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## How Should We Respond to Youth Crime?

**Jim Hackler**

*Responding to Youth Crime in Canada*, by Anthony Doob and Carla Cesaroni<sup>1</sup> is a readable and useful addition to the literature on this topic. It is an “in between” book – not designed for introductory students or for the specialist, but well suited to the professional who needs a competent, but not overly lengthy, review of key issues. For example, many new youth court judges come to the bench with little experience in youth matters. Although they have demonstrated their reliability and other admirable characteristics in a variety of ways, they face a steep learning curve. I have yet to meet a youth court judge who had taken a course in criminology or delinquency, but they learn fast on the job. Soon they will be invited by the local service club to speak on: “How do we respond to delinquency?” This book will help, just as it will help any professional taking on responsibilities which require an awareness of key issues in the youth justice system.

The book draws heavily on research done in Ontario at the Centre of Criminology at the University of Toronto. The selective use of research from elsewhere supplements these data and leads to reasonable conclusions on a number of topics related to juvenile offenders. The tables used to present these data are condensed, relatively simple, make the point clearly, and avoid the elaborate analyses that characterize so many journal articles.

Little time is spent trying to explain youthful crime. Obviously, different explanations of youthful offending will suggest different ways of responding, but the authors condense this discussion rather nicely. Instead, they focus on societal perceptions and how the youth justice system responds. The authors emphasize the fact that the level of youth crime is not affected very much by the type of youth system we have. At the end of this essay, I will try to convince the reader that it might be worthwhile trying to modify the justice system itself. For the core of this review, however, I will select a number of issues, summarize the conclusion offered by the authors, and interject a few comments of my own.

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<sup>1</sup> Anthony Doob and Carla Cesaroni, *Responding to Youth Crime in Canada* (Toronto: University of Toronto Press, 2004).

### **The public view that youth justice is lenient**

It is clear from survey data that the public believes that youth are handled leniently by the youth court. This has almost always been the case. But it does not follow that everyone wants to imprison almost all offenders. The public prefers alternatives to prison and an emphasis on prevention. This has led to a rather schizophrenic approach to the development of juvenile legislation. The original *Juvenile Delinquents Act* gave judges tremendous flexibility, but unbridled discretion was seen as risky by those with liberal views. Judges had the potential power to incarcerate for minor offenses. Conservatives, on the other hand, wanted more accountability. The *Young Offenders Act of 1984* (YOA) was a compromise and a move to a more legalistic system. While seen as an improvement by some<sup>2</sup>, it is not clear that society or youths actually benefited.<sup>3</sup>

An immediate concern raised about the YOA was that children under 12 could not be treated as criminal. The authors point out that those under 12 can be apprehended under provincial child welfare laws for acts considered to be criminal. Throughout the book the authors point out concerns and perceptions of the public. Often these concerns do not coincide with reality.

A variety of pressures on the House of Commons led them to rethink the YOA. The ever present cry that “we must crack down on youth crime” led to an initial attempt to make the *Youth Criminal Justice Act* (YCJA) sound “tough”. With the first introduction of the new legislation, publicity made it sound as if it were satisfying those who wanted harsher sentences. This led to many objections, particularly from Quebec. In general, Doob and Cesaroni support the new YCJA which was passed in 2003 because it gave clearer directions. Others of us were skeptical, but I would acknowledge that the YCJA, and the way it was introduced, may have been a masterpiece in terms of manipulating public opinion. The authors state that the YOA allowed judicial flexibility while the YCJA requires the judge, and others, to follow certain rules. Some of us feel that the system has always learned to use the laws as much as being restricted by them, and that competent people in the system use that flexibility to benefit clients.

### **Why have a separate youth justice system?**

In the second chapter, which makes the case for a separate youth justice system, the authors note that some ‘treatments’ can do harm. In fact, processing young people tends to increase the likelihood of future offending. If most young people ‘grow out of’ delinquency, there is good reason to be very cautious about risky treatments.

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<sup>2</sup> Nicholas Bala, *Youth Criminal Justice* (Toronto: Irwin Law, 2003).

<sup>3</sup> Jim Hackler, “An Impressionistic View of Canadian Juvenile Justice: 1965 to 1999” (2001) 20 *Canadian Journal of Mental Health* 2; see also Jim Hackler, “Youth Justice and the Legal Process” in Max Uhlemann & David Turner, eds., *A Legal Handbook for the Helping Professional* (Victoria: Law Foundation of British Columbia [*Legal Handbook*] [forthcoming]).

Chapter three focuses on very young children. The authors point out the danger of criminalizing such children. In general, the most aggressive 10 to 11 year olds are children who are unhappy, have a poor self-image, and have negative relations with family, teachers, and other children. Many adults have already rejected them. A punishment oriented criminal justice system would simply add another set of adults to the list of those already viewed as 'not liking them'. If politicians listen carefully to the public, they will not find that the majority is simply demanding more punishment. Despite the public belief that the system is lenient, the public also supports helping alternatives when they are available.

### **How bad are juveniles?**

Chapter four summarizes the nature of youth crime. The development of a persistent offender is the result of a complex interaction among biological, psychological, and social factors. Young offenders are typically disadvantaged. Many of these disadvantages could be ameliorated through social means. For example, low birth weight is related to other problems. The consequences of such disadvantages can be diminished with early intervention.<sup>4</sup> Public health nurses can help pregnant women to produce healthier babies.

Measuring youth crime is another challenging task. We gather a variety of indicators, all of which are imperfect. The link between an incident, its recognition, a reporting of the incident, police action, identifying a suspect, and finally coming to court is not straightforward. These indicators can be useful, but they can be influenced by many things unrelated to the criminal behaviour itself.

In addition to relying on police and court statistics, criminologists use self report measures and victimization surveys. Despite the problems with these measures, some generalizations are appropriate. For example, young people victimize other young people. Older people may be afraid of youths, but other young people are more likely to be the victims. Adults should focus their fear on those closer to their own age, and older folks should be more worried about adult criminals.

The public image of increased youth violence is reinforced by misleading court statistics. For example, the proportion of violent cases entering the youth court has risen in recent decades. Does this mean that juveniles have become more violent? Or have we redefined how much violence will be allowed before there is a formal response? School yard fights, formerly handled at school, now find their way into the courts.

I recall observing a case in court where a girl was charged with lighting another girl's hair on fire. It seems that several girls were using cigarette

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<sup>4</sup> S.G. Tibbets & A.R. Piquero, "The Influence of Gender, Low Birth Weight, and Disadvantaged Environment in Predicting Early Onset of Offending: A Test of Moffitt's Interactional Hypothesis" (1999) 75:4 *Criminology* 1222-45

lighters in this manner. But one of them succeeded. She then immediately put the fire out with her hands. Was this criminal behaviour? All of the girls were acting stupidly. If another girl had succeeded in starting the fire, would she have been the one to be charged? Did this case belong in court?

In general youth are more likely to be apprehended for offending than adults. Thus, youth may be over-represented in official 'crime' statistics. Police reports of youths charged are the most commonly used statistics for youth crime. They are useful, but they are more important as indicators of discretion to charge and take youths to court than as measures of youth crime.

### Gangs and school violence

Chapter 5 deals with gangs, schools, and recidivists. Citing Gordon's study of Vancouver gangs,<sup>5</sup> it seems that the 'names' of gangs were sometimes imposed on a group of offenders by the news media even when the members did not consider themselves a gang. Similarly, Tanner and Wortley concluded that much of the 'gang' behaviour attributed to youths in Toronto was ordinary youthful behaviour.<sup>6</sup>

A number of studies suggest that the media creates moral panics claiming that gangs are out of control. Some police forces have encouraged this misinformation and have successfully used this strategy to increase the size of their budgets.

High profile shootings in some schools have led to some Canadian school systems adopting a 'zero tolerance' policy for violence in schools. But are schools really dangerous places? The peak time for youth violence is immediately after school, not during school. In the U. S. the number of youths struck by lightning is about twice the number killed by gun violence in schools. The rate of juveniles murdered outside of school is estimated to be forty times the rate of those murdered in school.

Despite the lack of evidence of an increase in school shooting deaths in North America, some criminologists believe there has been increase in juvenile violence. Gabor notes that officials from 260 school boards and 250 police departments felt that violence had increased in the schools in the last 10 years.<sup>7</sup> Doob and Cesaroni prefer to base their conclusions on direct evidence rather than on the impressions of people.

There are important policy consequences depending on the conclusion one reaches. If the public overreacts to the perception of violence, it may interfere with good school programs. Despite very low levels of lethal violence in schools, the media hype and the 'violence' crisis has led to cuts

<sup>5</sup> Robert M. Gordon, "Criminal Business Organizations, Street Gangs, and 'wanna-be' Groups: A Vancouver Perspective" (2000) 42:1 Can. J. Crim. 39-60.

<sup>6</sup> Julian Tanner & S. Wortley, *The Toronto Youth Crime and Victimization Survey: Overview Report* (Toronto: Centre of Criminology, University of Toronto, 2002).

<sup>7</sup> Thomas Gabor, "Trends in Youth Crime: Some Evidence Pointing to Increases in the Severity and Volume of Violence on the Part of Young People" (1999) 41:3 Can. J. Crim. 385-92

in after-school programs, police officers in schools, and the expulsion of students for minor acts of violence. Are these intelligent responses? An 8-year-old boy in East Sable River, Nova Scotia was suspended for pointing a breaded chicken finger at a class mate and saying “bang”. “Chicken fingers are, apparently, a favourite weapon for 8-year-olds. An Arkansas boy had been suspended from school (...) for pointing an identical item at a teacher. He, however, also uttered the threat, ‘Pow, pow, pow’ “(p 108).

### Assessing recidivism of juvenile offenders

Official measures of recidivism are problematic, especially if attempts are made to compare jurisdictions. For example, if a province screens out minor cases, then the youths who actually arrive in court would tend to have more serious criminal records. A court that screens very few cases would have a lower proportion of serious offenders.

When I was studying the Calgary and Edmonton Youth Courts, they provided illustrations of the two patterns just described. It is possible that two of the judges in the Calgary court, who had social work backgrounds, felt that they could help juveniles if they came to court. They may have influenced other judges. The system cooperated by sending more juveniles to court so the judges could help them. In Edmonton, more screening was encouraged. Although more cases were coming into the Calgary court than in Edmonton, the numbers sentenced to incarceration was similar. Thus, screening was probably done *prior to* court in Edmonton, but *in* court in Calgary.

One should not assume that the Calgary court was less effective. Judges with much experience with helping agencies may in fact be able to accomplish things that other court systems would find difficult. My feeling was that Calgary and Edmonton accomplished similar things, but in a somewhat different way. But they produced different court statistics.

If returning to court is the measure of recidivism it doesn't depend solely on the youth. It also depends on those controlling the system. But knowing how the system works may help to improve policies. Lee discovered that the more frequently youth were brought to court, the higher the likelihood of recidivism.<sup>8</sup> If the judges in Calgary became aware of these data, would they modify their strategies? In fact, Calgary and Edmonton have compared data for years, puzzled over differences, and made constructive changes.

Clearly statistics on youth crime do not describe the criminal behaviour of youth. They provide a picture of the *end* of a filtering process. Even with this filter, most cases going to court are relatively minor. Quebec, compared to the rest of Canada, seems to filter out more cases before they get to court. Many of us would agree that Quebec is being sensible in its parsimonious

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<sup>8</sup> Statistics Canada, *Recidivism in Youth Court Histories, Part 1: The Likelihood and Rates of Recidivism 2000-2002* by N. Lee (Ottawa: Department of Justice Canada, 2002).

use of the youth court. This does not mean that there is less youth crime in Quebec.

Doob and Cesaroni note that although youths commit many offences in groups, it is not clear when a group becomes a gang. When older folks commit offences in gangs, such as executives at Enron or World-Com, or the accountants at Arthur Anderson, they are not typically described as a gang. Data on gangs, school violence, and recidivism are hard to gather. But are they really very useful in understanding youth crime? The authors feel that debates over these data do not provide much help in determining useful policy.

### **Police discretion**

One reason the authors like the new YCJA is that it says the police *shall* consider non-court actions. But the police have always considered a variety of options. The assumption that the *guidance* is useful to the police and the courts could be questioned. The police and courts have always used the law creatively. They use the law to achieve certain goals. There is no reason to expect them to treat the YCJA differently. The youth system has always been permissive and flexible. On the other hand, the new legislation may encourage those systems to introduce changes they were planning anyway.<sup>9</sup> Those of us who were skeptical of the YCJA may be wrong. Innovative middle bureaucrats who were designing progressive programs may now have more support for introducing them.

### **Trends in youth crime**

A persistent theme in this book is that increasing penalties will not make a lot of difference to the amount of crime we experience. Thus, even if there has been an increase in youth crime, which is very unlikely, increasing penalties would not help. Even criminologists, such as James Alan Fox, who believes there has been an increase in youth crime, recommend greater investment in schools, recreation, job training, and support for families.<sup>10</sup> No matter what the trend in crime, there is broad agreement on which responses make sense.

The authors agree with the conclusions reached by Frank Zimring.<sup>11</sup> There appeared to be an increase in the homicide rate for young offenders in the late 1980s, but this appeared to be completely the result of an increase in gun homicides, possibly the result of juvenile involvement in the drug trade. More importantly, in recent years police are more likely to view minor

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<sup>9</sup> Doug Hillian, Marge Reitsma-Street & Jim Hackler, "Conferencing in the Youth Criminal Justice Act of Canada: Policy Developments in British Columbia" (2004) 46:3 Canadian Journal of Criminology and Criminal Justice.

<sup>10</sup> James Alan Fox, *Trends in Juvenile Violence: A report to The United States Attorney General on Current and Future Rates of Juvenile Offending*. (Washington, D.C.: Department of Justice, 1996).

<sup>11</sup> Frank Zimring, *American Youth Violence* (New York and Oxford: Oxford University Press, 1998).

assault as more serious and arrest those who commit minor assaults. Zimring feels that those criminologists who predict an army of 'terrifying teenagers' or 'super-predators' are using inappropriate statistics to make their arguments.

For 40 years I have observed with dismay the common belief that "juveniles are getting worse" despite evidence to the contrary. Doob and Cesaroni note that such beliefs seem to persist over time in Canada but also in countries like Japan and Sweden (p. 122-123).

Those of us who do interviews with the media will certainly empathize with the author's experience (p 127) with a TV "researcher." She was preparing for a program on 'why young people commit more murders now than 20 years ago.' After Doob took a good deal of time to explain that this belief was not consistent with the evidence, the TV 'researcher' closed the interview. She told professor Doob that she didn't think he was the right person for the interview since her boss 'knew' that youth homicides had increased.

Admittedly, some knowledgeable scholars have argued that violent crime is getting worse, but I share Doob and Cesaroni's preference for the work done by Carrington and Moyer<sup>12</sup> and Carrington.<sup>13</sup> They fault the work of those analyses that claim youth crime has become more violent. What has changed is the manner in which we perceive and deal with violence. Many decades ago I carried a pocket knife to school. That is not acceptable today.

Carrington points out that the main reason youth crime appeared to increase after the YOA came into existence in 1984 was because the police exercised their discretion differently under the YOA. Despite the difficulty of assessing actual behaviour from official statistics, very few criminologists would argue that youth crime is 'out of control.' Unfortunately, there are some who find it to their advantage to perpetuate this myth.

### **The decision not to charge**

The police discretion regarding the decision to charge young people varies tremendously across the country. While I agree with the authors on this point, a reader of a book like this would benefit from some of the work on the "dynamics of youth justice systems."<sup>14</sup> Doob and Cesaroni fail to point out the prosecutors, police and probation officers quite often share information extensively. The decision to charge often involves a vision of what will happen and whether they feel this outcome is desirable. In addition, the court 'work group' changes over time creating different dynamics.

Looking at comparisons between the Edmonton and Calgary Youth Courts has been instructive. As mentioned above the dynamics in these two

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<sup>12</sup> Peter J. Carrington & Sharon Moyer, "Trends in Youth Crime and Police Response, Pre- and Post-YOA" (1994) 36:1 Can. J. Crim. 1-28.

<sup>13</sup> Peter Carrington, "Has Violent Crime Increased? Comment on Corrado and Markwart" (1995) 37:1 Can. J. Crim. 61-73.

<sup>14</sup> *Legal Handbook*, *supra* note 4

courts influenced their statistics, but they had other ramifications. The judges in the Calgary court from social work traditions probably felt they could help kids from the bench. Prosecutors and police were willing to give them an opportunity. Calgary had a 96 % charge rate around 1976.<sup>15</sup> Edmonton charged 30 %. Was Calgary a terribly ‘tough’ court? Or did some senior social work oriented judges convince their colleagues that there were many things they could do to help kids? Under the JDA these juveniles were not to be treated as criminals.

Was Edmonton really different? Or did prosecutors, police, and social workers do more without using the court in Edmonton. As I rode with judges to circuit courts in small communities it was clear that an informal communication system was working. When the ‘court room work group’ had worked together for a while, this informal system usually worked well. Unspoken messages were quite clear. For example, the message from the local probation officer might be: “He needs a chewing out, judge, but give him back to me. I can handle it.”

Another interesting message was conveyed at a circuit court when a probation officer told the judge that the boy was ‘wind bound’ on the other side of a big lake. However, the parole officer said the boy was doing fine. Later, at lunch, the local social worker, a former student, pointed out that they used boats to cross the lake, but they also drove around the lake with cars. There were family problems that the parole officer did not want discussed in court. In fact the boy was doing OK, by not staying with the family. The judge read the informal message clearly: “Let’s not talk about this in court.”

I have been impressed with the skill displayed by clerks, judges and others at reading the various unspoken messages in and out of court. Circuit courts in smaller communities can’t afford to go through eight adjournments before resolving a case. When judges fail to read unspoken messages and other clues, it hampers the workings of the court.

My basic point is that Doob and Cesaroni work with data that naturally doesn’t touch on these dynamic characteristics. Such data isn’t collected in official statistics. But of course these dynamics have a major impact on the formal statistics.

When I was trying to compare juvenile court statistics among different cities in France, I learned that a juvenile court judge could open a red folder for delinquent cases and/or a green folder for those receiving social services. These data were recorded for all juvenile courts. I thought this might give me a ratio, which would indicate “punitiveness.” However, when I compared courts that I had visited, these data simply didn’t make sense. When I checked with the judges with whom I was working they told me: “It doesn’t matter which folder you use. We try to help all the kids.” Thus, a system that was clearly recorded actually had no meaning.

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<sup>15</sup> D. Conly, *Patterns of Delinquency and Police Action in the Major Metropolitan Areas of Canada During the Month of December 1976* (Ottawa: Solicitor General, Canada 1978).

### **Variations across Canada**

Comparisons from province to province are useful, even if interpretation is difficult. There are huge differences across Canada in the rate at which cases are brought to youth court. Quebec brings relatively few to court, Ontario about twice as many, and Saskatchewan four times as many. It is unlikely that this is the result of genuine differences in offending. These data alert us to the fact that these three provinces are responding to youth differently. For some time researchers have been aware that in Quebec more cases are likely to be diverted out of the youth justice system into the welfare system.

International comparisons can also be useful. The U.S., Great Britain, and New Zealand appear to divert more juvenile cases from court than Canada but have similar rates coming to court for violence and property offences (p. 160-162). However, the U.S. uses the court much more for drug offences.

We also see a great deal of variation among sentencing by judges. For some people, more uniformity might seem important, but this variation is not from carelessness. Judges seem to be very thoughtful in the way they craft dispositions. Resources and circumstances differ and judges are trying to accomplish a range of purposes.

### **The impact of custody**

A number of research studies have concluded that serving time in custody tends to increase the likelihood that a young person will be re-arrested (p. 231). Despite the efforts of staff to provide a positive environment for juveniles, association with other troubled and troublesome youngsters may create problems for the future. It is also very difficult for staff to prevent victimization during a sentence. According to the Howard League Commission of Inquiry Into Violence in Penal Institutions for Teenagers the “nature of prison life breeds bullying (...). Those not inclined to violence before entering prison are forced to use it to survive.”<sup>16</sup>

I once observed a court case where a boy had left an open custody facility. He could not provide a good reason to the judge. He received three months in closed custody. At lunch with this relatively new judge and another, I learned that they both used a similar rational logic. If you leave open custody, you will get closed custody.

Later that day I visit the open custody facility and spoke with the psychologist. The boy had been repeatedly bullied by other boys. This was the reason for his leaving. And of course, one cannot ‘squeal’. Better to accept the consequences of closed custody.

Why didn’t the psychologist go to court? He had many reports to write, there was no guarantee he would even be called as a witness, and it isn’t even clear that if he described the situation that the boy would have been

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<sup>16</sup> U.K., Howard League for Legal Reform, *Banged Up, Beaten Up, Cutting Up: Report of the Howard League Commission of Inquiry into Violence in Penal Institutions for Teenagers under Eighteen* (London: Howard League for Penal Reform, 1995) at 13.

better off. Could the psychologist have called the judge and spoken to him privately? Not in our system. In many European systems this would have been the expected thing to do. In our system, the judge is supposed to be ignorant of everything except what he or she hears in court. European judges often consider this stupid. Experienced judges do learn quite a bit outside of court. Personally, I think that better informed judges make wiser choices.

I fed this story back to the judges I met earlier. Years later I notice that their patterns had changed. They dug out information and became aware that they would not always get the necessary information in the courtroom setting.

Other consequences of institutionalization included the negative impact on their high school record and the fact that their confinement became known to employers. Thus, youth custody appears to cut off opportunities and prospects for employment later in life (p. 237).

### **The demand for quick fixes**

The final chapter looks at three quick fixes to youth crime: harsher sentences, boot camps, and curfews. There are other examples of quick fixes, but these three are popular and occur frequently. But they don't work.

*Harsh penalties.* The 'harsh penalties' argument assumes a rational choice model. That is, young people go through a thoughtful process before they 'decide' to offend. After a brief review of the work in this area, the authors note that sentence severity does not affect the levels of crime in society. This does not mean that youths who commit criminal offences should face no consequences, but there should be no expectation that harsher penalties will increase social protection.

*Boot camps.* One of the politically popular fixes during the 1990s was the 'boot camp.' Since there is considerable evidence that youths tend to ignore the consequences of much of their behaviour, it is interesting that a model of military basic training would become popular. These training regimes focus on the necessity of following, and not questioning, orders received. Blind obedience, not thoughtfulness of others or individual responsibility, is paramount. As the military itself has begun to question the boot camp model for its own goals, the image of such military training as character building is probably an 'exercise in nostalgia.' One large study showed that offenders placed in boot camps were *more* likely to recidivate than those placed on probation or in a normal prison. Earlier studies indicated that intensive 'after care' programs did have some positive effects. Thus, it was not the boot camp that helped but rather the programming in the community which followed.

*Curfews.* By the mid-1990s, three-quarters of the 200 largest U.S. cities had curfews for young people. These have been studied extensively. Basically, they don't work, but the evaluations provided useful insights as to why they don't work. They don't include many of the perpetrators of crime,

names older adolescents and young adults. Curfews simply do not alter substantially the major correlates of delinquency: exposure to delinquent peers, schools, and family. Delinquency happens in a social context. If a juvenile lives in a family characterized by rejection, lax or overly severe supervision, discipline and abuse, how is forcing a juvenile to remain in such a home going to help?

### **Focusing on long-term prevention**

*Public health strategies.* The authors point out that some of our most promising approaches to delinquency involve a 'public health' strategy, which targets youths in disadvantaged neighborhoods. Healthy children are less likely to become delinquents. David Olds, and his colleagues, demonstrated that nurses visiting mothers during their pregnancy had a long term positive impact.<sup>17</sup> Nutrition and child-rearing techniques have nothing *directly* to do with crime, but the immediate benefits are obvious. Furthermore, there is no stigmatization. The nurse visitation program, especially when monthly visits continued until the child's second birthday, reduced involvement with the police, contacts with child welfare, and running away from home. As adolescents they had fewer sexual partners, smoked fewer cigarettes, and consumed less alcohol.

Successful programs seem to have some common elements (p. 266). Some of the most successful programs did *not* have delinquency prevention as the primary goal. The focus was on providing help to disadvantaged families. One evaluation also found that families not at risk of having problem children also benefited.

Although the authors do not emphasize this last point, it should be clear to policy makers that *universal programs* have major benefits. While they may have their greatest impact on disadvantaged families, good public programs pay off for everyone – and avoid stigmatization.

One criticism I would make of this section of the book is that it does not review the work of Richard Tremblay and his colleagues at the University of Montreal. Their carefully evaluated experimental programs of teaching young children to play together with less violence is probably some of the most promising in the world. These programs illustrate the desirability of teaching children to behave in a non-violent manner in the earliest years of school.

*A cautionary note: The Cambridge-Somerville project.* One should not assume that every intervention will be good. The evaluation of the juvenile boys involved in the Cambridge-Somerville project followed the juveniles past middle age. It also compared a treatment group with a set of controls. Those in the treatment group received a range of interventions including counseling, social support, tutoring, and medical and psychiatric attention. A follow-up twenty years later suggested that the program was beneficial to the

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<sup>17</sup> D. Olds *et al.*, "Long-term Effects of Nurse Home Visitation on Children's Criminal and Antisocial Behaviour." (1998) 280 *Journal of American Medical Association* 1238-44.

treatment group. However, when compared to the control group who received no treatment, there was no difference. There were unexpected improvements for those who were not treated at all. When a later follow-up was done, with the boys now middle-aged, disturbing differences emerged. Those in the *treatment* group were more likely to have been convicted of serious crime, to have died early, to have serious problems with mental illness, and to be alcoholics than those in the control group. In fact, the more treatment they received, the worse off they were. Without the control group, a program that had harmful effects would have been seen as a success.

### **Restorative justice**

While universal, long term programs that start early make the most sense, restorative justice programs take on the more difficult task of trying to change behaviour later in life. Hopefully, such programs provide more victim satisfaction, give offenders an understanding of the consequences of crime to the victims, and make the community feel that justice has been served. The hope is for a reintegration of the deviant into society. By contrast our 'courtroom ceremonies' tend to degradation rather than reintegration.

The authors caution that restorative justice is unlikely to have a major impact on recidivism. "If the long-term impact (...) is no less favourable than a court appearance but victims, offenders, and their communities are more likely to believe that justice was done, then, of course, this may be a more appropriate response to youthful offending (...) Like other approaches, however, it does not appear that restorative approaches (...) will be effective quick fixes for youth crime (p. 272)."

### **The dynamics of juvenile justice systems**

The new Youth Court judge coming onto the bench will find this a very useful book. Naturally, book reviewers often find that authors did not cover a topic dear to their heart. This gives reviewers a chance to do their thing. I cannot resist the opportunity.

Doob and Cesaroni argue that making changes in the juvenile justice system will not have much impact on juvenile crime. I agree partially. But I feel that some changes in our system would make the process less damaging to juveniles who pass through it. The authors recognize that the more juveniles are involved in the system the more likely they are to do poorly in the future. In some countries the system avoids this mistake more effectively than Canada. When I visited Toulouse, for example, in southern France, this four-judge system served approximately 1,100,000 people. How many juveniles were held in closed custody? Most people would guess at around 100. Actually, only three boys were in custody. When the number of judges outnumbers the juveniles held in custody, the system has clearly used alternative strategies.

We are not going to adopt changes from other countries that are completely foreign to what has evolved here, but I would like to mention a few of my brilliant ideas, which if Doob and Cesaroni had included as an additional chapter, would have made their book much more useful to the new Youth Court judge just coming onto the bench. In addition, if provincial governments would pay attention to these wise suggestions they would save millions.

*Public defenders and staff lawyers.* The legal industry seems to denigrate public defenders. However, in Quebec and Alberta we have illustrations of how staff lawyers have reduced the numbers of adjournments, saved money, and probably increased the effectiveness of youth court. Similarly, specialized youth prosecutors appear to become part of a “court work group” which operates more smoothly when compared to those systems that simply rotate prosecutors in from the adult system. True, judges always tell me about the dangers of too much cooperation that could lead to railroading juveniles. I have seen just the opposite. Troubled and troublesome youth, and their families, seem to suffer more when the system is adversarial.

In Melbourne, Australia five juvenile court judges serve a population of 3 million people. Canada requires almost five to ten times as many. In Melbourne it appears that very few cases ever get to court until they are ready to be “resolved.”<sup>18</sup> The key to this efficiency seemed to be a team of young staff lawyers who were supervised and tutored by experienced lawyers. These young lawyers learned rapidly. They also became part of an effective network of other professionals.

Admittedly, in many youth courts non-staff lawyers who specialize in youth work add immensely to the effectiveness. Unfortunately, the reward system sometimes punishes them for being truly effective and rewards them when they are not. For example, staff lawyers on a salary probably have more incentives to resolve cases outside of court.

*Requiring judges to have clerking experience.* When I suggest that judges should work as clerks for three years before being considered for the bench, I usually get a chuckle. In fact, some countries use clerking as part of the training for lawyers. Despite the fact that clerks gain valuable insights into the way the system works, we don’t encourage or require future lawyers and judges to get this type of “on the job” training.

While Canada recruits judges who are often “outsiders” to the court system, other countries may use more “insiders” who have been working somewhere in the system. Our system may produce judges who are more independent, but it may take them longer to learn the intricacies of what is, in fact, a family serving system. Our system may encourage judges to remain aloof, but in so doing they may be less effective team players. My general observation is that the most difficult task a youth court has is finding intelligent options for troubled youth. The knowledge of the law is

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<sup>18</sup> James C. Hackler, “The Manifest and Latent Functions of Legal Aid” (1992) 2:1 *International Criminal Justice Review* 58-75.

secondary to knowing how the systems surrounding the court actually operate.

*Retaining local courts.* As an economy measure, local courthouses are sometimes closed. Unfortunately, this often leads to other agencies incurring additional costs. Local police officers must travel to a court outside their jurisdiction and wait for hours to be called as a witness. Often the case is adjourned or the witness is not required. In a smaller community a police officer can be “on call” while doing her normal job. A radio call can get her to court in a short time.

In addition, local clerks and JPs solve a wide range of problems and avoid the need for court proceedings. In general, I have been impressed by the ingenuity displayed by local officials in solving problems because of the network of contacts they have in the community. When these same issues are transferred to the larger bureaucracies in larger centers, the officials must rely on routine procedures. Without the local knowledge of a smaller community, they can be at a disadvantage. They may not be aware of options available since they do not know the local resources as well.

My point is that bureaucratic changes may in fact increase costs to police forces, small towns, and the clients of the system. It may also do an inferior job of serving the public.

*A social service judge for youth.* In France the vast majority of juveniles who commit crimes will be picked up by the police, pass through the prosecutor’s office, and be sitting before the *juge des enfants* the same day. Most cases do not go to court, but the judge would usually have a range of services at her disposal.<sup>19</sup> Obviously, we are not going to change our system dramatically, but in the Fall 1996 *Provincial Court Judges News*, I suggested a Social Service Judge Role for British Columbia that would capture some of the characteristics of what I saw as a more effective system. While sitting as a Social Service Judge, this judge would have no punitive powers, only the authority to offer services and make suggestions. Without punitive powers defense attorneys, etc. would not be needed at such hearings.

Since this strategy has been described elsewhere<sup>20</sup> let me simply say that judges can be both persuasive and helpful even when they are not sentencing juveniles. Our system tends to rely on a “sentence” to accomplish something. Many other countries rely more on helping.

*The use of physical space.* With very little cost, courtrooms could be arranged to be more effective if one looks carefully at the use of space. In most courtrooms there is a barrier between the court personnel and the audience. The judge is usually on an elevated step with the clerk and sometimes a court reporter in front of her. The prosecutor and the defence are also within this “circle of communication” where they can hear each other easily. What about parents? Or social workers? Usually they are

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<sup>19</sup> James C. Hackler, “Practicing in France What Americans Have Preached: The Response of French Judges to Juveniles” (1988) 34 *Crime and Delinquency* 467-85

<sup>20</sup> *Ibid* at 474-75

outside of the barrier. Sometimes the defendant is in the box off to one side. Sometimes they can barely hear what is going on among those within the “circle of communication.” The outsiders rarely contribute unless asked. One can notice agitated parents or youths who wish to speak, but they are sometimes ignored by those within the “circle of communication.”

In one court an experienced social worker would routinely invite the parent to come with her into the “circle of communication” where both of them would be part of the proceedings. Admittedly, not everyone wants to share the “circle of communication.” One lawyer told me: “It is easier if the kid and the parents just shut up.”

Another use of physical space effects the communication among professionals. At the coffee break in Sydney, Australia, the two judges, prosecutor, defence counsel and others met informally over the cookies. While communication was cautious in this informal setting, it was often very useful. In some courts, parole officers were also included at coffee time. In other settings, they did not share the coffee period. If they had not been specifically invited, of course, they did not come. My feeling was that including more of the professionals was functional.

In Toronto, the wife of the chief judge at the Youth Court baked cookies. They were with the coffee at one end of his large office. A good portion of the dozen or so judges congregated there even though the chief judge could be on the phone at the other end of the office. In other words, coffee rooms, lunch rooms, and other physical features can contribute to the dynamics of work places. Industries study these things. Should legal systems pay attention?

*Learning from smaller communities.* In large cities procedures can develop that may expedite the operation of the bureaucracy but may interfere with the goals of youth justice. In smaller communities, with a circuit court judge visiting every few months, there is a need to resolve issues without delay. I have observed considerable ingenuity in these settings.

In one isolated community a youth was in conflict with the community. The local police officer pointed out to the probation officer that the court hearing would accomplish nothing. Neither a conviction nor an acquittal would deal with the conflict. Could something else be done? The probation officer spoke with the prosecutor who spoke with the judge. Would the judge speak with the local police officer? Some judges would remain aloof. This judge saw merit in getting a different perspective.

It was decided to contact community leaders by radio. By the time the court had dispensed with the other cases, the community leaders had assembled in the makeshift courtroom. Only the “youth in conflict” case remained. The prosecutor rose and withdrew the charges. The judge then announced that since many people were assembled, could they talk informally about the causes of the conflict? After a discussion of concerns, the judge adjourned the gathering. He then shook hands with the young man and many others. People were hugging and crying. Was the problem solved? At least the gathering was probably as effective as a trial.

The group dynamics that are so visible in smaller communities obviously operate in larger bureaucracies. At times the impact of these group processes is ignored. My point is that paying attention to these processes may not have a great impact on delinquency, but it could make the system work better. This might lead to the more efficient use of resources and to a better quality of juvenile justice. In the long run it might reduce the negative impact of judicial processing which can increase crime.

Although the Doob and Cesaroni book will be a useful addition to those wanting a good summary of the issues in juvenile justice, a chapter expanding on my suggestions would have rounded it out nicely.

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