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**JUVENILE JUSTICE IN TRANSITION: POLICE AND PROBATION
PERSPECTIVES**

by

Jennifer J. Hall

B.A. Hons., University of Victoria, 1983.

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
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ABSTRACT

The historical evolution of juvenile justice in Canada has proven to be circular in nature; with the crime control ideology of the 1700's being mirrored in the present state of juvenile justice. Explored in this thesis is the development of Canadian juvenile justice in relation to the evolution of the *Juvenile Delinquents Act* (1908) and subsequently, the *Young Offenders Act* (1982). Police and probation officers were chosen as the "units of study" because of their traditional espousal of the crime control and rehabilitative perspectives, respectively. The study was undertaken in order to trace philosophical shifts in juvenile justice through the perceptions of police and probation officers, with the hopes of perhaps anticipating future trends.

Data from a National Study conducted in 1981-1982 were used to examine the attitudes of police and probation officers with regard to juvenile court goals and philosophy of the *Y.O.A.* The responses of 596 probation officers and 761 police officers from six different Canadian provinces were examined. Results showed that traditional ideological distinctions between police and probation officers persisted, but with some change in the view of probation officers. This group, while supporting the rehabilitative perspective, also supported many of the justice or due process tenets such as protection of society, and special guarantees of the rights and freedoms for young persons. Overall, "rehabilitation" and "justice" were viewed more

favourably by probation officers than police, who continued to support the crime control model.

It can be inferred from these results that the increased capacity of the state to control young offenders through the specification of offences, proportional punishment and the codification of previously informal measures such as diversion, strengthens as opposed to widens the net of social control. Stricter controls legitimate deterrence, a primary justification for punishment under justice and crime control models, thereby strengthening the net of social control. More recent moves to "toughen" the *Y.O.A.* have provided the means for lengthier sentences for chronic and dangerous offenders, as well as enabling police to arrest probation violators. In effect, the justice/crime control tenets in the *Y.O.A.* provide political and legal flexibility for increased capacity to control youthful criminality.

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DEDICATION

To October 1, 1988 and the determination behind commitment.

For all their unending inspiration

and love -

Robbie G. and Misty

TABLE OF CONTENTS

Approval	ii
Abstract	iii
Acknowledgments	v
Dedication	vi
List of Tables	xi
I. INTRODUCTION	1
The Key Actors Survey - Capturing the National View .	12
II. THE EMERGENCE OF THE JUVENILE DELINQUENTS ACT	17
Introduction	17
The Evolution of the Juvenile Delinquents Act	19
The Impact of Industrialization	19
Child-Saving	22
The Culmination of Late Nineteenth Century Reform Efforts	25
Statutory Protections for Children	26
The Creation of Probation	29
Predecessors of Probation in the Early 1800's	29
Formalization of the Probation Function	30
Policing of Juveniles	33
Crime Control: A Definition	33
Policing Juveniles: An Historical Context	35
Jurisdictional Conflict Between Police and Probation Officers	37
The Erosion of Police Powers by Probation	38
The Enactment of the Juvenile Delinquents Act	40
Summary	44

III. THE EVOLUTION OF THE YOUNG OFFENDERS ACT	46
Introduction	46
The Transition From a Rehabilitative to a Justice Model in Canadian Juvenile Justice	47
The Medical Model in Juvenile Justice	48
Criticisms of the Rehabilitative Model in Juvenile Justice	51
Police Discretion	51
The Ineffectiveness of the Rehabilitation Model in Probation	53
Protection of Society	55
The Legal Impetus for Reform	58
Towards a Justice Model	62
Philosophical Conflict and Proposed Legislation to Replace the Juvenile Delinquents Act	63
The Enactment of the Young Offenders Act	66
The Ideological Shift in Probation	72
Summary	74
IV. RESEARCH OBJECTIVES AND METHODS	77
Introduction	77
The 1981-82 Key Actors Survey: A National Study	77
Objectives of This Study	80
Objectives of the Juvenile Court	81
Philosophy of the Young Offenders Act	83
Analytical Techniques	84
Summary	86
V. FINDINGS AND DISCUSSION	87
Introduction	87

Description of the Sample	88
Demographics	88
Summary of Demographic Analysis	93
Analysis of Court Goals	96
Ideological Description of and Distinction Between Police and Probation Officers	97
Factor Analysis and Analysis of Variance of Present (1981-1982) Court Goals	106
Factor Analysis and Analysis of Variance of Future Court Goals	108
Analysis of Philosophy of the <i>Y.O.A</i>	109
Ideological Description and Distinction Between Probation Officers and Police on the Philosophy of the Young Offenders Act	111
Summary	118
Discussion	119
Introduction	119
Ideological Overlap	120
Different Means to the Same End	124
Probation: Ideological Shift	126
Disenchantment	127
Summary	129
VI. CONCLUSION	131
Introduction	131
Social Control	133
Strengthening of the Net of Social Control	135
Theoretical Implications of the Ideological Shift Towards a Justice Model in Probation	138
Justice as Control: The Trend in Juvenile Justice ..	141
Critique and Recommendations	145

Appendix I 150
 Tenets of the Three Proposed Models of Canadian
 Juvenile Justice 150
Appendix II 153
Bibliography 155

LIST OF TABLES

Table		Page
I	Provincial Distribution of Police and Probation Officers	90
II	Gender Distribution of Police and Probation Officers ...	91
III	Distribution of Police and Probation Marital Status	92
IV	Age Distribution of Police and Probation Officers	93
V	Distribution of Educational Level for Police and Probation Officers	95
VI	Experience Working With Youths	95
VII	Rehabilitation - Present Court Goal	99
VIII	Rehabilitation - Future Court Goal	100
IX	Punishment - Present Court Goal	101
X	Punishment - Future Court Goal	102
XI	Protection of Society - Present Court Goal	103
XII	Probation and Police Views as to the Importance of the Future Court Goal of Protection of Society	105
XIII	Factor Analysis of Present Court Goals	107
XIV	Factor Analysis of Future Court Goals	110
XV	Probation and Police View of Protection of Society as Paramount Over Needs of Youth	114
XVI	Probation and Police View of Young Offenders Having Special Needs Because of Dependence	114
XVII	Probation and Police Views that Young Offenders Should have Special Guarantees of Their Rights and Freedoms	117
XVIII	Factor Analysis of the Philosophy of the Y.O.A	118

CHAPTER I
INTRODUCTION

Historically, three perspectives have dominated the field of juvenile justice in Canada: ¹ rehabilitation or welfare; justice; and, crime control.²

The rehabilitation or welfare model is characterized by the belief that youths are not responsible for their actions to the same extent as adults.³ Due to the perceived immature status of children, shaped mainly by their environment, they cannot be held fully accountable for their actions.⁴ Hence, rehabilitation is based on counselling and the provision of services which will enable a youth to mature into a responsible, law-abiding

¹The term "juvenile justice", used throughout this thesis, does not purport a meaning of justice as fairness but suggests a broad process of dealing with delinquents, neglected and deviant children in order to control their behaviour and maintain social order. Due process is viewed in conjunction with a justice model although it is only one element of a broader justice ideology. (See Thomson, 1982; Conrad, 1984; Thomson and McAnany, 1984; Harlow, 1984; Harris, 1984; Havemann, 1986 and Hudson, 1987).

²See for example, Packer, 1968; Platt, 1969; Liazos, 1974; Sosin, 1976; Sutherland, 1976; Rothman, 1980; Corrado, 1983; Reid and Reitsma-Street, 1984, and Havemann, 1986 for descriptions of the three models presented. The historical development outlined in the first three chapters is based on information from legislative debates, research and historical analyses that present different perspectives. However, a general consensus emerges and this is presented in a chronological format. A critical analysis of these differing historical perspectives is beyond the scope of this thesis.

³J. D. A., 1908. Preamble.

⁴Leon, 1977; Currie, 1986.

citizen.⁵

The rehabilitation or welfare perspective is based on social and psychological treatment principles that focus upon a youth's "character and life style, his psychological strengths and weaknesses, the advantages and disadvantages of his home environment".⁶ Treatment is administered through social casework methods based on the medical model. This model is premised on the assumption of underlying psychological problems which lead to an "anti-social syndrome".⁷ This results in "acting-out" or deviant behaviour - a much broader categorization than mere criminal behaviour.⁸ Reid and Reitsma-Street have clearly summarized the assumption of this model:

Modifying the criminogenic environments, particularly the family environment, and rehabilitating the anti-social youth are the major means of prevention (1984:4).

Dispositions are based on individualized treatment methods aimed at inducing conforming behaviour. This model gradually came to dominate juvenile justice from its inception in the early 1800's up until the 1960's.

Since the early 1960's, the justice model has gradually dominated the field of juvenile justice in Canada. In this

⁵Shireman, 1976.

⁶Rothman, 1980:215.

⁷American Psychological Association, 1980:31 in Reid and Reitsma-Street, 1984.

⁸See Platt, 1969; Griffiths et.al., 1980; Rothman, 1980, and Corrado, 1983.

model, the discretion of police, judges and correctional workers is limited by legal and procedural safeguards for the protection of individual rights. Although the justice model is often equated with the due process model, it is argued here that the former incorporates other tenets than those regarding legal and procedural protections. For example, the justice model includes neo-classical beliefs in deterrence and protection of society, focus on characteristics of the offence, and proportionality of sentences. Due process of law is more restrictive in that it is meant to provide fair handling in the justice system and restraints are introduced to ensure equality of treatment.

The justice perspective is "dominated by legal professionals and children's rights activists who advocate more legal/judicial control and the integration of due process rights into the existing treatment based system".⁹ This perspective includes the belief that children should not be subject to arbitrary and informal proceedings that may lead to abuses of process and harsher punishments than those received by adults for the same offence. Furthermore, young persons are deemed rational and responsible for their actions and choices, to a mitigated degree. The choice by youths to commit criminal acts is then followed by fixed and proportionate punishment, for which deterrence and the protection of society are justification.¹⁰ Given this premise, society is entitled to protection from

⁹Havemann, 1986:229.

¹⁰Conrad, 1984.

criminal activity although decisions are usually weighted in favour of the individual. Proceedings and legal decisions generally favour the individual by "considering deterrence, reparation and compensation as more important justifications for intervention than retribution or punishment".¹¹ "Justice" denotes fair treatment within the juvenile justice system and the right of juveniles to be educated about and participate in, a process that affects their custodial placement.

The crime control model may be understood in terms of the interests of the state, with an emphasis on the efficient administration of justice to maintain order.¹² Deliberate, youthful misconduct is seen as a threat to the social order and economic relationships within society.¹³ Under this model, laws defining criminal behaviour are flexible and broad, encompassing any behaviour perceived as immoral, unmanageable or threatening to the collective order. The police, court personnel, and penal agents are key actors in the implementation of the crime control model. The process of stopping, containing, adjudicating, and punishing violators is speedy and efficient, utilizing both informal and routine procedures.¹⁴

¹¹Reid and Reitsma-Street, 1984:4.

¹²Packer, 1968; Ericson, 1982.

¹³Cicourel, 1968; Ericson, 1982; Reid and Reitsma-Street, 1984; West, 1984; Cohen, 1985.

¹⁴Reid and Reitsma-Street, 1984:3.

As with the justice model, individuals are deemed to be responsible for rational choices hence justifying the need for punishment, deterrence, retribution and the protection of society. The fear of swift and harsh punishment is seen as a primary deterrent to criminal behaviour. Unlike the justice model, the protection of society is paramount over the needs of the young offender.¹⁵ The prevention of delinquency is also a form of crime control through the ongoing surveillance of youthful activity by various social control agents; for example, the police, probation officers and teachers.¹⁶

The purpose of this thesis is to explore these models as they relate to the roles of police and probation officers, roles which reflect a broader, ideological distinction within Canadian juvenile justice. Specifically, police have traditionally been crime control oriented,¹⁷ while the probation function represented the operationalization of a rehabilitative ideology.¹⁸ in Canadian juvenile justice that dominated from the

¹⁵Reid and Reitsma-Street, 1984.

¹⁶See Bittner, 1976; Bartollas and Miller, 1978; Griffiths et.al., 1980; Ericson, 1982, and Cohen, 1985.

¹⁷Skolnick, 1966; Bittner, 1976; Ericson, 1982.

¹⁸Several terms will be used synonymously with the term "ideology"; their definitions and an explanation for their use are thus outlined. First, sociological definitions of "ideology" do not differ significantly from the Oxford dictionary definition whereby ideology is defined as a "manner of thinking characteristic of a class or individual" (1985:533). Similarly, Shover states that an ideology is a "set of ideas or beliefs that are inextricably linked to a particular socio-historical context" (1979:57). Baxandall and Morawski (1973) base their definition on Marx and Engels' distinction whereby an ideology refers to the "ideational content of consciousness that... forms

late 1800's to the mid 1960's.¹⁹ The philosophies of police and probation officers towards juvenile justice will be shown to be quite different, continuing an historical conflict that first emerged with the development and implementation of the *Juvenile Delinquents Act in 1908 (J.D.A.)*.

Traditionally, the police have been responsible for keeping the peace or maintaining social order, and enforcing the law.²⁰ These functions involved the detection and apprehension of offenders as well as providing mediational services, or acting as a referee in situations which could not be resolved by the persons themselves. Contrary to public and police perceptions, studies have shown that the police spend most of their time providing services and maintaining social order rather than enforcing the law.²¹ The term "law and order" has been used to refer to the crime control methods of police, denoting a

¹⁸(cont'd) a backdrop against which the individual interprets his/her everyday experience" (In Grayson, 1985:236). Neo-Marxists such as Lukacs (1973), treat ideology more or less as a synonym for world view. Since perspective is defined as a "point of view or that position or ideal espoused by an individual which dictates how s/he will react to a situation" (Selltiz, Wrightsman and Cook, 1976:16), it will be used synonymously with the terms "ideology" and "orientation"; the latter denoting a person's relative position or view of his/her experiences. In sum, these three terms, perspective, orientation and ideology, will refer to the bases against which police and probation officers interpret their relationship to juvenile justice.

¹⁹Bartollas and Miller, 1978; Griffiths et.al., 1980.

²⁰Kelly and Kelly, 1976; Griffiths et.al., 1980; McGrath and Mitchell, 1981; Sewell, 1985.

²¹Skolnick, 1966; Reiss and Bordua, 1967; Reiss, 1971; Lundman et.al, 1979; Ericson, 1982; Sewell, 1985.

conservative philosophy focused on maintaining the social order and thereby protecting the power of the state at the expense of individual liberty and procedural fairness.²² An emphasis on maintaining law and order was evident in the origins of Canadian policing.²³

The origins of Canadian policing have been traced to a British tradition where police magistrates were also responsible for meting out individual punishments.²⁴ The power and authority inherent in the police role was supported by legislation and common law but restricted by the rule of law.²⁵ Discretionary powers had been abused where police used, for example, excessive force, intimidation or coercion to achieve the desired result of "law and order".²⁶ This use of unsanctioned methods was related to many factors, some of which were perceived as associated with bureaucratic, political and social inequities:

The complex police role with its guiding norms, rules, and expectations is the source of numerous problems, for this role produces so many contradictions, uncertainties, and conflicts, that problems inevitably arise when individual policemen attempt to resolve these conflicts.²⁷

Conflicting demands were made by, for example, the public,

²²Packer, 1968; Tepperman, 1979; Reid and Reitsma-Street, 1984; Havemann, 1986.

²³Kelly and Kelly, 1976; Taylor, 1987.

²⁴Griffiths et. al., 1980; McGrath and Mitchell, 1981.

²⁵Skolnick, 1966; Wilson, 1968a; Catton and Leon, 1977.

²⁶Courtis, 1970; Jaywardene, 1973; Mann and Lee, 1979.

²⁷Weiner, 1976:16.

governments, and the judiciary, which resulted in a multitude of responses by police for which there was often little support.²⁸

The frustration resulting from divergent expectations is divulged by Carter (1976) who presents a police view of the juvenile justice system:

The juvenile justice system doesn't take care of the dangerous kids - they are on probation...on the street...Juvenile justice is slow. If you are going to correct kids, they have to get their hands whacked first time they put them in the cookie jar, not six months later...we are doing our part. We try to clean the streets, but the rest of the people in the justice system seem more concerned about getting those hoodlums rehabilitated by turning them loose. The system has been lenient - leniency breeds contempt.²⁹

This view is supported by McGrath and Mitchell (1981) who claim that frustrations arising out of the police role and role conflict may manifest themselves in anger at the community, cynicism and apathy. In essence, police view the world from a particular, occupationally determined perspective and react to conflicting values and pressures in the maintenance of law and order.

The traditional crime control ideology of police was directly opposed to the original rehabilitative basis of the Canadian juvenile justice system, and probation in particular. In reality, probation became the "operationalization" of the system's *parens patriae* philosophy³⁰ and received considerable

²⁸Carter, 1976.

²⁹Carter, 1976:124-125.

³⁰This concept was adopted from British common law which provided the legal basis for state intervention into a child's

power from the juvenile court to carry out this rehabilitative function. The *J.D.A.* delegated enormous powers of intervention and investigation to probation officers in order to provide the court with detailed analyses of a juvenile's background and environment upon which the court would decide the best treatment plan for that individual. Probation officers were able to carry out any form of treatment that would rehabilitate or reform the juvenile and guide him or her into a non-delinquent and productive lifestyle. The traditional role of police in delinquency control and prevention was eroded by the increasing power of probation officers to carry out this function within a rehabilitative framework.

Dissatisfaction with the rehabilitative philosophy and concern regarding the lack of due process protections for juveniles became the focus of reform efforts shaped in the 1960's. The protracted process of legislative reform was explained by Havemann as a "lack of consensus among lobbies about the best model to adopt" (1986:228). The competing lobbies referred to by Havemann are: (i) treatment, (ii) civil libertarian, and (iii) law and order.³¹

During the 1960's, the treatment lobby was challenged by the civil libertarians as promoting processes, practices and

³⁰(cont'd) life; the state acted as a substitute parent acting in the child's best interests (Platt, 1969; Sutherland, 1976; Corrado, 1983).

³¹Ibid. These labels may be equated with the ideologies of rehabilitation, justice and crime control, respectively.

sentencing options that were unfair, inequitable and arbitrary.³² Judicial precedents established in the 1950's, 1960's and 1970's set out procedural and legal guidelines for juveniles with regards to issues such as the voluntariness of statements, the right to cross-examination, the right to call witnesses and to be heard in the course of adjudication, and the right to be informed of the nature of legal proceedings.³³ This shift towards a legalistic approach to juvenile justice reflected the belief that youths should be treated as persons with rights and responsibilities.³⁴ The ideological shift towards a justice model in Canadian juvenile justice is the phenomenon examined in this thesis.

The attitudes of police and probation officers are explored in relation to their respective views on the philosophy of the *Young Offenders Act* (Y.O.A.) and the goals of the youth court. The more punitive and stricter measures of control of young offenders are seen as favourable to a crime control ideology.³⁵ However, police opposition to the due process tenets of the justice model is expected in that police powers of discretion to charge young offenders, would be restricted due to a more precise definition of criminal conduct and the right of young

³²Catton and Leon, 1977; Griffiths et.al., 1980; Corrado, 1983; Havemann, 1986.

³³See Catton and Leon (1977) for a detailed discussion of legal precedents aimed at outlining and protecting the rights of juveniles.

³⁴Sosin, 1976; Reid and Reitsma-Street, 1984; West, 1984.

³⁵Havemann, 1986.

offenders to be informed of their rights and freedoms including access to legal counsel at all stages of processing; the right of youths to participate in the legal process, and mandatory notification to parents or guardians that the youth has been arrested or charged.³⁶ With regard to probation, an ideological shift represents a change in the way that youths are perceived.

It appears that probation has been converted to a more administrative or managerial role for reasons such as economic restraint, lack of adequate funding for effective treatment programs and increased caseloads. The espousal of the justice model in the *Y.O.A.* provides justification for stricter controls over young offenders while legitimating the decreased use of rehabilitative measures through the determination of youths' responsibility and accountability.³⁷ The hypothesis that the views of probation officers have shifted from a strictly rehabilitative perspective to a legalistic, administrative view, is explored in this thesis. Data collected in 1981-82 by a National Study Research team, is used to examine the views of police and probation officers in the determination of an ideological difference between these two groups as well as a general trend towards a justice perspective in the Canadian juvenile justice system.

³⁶Cousineau and Veevers, 1972; Catton and Leon, 1977.

³⁷Diana, 1960; Sheridan and Konrad, 1976; Conrad, 1984; Harris, 1984; Hudson, 1987; McWilliams, 1987.

The Key Actors Survey - Capturing the National View

In an attempt to capture the nature of philosophical changes in juvenile justice, a Canadian, national study on the functioning of the juvenile justice system was carried out in 1981-2 by various university and private sector research teams.³⁸ The aim of the research was to provide information to policy makers on the reactions of key actors, namely, judges, police, defence counsel, probation officers and prosecutors, to the *Y.O.A.* and juvenile justice in general.

Questionnaires were mailed to respondents in major cities and smaller centres in six different provinces (Nova Scotia, Quebec, Ontario, Manitoba, Alberta and British Columbia). The police and probation officer response rates were the largest of all the groups surveyed: 73% and 84%, respectively. In total, 769 police and 596 probation officers returned questionnaires. Two sections of the questionnaire were used in the examination of the responses of police and probation officers on their attitudes towards the philosophies of juvenile justice.

Only a small number of the 465 variables, which reflected the philosophical underpinnings of the Canadian juvenile justice system, have been used. Specifically, two sections of the questionnaire were directed at, (i) the objectives of the juvenile court; and, (ii) the philosophy of the *Y.O.A.* In understanding the choice of variables used to distinguish

³⁸Bala and Corrado, 1985:i.

philosophies, it is necessary to understand more fully, the historical and contextual development of the ideologies of police and probation officers in relation to Canadian juvenile justice. In effect, the variables represent specific tenets of juvenile justice ideologies which are reflected in the beliefs and practices of probation officers and police. The following two chapters describe the historical developments contributing to police and probation ideologies and the evolution of Canadian juvenile justice.

Chapter II consists of an account of the historical developments leading to the enactment of the Juvenile Delinquents Act in 1908. The first part of this chapter focuses upon the development of the social and political forces that affected a shift towards the creation of legal protections for youth. A discussion of the impact of industrialization is followed by an outline of the child saving movement. In effect, the child-saving movement was a reaction to the consequences of industrialization and urbanization in the early 1800's.³⁹ Next, the culmination of late nineteenth century reform efforts is discussed in relation to statutory protections for children. These early legal protections for neglected and delinquent children led to the operationalization of the rehabilitation model through probation.

The creation of probation was a major consideration in the formation of initial delinquency legislation and is addressed

³⁹Platt, 1969; Houston, 1972; Sutherland, 1976; West, 1984.

with regard to earlier predecessors and the subsequent formalization of the probation role. Probation became the primary force behind the control and prevention of delinquency through the rehabilitation model; usurping the traditional crime control methods of the police who had provided the service up to that time. In order to provide a picture of the nature of the ideological conflict between police and probation, the history of policing is explored in relation to juvenile justice.

The final sections outline the bases for jurisdictional and ideological conflict between police and probation officers as the principal antagonists in the implementation of the *J.D.A.* Following this discourse is a discussion of the enactment of the *J.D.A.* and its entrenchment of the rehabilitation model.

The primary focus of Chapter III is the evolution of the *Y.O.A.* and the ideological transition from the rehabilitation to the justice model in Canadian juvenile justice. Included is a brief examination of the medical model in juvenile justice. Next, the reform initiatives from the 1920's to the 1980's are outlined. The questioned constitutionality of the *J.D.A.*, together with other criticisms such as inequitable provincial practices and the inability of the rehabilitation model to curb delinquency, led to the legal impetus for reform. Several decisions by Canadian and American courts are discussed in relation to the shift towards a justice model in juvenile justice.

As with the development of the *J.D.A.*, antagonism existed between police and probation officers with regard to the best model to adopt in the handling of young offenders. Police and probation positions are examined in relation to the philosophy of the proposed Act which emphasized due process and focused on elements of a justice model, but included vestiges of the rehabilitation model as well as crime control tenets.

In Chapters II and III, the necessary functional and philosophical backgrounds of police and probation officers are provided. The historical and ideological aspects of each role are integrated with the emergence of Canadian juvenile justice. Following this background, the methods used to analyse key hypotheses in relation to the present ideologies of police and probation officers are presented in chapter IV.

Included in chapter IV is an outline of the general research objectives and methods. Since the data analysis for this thesis relates to only a small part of a larger national study on the Canadian juvenile justice system, the background of the national study will also be provided. Following this presentation, the objectives of this thesis are detailed more fully, together with a description of the analyses used to test hypotheses.

Chapter V contains the results of the data analyses and a discussion of those results. Included in the "findings" section are demographic and "ideological" descriptions of the two sample populations - police and probation officers. Ideological

description refers to the differences in beliefs rather than personal characteristics such as age, experience, marital status and education.

The final chapter includes a brief overview of the thesis, a depiction of the trend in juvenile justice, and a critique of and recommendations, flowing from this study. Two implications are discussed in relation to issues of juvenile justice: (i) the strengthening of the net of social control⁴⁰ and (ii) justice as control - the trend in juvenile justice. Analyses and implications are drawn together with the hopes of depicting a future philosophical trend in Canadian juvenile justice.

⁴⁰Austin and Krisberg, 1981.

CHAPTER II

THE EMERGENCE OF THE JUVENILE DELINQUENTS ACT

Introduction

The entrenchment of the rehabilitative ideology in the 1908 *Juvenile Delinquents Act* was the culmination of the work of reformers that had begun in the late 1700's. Traditionally, the treatment of children has been based upon their position in society¹ and how their role is perceived by adults. The "rehabilitation" of delinquent and neglected children has varied depending on their classification by adults; ranging from a state of innocence, to dependent and responsible persons, and even as miniature adults.²

By the late 1700's, children came to be viewed as capable of adult responsibilities; a change from the belief that children were innocent and should be sheltered from adult concerns. The use of children for work purposes resulted in the increased exploitation of children for monetary gain. Subsequent reform efforts were inspired in those adults who sought to restore the state of childhood to one of innocence. Included in the following account is an outline of the evolution of Canada's initial juvenile justice legislation and a delineation of the competing factions that vied for ideological and functional

¹For example, in the 1700's, children were seen as miniature adults; capable of working alongside adults and participating in similar activities (Leon, 1977).

²Sutherland, 1976; Rooke and Schnell, 1982; Currie, 1986; Chunn, 1987, 1988.

dominance in the field of delinquency control.³ This account begins with the nature of the exploitation of children in the late 1700's and continues through the child-saving movement of the 1800's, up until the implementation of the *J.D.A.* in 1908.

A description of late nineteenth century reform efforts includes details of early statutory protection for children. Towards the end of the 1800's, attempts at reform centred on the creation of a court for children and the formalization of the probation function to effect treatment. Jurisdictional conflict between police and probation officers reflected the ideological antagonism of crime control versus rehabilitation. Police and probation officers clashed over the implementation of the *J.D.A.* with regard to the best methods for handling delinquents. Despite police opposition, the *Juvenile Delinquents Act* was implemented in 1908 with overwhelming support for the rehabilitative philosophy and the probation function.

³ The term "delinquency" is used in this historical context to denote a status which encompassed a broad range of behaviours by children, resulting in "such wise care, treatment and control as will tend to check their evil tendencies and to strengthen their better instincts". *Juvenile Delinquents Act*, 1908, Preamble.

The Evolution of the Juvenile Delinquents Act

The Impact of Industrialization

As in Britain and the United States, economic, social and political forces such as industrialization, urbanization and bureaucratization, contributed to the formation of Canadian legislation designed to deal with juvenile delinquents.⁴ Similarly, these forces shaped the history of the family and the role of the child in society.⁵

The initial rehabilitative values of the child-saving movement can be traced to British common law emerging from the industrial revolution (approximately 1770-1830). Most importantly, children under the age of seven were considered *doli incapax* or incapable of committing a crime given their infant status, and children between seven and fourteen were deemed to have diminished responsibility for their actions. Given these principles of reduced capacity, children needed protection from the abuses that were occurring. Legal protection was needed to curb exploitative and negligent labour practices, and guard against families that would fail to provide a nurturing and supportive environment for children. The latter type of abuse resulted from the renting out or sale of children by poor and working-class families in order to profit from their

⁴West, 1984; Currie, 1986.

⁵Currie, 1986; Chunn, 1986; Chunn, 1987.

use as factory labourers.⁶ A primary theoretical focus of juvenile justice development in Great Britain, the United States and Canada, has been on the impact of industrialization and subsequent urbanization.⁷

During the period of industrialization (approximately 1770 to 1830), children worked with adults in the factories. More workers were needed to supply the factories and immigrants were acquired by businessmen to meet the growing demand for labourers.⁸ Urban immigration had also resulted in the appearance of more street children. The abuse of child workers increased as the number of poor and working class children in the labour market expanded.⁹

With more children being exploited for monetary gain, the structure of the family unit began to erode due to a changing value system based on materialism that stemmed from capitalism. In essence, with the expanding marketplace came increased production and consumption of goods. This cycle of production and consumption was perpetuated by economic forces which were altered by, for example, new technology, natural resource expiration or labour problems. The use of children in factories temporarily relieved the labour problem during industrialization

⁶Platt, 1969; Liazos, 1974; West, 1984.

⁷Houston, 1972; Liazos, 1974 and Platt, 1969, 1977.

⁸West, 1984; Currie, 1986.

⁹Liazos, 1974; West, 1984.

by meeting the demand by employers for additional workers.

Unskilled youths were paid minimally, thereby increasing profits and perpetuating the motive for continued exploitation and abuse of children. The resultant exploitation of children through harsh working conditions, long hours, minimal pay and physical abuse, contributed to growing youth problems such as poverty, street living, thieving and a lack of parental guidance to control criminal activity:

The belief that there was a growing 'youth problem' clearly coincided with...changes in the broader social order. Whereas during early industrialization, children were grossly exploited for low wages, their partial humanitarian exclusion from the labour market had by the end of the nineteenth century made them an expendable surplus population, a nuisance about which something had to be done. Burgeoning slum areas, the enforced idleness resulting from the passage of anti-child labour legislation, 'foreign' immigration, and fears of impending social disorder through epidemics and street crime focussed attention on the working class young.¹⁰

The above quote also encapsulates Platt's (1969) account of the emergence of the child-saving movement. Several Canadian authors support this view and maintain that the rehabilitation philosophy was a reaction to the consequences of industrialization and urbanization and not necessarily an extension of capitalist control.¹¹ The reaction by middle and upper class humanitarians in the mid to late 1800's, to the issues of abuse and neglect, was based on the disintegration of

¹⁰West, 1984:26.

¹¹See Sutherland, 1976; Hagan and Leon, 1977; Leon, 1977; Wang, 1977; Griffiths et.al., 1980; Corrado, 1983.

the family unit - primarily lower and working class families.¹²

Child-Saving

Currie suggests that during the early 1800's, "the welfare of society as a whole...was inextricably connected with the proper functioning of the family" (1986:57).¹³ Reform efforts were focused on the family because it was considered the individual's primary environment. Women were seen by society as the providers of nurturance, guidance and education within the home; this role was subsequently extended beyond the home environment into the public sphere of "child-saving". In an attempt to control the social and economic destinies of working class children, schools and reformatories were introduced in order to effect the rehabilitative goals of middle and upper class philanthropists.¹⁴

Underlying women's involvement in child-saving was the belief that society would benefit in moral terms from an extension of maternalism.¹⁵ This perspective on reform also suggests that the philosophy of *parens patriae* embodied maternalism or the belief that the right combination of nurturance, guidance and discipline could be supplied within reform institutions. Women were provided a legitimate avenue to

¹²Liazos, 1974.

¹³See also Rooké and Schnell, 1982; Chunn, 1987, 1988.

¹⁴Platt, 1969; Sutherland, 1976; Currie, 1986.

¹⁵Morrison, 1976.

escape the isolation of the home "without violating the basic tenets of Victorian femininity", that is, ideals that reflected a strengthening of the motherhood role which held women to be innately moral and virtuous. Thus, a child-saving movement developed which "focused upon the deleterious effects of urban life upon a large segment of underprivileged children and the treatment of these children by law".¹⁶

There has been much debate in the literature as to the motives of reformers in the development of juvenile justice.¹⁷ Generally, it is not disputed in the literature that children came to be abused and exploited during the industrialization era.¹⁸ From a Marxist perspective, analysts ask why the rehabilitative ideal was fostered, and explore the nature of the relationship between the ideal and industrial capitalism. In a subsequent Marxist analysis, as opposed to his first dissertation on the history of juvenile justice, Platt (1977) suggested that the goal of the child savers was not one of overall welfare for the child, but the protection of middle and upper-class interests from perceived increases in lower class criminal behaviour. Platt contended that the maintenance of social control was accomplished through the integration of the

¹⁶Currie, 1986:58.

¹⁷Platt, 1969, 1977; Houston, 1972; Liazos, 1974; Hagan and Leon, 1977; Bartollas and Miller, 1978; West, 1984.

¹⁸See Platt, 1969, 1977; Houston, 1972; Liazos, 1974; Sutherland, 1976; Hagan and Leon, 1977; West, 1984; Currie, 1986.

lower classes into the established social order.¹⁹ However, it may be argued that the Marxist perspective need not be mutually exclusive of the rehabilitative perspective in the development of the Canadian juvenile justice system.

The rehabilitation philosophy may be seen as a reaction to the social conditions which shaped the evolution of delinquency. Competing economic and political forces may have influenced the creation of the concept of delinquency, yet middle and upper class reformers successfully sold their rehabilitative ideology to a government and public awaiting new proposals for delinquency control. Little opposition was expressed to the intended philosophy of the juvenile court, but most debated were the organizational procedures to be followed.²⁰ Although there was little disagreement about the need for reform in the 1800's, the maintenance of control and jurisdiction was a basis for conflict primarily between probation supporters and the police.²¹ Despite the humanitarian motives of the "child savers" towards the creation of protectionist reforms, the dynamics of cultural, social, political and economic forces altered the functioning of lower-class families.²²

¹⁹See Taylor, Walton and Young, 1973; Fleming, 1985.

²⁰Hagan and Leon, 1977; Corrado, 1983.

²¹At this time, only minor concerns about due process were raised by legal activists, but the primary conflict was between police and probation supporters (Leon, 1977; Hagan and Leon, 1977).

²²West, 1984; Currie, 1986.

The Culmination of Late Nineteenth Century Reform Efforts

Towards the end of the nineteenth century, the belief that there was a growing youth problem coincided with the creation of "adolescence".²³ The "gradual enforcement of the dependence of children came about through their exclusion from wage labour and the extension of compulsory education".²⁴ Due to their forced exclusion from the labour market, children were left with large amounts of free time which was often spent in idle and non-productive activity and viewed by society and reformers as counter-productive to the maintenance of social order.²⁵ Reformers fought to implement programs that would train children for new industrial occupations as well as prefer middle class values aimed at socializing "marginal youths".

The efforts of reformers were rewarded with the proliferation of reformatories and public schools in the 1870's and 1880's, as the preferred institutions for dealing with neglected and delinquent children. At the same time, a liberal array of reform efforts grew in the areas of education, public health and the salvation of the "illegitimate born", the destitute and the criminal.²⁶ Education became the key to a child's socialization and advancement within an expanding

²³West, 1984.

²⁴Currie, 1986:58.

²⁵West, 1984; Currie, 1986.

²⁶Rothman, 1980; Rooke and Schnell, 1982.

industrialized and technological society.

Education was seen by reformers as an "investment in youth for their future participation in waged labour".²⁷ Compulsory education was mandated towards the end of the 1800's but, in reality, it was inadequate for dealing with social problems such as homelessness, child abuse and neglect, increased poverty, and crime. These social problems were created by the child labour market. At the same time, reformatories were introduced in order to:

...decrease crime and recidivism, and to help integrate the children of the poor, working class, and minority groups into the bottom of the social and occupational worlds.²⁸

These institutions reflected a social welfare model of rehabilitation whereby the social and psychological environment of the child took precedence over the criminal act; subsequently becoming the focus for new statutes and legal processes.

Statutory Protections for Children

Legislation enacted in Britain, [*Factory Acts* (1833, 1847); *Compulsory Education Acts* (1870, 1876, 1880)], the United States, [Abolition of work contracting (1884)], and Canada, [*An Act for the Establishment of Prisons for Young Offenders* (1857); *An Act for the Speedy Trial and Punishment of Young Offenders* (1884)] restricted the use of child labour, provided for the construction of reformatories, and increased the use of summary

²⁷Currie, 1986:57.

²⁸Liazos, 1974:7-8.

procedures and discharges for juveniles. It has been argued by some that reformatories and schools established in the mid to late late 1800's, were tools for social control in which the influence of middle and upper-class philanthropists (especially women) was facilitated through a family focus.²⁹ Under the guise of aiding children and their families, "youth workers" could intervene in family functioning in an attempt to maintain social order.³⁰

Solutions to delinquency were increasingly conceptualized in terms of the development of surrogate institutions, mainly for the lower classes, that proffered middle class values.³¹ Towards the latter half of the 1800's, the industrial school replaced the reformatory as the preferred institution for implementing educational reforms and was seen as a compromise between the home environment and the reformatory.

An Act Respecting Industrial Schools was passed in Ontario in 1874 with the intent by legislators to "provide residential institutions that would be less severe than reformatories and to which neglected, uncontrolled and delinquent children could be sent".³² Support for the philanthropic nature of institutions was given in the passage of another Act by Ontario in 1888: *An*

²⁹Platt, 1969; Houston, 1972; Liazos, 1974; Chunn, 1987; Havemann, 1986.

³⁰Ericson, 1982.

³¹Houston, 1972.

³²Hagan and Leon, 1977:591.

Act for the Protection and Reformation of Neglected Children. This Act authorized the courts to commit neglected children to industrial schools; not to take children from their families, but to "make the home and family all it ought to be".³³ Towards the end of the 1800's, the inability of reformatories and schools to effectively deal with the youth problem became the focus of reformers' efforts aimed at de-institutionalization.

Two acts were passed in Ontario in 1890, further restricting the use of reformatories and expanding the use of industrial schools.³⁴ Similarly, in 1891, the Commission of Inquiry into the Prison and Reformatory System of Ontario handed down a report that criticized the methods previously used to control and reform children. Recommendations included:

enforcing compulsory school attendance law, in that the good education of children was the foundation of all preventive measures; establishing... industrial schools in every city and large town; exercising caution with respect to child immigration in order that those with criminal parents or those who had lived in atmospheres of vice and crime would be prevented from entering Ontario; encouraging charitable and philanthropic endeavours, and introducing various after-care programmes and facilities.³⁵

In addition, the Langmuir Commission organized by J.J. Kelso in Toronto in 1891, recommended that "magistrates grant discharges to first offenders convicted of trivial offences and that various powers be given to probation officers". Public awareness

³³Hagan and Leon, 1977.

³⁴ *An Act Respecting the Custody of Juvenile Offenders and An Act Respecting the Commitment of Persons of Tender Years.*

³⁵Leon, 1977:84-85.

and reform efforts subsequently shifted towards increasing community involvement given the ineffectiveness of reformatories to deal with troubled youth.³⁶ One result was the creation of an informal, voluntary probation system.

The Creation of Probation

Predecessors of Probation in the Early 1800's

The framework for probation in Canada was adopted from British traditions in the early 1800's.³⁷ The origins of probation have been traced to the thirteenth century when the "benefit of clergy" protected men and women of the church from the jurisdiction of secular courts.³⁸ While the benefit of clergy provided for a more lenient sentence, it offered none of the features inherent in the definition of modern probation, such as imposed restrictions and return to jail upon a breach of a probation order. A later, more refined practice - recognizance - is more closely associated with present day probation. In theory, recognizance was similar to probation in that:

...a bond of obligation is entered into by a defendant, who thus binds himself to refrain from doing, or to do, something for a stipulated period and to appear in court on a specified date for trial or for final disposition...³⁹

Through this practice, the common features of modern probation

³⁶Leon, 1977; Rothman, 1980; West, 1984.

³⁷Griffiths et.al., 1980; Rothman, 1980.

³⁸Rothman, 1980.

³⁹Dressler, 1969:19.

developed, such as suspension of sentence, remaining in the community, conditions controlling release, and the possibility of revocation of liberty upon violation of the conditions. Mediation and supervisory functions were honed in the United States and Canada where the term "probation" became synonymous with correctional treatment.

Formalization of the Probation Function

Treatment involved the concept of suspended sentence, freedom in the community, and conditions placed upon that freedom. The offender's character was of vital importance in the selection of probation candidates:

Great care was observed of course, to ascertain whether the prisoners were promising subjects for probation, and to this end it was necessary to take into consideration the previous character of the person, his age and the influences by which he would in future be likely to be surrounded.⁴⁰

Candidates had to be pronounced "treatable" and had to be willing to follow direction from the court-appointed youth worker.

Canadian legislation enacted from the mid to late 1800's⁴¹ served as a basis for the organization and administration of probation. In the Ontario *Children's Protection Act* (1893), the

⁴⁰Dressler, 1969:24.

⁴¹*An Act for the More Speedy Trial and Punishment of Young Offenders*, (1857); *Criminal Code of Canada*, (1892); *An Act for the Protection and Reformation of Neglected Children*, (Ontario, 1888); *Children's Protection Act*, (Ontario, 1893); *Act Respecting Arrest, Trial and Imprisonment of Youthful Offenders*, (Canada, 1894).

role of Children's Aid Societies was recognized as being of primary importance in the supervision of delinquents.⁴² It was the job of the Children's Aid workers to "investigate the charges, inquire into the child's family environment, and report back to the court..." to enable judges to make informed decisions as to the best treatment method for each child while protecting society's interests.⁴³

Subsequent to the 1893 Act, the role of probation officers in the prevention of delinquency was increasingly emphasized by reformers. Both volunteers and professionals were required to "help children before they became criminally disposed"⁴⁴ Those children most at risk were perceived to be primarily associated with "marginal" or lower class families where supervision and control were lacking, and abuse and exploitation were more common.⁴⁵ Consequently, the probation officer would "frequently visit the home and insist on school attendance and proper moral instruction...[and], having a constant supervision of the child, would prevent his getting into trouble again".⁴⁶ The methods of "kindly advice and practical aid" used by probation officers during the late 1800's, were in direct conflict with those of the police, who were prone to use "force, and punishment in the

⁴²Leon, 1977.

⁴³Hagan and Leon, 1977:592.

⁴⁴J.J. Kelso, (1907), in Leon, 1977:92.

⁴⁵Liazos, 1974; West, 1984.

⁴⁶J.J. Kelso, (1907), in Leon, 1977:92.

restoration process".⁴⁷ However, probation officers were constrained in the performance of their work by a lack of legislative recognition.

In their enthusiastic efforts to assert the ineffectiveness of institutions, J.J. Kelso and his supporters sought to legitimate the role of probation and increase the power of the probation officer by enhancing state control over the welfare of children. In response to the persuasive arguments advanced by child savers, Ontario politicians enacted the first statute recognizing probation: *An Act to Amend the Children's Protection Act of Ontario* (1903). This Act provided for "children's committees" whose agents assisted in the placement of children, and no conviction was needed. Subsequently, probation acquired a substantial preventative function:

Extending probation work to delinquent children had allowed not only for supervision of those with suspended sentences, but also for supervision for "dealing with an increasing number of what may be called preventative cases...in which we are called in before the child actually gets into the hands of the police".⁴⁸

Despite overwhelming acceptance of the rehabilitative philosophy by politicians, social workers, and reformers, opposition to the proposed *J.D.A.* was expressed by two groups: (i) those concerned with possible abuses of the proposed system and the resulting effects on the rights of children, and (ii) those who advocated a more "punitive" approach to delinquency.⁴⁹ The former group's

⁴⁷Ibid.

⁴⁸W.L. Scott to W.J. Hanna, July 8, 1907 in Leon, 1977:97.

⁴⁹Leon, 1977:95.

concerns were largely ineffectual and voiced as a caution towards the possible abuses of legal process. Significant opposition came from the other group which was represented by persons working with children such as police officers, magistrates, and some Children's Aid Societies.⁵⁰

The more punitive perspective, or crime control ideology of police is best understood in terms of the historical development of policing in relation to juvenile justice. In the following section, the ideology of police is explored in an historical context and then compared to the rehabilitative ideology of probation. The conflicting nature of these ideologies is then addressed in relation to their respective positions on the J. D. A.

Policing of Juveniles

Crime Control: A Definition

* The nature of police ideology can be understood within a context of social control where the "law and order" functions of police in the 1800's, and present "crime control" functions, are viewed as mechanisms for maintaining the social order.⁵¹ Police have traditionally been the most visible and criticized agents of social and crime control, the latter being broadly defined by Reid and Reitsma-Street as "the responsibility of the state and

⁵⁰Leon, 1977.

⁵¹Skolnick, 1966; Packer, 1968; Ericson, 1982.

courts to maintain order for society" (1984:2-3). The authors further assert that this model gives priority to the security and maintenance of the moral, economic and political order and freedoms of a community.⁵² Policing is viewed by some scholars as a means of enforcing the social norms which produce order.⁵³

Under the crime control model, laws that define criminal behaviour are viewed as "flexible and broad".⁵⁴ Flexibility is given through statutory wording, common law, and judicial interpretation. Such flexibility allows law enforcers to justify coercive and discretionary actions which maintain order in the community.⁵⁵ Under this model, legal rights are abrogated so that "justice" is accomplished in the quickest and most expedient way possible.⁵⁶ Catton and Leon (1977) suggested that speed is achieved through the use of uniform and routine procedures; finality, by minimizing the opportunity to challenge the process; and, efficiency, by utilizing discretionary practices aimed at selecting out those who are most likely to be guilty.

Reid and Reitsma-Street state that together with the police, court personnel and penal agents are the "key personnel in the

⁵²Ibid.

⁵³Skolnick, 1966; Quinney, 1977; Ericson, 1982.

⁵⁴Reid and Reitsma-Street, 1984.

⁵⁵For further detail, see Skolnick, 1966 and Ericson, 1982.

⁵⁶Packer, 1968.

implementation of the crime control model" (1984:3).⁵⁷ Police are often the young offender's first contact with the juvenile justice system. Both formal and informal means are used to ensure that "containing...adjudicating and punishing violators is speedy and efficient...".⁵⁸ Specific tenets of a crime control model are evident in the beliefs of police officers regarding their role in society and are presented in the following discussion of the history of the policing of juveniles.

Policing Juveniles: An Historical Context

With regard to juveniles, police have traditionally exercised control through informal processing, for example, stern warnings, threats of court action, temporary detention, or returning a youth to his/her parents.⁵⁹ Prior to the enactment of the *J.D.A.*, police had considerable power in determining the fate of children. Following the passage of the Act, police believed that their efforts at reforming youths were being undermined by the rehabilitative philosophy of juvenile justice.⁶⁰

⁵⁷See also Cohen, 1985.

⁵⁸Reid and Reitsma-Street, 1984:3. See also Packer, 1968.

⁵⁹Griffiths et.al., 1980.

⁶⁰Kenney and Pursuit, 1965, 1970; Carter, 1976; Bartollas and Miller, 1978, and Griffiths et.al. 1980.

Organized policing in Canada began in the 1830's partially as a response to the social disorganization that resulted from industrialization and urbanization.⁶¹ Changes in Canada's socio-political structure, such as job diversity and a newly created and expanding federal state, resulted in urban migration by working-class youths who wished to capitalize on income opportunity.⁶² The emergence of organized policing in Canada was a response to the ineffectiveness of community "self-policing" to control criminal and delinquent behaviour, concomitant with these rapid social changes.⁶³ Due to several factors, such as an influx of immigrants and rural families to urban centres, a reduction in the use of child labour, and the increase in educational resources, youths in the late 1800's came to be seen as a nuisance and an "expendable surplus population" in need of control.⁶⁴

At this time, the police viewed their role as one of complete control over youths through the use of coercive measures. Delinquency prevention was based on instilling in youths a fear of punishment.⁶⁵ The creation of adolescence⁶⁶ and a widening of the gap between childhood and adulthood, led to

⁶¹Kelly and Kelly, 1976; McGrath and Mitchell, 1981.

⁶²Liazos, 1974; West, 1984; Currie, 1986.

⁶³Kelly and Kelly, 1976; Griffiths et.al., 1980; McGrath and Mitchell, 1981; West, 1984; Sewell, 1985.

⁶⁴West, 1984.

⁶⁵Leon, 1977; McGrath and Mitchell, 1981.

⁶⁶See West, 1984 and Currie, 1986.

the need for control over "idle and shiftless youths".⁶⁷ Police, being the most visible agents of social control, were given the task of controlling street youths, and surveillance, proactive, and coercive discretionary measures were used to effect this goal.⁶⁸ However, these methods of control were challenged by the proposed "rehabilitative" methods of the child savers in the mid to late 1800's.

Jurisdictional Conflict Between Police and Probation Officers

Ideological differences between police and probation officers were reflected in the respective methods of delinquency control and prevention exercised by police and probation officers. Prior to the *J.D.A.*, a crime control model of controlling delinquency was evident in the general police functions of law enforcement and maintaining social order.⁶⁹ Police viewed the *J.D.A.* and probation as undermining their power and authority within the juvenile justice system.

W.L. Scott, a primary draftsman of the Act, reported that opposition from the Toronto Police Department revealed that the police felt that the proposals were "intended to supplant them and were a reflection on their past work".⁷⁰ It was argued by the police that their methods were:

⁶⁷West, 1984.

⁶⁸See Griffiths et.al., 1980; Ericson, 1982, and Cohen, 1985.

⁶⁹Kelly and Kelly, 1976; Weiner, 1976; Bartollas and Miller, 1978; Griffiths et.al., 1980; McGrath and Mitchell, 1981.

⁷⁰In Leon, 1977:96.

... both sufficient and less expensive but also that the harsh attitude of the police had a deterrent effect by making an impression on children without resulting in the police being viewed as enemies.⁷¹

Child savers and reformers were characterized by the police as "superficial and sentimental faddists" intent on "introducing a jelly-fish and abortive system of law enforcement", while placing themselves in a position to "kiss and coddle a class of perverts and delinquents who require the most rigid disciplinary and corrective methods to ensure the possibility of their reformation".⁷² In this statement, reformation or rehabilitation was not being denied as the goal of juvenile justice, but the methods used to achieve that goal reflected an ideological difference between police and those who supported the rehabilitative model of juvenile justice.

The Erosion of Police Powers by Probation

The broad powers of probation officers to control and prevent delinquency, served to erode the potency of police even prior to the *J.D.A.* Police powers and discretion were usurped by the increased powers of intervention by probation officers to effect the social casework method of rehabilitation; that is, counselling, familial intervention and the mediation of social programs or services. Having traditionally assumed organizational responsibility for children through punitive

⁷¹R.G. Kingsford (police magistrate) to J.J. Kelso, Dec. 20, 1906, in Leon, 1977:96.

⁷²D. Archibald, *Report on the Treatment of Neglected Children in Toronto*, (Toronto: Arcade, 1907) in Leon, 1977:96.

measures of delinquency control and the construction of prior legislation⁷³, the police felt that the new measures threatened their dominance in this area and therefore they had to protect their interests.

Both police and probation officers exercised unique means to the same end: two quite different sets of beliefs and practices were aimed at the positive socialization of youths; the reduction of recidivism; and, crime prevention.⁷⁴ Nevertheless, the primary power mandated for rehabilitative functions was designated by the court to probation officers:

With the great right arm and force of the law, the probation officer can go into the home and demand to know the cause of...the delinquency...He becomes a member of the family and teaches them lessons of friendliness and integrity...whether by threats of cajolery, by appealing to their fear of the law or by rousing the ambition that lies latent in each human soul, he teaches the lesson and transforms the entire family into individuals which the state need never again hesitate to own as citizens.⁷⁵

Probation had become the preferred method of treatment for juveniles, with enormous powers of intervention conferred by legislation and common law. Rehabilitative methods were perpetuated by probation officers in their efforts to attract new cases.

The Toronto Probation Department actively sought to administer cases prior to court appearances:

⁷³Leon, 1977; Hagan and Leon, 1977.

⁷⁴Braithwaite, 1978.

⁷⁵Empey, 1979(a):51.

...we earnestly solicit those having problems of various kinds, within the jurisdiction of the court, coming and allowing us to assist before these problems become too acute so as to require official action.⁷⁶

Clinical and social investigations were performed on children without ever referring them to the police or the court.⁷⁷ The obvious lack of due process and other procedural rights was noted in the debate on the proposed *J.D.A.*, but little attention was paid to these concerns due to the nature of the juvenile court - that of a caring parent acting in the child's best interests.⁷⁸ The role of probation in the rehabilitation of wayward youths, had eroded the powers of police. The concern was not for the goal of the juvenile justice system, but for the best methods in handling juvenile delinquents, and the rehabilitation model espoused by the child savers was ultimately victorious over the traditionally punitive methods of police.

The Enactment of the Juvenile Delinquents Act

The goals of probation supporters - paid professionals, a separate juvenile court, and legislative recognition were accomplished with the introduction, in 1906, of the *Juvenile Delinquents Act*, and its subsequent passage in 1908. The enactment of the *J.D.A.* formalized the probation role and granted enormous powers of intervention to probation officers in order to carry out the Act's rehabilitative mandate. In effect,

⁷⁶City of Toronto, 1933:9 in Hagan and Leon, 1977.

⁷⁷Hagan and Leon, 1977.

⁷⁸Leon, 1977.

the rehabilitative or welfare philosophy was "expressed not only through special court procedures but also through the introduction of the probation role", usurping the traditional delinquency control and preventive functions of the police.⁷⁹ The Act also provided for the creation of a "voluntary Juvenile Court Committee to consult with, appoint and advise probation officers".⁸⁰ The juvenile court was advocated as the new saviour of wayward youths and operationalized the rehabilitative philosophy primarily through the probation function.

The court's philosophy of *parens patriae*⁸¹ legitimated, in the name of the state, the increasing power given to probation officers for intervention in family problems:

⁷⁹Corrado, 1983:4.

⁸⁰Hagan and Leon, 1977:593.

⁸¹The preamble to the *J.D.A.* specified the nature of the welfare model together with an element of control:

Whereas it is inexpedient that youthful offenders should be classed or dealt with as ordinary criminals, the welfare of the community demanding that they should on the contrary be guarded against association with crime and criminals, and should be subjected to such wise care, treatment and control as will tend to check their evil tendencies and to strengthen their better instincts (*J.D.A.*, 1908, Preamble).

In conjunction with this assertion is the declaration of the liberal intent of the Act in Sect.31:

This Act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.

The state was not a behemoth that had to be chained and fettered but a wise, all-knowing, and all-caring parent who alone could settle disputes amicably and justly...the problem was not how to protect the juvenile offender from the arbitrariness of the state, but how to bring the state more effectively to the aid of the juvenile offender.⁸²

The rehabilitative mandate was conferred on probation officers through the enactment of the *J.D.A.* Section 27 of the Act declares that every probation officer shall:

...make such investigation as may be required by the court; to be present in court in order to represent the interests of the child when the case is heard; to furnish to the court such information and assistance as may be required; and to take such charge of any child, before or after trial, as may be directed by the court.

It was also the duty of the probation officer, to consult with the Juvenile Court Committee to offer advice to the court as to the best method of dealing with individual cases and to facilitate by every means possible, the rehabilitation of juvenile delinquents.⁸³

The aim of the juvenile court was to determine the treatment necessary for rehabilitation. This differed from the aim of trials which served to determine guilt. On these grounds, the juvenile "justice" process has been labelled civil rather than criminal despite the limited application of this characterization. However, some have argued that due to Canada's division of powers within the federal system, the legal process is criminal, rather than civil because the federal government

⁸²Rothman, 1980:47.

⁸³Section 24, *J.D.A.*, 1908.

has the exclusive jurisdiction to create criminal law.⁸⁴ Overall, the informal nature of the juvenile court dominated legal proceedings.⁸⁵ Formal rules of procedure were not recognized and, indeed, were deemed unnecessary. Court proceedings were relaxed and informal, lawyers were not needed, and the rules of evidence and testimony were generally ignored or seen as dispensable encumbrances. The informality of the juvenile court and the substantial powers of intervention granted to probation officers, were justified under the guise of providing aid and assistance in family matters.

The *J.D.A.* reorganized and codified existing practices and brought the "provisions of various pieces of federal and provincial legislation under the purview of one federally enacted statute".⁸⁶ Canadian juvenile courts adopted the philosophy of *parens patriae*, under which the primary emphasis was on rehabilitation, rather than punishment, accountability, or due process of law.⁸⁷

⁸⁴Catton and Leon, 1977; Leon, 1977. According to Leon (1977), those who drafted Canada's juvenile delinquency legislation assumed that "delinquency" was a matter primarily related to criminal law, and therefore under federal, as opposed to provincial jurisdiction. This is in accordance with the provisions of the *British North America Act* (1867) whereby, under Section 91, the federal government has the exclusive jurisdiction to enact criminal law. Under Section 92, the administration of justice was proclaimed a provincial responsibility.

⁸⁵See also Section 31 of the *J.D.A.* where attaching a criminal label was not the intent of the juvenile court.

⁸⁶Larsen, 1979:16.

⁸⁷Hagan and Leon, 1977; Corrado, 1983.

Summary

The development of police and probation roles prior to the *J.D.A.* has been well documented in the literature.⁸⁸ Prior to the child-saving movement in the 1800's, the police exercised complete control over neglected and delinquent youths. Their punitive and coercive methods of handling youths were performed in the belief that the fear of punishment would deter further criminal activity. The harsh treatment of juveniles in adult gaols was challenged by reformers during the early 1800's.

A rehabilitative ideology was formulated prior to the enactment of the *J.D.A.* and probation was viewed by reformers as the ideal treatment method for delinquency prevention. The traditional powers of police to control delinquency were eroded through the all-encompassing mandate of probation officers to effect the rehabilitative philosophy of the juvenile court.

The conflict that surrounded the *J.D.A.* in Canada was "less about normative definition than about organizational arrangements".⁸⁹ More specifically, it was probation supporters and the police who struggled for procedural jurisdiction in the handling of delinquents. The more punitive philosophy of police was in direct contrast to the rehabilitative philosophy of probation officers. Both groups desired the end goals of

⁸⁸See for example, Platt, 1969; Houston, 1972; Liazos, 1974; Hagan and Leon, 1977; Leon, 1977; Corrado, 1983; West, 1984; Currie, 1986; Havemann, 1986.

⁸⁹Hagan and Leon, 1977:595.

delinquency control and prevention; however, their methods reflected the respective ideologies of crime control and rehabilitation.

Subsequent to the 1908 legislation, philosophical dissension continued. Police became increasingly disenchanted with the rehabilitative ideal and sought stricter controls and more punitive measures for juveniles. Comparatively, probation officers continued to support the general philosophy of the *J.D.A.* despite some apprehension about the lack of due process protections for juveniles and insufficient funding for the adequate provision of services.⁹⁰ The inability of probation and the rehabilitative model to curb delinquency and reform children, led to renewed calls for reform. The transition from a welfare to a justice model of juvenile justice in Canada and the respective roles of police and probation officers will be explored in the following chapter.

⁹⁰Griffiths et.al., 1980; Conrad, 1984; Thomson and McAnany, 1984.

CHAPTER III

THE EVOLUTION OF THE YOUNG OFFENDERS ACT

Introduction

A resolution of the ideological struggle between crime control and rehabilitation advocates was not achieved with the enactment of the *Juvenile Delinquents Act (J.D.A.)* in 1908. Increased involvement in juvenile justice issues by children's rights activists, resulted in further confusion as to the best strategies for handling delinquents. The transition from a rehabilitative or welfare, to a due process or justice model of juvenile justice during the period 1960 to the 1980's, (as evidenced in the enactment of Canadian and American legislation), has been complicated by the competing interests of groups such as probation officers, social workers, police, magistrates, legal rights activists, the Canadian Association of Social Workers, Canadian Bar Association, Canadian Mental Health Association and the Canadian Association of Criminology and Corrections. Examined in this chapter is the philosophical shift from a rehabilitative to a justice model in Canadian juvenile justice; culminating in the enactment of the *Young Offenders Act (Y.O.A.)* in 1982.

Prior to a chronological discourse, a brief explanation of the medical model is included as an aid to understanding the basis for treatment under the rehabilitative philosophy of

juvenile justice. Next, the initial efforts to reform the *J.D.A.* in the 1960's, is explored. Criticisms of the *J.D.A.* and constitutional arguments are presented as the basis for the move towards due process, resulting in the legal precedents established to protect the rights of juveniles. The final section focuses on the move towards a justice model in juvenile justice, and the ultimate enactment of the *Y.O.A.* in 1982. In tracing this transition, the conflicting roles and attitudes of police and probation officers are discussed in relation to the development of the *Y.O.A.*

The Transition From a Rehabilitative to a Justice Model in Canadian Juvenile Justice

The absence of due process protections was not a major challenge to the rehabilitative perspective during the creation of the juvenile court. The challenge and antagonism towards this philosophy came primarily from the police.¹ Their preference for traditional crime control arrangements focused on respect for their authority to maintain order through the use of discretion.² These methods were condemned by rehabilitation or welfare supporters as being too harsh and punitive.³ The traditional powers of the police were usurped, as behaviour that

¹Leon, 1977; Hagan and Leon, 1977.

²Skolnick, 1966; Bittner, 1976; Hagan and Leon, 1977; Ericson, 1982.

³Bartollas and Miller, 1978; Griffiths et.al., 1980.

was once scrutinized and controlled by police became the target for preventive intervention by probation officers.

Following the enactment of the *J.D.A.*, the few amendments made had little impact on the overall philosophy of juvenile justice in Canada.⁴ In effect, the rehabilitative philosophy of the *J.D.A.* remained unchallenged despite continued opposition by police, and amendments to the Act in 1929. Indeed, research in psychology and psychiatry in the 1930's and 1940's, resulted in new methods for the treatment of delinquency.

The Medical Model in Juvenile Justice

Corrado notes that "the medical model...was reinforced by the psychoanalytic and psychological theories of child and adolescent development" (1983:7). In the 1930's and 1940's, as social and medical researchers gained knowledge of the influence of early social experiences on emotional and personality development, the emphasis shifted from a concern with the symptoms of delinquency to the identification of its causes; particularly family, social and environmental factors.⁵ Those delinquents whom probation could not "cure" were subsequently shuffled to mental health "experts". In a generally optimistic framework, efforts were made by probation officers to expand the

⁴Wilson, 1982.

⁵Corrado, 1983; Currie, 1987; Chunn, 1988. For an example of a noted American psychologist's perspective and work on child development during the early 1900's, see G. Stanley Hall's (1939), *Adolescence: Its Psychology, and Its Relations to Physiology, Anthropology, Sociology, Sex, Crime, Religion, and Education*.

scope of rehabilitative programs with an emphasis on providing assistance to dysfunctional families.

Prior to the 1930's, an "administrative view of probation was dominant; involving the "execution of concrete measures (e.g., imposing a curfew, effecting a school transfer, helping the probationer find employment) in the hope that somehow a behavioural change will be effected".⁶ In order to develop a cohesive and efficient treatment philosophy for youth in the 1930's and 1940's, trained workers were needed to serve as probation officers because professional casework methods such as counselling and provision of services were integral to the treatment philosophy.⁷

During this time, the influence of the medical model in treatment,⁸ which began in the 1930's, led to an increased use of psychological treatment techniques in corrections. The social casework method was used to carry out this form of treatment:

...the basic theme of this approach is that the probationer's anti-social conduct is the product of some underlying emotional disorder which is in need of treatment; the treatment is generally borrowed from the disciplines of psychology and psychiatry.⁹

The philosophy and administration of probation thus retained the

⁶Griffiths et.al., 1980:253.

⁷Bartollas and Miller, 1978; Griffiths et.al., 1980; Chunn, 1987.

⁸This model refers to a behavioural approach to intervention which focuses on psychological and physical reactions to events influencing individuals (Shover, 1979; Rothman, 1981; Corrado, 1983; Thomson and McAnany, 1984).

⁹Griffiths et.al., 1980:253.

established concern with helping children adjust to their environment, but added a new focus in assisting them in the resolution of emotional problems. Despite this infusion of professionalism into probation, its goals and their achievement could not successfully be agreed upon.¹⁰ Though formal, theoretical goals for probation had been suggested, the measures used to achieve those goals were subject to broad interpretation by probation officers and affected by political and economic constraints, such as the lack of adequate funding for the provision of programs and criticism about the inability of probation to deal with dangerous offenders.¹¹

In the 1960's, the *J.D.A.* became increasingly criticized on several grounds: the lack of legal and procedural protections for juveniles; the discretionary and arbitrary practices of police, judges and correctional workers; the unconstitutionality of age limits and status offences; and the inequality of provincial practices and programs.¹²

¹⁰Success may commonly be defined as a youth's integration into a non-criminal lifestyle. However, Shireman provides a more detailed outline of the probation goal:

...to identify with the law abiding community, to internalize new value systems, and to achieve perceptions of nonviolative life styles...to be helped to increase their abilities to cope with the problems confronting them, at the same time, they are to be provided increased opportunity for legitimate success (1976:143).

¹¹Shireman, 1976; Thomson, 1982; Harris, 1984; McWilliams, 1987.

¹²Osborne, 1979; Griffiths et.al., 1980; Corrado, 1983; Reid and Reitsma-Street, 1984; West, 1984; Havemann, 1986.

Criticisms of the Rehabilitative Model in Juvenile Justice

The emphasis on child welfare in Canadian juvenile justice, resulted in the neglect of due process rights and procedural equality. Under the *J.D.A.*'s treatment philosophy, the distinction between neglected and delinquent children was unclear.¹³ Treatment of these two classifications of children was based on the same underlying assumptions inherent in the medical model; both neglected and delinquent children could be helped through the use of psychological techniques and environmental intervention. Under the guise of "helping", humanitarian intervention negated the need for procedural fairness in "criminal" cases (as opposed to intervention based on neglect). It was argued that, in order to avoid arbitrary and unfair practices, proper controls on police discretion, court procedures and corrections administration were desperately needed. Each of these groups lacked sufficient guidelines for the exercise of discretion and procedural equity.¹⁴

Police Discretion

One criticism of the *J.D.A.* and its rehabilitative philosophy, was a direct reflection of police discretionary practices and the absence of due process protections for juveniles:

¹³Leon, 1977; Bala, 1988.

¹⁴MacDonald, 1971; West, 1984; Havemann, 1986.

There were insufficient checks and balances over the exercise of discretion and authority by the police, the court and those who administered court dispositions.¹⁵

Discretion was an inherent part of the policing function because peace officers were not compelled to arrest or charge a suspect. The decision to arrest or charge would work in a young person's "best interests" when the police officer decided to deal informally with an incident in order for the youth to avoid further contact with the juvenile justice system.

Federal statistics released in 1974 showed that approximately 50% of arrested juveniles were "formally charged and referred to juvenile court while the remainder were treated informally and released".¹⁶ This would indicate that the decision to charge youths was based on other than legal or offence factors, for example, the demeanor of the juvenile towards the police officer, prior contact with the police, and prior record.¹⁷ Some scholars argued that the informal handling of juveniles constituted an alternate and "widened net" of social control.¹⁸ The authors defined net widening as :

...reforms that increase the proportion of subgroups in society... whose behaviour is regulated and controlled by the state (1981:169).

¹⁵Havemann, 1986:227.

¹⁶Griffiths et.al., 1980:291.

¹⁷Tappan, 1946 in Faust and Brantingham, 1974; Piliavin and Briar, 1964; Wilson, 1968b; Bittner, 1976; Gibbons, 1976; Weiner, 1976; Solicitor General of Canada, 1977(ba); Lundman et.al, 1979; West, 1984.

¹⁸Schur, 1973; Griffiths et.al., 1980; Austin and Krisberg, 1981.

Austin and Krisberg stated that criminal justice agents such as the police, courts and corrections reaped an "unnecessarily abundant catch of deviants" in order to control and prevent delinquent activity.¹⁹ In essence, the arbitrary decisions of police were being challenged by groups such as liberal rights activists and the Canadian Bar Association, as being unfair and unconstitutional.²⁰

The Ineffectiveness of the Rehabilitation Model in Probation

A second criticism of the J.D.A. was postulated by conservative politicians and police. They felt that the rehabilitative methods used by probation officers and social workers, for example, were ineffective in curbing delinquency.²¹ In addition, the police claimed that the juvenile courts were too lenient and returned dangerous youths to the streets far too quickly.²² They further argued that:

...as society insists more...and more on responsibility on the part of the young offender, his right to fair treatment in accordance with the principles of natural justice can no longer be left...to the discretion of those persons in authority...(Former Solicitor General, Robert Kaplan. Standing Committee on Justice and Legal Affairs, 1981.)

¹⁹Austin and Krisberg, 1981:165. See also Ericson, 1982 and Cohen, 1979, 1985.

²⁰Cousineau and Veevers, 1972; Havemann, 1986.

²¹House of Commons Debates, 1971, 1979; Empey, 1973; Hagan and Leon, 1977; Wilson, 1982.

²²House of Commons Debates, 1982. Vol.64:7-8.

The success and utility of the rehabilitative model had been subject to increasing criticism and cynicism. A contributing factor to the perceived ineffectiveness of probation was the inability of policy makers to formulate goals and strategies based on the rehabilitation philosophy.²³ Role conflict between law enforcement and rehabilitative functions (control and treatment tenets, respectively) experienced by probation officers in relation to court and client relationships, frustrated the efficient performance of either function:

Faced with the officer's honesty requirement and the rather evident elements of control in the order, the client may be reluctant to invest much trust in the relationship.²⁴

Probation continued to lack a clear definition of its functional goals and there was "little agreement upon basic strategies, much less how to implement them".²⁵ The failure of the rehabilitative model to significantly reduce juvenile recidivism, together with the Children's Rights Movement which began in the 1960's, led to calls by, for example, police, lawyers, the Canadian Bar Association, the Canadian Criminology and Corrections Association (which included probation officers),

²³Bartollas and Miller, 1978.

²⁴Fielding, 1984:25.

²⁵Shireman, 1976:144. In Canada, confusion was added to the probation role given the inherent division of political and legal powers (*B.N.A. Act*, Sections 91 and 92). A contributing factor to the diverse expectations of probation officers was the nature of legislation. Federal acts (e.g., *Criminal Code of Canada* and the *Corrections Act*) mandate the probation function while provincial statutes are responsible for the administration of the same.

and politicians, for reform of the *J.D.A.* :

Empirical studies on the effectiveness of treatment (Lipton et.al., 1975), increasing economic restraint and the perceived rise in crime rates, coupled with the civil libertarian critique of the lack of rights, combined to undermine the rehabilitative model as the dominant model in corrections.²⁶

Protection of Society

A third criticism was based on society's right to protection from illegal behaviour. The de-institutionalization trend of the 1970's, was believed to "reflect a changing focus from the historical tradition of *parens patriae* as legal ideology to a more civil liberties/children's rights model".²⁷ It was maintained that deinstitutionalization had failed to curb delinquency as had previous methods of rehabilitation.²⁸ Stricter controls over criminal behaviour by youths was called for by rehabilitation critics such as the police and some politicians.

In a federal-provincial conference on corrections in August, 1974, a Canadian member of parliament (Woolliams) stated that Criminal Code reform should aid in the detection of crime and the protection of society: "I would hope that some real strength is going to be given in reference to the control of crime in this nation". Judge Archambault, a significant contributor to the drafting of the *Y.O.A.*, asserted that the protection of

²⁶Havemann, 1986:231.

²⁷Linney, 1984:211.

²⁸Empey, 1973; Lipton et.al., 1975; Linney, 1984.

society would be a priority in the Act:

...if the protection of society is in jeopardy as opposed to the welfare of the individual, then the bottom line is the protection of society because after all, we have to recognize that it (Y.O.A.) is criminal law...Within the context of protecting society we take all the measures that are available to us to continue treating the young offender and to try to rehabilitate him.²⁹

This position was similar to the police belief that the public was becoming less tolerant of juvenile criminality, and that there was a need for tougher control measures.

There is a move from juvenile crime as a "nuisance" to more sophisticated acts...young people commit crimes, not as a lark, or on the spur of the moment, but with a degree of intricate planning and sophisticated execution not known before. Citizens are asking for protection from "young hoodlums" who, at 10 or 12 years, have made the cold, calculated decision to take their chances as confirmed criminals.³⁰

In contrast to the above positions, groups such as the Canadian Mental Health Association and the Canadian Bar Association felt there was considerable conflict between the philosophies inherent in the Y.O.A. The Canadian Bar Association (C.B.A.) was concerned with the merger of the adult with the youth justice system.³¹ Although this group felt that adopting adult safeguards for youths would protect them, there was still a need to treat young persons as different from adults. In

²⁹Standing Committee on Justice and Legal Affairs, Dec.6, 1979. Vol.13:29.

³⁰Superintendent Ferne Alexander, Staff Support Services, Canadian Association of Chiefs of Police. *Standing Committee on Justice and Legal Affairs*, Feb.24, 1982. Vol.64:7.

³¹ *Standing Committee on Justice and Legal Affairs*, Feb.24, 1982. Vol.64:34.

support of this argument, the Canadian Mental Health Association (C.M.H.A.) favoured due process protections for young persons, but felt that safeguarding civil liberties and social rights were of less importance than "the provision of legal machinery for meeting their particular needs".³² The Canadian Criminology and Corrections Association, which included probation officers, also supported due process protections in the Y.O.A.³³ Unlike the C.M.H.A., this group did not favour rehabilitative tenets above justice provisions such as the protection of society, responsibility of youths and equality of treatment before the law.

The original rehabilitative philosophy of juvenile justice was weakened in light of increasing pressure by legal decisions, and political and social groups, to adopt due process protections and stricter controls over juveniles. Dissatisfaction with the success of the rehabilitation model and concern over the protection of children's rights, led to a shift from a welfare to a justice approach in Canadian juvenile justice.³⁴

³²House of Commons Debates, 1971, p.2387, in Cousineau and Veevers, 1972.

³³Canadian Association of Criminology and Corrections, 1975.

³⁴The justice model includes the beliefs that youths are responsible for their actions and capable of making choices; due process protections are administered fairly; sanctions are fixed and proportional to the crime; trials are conducted on the basis of standard legal procedure where provisions are made for counsel, cross-examination and public scrutiny; protection of society is mandated but not at the expense of the individual (Corrado, 1983; West, 1984; Havemann, 1986).

The Legal Impetus for Reform

During the 1950's and 1960's, the Supreme Court of Canada established a precedent regarding the rights of juveniles. In *Smith v. the Queen ex. rel. Chmielewski*³⁵ the Supreme Court of Canada overturned the majority decision of the Manitoba Court of Appeal and held that a juvenile had the right to plead to a charge before the court and to be heard in this regard. In *R. v. Tillitson*³⁶, it was determined that the nature of the offence must be made clear to the child who then had the right to cross-examine witnesses, to call witnesses and to testify in his or her own behalf. These legal precedents gave impetus to the Children's Liberal Rights movement of the 1960's.³⁷

With the strengthening of the Children's Liberal Rights movement, juvenile justice was increasingly criticized on two bases: not only did the system fail to protect and rehabilitate children, it also failed to afford the protections accorded adults.³⁸ Although the Canadian Bill of Rights offered legal and constitutional protections to adults, these same rights were seldom extended to children because the philosophy of *parens patriae* recognized intervention as motivated by social rather

³⁵ 1959, S.C.R., 638, 124 C.C.C. 71; 30 C.R. 230.

³⁶ 1947, 2 W.W.R. 232; 89 C.C.C. 389, B.C.S.C.

³⁷ Cousineau and Veevers, 1972; Currie, 1986.

³⁸ See *In re Gault*, 1967; McDonald, 1971; Canadian Criminology and Corrections Association, 1971; Cousineau and Veevers, 1972; Houston, 1972; Catton, 1976; Canadian Bar Association, 1977; Corrado, 1983; West, 1984.

than legal concerns.³⁹ Judges did not think lawyers were necessary in juvenile courts because the basic objective was not the provision of an adversarial or criminal trial but a civil matter to determine the best treatment plan for children in trouble.⁴⁰ The notion that juvenile proceedings were to be dealt with as civil and not criminal matters, has been well addressed in the literature.⁴¹ It was argued by probation officers, lawyers and advocates of the Children's Liberal Rights movement,

³⁹ Unfair practices were the result of several aspects of legal and organizational inequality. First, children were subject to arbitrary police and correctional practices without proper legal guidance. Decisions were made that could have meant unnecessary periods of time in gaols, based on factors other than criminal charges. The *J.D.A.* included status offences such as truancy and sexual immorality whereby only youths could be charged while the same were not considered offences if committed by adults. In addition, the determination of adult status was not uniform across Canada. For the same offence, a seventeen year old male may not be charged as a youth in all provinces. Provincial differences also existed in the processing, dispositional and correctional practices aimed at delinquents (Wilson, 1982). Given these inequities, efforts were made by legislators to consult with the provinces, academic, professionals and practitioners in the juvenile justice field, to create legislation that would protect both the youth and society while ensuring equality of treatment before the law (Griffiths et.al., 1980; Wilson, 1982).

⁴⁰Wilson, 1982.

⁴¹Morrison, 1976; Sutherland, 1976; McBarnet, 1981; Houston, 1982; Currie, 1986 and Chunn, 1987. For example, McBarnet (1981) gives a thorough account of the background of magistrate and summary justice. The latter is characterized by its lack of many attributes of the ideology of law, legality and a fair trial; in essence, a lack of due process. Magistrates primarily dealt with summary or minor offenses, "ordinary" or trivial cases. It is the relative triviality of the penalties that provides the crucial legitimation in law for the lack of due process in summary justice, before a person's liberty may be interfered with - limited penalties available to magistrates means they can interfere less with one's freedom, therefore negating the need for due process. Hence, the less one's liberty is at risk, the less one needs protection. This is the philosophy of summary justice which was adopted by the juvenile court in Canada.

that unfair and coercive interference within the justice process was produced by procedural laxity; thus negating any advantage gained through court attendance. Overall, the constitutionality of the *J.D.A.* was challenged because of the lack of due process protections accorded juveniles.⁴²

A series of decisions by the U.S. Supreme Court in the 1960's and early 1970's, accelerated the influence of the constitutionalists. The same time lag in implementing due process protections for juveniles in the United States was experienced in Canada. In *Kent v. United States* [(1966) 383 U.S. 541, 18L. Ed. 527, 87 S.Ct. 1045] it was declared that the juvenile had a constitutional right to a hearing that must "measure up to the essentials of due process and fair treatment".⁴³ In his oft quoted statement from the *Kent* argument, Justice Fortas asserted that:

There is evidence, in fact, that there may be grounds for concern 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 [*K. v. U.S.*, 1966. 383 U.S. 541, 18L. Ed. 527, 87 S.Ct. 1045].

Similar decisions, for example, *Gault* (1967) and *Winship* (1970), were seen to uphold the constitutional right of due process for juveniles.

⁴²McBarnet, 1981.

⁴³In the *Kent* case, the juvenile court had transferred the defendant, Kent, to the adult court without an evidentiary or preliminary hearing. Also, Kent had not been present when the court decided to waive jurisdiction, and his attorney had not been permitted to examine the social investigation by the social worker [*Kent v. U.S.*, (1966). 383 U.S. 541, 18L. Ed. 527, 87 S.Ct. 1045].

In re Gault [(1967), 387 U.S. 1.], Justice Fortas concluded that juveniles had those fundamental rights which were incorporated in the due process clause of the Fourteenth Amendment of the United States Constitution. He also stated that a youth had the right to notice of the charges, right to counsel, right to confrontation and cross-examination, and privilege against self-incrimination. However, the court did not want to turn the informal juvenile hearing into an adversarial trial, contrary to the *parens patriae* philosophy.⁴⁴ Up to this time, there had been a move by the judiciary to recognize the rights of youth before the courts but implementation of due process protections had been slow.⁴⁵ Ironically, the Canadian reform movement was stimulated by these American decisions, while previous decisions in Canadian courts failed to invoke widespread procedural changes.

The decisions of Canadian courts⁴⁶ delineated the rights of juveniles only to a point. Though the need for the protection of procedural rights was acknowledged, the courts continued to recognize a youth's relative lack of maturity and

⁴⁴Bartollas and Miller, 1978.

⁴⁵ Platt, 1977. See also *In re Winship* [(1970), 397 U.S. 358.] in which the court decided that "due process required juvenile courts to adhere to the evidentiary requirement of proof beyond a reasonable doubt in deciding court cases" (Griffiths et.al., 1980:289).

⁴⁶For example, *R. v. Gerald X.* (1958), 25 W.W.R. 97.; *R. v. Tillitson*, (1947), 2 W.W.R. 232; 89 C.C.C. 389 (B.C.S.C.); *R. v. R.*, [1970]. 1 C.C.C. 283 (B.C.S.C., Rae J.). See Catton and Leon, (1977) for further details on Canadian legal precedent and legal representation in juvenile court.

accountability. Children remained bound by patriarchal beneficence, yet the system could not function to the maximum benefit of both due process and rehabilitative ideals. Not unlike its American counterpart, changes in the Canadian juvenile justice system lagged behind legal precedent because there was little agreement in regard to the appropriate measures and philosophy in the treatment of juveniles.⁴⁷

It was argued that the specification of charges and codification of the legal process would eliminate vagueness and encourage fair treatment of juveniles, as well as limit police and judicial discretion. However, because the nature of delinquency was still perceived as social, rather than criminal, the due process protections that were afforded adults under the Canadian Bill of Rights, were deemed inapplicable.⁴⁸

Towards a Justice Model

In the late 1960's, in both the United States and Canada, there was broad impetus for juvenile justice reform. Concern for reform of the Canadian *J.D.A.* was evident through the efforts of a committee formed by the Department of Justice in 1961. Its recommendations culminated in the presentation of Bill C-129 in 1970. However, little agreement was reached by competing interest groups and politicians about the needs of children and

⁴⁷Linney, 1984; Reid and Reitsma-Street, 1984; Havemann, 1986.

⁴⁸ [R. v. O. (197), 6 C.C.C. (2d) 385 (B.C.S.C.)]; [Can. v. Lavell (1973), 38 D.L.R. (3d) 481, 499 (S.C.C.) per Ritchie J.]; [Re *Juvenile Delinquents Act* (1975), 29 C.C. (2d) 439 (Ont. Prov. Ct.)].

youths.⁴⁹ No clear differentiation was made between delinquent, neglected, abused or exploited youth. In addition, no cohesive body of professional knowledge pointing to delinquency causation or efficient treatment methods, was recognized.⁵⁰ The resolution of differences remained distant due to the lack of agency co-ordination, political jurisdiction and differing philosophies.⁵¹ During the late 1960's and early 1970's, the juvenile court and political lobbies such as the Canadian Bar Association, the Canadian Mental Health Association, the Canadian Criminology and Corrections Association, and the Canadian Association of Chiefs of Police, sought to clarify the issue of rights, treatment, control and prevention of youthful criminality.

Philosophical Conflict and Proposed Legislation to Replace the Juvenile Delinquents Act

The ongoing debate between legal rights and treatment supporters was the key issue in the controversy generated by the proposed *Young Offenders Act* (Bill C-129, 1970). At this time, the rehabilitation philosophy continued to dominate within the proposed Act, despite vehement opposition by police, some correctional agencies and politicians, and persistent support for a justice model by legal activists. Legal rights proponents favoured the following premises: the need to punish only the

⁴⁹Griffiths et.al., 1980.

⁵⁰Olsen-Raymer, 1984; Chunn, 1987.

⁵¹Bittner, 1976; Wilson, 1982; Binder, 1984; Havemann, 1986.

guilty; that the punishment be equitable with the crime; the juvenile's right to be charged with a specific statutory offence as opposed to a status offence; and, the minimization of provincial inconsistencies.

Osborne (1979) submitted that the provinces expressed their opposition to the proposed *Y.O.A.* by objecting to the financial implications of the legislation. The basis for such opposition was that the structure of federal funding would not cover the expense of new programs such as diversion, given the extension of the age limit and the possibility of increased numbers of youths in the juvenile justice system. On the other hand, treatment perspective proponents supported the juvenile's right to intervention by various social agencies based on the needs of the youth. The Canadian Mental Health Association was opposed to the lack of philosophical priority, primarily, that the needs of youths were not viewed as being paramount.⁵² It is important to note that the Association did support due process in the legal determination of guilt. In order to appease competing ideological factions, for example, rehabilitation, children's rights, and crime control advocates,⁵³ extensive consultation with the provinces and territories was initiated by the federal government, which resulted in several rewritings of the proposed Act.

⁵²Cousineau and Veevers, 1972.

⁵³The Canadian Foundation for Children and the Law expressed the same concern about the Act's lack of priority in the principle section (In a report called *Justice for Children*, 1981, in Reid and Reitsma-Street, 1984).

Strong opposition to the *Y.O.A.* was expressed by the police:

It was felt that the proposals, especially those regarding raising the minimum age of criminal responsibility to 14, and those relating to the establishment of a formal screening procedure, did not represent an understanding of either the nature of juvenile crime or the traditional work of the police in screening or diverting young offenders away from the formal process.⁵⁴

Representative bodies of the police, specifically the Uniform Crime Reporting Committee and the Juvenile Delinquency Committee of the Canadian Association of Chiefs of Police, recognized the need to substantiate the police position on legislative reform. The Canadian Association of Chiefs of Police objected to others having the power to decree alternative measures:

Since it is the public police who have the primary responsibility for law enforcement and order maintenance in their respective jurisdictions, no decision-making power should be granted to other persons or agencies which would impede, frustrate, over-ride, or otherwise interfere with the autonomy and independence of law enforcement officers in relation to prosecution decisions.⁵⁵

The policing community felt that the new legislation would undermine their attempts at controlling delinquents - the same concern expressed by police in opposition to the *J.D.A.*

The police also lobbied for legislative changes that would increase the severity of punishment for dangerous and recidivist young offenders. The courts and probation officers were viewed

⁵⁴ Solicitor General of Canada, 1976:3.

⁵⁵ Standing Committee on Justice and Legal Affairs, Feb. 24, 1982. Vol. 64:8. Superintendent Ferne Alexander speaking for the Canadian Association of Chiefs of Police.

as being too lenient and in opposition to police practices.⁵⁶ In the brief submitted to the Justice and Legal Affairs Committee by the Canadian Association of Chiefs of Police, any proposal which was perceived as curbing the discretion and ability of police to investigate offenders in the future, was opposed. Interestingly, the Association did not oppose the reading of rights to juveniles, but there was concern that it would cause "unnecessary delays in court proceedings perhaps to the extent that the kids will have forgotten what they did before the case is disposed of...young person's should see justice done properly and expeditiously".⁵⁷ Cousineau and Veevers suggested that "as the nature of offences is made more and more explicit, the discretion of the police and courts is lessened" (1972:250). As with the creation of the *J.D.A.*, police opposition to the ideological shift in juvenile justice resulted from the belief that their traditional discretionary powers, used to handle young offenders, would be significantly reduced as a consequence of the legal constraints imposed by the Act.

The Enactment of the Young Offenders Act

Despite the need for revision of the *J.D.A.* and philosophical conflict reflected in the demands of various lobby groups, two key problems emerged through attempts to introduce

⁵⁶Binder, 1984.

⁵⁷Standing Committee on Justice and Legal Affairs Committee, Feb.24, 1982. Vol.64:11.

legislation. There was much debate over the choice of a maximum age limit and the division of provincial and federal financial responsibilities.⁵⁸ However, the philosophy of the proposed legislation was proclaimed as a move towards a justice model in juvenile justice:

The proposed legislation represents a shift in the basic philosophy from the *parens patriae*, social welfare and treatment-oriented approach to juvenile delinquency to a responsibility model whereby young persons will be held accountable for their behaviour.⁵⁹

New legislative proposals emphasized due process, the responsibility of youths, and the protection of society (*Young Persons in Conflict With the Law Act*, 1975). After lengthy consideration of the needs to be addressed in the new legislation, the *Y.O.A.* was enacted in 1982.

Implementation of the Act was delayed due to the conflict surrounding a number of philosophical issues: the best interests of the child (rehabilitation) versus the protection of society (crime control); punishment (crime control/justice) versus treatment (rehabilitation); and, flexible adjudication (rehabilitation) versus procedural rights (justice).⁶⁰ The *Y.O.A.* contains elements of each of these issues and the associated ideologies. Havemann (1986) claims that the rhetoric of due process rejected the *J.D.A.*'s rhetoric of child-saving

⁵⁸House of Commons Debates, 1979. Vol.2:26.

⁵⁹Solicitor General of Canada, White Paper, 1979, p.2. Also, see the comments of Judge Archambault. *Standing Committee on Justice and Legal Affairs*. 1979. Vol.13:29.

⁶⁰Reid and Reitsma-Street, 1984:2.

and returned it to the pre-1908 realm of child-blaming through, for example, an endorsement of individual responsibility and mitigated accountability.⁶¹

Section 3 of the *Y.O.A.* sets out the principles of the Act which support a justice model as the primary philosophical basis. For example, Section 3(1)(a) states that:

While young people should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions.

The major impetus for due process is reflected in Section 3(1)(e) where:

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

These rights and freedoms include a right to the least possible interference with freedom that is consistent with the protection of society and to be informed as to what those rights and freedoms are.⁶²

The prevalence of the justice model in the *Y.O.A.*, did not negate the inclusion of vestiges of the rehabilitation and crime

⁶¹See also Schneider and Schram, 1983.

⁶²Sections 3 (1)(f) and (g). See also Appendix II. For other rights which apply to juveniles, see *The Constitution Act* of 1982, which sets out specific legal rights under Part I - The Canadian Charter of Rights and Freedoms.

control models.⁶³ Elements of rehabilitative values are contained in Section 3(1) (a) and (c) where, because of their state of dependency and level of maturity, youths are also recognized as having special needs and require guidance and assistance. In addition, young persons may be removed from the home when parental supervision is inadequate. The needs of the young person must be taken into account should this be the case, and in any instance where interference with freedom is considered. In contrast, tenets of a crime control model are evident in the designation of youths as responsible for their criminal acts [Section 3(1)(a)]; young persons as requiring supervision, discipline and control [Section 3(1)(c)]; and, society being afforded the necessary protection from illegal behaviour [Sect.3(1)(b)]. In essence, the three models of rehabilitation, justice and crime control are present in the Y.O.A, with the primary emphasis being on due process - the latter being a tenet of a justice model/ideology.⁶⁴

Havemann (1986) argues that justice tenets such as the proportionality of sanctions (punishment), individual responsibility and the protection of society, could also be construed as supportive of a crime control ideology.⁶⁵ According to Havemann (1986), the justice model represents a compromise

⁶³Reid and Reitsma-Street, 1984; Havemann, 1986.

⁶⁴Justice and Legal Affairs Committee, 1979 and 1982; Reid and Reitsma-Street, 1984; Havemann, 1986.

⁶⁵See also Reid and Reitsma-Street, 1984, and Harlow, 1984.

between the competing tenets of rehabilitation, due process and crime control. The justice model is offered as a "new control model", appearing to guarantee the protection of society and emphasizing individual responsibility. Havemann advances the argument that the *Y.O.A.* is a compromise between the competing ideologies of rehabilitation, justice and crime control.⁶⁶

During the period of economic restraint between the late 1970's and the mid-1980's, a juvenile justice system based on a justice model was offered as an alternative to expensive rehabilitation-based programs and justified equitable, cheaper and ideally, more effective methods of control.⁶⁷ Disassociation with the "costly expansionism" of the treatment ideology resulted in a closer association with the crime control ideology within a justice framework. According to Havemann, the justice model is allied more closely to the crime control than rehabilitative perspective of juvenile justice. The narrower definition of youthful crime reduces police powers of discretion by limiting and specifying charges based on the Criminal Code of Canada. Yet, the Act's emphasis on individual responsibility justifies the need for society's protection from criminal acts and the deterrence of crime by young offenders, hence the emphasis on just deserts or punishment that is proportionate to the crime. Havemann's position is summed up, thus:

⁶⁶Havemann uses the term "lobby" to describe a group that espouses a particular ideology and is able to assert political pressure within that context (1986:228).

⁶⁷Havemann, 1986.

The justice model as a compromise between lobbies of the liberal Left (treatment and civil libertarian) and the Right (law and order) accomodates the rhetoric of rights while legitimating more coercive measure through its emphasis on individual accountability...In this way the justice model serves as a major ideological function...in reshaping the consensus to facilitate the transition from the welfare to the "exceptional state" (1986:231).⁶⁸

In support of Havemann's position, Reid and Reitsma-Street indicated that:

...the principles of the *Y.O.A.* call for a delicate balancing act, this "balance" is to be implemented in light of the resolution of virtually dichotomous issues: youth's accountability for their actions with society's responsibility for crime prevention; society's protection from crime with the least possible interference with an individual's freedom; and the needs and rights of youth being equally addressed (1984:10).

The justice model has functioned as an ideological "middle ground" in an attempt to maintain an appearance of fairness and equality with regards to the treatment and control of young offenders. Clear support for due process exists, yet this does not negate the nature of the conflict between the rehabilitative and crime control ideologies of probation officers and police as they struggle to maintain their respective positions of power within the eclectic philosophical domain of the *Y.O.A.* With the decreased emphasis on a rehabilitative model in Canadian juvenile justice, the role of probation, as originally conceived, has been affected most because the justice model necessarily moves towards a crime control ideology, favoured by police.

⁶⁸Havemann defines "exceptional state" as a "law and order" state or one based on a crime control ideology (1986:225).

The Ideological Shift in Probation

Prior and subsequent to the enactment of the *Y.O.A.*, and together with Canadian and American legal decisions protecting the rights of juveniles, lawyers became increasingly involved in the mediation of procedural and legal protections within the juvenile justice system.⁶⁹ Probation officers were no longer responsible for deciding whether or not a youth should be charged or go to court. Factual decisions based on legal definitions were made by the police and prosecutors.⁷⁰ With the change in the ideological basis of juvenile justice and "new" procedural guidelines, it is suggested that legal intervention now partially defines the "best interests of the child", as opposed to the original rehabilitative bias of probation.⁷¹ The rehabilitative function of probation has further been eroded by the lack of a definition of probation in the *Y.O.A.*, in terms of treatment.

⁶⁹Griffiths et.al., 1980.

⁷⁰Charging practices vary from province to province and also between cities. For example, in St. Albert and Edmonton, Alberta, and Prince Rupert, B.C. (centres with over 40,000 people), decisions to charge are usually a consultative process involving both the police and the Crown prosecutor. In smaller centres located on a court circuit route, e.g., Stettler, Milk River and Bashaw, Alberta, prosecutors may not be readily available for consultation and the decision to charge is then made by the police. (Information is gleaned from personal experience and informal interviews with police and court personnel in these areas).

⁷¹Catton and Leon, 1977.

Probation is explicitly referred to in two sections of the Act.⁷² Section 20(1)(j) states that the young person may be placed on probation...for a specified period not exceeding two years. In addition, Section 23(1) and (2) lists the conditions of a probation order; none of which make any reference to the provision of services or treatment. Although the federal government has included a treatment clause in Sections 20 and 22 of the *Y.O.A.*, appeasing supporters of the rehabilitation model (e.g., mental health agents, social and youth workers), probation appears to be relegated to a primarily administrative function.⁷³ The specification of probation officer is no longer included in the present *Y.O.A.* Section 37 outlines the duties of a "generic" youth worker, which includes the duties assigned to the former role of probation officer:

The duties and functions of a youth worker include
(a) where the young person is bound by a probation order that requires him to be under supervision, supervising the young person in complying with the conditions of the probation order or in carrying out any other disposition made together with it.
(d) preparing, a...pre-disposition report or a progress report.

No mention is made of rehabilitation or social services. In addition, the youth worker is under the aegis of the provincial director⁷⁴, not the youth court, as was the case under the

⁷²Section 14 refers to pre-disposition reports but makes no assertion as to who is to prepare them.

⁷³See Griffiths et.al., 1980; Harlow, 1984; Reid and Reitsma-Street, 1984; Thomson and McAnany, 1984; McWilliams, 1987.

⁷⁴Defined as a person, group or class of persons or a body appointed or designated by or pursuant to an Act of the legislature of a province or by the Lieutenant Governor in

J.D.A. In effect, the youth worker is mandated to carry out probation functions in an administrative capacity. The rehabilitative foundations of probation remain vestiges within the present justice framework of the *Y.O.A.*⁷⁵

Summary

The transition from a welfare/rehabilitative to a justice perspective in Canadian juvenile justice was examined in this chapter. This ideological shift culminated in the passage of the *Y.O.A.* in 1982, which emphasized due process, the responsibility of youths, and the protection of society in the adoption of a justice model. The rehabilitation philosophy was dissipated in favour of a more conservative model that espoused stricter control measures over the behaviour of youths.

Opposition to the Act was expressed by various groups which objected to specific measures. For example, the Canadian Association of Social Workers, The Canadian Mental Health Association and the Canadian Association of Criminology and Corrections, opposed the Act's apparent lack of philosophical priority, yet each group supported the due process perspective. The police, as represented by the Canadian Association of Chiefs

⁷⁴(cont'd) Council of a province or his delegate to perform in that province, either generally or in a specific case, any of the duties or functions of a provincial director (*Y.O.A.*, 1982).

⁷⁵For examples of provincial policy statements, see B.C. Corrections Branch, *Youth Justice Services in B.C.; Beliefs, Goals and Strategies*, Ministry of the Attorney General, B.C., 1986. pp. 1-3 and 3-6, respectively; *Young Offender Program*, Young Offender Branch, Correctional Services Division, Alberta Solicitor General, 1987.

of Police, the R.C.M.P., and various provincial associations, were opposed to: stricter controls on discretion; measures that restricted law enforcement efforts; intervention by other criminal justice agents into diversion and alternative measures decisions; and, extensive procedures aimed at protecting youths' rights, that would lead to unnecessary delays in processing a charge, conviction and punishment.⁷⁶ In contrast, the Canadian Bar Association supported the Act with a concern only as to the possibility of double jeopardy with regard to alternative measures of diversion.⁷⁷ Subsequently, tenets of crime control, rehabilitation and justice (due process) were included in the Act, which provides a broad and flexible basis for the control and prevention of youth crime.

Despite the inclusion of all three philosophical perspectives, the dominant model is one of justice.⁷⁸ Although the views of police have been clearly expressed with regard to the Act, little is known about the attitudes of probation officers, as distinct from the conglomerate of "corrections workers", towards the philosophies of juvenile justice and more explicitly, the *Y.O.A.* This study attempts to explore the issue of conflict between the attitudes of police and probation towards the philosophies of juvenile justice in relation to

⁷⁶*Standing Committee on Justice and Legal Affairs*. 1979-1983. Volumes 26-64.

⁷⁷*Ibid.*

⁷⁸*Standing Committee on Justice and Legal Affairs*, 1979, 1980-1983; Corrado, 1983; West, 1984; Havemann, 1986.

juvenile court goals and the philosophy of the *Y.O.A.* Most notably, the analysis will provide further information on the "ideological shift" in probation as described in the literature.⁷⁹ Included in the following chapters are the specific hypothesis for the study; methods used to analyse the data; the results and their implications.

⁷⁹Conrad, 1984; Thomson and McAnany, 1984; Hudson, 1987; McWilliams, 1987.

CHAPTER IV

RESEARCH OBJECTIVES AND METHODS

Introduction

The attitudes of police and probation officers will be analysed in relation to the philosophies underpinning the *Juvenile Delinquents Act* (J.D.A., 1908) and the *Young Offenders Act* (Y.O.A., 1982) with a view to depicting the ideological trend in juvenile justice. This chapter will include an analysis of two sections of a Canadian national survey (objectives of the juvenile court and philosophy of the Y.O.A.) to see if there are differences between the beliefs of police and probation officers. Prior to this analysis, a demographic description of the police and probation officer samples is provided. First, it is necessary to distinguish between the methods used in the national survey and those used in this study.

The 1981-82 Key Actors Survey: A National Study

The national study, funded by the Solicitor General of Canada, was undertaken by various university and private sector research teams (national study researchers), to study the operation of the Canadian juvenile justice system. Another aim of the study was to provide an empirical basis for evaluating the effect of the implementation of the Y.O.A.¹

¹Bala and Corrado, 1985.

In the summer of 1982, questionnaires were mailed to key actors (police, probation officers, judges, defence counsel and prosecutors) in both major cities (Vancouver, Edmonton, Winnipeg, Toronto, Montreal and Halifax) and smaller centres in six different provinces (Nova Scotia, Quebec, Ontario, Manitoba, Alberta and British Columbia). The larger cities were chosen by the national study researchers to maximize the largest number of accessible key actors. Over one fifth of all the juvenile charges in Canada were dealt with by the courts of the larger cities. The questionnaire was designed to extract specific views of the various key actors with regard to: (i) juvenile court objectives; (ii) philosophy of the Y.O.A.; (iii) police handling of young offenders; (iv) the juvenile court and the community; (v) judicial decision making; and, (vi) legal representation in court. The number of items in the questionnaire varied from 254 to 315.

A non-random sample was collected by the national study researchers (N=1,888). Attempts were made to gather samples from a majority of the provinces and cities which would reflect the broader national basis of Canadian society. A random sample of all the possible key actors would have been cumbersome and costly to undertake. Therefore, the researchers undertook to provide a provincially representative sample based on non-random selection. For the purposes of this study, only the responses of police and probation officers were used.

A total of 1,041 questionnaires were sent out to police and 710 to probation officers, in the six provinces. Five hundred ninety-six (596) probation officers and seven hundred sixty-one (761) police officers returned questionnaires with response rates of 84% and 73%, respectively. (These figures represent adequate response rates).² A brief description of the police and probation officer samples is provided to give the reader information on the generalizability of the results presented in chapter 7³:

Probation Officers:

In Nova Scotia and Ontario, the probation officers sampled were confined to Halifax-Dartmouth and Toronto, respectively. In the other four provinces, the samples were provincial. In metropolitan Toronto, all juvenile probation officers were sent a questionnaire. Probation officers in Manitoba often supervise adults as well as juveniles; some sampled there may have only limited contact with juvenile probationers. The Quebec "probation officer" sample was actually a sample of more multi-purpose "youth workers" in that province.

Police:

Police surveyed were drawn from urban areas: Vancouver, Kelowna, Edmonton, Winnipeg, Toronto, Montreal, Halifax and Dartmouth. The police are not provincial, but city-based samples. Everywhere but in the two British Columbia sites, where no juvenile divisions exist, youth squad police were either sampled (as in Montreal) or a full census was attempted (e.g., Winnipeg and Toronto). Presumably as a result of differing procedures for

²Moyer and Carrington, 1983.

³For further information on methodological details of this study, see Moyer and Carrington, 1983 and Bala and Corrado, 1985.

survey administration, as well as different sizes of youth squads, the proportion of youth squad respondents varies tremendously.⁴

Objectives of This Study

The literature suggests that a traditional ideological distinction exists between probation officers and police: probation officers espouse a rehabilitative or social welfare ideology while police officers have a crime control perspective. Hence, the due process focus of the Y.O.A.⁵ is not expected to be supported whole-heartedly by either group, but probation officers will likely favour the inclusion of due process tenets in the Y.O.A., moreso than police.⁶

In order to explore the issues of ideological differences between police and probation officers, two of the six sections (#1 and #2) of the questionnaire were selected for analysis. Section one, "juvenile court objectives", was intended to solicit police and probation officers' opinions as to "what the court goal is now" and "what it should be". These items reflected issues such as rehabilitation, respect for the law, processing cases, punishment, deterrence, protection of society and community morals. The following hypotheses are outlined with

⁴Moyer and Carrington, 1983:5-6.

⁵Judge Archambault, *Standing Committee on Justice and Legal Affairs*, 1981; Corrado, 1983; Havemann, 1986.

⁶See Harris, 1984; Thomson and McAnany, 1984; Hudson, 1987, and McWilliams, 1987.

respect to police and probation views as to present and future court goals: (i) It was expected that the police would feel that the juvenile court at present (1982), was too lenient, and probation officers would feel that it was too punitive; (ii) It was expected that police, moreso than probation officers, would feel that the juvenile court should be more punitively oriented. Specific variables in section one included the following:

Objectives of the Juvenile Court

- Var.4 The court's goal is now to rehabilitate young offenders.
- Var.5 The court's goal should be to rehabilitate young offenders.
- Var.6 The court's goal is now to develop in young people a respect for the law.
- Var.7 The court's goal should be to develop in young people a respect for the law.
- Var.8 The court's goal is now to process cases as quickly as possible.
- Var.9 The court's goal should be to process cases as quickly as possible.
- Var.10 The court's goal is now to see that juvenile offenders are appropriately punished.
- Var.11 The court's goal should be to see that juvenile offenders are appropriately punished.
- Var.12 The court's goal is now to deter the juvenile

offender from committing future offences.

Var.13 The court's goal should be to defer the juvenile from committing future offences.

Var.14 The court's goal is now to protect the community from dangerous youth.

Var.15 The court's goal should be to protect the community from dangerous youth.

Var.16 The court's goal is now to uphold the general moral standards of the community.

Var.17 The court's goal should be to uphold the general moral standards of the community.

These variables were measured on a five-point Likert scale devised by the national study researchers: (1) of no importance, (2) of little importance, (3) of moderate importance, (4) of considerable importance, (5) of very great importance.

Section two, "philosophy of the *Young Offenders Act*", included some of the principles of the Act. These principles represent tenets associated with the rehabilitation, justice and crime control ideologies inherent in Canadian juvenile justice. The following hypotheses are outlined with respect to the views of police and probation officers on the philosophy of the Y.O.A.: (i) It was expected that the police would be more supportive of crime control tenets than probation officers; (ii)

Probation officers were more likely than the police to be supportive of rehabilitative tenets; (iii) It was expected that probation officers would be more supportive of justice tenets than police. Police and probation officers were asked to indicate the extent to which they agreed or disagreed with nine statements on the following six-point Likert scale: (1) strongly agree (2) agree (3) mildly agree (4) mildly disagree (5) disagree and (6) strongly disagree. The nine statements (Variables 18-26) are as follows:

Philosophy of the Young Offenders Act

Var.18 Young persons should not in all circumstances be held accountable for their illegal behaviour in the same manner as adults.

Var.19 Young persons should not in all circumstances suffer the same consequences for their illegal behaviour as adults.

Var.20 Young persons who commit offences should be held responsible for their illegal behaviour.

Var.21 Where the needs of the young person and the protection of society cannot be reconciled, the protection of society must take priority.

Var.22 Young persons who commit offences have special needs because of their state of dependency.

Var.23 Young persons alleged to have committed an offence should have the right to participate

in the processes that lead to decisions that affect them.

Var.24 Young persons should have special guarantees of their rights and freedoms.

Var.25 In their dealings with the juvenile justice system, young persons should have the right to the least possible interference with their freedom.

Var.26 Young persons should be removed from parental supervision only when all measures that would provide for continuing parental supervision are inappropriate.

Analytical Techniques

First, statistics were used to profile police and probation officers. A demographic overview of age, gender, experience, marital status, location and education, was undertaken to determine if there were any differences between the two groups selected for this study. Chi-square was used to test for significant relationships between group membership and nominal/ordinal level, independent variables, while t-tests were used to determine if there were significant mean differences between police and probation officers on interval level, independent variables. These analyses will enable an empirical evaluation of possible contributing factors as to the differences between police and probation officers.

Prior to generating frequencies, a recoding of missing values was done for variables that were not recorded on individual cases.⁷ In addition, the variables "year of birth" and "years of experience" were recoded and collapsed to allow for easier interpretation of the distribution.

Next, six variables were chosen from section one (Vars. 4, 5, 10, 11, 14 and 15) and three from section two (Vars. 21, 22 and 24) in order to provide an ideological profile of police and probation officers.⁸ Variables from section one were collapsed from the original five level scale, into three levels which were called (1) little or no importance, (2) moderate importance, and (3) considerable importance. Recoding variables eliminated the number of cells with expected frequencies less than five. In this light, some information is lost by collapsing cells, but the general nature of the variables remains.

In providing an ideological profile, cross-tabulations were generated which presented a general view of the frequency distributions for police and probation officers across variables 4, 5, 10, 11, 14, 15, 21, 22 and 24. T-tests were used to test for

⁷Incomplete information on questionnaires may be due to refusal to respond or incorrect coding (Selltiz, Wrightsman and Cook, 1976). For the purposes of this study, both types of missing values were recoded as the median.

⁸In essence, only three variables were selected to represent specific tenets of rehabilitation, justice and crime control, from each of the two sections of the questionnaire. Since section one dealt with two points of view - the present and the future - both were included in the analysis. Hence, six variables were used which represented present and future beliefs about the philosophies of juvenile justice.

significant mean differences between police and probation officers on each variable. The criteria for significance was chosen as $p=.01$. For the final part of the analysis, factor analysis was used to identify the factors underlying the ideologies of juvenile justice inherent in the survey variables. Analysis of variance was then used to test for significant differences between police and probation officers on the factor scores resulting from the factor analysis.

Summary

A total of 1,357 cases (596 probation officers and 761 police officers) selected from the 1982-82 Key Actors Survey, were examined. In an attempt to explore the ideological differences between police and probation officers in relation to the philosophies of juvenile justice, two sections from the survey, "objectives of the juvenile court" and "philosophy of the Young Offenders Act" were selected for the data analysis. Descriptive statistics were used to analyse the data in order to provide a demographic and ideological profile of both groups. These statistics included frequencies, cross-tabulation, chi-square, t-test, factor analysis and analysis of variance.

CHAPTER V
FINDINGS AND DISCUSSION

Introduction

In this chapter, the findings (data analysis) and their interpretation are presented apart from the discussion in order to maintain clarity between the facts represented through the figures, and the speculation of the writer. The data analysis is contained in two parts: (i) juvenile court goals, and (ii) philosophy of the *Young Offenders Act*. Each section includes a demographic description of the police and probation samples. Frequencies are presented which focus on the "ideological profile" of the two groups. This latter description is intended to support the broad ideological distinctions of the factor analyses in relation to specific tenets of each model. Variables were selected which represent specific tenets of the crime control, rehabilitative and justice ideologies, and their analysis clarifies the ideological concepts. Chi-square was used to test for significant relationships between group membership and individual variables, and t-tests were used to test for significant mean differences between police and probation officers on selected variables.

Factor analysis was used to reduce the larger set of variables to smaller sets of factors and to determine if there were any underlying relationships between variables, denoting philosophies of juvenile justice: rehabilitation, justice, and

crime control. Principal components analysis was performed on three sets of variables from the two sections of the questionnaire used for this study (Objectives of the juvenile court, and philosophy of the Y.O.A). A varimax rotation was specified for each factor analysis and factors were selected based on an Eigenvalue greater than 1.0.¹ Finally, an analysis of variance (anova) was used to determine if significant differences between police and probation officers existed on the factor scores. Although an interpretation of the statistical results is offered, a detailed discussion will follow the report of the findings.

Description of the Sample

Demographics

Of the total sample population, 596 were probation officers and 761 were police (See Table I). Table I provides a summary of the provincial distributions of both police and probation officers. Frequency distributions in Table I show that the largest samples of police and probation officers were from Quebec and British Columbia. The Quebec samples were 35% and 26%, respectively while British Columbia had 31% of the total probation officer sample and 28% of the total police sample. It should be noted that only in Manitoba was the sample of probation officers (54%) larger than the sample of police (46%). The smallest of each group was from Nova Scotia (probation

¹Child, 1970.

Table I: Provincial Distribution of Police and Probation Officers

Provinces

Key Actors

	Probation	Police	
Nova Scotia	N = 7* 11% 1%	59 89% 8%	66 5%
Quebec	210 52% 35%	195 48% 26%	405 30%
Ontario	42 32% 7%	88 68% 12%	130 10%
Manitoba	106 54% 18%	90 46% 12%	196 14%
Alberta	45 27% 8%	119 73% 16%	164 12%
British Columbia	186 47% 31%	210 53% 28%	396 29%
	596 44%	761 56%	1357 100%

*Note: Each table will give the frequency number first, followed by the row and column percentages. Total column frequencies and percentages are also included at the bottom of each table while total row frequencies and percentages are included at the end of each row.

officers - 1%, and police - 8%).

A significant relationship was found between group membership and gender (chi-square=239.89, df=1, p<0.0). Ninety-seven percent of the police sample was males as compared to sixty-five percent of probation officers (See Table II). The complementary percentages for these groups reveals that a larger percentage of probation officers are female (35%) as compared to only 3% of police. The majority of the total population was male (83%).

A significant relationship was also found between groups membership and marital status (chi-square=54.11, df=2, p<0.0) [See Table III]. Breakdowns showed that a majority of both police (82%) and probation officers (65%), were married. Overall, 75% of the total sample were married.

In this study, the age factor was determined from a variable which requested the respondents' year of birth. Categories were recoded into ten year spans to enable easier analysis of the breakdown (See Table IV). The total age range was 20-63 years, inclusive. The largest percentage of police officers (51%) was between the ages of 30-39 years as was the largest percentage of probation officers (50%). Results of a t-test showed that there was no significant difference between police and probation officers on the age factor.

Results of the analysis of education revealed that there was a significant mean difference between police and probation

Table II: Gender Distribution of Police and Probation Officers

Gender	Key Actors		
	Probation	Police	
Male	387 62% 65%	738 38% 97%	1125 83%
Female	209 90% 35%	23 10% 3%	232 17%
	596 44%	761 56%	1357 100%

chi-square=239.89 df=1 p<0.0

officers ($t=23.0$, $df=1355$, $p<0.0$) [See Table .V]. Probation officers (Mean=6.84) had a higher average level of education than police (Mean=4.09). The largest percentage of probation officers had completed university (53%) and some university post-graduate education (13%). In comparison, only 5% of police had completed university. The largest number of police had completed high school (32%) as compared to 1% of probation officers. The second largest number of probation officers had done some or completed graduate studies in university (13.0% and 13.0%, respectively). In contrast, only 1% and .5% of police had done some or completed graduate studies in university, respectively.

Table III: Distribution of Police and Probation Marital Status

Marital Status	Key Actor		
	Probation	Police	
Single	148 62% 25%	92 38% 12%	240 18%
Married	387 38% 65%	627 61% 82%	1014 75%
Other	61 59% 10%	42 41% 6%	103 8%
	596 44%	761 56%	1357 100%

chi-square=54.11 df=2 p<0.0

Looking at the number of years respondents had worked with youths in either social services or juvenile justice, the largest group of both police (43%) and probation officers (41%) had spent between 6-10 years in that area (See Table VI). No significant mean difference between police and probation officers was found using a t-test. A higher percentage of police (31%) as compared to probation officers (28%), had between 0-5 years of experience in their respective fields. Overall, only a small percentage had worked with youths more than 21 years: police - 3%, probation officers - 5%. Of the total sample

Table IV: Age Distribution of Police and Probation Officers

Age in Years	Key Actor		
	Probation	Police	
20 - 29	145 44% 24%	192 56% 25%	337 25%
30 - 39	300 44% 50%	386 56% 51%	686 51%
40 - 49	114 43% 19%	149 57% 20%	263 19%
50 - 63	37 52% 7%	34 48% 4%	71 5%
	596 44%	761 56%	1357 100%

(N=1357), the largest number had worked in their respective fields between 6-10 years.

Summary of Demographic Analysis

The above analyses provided an overview of some basic characteristics of police and probation officers. Significant relationships were found on groups membership with gender and marital status while significant mean differences were found between police and probation officers on education. More

Table V: Distribution of Educational Level for Police and Probation Officers

Level of Education	Key Actors		(Total N) (Row %)
	Probation	Police	
Some High School Attained	52	45	(97)
	54%	46%	(7%)
Completed High School	6	241	(247)
	2%	98%	(18%)
	1%	32%	
High School Equivalency	0	37	(37)
	0%	100%	(3%)
	0%	5%	
Some Community or Technical College	6	135	(141)
	4%	96%	(10%)
	1%	18%	
Completed Community or Technical College	11	76	(87)
	13%	87%	(6%)
	2%	10%	
Some University	27	143	(170)
	16%	84%	(13%)
	5%	19%	
Completed University	314	41	(355)
	88%	17%	(26%)
	53%	5%	
Some University Post- Graduate Study	76	10	(86)
	88%	12%	(6%)
	13%	1%	
Completed University Post-Graduate Study	76	4	(80)
	95%	5%	(6%)
	13%	.5%	
Other*	28	29	(7)
	49%	51%	(4%)
	5%	4%	
	(596)	(761)	(1357)
	(44%)	(56%)	(100%)

t=23.0 df=1355 p<0.0

*Note: This category is undefined in the coding manual for the National Survey and could not be ascertained by the writer.

Table VI: Experience Working With Youths

Years of Experience	Key Actors		
	Probation	Police	
0 - 5	166 41% 28%	237 59% 31%	403 30%
6 - 10	244 43% 41%	326 57% 43%	570 42%
11 - 20	158 48% 26%	172 52% 23%	330 24%
21 - 50	28 52% 5%	26 48% 3%	54 4%
	596 44%	761 56%	1357 100%

probation officers than police were female; fewer probation officers than police were married; and most importantly, probation officers had higher levels of education more often than police. This latter factor may be the most relevant in

accounting for the difference between groups. In fact, it may be suggested that there may be little variation that could not be explained solely in terms of educational differences. And again, it should be noted that the police sample does not include a proportional number of R.C.M.P.² whose educational standards were subject to great change in the early 1980's.³ Though the educational standards for acceptance into the R.C.M.P. were raised in 1982, this has limited bearing on the present study and may be of substantial interest in further study of police views.

Analysis of Court Goals

Included in the following analysis are variables which represent specific tenets of the rehabilitative (4,5), justice (10,11), and crime control (14,15) ideologies.⁴ Cross-tabulations were used to analyse frequency distributions with t-tests being used to determine if there was a significant difference between police and probation officers on each selected variable. Variables 4,5,10,11,14 and 15, were prefaced with the phrase "the court goal", and the list is as follows:

Var. 4 ...is now to rehabilitate juvenile offenders.

²Moyer and Carrington, 1983.

³R.C.M.P., *Administrative Policy*, 1982.

⁴See Skolnick, 1966; Packer, 1968; Griffiths et.al., 1980; Ericson, 1982; Harlow, 1984, and Reid and Reitsma-Street, 1984, for respective specific tenets of each ideology.

Var. 5 ...should be to rehabilitate juvenile offenders.

Var.10 ...is now to see that juveniles are appropriately punished.

Var.11 ...should be to see that juveniles are appropriately punished.

Var.14 ...is now to protect the community from dangerous youths.

Var.15 ...should be to protect the community from dangerous youths.

A description of the frequencies for police and probation officers is discussed in relation to the ideological differences between these two groups. In addition, a t-test was used to determine if there was a significant mean difference between police and probation officers on each variable selected for this analysis.

Ideological Description of and Distinction Between Police and Probation Officers

This section includes an "ideological" description of police and probation officers on the six variables noted above. In tables VII and VIII, police and probation views on the court goal of rehabilitation are summarized. A t-test indicated that there was a significant mean difference between police and probation officers on their belief in the importance of rehabilitation as a court goal at the time of the study (1981-1982) [t=4.96, df=1355, p<0.0]! Probation officers

(Mean=3.42), more so than police (Mean=3.16), felt that the court goal of rehabilitation was of more importance (See Table VII). Forty-five percent of probation officers and 34% of police felt that the rehabilitative goal of the court was of considerable importance. In addition, 12% of probation officers and 27% of police felt that this goal was of little or no importance to the court at the time of the study.

In Table VIII, 87% of probation officers and 92% of police felt that rehabilitation should be a court goal of considerable importance (See Table VIII). A t-test revealed that there was a significant mean difference between police and probation officers on their belief as to the importance of rehabilitation as a court goal ($t=-4.15$, $df=1355$, $p<0.0$). Contrary to what the literature portrays, police (Mean=4.49), more so than probation officers (Mean=4.28), felt that rehabilitation should be an important goal of the juvenile court. This result supported the contention that both groups desired the same goal for young offenders.⁵ However, the traditional distinction between police and probation officers has centred on the methods used to achieve "rehabilitative" goals.⁶ Most closely associated with the police crime control ideology is the notion that offenders should be appropriately punished for their criminal behaviour.

The justice and crime control tenet of punishment was examined with respect to police and probation officers' views as

⁵Catton and Leon, 1977; Hudson, 1987.

⁶Skolnick, 1966; Packer, 1968; Corrado, 1983; Fielding, 1984.

Table VII: Probation and Police Views as to the Importance of the Present Court Goal of Rehabilitation

Level of Importance	Key Actors		
	Probation	Police	
Little, no importance	73	204	277
	26%	74%	20%
	12%	27%	
Moderate importance	257	297	554
	46%	54%	41%
	43%	39%	
Considerable Importance	266	260	526
	51%	49%	39%
	45%	34%	
	596	761	1357
	44%	54%	100%

t=4.96 df=1355 p<0.0

to what the court goal was at the time of the National Study, and what it should be. It was found that there was a significant mean difference between police and probation officers on the level of importance of the court's goal of punishment (t=15.99, df=1355, p<0.0) [See Table IX]. More probation officers (Mean=3.00) than police (Mean=2.22) felt that punishment was of more importance to the courts at the time of the study. While 68% of police felt this goal of little or no importance, only 8% felt that it was of considerable importance. In contrast, 26% of

Table VIII: Probation and Police Views as to the Importance of the Future Court Goal of Rehabilitation

Level of Importance	Key Actor		
	Probation	Police	
Little, no importance	15 65% 3%	8 35% 1%	23 2%
Moderate importance	63 53% 11%	55 47% 7%	118 9%
Considerable Importance	518 43% 87%	698 57% 92%	1216 89%
	596 44%	761 56%	1357 100%

$t = -4.15$ $df = 1355$ $p < 0.0$

probation officers felt that punishment was of little or no importance while 25% felt that it was of considerable importance.

The views of police and probation officers on punishment as a future court goal are summarized in Table X. It was found that there was a significant mean difference between police and probation views as to the importance of punishment as a future court goal ($t = -14.84$, $df = 1355$, $p < 0.0$). More police (Mean=4.22) than probation officers (Mean=3.48) felt that the court goal of

Table IX: Probation and Police Views as to the Importance of the Present Court Goal of Punishment

Level of Importance	Key Actor		
	Probation	Police	
Little, no importance	153 23% 26%	516 77% 68%	669 49%
Moderate importance	292 61% 49%	187 39% 25%	479 35%
Considerable Importance	151 72% 25%	58 28% 8%	209 15%
	596 44%	761 56%	1357 100%

t=15.99 df=1355 p<0.0

punishment should be of more importance. Only 2% of the police sampled, as compared to 16% of probation officers, felt that punishment should be of little or no importance as a court goal. Fifty-one percent of probation officers and eighty-four percent of police felt that punishment should be of considerable importance.

Table XI provides a summary of the police and probation views as to the importance of the court's goal of protection of

Table X: Probation and Police Views as to the Importance of the Future Court Goal of Punishment

Level of Importance	Key Actor		
	Probation	Police	
Little, no importance	98 85% 16%	17 15% 2%	115 8%
Moderate importance	194 65% 33%	102 35% 13%	296 22%
Considerable Importance	304 32% 51%	642 68% 84%	946 70%
	596 44%	761 56%	1357 100%

$t = -14.84$ $df = 1355$ $p < 0.0$

society. Results of a t-test indicated that there was a significant mean difference between police and probation officers on their views as to the importance of the protection of society as a court goal ($t = 18.58$, $df = 1355$, $p < 0.0$) [See Table XI]. Probation officers (Mean=3.45), more so than police (Mean=2.46), felt that this goal was of more importance to the court at the time of the study. Sixteen percent of probation officers and fifty-four percent of police felt that this goal was of little or no importance. In addition, Table XI shows that

Table XI: Probation and Police Views as to the Importance of the Present Court Goal of Protection of Society

Level of Importance	Key Actor		
	Probation	Police	
Little, no importance	94 19% 16%	409 81% 54%	503 37%
Moderate importance	211 45% 35%	259 55% 34%	470 35%
Considerable Importance	291 76% 49%	93 24% 12%	384 28%
	596 44%	761 56%	1357 100%

t=18.58 df=1355 p<0.0

probation officers (49%), more so than police (12%) felt that the court goal of the protection of society from dangerous youths, was of considerable importance. It appears that considerably more police (54%) than probation officers (16%) felt that the court was not operating in order to protect society.

In conjunction with the above, a majority of both probation officers (87%) and police (95%) reported that the court goal of protection of society, should be of considerable importance (See

Table XII). A t-test indicated that there was a significant mean difference between police and probation officers on their beliefs as to the importance of protection of society as a future court goal ($t=-10.13$, $df=1355$, $p<0.0$). More police (Mean=4.67) than probation officers (Mean=4.30) felt that the protection of society should be an important goal of the juvenile court. Only a minority of probation officers (2%) and police (1%) felt that the goal of protection of society should be of little or no importance.

In sum, it appeared that a majority of both police and probation officers supported tenets of all three models of juvenile justice (although only 51% of probation officers felt that punishment should be a considerably important goal of the juvenile court) yet they felt that the court, at the time of the study, was not operating in accordance with any of the three goals analysed. It also appeared that both groups believed there was a discrepancy about the court goals at the time of the study, and its perceived goals. This issue will be discussed in more detail in the final chapter.

The largest percentages of probation officers supported the rehabilitative (87%) and protection of society (87%) tenets as being of considerable importance as future court goals (See Tables VIII and XII). In contrast, although a majority of police (92%) viewed rehabilitation as a court goal that should be of considerable importance (See Table VIII), the majority also favoured punishment as a future court goal of considerable

Table XII: Probation and Police Views as to the Importance of the Future Court Goal of Protection of Society

Level of Importance	Key Actor		
	Probation	Police	
Little, no importance	10 53% 2%	9 48% 1%	19 1%
Moderate importance	65 76% 11%	20 24% 3%	85 6%
Considerable Importance	521 42% 87%	732 58% 96%	1253 92%
	596 44%	761 56%	1357 100%

$t = -10.13$ $df = 1355$ $p < 0.0$

importance (84%) (See Table X). For police, most support was shown for the protection of society as being a considerably important future court goal (96%) (See Table XII).

Overwhelming support from police and probation officers existed for both rehabilitation and protection of society as future court goals. Hence, it may be argued that police may not view tenets of rehabilitation in the same way as probation officers because support for rehabilitation is contrary to the traditional ideological attributes of police. In view of the

substantial support for punishment as a goal of the juvenile court, it is suggested that punishment is seen by police as a means to achieving rehabilitation.

A final analysis was done on juvenile court goals in order to determine if there were significant differences between police and probation views of the ideologies of juvenile justice as represented by factors extracted from a factor analysis of the variables in section one. The same analytical process was followed for the study of present and future court goals. Each section will be analysed separately. A description of the overall sequence of analysis is followed by results from each section. Further discussion of the previous findings will be undertaken in conjunction with the following analyses.

Factor Analysis and Analysis of Variance of Present (1981-1982) Court Goals

Seven variables (4,6,8,10,12,14,16) from section one (objectives of the juvenile court), representing the ideological tenets of justice, crime control, and rehabilitation, were used in the first factor analysis. Respondents were asked to rate the importance of each variable in relation to present court goals. Principal components analysis extracted one factor (Eigenvalue = 3.494) called "justice/crime control"; based on the selection of Eigenvalues greater than 1.0. (See Table XIII).

Table XIII: Factor Analysis of Present Court Goals

	Mean	Std Dev*
	-----	-----
Var.4	3.27	.99
Var.6	2.84	1.04
Var.8	2.77	1.01
Var.10	2.57	.97
Var.12	2.82	1.09
Var.14	2.90	1.09
Var.16	2.67	.98

Factor Matrix

		Justice, Due Process
Var.4	Rehabilitation	.53
Var.6	Respect for law	.79
Var.8	Process cases quickly	.42
Var.10	Punishment	.78
Var.12	Deterrence	.82
Var.14	Protection of community	.80
Var.16	Uphold community morals	.71

Eigenvalue = 3.49

Percentage of Variance Accounted for = 49.9%

*Standard Deviation

Note: Means, standard deviations and factor scores have been rounded off to the nearest one-hundredth.

This factor was labelled as such due to primary loadings on deterrence (.82), protection of the community (.80), respect for the law (.79) and punishment (.78). Each of these variables

represents specific tenets of justice and crime control.

The extraction of one factor may have been due to inadequate distinctions between the perceptions of police and probation officers on the philosophical tenets.⁷ In essence, these variables may not have been measuring the same thing for both groups, thus confounding internal validity (Selltiz, Wrightsman and Cook, 1976). Another reason for the lack of distinction between the variables could have been a general method effect. This results when environmental or personal factors influence the responses on the questionnaire.

Overall, the justice factor accounted for 49.9% of the total variance. An anova proved that there was a statistically significant difference between the police and probation views on factor scores from this component [$F(1,1355)=331.28, p<0.0$]. From this analysis, it can be suggested that probation officers (Mean=.51), more so than police (Mean=-.39), felt that the courts had been operating in accordance with a justice ideology.

Factor Analysis and Analysis of Variance of Future Court Goals

For this analysis, the remaining seven variables (5,7,9,11,13,15,17) from section one were used. Respondents were asked to rate these variables on how important they thought these goals should be to the juvenile court. Principal

⁷See Sosin (1976) and Reid and Reitsma-Street (1984) for the results of their respective studies which also resulted in "over-lapping" perceptions of some tenets of the various models of juvenile justice.

components analysis extracted one factor (Eigenvalue = 3.15) based on the criteria of selection of Eigenvalues greater than 1.0. This factor was also labelled "justice/crime control" because the primary determinents were deterrence (.78), respect for the law (.75), and protection of the community (.73). These variables reflected tenets of justice and crime control (See Table XIV). The justice/crime control factor accounted for 45.0% of the total variance.

Anova proved that there was a statistically significant difference between police and probation officers on the justice/crime control factor [$F(1,1355)=192.18, p<0.0$]. This result can be interpreted that police (Mean=3.12), moreso than probation officers (Mean=-.40), felt that court goals should be more justice/crime control oriented.

Analysis of Philosophy of the Y.O.A

In this final analysis, the ideological differences between police and probation officers in relation to the philosophies inherent in the Y.O.A, were examined. As stated previously, included in the Y.O.A are tenets of the three ideologies of rehabilitation, justice and crime control.⁸ The analysis of police and probation views of the philosophies included in the Act, will offer important clues as to the future trend in juvenile justice. In undertaking this analysis, the same process

⁸See Appendix II.

Table XIV: Factor Analysis of Future Court Goals

	Mean	Std Dev*
	-----	-----
Var.5	4.31	.76
Var.7	4.42	.70
Var.9	3.90	.97
Var.11	3.89	.98
Var.13	4.52	.70
Var.15	4.51	.70
Var.17	3.80	.95

Factor Matrix

Justice, Crime Control

Var.5	Rehabilitation	.53
Var.7	Respect for law	.75
Var.9	Process cases quickly	.51
Var.11	Punishment	.68
Var.13	Deterrence	.78
Var.15	Protection of community	.73
Var.17	Uphold community morals	.68

Eigenvalue = 3.15

Percentage of Variance Account for: 45.0%

*Standard Deviation

Note: Means and standard deviations have been rounded off to the nearest one-hundredth.

was followed as for the previous analysis of court goals.

Ideological Description and Distinction Between Probation Officers and Police on the Philosophy of the Young Offenders Act

Included in this section is an ideological profile of probation officers and police based on the selection of three variables from section two (philosophy of the Y.O.A) of the questionnaire. Variables 21,22 and 24 represent specific tenets of rehabilitation, justice and crime control. As with the previous analysis, cross-tabulations were used to analyse frequency distributions with chi-square being used to determine if there was a significant relationship between group membership and each selected variable. Variables 21,22 and 24 are as follows:

- Var.21 Where the needs of the young person and the protection of society cannot be reconciled, the protection of society must take priority.
- Var.22 Young persons who commit offences have special needs because of their state of dependency and level of maturity.
- Var.24 Young persons should have special guarantees of their rights and freedoms.

Analysis of variable 21 (crime control) revealed that there was a significant relationship between groups membership and

belief as to the protection of society being a priority over the needs of the young person (chi-square=51.24, df=1, p<0.0) [See Table XV]. In effect, 77% of probation officers, as compared to 91% of police agreed that the protection of society should take priority where the needs of the young person and society could not be reconciled. Overall, 85% of the total sample (1357) agreed that the protection of society should be a priority over the needs of the young person.

The results of the analysis of Var.22 showed that there was a significant relationship between group membership and the belief that young offenders have special needs because of dependency (chi-square=57.71, df=1, p<0.0) [See Table XVI]. In Table XVI, it can be seen that 87% of probation officers as compared to 70% of police agreed that young offenders have special needs because of dependency. Almost one third of the police sampled disagreed with this belief. Overall, 78% of the total sample agreed that young offenders have special needs because of dependency.

In the analysis of var.24, chi-square, determined a significant relationship between group membership and the belief that young offenders have should have special guarantees of their rights and freedoms (chi-square=173.66, df=1, p<0.0) [See Table XVII]. Table XVII shows that 66% of probation officers as opposed to 30% of police, agreed that young offenders should have special guarantees. Fifty-five percent of the total sample population disagreed that young offenders should have these

Table XV: Probation and Police View of Protection of Society as Paramount Over the Needs of Youth

Protection of

Key Actor

Society Paramount

	Probation	Police	
Agree	457 40% 77%	692 60% 91%	1149 85%
Disagree	139 67% 23%	69 33% 9%	208 15%
	596 44%	761 56%	1357 100%

chi-square=51.24 df=1 p<0.0

Table XVI: Probation and Police View of Young Offenders Having Special Needs Because of Dependency

Young Offenders	Key Actor		
Have Special	Probation	Police	
Needs			
Agree	522 49% 88%	534 51% 70%	1056 78%
Disagree	74 25% 12%	227 75% 30%	301 22%
	596 44%	761 56%	1357 100%

chi-square=57.71 df=1 p<0.0

safeguards. Of this total, 70% were police.

In the second part of the analysis, a principal components analysis of all the variables in section two, was rotated to a Varimax solution (See Table XVIII). Three factors were extracted based on the selection of Eigenvalues greater than 1.0.

Factor one (Eigenvalue=2.87) was labelled "justice", and accounted for the largest percentage of the total variance (28.4%). Variables 23-26 had the highest loadings on factor one

and therefore, were the primary determinants for the classification of this factor. The negative loading of Var.21 was interpreted as being that the needs of children were paramount over the protection of society - a belief congruent with both rehabilitative and justice ideologies. An anova showed a significant mean difference between police and probation officers [$F(1,1355)=493.78, p<0.0$]. This result can be interpreted as probation officers (Mean=-.58) being more supportive of the justice ideology in the *Y.O.A*, than police (Mean=.46).

Factor two (Eigenvalue=1.27) was labelled "rehabilitation". Variables with the highest loading on factor two were related to the distinction of youths from adults, which characterized them as less accountable for their behaviour and not subject to the same consequences as adults. Factor two accounted for 26.0% of the total variance. As was expected, an anova showed a significant difference between police and probation officers on factor two [$F(1,1355)=58.452, p<0.0$]. It can be implied from this result that probation officers (Mean=-.23) were more supportive of the rehabilitative tenets in the *Y.O.A*, than police (Mean=.18).

The third factor (Eigenvalue=1.11) was labelled "crime control". Two variables loaded on factor three - both crime control tenets. Var.20 (youth should be held responsible for illegal behaviour) had a loading of .83 while var.21 (protection of society is a priority over the needs of the young person),

Table XVII: Probation and Police Views that Young Offenders Should have Special Guarantees of Their Rights and Freedoms

Special Guarantees

Key Actor

of Rights and

Freedoms

	Probation	Police	
Agree	391 64% 66%	225 36% 30%	616 45%
Disagree	205 28% 34%	536 72% 70%	741 55%
	596 44%	761 56%	1357 100%

chi-square=173.66 df=1 $p < 0.0$

Table XVIII: Factor Analysis of the Philosophy of the Y.O.A

		Mean	Std Dev*
Var.18	Mitigated accountability	3.15	1.58
Var.19	Consequences different from adults	2.78	1.37
Var.20	Responsibility of youths	1.76	.91
Var.21	Society's protection paramount	2.24	1.22
Var.22	Special needs	2.75	1.25
Var.23	Participate in process	2.76	1.41
Var.24	Guarantees of rights and freedoms	3.75	1.55
Var.25	Least possible interference	3.80	1.48
Var.26	Remove from parents' when care inappropriate	2.44	1.27

Factor Matrix

	Due Process	Rehabilitation	Crime Control
Var.18		.88	
Var.19		.88	
Var.20			.83
Var.21	-.36		.68
Var.22	.36	.53	
Var.23	.71		
Var.24	.60		
Var.25	.68		
Var.26	.63		

Eigenvalues: Factor 1 (Due Process)=2.87
 Factor 2 (Rehabilitation)=1.27
 Factor 3 (Crime Control)=1.11

Percentage of Variance Accounted for: Factor 1 = 28.4%
 Factor 2 = 26.0%
 Factor 3 = 16.5%

Total Percentage of Variance Accounted for: 70.9%

*Standard Deviation

These three factors accounted for 70.9% of the total variance.

had a loading of .68. The crime control factor accounted for 16.5% of the total variance.

Once again, anova produced a significant mean difference between the police and probation officers [$F(1,1355)=8.32$, $p<0.004$]. The significance of this result was interpreted as confirming the hypothesis that police (Mean=-.07) were more supportive of the crime control tenets in the Y.O.A, than probation officers (Mean=.09).

Summary

Overall, the statistical analyses have generally supported the hypotheses of this study. Cross-tabulations and t-tests provided a demographic and ideological profile of the two groups studied - police and probation officers. Factor analysis and analysis of variance were used in the second part of this data analysis to determine which factors represented the ideological underpinnings of juvenile justice and to look at the differences between police and probation officers on these factors. Analysis of variance confirmed the hypothesis that police would support crime control tenets while probation officers would support rehabilitative and justice, over crime control tenets. However, this statement cannot be clearly confirmed through the factor analyses presented in Tables XIII and XIV due to the over-lap of justice and crime control tenets in each factor. Without a clear differentiation between justice and crime control ideologies, the views of police and probation officers cannot be adequately

distinguished. With regard to the philosophy of the *Y.O.A.*, it appears that "justice" is the primary model inherent in the Act. This justice factor accounted for 28.4% of the total variance although the "rehabilitation" factor accounted for 26% of the total variance. Further discussion follows in order to clarify the issues relating to the results of this study.

Discussion

Introduction

Canadian juvenile justice is perceived as evolving through two stages of conflict: (i) crime control vs. rehabilitation (1700's to the mid-1960's); and, (ii) rehabilitation vs. justice (1960's to the present).⁹ The first led to an almost total acceptance of the *parens patriae* philosophy, resulting in the usurption of traditional, discretionary police powers in the control and prevention of delinquency.¹⁰ The second stage resulted in the erosion of the treatment model and an infusion of due process and justice tenets that ensured legal and procedural equality, while emphasizing individual responsibility, proportionate sanctions and the protection of society.

The purpose of this study was to determine if probation officers and police continued to espouse their respective

⁹Havemann, 1986.

¹⁰Hagan and Leon, 1977; Griffiths et.al., 1980.

traditional ideologies (rehabilitation and crime control), in relation to the philosophies of Canadian juvenile justice. In addition, the argument that the goals of police and probation are similar, but the means reflect differing ideologies,¹¹ have been supported by these results and will be discussed further.

The following discussion is organized into three parts which link the results of the data analysis with broader theoretical issues, the implications of which will be discussed in the concluding chapter. The three parts are as follows: (i) "Ideological overlap" - similar goals through different means, (ii) the ideological shift in probation, and (iii) police and probation's "disenchantment" with the effectiveness of the juvenile court. These issues are based on the concept of a move towards a more punitive system of juvenile justice and a "strengthening of the net of social control" as outlined by Austin and Krisberg (1981).

Ideological Overlap

The results of this study are consistent with those found by Sosin (1976) in his similar study of the perceptions of juvenile court goals by court workers in the United States. Sosin found that there was an ideological shift in juvenile justice, towards a justice model. A factor analysis of variables that related to real and ideal court goals, extracted an "over-lap" factor called "youth concern" whereby rehabilitative tenets were

¹¹Catton and Leon, 1977; Fielding, 1984; Hudson, 1987.

combined with due process tenets. This fusion of two ideologies is similar to the overall probation response in this study whereby this group was supportive of justice tenets which may be perceived as in the youth's best interests.¹² Sosin's results were consistent with the results of this study in that probation officers supported both rehabilitative and justice tenets (See Tables VIII, X, XII, XVI, XVII and p.26). Support for the justice ideology by probation officers, was stronger than that of police (Table XIV and XVII). This denotes an acceptance by probation officers of stricter controls for juveniles and a belief in the need for procedural and legal protections of their rights.¹³

In this study, the ideological over-lap is evident in the justice/crime control factor as presented in Tables XIII and XIV. Although anova proved that there was a significant difference between police and probation officers' attitudes on this factor, tenets of all three ideologies of juvenile justice were included. Because the ideological distinction is unclear, the interpretation of this analysis should be viewed with some caution. However, recent Canadian research also supported the notion of "ideological over-lap"; primarily between justice and

¹²See also Ontario Law Reform Commission, 1974; B.C. Royal Commission on Family and Children's Law, 1975, and Catton and Leon, 1977.

¹³See Havemann (1986) for a theoretical account of the ability of the justice model to balance the rhetoric of the ideological left (rehabilitation) with the right (crime control). See also Packer (1968) and Ericson (1982) for theoretical associations between crime control and conservatism or right wing ideology.

rehabilitative tenets.

A study by Reid and Reitsma-Street (1984) was aimed at comparing the underlying principles of the *J.D.A* with the Declaration of Principles found in Section 3 of the *Y.O.A*. The authors found that indeed, there was some overlap between the welfare (rehabilitative) and justice principles in the *Y.O.A*. Their research was premised on the belief that social policy resulted in difficulties in "separating the welfare from the social control components" (1984:1). They argued that under the *J.D.A*, a delinquent was subject to arbitrary treatment and control (e.g., indeterminate sentences). These conflicting elements were also combined in the *Y.O.A*, together with due process tenets, which created an "ideological balance". The authors contended that:

...explicit principles are overt indicators of the more covert values and assumptions that guide the implementation of legislation and policy (1984:6).

Reid and Reitsma-Street outlined four models in the *Y.O.A* as compared to the three used in this study.¹⁴ Respondents in their study were asked to categorize specific phrases found in the Declaration of Principles into one of the four models - justice, welfare, crime control and community change. Categorization of principal phrases by respondents was not mutually exclusive, and

¹⁴The authors described the Community Change Model as embodying the view that it was society's responsibility to promote welfare and prevent youthful crime by changing the processes that lead to inequality, poverty and delinquency (1984:3,4). This model is based on Marxist theory and the "mid 20th century social conflict and phenomenological perspectives" (Snider and West, 1980) but did not figure prominently in the analysis.

perceptions of the ideological boundaries, varied. Rehabilitative tenets were confused or associated with justice tenets, but never with crime control tenets. This is consistent with information in the literature in that justice and rehabilitation models favour the individual over the protection of society.¹⁵ In support of this result, Havemann also classified the rehabilitation and justice ideologies as representative of the ideological left. The overlap between justice and rehabilitation models can be premised under the "best interests of the child".¹⁶

Overall, the rejection of a justice/crime control model (Table VIII and XVII) and the acceptance of rehabilitation and justice tenets over crime control tenets (See Tables XV and XVI, and pp.26-27), appears to support the contention that probation officers favoured the ideological left (rehabilitation/ justice) over the right (justice/crime control) as purported by Havemann (1986) and Reid and Reitsma-Street (1984). In addition, probation's acceptance of justice values denotes an ideological shift from its total rehabilitative orientation at inception (late 1800's), to the present justice orientation.¹⁷

¹⁵Skolnick, 1966; Sosin, 1976; Catton and Leon, 1977; Austin and Krisberg, 1981; Reid and Reitsma-Street, 1984.

¹⁶Sosin, 1976; Catton and Leon, 1977.

¹⁷See Sutherland, 1976; Hagan and Leon, 1977; Rothman, 1980; Corrado, 1983; Harlow, 1984; Thomson and McAnany, 1984; Hudson, 1987 and McWilliams, 1987.

Different Means to the Same End

It has also been argued in this thesis that police and probation officers have not differed significantly in their goals but that ideological differences have dictated alternate methods of achieving those goals.¹⁸ In support of this contention were the responses by both groups to the question of rehabilitation being an important future court goal. A majority of both police (94%) and probation officers (87%) felt that rehabilitation should be an important goal of the court. This result conflicts with the argument that police opposed rehabilitation.¹⁹ However, police and probation officers' methods for handling juveniles have been established in the literature as being in direct conflict. Hence, ideological differences dictated preferred methods for achieving the same goals of prevention and control of delinquency.

It is argued that the means differ from the end, however, punishment is unique in that it is a means to an end as well as an end in itself.²⁰ In contrast, "rehabilitation" denotes a goal by which the means are varied. Despite police support for the same court goal as probation officers (rehabilitation), punishment was also viewed by police as a considerably important goal for the future. Intuitively, these two goals are incongruent. If these beliefs are viewed in light of a police

¹⁸Fielding, 1984; Hudson, 1987.

¹⁹Platt, 1969; Hagan and Leon, 1977.

²⁰Packer, 1968; Conrad, 1984.

crime control ideology, support for rehabilitation and punishment as court goals may indicate a confusion, by respondents, between punishment as a goal in itself, and punishment as a means to achieving rehabilitation.²¹ Twenty-five percent of probation officers and 8% of police felt that punishment was an important goal of the court at the time of the study, while 84% of police and 51% of probation officers felt that it should be an important goal of the court. Support for "punishment" as a goal, necessarily means that punishment is the means to its own end. Police support of both rehabilitation and punishment as considerably important future court goals means that their perception of one of the two tenets is different from probation officers because the latter did not favour punishment as much as the former.

In sum, it appears that the police responses to punishment and protection of society as considerably important future court goals, together with their acceptance of the crime control tenets of the *Y.O.A* over rehabilitative and justice tenets, suggests continued support of the traditional crime control ideology as presented in the literature (See Tables XV - XVII).²² In contrast, probation's acceptance of justice principles together with their support of rehabilitative tenets, denotes a liberal perspective that favours the concerns of the

²¹The methods used in this study are not sufficient for examining this difference.

²²Skolnick, 1966; Weiner, 1976; Ericson, 1982; Sewell, 1985.

youth, as outlined by Sosin (1976).²³ In essence, Havemann presents a logical conclusion in his contention that the justice ideology "as a compromise of the Liberal Left (treatment and civil libertarian) and the Right (law and order) accomodates the rhetoric of rights while legitimating more coercive measures through its emphasis on individual accountability for offences under the Criminal Code" (1986:231).

Probation: Ideological Shift

The results of this study have supported the contention that probation officers favoured the due process/justice tenets of the *Y.O.A.*, moreso than police (See Tables XVI, XVII and pp.26-27). The above view is also supported by Giller and Morris (1981) who state that:

The idea of the soft social worker arguing with the stony judiciary to save the young offender from incarceration has proved to be a myth.²⁴

Additional support for this contention is the percentage of probation officers (87%) who reported that the protection of society should be a considerably important juvenile court goal. In addition, 51% of probation officers responded that punishment should be a considerably important goal of the juvenile court. Additionally, probation officers also supported justice and crime control tenets in the *Y.O.A.* (See Tables XV, XVIII and p.32). First, seventy-seven percent agreed that the protection

²³See also Reid and Reitsma-Street, 1984; Havemann, 1986.

²⁴In Hudson, 1987:141.

of society should be paramount over the needs of the youth (crime control). Second, 66% agreed that young offenders should have special guarantees of their rights and freedoms. The larger percentage of probation officers supporting protection of society over the needs of the young person, together with the percentage believing in special legal and procedural protections for young offenders, suggests a shift away from a rehabilitative perspective and towards a more punitive and crime control orientation. Hudson (1987) provided justification for the ideological shift in probation by suggesting that it must maintain credibility with regards to its ultimate goals, by creating and implementing programs that "take delinquency seriously". Therefore programs that reflect this belief resulted in "stronger elements of control than casework methods".²⁵

Disenchantment

Although this data supports the perception of an ideological shift in probation, the difference between the attitudes of police and probation officers, persists. While both groups felt that there was some need for change, the degree of change is not discernable, nor is the degree of change in the attitudes of police and probation officers.

An intuitive analysis of the responses of police and probation officers on variables 4, 5, 10, 11, 14 and 15, revealed that there was some degree of "disenchantment" with the

²⁵Hudson, 1987:141.

achievement of court goals (See Tables VII, IX and XI). "Disenchantment" refers to an unknown amount of dissatisfaction as noted by the frequency distributions of "what is" and "should be" variables. Frequency distributions showed that more police and probation officers felt that all three court goals (rehabilitation, justice and protection of society), should be of more importance than they were at that time (1981-1982).²⁶ Therefore, it is suggested that police and probation officers both felt that the juvenile court was not doing what they thought it should. This is not an unfamiliar assertion because reform of any kind has necessarily meant that the present way of operating is perceived by some groups as inadequate or ineffective.²⁷

In relation to this study, the ideologies of police and probation officers may have little effect upon the changing nature of juvenile justice. It is argued by Havemann (1986) that the justice ideology represented in the *Y.O.A* serves as a compromise between ideologies that work in favour of state manipulation of social control agents, e.g., police and probation officers, in order to effect crime control. Therefore, police and probation officers, while limited in their ability to

²⁶This difference is not proven statistically, but is open to interpretation and offers opportunity for further research to test the "degree of disenchantment" with court functions. It should also be noted that only 51% of probation officers felt that punishment should be a considerably important goal of the juvenile court; as opposed to 87% who felt that the protection of society and rehabilitation should be important goals.

²⁷Austin and Krisberg, 1981; Cohen, 1985.

effect change rendering legal processes more congruent with their ideologies, may be able to justify practices and policies within the flexibility of the justice model in the Y.O.A²⁸. In sum, although it may be argued that there is dissatisfaction with the attainment of court goals (See Tables VII to XII), this study does not provide adequate information to "pin-point" the locus of conflict between police and probation officers on their ideological divisions.

Summary

The results of this study have contributed to the knowledge of juvenile justice by analysing the attitudes of police and probation officers towards the philosophies of the Y.O.A and juvenile court goals. Some explanations have been offered for the outcomes, most notably the shift towards a justice ideology in probation and juvenile justice in general. The neglect of policing issues may not be to the detriment of further analysis. The traditional crime control ideology of police has been supported by the results of this study. Due to the lack of detail and appropriate analysis regarding due process tenets, the extent to which the police support due process, cannot be determined, only that they favour this position less than probation officers. The view that both punishment and protection of society are construed as both crime control and justice tenets.²⁹, does little to inform the reader about police beliefs

²⁸Reid and Reitsma-Street, 1984.

²⁹Reid and Reitsma-Street, 1984; Havemann, 1986

in regard to the specific principles associated with due process of the law. The final chapter will provide a general critique of the research with suggestions for future work, implications for social policy, and a discussion of the trend in juvenile justice as related to the nature of policing and probation in general.

CHAPTER VI

CONCLUSION

Introduction

The ideological conflict between police and probation officers in relation to juvenile justice has been the main focus of this thesis. The traditionally crime control-oriented police fought, through the evolution of the *J.D.A* and again with the *Y.O.A*, to maintain their traditional powers of discretion over the control and prevention of delinquency.

Reform during the late 1800's to the 1960's, led to the domination of the rehabilitation philosophy of juvenile justice which was realized in the probation function. The erosion of police powers, by the probation function, to prevent and control delinquency, sparked increasing conflict between these two groups. "Crime control" methods were pitted against "treatment" methods in an attempt to achieve the same end - control and prevention of delinquency.

Results of the data analysis have shown that police continue to espouse a crime control ideology, while probation officers are experiencing an ideological shift towards a justice perspective. The latter group continue to favour rehabilitative measures within a due process framework.¹

¹This transition is referred to as an ideological shift rather than a functional one because probation functions have remained basically the same, e.g., counselling, provision of services, and supervision or surveillance, but with different justifications, e.g., administrative efficiency and control

There is much evidence to support this belief,² and the trend towards stricter controls for juveniles may be moving more towards a crime control ideology.³ McWilliams (1987) characterizes probation's ideological shift as a "collapse of confidence in the scientific treatment of offenders", which led to an emphasis on control; for example, supervision and surveillance.⁴:

The change was certainly not deliberately and carefully planned... but the most important concept in the 'old' probation service which enabled it to be transformed into the 'new' was that of supervision. It was the concept above all which underwent a gradual but crucial alteration of meaning.⁵

Thus, ideological change appears to be the issue over functional change.

Results of the analyses for this thesis have supported the contention that an ideological shift in probation is occurring, yet the ideological distinction between police and probation officers continues to exist. Although probation officers favour both rehabilitative and justice tenets, only 51% reported that the court's goal should be to punish young offenders, while 87% felt that protection of society and rehabilitation should be considered important court goals. This is consistent with the

¹(cont'd) (Harris, 1984; Harlow, 1984; McWilliams, 1987; Hudson, 1987).

²See Sosin, 1976; Thomson, 1980, 1982; Conrad, 1984; Fielding, 1984; Thomson and McAnany, 1984; Hudson, 1987; McWilliams, 1987

³Krisberg et al., 1986; Havemann, 1986.

⁴Fielding, 1984

⁵McWilliams, 1987:67.

overall belief in "youth concerns" or the "best interests of the child" as determined by Sosin's (1976) similar study in the United States. In sum, it can be argued that while police have maintained a crime control ideology throughout the evolution and reformation of Canadian juvenile justice, the ideological shift to a justice perspective in probation necessitates a look at the broader issue of social/ideological change and methods of crime and social control. The nature and implications of this ideological shift are discussed below.

Social Control

Sociologists have argued that the earliest concept of social control was the general socialization process.⁶ This definition excluded the nature of conflict and pluralism in the generation of control. Theories of crime control have since focused on political economy, ideology, and power structures. Cohen's definition of social control includes the essence of crime control as:

...organized responses to crime, deviance and allied forms of deviant and/or socially problematic behaviour which are actually conceived of as such, whether in the reactive sense (after the putative act has taken place or the actor identified) or in the proactive sense (to prevent the act). These responses may be sponsored directly by the state or by more autonomous professional agents in, say, social work or psychiatry. Their goals may be as specific as individual punishment or as diffuse as 'crime control', 'public safety' and 'community mental health' (1985:3).

West states that increasing intervention in informal systems of

⁶Lowman et.al., 1987.

social control, e.g., the family, is "socially coercive" and intervention must be "understood as the real exercise of increasing state control over youths" (1985:44). This example has been extrapolated to police and probation, in an historical context.⁷

The police have often been labelled as the primary agents of crime control⁸ but probation has only most recently been increasingly criticized on the same grounds.⁹ The conflicting nature of the probation role (treatment versus surveillance) reflects the broader ideological distinction between probation and police. However, it may be argued that the shift towards a justice ideology in probation may provide a justification for the reduction of ideological conflict/tension between rehabilitation and control functions of probation officers.¹⁰ Although the control function has always been inherent in the surveillance function of probation, it has seldom been an issue until recently:

The surveillance/control function of probation...aims to protect the community from criminal behaviour through incapacitation and specific deterrence. The motive for incapacitation is to reduce the likelihood of future crime by restricting the offender's behaviour during the probation period.¹¹

⁷Skolnick, 1966; Platt, 1969.

⁸Ericson, 1982.

⁹Conrad, 1984.

¹⁰Bartollas and Miller, 1978; Shireman, 1976; Harris, 1984; McWilliams, 1987.

¹¹Harris, 1984:22-23. See also Hudson, 1987 and McWilliams, 1987.

Therefore, probation officers' support of a justice ideology may serve to allay the conflict created by the "ideologically opposite" functions of rehabilitation and surveillance (control).

Traditionally, the primary enforcers of "organized responses to crime" have been the police - the most visible agents of social control.¹² However, social control has been "transferred" between various government organizations, for example, mental health and probation, depending on the ideological justification for reform and control, at any point in time.¹³ Reform movements from the 1800's to the present, have consistently resulted in the shifting of the locus of ideological control through movements, for example, child-saving, justice and decarceration; often with unintended consequences such as net widening or drawing marginal offenders into the legal/criminal ambit.¹⁴

Strengthening of the Net of Social Control

Austin and Krisberg's 1981 study determined the extent to which reform movements strengthened, expanded, or created new modes of social control. The three types of changes in social control are described as follows:

¹²Skolnick, 1966; Ericson, 1982.

¹³Cohen, 1979b.

¹⁴Austin and Krisberg, 1981.

1. Wider Nets: Reforms that increase the proportion of subgroups in society (differentiated by such factors as age, sex, class and ethnicity) whose behaviour is regulated and controlled by the state.
2. Stronger Nets: Reforms that increase the state's capacity to control individuals through intensifying state intervention.
3. New Nets: Reforms that transfer intervention authority or jurisdiction from one agency or control system to another. (1981:169).

It will be argued that the shift towards a justice model in probation, strengthens, as opposed to widens the net of social control.

Policies, programs and practices have usually been aimed at decreasing the net through the limitation of police discretion, status offences and diversion.¹⁵ However, Austin and Krisberg argue that these "good intentions" often have unintended consequences. For various reasons such as lack of adequate

¹⁵Austin and Krisberg, 1981.

funding for programs, lack of trained personnel, and little inter-agency co-operation, idealistic reforms seldom reach their full potential to "rehabilitate", cure or educate.¹⁶ Philanthropic efforts at "treatment" have resulted in bureaucratic and administrative attempts to manage caseloads effectively by, for example, moving individuals through the system without incurring further problems that would lead to continued state intervention. "Conscience" has collided with "convenience" in that sincere attempts at reform have been stymied and co-opted into the existing political and bureaucratic systems which promote maintenance of the status quo.¹⁷ Probation epitomizes this transition in the trend towards a justice model in juvenile justice: the move from treatment to managerial strategies.¹⁸

Justice tenets such as due process, deterrence, proportionality of punishment and equality of treatment, reflect the state's response to the growing pressures and perceived need for stricter controls over youthful offending through the return of accountability and responsibility to the young offender. In effect, it is argued that the probation function "strengthens the net of social control" in its acceptance of the justice ideology given its mandated powers, through policy and law, to coerce compliance with court conditions and maintain stricter

¹⁶Corrado, 1983; West, 1984; Havemann, 1986.

¹⁷Taylor, Walton and Young, 1973; Quinney, 1977; Cohen, 1979, 1985; Rothman, 1981.

¹⁸Harris, 1984; Hudson, 1987; McWilliams, 1987.

controls over young offenders.¹⁹ In effect, the state, through enactment of the *Y.O.A*, has increased its capacity to control young offenders by intensifying state intervention; for example, stricter controls over youths on probation and more power to coerce compliance. At present, it seems more appropriate to suggest that the justice model inherent in the *Y.O.A* strengthens the net of social control as opposed to widens it, because the social, economic, political and ideological climate of criminal justice in Canada, has led to more conservative and restrictive measures of crime control both for probation officers and police.²⁰

Theoretical Implications of the Ideological Shift Towards a Justice Model in Probation

The contradictory role of probation officer as control and treatment agent is analogous to the conflict between the ideologies of police and probation in general.²¹ Control activities are those directed toward regulation of the offender's behaviour.²² Fielding states that control does not mean just disciplinary measures, "but any verbal or non-verbal action undertaken to induce the offender to conform to socially

¹⁹Austin and Krisberg, 1981.

²⁰Cohen, 1985; Havemann, 1986. See also the 1986, 1987 and 1988 amendments to the *Y.O.A* which give police increased powers to arrest those young offenders who have breached their probation conditions.

²¹Kenney and Pursuit, 1970; Bartollas and Miller, 1978; Sheridan and Konrad, 1979.

²²Fielding, 1984.

acceptable standards of behaviour" (1984:62). Restrictions on an offender's behaviour are the primary tools for exercising control.

In his study on the attitudes of probation officers to clients, Fielding noted that "the principal constraint on empathy is the reality of control" (1984:22). The reality that an offender may be sent back to court if another offence is committed, is a form of coercive control used to effect conformity. Like policing, probation's control over youths created a strain on developing helpful relationships.²³ The idea of coercion was ever-present:

When sterner treatment was demanded...the friendly advisor became the official representative of the court with the demand that certain conditions be observed or that the probationer be returned to the court.²⁴

The inclusion of crime control tenets in a justice oriented juvenile justice system, is part of the "balance" referred to by Reid and Reitsma-Street (1984). The shift towards a justice model in probation²⁵ and in Canadian juvenile justice in general²⁶ does not compel the integration of policing and probation ideologies. In fact, justice tenets such as due process and responsibility for one's own behaviour, serve as the

²³Bittner, 1976; Conrad, 1984.

²⁴Bartollas and Miller, 1978:128.

²⁵See Harris, 1975; Thomson, 1980; Conrad, 1984; Harlow, 1984; Harris, 1984, and Thomson and McAnany, 1984.

²⁶See Griffiths et.al., 1980; Corrado, 1983; West, 1984; Reid and Reitsma-Street, 1984, and Havemann, 1986.

bases for compromise between the ideological left (rehabilitation) and right (crime control).²⁷

Maintaining a belief in stricter controls and harsher punishments for young offenders may not be affected by the need to follow legal and procedural guidelines. In addition, adoption of the "responsibility" tenet can be seen as a move towards a crime control ideology; thus justifying proportionality of sanctions and a greater acceptance of this model by police. The rehabilitative ideology of probation has also been compromised by the acceptance of justice principles.

With the fusion of the justice model in corrections, the role of probation has necessarily changed. In Canada, social service and intake functions have been curtailed by economic, legal and caseload restrictions.²⁸ Discretionary powers of both police and probation officers have been constrained within the boundaries of due process. Catton and Leon (1977) noted that the increased use of legal representation in juvenile courts has caused some confusion about the role of legal advocates. Similarly, McKeown (1976) recommended that an office of *amicus curiae* be established in Alberta that would have the power to "commission social work and psychiatric investigations and call evidence to provide the court with an impartial opinion as to

²⁷Havemann, 1986. This author also argues that the *Y.O.A* is a "legal instrument for managing contradictory functions" (p.225). For support of this idea, see also Black, 1976; Ericson, 1981, and Reid and Reitsma-Street, 1984.

²⁸Griffiths et.al, 1980.

the child's best interests".²⁹ It is evident that this function conflicts with a strictly legal mandate that may be contradictory to the best interests of the child at some time. With the increased use of lawyers in juvenile courts, the legalities concerning the processing of youths become increasingly important and this would appear to erode the traditional function of probation officers in their mission to secure the best interests of the child.

Probation has also been "buffeted" by the use of community corrections and privatization where supervised alternatives in the community are offered to facilitate reintegration. With other organizations taking responsibility for the social welfare of the child, the original function of probation is eroded. Probation has become primarily managerial because its role is now to refer clients to other agencies and programs which perform social services, rather than developing and implementing its own. In general, the ideological antagonism between police and probation appears to have lessened given the shift towards a justice model in probation and the subsequent adoption of administrative and managerial roles.

Justice as Control: The Trend in Juvenile Justice

Despite the limitations of this study, the general trend towards stricter control and prevention of youthful crime, is evident. In an article in the *Vancouver Province* (Nov. 17, 1985),

²⁹In Catton and Leon, 1977:130.

it was reported that the police in British Columbia were dissatisfied with the *Y.O.A*. The police were critical of many of the legal procedures which had to be followed in order to obtain compliance with investigations. For example, obtaining a warrant for juveniles who had violated conditions of probation, was frustrating and often futile. While obtaining a warrant to arrest, the youth would "disappear" before it could be executed. Additionally, court time for each case had increased by 40% between 1984-1985 due to the increased rigor of legal procedures and advocate intervention.

Police also stated that, under the *Y.O.A*, they lacked the power to enforce court-ordered treatment or punishment, such as diversion or alternative measures. With increased use of lawyers, police felt that it was harder to convict a young person:

Police, prosecutors and corrections officials say the *Y.O.A* gives juveniles more rights than adults. A kid walks out of my office ³⁰ having committed 20 or 30 B & E's³¹. He did it. He knows he did it. But the message he's getting is he can walk away from it, as long as he has a lawyer who tells him to remain silent.³²

In the same news article, several changes in the *Y.O.A* were outlined by the British Columbia government:

1. The juvenile age limit be dropped from 18 to 16 years.

³⁰Vancouver prosecutor, Garth Gibson.

³¹A colloquial term for Break and Enters.

³²*Vancouver Province*, Nov. 17, 1985.

2. The Crown should be allowed to prosecute those under 12 who are persistent offenders or who have committed a violent crime.
 3. Police must be given back the power to arrest youngsters who are breaching the terms of their probation.
- (Vancouver Province, Nov.17, 1985.)

Similar criticisms and concerns have been raised by other provinces such as Alberta and Ontario. In an updated report by the federal government in 1988, several concerns were reiterated, for example, the inability of police forces to deal with criminal acts by children under 12 and over 7; the corroboration of evidence of children under 14 years; the need for longer sentences for recidivist and violent offenders; tougher measures for failure to comply with the conditions of probation; and, the nature of *in camera* proceedings. These concerns were expressed prior to the introduction of Bill C-106 - amendments to the *Y.O.A* - in 1985.

In response to these concerns, the *Y.O.A* was amended through Bill C-106, which was given Royal Assent on June 27, 1986. Section 20 of the *Y.O.A* was changed to allow for lengthier sentences; reflecting the continued trend to tougher measures for the control of youthful offending. As originally enacted, Section 20 did not permit the continuous combined duration of dispositions to exceed three years. Thus a young person who re-offended while serving a disposition, could only receive a

sanction that would return the aggregate sentence to three years. Bill C-106 amended Section 20 to allow for dispositions for new offenders to be consecutive to a disposition already being served. However, in line with justice principles, no disposition could result in punishment greater than the maximum punishment which an adult could get for the same offence.

Another amendment supportive of the move towards a crime control ideology resulted in the toughening of consequences for failure to comply with probation conditions. Under Section 33 of the *Y.O.A.*, failure to comply led to new dispositions which could be more severe than the original disposition. However, provisions of the Act did impose some restrictions on new dispositions after a Section 33 review. For example, unless a youth committed a serious offence, she or he could not be incarcerated for consistent and numerous probation violations. Bill C-106 repealed Section 33 and introduced a new offence of willful failure or refusal to comply with a disposition (Section 26). Thus such activity can now be treated as a new offence, with fewer restrictions on dispositions.

A final mention is made of the move towards publication of the names of young offenders and access to their records; a move which clearly demonstrates the perceived need for their acceptance of responsibility and accountability for their behaviour. The Ontario Court of Appeal found the *in camera* proceedings to be in contravention of the Canadian Charter of Rights and Freedoms' guarantee of freedom of expression and

freedom of the press, yet upheld these proceedings for specific circumstances (e.g., those deemed by the court to be injurious or prejudicial to the young person). In addition, new acceptions to the limitations on disclosure of records were added. These amendments reflected the move towards a crime control model in juvenile justice and strengthened the net of social control because they "increased the state's capacity to control individuals through intensifying state intervention".³³

Critique and Recommendations

Although the results of this study have clearly supported the traditional ideological distinction between police and probation officers, several issues may be raised about the quality and nature of this and further research. This section will include some *caveats* in the use and interpretation of these results, as well as suggestions for future research.

One concern of this study was the inability of the questionnaire to determine why probation officers favoured justice tenets and to what extent they supported "justice" as opposed to "crime control" measures. In other words, how large is the ideological gap between the crime control ideology of police and the present justice/rehabilitative ideology of probation officers. Further research is needed to determine the nature of the ideological gap between these two groups as it appears that the gap has narrowed with the ideological shift

³³Austin and Krisberg, 1981:169.

towards a justice model in probation.

Another *caveat* to be noted is that of generalizability. The use of a non-random sample limits the generalizability of the results to the total population.³⁴ Caution must be used in making broad statements about police and probation views. Ability to generalize to the larger population is similarly affected by the inadequate sampling of Canada's largest single police force - the R.C.M.P. Police views reflect those of municipal forces and may be quite different from that of the mounted police whose standards of selection, education, training and expectations, are quite different from many forces in Canada.³⁵

In addition, jurisdictional and cultural differences may also affect the responses of individuals. Historically, Canada has had great difficulty with the organization and implementation of federal law in the administration of provincial programs.³⁶ Practices and policies differed widely between provinces, cities and even communities. Further comparative research could include the selection of samples from "ideologically" or culturally cohesive areas, for example, provinces, cities or communities, which would provide a control on this variable.

³⁴See Chapter IV, and Carrington and Moyer, 1983.

³⁵Kelly and Kelly, 1976; Griffiths et.al., 1980; Sewell, 1985.

³⁶Osborne, 1979.

An alternate concern is that of the internal validity of the "rehabilitation" construct. Although it has been contended that police and probation officers favoured different methods to achieve the same end, this may mean that items on the questionnaire, intended to measure views on rehabilitation, were in effect measuring something else. Thus, the internal validity of the ideological constructs may be questioned. Explicit questions are needed to determine the definition of these constructs (e.g. rehabilitation, justice and crime control), by each group.

Finally, the aim of this research was to provide a comparison of the beliefs or ideologies of police and probation officers towards the philosophies of juvenile justice. Although, historical analyses have generally presented three perspectives, Reid and Reitsma-Street (1984) proposed an alternate perspective in their study on the principles of the *Y.O.A*. The community change model includes a Marxist perspective whereby the 'cure and control' of delinquent behaviour means a restructuring of social, political and economic forces in order to eliminate the structural inequalities that influence delinquency. The "ideology of the state" cannot be extricated from the beliefs of intrinsic agents of social control. This perspective, addressed most recently in the literature, should be explored more fully in relation to the roles of police and probation officers.³⁷

³⁷West, 1984; Cohen, 1985; Havemann, 1986.

This research has contributed to the body of knowledge surrounding the ideologies of police and probation officers. It has been demonstrated that police continue to espouse a crime control ideology in their support of specific tenets and a general crime control model in the *Y.O.A*. Results of this study also revealed that probation officers favoured justice tenets in the *Y.O.A* and a majority felt that the protection of society and punishment should be goals of moderate to considerable importance to the juvenile courts. This is a noticeable shift from the initial inception of probation as the embodiment of the rehabilitative perspective.³⁸ The nature of the ideological shift in probation is significant with regard to its role as a state agent of social control.

The nature of juvenile justice reform and its relationship to relative interest groups, such as police and probation officers, should be more closely studied in conjunction with political, economic and social forces that interact to induce "ideological" change. It can be argued that the ideological shift to a justice model in the *Y.O.A* serves as a tool for social manipulation whereby the state maintains stricter controls over youths through its agents (e.g., police, prosecutors and probation officers). By returning the blame to young persons, responsibility and accountability become justifications for the protection of society and stricter control measures over youths in that they must accept the

³⁸Sutherland, 1976; Griffiths et al., 1980; Corrado, 1983; Chunn, 1987, 1988.

consequences for chosen, illegal behaviour. The ideological shift in probation illustrates this point: a strengthening of the net of social control is useful to the state in providing an alternate mechanism for effecting coercive control of youths for the "reproduction of social order".³⁹

³⁹Ericson, 1982.

APPENDIX I

Tenets of the Three Proposed Models of Canadian Juvenile Justice

Rehabilitation

-social service
-counselling
-casework
mediation of
services
-focus of
offender
-needs of
offender
paramount
-behaviour
shaped by
environment
-treatment,
medical
model based

Justice

-responsibility
of youth
-fixed,
proportionate
punishment
-procedural
fairness
-legal counsel
provided
-focus on
deterrence and
social defence
-proceedings
weighted in
favour of
offender
-deterrence,
reparation,
and compensation

Crime Control

-focus on seriousness
of delinquent act
-application of quick
and severe
punishment
-deterrence: specific
and general
-consistent with low
levels of due
process
-allocation of power
and responsibility
to police and
prosecutors
-responsibility of
youth
-retribution
-protections of
society and control

more important of crime paramount
for intervention
than retribution
of punishment
-focus on
characteristics
of offence

*These principles have been taken directly from literary sources used in this study, for example, Ericson, 1982; Corrado, 1983; Conrad, 1984; Harlow, 1984; Harris, 1984; Reid and Reitsma-Street, 1984; Thomson and McAnany, 1984; West, 1984 and Havemann, 1986.

The following are the definitions of the three models of juvenile justice as delineated by Reid and Reitsma-Street (1984):

Crime Control - the responsibility of the state and court
to maintain order for society.

Due Process, Justice - procedures for interference with
freedom specifically limited and based
on consent as much as possible.

Welfare, Rehabilitation - societal responsibility to attend
to the needs of the youth and
family

*These definitions differ given various perceptions by authors such as West (1984), Reid and Reitsma-Street (1984) and Havemann (1986), who posit the justice tenets as part of a crime control ideology.

APPENDIX II

THE YOUNG OFFENDERS ACT - DECLARATION OF PRINCIPLE

- Sect.3 (1) It is hereby recognized and declared that
- (a) while young people should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions;
 - (b) society must, although it has the responsibility to take reasonable measures to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour;
 - (c) young persons who commit offences require supervision, discipline and control, but because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;
 - (d) where it is not inconsistent with the protection of society, taking no measures or taking measures other than judicial proceedings under

this Act should be considered for dealing with young persons who have committed offences;

- (e) young persons have rights and freedoms in their own right, including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms;
- (f) in the application of this Act, the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society, having regard to the needs of young persons and the interests of their families;
- (g) young persons have the right, in every instance where they have rights and freedoms that may be affected by this Act, to be informed as to what those rights and freedoms are; and
- (h) parents have responsibility for the care and supervision of their children, and for that reason, young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision is appropriate.

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