

**A COMPARISON OF JUVENILE COURT PROCEEDINGS UNDER THE
JUVENILE DELINQUENTS ACT AND THE YOUNG OFFENDERS ACT**

by

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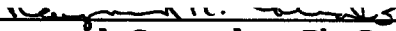
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ABSTRACT

In Canada, youths and adults were treated similarly by the criminal justice system until 1908 when the Juvenile Delinquents Act (J.D.A.) was proclaimed. This act created a juvenile justice system in which youths who transgressed the law were viewed as needing care, supervision and treatment. The underlying philosophy of the rehabilitation oriented act was based on the welfare model.

In 1984 the J.D.A. was replaced by the Young Offenders Act (Y.O.A.). The implementation of the Y.O.A. realized a vast change in the juvenile justice system. Key areas of difference are the abolition of the status offense and the inclusion of the right to due process and counsel. This act is based on the justice model in which the juvenile's rights and responsibilities are paramount. The change from the J.D.A. to the Y.O.A represents ^a the major shift in dealing with young offenders in Canada.

It was hypothesized that the divergent philosophies of the J.D.A. and the Y.O.A. would be evidenced in offender characteristics and court procedure.

rw ^{the purpose of the study} To ascertain whether these differences existed, a sample of 141 cases from the Vancouver juvenile court were observed, and data collected, in 1988. These data were compared to the data collected in 1982 from the same court as part of the National Study of Juvenile Courts in Canada conducted by Bala and Corrado (1985). Cross-tabulation analysis and comparison of percentages

and frequencies were employed to determine the magnitude of the expected differences.

The data indicate significant differences in the key areas of change (abolition of status offense, the right to due process and counsel) that support the contention that the Y.O.A. court is functioning according to the justice model philosophy.

The results obtained in the present period of juvenile justice research should be viewed as tentative. Judgement of whether the Y.O.A. has met its stated objectives should be withheld until future research is completed, and the data compared.

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CHAPTER I

AN OVERVIEW OF JUVENILE JUSTICE IN TRANSITION

IN CANADA

In common law jurisdictions, juveniles who have broken the law have always been dealt with according to principles that have distinguished them from adult offenders in some manner. In English common law a child under seven years of age was considered "incapable of doing wrong", and thus the doli incapax defense in common law was developed (Bala, 1988). Canadian juvenile justice legislation has also recognized youth as being different from adults. However the particular method and underlying philosophy employed by the state for dealing with youthful offenders in criminal law has recently changed. The major shift has been from viewing youthful offenders as children in need of state supervision (and rehabilitation) to viewing these offenders as responsible for their crimes. The Juvenile Delinquents Act (J.D.A.) was officially proclaimed in Canada in 1908, and repealed in 1982 with the introduction of the Young Offenders Act (Y.O.A.), however the Y.O.A. did not come into effect until 1984. These two acts represent the key shift in the Canadian context.

The divergent philosophies encompassed in the J.D.A. and the Y.O.A. represent this shift in attitudes toward juvenile crime and, therefore, should be reflected in the procedures

of those courts; there should be major differences in youth court practices.

The Origins of Juvenile Justice Legislation

There is consensus among scholars that the J.D.A. was the starting point for explicit government control over juveniles, and, according to Donzelot (1977), over the families of juveniles as well. This control was rationalized by the [Progressive philosophy] of the late 19th to early 20th century social reformers (Rothman, 1979). [These reformers "offered an environmental and a psychological interpretation of the cause of delinquency" that became the basis for the J.D.A.] (Rothman, 1979:35). [These Progressives have been referred to as "child savers"] by Platt (1977) in order to convey his critical perspective of the motives of these reformers. However, Leon (1977) maintains that:

Concern for child welfare legislation in Canada did not originate with the late nineteenth century reformers 'discovery' of urban social problems. The family, as a unit for the socialization of children, had long been supplemented by state efforts. (p. 75)

State intervention into the lives of children without parents (fathers in particular), included children of "inadequate" parentage as well. Leon (1977) notes that Dr. C. Duncombe (an early prison reform advocate) stated in 1836

that there existed children in Toronto with "ragged and uncleanly appearance" who displayed "idle and miserable habits", and he concluded that this undesirable situation was the result of "lack of control, with the blame being placed on the parents" (p. 75). [Thus the early nineteenth century legislative focus was on control of children and the families from which they came.] The distinction between behavior attributable to neglect versus illegal behavior was not at issue. [The concern ~~instead~~, was how to deal with children in order to promote adequate socialization before the youth actually became a convicted criminal (Leon, 1977).]

~~A major proponent of this new perspective on juvenile crime~~ was J.J. Kelso who organized the Toronto Humane Society in 1887. Kelso's goal was to promote "better laws, better methods, and the development of the humane spirit in all the affairs of life" (Leon, 1977: 82). Kelso supported better organized "reform" efforts, and as a result of lobbying, both provincial and federal legislation was passed to legitimize the reformer's place in the community. He later became Ontario's first superintendent of Neglected and Dependent Children. Examples of these laws included the separate trials for juveniles in the 1892 Canadian Criminal Code, and at the provincial level, the Child Protection Act of Ontario (1893). The latter gave authority to children's aid societies to apprehend and detain children who were ill-treated or neglected by their parents (Leon, 1977).

Kelso also asserted that as official recognition of the needs of youth grew, so did the recognition of the problems encountered when attempts were made to provide aid. In order to remedy these problems, new federal legislation was called for. On November 23, 1906 Speech from the Throne made reference to a bill that would include better provisions for dealing with young delinquents. This bill became the J.D.A. (Leon, 1977).

MacDonald (1971) states that [this act was designed to assist youthful offenders according to three basic themes:

- (1) It removed them from the jurisdiction of the adult criminal courts and the adult criminal law and placed them within the jurisdiction of specialized juvenile courts. Thus children violating any federal, provincial or municipal law or engaged in sexual immorality were to be charged with a single new offense known as "delinquency" and, if convicted were to be dealt with not as offenders but as persons "in a condition of delinquency"]
- (2) It made provisions for private trials for juveniles, free of publicity and separate from adult trials, with such trials to be conducted in as informal a manner as would be consistent with a proper administration of justice.
- (3) It provided for a wider range of reformatory dispositions focussed primarily on the welfare of the individual offender. (p. 67)]

The J.D.A. was not without its critics, both prior to its passage and immediately after. One source of opposition to the J.D.A. (when it was at the stage of being a bill) came from those who were already actively involved in dealing with

Problematic youth turned away from society

wayward children (police, magistrates, and some children's aid societies). They believed that their role would be greatly curtailed by this new legislation. Opposition also was voiced by Mr. Justice Anglin who ~~questioned the widespread discretion allowed to judges and probation officers, as well as the lack of safeguards against other~~ arbitrary decisions. In addition Senator Wilson stated that the proposed Bill would increase the numbers of criminal juveniles, and he was not convinced that the child's best interests would be served if deprived of certain rights (Leon, 1977). These objections went unheeded as the J.D.A. was passed in 1908.

MS after the JOA
In 1929, the J.D.A. was subject to minor changes which were mostly related to procedure and did not affect the basic philosophy of the act (Wilson, 1976). No subsequent amendments followed those of 1929. However in the 1960's, dissatisfaction with the J.D.A. began to emerge which heralded the beginning of a twenty-year debate that culminated in the repeal of the J.D.A., and its replacement with the Y.O.A.

The Demise of the Juvenile Delinquents Act and the Welfare Philosophy

Although the J.D.A. vastly improved the treatment of juveniles before the court, by the 1960's it was subject to numerous criticisms from many divergent sources including social workers, lawyers, and social scientists. In 1965 the

"release of a report on juvenile delinquency in Canada marked the beginning of a lengthy period of debate and gradual reform" (Bala, 1988: 13). [Much of this debate centered around the very same criticisms that Senator Wilson voiced against the original J.D.A., and equally important, the welfare philosophy which was the golden cornerstone of the Act, had "its theoretically benevolent purposes come under sustained attack."](Mennel, 1972: 69).

Besides the criticisms that the J.D.A. had not fulfilled its intention of benevolent treatment of youth, and the decrease of youth crime other critics asserted [the welfare model was inappropriately employed in the criminal sphere; status offenses should be abolished and that the right to legal representation and due process rights be extended to juveniles criminally charged.]

Status offenses are those offenses for which an adult cannot be charged (e.g., truancy, sexual immorality, incorrigibility). The status offense provision of the J.D.A. was criticized ^{for being} as vague and highly discretionary, yet the original proponents of the J.D.A. believed this law should be applied to any child "in need". Removal of status offenses for juveniles, therefore, has been a major concern for critics of the J.D.A. The criticism that status offenses violate the Canadian Bill of Rights occurred frequently. ~~Landau, for example, (1981) makes a cogent argument that~~ status offenses violate rights guaranteed under the Bill because the Bill of Rights, as interpreted by Justice Ritchie

in the Queen v. Drybones, states that, ["...no individual or group of individuals is to be treated more harshly under that law" (p.149). Ritchie stated further that "Unfortunately, the courts do not appear to apply this principle to age" (p. 149).]

Another major critical theme, involves status offenses as well, was directed at the J.D.A.'s effectiveness in decreasing youth crime. [As mentioned above, status offenses were to encompass a full array of behaviors that were believed to represent symptoms identifying a child in need of supervision. If this supervision was not provided, then it was asserted, that these deviant behaviors would develop into criminal activities. ~~Critical~~ studies indicate that the preventative intention of this provision has not been observed in practice (Kelly, 1983; Leblanc and Biron, 1980).] For example Kelly (1983) concludes that his study lends support to the proposition that the [criminal justice contact experienced by some juveniles may be associated with subsequent more serious offenses that "may at least in part reflect the deleterious effects of labeling resulting from court appearance" (p. 378). ^{harmful}

~~Criticism of the J.D.A.~~ also focused on juvenile court procedure (Bala and Redfern, 1983; Gardner, 1970; Catton and Leon, 1977; Stubbs, 1974; Chapman, 1971). While [the goals of the J.D.A. were to offer juveniles treatment in the form of a rehabilitative disposition, and to provide court procedures that would further this as part of the rehabilitative

process, what occurred in practice was far from this ideal.] According to Leon (1977), in practical terms, this lack of distinction between adjudication and disposition, as well as treatment and trial resulted in "unnecessary infringements on the procedural rights and substantive safeguards traditionally afforded to persons in criminal and quasi-criminal proceedings." (p. 74).

Critics of the J.D.A. specifically maintained that juveniles have legal representation in the court process, which some J.D.A. proponents would claim [interfered with the rehabilitative aspect of the J.D.A.] As stated by the [Juvenile Delinquency and Youth Crime Commission,] "Lawyers were unnecessary - adversary tactics were out of place for the mutual aim of all [was not to contest or object but to determine the treatment plan best for the child.]" (Stubbs, 1974:68). [Critics however, contend that "...in Canada and in other jurisdictions, the sword of benevolent justice is double-edged." (Wilson, 1976: 326).]

[In sum, the J.D.A. and the welfare model upon which the Act was based became the target of much criticism. These criticisms focused on the arbitrary nature of the status offense, and the need to provide youth with procedural safeguards including legal representation in the juvenile court.]

The Young Offenders Act and the Justice Model

The ramifications of the criticisms directed at the J.D.A. were enormous. The debates which took place in the literature concerning the need for a new direction in juvenile justice in Canada were subsequently taken up by the legislators. Eventually the changes to the J.D.A. that were being called for culminated in a new law, the Y.O.A., but the process of debate to enactment of legislation was slow.

In 1961 the Canadian Department of Justice appointed a five-man advisory committee to examine juvenile delinquency. The terms of reference for this committee were three-fold (Report of the Department of Justice on Juvenile Delinquency, 1961):

- (1) inquire into and report on the nature and extent of the problem of juvenile delinquency in Canada;
- (2) hold discussions with appropriate representatives of provincial governments with the object of finding ways and means of ensuring effective co-operation between federal and provincial governments acting within their respective constitutional jurisdiction; and
- (3) make recommendations concerning steps that might be taken by the Parliament and Government of Canada to meet the problem of juvenile delinquency in Canada. (p. 4)

The report published in 1965 was titled "Juvenile Delinquency in Canada". It proposed over one hundred specific recommendations. The report was discussed at a 1968

Federal/Provincial conference, however this initiative towards new juvenile justice legislation remained stagnant until 1970 when an actual draft of proposed law was introduced to Parliament for first reading, and tabled in 1971 for second reading.

Following the second reading the Standing Committee on Justice and Legal Affairs recommended that the Bill be reviewed and substantially amended. In 1973 the Health and Welfare Minister announced that the review of the Bill would be completed by March 1974, but it was not until 1975 the proposal for the new legislation entitled Young Persons in Conflict with the Law was tabled. The provinces were consulted (as well as interested individuals and organizations) and many objected to the jurisdiction assumed by the new federal law since it included jurisdictions that were considered local or provincial matters. In response to this and other criticisms, another, further amended Bill (C-192) was presented (which became the Young Offenders Act), and was given first reading by the House of Commons in November 1970 (Cousineau and Veevers, 1972).

According to Bala (1988), some provinces took the initiative upon presentation of Bill C-192, to alter their juvenile justice systems in accordance with the proposed changes set out in the report. Notably, Quebec ensured legal representation for accused youths and a formal system of juvenile diversion, but some provinces did not follow in this early initiative.

Although changes were being implemented at some provincial levels, the federal government did not pass the Y.O.A. until April 2, 1982 (Bala, 1988). Bala (1988) suggests that the Constitutional entrenchment of the Canadian Charter of Rights and Freedoms in 1982 provided the legislators with a sense of urgency to finally pass the Y.O.A. after almost 20 years of discussion, since many of the provisions of the J.D.A. would contravene section (15) of the Charter which guarantees equal rights, as discussed previously with reference to the Bill of Rights.

The preceding history provides insight into the evolution of Bill C-192. It has been stated that the process of the bill becoming legislation took over 20 years to complete, and during those years much commentary concerning the proposed legislation was voiced. A review of some of these commentaries seems particularly relevant in view of the fact that the J.D.A. was repealed on the basis of criticisms that were substantially ignored prior to that law originally being instituted. The time between the conception and passing of the Y.O.A. may have allowed legislators to produce a law that will prove to be both productive in dealing with youth crime and appropriate for the society for which it was conceived, since this time lag did allow for criticism, discussion, and alterations. The following provides an overview of some of the comments made in reference to Bill C-192.

The First Discussion Draft of Bill C-192 was well received by T. Grygier, Director of the Centre of Criminology at the University of Ottawa, in 1968. Grygier (1968: 458) stated that review of a first draft bill in Canada is "almost unprecedented...a bold and welcome innovation" since it allowed for constructive criticism. As well, Grygier applauded the fact that the Bill was developed on the basis of research.

The Canadian Criminology and Corrections Association articulated an official statement on Bill C-192 in 1971. The Association conducted surveys and consultations with public and private individuals and organizations to develop the statement which "supports many provisions of the Bill" (p. 310). Specifically it was agreed that: (1) Young people should be charged with a specific offense, rather than be charged with delinquency; (2) That status offenses should be eliminated as well as provincial and by-law offenses; (3) That provisions should be made for closer attention to legal procedure, including legal representation and the right to appeal; (4) And finally, that uniform age jurisdiction is appropriate. The Association was critical of the Bill in that it did not allow for enough flexibility in determining dispositions, and is too detailed and obscure in too many places. As well, closer ties with services dealing with children in need was suggested.

The second reading of Bill C-192 resulted in a heated debate in the House of Commons in which concerns were voiced by opposition members. MacDonald (1971) wrote that he "shares the principle concerns expressed by the critics" (p. 166), but also supports many of the other propositions of the Bill. However, MacDonald's concluding statement on Bill C-192 was that, on the balance, the proposed legislation did not represent a law which pursues the goals of a just society. He further claimed that such legislation could serve to extend the alienation between adults and youth in Canadian society.

The preceding has highlighted the various comments written concerning Bill C-192. No author has praised the Bill without stating some shortcomings, and authors such as MacDonald have fundamentally rejected the Bill as a positive step in juvenile justice legislation. However, many of the criticisms of the Bill were dealt with in the ensuing law. Examples of this are that the minimum age of the Y.O.A. is 12 years of age, not 10 as originally proposed and the right to counsel was entrenched in the Y.O.A. These examples are indicative of the important philosophical and practical differences between the J.D.A. and the Y.O.A.

The Young Offenders Act

history of juvenile criminal justice

[The ~~above discussion~~ has followed the development of changing attitudes towards juveniles who transgress the law, and the legislation associated with those attitudes. Where once juveniles were viewed as pitiable waifs who simply lacked proper parental guidance, juveniles are now held responsible for their behavior. In accordance with those changing positions, ^{about youths} juvenile law has also evolved. The waif was to be "rehabilitated" by the ~~development~~ state law who's ~~structure~~ was geared for this purpose. Thus the trial and adjudication were set up as components of the rehabilitative welfare model.] As the perspective of youth changed to "volitional individuals" [they were given many of the rights accorded to adults in the criminal justice system, such as due process and representation by counsel in a justice oriented model.]

As a result of the clear distinction between the philosophies of the two models of juvenile justice legislation, it is hypothesized that the differences should be observable in juvenile demographics and court procedure, and that measurement of variables associated with these categories will reflect the welfare philosophy in the case of the J.D.A., and the justice philosophy in the case of the Y.O.A.

An example of the expected differences that reflect the respective philosophies is the age variable. It is proposed that youths appearing before the court under the J.D.A. will be younger than those appearing under the Y.O.A. as a result of the welfare philosophy that wayward children needed to be rehabilitated, and that this would be most effective if the child was apprehended as soon as possible (before the poor habits became too engrained in their personalities). Conversely the Y.O.A. is based on the justice model that deals with youth as volitional individuals who must be punished for their crimes while society is protected, therefore it is expected that older children will appear before the court for "crimes" rather than "moral misdeeds".

The main query posed in this study is whether the changes in juvenile legislation has actually changed the ways juveniles are dealt with by the justice system. As the above discussion of the J.D.A. has indicated, good intentions are not enough, and unintended consequences are not unlikely. This study will quantitatively determine the direction of the change in court procedures that has occurred as a result of the implementation of the Y.O.A. and the magnitude of that change.

The research presented is from the Vancouver juvenile court. The data representing the welfare model J.D.A. court was obtained in 1982 for the purposes of a national study of the functioning of the juvenile court by Bala and Corrado.

The data representing the justice model Y.O.A. court was collected in 1988 for the purposes of the present study. Because all data presented here was obtained at the Vancouver court the scope of this study must remain within the context of that court. Any generalizations to other courts must be viewed as tentative, as will be discussed in the concluding chapter.

Chapter Outline

Chapter I consists of the history of juvenile legislation in Canada. The two laws that have dealt specifically with juvenile crime have been viewed in terms of the debates which preceded them and the criticisms that they were subject to.

Chapter II describes [the prominent theories concerning why the J.D.A. was adopted and why it was subsequently replaced by the Y.O.A.] While chapter one deals with this in terms of changing societal attitudes towards juveniles, chapter two provides a variety of other theories that attempt to explain this change.

Chapter III discusses the methodology employed in the present research. Cross-tabulation analysis and description of percentages and frequencies are used to compare data from 1982 which represents the J.D.A., and 1988 data to represent the Y.O.A.

Chapter IV provides the data and statistical analysis as it relates to the sub-hypotheses related to each individual variable, and the statistical significance of each test administered.

Chapter V presents a discussion which deals with the question of whether the implementation of the Y.O.A. can be preliminarily judged as fulfilling its intentions within the juvenile court. Studies conducted in other Canadian juvenile courts are presented in order to compare the results to the present study.

CHAPTER II

THE JUVENILE DELINQUENTS ACT AND THE YOUNG OFFENDERS ACT:

A CONTRAST IN PHILOSOPHY AND THEORY

In the preceding ^{section the} ~~chapter~~ a main theme was that the J.D.A. and the Y.O.A. came into existence as a result of changing attitudes towards juveniles. There are, however, a variety of other theories proposed to explain why each of these two laws evolved. These theories will be the focus of this chapter.

To reiterate, the Canadian juvenile justice system operated under the J.D.A. from 1908 until April 2, 1984 when the Young Offenders Act (Y.O.A.) was proclaimed. This change was fundamental because the basic philosophies of the two laws were in opposition. This chapter will also present the two opposing philosophies in detail. First, the J.D.A. will be reviewed in terms of the philosophy and practice associated with it. Second, a theoretical review will be presented ~~for the reasons why the J.D.A.~~ philosophy was adopted. And, third, those theories that address the question of why it was replaced by the Y.O.A. are addressed.

[The Juvenile Delinquents Act]

The J.D.A. is premised upon the common law principle of "parens patriae". This Latin term holds several meanings, however generally it means "father" or "protector of the country". More specifically, it [identifies the state ~~the state~~ acting on the child's behalf in order to promote the child's welfare (Bala and Corrado, 1985).]

Section 3 (2) of the J.D.A. expresses this conviction:

Where a child is adjudicated 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. (Snow's Criminal Code, 1983: J.D.A.-2)

This quote further signifies the J.D.A. as a welfare model of juvenile justice. According to this model, youth [are seen as being shaped and influenced by their environment (both psychological and physical), therefore the youths become delinquent as a result of environmental forces acting upon them. In effect a young person cannot be held accountable criminally for their actions as would adults (Reid and Reitsma-Street, 1984). The primary method for the prevention and rehabilitation of delinquency according to the welfare philosophy involves changing environmental forces that shape the child rather than the traditional punishment method.]
School and peer relations, for example, are viewed as

important, but the family is viewed as the key socializing agent (Reid and Reitsma-Street, 1984). In addition, since each child's composite environmental picture is different, a comprehensive investigation of the environmental situation is required for the adjudication and disposition processes of juvenile justice. In other words, [individuals must be assessed in terms of their unique situations. This welfare philosophy underlies the various facets of the J.D.A.] The following description of the J.D.A. is based on the original intentions of the Act as it was expressed in 1908.

Any [youth charged under the J.D.A. was done so under the general provision of delinquency. This label included violations against the Canadian Criminal Code, any federal or provincial statute, any by-law, as well as statutory offenses (e.g. sexual immorality, truancy, incorrigibility or similar forms of vice) for which an adult could not be charged.]

[There was considerable diversity among provinces and local courts in the application of status offenses (Bala and Corrado, 1985). This variation likely occurred because the J.D.A. did not describe statutory offenses specifically, therefore, it was subject to broad interpretation by juvenile justice personnel. Second, sexual immorality, incorrigibility and similar terms could be interpreted differently by persons because of conflicting values. In addition to this broad discretion, [the provinces had the power to define jurisdictional limitations in certain areas as well.]

The provinces had substantial authority over the age limitations for the application of the Act. Section 2 (1) stated that "In the Act 'child' means any boy or girl apparently or actually under the age of sixteen years, or such other age as may be directed in any province pursuant to subsection (2)." (Snow's Criminal Code, 1983: J.D.A.-1).

~~As well, because~~ ^{Since} the [welfare philosophy is based on the notion of treatment and care rather than punishment, many areas of the provincial child welfare agencies and the juvenile justice system overlapped (Bala and Corrado, 1985).]

This notion of treatment and care was evidenced in the new juvenile court. [The courtroom was originally designed to reflect the welfare philosophy.] Separate courts were assigned as juvenile courts, and hearings were not open to the public. [Proceedings were meant to be informal and non-adversarial.] ^{Thus lawyers were unnecessary.} ~~thus~~ negating the need for lawyers to be present. [The purpose of the court was to investigate the child's social situation and to prescribe treatment in a setting that reflected the doctor's office rather than an adult court.] (Corrado, 1983). *It was the concept of father knows best*

Children were not to be confined with adults. The length of disposition varied greatly because a youth could be in custody, on probation or fulfilling any other disposition set until the age of twenty-one. This was the age of majority when one was no longer considered a child and thus in need of care and supervision (Snow's Criminal Code, 1983:

J.D.A.). Under the J.D.A. the person who was to provide this supervision generally was the probation officer.

The position of juvenile probation officer was created by the J.D.A. The probation officer held special duties within the juvenile justice system which included conducting any investigations that the court required, to be present at court hearings in order to represent the child's interests, to provide the court with any information or assistance that the court required, and to take charge of the child as directed by the court, either before or after the trial (Snow's Criminal Code, 1983).

The probation officer held considerable power in the court. ~~Decisions~~ were often based on the information gathered by the probation officer for the pre-disposition report as well as on the verbal recommendations of the probation officer. The role of the probation officer revealed the welfare model philosophy in which the child's social situation, documented in the pre-disposition report, became the basis for adjudication and disposition rather than the act for which the youth was originally charged (Corrado, 1983).

The following discussion will deal with the question of why such a philosophy and practice was adopted in Canada to deal with youth and crime.

Several theories have attempted to explain the emergence of the welfare model juvenile justice system. The first of these theories is defined as the Progressive model. It

provided the ideological basis that the J.D.A. was founded upon in the early part of the twentieth century. According to Rothman (1979):

It was the Progressives who offered an environmental and psychological interpretation of the causes of delinquency that with minor changes and shifts in emphasis would characterize social thinking for the next several decades. Even more important, it was the Progressives who dramatically expanded the discretionary authority of the state. (p.35)

The Progressive philosophy provided the rationale for the welfare model of juvenile justice since its key principles were good intentions and humanitarian concerns for the young. Because the proponents of this philosophy supported an environmental and/or psychological interpretation of the etiology of delinquency they offered the "cure" - a welfare model based juvenile justice system (Rothman, 1979).

According to Breckinridge and Abbott, who wrote The Delinquent and the Home in 1912, the environment from which these children needed to be saved was specifically located in the immigrant slums. As well, they described how the conditions created by poverty produced delinquency (Rothman, 1979).

Other contemporary theorists such as William Healy, who wrote The Individual Delinquent in 1915, viewed the cause of delinquency as psychological in nature. According to Healy,

children from poor environments should be viewed in terms of the psychological consequences this environment had on the individual. Whether the emphasis was environmental or psychological, all Progressives believed that delinquency was curable and "to their minds, the state was the friend and not the enemy of the child, and its powers, appropriately, had to be broadly extended and not scrupulously limited in order to effect this cure" (Rothman, 1979: 45).

The juvenile court was the focus of the programs that the Progressives supported. This court, in its procedure and mandate, represented a new combination of benevolence and efficiency in which the good of society and the welfare of the child would be balanced. These reformers believed that they had created a middle ground between the two extremes of harshness and neglect (Rothman, 1979).

The Progressive perspective explains the development of the juvenile justice system as a rational response to the real needs of both society and youths with genuine concern and benevolence. It is possible to understand why this view was eventually accepted and expressed in policy, given the social positions of the proponents of the Progressive model. For the most part they were considered philanthropists. One organizational component of this group were the women's clubs whose members fervently argued the welfare philosophy as the method for rescuing the children from the ills of their environments. Chicago's first juvenile court judge, Richard Tuthill, described the women's impact on the situation and

the acceptance that their views received by stating that "the women's clubs are the parents of all children. They have taught the state how to be a parent." (Rothman, 1979: 38).

In addition to the women's groups, other interest groups and individuals testified to the benevolence of the proposed court system. Some of these people included one of the founders of the School of Social Work, Henry Thurston, and the first founders of the Settlement House Movement, Jane Addams and Julia Lamthrop. By 1910, these people were joined by psychiatrists and psychologists. (Rothman, 1979).

By persuasively presenting the causes of delinquency as being environmental and psychological, and by prescribing the juvenile court as the cure for delinquency, the welfare philosophy was acknowledged as the most effective method for dealing with delinquency. The ensuing J.D.A. was the application of the Progressive views.

The remaining theories that seek to explain why the welfare model J.D.A. was adopted locate the causal factors in the economic and/or political factors of the nineteenth century.

Anthony Platt (1977) offers an alternative explanation of the development of the welfare model of juvenile justice. He presents a political economy thesis in The Child Savers: The Invention of Delinquency. He presents a critique of the Progressive theory. Platt argues that the child saving movement did not humanize the treatment of juvenile offenders and rescue them from the ills of their environments. In effect, he claims that the Progressive theory was a myth. He further argues that the "child savers" created a system where more juveniles were subject to arbitrary punishment.

Platt's thesis employs a political economy perspective: "The child-saving reforms were part of a much larger movement to adjust institutions to conform to the requirements of the emerging system of corporate capitalism." (Platt, 1977:XLX). Platt asserts that this corporate capitalist movement was headed by middle and upper class individuals who were class conscious, and most interested in protecting their position

in society. He discounts the idea that the intentions of the reformers were humanitarian in nature, but rather, that it was self-serving and functional. He further stated that the child saving movement was not an isolated phenomena but also reflected "...massive changes in the mode of production, from laissez-faire monopoly capitalism, and in its strategies of social control, from efficient repression to welfare state benevolence" (1977: XX).

Big business played a key role in the development of welfare juvenile justice according to Platt's thesis. Child labour legislation coupled with compulsory school legislation are identified as the products of big business's lobbying efforts. Through these laws, Platt asserts, big business could drive out marginal businesses which relied on child labour and thus increase their own efficiency in production and consolidation of the marketplace. A specialized and disciplined labour force was a primary goal of corporate capitalism that could be achieved by a compulsory school system and juvenile court system that was based on the welfare model. Accordingly, delinquency was invented for the exigencies of the political economy of that era.

A. Laizos (1974) also used a political economy framework to explain juvenile justice legislation, though he takes a different perspective than Platt. Contrary to Platt, Laizos rejects the notion that poverty causes crime. According to Laizos, troublesome middle and upper class children were sent by the juvenile justice system to private facilities or

simply were left alone, while poor, working class and minority group children were condemned to public agencies and correctional facilities. Laizos (1974) contends that:

All the programs through the years have aimed at control and discipline of the poorer classes; they have tried to resocialize the boys and girls of the poor, working class, and minority groups so they would accept the place capitalism (in its various forms) chose for them.
(p. 2)

The programs to which Laizos refers are those that tried to prevent delinquency or rehabilitate delinquents.

These programs took two approaches. First, socialization through "moral suasion", including preaching and teaching, which were predominant in the nineteenth century. More recently, this first approach to socialization has included therapeutic and psychological techniques. The second approach, consisting of incarceration, rigid discipline, punishment and stigmatization, was employed when the first approach did not achieve its intended goals (Laizos, 1974).

Laizos states that those controls, which forced the child into capitalist society (whether they wanted to or not), was not the product of conscious motives of class control by the juvenile justice system. Instead he argues that "the objective functions and consequences of the programs and institutions of that system which serve to

perpetuate capitalism" are the basis of delinquency laws (1974: 3).

To support this thesis Laizos relies on an historical account of juvenile justice control mechanisms. Throughout juvenile justice history methods have changed, new programs instituted, and laws amended in order to promote social control and the preservation of capitalism. This is similar to the position held by Platt (1977) who proposed that a disciplined and specialized labour force was the objective of delinquency legislation. However, Platt states that this was the clear intention of wealthy industrialists, whereas Laizos argues that the J.D.A. was not the product of conscious motives.

Laizos (1974) contends that the goals of delinquency prevention and control programs have always been concerned with making the children of the lower classes accept dead-end jobs, the reduction of crime and recidivism rates, and simply keeping them quiet. An example of this was the house of refuge, which according to Laizos, was the product of the fear that children confined with adults would learn more about crime and criminal activity from them, thus creating the need for separation of youths and adults in confinement. The problem of delinquency did not rest with youths nor with their caretakers in institutions. The problem was with those who supported and perpetuated capitalism and its supporting institutions.

Hagan and Leon (1977) challenge the Marxist approach, particularly Platt's thesis. The major criticism of Platt is his misinterpretation of the socio-legal developments that led to delinquency legislation. Hagan and Leon find little evidence in Canada to support the premise that the industrial elite took an active economic interest in the passing of delinquency legislation. Rather, they contend, it was other interest groups, particularly those who supported the use of probation for juveniles, that led to the J.D.A.

Professionalism became increasingly important once youth reform gained credibility. The need for trained and experienced professionals emerged. Hagan and Leon claim that those involved in the juvenile justice movement became increasingly aware of their own positions within the newly-emerging bureaucracy. Legislation, such as the Canadian Criminal Code passed in 1892, and the Ontario government's passing of the Children's Protection Act in 1893 were particularly instrumental in setting up an organizational basis for probation work. The former made provisions for separate trials for youths under sixteen, and the latter gave explicit recognition and authority to Children's Aid societies. J.J. Kelso was a major force in the passage of these legislations.

Kelso was joined by W.L. Scott, Local Master for the Supreme Court of Ontario and President of the Ottawa Children's Aid Society. Together they voiced three concerns: (1) additional funding was needed to elevate philanthropic

workers to professional status and to encourage university students to enter into social and moral reform work; (2) probation workers lacked legislative recognition which hindered their work; and (3) the absence of judges specifically chosen to work in juvenile courts (Hagan and Leon, 1977). According to Hagan and Leon, the J.D.A. was prompted by W.L. Scott and others in response to these concerns. The passage of the J.D.A. gave probation officers the power of a constable which included:

conducting investigations, being present and representing the interests of the child in court, furnishing the court with such assistance and information as required, and taking charge of any child before or after, as directed by the court. (p.594)

Two main groups participated in the debates over the J.D.A. The first group, eventually successful, consisted of advocates of probation and special courts for juveniles. The other unsuccessful group, composed of the police and magistrates, advocated the traditional severe and punitive approach.

Hagan and Leon maintain that the historical evidence for their thesis indicate that professional interests played the key role in the development of juvenile justice policy. Hagan and Leon (1977) assert that:

Whether the eventual success of advocates of probation served the basic interests of the ruling elite is unknown, and

probably unknowable, for the various reasons discussed above; however little influence of the industrial elite was revealed in the personal correspondence and public documents of the key proponents of this legislation. (p.595)

J. Donzelot, in Policing of Families (1977), offers a very different approach to understanding why a welfare model of juvenile justice was implemented. His thesis is developed in the Foucault tradition in which discourses on a particular subject serve to locate what society has identified as a viable interest. In other words, it is public discussions, and private conversations that identify what problems or issues need to be addressed. According to Donzelot, the development of a welfare model of juvenile justice is not the logical response to a youth control and/or crime problem. It was developed within a larger context identified as the "tutelary complex" or guardianship. This refers to the set of apparatus used by the state to enable surveillance of the family. It is not the delinquent child, therefore, that is the subject of the welfare model juvenile justice system, but rather the whole family. Donzelot does not specifically state why the family became the target of discourses on social control, however it is implied that the role of the family was viewed during the late nineteenth century as the cornerstone of society and could not be allowed to disintegrate. It was the discourses about the family that gave rise to the tutelary complex.

Donzelot does not view the evolution of juvenile justice as an isolated phenomena, he describes its emergence as one part of a social control mechanism which found its access to the family through the child. An example of how the family is accessed through the child is the pre-trial report. In this report the child is not central, the circumstances in which the child lives becomes critical. The family is observed as well as the educational process. The tutelary complex begins to take shape and is expanded to include all aspects of the child's development. According to Donzelot (1977)

If we are to understand the inter-relationships of institutions dealing with irregular children, we have to represent them as being framed one within the other according to a principle of superimposition which ultimately relies on a juvenile court to prop it all together. (p. 109)

The court realized a shift in discourse about the delinquent. The child no longer stands before the court because of an act (a crime) which he/she has committed and will be punished for; the child stands before the judge because the act has come to symbolize something much wider in scope than the delinquent behavior; it now represents a dysfunctional social/familial/educational environment.

One component of the tutelary complex is the medical profession. It has been employed by the juvenile justice system from the beginning; juvenile law provided that a

social inquiry may be conducted when deemed appropriate by a medical examination. The psychiatric profession emerged in the area of child psychiatry because of a need to locate itself within a more general sphere (not limited to asylum cases) to find a base. The child became the base through which all behavioral and psychic anomalies and pathologies could be accessed.

The tutelary complex made it possible to identify individuals, (for the purpose of prevention), who could potentially damage society. This was made practical because: (1) the school could provide the location in which abnormal tendencies could be observed and identified; (2) the family was designated as the etiological origin of psychological abnormalities in the child, thus, by locating the origin of abnormality in the family, the educator implicitly became involved in the identification of the delinquent as well as the family; (3) the judiciary is the final and official step of identification.

Thus, the system that Donzelot relates is one in which the judicial, the medical/psychiatric, and the educative, in their development became superimposed. Their mutual focus is the child, and through the child, the family.

The welfare model of juvenile justice did not come into existence as a separate entity from other social institutions; according to Donzelot (1977):

This central importance of juvenile law is due to the pivotal position it

occupies between an agency that sanctions offenses (the retributive justice of ordinary law) and a composite group of agencies that distribute norms. (p. 112)

Donzelot's account of the development of the welfare model of juvenile justice is different from the other theories discussed. The Progressive model represented by Rothman portrays the advent of juvenile legislation as the result of society's genuine concern for the children who were in need of aid in order to escape the ill effects of their environments. The political economy model presented by Platt views the emergence of juvenile legislation as the result of lobbying efforts on the part of corporate capitalism, while Hagan and Leon identify the self-serving needs of professionals to enhance their position and role in society as their motivation for lobbying for the institution of the J.D.A. Donzelot relates a very different scenario in which the point of departure for his thesis is the discourse that allowed for the judicial, medical/psychiatric institutions to develop and merge in an effort to access the family through the child, for the purposes of surveillance (delinquency prevention) and control (delinquent rehabilitation).

While the debates concerning the factors that contributed to the creation of the welfare model of juvenile justice were far from over, theorizing about juvenile justice legislation in Canada took a new turn. Discontent with the welfare model J.D.A. began to become apparent in the 1960's, and discussions of juvenile justice legislation

began to turn away from the issue of what factors led to the creation of the J.D.A., to the issue of whether it was still an appropriate response to juvenile crime.

The Young Offenders Act

The J.D.A. was replaced by the Y.O.A. in April 1982, and came into effect in 1984. This new legislation reflected a vast change in the philosophy of dealing with young offenders. The name of the act reflects the central philosophical difference; [no longer are those children charged under the Y.O.A. referred to as delinquent, but are now referred to as offenders.] This term was previously solely used to describe adults who transgressed the law. Another difference between the J.D.A. and the Y.O.A. is that the latter identifies parameters for the application of the law, whereas the former was open to broad interpretation. Thus the Y.O.A. allows for considerably less discretion in its practical use. The Y.O.A. represents the justice model of juvenile justice where offenders are viewed as a volitional and responsible members of society who must deal with the consequences of their illegal behavior. This philosophy is strikingly different from the welfare philosophy which characterized the J.D.A. The key components of the Y.O.A. will be outlined.

A young person is defined as being between twelve and seventeen years of age. The declaration of principle states that: (1) Young persons cannot be held accountable for their

offenses to the same extent as an adult, yet still must be held responsible for their actions. (2) Society must take steps to prevent youthful offenses, but also they must be protected from illegal acts. (3) Those young persons who so commit crimes require supervision, discipline and control, but also due to their level of development and dependency need guidance and assistance. (4) The handling of offenders may be undertaken in a non-judicial fashion if it is not inconsistent with the protection of society. (5) Young persons have the right to freedoms declared in the Canadian Charter of Rights and Freedoms and in the Canadian Bill of Rights, and should have special guarantees of their rights and freedoms. (6) Those rights and freedoms include the right to the least possible interference with their freedom that is consistent with the protection of society. (7) Young persons have the right to be notified of their rights and freedoms. (8) Parents are responsible for the supervision and care of their children and can only be relieved of this responsibility of parental supervision if inappropriate (Snow's Criminal Code, 1983-Y.O.A.). These eight principles identify the basic philosophy of the Act, the following refers to the practical elements.

The status offense was eliminated when the Y.O.A. was introduced. A youth can be charged with violations of the Criminal Code, other federal statutes and regulations, provincial statutes and municipal ordinances. A young person cannot receive a sentence that would be greater than the

maximum punishment that would be applied if he/she was an adult for the same offense.

The Y.O.A. also recognizes the youth's right to obtain and instruct counsel without delay, and allows for interim release. The Y.O.A. allows for members of the public to be excluded from the court if the court believes that it would not be in the best interests of public morals, maintenance of order, or the proper administration of justice, where evidence or information presented would be seriously injurious or prejudicial to the accused. Those that cannot be excluded from the court are: the prosecutor, the accused, parents of the accused, counsel to the accused, the provincial director of his/her agent, and the accused's youth worker. The youth court is otherwise considered an open court (Snow's Criminal Code, 1983-Y.O.A.).

Young persons over the age of fourteen are eligible for transfer to adult court if they have committed an act that would constitute an indictable offense if committed by an adult. The application to transfer a youth to ordinary court must consider: the circumstances and seriousness of the offense; age, maturity, character, background, and previous criminal acts; availability of treatment/correctional resources; and any other factors (Snow's Criminal Code, 1983-Y.O.A.).

Where the youth is found or pleads guilty, the court may hand down any of the following dispositions: absolute discharge, if in the best interests of the child and not

contrary to public well-being; a fine, not to exceed one thousand dollars; compensation of loss or damage; probation; restitution; community service; detention for treatment purposes; detain in secure or open custody for a period not to exceed two years, but may be sentenced to secure custody for a period of three years for an offense for which an adult could receive a sentence of life imprisonment (Snow's Criminal Code, 1983-Y.O.A.). The youth may at no time be confined in a building which also houses adults. A youth may not be photographed and fingerprinted except in cases where an adult would be subject to the Identification of Criminals Act (Wilson, 1982).

A pre-disposition report must be submitted in writing when asked for by the youth court. This report includes: results of an interview with the youth and an interview with the youth's parents (if possible); an interview with the victim, if reasonable and possible; the young person's future life improvement plans; previous charges for which the youth was found guilty; history of alternatives used to deal with the youth; availability of community services and facilities; relationship between the youth and parents; school attendance and performance; age; maturity and character; behavior and attitude (Wilson, 1982).

The Y.O.A. has incorporated "alternative measures". This refers to diversion programs which must be authorized by the provinces. The young offender must give consent in order to be placed in a diversion program, however in order to

qualify for the program the young offender must assume responsibility for the act that he/she was charged with. If the young offender agrees to the diversionary measures, the court will dismiss any charge against them (Snow's Criminal Code, 1983-Y.O.A.).

The above describes some of the key aspects of the Y.O.A. It highlights the changes made in the criminal justice system's dealings with youths in contrast to the J.D.A. The Y.O.A. represents a justice model of juvenile justice. According to Schneider and Schram "In a justice model, the primary emphasis is on uniformity, fairness, and accountability rather than rehabilitation, punitiveness or deterrence." (1983: 102). The Y.O.A. reflects the ideology of the justice model in which youths are viewed as rational and responsible, however this is mitigated by a statement in the Y.O.A. which considers youth to be still in a state of immaturity and dependency which serve to diminish their responsibility.

Fixed and proportionate sentencing are also associated with the justice model and has been incorporated into the Y.O.A. (Reid and Reitsma-Street, 1984). Societal protection, the right to due process and the assumption of innocence until guilt is proven beyond a reasonable doubt are all components of the justice model which can be found in the Y.O.A.

The Transfer from the Juvenile Delinquents Act to the Young Offenders Act

The following section will deal with the question of why the change in juvenile law philosophy occurred, as described in the debates over the Y.O.A. For example, D. Rothman (1979) observed that

Our predecessors were remarkably confident that they understood both the causes of delinquency and its cure. We, for our part, can no longer accept their promises or programs, but we share little agreement on what ought to be substituted. (p. 34)

A substitute, the Y.O.A., was agreed upon by the Canadian Parliament, however it was preceded by much debate and was influenced by events in the U.S.A..

In 1965 a report on juvenile delinquency by the Justice Department presented recommendations for a new juvenile justice law. This report became the basis for the Children and Young Persons Act, presented in 1967. This act was criticized on the constitutional grounds that the Federal government had exceeded its jurisdiction with the new law, and ventured into provincial territory (Osborne, 1979). A revised act, The Young Offenders Act, was tabled by Solicitor General George McIllraith in 1970. The opposition in the House of Commons at that time were unreceptive to the proposed law, and nothing more was done about the proposed

Act until 1973 when a review of the yBill was called for, and then published in 1975. Recommended changes would have greatly affected the Federal funding that the provinces were accustomed to regarding juvenile justice, and as a result the provinces rejected this revised legislation.

A new draft of the Y.O.A. was submitted on July 31, 1975 to Solicitor General Warren Allemand. The revised Bill advocated the same procedural safeguards for juveniles that are accorded to adults in the criminal justice system (Wilson, 1982). The Bill went through several more revisions until the Y.O.A. was finally made into law. Bala (1988) suggests that this Bill was primarily accepted because the Charter of Rights and Freedoms had been entrenched, and several provisions of the J.D.A. seemed to ignore some of the rights guaranteed within the Charter.

Events which took place in the United States seemed to have influenced the Canadian juvenile justice system. Disenchantment with welfare model juvenile justice in the U.S.A. began in the 1960's. President Nixon waged a war on crime during his 1968-72 term in office. But, as Corrado maintains, "although similar frustrations and calls for reform are heard, they never attained the levels of intensity and extreme pessimism reached in the United States." (1983: 22). The intensity differential that Corrado refers to may have occurred as a result of the cumulative social disenchantment with state activities concerning the Vietnam conflict and the civil rights movement during the same

period. The following will present a few key instances of change in the United States, from a welfare to a justice model of juvenile justice, that may have influenced Canada's subsequent legislation in that area.

The U.S. Supreme Court case of Kent v. United States (1966) was concerned with the requirement of a hearing in order to move a juvenile offender to adult court in the District of Columbia (Hellum, 1979). Justice Fortas stated his concern over the promise and the practice of a separate juvenile court. Fortas stated that "the child receives the worst of both worlds: that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children" (Hellum, 1979: 301). This statement has been reiterated many times over the past two decades.

One year later the case of re Gault highlighted Justice Fortas' point. H.T. Rubin refers to this case as "a turning point in juvenile court developments" (1979: 281). The decision handed down by the Supreme Court of the United States stated that juveniles must be provided with the same due process standards. This decision contradicted the welfare philosophy in which civil proceedings were said to suit the well being and interests of the youth.

A more substantial change in juvenile justice practice occurred in Washington state in 1977. House Bill 371, passed in the State legislature, represented "the most substantial reform of a state juvenile justice code that has occurred

anywhere in the United States." (Schneider and Schram, 1983: 101). This legislation has certain principles in common with the Y.O.A., however the Washington State law is closer to the justice model ideal because it includes: removal of status offenses; reduction of judicial discretion; proportionate and determinate sentencing; an accountability-based diversion system that is institutionalized; a more formal court system based on legalistic decision-making criteria; all the rights (except trial by jury) available to adults accused of crimes extended to juveniles (Schneider and Schram, 1983). Clearly Washington state has opted for a justice model. The implementation of the new Washington state juvenile justice law was the culmination of disenchantment with the previous law, and subsequent challenges to it. As Corrado stated, the disenchantment with Canadian juvenile justice law was not quite as intense as in the U.S.A., and change came much slower in Canada. As in the late nineteenth century, the past twenty-five years have revealed much disenchantment with the methods employed in dealing with juvenile offenders. Hellum (1979) refers to the present period as the second revolution in juvenile justice. In response to the question of why this disillusionment occurred, Corrado (1983) offers some observations. { The availability of vast amounts of information concerning the juvenile justice system is part of the answer; never before have social scientists, legal scholars, the media, and other observers of juvenile justice scrutinized the system to such a degree as in the past twenty-five years. } The

intense observation has yielded information which has revealed discrepancies, between the promise of the *parens patriae* philosophy that characterizes the J.D.A. welfare model, and the realities of its application. It is from this contradiction, according to Corrado, that the disillusionment stemmed.

It is at this point that the discussion changes from why the disillusionment to questioning why a particular system, ie., Y.O.A. was adopted.

Why was the Justice Model/Young Offenders Act Adopted?

Austin and Krisberg (1981) identify the second revolution in juvenile justice as the widening, strengthening, and differentiating of the nets of social control. Their analysis begins by stating that the American criminal justice system "has not been working very well". The reforms adopted are viewed as reflections of crime control theory and the values of competing interest groups whose aim is control over the state's role in regulating criminal behavior. They cite social and economic factors to explain the popularity of reform during the past twenty-five years. Civil rights activity, the oppression of the lower classes, and changing family structures all contributed. Expressions of social unrest were interpreted as lawlessness which resulted in calls for stronger forms of social control.

One example of the instituted reforms is diversion programs (which were entrenched in the Y.O.A.). According to Austin and Krisberg (1981)

Diversion programs also serve to strengthen the net and create new nets by formalizing previously informal organizational practices and by creating practices where none has existed. (p. 171)

Austin and Krisberg state that new reform policies must be understood as a progression within the dialectics of the wider political economic structures of society because all the components of social life are interwoven and must be understood in their totality. In this case there is no single solution. Current reform efforts are understood as a continuation of previous social reform patterns and inter-relations. For example, current juvenile justice reform could not have occurred if the reformers of the early twentieth century had not chosen the particular path that they did, one reaction is based on the previous reaction. To focus on one answer why a justice model was adopted would be futile since it is the complex inter-relations of the past and present that have yielded this new philosophy:

Each separate reform movement (from the liberal direction-diversion, decarceration, due process and decriminalization; from the more conservative direction - deterrence and just desserts) represents a series of 'unmet promises'. The criminal justice system, propelled by its own

organizational dynamics, functions to resist, distort and frustrate the original purposes of these reforms. These 'dynamics' are both internal to the system (interactive processes by which changes in one segment trigger off changes in another or the operation of interest groups trying to expand their sphere of power) and external or dialectical (contradictions in the surrounding society, ideology and political economy). (Cohen, 1985:95)

An alternative theory was proposed by Schur (1973), although his analysis dealt with the American experience. He adopts the position that the former system "simply doesn't work" and proceeds to state that "A traditional response to this situation has been to assume that the system merely needs improvement." (1973: 117). Schur takes issue with this approach, and believes that the system itself was basically unsound, and sets out to explain what was needed by means of examples of how the welfare model system was ineffective, even destructive.

From the labelling theoretical perspective, Schur examines how the labelling of behaviors, such as those defined as status offenses, only served to instill in the child the delinquent identity which subsequently resulted in delinquent activities. In other words, the youths assimilate the ascribed status of delinquent into a self-concept; because their own actions and the result of the actions of others, namely the justice system. For example, the social investigation of a youth by the court, with almost total disregard for the offense, ensured that the youth would be

responded to as a stereotype, and this stereotyped perception will influence judicial decision-making (Schur, 1973).

Schur cites the fact that a youth could have been held in custody of the state for a longer period than an adult convicted of the same offense in order to call attention to the idea that this could not be in the "best interests" of the youth. That this term in the "best interests" is simply one of many euphemisms used (another is institutional rehabilitation). Allen claims "Good intentions and a flexible vocabulary do not alter this reality" of a destructive system (in Schur, 1973: 128).

Schur employs Matza's argument that the juvenile court proceedings only served to confuse the youth and thus substantiate the youth's feelings of powerlessness, and a sense of injustice. According to Schur (1973), the court experience:

strengthens rather than combats the delinquency-generating attitudes... youths processed by the traditional juvenile court have good reason to feel that their treatment violates these basic criteria for fairness or justice. The proceeding is vague and inconsistent, and perhaps, in the eyes of some beholders, hypocritical and incompetent. (p. 161)

These and other examples of the "it doesn't work" view lead Schur to a number of conclusions. (1) New measures for dealing with youth crime need to be adopted. (2) The vagueness of statutory offenses must be eliminated. (3) The

vast discretionary powers of the system must be curtailed. (4) The idea of treatment in view of dealing with the particular offense does not further the aim of rehabilitation and should be eliminated. (5) Youth should be treated in a way that increases a just and egalitarian view of society. (6) And, a system of justice that can be respected, and that respects youth must be created. Schur is advocating principles that have been implemented in the Y.O.A. Schur calls such a policy "dealing evenly" with youth, and states that above all, whenever possible, we should simply leave the youth alone.

Another theory that lends insight into the question of why the Y.O.A., is offered by Taylor (1982). His discussion begins with Becker's definition of the "moral entrepreneur"; someone who is committed to changing the dominant moral rules of society by declaring new rules in law. They feel very righteous in their beliefs and committed to the idea that their view would be best for society, often perceiving themselves as humanitarian, progressive, or liberal.

The creation of anxieties, the formation of moral panics, are key to the moral entrepreneur's campaign for change. Such is the case of law-and-order campaigns which can lead to "get tough" policies. The revised Washington state juvenile justice law previously mentioned can be viewed as one such policy. Taylor recognizes the campaigns of moral entrepreneurs in the 1960's as marking the beginning of the law-and-order movement. Accordingly, the North American

university campuses were viewed as places of civil and social unrest resulting from the civil rights protests which indicated a weakness in the established authority to maintain control of order in society.

In the 1970's the new or radical right gave respectability to "get tough" measures that had seemed too harsh and extreme during earlier periods. Individuals such as Vice-President Spiro Agnew and President Nixon were both proponents of tougher policy measures (e.g., the war on crime). Issues of fiscal crisis and energy problems also served to propel the movement since they too contributed to the feeling of disintegration.

This theory of moral panic and get tough policies does not seem to apply to the Canadian context for a number of reasons. First, the change in juvenile justice legislation in Canada was a slow process that took over twenty years to complete, this slow pace is not the landmark of a "panic". As well, as proposed by Corrado (1983) earlier, the extreme pessimism which is needed to fuel the moral panic was felt in the U.S.A., but was not evident in Canada. And finally, the discussions which preceded the implementation of the Y.O.A. included Federal and Provincial governments, agencies involved in juvenile justice, interested individuals and organizations, as well as lawyers and scholars. The fact that diverse elements of society participated in the development of the Y.O.A. negates the possibility of a specialized entrepreneurial group taking control. Thus

Taylor's theory does not seem to be applicable to the development of the Y.O.A.

Dealing more directly with the Y.O.A., Wilson explains the development of the act as a direct response to a juvenile justice system which was "ill-conceived" and "destined to fall short of its laudable objectives" (Wilson, 1982: 257). According to Wilson, the research and debates that have gone on in the area of juvenile justice has led us to the point where change in the law was the only method to deal with the glaring problems uncovered by investigation. Wilson writes, "It now appears that we have ended the hypocrisy and embarked upon a sincere effort to create a system of law rather than good intentions" (1982: 258). However, he contends that this is simply one step in the extremely slow process of adequately dealing with youth crime.

Summary

Wilson's (1982) view that the Y.O.A. was developed as a direct response to the dissatisfaction with the J.D.A., is similar to the nineteenth century progressive position that the J.D.A. was enacted as a direct response to the methods employed in dealing with youth crime that were deemed problematic and ineffective at the time. Both in the nineteenth and twentieth centuries laws dealing with youth crime have been deemed "inappropriate" or even "destructive".

A variety of theories have been discussed that attempt to explain why the each of the juvenile Acts discussed herein were implemented. According to the theories presented, the J.D.A. was passed because of the impetus of particular interest groups, for example.

Rothman suggests that the moral reformers (child savers) lobbied for the passage of the J.D.A. because it would provide them with an official position in juvenile justice policy and administration, and thus allow them to continue their quest to save children from a life of crime. Conversely, the Y.O.A. can be said to be the result of the unmet promises of the J.D.A. and the initiatives of the federal and provincial governments, and not interest groups (although interested groups and individuals were consulted). Another major difference between the two acts is that each is rooted in different philosophical basis; the J.D.A. as a welfare model, the Y.O.A. as a modified justice model. Regardless of the theories that attempt to explain why these models and their respective philosophies were implemented it remains, never-the-less, that they became the laws that govern society's official response to youth crime.

In the practical sense, the day to day operations of the juvenile justice system should be significantly different under Y.O.A. than they were under the J.D.A. because of their very different philosophical basis. One would expect the types of charges laid against juveniles under the J.D.A. to be different from those laid under the Y.O.A. This would be

anticipated because the welfare model, for example, is concerned far more with issues of morality whereas the justice model is concerned primarily with issues of criminality. Thus, charges under J.D.A. would include moral as well as criminal law transgressions and the Y.O.A. would solely be concerned with violations of the criminal nature. ✓

The courtroom should also evidence the philosophical differences between the J.D.A. and the Y.O.A. Under the J.D.A. the court was informal and non-adversarial, resembling a physician's/psychologist's office rather than a courtroom. Conversely, under the Y.O.A. the courtroom is almost identical to the adult court which operates under due process procedures that include the presence of lawyers. ✓

These are but two examples of the differences one would anticipate with respect to the concrete application of the two acts. Thus, it could be predicted that if one compared the application of the two juvenile laws along the lines of the examples presented above, significant differences would be revealed. This is the hypothesis that is offered.

CHAPTER III

METHODOLOGY

The object of this study was to determine if the philosophical differences between the J.D.A. and the Y.O.A. are evident in offender demographics and court procedures in the Vancouver juvenile court. A comparison will be made between data collected in 1982 and 1988.

The 1982 data were obtained from two sources. The first is based on a report of a national study of juvenile courts in Canada (Bala and Corrado, 1985), and the second is the final report on the Vancouver site from the same national study (Corrado, Hightower, Tien, Hatch, 1984). The 1982 study was undertaken to collect information about the functioning of juvenile courts in Canada, which would provide baseline information for the future assessment of the impact of the Y.O.A. (Corrado et al, 1984). The 1988 data was collected for the purpose of comparing it to the data collected in the National study mentioned above.

Research Design and Data Collection

The 1982 and the 1988 studies used similar methods. These included observation of court hearings and review of court files.

The research method employed for the 1988 study was designed so the data obtained in the 1988 sample would be

directly comparable to that from the 1982 sample. In both studies the researcher(s) attended sessions of the Vancouver Family Court, Youth Division.

The 1982 data included 863 items on an observation schedule. Data were collected between April 1981 and April 1982. The 1988 data were collected between January and April 1988, and included a comparable but smaller list of items that will be fully discussed under the heading "Operationalization of Variables". Data that were unavailable through observation were obtained through file audits in both 1982 and 1988.

The 1982 data were collected by research assistants who filled out an observation schedule describing what occurred at each hearing. The 1988 data were collected by the author who attended hearings and filled out a similar observation schedule.

The Sample

The 1982 study included data from 347 juveniles who were tracked from their first court appearance at the Vancouver court throughout the court process. The representativeness of this sample was assessed by a comparison to Statistics Canada information which included all cases that were heard at the Vancouver juvenile court. It was found that the types and number of cases observed in 1982 were similar to all the

cases appearing in 1982 and were thus representative of the court for that year.

The 1988 study included 150 juveniles who appeared between January and April 1988. The researcher attended court on each working day and observed juvenile cases being heard. The data collection period (defined above) was designated as appropriate by the supervising thesis committee because it was thought to be a sufficient period to collect the required sample, and would not be too long as to impinge on the progress of the thesis. As a result it was understood that a smaller data set than the 1982 study would result. A total of 150 cases were observed, however 9 cases were still incomplete at the conclusion of the observation period and were thus not included in the final sample (n=141). Data were collected on each day of the week, and the courtroom being observed was changed on a daily basis to avoid having particular judges overrepresented in the data.

In order to accurately track cases while preserving the youth's right to confidentiality, numerical identifiers were created in both the 1982 and 1988 studies.

Operationalization of Variables

The choice of variables studied here was dictated by the national study in order to maintain consistency and comparability between sample sets. However, this did not limit the present study because the variables included in the 1982 data were comprehensive (there were 863 variables). Not all the variables collected in the 1988 sample were employed in the present study. Only those variables directly related to the hypotheses were used (see Appendix A for 1988 data collection schedule).

The variables included in this study and their operationalization were as follows. Race was defined in the national study as Caucasian, native Canadian, or "other visible minority". These categories were maintained for statistical analysis in the present study, and the "other visible minority" category was further broken down to include: black, East Indian, and Oriental. Sex was defined as male or female. Age was defined as the age of the juvenile at the time of arrest. The jurisdiction of the Acts defines the age range; J.D.A. (in British Columbia) under 17, and between 12 and 17 under the Y.O.A. For comparative statistical purposes, only those ages which were common to both Acts were used.

The variable "charges" included all Criminal Code, provincial, by-law, Narcotics Control Act, Food and Drug Act, J.D.A. and Y.O.A., Motor Vehicle Act, and other federal offenses. This variable was categorized as: property crimes, assaults, drug and liquor offenses, traffic and motor vehicle offenses, other personal crimes/other Criminal Code offenses/other provincial/by-law offenses were included in another category, and offenses defined by the J.D.A. and Y.O.A. comprise the last category of this variable. This variable was categorized to comply with the national study and reflected the major types of crimes dealt with in the Vancouver juvenile court. Statistical analysis for charges was done on the most serious charge for which the youth was appearing, since there could be multiple charges in a single hearing, as described below.

"Number of charges per juvenile" referred to the total number of charges faced by a youth in a single hearing. A youth could appear in a single hearing on multiple charges that occurred as a result of a single incident, or multiple charges that occurred on separate occasions. The categories associated with this variable included: 1 charge, 2 charges, 3-4 charges, and 5 or more charges.

"Number of appearances" reflected how many court appearances (in total) the youth appeared on for a single charge or set of charges. This was broken down as follows: 1, 2, 3, 4-5, 6-10, and 11 or more appearances.

The category "Type of representation" was categorized as no legal representation, duty counsel present, and legal representation, which referred to what type of legal representation the youth had at their hearing.

"Prior record" was divided into those juveniles who either had a prior juvenile record or did not have a prior juvenile record (this referred to convictions only).

"Use of detention" described those juveniles who were detained at a juvenile facility or at the juvenile court pending their appearance in court. This variable was divided into those that were detained and those that were not detained.

"Type of hearing" referred to the main purpose of the hearing. This was categorized as adjournment only, plea only, arraignment/guilty plea/disposition, arraignment/guilty plea/adjournment, trial, trial and disposition, disposition only, review, termination only, other combinations, and bail hearing only.

"Type of disposition" defined the dispositional alternatives that were/are available to juvenile court judges under either the J.D.A. or Y.O.A. These included custodial sentences (both open and closed custody and participation in the wilderness training program), probation, community work

service, monetary dispositions (compensation, restitution, fine), discharge (conditional or absolute, and suspended final disposition), demerit points/suspended driver's license, and other. The disposition that most infringed upon the juvenile's freedom was represented in the data since often juveniles would receive sentences with more than one component (eg. probation and community work service hours).

"Dispositional input" was the term used to describe the fact that in considering disposition, the judge sometimes asked for input from interested parties. This variable identified which individuals spoke in the subject of disposition. The categories included the charged juvenile, parent(s), the prosecuting attorney, and the defense counsel. Since all or none of these people could have participated in the discussion on disposition this was coded as a series of dichotomies.

Methodological Limitations

The main methodological limitation faced in this study was the relatively short observation period. This is problematic since the data collection period of January to April may have reflected crimes that were specific to that time of year, and thus the generalizability of this study is limited. Another limitation occurred as a result of the differences between the J.D.A. and the Y.O.A. Some aspects of juvenile law changed from one to the other and did not

allow for direct comparison of variables. An example of this occurred in the category of age which was defined by the J.D.A. (in British Columbia) as under 17, and between 12 and 17 years old under the Y.O.A. For this study those ages that were similar under both acts were comparatively analyzed.

Differences between judges in terms of attitudes, and individual ways of conducting the proceedings were not accounted for in this study. It is acknowledged that these differences may have influenced the data collected. For example a judge with a strict justice philosophy may have given harsher sentences to juveniles than a more liberal judge, however this could not be controlled for within the scope of this study.

This study was limited to the Vancouver Court and cannot account for regional differences, nor rural vs. urban differences that may be present in other studies (both regional, and rural vs. urban differences were found in the national study). As well, differences in police processing (i.e., use of diversion), and differences in other areas of the juvenile justice system cannot be

accounted for by this study since its scope was limited to the court level and specifically to the Vancouver Court.

Ethical Considerations

Ethical considerations for this study included providing confidentiality for the youth's names and the information obtained through the court files. Permission to review files was granted by Vancouver Family Court Chief Administrative Judge Campbell, with the understanding that confidentiality would be maintained by methods discussed under "Research Design". As well, the Simon Fraser University Ethics in Research Committee's approval was obtained for the proposed study. Under the Y.O.A. the juvenile court is an open court, and permission to observe hearings is unnecessary, however the Vancouver juvenile court courtrooms are very limited in space and there was a need to be as unobtrusive as possible.

CHAPTER IV

RESULTS

The court data were analyzed in order to determine if the philosophical differences between the J.D.A. (1982 sample) and the Y.O.A. (1988 sample) are evident in charges, court procedures, and youth demographics. These analyses consisted of cross-tabulation analyses to determine if statistically significant differences exist between the two samples, and will include percentages and frequencies to indicate the magnitude of the differences. Some variables are discussed only in terms of their frequencies and percentages because the 1982 data were collected as multiple response categories and the 1988 data were collected as single responses categories, thus these variables were not amenable to cross-tabulation analysis. The variables that will be discussed include: offender characteristics (race, sex, age), type of charges that were heard, number of charges, number of appearances in court per charge, presence and type of legal representation, prior record, use of detention prior to disposition, distribution and type of hearing, and dispositions on sample charges. Two other variables, dispositional input (those individuals who spoke in court concerning the disposition being considered), and use of pre-disposition reports will be presented in terms of percentages and frequencies only, because they were not amenable to cross-tabulation analysis since the total number

of cases for these variables was not available in the 1982 data. It should also be noted that the total number of cases in the 1982 sample is not consistent across all variables. The number of cases for the age variable, for example, is different from the base of 347 because it was not possible to ascertain age in some cases.

Offender Characteristics

The J.D.A. was concerned with the juvenile as an individual who was in need of guidance; the legal infraction, or delinquent activity, was viewed as a symptom of this need. Thus the characteristics of each juvenile were very important to proceedings under the welfare model juvenile court of the J.D.A. These characteristics include age, sex and race for the purposes of this study, but could have included any aspect of the youth's environment or personality. The Y.O.A. does not consider the offender characteristics as the key point of reference in court proceedings, instead a justice oriented juvenile court focuses on the nature of the criminal act. Thus gender and age, for example, would likely vary between the two samples while little variation would be expected for race because it was not identified in either law or theory as an important demographic factor. Large discrepancies between the 1982 and 1988 data in the gender category were expected because of the philosophical differences between the two acts. The J.D.A. was concerned

with the moral development of the juvenile, i.e., delinquencies were symptomatic of a moral problem. Young females in particular were seen as susceptible and consequently they were more subject to the status offense provisions of the J.D.A., especially sexual immorality. In contrast, the Y.O.A. does not include status provisions in the law, it is concerned with the crime rather than the individual. Thus it was expected that more females would appear in the 1982 data than in the 1988 data.

The sex distribution was not significantly different from 1982 to 1988 (see Table 1). This might simply reflect young females participating in slightly more criminal activity in 1988 than those females in the 1982 sample.

Table 1: Sex of Juvenile by Sample

Sex	1982		1988	
	f	%	f	%
Male	277	79.8	107	75.9
Female	40	20.2	34	24.1
Totals			347	141

Age discrepancies also were expected since it was hypothesized that, in 1982, younger juveniles would have been prosecuted for minor offenses or status offenses, as explained above, i.e., such behaviors required early and

immediate attention. The cross-tabulation analysis for age was not statistically significant (4.66, df=3, p.<.05).

The age jurisdiction of the J.D.A. (in British Columbia) was defined as under 17 years old, whereas under the Y.O.A. all provinces changed their jurisdiction to cover the ages of 12 to 17 years old. Thus, in calculating the cross-tabulation, the age categories of 12-13, 14, 15, and 16 were used since they are common to both J.D.A. and Y.O.A. The 17 year old category does not appear in the 1982 sample and the 11 year old category does not appear in the 1988 sample for the above stated reasons, thus these two age categories are not viable for the cross-tabulation analysis and were omitted.

As stated above, cross-tabulation analysis of age does not indicate significant statistical differences between the two samples within the age range included under both acts (see Table 2). However, it should be noted that when the 17 year old category is taken into consideration (in the 1988 data) this category accounted for 55.6% of the total sample. Thus, although there was not a statistically significant difference between the two sample years for the 12-16 year olds, over 50% of the 1988 sample were 17 years old, thus indicating that the implementation of the Y.O.A. has not altered the age distribution of youths entering the juvenile justice system but has simply incorporated a new age group that previous to the Y.O.A. would have appeared in adult court statistics.

Table 2: Age of Juvenile by Sample

Age	1982		1988	
	f	%	f	%
12-13	35	10.5	3	4.7
14	69	20.8	9	14.1
15	74	22.4	19	29.7
16	153	46.2	33	51.6
Totals	331		64	

Chi square=4.66, df=3, p.<.05

Differences by race were not expected but were evident. The results of cross-tabulation analysis of race (see Table 3) indicate a minimal statistically significant difference among three race categories (6.009, df=2, p.<.05). Fewer Caucasian youth were charged in 1988 than in 1982, while visible minority youth were more frequently charged in 1988 than the previous period. A further breakdown of the other visible minority category shows that it was comprised of 7.8% East Indian, 12.1% Oriental, and 2.1% Black. The amount of crime charged to these other visible minorities in 1988 may be reflective of immigration and/or the growing problem of Asian youth gangs in Vancouver.

Table 3: Race of Juvenile by Sample

Race	1982		1988	
	f	%	f	%
Caucasian	238	77.3	96	68.1
Native Canadian	19	6.2	8	5.7
Other visible minority	51	16.6	37	26.2
Totals	308		141	

Chi square=6.009, df=2, p.<.05

Sample Charges

It was hypothesized that the types of crimes exhibited in the 1988 sample would be more serious than the types of crimes in the 1982 data because the Y.O.A. focuses only on criminal activity whereas the J.D.A. was concerned with the overall delinquent behavior that was not necessarily criminal, i.e. status offenses.

The 1982 sample charges included all charges observed, while the 1988 sample included the charge the juvenile was facing when observed, and if there were multiple charges, the most serious charge was employed in the data, therefore cross-tabulation analysis could not be performed for this variable. It should also be noted that as a result of this discrepancy in defining the variable in the two data sets, the conclusions drawn are only tentative.

The type and number of charges in the various categories were quite different (see Table 4). These percentages indicate that the incidence of property crimes have decreased from 1982 to 1988, while in the assault category, there was a 12.2% increase from 1982 (5.6%) to 1988 (17.8%). It should be noted that no incidence of murder was found in either of the data sets, and this category has thus been omitted. However, in the 1988 court observation data it was found that in a few cases attempt murder charges were reduced to the lesser included offense of aggravated assault.

Table 4: Charges by Sample

Charges	1982		1988	
	f	%	f	%
Property Offenses	574	62.7	57	40.3
Assaults	51	5.6	25	17.8
Drug and liquor	54	5.9	18	12.8
Traffice and motor vehicle	147	16.1	14	9.8
Other personal/other C.C.C./ other provincial/by law	57	6.2	18	12.7
J.D.A. and Y.O.A.	32	3.5	8	5.6
Totals	915		140	

In the area of prohibited substances, the 1988 data indicate a 6.9% increase from 1982. Traffic offenses and motor vehicle offenses did not substantially change. The category of other Criminal Code offenses, provincial, and by-law offenses doubled from 1982 to 1988. Offenses under the

J.D.A. and Y.O.A. were not significantly different in number from 1982 to 1988.

The above percentage differences between 1982 and 1988 indicate that juveniles were charged with more severe offenses in 1988 than 1982. However, as previously stated, these conclusions are tentative as a result of the inability to directly compare samples. The approximate 20% reduction in property crimes in 1988 was accompanied by a 12.2% increase in violent personal crimes, and a 6.9% increase in prohibited substance crimes, which are considered to be more serious in nature. The other percentage differences did not change substantially, except for the category of "other offenses" which increased by 6.5% from 1982 to 1988. Thus in terms of the sample charges, where there was found to be large differences between the two samples, the data supports the proposition that under the Y.O.A. the emphasis rests on bringing the more serious juvenile offenders into the official criminal justice system rather than for rehabilitative purposes as under the J.D.A. However, increases are also evident in the category of "other offenses" which may indicate that the types of less serious crimes has changed from property offenses to miscellaneous offenses in 1988, and that due to the Y.O.A.'s emphasis on dealing with criminality rather than moral issues, all crimes would be considered "serious" and subject to criminal prosecution.

One should also be aware that this data may also be a reflection of a more serious juvenile crime problem in 1988 than in 1982 which may be attributed to sociological changes that this study cannot account for (i.e., a general tendency toward more violence in society), or it may be due to the fact that under the Y.O.A. 17 year olds are now included in the juvenile system and their presence may also account for these increases in serious crimes.

Number of Charges per Juvenile

Again based on the Y.O.A.'s emphasis on seriousness of charge, number of charges, and past offense history it was expected that the 1982 data would show youths being charged with crimes of a less serious nature (e.g., property crimes as being less serious than crimes against the person). Youths appearing in the 1988 sample were expected to appear on a single serious offense in keeping with the justice philosophy of attending to the criminal event only.

Cross-tabulation analysis of number of charges was statistically significant (55.13, $df=3$, $p<.05$). The key area of difference was in the 1 charge category (see Table 5). As was anticipated there were far more juveniles with one charge against them in 1988 than in 1982. The data on sample charges previously discussed showed that the charges faced by juveniles in 1988 were of a more serious nature than in 1982. Together these two sets of data support the

hypothesis that in 1988 juveniles were being charged with fewer but more serious crimes than in 1982 which is consistent with the Y.O.A.'s justice model philosophy.

Table 5: Number of Charges per Juvenile by Sample

Number of Charges	1982		1988	
	f	%	f	%
1	156	45.0	115	81.6
2	92	26.5	13	9.2
3-4	58	16.7	10	6.8
5+	41	11.9	3	2.1
Totals	347		141	

Chi square=55.13, df=3, p.<.05

Number of Appearances in Court and Legal Representation

The J.D.A. made no provisions for legal representation for juveniles. On the contrary, the J.D.A. court philosophy emphasized psychological and environmental analysis in ascertaining the etiological factors of the delinquent event which brought the juvenile before the court. This was a key element of the welfare model of juvenile justice. The Y.O.A. has since clearly stated that every juvenile has the right to legal representation and due process.

Given this change, in 1988 considerably more juveniles would be expected to have legal representation than in 1982. This, in combination with the advent of due process in the

juvenile court would cause the numbers of court appearances on a single charge (or single set of charges) to increase in accordance with the increased bureaucratization of due process.

The cross-tabulation analysis of number of appearances was statistically significant (65.99, df=5, p.<.05). The two data sets differed notably in the frequency of "1 appearance" which decreased by 17.9% from 1982 to 1988, and in the "6-10 appearances" category where there was a 24.1% increase from 1982 to 1988 (see Table 6).

Table 6: Number of Appearances at Court per Juvenile by Sample

Number of Appearances	1982		1988	
	f	%	f	%
1	89	25.7	11	7.8
2	78	22.5	25	17.7
4	74	21.3	15	10.6
4-5	70	20.2	39	27.7
6-10	27	7.8	45	31.9
11+	9	2.6	6	4.3
Totals	347		141	

Chi square=65.99, df=5, p.<.05

The number of juveniles who had legal representation in 1982 was significantly lower than in the 1988 sample (59.1% in 1982, and 86.5% in 1988). The data (see Table 7) show

that far fewer juveniles had legal representation in 1982 than in 1988.

These data suggest that youth court has changed, possibly because of increased due process, as evidenced by the increase in the number of appearances that a juvenile is required to make on a single charge (or set of charges). As well, lawyers were far more frequently present in 1988 than 1982. Court observation in 1988 revealed that when juveniles did not employ legal representation it was usually because their appearance in court was the result of minor or non-criminal offenses (such as municipal by-law infractions and traffic tickets).

Table 7: Type of Legal Representation by Sample

Type of Representation	1982		1988	
	f	%	f	%
No legal representation	439	40.9	18	12.8
Duty counsel present	137	12.7	20	14.2
Legal representation	499	46.4	102	72.3
Totals	1053		140	

Distribution and Type of Hearing

As previously discussed, the J.D.A. did not state that juveniles had the right to legal representation or to due process since the court's role was to decide if a youth was in a state of delinquency rather than assessing guilt. Alternatively, the Y.O.A. clearly stipulates that youth have the right to be represented by a lawyer and have the benefit of due process. It is postulated that the Y.O.A. court will be more bureaucratized than the J.D.A. court since due process serves to formalize court procedure whereas the J.D.A. court procedure was largely dependent on the presiding judge's view on how the inquiry/examination would best be accomplished. It is expected that the increased bureaucratization of the Y.O.A. would be evidenced in the types and number of court hearings. Specifically, under the Y.O.A., criminal procedure (consisting of the process of arraignment, trial if necessary, decision on charge, and sentencing) would become more formalized in the 1988 sample than in the 1982 sample. Judges would no longer be able to attend to criminal procedure in an informal and arbitrary fashion, and the presence of lawyers would cause each aspect of the criminal procedure to be dealt with on different occasions, thus increasing the number of appearances per charge (or set of charges) in the 1988 sample.

The types of hearings observed in 1982 and 1988 were substantially different. The largest percentage difference occurred in the categories of "adjournment only", "disposition only", and "other combinations" (see Table 8). The "adjournment only" category occurred 29.3% more in 1982 than in 1988. This finding would seem contrary to the idea that the Y.O.A. is more bureaucratized than the J.D.A. and would thus increase the number of adjournments. This finding may however be accounted for by the idea that the Vancouver juvenile court had been moving towards the Y.O.A. model prior to 1984 when it was officially instituted, and thus proceedings were already formalized.

A substantial difference was evident for "dispositions only" where there was an 18.3% increase in 1988. This difference may be explained by the increase in legal submissions and debate on the issue of disposition which would require a separate hearing to allow lawyers to prepare this submission. As well, this would also allow defense attorneys time to discuss the disposition with their clients. Furthermore, pre-disposition reports are necessary under the Y.O.A. if a custodial sentence is being considered. Since it was found that the 1988 sample charges were of a serious nature, judges may have been considering a custodial sentence and thus would need to wait for a pre-disposition report that would be presented in a disposition hearing.

The category of "other combinations" exhibited a 9.3% increase in the 1988 sample. This is also consistent with

the hypothesis since it indicates that a wider variety of hearings occurred in the 1988 sample than in the 1982 sample.

Table 8: Type of Hearing by Sample

Hearing	1982		1988	
	f	%	f	%
Adjournment only ³⁴²	31.4	3	2.1	
Plea only	9	.8	2	1.4
Arraignment/guilty plea/disposition	200	18.4	27	19.1
Arraignment/guilty plea/adjournment	25	2.3	13	9.2
Trial	79	7.3	15	10.6
Trial and disposition	34	3.1	15	10.6
Disposition only ⁴⁰	3.7	31	22.0	
Review	76	7.0	7	5.0
Termination only ³⁷	3.4	6	4.3	
Other combinations	69	6.3	22	15.6
Bail hearing only	177	16.2	0	0
Totals	1090		141	

The Y.O.A. has resulted in major changes in the frequencies of different types of juvenile court hearings. One category of hearings that was not included in the analysis was "transfer to adult court" since it occurred in .2% of the 1982 sample and not at all in the 1988 sample. Similarly, "official bail hearings" were excluded since they did not occur as separate hearings in the 1988 sample and their actual number could not be ascertained. However, it should be noted that bail hearings occurred 16.2% in the 1982 sample. This difference may be attributable to changes in court administration rather than reflective of legal philosophy.

Juveniles with Prior Records

The necessity for early detection of delinquents was central to the J.D.A.'s notion of rehabilitation; the earlier the detection, the better the prognosis for rehabilitation. Conversely, the Y.O.A. is not concerned with rehabilitation rather appropriate punishment and protection of society are key foci. Thus it was expected that fewer juveniles would have prior records in the 1982 sample than in 1988 since they would be drawn into the juvenile justice system at the onset of the first delinquency. In keeping with the Y.O.A's justice model, those youths who had prior criminal convictions (representing a more severe "criminal" history) would more likely appear in the 1988 data while those who committed minor first offenses would be screened out of the formal court process (through diversion), and not appear in the 1988 sample.

Cross-tabulation analysis of prior records was found to be significant ($\chi^2=41.03$, $df=1$, $p<.05$) since there was an increase in the 1988 sample of 30.5% over 1982 (see Table 9). This substantial difference lends considerable support to the hypothesis that the Y.O.A. has affected the type of offense histories which characterize youth brought into the juvenile justice system.

Table 9: Juveniles with Prior Records by Sample

Prior Records	1982		1988	
	f	%	f	%
Juveniles with	91	26.2	80	56.7
Juveniles without	256	73.8	61	43.7
Totals	347		141	

Chi square=41.03, df=1, p.<.05

Use of Detention

According to the J.D.A. early detection of delinquency and the necessity to remove the juvenile from the environmental factors that led to the delinquency were important objectives. Detention upon arrest would ensure that the juvenile was removed from the presumed poor environment until such a time as a judge could determine if permanent removal was necessary. The Y.O.A. instead emphasizes the seriousness of the criminal event and the extent of the offense history. Under the Y.O.A. a youth would only be detained if the crime was serious and/or it was thought that the juvenile would fail to appear for their arraignment or subsequent hearing. Accordingly it was expected that detention upon arrest would be more widely used in 1982 than in 1988.

The cross-tabulation analysis of detention was statistically significant (21.48, $df=1$, $p.<.05$). Detention was employed in the 1982 sample 16.2% more often than in the 1988 sample (see Table 10). This serves to substantiate the hypothesis.

Table 10: Juveniles Detained Prior to Disposition by Sample

Use of Detention	1982		1988	
	f	%	f	%
Detained	98	28.3	17	12.1
Not detained	249	71.8	124	87.9
Totals	347		141	

Chi square=21.48, df=1, p.<.05

Dispositions

The purpose of disposition under the J.D.A. was to provide the youth with help, guidance, and proper supervision. In contrast, under the Y.O.A., the protection of society and the affirmation of the youth's responsibility for the offense are essential to disposition objectives. It is hypothesized therefore, that the dispositions in 1982 would be reflective of rehabilitation and the dispositions of the 1988 sample would be more inclined to repay the community (e.g., community work service) and custodial sentences to deal with accountability for serious crimes.

Cross-tabulation analysis of dispositions was significant (74.05, df=6, p.<.05). As predicted, custodial sentences increased by 15.1%, and probation decreased by 31.3% from 1982 to 1988 (see Table 11). It appears that the use of community work service has remained relatively stable

from 1982 to 1988. However, the data represent the most "severe" dispositions only, and when community work service is calculated as second disposition (most often occurring in conjunction with probation) it represents 26.6% of dispositions in 1988. Thus the use of community work service has actually increased in 1988 by 23.5%. Monetary dispositions have decreased in the 1988 sample by a marginal 3.4%, as well as demerit points/suspension of drivers license by 1.7%. The 1988 data indicate increases in discharge/suspended final dispositions and use of "other" dispositions.

Table 11: Type of Dispositions by Sample

Dispositions	1982		1988	
	f	%	f	%
Custodial sentences	8	3.1	26	18.2
Probation	173	66.3	50	35.0
Community work service	8	3.1	4	2.8
Monetary dispositions	39	15.3	17	11.9
Discharge/suspended final disposition	18	6.9	20	14.0
Demerit point/suspend driver's license	10	3.8	3	2.1
Other	4	1.5	21	15.4
Totals	260		141	

Chi square=74.05, df=6, p.<.05

Probation was introduced into the Canadian justice system as one component of rehabilitation through counselling by the probation officer and was evidenced in the 1982 sample

far more than in the 1988 sample in keeping with the rehabilitation philosophy of the J.D.A. Conversely, the 1988 sample indicated a greater use of community work service and custodial sentences in an effort to deal with compensation to the community and serious crimes respectively. Thus, dispositions for the 1982 sample were more rehabilitation oriented while the 1988 dispositions were based on accountability and the protection and repayment of society.

Dispositional Input and use of Pre-Disposition Reports

Under the J.D.A. a juvenile's environmental situation was considered important in prescribing appropriate rehabilitative programs in the disposition. The focus of the Y.O.A. disposition is the youth's responsibility for the criminal act as well as societal protection.

It is postulated that the "dispositional input" (input into the disposition decision by various individuals) and the use of pre-disposition reports would be quite different in the two samples. Specifically it was hypothesized that in the 1982 sample individuals such as parents and the juvenile themselves would have their opinions of the situation made known to the court when disposition was being considered more than in the 1988 sample. Whereas lawyers submissions would be far more frequent in 1988 than in 1982. In terms of pre-disposition reports, it is similarly hypothesized that these reports (also referred to as social histories or social

assessments) would be more widely employed in the 1982 sample than in the 1988 sample since the information that they contain was an integral part of the J.D.A. disposition, and was only required under the Y.O.A. when a custodial disposition was being considered.

The data (see Table 12) indicate that in the 1982 sample parents and juveniles were more involved in disposition hearings than in the 1988 sample, and that lawyers made submissions on disposition more in 1988 than in 1982 which supports the hypothesis. Of particular interest are the data that indicate prosecutors making submissions on disposition 94.3% in the 1988 data and only 25.4% in the 1982 data. A conclusion that can be drawn from this information is that society's interests and protection were taken into consideration far more in 1988 than in 1982 when dispositions were being considered. This conclusion is based on the fact that the prosecuting attorney is society's representative in the court proceedings, and the fact that prosecutors made submissions far more in 1988 than in 1982 substantiates the inference that society's interests concerning disposition was evidenced in accordance with the Y.O.A.'s position on the need to protect society. Conversely, and in keeping with the J.D.A. welfare philosophy, parents and the juveniles themselves were more involved in the disposition hearing in 1982 than in 1988.

Data on the use of pre-disposition reports was unavailable for the 1982 sample, however it is stated in Bala

and Corrado (1985) that pre-disposition reports were usually done orally and "...were presented in virtually every case.", whereas in 1988 pre-disposition reports were presented in 54.6% of the cases; 25.5% written and 29.1% oral. The 1982 figures substantiate the hypothesis presented that the J.D.A.'s welfare philosophy concerning disposition was largely dependent on the contents of the social history. The Y.O.A.'s justice philosophy states that the criminal act itself is more important rather than the youth's social situation, and a social history is only required when custodial sentence is being considered, this is contrary to the data for 1988. In over one-half of the 1988 cases pre-disposition reports were used, thus indicating that the juvenile's social background is still important to judges at the Vancouver court when considering dispositions. However it should also be noted that the use of pre-disposition reports has decreased from 1982 to 1988 by almost half.

Table 12: Dispositional Input by Sample

Those that had Dispositional Input	1982	1988
	%	%
Juvenile spoke	39.6	22.0
Parent(s) spoke	35.8	12.8
Prosecutor made submission	25.4	94.3
Defense made submission	77.9	80.9

Totals unavailable

Summary

Analysis of these data sets from 1982 and 1988 tested hypotheses that basic philosophical differences between the J.D.A. and the Y.O.A. would be evidenced in the differences between the variables associated with court procedures. Differences were in fact found for the majority of variables and therefore it can be stated that the Vancouver juvenile court has changed considerably from 1982 to 1988 as a result of the change from the J.D.A. to the Y.O.A.

CHAPTER V

DISCUSSION AND CONCLUSION

Juvenile justice in Canada has gone through major changes in its history. In the early part of the nineteenth century juveniles were treated in much the same manner as adults when they came into conflict with the law. In the second half of that century significant changes concerning the treatment of youthful offenders began to appear that were associated with a new perspective concerning the etiology of young offenders. As mentioned in Chapter I, Leon (1977) identified certain changes in law that exemplify this transition. The 1857 Act for Establishing Prisons for Young Offenders for example, separated adults and youths held in detention in order to prevent the development of career criminality.

As the nineteenth century drew to a close, there was an increase in lobbying efforts for further distinction between adults and children who came before the criminal court. Individuals such as J.J. Kelso and W.L. Scott were instrumental lobbyists (Hagan and Leon, 1977). These reformers supported the proposition that juvenile delinquency was symptomatic of poor social and psychological environments that resulted from living in urban areas. And in this environment parents of these children could not offer proper supervision and control. Thus deprived children were viewed as being "in need" of

proper control and socialization in order to offset the detrimental effects of their environments before these children became immersed in serious criminal lifestyles.

In effect, if the parents could not properly supervise their children, the state had to intervene in the best interests of the child and for the good of society as well.

These lobbyists/reformers provided the impetus for the passage of the J.D.A. in 1908. This act was based on the notion of "parens patriae" which holds that the state must act as a benevolent parent when the parent(s) was viewed as unable, eg., in the case of orphans, or unsuccessful, eg., in the case of delinquency. This law condensed all offenses by juveniles into one offense category - delinquency. A child was viewed to be "in a state of delinquency" if they transgressed any law, or participated in behaviors subsumed under the status offense provision. Since the illegal behavior was viewed as purely symptomatic of a larger, more pervasive social and psychological problem, it was deemed necessary to apprehend youth in order to rehabilitate them. This perspective on juvenile justice represents the welfare model.

At the time the J.D.A. was first introduced, it was largely hailed as an important and justified social reform that would substantially help children in need. There was however, a small minority that criticized this Act for not including procedural safeguards and legal representation for children who came before the court, even though this

situation was considered one component of the rehabilitative process. There was also concern over the discretionary status provision.

By the 1960's the concerns of the early critics which were originally ignored became prominent. The welfare model, in general, was criticized in this manner as well. The relevant difference between these two historical periods was that the original problems cited were not ignored, instead various acts were taken by several Canadian governments to examine criticisms of the J.D.A. As a result, although it took over 20 years, the J.D.A. was finally replaced by the Y.O.A.

The changes brought about by the Y.O.A. directly corresponded to the following issues. The status offense provision was abolished, and representation by counsel (as a right) and due process were introduced. These three areas involved the most substantial alterations and were widely acknowledged as positive. Other key changes included a uniform age jurisdiction across the provinces and the right of the juvenile to accept or reject treatment.

The Y.O.A. reflected a new philosophy in dealing with juvenile offenders commonly referred to as the justice model. According to this model, juveniles who come before the court are not treated as in need of rehabilitation, but are treated as individuals who have broken the law. The function of the juvenile court is no longer to

determine the precise cause of the illegal behavior and provide a remedy for it through the sentence, but rather to decide on legal guilt or innocence and make the youth accountable for any illegal acts. The public's protection is a primary concern as well.

This new direction in juvenile justice also has been referred to as a "get tough" policy which, for conservative critics of the J.D.A., is necessary for alleviating juvenile crime. For other critics, however, the justice model is seen as the best approach since rehabilitation has not been proven effective.

The present study was designed to assess whether the change in juvenile justice legislation and its related philosophy is evident at the court level. The sample of youths appearing at the Vancouver court in 1982 were compared with a sample from the same court in 1988 along a variety of variables that were identified as indicative of the two philosophies. The differences observed by cross-tabulation analysis, comparison of percentages and frequencies support the hypothesis that youths are now being dealt with essentially according to the justice model of the Y.O.A.

The most substantial changes to the juvenile law were in the area of the juvenile's right to counsel, due process, and the elimination of status offenses. With regard to the status offense provision, the Y.O.A. has abolished this offense category, however, it has been

suggested that those youths who would have been charged with this offense are now being tried under alternative charges.

Schneider (1984) studied the Washington state's experience with divestiture of the status offense, and concluded:

Relabeling obviously occurred in the sense that youths who would have been handled as status offenders in the pre-reform period were processed as delinquents in the past. This does not mean that the label used in the predivestiture system was correct and the second one wrong. Rather, the process, as it has been conceptualized here, is one in which law enforcement officials often have the discretion to deal with a youth either for status or delinquent acts because many youths exhibit both kinds of behavior within a relatively short period of time. (p. 367)

Austin and Krisberg (1981) have come to a similar conclusion. They compare this relabeling process with a similar process involving mental patients in the United States in the 1950's when new developments in drug therapy combined with fiscal pressures allowed patients to be released from mental institutions. The irony of that situation was the increase in the prison population of those who had histories of placement in mental institutions. In effect, with restrictions on mental health resources, individuals who would have been placed in mental health facilities were now being imprisoned for marginal criminal activity such as disorderly conduct.

Austin and Krisberg (1981) refer to the above situation of relabeling mental patients as "net widening", and in terms of juvenile offenders they state that

This change in definition allowed police and probation authorities to detain the "new delinquents", since the status offender label no longer applied. The overall effect was a strengthening of the net for the status offender, who was now elevated to juvenile criminal offender status; and the net was expanded to a new class of status offenders, who filled the void created by the relabeling. (173)

In a different vein, Schwartz, Jackson-Beck, and Anderson (1974) provide evidence for the proposition that the net widening has included yet another alternative to the criminal justice relabeling. In their study, based on review of juveniles institutionalized in the mental health and chemical dependency systems of Minnesota, it was suggested that these institutions have become another avenue for social control of youths who would have otherwise been apprehended by the juvenile justice system under the status offense provision.

The scope of the present study does not provide for the type of analysis required to ascertain whether the net widening and relabeling cited above appears in the Vancouver system of juvenile justice. This would be an interesting avenue of pursuit for future investigation, for if in fact this is the situation, then the repeal of the status offense has been in vain as it was abolished for its

discretionary nature. This policy objective was clearly evident in the statement by Jean-Paul Goyer (Solicitor General) at the second reading of the Bill C-192 (1971)

The philosophy underlying Bill C-192 is that the imposition of penalties for their deterrent effect alone may not work nor should penalties be imposed for pre-delinquent or quasi-delinquent behavior. By the proposed legislation we are undertaking to cease stigmatizing deviant, but non-criminal behavior in young persons. (p. 19)

The second major area of change that distinguishes the J.D.A. from the Y.O.A. is the inclusion of the youth's right to legal representation and due process under the Y.O.A. The data presented here indicate that youths appearing at the Vancouver court in 1988 were represented by either duty counsel or an attorney in 87.2% of the observed cases, as opposed to 59.1% of the 1982 sample. The difference is statistically significant according to cross-tabulation analysis, as well, court observation showed that when a youth did not have representation it was because it was unnecessary (as in the case of traffic violations which constituted 9.8% of the 1988 sample) or a lawyer had not yet been assigned to the youth as it was their first appearance in court. In terms of this variable, the change in legislation has seemed to have the desired effect.

The implementation of due process may have conversely produced unintended consequences. The present study found

that the number of appearances at court for a single charge (or set of charges) has greatly increased from 1982 to 1988. In 1982, 69.5% of the youths samples made 1, 2, or 3 appearances at court, while in 1988, 59.6% made 4-5 or 6-10 appearances. This suggests that the introduction of due process has provided youth with procedural safeguards at the expense of drawing out the judicial process.

Additional data on the type of hearings observed found that there was a wider variety of types of hearings in 1988 than in 1982, and that hearings for "disposition only" increased by 18.3% in 1988. This suggests that the implementation of due process in the juvenile court is associated with more hearings in order to conclude the case. However it should be noted that in the hearing category of "adjournment only" there were 29.3% more incidents in 1982 than 1988, which may indicate that the Vancouver court was moving towards a Y.O.A. model prior to its official proclamation.

The effect of prolonged juvenile cases suggests not only increased costs, but also it may affect the youth's perception of the judicial system in a negative way, ie. the gap between the illegal behavior and adjudication can be months. This same observation has been made by others,

Felstner has reported data indicating that judicial process has become more time consuming with youths. Numerous delays through adjournment in one jurisdiction are increasing the median number of days for completion of a

youth's case from 18 to 76 days with a fourfold increase in the number of trials set. (cited by Lescheid and Jaffee, 1987:429)

Although the increase in time spent on a case cannot be viewed as positive for the youth nor for the justice system, it may be defended as necessary for the larger positive effect of youth having access to procedural safeguards to offset the arbitrary nature of court procedure under the J.D.A. The decrease in the use of pre-adjudication detention may be an example of how due process has alleviated arbitrary dealing of accused juveniles. The data indicate that detention was employed 16.2% more in 1982 than in 1988. It may be inferred therefore, that the intervention of lawyers protecting their client's interests, and the stringent due process requirements for detention have served to lower the incidents of accused youths being arbitrarily held in custody "for their own good" as was possible under the J.D.A.

Conversely, post-adjudication detention, or custody orders, have increased under the Y.O.A. The increase documented in this research was 15.1% from 1982 to 1988. Several other studies have found increases in this area as well.

Lescheid and Jaffe (1987) conducted two studies concerning court dispositions under the Y.O.A. The first study focused on juveniles in south-west and central-west Ontario (a region that encompasses 40% of the province's

youth population), for a period of 5 months, that was compared to data collected in 1983. Results of this study "...indicate that twice as many custody committals were being made under the Young Offenders Act as compared to the Juvenile Delinquents Act..." (p. 423).

The second study dealt with referrals to the London (Ontario) Family Court Clinic for the same periods specified in the first study. Referrals for assessment occurred when a youth court judge felt that the young person had some type of special need, which is outlined in s.(13) of the Y.O.A., that would effect the disposition. The data from this study indicated that "...orders for custody differed under legislation. Whereas 4.2% of Clinic clients were committed to a custodial center under the Juvenile Delinquents Act, this number more than tripled (14.3%) under the Young Offenders Act." (p. 425).

Another study by Leschied and Jaffe (1985) of southern Ontario youths found a significant increase in custodial dispositions, twice the rate under the Y.O.A. compared to that under the J.D.A. These authors conclude that

Young persons in open custody appear to have been drawn from those who may have been previously ordered into the care of a children's aid society or placed in a treatment center as a term of probation. The fact that a judge can no longer order a youth into CAS care or treatment (without the young person's consent) may be having the effect of placing these heretofore child welfare/treatment groups into open custody. (p. 7530)

Thus, the present data are consistent with Leschied and Jaffe's assertion that "A 'correctional' response seems to have been given preference over the needs-based rehabilitative response by the court." (p. 7530).

Similarly, the studies cited above are in agreement with the present findings that no treatment orders were issued in 1988, and custodial sentences increased significantly from 1982 to 1988. It is not possible to determine here whether youths committed to open custody would have otherwise been dealt with in welfare or treatment institutions had the Y.O.A. not been in effect. However Lescheid and Jaffe (1985) further note that an increase in judge's requests for pre-disposition reports (P.D.R.) is reflective of a correctional response to juveniles, as opposed to a welfare response, because according to s. 24(1) of the Y.O.A., a P.D.R. must be conducted if a custodial sentence is being considered. In Lescheid and Jaffe's research (1985), requests for P.D.R.s increased by 30% in the Y.O.A. data over the J.D.A. data. This study found that in 1988, 54.6% of the cases P.D.R.'s were requested, however in the 1982 sample P.D.R.'s were done in virtually every case.

This difference between samples may be indicative of a number of things. First, it may suggest that the 1982 Vancouver court was the epitome of the welfare court, and thus conducted social histories in almost every case. But

once the Y.O.A. came into effect the new ideology was implemented, thus P.D.R.'s were only done in slightly over half the cases where a custodial sentence was being considered. Alternatively, it may be suggested that the Vancouver court has tried to maintain the welfare model, and have employed the P.D.R. in as many cases as the law will allow. This is possible given that P.D.R.'s were undertaken in 54.6% of the 1988 cases, but custodial sentences were handed down in only 18.2% of the sample, less than half of the P.D.R.'s conducted.

It is this author's opinion however that although the second explanation offered may be possible, it is not probable given the various types of data obtained in this and other studies which suggest that the 1988 Vancouver court is a justice oriented court rather than a welfare oriented court.

In terms of psychiatric/psychological assessments, it was found that they were employed in 2.8% of the sample for 1988 and 3.8% in 1982. These figures are quite low compared to data collected by Leschied and Jaffe (1985) in a similar type of study, and may suggest that the Vancouver court was moving towards a Y.O.A. type court in 1982. Leschied and Jaffe found that psychiatric/psychological assessments dropped 50% from 11.8% in 1983, to 5.5% in 1984. The decreased use of these assessments indicate that considerably less attention is paid to this aspect of the youth, and it is assumed, more attention to the criminal

act itself. Furthermore, as Leschied and Jaffe note, this decrease is somewhat surprising since the J.D.A. did not have any particular provision for clinical assessment, whereas the Y.O.A. does (s.13). However, it is also suggested by Leschied and Jaffe (1985) that "Judges are hesitant to order assessments without a request from defense counsel, since their 'parens patriae' role is no longer appropriate." (p. 7531).

The above discussion of custodial sentences, use of P.D.R.'s and psychiatric/psychological assessments seem to indicate that the philosophy of the Y.O.A. has in fact been adopted in the Vancouver juvenile justice court and that the intentions of the Y.O.A. have been achieved in practical terms. However if this statement is to be justified, one must also address the issue of offender demographics, for if the youth appearing at court under the Y.O.A. are significantly different than those who appeared under the J.D.A., differences in the data may simply reflect a different type of youth.

The present study found that there were no significant gender differences between the two samples; boys outrepresented girls by 4 to 1 in 1982, and 3 to 1 in 1988. Although the difference in the ratio of boys to girls who appeared before the youth court in both samples is quite large, this gap appears to be narrowing. This decrease in the ratio may be viewed as consistent with the justice philosophy of the Y.O.A. Because the offense is the

primary concern in charging juveniles, characteristics such as gender may not be viewed as mitigating factors when the decision is made by police to apprehend a female, which may have been the case under the welfare oriented J.D.A. However, in contrast, it could be suggested that one would have expected more females to be represented in the 1982 sample, as the welfare philosophy could have allowed for girls to be viewed as in "more need" of assistance than boys. Thus this finding of more girls appearing in the 1988 statistics may simply be a product of society's changing, more egalitarian, view of females.

The differences in the race category were found to be minimally significant. The most interesting changes occurred in the "visible minority" category which increased by almost 10% from 1982 to 1988. The breakdown of this category for 1988 showed that it was primarily composed of East Indian and Oriental youths. As previously stated in the data analysis, this situation may be a product of a larger Oriental and East Indian population in Vancouver, as well as the result of the recent proliferation of Asian youth gangs which are becoming a growing problem for the juvenile justice system (as evidenced by the newly formed special youth gang police initiative in Vancouver).

The age variable did not show significant differences from 1982 to 1988 for the age categories common to both the J.D.A. and the Y.O.A. (12-16 years old). However when the 17 year old group is considered in the 1988 sample, they

accounted for 55.6% of that group. The introduction of 17 year olds into the juvenile justice system by the Y.O.A. is of great importance in interpreting all of the data presented. These older youths may be "more criminal" than their younger counterparts, more practiced in their criminal ways. This 17 year old group may represent new challenges to the juvenile justice system that is beyond the scope of the present study. Future research comparing the effect of the Y.O.A. on this age group to other provinces where 17 year olds were included under the J.D.A. would provide juvenile justice system personnel with important information on how the change in law has effected this group. Unfortunately, this is not possible in British Columbia where 17 year olds were included in the adult system until the implementation of the Y.O.A.

As stated above, 17 year olds may be more criminal in their behavior than the 12-16 year olds. This may be inferred by the increase in serious crimes in the 1988 data, less serious property crimes decreased while assaults and crimes concerned with prohibited substances increased. This study cannot explain whether the more serious crimes can be attributed to the 17 year olds in the sample. Again, this would be an interesting part of any study concerning this age group and the effect of the Y.O.A. The trend towards more serious crime may not be a result of 17 year olds entering the juvenile system, but may however be reflective of a more violent society in general. Thus

conclusions concerning the effect of the Y.O.A. on the types of charges processed are only tentative.

Furthermore, the contention by Schneider (1984) and Austin and Krisberg (1981), that some youths who would have been charged with status offenses are now being charged with criminal offenses, makes it more difficult to assess the effects of the Y.O.A. and the justice philosophy on charges by introducing another factor that might confound the effects of the legislation.

As in the case of assessing the changes that the Y.O.A. may have produced in the charging of juveniles, all observations made here are tentative and represent data that is still preliminary and non-generalizable.

Several issues must be recognized here as factors that could effect the validity of the findings. First, the cases observed at the Vancouver court were presided over by the four main judges who sit there. These four judges cannot be said to represent the whole Canadian juvenile judiciary, as their particular views of their role, the role of the court, etc., may have influenced decision making and consequently the data obtained. Furthermore, data was collected during a specific time frame. It is possible that the cases observed represented juvenile crimes that were more prevalent during those months; climatic variation and school being either in or out of session are but two variables that may effect certain types of youth crime. It is possible that during inclement

weather youths may choose to remain indoors, in malls for example, and may contribute to higher incidents of shoplifting. Whereas good weather may entice juveniles outdoors where vandalism may be easier to perpetrate.

Another factor that may have hindered the comparison of the two data sets is that in the two sample groups criminal activity may not be reflective of the change in legislation, but may reflect a more general change in society. It is conceivable that the increased seriousness of the crimes observed in 1988 are simply a product of our society becoming more aggressive and degenerative as a whole.

Finally, as Leschied and Jaffe (1987: 429) point out "...it is up to each province to implement the Young Offenders Act, it is likely that there would be many inter-provincial differences in the pattern of dispositions being made...". Thus the present data is not generalizable to other provinces. In a similar vein, this study is not generalizable to rural areas, because, as noted by Bala and Corrado (1985), many differences were observed between rural and urban areas in the sphere of juvenile justice (although it must be noted that this observation was made of the J.D.A. and not Y.O.A. court).

Summary

The hypothesis that the philosophical differences between the J.D.A. and the Y.O.A. can be observed in court data has been found to be accurate. The variables observed have indicated that the objectives of the Y.O.A. have, for the most part, been observed at the Vancouver court. The Y.O.A. court has been found to be more punitive and concerned with criminal matters and the protection of society, than the welfare oriented J.D.A. court.

Though the data presented does not represent the "last word" on the subject, as previously discussed, other similar studies have drawn many of the same conclusions found here. This study may be viewed as representative of the initial period of the Y.O.A. in which the written legislation is being interpreted by the administrators of the law and the lines of practical application are being tested and drawn. This writer concurs with the statement by Leschied and Jaffe (1985: 7531) "Only time and more data will tell if these early trends are Y.O.A. growing pains or a significant shift in juvenile justice philosophy."

APPENDIX A: 1988 DATA COLLECTION SCHEDULE

Date:

Judge #:

Case I.D. #:

OFFENDER CHARACTERISTICS

Age:

Sex:

Race:

CHARGES

Statute Violated:

01 ()	Criminal Code	02 ()	Narcotics Control Act
03 ()	Food and Drug Act	04 ()	Y.O.A.
05 ()	Other federal	06 ()	Provincial
07 ()	Municipal	08 ()	Motor Vehicle Act
29 ()	Other		

Charge(s):

01 ())	02 ())
03 ())	04 ())
05 ())	06 ())
07 ())	08 ())
09 ())	10 ())

Proceeding:

01 ()	summary	02 ()	indictable
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COURT PROCEEDINGS

Type of Hearing:

01 ()	adjournment only	02 ()	bail hearing only
03 ()	plea only	04 ()	trial
05 ()	trial/disposition	06 ()	disposition only
07 ()	review/hearing	08 ()	termination only
09 ()	transfer hearing	10 ()	other combinations
11 ()	arraignment/guilty plea/disposition		
12 ()	arraignment/guilty plea/adjournment		

Number of Hearings per Juvenile:

01 ()	1	02 ()	2	03 ()	3
04 ()	4-5	05 ()	6-10	06 ()	11+

Was the Accused Represented:

01 ()	represented by defense	02 ()	duty counsel
03 ()	advocate	04 ()	no representation

Those that Were Present at Hearing:

01 ()parent or guardian 02 ()observer
03 ()social/youth worker 04 ()probation officer
05 ()police officer 06 ()victim
07 ()other

Plea:

01 ()guilty 02 ()not guilty
03 ()no plea 04 ()adjourn sine die

Use of Bail () (\$)

Held in Custody () (days-)

Those Who Spoke at Hearing:

01 ()juvenile 02 ()parent/guardian
03 ()probation officer 04 ()social/youth worker
05 ()witness 06 ()police officer
07 ()victim 08 ()prosecutor
09 ()defense/advocate 10 ()other

Decision on Charge(s):

01 ()withdrawn 02 ()dismissed
03 ()proceedings stayed 04 ()not guilty
05 ()guilty 06 ()continuance
07 ()transfer to adult court 08 ()sentance review

Disposition:

01 ()compensation
02 ()community work service (hours: , within days)
03 ()prohibition
04 ()absolute discharge
05 ()secure custody (days:)
06 ()open custody (days:)
07 ()datain for treatment (days:)
08 ()probation (days:)
09 ()fine (\$)
10 ()restitution (\$)
11 ()pay purchaser (\$)
12 ()other

Reports Ordered by Judge:

01 ()pre-disposition (orally) 02 ()medical
03 ()pre-disposition (written) 04 ()progress
05 ()psychological/psychiatric

Content of Pre-disposition Report:

01 ()education 02 ()peer relations
03 ()physical health 04 ()mental health
05 ()family situation/relations 06 ()living arrangements
07 ()prior welfare involvement 08 ()ward of court

PRIOR OFFENSES

number of offenses:

charge:

01 ()
02 ()
03 ()
04 ()
05 ()
06 ()
07 ()
08 ()
09 ()
10 ()

corresponding disposition:

01 ()
02 ()
03 ()
04 ()
05 ()
06 ()
07 ()
08 ()
09 ()
10 ()

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