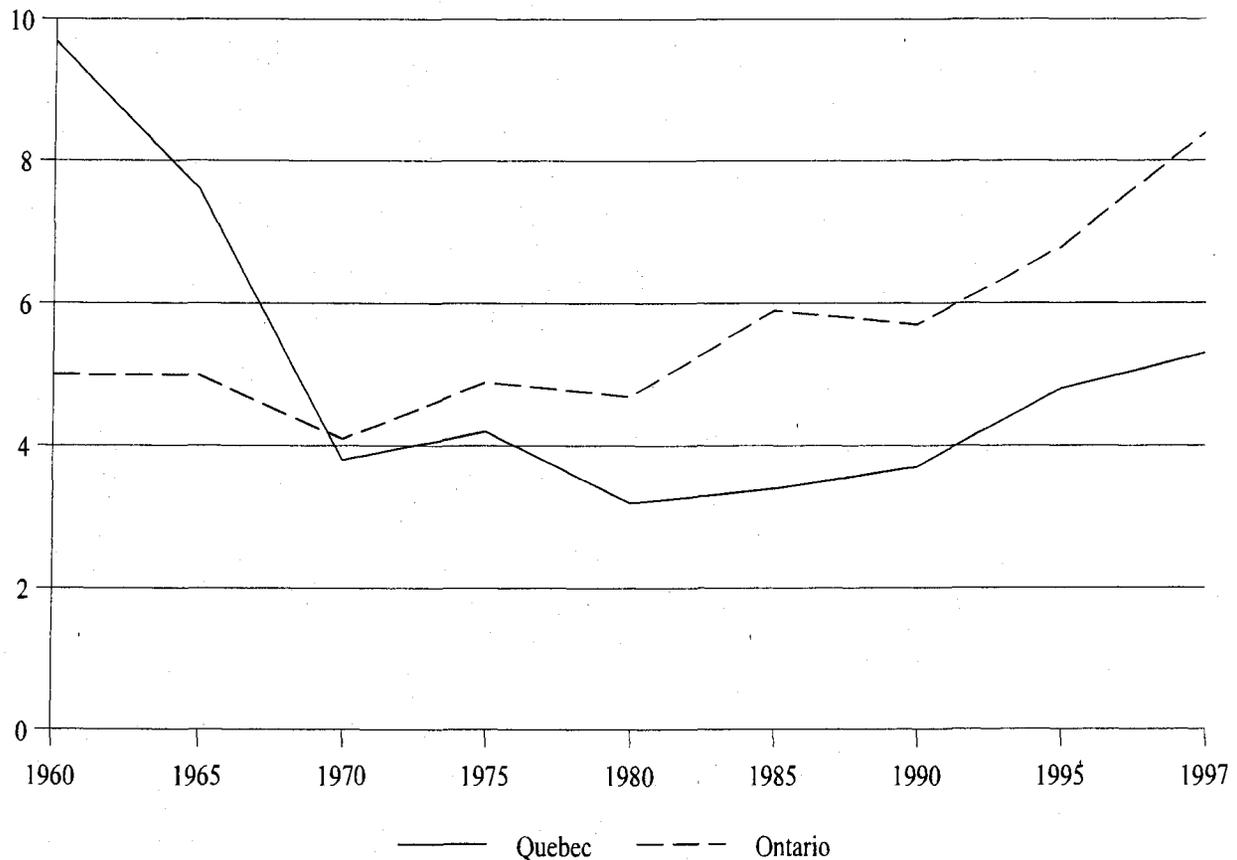
Figure 3.3 - Educational Expenditures as a Percentage of Personal Income



Source: Statistics Canada, *Education in Canada, 1973-2000*

multiple turns of marginally outspending the other, with Quebec experiencing approximately a 22.3 fold increase in such expenditures from 1960 to 1997 compared to approximately a 21.0 fold increase in Ontario. When the comparative wealth of the two provinces is taken into account, the picture changes somewhat as illustrated in figure 3.3. The data presented in this figure indicates that, relative to the average individual income of their respective populations, educational spending in both provinces peaked around 1970, with Quebec having consistently devoted a greater percentage of its wealth to education than Ontario, though the size of this difference has generally been quite

Figure 3.4 - Percentage of Educational Funding Derived from User Fees



Source: Statistics Canada, *Education in Canada, 1973-2000*

small, usually being less than 1 percentage point and never being greater than 3.5 percentage points. Once again, this constitutes a remarkable level of similarity.

Despite this general pattern of high levels of verisimilitude, there is one area of educational funding in which there have been important differences between the two provinces: the percentage of revenue which each education system derives through user fees. Figure 3.4 illustrates that, whereas tuition fees constituted a much larger source of funding in Quebec than in Ontario in 1960,

their relative importance in this province dropped throughout the decade such that, by 1970, they were of similar importance in both provinces, and after which time they became consistently more important to total educational funding in Ontario, first by an average of about one percentage point during the 1970s and then by an average of about two percentage points since 1980. While such differences may appear to be relatively insignificant, when dealing with budgets that are in the tens of billions of dollars, differences of one or two percentage points translate into monetary differences that are in the hundreds of millions of dollars. Moreover, since user fees are largely restricted to the post-secondary level of both education systems, these hundreds of millions of dollars in differences are derived from about one-quarter of the total student population in both provinces.

The end result is large variance or disparity in the amount of tuition paid by individual college and university students in the two provinces. Indeed, from 1993/1994 to 1999/2000, college students in Ontario paid an average of \$1,277 in tuition compared to an average of \$0 in Quebec where CEGEP remained, true to its original conception, tuition free.<sup>116</sup> Similarly, although it increased in both jurisdictions, university tuition in Ontario was generally about double that of Quebec throughout the 1990s: undergraduate tuition fees in arts programs averaged \$902 in 1990/1991 and \$1,868 in 1999/2000 in Quebec compared with \$1,653 in 1990/1991 and \$3,865 in 1999/2000 in Ontario.<sup>117</sup> This necessarily implies that students in Ontario are more responsible for funding their own education compared to students in Quebec where tuition is collectivized to a far

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<sup>116</sup> Manitoba Council on Post-Secondary Education, *Statistical compendium for the academic years ending April 2001*. (Winnipeg: <http://www.copse.mb.ca/en/documents/statistics>, 2003), 147.

<sup>117</sup> Statistics Canada, *The Daily*. (Monday, August 28, 2000).

greater extent, especially since the onset of the 1980s. The education system in Quebec is therefore more generous towards post-secondary students than is the Ontario system.

### **Characterizations of the Deservedness of Quebec and Ontario Students**

Both Quebec and Ontario represent young people as being inherently deserving in the language framing their respective education systems. Young people in Quebec however are framed marginally more positively than their counterparts in Ontario. The source of this minor difference does not reside in the quality of the reasons for which young people in both provinces are deemed inherently deserving of education, but the range of reasons. Whereas the reasons justifying the provision of education in both provinces frame young people in an equally positive light, the breadth of grounds for which young people are deemed to be deserving of education is slightly larger in Quebec.

Any discussion of the language that frames the provision of education as this relates to the deservedness of children in Quebec since the 1960s must give priority to the Parent Commission due to its unrivalled and continued importance in shaping the character of the education system in that province. Volume IV of the report identifies democratization as the core or overriding principle around which education should be organized in a modern society: “the central purpose of the reform we have proposed... [is] giving education a truly democratic basis.”<sup>118</sup> Democracy is defined as both a type of political structure and, more importantly for the context of education, an approach to collective endeavours that is rooted in a number of tenets; “democracy is first of all a variety of

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<sup>118</sup> Quebec, *The Royal Commission of inquiry on education in the province of Quebec*, volume III (1), 5.

political structure; but it can be said that it is essentially and fundamentally a spirit, a frame of mind, a way of life. It is based on the participation of the greatest number, individually and in groups, in the conduct of common enterprise, on respect for the rights of the person, on the equality of all within the diversity of occupation and abilities.”<sup>119</sup> Democracy is thus firmly rooted in the ideals of diversity and equality: it fundamentally accepts the rights of individuals to develop and express their individuality, and to be treated equally with respect to the distribution of opportunities and privileges. In the words of the Commission report, the principle of democratization revolves around enhancing “equality in the life of the community, an equality based, not on uniformity, but on diversity.”<sup>120</sup> When applied to the education system, the principle of democratization therefore implies that all individuals - though especially young people - are deserving of quality education on two grounds.

First, if diversity is a core tenet of democracy, then under an education system with democratization as its core principle, individuals are deserving of a quality education insofar as this enables them to develop their unique talents and interests to the maximum of their abilities. Since talents, interests and abilities necessarily vary from person to person, this implies that the content of an education that is rooted in the principle of democracy must be highly diversified rather than monolithic in nature. The report formally acknowledged the importance of diversified education, stating that “arrangements must be made so that, after the elementary years, everyone can have the advantage of the education best suited to his abilities and interests, whether these tend toward

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<sup>119</sup> Ibid., 3.

<sup>120</sup> Ibid., 3.

abstract studies, artistic expression, or the technical application of the sciences. This at once means that education must be sufficiently varied to afford opportunities for fulfilment to personalities and intelligences of every kind.”<sup>121</sup> To this it was added that “the highly gifted student must be able to count upon instruction that will nourish and stimulate him; in like fashion, one whose natural bent lies more in the direction of technical, or purely manual, skills must have at his disposal the shops and teachers suited to the development of his talents. The application of this principle extends to the whole range of human capacities.”<sup>122</sup> The development of talents and interests must not be limited to the most gifted individuals in each field of human endeavour, but must be extended to all; “the structures of education must be conceived in terms of the respect owed to all citizens, and they must allow for the most complete possible development of all men.”<sup>123</sup> Accordingly, one of the three goals of modern education identified by the report is “to allow everyone to continue his studies, in the field which best suits his abilities, his tastes and his interests up to the most advanced level he has the capacity to reach, and thus have available to him everything which can contribute to his complete fulfilment.”<sup>124</sup>

The preamble of *The Act to Establish the Department of Education and the Superior Council of Education* did in fact explicitly recognize this goal for it begins by stating that, “every child is

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<sup>121</sup> Ibid., 8.

<sup>122</sup> Ibid., 8.

<sup>123</sup> Ibid., 11. On this matter, the report also noted that it is “essential that every student be able to continue his studies to the most advanced level he can reach, taking into account his capacities and his academic achievements.” Ibid., 8.

<sup>124</sup> Ibid., 3-4.

entitled to the advantages of a system of education conducive to the full development of his personality...”<sup>125</sup> Personal development remains one of the primary goals of the Quebec education system to this day as indicated in the 1997 *Report of the Task Force on Curriculum* which noted that, “over the past 20 years, schools in Québec have been marked by ultimate objectives such as those proposed in *The Schools of Québec* [report], which focussed on personal growth, the instilling of values, and individual independence. Student’s overall development is cited as the single most important objective to be pursued by schools.”<sup>126</sup>

The idea that education should be provided in order to enable individuals - particularly young people - to develop their specific talents, personalities and beliefs to the limits of their capacities implies that all young people possess inherent worth: they are deserving of quality educational opportunities because they possess a capacity for growth as autonomous actors. Placing value on personal development regardless of individual potential, in other words, implies that all persons possess inherent worth simply because they are human beings. If they did not possess such worth, then there would be little reason for the education system to identify the personal growth of students as one of the primary justifications for its own existence. Emphasis would instead be placed on the importance of education in promoting such factors as economic productivity, political stability and social cohesion. Each of these implies that individuals should be granted access to education, not because they are inherently deserving as rights bearing human beings, but because doing so will

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<sup>125</sup> *The Act to Establish the Department of Education and the Superior Council of Education*, 1964.

<sup>126</sup> Quebec, *Report of the task force on curriculum: Reaffirming the mission of our schools*, (Quebec: Ministère de l’Éducation, 1997), 22.

confer benefits on the wider society, or at least certain segments therein. In such circumstances, young people are not valued for their own sake, but are valued as instruments for achieving collective ends which may or may not benefit them personally. The notion that young people are inherently deserving of education because of their basic humanity necessarily casts them in a positive light: they are deserving because they possess characteristics which are valued by the wider society, namely a capacity for personal growth as autonomous beings.

Second, if equality is a core tenet of democracy, then under an education system with democratization as its core principle, individuals are deserving of a quality education insofar as this better enables them to achieve equality within the community. According to the Parent report, "It must always be remembered that democracy summons men to a more and more complete achievement of equality among themselves - not only the equality of all before the law and in the exercise of their political rights, but the gradual establishment of equal opportunity for all with respect to their lives in the community."<sup>127</sup> Such a conception of equality between citizens is of course an ideal which encounters many kinds of social, cultural and economic barriers such that it is rarely if ever achieved in practice. Education however is framed as playing an important role in helping to surmount these obstacles; "today education seems to be one of the means to achieve this ideal of equality among men."<sup>128</sup> The reason has to do with the fact that sharing equally in the privileges and opportunities which a society has to offer requires a measure of knowledge, creativity and reasoning which often can only be gained through the formal educational training; "democratic

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<sup>127</sup> Quebec, *The Royal Commission of inquiry on education in the province of Quebec*, volume III(1), 10

<sup>128</sup> *Ibid.*, 10.

society is based on the direct or indirect participation of citizens not only in political power, but in various other activities throughout the broad range of social life. If it is to be real and effective, democratic participation requires that the individual be sufficiently enlightened to make judgements, to fill public office, to work with others in reaching collective decisions.”<sup>129</sup> This idea is elaborated upon further when the report states that, “equality involves freedom; one cannot exist without the other. Indeed democratic equality assumes sufficient independence of judgement and action on the part of each citizen... Freedom truly exists only for men whose intelligence, will and imagination have been adequately awakened, quickened and developed, and who are thus able to apply these faculties to the problems confronting them.”<sup>130</sup>

For this reason, two of the three goals of modern education identified by the report revolve around the issue of promoting equality between citizens. The first of these goals is “to make available to all, without distinction of creed, racial origin, culture, social environment, age, sex, physical health or mental capacity, an education of good quality satisfying a wide variety of needs.”<sup>131</sup> If education is to in fact promote equality within the community, then it must be equally accessible to all or, in other words, distributed on an egalitarian basis. This goal was in fact recognized by the Ministry of Education for it introduced a variety of policies promoting “equality of accessibility, regardless of adverse geographical, economic or social conditions.”<sup>132</sup> Indeed, since

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<sup>129</sup> Ibid., 11.

<sup>130</sup> Ibid., 11.

<sup>131</sup> Ibid., 3.

<sup>132</sup> Quebec, Ministry of Education, *Review of educational policies in Canada: Quebec*. 67.

1964 “the objective of educational accessibility has been of prime importance; in particular, it necessitated the development of generalized secondary education, and equivalent educational services in all regions (through an equitable distribution of resources), and the establishment of a completely integrated public education system, available to the various student populations.”<sup>133</sup> The second related goal is “to prepare all young people for life in society, which means earning their living by useful work, intelligently assuming their social responsibilities in a spirit of equality and freedom...” Much emphasis has in fact been placed on ensuring that the content of education is geared, in part, towards enabling individuals to achieve equality within the community - that is, on equipping them with the knowledge and skills to defend and extend their claims to equality.

The idea that education should be provided in order to enable young people to attain greater equality within the political community implies that they possess a measure of worth by simple virtue of their status as citizens of this political community. Citizenship, as demonstrated by Marshall, revolves around sharing in the full range of opportunities and privileges which are made available by political communities. To the extent that it is deemed important for young people to be granted access to education in order to promote greater equality within a political community, then young people are framed as inherently deserving of education by virtue of their status as citizens, a status which is not open to or shared by all human beings. This necessarily implies that young people possess worth by virtue of their legal status as citizens, a measure of worth that is above and beyond that which is possessed by all human beings: students are not just abstract

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<sup>133</sup> Ibid., 68. This emphasis on accessibility also gave rise to the creation of a network of regionally-based colleges and universities (i.e., the University of Quebec with its numerous campuses throughout the province).

individuals who have worth like all human beings, but possess a second or additional layer of worth because of their citizenship status.<sup>134</sup> If they did not, then there would be little reason for the education system to identify the promotion of equality as one of the reasons for its own existence: equality is only relevant insofar as individuals are deserving of sharing in the opportunities and privileges of democratic citizenship. The notion that young people are inherently deserving of education because of their status necessarily casts them in a positive light: they are deserving because of some characteristic which they possess that is valued by the wider society, namely legal membership status in that society.

Unlike in Quebec, no single report has thoroughly and enduringly dominated the issue of education reform in Ontario since the end of the 1950s. There is, quite simply, no Ontario equivalent to the Parent Report in terms of magnitude of influence over educational language and practice. Rather, the roots of education reform in Ontario are more evolutionary, residing in numerous Royal Commissions and Ministerial reports which often make little reference to each other. Despite this plurality of sources, there have nevertheless been certain consistencies in the tone and themes of the language which has framed the provision of education as this relates to the deservedness of children and youth in Ontario since the 1960s.

Though it is not linked to some grander principle like that of democratization as it is in Quebec, personal development is also identified as one of the central objectives of the education

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<sup>134</sup> That Quebec youth are deemed to be additionally deserving by virtue of their status as citizens also finds expression in the fact that, since 1997-1998, students from Quebec attending Quebec-based colleges and universities pay lower tuition than students coming from other provinces.

system in Ontario: just as in Quebec, young people are deemed to be entitled to education in order to enable them to develop their specific talents, personalities and interests to the limits of their abilities. This was certainly the overwhelming theme of the Hall-Denis report whose recommendations gave major impetus to the process of educational modernization in Ontario following its publication in 1968. The report placed individual development squarely at the centre of the education system when it argued that "Each human being is deserving of respect, identity, and the right to develop toward the fulfilment of his unique potential. In a democratic society, all men are of equal importance, and none is expendable."<sup>135</sup> Accordingly, the report formally acknowledged the importance of diversified education, stating that "It must be recognized that there are many children who have special gifts in music or art or drama, but who have no particular interest in the sciences or mathematics or other academic disciplines. The curriculum must provide for their progress and for graduation with emphasis in their specialties. These children cannot be branded failures by the fact that their talents lie in special areas rather than in the traditional disciplines."<sup>136</sup> Similarly, it also indicated that "There are the retarded and the slow learners who must also be accommodated by the curriculum so that when they have emerged from the school experience, they will have matured and learned as much as their capabilities permit in an atmosphere of self-respect and dignity, and without the stigma of failure."<sup>137</sup>

The idea that the personal development of students should be a core focus of the education

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<sup>135</sup> Ontario, Provincial Committee on Aims and Objectives of Education in the Schools of Ontario, *Living and Learning*. (Toronto: Newton Publishing, 1968), 21.

<sup>136</sup> *Ibid.*, 13.

<sup>137</sup> *Ibid.*, 13.

system was further emphasized in 1975 when the Ministry of Education issued *The Formative Years*, a policy document intended to provide new directions for elementary school teachers, which stated that “It is the policy of the government of Ontario that every child have the opportunity to develop as completely as possible in the direction of his or her talents and needs.”<sup>138</sup> In his introductory statement to this report, then Minister of Education Thomas Wells formally endorsed this focus on individual development by arguing that “the philosophical commitment of our society [is] to the worth of the individual” and that one of the primary goals of education should therefore be to assist every child “to develop and maintain confidence and a sense of self-worth.”<sup>139</sup>

The developmental goals of education were also emphasized in a 1972 report by the *Commission on Post-Secondary Education in Ontario* which stated that “The paramount value which the Commission has brought to its evaluation of post-secondary education is its commitment to the individual. The Commission wants to emphasize the importance of the individual in education: the individual must be central.”<sup>140</sup> The Commission further elaborated that “education must be man-centred. The various tests and examinations, the buildings, the programs, and the teaching methods - indeed, all facets of the post-secondary educational system - should be oriented towards serving individual students rather than the institutions themselves, future employers, or the professions.”<sup>141</sup> Moreover, “if the individual is at the centre, he must have the opportunity and the responsibility to

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<sup>138</sup> Ontario, Ministry of Education, *The formative years*. (Toronto: Queen’s Printer for Ontario, 1975), 4.

<sup>139</sup> *Ibid.*, 2.

<sup>140</sup> Ontario, Commission on Post-Secondary Education in Ontario, *Draft Report*. (Toronto: Queens Printer for Ontario, 1972), 10.

<sup>141</sup> *Ibid.*, 11.

decide what educational experience is best for him. The whole spectrum of educational services must be available to him, not just a degree program, a certification process, or what the institution thinks may benefit him.”<sup>142</sup>

In the mid-1990s, *The Report of the Royal Commission on Learning* stated that, with respect to primary and secondary schools, their “central or primary purpose is intellectual development” and, as such, are to contribute to “the healthy development and growth of children.”<sup>143</sup> More recently, a 1997 discussion document about the purpose and future of secondary education in Ontario stated that one of the two central goals of this system must be to “help students fulfil their personal potential, develop life skills, ‘learn to learn’, build self-esteem, develop interests and integrity, and become ‘good citizens’.”<sup>144</sup> Similarly, a 1996 discussion document about the purpose and future of the post-secondary education system in Ontario stated that it is important for all Ontarians to be granted opportunities to receive the education and training they need so that they may “develop their personal potential.”<sup>145</sup>

By virtue of consistently putting forth the idea that individuals, though especially the young, should be granted access to education in order to enable them to develop their specific talents and

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<sup>142</sup> Ibid., 11.

<sup>143</sup> Ontario, Royal Commission on Learning, *For the love of Learning, Volume 1*, 55 & 56.

<sup>144</sup> Ontario, Ministry of Education and Training, *Ontario secondary schools (1998): Detailed discussion document*. (Toronto: Queens Printer for Ontario, 1998), 3.

<sup>145</sup> Ontario, Ministry of Education and Training, *Future goals for Ontario colleges and universities: Discussion paper*. (Toronto: Queens Printer for Ontario, 1996), 6.

interests to the maximum of their abilities, the language which frames the provision of education in Ontario implies that, just like in Quebec, all young people possess inherent worth: they are fundamentally deserving of educational opportunities. As noted above, stating that personal development is important regardless of individual potential signifies that all persons are inherently deserving simply because they are human beings. Once again, the notion that young people are inherently deserving of education because of their basic humanity necessarily casts them in a positive light: they are deserving because they possess innate characteristics or properties which are valued by the wider society, namely a capacity for growth as autonomous beings.

Similar to Quebec, much emphasis has also been placed on the ideal of equality of access to education in Ontario. This ideal was certainly central in the Hall-Denis report which stated that “we accept the concept that every child in Ontario is entitled, as of right, to the opportunity of access to the educational and training facilities for which his talents qualify him” and that this access shall not be impeded by any “condition of race, religion, language, or background.”<sup>146</sup> Similarly, the report also stated that “The welfare of the individual child must be paramount in making decisions, and no stereotyped attitude, or condition of class, economic status, or environment should prejudice those decisions.”<sup>147</sup> Accordingly, the report argued that “the Province must assume an ever-increasing responsibility for educational costs, for in no other way can equality of opportunity through education become a fact and not merely a slogan to Ontario’s children.”<sup>148</sup> More recently, *The*

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<sup>146</sup> Ontario, Provincial Committee on Aims and Objectives of Education in the Schools of Ontario, *Living and Learning*. 11.

<sup>147</sup> *Ibid.*, 12.

<sup>148</sup> *Ibid.*, 11.

*Report of the Royal Commission on Learning* stated that the various goals of the education system “must be pursued within a safe, supportive environment for students, which values and supports diversity of race, culture, class, gender, and physical or intellectual ability.”<sup>149</sup>

Unlike in Quebec, however, the issue of education is not linked to the larger issue of societal equality: education is not overtly framed as a mechanism for promoting greater equality between individuals and groups in terms of the distribution of the privileges and opportunities of citizenship. This is not to suggest that education is framed as being completely divorced from the issue of citizenship equality in Ontario. It is periodically mentioned as being important to sharing in the opportunities and privileges of citizenship, but usually only in passing. Citizenship development, in short, is listed as one of the lesser or secondary reasons justifying the provision of quality education. It is certainly framed as being of secondary importance compared to Quebec. Consequently, young people in Ontario are not represented as possessing as great of a second layer of inherent worth that is above and beyond that which is possessed by all human beings relative to their counterparts in Quebec.

The evidence presented in this section suggests that the identity of citizen is defined more inclusively in Quebec than in Ontario, at least where young people are concerned. First, the Quebec education system appears to be more effective at incorporating the interests of young people than its Ontario counterpart. Although the eligibility criteria for receiving an education are very similar in both provinces, and although global spending on education is remarkably similar in both provinces,

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<sup>149</sup> Ontario, Royal Commission on Learning, *For the love of Learning, Volume I*. 54-55.

the interests of older youth are collectivized to a greater degree in Quebec insofar as their college and university tuition is subsidized to a far greater extent than in Ontario. Young people in Ontario, in other words, are more responsible for bearing the costs of post-secondary education than their Quebec counterparts. This result is consistent with the idea of Quebec possessing a strong institutional legacy of collectivizing the interests of diverse social groups as well as an ideological climate that is conducive to generous social programs and services, and of Ontario possessing an institutional legacy of stratification in which the interests of certain groups are treated less generously than others as well as an ideological climate that is generally not as conducive to the provision of generous social programs and services. Second, the Quebec education system also appears to characterize young people marginally more positively than its Ontario counterpart. Whereas young people in both provinces are framed as inherently deserving by virtue of their status as rights bearing individuals, young people in Quebec are framed as possessing a greater secondary layer of deservedness resulting from their legal status as citizens. This result is consistent with the idea of Quebec possessing an ideological climate that is conducive to expressions which affirm the distinctiveness and autonomy of its population.

### **The Inclusiveness of the Role of Citizen in Quebec & Ontario**

Welfare states define the substantive content of the role of citizen inclusively, as previously noted, to the extent that they create spaces for people to become involved in the public life of political communities. They create such spaces insofar as they open the design, administration and delivery of social programs and services to public participation. The degree to which the Quebec and Ontario welfare states define the role of citizen as involving active participation in the shaping

of social policy will be assessed on the basis of the quality of their support for intermediary citizen organizations. The reason for doing so lies in the fact that the voluntary sector potentially constitutes the single most important vehicle of citizen involvement in public affairs in democratic societies. Taken as a whole, the sector provides, according to Laforest and Phillips, “an organizing structure for citizen representation and participation and serves as a conduit between citizens and governments.”<sup>150</sup> In the absence of voluntary organizations, individuals are rarely in the position to help deliver social programs and services, or to have their voices heard by the state regarding their beliefs about the appropriate content and direction of social policy. Unlike in the previous section, this examination of support for the voluntary sector will not be limited to a single field of welfare state activity, but will assess the quality of such support provided by the welfare state generally. By implication, this means that the focus will not be on the nature of welfare state support for any one specific type of citizen organization, but on the nature of support for the voluntary sector as a whole. The rationale for doing so lies in the fact that support for citizen organizations often varies considerably across individual policy fields. As a result, it is very difficult to gauge the overall inclusiveness of welfare state definitions of the role citizen by examining the quality of their support for any one particular type of voluntary organization. A broader examination of the quality of such support for the voluntary sector as a whole is more useful in this regard.

Whereas voluntary organizations constitute the primary spaces in which social and political

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<sup>150</sup> Rachel Laforest and Susan Phillips, “Rethinking civil society - state relationships: Quebec and Canada at the crossroads,” 3-4. Unpublished translated version of Rachel Laforest and Susan Phillips, “Repenser les relations entre le gouvernement et le secteur bénévole: À la croisée des chemins au Québec et au Canada,” *Politique et Sociétés*. 20, (2-3, 2001), 37-68.

action transpires, the quality of opportunities these organizations afford to individuals and groups for such action is largely determined by the nature of state support for the sector as a whole. The quality of state support for the sector, in other words, serves to either enhance or stifle its capacity as a vehicle of citizen participation and representation. It does so on the basis of influencing numerous aspects of the character of voluntary organizations, including the range of issues around which they are formed, their mandates as well as the range of activities which they undertake in pursuing those mandates, how they govern themselves, and how they relate to each other and to the state.<sup>151</sup> The quality of state support of the voluntary sector, in short, influences the density of the sector, the character of its individual organizations in terms of whether they are primarily instruments of private 'charity' or of democratic citizen control, and the kinds of activities in which these organizations are involved. To what extent the role of citizen is defined inclusively can therefore be assessed on the basis of the quality of welfare state support for the voluntary sector.

Welfare state support of the voluntary sector takes three forms. The first is funding. Financial assistance is crucial to the ability of intermediary citizen organizations to carry out their functions, whether this involves service provision, political advocacy or both: without state funding, most citizen organizations simply cannot survive. It should be noted that it is exceptionally difficult to precisely assess how much money the Quebec and Ontario welfare states have annually made available for intermediary citizen organizations throughout much of the twentieth century because the funding of the voluntary sector has not emanated from a single ministry in either jurisdiction, or

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<sup>151</sup> See Lester M. Salamon & Helmut K. Anheier, *The emerging nonprofit sector: An overview*. (Manchester: Manchester University Press, 1996).

even been determined by central provincial planners working in the various relevant ministries. Rather, much of this funding tended to occur at the discretion of locally and regionally-based provincial agencies and institutions who devoted part of their own operational budgets to supporting voluntary sector organizations. While this necessarily makes it very difficult to compare annual funding levels of the voluntary sector across the two provinces, much can nevertheless be discerned about the quality of welfare state support for intermediary citizen organizations in Quebec and Ontario by examining the type of funding made available to such organizations as well as the kinds of activities for which they could receive funding. The second is technical support for the actual mobilization of citizen organizations. Such assistance is crucial to the formation or creation of voluntary organizations involved in service provision and political advocacy, particularly within the most disadvantaged sectors of society. The third are institutionalized roles for citizen organizations in the social policy arena. Such roles enable them to carry out their mandates - whether social or political - more effectively and, in so doing, provide them with a strong incentive not to disband or, in other words, with an ongoing reason for being.

### **Welfare State Support for Collective Citizen Organizations in Quebec & Ontario**

Both Quebec and Ontario possess long traditions of engagement by the voluntary sector in the design, administration and delivery of social programs and services. In Quebec, faith-based intermediary organizations that were created, controlled and supported by the Church began offering various kinds of rudimentary health, educational and social services in the mid-eighteenth century. The voluntary sector in Quebec retained its predominantly hierarchical and religious character until the 1960s: the mission and practices of intermediary organizations continued to largely be

determined by the Church which also remained the most important source of direct support for such organizations. Following the onset of the Quiet Revolution, however, the state rapidly became the primary source of support for intermediary citizen organizations, and the voluntary sector as a whole underwent a rapid process of secularization, grounding itself instead in a “concept of community development rooted in a sense of democracy and equal opportunity for marginalized people.”<sup>152</sup> In Ontario, intermediary citizen organizations have also been involved in the provision of social services since the pioneer era. Unlike in Quebec, however, the provincial government has a long history in providing direct support to the voluntary sector: the government of Upper Canada first began dispensing grants to charitable organizations offering relief and assistance to the needy in the early nineteenth century. This rather informal grant-giving system was institutionalized and regularized under the Ontario Charity Aid Act of 1874 which laid out a number of conditions which charities had to meet in order to receive funding from the provincial government.<sup>153</sup> Much like in Quebec, however, the voluntary sector largely remained a vehicle for upper-class paternalism and philanthropy rather than a vehicle for citizen participation and empowerment until the rapid rise of the Keynesian welfare state during the late 1950s and throughout most of the 1960s.

Since the onset of the 1960s, Quebec has made ever increasing levels of funding available to the voluntary sector. Following the election of Jean Lesage as premier in 1960, and with the

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<sup>152</sup> Jean Panet-Raymond & Robert Mayer, “The history of community development in Quebec,” in Brian Wharf & Michael Clague, eds., *Community organizing: Canadian experiences*. (Toronto: Oxford University Press, 1997), 32.

<sup>153</sup> Ramesh Mishra, Glenda Laws & Priscilla Harding, “Ontario,” in Jacqueline S. Ismael & Yves Vaillancourt, eds., *Privatization and provincial social services in Canada: Policy, administration and service delivery*. (Edmonton: University of Alberta Press, 1988), 121.

financial assistance of the federal government, the province embarked on an ambitious plan to modernise its inner city neighbourhoods and rural regions. As part of these plans, the province began offering minimal financial assistance in the mid-1960s to organizations providing vital social services in the major urban centres of the province. From these modest beginnings, service oriented groups have experienced continuous growth in state funding right through until the end of the century.

During the 1970s, this growth was propelled by enormous growth in the provision of social services to communities across Quebec, especially in the domains of health, education and recreation. As part of this community development strategy, the province made massive amounts of funding available for job creation projects whose parameters extended to the non-profit sector: much money was available to self-help type community groups. While this led to a rapid increase in the number of social service groups operating throughout the province, their funding tended to be of a short-duration (six to twelve months) and non-renewable in nature such that many of these groups simply disappeared once their grants ran out.

During the 1980s, this growth occurred despite - or, because of - deep cutbacks to social programs, especially in the domains of social and health services. These spending cuts - the first incidents of which actually occurred on a smaller scale in the late-1970s - arose in response to the onset of a deep recession in the early 1980s, and to the election of the neoliberal influenced provincial government of Robert Bourassa in 1985. For service oriented groups, these events resulted in substantial funding growth throughout the 1980s as the province ceased providing new

social services and actually began downloading a number of existing services to the voluntary sector. With its base of highly dedicated volunteers and non-unionized staff, the sector was viewed by the province as an effective instrument for delivering low-cost alternatives to publicly delivered social programs. Consequently, much funding was made available for intermediary organizations to fulfil identified service needs within the community, especially for women, youths and the elderly.<sup>154</sup>

During the 1990s, this growth was once again propelled by austerity. A deep recession was experienced in the early years of the decade while structural economic problems compounded by deep cuts in federal transfer payments pushed deficits and the accumulated debt to unprecedented levels in the middle years of the decade. Once again, the province responded by further increasing the role of the voluntary sector in the spheres of social and economic development: the ability of the sector to deliver services at a lower cost to the province than public agencies and organizations was further encouraged and exploited. As a result, the amount of funding made available to intermediary organizations to deliver services to the public has continued to rise throughout the decade.<sup>155</sup>

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<sup>154</sup> Jean Panet-Raymond & Robert Mayer, "The history of community development in Quebec," 43. For example, the provincial funding of groups involved in home care grew from several hundred thousand dollars in 1979 to over ten million dollars in 1989. Jean Panet-Raymond, "The future of community groups in Quebec: The difficult balance between autonomy and partnership with the state," *Canadian Social Work Review*. 6(1, 1989): 126-135.

<sup>155</sup> From the mid-1980s until the mid-1990s, for example, funding for community groups in the field of health and social services increased over fivefold and remained the fastest growing component of the province's health and social services budget. Deena White, "Contradictory participation: Reflections on community action in Quebec," in Brian Wharf & Michael Clague, eds., *Community organizing: Canadian experiences*. (Toronto: Oxford University Press, 1997), 79. Through one fund alone, the province currently earmarks \$471 million for the support of community organizations and the purchase of services offered within the sector. Ministère de l'Emploi et de la Solidarité sociale, *Community action: A crucial contribution to the exercise of citizenship and the development of Québec*. (Quebec: Direction des communications, Ministère de l'Emploi et de la Solidarité sociale, 2001): 9.

As part of its 1960s modernization plans, the province also began funding politically-oriented citizen organizations. From the very outset, it was realized within government circles that such an ambitious project could not be successfully implemented without the assistance and support of local populations. Much funding was therefore made available, particularly in rural regions, for the establishment and ongoing maintenance of citizen committees who could represent the residents of those local communities affected by these plans.<sup>156</sup> The expectation was that these committees would provide government planners with vital local knowledge as well as help build popular support among affected residents for the modernization of inner cities and rural regions by virtue of their involvement in the planning process. To the surprise of government planners, almost the total reverse happened: state supported citizen committees almost universally rejected these modernization plans - which typically called for the levelling of all or parts of their communities - and actually began spearheading the opposition to their implementation.

Not surprisingly, even though the 1970s was a period of growth in funding for the voluntary sector as a whole in Quebec due to its close connection to the ever expanding Keynesian welfare state, politically-oriented citizen organizations actually saw their funding decrease throughout this decade in reaction to their unwillingness to blindly support state initiatives. The antagonistic relationship which such organizations had developed with the state during the 1960s and which actually intensified throughout the 1970s as they became increasingly radical in their underlying

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<sup>156</sup> On the history of these committees see Jean Panet-Raymond & Robert Mayer, "The history of community development in Quebec"; Paul R. Bélanger & Benoît Lévesque, "Le mouvement populaire et communautaire: De la revendication au partenariat (1963-1992)," in Gerard Daigle & Guy Rocher, eds., *Le Quebec en jeu: Comprendre les grands défis*. (Montreal: Les Presses de l'Université de Montréal, 1992): 713-747.

ideologies and basic tactics prompted the province to begin cutting their funding.<sup>157</sup> This pattern of declining funding further intensified in the economic austerity of the 1980s: funding for advocacy groups dried-up almost completely during this decade as money was redirected for service provision groups.

Despite the continuing austerity of the 1990s, politically-oriented citizen organizations actually saw their funding rise to previously unseen levels. In order to entice the voluntary sector to accept the greater downloading of social services onto its shoulders in the wake of the fiscal crisis confronting the province, the government developed and implemented a policy which, among other things, formally recognizes the legitimacy of the sector's involvement in advocacy work and in speaking on the behalf of or otherwise representing the collective interests of communities.<sup>158</sup> As part of this policy, the province has greatly expanded the level of funding made available to politically-oriented community groups. Most important in this regard has been the creation of the autonomous community action fund (*Fond d'aide à l'action communautaire autonome*). This fund, which is administered by the secretariat for community action and which is financed by Loto Québec

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<sup>157</sup> In the wake of its general lack of success in preventing the government from proceeding with its modernization plans, it was widely agreed upon within the political wing of the Quebec voluntary sector that more focussed and intensive forms of political action were required if it was to have more influence over public policy. This led to the creation of single issue advocacy groups for welfare recipients, tenants, the unemployed and consumers which became increasingly radical throughout the 1970s such that many eventually began to espouse Marxist and Leninist principles, to multi-issue organizations which focussed on the needs of geographic communities, and even to the creation of a municipal political party in Montreal (the *Front d'action politique*, or FRAP) in 1970. See Jean Panet-Raymond & Robert Mayer, "The history of community development in Quebec," 38-39; Jean Panet-Raymond, "Community groups in Quebec: from radical action to voluntarism for the state?," *Community Development Journal*. 22(4, 1987): 281-286.

<sup>158</sup> Quebec, Ministère de l'Emploi et de la Solidarité sociale, *Community action: A crucial contribution to the exercise of citizenship and the development of Québec*. (Quebec: Direction des communications, Ministère de l'Emploi et de la Solidarité sociale, 2001).

through the donation of five percent of its annual profits which amounted to nearly \$500 million in 1999-2000, is explicitly designed to ensure that politically-oriented community groups receive core funding to support their missions, to cover basic infrastructure costs like rent, salaries and equipment, and to cover expenses resulting from participation (e.g., travel, research) in various sectoral and cross-sectoral advisory, coordinating or governing bodies.<sup>159</sup> Moreover, the administration of this fund by the secretariat also ensures that advocacy groups are not required to rely on the same government departments which they may wish to criticise in the course of their advocacy work for funding.

With the onset of the 1960s, the province also began providing technical assistance to the voluntary sector. When the province first started to engage the sector in the early-1960s in an effort to implement its modernization plans, it began making use of social animators whose job was to help establish citizen committees in both rural and urban settings. These social animators, who tended to be heavily influenced by critical theories of the state, assisted various often marginalised social groups - including tenants, consumers, women, the unemployed, persons directly and indirectly affected by mental illness, and so forth - form both service- and politically-oriented citizen committees.

This practice of making use of social animators to help establish intermediate citizen organizations intensified considerably during the 1970s. The province formally institutionalized the

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<sup>159</sup> Ibid., 23. Three kinds of activities are supported by this fund: advocacy and the defence of collective rights, the provision of services for vulnerable populations, and special one-time community development projects. Ibid., 24.

role of social animator in 1972 when a series of health care and social service reforms were passed which, among other things, approved the creation of a network of local community service centres known as CLSCs (*centres local de services communautaires*). CLSCs can be described as small public institutions with a tri-fold mandate to deliver frontline preventative health care services (e.g., school inoculation programs, home care, prenatal services), individual and group social services, and community development services to geographic communities of between 20,000 and 70,000 residents depending on local circumstances.<sup>160</sup> Because part of their mandate involved delivering services relevant to community development, CLSCs always included social animators or community organizers as members of their paid staff. Rooted in a model of community development which stressed the social rights of marginalised people, the regular duties of these organizers included encouraging the development of and providing technical support for the mobilization of intermediary citizen organizations interested in service provision and/or political advocacy.<sup>161</sup> These early CLSC community organizers helped mobilize an entirely new generation of service provision organizations often operating in entirely new domains including print and electronic media outlets, food cooperatives and housing cooperatives.<sup>162</sup> These organizers were especially important however to the formation of politically-oriented citizen organizations for whom comparatively little funding was available during this decade. Indeed, they played an instrumental role in giving rise to women's

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<sup>160</sup> Henri Lamoureux, Robert Mayer & Jean Panet-Raymond, *Community action*. (Montreal: Black Rose Books, 1989): 126. There are presently some 170 CLSCs operating across the province.

<sup>161</sup> Critics pointed out that much of the energy of these new 'professional' community organizers was directed at unionizing the CLSCs themselves rather than mobilizing citizens, and that they often tended to impose their own definitions on community needs and the kinds of action required to address these needs. Deena White, "Quebec state and society," in Marcel Fournier, Michael Rosenberg & Deena White, eds., *Quebec society: Critical issues*. (Scarborough: Prentice Hall, 1997), 30.

<sup>162</sup> Jean Panet-Raymond & Robert Mayer, "The history of community development in Quebec," 37.

rights groups, youth groups, gay and lesbian rights groups, tenants associations, and welfare recipients rights groups.

In the 1980s, the mandate of CLSCs was modified slightly so as to place greater emphasis on healthcare and less emphasis on social and community services. The model of community development which underpinned the CLSCs shifted from one which stressed the social rights of marginalised peoples to one which stressed - but was not exclusively limited to - the health related needs of targeted populations.<sup>163</sup> Because of this change, many CLSC community mobilizers were laid off while those that remained greatly reduced - but did not altogether abandon - their involvement in the mobilization of politically-oriented citizen organizations in order to focus most of their efforts on helping to establish service-oriented organizations for various targeted populations.<sup>164</sup> In the words of one set of observers, throughout the 1980s "Community organizers in CLSCs contributed greatly to the rapid growth of community organizations for targeted populations. After these agents of change were redefined as agents of integration, they supported and initiated many local initiatives to create community services for female victims of violence, day care, home care for seniors and the disabled, youths, drug users, etc."<sup>165</sup> This heavy emphasis on helping to mobilize service-oriented groups and comparatively light emphasis on politically-oriented groups continued throughout the 1990s.

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<sup>163</sup> These needs were defined broadly so as to include, for example, substance abuse, domestic violence, and mental illness.

<sup>164</sup> Louis Favreau, *Mouvement populaire et intervention communautaire de 1960 à nos jours*. (Montréal: Le Centre de formation populaire et les Éditions du Fleuve, 1989), 209-214.

<sup>165</sup> Jean Panet-Raymond & Robert Mayer, "The history of community development in Quebec," 44.

With the onset of the 1960s, Quebec also began institutionalizing the involvement of the voluntary sector in the social policy development process. The large role afforded to the voluntary sector in the delivery of social programs and services has already been discussed and need not be repeated here. The role afforded to the sector in the design and administration of social programs and services has been much smaller by comparison, but has been far from insignificant. Intermediary citizen organizations, especially those with a political orientation, have been afforded a direct voice - albeit of varying strength - in the design and administration of social programs and services through the establishment of numerous institutionalized points of access to the state. Such points of access first began to be established in the 1960s as part of the broader efforts to modernize the inner cities and rural regions of the province: public participation in the planning process was identified from the very outset as vital to the success of such endeavours. Indeed this was the primary reason for which money and technical assistance were provided for the establishment of citizen committees. The involvement of these committees in the planning process proved to be rather superficial, however, largely being limited to providing government officials with information about the culture of as well as the social and economic problems facing their own local communities. Though advertized as a vehicle for promoting democratic participation and empowerment, the consultation of citizen committees was in fact "deemed a tool of integration or co-optation in a citizen process in which the 'dice' were loaded and the experts took over. It was the most striking example of a top-down planning process disguised as a bottom-up process."<sup>166</sup>

Following these modest beginnings, the strength of the voice afforded to intermediary citizen

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<sup>166</sup> Jean Panet-Raymond & Robert Mayer, "The history of community development in Quebec," 34.

organizations in the design and administration of social programs and polity increased somewhat during the 1970s as a result of the establishment of the network of CLSCs across the province. These institutions proved to be important in this regard for two reasons. First, the province heavily involved citizen committees and health services delivery organizations in the design and implementation of these institutions from the very outset. Indeed, the creation of each CLSC “was delegated to existing or new coalitions of citizens’ committees working with professional community organizers appointed by the state.”<sup>167</sup> Second, once established, CLSCs were designed to structurally embody the democratic and egalitarian ideals of popular clinics. Although fully financed by the Ministry of Health and Social Services and therefore subject to a public charter, CLSCs “were to function as independent organizations, including their own boards of directors with heavy representation of service users.”<sup>168</sup> Citizens and voluntary organizations were therefore expected to share responsibility for the functioning and practices - i.e., administration - of CLSCs with state technocrats as well as the professionals - including nurses, social workers, health educators, community organizers, psychologists and doctors - who staffed them. Their structure, in other words, made room not only for citizen participation, but also for a small element of citizen control. This is very significant since CLSCs play a leading role in identifying and addressing the social needs - especially in the domains of health, welfare and community development - of territorial communities: not only do they provide a range of social services themselves, but they also help mobilize various populations to form self-help groups in order to fill the remaining service gaps.

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<sup>167</sup> Deena White, “Quebec state and society,” 30.

<sup>168</sup> David A. Rochefort, Michael Rosenberg & Deena White, “Community as a policy instrument,” *Policy Studies Journal*. 26(3, 1998), 556.

They play, in other words, an important role in coordinating the network of social services operating across the province in terms of ensuring that it possess a measure of internal coherence and consistency by virtue of directing resources towards those areas where they are most needed, and preventing intermediary citizen organizations from offering overlapping services to the same populations. Consequently, insofar as intermediary citizen organizations have a measure of influence over the administration of CLSCs, they possess a measure of influence over the design and administration of a wide range of social programs and services.

The voice of intermediary citizen organizations was further strengthened in the 1980s when many new institutional points of access to the state were created, thus partially offsetting the decrease in financial and technical support they were simultaneously experiencing. These access points took the form of advisory bodies and government secretariats operating at the local, regional and provincial levels including the Rent Control Commission, Day Care Office, Handicapped Office, and Women's Status Council. This increase in institutional access points was especially significant for youth as this period witnessed the creation of a permanent Youth Council in 1987 with a mandate to represent or give voice to the interests of young persons within the state, a permanent Youth Secretariat in 1988 with a mandate to provide research analysis and advice to government departments and agencies on youth issues, and the creation of the *Regroupement autonomes des jeunes*, an organization for youths eighteen to thirty which demanded from the province that people under thirty receive the same welfare benefits as all other groups in Quebec society.<sup>169</sup>

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<sup>169</sup> Jean Panet-Raymond & Robert Mayer, "The history of community development in Quebec," 44; Louis Favreau, *Mouvement populaire et intervention communautaire de 1960 à nos jours*. 39-40.

The 1990s witnessed a further expansion in the number and quality of institutional access points for the voluntary sector in exchange for assuming greater responsibility in the provision of social services. The sector was formally acknowledged as an autonomous actor entitled to playing a role in the development and administration of social and economic development programs. This recognition was formalized, for example, in the *Health and Social Services Act* of 1991 which established that the sector was a partner in the domains of healthcare and social services. This led to the creation of numerous new planning and administrative bodies operating at the local, regional and provincial level in the fields of health, education, social services, justice and labour within which citizen organizations could both express themselves and exert some influence over the direction of public policy.<sup>170</sup> Examples of such bodies include the *régies régionales de la santé et des services sociaux*, the *conseils régionaux de développement*, and the *conseils locaux de développement* which not only solicit the input of community groups, but have boards which are comprised, in part, of elected representatives from within the voluntary sector. Whereas these bodies have a predominantly advisory role with respect to their relevant provincial ministries, many have also been empowered to allocate a small proportion of the total funds of those ministries. Undoubtedly the single most important new institutional access point for the sector as a whole however is the SACA (*Secrétariat à l'action communautaire autonome*). Created in 1995, the role of this secretariat is to assist community groups gain access to state resources and to advise the province in its relationship with the sector.<sup>171</sup>

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<sup>170</sup> Jean Panet-Raymond & Robert Mayer, "The history of community development in Quebec," 49.

<sup>171</sup> Quebec, Ministère de l'Emploi et de la Solidarité sociale, *Community action: A crucial contribution to the exercise of citizenship and the development of Québec*. 23.

Since the mid-1950s, welfare state support for the voluntary sector in Ontario has generally taken two forms. The first is money. From the mid-1950s until the early 1970s, the province invested heavily in the creation of social programs and services: provincial spending on health, education and welfare rose from 3.8% of gross provincial product in 1946 to 13.1% in 1971.<sup>172</sup> This rapid expansion of state funded social services did not simply ‘crowd-out’ the voluntary sector which had traditionally undertaken the task of caring for the vulnerable and needy, but actually contributed to dramatic growth within the sector because intermediary citizen organizations were employed by the province to deliver many of these new publicly funded services to their targeted recipients; “this spectacular growth in state welfare, far from superseding the nongovernmental organizations in fact helped in their proliferation. The secret of this relationship is that the government funded a variety of voluntary organizations, old and new, and entrusted many of them with the delivery of services. The growth of government did not mean a decline of the nongovernmental sector, indeed quite the opposite.”<sup>173</sup> The province therefore dramatically increased its funding of the voluntary sector throughout this period in order to help buildup its capacity so that it could deliver many of these new or otherwise expanded social services.

This increase in funding of the voluntary sector also benefited organizations wishing to engage in political activism. There has traditionally been less of a distinction between political- and service-oriented citizen organizations in Ontario than there has in Quebec: intermediary citizen

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<sup>172</sup> Vernon Lang, *The service state emerges in Ontario 1945-1973*. (Toronto: Ontario Economic Council, 1974): 52.

<sup>173</sup> *Ibid.*, 122.

organizations often simultaneously engage in both types of activities in the process of carrying-out their mandates. The dual role of intermediary citizen organizations in Ontario during this period was facilitated by a funding regime which emphasized core grants - that is, grants which cover organizational expenses like office costs, capital costs, as well as volunteer recruitment and training - rather than fees for service. Such a funding regime enabled intermediary citizen organizations to engage in activities other than providing services to various segments of the population like undertaking research or engaging in advocacy if these were within their mandates, activities which would be far more difficult - though not altogether impossible - to undertake under a strict fee for service regime.<sup>174</sup>

Strong and ever growing demand for welfare services began to place enormous fiscal pressure on the state by the early-1970s prompting the province to seek out ways of restraining otherwise ballooning social program budgets. Similar to Quebec, the preferred solution in Ontario was to offload the delivery of many programs and services from provincial agencies and institutions to local communities; "The Conservative governments that dominated postwar Ontario politics ...foresaw a coming fiscal crunch and proposed to avoid it by separating policy making and program delivery."<sup>175</sup> The delivery of social services, under this offloading policy, was to be undertaken in ways that would draw upon community skills and resources, including those found in municipal

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<sup>174</sup> Susan D. Phillips, "How Ottawa blends: Shifting government relationships with interest groups," in Frances Abele, ed., *How Ottawa Spends: The politics of fragmentation, 1991-92*. (Ottawa: Carleton University Press, 1991), 187.

<sup>175</sup> Jane Jenson & Susan D. Phillips, "Distinctive trajectories: Homecare and the voluntary sector in Quebec and Ontario," in Keith G. Banting, ed., *The nonprofit sector in Canada: Roles and relationships*. (Montreal & Kingston: McGill-Queen's University Press, 2000), 45.

governments, voluntary organizations, social economy organizations, and for-profit corporations. Although this policy did leave room for the for-profit sector (which had in fact been involved in the delivery of social services in Ontario since the mid-1940s), non-profit community organizations were afforded a privileged position as they were granted monopolies over the delivery of a wide range of social services. While this policy did increase the level of funding afforded to the voluntary sector as a whole, it tended to leave individual organizations with less money to engage in advocacy because of increased workloads: intermediary citizen organizations were left with fewer resources to direct towards advocacy as cuts to public services, particularly in areas outside of healthcare, tended to increase their workloads as they were forced to step in and fill the gaps. More of their resources, in other words, had to be directed towards meeting the increased demand for their services thereby potentially leaving fewer resources for advocacy.<sup>176</sup>

By the mid-1980s, these cost-saving initiatives had proved to be insufficient as the province entered into a deep fiscal crisis provoked by ever rising demands for social services and the onset of a prolonged period of economic stagnation and intermittent recession. To redress this situation, the province began restructuring its network of social services, first under the successive Liberal and New Democratic governments of the late 1980s and early 1990s, and most radically under the heavily neoliberal conservative government of Mike Harris which swept to power in 1995. Although the funding of the voluntary sector as a whole generally continued to rise during this period, the amount of money made available to individual citizen organizations was reduced appreciably. This

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<sup>176</sup> Agnes G. Meinhard, Mary K. Foster, & Ida E. Berger, "The evolving relationship between government and the voluntary sector in Ontario: A preliminary analysis," *Ryerson Polytechnic University Centre for Voluntary Sector Studies Working Paper Series*. 23 (November, 2003).

was partially due to the fact that less money was made available for the delivery of various services as their global funding was reduced. It was also partially due to the fact that the character of funding shifted from core grants to fee for service contracts which do not make provisions for the other activities which form part of the mandate of such organizations. Lastly, it was also partially due to the fact that the privileged position afforded to voluntary organizations in the social service delivery system was eliminated as the process through which service contracts were awarded was transformed into a competitive bidding or tendering system that was opened up to profit-seeking enterprises thereby forcing voluntary organizations to become increasingly 'lean'. Not only did these changes leave organizations with little money for political advocacy, but speaking out against government policy became grounds for the revoking of funding thereby effectively pushing advocacy off the agenda for many groups.<sup>177</sup>

Welfare state support for the voluntary sector in Ontario has also taken the form of institutionalized roles in the policy process. The large role afforded to the voluntary sector in the delivery of social programs and services has already been noted and need not be discussed any further here. The province has afforded the sector a significantly smaller role in the design and administration of social programs and services through the creation of numerous institutionalized points of access to the state which enable intermediary citizen organizations to represent and defend the interests of their communities. These access points have primarily consisted of advisory councils and government secretariats, the large majority of which were established between the late-1960s

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<sup>177</sup> Ian Morrison, "Rights and the right: Ending citizenship in Tory Ontario," in Diana Ralph, André Régimbald & Nérée St-Amand, eds., *Open for business closed for people: Mike Harris's Ontario*. (Halifax: Fernwood Publishing, 1997), 73.

and late-1970s. Advisory councils that were open to the input of advocacy groups were created around such issues as the status of women, multiculturalism, and the status of seniors during this period. In addition to these advisory councils, the province also created a number of coordinating bodies which were open to participation from representatives of the voluntary sector when it began decentralizing the management and delivery of social services in the 1970s. In the domain of health, for example, the province has created some forty District Health Councils across Ontario, the first having been created in the Ottawa region in 1973. These councils organize the delivery of health services in the regions they serve, and advise the Ministry of Health on policy matters but have no budgetary authority. They are usually comprised of between fourteen and twenty-four members, of which approximately forty percent are healthcare providers, forty percent are service users and twenty percent are local government nominees.<sup>178</sup> Whereas the members of these Councils are drawn from the local community in order to help ensure that local needs and concerns are given proper consideration, the Minister of Health retains the power to veto the inclusion of any person on these Councils at his or her discretion. Public participation is therefore more restricted than in the sectoral and cross-sectoral planning boards operating in Quebec in which there is no Ministerial veto, and where the boards have more influence over spending.

Many of these points of access were subsequently eliminated or otherwise marginalised following the election of the Harris Conservatives in 1995. For example, the Ontario Advisory Council on Women's Issues, a body whose roots dated back to the early 1970s, was closed in 1996, while the new Minister of Community and Social Services David Tsubouchi refused to meet with

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<sup>178</sup> Hamilton-Wentworth District Health Council, *Information and Orientation Package*. (January, 1991), 7.

the Social Assistance Advisory Council after taking office thereby effectively rendering it irrelevant.<sup>179</sup> These channels of communication and influence did not disappear altogether, but rather tended to become far more informal and haphazard, largely being limited to the efforts of individual bureaucrats working within various ministries to solicit the input of citizen organizations on various issues.<sup>180</sup>

The evidence presented in this section suggests that the role of citizen is defined more inclusively in Quebec than in Ontario. Both provinces appear to have made significant and steadily increasing funding available to citizen organizations involved in the provision of services as well as afforded voluntary organizations a privileged position in the social service delivery system. This however is where the similarities between them end. In contrast to Quebec where funding has generally been available since the 1960s and been rising sharply throughout the 1990s, very little funding has been made available to support voluntary sector efforts at political advocacy in Ontario. Moreover, unlike in Quebec where social animators have been employed since the 1960s to help mobilize new citizen organizations within the most disadvantaged segments of society, Ontario has provided virtually no comparable technical support to its voluntary sector. Finally, citizen organizations in Ontario have been afforded far fewer opportunities to participate in the design and administration of social programs and services than their Quebec counterparts. Not only have many institutional points of access to the state been eliminated in Ontario in recent years, but these have

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<sup>179</sup> Ibid., 73.

<sup>180</sup> Agnes G. Meinhard, Mary K. Foster, & Ida E. Berger, "The evolving relationship between government and the voluntary sector in Ontario."

mostly taken the form of advisory bodies which have less direct influence over policy development and administration than the planning bodies which exist in Quebec.

These general patterns of support for the voluntary sector imply that, whereas both provinces - though especially Quebec - facilitate the involvement of intermediary citizen organizations in the provision of social services, Quebec has tended to facilitate their involvement in political advocacy to a far greater degree than has Ontario. This result is consistent with the idea that both provinces possess strong institutional legacies of involving the voluntary sector in the provision of social programs and services. It is also consistent with the idea that Quebec also possess a strong institutional legacy of involving the sector in the design and administration of social policy as well as an ideological climate which emphasizes the importance of creating opportunities for democratic involvement and control, and of Ontario possessing an institutional legacy of centralized decision-making and an ideological climate that is not particularly democratic in its orientation.

- Chapter Four -

**The Role and Approach of the Youth Justice Systems  
of Quebec and Ontario**

The purpose of this chapter is to examine and compare the size of the role and approach to order maintenance of the Quebec and Ontario youth justice systems throughout, though not strictly limited to, the twenty year period spanning 1981 to 2000, and to relate these results to the analysis of the inclusive character of the Quebec and Ontario welfare states provided in chapter three. The evidence presented in that chapter suggested that the Quebec welfare state defines the identity of citizen more inclusively than its Ontario counterpart by virtue of better incorporating the interests of young people and of also characterizing them marginally more positively. The evidence presented in chapter three also suggested that the Quebec welfare state defines the role of citizen more inclusively than its Ontario counterpart by virtue of creating more spaces for public involvement in the design and administration of social programs and services through its support of the voluntary sector. According to the argument put forth in chapter two, these results imply that the role of the Quebec youth justice system is likely to be smaller and its approach to order maintenance is likely to favour criminalizing a narrower range of troublesome events falling within its jurisdiction compared to the Ontario youth justice system. The present chapter therefore attempts to determine whether these predictions are in fact accurate, and if so, to determine whether such differences in the role and approach of the Quebec and Ontario youth justice systems can reasonably be attributed to differences in the inclusiveness of their respective welfare states.

This chapter is divided into three sections. The *Constitution Act* of 1867 stipulates that the

federal government has exclusive jurisdiction over the formulation and enactment of criminal law, but that the provinces have exclusive jurisdiction over the administration of criminal law. The *Constitution* also specifies that the provinces have exclusive jurisdiction over both the enactment and administration of policy in the domains of child welfare, mental health and education, systems whose operations impact on when and how criminal justice systems are deployed in response to troublesome events.<sup>181</sup> Whereas such a division of powers ensures that there is much room for variability in the role and approach of provincial youth justice systems, it also ensures that the federal level must be taken into account in any comparative study of provincial youth justice systems since it provides the legal framework or parameters within which these systems operate and evolve over time. The first section of this chapter therefore examines and compares the major principles and procedural guidelines of the *Juvenile Delinquents Act* and the *Young Offenders Act*, the two federal statutes that governed the administration of youth justice in Canada during the 1980s and 1990s.

The second section examines the role of both youth justice systems in responding to troublesome events, particularly as this role relates to the child welfare system operating in each province. It argues that the jurisdiction of the Quebec youth justice system is considerably more circumscribed than that of its Ontario counterpart due in large part to the existence of a welfare-based system of pre-charge diversion for which there is no equivalent in Ontario. It also argues that this difference in jurisdictional size is likely due, at least in part, to the Quebec welfare state creating a stronger ideological barrier against governing through crime compared to its Ontario counterpart.

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<sup>181</sup> Raymond R. Corrado & Alan Markwart, "The evolution and implementation of a new era of juvenile justice in Canada," in Raymond R. Corrado, Nicholas Bala, Rick Linden & Marc Le Blanc, eds., *Juvenile justice in Canada: A theoretical and analytical assessment*. (Toronto: Butterworth, 1992), 140.

The final section explores the approach of both youth justice systems in responding to troublesome events. It argues that the Quebec youth justice system possess an overall approach to order maintenance that likely favours criminalizing a narrower range of troublesome events than that of Ontario. Specifically, it contends that the working criminology of the Quebec youth justice system is appreciably more tolerant of troublesome conduct and marginally more tolerant of troublesome people. It also argues that this difference in approach is likely due, at least in part, to the Quebec welfare state creating a stronger ideological barrier against perceiving troublesome conduct and people as posing serious threats to the ongoing stability of the rule of law.

#### **The Federal Context: The *Juvenile Delinquents & Young Offenders Acts***

Until the *Juvenile Delinquents Act* (JDA) came into force in 1908, there were no separate criminal laws and very few specific policies for dealing with young persons in conflict with the law in Canada.<sup>182</sup> Youths seven and older who were suspected of having violated the law were treated more or less the same as adults during this period and largely subjected to the same set of procedures

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<sup>182</sup> The most notable exception was a piece of legislation titled *An Act for the more speedy trial and punishment of juvenile offenders* that was passed in the Parliaments of both Lower and Upper Canada in 1857. This act sought to minimize the lengthy pre-trial detention of youths by liberalizing the granting of bail in cases involving young offenders, and by accelerating the trials of such offenders by making exclusive use of summary procedures. Under this act, a young offender was limited to a person less than sixteen years of age charged with an offence deemed to be a larceny - youths charged with all other offences were treated as adults. A further notable exception involved legislation - enacted in 1869 in Quebec and 1894 in Ontario - which provided for the construction and operation of 'training schools' and 'reformatories' aimed at enabling child and adolescent offenders to be kept out of the penitentiary system and thereby away from adult offenders. See Nicholas Bala, *Young offenders law*. (Concord: Irwin Law, 1997): 5; Jeffrey S. Leon, "The development of Canadian juvenile justice: A background for reform," *Osgoode Hall Law Journal*. 15(1, 1977): 71-106; Danièle Gagnon, *History of the law for juvenile delinquents*. (Ottawa: Ministry of the Solicitor General of Canada, 1984). The only other major relevant provisions for dealing with young persons in conflict with the law were found in common law which stipulated that a child under seven years of age was incapable of distinguishing right from wrong and was therefore exempt from criminal prosecution, and that a child between the ages of seven and fourteen would be exempt from prosecution unless it could be proven that they could judge right from wrong.

and punitive responses, including hanging. This focus on delivering timely and proportional punishment reflected the dominance of the classical school of criminology which stressed human rationality and the need for clear and consistent laws, legal procedures and punitive sanctions.

By the mid to late-19<sup>th</sup> century, however, there was growing dissatisfaction with this school of thought among criminal justice scholars and practitioners both throughout Canada as well as abroad, and a growing interest in positivist theories of crime which variously stressed biological, psychological or social causation. Moreover, as Canada underwent a rapid transformation from an overwhelmingly rural and agrarian society to an urbanized and industrialized society in the final two decades of the 19<sup>th</sup> century,<sup>183</sup> the social and cultural standings of children were greatly affected. Industrialization transformed the role of children from economic producers to pure dependents while urbanization augmented the visibility of the ills afflicting them. These transformations gave rise to the notion of children as innocent and vulnerable beings, especially amongst the newly emerging middle classes. Coinciding with this general concern with the state of childhood, there was also growing concern around the turn of the 20<sup>th</sup> century that Canada was ill-equipped to stem an anticipated epidemic of youth crime resulting from the combined forces of a massive wave of immigration from primarily non-traditional continental European sources and the lack of a dedicated comprehensive youth justice strategy. There was a rising sense, in short, that the conditions in

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<sup>183</sup> For example, between 1880 and 1900, the relative proportion of urban dwellers in Canada more than doubled from 14 to 37 per cent of the total population, while between 1870 and 1890, the number of manufacturing units in Canada grew from about 38,000 to 70,000. See Elisabeth Wallace, "The origin of the social welfare state in Canada, 1867-1900," *Canadian Journal of Economy and Political Science*. 16(1950): 383-393.

Canada were ripe for youth crime to begin escalating out of control.<sup>184</sup> These two broad sets of forces culminated in the adoption of the JDA in 1908, an act which established Canada's first wholly separate justice system for youths, and which was heavily informed by the logic of positivist criminology in terms of stressing the importance of social ills like abuse, neglect, poverty and peer influence as leading causes of crime.<sup>185</sup>

In keeping with its strong positivist underpinnings, the JDA overwhelmingly embodied a welfare oriented model of justice. The needs of young persons were to be prioritized over all other considerations at every stage of the criminal justice process, from first contact with the police through to the termination of court imposed dispositions. This was made clear in section 3[2] of the act which stated that "where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision." This emphasis on the needs of children was also apparent in section 38 which stipulated that "the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as predictable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance." Such a strong emphasis on the needs of children had important consequences, as will be discussed in the pages to follow, for

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<sup>184</sup> Bryan Hogeveen, "Winning deviant youth over by friendly helpfulness: Transformations in the legal governance of deviant children in Canada, 1857-1908," in Russell C. Smadych, ed., *Youth justice: history, legislation, and reform*. (Toronto: Harcourt, 2001), 43-63.

<sup>185</sup> The JDA was actually formulated in the Senate where, after lengthy discussion, it was introduced as a bill on April 04, 1907. The act did not get beyond second reading on this particular occasion, but was reintroduced into the Upper House in 1908 and passed third reading on June 16, and was subsequently adopted by the House of Commons shortly thereafter. See Danièle Gagnon, *History of the law for juvenile delinquents*, 59-60.

the role and especially the approach of provincial youth justice systems.

The welfare-oriented model of criminal justice revolves around three major principles or doctrines. First, it encompasses the legal doctrine of *parens patriae* in which the state assumes the role of a benevolent protector of vulnerable persons. Under this doctrine, which loosely translates to 'state as parent', the various components of the youth justice system are to act in the best interest of the children they come into contact with much in the same manner as would a stern but wise and caring parent.<sup>186</sup> This necessarily implies that criminal justice is to be characterized by a high level of procedural informality or, in other words, by a low level of due process. Protecting the rights of children through the formalization of procedure only serves, according to this doctrine, to equip them with mechanisms by which to shield themselves from the aid, encouragement, help and assistance they so obviously require. Not only is due process undesirable according to this doctrine, but it is also largely unnecessary since the concern of criminal justice administrators rests primarily in doing what is in the best interest of the children they come into contact with. There is simply no need for due process in a criminal justice system in which the foremost priority of police officers, judges and probation officers is 'saving' what are assumed to be misguided children.

In keeping with the *parens patriae* doctrine, trials under the JDA therefore tended to be quite informal and non-adversarial processes in which the emphasis was less on the adjudication of guilt

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<sup>186</sup> Indeed, under the JDA, any young person found to be a delinquent was rendered a ward of the court until he or she was discharged by an order of that court or when they reached the age of twenty-one. See Tulio C. Caputo, "The Young Offenders Act: Children's rights, children's wrongs," *Canadian Public Policy*. 8(1, 1987): 125-143; Larry C. Wilson, *Juvenile courts in Canada*. (Toronto: Carswell, 1982), 1-5.

than on diagnosing or otherwise identifying the social and psychological needs of delinquent youth. Towards this end, section 5(1) of the act established that youth court trials were to be summary in nature which meant that young persons, including those facing serious charges, did not have the full complement of legal rights (e.g., a preliminary inquiry, the choice of being tried by a jury) which are guaranteed to adults charged with indictable offences. Not only did trials in youth court involve fewer procedural safeguards, but section 14 of the act also stipulated that "the proceedings may, in the discretion of the judge, be as informal as the circumstances will permit, consistently with due regard for a proper administration of justice." The legal basis for maximizing the informality of youth court proceedings was extended in 1929 when section 14 was revised to also include the following passage: "no adjudication or other action of a juvenile court with respect to a child shall be quashed or set aside because of any informality or irregularity where it appears that the disposition of the case was in the best interest of the child."

Consistent with this emphasis on minimizing procedural safeguards and maximizing informality, trials held in youth court did not require the participation of attorneys. In the absence of legal council, police officers would represent the interests of the Crown while probation officers - in what was often a clear conflict of interest due to their role in both helping to decide whether cases should proceed to trial or be diverted, and in providing guidance to judges regarding the needs of children for sentencing purposes - would represent the interests of the accused. In addition to their roles as adjudicators, judges - who were not officially required to have any formal legal training under the act - could also adopt an inquisitorial role and, in the process, take on certain prosecution and defence functions. Judges were afforded investigative powers that enabled them to question or

cross-examine anyone appearing before them, including youths, parents, social workers, probation officers and police officers. The rules governing the admissibility of evidence also made room for much informality as judges could accept hearsay evidence, both at the adjudication and sentencing stages. Finally, it also bears noting that there was no automatic right to an appeal under the JDA. Indeed there was no right to appeal whatsoever in the youth justice system until 1929 when the act was amended so as to provide the juvenile court with its own unique appeals procedure. Under the newly amended section 37, appeals were only to be granted on 'extraordinary grounds' by special leave of a Provincial Supreme Court Judge.

Second, the welfare model of criminal justice also encompasses the positivist principle of 'natural crime' which contends that crime or deviance is a distinct category of human behaviour - that is, it has an ontological reality - that can be identified scientifically by assessing whether a 'healthy' or 'normal' person would ever engage in such conduct. In keeping with this principle, the JDA provided for one all encompassing offence of 'delinquency' which entailed any violation of federal law (e.g., Criminal Code offences), provincial law (e.g., driving offences), municipal by-laws and ordinances (e.g., cycling on a designated pedestrian pathway), or - following a 1924 amendment to the act - partaking in a variety of loosely defined forms of vice like 'sexual immorality'.<sup>187</sup> Based on this criteria, virtually any child or adolescent could qualify as being in a state of delinquency thereby rendering the boundaries of the youth justice system extremely broad which had the

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<sup>187</sup> Anthony N. Doob & Carla Cesaroni, *Responding to youth crime in Canada*. (Toronto: University of Toronto Press, 2004), 14. The JDA also enabled provincially mandated officials like social workers, mental health workers and educators to turn over their 'problem cases' to the juvenile justice system. Consequently, youths could find themselves before the courts for behaviour like school truancy. See Raymond R. Corredo & Allen Markwart, "The evolution and implementation of a new era of juvenile justice in Canada," esp. 206. The link between the JDA and provincial social welfare legislation and agencies will be revisited in greater detail in the forthcoming section.

unfortunate unintended consequence of rendering the application of the act somewhat arbitrary, most especially at the 'soft' end of the continuum.

Third, the welfare model of criminal justice also encompasses the positivist doctrine of rehabilitation. The goal of this doctrine is to alter the character, attitudes, cognitive processes, or behaviour patterns of convicted offenders in order to diminish their criminal propensities. To be effective or successful, rehabilitation requires that delinquents receive treatment which is appropriate to the causes of their undesirable behaviour or, in other words, which addresses the identified social and/or psychological needs of delinquents. In keeping with the rehabilitative doctrine, sentencing under the JDA was also a highly discretionary process.<sup>188</sup> There were no specific guidelines for judges to follow when sentencing juveniles, except to do what was in their perceived best interest. Judges thereby relied heavily on probation officers - often the very same individuals charged with defending the interests of the child at the adjudication stage - to determine the needs of delinquent youth and decide upon the most appropriate course of action. The dispositions available to judges included a suspended sentence; an adjournment of the hearing for any definite or indefinite period; a fine not exceeding twenty-five dollars; committing the child to the care or custody of a probation officer or other suitable person; allowing the child to remain in their home subject to the visitation of a probation officer; placing the child in a foster home subject to the 'friendly' supervision of a probation officer; imposing on the juvenile any additional conditions which may be deemed advisable; committing the child to the charge of a provincial children's aid society; and committing

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<sup>188</sup> The act did not actually make use of the word 'sentencing' which implies punishment, but rather, only referred to the various 'courses of action' available to judges once a young person was adjudicated a juvenile delinquent. Anthony N. Doob & Carla Cesaroni, *Responding to youth crime in Canada*. 14

the child to an industrial or training school.<sup>189</sup>

Juvenile court judges therefore had tremendous latitude in responding to children who were found to be in a state of delinquency. All sentences were indefinite unless a judge issued a formal order to the contrary, with release only occurring when penal officials deemed the juvenile rehabilitated or when the juvenile turned twenty-one. If sentenced to custody, jurisdiction over the youth was transferred to the provincial authorities responsible for managing children's aid societies and training schools who then decided when it was appropriate to release the juvenile. If a disposition did not appear to be having its desired rehabilitative effect, probation officers could return the case to court and judges could impose additional measures, even if no new offences had occurred. Juveniles therefore possessed few legal safeguards with respect to the nature, duration or number of dispositions to which they were subjected. Sentencing under the JDA was therefore highly individualized or disproportional insofar as the perpetrators of nearly identical acts could receive substantially different dispositions, tended to be highly indeterminate since it could not be determined *a priori* when a delinquent would overcome that which caused their troublesome behaviour, and gave very little consideration to the protection of society.

The provinces possessed much flexibility with regards to the administration of justice under the JDA. Three features of the legislation were most important in this regard. First, though initially applying to all youths from the time of their seventh birthday until their sixteenth birthday, the Act was revised in 1921 to apply from the age of seven until the age of eighteen, but the provinces were

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<sup>189</sup> *Juvenile Delinquents Act*, section 20.

free, through their child protection legislation, to set the minimum age as high as they wanted and the maximum age at either fifteen, sixteen or seventeen. Second, whereas both criminal and non-criminal conduct (e.g., violations of provincial statutes) were grounds for criminal justice intervention under the JDA, the provinces could respond to non-criminal conduct through their child welfare systems if they so desired; “provisions of provincial statutes intended for the protection or benefit of children could be used instead of the JDA, except in the instance of an indictable offence under the *Criminal Code* and on the condition that such action was in the best interest of the child.”<sup>190</sup> Third, the Act did not differentiate between neglected and delinquent youth such that, once a custodial sentence was imposed, jurisdiction over the case was transferred to provincial child welfare authorities who could then “unilaterally alter the juvenile court’s decision in any direction which might offer, in their opinion, more ‘aid, encouragement, help and assistance’ - even if it mean[t] the premature release of the juvenile whom the court has sentenced to custody.”<sup>191</sup> This is significant since, as noted earlier, the enactment and administration of child welfare legislation falls exclusively under provincial jurisdiction. Collectively, these provisions thus ensured that there was much room for variation in the operations of provincial youth justice systems, especially with regards to the size of their roles in responding to troublesome events.

Though affording much flexibility to the provinces, the JDA also imposed certain obligations and constraints upon them which had the effect of limiting the scope for variability in the operations

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<sup>190</sup> Marc Le Blanc & Helene Beaumont, “The effectiveness of juvenile justice in Quebec: A natural experiment in implementing formal diversion and a justice model,” in Raymond R. Corrado et al., eds., *Juvenile justice in Canada: A theoretical and analytical assessment*. (Toronto: Butterworth, 1992), 287.

<sup>191</sup> Canada, *Highlights of the Young Offenders Act*. (Ottawa: Minister of Supply and Services, 1981), 11.

of their youth justice systems, especially with regards to how these approached the issue of order maintenance. First, the JDA explicitly stipulated that the operations of provincial youth justice systems were to be guided largely by the welfare model of crime. If nothing else, this stipulation ensured that criminal justice discourse remained centred on the needs of delinquent youth. Second, the JDA also created numerous legal, organizational and operational linkages between the youth justice and child welfare systems. In so doing, not only did the Act create much overlap in the authority of youth justice and child welfare officials, but it also tended to privilege the latter over the former in that, whenever there was conflict over how to proceed between both types of officials because of this overlap, more often than not it was child welfare officials who possessed the power to come out on top.<sup>192</sup> Most important in this regard, though by no means the only example of this hierarchy or power differential, was the ability of child welfare officials to oversee the administration of as well as to modify the court imposed dispositions of adjudicated delinquents at their own discretion. Insofar as child welfare officials are foremost concerned with the needs of young people, at least at the level of discourse even if not always at the level of practice, then this effectively ensured that the working criminology of the criminal justice system was heavily informed by the terms of reference of the welfare model of justice since it afforded child welfare officials with much say over the definition of what constituted a delinquent as well as final say over how such individuals were to be dealt with. By tying youth justice discourse and practice to the welfare model,

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<sup>192</sup> Even if the implementation of the JDA in 1908 resulted in child welfare officials having more power over the fate of troublesome youths than did youth justice officials, this does not mean that, from this point forward, they automatically chose to exercise this power, or that, when they did, they chose to exercise it in a manner that was significantly different than youth justice officials. As will be discussed in the pages to follow, it was not until the 1970s that child welfare officials in Quebec and Ontario began to give serious weight to the principle of respecting the rights of all young people, including those in conflict with the law. Consequently, although the interventions of child welfare officials in the domain of criminal justice were often framed in welfarist language prior to this period, the character of these interventions were quite often punitive and stigmatizing, at least by contemporary standards.

the JDA did not eliminate the possibility of variability in the tolerance of troublesome people and conduct across provincial youth justice systems, but it did ensure that such variability occurred within the parameters of a broader framework focussed primarily on the needs of delinquent youth.

Though remaining virtually unchanged - save for the aforementioned minor developments of 1921, 1924 and 1929 - until it was replaced by the *Young Offenders Act* (YOA) in 1984, the movement to replace the JDA actually began in the early 1960s. Despite there being a lack of solid supporting evidence, by 1960 there was an increasing sense among experts, policy makers and members of the general public that youth crime in Canada was a rapidly growing problem. Anecdotal accounts suggested that levels of youth crime were escalating quickly. Moreover, since the percentage of the total population who were of adolescent age was set to rise sharply as a result of the post-war baby boom, there was also much concern that the problem of youth crime was only going to continue to get worse.

To address these concerns, the federal department of justice appointed a special committee - the Committee on Juvenile Delinquency - in November of 1961 to study the nature and extent of the problem of youth crime in Canada, and to make recommendations on how to improve the youth justice system in order to better address the problem of juvenile delinquency.<sup>193</sup> The committee published its report in 1965, offering one-hundred recommendations on how to improve the youth

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<sup>193</sup> Canada, Department of Justice, *Juvenile delinquency in Canada: The report of the Department of Justice Committee on Juvenile Delinquency*, (Ottawa: Queen's Printer, 1965). It should be noted that the committee was also assigned an additional mandate of holding "discussions with appropriate representatives of provincial governments with the object of finding ways of ensuring effective co-operation between federal and provincial governments acting within their respective constitutional jurisdiction." *Ibid.*, 2.

justice system in Canada, with roughly three-quarters of these pertaining directly to the principles and procedures of the JDA. Despite their large number, these recommendations generally only revolved around two core issues, both of which closely reflected the dominant political culture of the time. First, consistent with the basic premise of the doctrine of reform liberalism that social problems can be resolved through the careful application of scientific knowledge, many of the report's recommendations called for increasing - in various ways - the resources devoted to the rehabilitation of young people in conflict with the law.

Second, consistent with the ideals of the civil rights movement in the USA and the growing human rights discourse in Canada, many of the report's recommendations also called for strengthening - in various ways - the legal rights of juvenile delinquents.<sup>194</sup> This focus on formal legal rights represented an extension of the strong desire to strengthen the citizenship rights of diverse social groups which arose in the immediate aftermath of the second world war throughout much of the West, and which also helped fuel the rapid growth of the welfare state in these societies during the 1950s, 1960s and early-1970s. Extending the civil rights of young people, in short, was consistent with the larger political efforts that were taking place in many Western countries to both broaden and deepen the bases of citizenship in response to the carnage of the 1940s. Whereas the call for the greater protection of the rights of children may appear to represent a break with the strong child welfare orientation of the JDA, it was in fact largely framed as an extension of the logic of child protection: not only did children need to be sheltered from negligent and abusive parents as

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<sup>194</sup> On the rise and nature of the human rights discourse in Canada see Michael Ignatieff, *The rights revolution*. (Toronto: House of Anansi Press, 2004).

well as from adverse social conditions, but also from excessive and arbitrary state intervention into their lives. In response to the report, the federal government put forth legislation to replace the JDA in 1967, legislation that effectively worked the seventy-five or so relevant recommendations of the report into the existing framework of the JDA. This proposed new act ultimately died on the Order Paper in parliament but was followed by a rapid succession of new legislative proposals in 1970, 1975 and 1977.

As the 1970s progressed, each of these legislative proposals moved further and further away from the exclusive child-welfare orientation of the JDA. This was largely due to two factors. First, the political landscape began to change rather dramatically during this decade. Most significant for present purposes, the almost euphoric optimism that once surrounded the principle of reform liberalism was beginning to fade. The public was therefore growing less receptive to social practices like rehabilitation which sought to alter the psyche of human beings through the application of theoretical knowledge by agents acting on behalf of the state. Second, within the field of criminology and criminal justice, there was growing doubt over the effectiveness not only of existing rehabilitative practices, but also over rehabilitation as a broad penal approach, particularly following the publication of Martinson's seminal article "What works?" in 1974.<sup>195</sup> With both public and expert opinion becoming progressively less supportive of the doctrine of rehabilitation throughout the 1970s, the legislative proposals crafted during this period placed progressively less emphasis on

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<sup>195</sup> In this review of 231 evaluation studies of rehabilitative correctional programs Martinson famously concluded that "with few and isolated exceptions the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism." Robert Martinson, "What works? Questions and answers about prison reform," *The Public Interest*. (Spring 1974), 25.

rehabilitation and more on the principles of deterrence, accountability and the protection of society.<sup>196</sup> The YOA, which was first introduced in Parliament in 1977, was finally passed unanimously by the House of Commons after several rounds of revision in 1982 and officially came into force on April 01, 1984. Whereas dissatisfaction with the JDA had placed youth justice reform high on the public policy agenda, its replacement by the YOA was propelled to a significant degree by the adoption of the *Canadian Charter of Rights and Freedoms* which would have rendered many of its practices illegal. It was widely believed that numerous sections of the JDA would not survive a Charter based court challenge and as a result, Parliament was obliged to finally settle on a replacement.

True to the climate in which it was developed, the YOA certainly placed far greater emphasis on the justice and crime control models of corrections than did its welfare-oriented predecessor.<sup>197</sup> It would, however, be inaccurate to suggest that the YOA outright rejected or repudiated the welfare model in favour of the more punitive and due process oriented crime control and justice models. In actual fact, it combined elements of all three models. The tri-fold and often contradictory emphasis on the protection of society, justice and welfare was most evident in section 3 of the YOA, the declaration of principles.

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<sup>196</sup> Indeed, as then Solicitor General of Canada Robert P. Kaplan stated before the Standing Senate Committee on Legal and Constitutional Affairs when that body was studying the YOA in 1982, "The public is demanding more accountability and more responsibility for young people, and greater protection of society from the illegal behaviour of young people." Senate of Canada, *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs*. 17 (June 3, 1982), 5.

<sup>197</sup> The crime control model emphasizes the importance of deterrence and incapacitation as crime fighting tools whereas the justice model emphasizes the importance of due process and fair treatment under the law as preconditions for breeding respect for the law.

Eight principles were established to guide in the interpretation and implementation of the Act. The first of these principles declared that young persons should be held accountable - and therefore punished - for their misdeeds, albeit not in the same manner or to the same extent as adults. The second principle stipulated that society must be afforded the necessary protection from the illegal conduct of young persons. The third declared that, whereas young persons involved in crime require supervision, discipline and control, they have special needs due to their state of dependence and level of maturity such that they therefore also require guidance and assistance. The fourth principle stipulated that special consideration should be given to either taking no measures against or using alternative measures to formal court proceedings when responding to young offenders so long as this did not endanger public safety. The fifth and seventh principles of the YOA declared that young persons in conflict with the law are entitled to the full compliment of rights layed out in the *Canadian Charter of Rights and Freedoms*, and that they have the right to be informed of their due process rights. The sixth principle declared that young persons have a right to the least possible interference with freedom that is consistent with the protection of society. Finally, the eighth principle of the YOA declared that parental supervision is generally more desirable than detention. Consequently, whereas the YOA did place considerably more emphasis on accountability, proportionality, the protection of society and the rights of adolescents than did the JDA, it certainly did not abandon the welfare model altogether as evinced by its emphasis on the special needs of children, on alternative measures, and on parental involvement.

This greater emphasis on the principles of justice and crime control rendered the YOA far more similar in character to the adult criminal justice system than its predecessor. Whereas the JDA

was predominantly child welfare legislation, the YOA was unequivocally criminal law. In the words of one commentator, "The difference between the *Juvenile Delinquents Act* and the *Young Offenders Act*, is the difference between using the criminal justice system to achieve welfare objectives, and accepting the validity of welfare concerns in achieving criminal justice objectives."<sup>198</sup> Indeed, the YOA severed many of the legal links between the youth justice and child welfare systems which, as will be discussed shortly, had the effect of rendering the relationship between the two systems much more open-ended with regards to their ordering or, in other words, with regards to the power relations between youth justice and child welfare officials. There were numerous other ways in which the Act embodied the principles of justice and crime control at the level of practice and/or procedure.

To begin, the act guaranteed youths access to legal representation, the right to appeal both verdicts and dispositions, and placed tight limitations on the ability of police officers to arrest and question youths in the absence of adult guardians. The act also stipulated that, like adults, youths could no longer be brought before the criminal courts for provincial, municipal or status offences: they could only be charged for violating federal criminal law statutes. Relatedly, the YOA also stipulated that youths had to be charged with specific criminal offences and not with some general state of being like delinquency, and that the standards of evidence in the adjudication process were to be equal to those of the adult system such that, unlike under the JDA, hearsay evidence could no longer be accepted. Moreover, under the YOA, sentences, which could include absolute discharges,

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<sup>198</sup> Maureen McGuire, "C.19 An Act to Amend the Young Offenders Act and the Criminal Code. 'Getting tougher?'," *Canadian Journal of Criminology*. 39(April, 1997): 188.

finer of up to \$1,000, restitution or compensation, up to 240 hours of community service, a maximum of two years probation, up to two years detention for the purposes of rehabilitation, and open or secure custody for up to three years for all offences, were rendered finite or fixed, and could only be imposed once for any given offence. It is important to note, however, that the YOA was revised in 1986 to create the offence of non-compliance with the administration of youth justice in response to concerns "that officials did not have sufficient tools to make young offenders comply with their dispositions."<sup>199</sup> Finally, the YOA supported a formal separation of the child welfare and youth justice systems through the elimination of the ability of the courts to transform criminal justice matters into child welfare matters by virtue of sentencing youths to the custody of child welfare officials.

Unlike the JDA, the YOA underwent numerous revisions throughout its tenure. In addition to the technical and procedural revisions of 1986 that resulted in, among other things, the creation of the offence of non-compliance with the administration of youth justice, the act was also revised in 1991 and again in 1995. The most important elements of the 1991 amendments included raising the maximum sentences for first- and second degree murder from three years to five years less a day, and modifying the parole eligibility for youths transferred to adult court to five and ten years. The most important elements of the 1995 amendments included imposing sentences of seven years for second-degree murder and ten years for first degree murder, introducing automatic transfer

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<sup>199</sup> Marge Reitsma-Street, "Canadian youth court charges and dispositions for females before and after the implementation of the *Young Offenders Act*," *Canadian Journal of Criminology*. 35(October, 1993): 445. Thus, although youths could only be sentenced once for any given offence, they could be charged with and subsequently sentenced for a new offence by virtue of failing to comply with the conditions of the original disposition.

provisions to adult court for sixteen and seventeen year olds charged with serious personal injury offences unless it could be demonstrated to a judge that the objectives of public protection and rehabilitation could be better achieved through the youth court, and emphasizing that the rehabilitation of youths charged with minor offences is best achieved in the community rather than in custody. These reforms were, on the whole, in keeping with the overall balance which the YOA sought to achieve between the welfare, justice and crime control models - elements of all three models were present in these amendments.

The introduction of the YOA in 1984 reduced some of the flexibility which the provinces had previously enjoyed over the administration of youth justice in at least two ways. First, the Act greatly reduced the discretionary power of judges, police officers and corrections officials by requiring that they adhere to strict standards of due process. This greater emphasis on procedural formality served to reduce the ability of criminal justice officials to respond to troublesome events through informal mechanisms and concomitantly increased their need to respond to such events through adversarial court proceedings. This turn towards procedural formality thus placed important limits on the kinds of responses which could be employed by provincial youth justice systems. Second, the Act also reduced some of the flexibility which the provinces had previously enjoyed over the size of the role of the youth justice system in responding to troublesome events insofar as it imposed uniform age parameters of twelve to seventeen on young offending and also removed the violation of provincial statutes and municipal ordinances as possible grounds for criminal justice intervention.

It is also true however that the introduction of the YOA increased the flexibility enjoyed by the provinces over the administration of youth justice in at least two ways. First, whereas the guiding principles of the YOA stress justice, societal protection and welfare, these principles were not prioritized in any way thereby affording provincial officials considerable discretion over whether to emphasize punishment or rehabilitation, though never to the complete exclusion of the other.<sup>200</sup> This stands in marked contrast to the JDA under which the emphasis of the system was necessarily rehabilitation. This greater flexibility over the orientation of provincial youth justice systems created more room for variability in their approaches to order maintenance than ever existed under the JDA. Second, by severing most of the legal, organizational and operational linkages between the youth justice and child welfare systems, the YOA also profoundly restructured the relationship between the two systems. Whereas the division of power between the two systems was necessarily tilted in favour of the child welfare system under the JDA, their relationship was largely open-ended under the YOA such that either could play a leading role depending, as will be discussed in the pages to follow, largely on the character of provincial welfare states.<sup>201</sup> Since these two systems draw to a

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<sup>200</sup> Jean Trépanier, "Is the Young Offenders Act more punitive? In Lucien A. Beaulieu, ed., *Young offender dispositions: Perspectives on principles and practice*. (Toronto: Wall and Thompson, 1989), 27-66; Anthony N. Doob, "Dispositions under the Young Offenders Act: Issues without answers?, In Lucien A. Beaulieu, ed., *Young offender dispositions: Perspectives on principles and practice*. (Toronto: Wall and Thompson, 1989), 193-225.

<sup>201</sup> It is worth reiterating that, just because child welfare authorities were afforded greater say over the fate of young people in conflict with the law under the framework of the JDA than under the framework of the YOA, this does not mean that these officials necessarily chose to exercise this authority, or to exercise it in ways that were particularly welfarist throughout the entire JDA period. As discussed earlier, this tilting of power in favour of child welfare officials had the effect of ensuring that youth justice interventions tended to be framed in welfarist language, but little else. Because state interventions - whether by criminal justice or social welfare agencies - that aim to address the needs of individuals can be highly disruptive, punitive and stigmatizing, especially in contexts where little consideration is given to the rights of individuals as was the case for young people in Quebec and Ontario prior to the 1970s, there is little reason why the privileging of child welfare officials under the JDA would or should have automatically given rise to practices for dealing with young people in conflict with the law that were particularly tolerant, compassionate or just. The child welfare systems, in short, though less inherently exclusionary in nature than the youth justice system, is certainly by no means necessarily inclusive in its basic functioning either.

significant degree on overlapping populations,<sup>202</sup> this restructuring meant that there was much room for variability in the range of troublesome events falling under the jurisdiction of the youth justice versus child welfare system.

The JDA and YOA both provided the provinces with considerable room for variability in the administration of youth justice, even if not always in the same manner. The size of the role of provincial youth justice systems in responding to troublesome events could certainly vary greatly under both Acts. Whereas this was largely due to the existence of flexibility over the minimum and maximum ages of what constituted delinquents as well as over whether to include non-criminal offences as grounds for youth justice system intervention under the JDA, this was largely due to the open-ended nature of the relationship between the youth justice and child welfare systems under the YOA. The approach to order maintenance of provincial youth justice systems could also vary under both Acts, though more so the YOA where the provinces were free to give priority to either punishment or rehabilitation than under the JDA where rehabilitation was necessarily the first priority. How Quebec and Ontario have made use - especially during the 1980s and 1990s - of the flexibility afforded by these two Acts with regards to the size of the jurisdiction and approach to order maintenance of their youth justice systems is the focus of the final two sections of this chapter.

### **The Jurisdiction of the Quebec and Ontario Youth Justice Systems**

Through the enactment of youth justice legislation like the JDA and YOA, the federal

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<sup>202</sup> See A. H. Thompson, "Young Offender, child welfare, and mental health caseload commonalities," *Canadian Journal of Criminology*. 30(April, 1988): 135-144.

government defines what is and what is not youth crime in Canada. This would seem to imply that the boundaries or jurisdiction of provincial youth justice systems are fully determined by the federal government. As noted earlier, however, this is simply not the case: there has always been much room for variability in the size of the role of the youth justice system in responding to troublesome events between provinces because the jurisdiction of this institution necessarily overlaps with that of the child welfare system. The size of the domain of the youth justice system is therefore, to an important degree, inversely related to the size of the domain of the child welfare system, a system over which the provinces possesses full legislative and administrative control. Consequently, whereas the size of the jurisdiction of youth justice systems is important to the social construction of crime rates since, as outlined in chapter two, everything else being equal, crime rates will tend to be higher where criminal justice systems possess wider rather than narrower jurisdictions, whether and to what extent the size of this jurisdiction varies from province to province largely revolves around or otherwise depends on how the provinces define what constitutes a child in need of protection, the mechanisms put in place to identify such children, and the mechanisms put in place to address the needs of such children. To assess and compare the size of the jurisdiction of the Quebec and Ontario youth justice systems, in other words, it is necessary to pay particularly close attention to how these systems interact with and relate to the child welfare systems operating in their respective province.

### **Youth Court Jurisdiction & the Child Welfare System in Quebec**

By 1980, numerous steps had been taken in Quebec to diminish or otherwise restrict the very broad jurisdiction of the youth justice system as defined under the JDA. These restrictions were of

both an indirect and a direct nature. The province indirectly limited this jurisdiction by virtue of introducing many legal safeguards which sought to improve and protect the rights - especially the due process rights - of young people who were before the courts. Whereas strengthening such rights was certainly also relevant to the internal day-to-day practices of the Quebec youth justice system, it was most relevant to the jurisdiction of this system since it served to limit the scope of criminal justice processing to only those individuals against whom credible and conclusive evidence could be properly gathered. By significantly extending the legal rights of young people, in other words, the range of youths who could be successfully prosecuted under the JDA was narrowed. The province placed direct limitations on this jurisdiction by reducing the breadth of grounds for which the youth justice system could intervene in the lives of young people - that is, it reduced the range of troublesome people and conduct who fell under the dominion of the youth courts. No single piece of legislation was more important in both indirectly and directly limiting the jurisdiction of the youth courts in Quebec than the 1977 *Youth Protection Act* (YPA). The administration of youth justice in this province was systematically overhauled by this legislation.

Prior to the YPA coming into force in 1979, Quebec had already taken many steps to increase the procedural formality and regularity of the youth justice system including, most notably, by increasing access to legal representation through the establishment of a system of legal aid for juveniles in 1970, and by ensuring that judges could not be appointed to the bench unless they had been practising members of the Quebec bar with ten years of experience. Though important, these steps towards greater procedural formality were relatively minor compared to those brought about by the introduction of the YPA as part of its broader child protection mandate. Applying to all

persons under the age of eighteen in the province, this legislation identifies the protection needs of young people as extending to the functioning of the courts: the YPA stipulates that young people require protection against the abuses associated with myriad forms of authority, including that of the youth justice system. Many of the legal rights of children and parents which it defines therefore explicitly pertain to the operations of the youth justice system or, in other words, many of the rights which it introduced are due process rights. Three such new due process rights were especially consequential for the administration of justice during the JDA era.

First, whereas Quebec had an extensive legal aid program for juveniles prior to its implementation in 1979, the YPA took steps to ensure that juveniles actually made use of this system. That is, it encouraged children and parents to retain counsel.<sup>203</sup> This was achieved by stipulating that both young people and their parents must be informed of their rights to be represented by an advocate, and that the courts must ensure that defence counsel is assigned to juveniles whose interests stand opposed to those of their parents.<sup>204</sup> Second, under section six of the act, the courts must give children or anyone representing their interests an opportunity to be heard or, in other words, to argue their case. Lastly, the act also stipulated that children were to be granted and informed of their rights to appeal any court decision which directly pertains to them.<sup>205</sup> When

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<sup>203</sup> Indeed, a study looking at the functioning of youth courts in Montreal following the implementation of the YPA found that juveniles were represented by an attorney in almost all criminal cases and at the vast majority of hearings. Marc Le Blanc & Helene Beaumont, "Description du fonctionnement de tribunaux de la jeunesse de Montreal entre mai 1981 et avril 1982," cited in Marc Le Blanc & Helene Beaumont "The effectiveness of juvenile justice in Quebec," 301.

<sup>204</sup> See section 5, section 78 and section 80 of the Youth Protection Act.

<sup>205</sup> See section 5 of the Youth Protection Act.

combined with each other, these three rights transformed youth justice in general and youth court in particular into an adversarial, legalistic and formalized process. In the words of Le Blanc and Beaumont, “because of these rights... a more adversarial atmosphere characterized the functioning of the juvenile court. Facts and procedure were more frequently contested by defence lawyers, and Crown prosecutors became more active in court. By the beginning of the eighties, procedures in the Montreal juvenile court were much like those in adult court.”<sup>206</sup> In transforming the court process in this manner by virtue of its strengthening of the due process rights of all young people in the province, the YPA not only foreshadowed the introduction of the YOA by some five years, but also shrank the pool of individuals who could be successfully convicted of and therefore ultimately charged with an offence in the process.

This heavy emphasis on protecting the rights of young people in conflict with the law implies that the rules governing formal youth justice system processing were increasingly being influenced by or otherwise conforming to the representation of young people found in the welfare state: as autonomous beings possessing certain inalienable rights as opposed to misguided children in need of benevolent state intervention. To the extent that framing access to quality education as a fundamental right to which every young person is entitled implies that such persons are necessarily rights bearing individuals, in other words, then welfare state characterizations of young people were increasingly informing the decision-making of those persons responsible for delineating the conditions which had to be satisfied in order for youth justice officials to justify formally intervening into the lives of adolescents. Indeed, there had in fact been a growing emphasis on the rights of

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<sup>206</sup> Marc Le Blanc & Helene Beaumont “The effectiveness of juvenile justice in Quebec,” 300.

young people in the political discourse on youth crime throughout the 1970s in Quebec. This was especially evident in the discussions and debates surrounding the development and implementation of the YPA. For example, Pierre Marois, the Parti Québécois Minister responsible for developing and implementing the legislation, criticized the most recent of the previous proposed youth protection bills because “it did not go far enough in protecting the rights of children. Most notably, it failed to prohibit incarceration in adult prisons, and did not open the court process to public scrutiny so that the occasional injustice that occurred could be brought to light.”<sup>207</sup> This kind of sentiment enjoyed broad-based support in the provincial legislature: the strong rights emphasis of the YPA, including as it applied to young people in conflict with the law, was lauded by members of the national assembly speaking on behalf of both opposition parties, the Liberal Party of Quebec and the Union Nationale.<sup>208</sup> As a tangible expression of this support the legislation was adopted unanimously by the national assembly on Friday December 16, 1977.

That the discourse on youth crime in Quebec placed such a heavy emphasis on the rights of young people is consistent with the notion of the Quebec welfare state contributing to an ideological climate that does not place a heavy premium on strict conformity. An ideological climate that is highly intolerant of non-conformity is logically more conducive to the development of criminal justice practices which make it easier instead of harder to convict individuals of offences. By raising the standards of what constitutes acceptable evidence, by rendering evidence more contestable, and

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<sup>207</sup> Quebec, Assemblée nationale, *Journal des Débats*. Second session, 31<sup>st</sup> Legislature (Thursday, November 24, 1977), 4324 (author’s translation). Prior to the adoption of the YPA in 1977, three proposed new youth protection bills had died at various stages of development since 1972.

<sup>208</sup> See Quebec, Assemblée nationale, *Journal des Débats*. Second session, 31<sup>st</sup> Legislature (Thursday, November 24, 1977).

by increasing the difficulty of obtaining certain kinds of evidence like confessions, the emphasis placed on protecting the rights of young people in Quebec was therefore consistent with an ideological climate that is at least moderately tolerant of non-conformity. To make this point in a slightly different manner, that so much emphasis is placed on the rights of young people is consistent with the notion of the Quebec welfare state creating strong ideological barriers against extreme intolerance of non-conformity through its support for public participation in the design, administration and delivery of social programs and services.

One of the major objectives of Quebec's YPA was to place direct limitations on judicial action or, in other words, to directly restrict the jurisdiction of the youth justice system to the greatest extent possible. This has largely been pursued via three avenues. First, when the YPA took effect in 1979, it raised the age of criminal responsibility to fourteen and extended child protection to anyone under the age of eighteen. This meant that, from 1980 to 1983 when the JDA was still in effect, no child under the age of fourteen could be charged with a criminal offence and youths up to eighteen could be managed through the child welfare system instead of the youth justice system if it appeared that they required protection and that doing so would not endanger public safety. Indeed, section 38(h) of the YPA stipulates that the security or development of a child is to be considered threatened when the child has serious behavioural disturbances - of which offending behaviour is an acknowledged example - and his or her parents fail to take the measures necessary to remedy the situation thereby formally opening the door for addressing criminal matters through the child welfare system. Both of these measures served to reduce or otherwise limit the jurisdiction of the youth justice system in terms of the range of troublesome people over which it had dominion. With the

introduction of the federal YOA in 1984, the age of criminal responsibility in Quebec was lowered to twelve,<sup>209</sup> but the YPA continued to apply to anyone under the age of eighteen which is significant since, as outlined under section 4 of the declaration of principles, the YOA made room for the use of alternative measures to formal criminal justice processing of which child welfare system interventions constitute a clear example.

Second, the YPA also stipulates that young people can only be subjected to the intervention of the youth justice system for incidents involving violations of federal criminal law statutes. Violations of provincial and municipal statutes would be addressed under Quebec law, namely the *Summary Convictions Act*. This greatly restricted the jurisdiction of the youth justice system in the province in terms of the range of troublesome conduct over which it had dominion since, as noted earlier, the JDA afforded the provinces the authority to criminally prosecute young persons for provincial, municipal and status offences. The introduction of the YOA in 1984 did not affect this section of the YPA, but rather simply brought federal legislation in line with pre-existing provincial legislation.

Finally, and most significantly, since its very outset, the YPA has made provisions for a formal system of welfare-based diversion aimed at keeping young people out of the justice system. Informed by the principles that young people should not be subjected to court proceedings in general and to institutionalization in particular unless absolutely necessary for their protection or for the

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<sup>209</sup> Though, because of the organization of pre-charge diversion programs in the province the nature of which will be discussed shortly, the criminal prosecution of youths between the ages of twelve and fourteen remained exceptionally rare after the adoption of the YOA in 1984.

protection of society, the YPA actively encourages the use of voluntary alternative measures in all but the most serious protection and delinquency cases. Towards this end, while the JDA was still in effect from 1980 to 1983, the YPA required that the police forward all cases they did not handle or otherwise dispose of informally to the local Youth Protection Director (YPD) - every region in Quebec, seventeen in total, had its own integrated social services centre whose administrative council named a YPD who was responsible for defending the rights, promoting the interests, and improving the health and safety of children in their region - for screening. Drawing on information about the circumstances of the youth, whether they represent a risk to the community, their general attitude, their willingness to accept responsibility for the incident and their willingness to repair the harm that was caused - information that was largely gathered through interviews of the youth and their parents - the YPD (or persons acting on their behalf, typically social workers) assessed the case and determined whether it should be closed without further action, addressed through 'voluntary measures', or referred to the courts via the Crown prosecutors office.<sup>210</sup>

Under the guidelines of the YPA, voluntary measures could take the form of community service, restitution, the imposition of a curfew, submission to counselling or even placement in a group home. These measures were deemed voluntary or non-coercive because "the adolescent accused of a crime had to recognize that he had committed an offence, and... had the opportunity to choose between a voluntary measure and a referral to court. He also had to be informed of the nature of the voluntary measure that could be proposed."<sup>211</sup> When dealing with delinquency cases (for this

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<sup>210</sup> Nicholas Bala & Raymon Corrado, *Juvenile justice in Canada: A comparative study*, 80

<sup>211</sup> Marc Le Blanc & Helene Beaumont "The effectiveness of juvenile justice in Quebec," 292.

screening process also applied to protection cases and provincial offences cases), the decision of the YPD had to be approved by a person appointed by the minister of justice. If a disagreement arose, which occurred only very rarely, an arbitrator was appointed by the Youth Protection Committee - a province wide body with the mandate to monitor all aspects of the child care system, including protection and delinquency cases - to resolve the dispute. The eligibility criteria for participation in alternative measures was completely open-ended: youths were eligible for diversion regardless of the crime with which they were accused and regardless of their prior criminal record.

With its provisions for alternative measures, the introduction of the YOA in 1984 only required making slight modifications to this formal system of pre-charge diversion. Under section 4[1](g) of the YOA, alternative measures may only be used if there is sufficient evidence to proceed with the prosecution of the offence. This safeguard is intended to ensure that diversion not be used as a mechanism for punishing or otherwise intervening in the lives of young persons for whom there is insufficient evidence to lay criminal charges. Consequently, instead of forwarding all cases to the YPD for screening such that only those deemed inappropriate for taking no further action or for alternative measures would actually reach the Crown Prosecutor, under the YOA the police were obliged to forward all cases directly to the Crown Prosecutor to assess if there was sufficient evidence to prosecute the case. If the evidence was deemed sufficient, most cases - except those of a highly violent or otherwise serious nature - would then be passed along to the YPD for screening, and those deemed unsuitable for no further action or for alternative measures would then be forwarded back to the Crown to commence prosecution. This modest increase in the influence of Crown Prosecutors over the diversion process had little impact on the rate of informal police

diversion or on the rate of formal pre-charge diversion in the province.<sup>212</sup> The eligibility criteria for participation in pre-trial diversion remained open-ended following the introduction of the YOA.

This kind of open-ended, welfare-based system of diversion served to significantly reduce the range of troublesome people and conduct over which the youth justice system possessed jurisdiction. It effectively served to render the child welfare system and not the youth justice system the dominant state institution for responding to troublesome events involving young people. This subordination of the youth justice system to the child welfare system was further amplified in three additional ways. First, the YPA stipulated that the provincial director of child protection was also to assume the role of provincial director for youth justice. Second, the YPA also stipulated that the supervision and execution of alternative measures and court dispositions for both delinquent and endangered youth was to be organized through an integrated network of social services centres operating under the jurisdiction of the Ministry of Health and Social Services. These youth centres, which are also responsible for assessing the needs and suitability for diversion of all youths facing court proceedings, “deliver the full spectrum of specialized services for youth protection, young offenders, foster care, family mediation and adoption.”<sup>213</sup> Finally, the YPA also authorizes the creation of rehabilitative centres operating under the authority of the Ministry of Health and Social Services which are to house both delinquent and endangered youth when secure custody is deemed necessary by the courts. Responsibility for the administration of adjudicated young offenders

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<sup>212</sup> Ibid., 297-298.

<sup>213</sup> Secretariat to the Federal/Provincial/Territorial Working Group on Child and Family Services Information, *Child welfare in Canada 2000: The role of provincial and territorial authorities in the provision of child protection services*. (Ottawa: Health Canada, 2002): 66.

therefore falls exclusively to the child welfare system.

The subordination - at least in large part - of the youth justice system to the child welfare system through these various YPA stipulations including, most importantly, those pertaining to the use of alternative measures is consistent with the notion of the Quebec welfare state creating an ideological climate that is very supportive of individual and group self-expression. Insofar as the processing of troublesome events through the youth justice system necessarily involves an element of punishment and of symbolic exclusion from the community, then the sheltering of young people from such processing - especially though not exclusively through the use of welfare-based, pre-charge diversion - is simply inconsistent with a strong intolerance of non-conformity. This ideological climate of tolerance of non-conformity not only found expression in the content of the YPA, but also in the broader political discourse surrounding the use of diversion in Quebec.

The notion of establishing a welfare-based system of pre-charge diversion first gained prominence on the provincial policy agenda in 1968 when the first volume of the fourth report of the Commission of Inquiry into the Administration of Justice and Penal Matters in Quebec put forth numerous recommendations calling for and outlining the creation of such an alternative measures program.<sup>214</sup> In discussing the need for a system of diversion, the report argued that “an excellent manner of limiting the scope of criminal justice intervention is to systematically afford priority to

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<sup>214</sup> Yves Prevost, *La société face au crime: La cour de bien-être social, Commission d'enquête sur l'administration de la justice en matière criminelle et pénale au Québec*. 4(1, 1968).

child welfare law over criminal law.”<sup>215</sup> The report went on to elaborate that, “child welfare intervention represents a useful substitute to criminal justice intervention not because it prevents contact with the courts, but because it forces society and the courts to view youth crime from a different perspective. The instincts of repression and exclusion are bypassed in favour of a desire for rehabilitation and social integration.”<sup>216</sup> The notion that criminal justice intervention is undesirable because of its repressive and exclusionary tendencies suggests a certain tolerance of non-conformity. It implies that governing through crime is generally even more undesirable than non-conformity where young people are concerned.

This tolerance of non-conformity continued to find expression throughout the 1970s as the province embarked on the process of developing a system of welfare-based pre-charge diversion. For example, Pierre Marois - the aforementioned Parti Québécois minister responsible for overseeing the development and implementation of the YPA - described judicial intervention as “often being very traumatizing and even needlessly traumatizing” for young people, including those in conflict with the law.<sup>217</sup> Accordingly, he declared that judicial intervention should only be reserved “for those cases where it is absolutely necessary,” which he identified as being “when it is essential to pass judgement on the rights of young people whose well-being is in peril and, secondly, when it is necessary to limit the rights of young people for the protection of society.”<sup>218</sup> The notion that judicial

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<sup>215</sup> Ibid., 73, (author’s translation).

<sup>216</sup> Ibid, 73, (author’s translation).

<sup>217</sup> Quebec, Assemblée nationale, *Journal des Débats*. Second session, 31<sup>st</sup> Legislature (Thursday, November 24, 1977), 4323 (author’s translation).

<sup>218</sup> Ibid., 4325.

intervention is needlessly harmful to the well-being of young people implies that securing their conformity is not just of secondary importance to their well-being, but that it is actually undesirable in most circumstances: expressiveness is generally more important and desirable than conformity. Moreover, it seems reasonable to assume that this point of view enjoyed widespread support across the political landscape in Quebec - and therefore accurately epitomizes the nature of the discourse surrounding the issue of diversion - because no objections were raised against the spirit of these statements or even against the alternative measures provisions of the YPA more broadly in the legislature.<sup>219</sup> Both the content of the YPA and the discourse on diversion are therefore consistent with the notion of the Quebec welfare state creating very strong ideological barriers against intolerance of non-conformity.

### **Youth Court Jurisdiction & the Child Welfare System in Ontario**

Much like in Quebec, numerous steps had been taken by 1980 in Ontario to diminish or otherwise restrict the jurisdiction of the youth justice system as outlined under the JDA. Once again, these restrictions were of both an indirect nature in terms of making it more difficult for the youth justice system to formally process individual young people through the introduction of numerous procedural safeguards or due process rights, and of a direct nature in terms of reducing the range of categories of troublesome people and conduct falling under the dominion of the youth justice system. Unlike in Quebec, however, no single encompassing piece of legislation or agency had been developed to promote and protect the rights of all children in the province, including those suspected

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<sup>219</sup> There was very little discussion of let alone debate over the YPA in the legislature such that the Act is often said to reflect a provincial consensus on the issue of child protection.

of delinquency. Indeed, although the various services for children (e.g., daycare, child protection, youth mental health centres, juvenile corrections, and so forth) provided by the province were consolidated under the Children's Services Branch of the Ministry of Community and Social Services in 1977, these were nevertheless collectively governed by eight separate provincial statutes. Perhaps not surprisingly therefore, the indirect and direct steps taken to restrict the jurisdiction of the youth justice system were both more piecemeal and less extensive than those developed in Quebec.

Regardless of how it compared to its eastern neighbour, the court process for youths in conflict with the law in Ontario had, by 1980, become considerably more formal and rights oriented than it had been only fifteen years previous. Though family court judges - delinquency cases in Ontario were adjudicated by the family division of the provincial court, a tribunal which also presided over such matters as adoption, child protection, domestic violence, child and spousal support, and child custody - were not formally required to have legal training, in practice the vast majority were university trained lawyers.<sup>220</sup> The presence of attorneys in the courtroom had grown considerably, but had done so unevenly. On the prosecution side, such matters as first appearances, bail hearings and uncontested guilty pleas were typically handled by police officers, truancy cases were prosecuted by school board liaison officers, and probation officers usually filled the prosecution role when cases were brought back to court for an additional disposition hearing. During the actual trial stage of criminal cases, however, the role of Crown prosecutor was almost always filled by attorneys. On the defence side, Ontario had implemented a legal aid program to help ensure that

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<sup>220</sup> Nicholas Bala & Raymond Corrado, *Juvenile justice in Canada*, 38.

juveniles had access to legal representation. While few provisions were put in place to ensure that children were actually made aware of their right to consult an attorney in a timely manner and understood this right, most juveniles were in fact represented by an attorney when they were before the courts.<sup>221</sup>

Though no formal legislation had been developed to strengthen the rights of children in the area of detention/bail hearings, Ontario family court judges had adopted the convention of conducting these according to the stipulations of the Criminal Code which placed the onus on the Crown to 'show cause' why an accused - in this case a juvenile - should be detained prior to trial. The right to appeal was also modestly expanded. Under the *Training School Act*, juveniles committed to such institutions could appeal the decision of the courts without seeking the special leave that was stipulated under the JDA. Finally, there were also efforts to reduce the ability of judges to place young offenders in training schools. Section 8 of the *Training School Act* - which enabled judges to order children under the age of sixteen to be sent to a training school simply because their parents or guardians felt that they were unable to control them, because the care available to them through some alternative disposition was impractical or insufficient, or because they required care that was provided by a training school - was repealed in 1975. Consequently, although legal safeguards had not advanced to the point where it could be said that Ontario was foreshadowing the adoption of the YOA like Quebec, they had nevertheless advanced considerably by 1980.

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<sup>221</sup> Ibid., 61.

As was the case in Quebec, this growing emphasis on protecting and extending the rights of young people in conflict with the law throughout the 1970s implies that the rules governing formal youth justice system processing in Ontario were increasingly being influenced by the representation of young people found in the welfare state since the mid-1960s: that such persons possess meaningful individual rights simply by virtue of their status as autonomous human beings. This growing emphasis implies, in other words, that welfare state characterizations of young people as rights bearing individuals were increasingly informing the decision-making of those persons responsible for delineating the conditions which had to be satisfied in order to justify formal youth justice system intervention into the lives of adolescents. The influence of the notion of young people possessing certain inalienable rights continued to grow in Ontario throughout the 1980s. This can be seen in the fact that, when the province adopted new child protection legislation in 1984, legislation which explicitly applies to certain categories of young people in conflict with the law as will be discussed shortly, the new *Child and Family Services Act*, although not going quite as far as Quebec's *Youth Protection Act*, did nevertheless place considerable formal emphasis on the rights of children and youth, and certainly more formal emphasis than any of its predecessors. This emphasis is especially evident in three sections of the act, the first of which stipulates that one of its purposes is "to recognize that the least restrictive or disruptive course of action that is available and is appropriate in a particular case to help a child or family should be followed," the second of which stipulates that child service providers shall ensure "that children and their parents have an opportunity where appropriate to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving," and the last of which stipulates that child service providers shall also ensure "that decisions affecting the

interests and rights of children and their parents are made according to clear, consistent criteria and are subject to procedural safeguards.”<sup>222</sup>

The growth in the importance placed on the rights of young people in conflict with the law during the 1980s can also be seen in the character of the discourse of the major provincial political parties in the debate surrounding the implementation of the YOA. First, both provincial opposition parties - the Liberal Party and New Democratic Party of Ontario - repeatedly expressed their support for the spirit and principles of the new Act, including its strong rights orientation.<sup>223</sup> Moreover, the Conservative government of the time also expressed its strong support for this rights orientation when, for example, then Provincial Secretary of Justice for Ontario Norm Sterling stated to the Standing Senate Committee on Legal and Constitutional Affairs in June of 1982 that “I want to make clear that, though, that our [the government of Ontario] position has been one of general support and agreement for Bill C-61 [the YOA]. We see many good and new things in this legislation which are long overdue, and those particularly relate to the rights of young offenders before the courts and their treatment by those courts in terms of preserving their rights.”<sup>224</sup> Clearly discourse in the field of youth justice was increasingly mimicking welfare state characterizations of young people as possessing inherent rights as autonomous human beings.

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<sup>222</sup> See sections 1(b), 2.2(a) and 2.2(b) respectively.

<sup>223</sup> For example, after noting that the YOA possessed a strong rights orientation, the New Democratic representative for Riverdale J. A. Renwick stated in the legislature in his capacity as Justice Critic that “I welcome the Young Offenders Act... I hope we [Ontario] will embrace the philosophy [of the act]”. Legislative Assembly of Ontario, *Hansard Official Report of Debates*. 54 (Monday, May 28, 1984), 1890. Similarly, J. Sweeney stated in the legislative assembly that the Liberal Party of Ontario agrees “with the spirit and principle of the Young Offenders Act.” Legislative Assembly of Ontario, *Hansard Official Report of Debates*. 24 (Tuesday, April 17, 1984), 824.

<sup>224</sup> Senate of Canada, *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs*. 20 (Thursday, June 17, 1982), 6.

The fact that the idea that young people in Ontario possessed fundamental rights was playing an increasingly important role in youth justice practice and discourse is consistent with the notion of the Ontario welfare state supporting an ideological climate which does not place a heavy premium on conformity. The emphasis placed on protecting the rights of young people, in other words, was consistent with the notion of the Ontario welfare state fostering an ideological climate that was at least moderately tolerant of non-conformity. The fact that this emphasis on rights did not develop as quickly or as thoroughly as in Quebec is also consistent with the notion of the Ontario welfare state defining the role of citizen less inclusively than in Quebec and of therefore creating less effective ideological barriers against intolerance of non-conformity.

In contrast to Quebec, Ontario had taken relatively few steps - though certainly by no means no steps - by 1980 to directly restrict the range of troublesome people and conduct over which the youth justice system had dominion. This was most evident in two regards. First, few limitations were placed on the age jurisdiction of the courts by the child welfare system during the JDA period. From 1980 to 1984, the minimum age of criminal accountability was seven while youths sixteen and older fell under the jurisdiction of the adult courts. Although the child welfare system did not claim jurisdiction over children involved in illegal conduct if they were older than six, it should be noted that throughout the course of the 1970s children under the age of twelve nevertheless began to be informally decriminalized. The charge rate, the conviction rate and especially the custody rate for seven to eleven year olds decreased throughout the decade largely due to changing perceptions among criminal justice actors about the desirability or, more precisely, the undesirability of

criminalizing children of such a young age.<sup>225</sup> The maximum age jurisdiction of fifteen for the youth justice system was consistent with the age jurisdiction of the child welfare system whose provisions generally did not apply to anyone sixteen years of age or older. Second, non-criminal conduct such as the violation of provincial statutes and municipal ordinances remained grounds for formal criminal justice processing in Ontario from 1980 until April 1984. It should be noted however that, although certainly not rare, laying delinquency charges as a result of such conduct was becoming less common during this period insofar as the province was making greater use of diversion programs, albeit still on a rather limited and haphazard basis particularly compared to Quebec. Whether and to what extent formal diversion was employed varied considerably by region, but did nevertheless occur.<sup>226</sup>

This general reluctance - at least relative to Quebec - to restrict the range of troublesome people and conduct falling within the jurisdiction of the youth court did not diminish following the implementation of the YOA in 1984, and may in fact have intensified over the short term. Precipitated in large part by the need to accommodate this new federal youth justice legislation, Ontario thoroughly restructured its child welfare system in 1984 by replacing and consolidating the

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<sup>225</sup> Central Toronto Youth Services, *Youth opportunity action: Toward Ontario's new system for young offenders*. (Toronto: Central Toronto Youth Services Foundation, 1982): 21.

<sup>226</sup> Though not directly pertaining to the jurisdiction of the youth courts, it should also be noted that there was one area in which the province did place important limitations on judicial action: the use of custody. Following the reorganization of children's services in 1977, the Ministry of Community and Social Services implemented a policy of reducing the number of training school beds as well as overall admissions to such institutions or facilities throughout the province: training schools were henceforth only to be employed as a last resort for children who were a danger to themselves and/or to the community. The results of this policy were dramatic: whereas there were fifteen training schools in Ontario with a total of 1740 beds which received nearly 1400 admissions in 1970, there were seven institutions with less than 400 beds and an average of 300 persons in residence by late 1982. Central Toronto Youth Services, *Youth opportunity action*. 41. See also Ian Grant, "The 'incurable' juvenile: History and prerequisites of reform in Ontario," *Canadian Journal of Family Law*. 4(1984): 293-318.

eight provincial statutes which hitherto had governed the provision of social services to children - including those in conflict with the law - in the province with a single piece of legislation, the *Child and Family Services Act* (CFSA).<sup>227</sup> One of the distinguishing features of the new act was that it conceded much of the jurisdiction over young people in conflict with the law to the youth justice system. This was especially evident in two regards.

First, the new Act upheld the Ontario tradition of treating sixteen and seventeen year olds more like adults than minors in terms of the range of social protections and social services it afforded them. Though perhaps broader than that afforded to adults, this range was nevertheless narrower than that afforded to young people under the age of sixteen. The tendency to provide more limited forms of support to sixteen and seventeen year olds relative to other minors was especially true with regards to young people in conflict with the law. This group of older adolescents was excluded entirely from the jurisdiction of the child welfare system since the new child protection legislation made no provisions for them whatsoever. Such exclusion is significant because, under the Act, the commission of certain offences can be grounds for intervention by the child welfare system if their occurrence can be linked to their perpetrators having suffered some form of emotional harm and/or to the inability of their parents or guardians to adequately fulfil their basic needs. Indeed, section 42 of the act stipulates that, if a person under the age of sixteen commits a criminal offence and a "peace officer or other person believes that the child is in need of protection, that matter must be

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<sup>227</sup> These statutes include the Child Welfare Act, the Children's Residential Services Act, the Children's Mental Health Services Act, the Training School Act, the Children's Probation Act, the Children's Institution Act, the Developmental Services Act, as well as sections of the Homes for Retarded Persons Act.

reported to a children's aid society."<sup>228</sup> This necessarily implies that, in certain circumstances, the child welfare system assumes priority or possesses jurisdiction over the youth justice system in responding to events involving illegal conduct by young people. However, since the act made no provisions for sixteen and seventeen year old young offenders, this possibility of responding to their illegal conduct through the child welfare system is virtually non-existent. Their exclusion from the Act, in other words, means that a larger proportion of this group falls within the jurisdiction of the youth justice system than is the case with young people aged twelve to fifteen.

The exclusion of sixteen and seventeen year old young offenders from the jurisdiction of the CFSA is also significant because it forced the province to develop a two-tiered system of programs and services for young offenders. The new child welfare legislation stipulates that the provision of programs and services for young offenders is the exclusive responsibility of child welfare officials or, in other words, falls under the sole authority of the Ministry of Community and Social Services. However, since the age provisions of this legislation define a young offender as a person under sixteen years of age but the YOA defines a young offender as a person under eighteen years of age, there was also a need to establish programs and services for sixteen and seventeen year old young offenders that were completely separate from those of the adult system. Since the Ministry of Community and Social Services was not empowered to do so, responsibility for developing and administering such programs and services was assigned to the Ministry of Corrections, the same ministry that was responsible for overseeing the sentences of provincial adult offenders. The age provisions of the CFSA therefore effectively forced Ontario to introduce a two-tiered system in

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<sup>228</sup> Priscilla Platt, *Young offenders law in Canada*. (Markham: Butterworths, 1995), 132.

which the Ministry of Community and Social Services and the Ministry of Corrections “administer respectively tier one (12- to 15- year-old young offenders) and tier two (16- and 17-year-old young offenders) within their existing mandates.”<sup>229</sup> This implies that the implementation of the YOA in Ontario had little effect on how services for youths in conflict with the law were organized or administered from the perspective of both groups of offenders, except that tier two offenders were now kept apart from adults in addition to younger children with regards to detention.

Such a division of responsibility was important to the range of troublesome behaviour falling within the jurisdiction of the youth justice versus child welfare systems insofar as overseeing the administration of court dispositions inherently creates opportunities for officials to ‘discover’ new forms of potentially criminalizable troublesome conduct by virtue of subjecting offenders to heightened levels of scrutiny while simultaneously withdrawing many of their otherwise taken for granted liberal democratic freedoms. This potential for bringing forth new charges against young offenders through the very process of administering court dispositions was amplified greatly when the federal government created the new offence of failure to comply with the administration of youth justice in 1986. To the extent that responsibility for overseeing the administration of youth court sentences falls to the child welfare system, then much of the power over whether to bring forth new charges against currently troublesome young offenders rests with officials working within that system. To the extent however that this responsibility falls to the youth justice system, then the power to bring forth new charges against currently troublesome youth offenders rests entirely with

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<sup>229</sup> Alan W. Leschied & Peter G. Jaffe, “Implementing the Young Offenders Act in Ontario: Critical issues and challenges for the future,” in Joe Hudson, Joseph P. Hornick & Barbara A. Burrows, eds., *Justice and the young offender in Canada*. (Toronto: Wall & Thompson, 1988), 69.

officials working within that system. The exclusion of sixteen and seventeen year old young offenders from the CFSA therefore resulted in a wider range of the troublesome behaviour of this group - namely the failure to comply with court dispositions - falling within the immediate domain of the youth justice system than is the case for twelve to fifteen year olds.

Second, the CFSA also conceded much of the jurisdiction over young people in conflict with the law on the basis of failing to include any meaningful provisions for diverting such individuals out of the youth justice system as was the case under the YPA in Quebec. Indeed with this absence, the province adopted the position that it was not legally obliged to offer any alternative measures programs whatsoever to young offenders and thereby proceeded to abolish all such programs when it implemented the YOA in 1984. The province did so despite the fact that diversion was a well established practice in certain regions of Ontario, and despite the fact that the YOA explicitly declared support for the principle of diversion and included provisions for the practice of diversion.<sup>230</sup> This decision proved to be highly controversial since Ontario became the only province or territory in which young offenders were not granted access to diversion programs following the implementation of the YOA and was eventually challenged in the courts on the grounds that it violated the Constitutional guarantees to equality under the law as outlined under section 15 of the *Charter of Rights and Freedoms*: the decision of the Ontario government not to implement section 4 of the YOA was argued to deny young offenders in that province the full range of privileges and opportunities to which they were entitled under the law. The Ontario Court of Appeal rendered its

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<sup>230</sup> Whereas section 3(d) of the YOA declared support for the principle of alternative measures, section 4 of the act both authorized and governed the use of such measures.

decision on the matter in 1988, finding that the absence of such programs in Ontario did indeed violate section 15 of the *Charter*. The government of Ontario responded to this ruling “by establishing alternative measures programs across the province, albeit on an ‘interim basis,’ but it also appealed to the Supreme Court of Canada.”<sup>231</sup> In June of 1990 the ruling of the Ontario Court of Appeal was reversed by the Supreme Court on the grounds that the language pertaining to the use of alternative measures in the YOA granted discretion to the provinces over whether to establish such programs. Despite this ruling in its favour, however, Ontario continued to make use of and even expanded its temporary alternative measures programs largely due to a second ruling by Supreme Court which found that the long delays which had consistently plagued the province’s court systems violated the Charter rights of both adults and youths to be tried within a ‘reasonable’ period of time. This second ruling “placed great pressure on the government to deal with the problem of overcrowding in the court system, and provided a strong impetus for moving less serious cases out of the courts by making use of alternative measures programs.”<sup>232</sup> What started out as an interim practice in 1988 therefore became a permanent fixture shortly after 1990.

The alternative measures programmes that have operated in Ontario since 1988 have been among if not the most restrictive in Canada. To begin, authority over these programs was located exclusively within the criminal justice system: child welfare officials were given no input into who was to be diverted or how. These programs operated strictly on a post-charge basis, with the decision to divert resting with crown prosecutors who typically have based their decisions on the

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<sup>231</sup> Nicholas Bala, *Young offenders law*. 154.

<sup>232</sup> *Ibid.*, 155.

recommendations of the police. Upon the youths first appearance in court, the Crown prosecutor informed the court that the youth was being considered for an alternative measures program. At the time of their second appearance, the Crown informed the court whether the youth was in fact being referred for alternative measures. If this was the case, then the youth was obliged to make a third court appearance at which time the charges against them were withdrawn, though the incident would still count towards the official crime rate. This system of multiple court appearances was simplified somewhat after 1995, but most important with regards to social construction of crime statistics, diversion remained post-charge in nature.

Not only was the Ontario alternative measures program post-charge in nature, but eligibility was restricted to a relatively narrow range of first time offenders. This eligibility criteria was liberalized somewhat in 1995 when the provincial Attorney General enacted new guidelines for the use of alternative measures. According to these new guidelines, first time offenders charged with class I offences - which include property offences under \$1,000, causing a disturbance and taking a vehicle without consent - should be diverted into alternative measures unless there are 'exceptional circumstances' which suggest that they should be tried before the courts. If youths charged with a class I offence are not first time offenders, the Crown attorney may nevertheless deem them eligible for alternative measures, but only at their discretion. There is no longer any presumption that this should occur. For both first time and repeat offenders charged with class II offences - which includes property offences over \$1,000, minor assaults, giving a false name upon arrest and credit card fraud - the Crown attorney may divert the youth at their discretion while taking into consideration, among other things, the wishes of the victim. Finally, for youths charged with class III offences - which

includes murder, sex offences, assaults causing bodily harm, failure to comply with the terms of a court order and driving under the influence of alcohol - there is no possibility of diversion. Consequently, even with the 1995 liberalizations, the eligibility criteria for diversion in Ontario remains far more restrictive than in Quebec where any young offender can potentially be diverted.

The justification for abolishing and eventually reintroducing such limited alternative measures programs has largely been rooted in the justice model ideal of equality before the law through due process and transparency. Indeed, in abolishing the practice of diversion in 1984, the provincial Attorney General suggested that the primary reason for doing so lay in the fact that it compromised "a young person's rights to a fair trial and the court's opportunity to decide on appropriate disposition. The fear was expressed that an 'undercover' system of juvenile justice could develop without the protection afforded by the public scrutiny and accountability of the court system."<sup>233</sup> Though Ontario was certainly concerned with protecting the rights of young people, it would however be a mistake to assume that the 1984 decision to abolish alternative measures programs was rooted in some profound ideological conviction that such measures inherently jeopardized these rights. There are three reasons for believing that this decision was not primarily rooted in deep-seated conviction.

To begin, the decision of the provincial government not to implement section 4 of the YOA received little discussion in the Legislative Assembly. Whereas members of the two opposition parties did make passing references to the issue of diversion on occasion while debating the larger

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<sup>233</sup> Alan W. Leschied & Peter G. Jaffe, "Implementing the Young Offenders Act in Ontario," 70.

issue of the implementation of the new youth justice legislation in Ontario, a review of these debates reveals that members of the ruling Progressive Conservative party rarely if ever mentioned this issue. Since it was not an issue that anyone in any of the three political parties with seats in the legislature was particularly interested in talking about, this would seem to suggest that support for and opposition to the practice of diversion was not especially strong or principled in Ontario.

Furthermore, the ruling Progressive Conservative party actually expressed its conditional support for alternative measures programs in 1974. In a report prepared for a national conference on youth justice, it recommended that any new federal youth justice legislation should include provisions for diversion. The report stated that "There seems to be general and widespread agreement that court intervention should be a last resort and for that reason an intake or screening process needs to be developed for Family Courts. Thus we recommend the Federal Code should encourage and assist in funding a screening process with the details regulated and administered by the provinces."<sup>234</sup> Once again, this would seem to suggest that opposition to the practice of diversion was not rooted in deeply cherished principles and convictions.

Lastly, there was also much reason to believe that the decision by the Ontario government to abolish alternative measures programs was, at least in part, a negotiation tactic intended to pressure the federal government to provide more funding to the provinces to assist with the

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<sup>234</sup> Ontario, Ministry of Community and Social Services, "Position paper on issues related to young persons in conflict with the law." *Joint federal-provincial working-group on young persons in conflict with the law: Provincial papers presented at the conference 11-15 March 1974 in Ottawa*. (Ottawa: Department of the Solicitor General, 1974). Volume II, Eastern Provinces and Territories, 62.

implementation of the YOA. Such a conclusion can be drawn, for example, from the fact that, when asked to explain the basis of Ontario's opposition to the then proposed YOA before the Standing Senate Committee on Legal and Constitutional Affairs, Provincial Secretary for Justice in Ontario Norm Sterling testified that it was not rooted in any particular principles of justice, but in the desire to receive greater funding commitments from the federal government. Specifically, when he was asked "leaving aside the financial implications of the bill which affect the province of Ontario and which you have pointed out to us, do you accept the philosophical concept in its entirety?" Sterling replied "Yes." This answer prompted the followup question of, "What you are really looking at, then, is money?" to which Sterling replied "Yes. I suppose that we would prefer a little more flexibility in procedure, but the money aspect is basically it."<sup>235</sup> Consequently, although protecting the rights of children was clearly an important consideration, clearly it would be an overstatement to suggest that the decision to abolish the practice of diversion in 1984 was exclusively driven by some strong and principled desire to protect these rights.

The reintroduction of the practice of diversion in 1988 was also heavily informed by the justice model ideals of due process and transparency. This can be seen in the character of the program itself in terms of the heavy emphasis which it placed on court appearances: these served to render the screening process both highly legalistic and public in nature. This influence can also be seen in the character of the discourse surrounding the decision to reintroduce diversion in Ontario. Perhaps the clearest and most complete expression of this justice orientation was provided by Norm Sterling when, speaking on behalf of the Progressive Conservative Party of Ontario before the

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<sup>235</sup> June 17, 1982 - 21

Legislative Assembly, he lauded both the new diversion initiative because of its strong legalistic emphasis as well as the decision by the Liberal government to appeal the court ruling which mandated that Ontario establish this initiative in the first place. He began his comments by stating, "I would like to congratulate the Minister of Community and Social Services (Mr. Sweeney) on announcing the alternative measures program. I want to indicate at this time, however, that I am very much in support of the appeal of the Attorney General (Mr. Scott) on this particular case."<sup>236</sup> He went on to elaborate that "it is important that we maintain the principles of justice not only for adults but also for the young people of our province. It is important that when young people are charged with an offence, they are given the right to a public trial in terms of what they are charged with."<sup>237</sup> To this he added "What the Supreme Court has decided is that we want to give that particular decision to social workers behind closed doors. Quite frankly, while I have every confidence in our social workers in terms of their goodwill etc., we are most concerned with the principle of justice that when a person is charged with a criminal offence, he has the right to an open and public trial."<sup>238</sup> Whereas the decision to appeal the court ruling was not supported by the New Democratic Party of Ontario, the overall legalistic emphasis of the new diversion initiative certainly was. To quote one NDP member of the legislature on the matter, "Certainly, as far as we are concerned, the program is great. The only problem with it is that it is interim, pending the Attorney General's misguided application of an appeal to the Supreme Court of Canada."<sup>239</sup> Clearly the logic, assumptions and

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<sup>236</sup> Legislative Assembly of Ontario, *Hansard Official Report of Debates*. 44 (Tuesday April 12, 1988), 2335.

<sup>237</sup> *Ibid.*, 2336.

<sup>238</sup> *Ibid.*, 2336.

<sup>239</sup> *Ibid.*, 2334-2335.

values of the justice model - a model whose basic underlying principles coincide with how young people were being conceptualized by the provincial welfare state - played an important role in shaping the reintroduction of post-charge alternative measures in Ontario in 1988.

The fact that the child welfare system in Ontario has done very little to directly limit the jurisdiction of the youth justice system compared to its Quebec counterpart is consistent with the notion of the Ontario welfare state creating weaker ideological barriers against intolerance of non-conformity compared to the Quebec welfare state. It is consistent, in other words, with the notion of the Ontario welfare state fostering an ideological climate that is considerably less supportive of expressiveness than the Quebec welfare state. Recall from the previous chapter that, whereas both welfare states were highly supportive of the creation of spaces for collective social action through the provision of much assistance for public involvement in the delivery of social programs and services, the Quebec welfare state was far more supportive of the creation of spaces for collective political action through the provision of much assistance for public involvement in the design and administration of social programs and services compared to the Ontario welfare state. By providing less support for political advocacy, the Ontario welfare state therefore fostered an ideological climate that was generally less supportive of expressiveness relative to Quebec. This general disparity certainly applied to young people, and was perhaps even greater than its was for adults: whereas Quebec provided considerable support for political advocacy by organizations and bodies consisting of or otherwise representing the interests of young people, Ontario provided very little in the way of equivalent assistance.

## **The Approach to Order Maintenance of the Quebec & Ontario Youth Justice Systems:**

### **Tolerance of Crime and of Criminality**

Welfare state inclusiveness is not only relevant to the size of the role of criminal justice systems in responding to troublesome events, but also to how they carry-out this role or, in other words, to the extent to which their basic approaches to order maintenance privilege or otherwise favour criminalizing versus non-criminalizing responses to those troublesome events falling within their jurisdiction. Whether criminal justice systems tend to be tolerant or intolerant of such events largely depends on the degree to which their individual agents are predisposed to perceive the benefits of criminalization as generally being high or low relative to its associated costs. Such perceptions ultimately revolve around whether the type of conduct involved is believed to be likely to spread if the event is not criminalized, and around whether the actor involved is believed likely to continue engaging in troublesome conduct if the event is not criminalized. Criminal justice system tolerance of troublesome conduct and people therefore revolves around their working assumptions about the causes of crime and of criminality. Criminal justice system authorities tend to be tolerant of troublesome events insofar as their perceptions are informed by a working criminology which frames crime as caused rather than freely chosen, and which frames criminality as a temporary or transient state of being - rather than being rooted in the possession of stable traits or characteristics which differentiate the troublesome from the non-troublesome - which virtually everyone experiences over the course of their lives.

Dominant working criminologies are difficult to gauge because they are overarching rationalities that exist only at the level of the operating culture of criminal justice systems. As such,

they can only ever be examined indirectly through the statements, choices and mentalities of decentralized actors occupying various roles within the criminal justice system. Insight into whether the dominant working criminologies of the Quebec and Ontario youth justice systems conceptualize youth crime as predominantly purposeful and youth criminality as a predominantly stable or persistent state of being will be gained by examining three indicators. The first is how these two issues are framed in the official language of both systems as expressed through major documents and reports produced by officials working within those systems during the period of interest. The second indicator is survey data pertaining to the values and beliefs of youth justice officials in both provinces. Because the very consciousness of criminal justice officials is profoundly influenced by the dominant working criminology of the system in which they are employed, survey data pertaining to their attitudes and beliefs about the roots of youth crime and youth criminality necessarily provides insight into how these issues are conceptualized by this working criminology. The third indicator is data pertaining to provincial sentencing patterns. Differences in how youth crime and youth criminality are conceptualized across justice systems inevitably give rise to differences in the kinds of sentences which are imposed by those justice systems.

### **The Official Language of the Quebec & Ontario Youth Justice Systems**

Without question, the single most important document with regards to providing insight into how the issues of youth crime and youth criminality were conceptualized within the Quebec youth justice system during the period of interest was the 1995 report of the Jasmin Commission, both because of its thoroughness and its importance to or impact on the administration of youth justice

in the province.<sup>240</sup> Based on extensive consultations with stakeholder groups including judges, Crown and defence attorneys, police officers, probation officers, social workers, educators, young offenders and parents of young offenders, the Commission reviewed the implementation and application of the YOA in Quebec in order to both assess as well as develop recommendations on how to improve the effectiveness of the province's youth justice system. In the process of carrying-out this mandate, the report tended to frame youth crime as overwhelmingly unintentional or otherwise caused by social forces over which young people have little control. More specifically, it argued that youth crime is primarily caused by the inadequate internalization of social norms, an occurrence for which young people are not themselves ultimately responsible. In the words of the report, the problem of youth crime requires "a process of integration which proceeds in two directions: adolescents must gradually integrate the norms of society which, in turn, must integrate these adolescents to mould them into responsible citizens."<sup>241</sup> This notion of youth crime being caused by social forces was also implicit in the argument that public safety is not enhanced through the threat of abstract punishment,<sup>242</sup> but only through rehabilitative measures focussing on the individualized needs of young offenders. This is significant because rehabilitation is only necessary if crime is caused by the possession of some type of deficit such as the inadequate internalization of social norms. The language of the report is therefore suggestive of a working criminology which frames youth crime as overwhelmingly caused behaviour and, in so doing, supports an approach to

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<sup>240</sup> Groupe de travail chargé d'étudier l'application de la Loi sur les jeunes contrevenants au Québec, *Les jeunes contrevenants: au nom ... et au-delà de la loi*. (Québec: Ministère de la Justice et Ministère de la Santé et des Services Sociaux, 1995).

<sup>241</sup> *Ibid.*, 16 (author's translation).

<sup>242</sup> Indeed, the report explicitly states that general deterrence "is of little value to youth justice." *Ibid.*, 16.

order maintenance that is highly tolerant of such conduct.

The report of the Jasmin Commission framed youth criminality as being rooted in a variety of social, psychological and cognitive factors. Whereas under-socialization causes youth crime, the inadequate internalization of social norms by young people is caused by some combination of environmental deficits, emotional deficits and cognitive deficits. Accordingly, the report emphasized the importance of educational and, to a lesser extent, clinical rehabilitation programs as the most effective means of repairing these deficits and of therefore preventing repeat offending: "Quebec justice has relied on rehabilitative, treatment and educational measures in order to prevent recidivism among young people."<sup>243</sup> Indeed, the report reaffirmed the commitment of the Quebec youth justice system to the goal of rehabilitation by arguing that it represented the most effective means of fulfilling the YOA's stated commitment to the principles of accountability and of the protection of society. According to the logic of the report, rehabilitation programs - whether educational or cognitive in nature - promote the protection of society by virtue of reducing recidivism and promote accountability by virtue of improving the mental and emotional capacity of young people to accept responsibility for their actions.<sup>244</sup>

In stressing the importance of rehabilitation, the report argued that the large majority of young people who violate the law do not require participating in educational and clinical rehabilitative programs. Rule breaking was not only considered normal to a large degree, but was

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<sup>243</sup> Ibid., 16 (author's translation).

<sup>244</sup> Ibid., especially 233.

also considered to play an important role in the process through which young people gradually learn about the social boundaries of Quebec society. To quote the report on this matter, “for most adolescents, the commission of a legal infraction constitutes an opportunity to test and internalize societal norms: the reactions of those who immediately surround them and of the wider society more generally contributes to their internalizing of those norms which they transgressed as well as to their developing a respect for the law. Such conduct cannot be categorized as abnormal.”<sup>245</sup> Rather, educational and clinical rehabilitative programs must be reserved for the minority of young people who become involved in more serious forms of illegal conduct, or whose involvement in less serious forms of illicit conduct proves to be persistent or non-transitory in nature - that is, for repeat offenders and for serious first time offenders. Criminality, in other words, is generally most effectively addressed through informal community mechanisms and, to a lesser extent, through alternative measures to formal criminal justice processing. The language of the report is therefore suggestive of a working criminology which frames youth criminality as largely being transient in nature though also sometimes being stable and, in so doing, supports an approach to order maintenance that is moderately tolerant of troublesome people.

There has been no Ontario equivalent to the Jasmin report in terms of a single document which, in describing and evaluating every facet of provincial youth justice system functioning and practice, provides a clear window into how the issues of youth crime and youth criminality are framed in the official language of this system. Some insight into how these issues are framed in the official language of the Ontario youth justice system can nevertheless be gained by examining the

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<sup>245</sup> Ibid., 9 (author’s translation).

formally stated objectives and guiding principles of this system. Following the full implementation of the YOA in Ontario in 1986, there were, as noted earlier, effectively two distinct youth justice systems operating in the province: the phase I system for twelve to fifteen year olds, and the phase II system for sixteen and seventeen year olds.

The system for phase I young offenders, who fell under the jurisdiction of the Ministry of Community and Social Services, was guided by two overriding principles: that the paramount objective of criminal justice intervention must be the promotion of the best interests, protection and well-being of children (i.e., must be addressing the needs of children), and that the least disruptive or restrictive course of action that is both appropriate and available should always be employed.<sup>246</sup>

Two conclusions may be drawn from this dual emphasis. First, that much weight was placed on improving the well-being of young people is consistent with the welfare model of penal justice which, as noted earlier, assumes that crime is caused by various social, psychological and biological forces rather than being freely chosen. The well-being of young people is only relevant to criminal justice functioning insofar as it is assumed to influence behaviour patterns. Similarly, the fact that no emphasis whatsoever was placed on the punishment of phase I youth crime also implies that it is non-deliberative in character. The only reason not to punish troublesome conduct is if it is unintentional in nature.

Second, emphasizing the best interests of phase I young offenders and the least restrictive

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<sup>246</sup> See, Ontario, Ministry of Community and Social Services, *Review of the young offender residential service system*. (Toronto: The Queen's Printer, 1989), 11.

course of action implies that the focus of the phase I youth justice system should be on the individual needs of the members of this group. Indeed, all phase I young offenders charged with an offence were subjected to a needs and risk assessment whose results served to inform the sentencing process if convicted. Those deemed to be in need of some form of treatment were directed accordingly while all others were to be quickly released from the justice system in accordance with the principle of minimal interference. This necessarily implies that phase I youth criminality is assumed to sometimes be rooted in the possession of stable deficits and sometimes is not. These goals and principles are therefore suggestive of a working criminology which frames phase I youth crime as being overwhelmingly unintentional and phase I criminality as being largely transient and, in so doing, supports an approach to order maintenance that, much like in Quebec, is highly tolerant of phase I offending and moderately tolerant of phase I offenders.

The system for phase II young offenders, who fell under the jurisdiction of the Ministry of Correctional Services, was also primarily guided by the principle of promoting their best interests on the basis of assessing their individual needs and of subsequently addressing these needs if it was deemed that they would benefit from some form of psychological, cognitive or educational treatment.<sup>247</sup> Unlike the phase I system or the Quebec system, however, there was also a strong secondary emphasis on promoting accountability through discipline and supervision, particularly for those individuals who were persistently involved in troublesome conduct.<sup>248</sup> That is was deemed to

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<sup>247</sup> See, for example, Legislative Assembly of Ontario, *Institutional services and young offender operations*. (Toronto: Standing Committee on Public Accounts, 2001), especially 14 & 19.

<sup>248</sup> *Ibid.*, 10-13.

be important that sixteen and seventeen year olds be held accountable for their criminal conduct implies that, at least to some degree and in certain circumstances, phase II youth crime is purposeful or deliberative in nature: the only reason to hold individuals accountable is if they are at least partially responsible for their actions. Moreover, that phase II young offenders may require some combination of treatment and/or discipline implies that their criminality is sometimes rooted in the possession of chronic deficits of various sorts, and sometimes is not. It implies, in other words, that their criminality is sometimes a stable and sometimes a transient state of being, though with the addition of discipline as a potential unmet need, it implies that it is marginally more stable than for phase I young offenders and for Quebec young offenders. These goals and principles are therefore suggestive of a working criminology which supports an approach to order maintenance that is less tolerant of youth crime than in either the phase I system or in Quebec, and marginally less tolerant of young offenders than in either the phase I system or in Quebec.

### **The Values and Beliefs of Quebec & Ontario Youth Justice Personnel**

Though difficult to gauge, the attitudes and beliefs of Quebec and Ontario youth justice system officials were probed in a large national survey of youth justice personnel - including judges, Crown prosecutors, defence attorneys, probation officers and police officers - from every province immediately following the formal adoption of the YOA by the federal government in 1982.<sup>249</sup> Although the survey did not directly ask respondents to discuss their attitudes and beliefs about the nature and roots of both youth crime and youth criminality, it did nevertheless put forth a number

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<sup>249</sup> Sharon Moyer & Peter J. Carrington, *The attitudes of Canadian juvenile justice professionals towards the Young Offenders Act*. (Ottawa: Ministry of the Solicitor General of Canada, 1985).

of questions that were indirectly relevant to these attitudes and beliefs and therefore provided some insight about them. Two sets of questions were especially relevant to the issue of the nature and roots of youth crime.

First, the survey asked youth justice officials whether they disagreed with the YOA's uniform maximum age of eighteen or, in other words, whether they agreed that sixteen and seventeen year olds should fall under the jurisdiction of the youth courts instead of the adult courts where sentences are longer and where general deterrence constitutes a fundamental guiding principle of the sentencing process. Table 4.1 reveals that, with the exception of police officers, Quebec youth justice officials tended to strongly support the maximum age provisions of the YOA.<sup>250</sup>

Table 4.1 - The approximate percentage of Quebec and Ontario youth justice officials stating that they opposed the YOA's uniform maximum age of eighteen

Province	Judges	Crown Attorneys	Defence Attorneys	Probation Officers	Police Officers
Quebec	30	35	10	25	65
Ontario	55	75	45	65	85

Source: Sharon Moyer & Peter J. Carrington, *The attitudes of Canadian juvenile justice professionals towards the Young Offenders Act*, 29.

Second, the survey also asked youth justice officials whether they disagreed with the YOA's two year maximum sentence disposition for all offences except those for which an adult could receive life imprisonment or, in other words, whether they thought that the two year maximum

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<sup>250</sup> Police officers tended to favour a maximum age of seventeen. *Ibid.*, 30.

disposition was sufficient for dealing with all but the most violent forms of youth crime (for which the maximum disposition was three years). Whereas support for longer sentences is consistent with the principle of general deterrence, table 4.2 reveals that, with the exception of Crown attorneys, Quebec youth justice officials tended to support the existing sentencing provisions of the YOA. Though certainly not providing in-depth insight into the attitudes and beliefs of Quebec youth justice officials regarding the nature and origins of youth crime, these two sets of responses nevertheless suggest that these attitudes and beliefs were not generally oriented towards the principle of general deterrence and, by extension, to the notion that youth crime is intentional or deliberative by nature. They are suggestive, in other words, of the presence of a working criminology which conceptualizes youth crime as overwhelmingly non-deliberative in character and, in so doing, supports an approach to order maintenance that is highly tolerant of such conduct.

Table 4.2 - The approximate percentage of Quebec and Ontario youth justice officials stating that they disagreed with the YOA's two year maximum sentence disposition for all but the most violent offences

Province	Judges	Crown Attorneys	Defence Attorneys	Probation Officers	Police Officers
Quebec	25	55	35	35	50
Ontario	30	70	45	30	55

Source: Sharon Moyer & Peter J. Carrington, *The attitudes of Canadian juvenile justice professionals towards the Young Offenders Act*, 60.

Ontario youth justice officials tended to answer these two questions in a slightly different manner than their Quebec counterparts. Table 4.1 indicates that, with the exception of defence attorneys, most Ontario youth justice officials tended to oppose the maximum age provisions of the

YOA or, in other words, felt that sixteen and seventeen year olds should fall under the jurisdiction of the adult courts. Table 4.2 reveals that Ontario youth justice officials tended to mildly support, albeit on a more limited basis than in Quebec, the two year maximum sentence disposition for all offences except those for which an adult could receive life imprisonment. These two sets of responses suggest that the attitudes and beliefs of Ontario youth justice officials about the origins of youth crime were more strongly oriented towards - though by no means predominantly oriented towards - the principle of general deterrence and, by extension, the notion that youth crime is partially deliberative in character compared to their Quebec counterparts, especially where sixteen and seventeen year olds are concerned. They are suggestive, in other words, of the presence of a working criminology that supports an approach to order maintenance that is tolerant, even if not quite to the same degree as in Quebec, of troublesome conduct.

The survey also put forth at least one question that was indirectly revealing of the attitudes and beliefs of provincial youth justice officials regarding the nature and roots of youth criminality. This particular question asked respondents to indicate how strongly they agreed or disagreed with the statement that, "in their dealing with the juvenile justice system, young persons should have the right to the least possible interference with their freedom."<sup>251</sup> Table 4.3 indicates that Quebec youth justice personnel tended on balance to mildly agree with this statement. Insofar as non-criminalizing responses to troublesome events are consistent with the principle of minimal interference, then such a moderately favourable attitude towards this principle suggests that the working criminology of the Quebec youth justice system conceptualizes youth criminality as

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<sup>251</sup> Ibid., 16.

sufficiently transient in nature so as to support an approach to order maintenance that is moderately tolerant of troublesome youth.

Table 4.3 - The approximate average weight of the responses of Quebec and Ontario youth justice officials regarding their level of agreement or disagreement with the principle of minimal interference

Province	Judges	Crown Attorneys	Defence Attorneys	Probation Officers	Police Officers
Quebec	3.5*	4.0	3.0	2.6	3.7
Ontario	3.7	4.2	3.2	3.1	4.4

\*Averages are based on a six point scale whereby a weight of one was assigned to the response of 'strongly agree', a weight of two to the response 'agree', a weight of three to the response 'mildly agree', a weight of four to the response 'mildly disagree', a weight of five to the response 'disagree' and a weight of six to the response 'strongly disagree'.

Source: Sharon Moyer & Peter J. Carrington, *The attitudes of Canadian juvenile justice professionals towards the Young Offenders Act*, 16.

Table 4.3 also indicates that, unlike their Quebec counterparts, Ontario youth justice officials tended on balance to mildly disagree with this statement. Once again, insofar as non-criminalizing responses to troublesome events are consistent with the principle of minimal interference, then such a mildly unfavourable attitude towards this principle suggests that the working criminology of the Ontario youth justice system conceptualizes youth criminality less transient in nature than Quebec counterpart. Such a working criminology supports an approach to order maintenance that is moderately tolerant of troublesome youth, though marginally less so than in Quebec.

### **The Sentencing Practices of the Quebec & Ontario Youth Justice Systems**

How youth crime and youth criminality are conceptualized carries important implications

with regards to how these issues should be addressed. If youth crime is conceptualized as being overwhelmingly caused and therefore beyond the control of young people, then little emphasis should be placed on the principle of general deterrence: there is little need to deter the wider public from engaging in deviant conduct if its occurrence is not rooted in rational calculus. Since incarceration is the most severe sanction allowed under both the JDA and YOA, it therefore stands to reason that a provincial youth justice system that places heavy emphasis on the principle of general deterrence would also place heavy emphasis on the use of incarceration, and a provincial youth justice system that did not place heavy emphasis on the principle of general deterrence would place less emphasis on the use of incarceration. Similarly, if youth criminality is conceptualized as a temporary state of being that will dissipate on its own then there is little reason for the justice system to make use of intensive forms of intervention aimed at transforming deviant individuals into conforming citizens. Since incarceration constitutes the most intensive criminal justice disposition allowed under either the JDA or the YOA, it therefore stands to reason that a provincial youth justice system that places a heavy emphasis on the need to transform young offenders will make greater use of incarceration than a provincial youth justice system that places a lower emphasis on the need to transform young offenders.

Table 4.4 reveals that incarceration in the domain of youth justice is employed more frequently in Ontario than in Quebec: the percentage of young people sentenced to custody any given year is on average approximately nine percentage points higher in Ontario. This result therefore suggests that the Ontario youth justice system possesses a working criminology which frames youth crime and youth criminality as collectively more problematic than does the working criminology of

the Quebec youth justice system. Whereas this data provides little insight into whether and to what extent the Ontario youth justice system possesses a working criminology which represents youth crime as more purposeful compared to its Quebec counterpart, and into whether and to what extent the Ontario youth justice system possesses a working criminology which represents youth criminality as more persistent compared to its Quebec counterpart, it does nevertheless suggest that the working criminology of the Ontario system supports an approach to order maintenance that is on the whole less tolerant of troublesome events than does the working criminology of the Quebec system.

Table 4.4 - Percentage of young offenders found guilty of an offence who were sentenced to custody in Quebec and Ontario, 1991/92-2000/01

Year	% Secure Custody Quebec	% Open Custody Quebec	Total % Custody Quebec	% Secure Custody Ontario	% Open Custody Ontario	Total % Custody Ontario
2000/2001	14.1	10.6	<b>24.7</b>	15.8	18.0	<b>33.8</b>
1999/2000	13.8	10.4	<b>24.2</b>	16.1	18.3	<b>34.4</b>
1998/1999	14.0	12.2	<b>26.2</b>	17.0	19.3	<b>36.3</b>
1997/1998	13.3	12.3	<b>25.6</b>	17.7	20.2	<b>37.9</b>
1996/1997	13.6	10.5	<b>24.1</b>	16.3	20.3	<b>36.6</b>
1995/1996	12.1	11.5	<b>23.6</b>	16.9	21.4	<b>38.3</b>
1994/1995	15.4	12.8	<b>28.2</b>	16.6	20.1	<b>36.7</b>
1993/1994	15.5	11.8	<b>27.3</b>	15.4	19.8	<b>35.2</b>
1992/1993	15.5	12.0	<b>27.5</b>	12.8	18.0	<b>30.8</b>
1991/1992	17.3	11.5	<b>28.8</b>	12.5	17.7	<b>30.2</b>
<b>Mean</b>	14.5	11.6	<b>26.1</b>	15.7	19.3	<b>35.0</b>

Source: Data derived from tables of the Youth Court Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada.

Individually, the sample of the official language used to frame the issues of youth crime and youth criminality by both youth justice systems, the results of the survey of the attitudes and beliefs of youth justice officials from both provinces, and the statistics on the frequency of the use of incarceration by both systems provide little in the way of convincing insight into how the dominant working criminology of the Quebec and Ontario youth justice systems respectively conceptualize the roots of youth crime and youth criminality. When taken collectively, however, they provide substantial evidence that the dominant working criminology of the Quebec youth justice system frames youth crime as being overwhelmingly unintentional in character, and frames youth criminality as only being occasionally persistent in nature. Because all three indicators pointed in this direction, in other words, they provide strong evidence that the dominant working criminology of the Quebec youth justice system supported an approach to order maintenance that was highly tolerant of troublesome conduct and moderately tolerant of troublesome youth. Moreover, when these indicators are taken collectively they also provide compelling evidence that the dominant working criminology of the Ontario youth justice system frames youth crime as only possessing a minor deliberative component, and frames youth criminality as only being occasionally persistent in nature. Because all three indicators pointed in this direction, in other words, they provide strong evidence that the dominant working criminology of the Ontario youth justice system supported an approach to order maintenance that was generally tolerant, though certainly less so than its Quebec counterpart, of troublesome conduct, and that was moderately tolerant, though marginally less so than its Quebec counterpart, of troublesome youth.

That the working criminology of the Quebec youth justice system appears to support an

approach to order maintenance that is more tolerant of youth crime than the working criminology of the Ontario youth justice system is consistent with the manner in which both provincial welfare states have tended to incorporate or otherwise collectivize the interests of young people in the process of defining the substantive content of the identity of citizen. Chapter two argued that, the greater the extent to which welfare states collectivize the well-being of some group, the stronger the ideological barriers they create against criminal justice systems developing approaches to order maintenance which assume that criminalization is important to limiting the spread of crime within that group. Chapter three argued that, although both welfare states took important steps towards collectivizing the well-being of young people, the Quebec welfare state went further in this regard insofar as it subsidized education to a greater degree than did the Ontario system where young people paid higher college and University tuition fees. The Quebec welfare state, in other words, was found to be more generous towards young people, especially older youth, than the Ontario welfare state. The Quebec youth justice system being more tolerant of youth crime than the Ontario youth justice system is therefore consistent with the idea that, in defining the identity of citizen in a manner that more fully integrates the interests of young people, the Quebec welfare state fostered an ideological climate that was more supportive of or otherwise open to conceptualizations of youth crime as non-deliberative - and thus relatively non-threatening to the stability of the rule of law - in nature than the Ontario welfare state.

That the working criminology of the Quebec youth justice system appears to support an approach to order maintenance that is marginally more tolerant of youth criminality than the working criminology of the Ontario youth justice system is consistent with the quality of the light in which

young people have been cast in the process of defining the substantive content of the identity of citizen. Chapter two argued that, the greater the extent to which welfare states characterize a group as possessing positive attributes and of not possessing any negative attributes, the stronger the ideological barriers they create against criminal justice systems developing approaches to order maintenance that assume criminalization to be important to limiting recidivism by the members of this group. Chapter three argued that, whereas neither welfare state characterizes young people as possessing inherently negative attributes, and although both welfare states frame young people as inherently deserving by virtue of their status as rights bearing individuals, the Quebec welfare state frames them marginally more positively by suggesting that they possess a greater secondary layer of deservedness arising from their status as future citizens. The Quebec youth justice system being marginally more tolerant of youth criminality than the Ontario youth justice system is therefore consistent with the idea that, in defining the identity of citizen in a manner which characterizes young people as inherently deserving for a slightly wider range of reasons, the Quebec welfare state fostered an ideological climate that was somewhat more supportive of or otherwise open to conceptualizations of youth criminality as non-persistent or transient - and thus only moderately threatening to the stability of the rule of law - in character than the Ontario welfare state.

- Chapter Five -

**Official Statistics on Youth Crime in Quebec & Ontario**

The purpose of this chapter is to examine and compare the officially recorded patterns of youth crime in Quebec and Ontario throughout the 1980s and 1990s, and to relate these patterns to the results of the two previous chapters. Chapter three argued that, since the mid-1960s, the Quebec welfare state has defined both the identity and role of citizen more inclusively than has the Ontario welfare state. Chapter four argued that these differences in welfare state inclusiveness were reflected in the size of the jurisdiction and approach to order maintenance of the Quebec and Ontario youth justice systems. The narrower jurisdiction of the Quebec youth justice system was argued to reflect the tendency of the Quebec welfare state to foster an ideological climate that was more supportive of or otherwise open to expressiveness resulting from its greater provision of assistance for citizen social and political activism. The greater tendency of the Quebec youth justice system to rely on non-criminalizing responses to those troublesome events falling within its jurisdiction was argued to reflect the tendency of the Quebec welfare state to foster an ideological climate that was more supportive of the assumption that responsibility for the well-being of young people is largely a collective rather than individual matter resulting from its greater integration of their interests, and of the assumption that 'abnormalities' or pronounced deficiencies are relatively uncommon amongst young people resulting from its characterization of this group in an entirely positive fashion. The present chapter therefore attempts to determine whether major similarities and differences in the trajectory and especially in the scale of official patterns of youth crime in Quebec and Ontario can be attributed to, at least in part, major similarities and differences in the jurisdiction and approach of both provincial youth justice systems and ultimately to major similarities and differences in the

inclusiveness of both provincial welfare states.

This chapter is divided into two sections. The first section provides a detailed overview of the official patterns of youth crime in Quebec and Ontario from 1981 through 2000, identifying major points of similarity and difference across both aggregate offence categories and individual offence types. It indicates that rates of youth crime in both provinces generally followed a very similar downwards trajectory except for a seven year period immediately following the implementation of the YOA in 1984 when these rates increased rapidly in Ontario but largely continued to decline moderately in Quebec. It also indicates that, whereas rates of youth crime tended to be higher in Quebec from 1981 to 1983 when the JDA was still in effect, rates for most offence types immediately became higher in Ontario following the implementation of the YOA in 1984, and rates for all offence types had become higher in Ontario by 1991 and remained so through to 2000 by an average factor of approximately one-hundred percent. The second section examines to what extent these official patterns of youth crime appear to have been shaped by differences and similarities in when and how the Quebec and Ontario youth justice systems were deployed in response to troublesome events. Doing so requires examining how the trajectory and scale of these patterns evolved over time in relation to the youth justice systems and welfare states operating in both provinces. It indicates that welfare state inclusiveness appears to have played an important role in shaping the trajectory of rates of youth crime in both provinces over the period of interest, and appears to have been responsible for much of the discrepancy in the rates of youth crime between the two provinces.

### Official Youth Crime Statistics in Quebec and Ontario

Official statistics on youth crime in Canada, including at the provincial level, are compiled by the Canadian Centre for Justice Statistics, a division of Statistics Canada. The Centre collects data on youth crime through an ongoing survey of policing agencies from across the country. First established in 1962, the Uniform Crime Reporting (UCR) Survey requires all police officers to complete a report whenever they deem that a crime has occurred, and requires that the organizations which employ them collect and subsequently forward these reports to the centre on a regular basis. Since all police organizations in Canada are required to participate in the UCR Survey by law, the response rate tends to approach one-hundred percent.<sup>252</sup>

The survey does not attempt to measure the total number of legal infractions which come to the attention of the police, but gauges criminal activity on the basis of the most serious offence committed in any one incident or single chain of closely related events. In determining the most serious offence, violent offences always take priority over non-violent offences, with priority otherwise going to the offence which carries the longest maximum sentence. The UCR Survey also probes certain characteristics of persons charged with an offence, including whether they are adult or young offenders at the time of the incident. The rate of youth crime is therefore based on the number of young people charged with various offences on an annual basis. When youths are simultaneously charged with multiple offences, the survey only counts the most serious offence, even

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<sup>252</sup> Statistics Canada, *Uniform Crime Reporting Survey (UCR)*. </www.statcan.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=3302&lang=en&db=IMDB&dbg=f&adm=8&dis=2>.

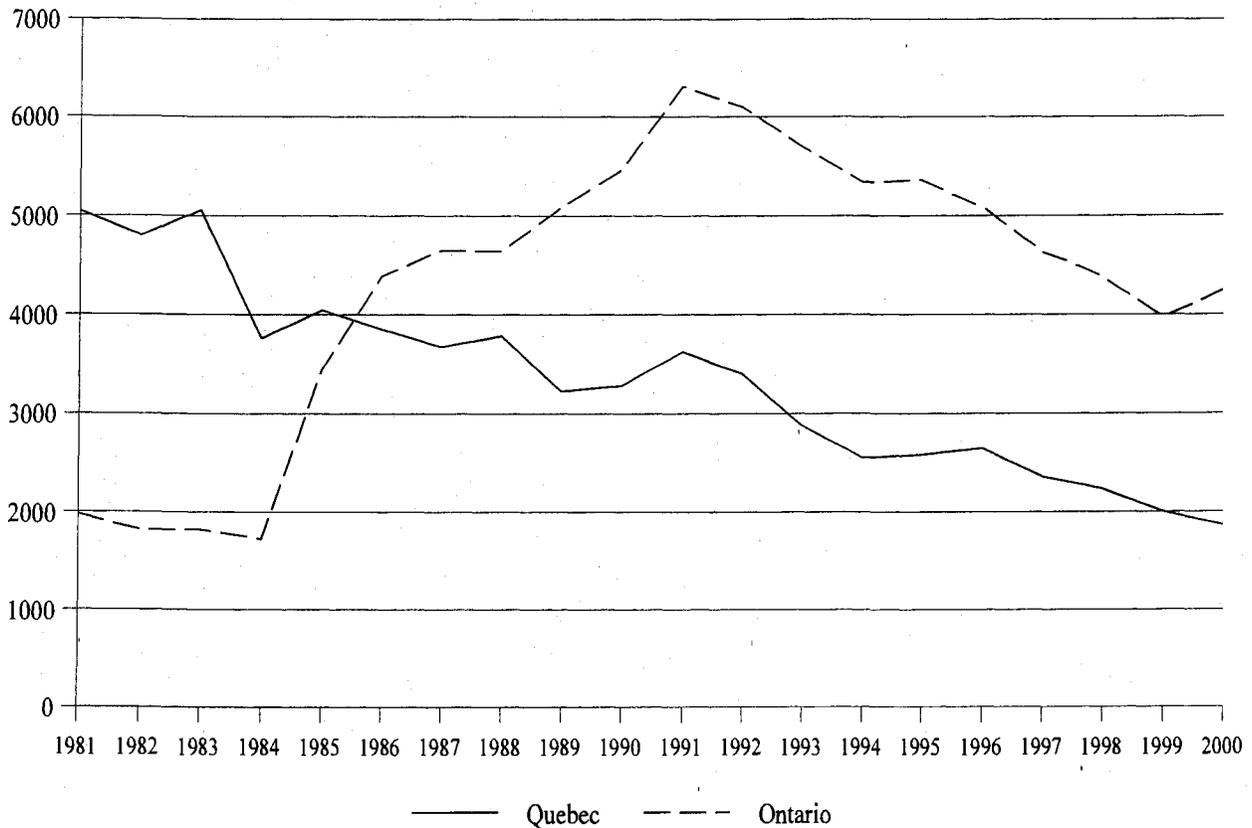
if the offences occurred in more than one incident - all that matters is when they were charged, not when the incidents occurred. For example, if a young person stole a number of items from a store including a firearm one day, stole a vehicle the following day, then used the firearm and vehicle the next day to perform a robbery at which time they were apprehended and charged with theft over, motor vehicle theft and robbery, only the robbery would be counted towards the official crime rate - for the purposes of the survey, only the robbery would have occurred. This necessarily tends to skew the youth crime statistics towards more serious offences and away from less serious offences. While only one offence may be counted in the Survey on any occasion when charges are laid against young people, youths may be counted in the survey more than once over the course of a given year, though each time only on the basis of the most serious charge they are facing.<sup>253</sup> Consequently, despite being highly constructed artifacts, official youth crime statistics tend to be constructed in a very consistent manner from province to province following the point of charges being laid against young people since justice officials in every jurisdiction are employing the same survey and since participation rates are virtually identical everywhere.

The overall rates of youth crime in Quebec and Ontario have varied considerably between 1981 and 2000, as illustrated in figure 5.1. Indeed, this variability is such that three distinct periods may be identified within this larger twenty year time span, each possessing a quite different pattern of overall youth crime in both provinces relative to the other two periods. During the first such period, whose duration extended from 1981 to 1984 when the JDA was still in effect, the overall rate of youth crime in Quebec was on average approximately 2.5 times higher than in Ontario, and was

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<sup>253</sup> Ibid.

Figure 5.1 - Rates of Total Youth Crime in Quebec &amp; Ontario

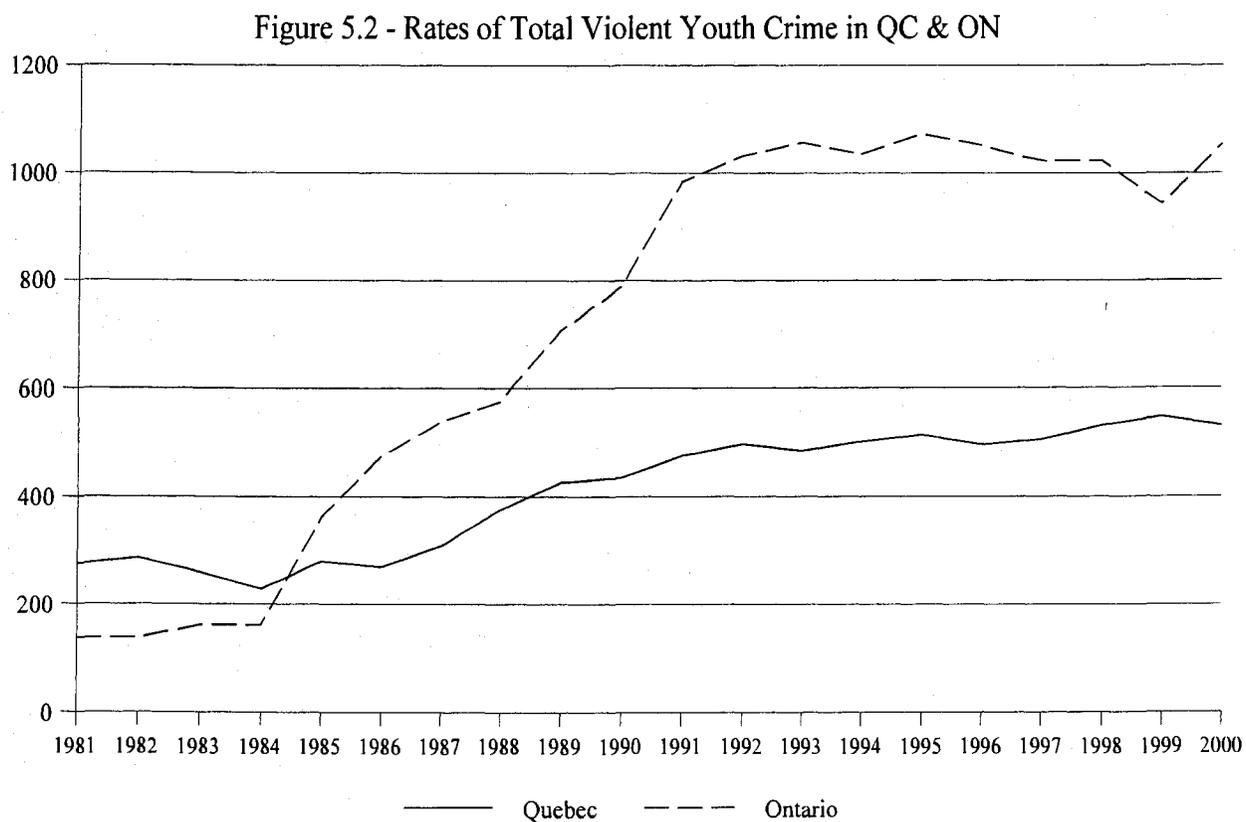


Source: Data derived from tables of the Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

declining in both provinces, though more sharply in Quebec where it dropped by approximately twenty-five percent compared to approximately thirteen percent in Ontario. During the second period, whose duration extended from 1984 to 1991, the overall patterns of youth crime in both provinces followed largely opposite paths, dropping by approximately eleven percent in Quebec and increasing by approximately eighty-three percent in Ontario such that, by 1991, the overall rate of youth crime in Ontario was about seventy-four percent higher than in Quebec. During the third period, whose duration extended from 1992 until 2000, the overall patterns of youth crime in both

provinces followed highly similar declining paths, dropping by about forty-five percent in Quebec and thirty percent in Ontario such that, in 2000, the overall rate of youth crime in Ontario was about 2.1 times higher than it had been in 1981 and about 2.3 times higher than in Quebec whose rate was now about 2.7 times lower than it had been in 1981.

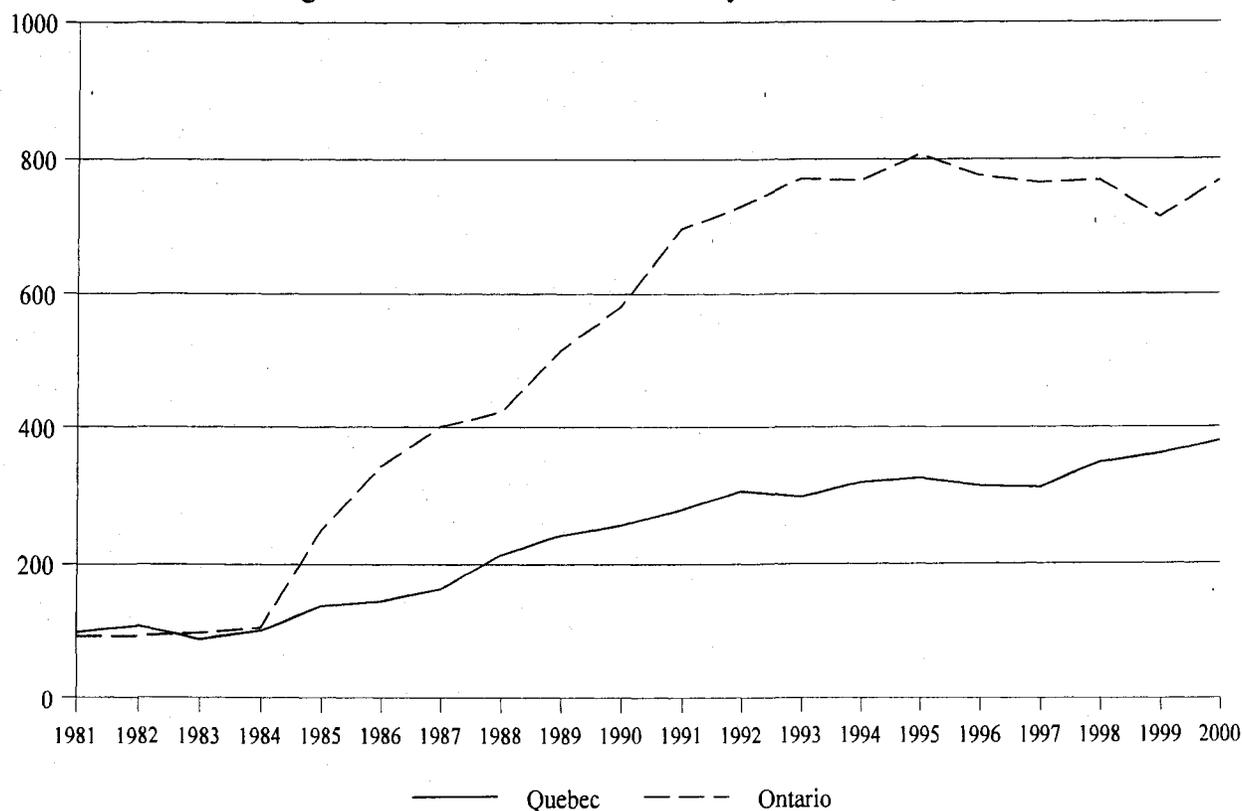
Crime rates are typically divided into three major offence categories in Canada: violent (e.g., murder, assault, sexual assault, robbery), property (e.g., break and enter, theft over, theft under) and



Source: Data derived from tables of the Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

'other' (e.g., disturbing the peace, public morals, solicitation, mischief). Figure 5.2 illustrates the official patterns of violent youth crime in both provinces over the twenty year period of interest. Three important points emerge from figure 5.2. First, the official pattern of violent youth crime in both provinces differs considerably from that of total youth crime. Rates of violent youth crime tended to rise in both provinces throughout most of the twenty year period of interest such that, by 2000, the rate of violent youth crime in Ontario was about 7.66 times higher than in 1981 and was about double its 1981 levels in Quebec. Despite this important divergence, however, the size of the

Figure 5.3 - Rates of Total Assaults by Youths in QC & ON



Source: Data derived from tables of Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistique Canada

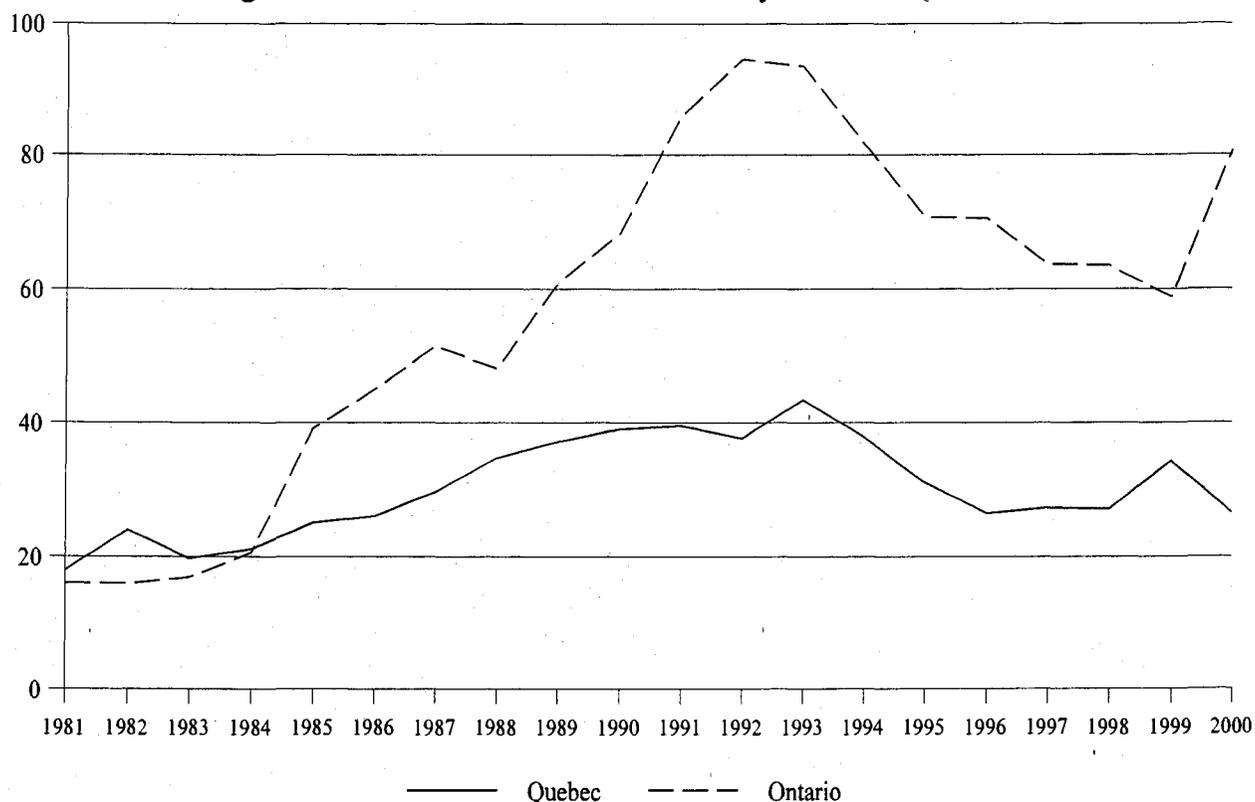
gap in the rates of violent youth crime between the two provinces was highly similar to that of total youth crime: the rate of violent youth crime was on average 1.7 times higher in Quebec than in Ontario in 1981 to 1983 when the JDA was in effect, was approximately 2.1 times higher in Ontario in 1991, and remained on average approximately 2.0 times higher in Ontario from 1992 through 2000. Second, in both provinces violent youth crime has become a larger percentage of the total youth crime rate over time: whereas in Ontario the ratio increased from about seven percent to twenty-five percent, in Quebec the ratio increased from about five percent to twenty-eight percent. Finally, the percentage of violent youth crime as a percentage of total youth crime has traditionally been very close in both provinces, the size of the gap between them never exceeding 3.7 percentage points and averaging a miniscule 1.3 percentage points.

Three individual offence categories collectively comprise, on average, over ninety percent of all violent youth crime in Quebec and Ontario: assault, sexual assault and robbery. Rates for these offence categories throughout the course of the 1980s and 1990s are presented in figures 5.3, 5.4 and 5.5 respectively. These three figures indicate that assaults are the most common form of violent youth crime in both provinces, on average accounting for over sixty percent of all violent offences in Quebec and approximately seventy percent of such offences in Ontario.<sup>254</sup> These figures also indicate that the offence category of assault is largely responsible for the steadily increasing trajectory of violent crime in both provinces over the twenty year period of interest since both youth

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<sup>254</sup> There are three forms of assault in Canada: level 1 or simple assault, level 2 or assault with a weapon and level 3 or aggravated assault, with level 1 accounting for approximately seventy percent of total assaults by youth in Ontario and Quebec on an average year, level 2 accounting for approximately twenty-five percent and level 3 accounting for approximately five percent.

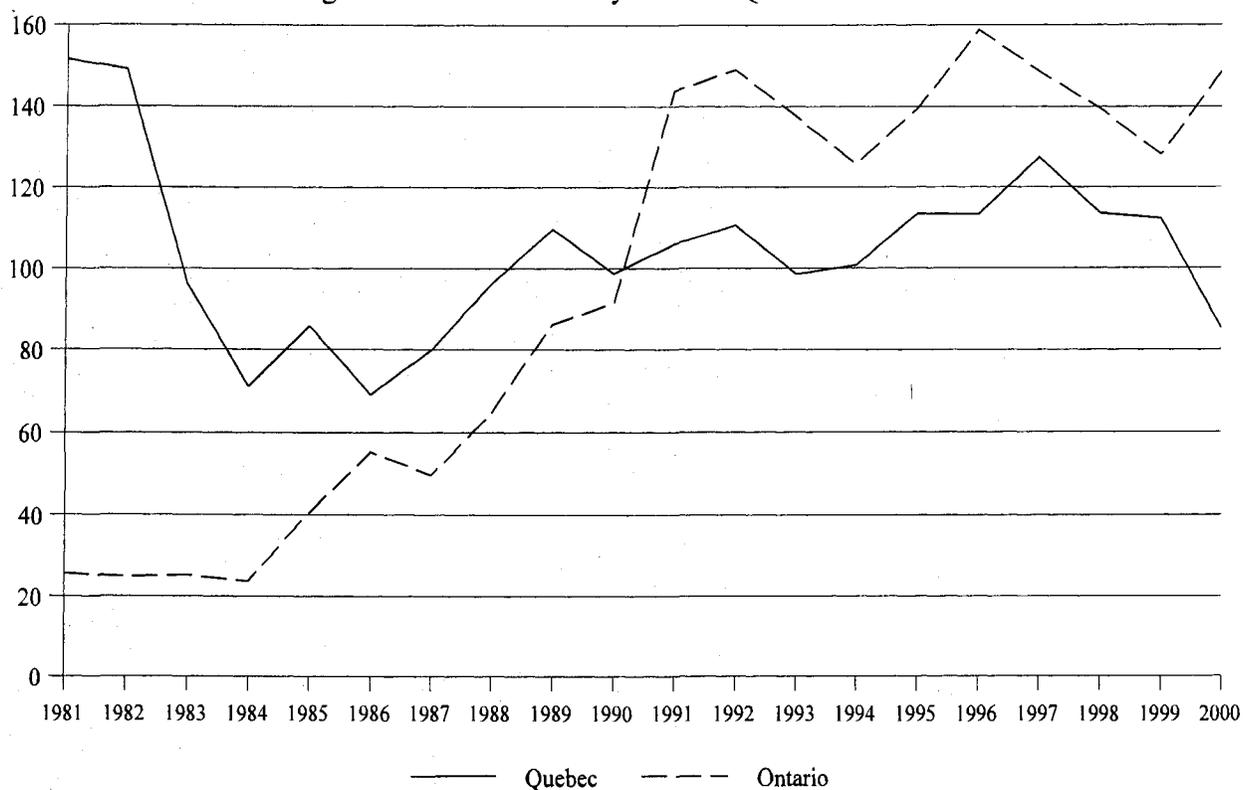
Figure 5.4 - Rates of Total Sexual Assaults by Youths in QC &amp; ON



Source: Data derived from tables of Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

robbery rates and especially youth sexual assault rates tended not to follow a straightforward upwards trajectory: youth robbery rates tended to be relatively stable in both provinces during the 1990s and youth sexual assault rates tended to follow a relatively similar trajectory to rates of total youth crime in both provinces. Finally, these figures also indicate that, even though the size of the gap varied somewhat across offence categories, the overall pattern of variability in the crime rates of the two provinces was largely the same for these three offence categories as it was for total youth crime: rates for all three offence categories tended to be higher in Quebec during the early 1980s

Figure 5.5 - Youth Robbery Rates in Quebec &amp; Ontario



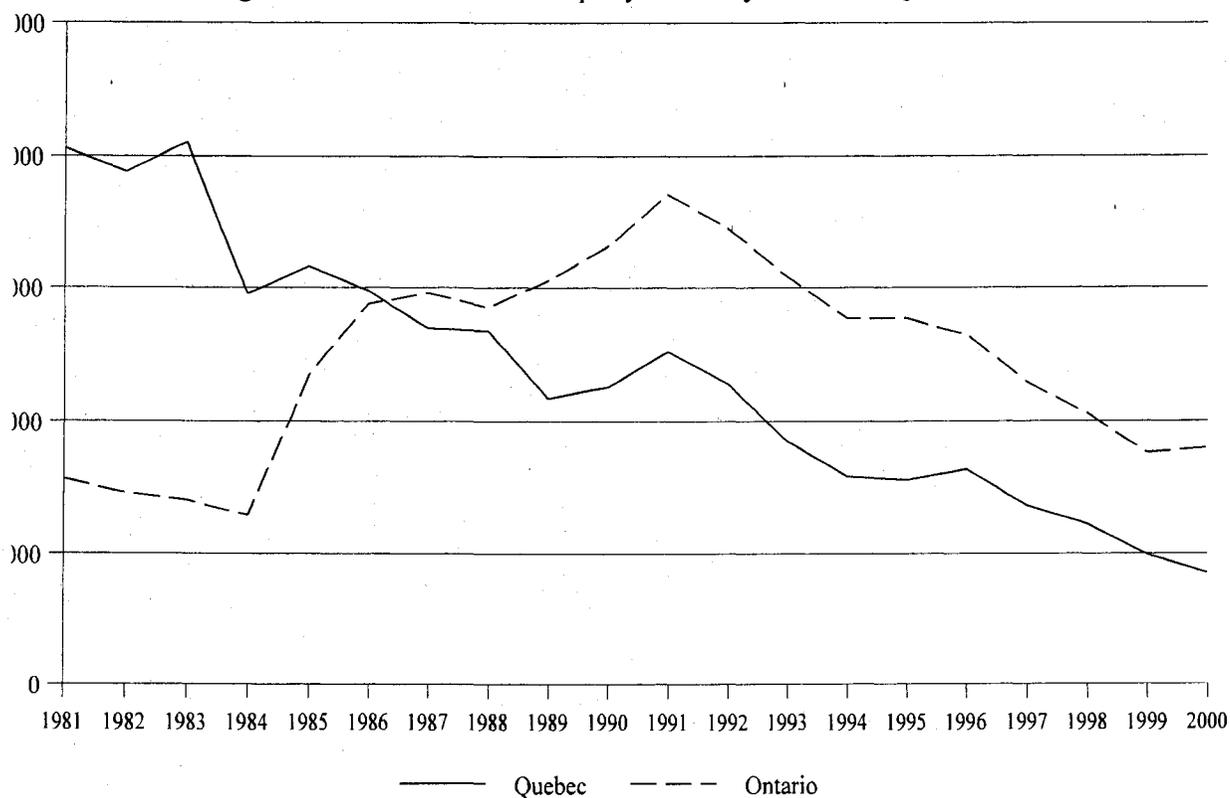
Source: Data derived from tables of Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

when the JDA was still in effect and tended to be much higher in Ontario during the 1990s. Only youth robbery rates diverged slightly from the general pattern of variability between the two provinces in that, whereas rates for total youth crime immediately switched from being higher in Quebec to being higher in Ontario following the implementation of the YOA in 1984, in the case of youth robbery this switch did not occur until the early-1990s.

Official rates of youth property crime in Quebec and Ontario over the period of interest are

illustrated in figure 5.6. Three important points emerge from this figure. First, official patterns of youth property crime in both provinces closely resembled official patterns of total youth crime. This was true both with regards to the trajectory of these rates over time, and in terms of the degree of variability in these rates between the two provinces over time: rates of youth property crime were on average 2.6 times higher in Quebec than in Ontario from 1981 to 1983, were forty-eight percent higher in Ontario than in Quebec in 1991, and were one-hundred-ten percent higher in Ontario than in Quebec in 2000. Second, throughout the twenty year period of study, youth property crime

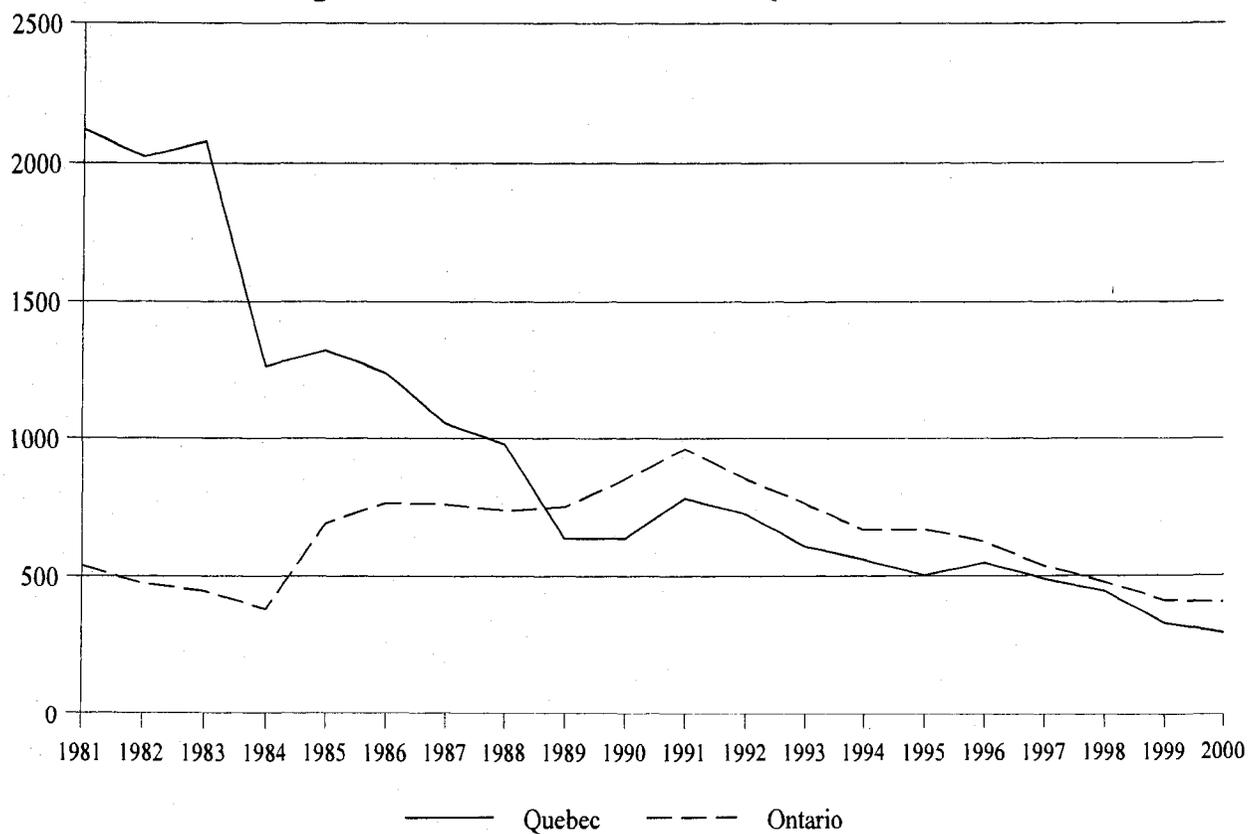
Figure 5.6 - Rates of Total Property Crime by Youths in QC & ON



Source: Data derived from tables of the Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

constituted the largest single offence category in both provinces, averaging approximately two-thirds of all youth crime in Quebec and approximately sixty percent of all youth crime in Ontario. Finally, even if it remained the single largest offence category in both provinces, the relative importance of youth property crime to total youth crime decreased considerably in both jurisdictions during the 1980s and 1990s, declining from about eighty to forty-six percent of total youth crime in Quebec and from about seventy-nine to forty-two percent of total youth crime in Ontario.

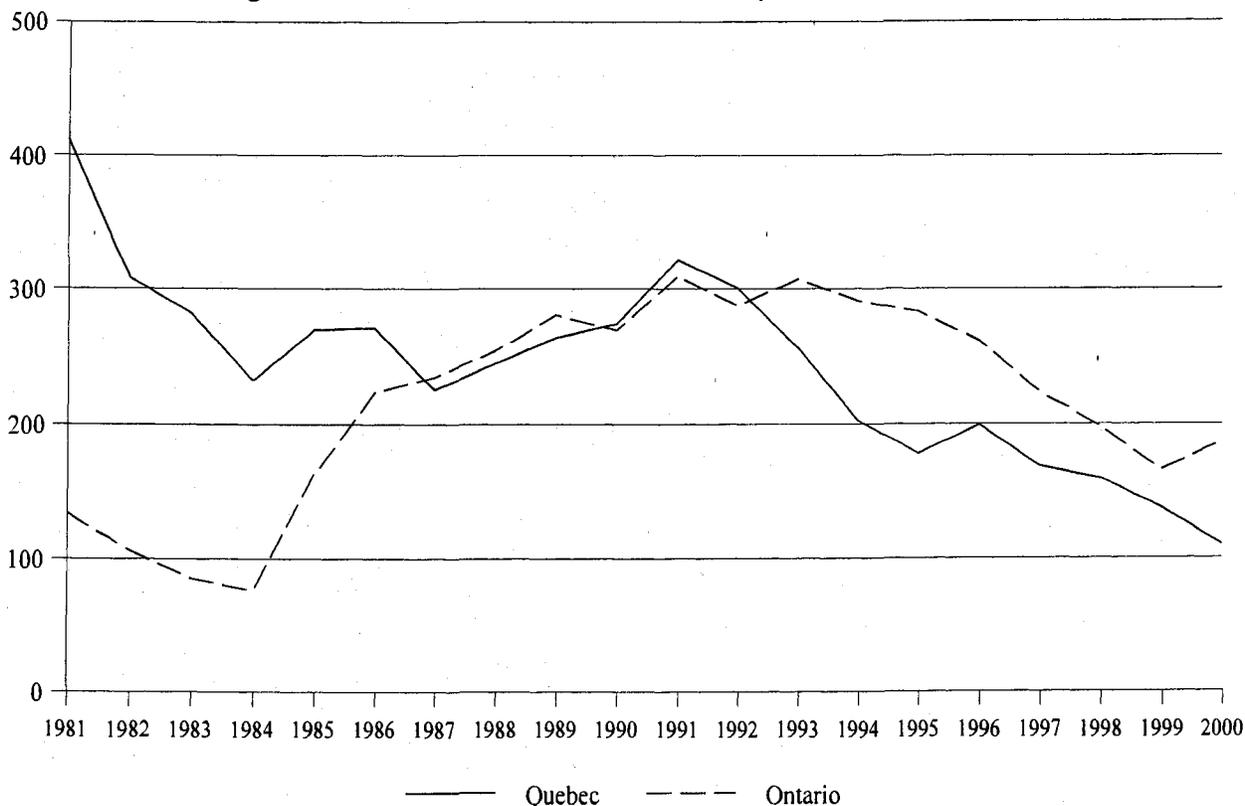
Figure 5.7 - Rates of Youth B & E in Quebec & Ontario



Source: Data derived from tables of Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

Three individual offence categories collectively comprise, on average, about ninety-three percent of total youth property crime in Quebec and over eighty-three percent in Ontario: break and enter, motor vehicle theft and theft over and under.<sup>255</sup> Rates for these offence categories throughout the period of interest are presented in figures 5.7, 5.8 and 5.9 respectively. These figures indicate that theft over and under are collectively the most common form of youth property crime in both

Figure 5.8 - Rates of Motor Vehicle Theft by Youths in QC & ON

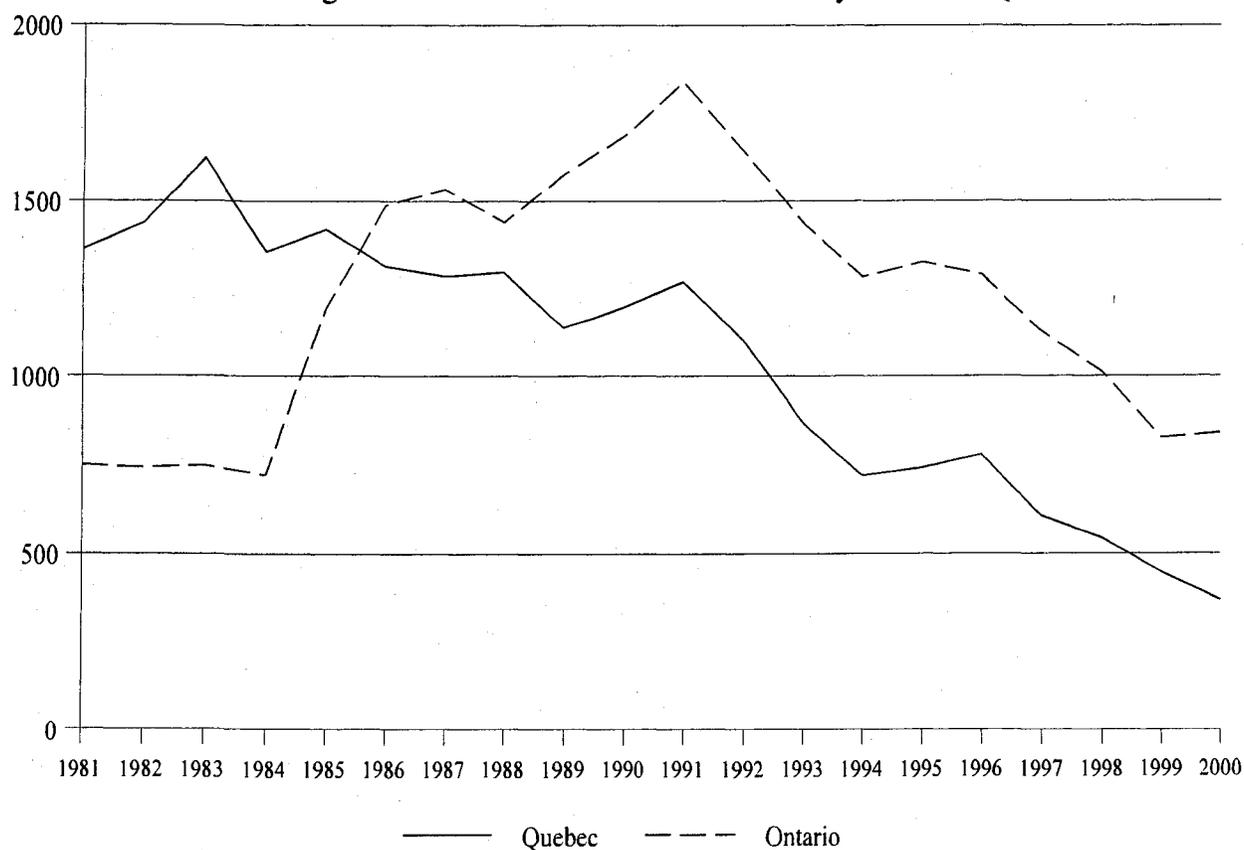


Source: Data derived from tables of Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statiscs Canada

<sup>255</sup> The 'under' and 'over' in theft under and theft over refers to the monetary value of the stolen property. Throughout much of the 1980s and 1990s, for a young person to be charged with theft under the valued of the property could not exceed \$1,000.00.

provinces, on average accounting for approximately fifty percent of total property offences in each jurisdiction. These figures also indicate that, even though the size of the gap varied across offence categories, the overall pattern of variability in the youth crime rates of the two provinces was largely the same for these three individual offence categories as is was for total youth crime: rates for all three offence categories tended to be higher in Quebec during the early-1980s and tended to be higher in Ontario during the 1990s. Rates of breaking and entering and of motor vehicle theft did diverge slightly from the general pattern of crime rate variability between the two provinces in that

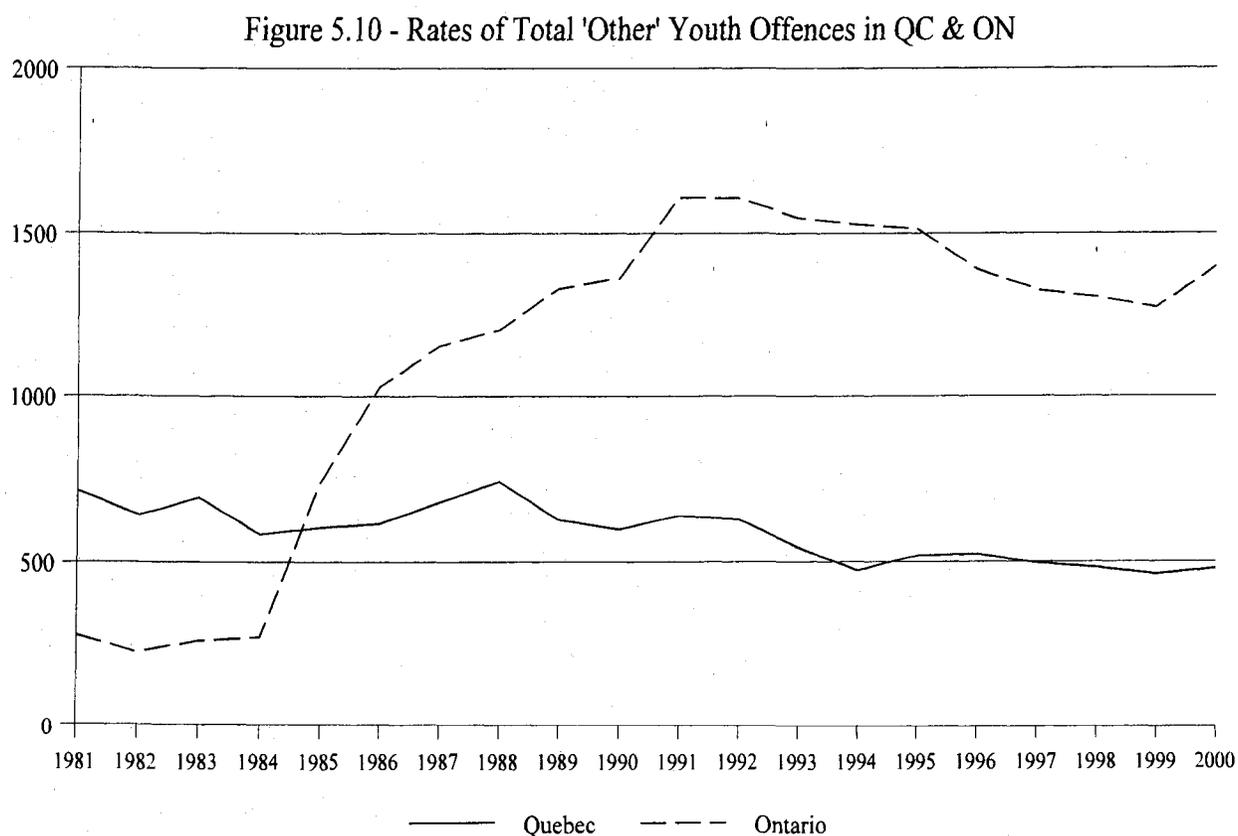
Figure 5.9 - Rates of Theft Over & Under by Youths in QC & ON



Source: Data derived from tables of Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

rates for both offence types in Ontario did not immediately surpass those of Quebec following the implementation of the YOA in 1984, but only did so in the early-1990s.

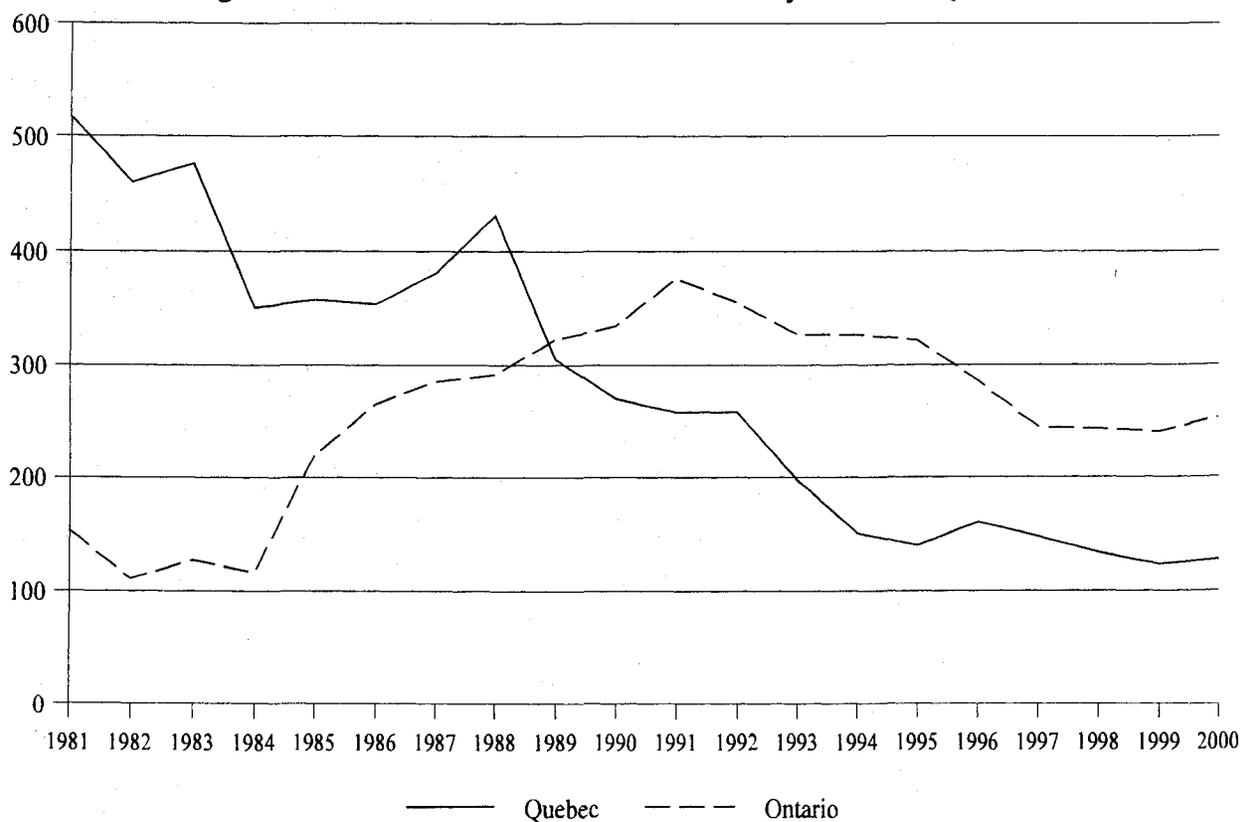
Official patterns of 'other' youth crime in Quebec and Ontario over the period of interest are illustrated in figure 5.10. Three important points emerge from this figure. First, official patterns of 'other' youth crime in both provinces are neither very different from nor highly similar to official patterns of total youth crime. Their degree of similarity to the latter lies somewhere between patterns



Source: Data derived from tables of the Uniform Crime Reporting Survey Provided by the Canadian Centre for Justice Statistics, Statistics Canada

of youth property crime and patterns of violent youth crime. This was true both with regards to the trajectory of these rates over time, and in terms of the degree of variability in these rates between the two provinces over time: rates of 'other' youth crime were on average 2.5 times higher in Quebec during the early-1980s, were 2.5 times higher in Ontario in 1991, and were 2.9 times higher in Ontario in 2000. Second, the category of 'other' youth crime became more important as a percentage of the overall youth crime rate in both provinces over time: whereas in Quebec the ratio increased from about fourteen to twenty-six percent, in Ontario the ratio increased from about fourteen to

Figure 5.11 - Rates of Mischief Over & Under by Youths in QC & ON

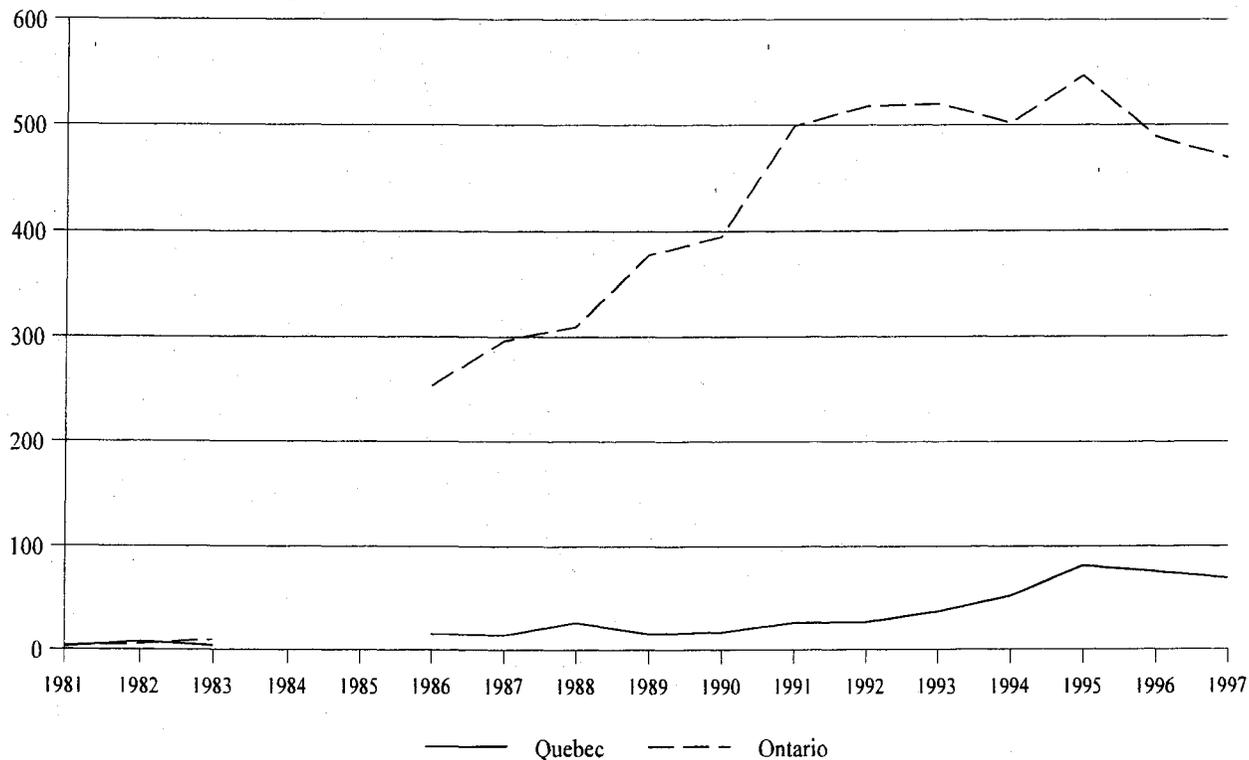


Source: Data derived from tables of the Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

thirty-three percent. Finally, the relative importance of 'other' youth crime as a percentage of total youth crime in both provinces was quite close during the JDA years, averaging less than one percentage point difference, but gradually increased over time such that, during the final three years of the period of interest, this percentage averaged about eight points higher in Ontario.

Four individual offences collectively make up the bulk of the 'other' youth crime category in Quebec and Ontario: mischief over and under, bail violations, escape from custody and offensive

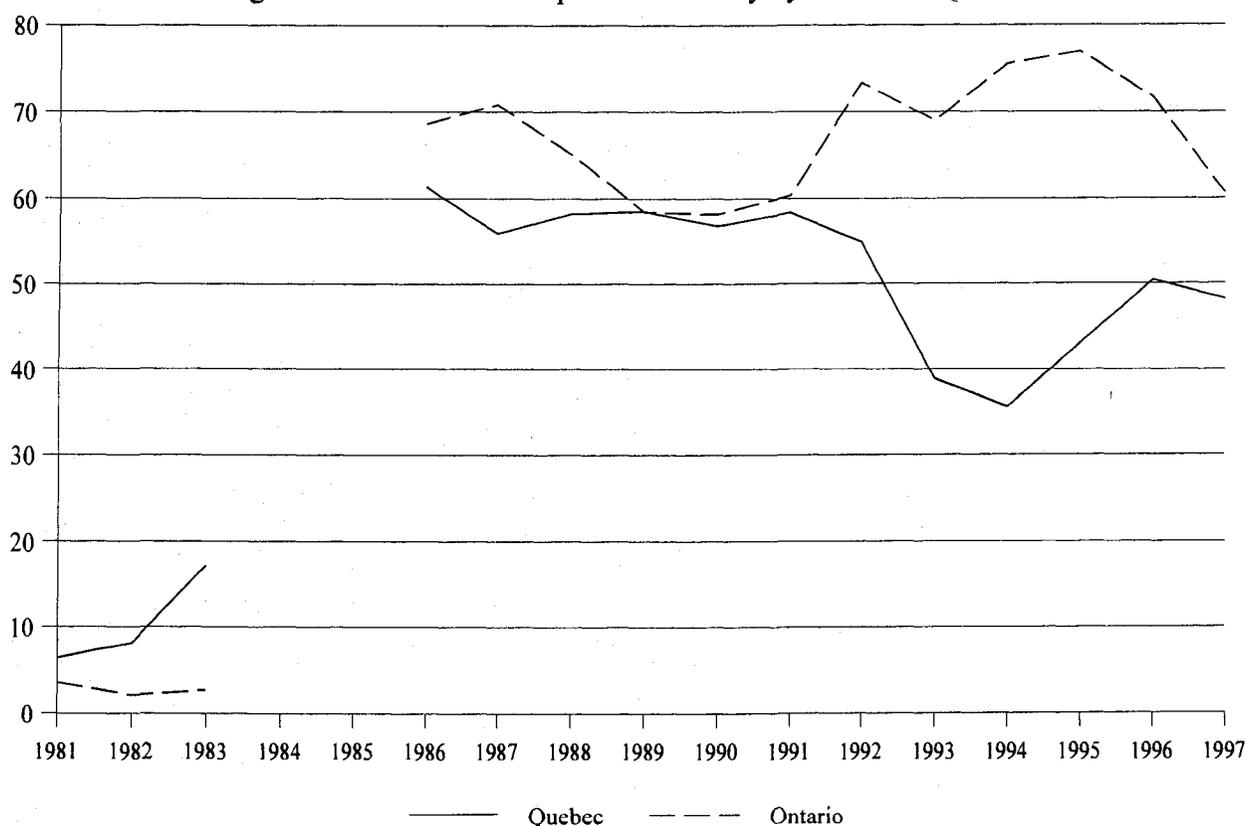
Figure 5.12 - Rates of Bail Violation by Youths in Quebec & Ontario



Source: Data derived from tables of Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statiscs Canada

weapons.<sup>256</sup> Rates for these offence categories during the period of interest are presented in figures 5.11, 5.12, 5.13 and 5.14 respectively. These figures indicate that mischief over and under are collectively the most common form of 'other' youth crime in both provinces, though they account on average for less than fifty percent of 'other' youth crime in each jurisdiction over the entire period of interest, and on average less than one-third of 'other' youth crime in each province during the 1990s. This stands in marked contrast to both total violent and total youth property crime whose

Figure 5.13 - Rates of Escape from Custody by Youths in QC & ON

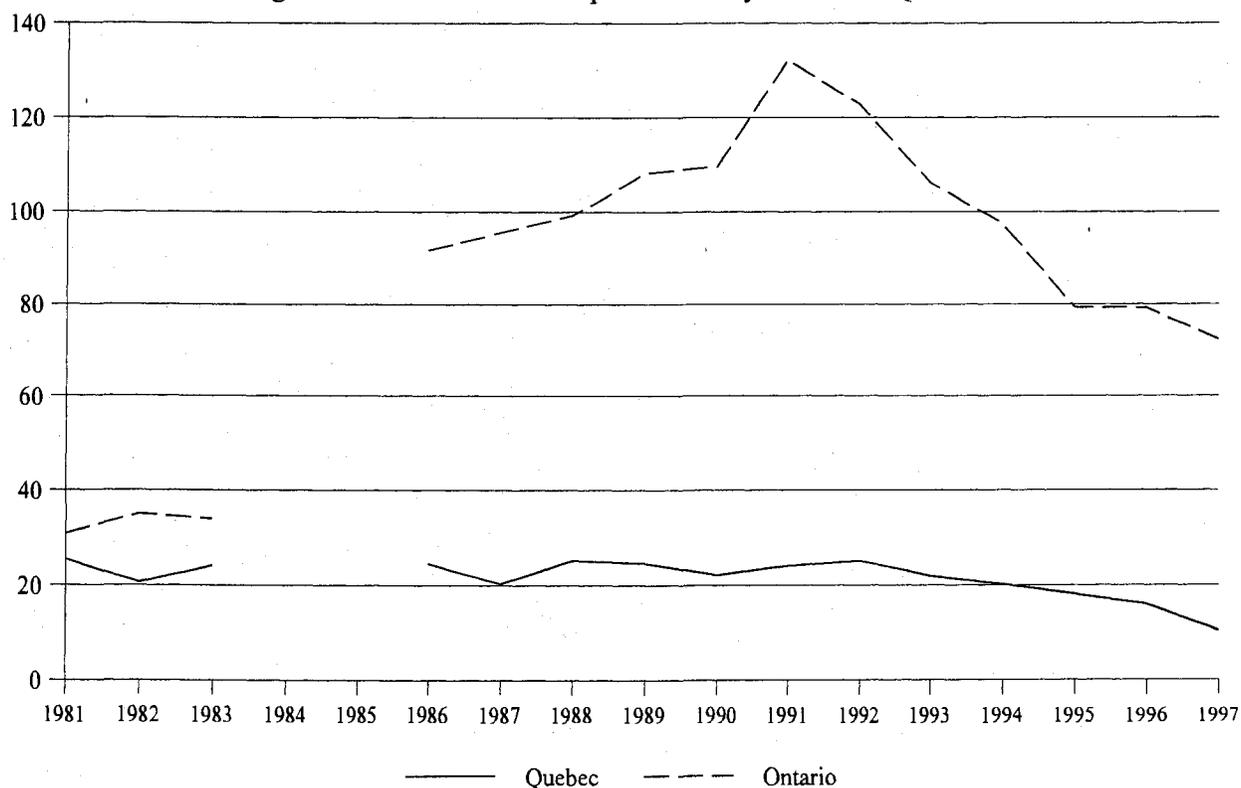


Source: Data derived from tables of the Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

<sup>256</sup> Data for the last three types of offences, that is for bail violations, escape from custody and offensive weapons, was not provided for the years 1984 and 1985, or for 1998, 1999 and 2000. Despite these lapses, trends and patterns can nevertheless be discerned.

compositions were overwhelmingly dominated by a single offence type in both instances. These figures also reveal that, with the exception of mischief over and under, in both provinces these individual offence types differ quite considerably in their historical trajectories from that of total youth crime and even from that of total 'other' youth crime. Lastly, these figures also indicate that, even though the size of the gap varied across offence categories, the overall pattern of variability in the youth crime rates of the two provinces was generally the same for these four individual offence categories as it was for total youth crime: with the exception of offensive weapons and bail

Figure 5.14 - Offensive Weapons Rates by Youths in QC & ON



Source: Data derived from tables of the Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

violations, rates for these offence types tended to be higher in Quebec from 1981 to 1984, and tended to be higher in Ontario throughout the course of the 1990s.

In light of the above, it may be concluded that patterns of youth crime in Quebec and Ontario throughout the 1980s and 1990s resembled each other in shape but not in magnitude: crime rates in both provinces tended to move upwards and downwards in unison except for a seven year period from 1985 to 1991 when they tended to follow diametrically opposing paths, and tended to be higher in Quebec when the JDA was in effect and much higher in Ontario when the YOA was in effect. This general pattern of being similar to each other in shape and different from each other in magnitude holds true across major offence categories, and even across most individual offence types. There were therefore both important points of similarity and of difference in their official patterns of youth crime over the two decades of interest.

### **The Importance of Youth Justice System Deployment Dynamics in Shaping Official Patterns of Youth Crime in Quebec & Ontario**

To what extent have the jurisdiction and approach of the Quebec and Ontario youth justice systems - and by extension the inclusiveness of the Quebec and Ontario welfare states - shaped the trajectories of and differences between the official rates of youth crime in both provinces? Addressing this question requires carefully examining the manner in which rates of youth crime in both provinces evolved in relation to youth justice system functioning and practice. Such an examination is necessary because if, for example, major changes in the trajectory of or degree of variability between the rates of youth crime in both provinces occurred prior to any significant

changes in the jurisdiction or approach of the two youth justice systems, then this variability cannot reasonably be attributed to the dynamics of youth justice system deployment and, by extension, to the dynamics of welfare state inclusiveness.

The general downwards trajectory of official rates of youth crime in Quebec during the 1980s and 1990s is broadly consistent with the types of changes that were occurring in when and how the Quebec youth justice system was being deployed in response to troublesome events throughout the course of this period. The tendency of these statistics to move downwards from 1981 to 1984 when the JDA was still in effect is consistent with the formal decriminalization of violations of provincial and municipal statutes as well as the introduction of a welfare-based system of pre-charge diversion resulting from the implementation of the *Youth Protection Act* in 1979. Both of these developments, though especially the latter, served to significantly reduce the size of the jurisdiction of the Quebec youth justice system and are thus likely to be responsible for precipitating much of this decline. Following the implementation of the YOA in mid-1984 through 1991, the general downwards trajectory of rates of youth crime in Quebec can be said to reflect, at least to an important degree, the continued growth or expansion of the system of pre-charge diversion. From 1992 to 2000 such a trajectory is consistent with what appears to have been an increasing tolerance of troublesome events by the Quebec youth justice system. That the Quebec youth justice system was moving towards an approach to order maintenance which increasingly favoured non-criminalizing responses to troublesome events can be seen in the fact that, although the rate of young people apprehended by

the police increased slightly over the course of the decade,<sup>257</sup> the percentage of apprehended young offenders against whom the police actually brought forth charges declined every single year, from a height of approximately seventy-five percent in 1992 to approximately forty-six percent in 2000.<sup>258</sup>

Whereas roughly the same number of troublesome events officially came to the attention of the police, in other words, the actual recommended charge rate declined by approximately thirty-nine percent over this eight year span. Since the overall rate of youth crime dropped by about forty five percent over this same period, it seems likely that much of this decline was due to this apparent shift towards an approach to order maintenance which favoured the response of criminalization in a narrower range of situations. Such a shift is consistent with the continued heavy emphasis placed by the Quebec welfare state on defining the identity of citizen as it applied to young people inclusively.

Whereas the general trajectory of rates of youth crime in Quebec was one of decline throughout most of the 1980s and 1990s, this pattern did not hold across all offence categories and types. The presence of such variability serves as a reminder that the size of the jurisdiction and criminalizing propensity of the approach to order maintenance of criminal justice systems are not the only factors influencing the social construction of crime rates. It also serves as a reminder that changes to the size of the jurisdiction and in the approach to order maintenance of criminal justice systems do not necessarily apply evenly across all offence categories: because crime is not a

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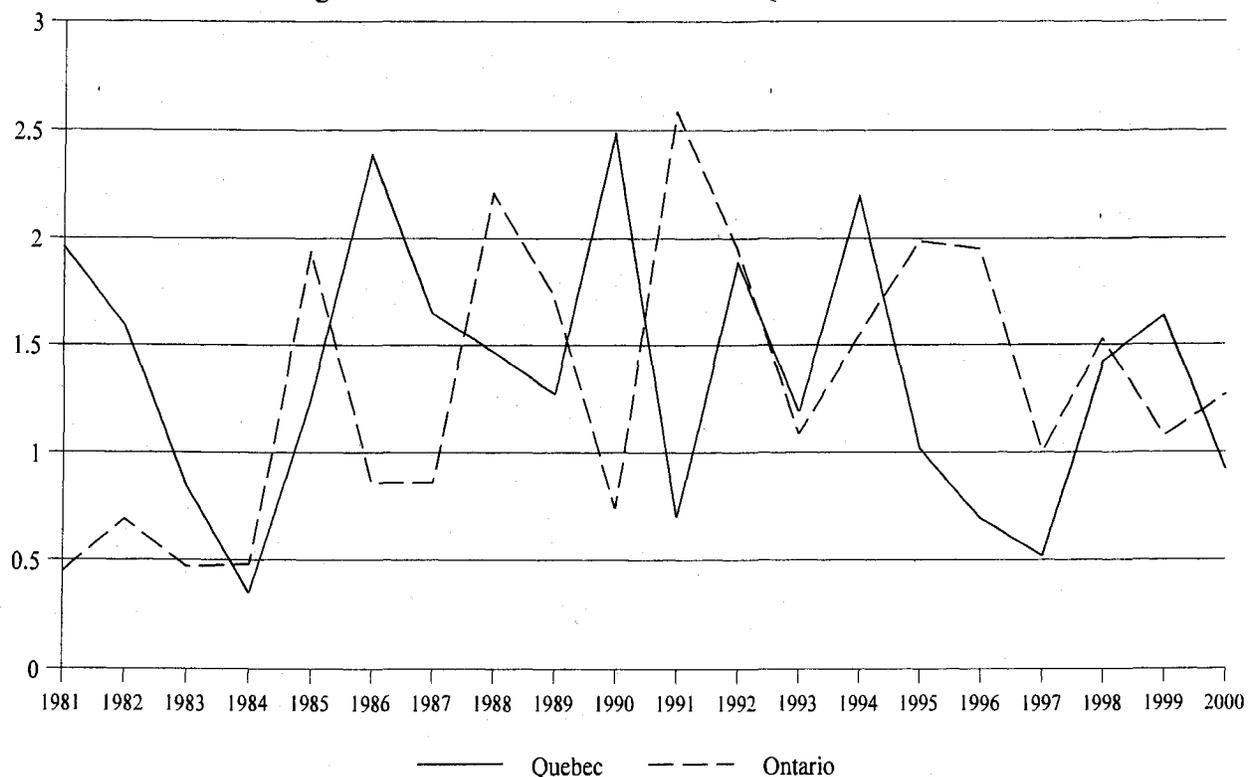
<sup>257</sup> See Peter J. Carrington, "Trends in youth crime in Canada, 1977-1996," *Canadian Journal of Criminology*. 41(January, 1999), 16.

<sup>258</sup> Peter J. Carrington & Jennifer L. Schulenberg, *Police discretion with young offenders*. (Ottawa, Report to the Department of Justice Canada, 2003), 16.

monolithic type of conduct but a label that applies to highly diverse forms of conduct, such changes may impact certain categories of crime more than others. Indeed, even if the overall jurisdiction and criminalizing propensity of criminal justice systems are declining, one or both of these factors may be expanding *vis-à-vis* certain individual offences, and *vice versa*. General tendencies, in other words, do not preclude important exceptions.

The steady increase in the rates of violent youth crime in Quebec from the mid-1980s to 2000

Figure 5.15 - Youth Homicide Rates in Quebec & Ontario



Source: Data derived from tables of Uniform Crime Reporting Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada

speaks directly to this importance of other factors as well as to the unevenness of when and how criminal justice systems respond to different kinds of troublesome events in shaping the social construction of crime statistics. The upwards trajectory of rates of violent youth crime, as noted in the previous section, was primarily due to rapidly rising youth assault rates over the course of this entire period. It seems likely that two factors were responsible for this phenomenon: declining public and criminal justice system tolerance of assaulting behaviour. What was once perceived to be 'normal youthful roughhousing' or 'boys just being boys' by both the general public and criminal justice officials, in other words, was increasingly being perceived by both groups as illegitimate. Two factors support such an interpretation. The first is the pattern of youth homicide rates in Quebec throughout the 1980s and 1990s. Homicide statistics provide a window - albeit a narrow window - into actual behaviour patterns: they are widely acknowledged as corresponding more closely to actual behaviour patterns than any other single offence type. There is, quite simply, far less room - though by no means altogether no room - for subjective factors to influence the social construction of homicide statistics. Figure 5.15 reveals that, from 1981 through 2000, homicide rates in Quebec were relatively stable or, in the very least, were not characterized by any kind of steady upwards trajectory. This suggests that changing behaviour patterns likely were not responsible for rising rates of youth violence and, by implication, that increasing public and criminal justice sensitivity to such conduct was likely responsible. Second, as noted in the previous chapter, throughout the 1980s and 1990s there were numerous initiatives by the federal government to extend the length of the maximum sentences for violent offences. These initiatives appear to have received considerable

support from both the general public and from youth justice administrators in Quebec.<sup>259</sup>

To suggest that the role of the youth justice system in responding to assaulting behaviour was rising and that its tolerance of such conduct was declining throughout the 1980s and 1990s is not altogether inconsistent with the general direction of welfare state development in Quebec since the early-1960s. Following the onset of the Quiet Revolution, the identity and role of citizen in Quebec, especially as they have applied to young people, have generally been defined ever more inclusively. The implication of placing heavy emphasis on incorporating the interests of young people and of representing them positively while also strongly supporting their capacity for self-expression is that they inherently possess much dignity and worth as autonomous beings. Violence, by its very nature, poses an existential threat to this dignity, worth and autonomy: it harms the very integrity of the individual.<sup>260</sup> Declining youth justice system tolerance of violence therefore constitutes an extension or expression of an ideological climate which places paramount value on the dignity, worth and autonomy of the individual.

The general trajectory of rates of youth crime in Ontario throughout the 1980s and 1990s is also broadly consistent with the types of changes that were occurring in when and how the Ontario

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<sup>259</sup> See Jean Trépanier, "What did Quebec not want? Opposition to the adoption of the Youth Criminal Justice Act in Quebec," *Canadian Journal of Criminology*, 46(April, 2004), 291. Indeed, the 1982 survey of provincial youth justice personnel revealed that approximately seventy-five percent of judges, eighty percent of Crown attorneys, sixty percent of defence attorneys, fifty-five percent of probation officers and eighty percent of probation officers in Quebec believed that the three year maximum sentence for offences for which adults could receive life imprisonment - namely violent offences - was insufficient. Sharon Moyer & Peter J. Carrington, *The attitudes of Canadian juvenile justice professionals towards the Young Offenders Act*, 56.

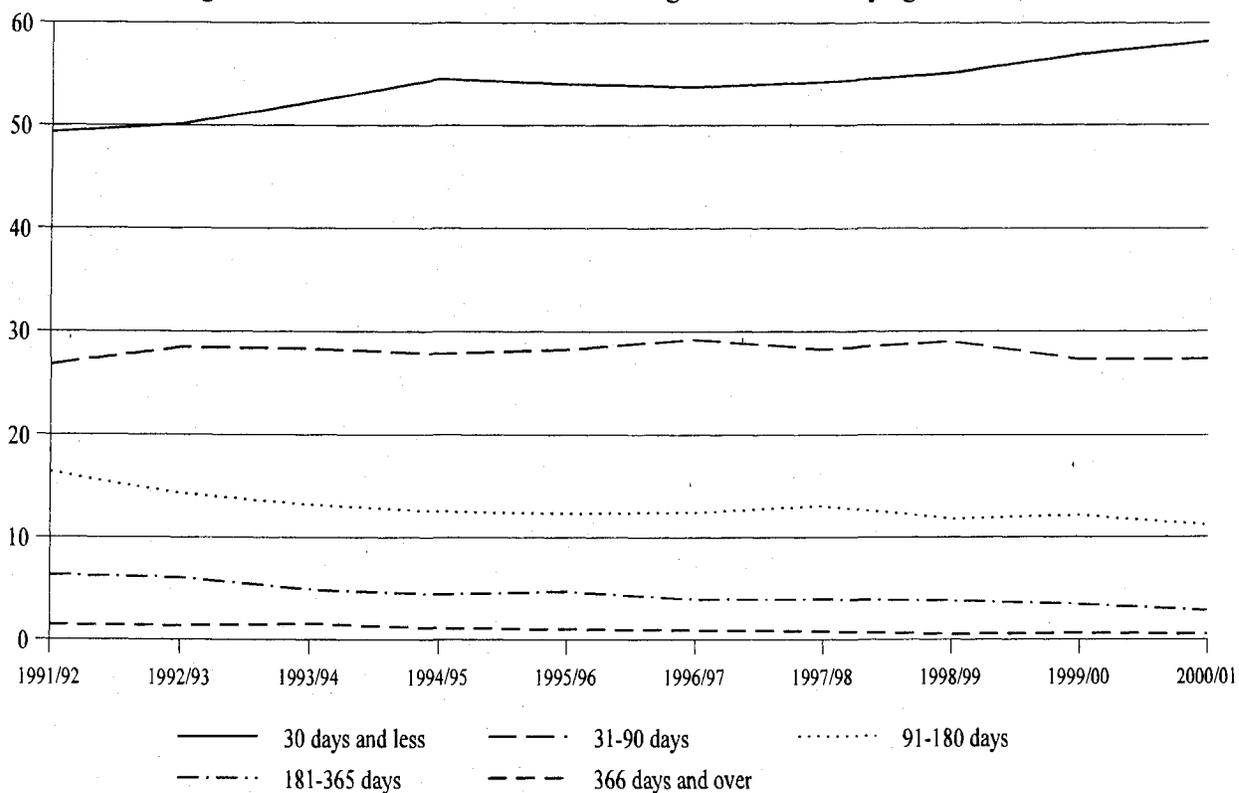
<sup>260</sup> By contrast, acts which cause harm to property or which violate public decorum generally do not pose an existential threat to human dignity, worth and autonomy.

youth justice system was being deployed in response to troublesome events over the course of these two decades. The tendency of these statistics to move downwards from 1981 to 1984 is consistent with the trend of placing ever more limitations on judicial action that began in the 1970s, most significantly by informally decriminalizing the troublesome behaviour of children aged seven through eleven and, to a lesser degree, by informally decriminalizing provincial and municipal statute violations. Both of these developments, though especially the former, indicate that the approach to order maintenance of the Ontario youth justice system was increasingly favouring non-criminalizing responses to a wider range of troublesome events and are thus likely to be largely responsible for this decline.

The rapid increase in rates of youth crime in Ontario from 1985 to 1991 can be said to reflect, at least to a significant degree, the large expansion of the jurisdiction of the youth justice system resulting from, most significantly, the raising of the maximum qualifying age of young offending from fifteen to seventeen brought about by the implementation of the YOA and, to a much lesser extent, from the abolition of all diversion programs across the province in 1984. Shifting authority over the administration of sixteen and seventeen year old offenders from the adult to the youth justice system was particularly important in terms of increasing the jurisdiction of the latter. The general downwards trajectory of rates of youth crime from 1992 to 2000 is consistent with the efforts of criminal justice administrators in Ontario to reduce the 'intake' of the system and thereby reduce the pressure on the courts in order to comply with the 1990 ruling of the Supreme Court which found that the long delays which consistently plagued the provincial court system to be in violation of the *Charter of Rights and Freedoms*. The ruling, whose underlying logic represents an extension of the

welfare state notion of young people as possessing certain inalienable rights, effectively encouraged Ontario criminal justice personnel to begin 'defining deviance down' in terms of becoming more tolerant of a wider range of troublesome people and conduct as one means of addressing the problem

Figure 5.16 - % of Incarcerated Youth Serving Sentences of Varying Duration, ON



Source: Data derived from tables of the Youth Court Survey Provided by the Canadian Centre for Justice Statistics, Statistics Canada

of overcrowding in the courts. Indeed, the tendency of the Ontario youth justice system to make moderately greater use of shorter periods of custody and moderately lesser use of longer periods of custody as illustrated in figure 5.16 supports the notion of a shift towards greater tolerance. This

figure also suggests however that any such shift was likely rather small.<sup>261</sup> Consequently, though undoubtedly contributing to the thirty percent decline in rates of youth crime over this period, it seems unlikely that this apparent shift in the orientation of the approach of the Ontario youth justice system was solely or even largely responsible for this decline. Other factors also likely played an important role in fostering this drop in official youth crime statistics.

Whereas the general trajectory of rates of youth crime in Ontario was one of decline in the early-1980s, sharp incline from the mid-1980s to the early-1990s, and steady decline from the early-1990s through the remainder of the decade, this pattern did not hold across all offence categories and types. Once again, this serves as a reminder that the trajectory of these rates were influenced by numerous other factors unrelated to when and how youth justice systems are deployed, and that changes in the size of the jurisdiction and in the approach to order maintenance of youth justice systems do not always apply evenly across all offence types. As was the case in Quebec, the major exception or outlier in Ontario was violent youth crime whose rates increased marginally during the early-1980s, increased dramatically - by a factor of approximately five - from the mid-1980s to the early-1990s, and which remained steady from the early-1990s through to the end of the decade. Once again, it would also seem that declining public and criminal justice system tolerance of such conduct likely had much to do with these general patterns. Two factors support such an interpretation. First, after jumping dramatically in 1985 as a result including sixteen and seventeen

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<sup>261</sup> Indeed, Carrington & Schulenber suggest that there was little change in the percentage of apprehended youth who were actually charged with an offence over this period. Peter J. Carrington & Jennifer L. Schulenberg, *Police discretion with young offenders*, 16. While this in itself does not rule out a shift towards greater tolerance since it is quite possible that police officers were simply choosing not to apprehend a greater proportion of young people they came into contact with, it does suggest that any such shift was likely quite small.

year olds in these statistics for the first time following the implementation of the YOA, rates of youth homicide remained fairly steady until the early-1990s after which time they actually declined moderately as illustrated in figure 5.15. This suggests that behaviour patterns likely were not responsible for the divergence of patterns of violent youth crime from patterns of total youth crime and, by implication, that public and criminal justice sensitivity to violence were likely responsible. Second, as noted in the previous chapter, the federal government initiatives to extend the length of maximum sentences for violent offences appeared to receive considerable support from the public and from youth justice officials in Ontario.<sup>262</sup> Like in Quebec, the notion of declining tolerance of youth violence is not inconsistent with the emphasis placed since the mid-1960s on incorporating the interests of young people and of representing them positively while also supporting their capacity for self-expression by the Ontario welfare state: it represents an extension of how the identity and role of citizen as it applies to young people has been substantively defined by the Ontario welfare state.

Differences in the rates of youth crime between the two provinces also correspond to or otherwise reflect differences in the size of the jurisdiction and approach to order maintenance of their respective youth justice systems. Rates of youth crime were significantly higher in Quebec than in Ontario from 1981 to 1984 while the JDA was still in effect. This result is consistent with the fact

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<sup>262</sup> Much like in Quebec, the 1982 survey of youth justice personnel indicated that the overwhelming majority of Ontario youth justice officials supported longer sentences for those offences - namely violent offences - for which young offenders could receive a maximum of three years incarceration: approximately eighty percent of judges, ninety-five percent of Crown prosecutors, seventy-five percent of defence attorneys, eighty-five percent of probation officers and eighty percent of police officers stated that they opposed the three year maximum sentence for those offences for which adults could receive life imprisonment. Sharon Moyer & Peter J. Carrington, *The attitudes of Canadian juvenile justice professionals towards the Young Offenders Act*, 56.

that the maximum age jurisdiction of the youth justice system extended to sixteen and seventeen year olds in Quebec but only to fifteen year olds in Ontario during this period. This age discrepancy is highly significant because approximately half the number of young offenders appearing before the youth courts in Canada in any given year are sixteen and seventeen year olds.<sup>263</sup> The higher official rates of youth crime in Quebec therefore reflect a very large discrepancy in the size of the role of the two provincial youth justice systems in responding to troublesome events. Rates of youth crime were higher in Ontario than in Quebec following the full implementation of the YOA in 1985, remaining approximately double the Quebec rate throughout the 1990s. This large difference is consistent with the fact that the Quebec youth justice system possessed a jurisdiction that was considerably more circumscribed than that of Ontario during this period largely as a result of the functioning of a child welfare-based system of pre-charge diversion. This large differences is also consistent with the fact that the Quebec youth justice system also possessed an operating culture or approach to order maintenance that was more tolerant of troublesome conduct and, to a lesser extent, troublesome people than that of Ontario as a result of employing a dominant working criminology which framed criminalization as being largely unimportant to preventing youth crime and as only moderately important to preventing youth criminality.

Differences in the scale of official patterns of youth crime between the two provinces can also be said to correspond to differences in the jurisdiction and approach of their respective youth justice systems for a second set of reasons. These have to do with the fact that this variability of scale between the two provinces was relatively stable or evenly distributed across major offence categories

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<sup>263</sup> Paul deSouza, "Youth court statistics, 2000/01," *Juristat* 22(3, 2002), 5.

and even individual offence types. Not only were overall rates of youth crime in Ontario approximately double those of Quebec throughout most of the 1990s, but rates for virtually every single offence in Ontario were in fact within the broad vicinity of being double those of Quebec: differences in scale were remarkably consistent from offence to offence. This stability is significant because the jurisdiction of the Quebec youth justice system was considerably more circumscribed than its Ontario counterpart due largely to the presence of the welfare-based system of pre-charge diversion. Under this system, alternative measures could be employed for young offenders facing every possible type of charge outlined in the YOA, with the decision on whether to divert primarily being based on the best interest of the individual. Insofar as the needs of individual young offenders are reasonably similar or evenly distributed across offence types, then the rate of diversion for youths facing different types of charges should also be relatively similar. Broadly speaking, there is little reason to expect offenders facing charges in one offence category to be more likely to be diverted than offenders facing charges in another offence category.

The stability of rates of youth crime across offence categories is also significant because the tolerance of the operating culture of criminal justice systems pertains to the threshold at which troublesome events are deemed serious enough to warrant a response of criminalization: despite the odd exception, tolerance generally tends to be spread relatively evenly across offence types. The greater tolerance of the operating culture of the Quebec youth justice system should therefore translate into fewer cases being brought into the youth justice system across most individual offence types. Consequently, the fact that differences in the scale of official patterns of youth crime are highly consistent across major offence categories and individual offence types corresponds to the

particular manner in which the jurisdiction and approach to order maintenance of the Quebec youth justice system are different from their Ontario counterparts.

Differences in the jurisdiction and approach of the Quebec and Ontario youth justice systems appear to have played a crucial role in contributing to the differences in the rates of youth crime between the two provinces for a third reason. As illustrated in figure 5.15, there were no major discernable differences in the patterns of youth homicide statistics between the two provinces from 1981 to 2000. These rates varied considerably in both provinces, with each province taking numerous turns of short duration possessing a marginally higher rate of youth homicide than the other. Indeed, the average rate of youth homicide in the two provinces over this twenty year period was remarkably similar: 1.322 in Ontario versus a negligibly higher 1.373 in Quebec. Whereas it is difficult to make extrapolations about youth conduct in general based on the frequency of events as rare as homicides, figure 5.15 nevertheless suggests - for the reasons outlined above - that patterns of troublesome conduct are likely broadly similar in both provinces. This implies that differences in the official rates of youth crime between the provinces are unlikely to reflect important provincial differences in the behaviour of young people. This in turn indirectly supports the notion that differences in official youth crime rates between Quebec and Ontario are largely due to differences in the size of the jurisdiction and approach to order maintenance of their respective youth justice systems.

The preceding discussion suggests that the narrower jurisdiction and more tolerant operating culture of the Quebec youth justice system are likely overwhelmingly responsible for Quebec

possessing a lower rate of youth crime than Ontario since the mid-1980s. This discussion has however thus far provided little insight into the relative importance of these two factors in contributing to this difference. That is, into how much of the difference was likely due to the smaller role and how much was likely due to the lesser emphasis on criminalization of the Quebec youth justice system. Their relative importance in contributing to this outcome can be roughly assessed on the basis of data on the use of diversion in Quebec. Because alternative measures in Quebec are pre-charge in nature, diverted cases constitute troublesome events that would have been counted towards the official rate of youth crime were this welfare-based system not in operation. They are, in other words, troublesome events that would otherwise have fallen within the jurisdiction of the youth justice system. Since this alternative measures program is by far and away the single most important factor in restricting the jurisdiction of the Quebec youth justice system, adding the number of diversions to the number of charges provides a reasonably accurate impression of what the rate of youth crime in Quebec would be if the jurisdiction of its youth justice systems were similar in size to that of Ontario.<sup>264</sup>

As outlined in table 5.1, data on the use of diversion in Quebec from 1997 through 2000 reveals that when the two figures are combined the rate of youth crime in Quebec would, on average, still have been approximately fourteen percent lower than in Ontario. This suggests that the narrower jurisdiction of the Quebec youth justice system accounted for approximately seventy-seven percent of the difference in scale of official crime patterns between the two provinces over this

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<sup>264</sup> In making this comparison of jurisdictional size, it is unnecessary to add the number of diversions to the number of charges in Ontario since alternative measures program in that province is post-charge in nature.

period. By implication this suggests that the greater tolerance of the operating culture of the Quebec youth justice system accounted for approximately twenty-three percent of the difference in scale between the two provinces over this period. Consequently, whereas both the narrower jurisdiction and more tolerant approach to order maintenance of the Quebec youth justice system appear to have played a role in contributing to rates of youth crime being considerably lower in Quebec than in Ontario during the YOA period, the former appears to have played a far larger role in this regard than the latter.

Table 5.1 Influence of Quebec alternative measures program on difference in scale in official rates of youth crime with Ontario, 1997-2000

Year	Ontario Rate of Youth Crime	Original Quebec Rate of Youth Crime	Quebec Rate of Youth Crime Adjusted for Diversion	% by which Ontario Rate is Greater than Adjusted Quebec Rate	% of Original Gap in Rates that was a Function of Diversion
2000	4244	1864	3547	20%	71%
1999	3972	2004	3671	8%	85%
1998	4380	2235	3884	12%	77%
1997	4636	2359	4048	16%	74%
Annual Mean	<b>4308</b>	<b>2116</b>	<b>3788</b>	<b>14%</b>	<b>77%</b>

Source: Data on youth crime derived from tables of the Youth Court Survey provided by the Canadian Centre for Justice Statistics, Statistics Canada. Data pertaining to use of diversion in Quebec derived from Julie Marinelli, "Youth custody and community services in Canada, 2000/01," *Juristat* 22(8, 2002).

This chapter has demonstrated that rates of youth crime in Quebec and Ontario throughout

the 1980s and 1990s followed broadly similar trajectories but were dramatically different in their scale: these rates tended to increase and decrease in unison except for a seven year period immediately following the implementation of the YOA, and tended to be much higher in Quebec while the JDA was in effect and much higher in Ontario once the YOA was in effect. This pattern of similarity in trajectory and difference in magnitude tended to hold true across major offence categories and even most individual offence types. The chapter has argued that the trajectory of rates of youth crime in both provinces have been profoundly influenced, though not fully determined by, the size of the jurisdiction and approach to order maintenance of their respective youth justice systems. The role of additional factors in contributing to these trajectories appears to have been especially important with regards to the 'crime drop' of the 1990s. The chapter has also argued that variability in the rates of youth crime between the two provinces appear to have largely arisen due to differences in the size of the jurisdiction of their respective youth justice systems, and to a much lesser though not insignificant extent from differences in the tolerance of the operational cultures of their respective youth justice systems. Because, as outlined in the previous chapter, the jurisdiction and approach of both youth justice systems in responding to troublesome events appear to have been profoundly influenced by the manner in which the welfare state of each province defines the identity and role of citizen, it can therefore be concluded that the trajectory of and especially the differences in rates of youth crime in Quebec and Ontario reflect important similarities and differences in the inclusive character of their respective welfare states.

**- Chapter Six -**  
**Conclusion**

**Argument & Results**

The purpose of this dissertation was to examine the role of welfare states in contributing to variability in official crime rates, both over time and across jurisdictions. Working from the premise that crime statistics are largely determined by when and how criminal justice systems are deployed in response to troublesome events, the argument that was developed is that differences in the inclusive character of welfare states produce differences in the size of the jurisdiction and approach to order maintenance of criminal justice systems, thereby giving rise to differences in official crime rates. The influence of welfare state inclusiveness over crime rates is argued to be neither mechanical nor immediate, but is thought to be gradually manifested over the long-term.

The inclusiveness of welfare states was said to revolve around whether and to what extent they bring the members of political communities into the role and identity of citizen. Welfare states bring individuals and groups into the role of citizen to the extent that they provide them with opportunities to participate in the public life of political communities, and bring individuals and groups into the identity of citizen to the extent that they provide them with benefits and services that collectivize their interests and that also cast both recipients and non-recipients in a positive light. In shaping the substantive content of the role and identity of citizen, welfare states exert a profound influence over the character of dominant social, political, cultural and economic arrangements. In so doing, they act upon the decision-making of those persons and agencies responsible for defining the jurisdiction and approach to order maintenance of criminal justice systems in ways that make

inclusive and exclusive criminal justice system deployment patterns appear to be more natural or logical. Stated differently, they create ideological barriers against certain kinds of societal responses to troublesome events, and ideological support for others.

Welfare states likely create stronger ideological barriers against criminal justice systems possessing larger jurisdictions in responding to troublesome events relative to other state institutions when and where they define the role of citizen more inclusively. Welfare states also likely create stronger ideological barriers against criminal justice systems adopting approaches to order maintenance which favour criminalizing a wider range of those troublesome events falling within their jurisdiction when and where they define the identity of citizen more inclusively. More specifically, welfare states that address a wider range of individual and group needs likely create stronger ideological barriers against intolerance of troublesome conduct, and welfare states that frame recipients and non-recipients of benefits and services more positively likely create stronger ideological barriers against intolerance of troublesome people. When examined over the long-term, crime rates are therefore likely to be lower on average where and when welfare states are more inclusive in character.

The empirical findings of this dissertation on the relationship between rates of youth crime and welfare state inclusiveness in Quebec and Ontario during the final two decades of the twentieth century appear to largely support this argument. Chapter three found that the Quebec welfare state defines the role of citizen more inclusively than the Ontario welfare state. It creates more spaces for public involvement in the design, administration and, to a lesser degree, the delivery of social

programs and services, through its support of the voluntary sector. The chapter also found that the Quebec welfare state defines the identity of citizen more inclusively than does the Ontario welfare state on the basis of both providing more generous programs and services which therefore better incorporate or otherwise collectivize their interests, and of framing them somewhat more positively in the discourses justifying the provision of these programs and services. The Quebec welfare state was therefore found to be more inclusive than its Ontario counterpart on all fronts, even if sometimes only marginally so.

Chapter four found that the jurisdiction of the Quebec youth justice system was considerably more circumscribed than that of Ontario. This result was found to be consistent with the evidence of the previous chapter suggesting that the Ontario welfare state defined the role of citizen in a manner that likely produced weaker ideological barriers against intolerance of non-conformity compared to the Quebec welfare state. Indeed, the discourse surrounding the issue of diversion in Quebec was found to be more heavily infused with sentiments or expressions of tolerance of non-conformity than in Ontario. Chapter four also found that the approach to order maintenance of the Quebec youth justice system was more tolerant of troublesome conduct and somewhat more tolerant of troublesome people than that of the Ontario youth justice system. These results were found to be consistent with the evidence of the previous chapter suggesting that the Ontario welfare state defined the identity of citizen in a manner that likely produced weaker ideological barriers against intolerance of troublesome conduct and somewhat weaker ideological barriers against intolerance of troublesome people.

Chapter five found that the official patterns of youth crime in Quebec and Ontario during the 1980s and 1990s largely conformed to the similarities and differences in the size of the role and in the approach to order maintenance of their respective youth justice systems. Changes in the jurisdiction and approach of both youth justice systems were found to be likely responsible for the general trajectory of rates of youth crime in both provinces during the 1980s. The dynamics of criminal justice deployment were also found to have played an important role in contributing to the decline in rates of youth crime in both provinces during the 1990s, though other factors appear likely to have also played a role in contributing to this decline, especially in Ontario. Differences in the scale of official rates of youth crime between the two provinces over this twenty year period appear to have largely arisen due to differences in the size of the role afforded to their respective youth justice systems in responding to troublesome events, and, to a much lesser degree, due to differences in the tolerance of their respective youth justice systems for troublesome conduct and for troublesome people. Because the jurisdiction and approach of both youth justice systems in responding to troublesome events appear to have been profoundly influenced by the manner in which the welfare state of each province defines the identity and role of citizen, these findings therefore appear to provide an important measure of support for the argument that crime rates are likely - on average and over the long-term - to be lower when and where welfare states are more inclusive in character.

### **Limitations of the Study**

It is important to note that these results are only suggestive that official crime rates are likely to be inversely related to the inclusiveness of welfare states. They are by no means conclusive. This

qualification speaks to the fact that the present study possessed a number of limitations. First, the study could not fully account for the role of behaviour patterns as well as public attitudes towards troublesome people and conduct in shaping the construction of youth crime statistics in both provinces. Whereas various indicators were employed to assess their likely roles in shaping the trajectories of and differences between official rates of youth crime in Quebec and Ontario, these could not be determined with anything resembling absolute certainty. As a result, the suggestion that changes in and differences between the size of the jurisdiction and approach to order maintenance of the Quebec and Ontario youth justice systems appear to have been largely responsible for the trajectory of and differences between the rates of youth crime in both provinces must be treated with caution.

Second, this study only examined the relationship between welfare states, criminal justice systems and crime rates in two settings. Whereas the argument that welfare states defining the role of citizen more inclusively is likely to result in criminal justice systems possessing narrower jurisdictions and the argument that welfare states defining the identity of citizen more inclusively is likely to result in criminal justice systems developing approaches to order maintenance which are more tolerant of troublesome people and conduct were found to hold in these two particular cases, they may not in most other settings. Though it certainly seems unlikely, these results may simply have been coincidental. For this reason, the central conclusion of this dissertation that crime rates are likely to be lower when and where welfare states are more inclusive in character must also be treated with caution.

Finally, this study only examined the universality, generosity and discourses of the education systems operating in both provinces when gauging the degree to which both welfare states define the identity of citizen inclusively. Welfare states, as noted earlier however, simultaneously operate in numerous policy domains critical to human survival and development. Whereas education is undoubtedly the single most important youth-centred social policy as discussed in chapter three, it is nevertheless possible that the characterization of how inclusively both welfare states define the identity of citizen as it applies to young people would have been different if other policy domains such as child welfare would have also been examined. For this reason, the validity of the assessments of the inclusive character of both welfare states - and by extension the interpretation of the final results - must be treated with caution.

### **Implications for Future Research**

The results of this dissertation also raise a number of important questions that could be addressed in future research endeavours. These questions tend to centre on three major themes. First, one of the implications of this study is that welfare states differ in important and fundamental ways depending on the degree to which they define the role and identity of citizen inclusively or exclusively. How welfare states address these two dimensions of citizenship revolves around the universality and generosity of the benefits and services they afford, the character of the discourses they employ to justify the provision of and limitations attached to these benefits and services, and the quality of the opportunities they create for individuals and groups to become involved in the development, administration and delivery of these benefits and services. Clearly variability in the extent to which welfare states define the role and identity of citizen inclusively gives rise to

important or meaningful differences with regards to their basic functioning and practices. These are not superficial matters, but lie at the very heart of what it is that welfare states do and how they go about doing it.

Chapter two noted that welfare states are commonly said to differ in kind or, in other words, to fall into clusters of distinctive regime types, with Esping-Andersen's threefold taxonomy being the most prominent in the literature.<sup>265</sup> Given the nature of the differences it involves, this raises the question of whether variability along the inclusive dimension of welfare states provides a sound basis for classifying welfare states into different regimes. Can welfare states be said to differ in kind, in other words, based on the degree to which they define the role and identity of citizen inclusively or exclusively? If so, how would a typology based on inclusiveness relate to that which has been developed by Esping-Andersen? Would it merely reinforce the regime types constructed Esping-Andersen with possibly a few minor modifications, or would it produce altogether different groupings of welfare states? More conceptual and empirical work is required in order to properly address these questions.

Second, an additional implication of this study is that, although welfare states exert a profound influence over crime rates, the latter are nevertheless somewhat independent of the former since the jurisdiction and approach of criminal justice systems are not the only factors which determine their social construction, and since criminal justice systems possess a measure of relative autonomy from the outside world such that welfare states can only influence when and how they are

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<sup>265</sup> See Gosta Esping-Andersen, *The three worlds of welfare capitalism*.

deployed in response to troublesome events over the medium to long-term. The results of this study, to put it more simply, suggest that welfare states have little influence over crime rates over the short-term and that these rates therefore form part of the social, cultural, political and economic backdrop against which social programs and services are developed. This raises a number of questions regarding the potential influence of crime rates - and by extension criminal justice systems - over the inclusiveness of welfare state discourses and practices. In particular, do high crime rates help foster the development of discourses and practices which frame recipients and/or non-recipients of state benefits less positively than do low crime rates? Similarly, are high crime rates less conducive to the development of generous social programs and services than are low crime rates? Lastly, do crime rates influence the quality of opportunities afforded to the public for involvement in the design, administration and delivery of social programs and services? To understand the impact of crime rates on welfare state inclusiveness, it is necessary to examine whether the issues of crime and criminality formed part of the larger discussion and debate on social policy.

Third, an additional implication of this dissertation is that the field of criminal justice is central to or otherwise intimately linked to the issue of citizenship. The discourses and practices of criminal justice systems express a particular model of citizenship and, since these institutional complexes also possess a measure of autonomy from the outside world, they also play a role in shaping the character of the status, identity and role of citizen in a given political community. Citizenship is most often conceptualized as a legal status which confers various civil, political and social rights upon those individuals and groups who, in varying degrees, acquire its possession. Moreover, these rights tend to be framed as being highly secure in that, once they have been

acquired, they are not easily lost. The latter seems inaccurate, however, for even a cursory understanding of criminal justice system functioning and practice reveals that many taken for granted civil, political and social rights are temporarily and sometimes even permanently lost as a consequence of criminal prosecution. That many citizenship rights are often contingent on avoiding coming into conflict with the criminal law raises a number of questions regarding the influence of citizenship in ordering the social relations and social practices of political communities. Does this conditionality influence or otherwise impact on the quality of social relations within and between social groups? Does rendering citizenship more or less conditional in this regard render individuals and groups more or less willing to accept the burdens of citizenship such as taxation, jury duty, military service and so forth? How does increasing or decreasing this conditionality influence the quality of the benefits citizenship? Are these civil, political and social rights likely to be more or less generous where they can be withdrawn more easily and to a greater degree?

Chapter two briefly noted that political communities tend to develop distinctive citizenship regimes which are generally highly stable, only changing during periods of important economic and social turbulence or, in other words, when the political economic circumstances in which they were forged are significantly eroded. This raises a number of questions regarding the relationship between citizenship regimes and criminal justice systems. Most significantly, can criminal justice systems, by virtue of producing high levels of crime and/or high levels of incarceration, contribute to the downfall of citizenship regimes? Moreover, which models of citizenship are least and most prone to withdrawing social, political and civil rights in response to criminal prosecution? More conceptual and empirical work is required to address all of these questions.

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