

DISCORD AND AMBIGUITY WITHIN YOUTH CRIME AND JUSTICE DEBATES

DISCORD AND AMBIGUITY WITHIN YOUTH CRIME AND JUSTICE DEBATES

By

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ABSTRACT

This dissertation traces debates about youth crime and justice in Canada. On a substantive level, I ask how the social problem of youth crime and justice is constructed, focusing specifically on debates over the culpability of young offenders. I also examine debates over the degree and severity of youth crime and connect the divergent positions on this question to how young offenders are conceptualized. Related to these debates, I examine the search for solutions to youth crime. I argue that positions regarding how to address youth crime are rendered ambiguous given the creation of a hybridized youth justice context which combines various competing goals. On a theoretical level, I explore the relationship between how formulations of ‘deviant identities’ (in this case ‘young offenders’) are related to other areas of advocacy over a social problem. I explore the dynamics of a social problem debate which persists without resolution over an extended period of time. I also address the ways in which social context impacts upon claims made over a social problem.

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And, according to Lao Tzu:

Existence is beyond the power of words
To define:
Terms may be used
But are none of them absolute.
In the beginning of heaven and earth there were no words,
Words came out of the womb of matter;
And whether a man [sic] dispassionately
Sees to the core of life
Or passionately
Sees the surface,
The core and the surface
Are essentially the same,
Words making them seem different
Only to express appearance.
If name be needed, wonder names them both:
From wonder into wonder
Existence opens.

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INTRODUCTION - Youth Crime and Justice in Canada: A Fragility Resting on Ambiguity

This dissertation traces debates about youth crime and justice in Canada. I ask how the social problem of youth crime and justice is constructed, focusing specifically on debates over the culpability of young offenders. I also examine debates over the degree and severity of youth crime and connect the divergent positions on this question to how young offenders are conceptualized. Related to these debates, I examine the search for solutions to youth crime. I argue that positions regarding how to address youth crime are rendered ambiguous given the creation of a hybridized youth justice context which combines various competing goals.

Attention is paid to the ways in which young offenders were represented under the Juvenile Delinquents Act (1908-1984), Canada's first national law governing youth crime, with a focus on the ways in which later legislation, namely the introduction of the Young Offenders Act in 1984, came to affect these representations and related debates over the severity of youth crime and the best way to process them through the youth justice system. I also provide evidence in each of the substantive chapters that the debates which emerged under the Young Offenders Act are continuing under the present legislation, the Youth Criminal Justice Act, implemented in 2003.

Underlying these debates is a fundamental disagreement regarding the *nature* of youth. Who are young offenders or youth in conflict with the law? Is their identity better characterized as misguided or malevolent? The response of the criminal justice system to youth crime is contingent upon whether or not youth are represented as victims or victimizers. I characterize the debates over young offender culpability as a *victim contest* (Holstein and Miller, 1997), a concept which underscores the way in which victimhood is variably interpreted and attributed with respect to young offenders. Under the Young Offenders Act, Young offenders were characterized as either remorseless victimizers who, with full intentionality, commit brazen crimes with no regard for their victims; on the other hand they are characterized as victims of social circumstances who were also too immature to possess the criminal intention deemed necessary to hold them fully responsible for their crimes. Spencer (2005: 48) suggests that these characterizations render young offenders ambiguously culpable for their deviant behaviour. It is this basic tension over the degree of young offender culpability that I suggest perpetuates contention within youth justice debates over the extent and severity of youth crime, as well as potential policy solutions.

I demonstrate that since the rise of the Young Offenders Act, and continuing to the present day, these victim contests have persisted. This persistence has made it difficult to arrive at any long-term agreement on how to deal with youth crime. I conclude that on-going disagreement about whether young offenders are culpable for their deviant behaviour ultimately creates disagreement regarding the role of the youth justice system. Both the Young Offenders Act and perhaps even more so the Youth Criminal Justice Act can be interpreted as attempts to strike an appropriate balance with respect to responses to youth crime. However, I argue that any sustainable consensus

regarding effective youth justice policy is unlikely to occur unless the tensions over young offender *identity* are ameliorated.

To examine these debates I employ a social constructionist perspective, which concerns itself not with analyzing and/or verifying the objective status of social problems but with the process by which conditions come to be seen as problems (Spector and Kitsuse, 1977; Schneider, 1985; Best, 2008). This perspective has given rise to a long list of questions having to do with the framing of conditions, people and solutions in social problems work. I discuss this perspective in a more detailed way in Chapter Two.

The dissertation is organized in the following way:

Chapter One presents a background of Canadian youth justice from the early 20th century to the present. The principles and philosophies behind the three federal youth justice laws are reviewed. Key points of contention with these laws, as well as key amendments are laid out. I begin with the rise of the welfare paradigm in the early 20th century and implementation of the Juvenile Delinquents Act in 1908. I then look at challenges to this paradigm which emerged after the 1960s, leading to the implementation of the Young Offenders Act and eventually the current Youth Criminal Justice Act. This history provides the backdrop for my substantive chapters.

Chapter Two presents the general tenets of social constructionism, in addition to an overview of existing theoretical approaches to the study of youth justice. Social constructionism is contrasted with these other approaches, and its utility for answering the questions asked in this dissertation is underscored.

Chapter Three describes the methods I used to conduct this research, including an overview of the data I collected.

The three substantive chapters which follow focus primarily on debates since the implementation of the Young Offenders Act in 1984 to the present. Chapter Four presents the argument about how ongoing debates regarding youth identity and culpability may be seen as a victim contest (Holstein and Miller, 1997). I examine the strategies employed by both those who saw deviant youth as innocents in need of protection and by those who saw them as ‘young thugs’ who need to be held accountable for their misbehaviors.

Chapter Five focuses on positions taken over the extent and severity of youth crime. These debates often engage statistical evidence, and can be characterized as a ‘stat war’ (Best, 2001, 2004). My concern in this chapter is to explicitly link the ‘stat wars’ in this case to underlying victim contests over young offender culpability.

Chapter Six explores debate over youth justice solutions, focusing on tensions between the competing principles of punishment and rehabilitation with respect to the youth justice system. Rather than polarized positions, I explore evidence of a greater ambiguity regarding appropriate youth justice solutions, which suggests that parties on all sides of the debate were (1) proponents of rehabilitation, yet (2) had disagreements regarding the *meanings* associated with rehabilitation for serious youth crime under a youth justice context which combined social welfare and legalistic modes of youth justice.

The conclusion offers a summary of the major findings and contributions of the dissertation, and suggests potential directions for further research.

CHAPTER 1 - A Tale of Three Youth Laws: Background to Canadian Youth Justice Legislation and Debates

The creation of a formal Canadian youth justice system with a distinct philosophy and approach is relatively recent: 2008 marked the 100th anniversary of the passing of the first piece of legislation governing youth justice in Canada, the Juvenile Delinquents Act of 1908. This chapter provides a general overview of Canadian youth justice legislation since that time. I trace the emergence of the welfare paradigm in the early 20th century and implementation of the Juvenile Delinquents Act in 1908. I look at a series of legislative challenges to the Juvenile Delinquents Act beginning in the 1960s and 1970s. I discuss how these challenges led up to the implementation of the Young Offenders Act in 1984, which was then followed by a series of amendments leading ultimately to the implementation of the Youth Criminal Justice Act in 2003. The central tenets and underlying philosophy of each piece of legislation is outlined, in order to contextualize the debates during the Young Offenders Act and Youth Criminal Justice Act period.

The Emergence of the Welfare Paradigm and the Juvenile Delinquents Act

Modern associations of ‘childhood’ as an age of immaturity and innocence were not formulated until the 18th century. Up until then, “children moved from toddlerhood into adult society” (Rock, 2005: 3), and were expected to contribute and support their families and communities. During biblical times children were thought of as legal property (Patenaude 2006). Divisions of age were made, but young boys, for instance, were depicted as men “on a smaller scale” (Aries, 1962: 10).¹ High infant mortality rates “discouraged emotional investment” and the tendency was to either “ignore children or exploit them” (Empey, 1982: 38, cited in Caputo, 1987: 126).

Prior to the introduction of the Juvenile Delinquents Act in 1908, young offenders in Canada were “treated similar to adult criminals, often receiving harsh sentences for relatively minor crimes” (Makarenko, 2007). Moreover, they were often sent to adult jails and served their sentences alongside adults. New ideas about the nature of childhood and its distinctiveness as a stage in the life cycle began to emerge in the late 18th century (Rock, 2005). Radical changes to class relations, due to the industrial revolution, the democratic revolutions in America and France, as well as the emergence of the rational modern sciences and medicine led to the creation of “new subject categories” (O’Malley, 2003: 1). The emerging middle class began to “define their children as innocent and sensitive beings who required nurturance and protection” (Rooke and Schnell, 1983: 8, cited in Caputo, 1987: 126).² This view led, during the latter half of the 19th century, to a “greater recognition of the special needs and malleability of children as individuals and as a social group” as well as “an emphasis on environment over heredity as a determinant of human behaviour” (Bullen, 1991: 136).

The concept of a ‘juvenile delinquent’ coincided as well with a concern over urban youth crime (Rock, 2005: 4). Some analysts attribute this concern to the growing dominance of middle class values and the advocacy of ‘child savers’, who had concerns over “working class youth in burgeoning industrial cities” (West, 1984: 52, cited in

Caputo, 1987: 127). Similar to related changes in the U.S. (see Platt, 1969), ‘child-savers’ in Canada, such as child-activist and police reporter J.J. Kelso, ushered in a series of reforms with respect to the treatment of children, which included addressing the social problem of juvenile delinquency (Bullen, 1991). In May 1893 Ontario passed, through the influence of Kelso, *An Act for the Prevention of Cruelty to, and Better Protection of Children* (Bullen, 1991: 142-3). The Act’s goals mirrored those subsequently adopted by the federal Juvenile Delinquents Act in 1908:

to protect children from cruelty; ...to watch over and guard their interests and promote their happiness and well being; ...to take the part of a friend towards any child accused of offences against the laws of the Province or the Dominion; ...and, generally, to advocate the claims of neglected, abandoned or orphaned children upon the sympathy and support of the public (Bullen, 1991: 145).³

The Canadian child saving movement acted to reinforce a state welfare paradigm that underscored the notion that children required special protections (Trepanier, 1991). The *doli incapax* defense, ‘the incapacity to do wrong’, was often applied to young offenders during this period. “A child under the age of seven was deemed incapable of committing a criminal act” (The Evolution of Juvenile Justice in Canada, Department of Justice, n.d.).

By the turn of the 20th century, the social welfare paradigm, which emphasized child protection and their limited maturity, influenced the emergence of the ‘*parens patriae*’ system of youth justice. Under this system, the State took on the role of a benevolent parent acting “in the best interests of the child” (The Evolution of Juvenile Justice in Canada, Department of Justice, n.d.), whereby young offenders were perceived to be misguided children due to social circumstances beyond their control (Winterdyk, 2002: 61). The State was not “solely an agent of punishment, but benevolent,” helping to save young offenders from their vices (Trepanier, 1991: 205). Under this system, in contrast to future eras, there was less concern for the offences committed by young offenders, and more concern for their treatment needs.

The Juvenile Delinquents Act, implemented in 1908, instilled these rehabilitative concerns for young offenders under Canada’s first federal youth justice law. The Juvenile Delinquents Act was premised on an understanding of youth in conflict with the law as troubled or irrational young people in need of guidance and rehabilitation. Its core premise was that “every juvenile delinquent shall be treated ...as a misdirected and misguided child” (Winterdyk, 2002: 61). Given its emphasis on the “best interests” of young offenders, and given that the contemporary application of due process rights to young offenders had not yet been formulated, the Juvenile Delinquents Act favored “an informal process” which promoted children’s welfare (The Evolution of Juvenile Justice in Canada, Department of Justice, n.d.) and distinguished minors from adults. Under the Juvenile Delinquents Act, a youth who violated the law is treated as “one in a condition of delinquency” (*Globe and Mail*, September 8, 1944), with specific reference to the offence omitted, focusing primarily on the treatment of the offender. Young offenders were charged with ‘delinquency’, never with specific offences. This ‘condition of delinquency’ gave rise to ‘status offences’, which were deemed offences “solely because

they were committed by juveniles” (Challen, 1996: 230). Status offences included forms of vice such as sexual immorality.

While the minimum age under the Juvenile Delinquents Act was set at seven years of age (Makarenko, 2007), the Act also allowed provinces to set their own maximum age limit for young offenders (Thorson, 1999: 847). A maximum age of 18 was set in Québec and Manitoba, 17 in British Columbia and Newfoundland, and 16 in Prince Edward Island, Nova Scotia, New Brunswick, Ontario, and Saskatchewan (Makarenko, 2007).

One consequence of the provisions of the Juvenile Delinquents Act was the creation of separate Juvenile Courts and the processing and sentencing of all young offenders separate from adults (Makarenko, 2007). The Juvenile Court would further “advance the emerging conception of childhood” (Howell, 1997: 12, cited in Beaulieu and Cesaroni, 1999: 372) by applying and enforcing new laws in line with the view of young offenders as misguided victims. In addition, when young offenders were found guilty of status offences, they could be “removed from their homes” and placed within institutions geared towards rehabilitation and moral development, dubbed “training schools” (Bala, 1994: 254). Young offenders could be detained for social welfare purposes unrelated to their offence. A survey of judges operating under the Juvenile Delinquents Act indicated that “in half or more of the cases where youths were detained prior to trial, ‘the detention [was imposed] only because the young person had no adequate place to stay, or for some other child welfare reason’” (Doob and Cesaroni, 2004: 16). A youth sent to a ‘training school’ could be kept until it was felt that rehabilitation was successful.⁴ This system of ‘indeterminate sentencing’ was “consistent with a purely rehabilitative philosophy” (Bala, 1994: 254).

Associations of innocence with youth’s limited culpability became sedimented within Canada during the early to mid 20th century under the Juvenile Delinquents Act. Debates over the culpability and ‘adult intentionality’ of young offenders had not yet emerged. Debates concentrated instead on social and environmental conditions that led youth to “drift” into delinquency (*Globe and Mail*, March 21, 1940), such as a “lack of clean attractions and honest amusements” (*Globe and Mail*, March 10, 1923) or “weakness of the home” due to absentee fathers during WWII (*Globe and Mail*, March 6, 1942). A dominant view of young offenders as victims was maintained during this period, concentrating debate on effective solutions to help prevent otherwise ‘good kids’ from being ‘pushed’ towards deviant associations.

In sum, the Juvenile Delinquents Act reflected the child welfare system’s concerns for the protection of misguided young offenders, treating them as victims who required rehabilitation. Under this system the offender’s needs took precedence over the offence.

The Shift From the Juvenile Delinquents Act to the Young Offenders Act: 1960s-1984

With the passing of the *Canadian Bill of Rights* in 1960, there emerged concerns that the Juvenile Delinquents Act did not adequately address children’s legal rights

(Makarenko, 2007). A significant U.S. Supreme Court ruling in 1967 acted to affirm children's rights in the United States. A 14 year-old boy, Gerald Gault, arrested for making obscene phone calls, was sentenced to six years in a State Industrial School. The maximum adult sentence for the same offence was six months. The Supreme Court overturned the sentence, ruling that "juveniles have a right to receive counsel, to confront and cross examine witnesses, to remain silent, to be given a transcript of the hearing, and the right to an appeal" (Lundman, 1984: 99, cited in Caputo, 1987: 128; see also Neigher, 1967). Such a decision, some analysts argue, came to impact Canadian views (West, 1984, cited in Caputo, 1987: 129).

Within Canada, a similar sentiment grew regarding the importance of applying legal protections to young offenders. In contrast with the Juvenile Delinquents Act, bearing responsibility (Winterdyk, 2002: 62) and accountability became a core premise directed at youth, and young offenders in particular. A Youth Court judge interviewed for this study recalled that he and other young lawyers during the 1960s "were going through ...the civil rights type of thing," and "we had this, this, ..approach, this concept of individual rights, you know civil rights, dealing with people, underprivileged people, in a fair and respectable manner". This attitude, he said, "eventually ...came to children," and had "influence[d] a lot of us young judges working then". He added that "those of us who came in the family court at that time seemed to be more ..activist" (Personal Communication, January 18, 2008).

In response to these concerns, the federal Department of Justice commissioned a committee in 1960 to examine the state of youth justice in Canada. The committee's report was released in 1965, titled *Report of Justice Committee on Juvenile Delinquency in Canada*. The report strongly criticized the lack of uniformity across provinces with respect to practices under the Juvenile Delinquents Act. This included not only the variable maximum age limits under the Act, but variations in terms of "types or sizes of institutions, the number and qualifications of staff and the policies to be administered in the operation of training schools" (The Evolution of Juvenile Justice in Canada, Department of Justice, n.d.). The report recommended standardizing the services and programs under the Juvenile Delinquents Act, the implementation of more formal procedures in order to protect such rights, and that young offenders be informed of their right to legal representation. In sum, the report formalized the emerging view that the Juvenile Delinquents Act's social welfare model of youth justice was outdated, and suggested that its replacement should be a more legalistic model which protected young offender rights.

The recommendations of the *Report of Justice Committee on Juvenile Delinquency in Canada* led to the passage of Bill C-192, *The Young Offenders Act* on November 16, 1970. However this bill was ultimately rejected by the end of the 1972 session of the House of Commons, due to resistance from the provinces, opposition parties in Parliament, as well as welfare and treatment interest groups who criticised the bill as "too legalistic and punitive and as a '*Criminal Code* for children'" (The Evolution of Juvenile Justice in Canada, Department of Justice, n.d.). One criminologist suggested that apart from political reasons, "all of the mental health folks and the treatment people generally didn't like the bill because it was too criminal" (Personal Communication,

November 11, 2008). The view of young offenders as victims remained dominant during this period as well, with some advocating the importance of legal protections given their view that the system under the Juvenile Delinquents Act was imposing harsh and potentially stigmatizing effects upon youth. Others resisted this notion, preferring the informal responses offered under the system which, they argued, would *not* stigmatize young offenders by ‘criminalizing’ their behaviour. Both views, while disagreeing with the type of youth justice response best suited for young offenders, wanted to avoid any stigmatizing effects for young offenders who were seen to be victims in need of protection.

The failure of Bill C-192 led the federal Solicitor General, in 1973, to establish another committee to assess the youth justice system. The committee’s report, released in 1975, was titled *Young Persons in Conflict with the Law*. The committee recognized the efforts of the Juvenile Delinquents Act to rehabilitate young offenders, arguing that it “was an enlightened approach for its time [but] has, for a number of reasons, fallen short of its original goals” (Young Persons in Conflict with the Law, Solicitor General Canada, 1975: 3). The committee’s concerns were centered on the inability of the Juvenile Delinquents Act to “deal with a broad range of problem behaviour for which [it was] not designed or equipped [for] adequately” (Solicitor General Canada, 1975: 3). The parental model of the Juvenile Delinquents Act, the report stated, has in effect “abridged the rights of these children” (Solicitor General Canada, 1975: 3). There are no “procedural safeguards” in place, as in the adult system (Solicitor General Canada, 1975: 4). “Elements such as deterrence, punishment, detention and the resulting stigma have surfaced in the juvenile justice process,” the report stated, “despite initial intentions to the contrary ...[leading to] development[s] ...similar to the adult criminal process” (Solicitor General Canada, 1975: 4). It made reference to the fact that “young people are growing up in a world that is more complex than that experienced by previous generations”, a world characterized by “growing disillusionment and frustration” (Solicitor General Canada, 1975: 2).

The report generated a series of recommendations which included “recognising the right of a young person to have legal representation or assistance from a responsible person, setting the minimum age at 14 years and affording more protection to young persons in relation to statements made to authorities” (The Evolution of Juvenile Justice in Canada, Department of Justice, n.d.). The report also emphasized that “young persons in trouble [with the law] are often *children in need*: children in need of parents, homes, education, understanding, supervision and respect” (Young Persons in Conflict with the Law, Solicitor General Canada, 1975: 3). The committee added that young offenders should be charged under specific and identifiable criminal code offences, thus negating the detrimental effect of the ‘blanket charge’ of ‘delinquency’, as well as the indeterminate periods of incarceration imposed for the purposes of rehabilitation and child saving (Solicitor General Canada, 1975: 7).

The ideas found in the *Young Persons in Conflict with the Law* report was subject to much debate and revised in 1976 and again in 1977 by the “federal working group for an Act respecting procedures to deal with young persons who commit offences against the Criminal Code and other federal statutes” (*Globe and Mail*, July 22, 1978). Political

concerns were expressed by Ontario social services ministers, who argued that implementing the ideas in the report “would restrict provincial discretion in the laying of charges against juveniles and in the determination of treatment and that it would be more costly to administer” (*Globe and Mail*, July 6, 1978). Other concerns were expressed by a Conservative Federal government report in 1979, which argued that Youth Courts should “stop treating juvenile delinquents as misguided children and start treating them as criminals” (*Globe and Mail*, October 27, 1979). The philosophy of the Juvenile Delinquents Act, according to this report, was “outdated”, and recommended new legislation since “young people [should] be held accountable for their behavior” (*Globe and Mail*, October 27, 1979). This statement evidences a shift towards a view of young offenders as victimizers. The view that the Juvenile Delinquents Act was outdated remained, but the notion that young offenders were “criminals” who should be “held accountable” indicates an emerging reconceptualization of young offender identity and culpability.

These debates continued until the introduction of another Young Offenders Act, Bill C-61, in 1981. In contrast to earlier debates during the 1970s, debates over Bill C-61 were no longer concerned with the bill’s philosophical direction. “The legal rights orientation of the Bill went virtually unchallenged; what was really at issue in this regard was not the rights in themselves but their implications” (*The Evolution of Juvenile Justice in Canada*, Department of Justice, n.d.). The debates here were not as concerned with whether or not the youth justice system *should* be rights-based, but the nature and extent of those rights. Adding even more institutionalized support for the legalistic paradigm was Prime Minister Pierre Trudeau’s implementation of the Charter of Rights and Freedoms in 1982. One Youth Court judge, reflecting on the transition period that led up to the Young Offenders Act, recalled that “in the 70s we had ... *Young Persons in Conflict with the Law*; they talked for a long time before they did anything. ... Well the rubber hit the road with the Charter” (Personal Communication, September 21, 2007).⁵ Another Youth Court judge recalled that “certainly by the mid to the late 80s that issue of whether or not this is welfare, child welfare legislation or whether it’s criminal legislation has been put to bed – it’s *clear*, as of the mid 80s and thereafter, that this is criminal legislation. *Clearly* criminal legislation” (Personal Communication, January 18, 2008). In addition, one of the most critical effects of the Charter was the creation of an urgent need to spell out a federally consistent age range for youth under the youth justice system. There was much pressure to pass Bill C-61 due to the overwhelming impetus to have a youth justice law in line with the now formalized legalistic paradigm. This led to the passing of the Young Offenders Act in 1982.

The Young Offenders Act (1984-2003)

The Young Offenders Act was formally implemented in 1984. While under the Juvenile Delinquents Act there was a “direct legislative link between child welfare and youth correctional services,” the model under which the Young Offenders Act operated, some argued, “removed this link,” and “encouraged a separation of youth correctional and child welfare services” (Corrado and Markwart, 1994: 369). The Young Offenders

Act, for instance, placed “much more emphasis on the criminal behaviour of young people” (Caputo, 1987: 134). However it also sought to address the needs of deviant youth through legal protections. Under this system, the *parens patriae* model was formally deemed unconstitutional. ‘Status offences’ were eliminated (Caputo, 1987: 134), since the moralizing undertone of the sentence was not seen as compatible with the new justice model. Youth charged with an offence were guaranteed the right to counsel (Caputo, 1987: 135). A system of separate and specialized youth courts was also established (Hylton, 1994). Trials could be held in public, but the identities of young offenders could not be revealed (Caputo, 1987: 135). Youth Court judges were instructed to “explicitly consider accountability and the protection of society as factors in youth sentencing” (Bala, 1994: 248). Provisions were also introduced that allowed young offenders charged with serious offences to be transferred to adult court (Caputo, 1987: 135), especially considering serious charges such as murder. Transfer to adult court would not be imposed by the court unless it was satisfied that it was “in the interest of society ...having regard to the needs of the young person” (Bala, 1994: 263). For those youth transferred to adult court for murder, a parole ineligibility period would apply, as it works in the adult correctional system. For instance a 15-year-old sentenced for first-degree murder would be *first* eligible for parole 25 years later at age 40 (Doob and Cesaroni, 2004: 19). Consistency with respect to youth justice practices across the provinces was also addressed. Whereas under the Juvenile Delinquents Act provinces had variable maximum ages for ‘juvenile delinquents’, the Young Offenders Act imposed a federally uniform maximum age of 17 for young offenders (Bala, 1994: 255), and a minimum age of 12 (Hylton, 1994). Children under 12 would be treated under the auspices of the child welfare system.

Unlike the slowly emerging criticisms that took shape over the course of the Juvenile Delinquents Act period, criticisms over the Young Offenders Act were formulated virtually right after the new law was implemented (Hylton, 1994). *The legalistic paradigm, while creating new rights for young offenders, also placed responsibility on individual youths for their criminal behaviour.* This generated intense debate between the political right or ‘get tough’ camp, and the therapeutic left or ‘return to rehabilitation’ advocates (Bala, 1994: 247).

For the ‘return to rehabilitation’ advocates, the legalistic paradigm imposed under the Young Offenders Act was too severe. The shift from the Juvenile Delinquents Act to the Young Offenders Act has been described as one “from punishment without process to process without principles” (Doob and Cesaroni, 2004: 190). The new rights granted to youth “may have come at a high cost”, Caputo (1987: 135) argued, since greater responsibilities were simultaneously placed upon youth. Mental health professionals criticized the Young Offenders Act for not emphasizing rehabilitation (Leschied, Jaffe, Andrews, and Gendreau, 1992). Others pointed to increasingly punitive outcomes for young offenders as a result of the new legalistic system. They drew attention to the fact that since the implementation of the Young Offenders Act, the rate at which young offenders were being incarcerated rose dramatically (Caputo, 1987: 136; Brief to the House of Commons Standing Committee on Justice and Legal Affairs, John Howard Society, 1995), though some analysts commented that the average time served was

shorter than the periods of indeterminate sentencing under the Juvenile Delinquents Act (Markwart, 1992, cited in Bala, 1994: 248). John Howard Society officials suggested that the Young Offenders Act had not dissuaded the general public from believing that youth crime is out of control, especially considering the effects of “sensational” press coverage (Brief to the House of Commons Standing Committee on Justice and Legal Affairs, John Howard Society, 1995). While the general public favors rehabilitation as the “primary objective” of the youth justice system, they argued, they have “underestimate(d) the harshness” of the sentencing practices under the Young Offenders Act (John Howard Society, 1995).

In opposition to these views came a “public tempest” (Corrado and Markwart, 1994: 347) which denounced the Young Offenders Act for being too lenient with young offenders. There was widespread concern that the law’s perceived leniency was causing rapidly rising levels of youth crime, with advocates pushing for longer sentences and more transfers to adult court (Bala, 1994: 248). Victims’ rights groups argued that the Young Offenders Act lets young offenders literally ‘get away with murder’ (Corrado, 1994). Policing officials, some of whom dubbed the new law the ‘Youth Protection Act’ (Corrado and Markwart, 1994: 345), often stated that they felt constrained to act against youth crime given the rights now protecting young offenders. Furthermore, they frequently argued that young offenders were taking advantage of the new rights accorded to them and were mocking the youth justice system. Many of these critics pointed to the inability of the Young Offenders Act to serve as a deterrent for young offenders (Corrado and Markwart, 1994: 344). They also pointed to the minimum age of 12 as being too high, given the presence of “increasingly sophisticated and sometimes violent” (Corrado and Markwart, 1994: 345) crimes being committed by young offenders under 12; crimes for which the social welfare system was argued to provide an inadequate response (see chapter 6).

Pressure was placed upon legislators from the public as well as the media (Brief to the House of Commons Standing Committee on Justice and Legal Affairs, John Howard Society, 1995) to amend the Young Offenders Act (Corrado and Markwart, 1994: 347). In response to these pressures, the law was amended in November 1986. New offences, such as ‘failure to comply with a disposition of the youth court’, were introduced. In addition, the maximum sentence of three years was extended for young offenders who committed an offense while under sentence for a previous offense (Hylton, 1994). The identity of young offenders, otherwise protected under the Young Offenders Act, could be revealed if a youth was deemed a danger to society and was ‘at large’ (Hylton, 1994). The 1986 amendments, however, were not just a reaction to ‘pushes to get tough’. Bala (1994: 262) explains that the amendments were also meant to ensure that “custody is not overused”. Custodial sentences, under the amendments, were not to be imposed unless it was deemed “necessary for the protection of society, having regard to the seriousness of the offence and... the needs and circumstances of the young person”. The attempt to balance and reconcile the need to address the protection of society with the needs of youth was a policy goal of the amendment.

Legislators introduced further changes to the Young Offenders Act in 1989 to further refine this balance. The amendments focused on addressing the needs of young

offenders charged with serious crimes who were sentenced to adult court. It included the creation of a transfer to adult court ‘test’ that required the demonstration of available resources within the youth justice system; the presence of which would *mitigate against* transferring youth (charged with serious offences) to adult court. The onus was thus on adult court transfer to be denied *unless* it could be demonstrated that adequate resources within the youth justice system were not available (Doob and Cesaroni, 2004: 19).

Both the 1986 and 1989 amendments were aimed at clarifying and balancing competing youth justice priorities. However, the debates which followed closely resembled those that preceded the amendments. Some pointed to the effects of the amendments as exacerbating the number of young offenders sent to custody, while others continued to insist that the law was too lax with young offenders (Hylton, 1994; Brief to the House of Commons Standing Committee on Justice and Legal Affairs, John Howard Society, 1995). Furthermore, some argued that the Young Offenders Act was creating *legislative ambiguity*, since the priority given to competing interests was left unclear (Corrado and Markwart, 1994). Amendments during the 1990s attempted to clarify these ambiguities. Before 1992, the Young Offenders Act directed judges to consider the needs of youth and their rehabilitation, as well as public safety and accountability. However which principle had precedence remained unclear, especially in relation to decisions about whether or not to transfer youth to adult court (Bala, 1994: 263). The problem for practitioners was that the Young Offenders Act had a “wide range of discretion” coupled with “a complete lack of guidance and direction, that results from a philosophically muddled and fundamentally flawed model of juvenile justice, welfare, and crime control models, without any sense of priority that should be given to each” (Corrado and Markwart, 1994: 361; see also Endres, 2004).

Amendments to the Young Offenders Act in 1992 were designed to clarify this ambiguity in legislative interpretation, especially with respect to the decision whether or not to transfer a young offender to adult court. The primary ‘test’ for transfer to adult court lay in assessing what would be best in regards to the “interest of society”, which required balancing “the protection of the public” with “the rehabilitation of the offender” (Bala, 1994: 264). For young offenders found guilty of murder in adult court, a parole eligibility period of 5 to 10 years was introduced, and “a transferred youth facing a life sentence [could] be kept, at least for some time, in a youth custody facility, before [being transferred] to an adult facility”. However, with respect to the decision whether or not to transfer a young offender to adult court, where ambiguity remained in the decision to reconcile the competing demands upon the ‘interest of society’, the amendments stipulated that *public safety was to take precedence* (Beaulieu, 1994). In addition to these measures, the amendments also increased the maximum sentence for first degree murder from three to five years under the Young Offenders Act (Brief to the House of Commons Standing Committee on Justice and Legal Affairs, John Howard Society, 1995).

Some argued that adult court transfers of young offenders were encouraged by the amendments, given new provisions which shortened the period to parole eligibility for youth convicted of murder in adult court (Hylton, 1994). Judges who were otherwise weary of transferring youth to a ‘full length’ adult sentence (of up to 25 years) were more inclined to transfer youth to adult court given the new provisions for parole eligibility

(Personal Communication, Youth Court Judge, January 18, 2008). Nevertheless, Beaulieu (1994: 337) was optimistic about the 1992 amendments' capacity to resolve persistent problems of the Young Offenders Act with respect to ambiguity:

The apparent difficulties of interpreting the competing factors of youths' needs, and the protection of the public, may not disappear under the new provisions of the Act. It is, however, *probably safe to assert that the confusion and ambivalence in the mind of the decision maker should be greatly reduced*; what is different is that the court must first attempt to reconcile the two objectives, and, when they cannot be reconciled, protection of the public is paramount and a transfer is ordered. *The debate* surrounding the weight to be given to the respective objectives *is therefore apparently closed* [my emphases].

On the contrary, the 1992 amendments had no such effect. A 1993 Supreme Court case addressed the issue of a Native youth of 14, charged with three counts of break and enter and one count of breach of probation, who was a victim of an "intolerable" domestic life involving child abuse and violence (Corrado and Markwart, 1994: 357). A proportionate response, measured in relation to the severity of the crime, was deemed less significant than the youth's "special needs and requirements of guidance" in the interests of "reformation and rehabilitation". Yet the end result was to *effect this period of rehabilitation through an elongated custodial sentence* (Corrado and Markwart, 1994: 358; see chapter 6 for a discussion of the ambiguous nature of youth justice solutions). Both general deterrence (the goal of punishment being to deter the general public from committing the same offence) and the need to address personal circumstances became justifiable reasons for increasing custodial dispositions for young offenders under the new amendments. This "reinforce(d) a disquieting trend under the Young Offenders Act," Corrado and Markwart argued (Corrado and Markwart, 1994: 358), "wherein the youth justice system, especially open custody, is acting, by default, as a substitute for the child welfare system". Ambiguity, then, remained during this period regarding the fundamental role of the youth justice system.

These ambiguities were accompanied by controversy over the Young Offenders Act, which persisted for many of the same reasons as it had a decade before, during the Young Offenders Act's implementation period (Hylton, 1994). Some pointed to detrimental effects of the previous amendments, which they argued resulted in increased rates of incarceration of youth, often for what began as relatively minor charges (see Carrington, 1998). By 1994, failure to comply (with a court order) charges would account for approximately 1/8 of all cases brought to the youth court, with almost a quarter of these resulting in a custodial sentence (Doob and Cesaroni, 2004: 18). The John Howard Society (Brief to the House of Commons Standing Committee on Justice and Legal Affairs, 1995) criticized legislators for responding too quickly to 'get tough' critics, arguing that "the pursuit of public confidence through punitive means appears to have been futile", given that previous amendments had failed to quell public criticism of the Act.

Whether or not legislators were responding to appease public critics of the Young Offenders Act, further amendments in 1995 were widely perceived as legislative attempts to ‘get tough’ with young offenders. The sentence for first degree murder in 1995 was extended from 5 to 10 years (six years in jail and four under community supervision) (*Globe and Mail*, February 24, 2004), and presumptive transfers to adult court were introduced for 16- and 17-year old young offenders charged with the most serious offences (Jaffe and Baker, 1998: 23). Presumptive transfers switched the burden of proof for youth charged with the most serious offences, who had to “demonstrate that it is not in the public interest for the case to be moved to adult court” (Doob and Cesaroni, 2004: 19-21). In other words, the onus was placed on the defense to argue why a young offender should *not* be transferred to adult court. Other academics have highlighted other sections of the 1995 amendments which included “proposals to encourage rehabilitation and treatment of young offenders” (Jack and Ogloff, 1997: 250). Nevertheless, like the 1992 amendments, which strove to ensure clarity in interpreting competing ‘welfare’ and ‘legalistic’ principles of the Young Offenders Act, the 1995 amendments clearly intended to underscore the rejection of “the use of criminal legislation to achieve child protection objectives” (McGuire, 1997: 187).

Neither the 1992 nor 1995 amendments, however, quelled debate over the Young Offenders Act. “A 1998 study found that seventy-seven percent of Canadians believed sentences handed down to young offenders were still too lenient” (Youth Justice in Canada, Justice Canada Monitor, n.d.). The ‘next step’, it was perceived by some politicians and legislators, was not to instill further amendments, but to write a new piece of legislation which would more firmly and efficaciously balance the competing paradigms of former legislation. A new law would finally, it was hoped, put to rest ongoing concerns and the persistence of ambiguous interpretations of legislation and the identity of young offenders.

In 1997 the federal government released a report titled *Renewing Youth Justice*, which challenged a dichotomous conceptualization whereby concerns for the rehabilitation of individual youth are placed, superficially, against the need to protect society (Standing Committee on Justice and Legal Affairs, *Renewing Youth Justice*, April 22, 1997). Many of the suggestions of the report were introduced by the government under Bill C-68 and reintroduced as Bill C-3 in 1999, the initial proposals for the Youth Criminal Justice Act. Bill C-3 also failed to pass. Governmental sources suggest that this was due to an election call at the time (*The Youth Criminal Justice Act: Summary and Background*, Department of Justice, n.d.). However, strong opposition from Québec officials and politicians, who favored a strongly rehabilitation-oriented system of youth justice, as well as opposition from ‘right wing’ political parties such as the Reform/Alliance Party, who favored a strongly punishment-oriented system, may have also played a part. Québec’s youth justice system is arguably the closest in line with a ‘child welfare’ paradigm similar in nature to the paradigm of the Juvenile Delinquents Act (see Trepanier, 2004; see also chapter 6). Their opposition was based on their view that the Youth Criminal Justice Act treats young offenders too much as victimizers who should be punished, rather than as victims who require rehabilitation. Reform Party politicians were comparably vocal opponents of the Youth Criminal Justice

Act given their view that the Act would be too lenient on young offenders (but see chapter 6 for further explication of these positions). Nevertheless, in February 2001 the federal government introduced Bill C-7, which received Royal Assent in February 2002, leading to the implementation of the Youth Criminal Justice Act in April 2003.

The Youth Criminal Justice Act (2003-Present)

The Youth Criminal Justice Act is designed to balance the concerns and youth justice approaches prominent under both the Juvenile Delinquents Act and Young Offenders Act, offering a harsher and more punitive approach with respect to serious offences, and alternatives to formal judicial processing for less serious offences, such as community service work, letters of apology and restitution payments to victims. It is also designed to provide greater interpretive direction (for example to police and judges), especially in the areas of informal diversion and sentencing (Barnhorst, 2004). An increased emphasis on both pre-charge ‘extra-judicial measures’ and post-charge ‘extra-judicial sanctions’ is provided by the Youth Criminal Justice Act. In addition, some jurisdictions have developed and employed youth justice committees, consisting of volunteer members of local communities working with youth involved in either extra-judicial measure or extra-judicial sanction programs (see Harris, Weagant, Cole, and Weipner, 2004). Restorative justice conferences have also been encouraged under the new law, involving informal interactional sessions between victims, offenders, and community volunteers (see Kenney and Clairmont, 2009).⁶

A key theme of the Youth Criminal Justice Act is its emphasis on restraint and proportionality. “The act requires that consequences be proportionate to the seriousness of the offence and the degree of responsibility of the youth. ...Exceeding a proportionate response is prohibited by the act” (Barnhorst, 2004: 234). While there is evidence to suggest decreases in the use of pre-trial detention, court and incarceration for youth, given the Youth Criminal Justice Act’s emphasis on proportionality and diversion, Barnhorst is careful to question whether or not this is an effect of the new legislation or an early trend not connected to it (Barnhorst, 2004: 233).

The Youth Criminal Justice Act is said to provide more clarity and guidance than the Young Offenders Act, through a statement of principle which underscores the importance of proportionate responses while also considering rehabilitative concerns (Barnhorst, 2004: 233-244). This represents a “fundamental shift to a new sentencing model for youth justice,” Bala and Anand argue (2004: 268). Rehabilitation is to be considered, but only insofar as it does not violate the sentencing principle of proportionality (Barnhorst, 2004: 244).

The Youth Criminal Justice Act also strives to clarify the appropriate reasons for incarcerating young offenders. Youth judges are “directed not to detain a young person in custody prior to sentencing, nor as a substitute for child protection, mental health, unless mitigating and aggravating circumstances warrant the measure” (Harris et al., 2004: 371; see also Roberts, 2003: 425). This philosophy explicitly underscores the notion that the current legislation should not engage in ‘child saving’ as was the practice under the Juvenile Delinquents Act. Furthermore, these provisions suggest that the

legislators who crafted the Youth Criminal Justice Act placed a great degree of emphasis on the clarification of the role of the youth criminal justice system with respect to the separation of treatment and punishment goals. Whereas under the Young Offenders Act, “judges occasionally perceive[d] incarcerating the young offender to be the only way in which they can ensure the young person receives some social welfare intervention” (Roberts, 2003: 425), this sentencing mentality is explicitly “prohibited” (Roberts, 2003: 421) under the Youth Criminal Justice Act. Furthermore, deterrence, denunciation and incapacitation are specifically excluded as sentencing principles from the Youth Criminal Justice Act, as a measure to reduce the use of incarceration and its duration (Roberts, 2004: 306).

‘Presumptive offences’ are retained under the Youth Criminal Justice Act. If a young person is found guilty of these serious charges (including first- and second-degree murder, aggravated sexual assault), an adult sentence is automatically imposed. The minimum age of application has been lowered to 14 under the Youth Criminal Justice Act (from 16 under the Young Offenders Act). Similar to 1989’s ‘test’ of available resources, judges are required “to determine whether a youth sentence would be of sufficient length to hold the young person accountable” (The Youth Criminal Justice Act: Summary and Background, Department of Justice, n.d.). However under the new law, youth charged with presumptive offences are no longer transferred to adult court, but may be charged with *adult sentences within youth court*. Additionally, adult sentences are served in youth facilities unless the youth is 18 at the time of sentencing; if the latter, youth may be sent to adult institutions. The ‘onus’, under the initially formulated Act, was still upon the defense to demonstrate why a young offender charged with a presumptive offence should *not* be transferred to adult court (but see below).

Also notable is the new ‘Intensive Rehabilitative Custody and Supervision Order’ under the Youth Criminal Justice Act. This applies to young offenders found guilty of murder, attempted murder, manslaughter, aggravated sexual assault, or who have a demonstrable pattern of repeated, serious violent offences (The Youth Criminal Justice Act: Summary and Background, Department of Justice, n.d.). To qualify for this specialized sentencing provision, “the young offender must be diagnosed with some form of mental illness or disorder, psychological disorder or emotional disturbance” (*Globe and Mail*, October 22, 2007). The sentence would be carried out among a “young offender centre, a forensic psychiatric hospital, a group home and finally a move back into the community” (*Globe and Mail*, October 22, 2007). The provision is notable since it reflects the philosophy of the Youth Criminal Justice Act that no matter how serious the offence, ‘punishment’ is an inappropriate response unless it is imposed alongside treatment programming.

The Youth Criminal Justice Act is perhaps the first of its kind with respect to the goals it sets out. Its designers wanted to send a clear message that the ability of youth justice legislation to ‘solve’ the problem of youth crime is limited in and of itself; that the Youth Criminal Justice Act is one part of a broader and sustained approach to combating youth crime which includes addressing poverty, systemic inequalities, racism, sexism, and education (Personal Communication, Criminologist, June 12, 2007; see also Barnhorst, 2004). Yet while the legislation to a large extent idealizes the balance

between proportionate judicial response and rehabilitative concerns, in practice the two philosophies often blend in an ambiguous way. As Roberts (2004: 317) explains:

proportionality considerations require that the term of the [supervision] order be long, in which case rehabilitation would need a substantial period of intensive supervision. The net result is that the offender would be under a unique form of state control for many years and not simply be ‘punished like an adult’. For the most serious cases – juveniles convicted of murder, for example – the degree of state intervention in these offenders’ lives must be considerable; not because these individuals have demonstrated their ‘adulthood’ but for reasons of proportionality and rehabilitation.

In practice, then, there is reason to believe that despite the best efforts for the clarification of competing goals, the role of the youth justice system in meting out punishment ‘versus’ rehabilitation remains ambiguous (see chapter 6).

The big question with the Youth Criminal Justice Act remains “whether history will repeat itself” with respect to calls to change the Young Offenders Act (Carrington and Schulenberg, 2004: 220). In May 2008 the Supreme Court of Canada ruled on a contested section of the Youth Criminal Justice Act regarding the decision to transfer young offenders to adult court charged with a serious violent offence such as murder, manslaughter or aggravated sexual assault. Whereas before the Supreme Court decision, it rested on the defense to demonstrate why a youth should *not* be transferred, the Crown must now demonstrate why the transfer is justified (*Globe and Mail*, May 17, 2008). During this same period, however, the Conservative government attempted to introduce revisions to the Youth Criminal Justice Act that would toughen up sentences (*Globe and Mail*, May 16, 2008) and allow tracking of the most dangerous young offenders, despite protests coming from non-profit organizations who run diversionary programs for youth, such as the John Howard Society (*Globe and Mail*, August 11, 2008). It does not appear that the attempt to balance competing interests with the passage of the Youth Criminal Justice Act has curbed contentions that have fueled controversy over youth justice in Canada since the debates leading up to the Young Offenders Act. In the coming chapters I analyze these controversies more carefully, but first I discuss the theoretical framework that has guided my analysis and the data I drew on.

Endnotes

1 – For instance in paintings during this period, children had a short stature but their faces were clearly ‘adult’ in feature and countenance (see examples in Aries, 1962).

2 – One method was through children’s literature, which became a key medium through which middle-class ideology was transmitted. O’Malley (2003: 11) argues that “for children to participate successfully in the new ideological project of the period, they had to be rendered into subjects whose energies could be controlled and effectively harnessed”.

3 – Historiographical examinations from this period frequently contest the motives that child-savers had in ‘helping’ children. Bullen (1991: 158) notes that the child-saving movement in Canada was influenced by and benefited a “middle-class vision of society which child-savers paternalistically imposed upon children whose only crime was their kinship to poor, troubled families”, and suggested that while the concern for youth was genuine, the ultimate goal was “to integrate dependent children into the mainstream of the working class and thus avoid future expenditures on welfare and the punishment of criminals” (Bullen, 1991: 145). Similar to changes in Canada, the child-saving movement in the U.S. reaffirmed ideal values and stressed the positive capacities of traditional institutions (Platt, 1969: 18), yet did so through “‘organized persuasion’ rather than ‘coercive restraint’” (Platt, 1969: 49). Regardless of these mixed motives, the orientation that children were victims of environmental circumstances and required state intervention in order to ‘help’ them remained the central theme of these initiatives.

4 – Québec’s youth justice system up to the present day continues to resemble this child welfare model. One Québec official during the mid 1990s said that young offenders as young as 10 could be placed in a “home or centre” where they could be assessed and “protected” for as long as it was deemed necessary, up until the youth was 18 years of age (see chapter 6).

5 – The *Young Persons in Conflict with the Law* report was sometimes referred to as “Y-Pickle” within newspapers reports (*Globe and Mail*, July 22, 1978), as well by a Youth Court Judge I interviewed (Personal Communication, September 21, 2007). The name represents a memorable short-hand of the full title of the report, and does not appear to have the pejorative significance of later acronyms for youth justice legislation, such as ‘You Can’t Jail Anyone’ for the Youth Criminal Justice Act (*Globe and Mail*, October 11, 2007).

6 – Kenney and Clairmont (2009), conducting participant observation research with Canadian restorative justice conferences, observed that the interactional dynamics are more complicated than previous characterizations of conferences have rendered. The interactions by participants in restorative justice conferences involved victim contests

(Holstein and Miller, 1997; see chapter 4) that used the victim category as both a sword (to achieve goals) and a shield (to deflect criticism).

CHAPTER 2: The Utility of Social Constructionism in Youth Crime and Justice Research

This dissertation examines youth crime and justice debates from a social constructionist framework. In this chapter I highlight the central tenets of social constructionism and discuss its utility for youth crime and justice research. I begin by discussing the emergence of constructionism as a response to dominant perspectives within the deviance and social problems literature. I then outline the general tenets of social constructionist theory. This is followed by an overview of frequently employed theoretical approaches to the study of youth crime and justice debates, including dominant criminological approaches¹ as well as moral panics theory. I then contrast these approaches with social constructionism and present the specific theoretical concepts employed within the dissertation. I conclude with an argument in support of constructionism's utility in answering the questions posed within my dissertation.

The Emergence of a Social Constructionist Approach

When Spector and Kitsuse (1977: 1), constructionism's initial promulgators, declared that "there is not and never has been a sociology of social problems," a challenge was issued to the dominant normative approaches often employed by sociologists studying deviance and social problems. Normative theories were concerned with identifying the objective conditions of social problems and assessing potential causes. Spector and Kitsuse (1977: 23) suggested that such approaches were concerned with "identify(ing) conditions or behaviors that impede the fulfillment of society's goals, that interfere with the smooth functioning of society, or that throw society into disequilibrium". An early challenge, intended as a decisive break from the normative paradigm was issued by Spector and Kitsuse (1973: 145), who argued that "in basing the study of social problems on the analysis of 'objective conditions', ...the sociology of social problems becomes merely the analysis of dysfunctions within the functionalist or social systems paradigm". Spector and Kitsuse took issue with Merton's functionalist definition of social problems; a definition which characterized social problems as "a substantial discrepancy between widely shared social and actual conditions of social life" (1971: 799, cited in Spector and Kitsuse, 1977: 32), Spector and Kitsuse asked how one determines what constitutes a substantial discrepancy. They asked, "are assertions about widely shared social standards a fruitful way to build a sociology of social problems? ... We think the answer is probably not" (Spector and Kitsuse, 1977: 32). Moreover, they argued that the normative paradigm "reflected a common belief that social problems should be diagnosed by the sociologist as conditions that are destructive to society" (Spector and Kitsuse, 1977: 24). The role of the sociologist, under the normative paradigm, was that of an expert able to identify social problems that the public could not or was unwilling to identify (Spector and Kitsuse, 1977: 35).²

A theoretical approach that challenged the normative paradigm, the value-conflict approach, emerged during the 1920s (Spector and Kitsuse, 1977: 40). By focusing on how imputations of deviance can be considered as value judgements, the value-conflict

paradigm introduced the consideration of subjective aspects as part of social problems formulations. Linking aspects of the value-conflict approach to symbolic interaction theory (Kitsuse and Spector, 1973: 408) Spector and Kitsuse recognized the contributions and insights of this approach. They cited Willard Waller, one of the formulators of the value-conflict approach, as issuing a representative statement of this paradigm. Waller argued that “various attempts to treat social problems in a scientific manner have proved useless because they have dealt only with the objective side of social problems, and have failed to include the attitude which constituted them problems” (1936: 922-925, cited in Spector and Kitsuse, 1977: 42). Spector and Kitsuse also cited Fuller and Myers (1941: 25-26, cited in Spector and Kitsuse, 1977: 42), who argued that “conditions do not assume a prominent place in a social problem until a given people define them as hostile to their welfare ...it is not enough that people are being or will be affected by objective conditions. Their behaviour must indicate that they think the condition threatens cherished values”.

While Spector and Kitsuse acknowledged the ways in which the value-conflict approach challenged objectivist theories of deviance, they argued that these theorists did not go far enough. They pointed out that value-conflict theorists often subtly re-introduced objectivist assumptions within their theoretical statements, and continued to be concerned with the root causes of deviance. They cited as an example Fuller and Myers’ (1941: 320, cited in Spector and Kitsuse 1977: 44-45) statement that “every social problem thus consists of an objective condition and a subjective condition”, and that the objective condition is a “verifiable situation” that can be assessed by a “trained [observer]”. Fuller and Myers advocated the study of ‘subjective’ value-judgements *in addition to* objective conditions. Kitsuse and Spector (1973: 412) argued that in stressing both the objective and subjective aspects of social problems, value-conflict theorists became simultaneously concerned with “explaining the causes of the objective conditions and the process by which they become defined as social problems”, but that this fusion unwittingly “deflects the originality and thrust of the value-conflict formulation” (Spector and Kitsuse, 1973: 146). Spector and Kitsuse sought to develop an approach that focused analytical attention more narrowly on the subjective processes by which behaviours and conditions come to be seen as problematic, without regard to the causes of those behaviours or conditions.

Central Tenets of Social Constructionism

Kitsuse and Spector argued that “the explanation of the ‘subjective elements’ of social problems ...is the *distinctive task* of the sociology of social problems” (Kitsuse and Spector, 1973: 418). The central task for a *sociology* of social problems, they argued, “is to account for the emergence, maintenance, and history of claims-making and responding activities” (Kitsuse and Spector, 1973: 418; see also Spector and Kitsuse, 1977: 73, 76). By claims-making, they referred to “the activities of groups making assertions of grievances and claims to organizations, agencies, and institutions about some putative conditions” (Spector and Kitsuse, 1973: 146; see also Spector and Kitsuse, 1977: 75). Within this paradigm, “values are part of the data of social problems rather than

explanations of them” (Spector and Kitsuse, 1977: 93). For instance constructionists may examine claims-makers who argue that there is a crime problem (for instance with young offenders). However, rather than assess the objective reality of the problem (in order to prove or disprove the positions taken by claims-makers), constructionists draw attention to the way in which a ‘crime problem’ “is generated and sustained by the activities of complaining groups and institutional responses to them” (Spector and Kitsuse, 1973: 158).

Perhaps the most salient aspect of the constructionist paradigm is its position regarding the role of the sociologist. Gusfield (1984) suggests that constructionists should remain “on the side[lines]” with respect to their examination of claims-making activities. By this he meant that where sociologists themselves stand on the issues that are at the centre of claims-making debates is irrelevant. The concern in a constructionist analysis is not on what sociologists think about the claims that groups are advancing, but on how claims-makers advance these claims, how they typify, define or construct ‘problems’ and how they attempt to persuade others. It is not the task of constructionists to ‘debunk’ claims, since this places the sociologist in the tenuous position of being a claims-maker him or herself.³ In taking such a stance, constructionists are not dismissing or minimizing ‘real’ social problems. They are simply focusing their analytical gaze on questions that are different from those who take a normative approach.

The Youth Crime Literature

Looking at sociological studies on youth crime and violence, one observes that most of this literature takes an objectivist approach. That is, the greatest proportion of this literature concerns itself with understanding the reasons for deviant behaviour among youth. For example, studies which emerged out of the University of Chicago in the early 20th century suggested that youth crime was directly linked to the ergonomic layout of urban environments, leading to social disorganization and breakdown of norms and values (Shaw and McKay, 1929, 1969). Merton’s (1938) normative ‘strain’ model argued that lower-class youth are ‘pushed’ into delinquency as a result of the frustration they experience as a result of their low status and when they discover their limited access to legitimate means for achieving success goals (Cohen, 1955). ‘Control theory’ challenged the ‘strain’ model of deviance, emphasizing that the common values that bond most individuals to society are in some cases not sufficiently strong, creating the possibility for individuals to be ‘pulled’ into deviance (Hirschi, 1969).⁴ While some of these studies employed ethnographic, qualitative observations of youth crime (Thrasher, 1937), they all remained concerned with assessing root causes of deviance (e.g. Thrasher, 1949). Normative sociological approaches to studying youth crime remain popular today (e.g. Matsueda, 1982; Agnew, 1985; Sampson and Groves, 1989; Hartnagel and Baron, 2002; Jacob, 2006). Hagan and McCarthy (1998), for instance, apply both control and strain theories to examine and explain the causes of youth crime.

A similar normative framework is found in recent criminological analyses of youth crime. These studies are concerned with highlighting policy, operational, and implementation issues regarding the youth justice system (e.g. Bala, 1994; Carrington,

1999; Doob and Cesaroni, 2004). They are often concerned with assessing “how the system works, who it brings in, [and] what it does with them” (Personal Correspondence, *Criminologist*, June 12, 2007). For instance criminologists have analyzed, and have taken positions on the ‘net widening’ effects of the Young Offenders Act, whereby elevated youth crime rates reflected in statistics are argued to be a result of changes in policy regarding who is being counted as a ‘young offender’ (e.g. Carrington, 1998; Carrington and Moyer, 1994; see also chapter 5). These analysts often conclude either that youth crime is or is not out of control based on their assessment of available evidence. Other criminological analyses have focused on changes to youth crime law and potential policy effects (Caputo, 1987; Bala and Anand, 2004; Barnhorst, 2004), reactions to youth crime legislation (Bala, 1994; Hylton, 1994; Trepanier, 2004) or explored and advocated various psychological and treatment approaches and their effectiveness on young offenders (Basso, 1989; Leschied and Gendreau, 1994; Jaffe and Baker, 1998).

Some criminological studies have dealt, either implicitly or explicitly, with the question of whether Canada’s youth crime problem has been unjustifiably sensationalized and whether public outrage over ‘out of control’ young offenders is indicative of a ‘moral panic’ (e.g. Cohen, 2002; Glassner, 1999). The term ‘moral panic’ was coined by sociologist Stanley Cohen (2002 [originally 1972]) who, drawing on the labeling theory of deviance (Lemert, 1951, 1974; Becker, 1963), examined how negative societal reaction (Cohen, 2002: 6) to specific groups, often the young, the working class, and/or violent males (Cohen, 2002: viii), type casts and exacerbates the perception of the targeted group as deviant, so that their subsequent behavior is interpreted through this lens (Cohen, 2002: 3). Through this process, young offenders and their ‘private troubles’ come to be associated with the ubiquitous ‘public issue’ (Mills, 1959) and social problem of youth crime. The moral panics literature moves in the direction of a relativist approach given its examination of how issues related to youth become constructed as problematic.

Perhaps the most salient aspect of moral panics theory in relation to youth crime remains the idea of demonstrating an exaggerated and unwarranted response on the part of the public. Criminologists, and the publics they write for, often seek to separate ‘myth’ from ‘reality’, with many aiming to calm the “public tempest” (Corrado and Markwart, 1994: 347; see also Doob and Spratt, 1998) of public outrage which emerges from this perspective, based on the perception of an out of control youth crime problem. Pointing out that public reaction to youth crime is disproportionate suggests that young offenders do not offer a significant threat to social order, and that rising crime rates are a myth; therefore fear or hostility over youth crime is unwarranted (see chapter 5). Furthermore, if the reaction against youth crime is not warranted, there is no justification for changes in legislation or its implementation.

Others have suggested that while youth crimes rates in the long-term are not rising, it is the form and quality of crime that is changing for the worst (Gabor, 1999). Gabor (1999: 390) critiques moral panics theory given this view, asking:

is a social problem merely being constructed or has there been a real change in the quantity and quality of violence among our youth? The evidence, while somewhat contradictory, suggests that real changes are taking place in some areas. ...in my view, dismissing or minimizing these changes does a disservice to our attempts to deal with interpersonal violence. ...there are risks involved in either over-dramatizing or minimizing the issue of youth violence [see also Carrington, 1995: 65; Markwart and Corrado, 1995: 81].

From Gabor's (1999) perspective, not heeding the 'panicked' response of those who feel that young offenders are victimizers whose crimes are becoming increasingly out of control may have serious effects on victims of youth crime and on policy implications as well. Thus the common aim of much criminological research on youth crime and justice has been to come to a definitive conclusion about the objective state of youth crime, assess the legitimacy of public fear over the social problem and submit proposals that may be taken up by policy makers and legislators.

Recent sociological assessments of youth crime also invoke a moral panics framework. Hartnagel (2004: 370), for example, argues that "there exists a substantial gap between much of the rhetoric and the reality of youth crime and justice".⁵ Hogeveen and Smandych (2001) argue that the media "bombarded" Canadians with representations suggesting the "growing seriousness of youth crime" (Hogeveen and Smandych, 2001: 148). They add that this "punitiveness" has "infected essential elements of government policy and discourse," (Hogeveen and Smandych, 2001: 145) implying that moral panics are intentionally derived. In a later article Hogeveen (2005: 74) argues that Parliamentary debates over the Young Offenders Act during the 1990s reflected an "ethos of a 'new punitiveness' that eschews any pretence of compassion towards serious offenders". Hogeveen links this to a broader "culture of punitiveness" in Canada during this period.

Schissel (1997; 2006) goes further still, suggesting a direct link between youth crime reporting in Canadian newspapers and a "conspiracy against the marginalized" (1997). Furthermore, Schissel links Hall's (1978, cited in Schissel, 2006: 17) analysis, which argues that media discourses are produced and mediated through hegemonically geared political and economic institutions, to social constructionism. He says that the "orientation of [his (Schissel's)] book is both critical and social constructionist" (2006: 23), with the aim of "hopefully" providing "an antidote to regressive and consequently oppressive, [youth] justice strategies" (2006: 23). He employs a "critical analysis of media coverage" to argue that the "public perception of [youth] crime is largely a matter of misjudgments" (2006: 23). Significantly, he adds that the representations of young offenders in the media is "not based" upon an "empirical reality but a deliberately constructed version of youth crime that serves political purposes" (2006: 106). While Hogeveen and Smandych (2001) and Hogeveen (2005) imply that media and political officials orchestrate moral panics, Schissel (2006: 26) argues these are more explicit processes based on intentional amplifications of public fear over youth crime. He concludes that given this hegemonic structure, Canadian youth are "among the most marginalized in Canadian society with respect to civil rights and conditions of life"

(2006: 137). For Schissel this amounts to a condition of “postmodern slavery” which he connects with conditions of “global slavery” that youth face (2006: 138).⁶

These sociologists all ‘take a side’ and render a judgment about the social problem of youth crime. They position themselves as expert analysts rendering decisions about the veracity or truth value of claims-makers’ assessments of youth crime. However, the moral panics approach, which requires assessing the subjective nature of contention over the objective reality of youth crime, is not unlike the value-conflict approach criticized by Spector and Kitsuse (1977). Furthermore, the manner in which a disproportionate response is gauged, by those who employ moral panics theory, remains problematic insofar as theorists lack consensus regarding how to assess where disproportionate responses are evident, and how to measure the level of disproportionality (Cohen, 2002: xxvii).⁷

It is not my intention to dismiss the theoretical orientations, nor substantive contributions of criminological and sociological examinations of youth crime, including those which engage a ‘moral panics’ framework. Nor do I want to suggest that asking questions about the objective nature of youth crime is illegitimate. On the contrary, questions regarding the objective conditions perpetuating and perhaps exacerbating youth crime are important to address. However, I maintain that the epistemological problem with objectively assessing a disproportionate response is too mired in the moral and ethical judgements required of the researcher. That Cohen (2002), Gabor (1999) and Schissel (2006) all advocate for social justice with respect to youth crime is admirable. However, my preference is to ask a set of questions that have more to do with how the debates around youth crime play themselves out, rather than to ask who is right and wrong in these debates.

Although both moral panics theory and social constructionism are similar in some respects (an interpretivist emphasis on the construction of meaning and deviant identity (e.g. Cohen, 2002: xxii-xxiii, xxxiv)), the *role* of the sociologist is essentially different. I argue that social constructionism should not be concerned with either ‘proving’ or ‘disproving’ whether public reaction is justified in relation to these problems. I am not concerned with answering questions regarding the ‘true extent’ of the social problem of youth crime. Nor do I offer ‘ready made’ solutions to help alleviate ongoing disagreements regarding the direction youth justice policy should take.

I employ a social constructionist framework to ask different questions. How are young offenders being characterized? What language is being employed to render these characterizations? How do these characterizations come to impact assessments regarding the extent and severity of youth crime? What are the social contexts that mediate these characterizations? How do these contexts come to influence the solutions to youth justice being offered? My aim is to explicate these debates using a longitudinal, qualitatively based examination. In assessing how others come to argue that young offenders are victims or victimizers, or that youth crime is or is not a rampant problem, or that youth should be punished or rehabilitated (or both), I remain ‘on the sidelines’ (Gusfield, 1984). Most significantly, this dissertation may in fact come to serve social justice and policy interests by *not* taking an explicit position on youth crime debates, allowing for a more rigorous assessment of their intricacies and ambiguities. Ultimately others who read this

dissertation may appreciate these intricacies and may themselves formulate solutions which more comprehensively address youth crime. The specific theoretical concepts I apply help to problematize sometimes over-simplified renditions of youth justice debates and suggest a more nuanced understanding of what may be transpiring in these debates. Through a constructionist exploration, I hope to illuminate circumstances that will inform those who wish to adopt, adapt, and/or modify youth justice programs and policies within their localities.

Constructionist Concepts

I began the chapter by laying out in general terms the social constructionist framework that undergirds my dissertation. There are a number of more specific conceptual formulations that have been generated within the social constructionist literature that I employ in my analysis. In the remainder of the chapter I discuss these concepts.

Loseke (1999: 73), for instance, has noted that claims-makers must convince their audience that a social problem “has a particular type of *cause*, that [it is] *frequent*, and that its consequences are morally *troublesome*”. She adds that social problems advocacy, for instance over a condition such as youth crime, is linked to attributions of the particular types of individuals involved: young offenders. She calls this a process of “people production” (2003: 120). Loseke’s (2003) contribution lies in the link she establishes between the construction of social problems and the construction of ‘people-types’. Constructionists consider the analysis of discourse as central with respect to the analysis of social problems, given the many ways that rhetoric is employed by claims-makers in order to draw attention to social problems (Best, 1987), and the ‘people types’ related to them. The focus for constructionist analyses of discursive tactics remains on the interpretive processes involved in rendering attributions of social problems and deviant people types. Best (1987: 115) notes that “unless the audience first ratifies these interpretive or conceptual claims, it is unlikely to concede to demands for action”. Claims-makers involved in youth crime debates, for example, make imputations about young offenders that cast them within “particular moral universes”, within which they are rendered as either “sympathy-worthy” or “condemnation-worthy” (Loseke, 2003: 122).

An area related to these concerns involves the analysis of debates which engage in attributions of victimhood. Best (1997: 17) notes that the contemporary concern for victims and their rights emerged during the 1960s, giving rise to a ‘victim industry’ involving various professional and legal organizations. Constructionists have also analyzed how specific groups have become the targets of ‘victim contests’ (Holstein and Miller, 1997). From a constructionist perspective, victim contests involve various social processes through which attributions of victimhood are interactionally/discursively accomplished (Holstein and Miller, 1997: 26). While not denying that there are ‘real victims’, Holstein and Miller suggest that constructionists should “examine the practices through which a sense of ‘victim-as-a-fact’ is achieved” (1997: 28). Victim contests are themselves a part of broader discursive tactics that attempt to define identity and ‘people types’ as well as ‘emotional orientations’ (Loseke, 2003).

Loseke (2003: 122) adds that attributions of victimhood engage emotional responses which people wrestle with as they decide whether to have sympathy for certain individuals, or to condemn them. She argues that “constructing moral or immoral types of persons simultaneously constructs preferred *emotional* orientations” (2003: 123), adding that “general questions about relationships among cognitive, moral, and emotions themes in social problems discourse remains largely unexplored” in constructionist analyses (2003: 127). For instance, a ‘victim’ is someone who is considered to be passive and helpless in the face of injustice (Holstein and Miller, 1997: 43). Loseke (2003: 122) adds that a ‘victimizer’ is someone who *intentionally* decides to harm someone else. These emotional orientations are significant since what some members ‘feel’ towards groups targeted by victim contests are considered by some to be more legitimate than what others ‘think’ (2003: 127).

Attributions of victimhood are often contested regarding specific ‘types’ of groups whose deviant behaviour *en mass* indicates a social problem. If successful, attributions of victimhood can lead to the perception that social problem conditions are becoming worse and that the victimizing group is responsible (Best, 2008: 34). Claims about victimhood may also affect policies directed at social problems (2008: 203). I explore attributions of victimhood for young offenders in chapter four, wherein debates over young offender culpability elicit and channel emotional responses in order to render young offenders as either victims who deserve sympathy, or victimizers who deserve condemnation.

Also related to these concerns are assessments regarding the extent and severity of the problem. These assessments often engage with official statistics that present broad tabulations which gauge the extent of the problem. Constructionists focus not on verifying the veracity of such statistics, but rather treat claims-makers’ statements which engage statistics as part of the analysis. Joel Best (2001: 127, 129) has examined how “stat wars” over a social problem occur when claims-makers in various camps invoke statistics to draw attention to a social problem. Constructionists recognize that not only are statistics the products of social activity (e.g. Kitsuse and Cicourel, 1963; Best, 2001: 27), they also reflect a series of associations regarding the social problem and the deviant group(s) involved. Best (2001: 132) argues that debates over statistics often indicate a “broader social issue” being debated; disagreements that are rarely resolved through ‘stat wars’ alone (2001: 152). In chapter five I draw connections between the concept of a victim contest and a stat war over youth crime in order to explore how positions taken regarding young offender identity and culpability relate directly to assessments regarding the extent and severity of youth crime.

In analyzing how young offenders as ‘people-types’ are constructed, the social context within which such characterizations are made becomes an important consideration. Best (1987: 117) argues that “systematic attention” should be paid to questions asking why claims emerge within particular social contexts. Some constructionists have heeded Best’s argument that discourse (in terms of both its content and its use) should be a central point of analysis, and have extended this insight to theoretical formulations of social context. However, social constructionists have different ways of understanding social context, in contrast to ‘normative’ or objectivist

approaches. Instead of treating context as an abstract, macro force that acts deterministically and isomorphically upon social actors and the claims they make, some constructionists treat context as a series of discourses from which claims are appropriated. Spencer (2000), for example, argues that constructionists should avoid “treating claims as free-floating discourse” while at the same time avoid “unnecessary reification of what is commonly referred to as ‘context’” (2000: 29). He argues that “cultural values and other systems of knowledge ...constitute shared discursive understandings,” wherein “claims-making activity is seen as both producing and extending this culture by providing new meaning to these collective representations” (2000: 29). Spencer’s observations provide for a dialectical conception of agency/structure and micro/macro levels of analysis within constructionist theory. The available discourses from which claims-makers draw are produced at the micro level through a variety of discursive tactics; at the same time discursive contexts, from the meso and macro levels, act to influence the ways in which such tactics are employed and influence the available discourses social actors draw upon at the micro level. This conceptualization is not ‘bottom up’ nor ‘top down’. In other words, it does not suggest that claims-makers at the micro level have insuperable agency to shape discursive environments. Nor does it posit that discursive topographies impose insuperable constraints upon the actors caught within its terrain. Chapter six addresses these ideas by exploring how claims regarding solutions to youth crime, specifically ideas regarding rehabilitation, engage with a specific youth justice discursive context; contexts that were themselves shaped, over time, by claims-making activity.

Through a social constructionist framework my analysis of youth crime and justice debates provides insight into how young offenders are represented, how these representations are related to assessments regarding the extent and severity of youth crime, and how particular youth justice contexts come to shape these debates, especially with respect to ideas regarding how to deal with youth crime. I ask different questions than normative approaches to the study of youth crime in an attempt to explore definitional challenges and contentions which resonate to produce and maintain an ambiguous youth justice context.

In the next chapter I discuss the methodology employed to conduct my research. I outline how I became interested in studying youth crime debates, and review the sources consulted and analytical processes I drew upon. I underscore a methodology in line with the theoretical paradigm outlined in this chapter.

Endnotes

1 – By ‘dominant’ I refer to the fact that the majority of criminological studies on youth crime and justice employ positivistic theory (or are atheoretical) and methods of analysis (focusing largely on rates of youth recidivism and policy effects vis-à-vis statistical analyses and survey designs). These studies are frequently geared to answering specific types of questions regarding youth justice (e.g. is youth crime ‘really’ on the rise?). However I do not mean to suggest that all of these studies are positivistic or quantitatively oriented. There is increasing interest in ‘cultural criminology’ (Ferrell, 1999) as well as ‘constitutive criminology’ (Henry and Milovanovic, 1996), which offers an interpretivist orientation more in line with social constructionism. Other criminological approaches draw upon a ‘post-modern’ framework, employing a ‘phenomenological inquiry’ into the discourses invoked during Canadian youth crime debates (e.g. Maclure, Campbell, and Dufresne, 2003).

2 – Spector and Kitsuse (1977) criticize Merton’s theoretical model of ‘manifest’ versus ‘latent’ conditions as an example. Merton describes manifest conditions as “objective social conditions identified by problem-definers as at odds with social values”, while latent conditions are “also at odds with values in current society, but are not generally recognized as being so” (1971: 806, cited in Spector and Kitsuse, 1977: 35). This is a problem given Spector and Kitsuse’s vision for a *sociology* of social problems, since it reserves “for the sociologist the knowledge and capacity to identify social problems of which people are *not* aware” (1977: 35).

3 – While there are perhaps no constructionist researchers who would consider their primary task to ‘debunk’ social problems that are ‘mythic’ or ‘erroneous’, there have been a series of epistemological disagreements regarding the types of questions constructionists should be asking and the way such analyses are conducted (e.g. Woolgar and Pawluch, 1985, 1985b; Gusfield, 1985; Troyer, 1992; Rafter, 1992; Best, 2003a). Among other questions, these debates center upon the role of the sociologist, and whether or not it is ‘permissible’ for constructionists to ‘take a side’ (Gusfield, 1984) within their analyses. Some constructionists have published popular works maintaining an agnosticism towards the claims-making activities they have studied (Pawluch, 1983; see also Ibarra and Kitsuse (2003) for a theoretical restatement of this position), while others have published popular works which aim to discredit some claims, such urban legends (Best and Horiuchi, 1985) or ‘erroneous’ statistics (Best, 2001, 2004; see also Best, 2003a for a theoretical statement on this position). Despite these disagreements within social constructionism, constructionists have agreed with the overall goal of examining the problem-making *processes* which generate and typify social problems.

4 – These early theories of deviance, in suggesting that people are often either pushed into deviance (Merton, 1938) or pulled away from it (Hirschi, 1969), were taking positions subtly related to assumptions regarding human nature. Some sociologists have suggested that such sociological assumptions and questions need to be linked back to

original premises and questions posed by foundational social thinkers, for example Thomas Hobbes (see Wrong, 1961). Hobbes' treatise suggests that human nature is naturally self-serving and conniving, requiring it to be tempered and reigned in by social forces. Many of the early normative theories of deviance, I argue, situated theoretical concepts upon such underlying assumptions of human nature. However, the need to align sociological theory with underlying visions of human nature becomes moot within social constructionism, insofar as claims-making regarding human nature is itself a part of the analysis.

5 – Hartnagel (2004) is one of the few scholars to examine Canadian youth justice from an explicitly social constructionist framework, framing his analysis specifically drawing upon Spector and Kitsuse (1977), Loseke (2003), and Best (2003b). He shares my interest in exploring the construction of youth identity, and the impact of these constructions on youth justice policy. However, his analysis is more in line with moral panic studies of youth crime in the sense that he is seeking to demonstrate a disjuncture between 'actual' crime rates for youth and exaggerated public perceptions. He does not, however, see himself as a 'constructionist' researcher per se; it is simply that he seemed to find the perspective of some utility for the cited study (Personal Communication, June 7, 2007).

6 – Notable also is Schissel's (2006: 26) suggestion that "social constructionism" is "part of the domain of post-modernism". I argue that there are problems linking social constructionism to post-modernism as well as critical theory (Schissel, 2006: 23). To elaborate on the central tenets of each respectively is beyond the scope of this discussion; however I argue that both critical theory and post-modernism are alike with respect to the *role* of the sociologist. In both of these paradigms the sociologist's task is akin to the poet's in Salman Rushdie's (1997: 100) *The Satanic Verses*: "To name the unnamable, to point to frauds, to take sides, start arguments, shape the world and stop it from going to sleep". I maintain that such a goal, taken up for the praiseworthy pursuit of social justice, nevertheless distracts from asking the sorts of questions I seek to ask in this study.

7 - In a recent revision to his original statement on moral panics, Stanley Cohen addresses these criticisms, admitting that the demonstration of disproportionality remains "genuinely problematic" (2002: xxvii). He starts by suggesting that the broad characterization of moral panics as a reaction to something which 'does not exist' or one that is based on 'delusion' or 'hysteria' or being 'duped by the powerful' is discrepant with his intent (2002: viii). Even as a "mere metaphor", he is convinced "the analogy works" (2002: xxvii). He argues that "disproportionality assumes that the reaction is always *more* severe than the condition warrants" (2002: xxviii). Significantly, however, he argues "only with a prior commitment to 'external' goals such as social justice, human rights or equality (can academics) evaluate any one moral panic or judge it as more specious than another" (2002: xxviii). This may well be true: the analyst's embracing of a moral position regarding a social problem being studied may enable him or her to make assessments regarding where a disproportionate response has occurred. Yet this

backgrounded motivation for research is not in line with the constructionist call to remain on the 'sidelines' (Gusfield, 1984), and such backgrounded concerns may distract from exploring ambiguities and interpretive nuances not explicated by those who draw their conclusions in advance.

CHAPTER 3: Methodology

This chapter discusses how my research was conducted, and traces the research process as it unfolded. I begin by describing my interest in youth justice debates, and the sources of data I used to conduct my analysis, which include news media, Parliamentary debates and key informant interviews. The data collection process is described, as are the methods of analysis used with respect to the archival materials and the interviews.

Having had experience as a voluntary probation officer during the transition from the Young Offenders Act to the Youth Criminal Justice Act (2002-2003), I witnessed first-hand how youth were handled within the youth justice system, especially with respect to the diversionary programs I was charged with monitoring. I had many lengthy discussions with probation officers and other youth workers, during which time I came to appreciate some of the criticisms and tensions associated with the Young Offenders Act. The most significant tensions seemed to reflect unresolved questions about how youth involved with the law should be understood. I strove to analyze these tensions by exploring areas where debates about youth crime and justice policy were concentrated.

Despite my personal involvement with the youth justice system, I had little knowledge about youth crime policy, or the general history of youth justice in Canada. I began, therefore, with a review of criminological sources on Canadian youth crime. These sources, which largely focused on policy aspects of the legislation and historical overviews of the Canadian youth justice system, helped familiarize me with the system and the key debates and issues. I also made use of the bibliographies of these articles to expand my search. Although the criminological sources proved useful in providing me with a basic background on youth justice issues and policy aspects, my overall research question – exploring the various ways youth identity was being contested – invited a qualitative analysis which these sources largely did not provide. My interest was not in assessing youth crime as an objective condition (including assessments of its severity and conclusions regarding the proper course of action), but in analyzing the rhetoric employed and ‘discursive tactics’ used by claims-makers (see chapter 2). A qualitatively-oriented methodology, drawing upon documentary analysis and semi-structured interviews, would serve to explicate the interpretive processes that undergird the ongoing contentions surrounding youth crime debates.

Documentary Sources

Non-Profit and/or Governmental Data Sources

My next step was to immerse myself directly in a variety of documentary sources which would provide me with first-hand exposure to youth crime debates and the various ways in which young offenders were being represented in these debates. I reviewed and ‘bookmarked’ 107 websites, including several governmental websites. Many of these sites contained mission statements and separate sections for current research, often with archives and downloadable articles, as well as links to related organizations’ websites. Based on a cyber-snowball sample of these organizational websites, 693 documents were

saved, including position papers, informational pamphlets and brochures (many in PDF form with full visual layouts). Some websites included sections where visitors to the website could voice their opinions regarding youth crime and justice; these postings were also saved and reviewed.

These sources included materials generated by non-profit and governmental organizations concerned with youth justice, such as the British Columbia Civil Liberties Association, Canadians Against Violence, Canadian School Boards Association, Child and Family Canada, Community Safety and Crime Prevention Council, the Congress of Aboriginal Peoples, Elizabeth Fry Society, the John Howard Society, Justice for Children and Youth, Public Legal Education Association, and the Public Legal Education Network of Alberta.

The documents included pamphlets prepared by teacher's organizations, such as the Canadian School Boards Association's *The Need To Know: A Guide for Timely and Ongoing Information Sharing Between School Officials and Justice System Personnel with the Youth Criminal Justice Act* (2003), submissions to the federal government by the John Howard Society (1995; 2000), a *Toronto Councillor's report of the Mayor's Task Force on Young Offenders* (Fotinos, January 1999), the Canadian Institute for Health Information's *Mental Health, Delinquency and Criminal Activity* (2008), and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (1985).

News Sources

I also consulted a broad range of news sources, entering broad search terms such as 'youth crime' and 'young offender(s)' within searchable databases. I wished to have several papers which represented both national, provincial and regional areas. At this point I was not interested in an acquiring an exhaustive sample, but one that provided me with sufficient knowledge of the various ways youth crime debates were being represented in various news sources. Regionally specific sources included Regina's *Briar Patch*, the *Toronto Star* and the *Toronto Sun*, Toronto's *Community Action* and the *Hamilton Spectator*. Provincial sources included the *Alberta Report*, Ontario's *Education Today*, and Saskatchewan's *New Statesman and Society*. National sources included the news magazine *MacLean's*, the *Globe and Mail*, *OH and S Canada (Occupational Health and Safety)*, the aboriginal news source *Windspeaker*, *CBC News*, *Catholic New Times* and *Canadian News Facts*.

These sources served to orient me to the general issues and concerns regarding youth justice. They also provided me with information regarding the youth justice system, including historical background, which helped me to contextualize current debates. The point was not to locate every source available on youth crime, but to familiarize myself with the various dimensions and tenor of the debate. Notably, while wide in scope, many of the news sources were mostly localized to particular cities, and available records did not extend back beyond a few years. The exception was the *Globe and Mail*. Initially I found the online database for the paper, through the Factiva online archive, to be limited in terms of how far back I could conduct a search (articles could be searched back to 1995). However I discovered the *Globe and Mail's* online Heritage

Collection database, which included full PDF formatted archives extending as far back as 1844. The articles I selected from the *Globe and Mail* ranged from 1919 to the present. Up to the end of 2008, I had reviewed 458 *Globe and Mail* articles.

The *Globe and Mail* has been characterized by Ericson, Baranek and Chan (1991) as a 'quality' newspaper containing articles which are structurally complex. The paper also uses a 'literary' vocabulary, and employs "an investigative and adversarial style that articulates with the institutional concerns of upscale readers who in turn are a market for upscale advertisers" (1991: 39). My searches began with key words such as 'youth deviance' and 'youth crime', but I found that these key words generated results which were too broad, often identifying articles which were only peripherally related to assessing young offenders and youth justice issues. I then searched for articles dealing specifically with youth justice legislation. I searched for 'juvenile delinquents act', 'young offenders act' and 'youth criminal justice act' respectively. I saved all PDF articles and created a Microsoft Word document which contained key quotes and pieces of information, including the names and titles of interviewees quoted. This document, which eventually expanded to several hundred pages in length, became a central source that allowed me to run key word searches during later stages of my analysis.

My goal at this point remained to track the claims-making surrounding youth crime. After sampling a few articles I found it useful to systematically track the types of claims being made and who was making them. Due to the high number of article 'hits' retrieved from my searches, I began to take quantitative tallies of the articles as I read them, tracking these figures in a Microsoft Excel spreadsheet. While my long-term goal remained an in depth qualitative explication of these debates, quantitative measures at this early stage served to further orient me to the data. Berg (2004: 268) advocates blending quantitative and qualitative approaches where it is deemed appropriate. He suggests that 'counts' of textual elements help to identify and to organize the data, while complementing an understanding of how claims-makers view their social worlds. Most articles featured quotations from various stakeholders with statements about youth crime and justice. I listed the titles of these claims-makers, including academics, politicians, teachers and teaching officials, victims and victim-advocates, psychologists, police officers and police officials, etc. I also kept track of the gender (male/female) of the claims-maker, as well as where the claims were being made. While most of the articles and sources were focused on the province of Ontario, a few came from other provinces or outside of Canada. Perhaps most significantly, I categorized the 'type' of statement claims-makers made into one of five categories: economic, moral, political, legal, and identity. Constructionists who have employed typologies of claims have recognized that such 'ideal' typologies are necessarily artificial, with categories often overlapping with each other in ambiguous ways (Best, 1987: 117). The categories I chose were based upon general and dominant types that I observed, and these helped me glean, within the context of the *Globe and Mail*, some of the qualitative aspects of claims-making about youth crime.

More often than not claims would obviously fall into one of the categories I had chosen. Economic claims would concern issues such as youth crime budgets and the availability of provincial and federal resources. Ministry officials most frequently made

these types of claims. Moral claims were often infused with emotional rhetoric. For example, claims that attempted to engage sympathy over the graphic nature of an instance of youth crime. Victims and victim-advocates would often make these types of claims, frequently through letters to the editor, as would police officials and lawyers. I initially tracked political and legal claims separately. However I quickly collapsed these two categories given the significant amount of overlap between the two. These claims related to legal aspects of youth justice policy, including amendments to certain sections of the law, or to provincial variations in terms of implementation practices and procedures. Ministry officials and academics (most often criminologists) were most frequently cited making political/legal claims. Identity claims explicitly engaged questions regarding who young offenders *are*, sometimes with respect to how their identity has been formulated within specific historical contexts. These sorts of claims were not frequently made, but when they were espoused they were found within editorials written by newspaper staff.

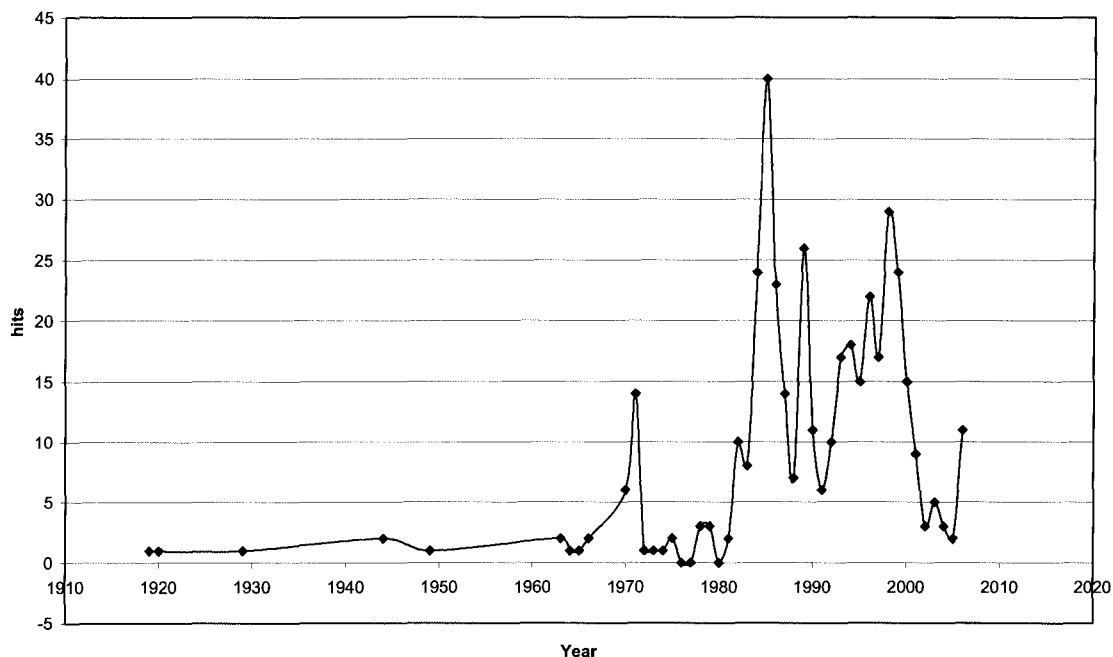
I hypothesized that many of the claims would not overtly engage the question of who young offenders are and question their identity (especially within a historical context); rather, I suspected that claims-makers would make backgrounded assumptions regarding young offender identity, and focus on, for example, morally-infused calls to combat youth crime, or what should be done to alleviate the problem. This was found to be the case: most statements did not actively question young offender identity or explore social/historical factors that lead to various interpretations of young offender identity. Moreover, I quickly found that the *Globe and Mail* most often featured ‘moral’ or ‘political/legal’ claims. Explicitly ‘moral’ claims, however, were not quite as prominent as ‘political/legal’ claims (additionally, I found that based upon the *arrangement* of claims within articles, moral claims were often delegitimated next to legal/political assessments of youth crime – see endnote #1). It was also interesting to note the gender of the claims-maker, with much greater male representation than female. Sections of the table I produced to summarize these findings are reproduced on the following page, highlighting the types of claims made in the *Globe and Mail*.

GLOBE AND MAIL CLAIMS TALLY 1970-2006

	TOTAL	MALE	FEM.	ECON.	MORAL	POLITICAL/LEGAL	IDENTITY
Ministry Official	92	69	22	22	12	66	2
Members of Parliament	36	29	2	2	11	28	
Judge	37	34	2	4	23	43	5
Lawyer	86	72	14	3	47	44	4
Psychologist	20	16	4		17	7	5
Psychiatrist	10	9	1		8	3	4
Provincial Premiere	9	9		2	4	3	1
Justice Critic	17	11	6	3	3	10	1
Teacher/Official	14	11	3		9	5	1
Attorney General	40	36	3	3	10	34	1
Organization Official	71	62	9	9	28	47	5
Social Worker	16	8	6	2	13	5	1
Academic	64	53	8	6	18	51	7
Globe and Mail (oped)	59	11	5	8	21	45	10
Letter to Editor (citizens)	57	30	25	1	37	21	4
Teens and former 'YOs'	19	16	2		17	2	
Police/official	59	52	3	5	36	24	3
total	706	528	115	70	314	438	54

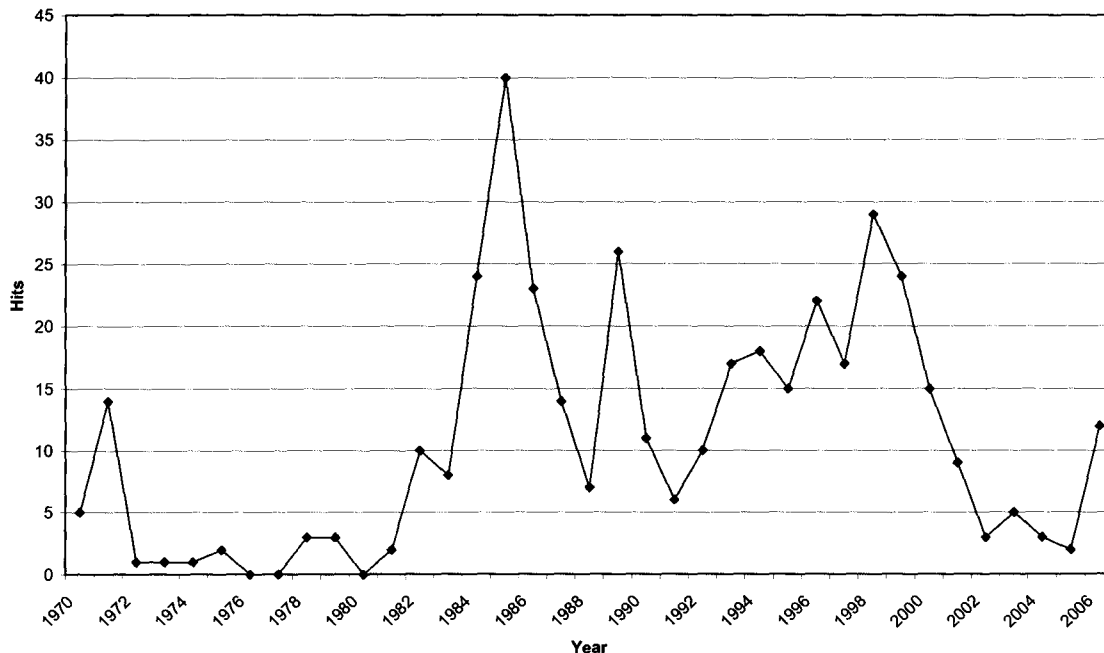
I also tabulated a running total of all articles found, which I reproduced graphically. Both the 1980s and 1990s witnessed peaks in *Globe and Mail* coverage of youth crime and justice debates (please see following page):

Youth Legislation Hits - Globe and Mail



The spikes seem to correspond with the introduction of new youth justice legislation and subsequent amendments. The initial spike in the early 1970s corresponds with debates over the introduction of a preliminary form of the Young Offenders Act (see chapter 1). The greatest spike is located during the mid-1980s, when the Young Offenders Act was implemented. It is notable that articles debating youth crime legislation were largely absent under the Juvenile Delinquents Act. There were concerns expressed over 'juvenile delinquency' (with the assumption that young offenders were victims in need of help; see chapter 1), but the points of contention that have characterized more recent debates were largely absent (for example, the victim contests that emerged after the mid-1980s or debates over the appropriate balance to be struck between punishment and rehabilitation; see chapters 4 and 6 respectively). Subsequent spikes after the mid-1980s never reach the level of article concentration as much as the initial one. A more 'close up' graphic (see following page) zeros in on the past two decades:

Youth Legislation Hits - Globe and Mail



Here a couple of the spikes subsequent to the 1984 peak are more clearly discernable. They seem to correspond to legislative amendments introduced in 1989 and the early 1990s, as well as the legislative proposals for the introduction of the Youth Criminal Justice Act in the late 1990s (see chapter 1). It is interesting to note that these spikes do not appear to correspond with any ‘moral panics’ over specific incidents of youth violence; rather, coverage of youth crime within the *Globe and Mail* concentrates on ‘political/legal’ claims.¹

While such quantitative summaries helped sensitize me to who was saying what about youth crime, I did not continue to make direct use of these figures, given my theoretical framework. Social constructionists examine the *interpretive* dynamics involved in the attribution of social problems, and to draw conclusions based on the simple counting of ‘types’ of claims would not allow me to get at any potential ambiguity among and between these types. Marsh (1991: 71) found most research investigating newspaper crime coverage to be quantitative in nature, often focused on assessing issues such as fear of crime. However, examining newspaper content is not always benefited by, for example, tabulating the number of columns devoted to crime (Howitt, 1982, cited in Sacco, 1995: 153). Thus, the heart of my analysis emphasizes the *qualitative* aspects of youth deviance representations. News reports offer ‘messy texts’ and ‘thick descriptions’ characterized by ambiguity (see Geertz, 1973) which are often difficult to map out in quantifiable terms. Spencer (2005), for example, suggests that characterizations of young offenders are marked by ambiguity given contention over the degree of their culpability. Examining characterizations of youth violence in the U.S., he

selected *New York Times* articles in 1994 based upon findings by Altheide (2002, cited in Spencer, 2005:51) that references to fear of youth crime in newspapers peaked at that time. Although my qualitative analysis is theoretically in line with Spencer's (see chapter 2), I extend the range of analysis to a full century of *Globe and Mail* newspaper debates, concentrating on the debates after the implementation of the Young Offenders Act in 1984, when coverage became especially concentrated. This range permits me to track various permutations regarding the nature of youth crime debates over time, including shifts in the ways in which young offenders are represented within these debates.

Interviews

At the same time as I was analyzing documentary materials, I conducted 19 semi-structured interviews with key informants in the youth justice system, including probation officers, Youth Court judges and lawyers, social workers, academics, and a senior political official. I postponed interviews until I had some background about the youth justice system and issues, since I did not want to take time asking basic questions for which answers could be found in documentary sources (see Spector, 1980). The documentary sources and academic literature I reviewed at this point greatly enhanced my understanding of these debates and served to contextualize them. However, I sought out interviews with key informants on the 'front lines' of the youth justice system in order to help supplement and hone my understanding of these findings. As with Spector's (1980: 101) own research, the interviews served to "fill in blank spots in the facts already assembled," and were aimed to highlight "interpretations or clarifications unlikely to appear in published accounts".

Ethics clearance was obtained to conduct these interviews. All potential interviewees reviewed a consent form including information about the research and an assurance of confidentiality. Interviews ranged from 30 minutes to 2.5 hours, and were semi-structured, allowing me to follow up with respect to unexpected responses. The interviews continued until the late stages of chapter revisions and data analysis, at which time I felt that further interviews would not greatly contribute substantive or theoretical understanding of these debates.

In preparation for the interviews, I conducted background research on the interviewees, and drew up roughly a dozen questions catered to their specific background and experience. Since a number of interviewees were public figures, who were often quoted within the documentary sources I consulted, this biographically-specific background research became important in order for me to avoid asking questions which could be easily answered in advance (see Spector, 1980). In some cases I created separate files with all articles including potential interviewee statements, and used these to familiarize myself with their position within these debates, as well as to formulate follow-up questions during the interviews themselves.

It was through some of the Internet secondary documents and websites that I made some contacts that were followed up for interviews, and from those contacts received further recommendations for people to approach. Thus snowball sampling was employed once a few initial contacts were made and interviews conducted. Other

contacts, such as academics researching youth justice, were found through their respective academic institutions, where their specialty in youth justice and contact information was cited. Some contacts were simply 'cold called' and agreed, after receiving disclosure about the research, to be interviewed. For example one youth lawyer, whom I read about through a newspaper article, was called in this manner. After the interview he gave me the contact information for one of the Youth Court judges I interviewed.

Interviews were often held at places of work. I generally met with probation officers and youth workers during regular business hours and conducted the interviews in a private office. Youth Court judges were interviewed in their private chambers. Criminologists, likewise, were also interviewed at their offices. One senior government official was interviewed by phone.

As noted earlier, questions were honed with respect to each interviewee. For instance Youth Court judges and lawyers were asked questions relating to their respective experiences dealing with youth during trials, as well as their experiences working under specific youth justice legislation. Social workers were asked about their own experiences working with youth and working within the non-profit sector. All youth justice officials and youth workers were asked about their experiences working within the youth justice system, with some having more experience under the Juvenile Delinquents Act, Young Offenders Act and/or Youth Criminal Justice Act respectively.

For initial interviews, I took notes during the interview and wrote up more complete notes as soon as possible afterwards; these interviews were more informal and I felt that the absence of formal recording equipment would facilitate the openness of the discussion. After a few of these, I tape-recorded all subsequent interviews. After interviews were completed, the records were transcribed into Microsoft Word documents, with the original audio record erased and the documents secured with an encrypted password. The documents, after transcription, ranged from 9 to 35 pages in length. During transcription, I used .. to indicate short pauses in speech, and ... to indicate longer pauses. Square brackets were used to interject my own comments and to distinguish these comments from the interviewee's statements.

Parliamentary Debates

While news sources offered brief quotations by a variety of claims-makers, and interviews explicated the views of particular individuals working within the youth justice system, I required an additional source where *elaborated* statements on youth crime and justice could be analyzed. Since youth justice policy was often a jumping off point for many debates, I naturally gravitated towards federal Parliamentary debates as a third source of information. These debates concentrated on the extent/severity of youth crime as well as potential solutions that involved debates over the appropriate provision of rehabilitation and punishment.

There were two varieties of Parliamentary debate archives: debates involving question/answer sessions held at the House of Commons, and more specialized debates involving three Senate Justice Committees. Specifically, these include *the Standing*

Committee on Justice and Human Rights, the Standing Committee on Justice and Legal Affairs, and the Standing Senate Committee on Legal and Constitutional Affairs. All transcripts were reviewed with searches for ‘young offenders act’ or ‘youth criminal justice act’. The House of Commons debates were frequently, though not always, centered on debating the youth justice system. While all of these sessions were reviewed, I focused mostly on those archives that were specifically centered upon youth justice issues (i.e. an ‘allotted day’ to debate the Young Offenders Act). The Senate Justice Committee transcripts were all focused on debating specific bills to amend and/or replace youth justice legislation. They included statements from invited witnesses, including teachers, victims of youth crime, social workers, police officers and criminologists.

The House of Commons archives ranged from January 21, 1994 to December 3, 2008, with no further concentrated debates following the implementation of the Youth Criminal Justice Act aimed at major amendments or replacements to the Act. In the end, 401 House of Commons debate records were saved for ‘Young Offenders Act’ searches, and 83 articles were saved for ‘Youth Criminal Justice Act’, totaling 484. The Senate Justice Committee archives ranged from April 30, 1996 to November 7, 2001, and a total of 27 files were reviewed. With all Parliamentary records saved within Microsoft Word files, they could be searched for key words and themes which emerged.

Data Analysis

During the initial stages of data collection I resolved to remain ‘on the side(lines)’ (Gusfield, 1984) and collect as much data as possible without coming to any definitive substantive or theoretical conclusions about what the data reflected sociologically (Berg, 2004: 278). This process involved ‘open coding’ of the data and “widely open inquiry” (Berg, 2004: 278). I followed Strauss’ advice to “believe everything and believe nothing” (1987: 28, cited in Berg, 2004: 278). Over time, despite the ‘messy’ texts consulted, including transcribed interviews, there were several themes that emerged from the data.

Minute analysis of the data (Berg, 2004: 279) led me to create a list of potential areas for investigation; some of them proving to be superfluous in retrospect, given the final product, but which helped me flesh out all available directions I might take. The list included: public opinion, gauging public reaction; fear of youth crime; children under 12; child welfare provisions, resources; reverse onus provisions – violent youth 14-16; representation of constituencies – politicians; public opinion polls and petitions; ‘going concerns’ for those who process young offenders (social problems workers); budgetary issues, funding and resources; emotions and identity – victims and victimizers; victim contests – victims/victimizers; moral panics/disproportionality; statistics (invocation of; contestation of); aboriginal young offenders; restorative justice for aboriginal youth; treatment/right to deny treatment under the YOA; rights balancing – youth as victim vs. society as victim; publication of youth identity – community protection (school boards, parents); Ontario’s transition from JDA to YOA (experiences of social problems workers); submissions to House of Commons (i.e. John Howard Society, Quebec’s Jasmin Report).

Several 'coding frames' (Berg, 2004: 280) were then employed. I began to narrow these broad themes into separate Microsoft Word documents that amalgamated my sources into these areas: children under 12; notes for Ontario's experience during the Juvenile Delinquents Act; perceptions of youth perceptions; punishment AS rehabilitation; rights balancing; treatment. I was still not fully cognizant how these themes related to one another at this point, and had nowhere near a 'coherent' story to tell. I produced two 'exploratory' papers as potential dissertation chapters. One explored variations in the way young offenders were represented in the *Globe and Mail* versus the *Alberta Report* newspapers (see endnote #1). Another explored the experiences of youth justice officials working under the Juvenile Delinquents Act during the transition from that Act to the Young Offenders Act. Neither of these papers, however, was broad enough to address the overall questions I wished to explore.

After some reformulation of my thoughts regarding the data I had, I arrived at what seemed to be the most logical arrangement of the data. I created separate Microsoft Word documents for three overarching schemas under which the data was organized via 'axial coding', which involved "intensive coding around one category" (Berg, 2004: 280): formulations, consequences, and solutions. Under 'formulations' (referring to formulations of youth identity) were the sub-categories (and related files): offenses vs. offenders; youth under 12. The first addressed the way that many would make arguments either focusing on the importance of the offence versus the offender as the primary point of consideration. The latter emerged as a separate theme since youth under 12 were below the minimum age under both the Young Offenders Act and Youth Criminal Justice Act, and so the question of what do to with these youth became a frequently expressed concern. Under 'consequences' were the sub-themes: balancing competing interests (the individual versus society); refusal of treatment; too tough or too lenient; two-tier split (referring to Ontario's split system under the Young Offenders Act). Under the 'solutions' theme were: identify early; publication; Quebec on rehabilitation; resources; role of treatment and punishment; root causes or punishing crime; Youth Criminal Justice Act Liberal bid and responses; youth under 12.

I also created a number of 'amalgamated notes' files which facilitated my re-reading through much of my data and 'trying out' various thematically oriented arrangements. Key words were used to create these files, such as: balance; 12; biology; born; biological; maximum; publication; reverse onus; transfer; safety valve. Other documents were created which combined notes: will the YCJA last; victim's rights overshadowed; maximum sentence and age; deterrence; bifurcation of culpability.

After several permutations of these themes in terms of emphasis and order, it seemed logical to focus on one chapter which explored the question of young offender identity. The theoretical concept of a 'victim contest' (Holstein and Miller, 1997; see chapter 2) seemed to naturally fit the data, given the 'kids or cons' positions taken in these debates. I also found it reasonable to focus one chapter on the various solutions offered regarding youth crime. This chapter would explore the various positions taken with respect to rehabilitation and punishment. A third chapter would follow which focused on debates regarding the extent and severity of the social problem. This chapter seemed to fit in between the first and last substantive chapter, and eventually was

positioned as such (chapter 5). The chapter would combine the concept of a ‘victim contest’ with that of a ‘stats war’ (Best, 2001) to analyze how the two concepts are related to each other. The final chapter, on youth justice solutions, did not have as clear a focus initially, since I was struck by the ambiguity of the positions I analyzed. While at first I expected to find ‘the usual’ positions taken with respect to rehabilitation ‘versus’ punishment, I was struck by the position of some regarding the invocation of rehabilitation as a goal to be achieved *through* punishment (usually through the use of custody with respect to serious youth crime). The chapter went through several drafts before I was introduced by my supervisor to a theoretical article addressing how claim-makers ‘appropriate’ discourses from specific contexts during debates over social problems (Spencer, 2000). The article helped me to apply constructionist theory in order to help make sense of the seemingly ironic and ambiguous positions taken regarding youth justice solutions.

Overall, the process I have engaged in may resemble that of Glaser and Strauss’ (1967) grounded theory approach. However while I have made contributions and linkages to constructionist theory, it was not my intention at the beginning to ‘generate theory’. My analysis was inductive and comparative, and themes slowly emerged and were constantly checked and compared with each other. Further, I did not start my research as a person with a ‘*tabula rasa*’ or blank slate. I had some preconceptions regarding what I would find, based on my previous experiences volunteering as a youth probation officer. That being said, I remained committed to being ‘on the side(lines)’ (Gusfield, 1984) and employing a theoretical framework that would allow me to analyze the meanings associated with youth crime, instead of concerning myself with the objective assessment of youth crime per se (see chapter 2). My method informed my theory, and vice versa. However, and perhaps ironically, by not concerning myself at the outset with ‘theory generation’, I was able to provide an analysis which links various constructionist ideas together, suggesting that youth crime ‘stat wars’ are products of the ‘victim contests’ generated by youth justice contexts; contexts from which arguments for rehabilitation and punishment are ‘appropriated’. I also underscored the utility of a constructionist framework for understanding Canadian youth crime debates in general. By being ‘on the side’ not only with respect to my data but also with respect to my theoretical development, I have contributed a method which generates knowledge with respect to both areas.

The following chapter explores the ways in which young offenders were characterized after the implementation of the Young Offenders Act. I argue that while under the Juvenile Delinquents Act young offenders were largely viewed as victims of detrimental environmental and social forces (see chapter 1), the paradigm introduced under the Young Offenders Act problematized this dominant view, introducing the notion of young offenders as victimizers. This new view did not come to dominate these debates; rather, the view of young offenders as victimizers was in active contention with ongoing views of young offenders as victims, spawning what constructionists have dubbed a ‘victim contest’ (Holstein and Miller, 1997) over young offender identity and culpability. The chapter also explores how emotional rhetoric was invoked by claim-makers within these debates in order to elicit either condemnation or sympathy for young

offenders (Loseke, 2003). These contests illuminate a contested interpretive domain that underscores the social construction of identity.

Endnotes

1 – As a side project, I compared youth crime representations from the *Globe and Mail* to those of a putatively more ‘right wing’ newspaper – the *Alberta Report*. I found different discursive tactics operating with respect to the *Alberta Report*’s representations of youth crime. My research focus for this dissertation did not permit me space to systematically explore representations of youth crime between various newspapers. The goal of this side project was to explore this question in more detail.

In contrast to a ‘quality’ paper, the *Alberta Report* can be considered a ‘popular’ paper, which is “simple in structure and colloquial in its use of vocabulary, and (which) gives more emphasis to emotive ...understanding” (Ericson et al. 1991:39). During a presentation analyzing my *Globe and Mail* findings, I received a question asking whether or not I had considered ‘Western’ Canadian news sources, such as the *Alberta Report*, which, it was argued, may present a more emotional tone and offer ‘law and order’ representations of young offenders compared to the ‘balanced’ coverage of the *Globe and Mail*. I reviewed 50 articles from the *Alberta Report*, ranging from January 18, 1993 to October 25, 1999. While the *Globe and Mail* highlighted the opinions of both those who viewed young offenders and victims and victimizers and generally gave both equal coverage, the *Alberta Report* often underscored the opinions of those who more explicitly viewed young offenders as victimizers.

I outlined my findings in a paper which asks how a ‘narrative sociology’ would address ideology. I examined divergent claims (favoring either ‘punishment’ or ‘rehabilitation’ for young offenders) as they are positioned in relation to each other within *The Globe and Mail* and *Alberta Report*. I show how editors draw on a process of ‘book ending’ claims in order to highlight those claims which act to favor each newspaper’s position. Methodological implications for the study of narrative sociology are central: existing research which stresses the ideological and sensationalistic aspects of media representations of youth crime tend to draw more from ‘sensationalistic’ media sources rather than those which more prominently include rehabilitation and contextualizing claims.

CHAPTER 4: Kids or Cons

“Children are children. They are in a state of immaturity. Doesn’t matter how much we want them to behave like adults, they aren’t going to” (*Globe and Mail*, April 11, 1998).

“I want those responsible to face court as adults. Children do not kill children; children do not kill” (*Globe and Mail*, December 6, 1999).

Introduction: Victim Contests Involving Youth Crime and Identity

Who are young offenders? Are they individually responsible for their deviant behaviour? If they commit ‘adult crimes’ should they be viewed as adults? Or should they be viewed as victims who are incapable of forming the malevolent intention necessary for criminal responsibility? The debates over youth crime in Canada preceding the implementation of the Young Offenders Act in 1984 (see chapter 1) gave rise to disagreement about the degree of culpability of young offenders. Holstein and Miller (1997) would characterize such debates over culpability and identity as ‘victim contests’. Where there are disagreements regarding putative victim status, victim contests may become especially contentious. Youth justice debates are suffused by these tensions, given the presence of ongoing disagreements regarding the extent of young offender culpability. How we come to think about and render young offender identity is strongly influenced by the designations generated from victim contests. The arguments from both sides point to how we should come to consider who young offenders are, as well as their circumstances and behaviour (Holstein and Miller, 1997: 29). These ascriptions of victimhood are also linked to potential youth justice “responses and remedies” (1997: 33; to be examined in chapter 6).

Holstein and Miller’s (1997: 25) constructionist perspective on victimology is designed to be distinguishable from (largely objectivist) criminological approaches, given its focus on the analysis of the social processes involved in designations of victimhood. They do not wish to deny that there are ‘real victims’, nor the consequences of lived experiences for victims in society (1997: 28); rather, they wish to analyze the processes through which the labels of ‘victim/victimizer’ are socially ascribed. Additionally, they seek to interpret victim contests within the context they are debated. In this vein, victims are not only considered individuals who have experienced harm, but persons *not responsible* for the harm done to them. Holstein and Miller (1997: 43) argue that “to ‘victimize’ someone instructs others to understand the [victim] as a rather *passive*, indeed *helpless*, recipient of injury or injustice”. Likewise, victimizers are persons who have engaged in *deliberately chosen* deviant behaviour(s) (Loseke, 2003: 122).

The concept of a victim contest has been employed in a number of recent constructionist studies, examining attributions of victimhood to high school girls sexually involved with older men in Tokyo, Japan (Yamamoto and Nakagawa, 1999); gay and lesbian rights and the social construction of ‘injustice frames’ (Berbrier and Pruett, 2006); and battered women’s victimization and agency (Dunn, 2001; Dunn and Powell-Williams, 2007). Constructionist analyses have only recently used the concept of victim

contests to analyze narratives of youth violence (Spencer, 2005), in the wake of reports of school shootings during the 1990s. Examining youth crime debates in 1994 within four U.S. newspapers, Spencer (2005: 48) found representations of youth violence marked by ambiguity and paradox, which he attributes to two competing “broader cultural discourses” of youth as “cold-blooded, calculating predators, incapable of remorse (and) on the other hand... (as) innocent victims of the social conditions that had robbed them of youthful innocence” (2005: 55). While some have argued that youth can be considered ideal victims, being vulnerable both physically and “politically” (Stasio, 1995: 27, cited in Altheide, 2002: 245), Spencer’s model of a bifurcation of youth identity suggests that violent youth are presented, paradoxically, as both victims and victimizers (2005: 60; see also Altheide, 2002: 233). Spencer (2005: 48) argues that “this casting appears to create an ambiguous sense of culpability” regarding deviant youth. By addressing the ambiguity embedded within constructions of youth violence, Spencer (2005: 63) challenges constructionist analyses which examine claims-making as emphasizing “simplicity and clarity”. Constructionists find such “simplicity” partly, he argues, “because that is what we look for. We might advance constructionist social problems theory by looking for the complex and ambiguous instead”.

Spencer’s (2005) analysis of the ambiguity of arguments over youth culpability is instructive here, highlighting how they remain unresolved. What renders victim contests regarding youth crime ambiguous is disagreement regarding how culpable youth are with respect to their actions, and whether or not they should be blamed for arguably intentional deviant behaviour. Youth crime debates address underlying assumptions regarding cultural associations of adolescence. Applied in this context, those who see young offenders as responsible for their actions view them as victimizers; those who see young offenders as not responsible describe them as victims. Additionally, while there is general agreement that the vast majority of youth offences are minor (Doob and Cesaroni, 2004: 70) and that youth who engage in these behaviours are simply ‘being kids’, the debates become more contentious when they centre on youth who have committed serious offences. Those who view youth as victims often suggest that the offence itself should not be the principle concern – that even with (and especially given) the presence of serious crimes, the offender, and not the offence, should be the germane concern. Those who view youth as victimizers often point to the nature of the offence, especially given serious crimes, to suggest that young offenders should be considered adults, especially given the presence of ‘adult’ crimes. The seriousness of the offence becomes the basis for defining who is a child; children by definition do not commit serious crimes. The side of the victim contest that claims-makers take acts as a *lens*, whereby young offender behaviour is *differentially interpreted* as the actions of a victim or victimizer.

Directly related to the ambiguity regarding youth culpability and identity are the “ambivalent emotional orientations” (Spencer, 2005: 48) involved. Young offenders are cast as *both* “sympathy-worthy” and “condemnation-worthy” (Loseke, 2003: 122), and these labels are infused with emotional appeals. Emotions are amenable to constructionist study, since they are discursively mediated as “socially constructed language forms” (Perinbanayagam, 1989, cited in Loseke, 2003: 124). Loseke (2003: 124) suggested that “within such a casting, emotions discourses are linguistic cultural

resources available for members to situationally use in evaluating, labeling, expressing, and managing putative internal states”. Significantly, “what members ‘feel’ is [often] judged as more important than what members ‘think’” (2003: 127). Applied to the analysis of Canadian youth crime debates, I analyze how emotions discourses act to highlight attributions of young offender victim or victimizer identity, placing importance on the consideration of the emotional qualities of claims-making about youth crime and justice.

Spencer’s (2005) application of victim contests to youth crime debates offers the potential to consider how the *meanings* associated with childhood and youth are actively disputed, and hints at reasons why associated debates regarding the severity and extent of youth crime (chapter 5) as well as youth justice solutions and the role of the youth justice system (chapter 6) also remain contentious and unresolved. His analysis, however, is limited to 4 major U.S. newspapers during 1994. He explained that this year was chosen for several reasons, including the fact that “conventional indicators of youth crime peaked between 1993 and 1994” in the U.S., and media coverage of the “summer of violence” in Denver, the murder trials of the Menendez brothers and others concentrated media coverage on violent youth crime (2005: 51). Victim contests are not, however, central to Spencer’s analysis. The notion of ‘victim contests’ is only mentioned once in passing (2005: 59), and potentially broader connections and insights regarding the link between victim contests and the perpetuation of youth crime debates over time is left unclear.

In this chapter, I seek to analyze the debates around deviant youth in Canada as a victim contest, focusing on debates during the Young Offenders Act period (1984-2003). I am interested in *what* claims are being made in relation to attributions of young offenders as victims or victimizers, as well as *how* claims-makers on various sides of the issue present their claims through *discursive strategies* used in their attempts to persuade others of the nature of deviant youth identities. I draw from a wide range of sources including newspaper archives and federal political debates, as well as key informant interviews and criminology journals (see chapter 3 for details on these sources). I conclude by providing some evidence that victim contests are continuing unabated under the current Youth Criminal Justice Act (2003-present).

For most of the 20th century, under the Juvenile Delinquents Act, the victim perspective of young offenders, under a social welfare model, was dominant. Young offenders were considered to be “misdirected and misguided” victims of the social circumstances which push them into delinquency (Winterdyk, 2002: 61). In chapter one I traced the development of this perspective, including the challenges to the Juvenile Delinquents Act’s welfare model which emerged in the 1960s and 1970s (Challen, 1996; Winterdyk, 2002). These challenges led up to the implementation of the Young Offenders Act in 1984. The new law recognized the legal rights and protections of youth formerly granted only to adults. A minimum age of 12 and maximum age of 17 was applied across the country. Young offenders under 12 came under the auspices of the child welfare system. *While the new legalistic youth justice model offered a variety of safeguards for young offenders, it simultaneously acted to rest culpability and responsibility for crime upon individual youth.* Moreover, the former welfare model was

not negated, but fused with the new legalistic paradigm of youth justice, generating contention over which should have greater priority (Corrado and Markwart, 1994). Victim contests during the Young Offenders Act period responded to this new hybridized paradigm governing young offenders. Under this new system, debates centered on questions regarding how young offenders should be perceived, whether or not youth crime was rising out of control, and what appropriate solutions to youth crime should be. This chapter examines responses to the first question, first by examining the arguments taken by those who saw young offenders as victimizers, followed by an examination of the views of those who saw young offenders as victims.

Attributions of young offenders as victimizers were underscored by highlighting the individual as the focal point of culpability. From this perspective, a young offender who commits a serious crime deserves condemnation, since the nature of the offence dictates the identity of the offender. The commission of an ‘adult crime’ frames young offenders as ‘adults’ who are fully mature and therefore responsible for their actions. These claims-makers were responding to others who drew attention instead to the surrounding circumstances that was argued to influence a young offender’s deviant behaviour in order to draw sympathy towards them. From the perspective of those who viewed young offenders as victimizers, such a ‘benevolent’ view deflected attention away from the need to hold young offenders fully culpable and accountable for their actions. For these claims-makers serious crime on the part of both older adolescents as well as young offenders less than 12 years of age suggested an ‘adult’ mentality and responsibility.

To underscore their views, these claims-makers described young offenders through language which channeled emotions linked to condemnation of the individual. Such emotions were also elicited by drawing attention to the details of violent criminal offences by young offenders. The presence of serious violent offences served as evidence for the incorrigibility of young offenders. To further reinforce their position, these claims-makers drew upon various psychological and physiological theories which suggested that young offenders are mature and fully in control of their actions, also pointing to the possibility of emerging psychopathic tendencies among some young offenders.

Given the view that young offenders are mature individuals capable of forming criminal intent, it was also felt by these claims-makers that an increasing number of young offenders, especially those under 12, were taking advantage of the legal protections offered by the Young Offenders Act and mocking the law. Such mockery was interpreted as self-evident proof that young offenders are victimizers who are fully cognizant of their actions, deserving of condemnation and punishment. The legalistic context under the Young Offenders Act, which underscored the responsabilization of young offenders, thus acted to frame and sediment the position of those who viewed young offenders as victimizers.

Some analysts have pointed to the presence, during these debates, of widespread “YOA bashing” (Bala, 1994) and the increasing dominance of the victimizer perspective of young offenders. Baron and Hartnagel (1996) pointed to the increasing prominence of public views that the Young Offenders Act should ‘get tough’ on young offenders, while

Hogeveen (2005) suggested that such views were becoming increasingly prominent within political debates during the 1990s. Hogeveen (2005: 74) argued that these debates evidenced an “ethos of a ‘new punitiveness’ that eschews any pretence of compassion towards serious offenders”, and linked this to a broader “culture of punitiveness” in Canada during this period. Schissel (2006) made the same argument with respect to youth crime debates within newspapers, arguing that there is an increasing “demonization” of youth within Canada (2006: 7). He cited Postman’s *The Disappearance of Childhood* (1994) to point to the “contemporary dissolution of the distinctions between children and adults” (2006: 137). However, while I agree with those who suggest that arguments made by those who view young offenders as victimizers remained strong during the Young Offenders Act period, I challenge characterizations which suggest that such views were *dominant* during this period. In fact, claims-making from those who persisted in viewing young offenders as victims remained *equally strong*.

Claims-makers who made attributions of young offenders as victims pointed to external social forces, as well as internal psychological knowledge, to contextualize the circumstances leading up to particular offences. From this perspective, the young age of the offender (including older adolescents) is the most salient feature dictating identity, rather than the offence, insofar as a young age becomes associated with notions of limited development and maturity. These claims-makers argued that the presence of serious criminal behaviour on the part of young offenders underscores even further the need to consider these youth as victims of social and economic deprivations. Young offenders deserve sympathy, from this perspective, rather than condemnation, regardless of the nature of the offence. Emotions of sympathy were elicited by drawing attention to the deprivations young offenders face.

To underscore this perspective, claims-makers drew upon language which associated young offenders with notions of innocence and limited culpability. Psychological and physiological theories were also highlighted, especially with respect to youth under 12, to further reinforce these views. These claims-makers also acknowledged that some young offenders were mocking the law, for example through statements that the youth law is a ‘joke’, but suggested that such behaviour should be interpreted as an indication of innocence and naivety, rather than malevolent intentionality. The following section explicates youth justice victim contests during the Young Offenders Act era, paying attention firstly to claims-making from the victimizer perspective of young offenders, followed by the position of claims-makers who viewed young offenders as victims.

Victim Contests During the Young Offenders Act Era: 1984-2003

Representations of Young Offenders as Victimizer

The emerging view that adolescents were young, mature adults became frequently invoked by those who viewed young offenders as victimizers. From this perspective, if young offenders are ‘adults’, they should be held fully responsible for their actions. One feature in the *Globe and Mail* involved the case of a 16-year-old who hung himself in his

jail-cell while in an adult facility, shortly before the Young Offenders Act came into effect. At the time of his suicide he was considered an adult in Ontario, where the maximum age under the Juvenile Delinquents Act was 15. The presiding judge, Justice J.S. Climans, made a statement to the youth before sending him to an adult facility for a theft and break-and-enter charge: "I think you're awfully stupid to be here in the first place. ...I don't know how old you think you've got to be before you grow up, but as far as I'm concerned, you're now an adult" (*Globe and Mail*, February 12, 1983).¹ Commenting on the case, Bernard Robinson, British Columbia's Commissioner of Corrections, felt that "most 17-year-olds are more likely to see themselves as adults, be living separately from their families most frequently, and indeed should begin to be assuming adult responsibilities as other adults do" (*Globe and Mail*, February 12, 1983).

Those who viewed young offenders as victimizers were not convinced by others who expressed concern for the context and social circumstances of a young person's criminal behaviour, arguing that this position caters too much towards the needs of the individual offender, and does not address the severity of the offence, nor the responsibility of the offender. During Parliamentary debates Reform Party MP Jack Ramsay suggested that the "bleeding hearts in this country" (referring to the Liberal party) have acted to

[restore] the rights of the [young] offender after he has taken the rights from his victim ...the rights associated with human life. ...They have erroneously made the criminal the victim by suggesting that the criminals are not responsible for the choices they make that lead to their criminal acts. They read into the circumstances of the criminal's life justification for the brutal and sadistic acts committed by them. Regardless of our upbringing, no matter how deplorable the conditions of our life, we all have the power to make choices. We all know the difference between right and wrong and we are all responsible when we make the wrong decision. We cannot blame anyone else. We must be accountable for our own actions. (House of Commons [hereafter HOC], May 2, 1994)

For Reform Party MP Jim Pankiw, the promotion of "personal responsibility" for young offenders is crucial: "Individuals must be responsible for their own actions," (HOC, May 26, 1998) he suggested, adding that

The Liberals believe that our environment is responsible for criminal behaviour. They believe individuals have no personal obligation whatsoever. Blame it on TV, blame it on alcohol, blame it on the humidity, the alignment of the stars and planets, whatever, but do not feel you are personally responsible. That is the message being delivered by this Liberal government, but that is the wrong message. Criminals must be held accountable for their actions. (HOC, May 26, 1998)

Elsewhere Pankiw attacked Liberal politicians who "treat these criminals as harmless children" (HOC, April 23, 1998), and who argue, he suggested, that the "rights of

criminals should be secondary” to the “protection of society” (HOC, May 26, 1998). Liberal politicians, however, also recognized the need to address accountability for youth. Toronto area Liberal MP John Nunziata suggested that “we have to stop perpetuating the myth that a 17-year-old just shy of his 18th birthday is somehow not responsible for his crimes,” (*Alberta Report*, May 9, 1994) adding later that “sixteen and seventeen year olds know the difference between right and wrong, [and] understand the nature and consequences of their acts” (HOC, May 2, 1994).

Victim’s advocates, such as parents who have had a child killed by another youth, also pointed to the presence of severe offences to undermine the association of childhood with innocence. “Kidnapping, torture and murder are not crimes of children” (*Globe and Mail*, April 17, 1996) argued Theresa McCuaig, a member of the victims-advocacy group Victims of Violence. The mother of murdered teen Dmitri (Matty) Baranovsky, who was killed by two 16-year-old boys, told a crowd of supporters “I want those responsible to face court as adults. Children do not kill children; children do not kill” (*Globe and Mail*, December 6, 1999).

For these claims-makers, the assignment of blame rests squarely on the *individual*, who, even if an adolescent, is a criminal and adult given the commission of an ‘adult crime’. Youth who engage in serious offending relinquish their innocence given the assumption of their responsibility and free will to engage in criminal behaviour. The surrounding circumstances of their offending, and the emotions directed at highlighting sympathy towards youth, are deflected through focusing condemnation upon the crimes of individual young ‘criminals’.

Emotions were focused by these claims through the use of language which served to undermine young offenders’ innocence. Within Parliamentary debates, Reform Party MP Paul E. Forseth argued that “these criminals are not young offenders; they are youthful appearing adults and should be treated as such” (HOC, June 6, 1994), hoping to stymie the arguments of those who suggest youth have limited culpability. Similarly, Reform Party MP Jack Ramsay suggested that young offenders are “faceless, nameless monsters who pose behind the masks of adolescence” (HOC, June 20, 1994). Toronto area Liberal MP John Nunziata argued that “the [Young Offenders Act] should protect children, not pseudo-children” (*Alberta Report*, May 9, 1994). These statements suggest that given the presence of serious charges, young offenders are no longer “children” but imposters posing under the guise of childhood. The use of the word ‘pseudo’ and ‘masks’ challenges the view of young offenders as victims by underscoring their criminal actions, not their age, as the determining factor of their identity. In subsequent debates Reform Party politicians referred to young offenders as “hardened little criminals” (Lee Morrison, HOC, May 10, 1999), “thieves and thugs” (Chuck Cadman, HOC, March 22, 1999), or “teenage thugs” (Myron Thompson, HOC, November 24, 1997).

Similarly, within the *Alberta Report* newspaper, young offenders were frequently referred to as “young thugs” (*Alberta Report*, May 9, 1994) or “juvenile thugs” (*Alberta Report*, July 24, 1995) by oped writers. A series of newspaper headlines also represent young offenders as victimizers, for example (capitalization in original):

CRACK DOWN ON PUNKS (*Alberta Report*, September 13, 1993)

LOCKING UP THE WILD GENERATION (*Alberta Report*, May 9, 1994)
A ticking crime bomb (*Alberta Report*, February 23, 1998)
Young and offensive (*Globe and Mail*, April 11, 1994)

In one *Alberta Report* article Tom Fleming, editor of *Chronicles: A Magazine of American Culture* and president of the Rockford Institute, warned that “when an adolescent goes deeply wrong, ...they become nihilists - mindless monsters whose lives become centred on sheer destruction” (*Alberta Report*, May 10, 1999). Another article in the paper referred to the growing problem of “juvenile super-predators” (*Alberta Report*, June 17, 1996). Adjectives such as “monster” or “predator” are associated with emotions that limit the ability to sympathize with young people’s social and environmental situations and the circumstances of their offending behaviour, especially given the presence of serious offences. The vocabulary of “child” is strongly rejected by these claims-makers as accurate descriptions of violent young offenders. Furthermore, the use of these labels acts to decontextualize the surrounding circumstances of offending behaviour, focusing blame upon the individual young offender.

In addition to adjectives that would highlight the victimizer status of young offenders, these claims-makers often explicated the details of violent youth crime in order to draw and entrench emotions of condemnation. Significantly, these claims-makers considered the *strong negative emotional reaction* by many to violent youth crime details as a *legitimate* and even necessary response. This view was also a response to claims-makers who argued that highlighting violent details of youth crime drew undue attention to an unfortunate minority of offenders who did not represent young offenders as a whole. Politicians during Parliamentary debates, often Reform Party MPs, would introduce such details before presenting petitions to ‘toughen up’ the Young Offenders Act.² Sharon Hayes, one such Reform Party MP, introduced a petition by describing the case of a 31-year-old man who was “stopping by a Mac’s Milk store,” where he “was brutally and senselessly kicked to death by two teenagers, one of them just 15 years old. This is just one of a recent number of tragedies in the Vancouver area”, she stated (HOC, September 27, 1994). Reform Party MP Myron Thompson recalled the detailed description of a murder first described by the victim’s advocacy group CAVEAT (Canadians Against Violence Everywhere Advocating its Termination), suggesting that the nature of the offence overrode any special protections accorded to the accused youth:

Mr. Speaker, we have been told by CAVEAT of the details surrounding the brutal murder and rape of Ann Marie Bloskie. Her murderer was six weeks from his 18th birthday when he beat Ann Marie to death with a rock, sexually assaulted her corpse, left her, returned the next day and sexually assaulted her again. Why did the justice system not demand that this murderer be tried in adult court, since his actions are not actions of a young offender? (HOC, November 7, 1995)

Featuring the details of such a case suggests that the youth involved is unarguably a victimizer and ‘adult’; that he should not even be considered a ‘young’ offender at all, given the association of that label with limited culpability. This ascription is further

solidified by highlighting the targets of young offenders as innocent victims. Sympathy is drawn towards the 'real victims' of youth crime through the simultaneous condemnation of the individual young offender.

These claims-makers also strongly rejected the notion, from their opponents, that strong emotional reactions to violent youth crime were unwarranted (see also chapter 5). A feature in the *Alberta Report* began with the details of a crime committed by two 16-year-old boys:

One Thursday evening early this month Rodney Bell, 44, was driving in the town of Oyama, B.C., between Kelowna and Vernon, when a car full of teenagers ran a stop sign and he narrowly avoided a collision. He followed the youngsters to a service station, where he thoroughly berated them. The next day one of the teenagers warned Mr. Bell's son that his dad had 'messed with the wrong guys,' and at about 11:30 the following night, Saturday, the family was awakened by a gang outside their home. Mr. Bell came out to reason with them. His wife heard 'this really loud thwack,' then found her husband lying on the lawn bleeding while the teens fled. He had been hit over the head with an axe and his skull smashed in. The kids didn't kill him--quite. But he can communicate only by squeezing his wife's hand, and his left side is likely permanently paralysed. He will probably never work again as a commercial tree planter. Two 16-year-olds have been charged, one for kicking him as he lay prone. (*Alberta Report*, May 23, 1994)

The feature columnist then exclaimed, addressing the reader: "What you may be sensing after hearing these facts is described by our federal minister of Justice [Allan Rock] as 'an emotional reaction,' by which he means that your opinion must be discounted. We must look at youth crime 'realistically,' he says, not 'emotionally'" (*Alberta Report*, May 23, 1994). The feature columnist strongly rejected Allan Rock's dismissal of an emotional response as it limited the ability of such graphic details to elicit emotions of condemnation towards young offenders. These violent details were not highlighted, from this perspective, in order to 'sensationalize' youth crime, but to provide clear evidence for the intentional maliciousness of young victimizers.

To further legitimate their views on young offenders, these claims-makers drew upon psychological theories which suggest that adolescents are mature and thus should be considered adults who are fully responsible for their actions. Quoting the psychological theories of child development from Jean Piaget, Reform Party MP Jack Ramsay argued that "by 12 or 13 years...a child has reached maturity. By the age of 14, a young person has all the physiological and psychological characteristics of an adult. With income from work, the end of adolescence can even occur long before the child reaches 16" (Senate Committee on Justice and Legal Affairs [herein SCJLA], September 23, 1996). He added that the "eminent psychoanalyst Françoise Dolto" argued in her last book on adolescence that "the legal age of majority should be 13...and...(full emancipation) should be possible starting at age 15". Invoking such theories from 'experts' in psychology acted to

legitimate the view that young offenders know what they are doing when they commit violent crimes.

These claims-makers also drew upon psychological theories of adolescent self-esteem in order to respond to opponents who suggest that young offenders are victims due to problems with low self-esteem. Two articles in the *Alberta Report* featured the expert opinion of William Coulson, a psychologist from California, described as a “progressivist turned traditionalist” (*Alberta Report*, May 9, 1994), who warned against instructing children in “false lessons in artificial self-esteem and lessons in feel-goodism” (*Alberta Report*, July 18, 1994). While an early “enthusiast of self-esteem theory”, he has “since repudiated it” (*Alberta Report*, July 18, 1994). “Self esteem is largely irrelevant”, concurred Alan Leschied, assistant director at the Family Court Clinic in London, Ontario. “I can introduce you to 10 kids who feel terrifically about themselves because they’re really good at breaking the law” (*Globe and Mail*, April 1, 1995). Catherine Carvell, the clinical supervisor of a youth rehabilitation centre also agreed, suggesting that efforts at improving self-esteem leaves society with “a criminal with good self-esteem” (*Globe and Mail*, April 4, 1994). Another *Alberta Report* article summarized the thoughts of Barbara Lerner, a Chicago psychologist and lawyer, who suggested that “an over-developed sense of self-esteem can all too easily degenerate into virulent selfishness. Taking comes as naturally to children as sucking” (*Alberta Report*, May 10, 1999). Lerner’s statement went further than the others, suggesting a theory of *human nature* regarding youth – that deviance amongst youth is ‘natural’ and expected.

Some went further still, drawing upon theories of psychopathy which suggested violent young offenders are oblivious to the influences of their environment. John J. Dilulio, Jr., co-director of issues research for the Foundation for the American Family, who characterized violent young offenders as “*juvenile super-predators*”, argued that they are “driven by two profound *developmental defects*”. First, they are “radically present-oriented, perceiving no relationship between action and reaction--reward or punishment”. They are also “radically self-regarding. Nothing is sacred to them. They live only for what brings them pleasure and a sense of power, placing zero value on the lives of their victims” (*Alberta Report*, June 17, 1996). Such characterizations suggest that these young “super-predators” are *natural born killers* whose “developmental defects”, rather than mitigating their culpability (as their opponents claim), acts to entrench their victimizer identity. The *interpretation* of such defects, by these claims-makers, leads to the conclusion that young offenders are remorseless victimizers.

These concerns and attributions of a deviant human nature were also expressed for young offenders under 12 years of age. Reform Party MP Lee Morrison warned that while youth might be able to feign innocence, parents should be aware that “the most benign and sensitive 11 year old” has much “guile” (HOC, May 10, 1999). In a philosophically oriented *Globe and Mail* article discussing young offenders, French philosopher Jean Jacques Rousseau was quoted as writing that

childhood is the sleep of reason, ...[that] the very ease with which children learn is their ruin. Their shining, polished brain reflects, as in a mirror, the things you show them, but nothing sinks in. Children see images, repeat words, describe

appearances, but do not really understand the meaning of what they talk about, or the relationship between the images they name and describe. They 'get' images. They don't 'get' ideas" (*Globe and Mail*, April 11, 1998)

The "sleep of reason" metaphor was applied by author David James Smith to characterize two ten year-old British boys who lured and murdered, with full intention, two-year-old James Bulger.

Similarly, physiological knowledge was employed by those who saw young offenders as 'naturally born' bad, further reinforcing the view that a youth's social environment does not play an integral role in their victimization. Troublesome youth could be recognized in some cases "almost at birth," suggested Sandra Scarth, director of the Child Welfare League of Canada, and a former senior official in Ontario's Ministry of Community and Social Services. "They can be recognized again when they hit age 3 and start bullying, and they can be caught again when they fail Grade 1. If you get conduct disorder, it's almost intractable beyond the age of 8" (*Globe and Mail*, April 1, 1995). Likewise Richard Tremblay, a psychology and psychiatry instructor at the Université de Montréal argued that, in relation to a discussion about the Young Offenders Act, "2 year olds are naturally aggressive, and if not taught otherwise, they are not likely to change" (*Globe and Mail*, April 7, 1995). Sheilagh Hodgins, another psychology professor at the same university, suggested that "males have weaker central nervous systems" causing problems with "hyperactivity" (*Globe and Mail*, April 7, 1995). One *Globe and Mail* article featured two older teenagers characterized as "teen time bombs" who were involved in a "thrill killing" of a random stranger (*Globe and Mail*, December 27, 1991). The article delved into the youths' troubled past, exploring physiological antecedents to explain their behaviour. One of the accused, at the age of 8, hid in his bedroom closet and set it on fire. While growing up, the youth "used to deliberately hit his head against walls and would sometimes hold his breath until he fainted". The writer suggested that his "problems may have begun before he was born", as his mother had "complications during pregnancy and took medication to avoid a miscarriage". While opponents suggested that physiological factors rooted in childhood are themselves influenced and mediated through social forces (see below), these claims-makers suggested that some young offenders are "predators" and killers from birth, and that attention to social forces and environmental conditions distracts from the need to view these young offenders as victimizers. The invocation of these theories elicited emotional responses of condemnation towards individual young offenders, while simultaneously acting to delegitimize the views of opponents who stressed the importance of self esteem and the social circumstances which contextualize youth crime.

Reports of young offenders who were openly mocking the Young Offenders Act for its putative leniency were hailed by these claims-makers as further evidence of their maturity and incorrigibility. If young offenders are victimizers, their mockery of the system provides evidence from the source for this view. Writing an article-length oped piece, G. Derrik Elkin, a retired teacher and youth counsellor, argued that young offenders think of the youth law as "a joke – to be sneered at for its leniency, boasted about when its punishment is little more than a slap on the wrist" (*Globe and Mail*, June

22, 1992). Recalling recent violent crimes committed by young offenders, he argued that crimes such as “a gunshot blast to the back of the head is not a childish prank. It is a deliberate murder... [a] serious criminal [offence]”. Young offenders “read the papers; they see the TV” and “know that kids under 18 can’t get anything serious,” Detective-Constable Ed Madeira argued. “I think a lot of them know it’s a joke... they have a couldn’t-care-less attitude” (*Globe and Mail*, May 16, 1996). Recalling the details of a case involving the beating to death of a 79 year-old widow by a 15 and a 19 year-old, Reform Party MP Chuck Cadman observed that the “young girls in the courtroom who were friends of the accused were partying, winking, smiling and laughing as if it were something that happens every day. Again, that is the attitude” (HOC, May 29, 2001). A similar observation was made by David Griffin, an Executive Officer of the Canadian Police Association: “we have problems with chronic offenders in our system. They are laughing at youth laws ...they are laughing at the system. They do not see any deterrence” (Standing Senate Committee on Legal and Constitutional Affairs [herein SSCLCA], October 17, 2001).

These concerns applied especially to youth under 12, since these youth were below the minimum age under the Young Offenders Act, and thus not under the purview and power of the youth justice system (see also chapter 6). These claims-makers were concerned that young and precocious 12 year-old “street wise” youth (George Caldwell, Executive Director, Ontario Association of Children’s Aid Societies, *Globe and Mail*, May 15, 1985) were taking advantage of their prosecutorial immunity. Shortly after the Young Offenders Act was implemented, James Clark, Staff Inspector of the Toronto Youth Bureau, said that he had begun to see older children instructing those under 12 that they could break the law with impunity, since police are powerless to intervene.

The day the act came into place on April 1, we had three kids in for robbery. Two were 12 and one was 11. They’d knocked down an old lady and robbed her. I had to advise our officers to proceed with the 12-year-olds and drive the 11-year-old home. The 11-year-old asked why he was being let go and not his friends. Of course, the law was explained to him. You only have to give some thought as to what the little kid was thinking. (*Globe and Mail*, January 9, 1985)

In a later article Peter Scott, Deputy Chief of Metro Toronto, insisted that “we have a number of hardened criminals and in some cases we’ve got some very mature 12-year-olds who give us more problems than 16-year-olds; ...I think that they’re old enough to know the difference between right and wrong” (*Globe and Mail*, March 3, 1989). These concerns were also echoed within Parliamentary debates. “Sadly too many kids are experienced criminals by the time they reach 12 years old,” (HOC, October 21, 1999) Jay Hill, a Reform Party MP argued. For claims-makers who argued young offenders are fully rational and mature ‘adults’ capable of taking full responsibility for their criminal acts, the espousals by young offenders referring to the Young Offenders Act as a ‘joke’ were to be taken seriously, further reinforcing their position that young offenders are victimizers who should be condemned. Even young offenders under 12 were referred to as “hardened” and “experienced criminals” who were fully responsible for their criminal

offences. The view of young offenders as victimizers led to the interpretation of subsequent behaviour through that interpretive lens.

Representations of Young Offenders as Victims

Some analysts have suggested that the debates during this period were dominated by a victimizer view of young offenders (Hogeveen, 2005; Schissel, 2006). This may reflect the prominence and visibility of victimizer characterizations in newspapers and Parliamentary debates, noticeable through the highlighting of violent youth crime details, and undoubtedly colourful characterizations of young offenders as “monsters” and “super-predators”. However, equally forceful views were actively expressed during the Young Offenders Act period by those who characterized young offenders as victims. These claims-makers insisted that young offenders deserve sympathy due to external social and environmental factors that impact upon their offending behaviour. Sympathy is elicited, from this perspective, by drawing attention to these external contingencies, rather than to the details of violent youth crime. In addition, the individualization of blame directed at young offenders by those who view them as victimizers was strongly rejected by these claims-makers. The young offender remains a victim, no matter the severity of the offence.

Suzanne Tremblay, a Bloc Québécois politician, took this view when she argued: Teenagers and children are victims. They were not born this way. We have to understand that they are not totally responsible for their actions. The economic and social conditions in which we have them live and the school situation they find themselves in have a significant impact on the lives of 14- to 18-year-olds. When they need to identify with someone, there is no one around: their fathers are gone, their mothers have new boyfriends or vice versa. They change home every week, they never live at the same place, they have problems at school. We built them huge schools where they do not feel as though they belong. All of these things make life very difficult for our young people. That is why they are constantly testing society to see what is allowed and what is forbidden. (HOC, June 16, 1994)

Instead of being ‘criminals’ who carry out ‘criminal actions’, these young people were characterized as victims of social circumstances who are “testing society” as a normal act of adolescent maturation. Tremblay’s statement also directs sympathy towards the difficult life situations that young offenders presumably face. Supportively quoting René Binet, the president of the youth justice association of Montreal and a “specialist in the area of youth justice”, Michel Bellehumeur, a Bloc Québécois MP, argued in a similar statement that “the pollution that our adolescents live with is made up of poverty, school dropouts, unemployment, racism, suicide and exclusion” (Standing Committee on Justice and Human Rights [herein SCJHR], September 20, 2000). Also in line with this view, Danny Graham, a Halifax defence lawyer, offered a profile of the young offenders he generally represented, characterizing “80% of these kids” as “straight out of a cookie

cutter” (Renewing Youth Justice, SSCLCA, April 22, 1997): coming from “dysfunctional families”, their parents having “little education”, and suffering from “self-esteem and substance abuse problems”. In addition, he added, “there is substance abuse among the parents, and other poverty problems” (SSCLCA, April 22, 1997). Gary Rosenfeldt, Executive Director of Victims of Violence and the Canadian Centre for Missing Children, cited the example of a sexual assault committed by an 11 year-old boy, admitting that while it was a “very serious offence ...eleven year-olds do not think of sexual assault under normal circumstances unless something in their life caused them to do so” (SSCLCA, October 3, 2001). He asked, “Are they being sexually assaulted at home and/or in school or some place else”? One victims rights advocate, Anne Marie Aikins (in an arguably exceptional statement), wrote an oped article where, writing as a “survivor of rape”, blamed “law-and-order agendas” for “[deflecting] blame for complex social problems” (*Globe and Mail*, February 23, 2000). She wrote,

if I hear one more cop, one more radio disc jockey, one more grieving parent or one more right-wing, law-and-order politician blame the Young Offenders Act for our supposedly out-of-control youth, I think I’ll scream. ...In my view, young people are not demons, as portrayed so often by the media, committing crimes because of a law that shields them from responsibility. Most teens are ordinary people struggling to deal with modern problems and issues in a law-abiding fashion. (*Globe and Mail*, February 23, 2000)

Some debates addressed the case of British toddler James Bulger, which created anxiety in some Canadian observers that the same type of crime might be committed by youth under 12 in Canada. However, Bloc Québécois MP Pierrette Venne argued against such a worry: “this tragic incident must not make us forget that childhood is the universal age of innocence and that when children do something wrong, it is invariably the reflection of something done by an adult” (HOC, June 6, 1994). These claims-makers shared a concern that young offenders are *themselves* being victimized by their social environment. Many young offenders are “ordinary people” who have to contend with a complex array of modern social problems. They deserve sympathy, from this perspective, since their criminality is not their fault.

The characterization of young offenders as victims was reinforced, by these claims-makers, through the use of language which underscored their innocence. This use of language was a response to others who criticised the use of the word ‘child’ in association with young offenders. Reacting against this, Mary Clancy, Parliamentary Secretary to Minister of Citizenship and Immigration, argued “the word child is very important here”, argued “because we are talking about children when we talk about young offenders. We are not talking about hardened criminals” (HOC, March 17, 1994). Peter Dudding, the executive director of the Child Welfare League of Canada, similarly criticized “the use of the terminology ‘criminal’ in relation to children. In our opinion, that is both inappropriate and offensive. Children are not criminals” (SCJHR, February 22, 2000). Stanley AvRuskin, a Toronto lawyer who has worked for many years with young offenders, agreed that “children are children. They are in a state of immaturity.

Doesn't matter how much we want them to behave like adults, they aren't going to" (*Globe and Mail*, April 11, 1998). "Children are children," echoed William Trudell of the Canadian Council of Criminal Defence Lawyers. "Even children who commit heinous crimes are not adults," he argued. "They might need to be treated differently than a child who commits another kind of crime, but that is the philosophical problem ...our biggest challenge is to get everyone to believe that kids are kids" (SSCLCA, October 25, 2001). Regardless of the severity of the offence, argued Cécile Toutant, a member of the Board of Directors of the Canadian Criminal Justice Association, "even [for youth who] commit a murder", it should be acknowledged that "repeat offences are very minimal and very seldom violent" (SSCLCA, October 24, 2001). "I see [repeat violent young offenders] we have treated and who are managing very well, far better than young persons who have committed crimes against property," she argued, recommending that dissenters "come along with one of my former clients. What I mean is that they are not monsters".

Others expressed concern for the potential stigmatization of young offenders that comes from pejorative labels. One youth lawyer I interviewed recalled the challenges of dealing with the label 'young offender' while practicing under the Young Offenders Act. He recalled that

...For years we've had a problem with packages the crowns have been using in court rooms ...with the great big huge 'YO' put on it – I've heard jail guards for years refer to the young persons in the cells downstairs as the young offenders or the 'YOs'. For years and years I've heard defense lawyers refer to their clients as 'YOs', or young offenders. I've seen case law reports from some of the case reporting companies where the heading to describe the area that has to do with 'young offenders' ...so to me the words, the word 'young offender' ...applying to someone who hasn't been found guilty, okay, is improper, it's a pejorative term, it is an act of ageism that's just as bad as racism or sexism. And it's a serious serious problem in our justice system... (Personal Communication, November 20, 2007)

Carol Letman, of the Criminal Lawyers' Association, expressed similar concerns that the processes and procedures under the Young Offenders Act stigmatized youth through the "premise ...that we were dealing with offenders right from the start" (SSCLCA, October 25, 2001). Language which underscored the sympathy-worthiness of young offenders was facilitated by a technique of 'cupleting' words such as 'kids' and 'children', placing emphasis on the identity of the offender as a victim, rather than on the nature of the offence. For these claims-makers, even the presence of serious crimes committed by young offenders does not suggest that they are "monsters". Apart from pejorative terms like 'monster' and 'predator', even the phrase 'young offender' was potentially stigmatizing from the perspective of lawyers wishing to defend their clients under the Young Offenders Act's legalistic paradigm.

While others drew from psychological theories in order to sediment their view of young offenders as victimizing "monsters", some of these claims-makers interpreted

psychological theories in order to support their view of young offenders as victims. Peter Jaffe, a psychologist and director of London's Family Court Clinic, argued that "the majority of young offenders are extremely immature," and that the Young Offenders Act was "born out of the need to recognize the special needs of kids from 12 to 17" (*Globe and Mail*, December 20, 1985). He added that "it's practically impossible [for youth to decide what's best for themselves] by the very nature of adolescents wanting to assert their independence on one hand, yet recognize [sic] that they are still dependent on adults on the other". Catherine Latimer, the Senior Counsel and Director of Youth Justice for the Department of Justice, concurred that "the whole concept of youth justice embraces the notion that young people are at a developmental stage of their lives, and in many cases the appropriate measure of accountability is not as serious as it would be if it were an adult" (SCJHR, November 30, 1999). Bloc Québécois MP Michel Bellehumeur argued that this developmental stage involves youth having "a different sense of time ...from that of adults", adding that "all the psychologists and psychiatrists say the same thing" (SCJHR, April 13, 2000). Others, such as Claude Boies of the Québec bar, pointed to "self-esteem and socialization" (HOC, April 22, 1997) as key factors to consider which impacts upon a youth's sense of identity and influences his or her behaviour. These claims-makers, who included both psychologists and those who referred to psychological theories, legitimated their view of youth as victims by explaining their deviance as a natural byproduct of a still-maturing psyche.

Psychological theories were also applied by these claims-makers towards youth under 12, who were seen as victims especially due to psychological factors that demonstrate their actions are not under their control. Detective-Constable Ed Madeira of the Metro Police youth bureau recalled a case in which his unit had to deal with an 11 year-old who "tried to hold up a neighbourhood store with a toy gun" (*Globe and Mail*, May 16, 1996), indicating his lack of maturity despite the presence of a serious charge. While admitting that crimes committed by younger "kids" are "scary", he added "thank God, they're not that sophisticated. That's why we catch a lot of them". During Parliamentary debates, Pierrette Venne, a Bloc Québécois MP, asked "on what philosophical view of human nature is this notion of criminal responsibility based in the case of ten-year-old children" (HOC, May 12, 1994)? She went on to

agree that a ten-year-old child knows the difference between good and evil, but does the ['conservative' Reform Party] hon. member truly believe that a ten-year-old understands the nature of what is evil? Does he think that a child of that age is already corrupted and bad to the point of purposely doing something wrong and drawing from it a gratuitous satisfaction related to the fact that he is copying adults? (HOC, May 12, 1994)

One *Globe and Mail* article featured the views of author Leslie Savage, who was writing a book about homicidal children. She argued that "there's every reason to think that children who kill, like other children, are emotionally and intellectually undeveloped" (*Globe and Mail*, April 11, 1998). The article also featured two psychiatrists, one of whom, Dr. Clive Chamberlain, recalled "children [who] have told him they were 'really

surprised' by their murderous acts". These arguments suggest that violent criminal acts committed by young offenders, especially youth under 12, provide *all the more evidence of their victim status* as innocents. The arguments are reinforced by drawing on knowledge bases within psychology which appeal to popular notions of the limited culpability of children.

Physiological theories were also invoked by these claims-makers with respect to cases where biological effects were argued to mitigate the culpability of adolescents charged with serious offences. One case featured in the *Globe and Mail* discussed the murder, by two 15 year-old females, of a 58-year-old woman who operated a group home for young offenders. The local community was outraged, especially after discovering that one youth involved was already convicted of a manslaughter offence two years previously for drowning a three-year-old. However, the feature writer added that "what has not been widely discussed about the ...tragedy is the background of the two teenagers accused of the crime. One suffers from fetal alcohol syndrome and is mildly retarded. She has been violent and anti-social from babyhood" (*Globe and Mail*, February 12, 1998). In a later article, Queen's law professor Nicholas Bala advocated the necessity of recognizing fetal alcohol syndrome as a problem before making determinations of culpability. "These are the kids who are most likely to offend," he argues, "and most likely to be expelled; they're also the ones who most need our help" (*Globe and Mail*, December 3, 2003).³ Perhaps exceptionally, Reform Party MP John Reynolds, referring to the work and research of Reform colleague Keith Martin, underscored

the importance of the first eight years of life. If an individual is exposed to pernicious behaviour such as drug abuse, sexual abuse, violence, dysfunctional parenting or absence of parenting at all, it has a negative impact on the child's brain. The neurological development of the child's brain is impeded. This has a consequence as the child grows to adolescence and on to become adult. (HOC, May 10, 1999).

These claims-makers did not refer to physiological theories as often as psychological theories. Nevertheless they served to coalesce sympathy towards young offenders due to internal physical factors out of their control. Moreover, they stressed that any *physiological* predispositions do not necessarily lead to young offenders being naturally 'born bad'; rather, these predispositions are actively shaped and exacerbated by external *social* forces.

These claims-makers also responded to others who felt that youth were taking advantage of the Young Offenders Act and mocking the criminal justice system. They suggested that when youth *express* a mature knowledge of the system, they are in fact *feigning maturity*; that in fact they are simply naïve youth behaving as youth should be expected to behave. Psychologist Peter Jaffe responded with his thoughts on young offenders who were, according to critics, 'laughing at the system'. He countered such notions by arguing that "a lot of these kids would rather be seen as bad rather than mad. They worry about what their peer group thinks" (*Globe and Mail*, October 24, 1987). As

in other statements Jaffe made, he argued that many of these youth “are depressed, often relating to a family situation such as unresolved feelings about a separation or feeling abandoned. They mask their depression by being defiant or angry with authority figures”. Roger Gallaway, a Liberal MP, agreed in a later statement during Parliamentary debates. “We have heard references to the fact that an 11-year old will say to the police: ‘You cannot touch me. There is nothing you can do about it’,” he said. “...I have no doubt that 11-year olds will say that. Certainly as a parent, children at various ages will say various things. It is part of their development into adulthood” (HOC, November 8, 1996). Arlene Gaudreault, the President of the Association Québécoise Plaidoyer-Victimes Inc. was asked, during a Parliamentary Justice Committee proceeding, her position on whether or not youth lack understanding about the law, or whether they “laugh in its face”, “wilfully ignoring the laws” (SCJLA, September 23, 1996). She responded,

I think that young people as a rule are not very familiar with the provisions of this legislation. However, I do believe that they know something about the law in general, although this is not an overriding concern of theirs. Knowledge of the law will not have much of an impact on their behaviour. I don’t think the feeling of impunity is directly linked to knowledge of the law; rather it is the profit to be derived or pleasure taken in committing the crime that seems to matter most. When a person decides to commit an offence, he [sic] doesn’t necessarily think about the punishment that awaits him. (SCJLA, September 23, 1996)

A Standing Justice Committee witness, whose son was killed by young offenders, was asked whether or not he would be prepared to meet the youth who were charged in person. He responded that he already had done so in court, admitting that “at the time you have anger in you, ...but I did see the three children - at that time I called them kids - who killed my son” (SCJLA, September 23, 1996). “I watched these kids in court sitting down to be charged with murder. In my son’s case, they played with their fingernails and joked when the judge talked in both languages. They joked about it,” he says. However, he went on to state that since that time he has met with and helped other youth through a local police department, showing them papers about “what happens to kids”. He closed his statement by suggesting that “there is not enough done to help these kids. From what I’ve seen so far, roughly since the first court case ...when I started my crusade, I’ve never seen anything done to help these kids”. According to this witness, the fact that the young offenders who murdered his son were laughing in court should not, he argued, distract attention from the fact that they are “kids” who should be “helped”.

I asked a Youth Court Judge, currently working with youth under the Youth Criminal Justice Act, whether or not adolescents are taking the system seriously. He recalled a particular case early in his career, during which he was a lawyer under the Young Offenders Act:

I was interviewing one of my clients through the glass, you know this little opening down here, we were young and I was trying to cut a deal but [the

prosecuting attorney] wanted to go to trial; I said ‘Well okay spin the wheel you’d probably get jail time’ and [my client] said ‘Well that won’t happen to me I’m just a juvenile’ and I said ‘*You’re in jail right now!*’ – you know [subtle laugh] she’s talking to me though this glass and *she’s not getting that she’s lost her liberty*. It was a concept that she didn’t have quite down yet – what’s liberty and what isn’t. That was one thing ...do they perceive it as a joke, or do they just don’t *get it?* ...so do they think it’s a joke? I don’t *know* that ...that a lot of teenagers can engage in the kind of conceptual thinking you need to appreciate it as being a joke. My experience was that they were profoundly ignorant about their surroundings and the legal environment. ...So [either] they don’t understand it enough to think it’s a joke, or they don’t take it seriously since it’s getting in the way of doing business. (Personal Communication, September 21, 2007)

These claims-makers were responding to opponents who suggested that young offenders who mock the system are victimizers evidenced by their espousals of defiance. This position was rejected by claims-makers who interpreted such espousals differently, in line with their view that young offenders are victims. In fact a defiant attitude suggests, from this perspective, all the more evidence of a feigned maturity that masks underlying social sources of malaise.

These victim contests continued throughout the 1990s unabated, leading up to proposals by the federal government, beginning in 1997, to introduce legislation which would replace the Young Offenders Act. From a policy perspective, legislators intended that the new law would put to rest the ongoing contentions perpetuating youth crime victim contests. Rather than introduce further amendments, a wholly new youth justice law, it was hoped, would strike the right balance between competing interests and positions. The following section explores how young offenders have been characterized under the current Youth Criminal Justice Act.

Current Victim Contests Under the Youth Criminal Justice Act (2003-2009)

Perhaps the single largest distinction between the Young Offenders Act and the Youth Criminal Justice Act is the latter’s “emphasis on rehabilitation” (*Globe and Mail*, April 1, 2006) and diversionary initiatives, including restorative justice programs, while simultaneously providing tougher sentencing provisions for serious offenders (see chapter 1). The Youth Criminal Justice Act was designed to strike a definitive balance with respect to the treatment of young offenders that would ideally quell the debates which mired the period of the Young Offenders Act. At least within Parliamentary debates, this goal seems to be temporarily achieved. Since the Youth Criminal Justice Act was passed in 2003, there have been no further concentrated Parliamentary debates geared specifically towards major amendments to or replacement of the law.⁴ There is some preliminary evidence, however, to suggest that victim contests under the new law have continued unabated.

Claims-makers who view young offenders as victims have maintained their position that the offender, not the offence, should remain the primary criterion of

consideration, and that young offenders should not be held fully culpable for their crimes. They continue to reinforce their position by underscoring the naiveté and limited maturity of young offenders. A youth lawyer I spoke with, who currently practices youth law under the Youth Criminal Justice Act, suggested that despite a few “insightful” young offenders, “most” are far less aware of the severity of the situation they are in. He compared the state of mind of young people caught up in the court system to Bart Simpson of the TV show *The Simpsons* training his dog, where all the dog hears is “bla bla bla bla”; he argued that for youth it is “the same thing” (Personal Communication, August 6, 2008). Others have also made reference to the limited culpability of young offenders, despite the presence of serious crimes. Commenting on a recent case under the Youth Criminal Justice Act where three “children ...forced a six-year-old boy to strip naked before pushing him into a lake where he drowned”, criminologist and sociology professor Mahfooz Kanwar of Mount Royal College suggested that “it would seem likely that the children were playing and did not realize what they were doing. ... You cannot hold a nine-year-old responsible for a crime” (*Globe and Mail*, August 13, 2007). These claims-makers maintained a view of young offenders as victims, whose criminal offences served as evidence of their lack of maturity and limited culpability, especially considering popular notions of adolescence. Queen’s University law professor Nicholas Bala argued that “youth crime fascinates us and horrifies us,” asking “how could a teenager, someone still not an adult, be so brutal” (*Globe and Mail*, December 3, 2003)? He added that

the sad reality is that young people who are most likely to commit the most-serious offences are also those who are least likely to be considering the consequences of their acts. They are the ones who are most likely to be engaging in unsafe sex, using drugs and dropping out of school. They think that they’re invulnerable. (*Globe and Mail*, December 3, 2003)

In a later article Kim Pate, director of the Elizabeth Fry Society, also referred to young offenders’ lack of “cognitive ability to reason abstractly” (*Globe and Mail*, June 23, 2006). Delinquent behaviour “really is one of those things that, for better or worse, youth do when they’re adolescents,” University of Toronto Criminologist Anthony Doob suggested (*Globe and Mail*, September 26, 2007). “I don’t find it alarming, partly because when we were young, we all did these things,” he said. “For most of us, that’s the nature of kids, and particularly boys”. These claims-makers, drawing on common ideas about adolescent development, underscored the need to invoke sympathy towards young offenders who are otherwise hapless and naïve.

Those who view young offenders as victims continue to point to the surrounding circumstances of offences in order to draw sympathy toward young offenders’ situations. One *Globe and Mail* article titled “A ‘troubled kid’ searching for someone to talk to” featured the case of a teen with allegedly “satanic interests” who plotted to murder a number of parishioners at a church he attended (*Globe and Mail*, January 19, 2009). Another teen said that the youth, described in the article as a “quiet goth kid”, “looked like he was really reaching out for someone to talk to”, and that his appearance made it

“hard for him” to get along with others at school. A Pastor who knew the youth, Mark Hughes, argued that “when a troubled kid shows up at a place like this [church] without his family, you know he’s searching”. Despite the youth and his girlfriend’s “deadly plan to shoot up two high schools, the University of Manitoba and the church,” he was characterized as a loner and young victim due to his circumstances, such as having no family contacts or friends.

Another article featured the case of a 17 year-old young male who raped and “bludgeoned to death” a 13 year-old girl. The young offender was characterized as suffering from severe mental health problems since the age of 4. These problems were linked to the youth having grown up “in a home filled with physical, sexual and emotional abuse” (*Globe and Mail*, October 19, 2007). One young offender, Kevin Madden,⁵ is described in a *Globe and Mail* article as “a hulking, stone-faced figure” (*Globe and Mail*, September 30, 2006), who, along with an accomplice dubbed “Vampire Boy” (named so for his “professed fondness for sipping blood”) were convicted for killing Madden’s own brother. The judge presiding over Madden’s case pointed to the youth’s history “moving from house to house after his parents’ marriage failed, habitual truancy at 10 different schools, alcohol abuse that started at the age of 12, sharing his home with a stepfather he hated,” in order to argue that he saw a “glimmer of hope, because of his youth”. “He’s got ambition now,” his biological father told the court after visiting his son in custody. “He wants to get good grades, wants to be productive, he seems like a totally different person”. The details of violent youth crimes are interpreted and shaped through the view of young offenders as victims; the details are significant, but should not, from this perspective, deflect attention away from the needs of the young person who has been victimized him or herself, given detrimental social and environmental experiences. Sympathy is elicited by pointing to the details of the social circumstances that push youth into crime.

However, for others such violent details remain in and of themselves a legitimate source of knowledge that characterizes young offenders as victimizers. Claims-making from those who view young offenders as victimizers remained in contention during this period. These claims-makers have continued to suggest that young offenders are fully culpable and responsible for their crimes. The offence remains the key criterion, not the needs or surrounding circumstances of the offender. A *Globe and Mail* article titled “Horrific attack on 18-year-old woman shocks neighbours” featured the case of a “vicious attack” and torture of a young woman by a two 14 and 15 year-old female young offenders (*Globe and Mail*, September 29, 2007; in chapter 5, I discuss evidence cited by some claims-makers for rising rates of female youth crime). The attack, which took place behind a junior high school, lasted for about two hours, where the victim was beaten unconscious, only to be revived several times to continue the beating. The victim “suffered a fractured eye socket, broken nose and bruises on her face. She also had cigarette burns inside her ears and on her tongue”. Some sources said that the girl’s “hair was set alight”. Crown prosecutor John Nisbet commented that the case was “incredibly unusual,” but added that “there is an aggressiveness in female youth that’s very disturbing”. One case in 2004 involved a 16-year-old youth charged with criminal negligence causing death, after striking a car driven by Theresa McEvoy, a 52-year-old

teaching assistant and “mother of three” (*Globe and Mail*, April 1, 2006). The youth was “so high on marijuana that he did not know how fast he was going”. The case sparked an inquiry that led to calls to expand the notion of what a “violent offence” constitutes under the law (*Globe and Mail*, December 6, 2006). The details of violent youth crime, for those who view young offenders as victimizers, remains a legitimate form of evidence to suggest that they are fully culpable and should be held fully responsible for their actions.

Critics of the Youth Criminal Justice Act have argued that the youth law “lets young offenders violate conditions of release without consequence” (*Globe and Mail*, October 3, 2007). Some critics have re-dubbed the Youth Criminal Justice Act “You Can’t Jail Anyone” (*Globe and Mail*, October 11, 2007), pointing to their view that young offenders are dealt with too leniently under the law. Josee St-Pierre, whose 14 year-old daughter was allegedly killed by a 15-year-old, suggested that the Youth Criminal Justice Act “is far too generous to youth; it gives them the benefit of the doubt at every turn” (*Globe and Mail*, September 23, 2008). She emphasized that the presence of serious charges indicates that a young offender is mature and fully responsible for his or her actions. “To me, if you’re capable of killing at 15, you’re capable of facing the full consequences of the act”. Thus some felt that the Youth Criminal Justice Act “makes itself look ridiculous” given the presence of serious youth crime for which it is an inadequate response, such as the school shooting in Taber, Alberta by a 14-year-old boy who was allegedly “inspired” by the Columbine High School “massacre” in Colorado during 1999 (*Globe and Mail*, February 24, 2004). Justice Minister Vic Toews, who has maintained a strong opposition to the Youth Criminal Justice Act, argued that that Act was too lenient on young offenders, and that “accountability and responsibility for serious crimes needs to be enforced in our youth justice system” (*Globe and Mail*, June 24, 2006). The Justice Minister who followed Toews, Rob Nicholson, concurred, saying that “our government believes that more work needs to be done to ensure that sentences are proportional to the gravity of the offence and to the degree of responsibility of the offender,” (*Globe and Mail*, May 17, 2008). If young offenders are victimizers who are fully responsible for their violent crimes, their maturity must be demonstrable. For these claims-makers such evidence is provided by the details of serious violent youth crime: adult crime signals adult intentionality and should garner adult punishment (see chapter 1 for an additional recent challenge to the Youth Criminal Justice Act that suggests the ongoing presence of the victimizer perspective of young offenders).

Reflecting on Victim Contests Within Canadian Youth Justice Debates

Identifying young offender debates as a victim contest (Holstein and Miller, 1997) serves to center attention on how these debates render young offender culpability as ambiguous (Spencer, 2005). The question that Canadian Alliance (formerly Reform) MP Larry Spencer asked is arguably the most philosophical during these debates: “With whom are we dealing? It sounds like a very simple question because obviously we know we are dealing with youth under 18 years of age. ...[But] what does that mean? Who are these people” (HOC, March 26, 2001)? In this chapter I demonstrated how victim contests serve as an interpretive lens through which young offender behaviour is

interpreted, revealing the varying perspectives that drive youth crime debates. During the Young Offenders Act period, these debates took place within the context of the new legalistic paradigm governing young offenders; a paradigm combined with a persevering welfare approach. For those who viewed young offenders as victimizers, this paradigm served to focus the lens upon young offenders as fully and legally responsible for their crimes. Others criticized this legalistic view as one of “process without principles” (Doob and Cesaroni, 2004: 190), ignoring how young offenders themselves were being victimized given the presence of social forces out of their control. The legalistic emphasis of the youth law was also not appropriate, these claims-makers maintained, given evidence for the limited maturity of youth. From this perspective young offenders, due to their young age, should not be held fully culpable for their crimes. However, while the young age of the offender became a point of saliency for these claims-makers, age was largely irrelevant for those who viewed young offenders as victimizers. For these claims-makers, the gravity of the offence itself was proof that the offender should be considered an adult.

To legitimate their opposing views, each side engaged in similar strategies designed as responses to their opponents. Victim contests have remained contentious because of the application of language which has acted to reinforce either a victim or victimizer perspective of young offenders. Adjectives such as “monster”, “thug” and “predator” have served to underscore their malevolence, for those who viewed young offenders as victimizers. Critics of this view have often repeated the use of the word “child”, sometimes in couplets such as “children are children” to draw attention to the innocence of the offender. The use of language has thus served to elicit emotions of either condemnation or sympathy towards young offenders.

Both sides also illustrated their point by expounding upon either the details of the offence, or details regarding the surrounding circumstances of the offender. If young offenders are victimizers, their “horrific” crimes provide evidence of a brutal intentionality and maturity comparable to the most sophisticated and serious adult offenders. If young offenders are victims, the deprivations engendered by social forces out of their control are focused upon to interpret their offending behavior as an aberration of otherwise normal and still-maturing youth. Emotions directed towards either condemnation of the individual young offender or sympathy towards the offender’s circumstances have served to reinforce these positions.

Both sides have also drawn upon theories from psychology and physiology in order to legitimate their positions. Those who view young offenders as victimizers have drawn upon such knowledge bases in order to reject popular notions of adolescence as a period of limited maturity and development. Studies which have suggested that some youth are ‘hard wired’ for deviancy have been highlighted to suggest that such incorrigible youth were clearly victimizers from birth. While physiological theories have also been invoked by those who have viewed young offenders as victims, they were closely tethered to social factors which, they argued, negatively impacted upon physiological features such as brain development. Psychological theories which supported these claims-makers’ view of adolescence as a time of limited maturity were also highlighted.

Since the implementation of the Young Offenders Act, claims-makers have pointed to young offenders who are openly mocking the leniency of the youth law, especially youth under 12 who are under the minimum age set by the legislation. Such mockery has been interpreted as evidence for a growing maturity and malevolence from the perspective of those who see these youth as victimizers. Opponents of this view have suggested that while young offenders present themselves as victimizers, this is a charade which thinly masks the reality of their naiveté and relative innocence. These youth are viewed as victims regardless of the severity of the offence or the espousals of young offenders. For the opponents of this view, the presence of serious violent crimes, as well as open mockery of the youth system by young offenders has always been characterized as the actions of young victimizers.

Thus, victim contests have acted as a lens through which youth crime has been interpreted; a lens that has elicited and channeled emotions of sympathy or condemnation towards young offenders. It is these opposing interpretations that, while employing similar strategies and invoking similar sources of legitimation, remain in contention to the present day. Given these interpretations, along with the knowledge bases drawn upon to legitimate each respectively, young offender behaviour was variably interpreted by both sides of the victim contest.

In chapter 5 I suggest that these victim contests are directly related to positions over the *extent and severity* of youth crime. Here too, victim contests act as a lens dictating the interpretation of youth crime statistics, as well as notions that the quality of youth crime is becoming more serious. In chapter 6 I explore how the hybridized youth justice context under the Young Offenders Act complicated claims in terms of *solutions* to youth crime, especially with respect to discourses of rehabilitation. I suggest that these debates point to broader questions regarding persistent ambiguities with respect to the role of the Canadian youth justice system. However in light of the data explored in this chapter, I argue that any solutions offered to youth crime, whether they are legislative amendments or the implementation of policies and practices, will remain actively contested until the underlying contests over youth identity are, if not entirely resolved, at least assuaged.

Endnotes

1 – In a statement to the press quoted within the same article, however, his brother argued that “talking to [his brother], it is hard to take seriously the claim that this is an adult” (*Globe and Mail*, February 12, 1983).

2 – A related issue here regards how politicians respond to their constituents. Liberal politicians were arguably more careful in responding to petitions to change the Young Offenders Act than Reform Party MPs. Some Reform MPs felt that they were simply representing the concerns of their constituents, while some Liberals were concerned that the population represented by those who signed petitions did not necessarily reflect the views of Canadians as whole. A senior Liberal official stated that “the Reform party placed great stock on referenda, on petitions – we believe that the best expression of public opinion is in democratic elections, and running on a platform, and saying what you believe and asking for the public’s support” (Personal Communication, March 18, 2008).

3 – While reference to fetal alcohol syndrome and other social and psychological deprivations was sometimes made by those who suggested a severe offence merits severe sanctions, they used the evidence of these deprivations and circumstances to suggest that institutionalization is still the only response available, given that the role of the criminal justice system is to sanction behaviour, not address underlying contingencies and deprivations.

4 – However, there have been recent legal challenges to the Youth Criminal Justice Act which have led to a recent Supreme Court of Canada ruling, reversing a provision regarding the transfer of young offenders to adult court (see chapter 1).

5 – Madden’s identity was not protected after his case was sent to adult court.

CHAPTER 5: Questioning the Severity of Youth Crime

Headline: “No real rise found in serious violence by young people” (*Globe and Mail*, February 1, 1995)

Headline: “Extreme violence by teens rising” (*Globe and Mail* April 7, 1995)

Introduction: Victim Contests, Stat Wars, and Emotion

In this chapter I explore debates over the extent and seriousness of youth crime in Canada. In the previous chapter I characterized debates over youth crime as marked by ongoing contention over the identity and culpability of young offenders. Spencer (2005: 55) argues that this contention acts to render youth culpability ambiguous, given contrasting views of young offenders either as “cold-blooded, calculating predators, incapable of remorse (and) on the other hand... (as) innocent victims of the social conditions that had robbed them of youthful innocence”.

This chapter extends my analysis by exploring how those who view young offenders as victims or victimizers characterize the extent and severity of the social problem of youth crime in Canada. The extent and severity of youth crime is often gauged through statistics; thus to a great extent, I pay attention to how statistics are employed by claims-makers on both sides of the debate. I am not concerned with the statistical analysis of youth crime per se, but with the part that debate over statistics plays in establishing young offenders as victims or victimizers. Debates over youth crime severity are related to questions regarding who young offenders are. I am concerned with both *what* claims are being made regarding the extent and severity of youth crime, as well as analyzing the strategies involved in *how* these claims-makers legitimate their positions.

Sociologists have long been interested in debates over statistics. Kitsuse and Cicourel (1963) rejected the concerns of ‘normative’ sociology over gauging the reality of social problems through the assessment of statistical data. They argue that

the question to be asked is not about the ‘appropriateness’ of the statistics, but about the definitions incorporated in the categories applied by the personnel of the rate-producing social system to identify, classify, and record behavior as deviant; to reject these statistics as ‘unreliable’ because they fail to record the ‘actual’ rate of deviant behavior assumes that certain behavior is always deviant independent of social actions which define it as deviant (1963: 136).

While Kitsuse and Cicourel were more concerned here with how agents of social control, such as police officers, produced statistics, constructionists have more recently treated debates over the legitimacy of statistics as “stat wars” (Best, 2001: 129), examining how such debates are themselves “products of social activity” (2001: 27). Best has suggested that statistics are used by “problem promoters” (2001: 16) as “ammunition” (2001: 18) either to draw attention to or away from a social problem. “Big numbers” (2001: 17)

point to serious threats that the public, who “usually treat statistics as facts” (2001: 19), come to believe and leads them to conclude that a social problem is serious and possibly out of control. Best notes that it is important to remember that “stat wars ...[often] are only a small part of a long-standing dispute over some broader social issue” (2001: 132), and that “even when it is possible to clarify a specific statistical disagreement, that clarification will not resolve the larger debate about the broader social issue; statistics in and of themselves cannot resolve these debates” (2001: 152). Stat wars over youth crime underscore this observation, given ongoing victim contests (Holstein and Miller, 1997) characterized by young offenders’ ambiguous culpability (Spencer, 2005; see chapter 4).

I contribute theoretically to the notion of ‘stat wars’ in relation to youth crime debates by demonstrating that both ‘big numbers’ *and* ‘small numbers’ are often invoked through the same strategies employed by those on opposite sides of the debate. This suggests that the salient concept for the interpretation of statistical debates over youth crime is the underlying meanings associated with youth identity and culpability; meanings which augment the *interpretation* of youth crime figures. Youth crime stat wars also, albeit more implicitly, debate whether or not emotional responses to youth violence are legitimate in the face of statistical evidence.

Drawing on Loseke’s (2003) linkage of victimology with emotional responses (see chapter 4), I make further connections between victim contests and stat wars, suggesting that those who view young offenders as victims often point to ‘sobering’ statistics demonstrating low youth crime rates, while those who view young offenders as victimizers draw attention to emotionally-infused evidence regarding the quality of youth violence that is often presented as a statistical blindspot. I demonstrate that ongoing debates during the 1990s and into the 21st century leave the ‘true’ condition of youth crime unresolved. I argue that this is not solely due to an inability to agree on statistics, but to an inability to come to terms with questions about who young offenders are – victims or victimizers.

In two substantive sections, I analyze these debates in detail, with a focus first on debates during the 1990s and early 21st century under the Young Offenders Act, followed by the period after the implementation of the Youth Criminal Justice Act in 2003 to the present. Statistical debates regarding youth crime trends did not emerge in earnest until the 1990s, during which time federal youth crime statistics began to be more carefully tracked. While there were references during debates in the 1990s to youth crime statistics collected from the 1980s, comparisons of statistical trends between decades was deemed problematic by some analysts.¹ Ontario, for instance, did not report crime statistics by age until 1991-1992 (*Globe and Mail*, April 21, 1995). This was also likely due to the fact that crime statistics were not captured by age by Uniform Crime Reports until the late 1980s (Carrington, 1998). This changed during the 1990s, during which time what youth crime statistics demonstrated, and what such statistics failed to capture, began to be widely debated.

Stat Wars Under the Young Offenders Act (1990s – 2003)

In this section, I track debates over youth crime severity, first from those who argued that youth crime was worsening, followed by the claims of those who argued that youth crime levels were remaining low.

“Youth Crime is Worsening”

Those who advocated that youth crime was worsening employed a number of strategies to underscore their arguments. (1) They presented statistical trends which showed ‘big numbers’ in order to highlight increases in youth crime, including among female adolescents; (2) They rejected statistical trends demonstrating falling rates of youth crime by claiming that such figures were masking an increasingly serious *quality* of youth offending, a quality being observed on the ‘front lines’; (3) Fear over youth crime, from this perspective, was a warranted and justified reaction. Politicians who took up these arguments suggested that they were not fearmongering but simply representing the reality of worsening youth crime that their constituents were witnessing.

Claims-makers who viewed young offenders as victimizers often referred to ‘big numbers’ (Best, 2001) to demonstrate that youth crime was spiralling out of control. Many of these claims-makers argued that the Young Offenders Act was treating young offenders too leniently, and that rising crime figures demonstrated their incorrigibility. One *Alberta Report* article listed several youth crime statistics to argue that “the total number of youths charged with murder, manslaughter, attempted murder, sexual assault, aggravated assault, robbery, weapons offences or minor assaults in 1992 was 20,033, versus just 9,275 six years earlier” (*Alberta Report*, May 9, 1994). The paper did not attribute the rise to shifts in demography. “Since the introduction of the [Young Offenders Act],” the article stated, “the percentage of all crime committed by youths has risen out of proportion to their share of the population. ...In 1986, 12- to 17-year-olds accounted for 8.7% of Canadians and committed 10.5% of all crimes. By 1992 they made up just 8.0% of the population, but committed 13.7% of the crime”. These statistics indicated, according to the article, that “despite official denials, the [Young Offenders Act] has had a profound impact on youth crime, especially the violent kind.” The ‘official denials’ were coming from opponents who argued that elevated youth crime rates did not reflect a ‘real’ rise in youth crime. For those who viewed young offenders as victimizers, however, such ‘denials’ flew in the face of the evidence.

Within Parliamentary debates, Reform Party politicians made similar statements. Reform Party MP Myron Thompson argued that “in 1984 there were 4,000 youth crimes reported in Canada. In 1994 there were 21,000. This is a 187 per cent increase since the implementation of the Young Offenders Act. Obviously it is not working. Every Canadian knows it is not working” (House of Commons [herein HOC], June 4, 1996). Reform Party MPs criticized the concerns of those who viewed young offenders as victims; they characterized them as “the bleeding hearts of Canada”, who “tell us that soft love works” despite the fact that “violent offences by youth are up 365%” (Darrel Stinson, HOC, September 25, 2000). They often cited statistics from organizations that supported their view that youth crime was rising out of control, while at the same time rejecting others who cited competing statistical trends from other organizations. For

example, during an exchange between Reform Party MP Randy White and Liberal Party MP Warren Allmand, White criticized Allmand's highlighting of relatively low youth crime statistics from the John Howard Society, an organization that takes the view that serious youth crime is a relative anomaly and often presents crime statistics to support this view (John Howard Society, 1995, 2000). White stated that he preferred, instead, "to quote a few items from Victims of Violence", a victim's rights organization, who White quotes as arguing that

youth crime is up 117 per cent since the Young Offenders Act took effect in 1984: 25 youth committed first degree murder in 1990, 23 youth committed second degree murder in 1990 and 6 youth committed manslaughter in 1990. I suspect the member [Allmand] would say that is not very many. However the fact is that there are strings of victims in the wake of what is going on here. (HOC, September 25, 2000)

White's statement is instructive for two reasons. First, it demonstrates how advocates draw from sources which serve to legitimate their preexisting conception of young offenders as either victims or victimizers. White draws upon the youth crime trends quoted by Victims of Violence, an organization that advocates on behalf of 'victims' who have suffered from youth 'victimizers'. He does so not only in order to demonstrate elevated youth crime rates, but to delegitimize the statistical trends quoted by his party's opponents. Second, White's statement, anticipating Allmand's dismissal of the Victims of Violence statistics, suggests a way in which advocates in these debates are aware of their opponent's views and attempt to deflect them; in this case by drawing attention to the "fact" that there are "victims" that are concretely affected by these youth crimes. Belittling the statistics, from this perspective, belittles the victims of serious youth crime, however few in number they may be, and reinforces the view of young offenders as victimizers.

Rising youth crime rates were also identified among specific sub-groups. For example, claims about rising youth crime figures among *female* young offenders also became more prominent in the late 1990s. One *Alberta Report* article drew on statistics that showed, for instance, that the number of "teenage girls charged with violent crime has risen 300% in the last decade" (*Alberta Report*, September 1, 1997). Similar concerns were brought upon during Parliamentary debates. During an exchange within Senate Justice Committee hearings on the Young Offenders Act, Senator Joan Fraser asked Roy Jones, Director of the Canadian Centre for Justice Statistics at Statistics Canada, his impression of the "data relating to gender", noting "that the number of girls charged with violent offences has risen amazingly in the past 15 years" (Standing Senate Committee on Legal and Constitutional Affairs [herein SSCLCA], October 16, 2001). "Is there a qualitative difference between the violent offences committed by girls and the violent offences committed by boys," she asked? Jones responded that "the distribution is under the violent category, which is a bit of an abstract category in the first instance. The distribution is somewhat different for girls under the age of 17. There is a greater proportion of common assault, but that still leaves a fair proportion of aggravated

assaults, assaults with weapon and robberies for young women”. Fraser responded, “so these are real violent offences?” “Exactly,” Jones answered (see chapter 4 for examples of the characterizations of female young offenders).

This exchange indicates a quest to get at the reality, the qualitative factors behind youth crime statistics, especially with respect to ‘novel’ forms of youth violence emanating from female youth. Fraser’s concern for the reality of the statistical trends in female youth crime rates suggests the tensions that exist over the multiple interpretations of youth crime statistics. Statistics may appear to be rational, scientific assessments which neutrally gauge a social problem. However those who view young offenders as victimizers often draw on ‘big numbers’ indicating elevated youth crime trends in order to elicit sympathy towards the victims of violent youth crime; sympathy which underscores the young offender as victimizer, and legitimates public outcry (see below). Emotional responses, for those who view young offenders as victimizers, are legitimate reactions to worsening youth crime; yet such responses are evoked by drawing on the legitimacy offered by the rationality of ‘big numbers’.

Another strategy involved rejecting the numbers themselves, especially those that demonstrated declining youth crime. Claims-makers who employed this strategy suggested that such numbers masked an increasingly serious *quality* of youth offending. What is “more important” to consider is “what the numbers don’t show”, argued Priscilla de Villiers, a victims-rights advocate and founder of the organization CAVEAT (Canadians Against Violence Everywhere Advocating Its Termination). She cited a 1987 Statistics Canada study which stated that “just 31% of violent crime is reported”. This, she argued, explains the “total outrage in the public” (*Globe and Mail*, August 31, 1993). Victim’s advocates, speaking on behalf of victim’s rights organizations, often felt that, as front-line workers, they were witnessing youth crime trends that were not being captured by the numbers. Steve Sullivan, director of research for Victims of Violence said “Statistics? Whatever you want to do with them, you can do with them. But as an organization, we actually speak with the people who are affected by these things. I think you get a different perspective from that” (*Globe and Mail*, August 31, 1993).

Victim’s-rights advocates also suggested that declining rates of youth crime were a specious product of counting practices, and could not be relied upon. Chris Simmonds, president of British Columbia’s CAVEAT branch, reacted strongly against those who pointed to declining crime statistics: “I really don’t believe it” he stated, offering reasons why: “police officers often investigate only the most serious crimes, thanks to chronic understaffing; advances in medicine mean fewer victims die; people don’t report assaults as much as they used to; and whatever the crime rate, the raw numbers keep going up” (*Globe and Mail*, March 23, 1996). Simmonds’ comment is very similar to opponents of this view, who argue that social practices used to collect statistics artificially *raise* the rates (see below). Simmonds, in contrast, referred to social practices which affect statistics in order to suggest the opposite: that ‘actual’ crime was rising.

Other victims-rights advocates complemented this view by pointing to the effects of diversionary initiatives ushered in under the Young Offenders Act (see chapter 1). Programs such as ‘alternative measures’ allowed youth to avoid formal charges in exchange for writing a letter of apology and/or performing community service hours, or

other tasks. Steve Sullivan, a researcher for the Canadian Resource Centre for Victims of Crime, suggested that these programs act to create statistics which “aren’t really a true reflection of violent youth crime. ...There’s lots still going on” that are being masked due to youth being diverted from the system (*Alberta Report*, September 1, 1997).

A similar point was made by David Griffin, an Executive Officer with the Canadian Police Association, who presented to the Senate Justice Committee the Canadian Police Association’s view, which he stated was “extremely concerned by alarming increases in serious youth crimes” (SSCLCA, October 17, 2001). He also pointed to the use of informal diversionary programs, which he argued reduce the statistics on youth charged; for example, that “the rate of [youth] property crime charges has decreased by over 40 per cent in the last decade”. Griffin argued “this does not ...mean that less crime has been committed, just that fewer charges have been laid”. One Senator, Jerahmiel Grafstein, questioned Griffin on this conclusion, and expressed concern that the “public perception, notwithstanding statistics,” is that “we are not treating young offenders appropriately”. Griffin responded by maintaining the Canadian Police Association’s view that youth “crimes are going up” given that “police response to the crime” is the “primary driver behind the flattening, or in some cases reduction, of the charge rates”. He added that “I am representing the officers on the front line. ...I also fear that the way we are looking at this model ...we will pat ourselves on the back because youth crime has gone down. We may have more crime, but fewer charges. I would argue that is the situation now”.

Reform Party politicians often took up these views in statements during Parliamentary debates. Reform Party MP Jim Gouk referred, sarcastically, to statistics as “wonderful,” stating that “statistics say youth crime is down. Youth crime is not down at all. Convictions on youth crime and prosecution of youth crime is down, but in terms of actual problems out there we still have a lot of problems” (HOC, May 5, 1999). Reform Party MP John Reynolds suggested that “low” youth crime statistics were masking trends in violent offending visible only ‘on the ground’:

if you talk to police at the street level, the reason some of those statistics are low is that a lot of crimes aren’t reported any more. ...We can all make statistics look good, but if you go out to talk to people in small towns ...talk about the level of crime, Powell River is up 45% this year over last year because of one thing, and that’s a lack of police. They’ve lost a lot of numbers, and that’s unfortunate. (Standing Committee on Justice and Human Rights [herein SCJHR], February 22, 2000)

For these advocates, *reductions* in the levels of youth crime figures masked an increasingly serious quality of youth violence; a quality that was evident given the experiences of those who witnessed youth crime first-hand.

There was also a strategy for responding to the argument that the manner in which youth crime statistics are tabulated acted to *exaggerate* youth crime levels that were in reality not as high (see below). While opponents suggested that statistics which showed, for instance, rising levels of violence in school were the product of ‘zero tolerance’

school initiatives (whereby deviant behaviour that was informally dealt with in the past receives more formal attention), one *Alberta Report* article asked

might not the larger number of [youth] charges be due to the wider availability of evidence, which in turn is due to a wider participation of youngsters in crime? A growing tendency to run in gangs, for instance? And are the teachers and principals now calling police perhaps because they do not relish getting hit over the head with an axe...? Teachers, according to the Alberta Teachers' Association, are increasingly reporting physical assault by students. Could this not, just maybe, explain their readiness to call police? (*Alberta Report*, May 23, 1994)

Instead of dismissing youth crime statistics as an issue of categorization, this statement suggests (with a note of sarcasm: "perhaps", "just maybe") that increases in charge rates reflected a very *real* trend in serious youth offending; a reality which *victims of youth crime* were facing. Emotions of sympathy were implicitly directed here towards the victims of youth crime, simultaneously underscoring the condemnation of young offenders.

The construction of young offenders as victimizers and the characterizations of their offences as becoming more serious in quantity and quality appeared to have influenced public attitudes. A national poll conducted by the Angus Reid group indicated that "most Canadians, ...especially those in Western Canada ...believe crime in their communities is on the rise" (*Globe and Mail*, July 28, 1997). The poll found that "seventy-two per cent [of respondents] said they have little or no confidence in the Young Offenders Act or the parole system". Baron and Hartnagel (1996) also found evidence for largely punitive views on youth crime expressed by Winnipeg citizens, especially those with "conservative" social values.

Those who promoted the view of youth as victimizers suggested that such beliefs could not be considered an 'over reaction' or 'panic', since public outrage was a reaction to a real and pressing social problem. "It's a mistake to say people are overreacting," victims-advocate Priscilla de Villiers argued, "nor is public concern about youth crime merely hysteria based on media over-reporting. The media have always reported murders and if there seem [sic] to be more violent youth crimes now, the impression is real" (*Alberta Report*, June 17, 1996). Likewise, Inspector Gary Bass, head of the Royal Canadian Mounted Police's serious-crime division in British Columbia, argued "I think the public perception is dead on. I don't know how any statistician could say the trend is down" (*Globe and Mail*, March 23, 1996). These responses indicate an awareness of critics, such as those who accuse the media of sensationalizing youth crime. The expert status of statisticians is also called into question, in line with the view that public outrage over youth crime is appropriate since it matches the reality. One *Alberta Report* article pointed to the way in which "Canadian crime statistics are often used to confuse" (*Alberta Report*, September 13, 1993), outlining the competing points of view with respect to crime statistics. "Whichever side is correct," the article argued, "the Canadian public believe crime is on the increase, dramatically, and they want something done

about it". The article did not argue that such a belief should be challenged, suggesting instead that these beliefs were a realistic reaction to youth crime escalation.

Reform Party politicians concurred with this view during Parliamentary debates, arguing that youth crime "is not a panic issue. It is just that Canadians are demanding changes" (Jim Abbott, HOC, May 12, 1994). Reform Party MP Jan Brown defended her party's support of its constituents' outcries against the Young Offenders Act: "Those of us who herald this debate have been called alarmists by many people in this House today and I wish to dispel that misunderstanding. I want to bring the debate even a little closer to home with some chilling statistics..." (HOC, May 12, 1994). Other Reform Party politicians, such as Jack Ramsay, pointed not to statistics but to the experiences of citizens confronting youth crime. Citing an editorial in the *Montreal Gazette*, he discussed the state of mind of Montreal teachers whom he argued were living in a state of fear over youth crime. "Teachers have been punched, kicked, choked, bitten and scratched, had chairs, bags and books thrown at them. There is a youth crime problem in Montreal, certainly in this school", he said (HOC, May 26, 1998). Reform Party leader Preston Manning also pointed to "an increasing series of incidents of violent [youth] crimes all over the place, [with] no rhyme nor reason to them," suggesting "I do think there's public fear – fear for safety" (*Globe and Mail*, May 12, 1994).

Fear of crime by the public indicated, for these advocates, the reality of increasingly severe youth offending. Emotional responses by the public were legitimated by the view of young offenders as victimizers. Such responses were represented, moreover, as legitimate given witnesses with 'first-hand experience' of the increasingly severe *quality* of youth crime; a quality not captured by the statistical trends cited by their opponents.

"Youth Crime is Not Worsening"

Those who advocated that youth crime was *not* worsening employed strategies similar to their opponents. (1) They presented statistical trends which showed 'small numbers' in order to highlight low or decreasing youth crime trends; (2) They rejected statistical trends demonstrating rising rates of youth crime by claiming that such figures were artificially exaggerated; this argument also served to demonstrate that *female* youth crime was not out of control; (3) Fear over youth crime, from this perspective, was an unwarranted, irrational reaction promulgated through media sensationalism as well as politicians fueling the fire for political gain.

These advocates attempted to delegitimize the arguments made by their opponents by pointing to statistics which demonstrated decreasing rates of youth crime. These statistical trends, they suggested, offered a sober and rational view of the social problem, in contrast to 'panicked' responses to youth crime. Such responses were often mocked. For example, one article pointed to a Statistics Canada report which suggested that "youth crime was reported to have fallen in this, the Year of the Killer Kids" (*Globe and Mail*, August 9, 1995). One *Globe and Mail* article argued that "youth crime is not, itself, all that widespread and is actually declining" (*Globe and Mail*, December 17, 1996). Criminologists were often cited in support of sober statistical assessments of

youth crime. University of Toronto criminologist Anthony Doob, who specializes in Canadian youth crime and justice, made frequent statements that youth crime rates were decreasing, not increasing. In one article he stated that “in 1994-95, youth courts heard 109,743 cases, down 5 per cent from the previous year” (*Globe and Mail*, March 29, 1996). He also noted decreases in property offences and violent crimes. These figures do not indicate a “significant trend”, he argued, but rather that “some things don’t change, or at least they don’t get worse”.

Representing the position of Québec, Carole Brosseau, a lawyer with the Barreau du Québec (The Québec Bar), told the Parliamentary Senate Justice Committee that “youth crime had not increased very much; it has remained stable” within Québec, justifying Québec’s arguably unique approach to youth justice (Standing Committee on Justice and Legal Affairs [herein SCJLA], September 23, 1996; see also chapter 6 regarding Québec’s position on youth justice solutions). Likewise, Bloc Québécois MP Michel Bellehumeur drew attention to statistics which indicated that “since peaking in 1995, the charge rate for violent crimes amongst youth has decreased by 3.2%” (SCJHR, April 12, 2000). He added that “while there was an increase in adult crime, as of 1995, there was a 3.2% decrease in youth crime. These are not my statistics, but statistics provided by the Minister of Justice”. He concluded that

If we focus solely on Québec’s statistics, it becomes apparent that this province has the lowest [youth] crime rate in Canada. Is that not a funny coincidence? This is the situation in the province where the Young Offenders Act is being applied. Funny that, in the provinces where the legislation is not being applied, or is being applied poorly or very little, the crime rate is higher! (SCJHR, April 12, 2000).

In a similar statement made two months later, Bellehumeur argued that he was “not just talking through [his] hat” (HOC, June 13, 2000) in referring to lower youth crime statistics within Québec. “We have the statistics to prove it, the same Canadian government statistics the minister is using to do her sell job, except that she makes a selective use of statistics”. Bellehumeur’s statement suggests that the same statistical sources are often cited by various parties with varying interpretations with respect to what they show about youth crime. For Québec officials, low rates of youth crime in their province were to be taken at face value, providing evidence for Québec’s distinct approach to youth justice.

Just as opponents of these advocates disputed the accuracy of low youth crime statistics, suggesting that they did not capture the extent and quality of the youth crime problem, these advocates also raised questions about statistical accuracy. They argued, however, that spikes in youth crime numbers *exaggerated* the extent of the problem. They often pointed to the effects of ‘net-widening’ to suggest that statistics which showed rising levels of youth crime could not be trusted. Net-widening refers to a rise in statistical data, related not to a substantive change in the behaviour being captured, but to a change in how behaviour is being counted. The counting practices act to artificially inflate the numbers, suggesting a real rise in criminal behaviour, when, it is argued, no

such rise has actually occurred. By pointing to net-widening as a factor, the argument that rising *rates* of youth crime were reflective of the *reality* was rejected.

Some pointed to the fact that after the Young Offenders Act's implementation in Ontario, the crimes of 16- and 17-year olds began to count as youth crimes (before which they were counted as adults). In 1995 the Canadian Centre for Justice Statistics explained a rise of 8% in violent youth crime statistics by suggesting that it "was most likely due to an increased number of court cases dealt with under the formal youth justice system; cases which were largely informally dealt with before" (*Globe and Mail*, February 1, 1995). Such increases led Toronto lawyer Eric Roher to argue that youth crime "figures are deceiving" (*Globe and Mail*, October 4, 1997), as "the rise in the youth crime rate was not a simple increase but, in part, the result of a change in categorization". Similarly, justice reporter Sean Fine commented that some youth crime statistics indicated that "the crime rate among youth grew 22 per cent from 1986 to 1992, while the adult rate grew [only] about 10 per cent; [however,] ...some wonder how much of that depends on increased reporting of such offences as school-yard fights or sex assaults" (*Globe and Mail*, April 2, 1994). Kim Pate, Executive Assistant of the Canadian Association of Elizabeth Fry Societies, argued that the available youth crime statistics did not demonstrate a "vastly different scenario from what we saw even twenty years ago. What we are seeing is more publicizing of it" (SCJLA, April 30, 1996). She added that

we must remember that it was only with the advent of the Young Offenders Act that we saw the publication of anything around juvenile justice issues, because prior to that time the media wasn't even allowed in a courtroom. They were completely in camera hearings. So suddenly, with the advent of the Young Offenders Act, we have the creation of juvenile crime, if you will, and increased public focus.

Within Parliamentary debates, Liberal politicians often criticized the Reform Party for presenting statistics "indicating that youth crime is increasing", suggesting that such references "are being used to distort reality" (Morris Bodnar, HOC, February 20, 1995). Liberal Party MP Warren Allmand pointed to the "phenomenon ...taking place which has led to an appearance of increase in statistics. That is what might be called the zero tolerance approach in many school board districts". Allmand's reference was to the policy of some schools to more readily inform local policing agencies about problem students, resulting in more youth crime being detected which would have gone unreported beforehand. Liberal MP Morris Bodnar's statement explicates this position:

When two young people are fighting at school, the matter is not resolved by the young people going to the principal's office or calling the parents. The matter is resolved by calling the police and charges are laid. That is how statistics get distorted and that is how statistics show that those crimes have gone up. It has not happened. That is the problem. (HOC, February 20, 1995)

Allan Rock, then Minister of Justice and Attorney General of Canada, made a similar point, arguing that “one should approach [rising youth crime] statistics with some caution:

yes, youth crime is up and, most troubling of all, violent youth crime is up. However, three-quarters of so-called violent youth crime are level one common assaults, pushing and shoving and scuffling in the schoolyard which 15 or 20 years ago would never have come to the attention of police. Because of the change in the system, the reporting practices and zero tolerance they are turning up as statistics. (HOC, February 20, 1995)

By underscoring the ways in which statistical data on youth crime is collected, these advocates argued that ‘big numbers’ were simply the byproducts of statistical collection techniques and were not real.

This strategy was also employed in order to deflect concern from the notion that *female* youth crime was on the rise. American criminologist James Q. Wilson argued that “about 6 percent” of teenage boys, across all societies, committed “half or more of all serious crime by young people”, while “teen-aged girls still remain fairly law-abiding” (*Globe and Mail*, December 17, 1996). During a Senate Justice Committee hearing Kim Pate, Executive Assistant of the Canadian Association of Elizabeth Fry Societies, argued that while she concurred that there had been increases in the “percentage representation of young women who commit violent offences and offences,” (SSCLCA, October 31, 2001), this representation did not correspond to “increases in real numbers”. Rather, she explained, they were increases “based on reporting data, policing data, prosecutorial data and, obviously, sentencing data”. She concluded that her organization was “not seeing real increases in the numbers of young women who are actually committing offences”. Based upon statistical data, from this perspective young women were not victimizers, and to suggest that they were needlessly exaggerated the social problem.

Such strategies were geared to tease out erroneous perceptions about youth crime from the reality, which, from this perspective, was that youth crime was not a social problem that warranted public fear or concern. Some of the senators within Parliamentary Justice Committee hearings advocated strongly for this position while engaging directly with witnesses with opposing views. An extended example is provided as an illustration, highlighting an exchange between Senator Jerahmiel Grafstein and David Young, Attorney General and Minister Responsible for Native Affairs (SSCLCA, October 31, 2001). Young stated his position that violent youth offences had increased, including a “dramatic 81 per cent rise” among female young offenders between 1989 and 1999”. Senator Grafstein challenged Young on these figures, arguing that

we have heard that there is little connection between perception and reality, and we are here to deal with reality. Let me give you the basics of that reality. In the media and in the public’s mind there is what I call ‘spike attitudes’ or ‘wedge attitudes’ about youth crime. ...When I look at the statistics ...I gather that youth crime is down over the last 10 years.

Young responded by suggesting that “we can probably agree that you and I could debate statistics for a considerable period of time and not agree”. Referring to recent witnesses, such as victims’-rights advocates who were “living the reality”, Young argued that “it is not a perception”. Senator Grafstein once again strongly disagreed with Young, to which Young responded, “I appreciate that is your position”. The final retort was the Senator’s: “It is not my position; it is the evidence”.

Senator Grafstein’s statement suggests the importance of teasing out reality from ‘erroneous’ perception. The exchange also places an interesting twist upon the senator’s observation regarding ‘wedge attitudes’. He seems to have made his mind up in advance that female youth crime was not out of control, and when challenged on this view given competing statistics, his own ‘wedge attitude’ caused him to dismiss the evidence presented by David Young. Such wedge attitudes are what drives victim contests over youth crime: preconceived characterizations of young offenders that act as an interpretive lens through which youth crime statistics are interpreted. What is most relevant to these debates is not the numbers themselves, but the positions taken with respect to young offender identity and culpability.

Given their view that youth crime levels were low and that artificial inflation of statistical trends was a frequent cause of distorted public perceptions, these advocates argued that public fear was unwarranted. Responding to the concerns of Reform Party MP Myron Thompson that the public was becoming increasingly fearful of youth crime, federal Justice Minister Allan Rock sympathized, stating “so far as fear is concerned, I am aware of the fear to which the hon. member refers. One thing we must be careful not to do is feed into or amplify those fears if they are disproportionate to the reality” (HOC, March 17, 1994). Criminologists made similar statements during Senate Justice Committee hearings. Université de Montréal Criminologist Jean Trépanier argued that “there is no cause for alarm as regards the youth crime rate. According to Statistics Canada, there has been a reduction in youth crime since 1992, and in violent crime since 1995. The homicide rate has been see-sawing up and down for 30 years...” (SSCLCA, October 31, 2001). During a Senate Justice Committee hearing, Senator Grafstein pointed to statistical drops in youth crime (referring to “10 years of relative calm”) to support his view that fear of youth crime was unjustified:

Where is the clear and present danger to our society? I do not see it in these numbers, except for some isolated problems that we have never addressed: how to deal with Aboriginal youth in depressed and deprived circumstances. However, I look at these numbers and I cannot help but wonder where the clear and present danger for legislation is? I do not see it. (SSCLCA, October 16, 2001)

Soon after the turn of the 21st century, one *Globe and Mail* article highlighted a Statistics Canada report which showed that Canada’s overall crime rate had dropped in 1999 “for the eighth consecutive year” (*Globe and Mail*, July 19, 2000) in all of the six largest metropolitan areas. The “national rate of youth crime” also dropped, the article reported, “despite the widespread perception that the Young Offenders Act allows it to flourish. If

nothing else, the Statscan figures invite sober, dispassionate reflection on the precise nature of Canada's [youth] crime problems, and what should be done to tackle them". These statements suggest the importance, from this perspective, of rational, "dispassionate" assessment of youth crime rates. Statistics, it was argued, offered a 'sober' knowledge source in contrast to emotional reactions which exaggerated the extent and severity of the social problem.

Some also pointed to media sensationalism, given their selective presentation of statistical data and often emotionally laden editorials, as perpetuating unwarranted public fear of youth crime. In 1993, newly elected Justice Minister Pierre Blais argued that the public's concerns [regarding youth crime] were, at times, based on isolated failures: "If you have one case [of serious youth crime], then the impression out there is that everybody is killing or making aggression. If you explain that we have [many] cases ...that are working well, nobody cares about that" (*Globe and Mail*, January 27, 1993). During a Senate Justice Committee hearing, Bloc Québécois MP Michel Bellehumeur argued that, "rather than panic, we need to look at the problem of delinquency and criminal behaviour among young people in a somewhat critical way, of course, but also realistically" (SCJHR, May 2, 2000), accusing the Liberal government of being "panic stricken" and having "a responsibility to counter this perception that is distorted by sensationalistic media coverage". In an earlier statement he argued that

we must look at the [youth crime] statistics, which mirror reality back to us. We must not settle for the headlines on the front page of sensationalistic papers or their legal columns. I believe that this feeling of insecurity is magnified by the information widely disseminated by the press. Reassuring statistics are seldom published. But statistics can be reassuring and indeed they are, particularly in Québec. (HOC, May 12, 1994)

Likewise, John Howard Society Executive Director Graham Stewart suggested that "we have seen, as a phenomenon around North America and indeed the world, the general hardening of attitudes toward young people. It is probably true that they have had bad press in many respects" (SSCLCA, October 31, 2001), adding that "it is very much a question of how it is presented to the public. There are those who have an interest in alarming and frightening people. In that context, they elicit those short and immediate responses". Media sensationalism contributes, from this perspective, to the "general hardening of attitudes" towards youth, and an unwarranted view of young offenders as victimizers.

In addition to media being accused of sensationalizing youth crime rates, politicians and officials were also accused of exacerbating public fears by 'playing politics'. One *Globe and Mail* article suggested that Ontario Premier Mike Harris was "gently prodding fears about [youth] crime," (*Globe and Mail*, May 20, 1999), while another accused Toronto Police Chief Julian Fantino of "raising the alarm in Toronto" (*Globe and Mail*, January 17, 2000) over youth crime. An article, written by crime reporter Henry Hess for the *Globe and Mail*, characterized politicians and other "hucksters" as "earnest fearmongers" with respect to unjustifiably raising public fears

about youth crime. “A critical look at the facts, however, suggests that their fears are misplaced,” he argued (*Globe and Mail*, September 27, 1993). Admitting that it was “true” that the “rate of violent crime ... is rising,” he argued that “in reality, the increase is largely in misbehavior that seldom made it into the crime statistics a decade ago”.

Perhaps the most lyrical statement in line with these views was given by a *Globe and Mail* article which argued that youth crime figures “may be disturbing” but should be carefully analyzed “before sounding the alarm” (*Globe and Mail*, January 17, 2000); the article quoted Shakespeare’s warning: “or in the night, imagining some fear,/How easy is a bush suppos’d a bear!”. Strong emotional responses to youth crime, from this perspective, were a reaction to myth, not reality. Worried that opponents were fueling the fires of sensationalism, these advocates pointed to the need for sober reflection, often upon statistical evidence, in order to underscore their position that youth crime rates were not climbing out of control.

Similarly, in relation to the ongoing victim contests which persisted under the Young Offenders Act, debates over the extent and severity of youth crime persisted throughout the 1990s. The introduction of legislation to replace the Young Offenders Act in the late 1990s was an attempt to put to rest these sources of tension. Specifically, the emphasis placed upon diversionary programs for young offenders, it was hoped, would lower youth crime rates. Since statistical data capture formal processing of young offenders within the justice system, the informal channeling of large numbers of minor charges, it was hoped by legislators, might yield much lower statistical trends. This was, in fact, what happened; however, youth crime ‘stats wars’ persisted.

Stat Wars Under the Youth Criminal Justice Act (2003-Present)

While there have been very limited Parliamentary debates explicitly debating youth justice under the Youth Criminal Justice Act, there is some evidence to suggest that debate over the severity and extent of youth crime has continued. Studies on public perceptions of youth crime have continued to suggest that “the prevailing views of the public are that youth crime is rising, particularly violent youth crime, and that young offenders are handled too leniently by youth justice courts,” (*Globe and Mail*, May 17, 2008). Critics of the Youth Criminal Justice Act, who felt that young offender crime rates were escalating and becoming more severe, have continued to challenge claims that crime rates are decreasing. In 2006, Justice Minister Vic Toews responded to figures released by Statistics Canada which, a *Globe and Mail* article suggested, indicated that “the new law really is keeping young people out of jail” (*Globe and Mail*, April 1, 2006). Toews disagreed, stating that “simply because few people are being incarcerated does not mean that the system is working”. His point recalls the skepticism of earlier critics who argued that the numbers were not capturing a serious quality of youth offending. Police and “experts versed in the gang culture embedded in low-income neighbourhoods” continued to argue that lower youth crime statistics “mask a reality that is often concealed: It is not just the number of violent incidents that matters, but the type of violence and the group dynamic that often accompanies it” (*Globe and Mail*, May 17, 2008).

Those on the 'front lines' were again hailed by these advocates as witnessing, and providing evidence for, this more serious quality of youth offending. One *Globe and Mail* article discussed "several brutal" young offender "attacks" in Halifax, which led the *Halifax Chronicle Herald* to declare the problem indicative of a "Summer of Fear" (*Globe and Mail*, August 31, 2007). Dan Leger, director of news content at the *Chronicle Herald*, defended the newspaper's assertion about the rate of violent crime in the city: "I'm not surprised that the mayor's office ...and defence lawyers would say that the violent crime rate isn't that bad, but I think if you asked the people of Halifax, they'd tell you something different".

These attributions of severity were, it was argued, masked by decreasing youth crime trends. Constable Jeff Carr expressed worry "about the increasing brutality of crimes committed by young offenders. ...What concerns us is the degree of violence ...and the random acts of violence - violence for the sake of violence," he said, adding that "while the number of violent youth crimes may be dropping, they are more severe" (*Globe and Mail*, August 31, 2007).

However, opponents of these views argued that such assessments needed to be put into perspective. These critics continued to suggest that youth crime was not out of control, and that a 'panicked' reaction was unwarranted. Some responded to the concerns over Halifax's youth crime problem. Halifax Regional Police stated that "violent crime in the first half of 2007 has actually dropped" by "nearly 8 per cent" (*Globe and Mail*, August 31, 2007). Chandra Gosine, a Halifax area lawyer who works with young offenders, concurred: "there has been little noticeable change in the crime rate among people between the ages of 12 and 17".

The media's influence upon public attitudes also remained a concern. Halifax Crown attorney Gary Holt explained the 'panic' over the Halifax crimes: "the thing that happens is you'll get a series of [youth crimes] very close together, which will skew the perception of what's going on and that's what's happened here. ...I think in an analysis of the past year, compared to any other year, you wouldn't see necessarily any more violent offences" (*Globe and Mail*, August 31, 2007). One youth lawyer I spoke with, who practices under the Youth Criminal Justice Act, accused the media of spreading public fear of youth crime: "They gotta sell newspapers, and they gotta get viewers on TV, so that's the way you gotta go about it - crime sells. ...It's always been a political tool, being hard on crime" (Personal Communication, August 6, 2008). Similarly, a youth worker I interviewed, also currently working under the present law argued that

in general there [has] been a bit of hysteria around youth, and people forget that they were youth, and people forget that whole transition period and the fact that a certain level of experimentation in, maybe not deviant in the true sense of deviant, but anti-social behaviors, a certain portion of that is normative. I think people forget that. ...The media ...blows it totally out of proportion, when it's a young person. Part of it may also be ... this expectation of innocence when it comes to children, and you know, children shouldn't be engaging in these types of things... (Personal Communication, March 6, 2008)

This youth worker's statement suggests that public 'hysteria' over youth crime, however much it may be an exaggerated response, is underscored by the cultural associations linking youth to limited culpability; and that when these cultural associations are violated, public outrage is sparked.

In a response to "horrific stories" of youth crime emanating from Vancouver and Toronto, Queen's Law professor Nicholas Bala maintained that "such stories inspire fear and calls for tougher laws. But in fact, adolescents in Canada commit about one homicide in 10, about 50 homicides a year, a rate that has actually been quite stable for many years" (*Globe and Mail*, December 3, 2003). Admitting that "youth crime fascinates us and horrifies us," he asked "how could a teenager, someone still not an adult, be so brutal? What can we do to make our society safer? Won't tougher laws help protect our society? ...But public fear won't help". The 'rational' analysis of statistical trends allowed, from this perspective, a more lucid analysis of youth crime that did not allow condemnatory emotions to become attached to "brutal" qualitative descriptions of youth crimes.

The artificially spiked nature of youth crime statistics was also highlighted by those favoring 'sober' reflection on these figures under the Youth Criminal Justice Act. One *Globe and Mail* article reported that as of 2005, "the rate of criminal charges against young people is at a 10-year low, and the Youth Criminal Justice Act's emphasis on reducing the number of accused who end up in court is the reason, Statistics Canada said yesterday" (*Globe and Mail*, June 25, 2005). While highlighting a "steady drop" in property crimes among youth, however, "violent crimes — including everything from assault to homicide — rose 14 per cent between 1991-1992 and 2003-2004". Dr. Nicholas Bala commented on these figures, arguing that "this does not mean more crimes are being committed; rather, they are being reported more often. Violence that previously might have been tolerated is now resulting in charges, ...but, the most serious offences, such as homicide, have not increased in more than a decade".

Discussion: Victim Contests and Youth Crime Stat Wars

The persistence of unresolved 'stat wars' over the extent and severity of youth crime, I argue, is a product of deeper concerns regarding the identity and culpability of young offenders. Characterizing these concerns as a victim contest (Holstein and Miller, 1997; see chapter 4) allows for an examination of debates over youth crime trends that suggests why certain positions were taken in these debates. While each side often worked with the same or similar sets of numbers to support their views, and while similar strategies were used by both sides, opponents differed regarding their aims and *interpretation* of the numbers.²

Those who viewed young offenders as victims most often pointed to statistics that demonstrated youth crime rates were decreasing. They often underscored the legitimacy of the source of these statistics, which frequently came from Statistics Canada directly. While acknowledging that a minority of serious and persistent offenders required more severe youth justice responses (see chapter 6), they often debunked the argument that youth crime was out of control, and wished to dissipate public fear and panic that was,

from their perspective, an unwarranted response to an exaggerated social problem. Where crime trends did indicate a rise in youth crime, especially violent crime, they often suggested that these figures were artificially elevated given changing procedures and practices in the way youth crime was counted. The effects of 'net-widening', they argued, masked the reality of low levels of youth offending. Where new 'folk devils' (Cohen, 2002) emerged in the late 1990s, such as female young offenders, they sought to demonstrate, by pointing to statistical trends, that such groups did not justify concern. Finally, they argued that given a sober assessment of the statistical evidence, youth crime was not a social problem that should garner an alarmed and urgent serious response.

On the other hand, those who viewed young offenders as victimizers also drew from 'experts' and 'expert sources' of statistics, such as Statistics Canada, in order to highlight youth crime figures that showed elevated levels of youth crime. They suggested that youth crime was taking on more serious forms, such as serious violent offending. In response to those who pointed to statistics demonstrating that youth crime is decreasing, they often agreed that contemporary youth justice policies and procedures were informally diverting young offenders more and more, but that this was masking the reality of an increasing volume of youth crime. This could be considered a 'net-narrowing' effect, whereby *decreasing* rates of youth crime were argued to be masking an increasingly serious quality of youth offending. Claims for the emergence of new forms of youth crime, such as female youth offending, were given credence, from this perspective, through rising statistical figures as well as detailed descriptions of violent criminal acts. Public concern and fear, from this perspective, indicated a legitimate response and expressed a level of connection that the general public had to the reality of youth crime that academics and 'left wing' politicians did not possess.

The concept of victim contests, linked to stat wars also underscores how emotions are elicited and channeled with respect to assessments of the severity of youth crime. Loseke (2003: 127) has argued that "what members 'feel' is [often] judged as more important than what members 'think'". However whether or not this statement was true for an individual making claims within these debates depended on whether or not they took a view of young offenders as victims or victimizers. For those who viewed young offenders as victims, statistics offered a way to soberly assess, given long-term trends and patterns, the true extent and severity of youth crime. They suggested that to arrive at the conclusion that longitudinal rates of youth crime remained low required rational and dispassionate assessment. Fear and panic, from this perspective, were irrational and 'knee jerk' responses that led to condemnation of young offenders and to inept, often excessively punitive solutions to youth crime. However, those who viewed young offenders as victimizers felt that their concerns, which included addressing the public fear about increasingly serious youth violence, were being dismissed by opponents; opponents who were divorced from the realities being witnessed on the 'front lines' by youth justice workers and officials. From this perspective, emotional responses were legitimate and justified, while 'sober reflection' only acted to exacerbate an already out-of-control youth crime problem. Reacting to young offenders as victims only ignored the increasingly malevolent quality of youth offending being witnessed 'behind' the numbers.

The *meanings* ascribed to young offenders' criminal behaviours and the manner through which they were *interpreted* was augmented by the positions taken on young offender identity and culpability. Best (2001: 152) has observed that quoting statistical trends often does little to resolve disagreements about a social problem. I argue that within these debates these disagreements are perpetuated given entrenched notions of young offender identity and culpability; that the underlying victim contests drive, to borrow Senator Grafstein's phrase, 'wedge attitudes' between those who persist in viewing young offenders as victims or as victimizers. This wedge persists into the Youth Criminal Justice Act period of the present day.

In this chapter I link two theoretical concepts within constructionism: that of 'victim contests' (Holstein and Miller, 1990) and 'stat wars' (Best, 2001). The form that youth crime stat wars took was shaped by underlying victim contests; contests that were themselves a product of the hybridized youth justice context created under the Young Offenders Act (see chapter 1). The same statistical trends from the same 'expert' sources are *variably interpreted* depending on the definition of young offender identity ascribed. The same arguments regarding a statistical 'blindspot' and the 'true nature' of youth offending it is masking are, likewise, variably interpreted depending on which side of the victim contest is being espoused. The meanings ascribed to emotional responses (Loseke, 2003) to youth crime are also intricately related to these victim contests. Most significantly, what makes young offender victim contests, as they are linked to stat wars, all the more ambiguous is the underlying ambiguous culpability (Spencer, 2005) of young offenders. The most 'concrete' statistics and lucid demonstrations of the 'true reality' of youth crime will not cause these victim contests to yield. Forms of knowledge over youth crime come into conflict with each other, and the more salient question becomes not which knowledge base reflects 'reality', but how these clashes serve to perpetuate these debates; and moreover, how such clashes of knowledge bases serve to problematize youth justice policy solutions, explored in the following chapter.

Chapter 4 explored the question of how young offenders were being characterized within youth crime debates. This chapter addressed assessments regarding the extent and severity of the problem, linked specifically to the characterizations explicated in the previous chapter. The following chapter will explore positions taken in relation to youth crime solutions – what should be done about the social problem. These debates have been frequently characterized as split between positions advocating rehabilitation versus punishment. However, I explore ambiguities within these positions that suggest not a polarized debate but one that actively contests the meanings associated with rehabilitation in relation to punitive solutions to serious youth crime. Theoretical implications, arising from how the youth justice social context impacts these debates, are explored.

Endnotes

1 – Debates over the extent to which the implementation of the Young Offenders Act acted to artificially inflate youth crime statistics were actively undertaken within Canadian criminology journals. Corrado and Markwart (1994: 354), for example, have argued that “with the exception of homicide, ...there has been a real and substantial increase in youth violence in Canada in recent years”. They have added that “public concern about youth violence is much more than, as some propose, simply a media-driven moral panic”. Peter Carrington (1995: 61) criticized this conclusion, arguing that the statement was “not warranted by the available evidence”. He pointed to the greater propensity of police to charge young offenders after the Young Offenders Act came into effect, acting to “inflate estimates” of youth crime (1995: 62). He also disagreed with Corrado and Markwart’s chosen years of comparison (1986 and 1992), arguing that the years were chosen in order to skew the data (1995: 62). Furthermore, he added, Uniform Crime Reports data used by Corrado and Markwart were an “unreliable guide to the degree of violence, if any, of each offence” (1995: 65). Though these criminologists debated issues related to statistical reliability in a sophisticated manner, I suggest that the root of the disagreement – what these statistics do and do not capture in terms of youth crime – were not merely limited within criminology or academia generally.

2 – It may be argued that the positions taken by individual politicians, oped writers, and youth workers indicate institutionally aligned preferences more so than personal motivations. For instance politicians, when they make statements regarding youth crime, are often accused of ‘playing politics’; a phrase which suggests that whether or not they ‘actually’ believe in their arguments, their statements are more reflective of the party line. Likewise, an oped writer for a ‘right wing’ newspaper like the *Alberta Report* is more likely representing the ideology of the paper/publisher rather than his or her personal preferences. Youth workers who suggest their experiences on the ‘front lines’ with young offenders indicates increasingly severe trends in violence, or that young offenders are actually much more naïve than others suggest, may say so, some may argue, to adjust to the demands of their jobs.

Social constructionism, however, asks questions towards which speculation about motive (e.g. Mills, 1940) is not required. Whether or not there are ‘actual’ objective motives is irrelevant in light of questions which seek to explore claims-making processes involved in formulating a social problem, as well as the strategies employed by claims-makers in legitimating their position. My main argument, that victim contests play a pivotal role in the perpetuation of youth crime debates, is not marred by either the truth or falsehood regarding the ‘true source’ of the discourses which act to perpetuate these contests. Victim contests and stat wars are conceptual schemes that allow for exploration regarding the ways in which social problems formulations play themselves out. Speculation regarding internal motives is *sociologically* irrelevant regarding this analysis, whether or not the analyst believes in the ability to objectively assess ‘underlying’ motivation.

CHAPTER 6: Appropriating Rehabilitative Youth Justice Discourse

“This would be real, authentic rehabilitation, and it would place young offenders into programs that could have a positive impact on their lives” (HOC, September 25, 2000). – Canadian Alliance MP

“I assume no one is against real rehabilitation” (HOC, May 2, 1994). –Bloc Québécois MP

Introduction: The Hybridized Youth Justice Paradigm of the Young Offenders Act

This chapter explores debates over youth justice solutions, analyzing the varying meanings associated with rehabilitation in regard to serious youth crime. Advocacy for the rehabilitation of serious youth crime, under the context of the Young Offenders Act, was rendered ambiguous given the ‘hybridized’ framework of the Young Offenders Act, which merged social welfare and legalistic youth justice paradigms (see below; see also chapter 1). Claims-makers debated whether or not punishment and treatment should be kept distinct as youth justice goals, or whether it was appropriate to address both simultaneously. These positions were themselves problematized given contention over the *meanings* associated with rehabilitation.

Previous chapters examined disagreements over the degree of young offender culpability, as well as the extent and severity of youth crime. I have related the positions taken with respect to both of these issues to the underlying view of young offenders as either victims or victimizers (Holstein and Miller, 1997; Loseke, 2003; Spencer, 2005). This chapter focuses on the aspect of these debates concerning solutions to youth crime. Constructionists have argued that discourses which make attributions about social problems and deviant people are related to discourses about solutions to these social problems (Loseke, 1999: 102). The *diagnoses* of a social problem impacts upon the *prognoses* offered to correct the problem. Holstein and Miller have also linked the ways in which imputations of victimhood are tied to “responses and remedies” (1997: 33) to social problems. However, unlike previous chapters, which suggest a clear link between the types of associations regarding young offender identity and the extent and severity of youth crime, I highlight evidence to suggest that the positions taken with respect to youth justice solutions are more ambiguous. I argue this is due to contention regarding the fundamental role of the youth justice system under the Young Offenders Act.

Those who engage in debates over youth justice solutions are responding to policy outcomes (Best, 2008) in the form of amendments to youth legislation. Under the Juvenile Delinquents Act (1908-1984) a social welfare system was dominant, whereby young offenders were largely seen as victims of social circumstances who required rehabilitation. One consequence was that they could be incarcerated in ‘training schools’ for indeterminate periods until rehabilitation was deemed successful (see chapter 1). The shift to a legalistic mode under the Young Offenders Act addressed the widely perceived injustices of the former system. However, with the introduction of a legalistic framework also came a view that young offenders were to be held responsible for their criminal acts.

Social welfare principles also remained strong during this period. Contention emerged regarding how to deal with young offenders charged with serious offenses. Youth law expert Nicholas Bala (1994) characterized the debate as a battle between those who wanted to ‘get tough’ on young offenders versus those who advocated for their rehabilitation. Given these seemingly opposing views, one would expect clear divisions between those who favor a view of young offenders as victims versus victimizers advocating for rehabilitative versus punitive solutions respectively. However this polarized conception glosses over evidence that parties on both sides of the debate actively wrestled with the *proper provision and emphasis* placed upon rehabilitation for serious youth offences; for example, the appropriateness of providing rehabilitation for young offenders in custody. While the debates discussed in previous chapters revealed clear ‘sides’ in active opposition with each other, here I explore ambiguity regarding appropriate youth justice solutions. Specifically, I suggest that parties on all sides of the debate were (1) proponents of rehabilitation, yet (2) had disagreements regarding the *meanings* associated with rehabilitation *under a youth justice context that fuses social welfare and legalistic paradigms*. While many agreed with the provision of long-term rehabilitation for youth who are charged with minor offenses, the debates became most contentious regarding the appropriate provision of punishment and rehabilitation for serious youth crime in the short-term. I further argue that these contentions acted to render the role of the youth justice system itself ambiguous.

My focus for this chapter is largely on Parliamentary debates concentrated in the 1990s and early 21st century under the Young Offenders Act. It was during these debates that positions on youth justice solutions were most fully elaborated. I seek to explore how rehabilitative discourses are appropriated by a number of claims-makers, including politicians, judges, social workers, and victims-rights advocates, under the youth justice context of the Young Offenders Act. In this regard, Spencer (2000: 36) argues that constructionists should examine the “ways that cultural discourses indirectly shape or limit claims. In this framework, discourses are selectively utilized or incorporated into the rhetoric of social problems language”. In this chapter, therefore, I link arguments over youth justice solutions to a broader youth justice discursive context, which shapes the way in which claims over youth justice solutions are articulated. I demonstrate that given the *hybridized paradigm* of the Young Offenders Act, which combines social welfare and legalistic modes of youth justice, advocacy for punishment is often made with an eye towards rehabilitation, while advocacy for rehabilitation is often made with an eye towards holding young offenders accountable. The two ideas are inextricable within these debates.

I focus on debates that concerned the *emphasis* placed upon rehabilitation as a goal for young offenders charged with serious offences for whom custody was a possibility. These debates took various forms. Some advocates, including defense lawyers, social workers, psychiatrists, victims-rights advocates, and politicians such as the Bloc Québécois, suggested that rehabilitation was incommensurate with custodial sentences; that putting young offenders in custody would label and stigmatize them, despite the best of intentions to provide rehabilitative treatment while they were incarcerated. They criticized the argument that custody was the only context within

which rehabilitation could be delivered. With respect to youth under 12, who were too young to be included within the formal youth justice system, these advocates strongly criticized the notion that including these youth would allow for more effective rehabilitation, suggesting that the social welfare system already in place was wholly appropriate for this age group. However, some of these same advocates (notably from Québec) used language that *interpreted custodial settings as focused on rehabilitation*.

Others, including political parties such as the Reform Party, but notably also some of the *same advocates* as above, argued that the formalized processing of young offenders in custodial settings would ensure that they receive effective rehabilitation. Furthermore, some suggested that custodial sentences needed to be long not just to ‘punish’ young offenders, but to ensure that rehabilitation would be successfully implemented. Likewise, for youth under 12, some suggested lowering the minimum age under the Young Offenders Act not only to hold these youth accountable, but to allow for suitable treatment programs to be delivered; treatment that was not effectively administered, they argued, under the social welfare system. Significantly, these claims-makers often employed language that undermined associations of custody with strict punishment.

Opponents responded by rejecting the idea that such facilities could be construed as ‘rehabilitative centres’. The ways in which rehabilitative discourse was appropriated by all of these advocates indicates “real ambiguity about the significance of rehabilitation as a guiding concept for a juvenile justice law” (Bala, 1994: 252). Thus I argue that it is through the appropriation of rehabilitative discourse from ambiguous youth justice discursive contexts (Spencer, 2000) that the responses to serious youth crime are themselves rendered ambiguous. The following sections explore the ways in which rehabilitation as a goal and rehabilitative discourse was employed by claims-makers taking positions on youth crime solutions. While there was evidence to suggest a divide between those who advocated long-term prevention versus the need for the justice system to address the immediate circumstances of youth crime offences, I focus on those debates which concentrated on the more serious forms of youth crime, where the tensions between rehabilitation and punishment were most visible, and where the ‘sides’ to this debate became problematized.

Contesting the Appropriate Provision of Rehabilitation

There was a general acknowledgment that long-term prevention and rehabilitation, especially for the majority of minor youth crime, were worthwhile goals. Liberal Justice Minister Allan Rock argued that “if the answer to crime was simply harsher laws, longer penalties and bigger prisons,” he argued, “then the United States of America would be nirvana today”. Rock argued that “more effective criminal justice responses” as well as “crime prevention in a broad and constructive sense” were needed, including the need to address the “causes of crime as well as ...the culture of violence in which our children and youth are growing up in Canada today” (HOC, May 12, 1994).

Claude Bilodeau, Director General of the Association of Youth Centres of Québec, pointed to a need for the youth justice system to address the “many associated causes” of youth offending (Standing Committee on Justice and Legal Affairs [herein

SCJLA], September 23, 1996). “If we truly want to deal effectively with youth crime,” he argued, “we must learn to see the forest for the trees, that is stop focusing exclusively on the actions of a particular young offender and begin seeing the bigger picture, namely the environment and living conditions of young persons. In short, we have to get a clear picture of delinquency, not just a picture of the young offender”.

Reform Party MPs did not disagree, but suggested that such long-term goals were secondary to addressing immediate circumstances. Prevention “is great,” argued Reform Party MP Dale Johnston. “That is exactly the route that we have to go in the long run” (HOC, March 17, 1994). Similarly, Reform MP Myron Thompson felt behooved to point out that his party “believe[s] in rehabilitation. I believe that we need to treat and do as much as we possibly can, but I also believe that we have to be realistic in our penal system...” (HOC, March 17, 1994). In a later statement Thompson criticized the Liberal Party for “constantly concentrating on the social aspect of problems” (HOC, February 20, 1995), suggesting that existing social agencies are already geared for this. He argued “I want to see good prevention programs. I want to see good rehabilitation. I want to see all the things that these people want to see, but the justice department does not want to address the part called justice”.

This divide points to ambiguity regarding the role of the youth justice system. Should it focus primarily on punishment or treatment? However, while these claim-makers were seemingly polarized in their *overall* vision regarding the proper agenda for the youth justice system, the tensions became centered on addressing the issue of how to deal with the *immediate* circumstances of young offenders charged with serious offences. It was within debates over serious youth crime that ambiguities over the interpretation of custodial sentences became evident. Serious youth crimes challenged cultural associations of youth with innocence, as well as the appropriate provision of rehabilitative goals.

Teasing Out Rehabilitation From Punishment

The federal election of 1993 was the “first in Canadian history where juvenile justice was an ‘issue’, with all four ‘national’ parties taking a ‘law and order’ approach” (Bala, 1994: 248). While others agreed and went even further to suggest that the 1990s were largely dominated by calls to ‘toughen up’ the Young Offenders Act (see below), emphasizing these statements ignores the various ways that rehabilitation remained a central concern within these debates.

Some became concerned that rehabilitation should be considered separately from punishment for young offenders. However doing so became difficult under the hybridized youth justice context of the Young Offenders Act. Unlike the Juvenile Delinquents Act, the Young Offenders Act imposed “inefficiencies”, one Youth Court judge recalled, upon the ability to intervene therapeutically, given its legalistic focus. Under this system, a colleague of the Judge once told him, “as soon as you try to do something nice for the kid in the justice system, all these walls go up immediately. ... ‘Can we do this?’ ‘No, protocol.’ ‘Can we do that?’ ‘No’” (Personal Communication, September 21, 2007). While the “inefficiencies” were in place to secure legally protected

rights of youth, implementing rehabilitative programming was impossible without the youth becoming involved in the formal justice system process. A criminologist elaborated on this problem: “the first time [officials representing the interests of young offenders] ask for services [for young offenders] is when they get into custody. And therein lies the problem: sure these programs are great, but to have to have someone go through a criminal process in order to access them is problematic” (Personal Communication, July 10, 2007). A youth lawyer, who practiced largely under the Young Offenders Act, argued that “it is alien to our Canadian [youth justice] system to use treatment as punishment. ...If you’re going to punish somebody, with a concept [that] the particular punishment has to fit the crime,” he said, “then the punishment is something other than the treatment. ...You don’t punish [young offenders] because of what they need. ...That’s not what the [youth justice system] is about” (Personal Communication, November 20, 2007). For these youth justice officials, the goal of rehabilitation should be kept separate from punishment, especially given their observation of the way in which the youth justice system under the Young Offenders Act merged rehabilitative with punitive outcomes for young offenders.

For some, regardless of the severity of the offence, consideration of the needs of the offender meant considering the detrimental effects of incarceration. Defence lawyer Philip Zylberberg was concerned that “no matter what these kids have done, if they’re kids, we look to salvage them” (*Globe and Mail*, July 16, 1992). Some suggested, furthermore, that young offenders who were sent to custody were going to be terrified and unresponsive to rehabilitative efforts. Graham Stewart, the Executive Director of Ontario’s John Howard Society, argued that youth “go [into custody] terrified. It takes them several years to get to the point that they’re not terrified every day” (*Globe and Mail*, July 16, 1992). A similar point was made by William Trudell, Chair of the Canadian Council of Criminal Defence Lawyers, who suggested that “if you take a young person and put him in a building and tell him it is for therapeutic reasons, he is denied his liberty and will not understand. He will think you are the enemy” (Standing Senate Committee on Legal and Constitutional Affairs [herein SSCLCA], October 25, 2001). Both Stewart’s and Trudell’s criticisms were based on their perception of the futility of trying to merge rehabilitative with punitive goals under the Young Offenders Act. Their view of young offenders as naïve ‘kids’ underscores their criticisms of those who would attempt to impose rehabilitative programs within custodial settings.

While others sometimes advocated for longer periods of incarceration in order to effect adequate rehabilitation (see below), Dr. Clive Chamberlain rejected this notion, arguing that “the length of time is a factor all by itself. If a kid is going to spend a long period of time in custody, there’s not a heck of a lot of incentive for a person to do anything particular about themselves” (*Globe and Mail*, July 16, 1992). Kim Pate, Executive Director of the Canadian Association of Elizabeth Fry Societies also criticized judicial practices under the Young Offenders Act which had led “paradoxically,” she argued, to where “we are seeing judges actually starting to comment that they hope the person will get the treatment that they need in this setting because it is a nice new regional prison. They are saying that a new institution is a new place where an individual can access treatment programs” (SSCLCA, October 31, 2001). Criminologist Jean

Trépanier, representing the Canadian Foundation for Children, Youth and the Law, while not wishing “to suggest that custody is the only way to rehabilitate people,” worried that “young people will not arrive [within institutions] with the intention of getting rehabilitated, but with the sole idea of serving their sentence, as is the case for adults” (SSCLCA, October 31, 2001). Senator Jerahmiel Grafstein, during Senate Justice Committee hearings suggested that “the paradigm of the criminal justice system is contrary to the notion of trying to help children be truthful. You are making them be criminals before they are criminals because they have to be subject to the paradigm of the criminal justice system” (SSCLCA, October 3, 2001).

Bloc Québécois politicians, likewise, were often strongly critical of the use of incarceration to address rehabilitative goals, especially with respect to provisions under the Young Offenders Act that allowed young offenders to be transferred to adult court for serious violent offences (see chapter 1). Bloc Québécois MP Réal Ménard criticized the ability, under the Young Offenders Act, to transfer a 14 year-old to adult court:

The House leader surely knows that the commission of a crime by a 14-year old is a cry for help. It is a sign of distress, a sign of inner turmoil. It does not make the offence committed any less serious, but we cannot agree with the logic that imprisonment and an intense process of criminalization will resolve the problem. I just do not see it. (HOC, April 21, 1999)

Bloc Québécois MP Michel Bellehumeur argued that “if a young offender is found guilty in adult court he will receive a very stiff sentence, offering very little opportunity for rehabilitation” (HOC, May 2, 1994). Moreover, Bloc Québécois MP Antoine Dubé criticized the Liberal government for suggesting, from his party’s point of view, that “young offenders must go to prison to be rehabilitated and reintegrated into society,” (HOC, June 2, 1994) adding that “it would seem that rehabilitation for young offenders is dependent upon coercion and imprisonment” (HOC, June 16, 1994). Québec officials also suggested that there was confusion over the *meaning* of rehabilitation. Claude Bilodeau stated that “some seem to have a strange idea of what rehabilitation entails” (SCJLA, September 23, 1996), criticizing opponents who suggested that rehabilitation can be implemented within custodial settings. Moreover, he suggested that some young offenders *request* transfer to adult court since “they believe they will be left alone”.

These debates also addressed whether or not it was appropriate to include young offenders under 12 under the formal youth justice system. The Young Offenders Act set 12 as the minimum age.¹ Provincial social welfare systems were charged with dealing with young offenders under 12. While opponents suggested that including youth under 12 would allow a more appropriate response than the social welfare system, especially with respect to the ability to provide effective rehabilitation (see below), opponents of this view felt that taking this action would unnecessarily punish and victimize these youth, for whom the child welfare system was already sufficient. One senior Liberal official I spoke with recalled the Liberal Party’s position on lowering the minimum age, especially given protests from the Reform Party: “We just didn’t believe in jailing 10 year-olds period. We think it’s wrong, we think it’s excessive, unnecessary, and that it

would have been pandering to the ...extreme elements in the public debate – we just didn't think it was appropriate or necessary" (Personal Communication, March 18, 2008). John Maloney, the Liberal Parliamentary Secretary to the Minister of Justice and Attorney General of Canada agreed, stating that the Liberal Party is "not prepared to criminalize 10 and 11 years olds [sic]," (HOC, October 21, 1999) preferring child welfare and mental health systems which have more "age appropriate, family oriented and therapeutic" services versus those in the youth criminal justice system.

Dick Barnhorst, youth justice advisor to the Department of Justice recalled that under the Juvenile Delinquents Act, when dealing with 10- and 11-year-olds, a criminal justice response was always a possibility but seldom employed, as judges relied upon social and mental health services (Standing Committee on Justice and Human Rights [herein SCJHR], November 30, 1999). "When you raise the question of needing a trigger to get the appropriate programs in place or to get the appropriate response for that young person," he argued, "that's absolutely correct. I think the question really is this: does it require a criminal justice response to do that"? He pointed to the fact that in some jurisdictions,

for an 11-year-old who commits what maybe would be a serious offence and is demonstrating severe emotional or mental problems, it's possible to have that person detained in a secure treatment facility because it's such a severe mental health kind of case. There are procedural protections in place, but it doesn't require a criminal justice response and a criminalizing of the behaviour. ...It's really more a question of getting at what's behind the behaviour with this age group.

Barnhorst's statement suggests the imperative of having a formal system response, a "trigger", to enable rehabilitation. However he denied that such a trigger need be a "criminal justice" response, which would act to stigmatize youth, especially those under 12. One youth lawyer I interviewed, who worked largely under the Young Offenders Act, also had strong reservations against those who suggested that if youth under 12 "need treatment, ...we have to drag them into the criminal justice system to get that," arguing

that's not right. There is nothing wrong in the context of a criminal proceeding of encouraging someone to go for treatment, but impose [sic], physical imposition of treatment on people isn't appropriate crime and punishment. ...If we're talking about 10 and 11 year-olds, and if our big concern with the 10 and 11 year-olds is kids who have special needs making sure that they get treatment, then why on Earth are we talking *at all* about the criminal justice model? We should be *talking* about the educational model and about the child protection model, to make sure that kids whose special needs are identified in educational programs, um, as being serious, get the help that they need, and to make sure that people who are in child protection settings get the help that they need. (Personal Communication, November 20, 2007)

Québec officials contributed even more forceful statements. “I cannot help but wonder what planet this is,” Bloc Québécois MP Suzanne Tremblay argued,

in what kind of country do we live in if we think, even for 30 seconds, that we should take 8 to 12 year olds and hand them over to the justice system because they did something we see as reprehensible, when the first question we should be asking ourselves is what kind of education they have received? What kind of school do they attend (HOC, May 29, 2001)?

These youth are “victims more than anything else”, she added, who require “help, not coercion”.

Despite the position, from this perspective, that considerations of rehabilitation are incommensurate with any sort of ‘coercion’ in the form of punitive solutions, claim-makers for whom punishment or formal inclusion within the youth justice system was a primary goal actively appropriated rehabilitative discourse to justify their positions. These claims are explored in the following section.

Advocating for Punishment as Rehabilitatively Oriented

Some analysts who have examined political debates over youth crime have characterized the Reform Party as right wing extremists who are bent on punishing young offenders. Hogeveen’s (2005) article, which examines House of Commons debates over youth justice during the 1990s, is titled “If we are tough on crime, if we punish crime, then people get the message”. Within the article, the quote is reproduced and attributed to ‘get tough’ calls by politicians, in this case by Reform Party MP John Williams. Hogeveen argues that statements such as this evidence a “culture of punitiveness” in Canada (2005: 74). However such truncated presentations of the debate do not adequately explore the ambiguities and complexities of statements by these politicians. In fact, immediately after making that statement, Williams added “...that is not with disregard to rehabilitation” (HOC, September 25, 2000). It is important to note that Reform politicians were equally engaged alongside others with interpreting the meanings and appropriate focus for rehabilitation vis-à-vis serious youth crime. In fact, Reform Party politicians made repeated reference to the fact that they were not against rehabilitation, even with respect to serious youth crime. Reform Party MP Bob Ringma made it a point to clarify that his party is “not looking to lock up all young offenders ...nor do we believe that even the most hardened young offender is beyond rehabilitation” (HOC, February 24, 1995).

Reform Party MPs as well as others who called for custodial sentences for serious youth crime often justified their position by insisting that effective rehabilitation could be provided *through* ‘punitive’ responses. In fact, elongated sentences, they argued, would provide the opportunity to instill effective treatment programs which, it was felt, would take time to effect properly. “Putting young persons into custody under the present system is no picnic for them,” Progressive Conservative MP Benoit Tremblay argued,

“but it provides for good supervision and gives them a chance to make a fresh start for themselves” (HOC, February 20, 1995). Criticizing the inability to detain any but the most serious offenders, he suggested the utility of being able to “detain” young offenders “for rehabilitation”, since “being in custody allows for the young person to be extricated from criminal surroundings and rehabilitated before it is too late”. Similarly, Canadian Alliance (formerly the Reform Party) MP Kevin Sorenson argued “that only through lengthy periods of incarceration, where there are effective rehabilitation programs including education, will violent offenders cease to be dangerous” (HOC, March 26, 2001).

Interestingly, while not as frequent, some *Liberal* MPs made similar points when discussing the appropriateness of custodial sentences for serious youth crime. Liberal Party MP Derek Lee argued that “in many cases the sentencing of young offenders is too short to enable them any kind of access to treatment” (HOC, May 12, 1994). Referring to ‘lenient’ sentencing practices under the Young Offenders Act, he added that “a two or three-month sentence is simply not enough time for the agencies and corrections professionals to offer to that youth some kind of a framework that would permit the youth to get his or her life properly organized”. Within custody, Liberal Party MP Serge Marcil argued, young offenders would receive “rehabilitation, not ...repression” (HOC, May 28, 2001). Notably, he added that “while these young people are in custody, they are supervised and those in charge will provide them with any therapy or other program needed for their rehabilitation into the community”. While such statements from Liberal politicians were exceptional, they suggest that when advocates did try to arrive at their position on how to deal with serious youth crime, considerations of punishment were bound to considerations of rehabilitation within custodial settings. While on opposing ‘sides’ on the political spectrum, both the Liberal and Reform parties *actively appropriated rehabilitative discourse from the same ambiguous youth justice contexts*.

In addition, despite earlier comments advocating otherwise, *Bloc Québécois* politicians also applied this view to older young offenders who committed serious offenses. In fact, some argued that custodial sentences should not be limited only to serious youth crime. Bloc Québécois MP Benoît Tremblay made this point when he argued that “limiting detention orders to offences involving serious assault with bodily harm” would act to

deprive the judicial system and social workers of an instrument sometimes necessary to the rehabilitation of certain young persons for whom recidivism, schooling, family and personal situation and other circumstances must be taken into account. In short, a prison sentence may be appropriate in certain cases even if the offences in question did not entail serious personal harm. (HOC, February 20, 1995)

Bloc Québécois MP Michel Bellehumeur supportively quoted a speech given by Québec’s Minister of Justice, Linda Goupil. Her speech discussed the hypothetical situation of a youth “found guilty of drug trafficking”, who has been expelled from

school, is without any parental supervision, and is affiliated with a gang” (SCJHR, May 2, 2000). Under the Young Offender Act, Bellehumeur said,

the young person can be placed in custody. This provides him with a supervisory framework and makes it possible to begin a rehabilitation program that is adapted to his own individual circumstances. If we take action quickly enough, there is a chance that the young person might escape the vicious circle of crime, and become a responsible citizen.

He added that unless custodial sentences were imposed, the proper help could not be provided for young offenders: “Before we can take any action, we will have to wait until the young person is well entrenched in a life of delinquency or commits a violent offence. In fact, before we can help him, we will have to wait until it is too late to help him”.

Québec officials and politicians also justified their advocacy of custodial sentences for older young offenders charged with serious crimes based on their interpretation of custodial settings as geared towards rehabilitation. Diane Trudeau from the Commission des Services Juridiques of Montréal argued “we do not incarcerate, we rehabilitate. We put individuals into *reception centres* and rehabilitate them” (SSCLCA, October 25, 2001 [my emphasis]). Québec’s custody system was also referred to as “*preventive detention* with adults” (SSCLCA, October 24, 2001 [my emphasis]) by Claire Bernard, a member of the Commission des Droits de la Personne et des Droits de la Jeunesse. In one statement Bellehumeur criticized the Liberals of “cracking down on young criminals,” and said that “I assume no one is against *real rehabilitation*” (HOC, May 2, 1994 [my emphasis]), advocating Québec’s “therapeutic response framework” which he contrasted to the “repressive approach” advocated by the federal Liberal government (SCJHR, September 20, 2000). Responding to a Liberal opponent during one debate, Bellehumeur said “when I heard the member for Laval East compare the youth centres to prisons, I thought to myself that she must not have set foot in a youth centre in a long time, because these centers really focus on rehabilitation in the community. ...The youth centres are not prisons” (HOC, May 29, 2001).

These views were opposed by those who suggested that proponents of custody for young offenders were employing rhetorical trickery by suggesting they were rehabilitatively inclined. Carol Letman, representing the Criminal Lawyers’ Association stated that she has “a problem with the concept of putting people in centres and re-educating them. I am sorry, but that is custody in my opinion” (SSCLCA, October 31, 2001). Liberal MP John McKay stated that “Québec actually had the second highest rate of transfers to adult court” (HOC, May 28, 2001). “Lord help us from those who claim to be locking them up or treating them for their own good”, he added. Liberal Party MP Claude Drouin added that

the most troubling thing about [Québec officials’ and politicians’] remarks is that they are based on the assumption that custody can be used to rehabilitate young offenders and to turn them into responsible persons. This assumption goes against what can be learned from criminology research and what has been seen in other

countries that have chosen less repressive measures to make their young offenders more responsible. (HOC, March 26, 2001)

Liberal MP Carole-Marie Allard added that Québec's system was "disturbing", asking "what if some young people are forgotten in these rehabilitation centres where they should get rehabilitation programs? This could happen if the management is deficient. It is not right to give the priority to structure" (HOC, May 29, 2001). Allard seemed to be alluding to the 'structure' that restricts, under the Young Offenders Act, the ability to implement rehabilitation outside of a formalized corrective response to serious youth crime. What is interesting here is the fact that Liberal Party members in some cases, for example during criticisms of Québec's youth justice system, vociferously rejected the blending of rehabilitation through custodial sentences. At other times Liberal members made statements arguably similar to those of Québec politicians and officials, advocating for the imposition of custodial sentences in order to enable rehabilitation. I argue that this ambiguity is created by the fact that these arguments draw from a discursive youth justice context that has merged social welfare and legalistic paradigms. It is under this context that debate over the priority granted to each paradigm, especially given serious youth crime, becomes most contentious (see discussion below).

With respect to youth under 12, a group that some felt was becoming increasingly violent and prone to committing serious offences, some argued that lowering the minimum age would enable more formal 'options' in terms of youth justice responses. Detective-Sergeant Neale Tweedy argued that the Young Offenders Act "dramatically limits the options available in dealing with anyone under 12. ...Once you ascertain their age and remove them from any danger, there's little you could do" (*Globe and Mail*, November 25, 1993). Some raised the case of James Bulger, a 2 year-old toddler in England, who was lured and killed by two 10 year-old boys. "In Canadian society absolutely nothing could be done in that situation," argued Reform Party MP Val Meredith (HOC, May 12, 1994). Also implying the inability of social welfare services to address youth crime for those under 12, Manitoba Justice Minister Rosemary Vodrey argued that "there isn't one single person or group of people alone who can deal with this problem of youth crime and violence" (*Globe and Mail*, August 4, 1995). "We've asked from the very beginning," she said, "that there be a mechanism in the Young Offenders Act that young people under the age of 12 who commit a heinous crime can be brought into the justice system". Similarly, Progressive Conservative MP Peter MacKay offered that "if we can transfer youth to adult court, we should be able to transfer children to youth court" (HOC, September 25, 2000). MacKay also pointed out that child welfare responses have insufficient resources "to act quickly in most cases" (HOC, April 15, 1999), especially in order to address the more severe cases of youth offending. Reform Party MP Jack Ramsay agreed, suggesting that "in the case of violent offences [for youth under 12] a welfare response is inappropriate" (HOC, April 21, 1999). While quick to point out that he did "not [suggest] putting children in jail," Gary Rosenfeldt, the Executive Director of Victims of Violence, argued that "I think we have to have some accountability for children aged 10 and 11" (SSCLCA, October 3, 2001). Reform Party MP Diane Ablonczy concurred:

The [Justice] minister rose in the House today and asked with horror and contempt in her voice why we would want to make criminals out of 10 year olds. The simple answer is no one wants to do that, but the sad fact is that there are sometimes extremely serious crimes committed, even murder, by 10 and 11 year olds. There needs to be a way for society to deal with that in a meaningful fashion. (HOC, September 25, 2000)

When examined in more detail, these advocates urging that youth under 12 be held “accountable” through their “meaningful” inclusion within the formal youth system were found to invoke rehabilitative arguments to justify inclusion. This was so, despite the fact that this inclusion would sometimes mean that youth under 12 may have to spend time in custody. The same argument – that formal youth justice responses would enable rehabilitation for young offenders – was also applied to young offenders under 12. Victims’ rights advocates often took this position. Gary Rosenfeldt, the Executive Director of the organization Victims of Violence and the Canadian Centre for Missing Children, dismissed what he felt was the misconception that their response would be to “put children in jail; that we want 10-year-olds and 11-year-olds serving time in [custody]. That is not what we are about” (SSCLCA, October 3, 2001). Rather, his organization’s position was that young offenders this age would benefit from “com[ing] into contact with the law”, so that police could identify persistently incorrigible “children”. Likewise, Steve Sullivan, President and Chief Executive Officer of the Canadian Resource Centre for Victims of Crime argued that his organization’s support of lowering the minimum age was

not a question of throwing 10- and 11-year-olds in jail, but trying to give youth courts power, when all other measures had failed, to instill some of the positive elements that the Young Offenders system has: supervision, probation, community service, treatment - things that at times lack in our provincial child welfare systems (SSCLCA, October 3, 2001)

Politicians such as Progressive Conservative MP Peter MacKay also took time to clarify their party’s position, pointing to the “misconception” that the Conservative Party would like to take “10 or 11 year old infants and [throw] them into jail” (HOC, April 15, 1999). In fact, MacKay argued, the purpose was to facilitate “early intervention when required”. In a later statement MacKay argued that while other politicians suggest that such solutions act to “pound 10-year-olds into the ground,” (SCJHR, November 30, 1999) he stated that the real reason was “so we can have a triggering mechanism that would get them involved in these programs at the first instance”.

Reform Party politicians concurred. Reform Party MP Jay Hill argued that the problem was due to the youth justice system not being able to provide “the appropriate counselling or rehabilitation programs because the current law says [youth under 12] are too young” (HOC, March 7, 1996). Alliance Party MP Derrek Konrad agreed, arguing that “this is the age group that could be helped the most if they were included in the legislation. *This would be real, authentic rehabilitation*, and it would place young

offenders into programs that could have a positive impact on their lives” (HOC, September 25, 2000 [my emphasis]). Reform Party MP Chuck Cadman added that *not* including youth under 12 would result in their not being able to “obtain all the benefits of rehabilitation and reintegration” (HOC, March 22, 1999). He argued that *not* lowering the minimum age “leaves [youth under 12] in this vacuum where they do not get the help and the support they need”. A few Reform politicians admitted that their platform suggested sending youth under 12 to jail. “In very serious offences that will be necessary. That is what we are pushing for,” (HOC, September 25, 2000) said Canadian Alliance Party MP Gary Lunn, adding

There are cases where 10 and 11 year old children absolutely need to be institutionalized to get the help they need. I mean that sincerely. If we do not send them away when they are committing really serious offences at a very young age, it is a problem. In most cases they come from terrible backgrounds. The best thing we can do for those young children when we institutionalize them is to make sure that they get the programs and the counselling they need. ...I believe in my heart that it is the right thing to do if we are going to get them the help they need.

Many of those in the Reform Party accused the Liberals, who remained adamantly against the idea of lowering the minimum age, of wanting to “sweep the issue of 10 and 11 year-olds under the carpet” and of “abandoning these children”, whereas the Reform Party insisted, in contrast, that their concern indicated a “compassion for children” (John Reynolds, HOC, May 10, 1999). Reform Party MP Jay Hill concurred, adding “as it stands [the Liberal government] has abandoned 10 and 11 year olds, who by committing criminal acts signal they are in need of help” (HOC, April 21, 1999). Furthermore, “by including 10 year olds in the legislation,” he argued, “the government would be protecting these youngsters from those who use them to perpetrate crimes”, such as older “drug criminals” (HOC, October 21, 1999). “By amending the age we will have in those very few cases of violent offences the means to provide these young children with the rehabilitation they need,” (HOC, April 21, 1999) Reform Party MP Jack Ramsay stated. Reform MP Jim Abbott highlighted the impoverished conditions that youth under 12 sometimes face, suggesting that they “can either be rehabilitated or indeed, habilitated. Often we get mixed up between rehabilitation and habilitation. In many instances some 10 and 11 year olds that are involved in this very awful activity have never had the opportunity to learn what is right and what is wrong” (HOC, April 15, 1999). Abbott’s statement is notable since it suggests that the reason to include youth under 12 within the formal system would be to provide basic socialization and learning, not just ‘re’-habilitation. His statement invokes the emphasis placed on child welfare under the Juvenile Delinquents Act. Similarly, Reform Party MP Vic Toews suggested that “children under the age of 12 fail to receive help either through the courts or through the child welfare system,” (HOC, January 30, 2002). “For all the shortcomings of the old Juvenile Delinquents Act under which I prosecuted,” he said, “at least it provided for a

measure of accountability for youth under the age of 12 so that they could be helped or dealt with by the courts”.

Ambiguities were also apparent regarding claims-making over the treatment of youth under 12 from Québec officials. Despite statements that were vehemently opposed to the inclusion of youth under 12 within the formal youth justice system (see above), their views were complicated, given their interpretation of institutional sentences for youth as rehabilitatively oriented. Claude Bilodeau, speaking to the Parliamentary Senate Justice Committee regarding Québec’s views, was asked what the process was if a youth under 12 committed a murder. First pointing out that such an event would be an “extraordinary situation,” (SCJLA, September 23, 1996) he stated that the youth would be placed into a “*rehabilitation centre, under secure custody if necessary*, so that an assessment could be undertaken” [my emphasis]. Though detained, a youth was not housed in an adult-oriented ‘jail’ but, from this perspective, in a “home or centre” where assessments for a “long- and medium- term plan” regarding his or her life circumstances could be made. A youth’s placement also ensured, Bilodeau added, that “they can be protected”. When others asked Bilodeau how long a youth could be kept to ensure his or her rehabilitation, he responded “up until 18 years old, even if first arrested at the age of 10. We can keep them for as long as they need rehabilitation. That could last until 18 years old, at the most. They’re young people who can stay in rehab centres, not necessarily because they have committed offences, but because of their needs...”. Perhaps ironically, though opposed to including youth under 12 under the formal youth justice system, in Québec these youth could, nevertheless, be ‘detained’ in order enable mechanisms of rehabilitation within institutions interpreted as rehabilitative “homes” or “centres”, not “jails”. The rhetoric employed by these claims-makers served to interpret custodial sentences therapeutically. Moreover, Québec’s model is most reminiscent of the Juvenile Delinquents Act paradigm, under which young offenders could be detained primarily to attain treatment goals.

Ambiguity Continues Under the Youth Criminal Justice Act

While there have not been any further concentrated Parliamentary debates dedicated to the proper implementation and provision of treatment and rehabilitation under the Youth Criminal Justice Act (despite recent Conservative efforts to introduce ‘get tough’ changes; see chapter 1), the Youth Criminal Justice Act makes further efforts to clarify the role of the youth justice system with respect to the use of custody. The Youth Criminal Justice Act should act to “[challenge] us to stop thinking about therapeutic detention”, explained William Trudell, Chair of the Canadian Council of Criminal Defence Lawyers, adding that “the [Act] says that detention cannot be used for other reasons,” (SSCLCA October 25, 2001). However such points of clarification have failed to resolve these tensions (much as similar legislative clarifications failed to resolve tensions under the Young Offenders Act; see chapter 1).

Some have continued to make the argument that mixing and merging rehabilitative and punitive goals are, or should be incommensurate under the Youth Criminal Justice Act. One youth lawyer, practicing under the Youth Criminal Justice

Act, suggested that the definitive balance the Act was designed to strike is not being found. He explains:

So the [Young Offenders Act] was a criminal justice statute – *clearly!* [The Youth Criminal Justice Act I think is clearly a criminal justice statute; although we're starting to see other stuff about the kinds of sentences that are a mix of jail, mixed with treatment, starting to creep back into the [Youth Criminal Justice Act]. But it sounds like there are lots of politicians who would like to do that a whole lot more. But if they do that, they're moving us back in the direction of the [Juvenile Delinquents Act] and it's very very dangerous to mix the two systems. (Personal Communication, November 20, 2007)

One youth worker expressed concern that incarcerating young offenders would act to stigmatize them: “incarcerating youth worsens the situation, in most cases. ...There's the labelling, being incarcerated I am a criminal, so some will keep going that way” (Personal Communication, March 6, 2008). One case that garnered media attention involved an older young offender, Kevin Madden, who at the age of 16, along with an accomplice, were convicted for killing Madden's own brother. While a Superior Court Judge ruled that the two be tried as adults, Madden's lawyer, Robert Nuttall, argued that Madden should be sentenced as a youth. “If he doesn't get treatment, he will remain a high risk to reoffend,” Nuttall argued. “The issue is, where's he going to get the treatment? It sounds like the [penitentiary] [sic] is not the place to get it” (*Globe and Mail*, September 30, 2006; see also chapter 4 for more on Madden's case).

Criticism of including youth under 12 within the formal youth justice system also remained. One Youth Court judge practicing under the present law argued that intervening with youth under 12 is “a dangerous area to go into”, where the question of what age is a sufficient minimum may be irresolvable:

you know you gotta be careful, when you're using the criminal courts to deal with children who are 10, or 8 or 6 years of age, I mean where do you stop, and what do you do, and what kind of resources are you gonna have to deal with those children, under the criminal system. I just have reservations about going in that direction. (Personal Communication, January 18, 2008)

Likewise, one youth worker questioned “what would be done differently” if youth under 12 were included in the formal youth justice system. “They would be incarcerated? What would be different about that ...what would be the result of that” (Personal Communication, March 6, 2008)? However, despite the apparent reticence by this youth worker to involve youth under 12 with formalized youth justice responses, she added that existing provisions were suitable for youth under 12 to be “incarcerated, but not within a youth justice facility – within a treatment facility”. Her statement suggests ongoing disputes over the associations relating to “facilities” catering to young offenders.

Others continued to advocate for custodial sentences based on their perceived ability to enable rehabilitation. Some continued to advocate for longer sentences within

custody as a manner to ensure rehabilitative programming is properly instilled. One article suggested there is good reason for the youth justice system to “stress rehabilitation and disdain vengeance,” though argued that “sometimes it makes itself look ridiculous” (*Globe and Mail*, February 24, 2004). The article referred to a 14 year-old Albertan boy who, “inspired by the 1999 massacre at Columbine High School in Colorado, brought a sawed-off shotgun and 355 rounds of ammunition to school in Taber”. He killed a teenaged boy and wounded another, for which he received a sentence of three years custody and seven years of community supervision. The editorial suggested that “the emotional and social problems behind the boy’s actions built up over many years, and there is little reason to believe they can be resolved in only three years”. This statement suggests that, for those who view the present youth law as having a ‘You Can’t Jail Anyone’ (YCJA) approach, a ‘short sharp shock’ sentence is insufficient to enable proper ‘resolution’ to emotional and social problems. Such a ‘resolution’ is considered with an eye to the treatment that can be afforded through longer periods of custody. During a recent trial involving a 21 year-old man (alongside 9 other young men) accused of murdering 14 year-old Jane Creba (a 15-year-old student killed during a Boxing Day shootout between two youth gangs in downtown Toronto), the defense lawyer suggested to the judge that “he could – and should – impose a prison term that would amount to longer than another 10 months. That would not only reflect the seriousness of the offence, [the lawyer] said, but allow [the accused] to undergo effective treatment while incarcerated” (*Globe and Mail*, April 10, 2009).

Some academics also presented this view. Criminologist and youth law specialist Nicholas Bala noted that while “the sad reality is that young people who are most likely to commit the most-serious offences are also those who are least likely to be considering the consequences of their acts, ...jail-based rehabilitation (and even boot camps) may have a role for a relatively small minority of adolescent offenders” (*Globe and Mail*, December 3, 2003). Criminologist Jean Trepanier, discussing Québec’s youth justice system, asked whether or not custodial sentences “can be further shortened and still retain some value for rehabilitation programs. Should their length still be reduced, would rehabilitation centres not turn into detention centres where youth would do their time” (Trepanier, 2004: 289)? His statement suggests that short-term custodial sentences may not serve the best interests of youth since there is insufficient time, from this perspective, to employ effective treatment programming. In addition, it is notable that he engages in definitional arguments with respect to his views regarding the *meanings* associated with punishment and rehabilitation: whether or not institutions are ‘rehabilitation centres’ or ‘detention centres’ depends upon the length of time young offenders are detained.

Soon after the implementation of the Youth Criminal Justice Act, the Ontario government announced plans to build a young offender ‘super jail’ in Brampton (National Union of Public and General Employees, July 1, 2004). The Ontario government reasoned, in a later statement, that the facility would have a “campus-style” and was “being designed with youth in mind” (Sumoud, April 14, 2006).³ In February 2009 the Ontario Liberal government announced the opening of the “newly expanded secure custody facility”, hailed for its ability to “accommodate more youth in conflict with the law with specialized services and programs” (Ministry of Children and Youth

Services, February 3, 2009). The Centre was part of Ontario's move to take young offenders out of adult correctional facilities and place them in separate "youth custody facilities" in order to "provide young people with more effective programs and more opportunity for rehabilitation as close to home as possible". Young offenders will "have access to dedicated youth programming that will significantly reduce their risk of reoffending," Deb Matthews, Minister of Children and Youth Services argued. Ottawa Centre MPP Yasir Naqvi added that "this expansion is part of Ontario's plan to establish a dedicated stand-alone detention and custody system to help meet the unique needs of youth ages 12-17 in conflict with the law".

However such initiatives have been met with strong opposition from groups which reject the notion that rehabilitation can be effectively meted out within 'super jails' for young offenders. Sean Lee-Popham, of the group 81 Reasons (formed specifically to publicly critique the plans to build Brampton's young offender 'super jail'), argued that the \$81 million the Liberal government is putting towards the facility "would be much better spent in the community looking at the roots of crime and stopping that" (Sumoud, April 14, 2006). 81 Reasons argued that "young criminals are better rehabilitated at smaller facilities closer to their home communities". Leah Casselman, President of the Ontario Public Service Employees Union agreed, stating "while we applaud the decision to build a new public facility, we question the super-jail concept" (National Union of Public and General Employees, July 1, 2004). Incarcerating young offenders within such facilities, she argued, would act to remove them "from family and community support" and "would make rehabilitation more difficult," adding that the goal of bolstering family and community support was ironically the Liberal Party's own platform.

It remains to be seen whether extended Parliamentary debates will reveal the same ambiguities and definitional contests over youth custody as found under the Young Offenders Act. Points of contention regarding the role of the youth justice system in relation to punishment and rehabilitation goals have remained since the implementation of the Youth Criminal Justice Act, suggesting that these debates will continue unabated.

Discussion: Ambiguous Contexts, Ambiguous Prognoses

During the debates that led up to the Youth Criminal Justice Act, Liberal Party MP Tom Wappel made an arguably philosophical statement:

What will we be able to learn from history? I think we will be able to learn that the treatment of young offenders changes with time and with societal values. That means it is not static. That means that after we pass the [Youth Criminal Justice Act], in future years society may decide to treat young offenders in a different way and this bill may become anachronistic. (HOC, May 29, 2001)

Wappel's call to heed history alludes to the ways in which youth justice contexts have changed over time. As the view emerged that young offenders should have the same legal protections accorded to adults, the ability to hold young offenders accountable for their actions, with a view to the protection of society simultaneously became a pressing

concern; especially after the Young Offenders Act formalized this paradigm. A tension was created between the need to help young offenders, given their limited culpability, and the ability to effectively hold them accountable for their crimes. The saliency of rehabilitative discourse was evident in these debates, but was often advocated with an eye to rendering young offenders responsible and accountable for their crimes.

Bauman (1991: 7-8, cited in Hier, 2003: 14) has suggested that the 'late modern' period evidences a "relentless attempt to minimize if not eradicate indeterminacy", to "exterminate ambivalence" in "an effort to define precisely – and to suppress or eliminate everything that could not or would not be precisely defined". The Young Offenders Act, as well as the Youth Criminal Justice Act, are policy attempts aimed at striking the proper balance between competing youth justice principles: addressing the protection of society and holding young offenders accountable for their actions, as well as addressing the needs of young offenders and instilling effective rehabilitation in order to turn young offenders into productive members of society. It was through trying to resolve these tensions that youth justice policy sought to "exterminate ambivalence". However ambivalence became a prominent theme under the Young Offenders Act that led to contention with respect to positions taken over how best to address serious youth crime.

Campbell, Dufresne and Maclure (2001) also examined Parliamentary hearings during the mid 1990s and came to similar conclusions. They argued that policy makers, in striving to appease competing views, "cultivated a discursive process of ambivalence and simplification" (2001: 273), part of which included a polarization of rehabilitation and punishment (2001: 279).² Others have also characterized youth justice debates over viable solutions to youth crime as between the "political right" or "get tough camp", and the "therapeutic left" or "return to rehabilitation" advocates (Bala, 1994: 247). While Campbell et al. (2001) do suggest that, despite this polarization, the discourse surrounding youth justice policy overall is characterized by ambiguity and contradiction (but see footnote #2), their analysis did not extend past debates over amendments to the Young Offenders Act during the mid 1990s. Moreover, they did not explicate how various claims-makers within these debates, often from putatively opposing sides, invoked similar discourse and discursive strategies to justify their positions.

While I agree that there is truth to the notion of a strong divide between groups in terms of their positions on rehabilitation and punishment, this chapter contributes to the understanding of these debates by suggesting that discursive ambiguities act to blur this divide, often with respect to the appropriation of rehabilitative discourse. While some have argued that these debates were dominated by punitive rhetoric (Hogeveen, 2005; see also Schissel, 2006), I argue that rehabilitation as a goal remained strong and prominent for claims-makers on all sides of the debate. When examined in detail, Parliamentary debates in particular revealed that when positions were fleshed out, no one group was advocating a 'throw away the key' approach to handling serious youth crime. Nevertheless, I explored tensions regarding the proper *emphasis* placed upon rehabilitation, especially with respect to custodial sentences, as well as the *meanings ascribed* to rehabilitation and treatment in relation to punishment. In this regard, I have concluded that these debates, as they were engaged under the hybridized youth justice context of the Young Offenders Act (which mixed social welfare and legalistic justice

frameworks) could not respond to punishment without addressing rehabilitation, and likewise could not respond to rehabilitation without addressing punishment. In fact the meanings associated with rehabilitation and punishment – the various interpretations ascribed to custody, for example – are mixed under this youth justice context. In exploring the various ways in which these rehabilitative discourses were appropriated, I have also concluded that attempts to find the appropriate emphasis to place upon rehabilitation, especially for serious youth crime, has rendered the role of the youth justice system inherently ambiguous.

Even for the most serious offenders who were to receive custodial sentences, the importance of addressing rehabilitative concerns remained necessary. Rehabilitative discourses, however, were not invoked uniformly. There were those who wished to disaggregate rehabilitative goals from custodial sentences, arguing that young offenders would be unduly stigmatized and, despite the best intentions, would not have the wherewithal to appreciate the rehabilitative efforts being offered while they were in custody. Opponents of this view advocated for custodial sentences by suggesting that through the formal, legalistic processing young offenders would be subjected to, rehabilitation could be applied. *'Punishing' young offenders, from this perspective, simultaneously enabled rehabilitation to take place.* The *selling* of punitive solutions was tethered strongly to the invocation of rehabilitative discourse. From this perspective, lengthy sentences were not strictly designed to reinforce punishment but to ensure that effective rehabilitation was implemented upon young offenders. These debates frequently shifted to addressing how best to deal with young offenders under 12, who were considered too young to be included under the umbrella of the formal youth justice system. Some maintained strong criticism of any sort of formal inclusion of these youth, arguing that the existing social welfare systems in place were more than suitable. However opponents, careful to state that they were not for 'jailing' youth under 12, nevertheless argued that a *more formal response would enable more efficacious rehabilitation programming* to be delivered to young offenders this age. These arguments, I argue, underscore the ways in which the context of the Young Offenders Act acted to hybridized 'punishment' with 'treatment' models of youth justice.

Youth under 12 who engaged in violent crimes and who were often diagnosed as victimizers (see chapter 4), were here more closely aligned as being victims in order to 'sell' the notion of their formal inclusion in the youth justice system. It is reasonable to assume that discourses associating "children" under 12 with innocence were more firmly entrenched than for older adolescents reaching the age of adulthood. However, an equally important element of these debates is the way in which the emphasis placed upon social welfare, formerly dominant under the Juvenile Delinquents Act, was managed by these advocates (as in Reform Party MP Vic Toews' statement above). The imposition of custodial sentences for *older* youth, as well as the elongation of these sentences was also advocated as a method to instill more efficacious rehabilitation.

These debates problematized the role of the youth justice system under the Young Offenders Act and complicated the 'sides' taken in these debates. For instance while Liberal Party MP Claude Drouin criticized Québec's use of custody in order to effect rehabilitation (HOC, March 26, 2001), Liberal Party MP Serge Marcil advocated for

exactly this idea (HOC, May 28, 2001). Bloc Québécois politicians also, who were arguably the most vocal critics of the blending of rehabilitation with punishment goals, nevertheless advocated “preventive detention” (SSCLCA, October 24, 2001) within “reception centres” (SSCLCA, October 25, 2001). These “centres” were not ‘jails’, they argued, but facilities that would enable “real rehabilitation” (HOC, May 2, 1994). Such discourse was not dissimilar to Reform Party statements also advocating for “real, authentic rehabilitation” *through* custodial sentences (HOC, September 25, 2000). That putatively ‘right wing’ politicians, such as the Reform Party, underscored their calls for punishment by appropriating discourses of rehabilitation, and that putatively ‘left wing’ politicians, such as the Bloc Québécois, *interpreted custodial sentences through the same discourse* suggests that these advocates all appropriated rehabilitative discourses from the same ambiguous, hybridized youth justice context.

Spencer (2005: 63) has recently argued that “simplicity and clarity may have become the rule of thumb in constructionist analyses of social problems, in part, because that is what we look for. We might advance constructionist social problems theory by looking for the complex and ambiguous instead”. In the same article, he examined representations of youth violence, arguing that young offenders are characterized as ambiguously culpable for their deviance (2005: 48). In a previous article (2000: 29), Spencer also argued that constructionists should treat social context as providing discourses which social actors draw upon in order to conceptualize social problems. He has suggested that “the concept of appropriation [of discourses from social contexts]...draws our attention to the ways that cultural discourses indirectly shape or limit claims. In this framework, discourses are selectively utilized or incorporated into the rhetoric of social problems language” (2000: 36). Combining these insights, I argue that the appropriation of rehabilitative discourses, given the ambiguous role of the youth justice system, has rendered debates over youth crime solutions equally ambiguous. By “looking for the complex and ambiguous”, I have demonstrated how social actors draw upon arguments for rehabilitation which come from a youth justice context that fuses such concerns with holding young offenders (charged with serious offences) accountable for their actions.

Discursive ambiguity can be considered in two ways. On the one hand, it may be sufficient to recognize areas where positions taken with respect to a social problem are ambiguous in general – that there are neither clear ‘sides’ to a debate nor any overarching interpretive ‘schemas’ that claims-makers draw upon. On the other hand, ambiguity may be explicated where there are discernable positions but where available discourses problematize the polarization of these positions. I argue that the debates explored in this chapter point to the latter formulation, and address theoretical understandings regarding the ways that discourses are appropriated under particular social contexts. Claims-makers from apparently differing ‘sides’ drew from the same discursive well – a social context that constrained the available discourses which social actors at the micro level were able to appropriate in order to make arguments about rehabilitation and punishment. Social actors’ agency is, crucially, both enabled and constrained by this discursive topography. Agency in this sense should not be conflated with ‘freedom’. Social actors are ‘free’ to make statements as they choose. Moreover, I

argue that discursive social contexts do not impose themselves in any isomorphic way from 'above', and are themselves shaped by micro-level claims-making activities over time (see chapter 1). The types of claims possible are limited and framed by discursive contexts, but within these are a myriad of possibilities for rhetorical tactics.

It may also be tempting to come to conclusions regarding the underlying motivations of claims-makers through the assessment of their statements (Mills, 1940; Campbell et al., 2001; Hogeveen, 2005; Schissel, 2006; see also footnote 3). It may be reasonable to suggest, for example, that many of the statements analyzed in this chapter can be read as political posturing given the Parliamentary context under which they are espoused. I would agree that politics, as such, may play a part. The Bloc Québécois often underscored their statements by claiming Québec to be a 'distinct society' and sometimes suggested that regressive youth justice policies emanated from Anglophone Canada. Liberal Party members, in taking up 'both sides' of the debate may have been trying to 'tow the line' with respect to their Party platform, and to find general appeal among a wide range of the voting public. However there were many claims-makers who were not (at least directly) connected to political parties, whose statements also employed the same discourses and discursive strategies. More importantly, speculation regarding the internal motivations of claims-makers becomes *sociologically* irrelevant when compared to how rhetorical choices are in large part 'inspired' by available discourses.

Are youth who commit serious crimes kids or cons? Chapter 4 explored that debate, suggesting that points of contention centered upon whether or not young offenders were perceived to be victims or victimizers. Both views retained saliency during debates under both the Young Offenders Act and Youth Criminal Justice Act. The prominence of rehabilitation as a goal, and rehabilitative discourse was likewise evident within debates over how to address serious youth crimes, especially those involving custody. Rehabilitation remains central within the statements of the most 'punitively minded' claims-makers. This is due, as I have argued, to a youth justice context that fuses goals directed at holding youth accountable as well as helping them change their lives for the better. However I also suggest that rehabilitation has remained a central concern given prominent cultural associations of adolescence with innocence. The young offender, no matter how serious the crime, remains an individual in flux and amenable to change.

Endnotes

1 – The minimum age of 12 was retained under the Youth Criminal Justice Act, given strong opposition by both the Liberal and Bloc Québécois parties to Reform Party motions to lower the age further.

2 – Campbell et al. (2001) noted that positions taken in relation to the supposed polarisation of rehabilitation and punishment discourse *could be* interpreted with greater ambiguity: that increasing sentences for young offenders can be justified by those with a “retributivist philosophy” (2001: 279) as well as those taking up a rehabilitative position. However they argued that the rhetoric during these debates remained “essentially antagonistic” (2001: 280).

Moreover, the central concern of their analysis was to demonstrate how policy makers had a “pre-determined agenda of policy re-formulation” (2001: 273). They argued that the state, through a “cumbersome process of dialogue” (2001: 274) engages in the mediation of discourse as a “means by which” it “legitimizes the formulation of social policy”. As evidence they point to the fact that the government held wide public consultations about how to amend the Young Offenders Act, yet their policy changed very little from the platform presented before the consultations (2001: 276). At best the discursive strategies employed by policy makers evidenced, they argue, a “vener of compromise and consensus” (2001: 275). Assessment of the motives of policy makers is beyond the scope of this dissertation, and moreover may be incommensurate with constructionist epistemology (see this chapter).

3 – Sumoud is a “political prisoner solidarity group established by a group of organizers in Toronto, Canada”. Sumoud means “steadfastness” in Arabic.

Chapter 7: CONCLUSION – Contested Identities, Ambiguous Contexts

In this dissertation, I sought to explore Canadian youth crime and justice debates, and examined the various ways young offenders and youth crime were being conceptualized under varying social contexts. Paying close attention to the transition to the Young Offenders Act in 1984 and the debates during this period, I sought to better understand the relationship between the ways in which young offenders were being thought of and notions of the extent and severity of youth crime. I also wished to address how the youth justice context under the Young Offenders Act impacted positions regarding how to address youth crime. My focus remained on the qualitative and interpretive aspects of these debates.

I demonstrated that tensions over young offender identity and culpability were present throughout the Young Offenders Act period. I also presented evidence to suggest that these tensions have persisted under the Youth Criminal Justice Act, implemented in 2003. Disagreements over the degree of young offender culpability revolved around whether they should be considered as victims or victimizers. I also established that these varying interpretations of young offender identity were directly related to assessments regarding the extent and severity of youth crime. The youth justice context under which such tensions were promulgated also produced sources of tension regarding the proper way to address youth crime. While I found, with respect to the question of youth justice solutions, positions taken up advocating either rehabilitation ‘versus’ punishment, I argued that these positions should not be considered as mutually exclusive. I demonstrated that advocacy for rehabilitation remained strong, but also that this advocacy was often tethered to arguments justifying punishment. This chapter will summarize specific research findings in each of the substantive chapters, followed by a consideration of both substantive and theoretical contributions made in this dissertation. Finally, areas for future research are explored.

Summary

Concern and debate over the crimes committed by youth is perhaps as old as the social construction of ‘youth’ itself. As one *Globe and Mail* article suggested, “adults have been raising the issue of youth violence ever since society invented the concept of adolescence. ...But now, as then, the subject resists easy analysis” (*Globe and Mail*, October 4, 1997). It was only after the 16th and 17th centuries that a conception of childhood began to emerge, with the first juvenile court in Chicago, Illinois opening in 1899 (Platt, 1969), mirroring similar developments and changes in frame of mind within Canada (see chapter 1). The Juvenile Delinquents Act, implemented in 1908, reinforced the emerging view of young offenders as misguided victims of social and environmental forces (Bullen, 1991; Trepanier, 1991; Winterdyk, 2002).

The criticisms of the Juvenile Delinquents Act that emerged after the 1960s were formulated during a period when civil rights and new legal protections were being applied to women, minorities and youth (Makarenko, 2007). The ‘benevolent’ protectionism of the Juvenile Delinquents Act was recognized for its good intentions, but

it was felt by some that the application of legal protections to young offenders was imperative. The civil rights approach to youth justice took a decisive hold especially after 1982's Charter of Rights and Freedoms was in place, leading to the implementation of the Young Offenders Act in 1984.

Debates over the culpability of young offenders which emerged after the implementation of the Young Offenders Act were related to this youth justice paradigm shift. The same legal protections that were designed to instill youth with civil liberties simultaneously acted to render young offenders responsible for their offences. Rather than negating the social welfare model, however, a youth justice context was created that fused the social welfare paradigm dominant under the Juvenile Delinquents Act with the legalistic, crime-control approach ushered in under the Young Offenders Act.

My dissertation explored the debates which emerged as a consequence of that fusion. The three substantive chapters focused on questions of how young offenders were being represented, what positions were being taken with respect to the extent and severity of youth crime, and how best to respond to youth crime.

Young Offender Culpability as 'Victim Contest': Victims or Victimizers

In chapter four I characterized debates over young offender culpability as a 'victim contest' (Holstein and Miller, 1997); one where young offenders were either held responsible for crimes enacted with brazen intentionality, or whose crimes reflected the natural mistakes of adolescence and the detrimental impact of negative social and environmental forces in their lives. I suggested that these victim contests were a product of the introduction of the new legalistic model under the Young Offenders Act, which was coupled with the social welfare model of the previous legislation. Those who made statements underscoring the innocence and limited culpability of youth included Bloc Québécois politicians, child-welfare advocates, defense lawyers, Youth Court judges, psychologists and criminologists. Those who disagreed, suggesting that young offenders are better viewed as fully culpable and malevolent included Reform Party politicians, victims and victims-rights advocates, psychologists, police officers and police-officials.

A number of strategies were highlighted which demonstrated how young offenders were rendered as victims or victimizers. These claims-making strategies took two forms: one involved the invocation of discourses which elicited and directed emotions of sympathy towards young offenders. The other invoked discourses and directed condemnation towards these same young offenders (Loseke, 2003). If viewed as victims, young offenders were cast as "children" who were hapless and innocent; if cast as victimizers they were viewed as fearless and remorseless "predators" and "monsters".

Detailed descriptions of either the young offender's circumstances or their offences were also introduced by claims-makers alongside these characterizations. If young offenders were victims, details regarding the surrounding circumstances the offender had faced served to direct emotions of sympathy towards the young offender. Social forces were seen as corrupting young offenders who were otherwise 'good kids' and coaxing them into their deviant behaviour. These social forces were themselves considered sources of victimization. If young offenders were victimizers, emotions of

condemnation were directed towards the individual young offender by providing details of the offense itself. These graphic details often underscored the ‘brutal’ or ‘heinous’ nature of their crimes. Only someone with an adult criminal intentionality, it was argued, could be capable of such brutality.

Another strategy included drawing upon psychological and physiological knowledge bases in order to legitimate these renditions of young offenders. If victims, the actions of young offenders were explained by psychological theories which viewed adolescence as a period of limited development and maturity. Psychological theories which pointed to a lack of self-esteem as a key variable to explain youth crime were cited. Further, physiological theories were cited which suggested that the brain wasn’t fully ‘hard-wired’ until the early 20s, thus explaining that young offenders were still ‘testing’ society during their adolescence. If victimizers, young offenders were characterized as ‘hard-wired’ psychopaths and “super-predators” in order to explain their incorrigibility. Psychologists who rejected ‘self-esteem’ theories were supportively cited, and the idea that ‘molly-coddling’ young offenders by addressing self-esteem would be beneficial was rejected. The end product, it was argued, would be criminals with good self-esteem.

These debates also contested the general wherewithal of young offenders given evidence that some were openly mocking the youth justice system. If victims, the presence of young offenders making proclamations that the youth law was ‘a joke’ only reinforced the idea that they did not fully appreciate the serious circumstances they were dealing with. If victimizers, statements of ridicule were to be taken at face value as evidence of the full cognizance of young offenders and their awareness of the law’s leniency. These concerns were also expressed in relation to youth under 12, who were too young to be included under the formal youth justice system. Some argued that young offenders under 12 were victimizers who were fully aware that they could act with impunity and were openly mocking the law. Opponents did not disagree that youth under 12 were mocking the law, but suggested that their declarations further demonstrated that these youth were naïve victims, not sophisticated monsters.

Overall these debates over young offender culpability drew attention to either the offender or offense as salient factors. If young offenders were victims, then regardless of the severity of the offense, their actions were characterized as misguided. If victimizers, the nature of the offense itself dictated the identity of the youth: ‘adult crimes’ signalled adult intentionality. Through highlighting the strategies outlined above, I have demonstrated how victim contests served as a lens through which youth identity and actions are interpreted.

‘Stat wars’ and the Lens of Victim Contests

In chapter five I examined debates over the extent and severity of youth crime, suggesting that positions taken within these debates are linked to the sides taken within youth justice victim contests. I explored the strategies employed by advocates claiming youth crime was on the rise and becoming more severe in quality. I also considered the strategies of those who felt youth crime levels were either stable or declining and not

growing out of control or becoming worse in quality. These debates often engaged available youth crime statistics, and I drew upon the constructionist concept of a ‘stats war’ (Best, 2001) in order to frame the analysis. Social problems are often rarely resolved through debating statistics (Best, 2001: 152), and youth crime is no exception. By illustrating how the sides taken within youth crime victim contests led to the various positions and strategies employed in debates over the extent and severity of youth crime, I have illuminated the link between formulations of young offender identity and culpability and positions taken over the extent and severity of youth crime.

A series of strategies employed by those assessing the severity of youth crime were highlighted. Those who viewed young offenders as victims often pointed to statistical trends which demonstrated low or declining levels of youth crime. In addition they responded to reports which indicated rising levels of youth crime by claiming that such statistics were the effects of ‘net widening’: artificially inflated products of the ways in which youth crime was being counted. They argued that such statistics distracted from the reality that youth crime was not out of control. They also rejected the notion that crime rates among newly identified groups, such as female young offenders, were on the rise. Given these views, they argued that fear of youth crime by the public was an unwarranted and/or irrational response in light of the statistical evidence. These strategies served to underscore the importance of ‘sober’ and ‘rational’ assessments of youth crime, especially in the face of media depictions which were prone to exaggeration and played upon public fears. It was argued that emotional responses to the social problem disabled the ability to fully assess the true extent and severity of youth crime.

Opponents highlighted youth crime statistics which demonstrated the exact opposite in terms of youth crime trends: often depicting youth crime as rising out of control. They also pointed to what they considered to be an increasingly brutal quality of youth offending that was not being captured by the statistics. They rejected statistics presented by opponents that showed youth crime trends to be low or declining by claiming that such statistics were artificial products of the ways in which youth crime was counted, and that these figures had a ‘statistical blindspot’ that failed to capture a growing sophistication in youth criminal behaviour. They also pointed to statistical evidence which suggested that crime rates among new groups, such as female young offenders, were rising. Emotional responses to youth crime, from this perspective, did not suggest unwarranted fear but were seen as legitimate and justified reactions.

Overall, I have argued that the ambiguous culpability of young offenders (Spencer, 2005) generated through youth crime victim contests is what drives disagreements over the extent and severity of youth crime and the ‘stats wars’ that ensued. Assumptions about young offender identity served as an interpretive lens with respect to the meanings associated with youth crime statistics.

Youth Justice Solutions: Appropriating Rehabilitative Discourse under a Hybridized Youth Justice Context

In chapter six, I explored debates over youth justice solutions, which some analysts have characterized as between advocates for either the punishment or

rehabilitation of young offenders (Bala, 1994: 247). Some analysts have argued that the ‘punishment’ advocates were clearly dominant during the Young Offenders Act era (Hogeveen and Smandych, 2001; Hogeveen, 2005; Schissel, 2006), though Hogeveen (2005) acknowledged that, despite the putative dominance of punishment advocacy within Parliamentary debates, there was active resistance from Québec officials who supported a rehabilitative youth justice system. This led him to argue that there was an “obvious division between punishment and rehabilitation evident in House of Commons debates,” and that this division “was drawn along French/Anglo lines,” (Hogeveen, 2005: 79) with the Liberal and Reform Party characterized as more in-line with punishment advocacy. However, I challenged the underlying assumption that advocacy for punishment or rehabilitation was rendered separately and distinctively, and clearly demonstrated that the ‘punishment’ side did not, in fact, dominate these debates. These debates were permeated with advocacy for rehabilitation, even within statements calling for the ‘punishment’ of serious youth crime. More significantly, Hogeveen’s (2005) characterization of these debates did not address the *meanings* that advocates attached to rehabilitation goals, and did not explore the *ambiguity* that these meanings engendered (Spencer, 2005). By exploring these meanings, I problematized characterizations of the ‘sides’ taken along political party lines.

Analysts have argued that legislators were unable to come to a definitive youth justice policy direction under the Young Offenders Act, given persistent ambiguities centered upon finding the proper balance between rehabilitation/social welfare and punishment/crime control directives (Corrado and Markwart, 1994; see chapter 1). This chapter complemented these findings by examining in more detail competing claims-making over rehabilitation and punishment. Rehabilitation remains a prominent goal for the youth justice system to achieve. However, I have illustrated that the appropriate provision of rehabilitation, next to the demands for holding young offenders accountable for their actions, renders both agendas ambiguous. Bala has argued that “there is real ambiguity about the significance of rehabilitation as a guiding concept for a juvenile justice law” (Bala, 1994: 252). Heeding this observation, I have explored the ways in which rehabilitative discourses were appropriated (Spencer, 2000) from the hybridized youth justice context of the Young Offenders Act. I have also argued that attempts to find the appropriate emphasis to place upon rehabilitation, especially for serious youth crime, has perpetuated the ambiguity of the role of the youth justice system.

Specifically, while there was no disagreement that rehabilitation should be the goal for less serious forms of youth crime, and that prevention of youth crime should remain a long-term goal, the debates became concentrated upon the treatment of young offenders charged with serious offenses, especially those sentenced to custody. Some advocates felt that custodial sentences were incommensurate with rehabilitative goals, and that young offenders would be further victimized if sent to these facilities. They argued that being young and naïve, young offenders would not appreciate the efforts to help rehabilitate them and would be further stigmatized through incarceration. Opponents of this view felt that custodial sentences were suitable since rehabilitative programming could be properly applied. It was not just a question of ‘punishment’ but having the proper setting where suitable treatment was enabled. Elongated sentences,

from this perspective, were more appropriate not solely to provide a punitive consequence but in order to properly instill rehabilitation, which, it was felt, would be impossible through a short-term ‘revolving door’ youth justice system.

Also at issue was whether or not to include youth under 12 within the formal justice system. Under the Young Offenders Act, these youth were dealt with through provincial social services. While some claimed that the system in place was suitable and that lowering the minimum age would further victimize youth this age, others suggested that the social welfare system was not up to the task of providing the appropriate services, especially to young offenders under 12 charged with serious offenses. Moreover, the latter advocates claimed that effective rehabilitation could be instilled only by lowering the minimum age and providing a formal youth justice response.

I have demonstrated how these ‘sides’ were complicated given the ambiguous role of the youth justice system under the Young Offenders Act, which merged social welfare with legalistic crime-control paradigms. The meanings and priority granted to rehabilitation under this fused discursive context problematized the positions taken. Unlike Hogeveen (2005), I found that all political parties were drawing from the same discursive well. Despite their disagreements, I concluded that they were all engaged in an active attempt to manage the appropriate provision of rehabilitation for young offenders despite an ambiguous youth justice context which tethers punishment with treatment goals. For instance, all advocates made references, more or less frequently, to the rehabilitative potential of custodial settings. Some invoked language that interpreted these settings specifically as treatment centres, dissociating the punitive aspects of custody. Putatively ‘right wing’ politicians such as the Reform Party, who consistently characterized young offenders as victimizers (see chapter 4), underscored their calls for punishment by appropriating discourses of rehabilitation. Putatively ‘left wing’ parties such as the Bloc Québécois interpreted custodial sentences through the *same* discourse (despite admonishing other parties for blending punishment with treatment goals).

Substantive Contributions

This dissertation contributes to knowledge regarding long-standing debates over youth justice in Canada. There are numerous studies of Canadian youth justice. Most are geared to objective assessments of the extent and/or severity of youth crime (Carrington, 1998), policy implications and objectives (Bala and Anand, 2004; Barnhorst, 2004; Doob and Cesaroni, 2004), or assessing whether or not public ‘hysteria’ over youth crime is or is not warranted (Corrado and Markwart, 1994). My research complements this knowledge base through its explication of the interpretive formulations and discursive tactics employed by claims-makers making arguments about young offenders and youth crime.

I sought to remain ‘on the sidelines’ (Gusfield, 1984), or agnostic with respect to the various claims taken on youth crime and justice. Thus, I did not privilege one argument over another, nor did I seek to clarify questions such as what ‘really’ motivated politicians to enact ‘get tough’ youth justice policies; nor to ascertain the relation between rhetoric and reality in order to support or critique moral panics theory (Cohen,

2002). Rather, I asked: how are young offenders characterized over time, within different youth justice eras; how are the statements by various parties that youth crime is or is not out of control related to these characterizations; how is advocacy for youth justice solutions related to the youth justice contexts generated through these debates? Asking these questions enabled me to explore more comprehensively the various standpoints offered, in order to contribute to knowledge regarding the various *strategies* employed within youth justice debates. Moreover, I was able to contribute to knowledge that reveals why tensions suffused throughout these debates have persisted over time.

A number of analysts have explored Canadian youth justice from a historical perspective (Platt, 1969; Trepanier, 1991; Thorson, 1999), while others focus on specific aspects of the operations of the youth justice system under the Young Offenders Act (Caputo, 1987; Bala, 1994) or Youth Criminal Justice Act (Doob and Sprott, 2007). This dissertation provides a broad historical background of the Canadian youth justice system and the social welfare paradigm that was dominant for most of the 20th century; a paradigm under which young offenders were viewed largely as victims who needed help from the state. I explored in detail the various points of contention that emerged since the implementation of the Young Offenders Act; contentions which stood in stark contrast to the previous era's representations of youth crime. While analysts have pointed to the ways in which the Young Offenders Act ushered in a new hybridized paradigm that mixed social welfare and legalistic/crime control models of youth justice (Corrado and Markwart, 1994), I underscored the impact of this hybridization on claims-making activity itself within various arenas of representation. By examining various sources, including Parliamentary debates, news sources, Internet sources and by conducting key informant interviews, I was able to examine in more detail the dynamics involved with respect to the ambiguous interpretations over young offender identity and culpability and the ways in which these interpretations influenced related positions on youth crime severity and solutions.

Specifically, while some have argued that the Young Offenders Act era was characterized by its punitive rhetoric and youth justice policies (Hogeveen, 2005; Schissel, 2006), I demonstrated that these debates were more complex and ambiguous than some have suggested; especially with respect to attributions of young offender culpability. Rather than finding a dominance of punitive rhetoric, I explored active challenges which generated an arguably evenly-matched victim contest. Moreover, while I found evidence consistent with some who have suggested that positions over youth justice solutions were split between rehabilitation versus punishment advocates (e.g. Bala, 1994: 247), I underscored interpretative dynamics within these debates that pointed to ambiguities regarding the meanings associated with rehabilitation 'versus' punishment. I linked this ambiguity back to the hybridized youth justice context the Young Offenders Act engendered.

Some of the youth justice officials I interviewed pointed to evidence suggesting that the Youth Criminal Justice Act has had a positive impact on youth crime, for instance through successful diversionary initiatives that have lowered custody rates. However, I have demonstrated that the underlying tensions that generated contention under the Young Offenders Act have continued unabated. Without addressing questions

exploring the source of these tensions, I argue that youth justice policy will continue to be amended with little to no discernable impact upon these debates.

I also contribute more generally to understandings about cultural associations pertaining to childhood and youth. Children and youth have become the focus for many social problems debates, including youth crime specifically. Part of the reason for the concern over young offenders is undoubtedly the strong cultural linkage of childhood with innocence and as a period of special development. I have highlighted how this view of childhood is a relatively recent historical construction, but I have also suggested that this view, as well as contemporary challenges to it, are both reinforced by scientific knowledge bases such as psychology, psychiatry and physiology. While the linkage of childhood with innocence has come to be challenged during these recent debates, both those who viewed young offenders as victims and those who viewed them as victimizers looked to science to legitimate their preconceptions regarding young offender disposition. In the most general sense, this dissertation explores questions of human nature insofar as this culture looks towards youth for answers regarding who we are and what measures of good and evil we are capable of.

In deliberately not coming to a definitive conclusion with respect to the ‘true nature’ of young offenders, the extent and severity of youth crime or the proper balance of rehabilitation and punishment, I explicated hermeneutic factors impacting upon youth crime debates that may help to generate insight regarding why these debates persist to the present day under the Youth Criminal Justice Act. This dissertation may ultimately contribute to youth justice policy by identifying sources of tension which, if left unresolved, will persist, despite the arguments of those who are behooved to argue that youth crime *really is* high or low, and that youth justice policy should take one direction or another.

Theoretical Contributions

This dissertation research contributes to areas of study within constructionist theory in these new ways: (1) by linking the theoretical concepts of victim contests and status wars, I have argued that there is a connection between how constructions of ‘people types’ (and associated emotions) related to a social problem are themselves associated with notions of the severity of the problem; (2) I have explored the dynamics and discursive tactics of claims-making in response to social problems that go unresolved for long periods of time; (3) I have explicated how constructionists can expand upon their understanding of the ways in which discursive social contexts act upon claims-making activity, and (4) I have suggested how claims-makers themselves affect these contexts.

While constructionists have paid particular attention to the claims-making processes involved in rendering attributions of victimhood (Holstein and Miller, 1997) or how assessments of the severity of social problems engage statistical knowledge bases (Best, 2001), in chapter 5 I demonstrated how the positions taken up with respect to young offender identity and culpability are themselves linked to respective positions regarding the extent and severity of youth crime. This linkage suggests that formulations of ‘problem people’ come to act as interpretive lenses through which other aspects of the

social problem are perceived. Whereas Best (2001) points to the ways in which ‘big numbers’ are often quoted by claims-makers who wish to demonstrate that a social problem is getting worse or is out of control, I demonstrate how small numbers can themselves be construed to make the same argument. I argued that the *absence of large numbers* were also used to support claims of a *growing* problem, as yet not captured by statistics or under-represented because of inaction or inattention. I dubbed this a ‘net narrowing’ effect. Moreover, the numbers themselves really were of secondary importance in relation to the underlying assumptions regarding young offender culpability. Whether or not big or small numbers were central to the debates, youth crime was judged to be under control for those who viewed young offenders as victims, and out of control for those who viewed them as victimizers. I showed how statistical figures from the *same* sources could be endorsed or rejected by those holding divergent opinions related to young offender identity.

While Best (2001: 152) suggests that arguments over statistics related to a social problem are rarely resolved due to deeper disagreements over the problem debated, I contribute to an understanding of what, specifically, those deeper disagreements are over. When the basic identity and victimizer status of a ‘folk devil’ (Cohen, 2002 [1972]) is actively contested over time, disagreements about the impact of these folk devils upon the larger social problem emerge. Formulations of ‘problem people’ associated with a social problem come to act as interpretive lenses through which other aspects of the social problem are perceived.

In chapter 4, the ways in which emotions were elicited and channeled by claims-makers during these victim contests and stats wars were also underscored. Loseke (2003) has suggested that constructionists pay more attention to how deviant people types are associated with emotions that elicit either sympathy or condemnation, especially as they are directed through the discursive tactics employed within victim contests (see above). However I have extended and modified Loseke’s (2003: 127) observation that “what members ‘feel’ [about a social problem] is [often] judged as more important than what members ‘think’”. I have demonstrated that whether or not this statement is accurate depends on the perspective being taken within these debates. I argued that ‘emotions discourses’ were only sometimes viewed as legitimate reactions when considering the extent and severity of youth crime. Loseke’s observation appears to hold true for those who viewed young offenders as victimizers, but not for those who viewed them as victims. For those who viewed young offenders as victims, statistics allowed for ‘neutral’ assessments of long-term youth crime trends that offered more ‘sober’ reflections over the social problem. Nevertheless, emotional orientations were always central considering how these stat wars were directly influenced by underlying victim contests and the emotions discourses which permeated them.

The concept of a victim contest is best employed as a conceptual scheme within constructionist analyses. It is of course far too simplistic to suggest that social actors can or should be slotted into ‘sides’ over a debate across various contexts and time periods. Especially with respect to organizations, political parties or other ‘meso-level’ groupings, there may be more variety within the group than solidarity with respect to a collective ‘position’ on a social problem or problem people. This differentiation both within and

between social groups should not detract from an appreciation regarding the utility of the concept of a victim contest. The concept should be treated as an ideal type (Weber, 1949 [1904]) in order to point to the ways that particular discursive social contexts engender specific forms of claims-making activity and discursive strategies. The concept of “emotions discourses” within victim contests should also be treated as a conceptual scheme. Loseke (2003: 124) suggests how emotions discourses, as “linguistic cultural resources”, are effective for “managing putative internal states”. Her use of the word ‘putative’ is instructive, since it directs attention away from the need to question what the underlying motivations may be with respect to claims-making activity (Mills, 1940). This dissertation has underscored why the internal motivations of individuals or groups are *sociologically* irrelevant given an analysis which places emphasis on the ways in which discursive contexts come to influence the shape and content of social problems debates.

While Holstein and Miller (1997: 28) suggest that victim contests may lead to the reification of identity whereby ‘victim-as-a-fact’ is achieved, the victim contests explored in this dissertation did not lead to such a resolved outcome. Victim contests over young offender identity and their related debates persisted under both the Young Offenders Act and the Youth Criminal Justice Act. There was never any evidence of one side dominating the other – both ‘sides’ were fairly evenly matched. I argued that the irresolvable nature of these debates was directly related to ambiguities engendered by the youth justice context introduced under the Young Offenders Act. In analyzing these points of tension, I took note of Spencer’s (2005: 63) suggestion that constructionists should not be content to rest with the discovery of “simplicity and clarity” with respect to their analyses of social problems. Spencer argued that “we might advance constructionist social problems theory by looking for the complex and ambiguous instead”. Though I did not seek out to find ambiguity per se, I found evidence of such ambiguity within Canadian youth justice debates. This ambiguity led to a social problem that has persisted over a period of time without resolution. Ibarra (2009) makes a similar argument in his suggestion that analysts of social problems pay more attention to what he calls ‘problematic sociality’. While for Ibarra the term refers mainly to ‘real life’ situations of group participation/interaction, he argues that social problems can be examined for the “state of puzzlement” they induce (2009: 86), where meanings are “opaque, provisional or elliptical” (2009: 87). In the case of the youth justice debates I examined, the inability for a degree of consensus to emerge regarding youth identity and culpability stymied the ability for social policy to ameliorate these tensions and/or direct these tensions towards resolution. Whether or not the amendments made to the Young Offenders Act during the 1990s evidenced a successful push by ‘get tough’ advocates to increase punishments for youth crime (Hogeveen and Smandych, 2001), or whether the later changes that led up to the Youth Criminal Justice Act represented an attempt to appease both ‘right-’ and ‘left-wing’ critics (Hogeveen, 2005), I argue that youth justice policies have thus far failed to quell the underlying points of contention explored in this dissertation. It is this ambiguity, both spawned by the hybridized youth justice context created under the Young Offenders Act, and perpetuated in policy amendments that merely tweak, but never overcome this hybridization, that remains unresolved. Under the Juvenile

Delinquents Act, however, this sort of ambiguity (and related debates over youth crime statistics and the proper balancing of punishment and rehabilitation) did not exist. Whether or not claims-making over a social problem is ‘problematic’ and ambiguous or ‘simple and clear’ is largely conditioned by the social context under which these debates take place.

Perhaps the most significant theoretical point I wish to underscore is that these debates were and are never static. They are, in fact, always dynamic and processual. Much of the analyses of youth crime I have critiqued in this dissertation seemed to take up a more static conception of the youth justice system or the debates influencing youth justice policy. One of the Youth Court judges I interviewed (Personal Communication, January 18, 2008; see chapter 1) recalled how he and his colleagues considered themselves “activist[s]” back during the 1960s and 1970s. In contrast to the ‘old guard’ of judges who came up under the Juvenile Delinquents Act, they were already applying the legalistic and civil rights-based judicial practices that were only much later formally indoctrinated under the Young Offenders Act. This judge was not alone, of course. In other words, the imposition of a legalistic/crime control paradigm emerged as a result of the shifts in mentality and practices of individuals over several decades. The macro/cultural youth justice context that emerged after the Young Offenders Act came into effect as a product of the activities of many individuals who, as a collective, came to influence the shift away from the dominant welfare paradigm of the Juvenile Delinquents Act. Once in place formally, that hybridized context engendered the ambiguities explicated in this dissertation. I do not wish to suggest that this context is indomitable, acting ‘from above’ to constrain social actors and their formulations of social problems. However, a shift away from these ambiguities may take some time. After all, relative to the Juvenile Delinquents Act, which lasted for 76 years, both the Young Offenders Act and the Youth Criminal Justice Act (as of 2009) have collectively been in place for 25 years. While different in some ways, the Youth Criminal Justice Act still represents a hybridized youth justice model with differing responses towards serious and non-serious youth crime. If it is true that the Youth Criminal Justice Act is not remarkably different than the Young Offenders Act when compared to the Juvenile Delinquents Act, this may reflect how policies over social problems are a less useful gauge of a social problems ‘epoch’ than broader cultural associations and interpretive factors which take long periods of time to definitively change.

These observations also point to a consideration of how constructionists may come to theorize about the nature and impact of social context. There have been a series of disagreements within constructionism over how best to apply Spector and Kitsuse’s (1977) original formulation: that analysts of social problems should engage in a *sociology* of social problems – a study that should focus on the subjective aspects of social problem formulations. Despite the efforts that Spector and Kitsuse made to move away from the value-conflict school (see chapter 1), Woolgar and Pawluch (1985a) suggested that constructionists often continued to inadvertently and subtly introduce assumptions of objective conditions into their analyses. If youth crime is an example, the analyst may want to address how ‘young offenders’ were represented over a period of time. However, what is assumed here is that both cultural associations revolving around ‘young’ and

‘offender’ may not be the same from one historical era to another. In order to observe shifting subjective definitions, objective ‘anchoring points’ are (at best inadvertently) introduced to give leverage to comparisons across periods of time. Best (1995) argued that those constructionists who wanted to avoid the introduction of objective conditions (an attempt, he argued, to be futile), were engaged in a ‘strict constructionism’. He offered an alternative, which he dubbed ‘contextual constructionism’. It seemed as though constructionist analyses were being split between those who wanted to examine ‘strictly’ the subjective definitional aspects of social problems formulations, who argued introducing notions of context necessitated the subtle introduction of objective assumptions, and those who argued that subjective aspects needed to be grounded within particular social contexts.

Spencer (2000) has responded to this debate, suggesting that constructionists treat context as a series of discourses from which claims-makers draw. Within this dissertation this idea became a central premise of chapter 6, where I examined the appropriation of rehabilitative discourses under the Young Offenders Act’s hybridized discursive context. If context is considered to be a series of discourses, Spencer argues, the contention between ‘strict’ and ‘contextual’ constructionism over where constructionists “locate” their “ontological boundaries” may be “eliminated” (2000: 29). This is so, he argues, because it forces the analyst to avoid focusing too much at either the micro-level of claims-making over “free-floating discourse” or the meso- and macro-levels of “systems of knowledge.” Spencer’s suggestions help to reformulate how constructionists think about social context. In chapter 6 I explicated how debates over youth crime solutions are located within a youth justice context that perpetuates ambiguities both at the level of individual formulations of solutions as well as the general role of the youth justice system. Moreover, I argue that debates geared towards amending social policy, for example those held within Parliamentary contexts, perpetuate ambiguous discourses and the contexts that feed back upon claims-making activity. Given such a formulation, it is not theoretically useful to consider claims-making at the micro level and context at the macro level as distinct and mutually exclusive. I would add that it is integral to keep the processual and dialectical nature of social problems formulations central, in order to effectively link how micro-level claims-making dialectically impacts upon meso- and macro-level discursive topographies; and how these topographies can be subjected to ‘discursive landscaping’ from below. However, there are a number of ways I could have more thoroughly addressed the model Spencer (2000) has advocated. The next section explores some of these possible research directions.

Future Research

There are several directions for further research raised by this dissertation. Substantively, I outline areas specific to youth justice that could be pursued. Theoretically, I follow up on the discussion offered in the previous section, arguing that constructionist theory could be advanced in areas related to how social context impacts upon social problems debates, and address how a ‘natural history’ model may be applied towards this goal.

Substantive Explorations

It is important to continue tracking the debates under the Youth Criminal Justice Act. To date no further major legislative amendments have been debated in Parliament, though there have been several cases of youth crime featured in the news which have led to recent attempts by the federal Conservative government to amend the Youth Criminal Justice Act in order to ‘toughen up’ the law (see chapter 1). I have also traced continuing evidence, within the substantive chapters of this dissertation, of the same ongoing tensions over youth justice that were evident under the Young Offenders Act. I believe that further changes to youth justice policy, with the goal of arriving at a definitive balance with respect to the treatment of young offenders are inevitable. This will likely be the case despite recent assessments of the success of some of the Youth Criminal Justice Act’s policies, read in terms of lowering youth crime rates (see chapter 5). I argue that the interpretive factors underlying these debates, regardless of demonstrations of ‘success’, will perpetuate discord over effective youth justice solutions and the proper shape of youth justice policy.

Much has been made of the emphasis placed under the Youth Criminal Justice Act upon restorative justice. Restorative justice has been conceived as a ‘true alternative’ to formal youth justice processing of young offenders (it has also been applied to adults and those charged with serious crimes) (see Bazemore and Umbreit, 1995; Braithwaite, 1999). Restorative justice ‘conferences’, for example, involving community members, offenders and victims, seek to ‘reintegratively shame’ offenders (Braithwaite, 1989) to both take responsibility for their actions but also to strengthen bonds among community members and underscore the potential for forgiveness. Some recent analyses of Canadian restorative justice have focused on policy and implementation aspects (Harris et al., 2004; Hillian, Reitsma-Street and Hackler, 2004). However only recently have Canadian restorative justice conferences been studied which address micro-interactional dynamics through a qualitative research design (Kenney and Clairmont, 2009; see also Presser and Hamilton, 2006 for a U.S.-based example). Specifically, Kenney and Clairmont found problematic aspects related not only to organizational factors like facilitator training (2009: 298, 299), but also how ‘traditional’ shaming is still a prominent feature of conference interactions (2009: 286, 289), given the significant observation that the “institutional context” (2009: 295) of these sessions continues to blend formal and informal methods of response to youth crime. I would add that this blending is symptomatic of the same victim contests evident under the Young Offenders Act. Greater attention to how victim contests are coming to shape restorative justice initiatives and how the hybridized youth justice context impacts upon them may suggest directions to take to help bolster the efficacy of these programs.

More attention could also be given to comparison and contrast between various ‘arenas of representation’ within which youth crime debates unfold. News sources tended to arrange brief quotations from claims-makers in a way that did not allow for much elaboration. I also found differences among news sources in terms of how quotes were arranged and the support or criticism offered to particular claims-makers. In a

(unpublished) side project I explored these differences to suggest the importance of considering a newspaper's position as a collective unit in terms of the ways in which they present claims related to youth crime. Documentary sources such as informational pamphlets or position papers related to youth justice policy published by various organizations allowed for more elaboration, but were not in 'in active dialogue' with potential dissenters. Parliamentary debates thus were essential to analyze since they allowed various claims-makers (including politicians but also victims-rights advocates, criminologists and non-profit organization officials) to make elaborated statements regarding their position on youth crime and youth justice policy. Many of the ambiguities highlighted in this dissertation, especially those pertaining to youth justice solutions explored in chapter 6, focused upon these Parliamentary debates. While my goal here was to examine the debates using all available sources, it is also important to address how these debates may be variably represented within and among various sources or 'arenas of representation'.

I make a related methodological point here. Some of those who came to conclusions regarding the state of 'ideological domination' regarding positions related to youth crime in Canada supported this conclusion by looking at sources which presented a concentration of 'law and order' type of claims. Schissel (2006), for instance, focused much attention on 'right wing' western sources more than other news sources from different regions. Likewise, Hogeveen (2005: 74) examined Parliamentary debates during the late 1990s to emphasize an "ethos of a 'new punitiveness'" which "eschews any pretence of compassion towards serious offenders". Yet he quotes 'right wing' Alliance Party (formerly Reform) politicians more than those taking up a 'lenient' position. Moreover, Hogeveen presents truncated quotations from Alliance Party members (the title of his article; see also chapter 6) which stress the portion of their statements suggesting a tough-on-crime stance. A comparison between arenas of representation as well as highlighting the complexity of claims within particular arenas is essential to underscoring the ambiguities engendered by hybridized youth justice contexts; ambiguities in line with Spencer's (2005) suggestion that such representations are not as simple as they seem.

More broadly, it remains to be explored how the types of youth crime representations highlighted in this dissertation compare to other youth justice contexts, for instance in the United States. The currency of rehabilitation was evident in Parliamentary debates, even with respect to the most serious forms of youth crime where punishment was obviated. However, does rehabilitation have a similarly central place within comparable debates in the United States? Analysts have pointed to punitive youth justice policies in the United States that emphasize incarceration and retribution (Jenson and Howard, 1998). However, other studies have pointed to American public attitudes (from Tennessee) favoring 'child saving' and rehabilitation (Moon, Sundt, Cullen and Wright, 2000). Additionally, Spencer's (2005) analysis of debates over young offender culpability in four U.S. newspapers suggests the need for further exploration of contention over young offender identity and culpability in various arenas of representation, including a wider range of news sources and governmental debates. Comparative studies outside of North America would also be illuminating. If the youth

justice social context differs under various international systems, how does this impact upon *representations* of young offenders and youth crime?

Theoretical Explorations

While this dissertation applied the concept of a victim contest to youth crime debates, there are other substantive areas where this concept could be usefully employed. As mentioned in chapter 4, the concept of a victim contest has been utilized in a number of recent constructionist studies, examining attributions of victimhood to high school girls sexually involved with older men in Tokyo, Japan (Yamamoto and Nakagawa, 1999); gay and lesbian rights and the social construction of 'injustice frames' (Berbrier and Pruett, 2006); and battered women's victimization and agency (Dunn and Powell-Williams, 2007). While these case studies, as well as my own, offer specific insights with respect to particular social problems, more comparative research which may reveal theoretical points of commonality among these cases is required. Are other victim contests subject to the same ongoing points of tension over time? If these points of tension do not relate to *youth* identity, are there other ways to link them theoretically? How do social contexts impact upon these other victim contests? Do these social contexts offer comparable 'hybridized' discursive resources which filter down into specific claims-making strategies, or are there notable differences?

I have argued that social context should not be treated as a static, overarching structural entity acting in a 'top down', isomorphic fashion upon social actors at the micro level. Rather, it may be considered a series of discourses that claims-makers can draw upon (Spencer, 2000). Moreover, it is the *dialectical process* between micro and macro practices that help to tease out how ideas about social problems are formulated, disseminated and perpetuated. It is also important to note that constructionism has theoretical roots linking it back to ethnomethodology and phenomenology (see Loseke, 1999: 196, 197). These sociological and philosophical roots underscore how humans make meaning. However, some have criticized these approaches as being too rooted to the micro-level and for their inability to address how social context comes to shape micro-level interpretive processes (see Alexander, 1987: 297, Hilbert, 1990: 797). It is perhaps not surprising, then, that constructionism has come across similar epistemological challenges (see above). An alternative, I argue, is to more carefully consider the contributions that symbolic interactionism, rooted in American pragmatism, can make to resolving internal tensions between micro and macro analyses. Specifically, symbolic interactionism focuses on the dialectical nature mediating micro/macro processes, as well as 'agency' and 'structure' (see Maines, 1982, 2001). I argue that these insights may serve to help complement Spencer's (2000) ideas that address how discursive tactics from 'below' are dialectically related to discursive contexts from 'above'.

Another theoretical concept that may prove valuable to the study of youth crime debates, as well as other areas where victim contests apply, is that of a 'natural history'. Alongside their initial formulation of the social constructionist paradigm, Spector and

Kitsuse (1973: 146) made several proposals regarding the types of analyses in which constructionists could engage. They argued that

every social problem has its own unique history. One task for the sociology of social problems is to search for common elements, stages, or processes among the histories of various social problems – that is, to determine if social problems have a ‘natural history,’ and if so, to describe its stages and the contingencies of its development.

‘Natural histories’ are sometimes generally adopted in sociological studies in order to track the (usually chronological) progression of a ‘career’ or series of events and/or circumstances. Spector and Kitsuse (1977: 135) emphasized the more macro and sociological emphasis of natural histories, suggesting that while “history is the portrait of the individual example, ...natural history is the collective portrait of the type”. They (1973: 148) proposed a four-stage natural history model of social problems, suggesting that such ‘stages’ were ideal types and development through the stages need not be linear (Spector and Kitsuse 1973: 147). They suggested tracking four generic phases:

1 – group(s) attempting to assert the existence of some condition; 2 – recognition of the legitimacy of these group(s) by some official organization, agency or institution; 3 – reemergence of claims and demands by the original group(s) ...expressing dissatisfaction with the established procedures for dealing with the imputed conditions; 4 – rejection by complainant group(s) of the agency’s or institution’s response (see also Spector and Kitsuse, 1977: 142).

A more recent constructionist formulation of the natural history concept was advocated by Joel Best (2008: 17), who proposed six ‘stages’: 1 – claimsmaking; 2 – media coverage; 3 – public reaction; 4 – policymaking; 5 – social problems work; 6 – policy outcomes. Best was also careful to underscore the point that these stages are often non-linear, with “feedback” (2008: 26) possible both within and between stages.

Further research on the *feedback between* natural history stages may help to make broader connections between the various social problems stages. While Spector and Kitsuse (1977) and Best (2008) addressed specific aspects of each stage within their natural history models, and were careful to avoid a teleological presentation of stages, more research regarding the specific ways in which ‘feedback’ (Best 2008: 26) between stages occurs would help to demonstrate the varying impact of each stage upon the construction of social problems. Are there generic social processes involved in terms of the ways in which stages are connected for youth crime debates that are similar to those of other social problems?

Spector and Kitsuse (1977) were explicit in their formulation of a natural history model as addressing ‘macro’ aspects of social problems debates, while Best (2008) seemed to imply this as well. A historical model naturally suggests a broad level of analysis that is not bound to individual case studies and that is wide in scope, seeking generic sociological features across various social contexts and/or time periods

(moreover, how social contexts are affected over time). However, this again seems to jettison the ‘macro’ to a structurally imposing level of analysis, irrespective of the call to study claims-making *processes*. I argue that if the insights of the Pragmatist school are applied to how a natural history model is conceived, a more fluid model may emerge; a model which addresses how each ‘stage’ itself may be subject to ‘feedback’ from within as well as from without; a model which asks how agency/structure are dialectically related to each other within these debates; and how discursive context and the appropriation of discourses plays an integral role as well. Finally, such a model may help assuage the tensions between ‘strict’ and ‘contextual’ forms of constructionism, by treating social context and member standpoint as dialectically and mutually constitutive of each other.

Afterword

I became interested in studying youth justice issues given my interest in how identity for young people is socially constituted and ascribed. Sociologists have paid attention to the relatively recent reification of ‘adolescence’ and, more recently still, the ‘tween’. Deviant behaviour among youth elicits and illuminates tensions that often lie dormant regarding cultural assumptions related to childhood and youth. The question ‘who are these kids’ is asked (in various ways), especially when they are charged with serious crimes that challenge associations of innocence and limited culpability. I felt, entering into this area of research, that I had come in at the ‘twilight’ stage in terms of the sheer breadth and depth of the studies already conducted on youth crime/justice and deviance. What could I contribute at this supposedly late stage where all the questions that could be asked seemed to have been asked already? With the question of how youth were being actively represented in the back of my mind, I addressed questions about the various interpretive and hermeneutic qualities of youth crime debates. What challenged me at the beginning – the sheer volume of previous research in this area, has been surpassed by the challenges offered by the many questions and areas still left to explore.

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Inspiring Innovation and Discovery

Date

Letter of Information / Consent

Youth Crime, Social Problems and Claims-Making: The Rise and Fall of the Young Offenders Act

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905.525.9140 extension 23618

Purpose:

I am a (#)-year Ph.D. student studying sociology at McMaster University. I wish to analyze the issues that led to the implementation of the Young Offenders Act (YOA) in 1984 and the current Youth Criminal Justice Act (YCJA) in 2003. I am particularly interested in following debates about troublesome youth, the different ways in which youth have been characterized and how such characterizations have affected laws governing youth. This research will contribute to the literature on youth justice in Canada.

Procedure:

I am interested in conducting an open-ended interview with you, as someone who has been involved either directly with the implementation and subsequent interpretation of youth crime legislation, or having had regular contact with youth who come under the influence of this legislation. The interview will take approximately one hour and will be held at a mutually agreed upon location. I will ask such questions as what do you see as the key differences between the YOA and the YCJA; what do you feel are some strengths and limitations of each act; how do the acts work from the perspective of dealing with youth? The interview will be tape-recorded with your permission only. If you agree, I may also ask if it would be alright to conduct a follow-up interview to fill any gaps in my data as the analysis proceeds.

Potential Harms, Risks or Discomforts:

It is not likely that there will be any harms or discomforts associated with this interview. If you feel uncomfortable with any of the questions, you are free not to answer.

Potential Benefits:

Research which looks at legislative and policy changes is often not complemented by studies that look at how legislation is being interpreted and used. Your participation in this project will benefit the scholarly community by helping to fill this gap. The research may also benefit legislators and policy makers as they continue to deal with youth justice issues.

Confidentiality:

I will be treating all interview data as confidential. That is, your privacy will be respected. In referring to anything you might say I will not use your name, nor will I include any information that would allow you to be identified.

Any material generated by the interview will be treated securely. Audio tapes will be transcribed to an electronic transcript and then destroyed. The document will be protected with an encryption passkey. I will be the only person with access to the raw data.

Participation:

Your participation in this study is voluntary. If you decide to participate, you can decide to stop at any time, even after signing the consent form. If you decide to stop participating, there will be no consequences to you. In cases of withdrawal, any data you have provided to that point will be destroyed unless you indicate otherwise.

Information About the Study Results:

If you would like information about the study results, please let me know and I will provide you with an executive summary of my dissertation once it is completed.

If you have questions or require information about the study itself, please contact me or my supervisor at the numbers / emails / addresses provided.

This study has been reviewed and approved by the McMaster Research Ethics Board. If you have concerns or questions about your rights or about the way the study is conducted, you may contact:

McMaster Research Ethics Board Secretariat
Telephone: (905) 525-9140 ext. 23142
c/o Office of Research Services
Email: ethicsoffice@mcmaster.ca

CONSENT

I have read the information presented in the information letter regarding research being conducted by Mike Adorjan under the supervision of Dr. Dorothy Pawluch of McMaster University. I have had the opportunity to ask questions about my involvement in this study, and to receive any additional details I wanted to know about the study. I understand that I may withdraw from the study at any time, if I choose to do so. I have been given a copy of this form.

Name of Participant

In my opinion, the person who has signed above is agreeing to participate in this study voluntarily, and understands the nature of the study and the consequences of participation in it.

Signature of Researcher or Witness

Interview Guide

A representative sample of questions asked to interviewees is provided.

Questions asked to the majority of interviewees

- When/how did you first get involved with youth justice/studying youth justice?
- What do you perceive as your role in the youth justice system (or) What do you study as a criminologist?
- Often youth crime seems to generate more contentious and heated debates than those related to adult criminal behavior. Why is this so?
- What were some of the key differences, you felt, between the YOA and the YCJA (I asked this 'in terms of your experiences working under' for non-academics)?
- Is there anything specific that you would specifically change in the YCJA – something that you just don't see working the way it was expected to?
- From your perspective, what were some of the issues during the implementation phase of the YOA? (and/or YCJA; or 'versus the YOA and YCJA, depending on the individual)? (for non-academics this question was geared to organizational/bureaucratic implementation issues)
- What were some of the key issues during the transition phase (between the YOA and YCJA if applicable; between the JDA and YOA if applicable)?
- During the YOA era, many argued that kids are laughing at the system. What do you think about this argument?
- How do you feel about the argument that young offender identities, for serious crimes, should be publicly disseminated?
- Some have called for the lowering of the minimum age of youth under the law – what do you think about that argument?
- Is the language used to refer to young offenders significant, i.e. 'juvenile delinquent', 'young person', 'young offender'?
- How do you think the media affects the behaviour of youth?
- Is the media a significant factor in terms of influencing young offenders?
- Have the debates under the YOA tapered off significantly under the YCJA?
- Is the Youth Criminal Justice Act set up to last?

Questions catered to Youth Court judges

- When did you first get called to the Bench?
- Did you see any differences between phase 1 and phase 2, in terms of the treatment of youth?
- Do you have experiences where it struck you that dealing with youth, older youth too, they were really not thinking or acting as an adult would despite the gravity of being caught up in the justice system?

- What is your experience with youth in terms of their knowledge of the law, attitudes towards the law/legislation/youth workers/police officers, etc.? Do they think it's a joke, or is it more complicated than that?
- Has maintaining confidentiality of young offenders been a significant issue/problem?
- In this article you (suggested resistance in Ontario to the YOA). What conditions in Ontario created such resistance against the YOA? Was there anything that could have been done differently at the time?
- What role did 1981s Charter of Rights and Freedoms play in terms of your experience within the youth justice system?
- Some people say that what we're seeing in academic stats is that long term trends are going down, but what is seen on the front lines is somehow qualitatively different – the form of the crimes is becoming more violent, esp. gang crimes may be something new that is emerging. Is youth gang violence something novel or an increasing concern?
- Do you ever feel constrained by the law, that you are limited in your ability to help the way that you want to, or that the parents are somehow an impediment to justice, or is that over simplifying it?
- Did you see in that transition period between lawyer and judge, what was your experience there – was there anything that you weren't expecting from that shift, or some surprises, or things being from a different role from lawyer to judge?
- Have you heard of Dalton McGuinty's plans to build a new 'superjail' for youth in Brampton? What is your opinion about this?
- What was the impact of the amendments to the YOA that facilitated transferring youth to adult court?
- In a more recent article, you said the correctional system places a 'premium on fear' – have there been improvements do you think since that time?
- And I think one of the issues that came up in the 1980s is adults who took advantage of the immunity of children and young teens – is that something that still is an issue?
- The YCJA seemed to get at the best of both worlds – JDA's emphasis on *parens patriae*, vs. the YOA's legalistic emphasis – how do you see the YCJA fitting in?
- Things like ADHD and conduct disorders I imagine are on the rise – but they're never mitigating circumstances are they? Or used as let's say as an excuse?
- Did you find the same thing with the YCJA, in terms of something novel and being able to interpret it? Is the YCJA also being contested as much as the YOA was?
- Was the phrasing of the YCJA – taking out the words 'delinquent' and 'offender' and replacing it with 'justice' – significant or relevant to you?
- Now the youth justice committees were always very low risk offenders that they work with, but perhaps it is the high risk offenders that would benefit more from their diversion programs more, and even how that risk is assessed is a problem, but is that something that might be changed or addressed? Are the EJS programs geared towards more high risk youth?

- There's the new ministry now – ministry of children and youth that replaced COMSOC. Has there been issues with communication with that ministry, do you deal with them on a daily basis?
- Now the debates over the YOA actually were 20 years in the making – do you think the 60s had a lot to do with it, the civil rights movements, individual rights, liberties, and then that applied to children and youth – you coming up during that time period when you were young, was that a big influence you think?
- ...And it's interesting, the phase 1 phase 2 issue as well, in Ontario. It was unique compared to the other provinces. What was the reasoning behind that division – was that a necessary thing, how did you feel about that?
- Have victim impact statements become more institutionalized now?
- The YOA tries to balance rehabilitation with punishment goals. How effective do you think it's been in that regard?
- The YOA kept being amended in the 90s, but was it necessary to bring in new legislation in 2003?

Questions catered to youth lawyers

- When did you first get called to the Bar?
- When in your career as a lawyer did you begin to work with youth? Why did you make this decision?
- Were you more involved with phase 1 or phase 2?
- Did you see any differences between phase 1 and phase 2, in terms of the treatment of youth?
- Has gang activity become an entrenched problem here, especially with respect to the non-profits you deal with?
- Have you seen any organizational shifts/issues between the non-profits and youth probation after the YCJA came into effect?
- And another major difference with the YCJA is the emphasis on diversion by the police?
- How are young offenders dealt with in the courts?
- Have you witnessed anything where you felt they were treated unfairly?
- How important is the language used to refer to young offenders?
- Has the YCJA done a good job so far with balancing the philosophies of addressing rehabilitation and the needs of youth with holding youth accountable for their actions?
- What do you think about the recent Conservative calls to toughen up the YCJA?
- Do you have experiences where it struck you that dealing with youth, older youth too, they were really not thinking or acting as an adult would despite the gravity of being caught up in the justice system?
- From what you see in court, what you're doing on a day-to-day basis, were there any other major shifts involved under the YCJA?

- Your experiences dealing with other justices and judges and lawyers under the YCJA – do you often see eye-to-eye with the judges or are you often diametrically opposed to them?
- What are your experiences like interacting with youth?
- Do you feel they are often limited in their capacity to appreciate the gravity of their situation? Limited mens rea?
- Even with the most serious offenders, is it a challenge to keep that perspective that this is still a young person that needs to be treated differently?
- What is your experience with youth in terms of their knowledge of the law, attitudes towards the law/legislation/youth workers/police officers, etc.? Do they think it's a joke, or is it more complicated than that?
- Has maintaining confidentiality of young offenders been a significant issue/problem?
- In this article (from) 1984 you mentioned to me that Ontario wasn't ready for the YOA. That it was forced onto the province. What measures were taken to adapt to the situation?
- Wasn't there a resistance also in Ontario with the alternative measures implementation?
- Have you heard of Dalton McGuinty's plans to build a new 'superjail' for youth in Brampton? What is your opinion about this?
- One of the issues with psychological counseling, I think the issue was early in the YOA days, if the youth rejects the psychological treatment, that's their right, but we know they should have it but we can't force it...
- On implementation - was your experience the same with the YCJA as when the YOA came into effect?

Questions catered to criminologists

- What are some of the key differences which demarcate the JDA, YOA and YCJA?
- What is the 'parens patriae' philosophy – how does the YOA position itself towards this philosophy? The YCJA?
- Is the Parental Responsibility Act still in effect? Any studies on its effectiveness since implementation (of the YOA?)
- Is youth justice reform a West vs. East debate – Alberta vs. Quebec vs. Ontario?
- Has maintaining confidentiality of young offenders been a significant issue/problem?
- From 1984 to 2003 Ontario remained steadfast in its advocacy of a two-tier system split between ministries. Was this approach helpful in respect to implementation of the YOA, or did it present more problems? Has that been changed now?
- Have there been any studies regarding the amalgamation of phase 1 and phase 2 under the YCJA?

- Many advocates for toughening legislation acknowledge statistics that demonstrate aggregate levels of youth crime are decreasing, but remain resolute in their conviction that the 'form' of crime is changing – the incidents grow more horrendous and we are witnessing a quality to criminality that wasn't evident before. They argue that statisticians, sociologists and criminologists get to 'play with numbers' to support liberal/left wing policies. What do you think of this argument?
- Have police been following the directive to divert under the YCJA?
- Some feel that a small minority of youth are incorrigible. Nothing works. They are too far gone. Rehabilitation efforts waste tax payer dollars. One criminologist suggested that for this minority, institutionalization is perhaps the only alternative, including boot camps if necessary. Other researchers have called this minority "the 8%" and offered an "8% solution". Is this, you feel, a 'real group'/problem?
- Your research involves analysis of (risk assessment). What are these technologies? Do they impact areas other than the judicial/punitive spheres – courts, prisons?
- Under the YOA they had the two-tiered system – phase 1/phase 2. Was there a difference between the LSI-R and the RNA, that was also being used at the same time?
- I know the YCJA does want to emphasis diversion and leniency – stressing to police officers for minor offences; what about the so-called 8% - a few 'incorrigibles?' Is this a real group or something that is made up? It sounds like risk/needs may not work so well...
- What do you make of Stanley Cohen's 'moral panics' argument in relation to youth crime?
- Having worked with (non-profit organizations), what role does such an organization play in the youth justice system in particular?
- Are you aware of any studies looking into the effectiveness of these programs?
- What about communication factors *between* non-profit organizations?
- How do you respond to calls from the media where you are asked your opinion on youth crime?

Questions catered to youth workers/probation officers

- How long have you worked as...?
- Did you want to work with youth specifically?
- What about breaches? One of the concerns in bringing in the YCJA was that the high level of breaches found under the YOA would rise even further. Has that been an issue?
- Is it a problem of maintaining confidentiality for youth, or keeping them out of the system?

- What is your experience with youth in terms of their knowledge of the law, attitudes towards the law/legislation/youth workers/police officers, etc.? Do they think it's a joke, or is it more complicated than that?
- The YCJA places a greater emphasis on pre-charge extra-judicial measures. Has their utilization post-YCJA been effective?
- What about resources? Have promises been fulfilled in terms of funding?
- Have the recidivism rates been tracked for diversionary programming?
- What about the balancing of privacy and protecting youth identity and their involvement in these programs, especially given the CPIC database?
- Have the youth in phase 1 been treated differently than those in phase 2?
- What are your experiences dealing with risk assessment of youth, risk assessment tools?
- (If applicable:) What are the major differences between the LSI and RNA tools?
- Is the work you do satisfying or are there drawbacks?
- What was your experience like with training? Did training adequately prepare you for your work?
- Have you seen any major differences between male and female youth?
- How do you deal with the potentially dangerous aspects of your work?
- What are some benefits of the work?
- Has becoming jaded ever been an issue for you?
- Do you ever feel you're wearing different and competing 'hats', or taking on different roles while interacting with youth?
- Do you find many youth stereotype you in your role?
- Is there anything you would change about your work?
- Any aspect of your work that's frequently misunderstood?

Questions catered to the senior Liberal official

(Some questions are presented in a modified form since they implied the identity of the official)

- You may remember the Jeremy Bulger case in England, and it was argued that if this happened here we wouldn't have the resources to deal with the problem, that we need to bring in the criminal justice system. What did you feel about that argument?
- In the later 90s when the Alliance collapsed, do you perceive that as the general public just getting dissatisfied with their calls to lower the minimum age?
- Did you feel you had to balance competing demands from the Bloc as well as Alliance/CPC to both get tough and emphasize rehabilitation? What was your experience during House of Commons debates trying to balance these competing positions?
- How did you arrive at that balance?
- Moreso than any other party during HOC debates, Reform MPs had their presence felt given the sheer volume of petitions they presented from citizens demanding

changes to the YOA. They argued that they were more in touch than the Liberals were in terms of their constituency. What is your opinion about this argument?

- It seemed as though Reformers were presenting more petitions than Liberals. Didn't your party receive as many petitions?
- Was it ever frustrating to you – this desire not to kowtow to extremist lobbies and also educating the public and addressing misperceptions of youth – was that ever a point of frustration?
- How did you manage that?
- Have you followed some of the recent Conservative proposed amendments to the YCJA?

