The state and the reproduction of social control: A study of the history of Canadian juvenile justice practices.

Andrew Brian. Doerr

*University of Windsor*

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by

Andrew Doerr

A Dissertation
Submitted to the Faculty of Graduate Studies and Research through the Department of Sociology, Criminology and Anthropology in Partial Fulfillment of the Requirements for the Degree of Master of Arts at the University of Windsor

Windsor, Ontario, Canada
1996

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The following text analyses the Canadian criminal justice system's various reform movements between the late 1800's and the end of the 1980's. Specifically, three periods are investigated in detail and compared: 1900-1910, 1950-1960, and 1980-1990. Of particular interest to the author are the hypotheses introduced by various State Theorists (Miliband, 1969, Poulantzas, 1969, 1973, Quinney, 1974, 1980) as well as Michel Foucault's (1979) study of penal control. The research which follows attempts to evaluate the accuracy of their assertions in light of Canadian youth justice reforms initiated during each of the chosen periods. These include the introduction of the reformatory and later training schools, probation, and community-based controls. Through the use of official crime statistics data, the degree of state control was measured for each era, and each reform initiative. The findings indicate an increase in the state's control over youth between 1899 and 1990 and generally support the Instrumentalist State Theory position of social control.
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Introduction

When dealing with young offenders, court officials now have access to a greater variety of legal sanctions than ever before. During the early 1800’s, youth convicted of an offense were dealt with in much the same manner as adults (Carrigan, 1991). Typically that involved the use of corporal punishment, and in extreme cases, capital punishment. Over time, however, attitudes regarding the use of harsh punishment began to change, and imprisonment slowly came to replace physical punishment (Bellomo, 1972, McGrath, 1976).

One area that attracted particular attention was the welfare of children, most notably neglected and needy children. Through what later came to be called the “child-saving movement” many reformers and concerned citizens struggled to create state-funded institutions that would attempt to re-direct the lives of delinquent and dependent children. As “corrections” grew throughout the 1900’s, the goal of rehabilitation was paramount. Treatment of the offender was promoted as aggressively as was control and supervision, and soon, state officials and other “professionals” took over the work previously done by volunteers. As a result of these duel mandates, several successive juvenile justice reforms were introduced; from the development of reformatories, to training schools, to a variety of community-based social controls.

While this brief account of youth corrections seems straightforward, it does not offer any indication of the criticisms that were lodged at the system of crime-control as each new programme was introduced. One of the most pertinent critiques of the modern Canadian juvenile justice system is that each successive reform resulted in an addition to the overall system of controls rather than the intended replacement of a previously unsuccessful initiative. The resultant effect on youth, this position holds, has been an increased intrusion of the state into the lives of many individuals who would otherwise have been dealt with unofficially, or else indirectly, by the community or family.

Some of the prominent figures in the critique of contemporary social control practices have been both Stanley Cohen (1985), and Michel Foucault (1979), as well as several state theorists (Miliband, 1969, Poulantzas, 1969, Quinney, 1974, 1980).
Cohen's (1985) argument is that each new reform has become a supplement (instead of replacement) to the justice system, serving to further extend it's supervisory capabilities over a greater portion of the population than before. Social reform movements such as the development of treatment approaches were designed as much to reform individuals as to place them in an environment where they could be effectively organized, disciplined, and monitored (Cohen, 1985). Both Cohen and Foucault identify these changes as important shifts in the method of control used by the state.

At the heart of these new reform programs was discipline. Disciplinary controls function by producing a mode of surveillance that is visible yet unverifiable (Foucault, 1979). That is, the presence of the state, and it's ability to monitor the offender, is made apparent to the individual while the timing of this surveillance is withheld. Unable to discern when, and if, they are being "watched", offenders must carefully monitor their own behavior. It is Foucault's further assertion that, one, this system is not unlike the system we have in place in contemporary crime controls, and two, that this practice results in the state's gaining control of an increasing number of it's citizens (Foucault, 1979). In the instrumentalist state theory position, this increase in control represents the state's interest in maintaining it's position of authority (Quinney, 1980). The state, in this view, is largely influenced by the powers of the dominant classes. Because of their advantaged (social and economic) position in society, these classes are able to manipulate the state's actions in their favour (Miliband, 1969). Juvenile justice reforms, then, can be understood as measures which ultimately serve the interests of the dominant classes at the expense of the lower classes. In this research paper, the goal is to investigate each of these claims in regards to the Canadian situation of juvenile justice practices.

In short, this study proposes to investigate two questions: One, based on the available data, what trends have occurred in the history of Canadian juvenile justice reforms and what effects have they had on the actual number of youths placed under state control and supervision?, and, Two, do these findings support the analysis and hypotheses offered by theorists such as Foucault (1979), Cohen (1985), and various state theorists such as Miliband (1969) and Quinney (1974)?
To examine these assertions the following paper is divided into six separate sections. In the first, a review of the relevant literature gives a brief account of the origins of the Canadian crime control system, the more recent findings on youth justice practices, and a synopsis of the arguments of Cohen (1985) and Foucault (1979), as well as the pluralist, instrumentalist, and structuralist theories of the state. The next three chapters comprise the research findings. Three periods in Canadian juvenile justice history have been selected, 1899-1909, 1950-1960, and 1980-1990[1]. Each corresponds to time periods during which both Cohen and Foucault claim that important changes took place in the state's mechanisms of control and thus each has been chosen here to test their corresponding validity when examined in the Canadian situation. The first represents the turn of the century and the introduction of the first legislation of juvenile delinquency in Canada. The second corresponds to the decade following the second world war, a time described by Cohen (1985) as an era where the fear of non-conformity and the introduction of many new methods to control crime had an important influence on state-controls. The third period represents our most recent decade for the study of official state controls, and a time when "decarceration" was heralded as a way of cutting back on state intervention. Following the research chapters is an analysis of the findings. In this section a theoretical discussion and an evaluation of the social control model are also presented. Completing the paper are some concluding remarks and brief recommendations.

1. These three periods have been chosen because they mirror three important changes, or as Cohen has identified, "Master Shifts", in the recent history of state-control and punishment as identified by Foucault and Cohen. Because the dates are separated by large "gaps" in time, other dates will be briefly included in the research findings in order to gain a clearer picture of changes, over time, which have occurred in state youth-controls and avoid the possible critique that no study of these middle years was conducted.
Chapter Two
Review of the Literature

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Penology and the Effect of the Enlightenment in Canada
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Melossi and Pavarini: Capitalism and the Control of Labour
Structuralism: The State and Relative Autonomy
Conclusion

The following chapter comprises two major sections: one. a brief review of the historical emergence of juvenile justice controls in Canada, and two. a review of the theoretical propositions which apply to the topic being researched. The first is designed to familiarize the reader with some of the historical responses that led to the justice reforms being analyzed in this study. With this background in place, the three chapters comprising the research will be placed in proper context. Next, the theoretical review begins by analyzing the contributions of Stanley Cohen (1985) and Michel Foucault (1979). As Foucault’s (1979) study plays such an influential role in guiding the research in this paper, it receives more thorough attention. Also included in this section is a review of state theories. Noting a reluctance in Foucault’s analysis to concentrate on the important role of the state, (and particularly the agents which maintain control over state functions) the pluralist, instrumentalist, and structuralist perspectives of the state are presented.

To begin the historical review, it is important to note that early responses (late 1700’s, early 1800’s) to criminality were met with harsh penalties. Children, in these situations, were treated in much the same way as adults, with capital punishment and corporal punishment being used frequently. The conditions of punishment that young criminals endured, however, did not go unnoticed by the society at large. Increasingly, public reaction to the cruel decisions laid down by the courts had their effect on criminal
justice. The most significant changes can be traced to the beginnings of a reform movement known as the Enlightenment (Carrigan, 1991).

Enlightenment thinkers were a new generation of intellectuals who challenged the long established ways of looking at and explaining society (Emsley, 1989). In their view, human beings were part of a social order in which various rights and duties were bestowed upon them. This social contract, as it was termed by Rousseau, was, in turn, violated by an individual’s criminal activity. Crime was an abuse of the privileges given to the individual by society. Most harmful was the cruel and repressive punishments that the state used as a reaction to crime. Such actions by the state were completely incompatible with the humanitarian views proposed by Enlightenment thinkers (Harris and Webb, 1987).

- **Penology and the Effect of the Enlightenment in Canada**

The emerging philosophy that had begun in Europe was soon taking effect in the North American colonies. In Canada, this was evidenced by a shift away from the arbitrary use of severe punishments, to a conscious policy aimed at less severe consequences for criminals (Ekstedt and Griffiths, 1984). By the 1820’s and 1830’s the old forms of punishment were being replaced with fines, incarceration, and hard labour. This is not to say that the state’s interest in social control had wavered, but rather that it’s methods became more attune with public conscience (Boyd, 1977). For instance, along with the increased use of prison sentences for punishment, there were other indications of a more humanitarian approach to criminal activity. In 1832 the death penalty was abolished for a number of infractions. By 1833, the number of crimes punishable by death had been reduced to twelve, and then to only 3 by 1841. Moreover, the use of the pillory, banishment, public flogging, and branding for civilians had been abolished by 1842 (Carrigan, 1991).

However, while incarceration was fast becoming the favored means of punishment, there is no indication that it was free of cruelty. The Brown Report, an 1848 investigation into allegations of mistreatment at Kingston Penitentiary, discovered numerous accounts of cruelty, corruption, and mismanagement in the country’s largest
prison (Edmison, 1976). Thus, while the use of harsh punishment seemed to have been eradicated from the public market places of villages and towns, it easily found its way into the prison system.

While the use of institutional prisons had their failings, they did signal that changes were taking place in how the justice system responded to deviancy. Increasingly, throughout the later 1800’s, crime and delinquency came to be seen as a “disease”, something which proper care and treatment could “cure” while it protected society (Bolton et al., 1993). With juvenile delinquents this sentiment was especially pertinent. For the moral reformers of the latter 1800’s, youth, particularly neglected and dependent youth, were to be viewed not as criminals, but as needy children requiring aid and assistance (Kelso, 1907). One result of these ideas in the forum of crime control was the creation of institutions designed to remove troublesome (and troubled) youth from society in an effort to re-direct their lives. According to Leon (1977), the rationale for the control of juvenile misbehavior was a combination of needing to protect society from delinquents, and needing to protect delinquents from themselves. The question became not one of how to punish, so much as one of how best to treat the child before he/she became a dangerous criminal. As the family was believed to be the main source of the poor socialization that led to the child’s delinquency, it was the family environment that was blamed when the child acted criminally. With the blame for criminal activity being lodged primarily at a maladjusted environment, many perceived the working-class, urban poor, as responsible for a significant amount of criminal activity. As a result, justice officials became increasingly interested in establishing formalized controls that could both monitor and extend treatment to the families of young offenders (Houston, 1972). In turn, if the family was deemed unfit to adequately care for the child, it was left up to the state to intervene and control the actions of the child. The earliest attempts to provide separate facilities to meet the needs of children came in the form of the Reformatory prison, and later the training school. These institutions addressed the concerns for the welfare of children and the need for treatment. The attempt in each case was to remove the child from a poor home and social environment and place him/her into a highly controlled and highly supervised establishment. Through education, religion, and vocational training, the state
sought to alter and reform the delinquent (Sutherland, 1976). It was under these influences that the JDA was drafted in 1908.

- **Parens Patriae and the Introduction of the JDA**

  One of the underlying philosophies of the JDA was that intervention by the state into the lives of children was a good thing (Bolton et al., 1993). Under the principle of *Parens Patriae*, or 'state as parent', the justice system, influenced by social reformers of the time, developed a series of control mechanisms designed to supervise children in treatment-oriented institutions. This model provided for a paternalistic approach to corrections, attempting to re-create a family setting within the walls of a facility or school. Reforming the delinquent was deemed to be positive on two counts: one, it permitted the state to reintroduce the individual back into society as a productive member, and two, it protected the social order through the temporary removal of the delinquent (Leon, 1977). The success of rehabilitation within these facilities, however, quickly came under criticism (Houston, 1972). Boyd's (1981) research on training schools during the latter 1800's and early 1900's found numerous indications that these institutions failed to successfully achieve their goals. Rehabilitation and education were circumvented by poor administration, a lack of trained workers, high rates of punishment, and under funding (Bolton et al., 1993).

  As the various reform efforts grew in number, there was a corresponding need for specially trained workers. In Leon's (1977) interpretation, the move towards replacing the work done by volunteers with that of paid "professionals" was done, in part, to rationalize the child-saving efforts of the early reformers.

  What is needed is personal service, the complete organization of charitable forces, harmony of action, and the appointment of trained and experienced workers, instead of isolated action, rivalry, jealousy, and spasmodic and amateur administration.

  (Kelso, 1905, in Leon, 1977)

  By the first quarter of the 1900's, a new form of rehabilitation and control gained popularity among social reformers and justice officials alike. Probation promised to meet the demands of the justice system in a more effective and economic manner. Through the
use of probation officers, the justice system could appoint representatives of the court to monitor the child out in his/her own community (Boyd, 1978). More importantly, to reformers such as Kelso and others, probation officially permitted justice officials to enter the homes of delinquent children (Kelso, 1912). While the claim was that this procedure allowed the courts to extend rehabilitation and treatment, it was also an undeniable opportunity to monitor the families of the delinquent (Sutherland, 1976). As indicated, there exist numerous records which indicate that reports written by probation officers after visiting the child’s home were used as justification for the removal of a youth from the family.

By the mid-1900’s there existed several responses the state could take to control and supervise delinquents. Prisons were by this time were reserved primarily for adults, although Reformatory prisons for youth still existed, as did the closed-custody training schools. By the end of the 1950’s, probation had taken over as the most common disposition awarded a young offender; comprising more than half of all sentences in 1960 (Coughlan, 1963). More recently, the introduction of the YOA in 1984 initiated a more control-based response to youth deviance, stressing accountability and control versus the more predominant paternalism of the JDA (Reid-MacNevin, 1991).

- **The 1980’s and the Introduction of the YOA**

The YOA reflected the changes which had occurred during the 1970’s and early 1980’s regarding the various control mechanisms in place. By the late 1960’s researchers were increasingly discovering that reforms constructed under the principles of *Parens Patriae*, particularly treatment based, or diversionary alternatives to incarceration were unsuccessful in their efforts (Griffiths and Verdun-Jones, 1994, Bolton et al., 1993).

Ironically, as Bolton at al., (1993) note, negative findings concerning the effectiveness of rehabilitation were often interpreted by reformers as a justification for more, not less, intensive treatment. Regardless, by the 1980’s period, there was a notable growth in the use of community-based rehabilitative controls. Some of these took the form of diversion programs (intended to be informal) and some the form of more formal open-custody community homes. Diversion programs represented one example of the
movement towards ‘decarceration’ that the government had initiated during the 1970's. In Osborne’s (1979:23) analysis, “diversion” has two aspects: “keeping the offender out of the criminal justice system altogether or keeping him out of the formal criminal justice system but redirecting him into an informal system”. Several researchers, among them Caputo, (1987), and Kenewell, Bala, and Colfer (1991) have argued that diversion programs such as Canada’s Alternative Measures Program are far from an informal experience for delinquent youth. Moreover, many researchers have also held that diversion programs have resulted in a “widening of the net” - an increased intrusion into the lives of many youths who would otherwise have been dealt with informally, or else directly, by community-based services (Frazier and Cochrane, 1986, Leisheid and Jaffe, 1988, Hackler, 1991, and Reitsma-Street, 1991)

While there has been very little empirical research conducted to ascertain the effects these various penal measures have had on the control of delinquent youth in Canada, Mandel (1993) has done a similar study on adults. In his research, he tracks imprisonment rates and various community-based controls (namely probation and parole rates) to study their impact on the number of individuals under state control over time. According to his findings, while the 1980’s succeeded in reaching and sustaining an all-time per capita prison population compared to other forms of punishment and control, imprisonment in Canada (in relative terms) appears as a declining form of punishment. Since the 1960's, he demonstrates, the use of prison as a response to deviance has been considerably overshadowed by the enormous rise in mechanisms operating outside of the traditional prison setting. These measures include diversion programs, community hostels, and various forms of probation orders.

In fact, while in 1965 prison admissions outnumbered probation admissions by 9:1, this number dropped down to 2:1 by 1979. Meanwhile, the rate of probation admissions escalated from about 98 per 100 000 population in 1965, to 367 in 1982. Further evidence of the shift to less-coercive forms of control is suggested by the average daily population rates (of individuals on probation orders). For Ontario between 1965 and 1972, from only a few individuals on community-probation orders, the number eventually surpassed the number of adults in prison. By 1983, Ontario’s probation population was
more than four times its adult prison population. For the rest of Canada, the numbers are approximately three times the population of incarcerated adults (Mandel, 1992).

An interesting element of Mandel's work is his attempt to devise what he terms a "repression rate". Canada, he claims, has become an increasingly repressive state, with more and more citizens falling under the purview of the crime-control system. While he acknowledges the increase in crime rates over the years, his claim is that the repressive mechanisms of the state do not proportionately reflect these changes. To this he offers many findings to support his thesis that now, more than ever, Canada operates a more "repressive" crime-control system.

Part II: Theoretical Perspectives

- **An Interpretation of the Rise of Disciplinary Controls: Foucault and Cohen**

  The social control analysis also interprets these historical and present-day reform consequences critically. The move to the use of the prison, and subsequent prison-based institutional programs, they argue, was designed primarily to maintain order and control rather than to rehabilitate offenders. Discipline, and the ability to better monitor a growing population, was best achieved under the prison model. This concern with discipline and surveillance is still noted in the present-day change to a system geared towards decarceration. Only after the prison had proven a failure, and an expensive one, had the shift occurred to community based corrections.

  Social control theorists maintain that this *most recent* change is also one of the most important, for it's occurance affects more people than ever before. Cohen (1985) best summerizes the social control hypothesis:

  - Decarceration reforms are more of a response to fiscal pressures than a search for the rehabilitation of delinquents.
  - Decarceration is a myth. Historically, rates of institutionalization are not decreasing as they should.
  - There is no evidence that community alternatives are any more effective in reducing crime.
  - These new methods are not really cheaper.
• The system's assertion that these new methods are a form of retraction is undercut by its increase in "invisible" methods of control.
• As a whole, the "net" of social control (those under federal and provincial surveillance) has actually expanded over time.

Cohen's analysis of recent penal changes divides each series of profound changes into what he terms "master shifts". The first master shift, he claims, occurred during the late 18th and early 19th centuries. What makes this period significant is the change which occurred in the state's official response to deviance. Once harsh, corporal punishments, have giving way to a more rationalized form of control - culminating in the introduction of the prison (Cohen, 1985). Within the prison, punishment was closely associated, and dependent upon, treatment. Reformation of the mind, not punishment of the body, provided a new method to deter future delinquency.

Coinciding with this growth in the reformatory practices was the growth in a new class of experts and professionals. Their dominance in this field grew during the early and mid-1900's with increased use of treatment-based facilities and community controls. To Cohen (1985) this represents an extension of the first master shift, as professionals use their "science", and "rhetoric of evaluation", classification, and treatment to dominate penal ideology.

The next master shift occurred following the 1960's: the destructuring movement. Contrary to the conventional view of penal history which holds that a new understanding of the needs of the offender led to decentralisation, de-professionalisation, and decarceration (Carrigan, 1991) Cohen argues the circumstance are quite different. In this latest master shift, state intervention has in fact been strengthened and extended. Forms of control, whether old (closed custody) or new (community based) have both expanded. While the first master shift (the introduction of the prison) was typified by exclusion of the individual, with the second master shift (decarceration), control and punishment have instead become dispersed into the community of the offender.

Foucault's interpretation of these events is somewhat similar. His analysis, however, concentrates more closely on older forms of crime-control, and then traces their evolution towards modern times. In his book, Discipline and Punish (1979), he traces the
development of what were once severe penalties for misbehavior to more humane disciplinary procedures. Though subtitled “the birth of the prison”, his investigation does not comprise merely a history of the prison (Coussins and Hussain, 1984). In fact, only one chapter deals exclusively with the prison. The reason the prison is important to Foucault is because it represents one of the key defining characteristics of modern disciplinary forces. With the birth of the modern prison during the 1800’s, incarceration slowly replaced corporal punishments by the state. As Foucault (1979) demonstrates, this new method of containing deviance also resulted in a shift in the “target of punishment”. What once resembled a physical attack on the body had been replaced by a system which sought to alter behavior by reforming the mind of the offender. Prison also represented exclusion. Pain had been eliminated, but at the cost of a deprivation in liberty (Foucault, 1979).

In Discipline and Punish (1979), the first chapter opens with an extremely graphic depiction of the torture of Damiens, a man sentenced to a horrible death for his attempt on the life of the king. Immediately following this is an excerpt from the “House of Young Prisoners” written less than a hundred years later. The series of events are, comparatively, drastically different; one a brutal execution, the other a detailed timetable for the regulation of the day of a young offender. Foucault’s use of these two excerpts from criminal justice history clearly demonstrates the changes he wishes to draw attention to in his study. As Lemert and Gillan (1982) note, it also serves to uncover many of the elements contained within each mode of punishment. Historically, punishment (and deterrence) was based upon public spectacles of corporal punishment. More recently, the state has changed the methods of distributing punishment and deterrence. Punishment relocated to closed facilities and became increasingly concerned with changing the attitudes, values, and skills of the offender.

Cohen and Foucault both identify the introduction of the prison as a significant shift in the method of punishment. Foucault’s discussion, however, is more concerned with an analysis of power and it’s relation to the rise of the prison. To Foucault, power plays a central role in all circumstances. As Foucault (1979:303) states, “in it’s function, the power to punish is not essentially different from that of curing or educating”. Thus, the
rise of the prison does not so much represent a new mechanism of control (Foucault, 1979). What the prison does represent, however, is an increase in the degree of power (control) held by the state.

To best illustrate his argument, Foucault employs Jeremy Bentham’s model prison, the Panopticon. The Panopticon is a design for a prison which attempts to create a structure in which all inmates can be seen, at any time, from one central location. As a consequence, one guard may now supervise a population of prisoners which may have previously required several guards. This “architecture of control” becomes, for Foucault, the perfect model of exercising power, and, as metaphor, of understanding modern control forces.

- *Structures of Discipline: From Bentham to Foucault*

  ...the more constantly the persons to be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose of the establishment be attained.

  J. Bentham (1962:40)

Such is the argument for the Panopticon; Jeremy Bentham’s all-seeing prison plan. While the Panopticon is the invention of Bentham, credit for its contemporary application must go to Michel Foucault. As Lyon (1991) states, “what for Bentham was a dream, for Foucault is the reality *par excellence* of modernity” (1991:607).

Bentham published his plan for the Panopticon prison in 1791 (Atkinson, 1969). Integral to the plans were the idea of a central “inspection lodge” which was surrounded by cells forming in a semi-circular pattern around it. Through the use of various architectural manipulations the objective was to create a relationship in which officials would be invisible to the inmates. Consequently control could be maintained by the constant sense that inmates were being watched by unseen eyes (Lyon, 1991). Not knowing whether one was under surveillance, obedience would be the prisoners only rational option.

The significance Foucault (1979) accords the Panopticon can be grasped in his connections between it and modernity. The Panopticon forms the bridge between punitive and reformative disciplinary practices. Bentham’s innovation was not only created for purposes of inspection or rehabilitation, but to use uncertainty as a means of subordination.
While previously punishment was cruel and visible, the shift to contemporary times introduced clean and rational forms of social control. In Bentham’s own words “there you saw blood and uncertainty; here you see certainty without blood” (Bentham, 1962:64).

Encompassed within the power relations which the Panopticon prison model created was, principally, disciplinary power. In Foucault’s (1979:187) words, disciplinary power

...is exercised through its invisibility. It imposes on those whom it subjects a principle of compulsory visibility...It is the fact of being constantly seen, of being able to always to be seen, that maintains the disciplined individual in his subjection”.

In short, visibility and uncertainty become a trap which, in turn, acts to maintain order. The irony of this situation is that inmates, in the absence of being physically coerced, (as once they were) now come to monitor and control their own behavior. It is these qualities which Foucault locates in modern-day control systems: whether they be crime-control, education, medicine, or the workplace. The fabrication of an institution or system (prison, factory, school) necessarily incorporates the potential of constant supervision. An example of this could be any one of the community controls now designed to monitor young offenders. With probation, for instance, more real-life activities of an individual can be observed by a method that permits a generalized and constant surveillance (Foucault, 1979).

The Panoptic model is, therefore, an image of power which, when re-created and applied in a diversity of instances, acts to secure subjection of the offender. For Foucault, the extension of this mechanism of power creates disciplinary power. Probation, for instance, extends the states surveillance powers into the community and even the homes of the offender. This form of disciplinary action establishes control through observation. Probation practices and community-based programs observe the conduct and behavior of individuals in their home environment almost as prisons once monitored behavior within the prison walls. With these latest control measures, however, power is visible, but has now become unverifiable. Consequently, a smaller number of officials (social workers, probation officers, etc.,) can now control a greater number of delinquents. As a result, any increase in, or addition to, the size of the control functions of the justice system should
result in an unproportionately larger increase in the numbers under official state control and supervision.

All of these techniques, and their expansion, have had a similar effect: they have made the state, whether in the form of a social worker, probation officer, or criminologist, not master over the individual, but over the entire group defined as delinquent. Again, power is a central element of this analysis. Power here can be extended not only over children, but over their parents and their way of life. Each of these areas are now subject to the critical eye of the justice official in charge, and each has a bearing upon the subsequent actions taken by the state during the process of supervision.

While Foucault's discussion on the expansion of power is informative in this regard, it also has its limitations. The analysis presented thus far has attempted to examine the methods whereby the state (specifically the crime-control system) has increased it's control functions over the last century, and the consequences this entails. One contribution Foucault's work has made to this analysis is it's concentration on localized or "capillary" power. This entails examining the sites of power which arise in the local relationships and environments which people encounter in their day to day lives. In Foucault's case, however, this is also a double-edged sword, for his contention that power is to be found in the smallest of social interactions has the consequence of redirecting the study of power away from the state.

[T]he analysis...should not concern itself with the regulated and legitimate forms of power in their central locations...On the contrary, it should be concerned with power at its extremities...with those points where it becomes capillary. One should try to locate power at the extreme points of its exercise, where it is always less legal in character.

Foucault, 1979:

This assertion aides in the understanding of the present study immensely, for it directs the study of the states power, and the actions of professionals working for the system, away from larger institutional arenas and into the more localized domains of the community and the home. The problem with Foucault's work, however, is that, as a study of non-legal social controls, it has the effect of de-emphasizing the significance of the state and other forms of centralized and institutionalized power.
Foucault's argument that power relations extend beyond merely the state does offer some good advice to social research however. It can guide the analysis herein to examine those controls which have localized state power within the community, and thus widened the social control net. However, Foucault appears to have ignored the very diversity he claims power relations entail. His analysis focuses almost entirely on those instances of power which occur in the localized regions of interaction and control. His rejection of Marx and the ruling class as agents of control leads him to place his analysis beyond the level of the state (an important approach) but he does so at the expense of virtually ignoring the importance of the state and it's role. The “state” for Foucault, is never even defined. With old forms of discipline and punishment, the sovereign represented the clear holder of power. With the shift to modernity, the roles of discipline have become blurred. In Foucault's analysis, this evolution, and modern repressionary forces in general, represent an overall “strategy” of power. But who is the “strategist” then? In Foucault's work there is no one agent of control. In fact, we are all agents of our own control as much as others are responsible for our control. That is what makes the Panopticon model interesting in our bid to understand the findings in this research. It implements a measure of control which is independent of the person, or mechanism, that operates it. In fact, as Foucault (1979:201) states “…the inmates should be caught up in a power situation of which they are themselves the bearers”. With surveillance being unverifiable, it forces the individual over whom it is fixed to constantly monitor his/her own behavior. But who wields this power? Who, or what, is the common agent responsible for unifying all of the control measures in place today? To Foucault, the answer lies within “the Gaze”; the Panopticon. Essentially, Foucault does not answer who controls the power behind the disciplinary society, only what controls it. The identification of the Panoptic gaze is interesting because it allows Foucault to avoid the need to identify a unifying agent for all of the diverse practices he investigates (Hunt, 1992).

- **Social Control and the Theories of the State**

  More than ever before men now live in the shadow of the state. What they want to achieve, individually or in groups, now mainly depends on the state's sanction and support.
Echoing Foucault’s analysis of the state, Miliband (1969) points out early in his discussion on state theory that a study of the “state” is also a study of society and the distribution of power in that society. State theory is concerned with studying the numerous institutions which, taken together, constitute the state. As Miliband observes, the state, or state system, is made up of various elements. These include: the government, the administration, the military and the police, the judiciary, and the units of subcentral government (Miliband, 1969:49-55). While Miliband represents an instrumentalist position regarding state theories, this general breakdown in the elements which comprise the state will serve as a good starting off point from which to understand state theories. Where most theories (and theorists) of the state differ is not in locating the site of power (those institutions mentioned above), but rather in their perspective of who exercises it, for whom, and how it is exercised. Two theories of state theory are analyzed in depth herein, the instrumentalist and the structuralist, with a short review of the liberal/pluralist position also presented.

- **The Liberal/Pluralist View of the State**

According to the liberal perspective, the state exists to maintain order and stability in civil society (Quinney, 1974). Law, for instance, is established through consensus and is divorced from any political or class-based interests. Each of the different classes in society utilizes the law to settle its disputes, and can rely on it to remain neutral, for the “rule of law” disallows bias and dispenses justice fairly (Ratner, McMullen, and Burch, 1987).

The state thus functions to serve all groups equally. While the existence of various “classes” in society is recognized, the pluralist perspective contends that power and influence is dispersed among a multitude of competing interest groups (Ritzer, 1988). With so many groups struggling for resources, “competition...is itself a prime guarantee that power in society will be diffused and not concentrated (Miliband, 1969:4).

In this democratic state, therefore, there is no one power elite that rules society. The state is a legitimate and neutral forum that handles negotiations evenly and fairly. Here, the rule of law strives to serve “the interests of all” over “the interests of the
particular" (Ratner, McMullen and Burch, 1987:90). In this idealist understanding, reforms, such as the introduction of the prison to replace harsh punishments, are seen as the triumph of humanitarian causes. Informed, professional methods of dealing with delinquency, this perspective holds, took over during the 1800’s in an effort to transform and help the deviant. Physical punishment is said to have given way to rational intervention (Cohen, 1985). Rehabilitation goals led to the creation of Reformatories and training schools and, over time, these institutions and their methods adapted and modified themselves based on the needs of society and the offender. Moreover, this perspective would claim that the recent development in penal reforms has resulted in a movement away from the reliance on prison and formal intervention (Bolton et al., 1993). Decarceration, and an increased reliance on community based alternatives, are designed to lower the overall inmate population (thereby lowering the cost of penal measures) and re-integrate the offender into society in a less obtrusive manner.

- **Instrumentalism: Capitalism and the Influence of the Ruling Class**

In the instrumentalist perspective of the state, and particularly of the crime-control system, class is the most important factor affecting the distribution of justice (Linden, 1992). In this perspective there exist two very important classes: the ruling class and the working class. In brief, the instrumentalist position views the state as having been created by the ruling class; that class which owns and controls the means of production in society (Quinney, 1980). As the dominant class, this group is able to use the state and its institutions as an instrument to secure and reproduce the material basis that insures it's (the upper class’s) relative position in society. Having control over the means of production, and thus the material resources in society, the upper class has the power to effectively manipulate the state, and its various institutions, in its favor. The legal system thus becomes a tool, or instrument, of class domination favoring the interests of the ruling class (Quinney, 1974). Ratner, McMullen, and Burch (1987) indicate that this thesis is confirmed by studies of corporate crime in Canada. The state and the law, they point out, are particularly ineffective when it comes to pursuing corporate tax fraud and business crime, but display an extremely harsh disposition when pursuing and sanctioning offenders
of petty-crimes. Snider (1993) also demonstrates the ineffectiveness of the law when dealing with such illegalities as anti-combines legislation and infractions against the environment by Canadian businesses. The worst penalty a company may face is a large fine. Compared to the profits derived from the illegal action however, this fine is usually insignificant. As Snider (1993) points out, big business is consistently able to subvert the law by receiving a finding of illegality but avoiding the label of any criminal wrongdoing. To the instrumentalist theorist this example does not so much indicate that these large organizations are above the law, but more accurately, that they control the laws in their favor (Ericson, 1987).

The interests of the state, and the maintenance of the status quo are not only insured by the few ruling elite of capitalism, but also by the many “managers” who work on behalf of the state. As Miliband (1969) contends, while a minority of people control the majority of wealth, in countries such as Canada and the U.S., ownership itself is diminishing in significance. What Miliband does is draw a distinction between the ownership of resources and their actual control. Control, in this view, has now passed (or is passing) into the hands of managers who themselves are not the actual owners of the resources they command. That their loyalty rests with the capitalist enterprise is not surprising.

For our intents and purposes, it seems feasible to draw upon this same argument to understand the actions of government (public service) managers as well. The instrumentalist position views those members of the state responsible for making, interpreting, and enforcing the law as favoring the interests of the capitalist state in order to enhance and protect their own privileged positions (Ritzer, 1988). Moreover, the loyalty they pledge to the public interest is not viewed as politically neutral. “Neutrality is absurd” states Miliband (1969:120). Placed in positions of responsibility for not only applying but determining public policy, these individuals are constantly subjected to the ideology of the state’s interest and the interests of the capitalist economy. The education, social standing and class position of those civil servants who hold enough power to determine and implement social reforms places them in a special group of individuals whose ideas and beliefs are bound to influence their view of the “public” interest.
State agents are thus considered a strong force in the preservation of the status quo. Unlike the popular conception of state social reformers which views them as placing the interests of the lower class on equal footing when making policy, the instrumentalists equate the role of bureaucrats in conducting the affairs of the state to the preservation of a system of inequality (Ericson, 1987).

Quinney (1974) also draws attention to the powerful voices of learned professionals in society. These individuals, encompassing the community of psychiatrists, sociologists, criminologists, social workers, and researchers have become, in his words, the "ancillary agents of power" (Quinney, 1974:26). These professionals, or "experts", are described as providing the kinds of information which leads to the creation of programs intended to control those who threaten the social system. In essence, the information the "managers" of social order compile directly and indirectly serves to reinforce the existing inequalities in society.

This alliance between criminology and the state, however, is far from being an explicit conspiracy; rather, the relationship is much more natural and subtle. Criminologists automatically serve the interests of the state by following their own unexamined assumptions about the nature of the world and the process of understanding it. By pursuing...an ideology of social order, the criminologist finds his interests tied to those of the state


These professionals act as reformers of the state since it is the issues and problems raised by them which receive official attention. As experts increasingly define what or who poses a threat to society, they help to influence reforms which reinforce the interests of those in power while insuring the relative powerlessness of those adversely affected.

McMahon and Ericson’s (1987) study of a citizens group established to reform the police in Toronto during the early 1980’s highlights this assertion. The study demonstrates how reform efforts by groups or individuals who operate outside of the system can fail because of “instrumentalist co-optation” by members of the state. In this case, a group of private citizen’s efforts at reforming police are met by the presence of state representatives who attempt to control and monitor the reform process. In so doing, these representatives bring the reform effort into line with their own needs and abilities.
This process is required as both parties, particularly the outside reform group, need to make their demands ones that are manageable by the present system. In the end, McMahon and Ericson (1987) note, the needs of the reform group are "converted" into their instrumental value for the state.

While this example provides an insight into the ways the state may subvert outside attempts at reform, there is the more likely situation in which the state's representatives themselves instigate reform movements. Many reformers are employed by the state and thus many issues and problems are raised by them. This allows these individuals to identify "problems" that need to be addressed by the state system, as well as formulate solutions to deal with them. Thus, it is they who decide the course of events which unfold as reforms are implemented. Instrumentalists such as Quinney (1974) and Ericson (1987) view these reform initiatives as instruments for "reforming" and/or "reordering" the "structure of domination" that exists within society. Reforms are a way for the state to institute programs which reinforce its control in an ever changing society.

Studies conducted by Boyd (1981), Jones (1978), Rains (1984) and Platt (1969) all demonstrate cases in which specific reform movements resulted in an extension of the state's control over dependent or delinquent children. For example, in Neil Boyd's analysis "The Cruelty of Benevolence: The Release of Delinquents from Ontario's Training Schools" (1981), he depicts the numerous reforms aimed at providing more effective, lower-cost methods of dealing with juvenile offenders during the 1800's and early 1900's period when institutional training schools were subjected to increasing criticism. Despite several efforts at reforming the training school system, and even replacing it, the justice system ended in actually increasing the number of training schools while also implementing a system of probation (a measure initiated to replace the reliance on the schools) (Jones, 1978). The result of the reforms studied by Boyd (1981) was a marked increase in the number of youths subject to the official control of the justice system.

This finding is indicative of McMahon and Ericson's (1987) assertion that any reform initiated from within the state system can have no other consequence but to maintain the status quo, reinforce the existing social order, or reproducing more control.
“Reform” they state “is itself constantly in need of reform” (McMahon and Ericson, 1987:74).

In Foucault’s (1979) analysis of penal controls, the idea of “progress” is a claim made by the system in an effort to justify its reform efforts. Reforms, using this justification, are easily placed in the context of the “public interest” and described as “improvements”. The end result, as Miliband (1969) also contends, is that ‘progress’ does not achieve a goal which serves the interests of those it is intended to serve (lower class, delinquents, etc.,) but rather, has the effect of serving the narrow interests of the group in charge of implementing those reforms. The result for the former group (those subjected to state measures of “reform”) is to endure the negative consequences of the reform movement.

Recall that the instrumentalist perspective holds that the state is an instrument controlled by the ruling class. In Discipline and Punish, (1979) Foucault’s analysis purposely avoids a definition of “the state”. In so doing, Foucault is able to place his analysis beyond the level of the state. This allows him to investigate other sources of power which influence and control human action (Hunt, 1992). While this is an interesting approach, it leaves Foucault ignoring the importance of the state and it’s role. As a result, Foucault identifies the “strategy” of modern control mechanisms but fails to identify and analyze who is the “strategist”. For Miliband (1969, and Quinney, (1974, 1980) the answer is found in the ruling class. Reform movements and the idea of “progress” they attach to their actions are elements of a legitimation process closely monitored by those who hold the most influence in society. Quoting Marx, Miliband (1969:180-81) writes “the ideas of the ruling class are in every epoch the ruling ideas”. Therefore:

The class, which is the ruling class material force in society, is at the same time its ruling intellectual force. The class which has the means of material production at its disposal has control at the same time over the means of mental production, so that, generally speaking, the ideas of those who lack the means of mental production are subject to it.

(Marx, 1964, in Miliband, 1969:181)

Platt’s (1969) study of the child saving movement in the United States displays this assertion. In his analysis, Platt identifies how ideology, especially the ideology of
humanitarianism, can act as an effective instrument to exert control over the lives of others. Through the use of humanitarian efforts, the middle class in the early 1900’s was able to play an important role in strengthening the state’s image of representing the public interest. As Mathews (1979, in Chan and Ericson, 1987:7) noted “[i]deologies do not simply descend from heaven...they have a real material basis, and practical consequences”. In the case of the child saving movement, those consequences included the extension of state control over the lives of lower class youth and their families.

Legitimization by the state is an important aspect of its survival. Recall that the instrumentalist perspective holds that the states’ institutions function to constantly reproduce and reinforce the existing social order. To that end, it is also important for the state to maintain it’s image as neutral while still protecting the interests of the dominant groups (Quinney, 1980). As Foucault (1979) points out, the introduction and extension of such social services as welfare, health care, and policing measures have all been implemented in the public good (and with the public’s approval) but have also led to the expansion of state control forces. It is this presentation of public good that allows the states “services” to extend with so little resistance into the everyday lives of individuals.

...the coercive force of the state is but one means of maintaining the social and economic order. A more subtle reproductive mechanism of capitalist society is the perpetuation of the capitalist conception of reality, a non-violent but equally repressive means of domination

(Quinney, 1974:46-47)

How is this accomplished? One answer lies in the public education system. Education, more than even the media perhaps, plays an important role in the socialization of individuals. While schools try to avoid political bias in their teaching agenda, they engage, says Miliband (1969:181), perhaps unconsciously, in “political socialization”. This is to say, education fulfills a conservative role in that it acts to legitimize the actions of a particular society. It does this chiefly by its ability to transmit values; values, the instrumentalist position argues, which are sanctioned by the dominant groups in society (Miliband, 1969).

Through its various institutions then, the state is able to protect its interests and those of the ruling class. Whether the education system or the justice system, each
becomes the coercive means to controlling threats to the existing social and economic order.

One detailed approach to studying the rise of the state's institutions is Melossi and Pavarini's (1981) account of the evolvement of the prison in capitalist society. The evolution of the prison, they contend, is an example of the ruling class's desire to control an ever-growing labour force during the time of the industrial revolution. For our purposes, it represents a good example of an investigation of a state-based justice reform.

- **Melossi and Pavarini: Capitalism and the Control of the Labour**

For Karl Marx, the distinguishing feature of "modern" society is the emergence of the economic system of capitalism. Capitalism, however, is marred by class struggle (Lyon, 1993). This struggle arises out of the exploitation by the dominant class of the subordinate class. Thus, for our purposes, social control, in the Marxian tradition, can be viewed as a means of maintaining control over labour on behalf of capital. According to Melossi and Pavarini's (1981) historical overview, despite previous methods of control, with the introduction of modern society labour was no longer coerced. Although the worker was now, in a formal sense, free, there was still a need for the capitalist workplace to control behavior. As a result, various means were created to monitor workers and ensure their compliance as a disciplined labour force. These entailed the creation of "management", the use of machinery, and the formation of the factory (furtively designed as a prison) in which to apply these measures (Melossi and Pavarini, 1981). Hence, the organization of large numbers of workers under one roof created a unique method of obtaining discipline through the constant supervision of labour. This discipline is not merely proactive either. According to Rushe and Kircheimer (1939, in Garland, 1990) an examination of the capitalist control of labour provides not only an analysis of how capitalism structures the labour market and members of society, but also the "penal institutions which are used against them when they resort to crime or political resistance" (1990:94).

To Melossi and Pavarini, the use of the modern techniques of punishment, and, in particular, the prison, is an important element of discipline. For the state apparatus to
survive, it must constantly reproduce the labour power of the workers. To do this, it is integral that workers are properly trained, properly disciplined, and adequately rewarded for their labour. For those who pose a threat to the system, the prison is put in place to both punish and deter. The prison, in their words, is “like a factory producing proletarians, not commodities” (Melossi and Pavarini, 1981:145).

- **Structuralism: The State and Relative Autonomy**

  The structuralists view of the state in society differs on mainly two counts: one, the relationship between the state and class, and two, the role, or function, the state plays. To begin, structuralists reject the assumption that the capitalist class “acts as if it had one mind and body” (Linden, 1992). Capitalist society, they argue, is composed of a variety of classes. The capitalist and proletariat are considered the two most important ones, but there are others that are also important. These classes, often antagonistic, attempt to use the state and its institutions (for example, the justice system, the legal system) to settle disputes or further their interests. Contrary to the instrumentalists, however, the structuralists reject the idea that the state, in these instances, serves the interests of the capitalist class *directly* (Poulantzas, 1969).

  In the instrumentalist analysis, little autonomy is accorded to the state due to the ease with which the dominant class is able to manipulate it as a tool for its interests. In comparison, the structuralists view the state as relatively autonomous from the direct interests of specific groups. The state is thus conceived of in terms of its “functional utilities, playing a role of ‘liaison’ between classes (Ratner, McMullen, and Burch, 1987).

  The assertion of the ‘relative autonomy’ of the state is an important concept in the structuralist argument. Relative autonomy denotes a situation in which the various structures (or institutions) of the capitalist state are relatively independent of each other (Ritzer, 1988). Here, the state is characterized by both the “relative” separation of the economy from the political, and the state from the dominant classes (Poulantzas, 1973).

  It is important to note that relative autonomy does not signal that the state is completely neutral, or unmanipulable. For example, within the legal system, the autonomy of law maintains that law, free from bias, acts as a neutral arbitrator between
groups. As Snider, (1993) points out, however, state law is often weak and in the end serves the interests of the stronger group. The state does, then, give a certain advantage, or degree of protection, to the dominant class - even though it is not directly in the hands of capital (Ratner, McMullen, and Burtch, 1987). Overall, the state functions to support the long-term interests of capital and, in turn, protects its own well-being.

One of the leading writers on structuralist theories of the state, Nicos Poulantzas, has introduced many of these ideas. The state, in his view, is relatively autonomous from the immediate control of the capitalist class which is what allows it to accomplish the maintenance of the capitalist state in a manner perceived as legitimate. The state, he explains, “can only truly serve the ruling class in so far as it is relatively autonomous from the diverse fractions of that class” (Poulantzas. 1972, in Ratner, McMullen, and Burtch. 1987:86). Within this process, legitimation plays an important role, for if the state is perceived as repressive or biased to the demands of one group, other groups will increasingly resist efforts to control them (Linden, 1992). It is thus important that the state exercise its control, in the long run, through “ideological domination” (Ritzer, 1988:267). For Poulantzas, ideological domination occurs throughout the socialization process, particularly during the course of training people to occupy various positions and occupations within the capitalist economy.

**Conclusion**

Several competing, and some complementary, perspectives on the role of the state and its crime-control, justice, and legal system have been reviewed here. Overall, these are intended to serve as a guide to understanding, and critically analyzing, the events studied in the chapters to follow.

Having reviewed several theories regarding crime control and the state, it is hoped that, taken together, these perspectives will serve to guide an understanding of the findings which follow. For instance, Foucault’s (1979) analysis of the rise of social control points to the way in which control and surveillance have become increasingly dispersed into the everyday lives of human beings. Each successive reform movement initiated by the state in the past 150 years, both Foucault (1979) and Cohen (1985) assert,
has broadened the system’s control forces while having no observable impact on the prevalence of criminality. Crime continues to exist, and so do the growing number of state controls designed to monitor those who pose a threat. Over time, and particularly in the last few decades, the power of these mechanisms of control have increased substantially as surveillance has transformed itself from an action of the state within enclosed institutions to a generalized form of community-controls (Foucault, 1979, Cohen, 1985). Using state theorist’s perspectives, such as the instrumentalist (Miliband 1969, and Quinney, 1974, 1980) and the structuralist (Poulantsas, 1969), one can further develop an understanding of state juvenile controls. Where Foucault and Cohen’s social control thesis leaves off (namely in examining “why” the state acts as it does) the state theorists offer an explanation. Society, they argue, is composed of several classes. Those which hold power, mostly the middle and upper classes, are two such classes and they exercise considerable influence over the actions of the state and it’s institutions. When reforms occur to the juvenile justice system, for example, it is the interests of the dominant classes in society which primarily reflect the direction these reforms will take. As a result, the state’s actions in matters of social control are manipulable by the middle and upper-classes and are consequently to the detriment of the lower classes. Over time, the many reforms (which Cohen and Foucault identify) can be examined as a constant reinforcement of the status quo in society. Taken together, social control theory and state theory would identify reform movements initiated by the state system as serving the interests of the dominant classes while increasing the net of social control cast over the lower-class poor.

The next three chapters, which comprise the research on Canadian youth justice controls and their effects, are organized in a similar manner as Foucault’s (1979) study on penal controls. As stated at the outset, the goal of this paper is to evaluate the degree to which Foucault’s analysis of the rise of state justice controls is an accurate depiction of the Canadian situation regarding young offenders and state control. To do this, the study traces the history of Canadian juvenile justice reforms using a method comparable to Foucault’s in Discipline and Punish (1979). In the next chapter, the beginnings of a reform movement that led to the separate care of children from adults is explored.
Chapter Three

Methodology

Introduction

In setting about researching this paper, it is important to reiterate that my goal is to evaluate the applicability of Foucault's (1979), Cohen's (1985), and the various state theorist's (such as Miliband's (1969) Poulantzas's (1969) and Quinney's (1974, 1980))
depictions of the rise of state crime-control in light of the current findings on Canadian youth justice controls from the late 1800's to the present.

In his work, Discipline and Punish (1979), Foucault provides a socio-historical account of the rise of crime-control. The following paper takes a similar approach, tracing the Canadian situation regarding juvenile justice practices historically to reveal whether they follow a pattern consistent with Foucault's depiction of the rise of disciplinary controls. To do this, empirical data from official government sources will be used to measure the relative increase in the number of youths coming under state control and supervision during the last 100 years in Canada. This data, along with the careful study of the numerous youth justice reforms which have occurred during this period, is intended to provide the basis upon which the various theoretical positions presented at the beginning of the paper may be evaluated.

Each research chapter begins first with an historical account of the juvenile justice reforms which occurred during the period under review, then the empirical data indicates the effects these reforms have had on the number of youths placed under state control and supervision. Methodologically, the research will centre around second-hand data collection. This data will take the form of government-published documents and statistics, as well as the use of secondary literary sources and published research. Investigating the three areas that comprise the study (theory, Canadian penal history, and empirical findings) will make use of each source to a varying extent. The third, being the empirical research and presentation, is the most pertinent, and receives the most detailed overview below.
History of Canadian Juvenile Justice Reforms

To carry out a historical investigation of the Canadian response to deviance, secondary sources are again used. These entail both published historical studies (books and/or journal articles) on selected topics as well as published government documents.

Readily available government publications from the mid to late 1800’s and early 1900’s include a series of Reports published each year by various persons in charge of jails or reformatories. The first available reports are from 1860, which comprise the Report Upon the Common Gaols and Reformatories of Upper and Lower Canada and three Inspector of Reformatory Prisons for Boys Reports from Upper and Lower Canada. These provide information on the structure and organization of the jails and reformatories, the staff, the living conditions and routines of the inmates, and admissions information regarding age, offense, and duration of sentence of the prisoner population.

Subsequent reports include the Annual Report of the Minister of Justice (1882-1927), provincial Sessional Papers documents and reports and articles published in legal journals, the Journals of the House of Commons, and by individuals and institutions such as the Department of Neglected and Dependent Children (1907-1914) or the Children’s Aid Society.

To further study the changes taking place over time, and some of the attitudes towards them, Canadian House of Commons Debates are investigated. All of the debates which have occurred in the House of Commons since the 1880’s to the present have been recorded and are available for review. The indexes are filled with references to debates circulating prior to the advent of the JDA, several reforms throughout the 1900’s, and then the YOA in the 1980’s. These offer an invaluable insight into the various positions held by then-current politicians and the decision-making process regarding youth justice legislation.

Empirical Data Collection

To address the final question; whether there has been an increase in the number of youths handled officially by the system, government statistics will be thoroughly examined. These statistics will be gathered in a variety of forms, due mainly to the changing ways in which they were published between 1860-1990.
What remains consistent in the reportings on juvenile justice controls in the available data is the total number of youths charged, the various dispositions they received (for example, sentence to training school, reformatory, probation, etc.,) the length of their sentence, and the breakdown, by age, of the number of youths sentenced each year.

Beginning with 1860, a set of four government reports offers the first empirical information regarding the incarceration of juveniles in Upper and Lower Canada Jails and Penitentiaries. While these reports provide insight into the sentencing of juveniles in the mid 1800’s it is only by the 1880’s and 1890’s that consistent (and therefore comparable) data collection began to take place. The Statistical Yearbook of Canada, for instance, contains overall charging statistics of youth, by province, from 1882 onwards. A more specific breakdown of the data on youth dispositions is available in the Wardens Reports of Ontario (1886-1907), and the Annual Report of the Minister of Justice (1883-1911). Both indicate the number of juveniles in custody in provincial and federal jails/penitentiaries, the total number of juveniles sentenced each year, and the various types of dispositions received by juveniles. Dispositions are broken down into: fines, probation, jail sentences, prison/penitentiary sentences, reformatory prison sentences, and training school sentences (beginning only in 1901, Canada-wide). Later statistical publications include Canadian Published Statistics Reports (1936-1955), Statistics Canada Annual Reports (1956-1972), and then the Juristat (1978-1990) published by Statistics Canada. The Youth Court Survey Reports (YCS) and the Uniform Crime Reports (UCR) both published by the Canadian Centre for Justice Statistics, will also be utilized.

Despite the changes in the publications which provide the statistical information used, the categories of dispositions, being the number of sentences to probation, reformatories, training schools, etc., remains consistent. To analyze the effect of the justice system’s disposition rate relative to the youth population of the same age, the Canadian Census Reports (1881-1991) will be used.

With these two data sets (total disposition count and total youth population/Canada) ratios can be created to assess the relative growth in the number of youths receiving various dispositions. This provides the study with a valuable tool to analyze differences between sentences, such as the rise or decline in probation sentences.
relative to secure custody sentences, or between the total number of youths sentences relative to the youth population in Canada of the same age group. Through this method of analysis, it is possible to better ascertain whether in fact a rise has occurred in the number of youths coming under state supervision and control (versus simply an increase in the population of youths in general).

All of the research findings will be presented over the course of three chapters. Each chapter investigates one ten-year period between 1899-1990. In each case, the ten year period selected has been chosen because it corresponds to a time that mirrors the important time periods noted by Cohen (1985) and Foucault (1979) in their analyses of the rise of state controls. Chosen are 1899-1909 (turn of the century, introduction of the JDA), 1950-1960 (following W.W.II), and 1980-1990 (introduction of the YOA). These three “snapshots” of Canadian history will also be supplemented with a brief review of the data from the years between each ten-year period (this is done to ascertain what consistency exists in official control practices).

The first chapter, which concentrates on the late 1800’s and early 1900’s gathers data from a variety of sources. Here, the Report Upon the Common Gaols and Reformatory Prisons of Upper and Lower Canada (1960), the two Report(s) of the Inspector of Reformatory Prisons for Boys (1860, and 1861) for Upper Canada, and the Report of the Superintendent of Reformatories for Boys (Lower Canada) are all used for admissions information and sentencing records. The Annual Report of the Minister of Justice (1882-1909) also provides similar information. The most comprehensive source of empirical data for this chapter comes from the Wardens Reports of Ontario (1886-1907 - Ontario data only) and a combination of The Statistical Yearbook of Canada (1882-1909) and the Annual Report of the Minister of Justice (1883-1909) for federal data. Historical information (non-empirical) is gathered from a review of the Annual Report(s) of the Department of Neglected and Dependent Children (beginning in 1907) and the Children’s Aid Society (1904-1905, and 1909-1914).

In the second chapter, which researches the 1950’s period, the majority of all empirical data comes from the federal Canadian Published Statistics Reports (1936-1955) and Statistics Canada Annual Reports (1956-1972). This resource is combined with the
Statistical Yearbook of Canada (1950-60) and the Canadian Census Reports (1951, 1961) to fully research the data of state youth controls for the 1950-60 period.

In the third chapter, empirical data is collected from The both the Statistics Canada Annual Reports and the Juristat, published by statistics Canada. Youth Court Survey Reports and Uniform Crime Reports published by the Canadian Centre for Justice Statistics are also used to collect data on state controls for the 1980 to 1990 period.

In each chapter, a thorough review and analysis of the changes in youth corrections will be undertaken. Following this, the empirical findings will be presented. Here, the use of tables, and in some cases charts, will display the changes in judicial dispositions over time. These tables are intended to provide the analysis with a clear and simple method of identifying changes in the number of youths dealt with by the formal justice system over the three time periods reviewed in the chapters that follow.
Chapter Four
Canada and the Development of Youth Controls: 1849-1910

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• Introduction

In the chapter that follows, an attempt is made to introduce the reader to the first measures of Canadian crime control. The primary focus date here is the period from 1899 - 1909, representing the years leading up to, and immediately following, the introduction of the JDA. In order to place the conditions of the turn of the century in perspective, however, it is important that a historical review of the country’s reaction to juvenile delinquency be conducted. This chapter, therefore, investigates early concerns of what was perceived as an uncontrollable growth in criminality among the young. Although the increase in crime may simply have been due to the rapid growth in Canada’s population due to the influx of immigrants during the 1830’s and beyond, the findings presented herein suggest there is no indication that the rate of actual crime was increasing disproportionately. Nevertheless, strong pressures were placed on the government by social reformers and concerned citizens to create improved methods of controlling delinquency. What evolved, over time, was a dual mandate to protect both society and the child; society from the actions of undisciplined youth, and the delinquent child from the failings of a disadvantaged environment.

In the pages that follow, all of the numerous changes and reforms will be discussed and analyzed. Following this, an attempt will be made to investigate the actual statistical data that exists regarding official sentencing practices during the 1800’s and early 1900’s. The hope is that this final method of analysis will serve to complement the discussion that precedes it and further identify those changes taking place.
**Background to Reform: Canada during the Early 1800's**

Early Canadian history saw many periods of rapid growth in the new country's population. During the period between 1829-1836, for example, the population increased from 186,488 to 374,288, a near doubling of the total population (Historical Statistics of Canada, 1992). This large increase placed stress on many of the resources of the country. This becomes all the more apparent when one considers that many of Canada's new immigrants at the time came from conditions of near poverty. With the Industrial Revolution under way in Britain, the promise of free land and a new life proved attractive. To Irish immigrants seeking to escape the famine of the 1840's, Canada was seen as a way out of poverty. The result, however, was a large number of destitute families making their way into the country (Splane, 1965). The most common destination was into larger urban centres where "drunkeness and vice" were said to run rampant (Baehre, 1981). Children in these surroundings were described as undisciplined and unsupervised, and, in turn, predisposed to delinquent behavior (Rooke and Schnell, 1982, Houston, 1972). Added to this problem was the plight of abandoned and orphaned children. One Archdeacon, in a report on the social and educational status of York in 1831 wrote that York was "overwhelmed with widows and orphans" (Starchan, 1931, in Carrigan, 1991). In just one relief agency in York, between 1832 and 1834, a total of 535 orphans were being cared for (Houston, 1982). Further adding to this were the actions of British Child Services agencies who gathered children from the slums and orphanages of Britain and sent them to Canada in hopes of a better future (Bagnell, 1980). Between 1873 and 1903 Canadian Child Immigration agencies sponsored 95,000 such children. These children were, in turn, supposed to be placed in homes and families as paid help; young girls receiving mostly domestic servants' positions, and boys, farm help positions.

The success of these ventures is mixed. While many children were said to find good "homes", many still were exploited or abused and soon left their new placements (Bagnell, 1980).

Concerns over the rising numbers of destitute children came from many areas. The Ontario Prison report of 1881 concluded that the circulation of these children was
"fought with much danger", believing they would only prove to “swell the ranks of the criminal classes (Carrigan, 1991). Labour leaders also complained that these children created unfair competition, undercutting wages and taking jobs from hardworking “native” Canadians (Leon, 1977). Either way, many individuals were concerned about the control of such a large group of potential delinquents.

This interest in control had another dimension. As the poor situation of many children became increasingly apparent there arose a corresponding concern for their well-being. A series of articles published under the pseudonym “Philanthropy” in 1857 best characterizes this new concern. In it, the author speaks of coming to the plight of needy children at risk of delinquency.

[The] evil must be reached at it’s source: the noxious weed must be nipped in the bud; the child must be separated from parents and [situations] that would only train it up to vice...and allow such children to become actual criminals.

(From Carrigan, 1991:207)

In effect, the new concern with controlling the deviant behavior of youths was just one segment of the larger child-saving reform movement of the latter 1800’s and early 1900’s. One goal of the Victorian-age reformers was to form a clear connection between those children who were disadvantaged and thus viewed as at-risk of criminality, and those who were actually criminal. It is at this juncture that Platt (1969) views the beginnings of the humanitarian efforts of the middle-class child savers. While his analysis is of the American child-saving movement, it has several parallels to the experiences of the social reformers in this country. Platt’s (1969) study uncovered many of the results of a reform movement undertaken by the middle class; particularly the ideological changes that occurred in the nation’s mindset regarding the “care” versus “control” of destitute children. In this light, “ideology”, in particular the ideology of humanitarianism, can be viewed as an important aspect of both punishment and control (Chan and Ericson, 1981). It is Platt’s contention that humanitarianism was not truly the guiding force behind the changes that occurred in reform movements seeking to provide “aid” to neglected children. Here in Canada, there is evidence to support the fact that many citizens, particularly the middle-class, were deeply concerned about the influx of the lower-class poor immigrants, and the growing number of “street urchins” (Bellomo, 1972). They viewed these children as
potential, if not actual, criminals threatening the safety of larger urban cities. While it can be argued that many of the individuals involved in the reform movement of the late 1800's had unselfish intentions (Bagnell, 1980), it is important to recognize that the intentions behind a reform movement may in many cases be different from its consequences. For instance, Platt (1969) argues that the humanitarian efforts of the child-saving movement in the U.S. played an important part in reinforcing the upper and middle class's role as the protectors of the public interest. If nothing else, this reform movement, in both countries, served to create the impression of a concerned justice system and justified the government's further intrusion into public life.

- **The Institutionalization of Young Offenders and the Introduction of the Prison**

  Implementing a reform which regards children as destitute and in need of care, reformers first called for the end of child imprisonment in adult-based institutions. In these institutions, both children and adults suffered an equal form of discipline. The early attitude that originally prevailed regarding children was demonstrated not only by the fact that they were imprisoned regularly, but also by the harsh treatment they encountered while there. The 1849 Report on Kingston Prison gave examples of extreme cruelty. For example, a young boy, ten years of age, who was sentenced for a seven-year term, was publicly lashed fifty-seven times over an eight and a half month period (Brown Commission Report, 1849). This punishment was carried out for the offences of "staring and laughing", both felt to be disruptive by the warden. Another boy, eight years old, was lashed during his first week at the Prison and subsequently lashed again fifty-five times over the course of the next nine months. Young girls were also housed in prisons and they too received similar punishment.

  The first available statistics on prison populations which differentiated its population by age is the *First Annual Report of the Board of Inspectors of Asylums and Prisons* (1860). In this report, the data points to a total of 682 young persons (under the age of 16) in Canadian Jails. This number represents 6.6 % of the total population of prisoners. When compared to the rest of the population in Canada, the rate stands at 23.2 per 100 000 population. In almost all cases, the crimes for which juveniles were incarcerated were of a
very minor nature. The Report of 1860 notes only a few, but examples such as minor theft are common.

As crime and juvenile crime rose, an increasing number of prisons and jails were built and an increasing number of juveniles were sent to them. With little else in the way of alternatives for young delinquents, and in assessment of their 1849 findings, the Brown Commission made the recommendation for the building of houses for the “reformation” of youth.

- *The Institutionalization of Young Offenders and the Development of the Reformatories*

It was in the midst of these findings that a concern arose with regards to prison. The finding was that prison was ineffective in producing social change and thus needed replacement (Jones, 1978). In short, prison didn’t work. Influences from the United States and a growing belief in the virtues of education and schooling also urged governments to design a new system for dealing with young people (Griffiths and Verdun-Jones, 1994). What children were believed to need most was an institution separate from those of adults which would expose them to an environment superior to that of their home environment (Jones, 1978, Prentice, 1977). Thus, in 1860, An Act for Establishing Prisons for Young Offenders led to the creation of Canada’s first two reformatory Prisons for boys; one each in Upper and Lower Canada. While these institutions emphasized the classification and segregation of children from adults, they were still very much prisons (Shoom, 1972). Nevertheless, the facilities were heralded as an improvement in the response to juvenile crime. Reformatories became a place were the dual needs of protecting society and protecting children could be met.

Shoom’s (1972) analysis of the Penetanguishene Reformatory for boys demonstrates the sudden, and increasing, reliance on such institutions. The reformatory, which was organised to house between fifty and sixty boys, reached capacity in its first four months. Within a year the population had grown to eighty, and the building was being enlarged. Three years later, the count was 174 and again was over-crowded. Around the country, reformatories were being built and growing just as fast (Splane, 1965). As the
years passed, reformatory Prison populations continued to grow and so did mounting criticism of their ineffectiveness.

Similar to the use of Prisons, which had previously been used as the primary means to house delinquents, reformatories were geared towards the use of punishment and hard labour. The 1891 Report of the Reformatory Prisons draws attention to the young ages of many children, the over-reliance on hard labour and punishment, and the poor and harsh living conditions of the children in these intitutions. Describing the relative crimes for which many of these youths had been imprisoned in the reformatory, one inspector was led to write “many here have been more sinned against than they have sinned” (Dickson, 1891:30). Further opposition arose due to the costs of such reformatories. In one report, an official noted that while prisons once absorbed the costs of adults and child offenders in a single institution, the reformatories had resulted in additional costs to the country (Hansand, 1890, in Jones 1978). The total annual expenditure in Canada (for 1889-90) was calculated to be an average of approximately $30,000 per reformatory, a cost cosidered by many at the time to be excessive (Jones, 1978). As a result, in the years that followed, the government came under growing pressure to reduce the costs associated with such institutions (Ontario, Sessional Papers 1897/98).

The most distinctive feature in punishment during the 1800’s was the introduction of the prison as the primary response to criminal behavior; where once young persons were treated in the same harsh manner as adults, the use of confinement was increasingly administered. As the findings thus far demonstrate, the introduction of the Kingston Penitentiary, and the use of the common gaols, were all housed with growing numbers of children during the early to mid 1900’s. As Carrigan (1991) has stated, the growth in Canada’s population, especially within the larger urban areas, posed new threats to the legal system as new illegal practices soon came into existence. Change was taking place within both the economy and society at large and each required stability and regularity. As a result, crime came to be viewed as an act against the interests of the society and the economy in a more generalized sense, not simply against the individual (Bolton et al., 1993). The expansion in the use of the Prison offered a response which seemed entirely appropriate on several grounds: it removed the offender from society, it punished humanely without
destroying, it allowed the state to react to both the crime and the criminal. In so doing, it offered the system a chance to reform the individual for successful release. In actual fact, the use of the prison signaled an increase in the overall power of the state to interfere in the lives of those children feared to be criminal or at-risk of future criminality. The replacement of corporal punishment with a system of suspended tights and constant supervision of those thought to pose the greatest threat to the well-being of society was crime control in its simplest form. It entailed less pain, and less cruelty, but more control and a greater ability to concentrate on the offender. As Foucault (1979) has pointed out, attention slowly transformed within this system, from an emphasis on the physical to an emphasis on the mental. That is, a change in the offender was thought to be achievable within a highly structured, closed environment. As social reformers lobbied tirelessly to establish more humane facilities which addressed the social/vocational needs of youth, institutional reformatories grew in population throughout the country.

- **An Attempt at Promoting Change: The Introduction of the Industrial Schools**

As noted thus far, reaction to juvenile crime during the 1800's reflected a reliance on punishment, hard labour, and the use of custody in the efforts to control deviance and reform juvenile criminals. While the move from prison to juvenile reformatories was an effort to better meet the needs of both society and children, each institution suffered from the same shortcomings. In the words of the *Commission of Inquiry into the Prison and Reformatory System of Ontario* (1891) the reformatory was described as “a great mistaske...the new structure was but a more commodious prison” (in Leon, 1977). As interest grew in finding a superior alternative to the reformatories, Industrial Schools soon gained popularity.

The idea for the Industrial Schools was influenced, in part, by the efforts of J.J. Kelso and the volunteers who sought social change for disadvantaged youth. Kelso, originally a Toronto journalist by trade, founded the Childrens Aid Society and participated in authoring the Child Protection Act of 1888 and later the JDA in 1900 (Rains, 1984). His criticism of the reformatories, as well as the influence of changes occurring in the United states, led him to advocate for the creation of academic and vocational institutions for
delinquent and disadvantaged youth. These new facilities would attempt to approximate the family as closely as possible; the family being viewed as both the possible cause of, and cure for, juvenile delinquency (Griffiths and Verdun-Jones, 1994, Rooke and Schnell, 1982). Thus, the belief was that an institution which could reproduce all of the benefits of the family: education, emotional support, structure, and discipline, would work to control further deviance. It is important to note also that these new facilities were formed originally with the intention of dealing with disadvantaged youth. Reformatories would still be used to deal with delinquents.

The first Industrial School in Ontario was opened in Toronto in 1881 (Carrigan, 1991). In 1892 the Alexandria Industrial School for girls was opened in Toronto, as the first such facility for girls. By the end of 1896 there were seventeen such schools operating between Vancouver and Halifax, housing over 800 children (Matters, 1980). As time passed, the schools came to be used as institutions for not only neglected children, but also those perceived as being at-risk of delinquency. Thus a preventative function emerged early in the history of the schools. Children believed to be at-risk were often committed in an effort to keep them out of trouble (Carrigan, 1991). In fact, it was even possible for parents to commit their own children if they claimed they were out of control (Houston, 1972). By the late 1800’s and early 1900’s, industrial schools were being used as direct forms of incarceration by judges as the courts increasingly sent delinquents to the industrial schools instead of reformatories (Leon, 1977, Jones and Rutman, 1981). The result was an expansion in the use of industrial schools to control juvenile delinquency. Consequently, with industrial schools now housing growing numbers of poor and delinquent youth, the overall control of children (predominantly lower-class children) by the state increased.

In Jones’ (1978) analysis of the events leading to the dismantling of Ontario’s Penetanguishene Reformatory Prison for Boys he gives evidence demonstrating the rapid rise in industrial schools. His research indicates that industrial schools had reached population sizes which nearly equalled those of the reformatories (which they were intended to replace) by the early 1900’s. Moreover, following the closing of Penetanguishene Reformatory in 1904, the subsequent year alone witnessed a 21% increase in the industrial school population. By the end of the decade, the population in industrial schools had alone
outnumbered the population of children once confined to both reformatories and industrial schools combined at the turn of the century. It appears, then, that the industrial schools had taken over the position previously held by the reformatories.

Life inside the industrial schools was originally envisioned to be one of discipline and learning. The goal was to achieve what the reformatory had failed to do; create a structured, well disciplined environment modelled after the family which encouraged education and vocational training. It was believed that an environment that would train young children useful skills and keep them occupied would aid them to lead self-supporting and crime-free lives upon release.

The day-to-day activities of these institutions consisted of the learning of housekeeping tasks (cooking, sewing, etc.), religious studies, sports, and of course the training of the children in trades. While these elements marked a positive departure from the conditions of the reformatories, there were still many conditions that persisted into this new establishment.

As these facilities became popular as dispositions for delinquent and "pre-delinquent" youths, they also quickly suffered from overcrowding. According to J.J. Kelso’s study of the Ontario industrial school system, there were several facilities operating at double their limit, thus straining resources and impeding progress with the children (Kelso, 1913, in Jones, 1978). The sudden increase in the use of industrial schools also meant increased costs to the provinces. A complaint by one superintendent in a Vancouver facility was directed at the use of per-capita funding (Donaldson, 1907, in Matters, 1980). This, he argued, placed a premium on the accumulation of inmates. This rises the overall cost of the system and in turn threatens its ability to serve the best interests of the child.

With regards to vocational studies in the schools, most of the work was in manual or industrial training. Tailoring, printing, shoemaking, upholstering, blacksmithing, baking, gardening, farming, and carpentry were the most prominent, although most schools only offered two or three such trades (Carrigan, 1991, Houston, 1972). In many cases, however, the children’s "education" revolved around their need to provide for themselves and the needs of the school. With financial support from the government low, many institutions were dependent upon the residents’ labour for general maintenance. The superintendents
journal at the Provincial Industrial School for Boys in Vancouver, for instance, documents how the inmates there were put to work digging a 200 foot long trench, between twelve and fifteen feet deep, for the replacement of a sewer line.

The excavating ... meant a great deal of hard work for the boys, but the practical experience will be usefulness to them later on.

(Donaldson, 1911. reprinted in Matters, 1980).

Another area that often failed to show improvement over the reformatories was punishment. The use of corporal punishment was a common form of discipline for children who had broken the rules (Carrigan, 1991, Jones, 1978). Investigating the records of one industrial school operating in the late 1800's and early 1900's, Matters (1980) recounts the activities of one well meaning school official who had called in a doctor to examine a boy whom he had punished. The doctor was notified to ensure that if legal action should be brought to bear against the official, there could not be “any suggestion made that he had been unmercifully beaten”.

The use of harsh punishment, vocational and industrial training, and educational instruction in both the reformatories and industrial schools is indicative of the new emphasis which arose on altering the attitudes, values, and skills of the offender. It also signalled the fear of reformers that imprisonment in federal and provincial penitentiaries allowed the mixing of all classes and ages of offenders which served to perpetuate future criminal actions. As a result, the early reformatories for children were arranged not simply to punish or monitor children, but as a therapeutic institution to reduce future reoffending. Reformatories and training schools were organized to morally educate through labour, vocational and educational instruction, and religious teachings. These institutions for youth surpassed the more generalized prison plan for they controlled the very minutiae of their environment. These facilities provided for the strict organization of the time of children and the strict regulation of every detail of their daily life. When to rise, eat, pray, work, and sleep were all arranged by those in charge. Rather than a show of force, therefore, the actions of the institutions sought to achieve total control over youth through discipline and supervision.
Most importantly, these institutions taught lower-class children what role they would play in society. Every aspect of the curriculum blatantly indicates a desire to train the youth within the reformatories in the trades and lifestyle deemed fit for the working class. The industrial school, as demonstrated, stressed vocational and industrial training and utilized manual labour in the process of “educating” delinquent and dependent children. While J.J. Kelso and the other members of the Children’s Aid movement sought to provide children with facilities that would approximate the “family” as closely as possible (parents, values, education), all the evidence indicates that if these institutions came close, it was only in reproducing a “lower-class” model of the family (albeit with middle-class libertarian values thrown in).

A central element to these institutions is their role in the socialization of lower-class youths. The reformatories and industrial schools introduced in the latter 1800’s indicated, above all, a concern with the sufficient preparation of youths to later occupy their designated adult roles (both socially and economically). This “class-confirming” role of which Miliband (1969) speaks is an important aspect of the control function of these institutions. The justice system, in this scenario, operates as a device for controlling the lower-class while protecting and promoting the interests and values of the middle and upper classes (especially those individuals who lobbied the state to establish these institutions). Moreover, because it achieves its goal in the least oppressive manner possible (socialization, education), it receives full public sanction from all sectors of society. This confirms Platt’s (1969) contention that the ideology of humanitarianism plays an important role in the application of punishment. In Canada, the childsaving movement, and state reforms implemented to intervene in the lives of dependent and delinquent children both played an important part in confirming the dominant position of the upper and middle classes (those leading these institutions) relative to the lower classes (those subjected to the demands of these institutions. Recall the instrumentalist position that “the state”, as we know it, is created by the class that has the power to enforce it’s will on the rest of society (Quinney, 1974). This perspective provides an accurate depiction of both the implementation and curriculum of the reformatories and industrial schools during the late 1800’s. Middle and upper class efforts at curtailing the perceived problems caused by dependent and delinquent
youth led the justice system to develop these reforms. Herein, through the use of regulation, education, coercion, and legitimization, the state ensures both its stability and its expansion (Ratner et al., 1987) while upholding the interests of the dominant classes.

- **Probation and the Introduction of Community Controls**

Ten years after its introduction, the industrial school was already coming under criticism. Overcrowded conditions, the mixing of troubled children with more serious offenders, the continued use of harsh discipline, the apparent ineffectiveness of the schools to properly educate, and the general over-reliance on institutionalization were all elements of criticism lodged by those interested in making changes to the system. This pressure to promote change came from many sides.

Social reformers and child advocates were displeased by the failure of the “family model” as an influence to the industrial school’s internal organization. The belief that the family was at once both the cause of delinquency (poor family controls) and the best response to delinquency (in the form of a supportive, well structured environment) was gaining strength in the late 1800’s and early 1900’s (Rooke and Schnell, 1982). Therefore, a proper family model, one which promoted those positive aspects, was the best form of control. What Kelso and others wanted most was a system of control that did not rely upon the expansion of institutionalization. The new idea called for the introduction of what they called probation:

> We want to bring about what is called the Probation System, following these kids up from their first offence and never letting them termed a “probationary system”. In Kelso’s words: get any further

(Kelso, 1907:109)

Kelso also advocated for the use of foster homes versus reformatories and industrial schools while delinquents awaited trial, claiming that in their normal duty, police officers and prison officials alike “however sympathetic they may be” were too reliant upon “force and punishment” (Kelso, 1907:106).

In direct opposition to Kelso and the advocates of probation were those who argued for an extension of disciplinary actions against delinquent youth. One official of the Toronto Children’s Court argued that existing methods were not only effective and inexpensive, but also that the “harsh attitude of police had the best deterrent effect on
children (Archibald, 1907, in Leon, 1977:92). He further believed that the actions of the “philanthropic...and sentimental fadists” would force justice officials to “kiss and coddle a class of perverts and delinquents who require the most rigid disciplinary action” resulting in a “disastrous effect” on the youths in question. While the St. Vincent de Paul Society was by no means in favour of the use of increasing the use of harsh punishment, they also objected to what they termed the “shadowing “ of young children (Leon, 1977). In their opinion, probation would lead the courts directly into the homes of young people, both delinquent and “at-risk” [indeed, Kelso (1907) advocated a system whereby probation officers report family situations to the magistrate in order to determine probable grounds for a child’s removal from the home]. This interference into the private lives of families was feared to jeopardize the goals of helping young delinquents.

A third argument for change arose from those who opposed the vocational schooling of young offenders. In this case, organized labour had a very negative reaction to industrial schools. According to one spokesperson, “our labour bodies are unanimously opposed to manual training in schools” (in Carrigan, 1991:412). The complaint to the government was based on the assertion that the industrial schools were producing less qualified workers still in their apprenticeship stage. As a result, employers were able to hire these individuals for less pay and this, it was argued, had the effect of depressing wages.

In the end, facing mounting pressures to lower costs and the public interest in promoting the welfare of disadvantaged and delinquent youth, the government adopted a probation system. The groundwork had been well laid, and in 1908 the JDA was passed. This officially declared probation as a dispositional option, and also incorporated special courts for youths into the system.

- **The Belief in Parens Patriae and the Implementation of the JDA**

Amidst all of the legislation passed in the years leading to the JDA, the Act and it’s subsequent reforms were heralded as “the one bright spot” in recent juvenile justice reforms (Aylesworth, 1909). Support for the introduction of probation seemed strong. As one member of the House of Commons put it:
The disheartening rising tide of criminality all over the world...and the changed conditions of modern life have rendered it necessary to meet those changed conditions (Monk. 1909:384)

This same individual goes on to say that intitutions are “nothing but a hotbed for the fermentation of criminality” and that “modern people...inspired by the spirit of Christianity or altruism now seek...to reclaim the [offender]”(Monk. 1909). Probation, then, was well received by many.

Interestingly, the best people for the job of probation are described by the then Solicitor General, Mr. Jacques Bureau, to come from “the best classes of society” and be “prominant men...who will form themselves into an association to teach young men to avoid...bad habits and commit crime” (Bureau, 1909:6389). W.L. Scott, the Local Master at Ottawa for the Superior Court of Ontario seemed inclined to agree, but added that this “highest and most important development in child-saving work” required trained experts if it was to be carried out successfully (Scott, 1906, in Leon, 1977:83-84). That Scott and Kelso were attempting to professionalize the work that had up until this point been done by volunteers is apparent. To do so served to legitimize the reallocation and expansion of funds now needed to make this new reform movement work. With most of the probation-oriented work being done by volunteers up until this point, the powers of probation “officers” in the eyes of the formal legal system was limited. What Kelso and Scott wanted was for legal and legislative recognition and to create financial support. This they felt would raise “the philanthropic work to the status of a profession” and encourage the interest of the educated classes (Kelso, 1907:106-107). An interesting suggestion for the appointment of professional probation officers came from W.L. Scott:

...the sex of a probation officer as...Feminine gender, is here used because experience has shown hitherto that women, intended by nature for motherhood, are better fitted for the work than men. Moreover, it is important that [they] be chosen from the best class...and a better class of women than men can frequently be got for the money available.

W.L. Scott (1908:896)

Not surprisingly then, Canada’s first two appointed professional probation officers, a Mme. Bruchesi and Miss Cassady, were women. The powerful lobby group that had fought for probation and a new method of responding to, and controlling, juvenile delinquency had successfully accomplished it’s goal. As the above findings indicate, the
issue of class position was an important consideration in the reform efforts being implemented at the time. The rise in new professionaly designated careers was selectively geared to insuring the “best classes” sought employment as experts of social/criminal matters and positions of authority within the system.

In the instrumentalist perspective, class is the most important factor affecting the definition of crime and the enforcement of criminal law (Linden, 1992). Due to their greater economic and social strength, the middle and upper classes are able to effectively control the application of the legal system. To this end, the argument is herein supported. Recall, however, that Miliband (1969) and Quinney (1974, 1980) also contend that the state (and its various institutions) arose to protect and promote the interests of the dominant class. This would imply that middle-class interests in promoting crime-control have a decidedly biased set of intentions. According to Poulantzas (1969), Miliband (1969) is incorrect in this assertion. Professionals within the middle classes, Poulantzas argues, do not constitute an offshoot of the upper class. They are separated from the actions of the dominant classes, and do not pursue what Miliband contends is a similar set of interests and goals as the dominant class.

While both rationales seem plausible the position of individuals such as middle-class justice professionals must lie somewhere in between. To begin with, complete political and ideological neutrality is impossible. Individuals who hold power enough to influence government reform movements and hold positions within the decision-making body have met the educational, professional, and social requirements needed to occupy their roles. Membership in this “social milieu” is bound to influence their interpretation of the “public” good (Miliband, 1969). As these individuals play an important role in the decision-making process, their goals and subsequent actions will have a strong influence on the outcome of state reform measures. As the findings demonstrate, social reformers displayed considerable interest in supervising the lives of needy children, particularly the lower-class poor. Whether by design or indirect consequence, the collection, supervision, and vocational training of lower-class youth had the effect of ideally serving the interests of the capitalist society.
In summary, the preceding pages have indicated that by the early 1900’s Canadian juvenile corrections had witnessed the creation of several social control methods created to control delinquent and dependent youth. From the prison to the reformatory to the industrial schools and finally to probation each successive reform did not result in a corresponding end to the one that had come before. That is, the building of the reformatories as a reaction to the criticisms of the prison did not completely eliminate the use of the prison to house juvenile delinquents; nor did the industrial schools lead to the abolishment of the reformatories, and so on. By 1909, the prison, the reformatory, the industrial school, and the use of probation and foster homes were all used as methods of controlling and monitoring young offenders. Each new reform added to the number of options justice officials had at their disposal when dealing with young delinquents. The purpose of the next section is to explore the available data on sentencing practices and investigate the effects of these new controls on delinquent youth.

**Review of the Statistical Data on Youth and Corrections 1849-1910**

As mentioned, the very first data that could be located is from 1860. This data comes from two main sources. One is the Report Upon the Common Gaols and Reformatories, and, for our purposes, it provides admissions information on jails in Upper and Lower Canada, and the federal penitentiary in Kingston, for 1860. The second source is a set of three reports published in 1860 on each of the three Reformatory’s for Boys in Upper and Lower Canada. Taken together, this data offers us an insightful view into pre-confederation incarceration in the two largest provinces.

**Table 1.**

<table>
<thead>
<tr>
<th></th>
<th>Population in Jails (under 16yrs)(^\underline{\text{a}})</th>
<th>Population in Reformatory (under 16yrs)(^\star)</th>
<th>Penitentiary Population (under 16yrs)(^\text{b})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper Canada</td>
<td>387</td>
<td>114</td>
<td>19</td>
</tr>
<tr>
<td>Lower Canada</td>
<td>295</td>
<td>36</td>
<td>--</td>
</tr>
<tr>
<td>Total</td>
<td>682</td>
<td>150</td>
<td>19</td>
</tr>
</tbody>
</table>

\(^{\underline{\text{a}}}\) From the Report Upon the Common Gaols and Reformatories, Dec. 31st, 1860.

\(^{\text{b}}\) From the Report of the Reformatory for Boys at Penetanguishene, 1860, and The Report (2) of the Inspectors of Prisons, Isle aux Noix, Quebec, 1860.
From Table 1 we see a preference for the use of jails to house young delinquents. Unfortunately, there is no information available from this time period regarding the conviction rate for juveniles, and thus it is impossible to calculate the ratios of those committed to those convicted. What we do notice, however, is the use of the Kingston federal penitentiary to incarcerate juveniles. The report of 1860 denotes juveniles sentenced to terms ranging from 8 months to indefinite sentences.

The next set of Data is for Ontario. This data was compiled using a variety of statistical publications published by the federal government, as well as a large number of Inspectors and Warden’s Reports from 1886 until 1910. The following table presents information on the Number of juvenile convictions for each year, the number of juveniles sentenced to common jails and juvenile reformatory prisons, as well as the number of juveniles sentenced to training schools (where available).
Table II: Juveniles Convicted, and Sentenced to Reformatories, Training Schools and Jails in Ontario, 1885 - 1910.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Juveniles Convicted *</th>
<th>Number Sentenced to Reformatories*</th>
<th>Number Sentenced to Common Jails (under 16)#</th>
<th>Number Sentenced to Training Schools*</th>
<th>Population of Young People (under 16) in Ontario*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1885</td>
<td>1214</td>
<td>n/a</td>
<td>500</td>
<td>--</td>
<td>750,540 (1881)</td>
</tr>
<tr>
<td>1886</td>
<td>1290</td>
<td>79</td>
<td>390</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1887</td>
<td>1375</td>
<td>91</td>
<td>447</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1888</td>
<td>1436</td>
<td>128</td>
<td>616</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>1889</td>
<td>1509</td>
<td>122</td>
<td>497</td>
<td>197</td>
<td></td>
</tr>
<tr>
<td>1890</td>
<td>1662</td>
<td>89</td>
<td>n/a</td>
<td>239</td>
<td></td>
</tr>
<tr>
<td>1891</td>
<td>1575</td>
<td>79</td>
<td>453</td>
<td>--</td>
<td>776,290</td>
</tr>
<tr>
<td>1892</td>
<td>1708</td>
<td>96</td>
<td>457</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1893</td>
<td>1631</td>
<td>102</td>
<td>422</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1894</td>
<td>1656</td>
<td>117</td>
<td>315</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1895</td>
<td>1847</td>
<td>159</td>
<td>314</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1896</td>
<td>1629</td>
<td>134</td>
<td>289</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1897</td>
<td>1848</td>
<td>102</td>
<td>282</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1898</td>
<td>1824</td>
<td>119</td>
<td>294</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1899</td>
<td>1831</td>
<td>150</td>
<td>292</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1900</td>
<td>1245</td>
<td>n/a</td>
<td>338</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1901</td>
<td>2108</td>
<td>n/a</td>
<td>289</td>
<td>--</td>
<td>955,060</td>
</tr>
<tr>
<td>1902</td>
<td>1914</td>
<td>125</td>
<td>231</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1903</td>
<td>2123</td>
<td>153</td>
<td>242</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1904</td>
<td>1399</td>
<td>113</td>
<td>171</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1905</td>
<td>1496</td>
<td>161</td>
<td>135</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>1861</td>
<td>89</td>
<td>136</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1907</td>
<td>2541</td>
<td>121</td>
<td>n/a</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1908</td>
<td>n/a</td>
<td>123</td>
<td>n/a</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1909</td>
<td>3058</td>
<td>169</td>
<td>n/a</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>1910</td>
<td>3370</td>
<td>247</td>
<td>n/a</td>
<td>--</td>
<td>1,109,956</td>
</tr>
</tbody>
</table>

*From the annual Criminal Statistics Reports of the Minister of Justice, Canada Sessional Papers 1883-1911, Volumes XVI No. 7 through XLVI, No. 9.
*From the Statistical Yearbook of Canada 1882-1911.
#From the Warden's and Inspector Reports of Ontario, Ontario Sessional Papers, 1889 - 1907.

Insofar as the number of children convicted is concerned, the period in review shows a steady increase up until 1910, with a slight drop in the 1902-06 period. The data on those sentenced to jail also shows a trend; this one a decreasing one from 1885 to 1906. While the data for training schools is unfortunately unavailable for most years, one report, the Report on Education for 1891 included figures for the previous three years indicating the number of juveniles sentenced to training schools in the province. Following the
introduction of the first training school in Ontario in 1887, there was a tremendous increase in the population of the schools from 1888 - 1890. The first year saw 67 enrolled that year, this more than doubled the second, and jumped to 239 by the third year. By 1896, six years later, there were a total of 17 training schools in Canada, with 10 of them here in Ontario (Jones, 1978). With the data on Reformatories we see a general rise in their use over the period reviewed here, with some dips during the early 1890's.

In order to better make sense of these numbers, and to analyse any trends that may be taking place over time, the above table will be broken down into three equal (five year) time periods. These are then presented in the form of ratios /1000 convictions and ratios /100 000 population (under 16 in Ontario).

**Tables III. IV. V.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Ratio of Convicted Juveniles/100 000 Population under 16 (Ont.)*</th>
<th>Ratio of Convicted Juveniles Sentenced to Reformatory/1000 convictions*</th>
<th>Ratio of Convicted Juveniles Sentenced to Jail/1000 convictions*</th>
<th>Ratio of Convicted Juveniles Sentenced to Training Schools/1000 convictions*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1887</td>
<td>175</td>
<td>66</td>
<td>325</td>
<td>n/a</td>
</tr>
<tr>
<td>1888</td>
<td>184</td>
<td>89</td>
<td>429</td>
<td>47</td>
</tr>
<tr>
<td>1889</td>
<td>192</td>
<td>81</td>
<td>329</td>
<td>131</td>
</tr>
<tr>
<td>1890</td>
<td>212</td>
<td>54</td>
<td>n/a</td>
<td>144</td>
</tr>
<tr>
<td>1891</td>
<td>203</td>
<td>50</td>
<td>288</td>
<td>n/a</td>
</tr>
<tr>
<td>1895</td>
<td>201</td>
<td>86</td>
<td>170</td>
<td>n/a</td>
</tr>
<tr>
<td>1896</td>
<td>170</td>
<td>82</td>
<td>177</td>
<td>n/a</td>
</tr>
<tr>
<td>1897</td>
<td>183</td>
<td>56</td>
<td>156</td>
<td>n/a</td>
</tr>
<tr>
<td>1898</td>
<td>181</td>
<td>65</td>
<td>161</td>
<td>n/a</td>
</tr>
<tr>
<td>1899</td>
<td>182</td>
<td>84</td>
<td>159</td>
<td>n/a</td>
</tr>
<tr>
<td>1903</td>
<td>222</td>
<td>72</td>
<td>116</td>
<td>n/a</td>
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<tr>
<td>1904</td>
<td>147</td>
<td>81</td>
<td>122</td>
<td>n/a</td>
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<td>1905</td>
<td>155</td>
<td>107</td>
<td>90</td>
<td>n/a</td>
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<tr>
<td>1906</td>
<td>190</td>
<td>50</td>
<td>73</td>
<td>n/a</td>
</tr>
<tr>
<td>1907</td>
<td>231</td>
<td>48</td>
<td>n/a</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**All numbers have been rounded**

*From The Census of Canada, 1871, 1881, 1891, 1901, 1911.

*From The Statistical Yearbook of Canada 1892-1911, and the Commissioners Report into Prisons and Asylums, Ontario, 1891.

*From Wardens and Inspectors Reports, Ontario. Ontario Sessional Papers, 1889-1907

As the above tables indicate, comparing these three five-year "snapshots" of Ontario, the ratio of youths convicted of all offences (indictable and summary) remains relatively stable. The average ratio for the first is 193.2/100,000 population. This declines somewhat to 183.4/100,000 for the 1895-99 period and rises again to 189/100,000 youths in the 1903-07 study period. Fluctuations are far more apparent with regards to the sentencing of juveniles to reformatory prisons. While an average of 66 youths per 1000 convicted where sentenced to reformatories during the 1887-1891 period under review, it rose to an average of 82/1000 convicted in the second period and then dropped to 69.5 /1000 youths in the third. At its highest level, the ratio of youths sentenced to reformatories was in 1905, topping 107 per 1000 convictions. Otherwise, there is no indication, over the period reviewed here, of any decrease in the use of the reformatory, despite the introduction of training schools and later probation.

One area which does demonstrate a decrease in each successive period is the use of the jails. Tables II through V, with the use of ratio's per 1000 juveniles convicted, shows a steady decrease in the use of common jails to incarcerate delinquent youth. From an average of 342.7/1000 convicted in the period 1887-1891, the count drops to an average of 165/1000 convicted in the second period and 103/1000 in the final 1903-1907 period with the very last years showing about 75/1000 convicted to the jails. As stated earlier, a similar comparison can not be made with incarceration to training schools, due to the lack of data that exists. The only analysis we can make is for the first three years after the introduction of the schools. For the period 1888-1890, there is a strong increase from 47/1000 convictions in the first year, to 149/1000 convictions in the third. Meanwhile, a noticeable decrease occurs in the use of the reformatory to house juveniles. In the years in which the training schools increase in rates of convictions by 47/1000 to 149/1000, the reformatories show a decrease from 89/1000 to 54/1000. While this seems to indicate a growing preference for one over the other, the data is insufficient to make any definite conclusions. The only records available on training schools are studies done on individual institutions. These studies (for example, Matters, 1980) all seem to indicate a growing preference for the training schools well into the early 1900's. The other piece of vital information missing from these early statistics is the numbers of juveniles sentenced in other ways. How many
were convicted but served no penalty, how many were fined, and, of course, how many were placed on probation?

The next set of data is for Canada as a whole. Information was collected in much the same fashion as the Ontario data. The Census of Canada for 1881, 1891, 1901, and 1911 were used to gauge the total population of youth under 16 in the country (all criminal statistics are presented as juvenile = under sixteen-yrs; thus for sake of comparability, other data was similarly collected). Some of the data came from the Statistical Yearbook of Canada as well, but most of the remaining information was collected by analysing the annual Criminal Statistics Reports, and Justice Reports, published in the Canada Sessional Papers.

Regretably, many of the available statistics published in these numerous reports fail to give any indication of the number of children who, on a federal scale, are sent to training schools, or are placed on probation.
Table VI

Table VI: Total Number of Juveniles Convicted, and Total Number Sentenced to Penitentiary and Reformatory, and Population of Young People (-16) in Canada.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Number of Juveniles Convicted*</th>
<th>Number of Juveniles Sentenced to Federal Penitentiary*</th>
<th>Number of Juveniles Sentenced to Reformatory*</th>
<th>Total Population of Youth (under 16) in Canada*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1882</td>
<td>2188</td>
<td>n/a</td>
<td>346</td>
<td>1,747,454</td>
</tr>
<tr>
<td>1883</td>
<td>2297</td>
<td>--</td>
<td>234</td>
<td></td>
</tr>
<tr>
<td>1884</td>
<td>2301</td>
<td>--</td>
<td>149</td>
<td></td>
</tr>
<tr>
<td>1885</td>
<td>2522</td>
<td>--</td>
<td>159</td>
<td></td>
</tr>
<tr>
<td>1886</td>
<td>2740</td>
<td>--</td>
<td>168</td>
<td></td>
</tr>
<tr>
<td>1887</td>
<td>2924</td>
<td>--</td>
<td>162</td>
<td></td>
</tr>
<tr>
<td>1888</td>
<td>3049</td>
<td>--</td>
<td>139</td>
<td></td>
</tr>
<tr>
<td>1889</td>
<td>3206</td>
<td>--</td>
<td>174</td>
<td></td>
</tr>
<tr>
<td>1890</td>
<td>3531</td>
<td>--</td>
<td>183</td>
<td></td>
</tr>
<tr>
<td>1891</td>
<td>3345</td>
<td>--</td>
<td>201</td>
<td>1,840,641</td>
</tr>
<tr>
<td>1892</td>
<td>3709</td>
<td>--</td>
<td>187</td>
<td></td>
</tr>
<tr>
<td>1893</td>
<td>3624</td>
<td>--</td>
<td>168</td>
<td></td>
</tr>
<tr>
<td>1894</td>
<td>3769</td>
<td>--</td>
<td>190</td>
<td></td>
</tr>
<tr>
<td>1895</td>
<td>4305</td>
<td>--</td>
<td>236</td>
<td></td>
</tr>
<tr>
<td>1896</td>
<td>3797</td>
<td>--</td>
<td>205</td>
<td></td>
</tr>
<tr>
<td>1897</td>
<td>4305</td>
<td>3</td>
<td>177</td>
<td></td>
</tr>
<tr>
<td>1898</td>
<td>4245</td>
<td>4</td>
<td>231</td>
<td></td>
</tr>
<tr>
<td>1899</td>
<td>4267</td>
<td>5</td>
<td>252</td>
<td></td>
</tr>
<tr>
<td>1900</td>
<td>4855</td>
<td>4</td>
<td>261</td>
<td></td>
</tr>
<tr>
<td>1901</td>
<td>5166</td>
<td>--</td>
<td>n/a</td>
<td>2,592,708</td>
</tr>
<tr>
<td>1902</td>
<td>4688</td>
<td>--</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>1903</td>
<td>5477</td>
<td>--</td>
<td>245</td>
<td></td>
</tr>
<tr>
<td>1904</td>
<td>3613</td>
<td>--</td>
<td>325</td>
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<td>1905</td>
<td>3864</td>
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<td>252</td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>4006</td>
<td>2</td>
<td>241</td>
<td></td>
</tr>
<tr>
<td>1907</td>
<td>5471</td>
<td>3</td>
<td>274</td>
<td></td>
</tr>
<tr>
<td>1908</td>
<td>6562</td>
<td>2</td>
<td>305</td>
<td></td>
</tr>
<tr>
<td>1909</td>
<td>7897</td>
<td>1</td>
<td>327</td>
<td>3,418,612</td>
</tr>
</tbody>
</table>

* From The Annual Report of the Minister of Justice. Canada Sessional Papers, Volumes XIV No. 5 (1884), through Volume XXXXIV No. 7 (1908).
^From The Census of Canada, 1881, 1891, 1901, and 1911.

As with the Ontario statistics in Table II, we again see a fairly steady increase in the total number of juvenile offenders convicted of all (summary and indictable) offences. From a total of 2188 convictions in 1882, the number rises to 7897 convictions in 1909. More fluctuations are noticeable in the reformatory sentences data. From an early high of 346 young offenders sentenced to reformatories in 1882, the number decreases steadily for the first 7 years, hovers around 200 per year, and then increases into the 300 range by 1908.
The early decreases from 1885 to 1890 may be due to the introduction of the industrial schools in Canada, then created to replace the reformatory system. The reformatory, however, continued to exist during the 1800’s and, in fact, appears to remain fairly stable during the early 1900’s, increasing in its absolute totals. Evidence of the use of the Federal Penitentiary being used to house juveniles during the late 1800’s and early 1900’s was found in Warden’s Reports of 1901, 1908, and 1910 (Canada Sessional Papers, Annual Reports 1901, 1908, 1910). More valuable to this analysis is an investigation of the data as a ratio relative to the population, and to the overall number of juveniles actually convicted in a specific year.

<table>
<thead>
<tr>
<th>Year</th>
<th>Ratio of Convicted Juveniles/100,000 Population under 16</th>
<th>Ratio of Convicted Juveniles Sentenced to Reformatories/1000 Convictions</th>
<th>Ratio of Juveniles Sentenced to Penitentiary/100,000 convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1882</td>
<td>125</td>
<td>158</td>
<td>--</td>
</tr>
<tr>
<td>1883</td>
<td>131</td>
<td>102</td>
<td>--</td>
</tr>
<tr>
<td>1884</td>
<td>132</td>
<td>65</td>
<td>--</td>
</tr>
<tr>
<td>1885</td>
<td>144</td>
<td>64</td>
<td>--</td>
</tr>
<tr>
<td>1886</td>
<td>157</td>
<td>62</td>
<td>--</td>
</tr>
<tr>
<td>1887</td>
<td>173</td>
<td>55</td>
<td>--</td>
</tr>
<tr>
<td>1903</td>
<td>180</td>
<td>59</td>
<td>--</td>
</tr>
<tr>
<td>1904</td>
<td>204</td>
<td>64</td>
<td>--</td>
</tr>
<tr>
<td>1905</td>
<td>139</td>
<td>62</td>
<td>--</td>
</tr>
<tr>
<td>1906</td>
<td>144</td>
<td>57</td>
<td>42</td>
</tr>
<tr>
<td>1907</td>
<td>162</td>
<td>56</td>
<td>55</td>
</tr>
<tr>
<td>1908</td>
<td>189</td>
<td>50</td>
<td>30</td>
</tr>
</tbody>
</table>

**All numbers have been rounded**

From the above tables we gain greater insight into the rates of juveniles being sentenced. As mentioned above, the ratio’s of young people being convicted relative to the total population of that same age group seems to indicate a growth in the number of formal convictions of young offenders in Canada. If charge rates were supplied in these early statistics, we would be able to investigate whether this may be due to an increase in actual crime by youth, however, that is not possible. According to Leon (1977), his research indicates a very large increase in the number of police officers in Ontario during the early
1900’s. Between 1903 and 1905, the size of the Toronto police force more than doubled, an increase that surpassed the actual population increase in the city (Leon, 1977). Perhaps the increase in the conviction rate in the late 1800’s and early 1900’s can be attributed to an increase in the number of police in the country.

While above it was believed that the rate of sentences to Reformatory decreased and then increased again in the 1900’s, this is not supported by the conversion to ratio’s/1000 convicted juveniles. A large drop did occur during the 1884-1890 period, coinciding with the introduction of the industrial schools, however that ratio later held steady at an average (for 1890-1908) of 63.4 sentences per 1000 convictions. Interestingly, in 1909, the year of the enactment of the JDA, the ratio rose to 104/1000.

The continued use of the Federal Penitentiary to house young offenders is also surprising. Only a few Statistical Reports over the entire period studied gave details about the number of juveniles sentenced to the Penitentiary. For that reason, only a few brief indications are available from which to analyse the use of this disposition. Excluding the 1860 Commissioner’s Report, in 1888-1900 there was an average ratio of 112 juveniles per 100,000 convicted who were sentenced to the penitentiary. By 1906 this figure drops to an average (1906-1909) of 41.3/100,000.

• Discussion and Conclusion

Taken together, both the Ontario data and the Canadian data seem to indicate an overall steady increase in the rates of young people being convicted of crime and handled by the formal justice system. Moreover, while probation statistics are not available, at this point in the research, the data seems to indicate an overall increase in the use of formal judicial control relative to the growth in the population of young people in Canada. Clearly, by the end of the period reviewed in this chapter, each new institution created to control delinquency still exists alongside the other. Furthermore, there is no indication that any of the institutions were in decline as a preferred method of reacting to young offenders.

In summary, the end of the study period in review in this chapter is marked by a theme of 'co-existence with' rather than the 'replacement of'. That is, in a rather short period beginning in the late 1800’s, reformatories are built to replace penitentiaries, are then
superseded by industrial schools which are then added to by the use of probationary controls, and finally, the reformatory is re-built alongside all of it's "replacements" (in 1909 and 1911, new reformatories were built in Quebec and Ontario, respectively, (Jones, 1978)). The use of institutionalization seemed only thwarted, not ended, in 1906-09 with the use of probation and foster homes. This may be what Rains (1984) refers to as "the failure of institutions to disappear..." (Rains, 1984:500). Institutions and their replacements were given new names and rehabilitative terms all associated with the latest child-saving methods, however, none of these reforms resulted in the abolition of the previous (and eventually criticized) reform endeavor.

Moreover, despite the attempt to "replace" the prison with the reformatory, and later still, the training school, the conditions and mechanics of the prison experience continued. Within the walls of the institution, young offenders were completely separated from society. Exclusion insured, on the one hand protection of society, but on the other, it also insured the state's ability to regulate the lives of delinquents in private. The institution became the perfect controlled experiment. The everyday experiences of youth - when to eat, sleep, pray, work, and study, could be organized and studied. Punishment, which had previously been a very public display, was now completely hidden and controlled. Within the closed institutions the goals and hypotheses of social reformers and politicians could be carefully tested and observed. Observation of youth became not only a method of monitoring progress, but also a way in which to maintain order. The strict regulation of the delinquent's day insured constant control. Discipline of this nature was believed to be the best method one could use to reform the child and reintroduce them into society (Kelso, 1907). These later ideas laid the groundwork for rehabilitation programs introduced during the early and mid 1900's.

In consideration of the findings, McMahon and Ericson's (1987) conclusion that reforms themselves are constantly in need of reform is here evidenced. Each innovation in the treatment and control of dependent and delinquent youths suffered considerable shortcomings, and in the end was heavily criticized for it's ineffectiveness. Consequently, each reform gave way to a new reform idea, only to be again criticized and supplemented.
Throughout its implementation, the conception of a reform as being in the public interest holds well for its acceptance. While purportedly attempting to meet the needs of the lower-class poor, however, the curriculum of the reformatories and industrial schools appears to have met the interests of the upper and middle classes more so. Lower-class youth were gathered from largely urban areas, morally educated, monitored, and taught the skills necessary to function in an obedient, working class manner. On top of reinforcing the existent economic and political order for the middle and upper classes, it introduced new professional-status career opportunities to them as well. In the end, the relative position of the lower-class had been depressed while the (economic, moral, and social) standing of the upper and middle classes had been elevated.

Following these reforms, the last initiative was the introduction of a system of probation. Here, an attempt was made to introduce the control permitted by the prison out into the everyday lives of youth. Regulation of daily experiences of young offenders, as well as the reformation of family life, were held as new goals which reformers believe they could locate out in the community. In the next chapter, the success of these programs is investigated.
Chapter Five
Rehabilitation and the Introduction of Community-Controls

Contents:
Historical Background to the Rise of Juvenile Justice Legislation in Canada
The Training School: an Institutionally-Based Response to Rehabilitation
Training Schools and the Modification of Behavior: Treatment or Punishment?
The Implementation of Treatment and the Extension of Control
Training Schools and the Use of Post-Release Controls
Probation and the Movement of Discipline beyond the Institution
Review of the Empirical Data of Youth Corrections, 1920-1960
Discussion and Conclusion

• Historical Background to the rise of Juvenile Justice Legislation in Canada

As stated in the previous chapter, the first official children's protection legislation was passed in 1888 in Ontario. Largely due to the efforts of J.J. Kelso, reformers and child savers handed over an official petition to the Minister of Justice in 1894 requesting the introduction of legislation to create separate juvenile courts and court practices (Leon, 1977). In the years that followed, several Acts were passed recognizing the need to deal with children in a different manner than adults. By 1907, after several years of studying similar legislation in both Britain and the United States, the Bill representing the Juvenile Delinquents Act (JDA) was finally introduced to parliament. Following some initial opposition, the Act received Royal Assent on the 20th of July, 1908.

Section 1(h) of the Act defined a juvenile delinquent as

...any child who violates any provision of the Criminal Code...or who is guilty of sexual immorality or any similar form of vice or who is liable to be committed to an industrial school or juvenile reformatory. (Bolton et al., 1993)

In February of 1909, in the dining room of a house in downtown Winnipeg, the first court under the JDA was officially opened (Sutherland, 1976). Although Winnipeg was quick to respond to the provisions of the new Act, other Canadian cities were very slow to adopt the legislation. In the first five years following the inception of the Act only Montreal, Ottawa, Toronto, Halifax, Charlottetown, and Vancouver had set up juvenile
courts. By 1917, only six of nine provinces had passed juvenile court legislation. As Sutherland (1976) reports by the 1940's a majority of smaller Canadian cities still had no juvenile court services. Only a few had established a separate court building while many still held juvenile proceedings in separate rooms or separate hours in Police courts.

- From Punishment to Treatment: the JDA and Canadian Juvenile Justice Reforms, 1909-1960

The Report of the Commissioners into the Penitentiary (1833) stated the importance of having the deviant clearly associate the connection between crime and suffering he would experience as a result of the commission of his crimes.

That a punishment should be formidable is decidedly the first point to be looked at: that it should be corrective is another point of great though far inferior consequence.


Punishment was not treatment; in fact, there is little evidence that treatment was even a consideration in the early response to crime in Canada. The use of the prison to punish was paramount, and any attempt to provide a program of rehabilitation was seen as lenient and unnecessary. “Punishment must be punishment, if the peace of society is to be maintained” ( Examiner, 1848, in Bellomo, 1972). Over time, however, a change occurred. The use of the prison institution slowly became one where a “reclaiming” of the individual might be accomplished. The introduction of the reformatories, and later the training schools, were an attempt to instill in delinquent children the values and skills necessary to function as a “good” citizen upon release. Thus, the institution as a place of punishment was slowly being replaced with a model of the institution as a place of treatment. The assertion of the reformers that this tradition could be successfully achieved must be called into question however. Prisons themselves had not altered in structure, thus making the claim that they could now produce positive change in offenders a spurious one. As Sheridan and Conrad (1976) note, a “disjuncture” arose when rehabilitation began to challenge punishment as the most effective way to control offenders. Up until this point, prisons were used as a form of punishment; now magistrates were using these same institutions as a method of accomplishing treatment. The change of a facility originally intended to punish, to one deemed suitable for rehabilitation and treatment seemed
contradictory. Punishment and treatment themselves appeared as opposing goals. Nevertheless, the concept of the institution as a possible location to introduce rehabilitation had enormous influence. As the previous chapter noted, the period following the 1860’s - 1900 witnessed the rise of the reformatory prison and later the training school as a method of dealing with delinquent youth. It will be the goal of this chapter to demonstrate that this rise in the interest of treatment with young (particularly lower-class) offenders in order to effect change and control their later behavior was the driving force behind many successive reforms. It is this new direction that lead to the dismantling of the reformatory prison, the continued use of training schools, and the subsequent rise of community-oriented probation practices.

- The Training School: an Institutional Response to Rehabilitation

From the outset, training schools were viewed as a response to the needs of both delinquent and neglected children. Due to changes in social attitudes during the 1800’s, it was no longer enough to merely remove a delinquent or needy child from his or her environment and place them into an institution. Punishment and retribution gave way to the desire to reform the individual, and the idea of the industrial/training school arose. Here reformation was to be achieved primarily through teaching the youth a trade. In this way, it was felt, the industrial schools could equip the individual with the dignity and self-worth that would keep him or her from reoffending upon release (Sinclair, 1965).

By the 1920’s, the established form that “training” took in these institutions was typically fivefold: academic, vocational, recreational, social, and spiritual (Matters, 1980). The curriculum was rather regimented and stressed the need to keep the children busy at all times. Throughout the 1920’s and 30’s, academic and vocational programs were broadened in an effort to meet the demands of such a large incarcerated population. Added to this, follow up programs were created in the form of probation, to further extend the supervision of the child even after leaving the facility (Walker and Glasner, 1965). One feature that remained unchanged up until the 1950’s, however, was the reluctance of the institution to adjust it’s programs to conform to the needs of the children it incarcerated (Boyd, 1981).
In 1939, industrial schools and training schools within the province of Ontario merged and thereafter were all called training schools. Similarly in other provinces, vocational institutions for delinquents were named training schools (Boyd, 1981). Unfortunately, nowhere in the JDA was there any indication what a training school should be or how it was to be organized (Carter, 1976). The Act encouraged the provinces to establish these institutions, however they failed to outline a consistent set of procedures for programming, length of sentence, or release procedures (Wilson, 1982, Boyd, 1981). The loosely defined structure of the legislation allowed the juvenile courts to sentence three broad classes of child to the training schools: the delinquent, the neglected, and the dependent child. Training schools, by the mid 1900’s were thus still being used to control both needy and criminal youth. Poor children, or those who came to the attention of the authorities (but were not not criminal) could still be admitted to institutions for “their own good” alongside juvenile delinquents.

The committal (or “wardship”) of both delinquent and non-delinquent children to the training school institutions insured the continued use of these facilities throughout the mid-1900’s. Under the provisions of the Juvenile Delinquents Act (1929), the provinces could send all children deemed to be in-need of institutional care, whether delinquent or neglected, to a training school. Until it’s revision in 1965, for example, the Training Schools Act (1929:Section 10(a)) stated:

The Minister may order that a boy or girl who has been made a ward of a Children’s Aid Society...and who in the opinion of the Minister is in need of the training and discipline offered by a training school shall be admitted to a training school.

In each incident involving a child throughout the 1920’s to the 1950’s, this was done in the name of treatment. The rehabilitation of the offender, or the care and education of the at-risk youth were used as a means of legitimizing the incarceration of juveniles. In addition, it was these practices that insured the continued use of the training schools throughout the 1950’s and 1960’s. While the evidence indicated that training schools were ineffective in their efforts to reduce delinquency (Boyd, 1981, Jones, 1978, Wheeler, 1976, Deutsh, 1950) their use persisted. This is not surprising, for rehabilitation and socialization were synonymous goals in these institutions. Training Schools, as the research
demonstrates, concerned themselves primarily with the *management*, as opposed to *education* of lower-class youth. Daily routine included vocational and industrial training; selecting occupations believed to be fit for individuals of their class position. This, combined with moral and religious training further served to satisfy the social standards of the middle-class reformers while preparing the youths to lead a productive, crime-free, life. In this regard, the reform mechanisms created by the justice system led to an affirmation of middle-class values. This is not surprising, for the introduction of the training schools and their curriculum did not arise within the lower-class communities they targeted, but rather, were imposed by the humanitarian efforts of the social reformers. Implemented in this manner, that group which controls the system of training and education within the institutions thereby controls the system of socialization the receiving group is subjected to.

As Quinney (1974:47) states:

> Those who rule in capitalist society - with the assistance of the state - not only accumulate capital at the expense of those who work, but impose their ideology as well. Oppressions and exploitation are legitimizied by the expropriation of consciousness...

(Quinney, 1974:47).

A study by Walker and Glasner (1965) into the juvenile court application forms for training schools demonstrates some of the reasons children were admitted to state control. Frequently, indications of sexual promiscuity, disregard for authority, truancy, and improper and immoral behavior were listed. Thus, admission to training school could be made on the basis of suspicion or fear of future criminality. Moreover, while the JDA listed a minimum age of 12 to be convicted of an offense as a delinquent, the Training Schools Act contained no such minimum requirement for admission to an institution. In fact the Department of Reform Institutions Annual Report (1954) indicates that children as young as seven years of age were institutionalized in training schools. The irony, then, is that there obviously existed a minimum age to be considered a criminal, but not to be treated as one.

- *Training Schools and the Modification of Behavior: Treatment or Punishment?*

Recall that the JDA states “where a child is adjudged to be delinquent he shall be dealt with, not as an offender, but as one ... requiring help and guidance... (JDA,
This broad definition allowed the state to intervene with a child who was either *not* guilty of an offence (or technically guilty of a minor offence) yet whose primary problem may have been the lack of a "positive" home environment. By dealing with both the delinquent and the destitute youth, the process of rehabilitation and treatment served to legitimize the extension of the training school facilities and ensure their existence throughout the mid-1900's and beyond. The curriculum of rehabilitation in the training schools during the 1950's also demonstrated little in the way of treatment. Programs which characterize today's youth facilities (such as anger management programs, self esteem building, etc.), were non-existent in the rehabilitation models of the 1950's. All evidence suggests the agenda of the training schools demonstrated a preference for control and discipline in an effort to combat recidivism and delinquency in the wider society.

It is important, however, to place the "education" received by these children in perspective. That the agenda of the training schools demonstrated a preference for control is evidenced by the contents and organization of the curriculum they followed. The curriculum entailed a highly structured routine. Every aspect of a child's life could be controlled; when to work, when to study, and when to sleep. Social reformers insured that discipline, above all else, would be the primary factor in altering the behavior patterns of dependent and delinquent children. As Foucault (1979) points out, institutional staff, adopting the role of teacher, judge, parent, and guard, all became "engineers of conduct", controlling the smallest details of a youth's experience.

As stated earlier, the objective of these initiatives is, simply, socialization. The training schools functioned to reinforce the social order, of which the youths sentenced to them were expected to eventually form. This is what Miliband (1969) terms the "class-confirming role" of the state's institutions. Socialization occurs by way of reinforcing in lower-class youths the values and expectations of the institution in which they find themselves. Recall that training schools offered shoemaking, bricklaying, carpentry, cabinetmaking, and other and other labour-driven occupations. Children in these settings are limited in their choices in a manner reflective of the limited opportunities they experience in the wider society. Their place in the social order is not only reinforced, but guaranteed. What little exposure they have to middle-class values and ambitions is
experienced more as an imposition of another culture rather than a model upon which they may base their own goals. Their real experience, both within the wider society and within the institution, have reinforced this many times. Education, as Miliband (1969) notes, plays a crucial role in confirming the class destiny and status of children.

The role of education had more than one purpose; not the least of which was to instill in those subjected to it a submissive acceptance of the social order of which they were destined to form the base.

(Miliband, 1969:240)

Ironically, Miliband contends that this ‘class-conforming’ role of the educational system is most apparent (and least hidden) in those schools which cater mainly to the children of the privileged classes. But what of training schools? The training school system implemented by reformers during the mid 1900’s was designed with the clear intention of supervising the lives of selected, lower-class children. The curriculum they administered played an important part in confirming and reproducing the status of the attending students. Miliband does go on to state accurately that lower-class schools, by virtue of the limited education they provide, combined with a poor learning environment, ensure the maintenance of the middle and upper class’s advantaged position in society. Again, this same reasoning can be transferred to an analysis of the training school system. These later institutions are marked more by the suppression rather than development of educational and future opportunities. Here, children were forced to choose between a limited selection of industrial-style trades, and also supplemented manual labour for academic studies to compensate for the lack of funding and resources provided by the government (see, for instance, Houston, 1972, Carrigan, 1991). Moreover, compared to lower-class children in the regular school system, youths in the training schools encountered the added detriment of having been labeled a delinquent. Their learning environment, the opportunities available to them, the choices given them, and the resources extended to meet their needs, were all affected by this designation.

- **The Implementation of Treatment and the Extension of Control**

As for official legislation, little guidance existed regarding the organization of treatment programs, however, it is evident that a clear association between treatment and
punishment existed. A government publication on training school standards from 1957 states simply:

The use of discipline and punishment [is] a crucial treatment consideration...it is part of a system of discipline that helps to both protect the child and prevent him from reoffending against the social order of the institution.

(Quoted in Sinclair, 1965:265)

The belief was that through the use of discipline and punishment, children would learn to think and act in "modified" ways and eventually come to discipline themselves (Carter, 1976). The use of punishment as a method of treatment in the training schools, while seemingly contradictory, was justified by the reformers on the grounds that it served to instill discipline. Discipline was, for all intents and purposes, the common denominator between punishment and treatment. Through discipline, punishment was not withdrawn, but improved. In this regard, the training school was believed to be an effective arena in which to regulate, and observe, the everyday activities of the offender. Here the young, typically lower-class child could be retrained and instilled with the (middle class) values that would purportedly lead to an honest life within the society at large. Seen in this light, the use of discipline-through-treatment, and not punishment, was a more effective (and preventive) mechanism of control. In Foucault's (1979) analysis, these measures signal the advent of disciplinary power. Each of the instruments and techniques created by the state - this would include the reformatory institution, its structure, the staff within, etc., - makes the exercise of power constant and unavoidable. Surveillance becomes permanent, whether in fact it is or not. In this practice, the ability to manipulate and reform behavior is possible without resorting to the use of force. Among the benefits this produces for the state, and the reformers in charge, is a legitimate, publicly sanctioned method of "punishing" and resocializing young offenders. In turn, their humanitarian efforts receive less public scrutiny (avoid criticism) and are left to more fully pursue their interests.

The exertion of control was further extended through the use of indeterminate sentencing. Youths who were sent to training schools during the period following the JDA until the 1960's were often sent under the premise of "indeterminate wardship" (Leon, 1977, Sutherland, 1976). Indeterminate sentencing was felt to have many benefits over a determinate committal to an institution. Among them:
(a) It offered an incentive to "involuntarily committed" offenders to participate in their own treatment and thus facilitates rehabilitation.
(b) It prevented "unnecessarily long" incarceration, which would also help to reduce costs to the system.
(c) It reflected the needs of the offender and not the gravity of the offence.

(From Prettyman, 1972)

In cases of sentencing, the responsibility of deciding when a youth was allowed to leave rested with the staff of the facilities and, ultimately, required the consent of the acting superintendent (Ministry of Correctional Services, 1976). The discipline and length of control exerted upon an admitted youth was therefore not based upon his or her offence but, rather, his or her behavior once inside the training school. The result was that a minor offence could result in a longer term of incarceration for one child compared to another charged for a more serious offence. Findings by Boyd (1981) indicate that the majority (80%) of young persons committed to training schools remained under "wardship" until the age of 18, the full term they could be institutionalized.

As for the effectiveness of the ideals of indeterminate sentencing, the evidence does not bear them out. Wheeler (1976) and Allen (1974, cited in Wheeler, 1976) found no empirical evidence to support the assertion that indeterminate sentencing acts as an incentive in offender rehabilitation. In fact, most research on the use of indefinite confinement indicates that it results in negative effects. Halleck and Witte (1977) for instance, found that administrative staff typically required that the offender demonstrate conformity to the institutional culture in which they were placed. Ironically, conformity to the lifestyle of the institution has also been found to impede an offenders chances of successful release back into the wider society (Halleck and Witte, 1977). More importantly, the use of indeterminate incarceration and the uncertainty concerning release often leads to adverse psychological effects (Mason, 1990). Mason (1990) also points to other negative consequences of indeterminate sentencing, including changes in social attitude, psychotic symptoms, and physical disturbances. Allen's (1974, in Wheeler, 1976) findings further criticize the claim that institution staff are capable of diagnosing the appropriateness of release.
This overall reliance on diagnostic measures to ascertain the readiness of release foreshadows Foucault’s assertion that knowledge is inextricably bound up with power. The decision to release an offender from an institution fell into the hands of the ever-growing numbers of professionals. These individuals, entrusted as “experts” in the field of treatment and rehabilitative theory, held the power to decide the fate of those committed to the training schools.

Foucault’s (1979) assertion that early reforms marked the emergence of a situation in which control (and thus power) was transferred from the domain of private citizens to the domain of the new “professional” group. Where once volunteers had formed to deliver services to dependent and delinquent children, degreed professionals, working on behalf of the state had now stepped in. This corresponds with McMahon and Ericson’s (1987) study which demonstrated that often, when private citizens organize for reform, state agents move in to monitor the situation. Eventually, the reform effort is brought within the state’s sphere of influence. In the end, the state has converted the goals and interests of the reform movement into it’s instrumental value for the state (and of course the newly salaried professional group) (McMahon and Ericson, 1987).

In Miliband’s (1969) view, this is an accurate depiction of what occurs when groups outside of the state, or law, attempt to use state resources in order to achieve reform.

As they enter existing parliamentary bodies, so are they also compelled, however reluctantly, to take a share in their work which cannot be purely obstructive. Merely by taking part in the legislative system they help the present government’s business. By entering this arena, they make at least a particular political game possible, and must play according to the rules which are not of their own choosing.

(Miliband, 1969:53)

This scenario is evidenced by the career of J.J. Kelso. Beginning in the late 1800’s, Kelso began his efforts to develop an alternative response to the cruel and unproductive methods used by the justice system to deal with delinquent and neglected children. His ideas called for institutional settings where children thought to be at-risk of criminality could be treated humanely. He further lobbied for the establishment of foster homes, the children’s-aid society, and a separate justice system for youth. While opposition (for example, Archibald, 1907, in Leon, 1977) eventually each reform initiative was adopted and implemented under the management of the state. Not only had the state successfully
brought each reform idea under its own control, but appointed J.J. Kelso as one of its leading youth justice spokespersons (Kelso held the position of Superintendent of Dependent and Neglected Children from 1903-1917) (Ontario Sessional Papers, 1918).

- **Training Schools and the use of Post-Release Controls**

The concept of “release” from a training school is itself misleading as control measures are also placed on youth upon their departure from a training school. With the rise of probation services during the 1930's - 1950's, the use of probation was added to the training school system. In most cases, released offenders from the latter 1900's onwards, remained under the supervision of an “aftercare officer” until the age of eighteen (Sutherland, 1976). If the youth failed to meet the expectations of the probation officer he or she could be re-admitted to the training school. The result was the system’s control of both the youth’s criminal and non-criminal behavior. In Boyd's (1981) view, the fact that 80% of youth admitted to training schools remained there until their eighteenth birthday, and the remaining 20% were placed under supervision, is indication that many young delinquents during the JDA period received ‘life’ sentences. “at least within the context of the juvenile justice system” (Boyd, 1981:239).

A booklet published by the Ontario government on training schools (1976) declares that the needs of a child admitted to a training school are identical to the needs of a child out in the “general society”. While it may be true that their basic needs are the same, their needs as delinquent children are greater. The obstacles they have to overcome - socially, economically, and academically- place them in a special position. This position is made all the more difficult by the state’s designation of “deviant” and the desire to control their actions. Within the training schools of the mid-1900's, however, it is questionable whether any significant gains were being made to ameliorate their relative situation. Special needs children, young and old, neglected and criminal, were all candidates for admission. Consequently, the goals of treatment and rehabilitation come under pressure within the scope of these situations. Where once the reformatory prison was considered as the most formal (and final) method of control, by the 1960's, it was the training schools that came to be viewed as a last resort when dealing with young offenders. As a disposition, committal
to a training school meant removal from society. Over time, the rising costs of institutionalization and the belief that community controls could more effectively locate control in the youths home environment led to a relative decrease in the use of the training schools compared to probation.

- **Probation and the Movement of Discipline beyond the Institution**

  In Canada, as with many other countries, the origin of probation work stems from an interest, usually by volunteers and private citizens, in the concerns of children who have come in contact with the law (Coughlan, 1963). Unlike many other countries, however, the Canadian response to extending probation services were relatively slower to develop (Hagan and Leon, 1980, Coughlan, 1963). The first signs of change came with the introduction of special legislation by the Canadian Parliament in 1894. The *Act Respecting the Arrest, Trial, and Imprisonment of Youthful Offenders* introduced a special provision whereby youths under 12 (or 13 for girls) could be placed in the care of the Children’s Aid Society to place the youth in a foster home or industrial school and thereby avoid the use of the prison system (McFarlane, 1967).

  While this legislation made many advances in the treatment of young offenders, it remained virtually unchanged until 1906. In 1906, the Children’s Aid Society of Ottawa appointed the first two “professional” probation officers to work with delinquent and impoverished youths. Probation first became available as a *legal* disposition in 1908, with the passage of the Juvenile Delinquents Act. At the time, it was one of nine options available to a magistrate in sentencing a child (Coughlan, 1963).

  Probation was thus conceived of primarily as an alternative to imprisonment which could maintain the discipline and supervision other non-custodial sentencing options lacked. To child savers, it represented the newest method of extending rehabilitation to the child within it’s own home environment. It therefore benefited the child through the avoidance of harsh punishment, and benefitted the child savers whose goal it was to introduce a measure of control into the dysfunctional families of neglected and delinquent children (Hagan and Leon, 1980, Sutherland, 1976). To legislators and politicians, probation meant a reduction
of expenditure and the introduction of a penal measure that had already existed in the U.S. and other countries for years.

The matter of probation ...is something which has been a black eye in so far as the administration of justice in this country is concerned. We have lagged behind other countries not only from the standpoint of rehabilitation, but also from a standpoint of cost as well.


In the Report of the superintendent of Neglected and Dependent Children (1901), considerable concern was raised over simply dismissing a youth with a caution, believing this would by itself be inadequate. Strict control and supervision were to be an important element of the probationary mechanism. In fact, the use of probation was proposed for not only convicted youths or those that had come to the attention of the authorities, but as a means for “constant supervision over wayward children” in all areas of a district they frequent (Ontario Sessional Papers, 1901:1104).

The resultant recommendation for the introduction and expansion of probation met, at first, with little response. In Ontario, the number of probation officers for juveniles were only 7 by 1945, 14 by 1950, rising to 105 by 1955 and 150 by 1960. In Quebec in 1940 there were 15 probation officers, and 65 by 1955. British Columbia’s probation services also grew rapidly in the 1950’s from 6 full-time professional probation officers in 1950 to 64 by 1960 (Madely, 1965).

By definition, probation is a “sentence imposed for commission of crime whereby a convicted criminal offender is released into the community under the supervision of a probation officer in-lieu of incarceration, with the violation of such standards subjecting his liberty to revocation (Black’s Law Dictionary, 1991:835). Although, by comparison to prison, probation appears lenient, Ontario’s Director of Probation Services in 1963 warned that it “is quite wrong to assume that it is equivalent to being “let off” ” (Coughlan, 1963:201). In his opinion it entails “strict compliance” which serves to control behavior through making “exacting demands” on the probationer.

Closely tied to this standard of supervision is its effect as a mode of treatment to the individual under probationary control. In the years immediately following the turn of the century, the use of the training school was deemed to be the best method of treating a
young delinquent. In the training school atmosphere, social reformers endeavored to re-create the environment of a "good" family; complete with the structure and discipline found in a [middle class] family. With the apparent failure of the training school ideal, probation arose as a way of delivering a mechanism of control and treatment to the youth in his/her everyday environment.

To the social reformers of the time, this element of the new reform was believed to be its most powerful. Viewing crime as a product of the lower class poor, the training school attempted to eradicate the effects of the lower-class environment through the creation of a highly disciplined lifestyle. The power of probationary measures was lay in their ability to surpass the training school by actually locating supervision and control in the community of the delinquent, or at-risk youth. The social domain of the family could now be disciplined and subjected to reformation. While the move from punishment to treatment was most apparent in the transformation from the reformatory prison to the training school, the move outside of the boundaries of the institution into the community was most evident with the introduction of probation.

Treatment, however, was an important consideration following the introduction of the JDA. The assertion that a delinquent child could be reclaimed and reformed into a productive member of society had significant appeal to both reformers and the public alike. As a result, any new reform that proposed to rehabilitate the offender and reduce future deviance met with less resistance. Moreover, it had the effect of not only justifying the intervention of penal reforms into the lives of disadvantaged youth, but also of legitimizing the ever-expanding growth of professionals who supported (and were supported by) these reforms. Whether probation effectively contained an element of treatment is questionable. One judge wrote, in 1929, that "probation is the very essence of rehabilitation" (Simpson, 1929, in Sutherland 1976:126). However, this assertion seems suspect. Little in the probation mechanism of the 1920's to 1950's held anything in the way of true treatment. Sutherland (1976) notes that probation officers, often overloaded with cases, could do little else but monitor, and attempt to control, the behavior of children while submitting reports to the courts regarding their family environment.
The emphasis placed on supervising not only the child but the environment in which he/she lived indicates a desire to control both the criminality of the youth and also the family and social milieu in which the child lived.

Unless the probation officer can feel that he has by his influence made a lasting change for the better in the character of the child and left the home and the environment in general better than he found them, he cannot claim to have succeeded, even though the probationer has not been returned to the Court for a new offence.

(Report of the Superintendent of Neglected and Dependent Children, 1912:119)

Reports written by probation officers were most often concerned with the conditions in which the child lived (Madely, 1965). A report indicating an unfit environment could easily result in a youth’s commitment to a training school.

...if it is plain that probation will not ultimately succeed, the boy should, in justice to himself, be placed in an institution without delay.

(Report of the Superintendent of Neglected and Delinquent Children, 1912:122)

As with committal to training school, probationary control could be placed upon a youth who came to the attention of the Children’s Aid authorities or police, but who was not found guilty of the commission of a crime. In Ontario, the most common causes of probationary supervision were received for “sexual immorality or a similar form of vice” (predominantly for girls) and truancy (under the School Administration Act - for boys) (McFarlane, 1966). Social reformers of the time justified their desire to order such sanctions upon non-criminal behavior by claiming these measures would result in the prevention of future criminality. J.J. Kelso, in 1901, stated that “strict supervision”, levied at those “classes” which offered poor and inadequate familial control, could be achieved through the system of probation. Criminality, he stated, arose from the “dirty and uninviting homes”, the “low class theatre which they (boys) frequent”, and the “confessedly worthless and depraved parents” which failed to instill proper social values into their children (Kelso, 1901:21-22). All of these sentiments indicate the desire to use probation as a means to control the lower classes of society, where crime and vice were believed to be most prevalent.

While probation was conceived of as a method of controlling even non-criminal (at-risk) youths, it is important to note that insofar as convicted youths were concerned, incarceration, and not probation, was predominantly reserved for lower-class delinquents
(Sutherland, 1976, Wheeler, 1976, Boyd, 1978). In Scarpitti and Stephenson’s (1968, in Boyd, 1978) findings, convicted juveniles sentenced to probation were most likely to come from affluent and stable backgrounds and had a better educational history than those who were incarcerated. Said another way, one’s class standing and perceived family background were found to be causally related to the degree of judicial assigned supervision. The preference to aim control at lower-class criminality is evidenced by the use of stricter sentencing practices towards those from disadvantaged backgrounds. These practices mirror the early attempts of reformers to bring order to the lives of neglected and disadvantaged children from the lower classes thought to be at-risk of future criminality. Preventative justice in the name of treatment and rehabilitation rose during the early to mid 1900’s, and with it the formal responses of the training school and probation system. In Platt’s (1969) critical analysis, the primary concern of the child savers was the recognition and control of youthful, and predominantly lower-class, deviance. His argument asserts that social reformers of the time highlighted, and thus “invented”, new categories of youth crime and corresponding responses to it (Platt, 1969:137). The use of measures such as training school and probation are, therefore, simply the mechanisms invented to control these categories of criminality.

Thus far, we have reviewed the evolution of these social control methods during the early and mid 1900’s, and also the implications of their proposed value. What follows next is an analysis of their use, over time, in the formal corrections process.

- **Review of the Empirical Data on Youth Corrections, 1920-1960.**

The following data has been compiled using a variety of government statistical sources. Most of the data regarding conviction rates and sentencing came from *Canadian Published Statistics Reports* (1936-1955), *Statistics Canada Annual Reports* (1956-1972), and the *Canada Statistical Yearbook* (1922-1960). Other information was located in the Annual Reports of the Minister of Justice (published in the *Canadian Sessional Papers Reports*) and Reports of the Commissioner in Charge of Prisons and Reformatories (published in the *Journals of the House of Commons*). Taken together, these sources of data
offer us an indication of official government responses to juvenile delinquency in Canada following the introduction of the JDA up until the end of the 1950's.

The first set of statistics collected are provided to offer an indication of the effect of the JDA in the early years of it's legislation. The JDA was introduced in an effort to promote various changes in the judicial response to young delinquents and needy children. It is important, therefore, to analyze the effect of this legislation in comparison to the events which both preceded it and which take place years thereafter.

In Table 1, the number of youths convicted and sentenced to various formal state controls are presented. This information represents only those dispositions which resulted in some form of official supervision or control. As a result, the number of youths receiving a fine (the most common disposition) or reprimanded have not been displayed below. It should be noted that this data set is presented to provide a brief view of the years that fall between the 1900 and 1950 time periods subject to investigation. Investigating the periods 1900-10, 1950-60, and 1980-90 leaves large gaps in the data; thus a brief review of some of the years between is conducted in this chapter.

**Table 1**

*Table 1. Number of Youths Convicted, then Sentenced to Training Schools, Probation, Indefinite Incarceration in either Training Schools or Penitentiary, and the Total Number Placed under Official Control, 1922 - 1932.*

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Youths Convicted</th>
<th>Number Sentenced to Training Schools</th>
<th>Number Sentenced to Probation</th>
<th>Indefinite Incarceration in Penitentiary or T.S.</th>
<th>Sentenced to Corporal Punishment</th>
<th>Total Count Placed Under Official Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>1922</td>
<td>6298</td>
<td>430</td>
<td>2956</td>
<td>169</td>
<td>1</td>
<td>3556</td>
</tr>
<tr>
<td>1923</td>
<td>6571</td>
<td>426</td>
<td>3227</td>
<td>165</td>
<td>11</td>
<td>3829</td>
</tr>
<tr>
<td>1924</td>
<td>7759</td>
<td>642</td>
<td>3573</td>
<td>187</td>
<td>39</td>
<td>4441</td>
</tr>
<tr>
<td>1925</td>
<td>7887</td>
<td>663</td>
<td>3591</td>
<td>145</td>
<td>29</td>
<td>4428</td>
</tr>
<tr>
<td>1926</td>
<td>7831</td>
<td>550</td>
<td>2637</td>
<td>284</td>
<td>44</td>
<td>3515</td>
</tr>
<tr>
<td>1927</td>
<td>8185</td>
<td>669</td>
<td>2559</td>
<td>346</td>
<td>109</td>
<td>3683</td>
</tr>
<tr>
<td>1928</td>
<td>7699</td>
<td>631</td>
<td>2698</td>
<td>200</td>
<td>64</td>
<td>3593</td>
</tr>
<tr>
<td>1929</td>
<td>7826</td>
<td>790</td>
<td>3001</td>
<td>126</td>
<td>38</td>
<td>3955</td>
</tr>
<tr>
<td>1930</td>
<td>8425</td>
<td>719</td>
<td>3522</td>
<td>70</td>
<td>22</td>
<td>4333</td>
</tr>
<tr>
<td>1931</td>
<td>7768</td>
<td>629</td>
<td>3743</td>
<td>32</td>
<td>24</td>
<td>3799</td>
</tr>
<tr>
<td>1932</td>
<td>7363</td>
<td>780</td>
<td>3294</td>
<td>15</td>
<td>32</td>
<td>4121</td>
</tr>
</tbody>
</table>

75
From Table 1 a steady but uneven increase in conviction rates is apparent. Beginning with 6298 criminal convictions in 1922, the number rises to 8425 by 1930 and then drops off slightly in the following two years. The largest changes occur in the different types of dispositions ordered by judges in this time period. Within Conviction Rates to training schools, there is an increase over the period which indicates a steady increase in the numbers sentenced. For the most part, despite the rise in the use of probation dispositions, there is a corresponding increase in sentences to training schools as well. Probation, for the most part, only shows an increase in the last few years, otherwise it rises and falls in the period reviewed. When these numbers are compared to the earlier data sets presented in the previous chapter we see a great change in judicial dispositions. The preference for incarceration to a training school institution has risen. and the use of probation, not available in the previous data set, actually outstrips even the training school population. In column four, sentencing counts for indefinite incarceration are given. Unfortunately, this data supplies little information. The actual allocation of offenders to penitentiary and/or training schools is not supplied. It is very important to note, however, that this data is not an accurate depiction of those numbers of youths indefinitely admitted to institutional facilities. This is due to two reasons. First, while a judge may have sentenced a youth to a closed institution, it often became the responsibility of the superintendent and his or her staff (once the youth was evaluated upon admission) to decide the appropriateness of release. (Sinclair, 1965). Thus, “wardship”, the length of stay in a secure facility, was decided most often by the staff of the institution, not predetermined by the judge. This data was given separately in the statistical records however, and therefore is presented separately herein.

The second reason why the data on training school and probation sentences is not reflective of the real numbers assigned these measures, is due to the difference that exists between “admission to” and “commission to”. The statistical patterns presented above indicate only those numbers convicted of a criminal code offence and ‘committed’ to one of the formal measures. These numbers do not include those children ‘admitted’ to training school or probationary controls by the Children’s Aid Society or some other agency. Recall that non-delinquent youth, presumed to be at-risk of delinquency because of their
social activities or impoverished environment could be admitted to both secure facilities and
probationary controls. Toronto court data for 1921 (in Sutherland, 1976) indicates that 2384
cases were labeled as "unofficial cases" being handled outside of the court. Of these cases,
a large number of youth were "sentenced" to probationary controls, and admitted to training
schools (Sutherland, 1976). In their study, Hagan and Leon (1980) found that from the
period 1912-1946 the number of "occurrences" handled outside of the courts in Toronto
rose from 725 (in 1912) to 7336 (in 1946); more than a 1000% increase. In sum, what is
appearing to take place is a deflated depiction of formal control statistics through the
diversion of at-risk and minor offenders into the area of "preventive cases" treated
unofficially outside of the court. Findings such as this make it necessary to re-state that this
research project is a depiction of official responses to youth crime.

In Table II, data are presented for the period 1950-1960. This data set indicates
similar increases in all areas, from the number of convictions to the growth in probation
dispositions.

**Table II**

*Table II.* Number of Youths Convicted, sentenced to Training School, Probation, Indefinite

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Youths Convicted</th>
<th>Number Sentenced to Training School</th>
<th>Number Sentenced to Probation</th>
<th>Indefinite Incarceration in Penitentiary or T.S.</th>
<th>Total Number Placed under Official Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950</td>
<td>6418</td>
<td>1144</td>
<td>2392</td>
<td>26</td>
<td>3565</td>
</tr>
<tr>
<td>1951</td>
<td>6644</td>
<td>1141</td>
<td>2313</td>
<td>45</td>
<td>3501</td>
</tr>
<tr>
<td>1952</td>
<td>6068</td>
<td>1152</td>
<td>2412</td>
<td>1</td>
<td>3567</td>
</tr>
<tr>
<td>1953</td>
<td>6377</td>
<td>1107</td>
<td>2620</td>
<td>28</td>
<td>3755</td>
</tr>
<tr>
<td>1954</td>
<td>6332</td>
<td>1121</td>
<td>2595</td>
<td>27</td>
<td>3745</td>
</tr>
<tr>
<td>1955</td>
<td>7025</td>
<td>1180</td>
<td>3067</td>
<td>50</td>
<td>4311</td>
</tr>
<tr>
<td>1956</td>
<td>8985</td>
<td>1445</td>
<td>3155</td>
<td>30</td>
<td>4630</td>
</tr>
<tr>
<td>1957</td>
<td>9679</td>
<td>1570</td>
<td>3822</td>
<td>63</td>
<td>5456</td>
</tr>
<tr>
<td>1958</td>
<td>11,389</td>
<td>1836</td>
<td>5728</td>
<td>13</td>
<td>7580</td>
</tr>
<tr>
<td>1959</td>
<td>11,686</td>
<td>1687</td>
<td>6151</td>
<td>9</td>
<td>7847</td>
</tr>
<tr>
<td>1960</td>
<td>13,658</td>
<td>1805</td>
<td>7413</td>
<td>42</td>
<td>9260</td>
</tr>
</tbody>
</table>

From Table II, it is apparent that a steady increase occurred between 1950 and
1960 in the number of juvenile delinquents convicted by the courts. Between 1950 and
1960, the number of youth convicted more than doubled, representing the greatest increase
in a ten-year period yet. Similarly, the number of youth sentenced to training schools also increased over this period, though not as spectacularly as the conviction rate. The largest growth evident was in the areas of sentences to probation. Here the total of 2393 dispositions in the year 1950 climbed to 7413 sentences by 1960, a tripling in the use of probation over the ten year period. This appears to indicate a preference for the use of probationary community controls, despite the continued use and increase in the training schools. Most important to the discussion at hand is the finding that the overall number of youths placed under official control has increased from a count of 2556 in 1922, to 9260 by 1960. Another interesting point, though not labeled on the chart above, is the use of the Penitentiaries to house young offenders. Despite the emphasis on treatment and a move away from the use of harsh institutional controls, judges continued to use this sentencing option. In 1950, six youths fifteen years of age and under were assigned to federal penitentiaries. By 1960, this number had steadily increased to thirty, reaching a high of thirty-eight in 1958 (Statistics Canada, Annual Reports).

In order to ascertain the direction these findings take in the years that follow, Table III is presented showing similar data for the last five years of the proceeding decade. While this data set represents years that fall outside of the study, it is offered here to provide a "snapshot" of the years between the 1950's and 1980's. Once again, a large increase in convictions is apparent between 1965-1969. All other columns show increases as well.

**Table III**

*Table III. Number of Youths Convicted, Sentenced to Training School, Probation, and Indefinite Incarceration, and the Total Number Placed under Formal Control, 1960-1969.*

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Youths Convicted</th>
<th>Number Sentenced to Training School</th>
<th>Number Sentenced to Probation</th>
<th>Indefinite Incarceration in Penitentiary or T.S.</th>
<th>Total Number Placed Under Official Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>18,352</td>
<td>1950</td>
<td>10,021</td>
<td>80</td>
<td>12,051</td>
</tr>
<tr>
<td>1966</td>
<td>20,310</td>
<td>1988</td>
<td>10,826</td>
<td>90</td>
<td>12,904</td>
</tr>
<tr>
<td>1967</td>
<td>20,743</td>
<td>1997</td>
<td>11,268</td>
<td>93</td>
<td>13,358</td>
</tr>
<tr>
<td>1968</td>
<td>27,142</td>
<td>2193</td>
<td>13,563</td>
<td>298</td>
<td>16,054</td>
</tr>
<tr>
<td>1969</td>
<td>27,197</td>
<td>2356</td>
<td>13,309</td>
<td>235</td>
<td>15,900</td>
</tr>
</tbody>
</table>
In order to more effectively understand the effects of these sentencing practices on the overall control of young delinquents, it is important to analyze the data in the form of ratio's. Through the use of ratio's, trends in the proportion of individuals affected by state controls can be better depicted. To analyze the relative effect of various control measures, Tables IV and V are presented showing the numbers of youths placed under different government controls as a ratio per 1000 convictions or as a ratio per 100,000 youth population. The ratio's of dispositions /1000 convictions is intended to act as an indicator of the relative weight assigned to each sentence. The ratio's of youths convicted and sum total of youths placed under judicial control is given to assess the relative number of youths assigned to state supervision compared to the total Canadian youth population of the same age group.

**Tables IV and V**

*Tables IV & V.* Number of Youths, as a Proportion of all youths, Convicted of a criminal offence/100,000 population, sentenced to Training School/1000 youths convicted, placed on Probation/1000 youths convicted, and the Proportion of Youths placed under Official Control/100,000 population.

<table>
<thead>
<tr>
<th>Year</th>
<th>Proportion of Youths Convicted per 100,000 population</th>
<th>Proportion of Youths sentenced to Training Schools /1000 youths convicted</th>
<th>Proportion of Youths Placed on Probation /1000 youths convicted</th>
<th>Proportion of Youths Placed under Official Control /100,000 population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1922</td>
<td>198</td>
<td>68</td>
<td>441</td>
<td>111</td>
</tr>
<tr>
<td>1923</td>
<td>206</td>
<td>65</td>
<td>454</td>
<td>120</td>
</tr>
<tr>
<td>1924</td>
<td>243</td>
<td>83</td>
<td>433</td>
<td>135</td>
</tr>
<tr>
<td>1925</td>
<td>247</td>
<td>84</td>
<td>424</td>
<td>137</td>
</tr>
<tr>
<td>1926</td>
<td>246</td>
<td>70</td>
<td>341</td>
<td>111</td>
</tr>
<tr>
<td>1927</td>
<td>257</td>
<td>82</td>
<td>316</td>
<td>116</td>
</tr>
<tr>
<td>1928</td>
<td>241</td>
<td>82</td>
<td>335</td>
<td>113</td>
</tr>
<tr>
<td>1929</td>
<td>224</td>
<td>101</td>
<td>381</td>
<td>113</td>
</tr>
<tr>
<td>1930</td>
<td>241</td>
<td>85</td>
<td>422</td>
<td>120</td>
</tr>
<tr>
<td>1931</td>
<td>225</td>
<td>81</td>
<td>467</td>
<td>109</td>
</tr>
<tr>
<td>1932</td>
<td>210</td>
<td>106</td>
<td>450</td>
<td>118</td>
</tr>
<tr>
<td>Year</td>
<td>Convictions</td>
<td>Charges</td>
<td>Sentences</td>
<td>Rate</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>---------</td>
<td>-----------</td>
<td>------</td>
</tr>
<tr>
<td>1950</td>
<td>143</td>
<td>178</td>
<td>373</td>
<td>79</td>
</tr>
<tr>
<td>1951</td>
<td>148</td>
<td>172</td>
<td>348</td>
<td>78</td>
</tr>
<tr>
<td>1952</td>
<td>135</td>
<td>189</td>
<td>397</td>
<td>79</td>
</tr>
<tr>
<td>1953</td>
<td>140</td>
<td>174</td>
<td>410</td>
<td>84</td>
</tr>
<tr>
<td>1954</td>
<td>116</td>
<td>177</td>
<td>410</td>
<td>69</td>
</tr>
<tr>
<td>1955</td>
<td>129</td>
<td>168</td>
<td>436</td>
<td>80</td>
</tr>
<tr>
<td>1956</td>
<td>165</td>
<td>161</td>
<td>351</td>
<td>85</td>
</tr>
<tr>
<td>1957</td>
<td>177</td>
<td>162</td>
<td>395</td>
<td>100</td>
</tr>
<tr>
<td>1958</td>
<td>209</td>
<td>161</td>
<td>503</td>
<td>117</td>
</tr>
<tr>
<td>1959</td>
<td>214</td>
<td>144</td>
<td>526</td>
<td>121</td>
</tr>
<tr>
<td>1960</td>
<td>216</td>
<td>130</td>
<td>531</td>
<td>142</td>
</tr>
</tbody>
</table>

From Tables IV and V a relatively steady rate of convictions is evident, with dips and rises in the overall conviction rate per 100,000 youth population over the 1920’s and 1950’s period. The decrease in conviction rates during the early 1950’s is explained by Madely (1965) and Sinclair (1965) as a result of the post-W.W.II social controls in society. During the War, conviction and crime rates both escalated dramatically. This is explained primarily through the lower restraints present in the home during that period. Following the War, these restraints had returned and thus crime and sentencing rates demonstrated an overall decrease.

With regard to training schools, the rates of sentencing show a steady rise in the preference for this disposition throughout the 1920’s and into the 1950’s. The ratio’s grow from 68/1000 convictions in 1922, to 177 by 1956, and then level off somewhat by the end of the 1950’s. Probation trends show a similar pattern. They rise steadily throughout the 1920’s, and then drop slightly to a new level during the 1950’s. By the end of the decade, 1960, the rate of sentencing to probation hits an all-time high of 531/1000 convictions. Taken together, the overall rate of official controls placed on youths also rises to a new height by the year 1960, a doubling of the rate just ten years previous.

Following these findings, all rates continued to grow in the following decade, 1960-1970. Table VI is presented to briefly highlight the continued trend in conviction and state control practices. It is interesting to note that with regards to training school sentencing rates there is a noticeable decrease in this period. This appears to signal a decrease in the preference for the use of this form of institutional disposition, however, the findings of the next chapter will indicate whether this trend continues. In all other respects,
state response to juveniles in the form of imposing formal controls demonstrates large increases when compared to any of the previous decades researched thus far.

**Table VI**

*Table VI. Ratio of Youths Convicted, Sentenced to Training School, Probation, and Placed on Official Control, 1965-1970.*

<table>
<thead>
<tr>
<th>Year</th>
<th>Ratio of youths Convicted</th>
<th>Ratio Sentenced to Training School</th>
<th>Ratio sentenced to Probation</th>
<th>Ratio sentenced to Official Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>283</td>
<td>106</td>
<td>546</td>
<td>184</td>
</tr>
<tr>
<td>1966</td>
<td>313</td>
<td>98</td>
<td>533</td>
<td>180</td>
</tr>
<tr>
<td>1967</td>
<td>311</td>
<td>96</td>
<td>543</td>
<td>196</td>
</tr>
<tr>
<td>1968</td>
<td>398</td>
<td>81</td>
<td>500</td>
<td>236</td>
</tr>
<tr>
<td>1969</td>
<td>400</td>
<td>87</td>
<td>489</td>
<td>233</td>
</tr>
</tbody>
</table>

In the period reviewed here, the most apparent changes occur in the relative use of training school dispositions and probation dispositions. Overall, a steady increase is seen in each throughout the 1950’s, with probation outgrowing training school sentencing by a rate of 4:1 by the end of the 1950’s. As we peak ahead to the late ’60’s we see a decrease in the preference for training school sentences, allowing probation to overshadow the former by a rate of nearly 6:1. Regardless of the decrease in the sentencing rates to institutional facilities, the overall rate of youths sentenced to judicial control shows an all time high by the end of the 1950’s period, and continues to grow as it approaches the 1970’s. The findings of this data indicate that, despite the existence of other dispositional alternatives, such as fines, restitution, etc., the use of sentences which place the offender under formal supervision and control are those that have increased. This preference for control measures corresponds with the reform goals of the 1940’s and 1950’s which emphasized closer supervision of the offender in an attempt to provide rehabilitation. Recall from the earlier discussion, that the extension of probation was promoted as the most effective way of delivering treatment into the natural environment of the delinquent and his or her family. In almost all cases, this resulted in the extension of surveillance into the environment of the deviant. Probation was, after all, first conceived of as a method of promoting a constant means of supervision over the population who were deemed responsible for producing delinquency: the lower-class poor (Platt, 1969). Here, the control of the justice system
could be extended into the everyday activities of children and their families. Power was exercised randomly and without warning. In this manner of application, reformers such as J.J. Kelso and others who followed, envisioned a means of perfecting the exercise of power over youths and their environment. This was accomplished in several ways. First, the extension of state controls into the homes of delinquents enabled the observation of real-life activity. Second, the spontaneity of a probation officer’s visit allowed for unscheduled and therefore constant surveillance. And, third, probation and community controls were a better method of maintaining power because they allowed the system to reduce the number exercising it relative to the number over who it was exercised. That is to say, the state demonstrated no reduction in the number of controls at it’s disposal. Instead, the findings from chapters three and four indicate that a modest increase in control measures had the effect of substantially increasing the purview of the system. Discipline, in this manner, was extended beyond the walls of an institution, and thus rendered the surveillance of the offender more complete than it ever was in a closed setting.

*Discussion and Conclusion*

The data presented herein highlights two important features of the social control mechanisms during the 1950’s period. First, it indicates that the introduction of the new methods of control (the expansion of the training school and the introduction of probation) coincided with an expansion in the numbers of youth placed under formal judicial supervision. Thus, a rise in social control measures is evident. Second, the expansion of the numbers of individuals under formal control is a result of the new innovations reformers introduced during the period under review, namely the use of the industrial school and the introduction of probation. Consequently, it is these formal measures that must also receive critical attention.

While it is a central element of this paper to investigate the empirical data regarding the changes (extension) in the use of the training school and the rise of probation, it represents only one important issue. The changes during the mid 1900’s represented changes in the nature of the state’s response to crime. To simply state that social control has increased is in itself insufficient. What is more noteworthy is that the nature of social
control has changed. The move from a system concerned with punishment to a system concerned with treatment and rehabilitation parallels the change from the use of the institution to the use of probation, and it is these shifts in ideology and practice that require analysis.

As we saw in the previous chapter, the original aim of the social reformers was to create separate institutions that could better meet the needs of children. The first response was the creation of the reformatory prison. Here, reformers sought to provide young delinquents with all the experiences which they had failed to receive in their home environment. The reformatory was built to ensure constant supervision. While providing destitute and delinquent children with a highly structured vocational itinerary. Added to this were the figures of authority; the superintendent and his wife, and the guards, who were to replicate the child's family experience and ensure the indoctrination of wholesome middle-class values. Similar to the reformatory, the industrial school (later "training school") was also created to induce change through conformity. Here, the teaching of religious, educational and vocational studies were designed to ensure the offender function successfully once out in the greater society.

It is at this juncture, between the use of the training school and the introduction of probationary methods, that we can best identify the desires of the social reformers to attack much more than juvenile delinquency. Criminality and vice were considered to be products of the lower-class poor. It was a limited understanding of poverty and delinquency, which viewed "worthless and deprived parents" and the "low class environment" (Kelso, 1912:100-101) as the locale of crime, however it served to justify the use of formal interventions in the name of preventative justice.

As a response to these dilemmas, the training school was envisioned as a place that could provide the child with the skills, both social and vocational, he/she required in order to return to society. Because many of these children failed to learn the rules of the dominant society, it only made sense to retrain them in an environment that, in a sense, replicated life in miniature. The training, in this regard, functioned similarly to Bentham's desired model of the Panopticon. It provided constant supervision, strict discipline, figures of authority, and, of course, penalties for wrong-doing.
It was the objective of achieving near-constant observation, albeit at a reduced cost, that led to the introduction of probation. To Kelso and the social reformers of the early 1900's, probation was the instrument of choice to use as a method of controlling and preventing lower-class criminality. The system they envisioned was one which would achieve all of the 'benefits' of total supervision, yet extend that control into the everyday environment of the child. Through probation, selected officers could go into the homes of children and their family and observe their behavior. With the power to observe behavior and effect change within the everyday lives of the lower-class poor, probation would accomplish what the training schools never could. Unlike the institution, the use of probationary methods were not to be limited by, and within, the walls of a facility. Probation officers could move the disciplinary functions of the reformatories and training schools out into the very social fabric of everyday experience. Thus, while at the outset probation received criticism (for example, Archibald, 1907) for being too lenient and therefore ineffective, the very strength of it's effect was it's ability to control more deeply by locating control outside of the institution.

Rehabilitation, in this manner, provides a way for the state to extend it's control functions. Rehabilitation, heralded as a humane and productive alternative to punishment, provided for the efficient suppression of crime, and, more pertinently, the lower-class criminal. As the instrumentalist perspective contends, reforms that are introduced in the public benefit are usually, regardless of stated purpose, to the detriment of the lower-classes (Miliband, 1969). In many instances, then, crime control equates to social control.

The movement, or change, from the predominant use of the institutional prison setting to the rise of training school programs and probationary controls, indicates also the change from punishment to treatment-oriented goals. During the period following the JDA up to the 1950's, a philosophy of rehabilitation, and reformation, took center stage. Through treatment-oriented practices, reformers believed they could change the offenders values, attitudes, and experiences, and in turn reduce later criminal actions. Treatment, whether in the Training School or through the use of probation, relied heavily on discipline. Through discipline, the deviant lifestyle of the child could be altered and re-programmed. The criminogenic effects of bad parenting and poor social controls could be overcome (and
justified) by a system which treated the child as sick or needy, requiring constant supervision and care. Punishment, the practical outcome of the institutional prison, could only deter. Treatment, the goal of the community probation system could both deter and reform. Punishment, which was physical, and thus directed at the body, was a factor of the prison system. Treatment, as a social-psychological measure, was directed at the mind, and was the objective of the training schools and probation. Recall that the goal of treatment was to reform the attitudes and values of a predominantly lower-class youth population. By inculcating the middle class values of the day, the development of probationary and community control systems were directed towards the eradication of the deviant lifestyles of the lower classes. As interest was transformed from the body to the mind, the effect of punishment (or control) did not become any less effective: instead it appears to have increased due to it’s ability to control more deeply into the social body (Cohen, 1986). Probation and related measures extended punishment and surveillance beyond the walls of the institution and into the community. The new power of probation, in Kelso’s (1912) view could better achieve the goals of the new reformers, for it extended the “valuable work” being done within the training schools out into the community where it could act both preventatively and reactively. The goal of the system was not to punish less, but to punish better. For, in locating the formal control functions of the state in the community, the state is able to expand “through a process which on the surface appears to be a process of retraction” (Foucault, 1979:391). The findings presented earlier support this assertion. With the introduction of less formal interventions during the 1940’s and 1950’s (primarily probation) the overall proportion of youths placed under official state supervision rose to unprecedented numbers. Recall also from the data that this increase in overall numbers was a product of both an increase in “formal” measures (such as the training school and reformatory) and the “informal” measures. By the 1950’s, probation had only supplemented the judicial system’s use of the institution, not replaced or reduced it. This is akin to Cohen’s (1986) assertion that the relationship between “informal” and “formal” controls is not complementary (one increases while the other decreases) but additive. As the child savers wanted, probation resulted in extending the reach of the reformers into the homes of
the lower class poor. In the name of treatment and prevention, supervision was moved from the institution out into the very real lives of delinquents and their families.

Thus, by the end of the 1950's, traces of the "disciplinary society" of which the social control theorists speak appears to have emerged. The events reviewed in this chapter revolve primarily around the burgeoning emphasis on treatment and rehabilitation in penal reforms. Under these models, the offender is to be retrained, observed, and made obedient, not merely punished. Treatment and discipline are closely intertwined. The use of training school and probation both attempt to regulate the everyday actions of the child's conduct in order to maintain control. As the next chapter outlines, the further extension of these practices reinforces similar goals. Social control of crime in the later twentieth-century relies not so much on the use of force to instill order, but rather, relies on discipline and the regulation of conduct to achieve its objective.
Chapter Six
Community Programs and the Rise of State Control

Contents:
Introduction
From the JDA to the YOA: Juvenile Justice Legislation from 1970-1985
Examining the Role of the State in Juvenile Justice Policy
Philosophy and Principles: Four Models of Juvenile Justice
Mechanisms of Control: The Emergence of Formal Diversion Programs and Community Controls during the 1970's and 1980's
Review of the Statistical Data

Introduction

Following the 1950's period, many changes occurred in juvenile justice practice and philosophy. On no small scale, many of these changes were attributable to the growth in the numbers of academics studying the effects of the juvenile justice system and its control of delinquency. In most instances, this new group of professionals were critical of the control functions which they witnessed. Finding little success in the rehabilitative models of the system, many called for serious changes to the system of crime control (Bolton et. al., 1993). In addition, public concern regarding the perceived rise in youth crime further added to the pressure on government to make changes in the state's disciplinary measures. The result was the drafting of new legislation during the 1960's, a Bill (C-61), later to be passed as the YOA in 1984.

My intention in the pages that follow is to analyse the changes that occurred following the introduction of the proposed Young Offenders Act (from 1970 onwards). To accomplish this, the chapter is divided into three sections. In the first, a comparison of the previous JDA to the new YOA will be made. Here, the philosophy and principles of Canada's present juvenile justice legislation will be explored and its role in the lives of young people will be contrasted with that of the JDA. To further study the changes which have occurred during the 1970's and 1980's, the second section will examine the changes in the state's control measures. Following criticisms of the rehabilitative ideals of the 1950's, disciplinary controls attempted to create community-based responses to the needs of delinquents. In the name of decarceration, “diversion” programs, both
formal and informal, began to gain popularity with social reformers. As the 1970’s progressed, however, the crime-control provisions of the judicial system gained strength, and a model of juvenile justice legislation which accorded increased responsibilities to youth was passed (YOA). The outcome of these changes is the concern of the third, and final, section. In this section, the empirical data will investigate the changes which have occurred in the state’s official response to youth crime. As this marks the final chapter of the three-part research on Canadian delinquency-control measures, the third section of this chapter will also provide a comparison, and analysis, of the three periods under review: the 1900-10 period, 1950-60 period, and the 1980-90 period.

- **From the JDA to the YOA: Juvenile Justice Legislation from 1970 - 1985**

  Changes occurring in crime-control legislation have many implications. Each reflects a diversity of interests, opinions, and beliefs from both justice officials and academics, as well as from concerned members of the larger society. As a result, this legislation also serves as an indication of the wide variety of ideas coming from all of these influential areas. During the early 1900’s, a fear of urban decay and lower-class criminality led policy makers and social reformers alike to create a system of intervention in the lives of troubled youth. Under the *Parens Patriae* (or “state as parent”) model, the state took a rather direct role in the care of children, acting as a helpful parent when it was deemed necessary. With the multiplicity of changes that have occurred in Canadian society since the turn of the century, attitudes towards intervention have also changed. The development of the YOA signalled a rights-based model of justice which stressed due process and the need to recognise the accountability of the offender (Trepannier, 1989). In the process, the ability of the state to intervene in the affairs of needy children was curbed by the rights now extended them. In the first section of this chapter, the differing roles of the JDA and YOA are examined in light of the different principles which guide each piece of legislation.

- **Examining the Role of the State in Juvenile Justice Policy**

  In the early response to youth deviance, representatives of the courts treated young people in a similar fashion as adults (Carrigan, 1991). Young persons over the
age of seven who were found guilty of a crime were treated as rational individuals and could be tried in criminal courts, cautioned, fined, whipped, transported, jailed, and even hung. Only by the latter 1800’s did changes occur. According to Reitsma-Street (1989), the latter 1800’s ushered in a parens patriae framework for dealing with delinquent and needy youth. The JDA, and similar Acts of the period, reflected this model which assumed the state must act to take some responsibility for young persons. The belief behind parens patriae was that the state, having concern for the welfare of youth, could, and should, step in and act as a parent whenever needed. This model of state-as-parent justified the justice system’s control of young people and the desire of the reformers and justice officials alike to limit and direct their environments.

With the introduction of the YOA, and the changes taking place in the later 1970’s and early 1980’s, the state’s view of it’s role changed. Research was showing that rehabilitation in the form of training schools and probationary controls were not achieving their desired goals (Bolton et. al., 1990). It was no longer feasible to maintain a system of official judicial intervention when it could not claim to be successful. As a result, various changes occurred. These changes can be attributed to three developments: One, criminologists and researchers in the field of youth deviance came to establish that the assertions of the parens patriae model had been ineffective in preventing recidivism (Jaffe and Leishied, 1989). Second, many academics and professionals began to stress the importance of using community-based “diversion” programs as a way of avoiding the harmful effects of “formal” (official) intervention. And, third, by the late 1800s, many Canadians were described as becoming more conservative (Carrigan, 1991). A concern was growing about youth crime and, increasingly, the public called for measures that would aim to control the delinquent population. With increasing evidence pointing to the ineffectiveness of rehabilitation, and the subsequent growth in diversion programs, the concept of treatment and parens patriae began to dwindle. The time to implement change was right, and by the late 1970’s and early 1980’s opposition to the JDA was widespread (Bolton et. al., 1993), and groups on all sides agreed that numerous changes were required to the existing

The proposed new legislation sought to introduce these changes. One area given attention were the criticisms lodged against the JDA. For instance, certain due process rights, felt to be neglected under the provisions of the JDA and *parens patriae* were to be accorded to youth. In the place of treatment and care, came control and accountability as principles of concern. Furthermore, as a response to calls for decarceration, formalised diversion programs were to be implemented across Canada.

At first glance, many of these implications seem contradictory. Indeed, many have argued that the YOA received unanimous approval because it represented a combination of several, often competing, concerns from a variety of discourses (Bolton at. Al., 1993, West, 1991, Reitsma-Street, 1990). These varying philosophical ideologies regarding how best to respond to delinquency are highlighted in the Acts "Declaration of Principle" section. The Declaration of Principle is the introductory section of the Act, and contains eight guiding principles intended to direct judicial interpretation of the Act. The problem, many critics argue, is that these principles represent different and largely incompatible ideas of how best to deal with youth deviance (Hackler, 1991, Reid-MacNevin, 1991, Markwart and Corrado, 1989, Trepanier, 1989). This plurality of objectives contained within the Act reflects the diversity of opinions held by reformers in the justice field.

As previously mentioned, reformers from all sides fought to pass new juvenile justice legislation. Academic literature during the 1960's and 1970's reflected ideas as far to the political left as Shur's (1973) "radical non-intervention" philosophy, and to the right and a call for a "just desserts" model of crime control which stressed accountability and the use of punishment as a method of deterrence.

The fact that each element found it's way into the new legislation can be traced by it's inclusion into the principles of the Act. The principles, according to Reid-MacNevin (1991) represent clusters of opinion found in four theoretical models of juvenile justice. They are the community-change model, the welfare model, the justice
model, and the crime-control model. In all, they represent the continuum that exists in the larger political and social forums of opinion regarding how best to deal with youth. To gain a deeper understanding of the Act, and subsequently, the statistical trends outlined at the end of the chapter, an examination of the many philosophies guiding it’s application now follows.

- **Philosophy and Principles: Four Models of Juvenile Justice**

  The first philosophical model of justice contained in the Act is the community-change model (Reid-MacNevin, 1991). The community-change model falls to the extreme left ideological position. Delinquency, this position claims, results from the poor life conditions of certain youth (Miller 1973, in Reid-MacNevin, 1991). Their reaction is a response to the alienation and powerlessness they feel within the wider society. To effect change, then, effort must be directed not at the youth him/herself, but rather at reforms which seek to ameliorate social conditions. The goal is to change the processes that lead to inequality and deviance through measures which promote community-based programs rather than the use of incarceration as a response to crime (Reid-MacNevin 1991). The community-change model is reflected in the Declaration of Principle (S.3) of the YOA in several areas. For instance, subsection 3(1)(b) states “[society] has the responsibility to take reasonable measures” to prevent criminal conduct. There exists also a strong emphasis which favours community-based approaches over incarceration (S.4 and S.20).

  The welfare model also assumes that delinquency is the result of factors beyond the control of youth. Reflected in the medical model, the welfare position holds that psychological and social variables make up the criminogenic disposition of the offender. Therefore, change is sought by ‘doing something to, or for’ the individual to ‘treat’ the problem (MacNamara 1977, and Wayman 1977 in Reid-MacNevin 1991). This is the model most often associated with the JDA (pares patriae) and it’s goals of treatment and rehabilitation. The philosophy of the YOA also incorporates several elements of the welfare model. The clearest is subsection 3(1)(c) which states that "young persons...because of their state of dependency and level of development and
maturity have special needs and require guidance and assistance". Other subsections stress the "use of alternatives to incarceration" wherever possible (S. 3[1][d]) and use the "least possible interference with freedom...having regard to the needs of young persons" (S. 3[1][f]).

A little more conservative is the justice or "due process" model which attempts to strike a balance between the legal rights of the child and the protection of the public. The justice model, unlike the previous two, believes delinquents act of their own free will and should therefore be held accountable for their actions (Reid-MacNevin 1991). Thus, punishment and discipline is a reasonable response in the effort to control deviance and should be applied in consideration of the act or crime committed. The system of juvenile justice should, further, recognize the rights of young offenders. Treatment, therefore, should be freely chosen, and never forced upon individuals. The Declaration of Principle (S.3: YOA) contains several tenets of the justice model. Young persons, it states, "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..." (S.3[1][e]) and to the "right to the least possible interference with freedom" (S. 3[1][f]).

Last is the crime control model. As the most conservative model, it is concerned primarily with law and order. Rehabilitation and treatment, both aspects of the former JDA are seen as over-lenient approaches to dealing with criminal youth (Horton, 1981). They serve only to shield deviants from the consequences they deserve for their actions which in turn poses a serious threat to society. Punishment and control are thus legitimate responses in an effort to contain deviant youth and protect the public (Reid-MacNevin 1991). Disciplinary measures in force during the later 1700's and early 1900's in Canada reflected this model. Over time, however, the welfare model and *parens patriae* began to take precedence in delinquency control functions. With the YOA, there is evidence (examined in the next section) that it signals a return to the earlier reliance on crime control provisions.

In Summary then, the YOA represents a combination of all of the four philosophies of justice outlined above. One setback of creating a piece of legislation in
this manner is the lack of consistency that arises when justice officials are faced with a variety of directives to enforce. As a result, many officials may find themselves applying those which they personally feel are important to promote. These directives indicate, on the one hand, that young persons should "bear responsibility for their contraventions" (S.3[1][a]) and "require supervision, discipline and control" (S.3[1][c]), but, on the other hand, that they also have "a right to the least possible interference with freedom" (S.3[1][f]). The result of these juxtaposed philosophies is an unwelcome amount of ambiguity; leaving justice officials uncertain in their interpretation of directives (Reid-MacNevin, 1991, Corrado and Markwart, 1988). This "philosophical confusion" as Markwart and Corrado (1989) describe it, is appropriately captured in a statement made by the then-Solicitor General R. Kaplan, who was responsible for seeing the proposed YOA through parliament:

...the opportunity of rehabilitating young offenders will be greater. I also think the opportunity of punishing young offenders will be greater than under the present system.


It seems ironic that section three of the YOA directs the courts to "liberally construe" the principles of the Act in all matters concerning juvenile justice. The Declaration of Principle (Section 3), while setting out a framework for guiding justice decisions, lacks any sense of prioritising these propositions. The result is a set of eight principles that are both unclear and, arguably, incompatible with one another. As stated earlier, this leads to a variety of problems. Most importantly, it allows for a large amount of discretion on the part of justice officials who, lacking direction, are lead to apply their own interpretations (Bolton et al, 1993, Reid-MacNevin, 1991, Markwart and Corrado, 1989, Corrado and Markwart, 1988, Leishied and Gendreau 1986, Reid and Reitsma-Street 1984). The result, at least from the available data, is that judges have demonstrated a preference for a more justice-oriented, or crime-control approach to juvenile justice. Hanscom (1988, in Markwart and Corrado 1989) for instance, found that of 67 Ontario Court judges surveyed, 75% indicated they emphasised punishment more than they did under the JDA, while 98% indicated that deterrence was a "very"
important consideration in sentencing. These findings are supported by evidence taken at the federal level. For instance, Corrado and Markwart (1988) have reported finding a 44% increase in youths sentenced to custody under the YOA than under the JDA (periods 1983/1984 and 1986/1987 compared).

The contradictions which have arisen between principle and practice are not surprising. While the Act stresses that a balance must be sought between various principles and goals, in practice this has many problems. As demonstrated by the discussion thus far, the degree to which the goal of "least possible interference" can be achieved is dependent upon the degree to which justice officials emphasize the goals of "protection of society" or the "needs of young persons" or the need to have children bear responsibility for their actions. As the evidence demonstrates, projectionist goals seem to have been closely adhered to. Regardless, whether one emphasizes protection of society as a justification for incarceration, or the "needs of young persons" to treatment in the form of diversion programs, the result will be an increase in state interference in the lives of youth, and a decrease in the possibility of "least possible interference" with freedom. As Corrado and Markwart (1988:98) warn:

This medling of a justice and treatment perspective... may well be dangerous ground: a philosophy that legitimises both deterrent and treatment considerations in sentencing may afford a convenient rationalisation for incarceration on either ground.

In the case of the YOA, these conflicting philosophies do seem to exist. The fact that Canadian juvenile justice legislation arrived at an ideologically 'diluted' mix of ideas parallels Cohen's (1986) final "master shift". For Cohen, the period during the 1970's and 1980's is characterised by an "ideological attack" in which several, often competing, philosophies and practices come into play. In this 'final' phase of history, decarceration, community alternatives, and diversion programs are all put into effect for a variety of reasons. Nonetheless, all result in the continued existence of the old institutions of control while these "other" systems (community programs, diversion, etc.,) each expand. As the next section discusses, this hypothesis is supported by the analysis of control programs established during the 1970's and 1980's in Canadian
juvenile justice. Not only did the YOA create new responses to delinquent youth, but also served to formalise several practices that were previously functioning outside of the official justice system and thus were at one time informal.

- *Mechanisms of Control: The Emergence of Formal Diversion Programs and Community Controls during the 1970's and 1980's.*

In the analysis of the previous chapter, it was the rise of the training school which came to replace the use of reformatory prisons in dispositions involving custody. Over time, the goals of treatment and rehabilitation were found to work best within the framework of a probationary system. Slowly, then, probation came to overshadow the use of the training school as the preferred method of treatment with young offenders. By the early 1970's however, academics such as Becker (1963), Lemert (1969), and Shur (1973) began to criticise the methods employed by the state to control juvenile delinquency. Shur's (1973) critique was especially influential. His position was that the process by which the justice system identified and categorised various youth as "criminal" was more harmful than good. This labelling view held that youth who were involved with the justice system and those who define them as deviant were more likely to become entrenched in a delinquent lifestyle. These ideas were very persuasive, and by the mid 1970's the effort to decrease the official (state) responses to delinquency, and offer programs within the community was under way (Carrigan, 1991). The goal was to offer choices that would avoid the formal methods of the state and thereby "divert" needy children into informal environments which would, it was argued, better serve their needs.

These various ideas and practices had a substantial effect on the development of juvenile justice policy in Canada in the years surrounding the introduction of the YOA. It is not surprising then, that the YOA reflects some of the positions advocated by 1970's academics. That is, the act recognizes and stresses that children should be dealt with in the least restrictive ways whenever possible (S.3[1][f]). The Act also goes so far as to authorise the implementation of official diversion programs in each of the provinces.
This aspect of the YOA is the most pertinent in regards to the changes which characterise the 1980’s period. The implementation of “diversion” programs for delinquent youth is an important development. Also significant is the subsequent growth in community-based programs created to decentralize and decarcerate the growing control system of the state. Taken together, these new methods of reacting to delinquent youth provide legal professionals with an entirely new set of disciplinary options in sentencing.

Official Diversion programs represent one of these new additions. In the YOA, section four provides legislative authority for the use of “Alternative Measures” programs. These diversion programs are intended to be alternatives to the regular, or official, methods of processing juvenile offender dispositions. Diversion often entails the decision not to prosecute a young person, but rather have him or her participate and be monitored in some educational or community-service program. The intention “is to avoid the formal, time-consuming, and often harmful effects of prosecution and punishment” (Library of Parliament Reports, 1993). While in principle this initiative appears to achieve its aims, in practice it suffers from a variety of downfalls.

The primary criticism one can lodge against the alternative measures programs in Canada is that they previously existed as informal, often volunteer-based, community programs. Just as the JDA formalized and legalized the probation practices of Children’s Aid agencies in the early 1900’s, the YOA was now formalizing previously informal practices. In so doing, it made “diversion” a legal sentencing option (with or without a charge; depending on the province), complete with probation officers and administrative staff who monitor and report on the youth’s progress throughout the assigned term. Implementing this programming in the name of decarceration signals a contradiction. Diversion programs are now used to handle thousands of children each year (Kennewell, Bala, and Colfer, 1991). Having created an entirely new system of control as an addition to already existing control measures does not indicate any form of retraction on the part of the state. In provinces such as Ontario and Nova Scotia, in fact, children who are subject to diversion programs must first be officially charged. For
them, the eligibility requirements for admission to a diversion program include an admission of guilt, a formal charging procedure, and an appearance before the judge or crown council to request participation in an Alternative Measures program.

In the YOA, the stated intent of Alternative Measures programs are to avoid the formal, time consuming and negative effects of prosecution. Given the practices stated above, this does not appear to have been achieved. Youth “diverted out” to other means of disciplinary action apparently witness a similar amount of control as those who go through the “normal” process. In Frazier and Cochrane’s (1986) research, this same conclusion was reached. Their findings indicate that youths who received diversion programming actually received lengthier official intervention and more restrictive controls than those not diverted. In their view, when youth diverted to community controls receive the full measure of the law and then experience further measures, control has not been reduced, but rather, it has been expanded (Frazier and Cochrane, 1986).

Another criticism made by many against the Alternative Measures system is that it results in a “widening of the net”; an increased intrusion into the lives of many youths who would otherwise have been dealt with informally, or else directly, by community-based services (or else would have received only a caution from a police officer) (Caputo, 1987, Leishied and Jaffe, 1988 Hackler, 1991, Bala and Colfer, 1991).

Among the reasons for this increase, some researchers have pointed to the effect of alternative measures legislation on police practices, comparing pre- and post-YOA policing methods. The contention, here, is that the creation of alternative measures programs has lessened the degree to which police officers exercise their own personal discretion. Caputo’s (1987) research bears this out. He refers to Doob’s (1983) concern that under the new rules of the YOA, police response to youth may be seriously altered. Prior to the YOA, police made decisions regarding diversion recommendations. With the (official) loss of this power (alternative measures are now crown, or judge, referred), the result may have been an increase in charging rates as police apply the rules more frequently (Caputo, 1987). Osborne (1976) argues further that diversion programs
increase "official" processing at the police level. This is due to a decrease in police discretion as police come to view this practice as the function of the diverting agency. This raises the concern that police who feel official community aid is the most helpful response to deviance may actually make it a policy to deal with all delinquents in a formal manner.

Fortunately, a great deal of data on this subject has also been organized by Carrington and Moyer (1994). Their report investigates crime reported by police (UCR data) and compares it to data provided by the Canadian Centre for Justice Statistics on the numbers of "young persons charged" versus the number of "young persons suspected and/or contacted by police" (whether charged or not). The attempt is to gauge changes as a result of the YOA and its impact on police responses to youth crime. As the authors note, any investigation of the outcomes of the YOA must study the changes that take place in the "inputs" to youth court (Carrington and Moyer, 1994). As the primary "gatekeepers of the youth justice system" it is the police who ultimately determine who is entering the system. This is similar to Markwart and Corrado's (1989) assertion that the introduction of the YOA had profound effects on police perceptions of their roles. Their argument is that, as an emphasis occurs towards using alternative measures, police will increasingly charge a youth and then refer him/her to the crown or court, viewing the decision to use community measures as now residing beyond their control. Carrington and Moyer's (1994) hypothesis is that any decrease in police diversion will result in a corresponding increase in the number of young offenders sent to court and thus placed under state supervision.

In their study they gathered data on rates of young persons suspected, charged, and diverted in Canada for the last four years of the JDA (1980-1984) and compared it to the first five years of the YOA (1985-1990). Their findings show that the mean rate of young persons charged during the first five years under the YOA was substantially (21%) higher than the mean rate for the last four years under the JDA (1322 per 100 000 youth population 1985-90, versus 1094 per 100 000 1980-84). For the same time periods the mean police-reported youth crime rate remained much the same. That is, the
so called "suspect" rate (contacted but not charged) for 1985-1990 (2079 per 100,000) 
was no different from the mean for 1980-1984 (2080 per 100,000). Because the mean 
suspect rate remained relatively stable while the mean charge rate increased 
significantly, it may be concluded that a larger number of youths who had contact with 
police in the YOA years were formally charged and sent through the system.

Moreover, findings indicate that, during the last four years of the JDA in 
Ontario, an average of 31.6 percent of youth suspects were charged and thus an average 
of 69.4 percent were diverted by police. Comparatively, in the first five years of the 
YOA, 58.0 percent of suspects were charged, meaning only 42 percent of youths were 
diverted. This represents a 26.4 percent decrease in police diversion (or a 26% increase 
in the charging rate) during a period with virtually no change in the police-reported 
youth crime rate. The conclusion that may be drawn from this is that the "use of 
alternative measures" as a mandate in the YOA, has actually resulted in an increase in 
the total number of youths processed by formal means. As Klein (1976, in Bolton et. 
Al., 1993:1039) states:

In short, the meaning of diversion has been shifted from "diversion from" to "referral 
to". Ironically, one of the ramifications of this is that, in contrast to such earlier cited 
rationales for diversion as reducing costs, caseload, and the purview of the justice 
system, diversion may in fact be extending the costs, caseload and system purview 
even further than had previously been the case.

The organisation of community-based programs created under the provisions of the 
YOA may also represent an infringement on children's access to due process. These 
programs represent a combination of two principles of the YOA: one, the child's right to 
the "least possible interference" (S.3[1][f]), and two, the acknowledgement that young 
persons "should bear responsibility for their contravention's" (S.3[1][a]). As such, the 
primary requirement for eligibility to a community program is an admission of 
responsibility. This poses a major threat to many children's rights because their legal 
rights may be infringed upon in marginal cases that would otherwise have been 
dismissed by the court (Kennewell, Bala, and Colfer 1991, Leishied and Jaffe 1988). 
Having conceded responsibility for the act, the child becomes enmeshed in the system.
Moreover, to create a program around the admission of guilt appears to ignore the fundamental idea of the presumption of innocence (Bolton et. al., 1993). It has always been an important aspect of our legal system that a person is presumed to be innocent until proven guilty by the courts. Guilt or innocence is not something to be resolved by an administrative system but rather by the judicial system.

Another consideration is that a young person may not fully understand or recognise his or her rights (or the loss thereof). In this view, the structure of the Alternative Measures program incorporates an element of coercion. The youth is forced to decide between admitting guilt and being "diverted", or claiming innocence and being sent through the system. As Berlin and Allard (1980) note in their discussion of diversion programs, an innocent youth may feel the easiest route to take is to admit to the allegations and submit to the relatively minor sanctions of the Alternative Measures program rather than face the strain, time, and cost of a formal court trial. A fear of the system, not to mention a degree of ignorance, may prompt a youth to perceive a very real threat of being found guilty and suffering greater punishment. While the program is entered into voluntarily by the client, Anderson (1978, in Bolton 1993) even criticises the nature of this voluntariness.

While it can be argued that the diversionary program is voluntary in the sense that the accused was not compelled to agree to the "diversion" conditions fixed by the prosecutor, it seems to me that one cannot avoid the fact that there was coercion in a very real sense...To my mind, to speak of a "diversion" agreement as a free and voluntary bargain in such circumstances is to speak of an illusion.

The entire principle of "least possible interference" holds little weight when one views the system in this light. Regardless of which decision a youth makes, interference by the system prevails.

The hard end of community programs is, of course, open custody facilities. By the later 1980’s many efforts were made to create community-based facilities which would attempt to reform youths in a less confined area. Despite the previous claims that rehabilitation facilities were often ineffective or harmful, a familiar example of such a facility is the two New Beginnings homes in Windsor, Ontario. These homes use
behaviour modification programs which focus on anger management, social skills development, and life skills achievement for young offenders.

For Rothman (1980) the reappearance of these reform-based facilities is no surprise. In his words "rehabilitation was to be given another turn - not change through internal insight this time but change through external compliance" (Rothman, 1980:144). This emphasis on community-based programs again signals an attempt to address the welfare concerns of the child. According to Klein (1979, in Frazier et. al., 1986) this practice also amounts to little more than "alternative encapsulation"; trading the definition of the child as "bad" - typically done by the youth justice courts - with the label "sick" - typically done by community service agencies. Regardless of which "treatment" method is used to justify intervention, the result for the overall system is the same: to supplement one form of control with another. Taken together, this combination of administrative (informal) sanctions and judicial (formal) sanctions in modern-day crime control is potentially more repressive than ever before.

Community-based dispositions were created to reduce the overuse (and cost) of incarceration for which the JDA was noted. However, Lemert (1981). Frazier and Cochrane (1986), and Kenewell et. al., (1991), all believe that increases in community programming will not simply act as substitutes for traditional, often more coercive, methods of punishment, but rather, may serve to expand the state's control over individual behaviour and freedom. Whether new dispositional alternatives have widened the net or not (the topic of the next section), up to this point it is apparent that community programming has created an entirely new forum of control in which to monitor youth feared to pose a threat to society. Instead of "diverting" children away from the formal justice system, they merely create an addition, or extension of it through the creation of new corrective programs. Consequently, an increase in dispositional choices does not simply imply a greater variety of choices in sentencing options. Rather, an increase in the number of control measures available to the system will inevitably result in an increase in their use. Subsequently, a greater percentage of individuals subject to state interference and control will follow. This is the hypothesis

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that guides us into the next chapter, as the empirical data on youth corrections from 1900 to 1990 is examined.

Review of the Data

In the preceding chapters, an attempt has been made to examine two other periods in history; the 1900-1910 period, and the 1950-1960 period. In this section, the third and final period, the decade 1980-1990, will be examined in light of the statistical data. The task here is twofold: one, to analyse the data for this decade (1980-90), and, two, to compare the three periods presented and examine the changes which have occurred over the years. As a supplement to the data compiled from Statistics Canada and the Juristat, information from other sources will also be provided were applicable. These sources include the use of the Youth Court Survey reports, the Uniform Crime Reports (both published through the Canadian Centre for Justice Statistics), and reports published by the provincial ministries of Corrections and Social Services and, finally, recent research projects published by other authors.

It is important to note that during the period 1980-1990, the implementation of the YOA occurred. Among the effects this had on the system of youth justice, one important factor to note is the change in the upper age range of those defined as delinquent. Prior to the YOA, the upper age limit had been defined as 16 years (17 in some provinces). With the implementation of the YOA, the upper age became standardised at 18. The result is that following 1984, 16 and 17 year olds were included in the young offender statistics. While this age group does not represent the most delinquent (according to Statistics Canada, 15 year olds do), the addition of this group will have an effect on the disposition rate. This effect may be most apparent on supervision-based dispositions, as courts are likely to place more severe controls on older youths. According to many academics, this represents a shortfall of the youth courts after 1984 as different age groups are treated in an inconsistent, and unequal, manner (Leishied and Jaffe, 1988, Reitsma-Street 1990, Wilson, 1990). In the data presented below, one method of controlling for this change, while enabling comparison between pre- and post-YOA years, is to ensure that ratios of youths convicted represent
the number of delinquents relative to the youth population now under 18 years of age. A second control utilised below is a calculation of the number of youths convicted (under 16) and then calculating the various rates based on the number of youths in the population (under 16). This allows us to examine the relative increase or decrease in control functions based on an identical subject group.

To begin the analysis, the findings for the period 1980-1990 will be presented below. Unlike previous chapters, this section will present only the calculated rates of various dispositions handed down by the courts. These dispositions include sentences to open and closed custody institutions, sentences to probation, and sentences to supervised community service orders (CSO). Other relevant dispositions and their effects on the sentencing rates will be discussed below.

Table I

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Youths Convicted /100,000 youth population</th>
<th>Sentences of Incarceration in Institution /1000 convictions</th>
<th>Sentences to Probation /1000 convictions (includes supervised community service order)</th>
<th>Sentences to Supervised-CSO /1000 convictions</th>
<th>Ratio of Juveniles placed under Judicially Ordered Control /100,000 youths. Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>395</td>
<td>95</td>
<td>416</td>
<td>n/a</td>
<td>212</td>
</tr>
<tr>
<td>1981</td>
<td>397</td>
<td>128</td>
<td>481</td>
<td>n/a</td>
<td>249</td>
</tr>
<tr>
<td>1982</td>
<td>397</td>
<td>131</td>
<td>508</td>
<td>n/a</td>
<td>263</td>
</tr>
<tr>
<td>1983</td>
<td>408</td>
<td>146</td>
<td>521</td>
<td>n/a</td>
<td>272</td>
</tr>
<tr>
<td>1984</td>
<td>416</td>
<td>144</td>
<td>526</td>
<td>64</td>
<td>292</td>
</tr>
<tr>
<td>1985</td>
<td>601</td>
<td>169</td>
<td>525</td>
<td>61</td>
<td>453</td>
</tr>
<tr>
<td>1986</td>
<td>627</td>
<td>240</td>
<td>495</td>
<td>87</td>
<td>538</td>
</tr>
<tr>
<td>1987</td>
<td>625</td>
<td>245</td>
<td>480</td>
<td>98</td>
<td>539</td>
</tr>
<tr>
<td>1988</td>
<td>615</td>
<td>252</td>
<td>476</td>
<td>103</td>
<td>534</td>
</tr>
<tr>
<td>1989</td>
<td>628</td>
<td>257</td>
<td>474</td>
<td>117</td>
<td>552</td>
</tr>
<tr>
<td>1990</td>
<td>635</td>
<td>255</td>
<td>490</td>
<td>132</td>
<td>566</td>
</tr>
</tbody>
</table>

From Table I it is evident that increases have occurred in all areas except probation, in which there occurred a slight increase in the mid-eighties and then a slight decrease thereafter. Overall, sentences to probation represent approximately 50% of
youth dispositions. The most interesting changes occurred immediately following the introduction of the YOA. Prior to 1985, custody dispositions accounted for an average of 14% of all dispositions. Immediately following the introduction of the YOA, the use of custody dispositions jumped to 24%, a near doubling. While this may in part be a factor of the inclusion of older youth, it is interesting to note that in the first two years of the YOA, the addition of 16 and 17 year olds to the statistics represented only 34% of the increase in youth convictions (Statistics Canada, 1987). If the addition of older youth were to be explained as the only factor for the 80% rise in custody dispositions, then it should represent a much greater contribution. A better explanation for the increase in conviction rates, and subsequent sentences to supervision and control, is the change from the Prens Patriae framework to a “rights” framework (Reitsma-Street, 1991). The rights framework (or Justice Model) of the YOA, in this view, has increased the number of individuals processed by the courts by stressing administrative and due process factors more than the JDA before it. This is exemplified in the example of summary offences. Summary offences, such as truancy and sexual immorality, were used frequently to place children in training schools and on probation during the JDA years. With the YOA, these non-legal issues were to be disposed of. In theory, this should lead to a decrease in the number of juvenile convictions and dispositions; instead there is a 78% increase in these factors immediately following the introduction of the YOA.

Another indication of the rise in control functions during this period is the relative changes that occurred between custody and absolute discharge rates. As indicated in Table II, during the decade 1980-1990, the percentage of youth receiving a disposition of absolute discharge declined dramatically, while a corresponding rise in custody occurred. From 1980 to 1990, the percentage of custody sentences rose approximately 150% while the occurrence of an absolute discharge dropped by two-thirds of its original value. This large decline in the number of absolute discharges occurring during a corresponding increase in the number of charges and custody dispositions may indicate the effect of community based alternatives on the sentencing.
rates of youth. Recall, that one of the claims of the diversion program critique is that diversion increases the number of youths caught in the system as justice officials exercise less discretionary powers (discharge) and increasingly demonstrate a preference for official community diversion programs. It is important to note that in many provinces, those youths that are sentenced specifically to Alternative Measures programs are not counted in the statistics. The large increases in custody and probation dispositions do not even include these individuals, as thus are not fully representative of the total number of persons subject to official control.

**Table II**

*Table II.* Percentage of Custody Dispositions and Absolute Discharges as a measure of all dispositions, 1980-1990.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Custody</td>
<td>9.5</td>
<td>12.8</td>
<td>13.4</td>
<td>14.6</td>
<td>14.4</td>
<td>16.9</td>
<td>24.0</td>
<td>24.5</td>
<td>25.2</td>
<td>25.7</td>
<td>25.5</td>
</tr>
<tr>
<td>Absolute Discharges</td>
<td>n/a</td>
<td>10.2</td>
<td>9.0</td>
<td>8.1</td>
<td>7.3</td>
<td>5.2</td>
<td>4.9</td>
<td>4.4</td>
<td>3.9</td>
<td>3.7</td>
<td>3.7</td>
</tr>
</tbody>
</table>

The increases in dispositions apparent immediately following the introduction of the YOA reflects similar findings from chapter two (1900-1910). Here, following the implementation of new juvenile justice legislation in the form of the JDA, there was a subsequent rise in the control functions of the justice system. To better compare the three periods of history studied thus far, each ten year period will be re-printed below. In each table, the ratio of youths convicted per 100,000 youth population of the identical age is presented, as well as the ratio of youths sentenced to custody and probation, and the ratio of youths convicted and sentenced to judicially ordered control per 100,000 Canadian youth population.
### Tables III, IV, and V.


<table>
<thead>
<tr>
<th>Year</th>
<th>Ratio of Juveniles Convicted /100,000 youths, Canada.</th>
<th>Ratio of Juveniles Sentenced to Custody /1000 convictions.</th>
<th>Ratio of Juveniles Sentenced to Probation /1000 convictions.</th>
<th>Ratio of Juveniles Placed under Judicially Ordered Control /100,000 youths, Canada.*</th>
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<td>635</td>
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</table>

*For the years 1900-1908, custody statistics include only data from Reformatory prisons. Following 1908, information is supplied including both reformatories and training schools.

*4* Until 1909, probation as a legal disposition did not exist, and was not counted in the official statistics. ⇒ Cont. Next Page...

*For the years 1900-1908, data indicating sentences to training schools is not supplied, and therefore cannot be used for comparison purposes.

*For the period 1980-1990, custody represents numbers of individuals sentenced to open and closed institutional settings.
As indicated by the above tables, increases are evident in all columns by the 1980's period. Conviction rates are the only one’s which show some fluctuation. During the 1950's, these rates demonstrate a decline when compared to the previous period. One explanation offered for this occurrence was that greater social controls both within society and, more effectively, the home, following the second world war, had an effect on the amount of criminality in society (Carrigan, 1991). As these rates grow again throughout the 1950’s, they virtually become overshadowed by the rates evident in the last years of the 1980’s. Ironically, despite the calls for community-based responses and decarceration, the custody rate also indicates tremendous increases by the final period. During the 1950’s and 1960’s, the use of custody declined steadily as rehabilitation programs and the regard for probation as a treatment consideration gained popularity. With the introduction of the YOA, subsequent reforms introduced community-based facilities once again. Treatment, and the desire to modify the child’s behaviour once again justified the use of open and closed custody institutions.

While the use of custody declined initially during the 1950’s, it was replaced by probation and the use of non-custodial community controls. Probation, representing just 7.2% of all dispositions in 1909 (following the introduction of the JDA), grew to over 50% of all dispositions handed down by the late 1950’s. Recall that probation was originally perceived as a method of decreasing the state’s reliance on the use of custody. The role of supervision was to be better achieved through probation, especially at a time when institutions such as the reformatories and training schools were being criticised. Despite the initial claim that probationary controls would replace the over-use of secure custody controls, by the 1980’s period this has not happened. Probation remains at over 50% of dispositions, while custody has risen to over 25% of dispositions. When one adds other community-based controls to this, the overall number of individuals under supervision increases substantially. As tables III through V indicate, where once the overall rate of youths sentenced by the system to some form of supervision or control was rather low (72/100,000 youths in 1909) it rose during the 1950’s (142/100,000 by 1960), and from there increased by nearly 400% by the final
years of the 1980's (566/100,000 by 1990). If one controls for the effect of the YOA having raised the upper age limit to 18 (that is, calculating the rate of offenders under 16 relative to the population of youth under 16 in Canada) the ratio of youth subject to official control equals 430/100,000. This still represents more than a 300% rise in the number of youths when one fails to count those changes which occurred as a result of the upper age changes. Looked at another way, the percentage of youth receiving a disposition resulting in some form of official supervision increased steadily over the century. The rapid rise in the use of control-based dispositions can be grasped quickly by viewing the following chart. It depicts the overall ratio of youths from 1909 to 1990, which have been placed on judicially ordered control or supervision. This includes sentences to training schools, reformatories, penitentiary, probation, and various community-based programs (not including Alternative Measures Programs).

![Graph of ratios of youths sentenced to custody, probation/community controls, and total numbers placed under control, Canada, 1900-1990.](image)

Another indication of the steady rise in the state's use of control is to examine the percentage of youth convicted who receive a disposition resulting in some form of official supervision. This number climbs steadily from 23.2% of sentences in 1909, to 55.5% in 1950, and 63.9% in 1980. By 1990, following the implementation of the
YOAs, the total percentage of dispositions which involved formal control or supervision stood at 85.1%. Interestingly, while the number of youths coming before the courts is on the rise, there is no indication that this is due to a rise in the youth population. According to Canadian Census reports from 1951 to 1991, the Canadian youth population in slowly decreasing, both in real numbers (since 1981) and in proportion to the total population. For example, between 1951 and 1991, the youth population dropped from 41% of the overall Canadian population to only 24% of the overall population.

All of the empirical evidence presented thus far indicates an increase in the use of custody and supervisory control during the nineteen-hundreds. One very popular conception, especially with the media, is that these changes are a function of the increase in serious crime by young people. The belief that youth crime is becoming more violent, or serious, fosters the belief that we must "toughen up" our controls. This, in turn, has an effect on policy makers who are equally sensitive, perhaps more so, to these popular conceptions. If indeed the volume of violent, or serious, crime as a percentage of all youth crime were on the rise, then it may explain the increase in the state's use of intrusive methods.

This hypothesis, when investigated by Markwart and Corrado (1992) using UCR data for 1984-1989, found little support. More recently, Carrington and Moyer (1994) used UCR data ("suspect" and "charge" rates) from the pre- and post-YOA years (1980 - 1990) to test the same hypothesis. For their study, a ranked typology of offences was formed creating six categories of offences. These six categories, or groups, of offences were then aggregated into decreasing order of seriousness. The six groups entailed, first, "serious person" offences, being the most serious. These included homicide, all types of sexual assault, assault causing bodily harm, and assault with a weapon. Next was the category of "break and enter" offences, followed by "theft over 100 and motor vehicle theft" offences. Ranking as less serious were the "less serious person" offences and "other property offences" (such as theft under, vandalism, etc.). The least serious category of offences was labelled as "other". This was made up of
actions such as disorderly conduct, offences against the administration of justice (for ex. failure to appear, bail violations) and other minor victimless offences.

From their findings, the hypothesis that youth crime in Canada has become more serious was not supported (Carrington and Moyer, 1994). While an increase in the proportion of suspected serious person offences was reported, it represented only a 1.1 percent increase in relation to the overall makeup of youth crime. In the four categories ranging from "break and enter" down to "other property offences" there was very little difference in the cumulative proportion of youth crime suspected during the JDA and YOA periods compared. In fact, from the empirical findings of Carrington and Moyer (1994), the only offence category with a substantial increase was the least serious "other" offences. This, they conclude, is an indication that the composition of youth crime actually became less serious during the 1980 - 1990 period.

More recent evidence from the 1992 Youth Court Survey indicates these trends are continuing. The offences resulting in the most serious personal injury (homicide, attempted murder, sexual assault, etc.,) accounted for only 0.4 percent of all youths charged with a Criminal Code offence. In the medium seriousness category of Break and Enter, the number of charges was actually lower in 1992 than it was five years previous (YCS - 1992). The largest increase in charge rates occurred again in the least-serious category comprising victimless offences and administrative offences. This again indicates a decrease in the seriousness of youth crime.

As the crime control provisions of the state reach the 1980’s to early 1990’s period, this increase becomes all the more observable. Interestingly, many of the control measures which mark the 1980’s period are a result of a program of decarceration that began a decade before. Disconcerting evidence regarding the ineffectiveness of official programs aimed at combating recidivism led many professionals to the conclusion that it was time for the system to “pull back”. As Bolton *et. al.* (1993) state, the goal became one of “less harm rather than more good”. By diverting young offenders at the ‘front end’ of the legal process, it was hoped that the full force of the system could be reduced substantially. Diversion programs were
thus increasingly formed in an effort to promote the use of community resources, believing “informal” measures to be a superior means of providing assistance to a troubled youth. Ironically, diversion programs of the 1970’s and 1980’s were initially implemented in the juvenile court system - itself a measure organized to divert youth from the once “official” system of control.

While this rationale continued into the 1980’s, and even found it’s way into the YOA, in many ways today we are witnessing a return to the agenda of the 1950’s. Increasingly, there is a mounting concern with the nature of our society, and particularly it’s youth. Each year, the popular Canadian news magazine McCleans publishes the findings of its Decima poll. According to the latest findings, their appears to be a sense among Canadians that older forms of social control once found in the family, the community, and the church, are being lost and have eroded (“Looking into the Canadian Conscience” Jan 4, 1995). One result is a re-newed emphasis on community-based programs. These controls once again attempt to re-create the family/community model thought to be ideal to the needs of a young person. This approach (combined with the perceived commitment to de-carceration and diversion which these programs concede) both justifies and increases the use of their controls.

As the research presented earlier testifies, however, the discrepancy between principle and practice is enormous. The original intentions of diversion and de-carceration programs have had no apparent effect in decreasing the numbers of youth subjected to official supervision and control. Even with early closed custody institutions of the late 1800’s, such as the reformatory and training school, the intentions of their designers to recreate the family and offer treatment were unsuccessful. Each successive reform program not only met with a similar outcome, but failed to replace the use of its predecessor. In this way, new controls became supplements to the overall system, not alternatives. Consequently, the system expands both its reach and authority over the population it aims to control.
Diversion programs reflect this assertion particularly well. With Alternative Measures programs, once discretionary and informal powers have been formalized and extended. This has transformed these programs, and their objectives, considerably. As Cohen (1986) notes, "diversion" itself now takes on the form of a massive, and separate, infrastructure of programs and agencies. Cohen further distinguishes between "true" diversion and "new" diversion. In true diversion children are completely removed from formal intervention, but with new diversion, children are first screened then subjected to programming. The organization of this new program now has the effect of diverting children into the system.

Interestingly, in these latest movements of social control, punishment has actually become the most hidden element of the penal process (Foucault. 1979). Punishment, once the cornerstone of the state’s mechanism of control over delinquency, has now transformed from the once visible, and brutal, display of the execution, and later the prison, to become both uncertain and abstract. Certainly, modern crime control mechanisms, such as the various community controls (and even closed custody institutions) have become less coercive, or physically harmful, but it is both their purported effectiveness and humaneness that have allowed them to expand.

The power of the state has coincided with expansion alongside. It’s power has increased because of the inevitability of punishment which now characterizes the new reforms. Where once a delinquent was subjected to indefinite exclusion (indeterminate incarceration) in closed custody institutions, today young delinquents experience what could be coined as "indeterminate inclusion". As probationary community controls are always subject to revocation, the youth faces a constant risk of being removed from society should he/she fail to meet the demands of the sanctions imposed. In Foucault’s words:

The exercise of discipline presupposes a mechanism that coerces by means of constant observation; an apparatus in which the techniques that make it possible to see induce effects of power...which make those on whom they are applied clearly visible.

(Foucault, 1979:170, italics mine).
In summary then, the empirical findings reported in the three preceding chapters have demonstrated that a very real increase in the level of state involvement and control has occurred. Indicative of this is the fact that imprisonment and other penal measures have demonstrated such a growth with the introduction and addition of community-based corrections. Apparently, the calls for decarceration have not only had little effect on the institutional incarceration of Canadian youth but have evolved into the creation of a host of different techniques used to monitor the slightest sign of deviance. This added flexibility in the range of possible responses to deviance represents an increase in state power. As Cohen (1985) expresses, the overall level of "imprisonment" has expanded; now reaching into the everyday lives of individuals forced to carry out their sentences beyond the prison walls. In the following chapter, a discussion of social control theory’s ability to accurately explain the findings presented herein is presented.
Chapter Seven
Discussion and Conclusion

Throughout chapters four to six, the research findings have uncovered that a consistent rise in state-implemented juvenile justice controls has occurred. Beginning with the introduction of the prison to house delinquents during the early 1800's, the use of the penal institution became a permanent feature of crime-control. Despite existing criticism, however, the use of the prison as a method of incarcerating juveniles persisted during the implementation of the reformatories in Canada. By the turn of the century, the reformatories themselves came under criticism for their numerous problems and inability to control recidivism. Following the reformatories came the industrial schools, then the training schools, and finally, probation. In each case, every juvenile justice reform movement, while initiated as a replacement for the previous measure, became a supplement to that measure. By the 1980's, the use of open and closed-custody institutions, probationary controls, and even community based non-institutional controls were all in force alongside one another. All of this has occurred despite the state's assertion that a movement towards decarceration is occurring. In fact, the findings demonstrate, decarceration programs have themselves led to enormous rises in the number of individuals now subjected to state control and supervision.

The findings from chapters four through six indicate that the number of youths sentenced to each of closed custody, probation, and community controls, have all increased relative to the overall Canadian youth population. Closed custody, for instance, rose from a rate of 57/100,000 youths convicted in 1900, to 135/100,000 in 1960, to finally, 255/100,000 in 1990: a near four-fold increase. With regards to probation, this number has risen from 72/100,000 in 1909 (the first year of it's implementation) to 531/100,000 in 1960, and then to 622/100,000 in 1990: a near seven-fold increase. The overall rate of youths sentenced to state supervision and control has risen from a rate of 72 per 100,000 Canadian youths in 1909, to 142/100,000 by 1960, to 566/100,000 by 1990. These findings indicate the unprecedented numbers of youths placed under state
supervision and support the assertions of Michel Foucault that state control has risen over the last century and a half.

In short, the examination that has unfolded here has uncovered a trend in Canadian youth corrections from once violent corporal punishment as a reaction to delinquency, to the use of the prison and subsequent institutions to, finally, community and probationary controls. These latest provisions attempt to monitor youth in their own natural environment while extending behavioral and social therapy to them. In each of these programs, from the prison to probation, there is an inarguable degree of power exercised over the youth affected. The use of Foucault’s discourse to understand these events is thus very useful. To Foucault, power is central to any discussion of modern social phenomena. In any relationship (between prisoner & state, pupil & teacher, man & woman) power plays a central role. Within a discussion of the state’s control of deviance, the power to punish is, in principle, no different from the power to educate a child or monitor a worker (Foucault, 1979). In modern society, each of these practices function similarly.

An example of this is clearly demonstrated by the practices of the early training school as well as today’s open and closed custody behavior modification programs. Here, the task is to instill patterns of behavior that will enable young persons to return to society and lead crime-free, productive lives. To accomplish this, staff must assume the role of a combination of judge, teacher, and parent. Foucault describes these professionals as “technicians of behavior; engineers of conduct...” (Foucault, 1979:293). Their responsibilities entail not only supervision, education, and control, but constant assessment. Children are monitored, and information (knowledge) is obtained in an effort to determine the appropriate time for their leave.

This acknowledgment of the importance of power again permits Foucault’s (1979) study to contribute to the analysis herein. In this case, Foucault embraces Jeremy Bentham’s model of the Panopticon. The Panopticon is the perfect example of an architecture of power relations which can be transposed, or compared, to modern society. In the Panopticon “visibility is the trap” (Foucault, 1979:200) and it is therefore the perfect method of guaranteeing order. The Panoptic model functions to induce, in the individual under surveillance, a feeling of “conscious and permanent visibility” that
insures the "automatic functioning of power" (Foucault, 1979:201). Thus surveillance is considered permanent, whether in fact it is or not. In the end, individuals are controlled by their involvement in a relationship of power which controls behavior without resorting to the use of physical force.

The Panoptic image of social control forces is one which permits an organized and detailed apparatus of control. It renders visible those who form the population around which it is established. Its constant presence acts also to transform the activities of individuals. Whether this model is applied to the school, the prison, or the factory, it has the power to teach, to correct, and to alter the behavior of those at the receiving end. This assertion is as much J.J. Kelso's as Michel Foucault's. The influential reformer of the early 1900's envisioned, and eagerly promoted, first the training schools, and later the probation system as devices that could successfully mold behavior through the constant supervisory controls they permitted.

As chapters four and five uncovered, institutional responses such as training schools and youth reformatories were designed on this very concept. They strove to control the actions, thoughts, and education of the children entrusted to their care. In so doing, these state institutions played an important role in the socialization of young delinquents. In each case, it was the values of those of higher status that were considered as worth imparting. By gearing the education and vocational training of youth in the manner the institutions did, they served to ensure the relative class and economic standing of these individuals (Miliband, 1969). The very act of labeling a youth as "criminal" and committing them to a reformatory or training school in itself played a crucial role in confirming the (present and subsequent) status of an individual.

As an institution of the state, these crime-control facilities therefore served to reinforce the existing order. Imposed by the justice system, and the reformers who lobbied for their creation, the socialization function of these institutions ensured that the interests of the powerful groups in society were fulfilled. For instance, the emergence of a whole new field of "professional" careers maintained the upper and middle class's relative position of dominance, while the power of the lower classes was diminished as their actions increasingly became subjected to the controls of those in power. This reinforces
the instrumentalist argument that "the state" is represented by the class that has the power to enforce it's will on the rest of society (Quinney, 1974).

The implementation and eventual consequences of each reform initiative studied in this research paper demonstrates the states use of crime and criminality as a justification to implement mechanisms of control into the social system. Each reform movement introduced by the state system did little to ameliorate the "crime-problem". As a result, the state was able to further introduce measures of control in order to meet the needs of controlling the deviant class. In this manner the criminal class, a permanent feature of modern capitalist societies, remains legitimately under the coercion of the state. By using Foucault’s (1979) analysis of social control and Quinney (1974, 1980) and Miliband’s (1969) perspectives on the state, one may devise a clearer understanding of state control. The result of which is to view the state and the history of it’s introduction of justice controls as a technique organized by the interests of the dominant (upper and middle class) groups to protect their material position within society. Those who hold power in society, such as the child-savers of the 19th century, or the social-reformers of the 20th, possess the ability to influence changes in their favour. As the findings indicate, this claim has proved true throughout the period studied here in regards to juvenile delinquency controls.

**Conclusion**

In conclusion, it has been the intention of this study to accomplish two tasks: one, to investigate the state’s crime control measures and their effects on young offenders from the mid 1800’s to the present, and, two, to ascertain whether these series of events do in fact prove consistent with the assumptions of Michel Foucault, Stanley Cohen, and the various State Theorists such as Ralph Miliband, Richard Quinney, Nicos Poulantzas, and Robert Ratner.

The resultant findings generally support Foucault’s assertions and indicate that his discourse provides an informative model whereby one may analyze the evolution of Canadian responses to youth crime. Foucault’s goal in *Discipline and Punish* was to uncover the ways in which the prison came to dominate the field of punishment in crime control. Central to his study was the investigation of the way the prison functions to
create a mechanism of discipline that transposes itself into the everyday functions of human life (such as work, education, religion, and medicine). In contemporary times, discipline, as Foucault contends, operates like an observatory. It is the observation of conduct and the ability to gain knowledge of the individual being observed that gives the disciplinary system its power.

This closely resembles today’s crime control forces, which forsake force in favour of observation and surveillance to control offenders both in closed-custody institutions and community-based controls. These controls are not unlike the working principles behind Bentham’s Panopticon plan; to inculcate in the individuals under control the idea that they are being (or can be) watched at any time. The unique element of this situation, and that which Foucault identifies as central to an understanding of social control, is that through the unverifiability of surveillance, individuals become the bearers of their own control (Foucault, 1979). Although this idea is Bentham’s (1965), Foucault adopts it to explain how social control operates within the everyday operations of life. Most relevant is it’s relationship to modern penal controls. These include community-based controls, such as diversion programs or probation, as well as closed-custody institutions, all of which function under the same principles.

While Foucault identifies several methods whereby the state functions to extend control, his analysis fails to deliver a clear answer as to why the state acts as it does. Here, the instrumentalist perspective gives the most accurate account in light of the findings from this study. For instance, Foucault’s analysis may indicate that reform movements which appear at first to extend services to criminals are also measures designed to control them. If one applies the instrumentalist analysis to this, one may further expose these measures as initiatives designed to sustain the relative social position of the delinquent (predominantly lower) class. This, in turn, reinforces the interests of those who hold power. As the research demonstrated, reforms which are introduced in either the public benefit, or to the “benefit” of the criminal, are, regardless of the stated purpose, usually to the detriment of the subordinate classes (Miliband, 1969).

For this reason, it is dangerous to offer solutions which suggest further reform measures. To offer a recommendation or alternative to the present system of control
would likely be a step in the same direction as that taken by each previous reform idea - that of creating an addition to the network of control/treatment mechanisms. Foucault himself did not feel it was his place to provide alternatives to the phenomena he studied because “to imagine another system is to extend our participation in the present system (Foucault, 1976, in Cooper, 1981:94). Under the present system, power, and who holds power, determines the consequences of various reform movements. Thus, any reversal in the relative position of the lower-class or the criminal groups in society will require a complete reordering in the distribution of power. This is a tall order, and, even if possible, could not guarantee that the struggle for power and domination would cease. Unless such a drastic change occurs, the greater economic and social power of the dominant groups in society will continue to reinforce their will, ensuring those subjected to it remain powerless to provoke change.
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