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CANADIAN YOUTH JUSTICE:

MORAL PANIC

OR

RESPECTABLE FEARS?

by

MATTHEW G. WILLIAMS, B.A.

**A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of**

**Master of Arts
Department of Law**

Carleton University

Ottawa, Ontario

August 29, 1994

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Canadian Youth Justice: Moral Panic or Respectable Fears?

**submitted by Matthew G. Williams, B.A. (Hons.) St. Mary's University
in partial fulfilment of the requirements for
the degree of Master of Arts**

A handwritten signature in black ink, appearing to be 'SM', is written over a horizontal line.

Thesis Supervisor

Chair, Department of Law

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August 29, 1994**

ABSTRACT

The following will apply the British model of Moral Panic as articulated by Cohen (1972) and elaborated by Pearson (1982), to the chronology of Canadian juvenile justice. This model of social breakdown and moral degeneration will be tested on the Canadian setting to examine whether Canada has adopted an autonomous response to youth crime, as opposed to the coercive and morally laden movements witnessed in Britain and the United States. This will be of relevance for the exploration of current neo-conservative trends in Canada, particularly in light of recent legislative amendments.

The major trends seen to influence this perceived state of disorder will be analyzed including: economic factors, the media and special interest groups. This will clarify the Canadian reaction as well as making sense of the recurrent state of concern.

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INTRODUCTION

Historically, when societies suffer economic difficulties and rapid social change, they appear to be exposed to periods of extreme violence and general decay regarding their collective morality. Since the advent of the mass media, a condition, episode, person, or group of persons has emerged to present this direct threat and by nature is portrayed in a stereotypical fashion. This phenomenon is what has become known as a moral panic: a self reproducing cycle of fear (Cohen, 1972).

Those in the media, politicians, and special interest groups, man the "moral barricades" deciding which behaviour will be deemed problematic and which will be passed over. For the most serious problems, long lasting fears result in legislative changes affecting both legal and social policy, eventually leading to an attitudinal shift within society.

The cause of this movement can be located in broad issues of social structure and community tension, although specific attention is paid to individuals or relatively small groups seen to be generating particular problems. In this sense some problems are strongly political or partisan in their origins. Although this closely resembles conspiracy theory, it is useful for explaining interest group politics and their influence on problems that fall within their scope of activity.

Perhaps the most recurrent moral panics in Western culture have involved youth and juvenile delinquency. Youth cultures, first of working class status, and increasingly of all socio-economic

backgrounds, have been associated with crime and violence leading to the greater breakdown of societal values. The Canadian history of youth crime has led to similar reactions, but only recently have sociologists and social-historians begun to apply a critical template to these, in order to provide access to the real causes of such change.

Studying a moral panic helps to illuminate the values, fears and conflicts of the community which sometimes need to imagine an external threat. Although Canada is by no means a moral panic goldmine, there has emerged repeated claims against child criminals that have allowed different stereotypes to become intertwined. The goal of this thesis is to describe and explain these various perceptions and to understand why they arose when they did.

Changes in the administration of juvenile justice have reflected fundamentally different philosophies regarding how to handle youth crime. The first piece of federal legislation dealing solely with youth crime, was the 1908 Juvenile Delinquents Act (JDA). This was based on the positivist and paternalistic notions that juveniles engage in deviant behaviour because of problems involving families, education, poverty, cultural values and other factors detrimental to their socialization. The 1984 Young Offenders Act (YOA), by contrast, was based partly on the neo-classical philosophy that youths wilfully engage in criminal behaviour, and therefore should be held accountable for their actions.

Aside from the various conceptualizations regarding adolescent deviant behaviour, it is safe to say that each era has reacted to what it saw as a permissive revolution. Not only were specific interests being advocated in the name of justice, real fears regarding youth crime and the general well-being of society did, and continue to, exist. In essence the history of Canadian youth justice is as much a history of fear as it is of reform.

With successive generations come changing behaviours, though the problems themselves retain a certain degree of urgency. Youth crime may capture headlines, but there is nothing new about it; what is new is the supposed novelty of its occurrence. Youth violence has always commanded negative attention, yet each era is certain of the validity of its claims. As long as Canadians continue to perceive fears as unparalleled, then attempts to intelligently deal with the problem will be stifled.

Geoffrey Pearson (1982) has undertaken the task of examining the history of the moral panic from a British perspective. His thesis is that older generations hold dear certain conceptions of how things should function. As social change inevitably accompanies upcoming generations, there grows a fear that cherished beliefs and traditions are being replaced by intolerant disorder. This has led to the decline of the most important tradition of all: 'the British way of life', for at one time Britain itself defined morality and discipline. Britain's history is one of stability and decency, but the present, as they are constantly reminded, is filled with chaos and violence.

The media, politicians and interest groups have taken up the fight against moral deterioration in Britain, and have mobilized the general public into campaigning against these young 'hooligans'. It is my purpose here to apply Pearson's analysis to the Canadian context, in order to discover if ours is a history of "respectable fears". Has the Canadian response been based on lofty ideological precepts like the British, or have we been more pragmatic in our approach? British responses to youth crime have been repressive and imbued with moralistic rhetoric. In a similar manner the United States has used the ideal of declining morality to strengthen its already harsh youth courts. Has Canada naively followed the British and American models of coercion and force, or has the Canadian response reflected distinctly autonomous circumstances?

I will trace Canadian youth justice legislation from the pre-JDA child saving movement of the late nineteenth century, through the justice movement of the 1970's, into the present day reformation of the YOA. This chronological approach will allow me to examine each epoch in order to see how contemporary concerns were reflected in social and legal policy. This historical engagement will hopefully enable me to gain some insight into the present "crisis" we are experiencing.

In each era I will first examine the broader context including: the economy; politics; demographics and general philosophies regarding punishment. The focus will then be narrowed to explore the role of the media, special interest groups and

politicians in helping to create, then alleviate, public concern. Finally, legislation will be analyzed to see how this mix of interests was reflected in the actual laws.

This will inevitably lead me to pose the question: "whose interests are most widely and often accepted?" However this should not be taken as the sole focus of this paper. Although a class-conflict analysis is unavoidable, my main problematic is to see how the concept of moral panic, in a Pearsonian sense, corresponds to Canada's history. With that in mind I am using the past to show how similar fears of social breakdown and moral degeneration have been voiced by previous generations. This will help to make sense of the present debate, by showing that fears over moral decay are hardly new concepts, despite how unique they may seem.

CHAPTER 1: THEORIZING THE MORAL PANIC

In this section I review a selection of literature pertaining to moral panics and their influence on the shift toward neo-conservatism in Canada, Britain, and to a lesser extent the United States.

Not surprisingly the majority of moral panic literature derives from Great Britain, perhaps the society most concerned with its loss of moral superiority on the world scene. British academics have written extensively on this myth of lawlessness, in an attempt to make sense of current debates by relating them to previous 'crime waves'. The Canadian experience with moral panic has not been as thoroughly documented, however, some recent works, particularly on hegemonic relations under neo-conservatism, have been developed. These will aid in my comparison of the two countries, giving consideration to those factors which have defined the Canadian response.

Although a range of literature on the history of Canadian youth exists, little of it approaches the problem in this manner. Therefore I have chosen those that best encompass the factors which most directly influence a moral panic: the economy; the mass media and political interests.

Geoffrey Pearson's analysis of the history of moral panics in the United Kingdom will comprise much of the theoretical basis of

my thesis. However before delving into this, it is necessary to outline the work upon which Pearson has built his argument.

In his 1972 book Folk Devils and Moral Panics, Stan Cohen details the Mods and Rockers scare of the 1960's. This detailed case study illustrates some of the features inherent in the emergence of juvenile deviance and the moral panics. Though the Mods and Rockers were only one of many groups active in Britain in the 1960's, they exemplify the cultural changes occurring at that time, and the attempts to sully such change.

Mod referred simply to a style of dress known as modernist, and a Roker was one who might listen to the Rolling Stones or the Who, but by the mid 1960's a British newspaper referred to them as "without parallel in English history." It was even rumoured that troops were being sent in to allay possible disturbances during a holiday weekend in Brighton Beach. Despite this great concern, by the end of the decade this fad seemed to have all but disappeared from public focus, leaving behind memories of folk devils to which current horrors can be compared (1972; 11). Cohen's study, then, is a study of mass hysteria, and how societies cope when confronted with the perception of social upheaval.

Although lower order processes are important for understanding the cognitive basis for this upheaval, it is more important that we analyze the ways in which Cohen says youth themes conceptualize greater social changes. In the 1960's this meant a new era in adult-youth relations, or more specifically the growing credibility of youth:

What everyone had grimly prophesied had come true: high wages, the emergence of a commercial youth culture 'pandering' to young peoples needs, the elevation of scruffy pop heroes into national idols, the 'permissive society', 'coddling' by the welfare state, all this produced its inevitable results (Cohen, 1972; 191-92).

The Mods and Rockers symbolized post-war social change in Britain. Elder citizens thought that upcoming generations had it too good too quickly. They resented the young for their growing professionalism, if only because of their increased spending power. Sexual freedom and growing emphasis on leisure time were linked with images of violence and vandalism, and the newest problem: drugs. This combination of factors led to much more than rowdy parties in Brighton Beach. Kai Erikson terms this a "boundary crisis: a period in which a group's uncertainty about itself is resolved in ritualistic confrontation between the deviant and the community's official agents" (Erikson, 1966). Given the cultural strain of the 1960's, it is not difficult to imagine how older generations were dealing with the diversity of younger ones.

'Crime waves' then, dramatize the issue, while at the same time providing a forum for the concerned citizens to articulate their fears more explicitly. "The community begins to censure forms of behaviour which have been present in these groups for some time, but have never attracted any particular attention before" (Cohen, 1972; 192). The fact that it is not any clearer what these young groups have done actually worsens the negative reaction.

This leads into another pervasive reason for the form of this

reaction. In the past, delinquent behaviour was thought to be contained to one sphere: the working class; a group that traditionally remained within its own boundaries. In the 1960's, however, the working class were shaking their pre-destined labels and beginning to join the middle and professional classes. Once these groups became political, their visibility and 'danger' grew rapidly.

Class barriers were being torn down, and youth cultures emerging. The Mods and Rockers epitomized these changes, and not surprisingly changes in the law as well. These "threats" were responded to punitively, and laws reflected a last ditch effort to halt what this generation stood for, not what they actually did (Ibid.; 197). A moral panic, says Cohen, relates to conflicts of interest and power differentials which leave some groups vulnerable to attack. This attack becomes easier when the group is more visible, such as through media exposure. Military strategists will agree the most difficult enemy is the guerrilla who can't be seen, but who blends into the general population.

Perhaps the most well known examination of the decline of the 'British way of life' is Geoffrey Pearson's Hooligan: A History of Respectable Fears. Pearson's focus is the perennial, or generational, concern expressed by middle-class citizens over social change threatening the moral fabric of society. Pearson is not so much concerned with crime, as he is with the myth of crime, and how successive generations appear to go through periods of moral decay. In the space of half a century Britain had gone from

a society composed of moral fortitude, to a state of disorder and lawlessness, that no longer respected the traditions of previous generations. This was, of course, not the case, and what Pearson attempts to show is that in fact things are no worse now than they ever have been - only different. The problems that exist in present day Britain, are of the same nature as those of a century earlier and the British way of life is still alive and well.

Pearson argues that the British preoccupation with adolescent "hooliganism" arises from tension in class struggle, and growing resistance by the working class to state governance. He suggests that the current British penchant for law and order, left over from Thatcher's accommodation of such a system, is a recurrent theme in British history, and that the nostalgia for the past is a sentiment found in every generation from the mid 1800's onward.

Using a chronological method, similar to the one which I will employ, Pearson moves through six eras of change and ensuing moral panic from 'Merrie ol' England' through Victorian times, into the more recent Mods and Rockers and soccer hooligan panics. What he attempts to make clear are the shortcomings of our nostalgia for the "old way" of life. We must be aware of making seemingly reliable comparisons between different time frames, thereby judging the historical realities of crime and violence in each. Pearson, however, does not try to promote a "flat earth" version of history according to which nothing ever changes: social circumstances do indeed change. Nor does he use the theory of the "historical wheel" in which history moves in cycles and repeats itself.

According to Pearson, what is responsible for the myth of declining social order is that each era is certain of the truthfulness of its claims. Aside from the few who question whether the problem has become enlarged in the public's eye, each epoch understands itself as standing at a point of radical discontinuity with the past. By connecting these bouts of discontent into a continuing history of deterioration, Pearson reveals the nostalgic regret for the destruction of the 'British way of life' for the myth that it is. He writes that it is almost fanciful to believe that our present day streets are more perilous than those of disorderly London (or Toronto) at the turn of the century. In order to generate present day fears, we must first discount the fears and factors of the past.

It would be remiss to shrug off present fears by simply saying that they signify nothing. What we need to ask ourselves, says Pearson, is how it is that this antiquated vocabulary of accusations, created under very different circumstances, still applies to our contemporary world. Historical realism says that we must find some way of holding onto the realities of violence while throwing out the claim of novelty. When this happens you run the risk of having special interest groups say that the problem is not being taken seriously. Pearson says that this assumption is misplaced. If the novelty is discarded, then we will be inclined to take the problem more seriously. After all, it is not the facts that create the myth, it is that the media and special interest groups rely too much on the facts, thereby clouding the real

picture of both the past and present (212).

In order to examine this fully, Pearson writes we must examine the statistics. Criminal statistics are notoriously unreliable as measures of the actual extent of criminal activity. Whatever your view on statistics the fact is that they are relied upon heavily for policy decisions. Unfortunately, they are complicated by a number of factors other than actual increases in crime. Growing police forces and changes in enforcement practices; the increased mobility of police; more punitive laws; and shifts in public attitude, all produce crime waves. Not only is it difficult to compare crime across time frames, even in the short term it cannot be done without precautions.

As for the tendency to target younger generations, it is not because they are inherently evil, but because they are subject to so much regulation that people cannot help but to see them as a group that needs constant governing and controlling. The British appear to have an amnesia for youth practices of the past, which become even more pronounced during periods of heightened anxiety.

Pearson concludes by saying that the preoccupation with mounting disorder serves a specific ideological purpose within British public life. Lawlessness is geared to the urgency of a much wider social apparatus and in the British example this is their decline as the preeminent world super power, economically, militarily and morally.

The fact that Pearson's analysis is centred on the Hooligan scare of the late 1970's early 1980's is irrelevant. His historical

reconstruction of moral panic has implications which extend beyond what is currently topical or newsworthy. That there is a contemporary revival of youth fears only buttresses his assumption that concerns will always be generated. Certainly the processes by which moral panics are nurtured change, but the underlying results are constant. Consequences cannot be ahistorical nor insulated from the social forces of the day, but given past histories one would be remiss to think that this trend will not continue in a like manner.

Before moving on to address Canadian sources, I want to briefly examine Anthony Platt's The Child Savers. Although Platt looks at turn of the century reform from an American perspective, his analysis is highly applicable to the Canadian experience, pointing to the occurrence of an early twentieth century moral panic in the United States.

Until the early 1980's, Canadian delinquency laws could be traced to the philanthropic reforms of the early twentieth century 'child savers' who helped to create special judicial and correctional institutions for the management of troublesome youth. Poor youths were classified as potentially crime prone by professional workers who also deemed parents as unfit and meriting state attention simply because of their socio-economic standing.

As Platt understands it, the reform movement had an interest far beyond simply correcting or preventing youth crime. The middle-class had an interest in normalising the behaviour, recreation, education, attitudes to authority and familial relationships of youth. This 'special' treatment led to the further subordination of

children, and their formal removal from the home in an attempt to "cure" them of their anti-social behaviour. Given the changing economic conditions of the day, urbanization, and industrialisation, child saving legislation was a clear reflection of what was acceptable for the insubordinate classes, particularly during periods of social change. It would be overly instrumental, however, to assume that real fears over immigration and disorder did not exist. The child savers did not want "destitute" youngsters corrupting their children and thus set out mechanisms to prevent this.

My own analysis will attempt to show whether the British model of social breakdown as portrayed by Pearson, fits the Canadian situation. It is therefore necessary to examine this problem from a local perspective, but only recently has work been done from this theoretical vantage point. Such contributors include: Ratner and McMullan; Hatt, Caputo and Perry and Leyton, O'Grady and Overton.

In my effort to apply the moral panic template to the Canadian context, it is unlikely that an exact fit will occur. Certainly there are fair grounds for comparison between the British, Canadian and even American experiences given the global restructuring that has been occurring for several years. But this has sparked debate about the nature of Canada's response to these changes, particularly in the face of the significant economic downturn of late. Though many Western nations have experienced similar crises in their own domestic spheres, each has dealt with these changes in its own unique way. In most Western democracies

new-right regimes have been elected to deal with these 'crises', and although responses have been similar, Canada has traditionally acted in a way that sets it apart from both Britain and the United States.

Hatt et al., (1989, 1991) postulate that a myriad of factors, including Canada's colonial past; the traditional reliance on central government; the division between federal and provincial powers; a small population and economy; regionalism; and proximity to the U.S. have all contributed to the Canadian response to juvenile crime (Hatt et al., 1989; 1).

Having already witnessed the standard British reaction to change, we know that their response has reflected concern over declining influence on the world scene. This is evident on a more micro level as concern with declining manners and a lack of respect for society's elders. Their solution has been to "police the crisis" (Hall, 1978). The United States, rather stereotypically given its global military role, has adopted: "a militaristic response to nuke or declare war on the crisis" (Hatt et al., 1989; 2). Typical American rhetoric includes the "war" on drugs and the "battle" against inner city gang violence. Both the U.S. and Britain can be seen as exploiting law and order politics: using coercion to suppress public unrest, in the name of maintaining societal equilibrium. In Canada the response has been less coercive, with law makers only cracking down in "exceptional circumstances" (Ratner and McMullan 1985). These exceptional measures are most pronounced within the criminal justice system,

where social order is of the utmost concern.

Hatt et al. investigate this in relation to juvenile justice in Canada (1991). In particular, they examine the transition in youth justice from the paternalistic and class-based Juvenile Delinquents Act (JDA), to the more formal and coercive Young Offenders Act (YOA). This transition can be explained by the major global restructuring occurring during this period. Post-war economic strategies based on Keynesian welfare principles were adding to the already large fiscal burden. Neo-conservative governments began to place greater emphasis on capitalist economic strategies which meant social spending cuts. Although the Trudeau Liberals cut social spending, their legal policies did not reflect the same trends being witnessed in other countries.

In Canada the polity is able to control much of the government's agenda through a series of checks and balances. This is less the case in Great Britain and the United States, where leaders such as Thatcher and Reagan were able to exploit public unrest to implement tough law and order policies in order to gain greater control over the general population. In Canada there has been less emphasis on socio-political policies that stress discipline through the maintenance of 'traditional' values and morality. Nor has it been the case that we have declared our streets places of virtual anarchy in need of coercive measures (Hatt et al., 1991).

Canada's approach, while conservative, is not quite so clearly understood without first taking into consideration the political,

historical and structural features that have effected the governing of the country (Ibid.). This includes the mix of federal, provincial and municipal powers. The Trudeau Liberals and the Progressive Conservatives under Brian Mulroney, employed strategies that allowed them to "manage consent" while the lower levels of government, namely provincial, were left to "manage crises." This hegemonic strategy works through a managerial approach which allows the federal government to designate problems as organizational or individual in nature. There is less emphasis on a more general, yet explicit, ideological approach evident in Great Britain, in which wholesale changes are advocated (Ibid.; 24).

This is particularly pronounced in the case of the Young Offenders Act. It was thought by civil libertarian reform advocates that the JDA was too reliant on subjective decisions by youth court judges to offer legal equality to its clients. Although these changes represented a concern with the lack of legal rights, they were as much related to how the federal and provincial governments would deal with this split in power, and the financial consequences to the provinces who now delivered the services. Therefore, the YOA was immediately unpopular, but for very different reasons than it is today. To understand Canada's move to the right, we need to examine how hegemony is produced within the Canadian structure. Legislation which once sought to protect youth now seeks to protect society from them. This is the result of the move away from welfare strategies which has further resulted in the centralization of policy with the decentralization of operation (Ibid.; 26).

Paul Havemann (1986, 1992) gives a more critical evaluation than Hatt et al.'s complex analysis. Havemann emphasises that Canada has followed a similar path in socio-political policy as great Britain and the U.S., and that the YOA is a perfect example of this trend.

Havemann perpendes the rise of the 1982 YOA with what he terms "child blaming". He writes that the growing accountability of youth will be extended to legitimate coercive policies based on a law and order agenda. He too attributes this to the global crises in capitalist economies, stating that the government attempts to balance this concern by moving beyond merely managing consent, to "the seizure of exceptional powers of coercive control." (1986; 226). The YOA, says Havemann, is such an instrument and thus enhances the government's exceptional powers, leading to a law and order society.

Havemann's 1992 analysis is of particular importance because he introduces the idea that the media often encourage such a move by portraying the YOA as overly lenient. The combination of this with current economic conditions has led to a moral panic set on legitimating coercion. The YOA is an example of a society legitimating crisis justice (1992; 112). Given the recent reforms that the federal government has undertaken, Havemann's prophecy has been quite accurate. Entrenched is a retributive apparatus that sees crime as a result of an undisciplined youth population in need of such measures.

In their book Violence and Public Anxiety, Leyton et al.,

examine the relationship between concern about violence and the mass media. Included in their analysis is the role of special interest groups and politicians, who realize more than anyone that in order to secure political funding, they must use the media to gain widespread recognition of their problem. One of the surest ways to do this is to "manufacture a crisis" (Leyton et al., 1992; 109). This involves taking a problem and indulging the facts or statistics used to understand it. Once the press becomes convinced of the veracity of the problem, the public can be persuaded through various emotionally charged news mediums, thereby completing the legitimation cycle (Ibid.; 110).

Their analysis is of particular relevance because it directly addresses the moral panic concept, as advanced by Pearson, on the Canadian scene. The authors assert that rival ideologies compete for media attention during periods of "crisis", whether real or imagined, leading to a "radically embellished" phenomenon known as a moral panic. This can be explained in terms of orchestrations by the media, government and police.

Leyton goes on to examine all crime related news stories from the St. John's Evening Telegraph between 1975-1985. His findings conclude that although the media do not act unilaterally, they present the opportunity for certain groups to receive the publicity that they were seeking. This in turn leads to the massive expansion of the justice industry, further solidifying its hold over Canada's social agenda. Although Leyton does not look specifically at youth violence and public anxiety, it is implicit in his analysis that

tension is magnified when youths are involved.

Leyton poses an important question in his analysis: "Precisely who are the 'primary definers' of these perceptions and are they exclusively from the power elites?" In Hall's (1978) well known look at mugging as a moral panic he suggests that "the media stands [sic] in a position of structural subordination to the primary definers", i.e., the elite (Hall et al., 1978; 342-343). Leyton's data suggest a less conspiratorial theory, but he concurs with Cohen's comment regarding the justice system: "It is in the best interests of professions to enlarge the system and attract more clients" (Cohen, 1985; 167). The openness of the Canadian press gives individuals from all socio-economic backgrounds the opportunity to partake in the news-making process. Elite groups manipulate violence statistics for their own political agenda causing what appears to be a perceived growth in crime. The inevitable result of this is that certain groups profit from the 'ownership' of these problems, when their original intention had been only to secure funding through public awareness (Leyton et al., 1992; 115).

There is no doubt that Leyton's article points to the occurrence of a moral panic in Newfoundland from the mid-1970's to the mid-1980's, but what about the remainder of Canada? Ericson, Baranek and Chan (1991) undertook an in-depth study of the Toronto news media, showing that nearly half of all news stories relate to crime or related topics (Ericson et al., 1991; 241).

Ken Hatt (1994) has gone several steps further examining the

Canadian News Index (CNI) from 1986 onward. His results mirror what Leyton found, sighting particular incidents, such as the L'ecole Polytechnique killings, that relate to the perceived growth in violence. Unlike Leyton however, Hatt's purpose is to explore why there has been a supposed increase in youth violence.

He accounts for this increase by looking at changes to Canadian young offender laws and enforcement practices. The apparent increase in youth violence is attributable to the inadequacy of statistics to properly represent these factors and thus does not accurately portray crimes committed by youths. The resulting moral panic can actually lead to an increase in violence, as people attempt to defend themselves in the face of increased state coercion and supposed lawlessness. Before addressing the contemporary period of disarray any further, let us first examine the origin of the original moral panic in Canadian history.

CHAPTER TWO

The Genesis of the Juvenile Delinquents Act

Throughout the last two decades numerous and wide ranging theories have arisen which seek to explain the rise of formal justice aimed specifically at Canadian youth. The history itself is not quite so diverse, with its origins rooted in the definition of children as needy and vulnerable to neglect and cruelty. The social purity ideology of the children's aid movement was, and is to a large extent, recognized solely as humanitarian in nature. Groups such as the Children's Aid Society were seen as furthering strictly humane ideals. Less well known is the CAS' efficient and economically prudent approach to child welfare, and how this culminated in the creation of the Juvenile Delinquents Act.

The entrenchment of the JDA was never a foregone conclusion; rather it was the result of numerous failed statutes and changing attitudes regarding how troubled and troublesome youths were to be dealt with. Numerous people including J.J. Kelso, the "father" of child welfare in Ontario and founder of the CAS, and W.L. Scott, the man who first proposed the bill, dedicated much of their lives to eradicate the perennial problem of "derelict" children. In order

to create a clearer picture of what influence Kelso and Scott had on the youth justice movement, it will be necessary to examine the advent of child saving in Ontario, and the philosophy behind the state sanctioned 'protection' of minors.

The essential preoccupation of the child saving movement was the recognition and control of juvenile delinquency. They brought attention to 'new' forms of deviance and helped to integrate a separate youth court system to deal with this. But this went far beyond humanitarian concern for wayward adolescents. It brought governmental control to seemingly harmless behaviours that had previously been handled informally. It was not by accident that the behaviours chosen - drinking, sexuality, and incorrigibility- were attributable to the children of lower class and immigrant families. Even though these were hardly new occurrences, there was the perception that they were leading to the breakdown of society. This resulted in heightened fears over such innocuous pastimes as dancing, movie watching and reading comics: hardly behaviours which warranted formalized sanctions.

Partly responsible for this 'need' for protection was the pervasive fear of youths, particularly in working class neighbourhoods. The image created by the police and welfare workers was one of crowded, violent and inefficiently policed streets where rowdiness and misbehaviour were the norm. The deviant behaviour mentioned in police reports included: placing obstacles on train tracks, spitting and throwing stones, hardly behaviour unique to nineteenth century Ontario (Ottawa CAS minutes; 12, 1894). News

reports of broken street lamps, street muggings and business break-ins, pointed to the existence of a major crime wave. Although the damage done by youths cannot be dismissed outright, there is a consistency in how these 'crimes' are dealt with what we still see today. Police and special interest groups continue to "peddle" myths of disorder, which only inflame the already threatened public.

Although the positive aspects of organizations such as the CAS cannot be denied, the dominance of middle class reform policy was the defining feature of these groups, and of the entire welfare movement in Canada (Bullen, 1991). At a more general level then, this chapter is about the advent of welfare-based reform law and the moral-political regulation of marginal populations in Ontario at the turn of the nineteenth century.

BRITISH INFLUENCE

Any historical analysis of Canadian policy first requires a cursory examination of concurrent British trends. At the turn of the century Colonial ties were still extremely strong and loyalty lay first and foremost with Britain, yet the growing influence of the United States can not be dismissed.

How closely did developments in Canadian juvenile justice reflect trends in the United Kingdom or the U.S.? In the latter part of the nineteenth century, social movements which sought to promote the "better treatment of children" developed in many

Western nations. We have briefly witnessed the form that this took in Canada, but exactly to what extent did this reflect our Colonial ties and/or proximity to the U.S.? To truly gain an understanding of our juvenile justice history we must examine the intricate ties between these countries.

Canada's economy had developed through industrial stages very similar to those in the U.S. and Britain. On an ideological level Canada was also influenced heavily by both nations, particularly after the advent of technologically based outlets such as the mass media. Although Britain's philanthropic movement began much earlier than Canada's, the British did not officially complete their separate juvenile court system until 1908, the same year that the JDA came into force.

The U.K. Children's Act of 1908, was heavily influenced by welfare philosophy, but did not extend this as far as the Canadian and American models. The British system recognized the blatant "corrupting and degenerative" influences of the city, and how these would eventually create a dangerous criminal class, leading to uncontrollable mobs, and the disintegration of British morality. (Morris and Giller, 1987; 31) Discipline and moral training was the only solution, for without this reintegration into respectable working class occupations and family traditions would be impossible (Ibid.).

Britain's youth courts were also premised on the state's promotion of middle-class values. Similar models had been established in Illinois in the United States in 1899, and Canada in

1908, but there was a notable difference between the British and North American forms. The divergence between the three nations was in the degree of formality practised in each. Canada and the U.S. advocated a philosophy where young offenders were seen as fundamentally different than adults and therefore required special handling within the courts. While Britain maintained certain welfare principles, their youth courts were much more formal as far as legal procedure was concerned, resembling smaller versions of adult courts. Because youth crime in Britain was seen as potentially more damaging to the moral foundation of society, they were hesitant to abandon completely their modified justice approach in favour of the welfare model in its entirety.

In 1927 the Moloney Commission on the Treatment of Young Offenders explored this possibility and rejected it outright. Their rationale was that in order to maintain respect for the law, the laws had to emphasize responsibility for crimes, and to adopt the welfare model would fundamentally weaken this ideal. The "social welfare" of the offender was taken into consideration only during sentencing, and then only moderately. Though the U.S. and Canadian models were scrutinized by the Commission, it was decided that they could afford to be more lenient because they had less to lose (Pearson, 1982; 117).

It was not until after World War II that the British Government established the Children's Department throughout the U.K. Although privately-run orphanages had operated for centuries, this was the first time that children had become official wards of

the state. This system was quickly set upon by law and order proponents who were concerned that it was too lenient and could not respond to the supposed increase in juvenile crime. These state-run institutions were strengthened, incorporating tough and punitive regimes with education. After all, stated one British M.P., "education reforms, but toughness deters" (Morris and Giller; 72).

HISTORY OF CANADIAN YOUTH.

Before delving into official Canadian youth policy, we must briefly turn to an historical examination of youth in pre-industrial Canada to see how growing concern over juvenile immigration and delinquency led to a moral panic which resulted in formal regulations.

Since the earliest settlement of Canada the child has played an important part in the family's struggle to exist. Children comprised a significant part of a family's earning potential, and often without the monies earned by these youngsters they would have been pressed to survive.

Life in nineteenth century Canada was often harsh and short, and children were not exempt from this brutality; rather they were treated much the same as adults. This was indicated not only by their economic duties, but also by their physical appearances, clothing and mannerisms (West, 1984). Children participated fully with adults "in sex games and social events, adding to economic endeavours and living with servants and apprentices" (West, 1993;

25). From the age of six or seven years they worked full-time with other members of the community, or were apprenticed by neighbouring craftsmen. Education as we know it was very rare, with needed skills occurring 'naturally' in work-related settings (Aries, 1962).

Though I refer to the word 'child', it is quite clear that prior to the nineteenth century this concept which is familiar today did not exist. Parents did not invest emotionally in their offspring, and children were not considered to be especially vulnerable or in need of special attention (Peikoff & Brickley, 1991; 29). Although present-day concerns about children have captured the public's attention, actual incidents of abuse and neglect cannot begin to compare with the likelihood of eighteenth or nineteenth century children being killed, abandoned or abused both physically and sexually (Ibid.).

Today we find it hard to comprehend how people could have been so disinterested in the lives of children. In fact, until somewhat recently, children had been the subject of very little historical research, when other social groups were being researched extensively.

Phillipe Aries describes mothers who continually beat their children, infant and otherwise, with sticks and rods, even while they were in the cradle. Others have documented accounts of mothers who dunked their infants in ice water, in a Rousseau or Locke like ritual of fortitude (de Mause, 1974; 77). By and large, the 'traditional' child was afforded many of the same "privileges"

as adults, and were free to mix with people of all ages (Ibid.).

Due perhaps to extremely high mortality rates, it is not surprising that many parents did not make strong emotional commitments to their children. Up to one-third of all children died within a year of birth, and only half reached their teenage years (Gillis, 1974; 10-11). In Western Canada, where resources were scarce and conditions much harsher, these numbers were even higher.

Most nineteenth century settlements in Canada, particularly Western Canada and Ontario, relied heavily upon agriculture as a way of life and means of survival. Youngsters were easily maintained by the products produced, so it comes as little surprise, then, that families were consciously large with often over a dozen children being born (Parr, 1982; 13).

Schooling in these rural communities was not state-controlled, but run by the community itself, and most skills taught were very basic. Those families who were fortunate enough to be successful - though often it was from wealth acquired before immigrating to Canada - sometimes bought their children parcels of land nearby so that they could share a common crop, but more importantly, so that the children could remain at their disposal. Other parents, as they began to age, often gave up the farm to live with their children in a nearby township (Parr, 1982; 15).

Toward the end of the 1800's many of the young people began to leave their native communities to set up their own farms, but more frequently to seek apprenticeship in a trade, often with help from

the eldest brother who had inherited the parents' farm (Gagan, 1981; 62). In order to acquire these apprenticeships, it became increasingly difficult for children to stay within their birth neighbourhoods. Those who did stay, found it increasingly difficult to find enough land to support them. Quite often daughters married neighbouring inheriting sons, but the family farm was usually left exclusively to the eldest son. If he did not want a life of farming, he headed to the city with its promise of growing trade and potential prosperity.

By the late 1800's the stream of immigrants from Europe had grown into a torrent. Many of the people who came in search of a life on the Canadian frontier left the land disappointed, and were forced to migrate to urban areas in Central Canada or the Eastern United States. Rapidly growing cities were recent developments and were understandably intimidating to those from rural Great Britain or Continental Europe not to mention rural Canada.

Many immigrants arrived with little money and, though at first work may have been abundant, it was becoming increasingly difficult to procure, particularly for those with few skills other than farming. Growing concern over the immigrants' plight forced society's attention to the consequences of rapid industrialization and urbanization. Many large industries combined science and labour to meet the demands of this swiftly growing population. But as industry expanded so too, did urbanization. It was this tautological effect which caused a mushrooming of social problems and it eventually led to the call for formalized legislation to

deal with these problems.

THE JUVENILE DELINQUENTS ACT

The study of youth justice legislation tells more than how youth crime was dealt with in late nineteenth-early twentieth century Canada. It shows how the welfare state took shape in this country, and how middle-class defined legislation worked to reproduce the desired class and gender relations among a particular marginal segment of the population: namely the urban proletariat.

The origins of the Sociological movement in law, which saw the emergence of the welfare state in Western society, can be defined by three distinct attributes: an emphasis on the treatment of deviance and deviant actors, a reliance on non-legal experts and professionals to implement this treatment, and the growing use of administrative methods (Hunt 1992; 7,9). The overall objective of this new form of justice was to "maintain general security through prevention and maintain the individual through rehabilitation." (Chunn, 1992; 4)

Before getting into any historical examination of Canadian attitudes toward uses of the legal system, it is useful to briefly account for British cultural influence. In 1880, the Ontario Government promised its citizens and prospective immigrants: "all the protection and safety that British law can ensure" (Marquis in Sargeant et al., 1992; 307).

There was more than simply an emotional attachment to British

traditions, there was a belief that British laws had moral and ideological force throughout the world. This was evidenced in the philanthropic movement in Britain which left no doubt as to the perceived shortage of regulation upon the young, the result being the creation of a class of people "impossible to govern" (Pearson, 1982; 185-86). A similar situation was to be found in Canada where juvenile delinquency laws were justified as necessary for stability and order.

The existence of British traditions in English Canada helped to perpetuate class antagonisms. The fears of youthful unruliness that arose were based as much on rudimentary prejudices toward race, class and gender, as they were on changing social circumstances, although the two cannot be disconnected. That official sanctions came into force should come as little surprise, given that in Britain and Canada legal ideology supported the status quo.

Interest groups combined genuine concern with self interest to create their vision of a separate youth system. Although the process may not have been this instrumental, we should not view the socio-legal welfare movement with as much nostalgia as do many contemporary accounts such as Bain (1983) and Carrigan (1991). While this was a period of heightened concern for youth, the basis of the movement was inequality. In order to examine this more fully we turn to late Victorian Ontario, to see how these forces acted to create crime control measures which sought to rescue those less fortunately placed in the social order.

Until 1982, when the Young Offenders Act was implemented, the system to deal with juvenile offenders extended back ninety years. In 1893 the Ontario Legislature passed an act "For The Prevention of Cruelty to, and Protection of, Neglected, Dependent and Delinquent Children." Prior to this period provisions for the "indenture" and institutionalization of these groups had been on the statute books for nearly a century (Bain, 1981; 8). However it was not until 1893 that specific legislation was enacted to allow for the establishment of groups to deal solely with child issues.

Before the 1893 Act was implemented, an incessant campaign was mobilized against the Ontario government to set up a private coalition to deal strictly with child delinquency and 'potentially' deviant youths. Reformers wanted extensive legal power, enabling them to directly intervene in warranted cases of neglect and cruelty. The group first recognized after the enactment of the 1893 Bill was The Toronto Society for the Prevention of Cruelty to Children and Animals. Shortly thereafter it was re-named The Toronto Childrens Aid Society, a group that would soon have a profound effect on juvenile justice in Ontario and throughout Canada.

The person most active in the lobby for the 1893 Bill was John Joseph Kelso, a reporter from modest means who later became the first government official appointed strictly for the purpose of protecting children. Originally a political columnist, he was on his way home from a political rally when he discovered his life long passion. He was approached by two homeless children begging

for money, and when he inquired as to where they lived the older of the two told them they could not return home without being beaten by their father. Sympathetic to their plight, Kelso took the children into his care and attempted to place them in an orphanage. Much to his dismay, none of the institutions he approached would undertake the care of the children, and he was forced to place them in a cheap men's lodging for the night. The next day he recounted his adventure to the readers of his *Globe and Mail* column, lambasting municipal Toronto authorities for being ill equipped for such emergency cases (Kelso Papers, 1895-90; 26).

Thus began Kelso's career caring for neglected and dependent children. In the vernacular of late Victorian times he was engaged in 'child saving'. Although the problem of needy youngsters had been addressed as early as 1779 in Ontario, orphaned and abandoned children were usually dealt with through placement in apprenticeships. In the mid-1800's private philanthropists recognized the need for special training during the formative years, and established orphanages to care for parentless or disregarded children. The purpose of these institutions was to provide vocational, religious and moral training so that the children could return to the community as industrious young labourers (Jones, 1982).

Perhaps an even more contentious issue in Canadian society at the turn of the century was immigration. Juvenile immigration in particular created much tension, and led to three dominant arguments which permeated juvenile justice philosophy for the next

three quarters of a century.

The most common charge levelled against immigrant children was that they were the products of a physically, morally and socially deteriorating population, thus posing a threat to the well being of an otherwise healthy Canadian society. The second oft heard claim was that immigrant children did not remain on the land as intended, but created competition for scarce urban jobs. The final assertion was that immigration caused children to be improperly socialized due to a lack of supervision and proper care. Growing concern over these young immigrants forced society's attention to the consequences of rapid urbanization. Many large industries were competing to meet the demands of this swiftly growing population, but as industry expanded so too did the number of immigrants seeking work. This circular effect caused a "mushrooming" of social problems including vagrancy and petty-theft (Chunn, 1992).

Once specialized jobs, such as printing and garment making, provided menial labour for children, but as the population grew demands for youth labour declined due to its accessibility and cost effectiveness; youth workers were more easily obtained and much cheaper than their adult counterparts (Gaffield, 1979). With work scarce, and many adults being priced out of the labour force, trade unions formed in order to have youth banned from the workplace. In 1884 child labour laws were enacted despite protests from industrialists who relied on this cheap and expendable labour pool. During this period of relative instability it was the youthful resident who often found his/her behaviour scrutinized. Not only

were the young thought to be an imposing concern by reform advocates, but they were also seen as the easiest to control and ultimately reform.

The first instrument of 'control' was the educational system. Children were forced into the classroom run either by state or church authorities while still making a contribution to their working class households. Mandatory education laws closely followed labour laws which prohibited the employment of boys under twelve and girls under thirteen; as well, boys between twelve and fourteen were not to be employed more than sixty hours per week. This meant work outside of the home, for there was no restriction on domestic labour for either gender, though household labour for girls was much more common (Rooke and Schnell, 1984; 162).

The values represented by the educational system were not those of the people for which they were designed, the working class, but rather of the middle class educators themselves. These mores were instilled in the children to discourage any who hoped for upward movement into the new middle class. Immigrant children must "look forward to work, and that they be made to do it" (CAS pamphlet, 1894). However, the type of work to which this statement refers is not the type that would allow them to have any social or economic advancement. Rarely were problem or immigrant children apprenticed into lucrative trades, or permitted the comparative freedom of the shop and market place (West, 1993; 64). It should be noted that the apprenticeship of children from poorhouses or bridewells had been the established manner by which to handle

problems of delinquency in nineteenth century Ontario. Until the 1880's, pauper children's services were often advertised in the press or posted on the doors of almshouses. As late as 1883 the Ottawa Journal published an advertisement: "for adoption, ten year old boy, to any respectable farmer" (Ottawa Journal, Nov 10, 1883).

Although the school may have been the desired form of "moral police", concern about youth crime committed by "degenerate immigrants" was not being alleviated by it. With immigration and migration still growing, and Europe's "worst stock" permeating Canadian society, a push for formal justice directed at youth was growing. Problem and immigrant children were morally unfit to become companions of young Canadians, and so reformers decided that specific legislation was needed to control this youthful 'plague' (Prentice, 1977).

Previous laws recognized the potential delinquency that could accompany children without a proper home life. This was followed over the next fifty years by a series of acts for the care of orphaned and neglected children, with most recommending either apprenticeship or committal to a workhouse. In 1832 a Royal Commission abolished this system and recommended segregation into training schools for those who broke the law. Boys were to be trained in trades and girls in housekeeping, a middle-class facet of Victorian society that defined the child saving movement.

The rationale was that hard work within the home prepared the girl for what was her natural destiny: child rearing and home maintenance, based on middle-class precepts of submission to the

family in order to ensure its moral foundation. Rarely did these lower-class women have any input as to what defined family; they were merely the guardians of this androcentric institution which while purporting to empower them, oppressed them.

Toward the end of the 1880's the new breed of child savers, including J.J Kelso, broadened the definition of children requiring help to include those who suffered from neglect and cruelty. This new approach demonstrated the alteration and enduring ideology of child welfare in nineteenth century Ontario. Many recent historians, including Andrew Jones (1981) and Ian Bain (1976) emphasize the positive aspects of Kelso's involvement with this movement. Jones, for instance, writes of Kelso's recognition of the special needs of children, and the favourable influence that the establishment of the CAS had on youth. Bain goes a step beyond Jones, commending Kelso for his emphasis on environment over heredity, and the weakening of total parental discretion which allowed for a more humane code of moral behaviour to be administered by objective government officials (Bain, 1976; 88).

Both of these accounts fail to deal sufficiently with the multitude of primary historical material that exists. Overwhelming evidence suggests that Kelso did not act unilaterally in his fight for a youth court, rather it was W.L. Scott, President of the Ottawa CAS, who was immediately responsible for the JDA. These writers identify Kelso and the child saving movement as bearers of progress and change. Kelso is portrayed in a heroic light, and his detractors are characterized as opponents to advancement. Their

overall theme is one of success, with Jones concluding: " Kelso was an innovator who advocated and introduced social measures many years ahead of his time" (Jones, 1981; 179). Although Kelso was among the first to promote policies such as foster care and juvenile courts, his thinking was not original. He acted more as a promoter of middle class interests than as an original thinker in the child welfare movement.

John Bullen provides what is perhaps the most comprehensive account of the children's aid movement in Ontario at the turn of the nineteenth century. He examines the changing attitudes and methods pertaining to child welfare, and how J.J. Kelso worked within this narrow framework. Unlike other socialist renditions, Bullen does not discount the many positive effects that the CAS had on thousands of needy youngsters. Despite the many who were rescued from dire straits by Kelso and his followers, these children were not safe from the class inequality that characterized urban industrial Toronto.

He goes on to examine the Children's Act of 1893, and how it empowered the Children's Aid Society to decide whether a child met their own standards of morality and goodness. Though Bullen's is a thorough and insightful look at child specific legislation based on Kelso's own middle-class bias, he too makes one blatant omission: the plight of girls within the formalized youth justice movement, particularly in relation to their handling by the CAS.

The proportion of destitute girls 'taken in' by the CAS was much higher than the proportion of wayward boys seized by the

Society. Clearly CAS members actively sought young girls in an attempt to keep them from becoming "fallen" women. Once in the confines of CAS homes, girls were trained in domestic work and given evangelical tutoring, in the hopes of securing placement in foster homes. CAS officials maintained that they were protecting these girls from harm, believing that they were acting in their best interests. (For a more thorough analysis of juvenile female regulation in early-twentieth century Ontario, see Dorothy Lunan, 1992.) It is safe to say that the transition to the welfare state in Canada represented the moral and political governing of all working class inhabitants, including females of this designation. While the original panic derived from mostly male delinquency, it was girls who ended up suffering the brunt of the child saving "benevolence".

Reformers came to view the family as the integral factor in training and shaping youth. Rather than deal with each marginal youngster at risk in large urban centres, laws were embraced which would imbue lower-class inhabitants with alien standards of child rearing and moral fortitude. When these middle-class standards of restraint inevitably failed to alleviate the problem, the lower classes became subject to more formalized legal coercion. The Children's Aid Society aimed to strengthen morality by placing emphasis on the child's environment, and professional workers were employed to ensure that this setting met uniform standards. Although this change in philosophy led to a significant shift in practice one thing remained constant: the system was dominated by

middle class reformers who felt it more cost effective, both morally and economically, to save children than to punish them (CAS Pamphlet, Kelso Papers; 1890-95; 1893).

During the late-nineteenth and early-twentieth centuries, numerous federal and provincial statutes enacted several criminal and quasi-criminal laws. While in theory these laws applied to the entire population equally, in reality they targeted the lower classes in most aspects of their lives. Laws regulating labour, education, leisure and sexuality restricted the activities of children within and outside of the family (Bullen, 1990; 111).

In Ontario the passage of the Children's Protection Act in 1893 was the result of decades of changing attitudes. It provided a framework to deal with the immigration problem, allowing the CAS to exclusively administer and police delinquent children. Under the Act CAS workers were given the power to apprehend children without a warrant and bring those whom they deemed neglected and/or dependent before a Magistrate. If the Magistrate concurred, then the child became a ward of the Society. They then became responsible for finding a suitable foster home in which to place them (Child Protection Act. Ontario Sessional papers, 1894).

As the CAS fulfilled its duty of placing "healthy good looking" children into foster homes, and caring for the "infirm and feeble-minded" on an ongoing basis, it became more concerned with preventing crime than caring for children. There was a desire to redirect young delinquents away from a perilous life of illegality and poverty, through proper childhood training. This goal could not

be accomplished in orphanages because they could not provide the requisite work environment needed to aid in the reform process. CAS policy therefore dictated that they make every effort to seek foster homes for eligible children.

The Child Protection Act reflected a new middle-class interventionist attitude toward marginal families, particularly those of poor immigrant status. At the founding meeting of the Toronto CAS in 1894, philanthropist Henry O'Brien summed up the paramount motive of the group, and much of the child saving movement: "The Society would save the community thousands of dollars, as it would rescue from criminal careers many who would otherwise grow up to be a curse and a danger to all those around" (CAS minutes, Nov, 1894). Though punishment, probation and other youth problems were discussed, the popular belief was that these would not be needed if only principles of reform were followed. The fact that the CAS was chiefly concerned with the economics of child saving is obvious in its first series of promotional circulars proclaiming itself as a sagacious business investment. Its original pamphlet was entitled "reasons why business men and all lovers of children should liberally support the Toronto Childrens Aid Society", and discusses the long term benefits of such alms-giving, including the preservation of goods and property.

O'Brien and other members of the Toronto CAS comprised an elite section of Toronto society. All had either emigrated to Canada with wealth and status from Britain, or had been born into successful first generation families (Bain, 1976). These bourgeois

reformers sought to steer troublesome youngsters away from a life of crime and destitution. This, of course, was as much to avoid future welfare costs and social strife, as it was out of concern for these children (Bullen, 1990; 109).

Foster parents were to guarantee the humane treatment of these children, ensuring they attended school and were integrated into the family. For doing so, the foster parents were often given pecuniary consideration by the municipality which could then attempt to recover this sum from the birth parents (Bullen, 1990; 113). Children too were not without responsibility in their new homes. They were expected to provide labour in and around the home as part of their placement. Work was a fundamental part of the development process, with its ultimate result being the inculcation of middle-class ideals into working-class children, although middle-class aspirations were out of reach. This served to maintain the class structure while at the same time "feed the demands of industrial capitalism by transforming dependent children into industrious and compliant workers" (Bullen, 1990; 110). Once again the rhetoric of capitalism was being employed.

Certain children were contracted out to families who required service, with contracts specifying the dates and type of work to be performed. The employers were to provide board, lodging, washing, clothing and necessities, and a small wage was to be held in trust for the child by the CAS. Kelso himself discouraged the wage demands for children, believing that learning healthy work habits was more valuable than the money itself (Kelso Papers, Vol.3, 1890-

95; 18). While there is no evidence to indicate whether the children received the money, it is obvious that they were treated as little more than domestic servants. But placing children in foster homes was but a small part of the state-sanctioned penetration of family life and erosion of parental rights among non-middle class populations.

Perhaps the change that Kelsj and others were most devoted to was the establishment of a separate court and detention system for juvenile offenders. William Scott, President of the Ottawa CAS, and a former lawyer from a prominent Ottawa family, became heavily involved in the battle for youth courts. It was Scott himself who would later draft the Juvenile Delinquents Act, and lobby for its political survival.

Although the 1893 Act intended to clear the way for municipalities to set up separate courts for juvenile offenders this did not come into effect. It also provided for specially appointed commissioners to take the place of Magistrates, and allowed for the private detention of juvenile offenders, away from adult offenders. In order for these to be implemented there had to first be a change in federal legislation. In an attempt to remedy this The Youthful Offenders Act was passed by the Dominion Parliament late in 1894. This act provided for the private trials of offenders under sixteen, and for their private incarceration prior to sentence and during imprisonment (Canadian Sessional Papers, 1894, no.36; 17). Although these provisions applied to the whole of Canada, only in Ontario was notice given to the CAS so

that they could deal with these cases, something they had been doing informally in Toronto since the previous year.

After the Pailliament passed the 1894 Act, the real work for Scott and Kelso began. Section 550 of the 1892 Criminal Code had been repealed and the following section substituted:

The trials of young persons apparently under the age of 16 years shall take place without publicity and separately and apart from the trials of other accused persons and at suitable times to be designated and appointed for that purpose. (Criminal Code of Canada, 1894).

The objection raised by Scott was that no specific machinery for juvenile courts had been provided, and that Magistrates were too busy to deal strictly with children.

Early in May of 1906, Scott received a circular urging his attendance at the forthcoming National Conference of Charities and Corrections to be held in Philadelphia (Minutes, April 1906, Ottawa CAS meeting). At the time a new juvenile court and probation system, inaugurated in Chicago in 1900, was being adopted in several large cities around the United States. This system was the result of nearly thirty years of reform efforts by child saving organizations in Illinois. Entitled the Juvenile Court Act, the basis of this was conservative in nature, reflecting middle-class bias. Delinquents were depicted as needing firm control and restraint if any reform was to be successful. It recommended increased imprisonment and whipping for older offenders, but a

juvenile court and probation system for offenders under the age of fourteen. Probation workers were to think in preventative terms, with their mandate being to identify conditions that could adversely affect the lives of children, and to work to correct these conditions. Instead of arresting young offenders it provided alternatives to incarceration and offered "information about health and morals in an entertaining and constructive manner" (Platt, 1969, Levine and Levine 1970). Scott returned home to Ottawa full of enthusiasm at the possibility of bringing such a "promising system" to Ontario and "the entire Dominion." In a letter to J.J. Kelso upon his return he wrote:

I was, I must confess, very sceptical as to the likelihood of our obtaining at the conference any new ideas, that would warrant the expense of the trip. The meetings, however, proved a veritable revelation to us. The subject of the juvenile court and probation system for children, which none of us in Ottawa had ever heard of, was in everyone's thoughts and was set forth in paper after paper. We were particularly taken with this system of juvenile probation, and we secured copies of a folder on the subject, for future reference. (Scott Papers, 1906, letter to J.J. Kelso; June, 1906)

Much to Scott's dismay, it was again found that the Dominion legislation of 1894 did not accommodate a separate court and probation system. A unanimous vote of Ottawa CAS officials decided that Scott would approach Justice Minister Alan Aylesworth in order to solicit his support in reforming this legislation. It was this vote that would eventually lead to the drafting of the Juvenile

Delinquents Act.

In the meantime Scott went about consulting with numerous legal and Parliamentary figures, including his father the Hon. R.W. Scott, Secretary of State. The elder Scott took a deep interest in the Bill and urged that it be completed by the end of the 1906 sitting (Letter to Scott Jr. Nov. 1906). When Parliament opened on Nov. 27, 1906, His Excellency's speech included among the Bills to be submitted to Parliament: "A bill to make better the provisions for dealing with juvenile delinquents" (House of Commons Debates Nov.23,1906).

In correspondence with W.L. Scott after the opening speech, Kelso, although with no legal training himself, pointed out an oversight that would plague the Bill from its outset: The Minister of Justice, under whose jurisdiction such subjects lay, had not been consulted prior to its reading. Aylesworth was annoyed and insulted, not at the provisions embodied in the Bill, but at the fact that parliamentary protocol had been ignored in its reading.

At the same time the Ottawa Society had arranged for an address by Mrs. Schoff, President of the Philadelphia Society for the Prevention of Cruelty to Children. The series of meetings on the JDA were well attended, and Mrs. Schoff's keynote speech was magnanimously received, with even Prime Minister Laurier in attendance. Conspicuously absent at these meetings was Aylesworth who gave no explanation. In fact all further correspondence between Aylesworth and Scott ceased, and Aylesworth repeatedly refused meetings. In January of 1907 Scott wrote to Kelso in

dismay:

I regret to say that Mr. Aylesworth seems to be dead set against the proposed bill and his objection appears to be an unreasonable one which cannot be got at by argument. Moreover he apparently does not wish to be convinced despite his earlier promise. (Kelso Papers, 1905-1908.)

The objection that Scott refers to is the fact that Aylesworth had not been consulted in the drafting process over which the Justice Minister "made no secret of his serious annoyance and declined to be appeased." In a letter to Mrs. Schoff of the Philadelphia CAS, Scott writes:

In the matter of the failure to consult him, he was, however entirely right and he had, therefore an excellent excuse for his hostility to our proposal. (Scott Papers, January, 1907)

Eventually Aylesworth consented under pressure by Governor General Lord Grey, a noted philanthropist and close friend of the elder Scott, who had just been appointed to the Senate on his recommendation. Senator Scott introduced the bill in the Senate with the explicit understanding that it would not go beyond second reading, and that its introduction should not be taken as committing Aylesworth in any way (Letter, R.W. Scott to W.L. Scott February 1907). Though the Bill was received favourably in the Senate, and passed without dissension, an opposition movement outside of Parliament threatened to sway the still undecided government away from supporting the proposed legislation.

This opposition was comprised mostly of high ranking police officials and Magistrates who argued that the JDA would reduce their control over delinquents, and that the current method was less costly and more effective. Essentially this was a conflict between the traditional controllers, the police, and the aspiring controllers, the probation workers and social welfare agencies. The police felt that the JDA was too lenient, but in fact they were concerned that their jurisdiction would be reduced, leading to a reduction in jobs (West, 1993; 35).

Inspector Archibald of the Toronto Police Department went so far as to call Scott and those involved "superficial and sentimental faddists" (Toronto News, March 16, 1907). In March of 1907 Saturday Night Magazine published an article complaining about the proposed system: "the state carries on what may be called the continuous business of producing criminals." Their solution was that instead of "coddling" youths harsh punishment would create the desired effect.

Finally the Government collapsed under the incessant lobbying by the CAS, and Aylesworth sponsored the Bill, thus assuring its smooth passage through the house. The Bill received its second reading and was passed on July 8, 1908, and given Royal assent on July 20th, crowning with 'success' years of effort by numerous people, most importantly J.J. Kelso and William Scott.

This new act gave considerable impetus to the idea of Children's Court giving it "exclusive jurisdiction in cases of delinquency" (JDA, 1908; 2). It included all of the changes that

Scott and Kelso had envisioned: separate detention centres, probation officers, informal procedures and a volunteer juvenile court committee which was to be overseen by CAS officials.

The JDA, despite how revolutionary it may have seemed, was aimed directly at the poor and identified certain children as being at risk simply because of their socio-economic standing. Government and CAS officials felt that what was needed to help those who 'could not help' but to offend, was a place where particular attention could be paid to young delinquents. This was a system of reformatories and youth homes administered almost exclusively by CAS officials. Not only did this lead to the subordination of lower class children and their families, but it ensured the place of the CAS in youth justice reform efforts. The JDA added another potentially coercive edge to state powers of intervention among the working and dependent poor. The state now officially recognized the term 'delinquency' and mandated the establishment of special youth courts, thus allowing it to extend its parental role and powers.

Unlike many of the liberal interpretations of the JDA, including the one given by Carrigan (1991), this legislation did more than sanction children in a "kind, and paternal manner", although the latter was at least partially correct. Aside from vagrancy offenses, it was the first time in Canadian history that a youth could be officially sanctioned under their own specific act for non-criminal behaviour such as truancy, wandering and loitering, and for engaging in such 'adult' practices as gambling, smoking, drinking and sex (1908, JDA). Children could be committed

to a probation officer or Children's Aid Society by any person deemed suitable by the court. If by chance they were given back to their family, provisions were made for CAS workers to closely monitor the family. Parents or adult guardians were subject to criminal penalties for "contributing to the commission of delinquent acts" and could be fined five-hundred dollars or imprisoned for one year.

The enactment of criminal statutes distinct from existing child protection legislation, and the Criminal Code, allowed the courts and CAS to differentiate between neglected or dependent children, and juveniles who committed criminal and status offenses. This separation was not perceptible in its exercise, however, and both of these categories were undistinguishable. Delinquents and homeless children were frequently detained together in CAS shelters, clearly indicating that the effect of this legislation was not simply the protection of children, but the penetration of family life. The JDA resulted in: a partial erasure of parental rights among working-class populations, by increasing the number and class of children covered by the act; an increase in the number of adults who could be charged with aiding delinquents through neglect and the broadening of CAS and juvenile court powers (Sutherland, 1976; Houston, 1982; Chunn, 1992).

During the ten minute debate in the House of Commons, a lone M.P. rose to suggest further study on the topic. Mr. Lancaster, an opposition Member from Simcoe, recognized the effect that the Bill would have and the extreme power that it would give the C.A.S. He

was, however, berated by his House colleagues for opposing legislation that he said: "places children at the mercy of a person called a probation officer...whatever the probation officer chooses to do with the child is to be done." Whether Lancaster realized it or not, the future of thousands of children was to be decided in a brief courtroom session, followed by years of possible indenture at the hands of CAS officials (House of Commons Debates, July 8, 1908; 12701).

The history of the CAS, and its influence on youth-focused legislation, is one of class-based reform. The original philanthropic movement which led to the establishment of the Toronto Humane Society and later the CAS, was led by economic and social elites. Leading business men, clergy, professionals and politicians guaranteed the success of this organization and defined its original aims. They provided the funding and access to government leaders that is vital for any movement's success. This was done with the expectation that "present and future expenditures on welfare could be avoided" and to "guarantee social peace and stability by transforming dependent children into industrious law abiding citizens" (CAS statement, quoted in Bullen, 1990; 125). Put in its simplest terms, the child savers and juvenile court advocates hoped that this new system of foster homes and juvenile courts would prove to be a more successful and less expensive method of dealing with a perennial social problem (Ibid.).

The most heavily involved group in this reform implementation was the Canadian middle-class. They contributed to reform

organizations, but more than capital, they provided the work force which enabled these organizations to run smoothly. The CAS' mandate was defined by people such as J.J Kelso who epitomized middle-class interests. It was their standard of conduct, and model of proper living that was forced upon the lower-class. Backed by the wealth and influence of the elite, the middle-classes set about reforming Ontario youth. They viewed the lower-classes and the poor in a patronizing manner. No matter how much the middle-classes felt that they recognized the difficulty arising from the conditions in which the poor lived, there was still the belief that poverty was the result of some weakness or shortcoming. The poor needed to be assisted by those who could act in their best interests: the 'kindly' members of the higher classes, with their greater responsibility toward the family and the child. Their initiatives were extremely successful. In Ontario these conceptions of childhood and family were widely accepted, and laws were implemented primarily through non-coercive strategies for increasing standards of youth morality (Chunn, 43; 1992).

When these laws failed, and the lower-classes did not live up to middle-class standards, they were subject to formal legal coercion in 1893 with the CPA and in 1908 with the JDA. Although these statutes were supposed to apply to all without impunity, they targeted the lower class.

Some recent accounts of this historical epoch see this legal coercion as a uniform system of oppression based solely on capital and patriarchal relations (West, 1984). This interpretation is

partially correct, but too narrow to see the humanitarian efforts that went into much of this legislation. Men such as Kelso and Scott did not set out to control the marginal, but as promoters of their own class and gender, this was the unavoidable result.

The Children's Aid Society, which worked to help children, ultimately ended up intruding upon working-class familial relations; however, they were not part of a wider conspiracy to oppress the poor as some instrumentalists might contend. The lower-classes also wanted reform, but the reform they got was not based on their own class interests, and in the case of poor women, gender interests (Chunn, 1992; 48).

Despite the humanitarian sentiments that reformers such as Scott and Kelso had intended, their legislation ensured that the working class had little mobility, and few opportunities for personal development. The CAS worked to reform children who had not been socialized under this form of state control. When these failed, they enacted a formal control mechanism to ensure the compliance of the lower classes. The JDA contributed to the reform of socio-criminal laws for youths, a process which had profound and far-reaching implications for families of the working class, well into the twentieth century.

The Juvenile Delinquents Act accepted the proponents of the Children's Court Movement definition of delinquency: "Youth crime, child abuse and neglect were all viewed as part of the same phenomenon; namely, the inability of large numbers of families, particularly non-middle-class families, to care for and control

their offspring" (Havemann, 1986; 227).

As we have seen, youth, particularly the urban working class had gained the potential status of 'dangerous'. Therefore, the child-focused legislation attempted to combine welfare ideology with the protection of society, or more specifically the prevention of crime. This is evidenced by Section 38 of the JDA:

This Act shall be liberally construed in order that its purpose may be carried out; namely, 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 practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child and one needing aid, encouragement, help and assistance. (1908)

The JDA made almost all forms of deviance illegal, extending its legislative hand over the area once governed by parents. Under this earlier tradition parents had unlimited power over their children, with the state's role being to protect and enforce this right (Melichcik, 1977; 197). Under the relatively recent doctrine of "parens patriae", this shifted the burden to the state, while at the same time disciplining the parents. This doctrine originated in England, moving to Canada in the mid-nineteenth century. Originally viewed that as the "father" of the country, the king had an obligation to intervene on behalf of a child, it intended to protect the property rights of orphaned children of nobility, whose parents had died serving the king. This was

gradually broadened to include other interventions on behalf of the child, and eventually superseded any rights that existed under its original form.

Despite our traditional reliance on British, and increasingly American, methods, the Canadian system was much more tempered with caring and reason than the harsh and coercive British standard. That does not mean that the Canadian system was without major flaws. Canadian delinquent children were those whose vices contravened local, provincial and federal laws regulating sexual immorality, incorrigibility or unmanageability. It was this emphasis on regulating children's behaviour, which led to numerous future problems. The JDA, with its child welfare content, allowed for indeterminate sentences, often with treatment-based provisions. This led to a neglect of due process rights that the Liberal Justice Movement of the 1960's would use to gather support for the reformation of the juvenile justice system. I will discuss the intricacies of this latter juvenile justice reform movement in the next chapter. For the time being it is necessary to clarify the paternalistic, classist meaning embodied in this bill.

The basic philosophy of the JDA, and of the entire child saving movement is set out in the following four sections:

2(1) A juvenile delinquent is any child who violates any provision of the Criminal Code or of any federal or provincial statute or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or

provincial statute.

3(1) The commission by a child of any of the acts enumerated in the definition of 'juvenile delinquent' in subsection 2(1) constitutes an offence to be known as a delinquency.

3(2) 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.

3(8) 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.

These sections give clear reference to the doctrine of "parens patriae", which became even more pronounced when the JDA was reformed in 1929. Despite these minor revisions, the JDA retained its original content, and remained intact for nearly seventy-five years. Broad Victorian definitions of delinquency under the JDA covered every offence from curfew violations to first-degree murder. Every single criminal act committed by a juvenile was lumped under one category, stigmatizing all as 'delinquents' (Wyman, 1977; 24).

Training school placement was the form of incarceration most widely used under the new youth laws. Under the Ontario Training Schools Act, in conjunction with the JDA, both victimized and victimizing children were placed under the same roof. The victimized, it was thought, were delinquents in the making, therefore: "The distinction between neglected and criminal in effect translated as potentially versus actually criminal" (Houston, 1972; 263).

Despite the child savers' espousal of decreased incarceration, Sutherland documents evidence to show that juvenile incarceration mirrored or exceeded actual population growth (1976; 146-9). Nowhere was this more blatant than in the case of female delinquents. Young women were not only confined by the definition of dependency cast upon them, but were further fettered by the social expectations set for them as females. That over two-thirds of females before the courts were incarcerated attests to the extension of this jurisdiction (as compared to the twenty-five to thirty-five percent of boys). (Ibid.) The transition to the welfare state in Canada represented the moral and political governing of all working-class inhabitants, particularly females and other minorities. The highly disproportionate number of Aboriginal youngsters was an equally disturbing testimony to the blatant racism of this system. The plethora of special provisions for the young represented the continuation of the family court's jurisdiction over lower-class families. Medically based rehabilitative strategies were employed by Youth and Family courts in an attempt to solve the delinquency 'problem'. As the twentieth century progressed, numerous acts including the: Child Protection Act, 1927; Deserted and Children's Maintenance Act, 1927; Adoption Act, 1927, and various federal commissions, combined 'corrective' policy with existing class-based philosophies.

It was this partial reliance on therapeutic policy that would, in the 1960's and 1970's, lead youth rights advocates to begin dismantling the JDA. Reports at the time began to acknowledge the

recidivist outcome of incarceration in corrective institutions. In its annual report of 1972, the Ontario Department of Corrections acknowledged that over a third of those coming into provincially-run homes were repeat offenders who remained "uncured".

Despite the influence that the United Kingdom had on its Colony, the Canadian response to juvenile delinquency was hardly an exact replica of Britain. There was certainly no regret for the decline of the 'Canadian way of life' for the country had existed only a generation. To think that it was the British standard that was being longed for would be to ignore the reason why many immigrants had left in the first place: to seek a better way of life.

Even in its early stages Canada was establishing itself as a strong and independent Dominion. Although developments in the U.K. paralleled those in Canada the fact that Britain did not adopt a juvenile court model similar to Canada and the U.S. revealed the growing differences between the Mother country and its Dominion.

CHAPTER THREE

Reassessing the "Needs" of Young Offenders: The Abolition of the JDA

Since the 1960's fear of crime and violence has become a world wide phenomenon. In Britain much has been made of this by the press, and in conservative political agendas. In the United States crime has become an obsession causing people to react to "terror" in the streets. The Canadian response, while not as intense, has seen crime move to the forefront of public opinion particularly in urban centres where it is thought that not only is crime increasing, it is becoming more violent.

The proposed legislative changes to the Juvenile Delinquents Act (JDA) marked a broad shift in philosophy regarding the treatment of young offenders. Moving from the "parens patriae" model, based largely on social welfare and treatment approaches, JDA alternatives supported a more stringent law and order model, advocating youth accountability.

With many conservative justice movements there often arises a call for greater rights (Havemann, 1986; 224). The 1970's youth justice movement in Canada was no exception with its proponents arguing that juveniles' rights to due process and fair and equal treatment were being compromised by the antiquated JDA. Accordingly, these reformers set out a piece of legislation decades

in the making. The proposed Act was based on principles of offender responsibility, the protection of society, and discipline and control; concepts not necessarily in line with greater rights. Lessened were the precepts of special needs and guidance that had dominated child welfare well into the twentieth century.

Did this change in thinking represent a "progressive change" in the law, (Archambault, 1983) or was this merely another shift in policy based solely on the fears of generational displacement? Paul Havemann (1986) writes that youth are victims of current crises in capitalist economic systems, and that the Young Offenders Act (YOA) was a product of such concern (Havemann, 1986; 225). With the end of the post-World War II baby boom came the beginning of the shift away from welfare practices. Of all Western countries Canada experienced the largest population explosion (West, 1984; 215). This boom caused the creation of numerous jobs to deal with the rising numbers, but by 1971 those under the age of twenty-four comprised nearly half of the Canadian population. (Ibid.). The result was heightened unemployment, particularly among young people. Welfare agencies worked to alleviate the accompanying problems, not because they were trying to socialize the poor to a welfare discipline, but because that was what the situation required. If the former explanation as postulated by Piven and Cloward was correct, then the juvenile justice model would not have changed to a system where welfare policies have all but disappeared.

Just as at the turn of the century the child saving movement

mirrored the end of the boom in industrial capitalism, the 1960's and 1970's marked the end of post-war prosperity. The crisis-racked welfare state had reduced expenditures on education from 20% of the Gross National Product in the early 1970's to 16% in the early 1980's. Youth employment had also decreased during this period amounting to 42.6% of total unemployed by 1982. At the same time the youth population grew by 50% between the years of 1966 and 1981 (Canada Youth, 1984; 20).

Due to the global crisis in most capitalist economies in the mid-1970's, youth world wide became targets of reform. Known as the new "dangerous class" (Spitzer, 1975) marginal youth groups were blamed for numerous societal ailments. Politicians, reformers and media personnel shifted the focus away from unresolvable economic problems to tangible acts of crime, leading governments and the public to call for crime control campaigns. Canada was no exception, invoking its coercive powers of social control to transform the costly welfare state into an "authoritarian moral order" (Hatt et al., 1991). Clearly, changes to the JDA served as a partial declaration of law and order philosophy providing an avenue for future exceptional changes, and the realization of neo-conservative objectives.

However, the need for change was interpreted quite differently by the ideologically opposed factions involved in the reform debate. Social reform activists, including CAS officials, adhered to JDA-like principles of indeterminate dispositions, while adding a legal maximum and judicial review clause. Justice-oriented

reformers advocated clearly defined and definitive lengths of sentences regardless of the degree of punitiveness. Law and order lobbyists were only concerned about sentencing in regard to its length. They felt that young people had to be responsible for their actions, and only coercive measures would ensure this.

Part of this growing concern arose out of the ever-changing perception of the child. By the mid-twentieth century it had shifted away from Victorian definitions of children as needy and dependent, toward recognizing male children, and to a lesser extent female children, as capable of a certain level of independence and competency. Decisions made for the benefit of youth, without their input, began to be questioned (Snider and West, 1977).

As witnessed in Chapter One, blatant hetero-sexism was one of the defining features of the child saving movement. Crimes of vice and immorality were implemented to control young women's sexuality. Sex was central to theories of delinquency and practices of control. The pattern of seeing female behaviour as different or less than the standard of male behaviour was pervasive in welfare laws and strategies. One of the paramount reasons behind changing the JDA and disavowing sexist, classist, and racist welfare procedures was to combine greater equality before the law, including less intrusive state agencies. This was but one of the many problems facing youth, that the numerous alterations to the JDA had to consider.

In 1975 the National Welfare Council produced a report that highlighted the major problem facing children in Canada: poverty.

It affected their health, education and probability of becoming involved in the legal system. An outcry from child protection agencies and the legal community alike stressed the need to do something more. Included in this was the belief that youth had to start being responsible for their own future if any positive change was to be made. The debate had moved from society being responsible for children, to the "responsibility of the young person to society" (Reid, 1982; 16).

For any major legislative change to be successful a strong lobby must often be mobilized in order to garner the requisite political and legal support. In many cases the government will appoint an 'independent' intermediary to act as a buffer between reform advocates, politicians, and the public. In the case of the YOA it was the Hon. Mr. Justice J.R. Omer Archambault, Director of the Young Offenders Policy Branch, who played such a role. Advocating the contradictory union of rehabilitation and responsibility, Archambault wrote that there was a need for legal professionals to "claim new turf that had long been elusive" (1982). Among these legal professionals were the police who according to Archambault "...had been hard done by under the JDA" (1982; 2). It is not surprising then, Archambault made all possible efforts to ensure the 'justice' aspects of this new law.

In his presentation to The Young Offender and National Education Seminar in 1983, Archambault laid out the philosophy and principles behind the drafting of the YOA. This Bill, writes Archambault, is Parliament's response to evolving values and

changing attitudes toward youth. The YOA reflects such change "...through extensive research and a more sophisticated knowledge of human behaviour generally, and the moral and psychological development of children in particular" (1982; 1). The new system would not represent a mini-adult system as many critics had charged, rather it would continue to emphasize "concern and caring" (Ibid.).

The JDA had become a point of contention first and foremost among police agencies, who represented the polar opposite to social services (West, 1984; 117). These varying views caused the reform process to be as protracted as it was. Although there were numerous approaches to the solution of the problem, three distinct lobbies arose which competed for 'ownership', to which notable benefits could accrue. The treatment lobby, civil libertarians and law and order campaigners comprised the three major delineations among dozens of sub-groupings (Havemann, 1986; 228). Though ideologically opposed, it was convenient for civil libertarians and law and order lobbyists to join forces. Both groups wanted major changes, though obviously for different reasons, while treatment protagonists only wanted minor reforms. It was this powerful union that led to the displacement of treatment-minded lobbyists, laying bare the youth justice system for others to stake their claim.

Comprised largely of public and private welfare workers, the treatment advocates' philosophy of need-oriented care resembled that of a century earlier. Not only did they vehemently fight to maintain the existing system, they argued that increased funding

and jurisdiction be allotted to psychologists, psychiatrists, physicians and social workers. Their mandate remained the "understanding" of delinquency, including matters such as treatment and prevention. Dispositions were to be based not on what the offender had done, but on what was socially useful for them. Their movement sought to perfect the "science of human relations", by mobilizing resources in the community as well as the clinic (Taylor, 1970; 5).

Much of the contemporary literature espoused by the pro-treatment lobby was critical of the justice system, not because it denied children their rights, but because welfare/social workers needed to become more directly involved in order to "throw off their traditional mantle and make a direct and dramatic impact on the youth justice system" (Rosser, 1975; 18).

The law and order campaign's growth was evidenced by a Solicitor General Working Paper in 1975 that criticised the Canadian state for continuing to supplement parental efforts (1975; 203). Most social workers complained that while this may have been the policy, it was ceasing to be the practice. Many agencies recognised the government's hesitation to give greater responsibility to the child welfare system, particularly in regard to delinquency. The government, wrote welfare workers, increasingly "views counselling and caring services as the 'soft' component of the JDA, and thus gives them relatively low priority" (Yelaja, 1975; 15). Counselling and protective services soon became secondary to punitive measures even before the YOA was implemented.

The Solicitor General's report continued: "Punitive measures achieve satisfactory outcomes for many of the children, for whom this [rehabilitation] is harder to achieve" (1975; 206).

Even in the midst of welfare-based corrections, the profession of social worker in the justice system had never been taken extremely seriously (Yelaja, 1977; 105). The extent to which social work is based on humanitarian ideals has also been questioned. Many social and legal theorists contend that welfare institutions have been used not to help the needy, but to direct and control their behaviour (Piven and Cloward, 1971). David Rothman acknowledges that there is great suspicion of the idea of doing good: "whereas once historians and policy analysts were prone to label some movements 'reform' thereby assuming their humanitarian aspects, they are presently far more comfortable with a designation of social control, thereby assuming their coercive quality" (1978; 83). Rothman's is a caveat of which we should take note. All reform programs reflect contemporary concern, and as such should be evaluated with that in mind. The development of public and private welfare was rooted in concern for the underprivileged. To deny this would be to dismiss genuine considerations altogether, even if these considerations were based on structural inequalities.

Civil libertarians, the closest thing to a compromise between the three groups, were partly correct in their evaluation of the JDA: it was costing juveniles many of their rights, forcing them into rehabilitative programs with no discernible benefits such as had been envisioned by its founders. The welfare state was being

attacked on both fronts, by the libertarians advocating the establishment of due process in the justice system, and by the 'just desserts' lobby who wanted to decimate the welfare state altogether. For these conservative reformers the welfare system perpetuated youth crime. Public campaigns against this youth "scourge" further nurtured the image of problematic youth behaviour. It was this exploitation of public concern that eventually saw the demise of the welfare state in Canadian youth justice.

Aside from the tightening of crimes of vice in 1929, the Juvenile Delinquents Act had remained intact for nearly seventy-five years. Attempts to thoroughly review its usefulness began in the 1960's, but it was not for another twenty years that any real change was legislated. In 1961, the Justice Committee on Juvenile Delinquency was appointed by the Hon. Lucien Cardin, Minister of Justice. Over the next two decades numerous groups and committees made countless recommendations and proposals. The following is a brief summation: (For a more extensive examination see Appendix A)

-1961. Committee appointed to investigate juvenile delinquency in Canada.

-1965. Report on Juvenile Delinquency in Canada published. Tabled on February 7, 1966.

-1967. Draft Act proposed to replace the JDA.

-1968. Federal/Provincial conference to further discuss the Draft Act.

-1970. Bill (C-192) The Young Offenders Act first proposed.

-1971. Death of (C-192).

- 1973. Solicitor General and Health and Welfare form committees to draft new legislative proposals.
- 1974. Solicitor general conference to examine the 1973 proposals.
- 1975. Solicitor General publishes Young Persons In Conflict With the Law initiating extensive debate.
- 1976. Response to the 1975 report seems favourable.
- 1977. The proposal for replacement of the JDA published and circulated.
- 1979. Federal election leads to the tabling of YPICL.
- 1981. Liberal Bill (C-61) introduced as The Young Offenders Act on February 16.
- 1984. Young Offenders Act given Royal Assent on July 7.

Of the above, the three major legislative proposals were the 1967 Draft Act, 1970 Bill (C-192) and Bill (C-61) which eventually became entrenched as the YOA.

Those advocating change brought a wide range of philosophies and strategies to the table. This diversity can be seen in the earlier bills, while later drafting reflects a more unilateral approach to youth dispositions: law and order advocates were beginning to dominate the process. Between 1970 and 1982 there was a change in thinking that began to de-emphasize the treatment content of sentencing. The basic philosophy of Bill C-192 in 1970 was similar to that of the 1908 JDA in that "misguided youth" still required the guidance of a parental-like authority. However, recognition of the needs of youth was but one part of the eight recommendations stated in the Bill including: the protection of society; accountability of youth; and least interference with

freedom (R.S.C., 1970 s.38.).

Bill C-61 went even further placing greater emphasis on procedural rights such as the right to counsel at all stages of proceedings, youth and parental consent for rehabilitative dispositions; and regular review of non-custodial sentences. This conflicts with C-192 in that similar provisions in the latter were to be left within the judge's discretion. With C-192 we witness only the partial replacement of welfare-based informal proceedings. It attempted to combine accountability and justice with social welfare principles, but was unsuccessful. Bill C-61, on the other hand, contained more specific elements which further limited judicial control, while appealing to conservative calls for harsher sentencing.

Susan Reid (1982) has compared the eighty-five sections of Bill C-192 with the eighty-one of C-61 (YOA). Below is a summation of the five major similarities:

1. The single charge of the state of delinquency is replaced with specific offenses.
2. Only Federal Criminal Code and related statutes included; excluded are contraventions of provincial and municipal regulations and the offenses peculiar to the status of juveniles such as incorrigibility and sexual immorality.
3. Age of criminal responsibility raised from seven years; youth can be transferred to adult courts if 14 years or older.
4. Procedural rights for due process enumerated including: notice of charge; information for disposition separate from adjudication process; maximum levels on sentences; and appeals of verdicts.

5. Special rights and guarantees appropriate for the development of youth insured such as: youth courts and judges, and youth workers; participation of family in judicial proceedings; detention and correctional centres separate from adults if at all possible; wide range of dispositions; predisposition reports if residential placement considered; anonymity of young person's in the media, who are now permitted access to youth courts unless specifically asked to leave; and diversion from judicial hearings dependant on judge discretion or existence of authorized programs (1982; 7).

Although at a cursory glance these two Bills seem quite similar, the various provisions reflect differences in the extent of state control and concern for the well-being of young people in conflict with the law. In brief, the YOA is more different from the JDA than C-192. The four major areas where the two proposed Bills differed were: principles; age limits; judicial discretion; and dispositions.

1. The philosophy of Bill C-192 is almost identical to that of the JDA except that the protection of society and accountability of youthful offenders suddenly appeared in C-61 where it hadn't been in C-192.

2. Bill C-192 raised the age of criminal responsibility from 7 to 10 and lowered the jurisdiction of the juvenile court to 17. C-61 raised the minimum to 12 and the maximum to 18 across Canada.

3. The procedural rights and limits on discretion are more extensive in the YOA (C-61) than in C-192. For example, the right to counsel at all stages of proceedings, parental consent for treatment dispositions and the regular review of custodial dispositions are examples of the new regard for legal formalism. C-192 by contrast, left all of the above to the judge's discretion.

4. The maximum dispositions under C-61 are less severe than under C-192, but more likely to utilize custodial containment on a regular basis. (Ibid; 35)

Why did Bill C-192 fail, when its close relative C-61 was met with resounding acclamation? Throughout the 1960's and 1970's with their heightened awareness of class discrepancy under capitalism, many Western countries, particularly the U.S. and Canada, experienced confrontation over inequality before the law. Canadian indicators of this concern were evident in the 1960 Bill of Rights, the Inquiry into Civil Rights in 1968 and the Royal Commission into the Status of Women in 1970. Among these calls for legal and social reform was the need for greater children's rights, particularly regarding their treatment under welfare laws (Chisholm, 1977). A child as young as seven could be sentenced to time in a training school; youth could be held indefinitely up to their twenty-first birthday even if they committed no further offenses; and youths charged with status offenses such as truancy or sexual immorality were often held for greater periods than those who had committed much more serious offenses (Snider and West, 1977).

It is interesting to note that while the JDA was devised and instituted largely by social reformers outside of the government, (although with considerable inside influence), the YOA was drafted exclusively by the federal government with minimal input from groups outside of the bureaucracy, namely police agencies. This factor undoubtedly influenced the formulation of principles and

powers within the legislation. Perhaps it was this lack of outside consultation that led non-governmental political and professional organizations to intensify conflict around the YOA that continues today. This will be explored further in the next chapter. For now let us examine those groups who did influence the YOA to see to what extent they reflected the changing economic and social circumstances in Canada.

Often with a law and order campaign come misconceptions about the amount of crime actually occurring. These overstatements buttress the myth of declining morality among younger generations. Youth crime in particular is exploited by the conservative lobby even though two-thirds of this crime consists of offenses against property, and as opposed to popular opinion, only a minute amount is violent (West, 1993; 117). The moral panic illusion is initially created by those on the front lines of justice: namely the police. Speaking to the Committee on Justice and Legal Affairs the spokesperson for the Canadian Association of Chiefs of Police commented on the state of youth crime in Canada:

Over the past 15 years I have personally been aware of the changing patterns of juvenile crime. Years ago their activities with some notable exceptions, were generally believed to be of the nuisance variety- a lot of minor thieving, some sexual activity, vandalism and the like. What faces us now are young people who commit crimes, not as a lark or on the spur of the moment, but with a degree of intricate planning and sophisticated execution not known.

We are not talking now of misguided children or those in need of protection. The citizens of this country are asking to be protected from young hoodlums who, some at the ripe old age of 10 and 12 years, have already made the cold

calculated decisions to take their chances as confirmed criminals. Public tolerance for their behaviour is diminishing and people are fed being [sic] their victims. (H.C., minutes and proceedings and evidence of the Standing Committee on Justice and Legal Affairs, 12-2-1982, Issue 64:7,8).

However, there were just as vocal statements made by the other moderates pressing for change.

Not surprisingly with a growth in population there comes a rise in the amount of crime consistent with the increased numbers, but also, unfortunately, with the perceived decay of youth values. Governments are able to deflect attention from themselves by refocusing the public's attention on more sensationalistic yet tangible issues. The Trudeau Liberals of the early 1980's saw their support wane as the recession peaked, making economic recovery appear distant. Though the YOA had existed in one form or another for many years, its introduction in the House coincided directly with the Liberal's poor showing in the pre-election polls. Based on a compromised justice model, the YOA offered the Liberals the chance to disassociate themselves with the unpopular leftist treatment lobby, while appealing to the civil libertarians' concern with legal process. In reality, this Act was based more on demands for offender accountability, protection of society and deterrence than on the absence of rights for youth: factors clearly put forth by the well funded law and order lobby (Havemann, 1986; 230). The justice model inherent in the YOA represents a compromise between the three lobbies, containing an eclectic mix of deterrence and due process respectively, sprinkled with bits of treatment philosophy.

This model was by no means unique to Canadian youth policy. The justice model originated in the United States, growing out of the tremendous civil unrest in the late 1950's and 1960's. It provided an alternative to rehabilitative philosophies which had caused the overcrowding of American prisons to the point of saturation. Combining treatment, offenders' rights and retribution, the justice model first put forth contained the rhetoric of due process, but more importantly accountability and just desserts (Paternoster and Bynum, 1982). Perhaps the most appealing aspect of this model was its purported expenditure reduction, welcome news in the face of costly treatment schemes that seemed to have no result.

Although at first the justice model appeared to represent genuine compromise: it put into place the equipment needed for a more punitive apparatus to prevail. With its emphasis on individual accountability for criminal offenses, this model "serves a major ideological function in reshaping the consensus to facilitate the transition from the welfare to the 'exceptional' state" (Paternoster and Bynum, 1982; Ratner and McMullan 1985).

By defining youth as rationally calculating individuals, the justice model is able to use its individual accountability precept to argue for greater deterrence in sentencing, such as we have just witnessed with the latest YOA compromise. Few Canadian academics anticipated that the justice model would be co-opted by neo-conservatives bent on exercising coercive power over youth, despite the fact that it had been happening in the U.S. for a number of

years (West, 1984; Havemann, 1986).

In the Solicitor General's "Philosophies and Principles of the Young Offenders Act", the Hon. Mr Justice J.R. Archambault sets out the dual roles of needs and rights, attributed to the treatment and libertarian lobbies respectively. Combined with the just desserts principle, the extent of the contradictory nature is first witnessed in the YOA declaration of principle:

3.(1)(a) While young people should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offenses should nonetheless bear responsibility for their contraventions;

(b) society must, although it has the responsibility to take measures to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour;

(c) young persons who commit offenses require supervision, discipline and control, but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;

(d) where it is not inconsistent with the protection of society, taking no measures or taking measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offenses;

(e) young persons have rights and freedoms in their own right, including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms;

(f) in the application of this Act, the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society,

having regard to the needs of young persons and the interests of their families;

(g) young persons have the right, in every instance where they have rights and freedoms that may be affected by this Act, to be informed as to what those rights and freedoms are; and

(h) parents have the responsibility for the care and supervision of their children, and for that reason, young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision is appropriate.

It appears in the preceding section that the YOA manifests the belief held in the first principle (S.3.[1]A) that youths are to be held accountable and responsible. The YOA, then, is not child welfare legislation, but a combination of the recognition of civil rights, the ineffectiveness of treatment programs, and the belief that JDA dispositions were "too soft" (Leschied and Jaffe, 1991; 162).

The result has been unmistakable: the YOA is allowing courts to hold young people accountable for their actions sentencing them to custodial dispositions at what Havemann states is nearly twice the rate of the JDA (1992; 208). Section 20 of the YOA outlines possible sentences, available to youth court judges, including intervention, restitution, and open and secure custody, with all being determinate in length and nature. Sanctions are based on proportional sentencing, meaning they were graded according to the seriousness of the crime, and are meant to specifically deter the individual from subsequent behaviour. The exact dispositions are left within provincial discretion, which has resulted in a range of

penalties as well as problems.

Recent data suggest that youth court judges have interpreted the deterrence principle as encouraging the use of incarceration. Even those judges who advocated treatment under the JDA felt that the YOA should place greater emphasis on punishment. The outcome to date: a large increase in committal rates, even though before the YOA was implemented, the number of youths being placed in training schools was declining. To think that the YOA could combine accountability with the protection of the public and decreased institutionalisation was both naïve and incorrect (Leschied and Jaffe, 1991; 164).

The question then remains: will the YOA accomplish what it set out to do, which is to contain youth? Are the sanctions allowed under it sufficient, and more importantly to the public will it control youth crime? Due to the more punitive nature of the Act it was immediately ascertainable that crime rates would not decline. Because greater numbers of youths were being subject to more stringent legislation and enforcement practices, official numbers were bound to increase. As far as actually reducing the amount of crime, that can never be truly known. What is known is that the YOA is living up to its intentions, meting out yet unseen numbers of custodial dispositions and community service orders. In an attempt to combine due process with heightened offender responsibility, the worse case scenario as envisioned by Havemann (1986) has occurred. The YOA has increased incarceration and reduced rehabilitation. The partial erasure of child welfare philosophy coupled with the

omission of libertarian motives has ensured the coercive nature of youth justice for some time. Recent changes to the YOA, as well as continued public outrage regarding youth violence, reflect the predictions made by Havemann nearly a decade ago. The other prophecy realized is that increased incarceration rates will make it appear as if we are in the midst of a crime wave. This leads us to the contemporary period of youth justice and the moral panic that presently grips the Canadian public.

CHAPTER 4

The Young Offenders Act: A "Revolution" in Canadian Juvenile Justice

Since its inception, the Young Offenders Act has been fraught with images of wayward youths, the products of a system too lenient toward juvenile offenders. Since 1990, youth violence has commanded particular attention both by the media and special interest groups. Recent amendments to the Act (1994) accentuate this concern, highlighting once again a crime control philosophy and its dominance over Canadian youth justice.

The fear of crime and violence has permeated Canadian society since the late 1980's. Much has been made of this "crime wave" by the press, politicians and police. Youth violence in particular has received special attention, and statistics tend to support those who argue that a crisis exists. Whether or not there actually has been an increase in youth crime is questionable. What is clear is that the fear of youth has risen to the level of moral panic. Images projected by those concerned with this are vividly memorable. "Once peaceful communities", or so it goes, are thought to be experiencing moral and social breakdown. The federal government attempts to deal with these problems through coercive penal strategies, which often further perpetuate the problem.

The previous chapter examined the shift from the welfare model in the first half of the twentieth century to the "justice" model in the late 1960's and 1970's, concluding finally with the entrenchment of the YOA, which in practice has resulted in the protection of society as its foremost concern. This chapter will follow with the implications of such a model, and how the current crisis in youth justice is inherent in the justice model upon which the YOA is premised.

The YOA is both a reflection and promoter of new right ideology that has emerged within several western nations in the past fifteen years. Countries such as Great Britain, the United States and Canada have gradually replaced their post-war welfare economies with neo-conservative platforms of free competition and personal responsibility. Public unrest has been used by western leaders to exploit the supposed need for coercive measures to maintain equilibrium under capitalism (Ratner and McMullan, 1985). These coercive measures are most pronounced within the criminal justice system, that area where the maintenance of social control is of primary concern (Ibid.).

In the previous chapter it was shown how the two-pronged attack levelled at the Juvenile Delinquents Act in the 1960's and 1970's led to the restructuring of the youth justice system. Concern with appeal procedures and limited due process were some of the changes advocated by law and order lobbyists that replaced differential treatment dispositions based on the paternalistic philosophy of the child saving movement.

Why in one decade had the juvenile justice system undergone such a dramatic change? During the late 1960's and 1970's, major global restructuring was occurring at a torrid pace. World-wide inflation, unemployment and rocketing interest rates were causing an economic downturn, the likes of which had not been seen since the Great Depression. Traditional state policy, based on the Keynesian welfare doctrine, was to stimulate growth through increased expenditures. Taxes were raised in order to fund the spending, which had the further effect of "deepening the fiscal crisis". This in turn led to the further discreditation of welfare philosophy (Hatt et al., 1991; 2).

Restructuring efforts advocated the dismantling of this system in favour of free market ideology espoused by newly elected conservative governments. Along with these new right policies went a conservative social agenda based on an "authoritarian social agenda" (Ibid.). Canada too elected a neo-conservative government which, while implementing drastic cuts in social spending, was not as pronounced with respect to its social policies (Ibid.; 3). While there is little doubt that neo-conservative policies are evident in Canada, the nature of these does not reflect the exact trend witnessed in the U.S. or Britain. To be sure, there are uniquely Canadian factors which have affected our laws.

The extent to which current juvenile justice philosophy is influenced by these factors needs to be addressed. The Trudeau Liberals devised an act which was to be implemented federally, while obliging the provinces to deal with the rigours of its daily

administration, this amid budgetary restraints and reductions in resources. The Progressive Conservatives under Brian Mulroney, continued to mandate legislative changes while the provinces dealt with the effects of such modifications. So while the federal government devised and imposed young offender laws, it was left to the provinces to interpret federal intentions in regard to dispositions. The result has been an overwhelming discrepancy between the provinces with regard to sentencing.

Given the vastness of the Canadian landscape, and a comparatively low population, Canadian governments have sought to govern keeping in mind regional diversity and an age-old distrust of federal motives. By manipulating federal/provincial relations, Ottawa is able to maintain its own interests while leaving the provinces to deal with any local opposition that may occur. This is what Hatt et al. have termed "managing consent", leaving the provinces to "manage crises" (1989; 1).

The most recent proposed amendments to the YOA continue to reflect federal strategies of legislating change, while the provinces continue to be responsible for its administration. This practice reflects the further shift to neo-conservatism and its emphasis on crime control. Before I examine these recent alterations, the broader political and economic context must be further considered.

The current period of economic recession has reached levels unseen before by the employable members of the work force. Though all have been hard hit by present market conditions, the primary

toll has been exacted upon youth. In November of 1989, 67% of youth aged fifteen to twenty-four years were in the labour force in one capacity or another. By November of 1993, less than 60% were working or looking for work making the downfall unprecedented in Canadian labour history (Statistics Canada, Spring, 1994; 30).

The previous quarter century has seen ups and downs in youth employment, but the general trend has shown positive results in labour force participation. This rise is attributable to two major factors: "a long term rise in the overall proportion of students, especially those aged fifteen to nineteen, holding part time jobs during the school year, and growing labour force participation among young women" (Ibid.; 31). In the latter half of the 1980's the youth employment rate continued to rise peaking at 67.3% in 1989. During the same period the unemployment rate was the lowest, 11.3%, since the early 1970's (Ibid.; 32).

Although the 1990's had auspicious beginnings for the Canadian Labour market, it has since borne losses that have staggered Canadian youth. By November of 1992, adult employment had surpassed pre-Depression levels. As for youth, employment had fallen over 17% in only three years, hovering at 50%. By November of 1993, the figure fell below 50% with no recovery in sight (Ibid.). The majority of lost jobs has occurred in the service industry. Ironically, these industries have grown steadily since 1989, with an overall growth in employment of approximately 366 000 jobs. Recessions typically affect youths more than adults. As experienced labour is forced to do more menial tasks, the hiring process slows.

Recovery as well tends to be more elusive for youth. In the recession of the early 1980's employment rates for youth coincided with the beginning of the recession, falling for twelve consecutive months. It took five years for recovery during this recession, perhaps an ominous indicator of the present recovery.

The recent decline has not been as steep as the dramatic fall of 1981-82, but it has already lasted longer (Ibid.; 34). If the trend of the early 1980's is repeated, it may be several years before 1989 rates of employment are reached. The result of this drastic economic downturn is a growing pool of young people with no work experience, thus further compounding the hiring problem. The proportion of youth who have never held a job rose from 10% in November of 1989 to 16% the following year.

This negative growth has forced youth to either stay in school or to return to school. Between November of 1989 and November of 1993, youths attending school full time was up from 49% to 56% (Ibid.). This has contributed to the reduction in labour force participation, except among part-time students who tend to balance academic and vocational demands. Yet labour force conditions have reduced participation for this group, down 5% in the past four years. This is not to say that young people only continue with their education, particularly post-secondary, because of the lack of employment opportunity. Rather, the rise in college and university entrants is relatively independent of employment conditions, though youth recognize that the former ultimately affects the latter (Ibid.; 35).

Not all youth have the opportunity, or for that matter the interest, to stay in school, even given the dim employment situation and diminished career prospects that exist without the requisite education. In November of 1980, 8% of Canada's youth were situated within this grey area of not being enrolled in school or actively seeking work, and by 1983 that percentage had risen to nearly 10%. However, by 1989, this figure had returned to 6%, but in 1993, despite a substantial growth in school attendance, this remained at 6%. This fifteen to twenty-four year old group has drawn particular attention from police and politicians and is generally ill-perceived by the public. The federal election campaign of 1993 brought this issue to the forefront of public concern. But rather than deal with the roots of the problem, the major concern was how to better control this segment of the population. The western based Reform Party, in conjunction with many of the urban and municipal police associations, sought to reform the criminal justice system, starting with the Young Offenders Act.

The Reform Party platform in the 1993 federal election drew the focus of an insatiable media bent on publishing stories of youth violence. Their general belief as issued in a 1993 caucus statement is: "That the justice system should place the punishment of crime and the protection of law-abiding citizens and their property ahead of all other objectives. This principle should apply to the Young Offenders Act" (1993, no. 19,1). The brief continues with a diatribe over the current "leniency" shown toward young

offenders, the result of a "19th century ideal that youth are morally incapable of criminal wrongdoing." The YOA, say Reformers, puts the offender's rights ahead of the victim's. Statements such as this add to the current crisis over youth justice, yet the validity of these are only questioned in regard to proportion. What are more readily questioned are statements made by academics and justice officials who purport to show that young offenders are more likely to wind up in detention now than at any other point in Canadian history.

Recent instances of youth violence have led to sensationalized media coverage, which has further exacerbated the problem. The killing in Calgary of a thirteen year old boy in 1992, several killings in suburban British Columbian communities in the 1990's, the March 1994 drive by shooting in Ottawa and the dessert cafe murder in Toronto, and a recent "execution style" killing in rural Nova Scotia have intensified public anger. The official announcement of impending amendments to the YOA comes as little surprise given the fears expressed by numerous groups, the most vocal of which have been victims' advocacy organizations.

In Canada a number of murders and violent crimes has caused young people to become defined as a pervasive threat, but not without aid from both the Canadian and American mass media. Once the media present these occurrences as existing in a problematic fashion, then it is only a matter of time before certain interest groups take advantage of this (Leyton et al., 1992).

An abundance of special interest groups have been active in

the Canadian campaign. Traditional groups include: the Canadian Association of Chiefs of Police, members of the legal community, educators and politicians. More recently, but just as vocal, are victims' advocacy organizations and Reform Party M.P's, as mentioned above. However, for any of these groups to be heard the media must be forcefully employed in order to further nurture public anxiety.

Hatt, (1994) examined the Canadian News Index (CNI) over the past decade. The CNI is a reference guide to periodical literature from the major Canadian magazines and newspapers. It lists the headlines and news clips of the eight major Canadian dailies. The result of Hatt's study strongly supports the proposition that shifts in public perceptions of violence are proportionate with related media coverage (1994; 3).

In 1990, the number of articles related to violence increased by over 100% from the previous year. Many of these articles, particularly on youth violence, were based on a few highly publicized incidents. Ironically, the growth of violence corresponds to years in which there was increased political coverage. The way in which the media report a story is as important as the incident itself. As Hatt points out, there is absolutely no connection between a drive-by shooting in Ottawa and a dessert cafe murder in Toronto, except that the perpetrators were young offenders. There is no proof that these tragic incidents are the result of a degenerating Canadian society. As heinous as these crimes were, there is no reason to believe that they are becoming

everyday occurrences, yet constructive journalists would have you believe otherwise.

Face value statistics regarding crime and youth violence portray delinquency as on the rise. This apparent growth can be attributed to changes in age levels for young offenders and more stringent enforcement practices by the police. The YOA raised the minimum age of young offenders from seven to twelve, thus eliminating all seven to eleven year olds from the statistical population. This had the effect of causing an apparent increase in crime, because those between these ages are unlikely to commit the levels of crime as twelve to seventeen year olds. The upper age limit was also standardized across Canada at eighteen, whereas previously some provinces had the age set at sixteen or seventeen (Hatt, 1994; 4).

Changes in enforcement practices also caused an "increase" in youth crime, particularly after the passage of Bill C-127 (sexual assault). Although the number of actual crimes remained consistent, the way in which reported offenses are dealt with did not. Under the more formalized YOA the police were more likely to lay formal charges and use diversionary measures less often. Statistics show that the apparent increase in youth violence is more the product of a moral panic than of an increase in crime. Certainly crime has increased, but not at a rate that is inconsistent with population growth. Despite this, youth still continue to be perceived as the new dangerous class.

The concept of managing consent referred to earlier, is based

on how the federal government attempts to maintain hegemony in Canadian society. A system of checks and balances is employed by which the general polity is able to control, or at least be aware of, the government's agenda (Hatt et al., 1991; 4). If the government is thought to be moving in an unpopular direction, then negative pressure is applied through various levels of internal and external bureaucracy. It would appear then that as opposed to the moral and extreme coercive approaches evident in Great Britain and the United States, respectively, the Canadian approach has been determined by more than our Colonial past and proximity to the U.S.

The passage of the YOA, however, represented more than simply a wholesale attempt to manage Canada's juvenile justice system; it was a much larger shift in philosophy toward youth in general. Despite this shift in attitude, the changes made to the youth justice system had very real costs. Because provincial governments were to be responsible for the administration of the YOA, protracted negotiations ensued over how the two levels of government would subsume the costs. Though costs to the federal government were reduced, provincial expenditures increased. Combined with a supposed decrease in effectiveness, cost issues would continue to prove contentious over a decade later when once again a change in philosophy dictated legislative change.

The original YOA, Bill (C-61), sought a balance between the needs of young people and the needs of society, with an added emphasis on due process and legal rights. The Liberal Government based the document on the same principles which formed the Canadian

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Charter of Rights and Freedoms (Hatt et al., 1991; 11). The result however was not the "just society" as envisioned by Trudeau, but a justice system concerned more with formalism than with the needs of young people. The outcome: an act whose paramount concern is with the protection of society, or more correctly, the persecution of young people.

Even with the increased coerciveness of the YOA various complaints immediately arose among influential and well-funded police associations. Despite the compromise by the three major interests, it was police concerns that turned public attention toward the supposed leniency of the Act. Though the level of public concern was hardly of the magnitude that it is today, the push for change quickly resulted in a series of amendments known as Bill (C-106) (1985). The increased punitiveness of the YOA raised the ire of liberal critics who accused the Mulroney Government of caving in to "increasing pressure from law enforcement officers, provincial Attorney Generals and Tory backbenchers" (Calgary Herald, Oct.19, 1985: A9 in Caputo, 1989). Bill C-106 itself was oriented to further strengthen the crime control basis of the YOA, providing for consecutive sentences for those in custody, longer pre-trial detention, and easier custodial transfer. Although these amendments were implemented to remove some of the minor technical problems within the Act, they reflected the growing emphasis on retribution and coercion inherent in the law and order model. (Caputo, 1989; 141)

Continued pressure placed on the federal Tories by the

provincial Attorneys General, led to further amendments in 1986, which were Bill (C-106). A "rash" of murders committed by youths created resounding public fear over juvenile crime, leading to further amendments in 1989. This raises what has been perhaps the most controversial issue in Canadian youth justice to date: the three year maximum sentence. In 1989 the federal government gave in to incessant lobbying by law and order groups, raising the maximum to five years. Even this extended disposition did not alleviate concern, as witnessed by the growing rage over the perceived leniency toward violent offenders (Ibid.; 142). This was not the only problem area defined by the 1989 consultations. Provisions for the level of custody, dispositional review, the admissibility of statements by youth and youth with special needs were also slated for change (Department of Justice, July, 1989).

However, it was a murder case involving an Ontario teen that set the tone for the amending process. The youth, who had murdered a family of three, was released after serving the maximum three year sentence. Amid cries of "softness", legislators quickly forgot about other areas being considered for change to focus on issues of sentencing and parole. Along with the new five year maximum came revised provisions for transfer to adult court. The power to transfer juveniles was taken from youth court judges, in order that the protection of the public should not be sacrificed. By leaving this to those who may be subjective, said reformers, this could not be assured (Caputo, 1989; 142).

To say that the situation has risen to the level of moral

panic would not be overstating the problem. Since the current recession began in 1989, Canadian society has been subject to an extended period of heightened concern. Dealing with a similar situation in early 1970 Britain, Stan Cohen elaborated the moral panic phenomenon:

A condition, episode, person or groups of persons emerge to become defined as a threat to societal values and interests; its nature is presented in stylized and stereotypical fashion by mass-media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or more often resolved to; the condition then disappears, submerges or deteriorates and becomes more visible.

In Canada the group is youth, the condition youth violence, and the episodes a number of recent highly publicized incidents involving young murderers.

As mentioned in Chapter Three, the idea of youth as a dangerous class emerged in the justice debates of the 1960's and 1970's. Moral panic discourse surfaces repeatedly in primary documentation arising from this period. The discourse put forth by the law and order lobby continues to generate public fear about youth crime. Geoffrey Pearson has traced the emergence of a similar phenomenon in Britain. He writes of the generational overrepresentation of young people in criminal statistics, leading to greater myths of degeneration and immorality while older members of society "gaze back fondly to the recently and dearly departed

past" (1983; 7). Fears in Canada may not be quite so nostalgic, but the current "crisis" facing Canadian youth culture does resemble those of previous eras. Current strategies proposed by current Justice Minister Rock are necessitated by fears that unless more coercive measures are implemented Canadian society will continue to decay, just as eighty-five years ago W.L. Scott and J.J. Kelso said it would.

The Trudeau Liberals of the early 1980's began this trend not only in youth justice but with broader issues of justice and security for all Canadians (Hatt, 1994; 7). The Mulroney Conservatives continued this with policy initiatives such as Bills C-36 (release and corrections) and C-90 (sentencing), in the late 1980's, aimed at tightening release and sentencing procedures respectively. By implementing these, the Conservatives emphasised their commitment to protect their citizenry through the use of the justice system (Hatt et al., 1991). The federal government appears to be reacting to public concern about rising crime, when in fact they are helping to perpetuate it. That is not to say that some of this concern is not justified, merely that the government's method of dealing with it goes to the fear-generating nature of the criminal justice system.

With the prioritization of the "justice" model, the coercive powers of the state have been further buttressed without jeopardizing popular consent (Havemann, 1992; 86). Present outrage toward youth can be partially explained by the fiscal crisis, examined above, which has made it an economic necessity to erase

any costly treatment philosophies that may have lingered within the system. The nature of the youth justice system has gone from structural responsibility to structural protection and strict retribution, hence the reliance on individual accountability in the YOA. The problem with increased punitiveness is the increased cost which accompanies retributive philosophy. Ironically, this adds to the fiscal crisis that originally led to the supposed problem.

Media calls for the government to "get tough" with youthful offenders play into governmental strategies of managing consent. Invoking coercive measures seems to create the effect that something is being accomplished through the justice system. Therefore, while seeming to battle crime, the government is thought to be fulfilling its commitment to the public. Hatt sums this up succinctly: "The intent is to reinforce the Canadian sense of protection by the state, even though it contributes, at the same time, to the view that the world is dangerous" (1994; 9).

The proposed changes by the Justice Minister are without question part of the current moral panic, which is a result of the inadvertent cooperation between the media and powerful interest groups. The official background statement issued by the Department of Justice is riddled with law and order rhetoric similar to that seen in the U.S. and Britain (Department of Justice, Spring 1994). This is reflected in the introductory paragraph to the Bill: "The proposed amendments to the Young Offenders Act will improve public protection by improving the Act's ability to deal with serious youth crime." Although the amendments purport to recognize the

need to assist in rehabilitation programs, such programs apply only to non-violent offenders, thus ignoring the problem which they have deemed most pressing.

To no one's surprise, phase one of the new Bill deals with youth court sentences for murder. The present maximum sentence for murder is five years with the last two being served in open custody, however, with no eligibility for parole. The proposal would increase this to a maximum of ten years for first degree murder, and seven for second degree murder. As well as providing for stiffer sentences, transfers to adult court for sixteen and seventeen year olds are facilitated by the fact that applications will have to be granted in order for the case to remain in youth court. The onus will be on the young person to demonstrate that the objectives of protection of the public and rehabilitation can be met in youth court. This appears despite the earlier statement that rehabilitation of non-violent offenders will be the only type of "treatment" undertaken.

The federal government has proposed these changes not only to deal with the problem of youth crime, but more importantly, to address public concern about the adequacy of the YOA to handle serious crime, and in particular violence. The full extent of this influence on the justice system is now visible. Stiffer sentences allow for the "greater control" of young offenders, which in this scenario will also be for much longer periods. Subsequent sections of the proposal, from information sharing to statements of youths in custody, have one underlying theme: "the protection of

society." For those who commit serious offenses this means lengthy custody, for those who engage in minor discrepancies, a wide range of dispositions, including treatment, will ensure public safety.

The long term strategy of the Chretien government is to undertake a second phase that in all likelihood will see the further tightening of sentencing dispositions (Solicitor General, Spring; 1994). If the law and order state has not been ensured given the present amendments, then the second phase of "reform" will undoubtedly complete it. Of the key topics to be addressed in the next round of amendments is the YOA itself: "...including an examination of the underlying issues governed by the current provisions of the Act" (Ibid.). The irony is that by such time attention and publicity will probably have shifted to another area of societal concern.

All but decimated are concepts of liberal ideology that began the 1960's legal rights movement. The proposed amendments epitomize "crisis justice" echoed by any moral panic. The federal government has gained control of the crisis by imposing strengthened powers over youths. Any ideological underpinnings that remain are those of neo-conservative strategists, many of whom have a vested interest in these changes (Havemann, 1992; 111).

Sound evidence regarding actual instances of youth crime suggest that there has been an increase only in proportion with the population growth, yet the federal government continues to dismiss these studies as inconclusive if not irrelevant. As for the percentage of violence of total youth crime: the amount is so

minute that attempts to sincerely address it would only lead to further undue public concern (Hatt, 1994).

CHAPTER 5

The Canadian Case: Moral Panic or Respectable Fears?

Does the history of Canadian youth justice legislation represent a history of moral panic in the Pearsonian sense, or is it the case that we are once again in the midst of a permissive revolution as asserted by law and order lobbyists, the media and the general public? As asserted by Pearson, it is the nostalgic regret of the destruction of the 'British way of life' that has led to a series of generational moral panics in the United Kingdom. But to what extent is this reflexive of Canada's history, and more importantly how has the neo-conservative movement used these fears to create a law and order state in Canada?

As we have seen, youth violence in Canada is hardly a recent concern, rather it has been the focus of media coverage and public attention long before the implementation of the Juvenile Delinquents Act. There is strong evidence to support the case that the current cycle of fear regarding youth is another chapter in the recurring history of the fear of declining morality. Certainly in the British example these fears have been more readily accepted, where with each generation crime and disorder increase by "leaps and bounds." At the heart of the matter in both cases is violence: its supposed novel presence appearing in new and unparalleled forms, from the lawless gangs of street urchins of late-nineteenth century Toronto, to the current "swarming" panic affecting Canadian

cities.

What are we to make of this history of "decline"? Certainly each era is sure that it is in the midst of a period of criminal disorder. The philanthropists of late Victorian Ontario were not only advancing middle-class interests, they were certain that the decline of the family was leading to a decline in morality which in turn led to delinquency, affecting the overall condition of society. Similarly, present day victims' rights advocates are correct in assuming that crime does have a face. The horror of violence is real, and its impact on those who it touches is undeniable. However, from the point of view of a moral panic, it seems that both of these very legitimate concerns led to the continuous public display of youth crime, thus causing the problem's visibility to increase unproportionately.

Clearly there are strands of Pearson's argument that are applicable to the Canadian situation. On a more general level each country has reacted to global change in a like manner. Both countries became consumed in similar philanthropic movements of the late 1800's. There was no shortage of spectacular media stories of violent and uncontrollable youth terrorizing Toronto and London even before the advent of the mass media.

In Canada, European "peasantry" were thought to be the cause of much of the juvenile unrest because the lack of land upon which to farm was forcing them to migrate to cities. These urban areas "at once destroy in large number their power to rear to decent livelihood the first generation of offspring upon our soil"

(Bathrop, 1905; 348). To some social reformers, children were innocent victims of cultural and technological conflicts, but for the most part those from lower class, or criminal, backgrounds were thought to be physically and morally unable to adapt to "Canadian traditions" (West, 1984; 23).

In Britain reformatories and orphanages were established in order to provide middle-class and religious values to those youngsters who were morally incapable of not committing delinquent acts (Pratt, 1989; 239). The reasoning behind this was that the dangerous class seemed to act as a symbol of larger social transformation. Laws advancing mandatory education and welfare based corrections would hopefully remedy a population that was "young, inexperienced, ignorant, credulous, irritable, passionate and dangerous" (Pearson, 1982; 182). To believe the child savers would be to label the entire Victorian era a failure.

In the 1960's both Canada and Britain adopted post-war economies based on Keynesian welfare state strategies. These combined capitalist, labour and state policies, but most importantly extended social programs such as unemployment insurance, workers compensation and old age pensions.

During the world wide recession of the 1970's, both countries elected neo-conservative governments under the assumption that by alleviating careless spending practices they would avoid the total rupture of their respective economies. Although in Canada this was not until the late 1970's, the result was a severe tightening of expenditures, notably reductions in the social wage and drastic

cuts in health, education and welfare. Corresponding to this was a conservative socio-political agenda stressing self-discipline, collective ethics and moral order. There was an expansion of the repressive law and order element of the state, and with this came the idea that coercion could be used to protect society. Whatever the state does to protect itself is legitimate, and often the targets of this legitimation are youth.

In the late 1960's and early 1970's the justice debate in Britain took an ideological about-face when the Longford Committee on Youth Justice advocated the "abolition" of juvenile courts. Instead, there was to be a family service structure where the youth, their family, and a welfare worker could work together to identify and resolve problems. To no one's surprise justice supporters ardently opposed this, claiming that the legal rights of juveniles would be sacrificed. In 1970 the Conservatives campaigned and won the election on a promise to do away with this "absurd" model. Although parts of the Children and Young Persons Act had already been implemented prior to Labour's defeat, the Conservatives quickly put a halt to any changes that would shift the justice model back toward welfare tenets. Their justification was that welfare workers were unable to make the "tough" decisions regarding custodial sentences (Morris and Giller, 1987; 94). The government feared the "hardened recidivists" who openly disregarded the authority of the juvenile courts, and who would never respond to "care orders", thereby jeopardizing the public (Ibid.).

Canada too attempted a shift to the left in the 1970's, but

welfare advocates were given less consideration by the neo-conservative Liberals than by the Labour Party in Britain. Instead, Canada moved to a system, that while emphasising the legal rights of offenders, resulted in greater emphasis on public protection and offender responsibility. The result of their efforts was The Young Offenders Act that has resulted in an increased in the number of young people appearing before the courts.

Today both societies face similar circumstances. The current economic crisis has fostered political polarization and class and race antagonisms, which have increased social tension and anxiety in Canada and abroad. On a more ideological level there also seems to be some continuity between the two nations. There is certainly some sense of loss in Canada though the extent to which this mirrors Pearson's model is questionable and therefore needs to be more closely explored. The 'British way of life' portrays the history of Britain as one founded on stability and decency, clearly concepts once deeply ingrained in its citizens. Amid the present dilemma, the past, as we may well have predicted, was a golden age of order and security. Britain was a society in which "our love of tolerant freedom was spontaneous, unregimented and natural" (Pearson, 1982; 8). Has the extremity of these judgements about the moral deterioration of British life been as harsh in Canada?

Unlike Canada, Britain was once the preeminent economic and military power in the world, with its empire extending to the four corners of the globe. Aside from getting into a exegesis of the decline of the British empire, it is safe to say that the twentieth

century has seen Britain fall behind other nations as the world's most influential, morally or otherwise. Therefore, Britain's fall from power does have a certain amount of validity to it. In only three generations its claim to superiority had been usurped by countries such as the United States and the former Soviet Union. The Canadian situation is hardly comparable. We have never had an overly influential effect on the world scene, in fact our history as a British colony has, until recently, dictated that as Britain goes so we go. It is no longer quite this simple. Canada has dealt with past and present crises in a distinct manner, particularly in the past twenty years.

The substantive area that I have focused on for my comparison is youth justice legislation. In order to clearly identify basic factors of a Pearsonian moral panic, basic trends in Canada and Britain, and to a lesser extent the U.S. must be further collated.

Despite the similarities noted above, the two countries are easily contrasted. Canada has undergone a shift to the right economically, but the tone has been one more of fiscal prudence, than the "morally laden attack on the welfare state" seen in the U.S. and Britain (Hatt et al., 1989). That is not to say that we are free from ideological rhetoric, simply that it is more tempered with practicality.

The threat to labour has been less pronounced in Canada than in Britain and America where coercion is often legitimated to protect the "general well being" of society. In Canada coercion is only legitimated in rare circumstances, hence the term

"exceptionalism" (Ratner and McMullan, 1985). A more subtle tactic employed in Canada is to 'ask' labour to adhere to capitalist ideals in their own best interests (Panitch and Schwartz: 1989). Rarely are bargaining rights or strike privileges suspended, although recently the former has appeared in several provincial budgets accompanying wage freezes.

Recent world wide labour trends can be summarized by saying that the international crisis of capitalism has led to the rise of the right in several countries. Hatt et al., (1989), recognize this shift economically and socially, but write that Canada's law and order campaign has been dissimilar to those in the U.S. and Britain. They refer to American justice legislation to illustrate how minimal Canada's response has been in comparison. In 1984 both countries set out their comprehensive policies regarding crime control. The United States Crime Control Act included such provisions as: tighter bail; determinate sentences; abolition of parole; higher fines for drug violations and a victims' fund, paid for by offenders. U.S. Attorney General W.F. Smith referred to these as "the most significant change in the federal system of criminal law" because it sought to "restore the proper balance between the forces of law and the forces of lawlessness" (New York Times, Nov 15, 1984: A 24, from Hatt et al., 1989: 9).

Liberal Bill (C-19) introduced in Canada prior to the 1984 election, dealt with issues such as computer crimes, impaired driving, pornography, and prostitution. Although these were areas which needed to be addressed, the Canadian legislation did not

contain the law and order emphasis found in the American Bill. Meanwhile, Conservatives in Britain under Margaret Thatcher adopted similar policies to the U.S. No longer were they just "policing the crisis", they were attempting to alter morality to alleviate the crisis altogether.

In Britain, in the late 1970's, the Conservatives established a committee to look into the possible reformation of juvenile justice laws. The Black Commission was mandated to examine measures to deal with youths who needed "control and punishment", with secondary consideration being given to those in need of care. Considering the moral panic under way in the late 1970's, there can be little doubt that this shift was intended to alleviate the general polity's concern over "hard core" criminals. By 1979 the British public was subjected to a daily diet of law and order rhetoric during the federal election campaign. Margaret Thatcher led this fight, encouraging British citizens to take an active role in the purification of their "once safe streets and neighbourhoods" (Morris and Giller, 1987; 108).

The Canadian model found in the Young Offenders Act also reflected a more conservative social agenda. Under the paternalistic Juvenile Delinquents Act, state intervention into family life was common, with youths often being denied fundamental legal rights. Although it purported to act in the best interests of the child, the JDA exercised absolute authority over young people. By the late 1960's pressure to change this system was mounting. Status offenses which included sexual immorality, vice and

incorrigibility, were being replaced by legalistic concepts such as the right to counsel and other protections that had not been afforded to youths under the JDA.

Hatt et al. write that although the YOA contained some of the paternalism found in the JDA it: "sought to respond to various criticisms levelled at the JDA, by emphasising children's rights" (1991: 8). However, the YOA also placed a greater emphasis on individual responsibility and the protection of society. Britain and the U.S., by contrast, were implementing much harsher laws based on custodial dispositions of a determinate nature. Once again Canada had not been as conservative in its approach. Canadian youth were not seen as the "scourge of the nation" as they were in Britain, but instead were still held out as amenable to change. Certainly the YOA was more punitive, but it did seek to balance the needs and rights of young people, with the those of society.

The Canadian government's strategy of managing consent by juggling offender rights with societal rights is revealed in the YOA. This is part of a greater strategy by which the state attempts to maintain hegemony through, among other factors, the split in federal and provincial jurisdiction. By doing this the federal government has been able to maintain its hold over a uniform system, while letting the provinces deal with "crises" such as policing and placement of facilities.

These discrepancies, as well as factors internal to the Canadian structure, have contributed to the formation of a moral panic. The most influential of these factors has been the role of

the media in encouraging the current panic over youth violence. Since the time of its introduction the YOA has commanded considerable negative publicity from the press regarding sensationalized incidents that the press themselves have nurtured. However, the media in Canada play a different role than those in Britain and the U.S., which is surprising given our reliance on American news culture.

The British media contain a wide spectrum of interests from conservative and elite papers, to the more racy tabloids. Although varying ideologies and opinions do exist, both end up at a crossroads. The more conservative sources stress the need for more punitive state policies in order to quell the possibility of violent uprisings. The tabloids, on the other hand, take rare incidents, such as the James Bulger murder, in which a two year old boy from Liverpool was brutally murdered by two 10 year old boys, and turn them into a media frenzy. They chastise the government for allowing such a thing to happen, and hold youths in general accountable. The result is that they create an appearance that youth crime is on the rise, and that harsher measures are the only solution. If one act can be responsible for setting off a nation wide panic it was this case. As horrendous as Jamie Bulger's death was the last time something like that happened in Britain was nearly two decades ago. Hardly a pressing concern, despite the abhorrent nature of the crime.

In America, journalists and editors are given a fair amount of political clout, although they are usually moderate in their

condemnation of politicians. The more established outlets are more likely to attempt to influence social morality than to criticize the government, although the Constitution guarantees this right and Americans hold it in highest esteem. By appealing to standards of morality the press can influence the public who in turn encourage the government to toughen legislation (Leyton et al., 1991).

The Canadian experience includes aspects of both. Prior to the 1960's the press tended to reflect particular political views. Since then it has become much more critical and political reporting has become quite negative. The media help to manage consent by portraying certain behaviours as problematic and in need of immediate attention. This enables the government to appear to be managing the crisis by tightening laws. The media play a watchdog role by exposing problems such as the inefficiency of the YOA. The consequences of this can be seen in the current fervour over youths and the apparent linkage of youth violence to the "lenient" YOA. (Hatt, 1994)

Britain in particular has media that contribute to new right ideology. Pearson stresses the media's involvement in creating the perception of the breakdown of traditional authority. News sources encourage widespread cynicism by constantly headlining stories of youth violence. Subsequently, social panics occur and legislators capitulate to mounting pressure by stiffening laws. The Thatcher election victory in 1979 was based partly on neo-conservative strategies such as the return of corporal and capital punishment. Although this has not been the outcome, the laws have undergone a

dramatic increase in stringency.

It is hard to see how the Canadian situation has been all that different. Various studies (Ericson et al., 1991; Leyton et al., 1992; Hatt 1994) overwhelmingly support the presumption that Canadian news sources also focus on crime and crime-related stories: after all, crime sells. The watch dog role of the media has created an emphasis on the efficiency of the system leading to the rise of more cogent governmental strategies advocating economic and legal prudence. More responsible spending is accompanied by greater criminal responsibility: offenders have to be more responsible for their actions. Although there has been extensive coverage, the content of Canadian media reports have been less laden with moral rhetoric than in The U.S. and Britain (Leyton et al., 1991; 93).

The government's handling of youth violence has no doubt helped to perpetuate a moral crisis. Hatt et al. write that the realignment of youth justice policy represents a determined effort to redefine the jurisdictional inter-relationship between federal and provincial authorities. Unlike Pearson they state that this has been justified as more efficient and grounded in reasonable economic discourse, than on moral decay. But is the re-organization of the criminal justice bureaucracy as calculated as the authors assert? Given our current economic 'situation' are budgetary control measures such as decentralization and privatization really strategies to manage the crisis, or are they knee-jerk responses to public outrage over mounting lawlessness?

The 'justice' model crystallized in the YOA seeks to protect the rights of offenders, and although it has partially accomplished this its real impetus cannot be denied: it appeals to public fears by stressing crime control measures. The myth of rights actually legitimates a shift to more coercive policies, such as we have witnessed with the recent revisions to the YOA. The reliance on due process bridges the gap between individual offenders and the crime control apparatus of the government, but does not mean that youths are now treated more judiciously. This is evidenced by statistics which show that punitive consequences for youth increased sharply after the implementation of the YOA. This in turn led to a perceived increase in crime although crime has not increased disproportionately to the general population.

Since 1989, this has led to a panic that defines Canadian society as being in need of protection. This can be traced to the current fiscal crisis, which renders any remaining welfare-rights strategies too costly and/or lacking discipline. There is no doubt that the current panic underway in Canada has created an ideological climate similar to Britain and the U.S. The moral authoritarian dimension of the new right in Canada is frighteningly similar to those of Reagan and Bush, and Thatcher. Aggressive right policies in their countries have allowed for neo-liberals, neo-conservatives and law and order authoritarians to join forces. Despite this variety of interests, the political impact of their decisions has been conservative, although masked somewhat under the eclectic justice model's concept of egalitarianism.

The situation has been congruent in Canada. Support for the liberal welfare state consensus still exists in areas such as education, health care and pensions. As for justice, the fiscal and ideological crises of America and Britain have spilled over into Canada. The fear of crime and the 'get tough' solutions espoused, are evident in the YOA, particularly after the latest round of amendments. Like our British counterparts highlighted by Pearson, Canadians have been encouraged to subscribe to visions of an inadequate judicial system. The fear of youth crime has been exploited by the law and order lobby in order to generate our own "respectable fears".

The Canadian situation with regard to young people in criminal statistics is also reminiscent of Pearson's analysis. The over-representation of youth in justice statistics under the YOA has heightened the call for a strengthened morality. The ideology conjured up is one which requires coercive strategies in order to fully assert itself. There is more than a commitment by the government to protect its citizens through the use of a criminal justice system which is serious, efficient and cost-effective: there is an outright effort to create a system that is more punitive.

Recent changes to the YOA mark the beginning of the Canadian version of tough criminal reform. Although we have been somewhat moderate in the past, the current trend is toward law and order strategies. The YOA does more than protect the public, it emphasises moral panic discourse playing into the hands of the law

and order lobby. Unless this is toned down, and there is a decline in attention and publicity, then Canadians may have the U.S and Britain to look to as future models of justice.

Grumblings against youth will likely continue. Social change, for better or for worse, inevitably leads to this. Youth crime will also continue, but not at a pace predicted by Reform M.P's, or with the amount of violence portrayed by the media. This preoccupation with disorder will continue, because it serves a particular ideological function in Canadian life, in that it is a convenient metaphor for wider social change. The child savers tried to instill their own form of consciousness on Canadian society, just as reformers continue to do today. This is not to deny the material foundations of the problems faced by each era, certainly these do exist. Nor should we abandon efforts to clarify and elaborate our understanding of the problem. We must admit, however, that how we perceive the problem is often partly the cause.

If applying Pearson's model to Canada has taught us anything, it is that violence and disorder among youth are nothing new. The answer does not lie in the current course that we are navigating. Moral panics will continue to exist as long as ideological abstractions such as "morality" and "respectability" are the basis of justice reforms. Simply because Canada has been more tempered than Britain and the U.S, does not mean that we too cannot shift to the right or adopt a truly moral standard of legality.

CONCLUSION

The preceding chapters have examined the impact of the JDA and YOA on the Canadian juvenile justice system. It is obvious that these legislative shifts have had dramatic effects on young persons as well as those in the legal, welfare and correctional professions, and also on the greater public.

While juvenile justice statistics before the YOA are scarce, our brief examination of the use of media during the JDA debates is an indicator that news sources have always been influential. This is certainly the case today. Since the advent of the YOA the extent of public debate has increased dramatically. The dominant themes have gone from the rights of young persons to the rights of society. Since 1990, the protection of the public has virtually subsumed all other youth justice issues.

The few youth who do commit murders and other heinous crimes have become well known to Canadian citizens. The majority of Canadians depend on the news media for their daily dose of justice information and little is left to the imagination when adolescents are involved. It is not surprising that a large proportion of Canadians want more severe sanctions for youth given the overgeneralizations about dangerous offenders running the streets or killing family members (Roberts, 1988).

The sense of moral panic, citizen outrage and political reaction is increasingly evident in Canada. This has been forceful enough to make legislators integrate crime control concepts into the already punitive YOA. This ideological perspective is most

pervasive during periods of major social and economic change, and the accompanying uncertainty that often ensues. There can be little doubt that this has contributed to fears of lawlessness in Canada. Although this is partly linked to a yearning for past traditions of stability and order, it is more out of fear of what the future may hold. Crime control justice in Canada appeals to those who see the breakdown of values and processes in the present, not the past.

In the United States the experience has been more ideological, with primary attention being given to more coercive penal strategies. The rationale is that punitiveness and deterrence seem to provide for the stability of American society. Like the U.S., Britain has also undergone periods of perceived decay and disorder and it too has responded in a like manner, particularly after the Conservative victory in 1970. The media in both nations portray urban violence and deterioration in a constant barrage of high-technology reporting. These images only recreate fears that things will worsen unless immediately addressed. Thatcher and Reagan so eagerly identified with and promoted crime control ideals that welfare strategies were completely passed over.

Although the YOA has partly reflected this trend of punishment, deterrence and incapacitation, it does not extend these nearly as far as Britain or the United States. Pearson's analysis is applicable insofar that our emphasis on discipline and the distinction between wrong and right has increased. However, we are less likely to engage in an historical journey, searching for a golden age when the Canadian way of life was intact.

Given the current changes combined with continuing public and private pressure, we may quickly adapt American or British approaches to juvenile crime. Youthful violent crime endures as a major issue both in political platforms and media coverage. Considering this constant exposure, who can blame the public for their concern?

APPENDIX A

-1961 (committee). Department of Justice Committee on Juvenile Delinquency appointed on November 6, 1961 to investigate the nature and extent of juvenile delinquency throughout discussions with provincial representatives, and to make recommendations that respond to the problem of juvenile delinquency in Canada.

-1965 (report). The 377 page Juvenile Delinquency in Canada report with its 100 recommendations was published (Canada, Justice, 1965). It was discussed by the Standing Committee of the House of Commons on Justice and Legal Affairs, and was tabled on February 7, 1966.

-1967 (Draft Act). In the spring of 1967 the Cabinet gave the newly created Solicitor General Department the authority to use the 1965 report to draft proposals replacing the Juvenile Delinquents Act. An Act Respecting Children and Young Persons was prepared and circulated (Canada, Solicitor General, 1967).

-1968 (Conference). The first federal-provincial conference was held in Ottawa on January 10-11 with Solicitor General Pennell in attendance and Assistant Deputy Attorney General Christie as the chair. Forty provincial delegates attended including all the deputy Attorney Generals and Directors of Welfare, correctional services, or juvenile courts, as well as 26 federal delegates.

-1970 (Bill). On November 16th Solicitor General McIlraith introduced Bill C-192, cited as the first Young Offenders Act (House of Commons debates, 1970). That winter the bill was debated briefly in Parliament led by the Solicitor General Jean-Pierre Goyer, and extensively in the Standing Committee on Justice and Legal Affairs (1971).

-1971 (Death of Bill). The steady opposition prompted the Government to withdraw Bill C-192 on Nov, 26, 1971, and to order another report be written (H of C debates, 1971b).

-1973 (Committees). The Cabinet authorized the departments of the Sol Gen and National Health and Welfare on Oct. 5, 1973 to carry out a joint review with the provincial governments regarding programs, services and financial arrangements dealing with young persons. This was called the Joint Review Committee Group. Concurrently, an internal Solicitor General committee worked alongside the Joint Review Group to draft new legislative proposals. These processes took place under the guidance of Solicitor General Warren Allemand.

-1974 (Conference). This second conference under the chairmanship of Mr. Wakabayashi, Assistant Deputy Minister in the Solicitor Dept. examined the work of the Joint Review Group.

-1975 (Report and Legislative Proposals). In September the Sol Gen Committee published the Young Persons In Conflict with the Law Report. (Canada, Solicitor General, 1975) Subsequently, extensive discussions took place between the federal and provincial coordinators especially established to review the proposals and future implementation.

-1976 (Committee). Responses to the 1975 report were evaluated and proposals formulated by an Interdepartmental Working Group struck in June with members from the Solicitor General, Justice, Health and Welfare, and in consultation with officials from the treasury board.

-1977 (Legislative Proposals). In March, 15000 copies of Highlights of the Proposed New Law for Young Offenders were distributed. (Sol Gen, 1977).

-1979 (Legislative Proposals). The continuing consultation following publication of the Highlights was interrupted when the Conservatives upset the Liberals in the June 1979 election. However, the Conservative Solicitor General Lawrence used the extensive preparation and quickly put together another set of proposals. (Solicitor General, 1979)

-1981 (Bill). Eleven months after their re-election in March 1980, the Liberals under Robert Kaplan as Solicitor General introduced Bill C-61, cited again as the Young Offenders Act, into the House of Commons on February 16, 1981. (H.C. debates, 1981a).

-1982 (Act). Seventeen months after its introduction, and many amendments later, the Young Offenders Act was finally given royal Assent on July 7, 1983.

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