

JUSTICE AND THE YOUNG OFFENDER IN CANADA Joe Hudson, Joseph P. Hornick, and Barbara Hudson, eds. (Toronto: Wall and Thompson, 1988).

This collection includes reviews of provincial responses to the Young Offenders Act as well as attempts to focus on some aspect of juvenile justice that has a broad impact. Thus, we have chapters that provide considerable information about the general workings of Alberta, Ontario, and Quebec and a specialized chapter that focuses on Youth Court Committees, relying heavily on work done in Manitoba. The chapter on aboriginal youth also draws significantly on material from Manitoba. Chapters on the voluntary sector, victim-offender mediation, custody, and the legal framework of the Young Offenders Act concentrate on issues that cut across geographical areas.

Authors who write chapters for this type of book, and editors who try to pull them together, are at a great disadvantage at this time. We have a dearth of research on juvenile justice in Canada. The available empirical data has not been analyzed, interpreted, argued over, and shared with practitioners. The meaning of statistics is unclear because we have made little effort to use them and to have others challenge our interpretations. Nor do we have the sort of anthropological research which focuses on local systems and helps us to appreciate the "culture" of a particular social system. Case studies are rare which follow juveniles through the system and help us see where the process stumbles and gets bogged down. Thus, even the best of authors are at a disadvantage because the raw material is scarce and usually of mediocre quality. Criticizing this book is easy, not because the authors are poor, but because this area of intellectual endeavor in Canada is clearly underdeveloped.

Carol LaPrairie's chapter on aboriginal youth illustrates the problem. Her own work makes an important contribution in this area, and she notes the lack of empirical work on the adolescent native population. The resulting review tends to reflect general knowledge which is familiar to those who are somewhat conversant with the field. But the chapter also contains some important insights. LaPrairie concludes that the disadvantages which native peoples face will not be corrected by a smoothly operating juvenile justice system (p. 166). On the other hand, it can make things worse by interfering with community efforts to develop viable self help programs and by removing individual offenders from the community where rehabilitation is more likely. This generalization applies to providing services to a variety of disadvantaged people. The issue is not: what sort of legislation is good, but what sort of legislation *avoids* the creation of processes that do damage. Since the YOA is much more detailed than the old Juvenile Delinquents Act, its potential for doing damage is considerable.

Many readers will find the chapters describing various governmental activities rather slow going, but I was pleased that an Alberta civil servant, Brian Mason, was willing to address the controversy over the authority to grant temporary releases. While most of us would not want a correctional institution to have the authority to move a juvenile from open to closed custody, I share Mason's view that permitting institutional personnel to

move youths to less restrictive settings, without always returning to court, makes good sense in systems that incarcerate large numbers of young people. If the YOA is to be utilized effectively, local personnel need to be active, not passive, participants in adapting the system to serve clients. This open debate in Alberta is a healthy sign.

Repetition is hard to avoid in this type of collection. The history of juvenile justice and the assumptions behind the YOA came up several times; one presentation even contains a mistake. The editors claim that the "YOA guarantees youths the same fundamental rights as adults" (p. 168). But youths are not entitled to jury trials. The YOA has made youths more equal to adults in many areas, but like society in general, the YOA has not obliterated all the differences in rights between adults and minors. The specific point is minor, but it would have been desirable to discuss the history and assumptions of the YOA just once in a more complete and organized manner.

A similar type of problem arises in the discussion of alternative measures. At times this topic is treated as if it were new, forgetting that calling diversion by a new name does not change the fact that this popular strategy was the subject of extensive research in the U.S. in the 1960s. Although Sharon Moyer's perceptive summary of this research for the Solicitor General of Canada is cited, the ideas therein do not seem to keep us from reinventing the wheel. It is not that alternative measures are irrelevant, but the research in the U.S. tried to analyze the conditions under which diversion was more likely to succeed and when it was likely to be used for widening the net in order to control youths who had previously been screened. Building alternative measures on the knowledge that was painfully gained 25 years ago makes sense; stumbling through the same mistakes again does not.

These criticisms do not apply to the chapter on victim-offender mediation by Kimberly Pate and Dean Peachey. These two practitioners have produced one of the most scholarly chapters in the book. Mediation and restitution sound promising. Caution is appropriate, but restitution programs in the U.S. seem to have some positive features, and the authors cite and utilize some of the better research. Although not its primary focus, the chapter also deals with the diversion question in a sophisticated manner. The authors recognize that alternative measures face the same problems that plagued such efforts in the U.S. This chapter utilizes current knowledge in a manner that increases the likelihood of making progress, in contrast to our tendency to leap on bandwagons that passed some time ago and stumble through the same mistakes a decade later. While some of the other chapters are somewhat insular and indicate little awareness of ideas about juvenile justice from other countries, Pate and Peachey have produced a more worldly chapter. When it comes to juvenile justice, this is quite un-Canadian.

When one compares custodial dispositions from province to province, it is easy to assume that counting the number of young people confined would be a reasonable way of assessing custody dispositions. However, as Caputo and Bracken point out, custody, both open and closed, can mean different things. Open custody in an institution is much different from being in a family setting. The chapter also illustrates how two good

scholars are limited in the questions they can ask because of limited data. They provide us with descriptions of facilities in various provinces, but in Nova Scotia the secure facility at Shelbourne is 130 kilometers away from Halifax. Does the distance cut down on adjournments? In Winnipeg, the defendant can step through a door into one of the nicest secure centres in Canada. Does this lead to casual use by judges? The number of beds available is useful information, but it is only the beginning step in trying to understand the impact of custodial arrangements. Caputo and Bracken could not provide insightful answers to meaningful questions with so little research on custodial facilities in Canada. Unfortunately, they overlooked a couple of good studies that are available. The excellent work by Prudence Rains on Boys' Farm<sup>1</sup> and Marc LeBlanc's study of Boscoville<sup>2</sup> stand out in Canada because there is so little research on the actual workings of juvenile facilities.

Leschied and Jaffe present a clear description of Ontario's reluctance to go along with many aspects of the YOA. The two tiered system, which permits youths 15 and under to be handled by Social Services while 16 and 17 year olds come under the jurisdiction of Corrections, was clearly not envisioned by the YOA. But before one can judge this administrative arrangement, we need to know how well it is serving young people. This clearly written chapter does more than describe the Ontario scene; it raises a number of important issues that plague other parts of Canada. As psychologists, Leschied and Jaffe are concerned about the difficulty of providing treatment if the young person does not give consent. The other side of this argument is summarized by the editors in the final chapter. Hudson and his co-authors argue that the loss of freedom and the possible debasement of treatment programs is too high a price to pay for the often dubious benefits of enforced therapy (p. 172).

The Quebec adaptation to the YOA was easier than Ontario's. LeBlanc and Beaumont argue that the Quebec Youth Protection Act of 1977 and other preliminary work by the province made the transition relatively painless. Unfortunately, the chapter provides little insight into the negative reaction that came from several areas when the YPA was first introduced. Many judges were unhappy with the YPA. In addition, the police were annoyed when certain screening functions were taken out of their hands. The sanguine picture of the easy acceptance of these legislative changes overlooks the normal struggles which typify any major change. The chapter on Quebec would have been more useful if it had provided insights into these conflicts and how they were resolved. In addition, Quebec has a unique and interesting system of delivering human services in three parallel organizations: francophone, anglophone, and Jewish. These three organizations serve juveniles in distinct ways and offer interesting models for the rest of the country. Information on some of the innovative and dynamic aspects of juvenile justice in Quebec might help other parts of the country to make more effective adaptations to the YOA.

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1. "Juvenile Justice and the Boys' Farm" (1984) 31 *Social Problems* 500.

2. *Boscoville: la rééducation évaluée* (1983).

Although a book on young offenders needs chapters describing the situation in Ontario and Quebec, it would have been interesting if an additional chapter could have compared the way our two largest provinces entered the YOA era. One was dragged in kicking and screaming while the other had more impact on moulding the outcome. To simply describe this as a "long period of debate" misses the importance of understanding how legislation evolves. Such extensive change inevitably leads to stress. The struggle among Ontario, Quebec and the federal government on these matters deserves an insightful history. It doesn't appear in this collection.

The chapter on the legal framework is in a different category from the others. Nicholas Bala is one of the finest legal scholars in this area. He also writes clearly. Bala also has an advantage over the social scientists in this collection who have little research to utilize. Lawyers, by contrast, have written extensively on the YOA. Unfortunately, the extensive legal debate may have led to a more involved, less workable piece of legislation. Sometimes legislators try to anticipate all contingencies, but no legislator can anticipate all situations or guide all behaviour with formal guidelines. In attempting to plug all the holes, instead of sticking with more general principles, the legal debate, which emphasizes uniformity, is out of step with a system which is very diverse. The comments in this book, and what little research has been done, suggests that there is tremendous variety in the way the law has been applied. This would have been anticipated if attention had been paid to juvenile court research. Thus, Canada has provided few resources for understanding *how* juvenile justice operates while devoting vast sums for debates concerned with drafting and revising legislation.

Understandably, legislation is concerned with fairness. The editors ask, "where does healthy local variation end and fairness and equity begin" (p. 175)? But if young people are being handled well in some situations, should we insist on treating them badly to provide equity with others who are less fortunate? Unlike the adult justice system, juvenile justice might admittedly give some youths more help, tolerance, and sympathy than they deserve. Errors of this type may be tolerable if society benefits. The tremendous diversity described in this book suggests that unevenness is inevitable. Concentrating on the poorly handled cases, so familiar to every practitioner, may be a more intelligent policy than constantly revising legislation to increase equity.

The back cover states that this book provides "a detailed analysis" of the social consequences of the YOA. This is misleading. Rather it brings together what we know, which isn't very much. One might well ask if such a collection were premature. If you are building a house and have only a small supply of bricks of mixed quality, should you wait until you have a better supply of better quality bricks? Perhaps it depends on how badly you need the house.

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