

**In the 'Best Interests of the Child?' : The Industrial School System in late  
Nineteenth and Early Twentieth Century Ontario**

**By**

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## *Abstract*

This thesis investigates Ontario's industrial school system during the late nineteenth and early twentieth century. New related legislation regarding children in the province in this period is surveyed, illustrating the increased intervention of the state into the family. The industrial schools are at the centre of these interventions. The research presented here illuminates the changing role of the law, from the traditional common law which reinforced the male prerogatives to legislative measures at both the provincial and federal government levels, justified according to the 'best interests' of the child. Moral regulation and legal initiatives regarding delinquent and non-delinquent children are seen to be tightly interwoven, both working to sustain the existing social order, and contributing to the tasks of state formation and citizenship.

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## *Chapter One: Introduction*

The late nineteenth and early twentieth century was a period of great social change in Canada. An urbanizing society and industrializing economy created the perception of social problems including poverty, unemployment, poor housing and sanitation problems. As members of the growing urban working classes faced these hardships the middle and upper classes became increasingly concerned about the more obvious manifestations of these difficulties and social breakdown. It was predominately the members of the middle class who undertook a mission of moral improvement and proposed regulatory schemes intended to improve the situation. The economic bases of these problems were seldom confronted. Rather, urban industrial problems were blamed on crime and immorality - more personalized and individual failings.

How then to fix these problems and their perceived causes? Middle class fears generated a variety of social reforms, involving institutions such as the church and education. More significantly, the state was expected to take a more direct and active role in social ordering in the name of moral reform. Reformers called for increased state intervention through repressive and regulatory laws in hopes that the federal and provincial governments would be able to legislate the problems away and restore social order. What was previously the most private of all social institutions, the family, was the focus of new public scrutiny in this perceived crisis. It is the emergence of new legal controls over the family, and specifically children, that is the

focus of this research.

The family fell at the centre of debates surrounding the evils of industrialization and urbanization. If the traditional Canadian family, typically the Anglo-Saxon Protestant family, was to survive reformers believed both the federal and provincial governments needed to intervene. Concerns about familial breakdowns centred around issues such as infidelity, abortion, and divorce. While reformers were raising their voices about these issues they were also looking beyond to the children, since children represented the future of the young dominion. The growth of the cities and the workforce allowed children to contribute to the family income through various odd jobs, but it also caused a problem with children 'running' the streets. The fear of children falling victim to the various available vices, such as alcohol, pre-marital sex, and prostitution, was widespread. Children, it was feared, would acquire a taste for the urban 'fast life' at a young age. If immorality could be stopped at an early age then perhaps these issues would cease to exist, or at the very least be greatly reduced. Reformers called on all levels of the government to legislate children off the streets, into the public schools, and in some cases into institutions. They called for direct intervention by state officials into the homes of private citizens, armed with the authority to remove children from homes if it was deemed that they were in danger. Further, it was believed that reformers themselves must take visible leadership in ensuring that Canada's future as a country rested in the hands of citizens who conformed to middle class standards which called for morally upright, hardworking, Christian men and women. Industry, manufacturing and production were all to be encouraged by the state, but the state was also in the

business of manufacturing their own citizens. Indeed, Canadian governments were in the business of creating 'good' citizens, and ultimately building a nation.

This thesis focusses on children and the law within this movement of moral reform and citizen formation in Ontario. The discussion to follow will deal with the development of child welfare legislation as it pertained to both delinquent and non-delinquent children. Delinquent children will play an important role in the picture that emerges as much of the legislation, institutions and regulatory programs that arose out the reform movement were directed toward delinquency, or at least initially so. It would be difficult to examine the plight of delinquent children during the late nineteenth century without giving some attention to child welfare issues. More often than not children were not either neglected or delinquent; quite often these two categories overlapped, causing reformers to constantly shuffle their attention between saving children through preventative legislation and reforming them through institutional means. Since so many of these children required help and attention from both areas, the fight for a separate system of justice to protect children within the legal system (through trial and sentencing practices) and the fight to protect children within the home, were often fought on the same front. The criminal law also drew the federal government into the picture, although this study focuses on Ontario initiatives.

Official attitudes toward the child and childhood changed dramatically during the late nineteenth and early twentieth century. Children evolved from being

an extra pair of farm hands to the future of the young dominion.<sup>1</sup> It was due to this changing attitude that children secured a very important place in the eyes of reformers. Children have been chosen as the focus of this study since they held the least amount of legal power within society. As well, in many ways I believe that children, more than anyone, were subjected to the brunt of social reform, legal and regulatory initiatives, permeating areas such as the education system, leisure reading material and activities, Sunday schools and the attitudes of parents. In this way I believe that many children of the late nineteenth and early twentieth century were significantly formed by state legal initiatives and regulatory schemes pushed by middle class interests.

Several reform movements working to improve the life of the neglected child will be surveyed, such as the Social Gospel, various Women's movements and Temperance. These reform movements had a great deal in common. Most importantly, reform movements of the late nineteenth and early twentieth century shared two things; Christianity and social discourse. Christianity was at the base of all moral reform movements of the time. This seems an obvious conclusion since morality is closely linked with religion but it went further than that. Christianity, particularly Protestantism in Ontario, fell at the centre of the reform movement. The middle class in an effort to preserve the Anglo-Celtic race felt it was important that future generations embrace Christianity. Reform movements of the time were also responsible for a social discourse that emphasized cleanliness, purity and morality.

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<sup>1</sup> Neil Sutherland, Children in English-Canadian Society: Framing the Twentieth-Century Consensus (Toronto: University of Toronto Press, 1976) at 12.

This discourse was enthusiastically repeated in all realms of society: churches, schools, government and business.<sup>2</sup>

There were a number of areas of law and institutional sites where comprehensive reforms affected children directly. These largely provincial institutions ranged from education, employment and the family (e.g., compulsory public schooling, factory acts and labour standards) to criminal justice (reformatories, female constables, passage by the Dominion government of the Juvenile Delinquents Act). Although this study will touch on all these areas, the latter in particular, the focus of the research will be on the industrial schools movement from the initial concept, to the opening of the first school and following the process to the decline of public support for the schools, and the introduction of the foster home.

The industrial schools were public institutions funded by the province where delinquent and/or neglected children were sent to be 'saved' through the benefit of learning a trade and moral instruction. Similar schools were enjoying varying success in Britain and the United States and Canadians embraced the idea as one that could alleviate some social issues regarding young people. The initial concept of the schools as a Canadian institution arose in the 1860's, and they were legislated into effect in 1864, although the first school did not open its doors until 1874.<sup>3</sup> With the onset of a massive population growth and a new concern for youngsters in trouble

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<sup>2</sup> Mariana Valverde, The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925, (Toronto: McClelland & Stewart Inc., 1991) at 10-11.

<sup>3</sup> Richard Splane, Social Welfare in Ontario 1791-1893 (Toronto: University of Toronto Press, 1965) at 226.



with the law, there arose the question of where to put these children. In the face of a movement that was arguing for children as young as seven to be removed from the penitentiary the provincial government was placed in an awkward situation. Where do you place children who have committed a crime? On the one hand was the argument that the federal penitentiaries and reformatories were too harsh an environment for children who instead of being reformed were being schooled in crime by older inmates. On the other hand the argument was that children who committed a crime so young had to be stopped and reformed so that when they entered society as adults they would be more inclined to live a life of obedience to the law. Thus, the industrial schools seemed to be the solution to the juvenile crime problem. Here, it was believed, children would benefit from hard work, a basic education and moral and religious instruction.<sup>4</sup>

It is important to note that the industrial schools were only one type of institution for children during this time. There were other 'homes' for children where they could be housed and kept out of trouble. These privately run institutions were not monitored by the provincial government although they did receive minimal financial assistance at times. These 'homes' were called children's homes and were meant for orphaned children. These institutions were generally run through a church organization and while they hold their own place in Ontario history, children's homes are beyond the scope of this research. The research presented here is meant to examine industrial schools that were state sponsored and monitored, in this way it is

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<sup>4</sup> Carolyn Strange and Tina Loo Making Good: Law and Moral Regulation in Canada, 1867-1939 (Toronto: University of Toronto Press, 1997) at 50-51.

possible to see the influence the state had in moulding it's future citizens.

### Research Goals

It is important, in my opinion, to study the industrial schools system in Ontario for four main reasons. First, the industrial schools act as an excellent marker of the wider range of reform initiatives affecting children. The initial concept of the schools emerge earlier than other reform initiatives, although they followed soon after. In this way the schools acted as a precursor to the child welfare movement and the quest for juvenile justice. While the schools were developing, other movements for reform grew rapidly within society and generated public support of the schools. The industrial schools system began as an educational institution meant to house and train children taken from either the street or from poor homes. As reform initiatives evolved so too did the schools, and during the end of the nineteenth century and the beginning of the twentieth century the schools' population underwent a dramatic change. The 'poor and neglected' children had been to a large degree replaced by juvenile delinquents, hardened already by their experience with the criminal justice system. As the schools' popularity began to give way to new notions on childhood and children's rights, the social reform movements continued to flourish, promoting family based reform for young people instead of institutional care. In this way the schools' original mandate to give children a chance to learn a trade and keep them off the street gave way to new beliefs in the benefit of a family environment in reforming children. As such, the foster care system undercut the schools' popularity for non-delinquent children, leaving the schools overrun with young people already found

guilty of a criminal act. Jane Ursel has noted that the social reform movements present within Ontario during the late nineteenth and early twentieth century enjoyed so much success because there was no opposition to the idea of morality that the social reform movement promoted.<sup>5</sup> Opposition to the industrial schools nonetheless began to mount by the 1880's, oddly enough, from the very social reform movements which had previously supported the institutions.<sup>6</sup> Why had the social reform movement which had previously sung the praises of this system begun to criticize the institutions? This question is important as it not only sheds light on what was occurring in society but reveals how society was reacting and interpreting the law regarding children.

Secondly, the study of the industrial schools movement in Ontario is important because it signifies an expansion of public policy implementations from publically funded institutions to quasi-public institutions such as the Children's Aid Society. There occurred a shift in the public/private dichotomy. Reformers in the early years of the movement relied on the provincial and federal governments to both punish young people guilty of a criminal offence as well as protect them from a future of crime. During the rise of the industrial schools, state intervention had taken the form of removing children from prisons and reformatories and placing them within other public institutions - the industrial schools. In the later years of the movement

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<sup>5</sup> Jane Ursel, Private Lives, Public Policy: 100 years of State Intervention in the Family (Toronto: Women's Press, 1992) at 74.

<sup>6</sup> Leonard Rutman "J.J. Keslo and the Development of Child Welfare" in The Benevolent State: The Growth of Welfare in Canada eds. A. Moscovitch and J. Albert (Toronto: Garamond Press, 1987) at 71-73.

the emphasis shifted to placing children within a family environment, the favoured means being the foster home. Now state intervention was not needed so much in terms of wardens and guards, which remained as fall-back measures, but in terms of legal power to remove children who were neglected or in danger of neglect or abuse from their caretakers. The production of citizens by the state took a further step, at the urging of the reformers, to protect neglected and dependant children. The industrial schools act as a starting point for this shift in state intervention.

Thirdly, the industrial schools are important because they set the stage for the *Juvenile Delinquents Act of 1908* (JDA). Examining the schools will allow me to show how far the province of Ontario and the federal government came in recognizing the particular requirements of children, to the extent that a comprehensive package of legislation was passed that was to involve both levels of government. This was to have a profound effect on the administration of criminal law and how delinquent children were regarded in society. The introduction of the JDA has special significance to this study as it acts as a stopping point for my research. Through the passage of the JDA, legislators and reformers believed it marked the end of a struggle between the state and reformers regarding the need to balance a child welfare system with a juvenile justice system. That is not to suggest that the fight was over, indeed it would only get more complicated. But the importance of this act is that many of those involved in the fight for child welfare and/or juvenile justice believed that they had effectively and responsibly established two separate systems for two separate groups of children. The JDA would both punish and protect young offenders and the Children's Aid Society would nurture

and protect neglected, dependant and abused children. Interestingly, reformers, politicians, and legislators of the time did not realize that more often than not these two groups of children needed attention from both systems.

The JDA attempted to change the way children were dealt with under the criminal law. While answering the needs of neglected and abused children was of equal importance to children in conflict with the criminal law, legislation regarding child welfare was well in place 17 years before a separate system of justice was in place for young people. The JDA attempted to respond to the many injustices committed against young people who became involved in crime, by its very nature a matter of pressing public concern, involving public processes. Child welfare was more of a private issue concerning the family unit involving more hidden interventions in the private sphere of the home. The JDA itself is beyond the scope of this study, but its removal of all young people from adult penitentiaries, prisons and common gaols, the separation of the adults and children during the trial and the various new rules and options open to the judges and magistrates regarding trials and sentencing of young offenders nonetheless had an effect on the system directed to other children in need.

Finally, examination of the industrial schools system allows for further opportunity to understand how middle class values and discourses reached a child's everyday life through basic education, religious instruction and industrial training. There has been a great deal of scholarship within the past twenty five years devoted to the social reform movements in Canada and to the part that the middle class had in regulating the working and lower classes. What I am eager to discover is the

amount of power the working class held within the social phenomenon that historians and sociologists have termed moral regulation. It is simpler to assume that the working class were regulated by a more powerful, and socially inclined middle class; it is far more difficult and interesting in my opinion, to begin with an assumption that the working class did possess an element of power. By voluntarily placing their children in these schools the working class were empowering their children with knowledge. While the education the children received was geared to keeping them within the working class, it is important that the working class in some cases did take the step themselves and enrol their sons and daughters in the schools to learn a trade, an opportunity they would otherwise have not received.

There was an onslaught of new ideas and solutions on how to curb the negative effects of industrialization and urbanization, apart from the criminal justice institutions and the industrial schools. There were other movements that resulted in institutionalized care for children. Coupled with ideas about purifying society through prohibiting alcohol, illicit literature and other sources of vice, some reformers worked tirelessly for the mental hygiene movement. There was a move to institutionalize anyone, especially children, who were perceived to be mentally disabled in any way. The mental hygiene movement was masked in the movement to improve the general health of all Canadian children. Reformers were concerned how the feeble minded would affect society at large. It was believed that all conditions of perceived mental disorders were inherited and if the members of this 'unfortunate class' were institutionalized then the cycle could be broken. The danger of the racial decline of Canadian society became another platform for the mental

hygiene movement in Canada.<sup>7</sup>

Many children did not fall under this category of 'retarded' but were nonetheless segregated due to physical disabilities. During the late nineteenth century a number of schools opened their doors to the exclusive education of the deaf, blind, and mute.<sup>8</sup> Finally the issue of infant mortality fell under great scrutiny during the last quarter of the nineteenth century. New advances made in public health indicated that high infant mortality rates were not necessary (at turn of the century Ontario nearly 1 in every 5 Canadian babies died). The Ontario legislature passed an act calling for the licensing of infant homes so they could keep an eye on health issues. Not surprisingly, this legislation was not actively enforced but by 1901 organizations such as the National Council of Women were teaching new methods to mothers, such as home pasteurization of milk. Foundling or infant homes also improved their techniques and the infant mortality rate eventually declined.<sup>9</sup>

While there were a number of institutions devoted to the care of children under various circumstances, I have chosen to focus on the industrial schools because these schools were concerned not with mental or physical disabilities but with the social disabilities of the children. I think it is interesting to trace how quickly the schools rose and fell in popularity, starting out as a second chance for misguided youth and eventually becoming a dumping ground for rebellious hardened young

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<sup>7</sup> Sutherland, supra note 1 at 71.

<sup>8</sup> Constance Backhouse, Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada (Toronto: Osgoode Society, 1991) at 183.

<sup>9</sup> Sutherland, supra note 1 at 56-58.

people, who by the saving grace of the 1908 *Juvenile Delinquents Act* were below the age limit to be sent to an adult jail. As well, it is important to study the schools if we are to effectively understand the struggle between public and private concerns for children which was played out in the battle between supporters of industrial schools and supporters of the foster home. By focussing on the industrial schools I will be able to effectively analyse this tension.

My focus on the industrial schools stems from an interest in the changing role of the law regarding children and young people. A great deal of legal changes regarding children occurred in a relatively short period of time. I want to know and understand what sparked and motivated these changes and how did both the state and its citizens react to these changes, if at all. Any time there is a new type of legislation passed it causes issues along enforcement and jurisdictional lines.<sup>10</sup> I am interested in the ripple effect children's legislation had within both the law and society.

### Theory and Methodology

Throughout this thesis I will assert that the thrust behind most reform movements and specifically those relating to children was one of moral regulation. As suggested earlier, in the face of a changing economy, population and society, many affluent citizens felt that many of the social issues of the day were directly

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<sup>10</sup> Strange and Loo, *supra* note 4 at 5.



related to an eroding moral base.<sup>11</sup> Moral regulation is a concept that will be more fully discussed in the following chapter, but it is important to indicate the link between moral regulation and law here. For middle class reformers of the late nineteenth and early twentieth century it had become important not only to regulate their own personal space but the public sphere, as well as other people's personal space, specifically those of the lower classes. In order to effectively do this there was a call for the provincial and federal governments to step into the private sphere, an area previously devoid of state intervention, and regulate the private sphere through legal means.<sup>12</sup> The law had symbolic and regulatory functions. Although it was an authoritative statement of disapproval its most important role was being reactive, responding to immorality after it occurred and punishing accordingly. Thus, the law and moral reformers had to come together in a workable partnership and form what Carolyn Strange and Tina Loo have termed "law in action". In this way the federal and provincial government legislated certain behaviour as illegal. Reformers were then responsible for the pressures put on everyday society to act morally.<sup>13</sup>

The use of this concept is informed by scholarship in the fields of social history and law regarding children. I will use legal concepts and methods to access the legislative changes made during the late nineteenth and early twentieth century regarding children. These statutes, and processes by which they were produced and

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<sup>11</sup> Valverde, supra note 2 at 12.

<sup>12</sup> Strange and Loo, supra note 4 at 60.

<sup>13</sup> Ibid., at 19.

administered, are central to the themes of reform and children because they were the most obvious means of state regulation.

However, research of the law, and its administration is not sufficient for a comprehensive understanding of these issues. For instance, while changes in the administration of criminal law and sentencing can tell us a great deal about how the Canadian justice system reacted to change felt within society, how are we to understand how the law responded to and affected Ontario social interests? To understand this I will rely on the field of social history. Social history has been called 'history from the bottom up' and 'history with the politics left out'.<sup>14</sup> A clearer more precise definition comes from David Gagon and H.E Turner who define social history as:

...the study of historical processes which prompted change and continuity in those social relationships that, taken altogether, describe and explain a whole way of life. Social history, in short, is the stuff of societal history if, by society history, we meant the total human order in a given era, age or epoch.....also history that treats society not as a museum of artifacts to be described, but as a constantly changing archive of public and private experience...<sup>15</sup>

Gagon and Turner break the field of social history into three main sections: women, the working class and societal reformation<sup>16</sup>. Children fall neatly into the field of social history; clearly they are the actors in society with the least amount of control.

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<sup>14</sup> David Gagon and H.E. Turner, "Social History in Canada: A Report on the 'State of the Art' " in Contemporary Approaches to Canadian History eds. Carl Berger (Toronto: Copp Clark Pitman Ltd., 1987) at 89.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid., at 90.

Since the main sect of people I intend to examine are those under the age of 18 and predominately from the working class, working within a social history framework makes good working sense for the research to follow.

How then to effectively combine these fields? Previously, most legal historical work was dominated by practicing lawyers with a focus on technical doctrine and its development. The 'new' legal history is concerned with the broader forces at work behind the creation of laws, how these laws are administrated, and how people experienced them.<sup>17</sup> These questions reveal the interactions between the law and society. This can take the form of the social history of crime and punishment. British social historians for instance, have turned to the records of criminal courts for insight into the lives of those who left few records of their own. This interdisciplinary approach has been extended to the family, women, class and race.<sup>18</sup> This type of history seeks to uncover the experiences of those who were left out of traditional historical accounts, especially those of women, children, and other marginalized groups. By turning away from a whiggish focus on great men and their political and economic achievements or a doctrinal focus, we widen the historical inquiry into what is significant.<sup>19</sup>

My theoretical framework takes a skeptical look at the state's role in child

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<sup>17</sup> Barry Wright, "An Introduction to Canadian Law in History" in Canadian Perspectives on Law and Society: Issues in Legal History ed. W. Pue and B. Wright (Ottawa: Carleton University Press, 1988) at 7.

<sup>18</sup> Jim Phillips, "Recent Publications in Canadian Legal History" in Canadian Historical Review vol. 78 no.2( June 1997) at 237.

<sup>19</sup> Veronica Strong-Boag, "Writing About Women" in Writing About Canada: A Handbook for Modern Canadian History. eds. John Schultz (Scarborough: Prentice-Hall Canada Inc., 1990) at 176.

welfare legislation and especially at the involvement of the government in the industrial school system and the *Juvenile Delinquents Act 1908*. I question the justifications for these measures. The purpose is to investigate whether or not the state and the social actors who influenced it really believed they were 'saving' these children. I suspect that the government really did believe they were rescuing non-delinquent children through the development of protective legislation, and the establishment and support of the foster home. With regards to delinquent children I believe that the government attempted to reform rather than rescue these children. By reform I mean to say that the government, consistent with middle class values, attempted to ensure that the children would grow up to be working class adults.

The methodology of this research will take two forms: content analysis of secondary sources and primary research of legislation and archival source material. The secondary source material will work to do two things. First, it will set the stage for the primary research to follow. In my next two chapters I will explain the concept of moral regulation and how it relates to existing researching on the idea of the new childhood and the influences and events leading up to child welfare legislation. In this way, the secondary source material will set out a context for the original research to follow.

I intend to focus on legislative initiatives as a reference or starting point to guide my primary research. The legislation I deal with in my research was drafted, implemented and enforced by privileged groups, and reference to other primary sources is necessary. One of the problems with primary source research in archives

to how to fill the gaps in the historical evidence and I acknowledge that such records usually reflect a privileged human hand and therefore that person's perceptions and views about events. How does one recover the experiences of people who left few if any records of their own, an important issue when it comes to children? Mindful of these limits, I have been able to separate my primary research into two main areas; newspapers and government papers. Literature from organizations such as church newsletters, city newspapers or reform propaganda are important as they allow the researcher to uncover what a wider segment of society (albeit largely privileged) felt toward working class children and the legislation pertaining to children at the time.

### Organization of Research

The next chapter sets out the political and social context by exploring the themes just introduced: Nation building, state formation, moral regulation, the development of the new childhood, and reform movements. I have organized chapter two into two main categories, each with sub-groups. The first section will deal with state development. Within this theme of state development I will deal with nation building, the sorting out of jurisdictional difficulties, for example, and state formation the production of ideas and identities. I believe it is important to investigate the how Canadian civil society, and citizens residing in Ontario were being regulated and moulded by the state. As a starting point, it is essential to understand what the policy priorities of both the provincial and federal governments were in relation to children. When was state intervention into the lives of the country's most vulnerable citizens deemed necessary? Why the displacement of the

role of the traditional patriarchal family on selected matters? A final subsection of the state development theme deals with the concept of moral regulation. This opens the way to the study of civil society, including class issues between the reformers, predominately from middle class, and those being 'saved', in this case working class and lower class children. Moral regulation provided the bridge between child welfare initiatives and broader pressures to sustain the existing social order, prevent future crime and contribute to the task of nation building.

The second section will focus on the social and political context, in particular social reform movements that emerged in the late nineteenth century, namely the 'new childhood'. I believe it is important to discuss the development of the phenomenon Neil Sutherland has termed the 'new childhood'. This was a move to seeing the child as a person with fundamental rights and needs. The change to viewing the child as a vulnerable person in need of guidance spurred the growth of many reform movements. Women, specifically mothers, played a fundamental role in the 'new childhood'.<sup>20</sup> The reform impulses of the late nineteenth and early twentieth century greatly affected the child welfare movement. In this section attention will be played to social reform groups such as the Social Gospel, the Women's movement (maternal feminism) and the temperance movement.

Chapter three deals with the legal context, focussing on legislation passed regarding child welfare and juvenile justice issues. It traces each important piece of legislation passed since the creation of Upper Canada until 1908. It also deals with

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<sup>20</sup> Sutherland, supra note 1 at 12.

the older common law approaches to the family and the courts in passing. The most important or ground breaking pieces of legislation are discussed fully, taking into account various pressures from members of society and the legislature. Throughout this chapter I attempt to closely tie in the themes of nation building and state formation and the legislative responses to this.

Chapter four focuses on the creation, development and organization of the industrial schools. This chapter is designed to investigate the schools' curriculum, discipline, daily schedule, population and organization, as well as tying in the five main themes of the research. The changing role of the schools is important to this chapter as it illustrates how the idea of nation building evolved during the late nineteenth and early twentieth century. This chapter also facilitates a discussion of the struggle between different reform groups, favouring either institutionalized care or private home care (foster home). Finally, this chapter examines both the successes of the school and the criticisms and problems of the schools.

The concluding chapter explores how the industrial schools coupled with the passing of the *Juvenile Delinquents Act* of 1908. The discussion will revolve around how the JDA affected the schools' organization and success. As well, I will very briefly introduce the JDA as a further means of regulation and as a logical consequence of the fight for child welfare and juvenile justice.

Before delving into the research at hand it is important to note that while the majority of the advances made through the movement will deal with delinquent children, non-delinquent children played an important role as well. Children suffering from neglect and/or abuse during the late nineteenth century received some

relief with the passing of several provincial acts. The gains made by many of the child savers regarding abusive and neglectful parents have been well documented over the past years, the real emphasis of the work presented here is intended to focus heavily on the industrial schools system as an agent of social control. The term 'incorrigible', which was used to describe offences such as loitering and larceny, act as a marker by which the research is to be measured. To fully and properly present the picture it is important to start with the experience of non-delinquent children to illustrate how the lives of 'incorrigible' children would be later affected.



## ***Chapter Two: Political and Social Context and Literature Review***

By the 1880's Ontarians could no longer deny that society was changing. The political and economic climate was developing in new ways that had a dramatic effect on society as a whole. Industrialized areas drew people in and intense urbanization soon followed. Even the face of the population was changing as immigration increased and new cultural backgrounds intermingled with existing cultural bases. The purpose of this chapter is to set the social and political stage for the research to follow. There is extensive historical literature on this area which is surveyed here. I will introduce and discuss the five main themes emerging from this literature of relevance: nation building, state formation, moral regulation, the 'new childhood', and reform movements in civil society. It is intended that these five themes, combined with the legal themes examined in the next chapter, will provide a contextual framework for the primary research that follows in chapters four and five.

The idea of 'building a society' was on the minds of political leaders and the population at large during the late eighteenth century, although there were different views about what this might look like within the Francophone population, loyalist refugees, British settlers, and other immigrants (largely non-loyalist Americans). The native peoples were increasingly marginalised and decreasingly had a say in this new society. By the mid nineteenth century, when the idea of a Canadian dominion made up of the British North American colonies and the notion of citizenship began to emerge, tensions between region and culture were not resolved, but only

compounded by new social tensions with the beginnings of industrialization and urbanization. After Confederation, power struggles emerged on every level, especially between the central state and the provinces, and manifested itself in jurisdictional disputes.

The ideas of nation building and state formation tend to overlap. Children were a key part of the quest to build a new nation and citizenship. Children, naturally, are seen as the future generation of a country, fulfilling the perceived need for productive industrious citizens. Children, particularly those from the lower classes, were viewed as particularly dangerous. If a child was brought up in poverty or even worse, crime, then how could that boy or girl contribute to the new country when they reached adulthood? The answer to this question comes in the form of the development of institutions. When using the term 'nation building' I will refer to the institutional developments designed to promote the strength of the country. The term 'state formation', focuses on the related objective of moulding a productive citizen base, that is, the cultivating of a compliant and well-ordered population. These two concepts tend to overlap, but I will discuss them separately.

The themes of moral regulation, the 'new childhood' and reform movements in civil society are also closely linked. We have already established that during this transitional stage in Ontario history, members of the middle to upper classes felt the need to regulate the behaviours of others in society. This shaping of behaviour and in many cases resistance to the regulating of behaviours also worked to build the nation. Coupled with new ideas on childhood purity and innocence, and a variety of moral reform movements the stage was set for society to reconstruct itself. Again we will

see this played out in the industrial schools, child welfare issues and the quest for a separate juvenile justice system. As a working point I have found that the overall theme or final destination was the building of a new nation and the formation of a state, where the mechanisms used to achieve these were concepts such as moral regulation, new ideas on childhood and moral reform movements in civil society. In this way the five themes to follow are closely linked together in the research to follow.

It is important to take a historiographical look at the existing secondary literature in order to fully understand how the research conducted here contributes to the existing scholarship. When discussing the authors to follow and their contributions to the topic it is important to remember that many fail to take the role of law into consideration. Until recently, even the critical literature on a social movement did not adequately account for changes in the role of the state. What I feel is missing from much of the secondary literature is a critical look at state involvement and, in particular, the role of law. It is my aim with the research presented in this thesis to fill the gaps in the existing literature regarding the role of the state and law.

Paul Bennett has completed important research on the experience of the industrial schools. His focus on the social history of the schools reflects a reaction against the 'whiggish' focus on institutions and 'great men' in older historical interpretations such as the 'nation building' perspective examined below. However, critical historians have begun to return to the study of institutions and their relation to social life, as reflected in the themes of state formation and moral regulation, also

examined below. This study reflects this move to 'reinstitutionalise' history, by paying particular attention to the law and the state from a critical perspective.

The industrial schools will be examined extensively in chapters four and five but it is important to again define the schools in light of the themes that I set out in this chapter. The industrial schools were state sponsored institutions that were meant to house children found wandering the city streets neglected or dependant. The schools were also set up to give children guilty of petty offences a second chance. The premise of the schools was to educate the children of the working and lower classes and transform them into industrious hard working citizens. Within the schools walls these children were taught to embrace Christianity, morality and middle class values. Basic education was offered but more importantly these children were trained in skills such as carpentry, and shoe making. The idea was to educate these children in the hope that they would carry these skills with them into adult hood and contribute positively to society in future years. These objectives reflected the concerns uncovered by those working on the political and social life in Canada and Ontario in this period.

#### a) Nation Building

The creation of the Canadian state was in progress well before Confederation in 1867. The British conquest of 1759 added to British North America as the other American colonies in the hands of Britain (with the exception of Nova Scotia) were lost. Quebec acquired a civilian government and administration of law under the Quebec Act, 1774. The Constitutional Act of 1791 divided the province of Quebec

into two new provinces known as Upper and Lower Canada. The geographical divide was made along the Ottawa River. There had been a push from the Loyalist population to have a separate province that resembled the British methods of law and land division as opposed to the French civil law and seigneurial land system. The Constitution Act of 1791 was not only reflective of Loyalist concerns for the new colony and British reaction to the American revolution, but also of concerns stemming from the French revolution.<sup>21</sup> Murray Greenwood and Barry Wright write that these attitudes: "... had an impact on the structure of representative government (a powerful appointed legislative council) and on the administration of law (which, through the Judicature Act of 1794, was closely modelled on the English system but was also heavily centralized and executively controlled)".<sup>22</sup>

These tensions between these institutional structures and the social and cultural divisions contributed to the rebellions of 1837-1838. The union of the Canadas, responsible government, and Confederation in 1867, were institutional responses to the crisis of the colonial state. Macdonald's "national policy" followed, yet this explicit drive towards nation building would cause yet further tension between different levels of government and different social groups in society.

The rebellions challenged the political culture that had existed for years and

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<sup>21</sup> Murray F. Greenwood and Barry Wright, "Introduction: State Trials, the Rule of Law, and Executive Powers in Early Canada", in Canadian State Trials Vol. 1: Law, Politics, and Security Measures, 1608-1837 (Toronto: University of Toronto Press, 1996) at 21.

<sup>22</sup> Ibid., at 21.

paved the way for moderate reform.<sup>23</sup> Lord Durham's famous report on the colonies of British North America entitled *Report on the Affairs in British North America* was completed and filed in January of 1839. Among Durham's recommendations for the political crisis of the colonies was responsible government (only realized ten years later after the work of reformers Robert Baldwin and Louis Lafontaine in the united provinces of Canada and Joseph Howe in Nova Scotia) and for the union of Upper and Lower Canada (in an attempt to assimilate the two cultures; French and British). As Greer and Radforth point out, Durham's recommendations were followed by Lord Sydenham's work in developing a much more elaborate and utilitarian administrative state. So while responsible government made Canada more democratic the state itself became much more pervasive in people's lives.<sup>24</sup> This introduced the foundation of state formation which will be examined shortly.

Confederation and the range of nation building policies under the leadership of Sir John A. Macdonald followed, to resist American incursions, to fill up the west with productive citizens, and partner the state and capitalism, notably the development of the transcontinental railway. This generated deep political conflicts between the federal and provincial governments whose jurisdictions were set out.

The federal government's control over the criminal law and provincial control over education has particular relevance to the study at hand. The industrial schools

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<sup>23</sup> J.M. Bumsted, *The Peoples of Canada: A Pre-Confederation History*, (Toronto: Oxford University Press, 1992), at 249.

<sup>24</sup> Alan Greer and Ian Radforth, "Introduction" in *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, eds. Greer and Radforth (Toronto: University of Toronto Press, 1992) at 8.

system fell under the provincial jurisdiction but many of the concerns about children related to criminal law matters. Tension also existed between provincial and municipal levels of government as well. Welfare issues clearly demonstrate the point, as welfare policies fell under provincial jurisdiction. The provinces in turn delegated this responsibility onto the municipalities and the financial burden fell onto them.<sup>25</sup> The municipalities, unable to cope with the financial responsibility, often just ignored the problem.

Mariana Valverde informs us that the process of nation building is how race, gender and class intertwine,<sup>26</sup> a definition that relates to the research at hand. The new nation was being developed through these interactions in both positive and negative ways. As a result, institutions and new practices, both political and legal, developed. Valverde goes on to say that there was a tension that existed between adopting British and American ideas and the desire to construct the young dominion as different. Regulatory rhetoric of the time was peppered with discourse emphasizing purity and morality. In an attempt to distinguish themselves from their British and American counterparts, Canadians focused on purity, snow, and whiteness, as metaphors for natural innocence and cleanliness. There was an assumed virtuousness and pure image about Canada, associating its youth with childhood innocence and purity. These metaphors, and the many more that

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<sup>25</sup> J.C. Turner and F. Turner, Canadian Social Welfare, (Don Mills: Collier Macmillan Inc, 1986) at 54.

<sup>26</sup> Valverde, supra note 2 at 16.

followed were meant to promote a healthy and less corrupt citizenry.<sup>27</sup> This rhetoric will be explored in later sections.

While the term nation building relates to institutional developments and policies there was a concern about citizenry and that some groups were more in need of character building than others. It was those who were perceived to be in danger of failing that suffered the most pressure to be moral and virtuous citizens. As Valverde puts it: “...non criminal populations and in particular youth, were seen as requiring a process of character building, the individual equivalent of nation-building...”.<sup>28</sup> This new character was not solely based on sexual purity and morality for an individual’s own good. Rather individual character building would benefit the nation when all individuals came together to form a national identity - one of industry, morality and good health.<sup>29</sup>

## B) State Formation

Ian Radforth points out that British ideas of state formation were fuelled by social and political ideas in civil society such as evangelicalism, humanitarianism and utilitarianism.<sup>30</sup> Radforth asserts that the Governor General of Canada in 1839, Charles Poulett Thomson later Lord Sydenham, believed that the citizens of the

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<sup>27</sup> Valverde, supra note 2 at 16-17.

<sup>28</sup> Ibid., at 27.

<sup>29</sup> Ibid.

<sup>30</sup> Ian Radforth, “Sydenham and Utilitarian Reform” in Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada eds. Greer and Radforth (Toronto: University of Toronto Press, (1992), at 64-66.



colonies also wanted the state to intervene to promote uniformity and efficiency.<sup>31</sup>

Fundamental to the theme of state formation is the production of good citizens. In the case at hand that meant producing healthy children, surrounding them with Anglo-Celtic, middle class ideals and values so they would grow up and contribute to society as efficient citizens, rather than contribute to instability and the prison population. While the emphasis will be primarily placed on children, it is important to understand that creating a solid citizenry was a phenomenon that reached all members of society in some way. One way to ensure that the dominions citizens were 'good' was to encourage immigration from a group deemed to be desirable. Desirable immigrants fell into two main categories, those from a wealthy background who had the financial means to facilitate immigration to Canada, and those from healthy stock who were industrious and strong bodied, to work the land.<sup>32</sup>

Just as new citizens were sought from abroad and brought over to be manufactured from within to match the ideal of what it was to be 'Canadian', children were too.<sup>33</sup> Jane Ursel's work on state intervention into the family is particularly useful here. Ursel describes a shift from familial patriarchy to social patriarchy as a process of increasing state intervention into the family. Ursel goes on to argue that the fundamental principle of societies is the reproduction of its

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<sup>31</sup> Radforth, supra note 30 at 74.

<sup>32</sup> Ibid., at 78.

<sup>33</sup> Strange and Loo, supra note 4 at 9.

population.<sup>34</sup> This principle can be applied to the case at hand as the goal during the late nineteenth century was not only the production of citizens, but the production of 'good citizens'. The number of neglected children on the street contributed to the fear as the 'quality' of citizenship. As well, it appeared that women of child bearing age were neglecting their natural calling and either having fewer children than their mothers or opting to have none at all.<sup>35</sup>

Early social and education policy presented obstacles to state intervention into the lives of children. One of Lord Durham's recommendations was to impose a uniform system of education throughout the colonies. During the twenty to thirty years prior to confederation education was struggled over between provincial government elites which favoured denominational education and reformers such as Ryerson who wanted a modern uniform system of compulsory public education. Interests were developing in using education as a method of ensuring that the future adults of Upper Canada and later the dominion would be governable out of their respect for British authority.<sup>36</sup>

The development of mandatory public schooling is beyond the scope of this thesis, but its relation to the industrial schools in terms of citizen formation is apparent. Prior to the 1870's sending a child to school was a voluntary action and a decision to be made by the child's father. As a general rule the majority of a child's

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<sup>34</sup> Ursel, supra note 5 at 4.

<sup>35</sup> Ibid., at 36-37.

<sup>36</sup> Radforth, supra note 30 at 92.

education was attained within the home. When churches became further established in pioneer Canada the educative sphere was expanded to include both home and church instruction. As schools became more popular children attended in a sporadic manner, depending on what seasonal chore was required of them at home. The School Act of 1871, legislated mandatory attendance for at least four months of the year. As well, each municipality was now required to provide a free common, or public school.<sup>37</sup> The schools were organized in a fashion that would facilitate the beginnings of a moral and Christian citizenry. In a way the move to bring Canada's children together in a school room was a move to bring order to a turbulent society. As we will see later in the chapter when discussing the new childhood, Canadians were discovering the effects of environment on children. Many believed that if causes of crime such as radical thought, lack of morals and no religious base could be removed from a child's environment, then perhaps future crime rates could be curbed.<sup>38</sup> Allison Prentice clarifies this further: "The movement to send all children to school was above all, a movement to bring sanctity and order to human affairs".<sup>39</sup>

Another problem area related to the industrial schools was social assistance. Canadian society had glorified self-sufficiency as a result of the tough pioneer conditions of the first half of the nineteenth century. The predominant attitude was that the poor should fend for themselves because once assistance was granted,

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<sup>37</sup> Allison Prentice, The School Promoters: Education and Social class in Mid-Nineteenth Century Upper Canada (Toronto: McClelland and Stewart Inc, 1988) at 15-17.

<sup>38</sup> Ibid., at 25-26.

<sup>39</sup> Ibid.

citizens would become dependant, lazy and immoral.<sup>40</sup> The public attitude toward charity was made clear in the February 27 1874 issue of The Globe :

In a new country like this we ought to find the problem [poverty] comparatively easy. Promiscuous alms-giving is fatal - it is the patent process for the manufacture of paupers out of the worthless and improvident. A poor law is a legislative machine for the manufacture of pauperism.<sup>41</sup>

It is because of these attitudes and the failure of Upper Canada to adopt the English poor laws that the development of assistance for the poor were not permanently put in place (during the first legislature meeting of Upper Canada in 1792 all English law was to be adopted with the exception of the poor laws and the bankruptcy laws).

Historians have vigorously debated the reasons why these laws were excluded.<sup>42</sup>

Russell Smandych suggests that perhaps these welfare issues were not seen as important when compared to emigration and military defence.<sup>43</sup> This is consistent with the prevailing attitudes of the day concerning nation building.

By the later stages of the nineteenth century charity became more administrative and institutional. Previously, charity sought to alleviate the immediate problem. Instead of 'hand outs', philanthropists at the end of the century focused on training the poor in industrious habits and hygiene. As well there was a move to focus

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<sup>40</sup> Andrew Jones and Leonard Rutman, In the Children's Aid: J.J. Kelso and Child Welfare in Ontario. (Toronto: University of Toronto Press, 1981) at 16.

<sup>41</sup> "Charity, its aims and means," The Globe, 27 February 1874 at 2.

<sup>42</sup> Russell Smandych " William Osgoode, John Graves Simcoe, and the Exclusion of the English Poor Law from Upper Canada" in Law Society and the State: Essays in Modern Legal History. eds., F. Knafla and S. Binnie (Toronto: University of Toronto Press, 1995) at 99-102.

<sup>43</sup> Ibid., 111.

on those members of society that would best benefit the nation, "...rather than give to old people, who were favoured by traditional charity, there was a new emphasis on children, and indirectly, on women, for with them one was making an investment in the future of the nation".<sup>44</sup>

The *Charity Aid Act of 1874*, The *Factory Act of 1884* and the *Workmen's Compensation Act of 1887* are all examples of the provincial government stepping in, in an attempt to get a handle on welfare issues. Private charities developed simultaneously with government programs, hospitals, orphanages, and hostels. With the passing of the Charity Act the province was able to give financial support to privately run organizations.<sup>45</sup> This move was seen as a necessary measure, as the private sphere simply could not cope with the problems. There was too much for members of society to deal with, both financially and through volunteerism. Despite the public view that financial assistance would produce a lazy and immoral citizenry the government had to intervene. It had become clear that the self-sufficiency that Canadians had prided themselves on had become an impossible task for some.

### c) Moral Regulation

The idea of moral regulation is closely linked with state formation as many of the institutions and policies at the time reflected the attempt to impose morality through regulatory means, in spheres such as education and social assistance as

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<sup>44</sup> Valverde, supra note 2 at 19.

<sup>45</sup> Rutman, supra note 6 at 69.

discussed above. We see an increased intervention into private spheres, specifically the family as well as economic activity. With the increase in industry it had become clear that some regulation was needed in terms of limiting hours, limiting age and establishing a minimum wage. Was this regulation rooted in economic issues or was this an example of the social sphere permeating the economic sphere? Some effects of industry, such as child labour and unsafe working conditions, had become a social problem and the state was subsequently asked to cross the line and legislate accordingly.<sup>46</sup> This shift in the public and private spheres will be picked up again in later discussion.

As we have seen, new state interventions were intended to build up good citizenship through regulation, social forces separate from the state also contributed to moral regulation. Historians influenced by the work of post modernists such as Michel Foucault have started to explore the complex web of power within and beyond the state. Since the state at various levels of government aims to portray itself as neutral, value free and an instrument of the majority, it becomes difficult for the state to become actively involved without first receiving some public pressure to do so. Once public pressure is placed on any level of government to change an existing law or practice, the state can respond through legislative means. It is easier to respond to the public cry for legislation regarding moral issues than it is to organize a moral campaign.<sup>47</sup> It is for this reason that we see the state taking on a reactive stance to

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<sup>46</sup> Valverde, *supra* note 2 at 20.

<sup>47</sup> *Ibid.*, at 25.

social problems rather than a proactive stance. Thus, regulatory schemes related to morality generally originated in the private sphere through civil reform movements.

Morality is an abstract concept with religious connotations and/or reference to natural law. Carolyn Strange and Tina Loo have adopted a definition of morality that I find to be useful for the purpose of this research: "...it is a strategy of evaluation or a means of distinguishing behaviour between goodness and badness. Thus, notions of morality dictate behavioural ideals...".<sup>48</sup> Laws may regulate our activity within society, but not all laws regulate our morality. In an effort to regulate the personal space many moralists relied on Christian values and fundamental principles of right and wrong. These are examples of social forces that operate some distance from the state but coordinate with it, notably through the law, in the regulation of moulding its citizenry.<sup>49</sup>

What is central to the idea of moral regulation is that laws based on morality are not neutral as the legislators claim them to be. Strange and Loo inform us that moral regulation was achieved through the work of three sets of actors; the federal and provincial states, Roman Catholic and Protestant churches, and the local communities.<sup>50</sup> By the late nineteenth century Canadians were not only working to improve themselves and those around them, but they were calling for the state to throw some power behind regulatory agendas. Examples of this can be found in the many urban reform movements of the period. Each movement was based on the goal

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<sup>48</sup> Strange and Loo, supra note 4 at 4.

<sup>49</sup> Ibid., at 4-5.

<sup>50</sup> Ibid., at 16.

of eliminating a 'vice' from society, such as improper sexual behaviour, illicit literature, alcohol, gambling and prostitution.<sup>51</sup> Vices such as these were seen to be the downfall of a good Canadian family and ultimately a productive healthy citizenry.

We will examine the law in more detail in chapter three, but as we have seen earlier in this chapter the British North America act granted the federal government the right to legislate criminal laws. Although the criminal law was derived from the federal government, its enforcement fell under provincial jurisdiction. The courts and police of particular provinces had their own agendas for moral regulation and were subject to local pressures. As a general rule the in the early national period the federal government reacted to inappropriate behaviour after it had occurred. In this way the federal government was taking a reactive stance towards crime as opposed to a proactive stance. Essentially the federal government relied on the criminal law to impose morality after an immoral act had occurred.<sup>52</sup> This set the stage for a jurisdictional tug of war regarding the legislating of behaviour.

Some historians have used the term 'social control' to explain the state's power over its citizens. However, if we assume that control occurs, then it is difficult to account for ineffective laws or institutions that fail to control.<sup>53</sup> As we will see, this is the case with the industrial schools; clearly the evidence points to the failure of the schools as they closed after a relatively short number of years. It would be almost

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<sup>51</sup> Strange and Loo, supra note 4 at 60.

<sup>52</sup> Ibid., at 18-19.

<sup>53</sup> Ibid., at 5.



impossible to explain the failure if I did not take into account that other factors were at work. The state may well have had the physical control of the children in that they were placed within the schools and submerged in middle class ideals and values. It is important to accept the fact that the children, their parents, and other members of society held an element of control in the process as well. This is why moral regulation theorists have emphasized, forces beyond the state. Control can come from religious institutions, schools, factories, families and peer groups.<sup>54</sup>

Strange and Loo use the concept of “law in action”, that is laws that are backed by a societal force.<sup>55</sup> I find this to be a useful concept to the research at hand. Had societal forces, namely from the middle class not been behind the legislation that regulated delinquent and non-delinquent children, many initiatives regarding children would not have been possible to implement, no matter how important the state regarded them. In reality, law on the ‘books’ is very different from law in action as we will see in the next chapter. A legal reformer may set out codify a law but is unaware of the enforcement problems, and unexpected consequences. Once a law is on the books it does not mean all the work is done. As well, there may be a difference between intended effects and actual results. In fact, as the authors suggest, the regulation itself often turned out to be worse than the moral dilemma to begin with.<sup>56</sup>

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<sup>54</sup> Strange and Loo, supra note 4 at 5.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid., at 37.

#### d) The 'New Childhood'

A fourth relevant theme in the historical literature examined in this thesis is the concept of the 'new childhood'. Neil Sutherland argues that the early traditional view of the child was that of a miniature adult. Canadians of the nineteenth century rarely discussed issues of child neglect and abuse, as people either did not want to interfere in the traditional family relationship or did not see these abuses as a problem at all. The idea of the family as strictly part of the private realm was firmly entrenched in the minds of Canadians at least during the early part of the century. There was also little awareness of the emotional needs of the child and children were not seen as individuals. Instead, they were expected to participate fully in the family economy.<sup>57</sup> One farmer who had emigrated to Canada found that in Britain his children were like a 'rope around his neck' whereas in Canada they were the 'source of his wealth'.<sup>58</sup>

Hard work was central to a child's life and what occurred during childhood, it was believed would ultimately determine the type of adult a child would eventually become. Sutherland maintains that pre-1880s adults viewed the child as a form of 'raw plastic' in need of being moulded and shaped by competent, moral and Christian parents into competent and independent adults. Proper nourishment, clothing and shelter were secondary to a child's upbringing. Morals and good work habits took

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<sup>57</sup> Sutherland, *supra* note 1 at 4-5.

<sup>58</sup> *Ibid.*, at 9.

priority.<sup>59</sup>

It is important to note that the new attitude toward children in the late nineteenth century was clearly reflected in types of metaphors or the discourse used to describe children and childhood. Instead of the 'plastic clay model' children were seen as persons who needed support and encouragement in order to grow.<sup>60</sup>

Throughout the mid 1870's to 1880's concern for the welfare of children was reflected in the development of institutional programs. The protection of non-delinquent children within the home had not yet developed and these children were still without official rights and protection. This again stemmed from the idea that the government could not and would not enter a 'man's home', reinforcing issues of the male prerogatives reflective in the law. Children were seen as the responsibility of the parents, and what they saw fit to do with their children regarding discipline and upbringing was nobody's business but the parents', particularly the father. During the 1880's and 1890's there was a growth of English Canadians who began to exert a new attitude toward children, and began to see them more as individuals and future citizens of the state and not so much as contributors to the family income.<sup>61</sup> This social shift in attitudes towards the child was ultimately reflected in the law, supporting attempts by both provincial and federal governments to foster the 'new childhood'. Other reform movements contributed to this intervention, and the

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<sup>59</sup> Sutherland, supra note 1 at 11.

<sup>60</sup> Ibid., at 17.

<sup>61</sup> Ibid., at 28.

historical literature on them will be surveyed in the final section that follows.

#### e) The Immediate Context of Reform Movements

Since there were a variety of reform movements within Ontario society, many of which have attracted considerable attention from historians, I have narrowed the survey down to the fields that I feel most greatly influenced and contributed to the child welfare movement, the industrial schools and the quest for a separate juvenile justice system. The reform movements I have chosen to focus on are those that were religiously orientated and those led by women. Religion played a fundamental role in reform movements and I will discuss the effect that the Methodist church, particularly the phenomenon known as the Social Gospel, had on children.

Reform movements led by women fall under the umbrella of what Constance Backhouse has termed the 'cult of motherhood'.<sup>62</sup> I have borrowed this term and under it placed the emergence of domestic science within the public school system and the support of women for the Temperance movement, through the Women's Christian Temperance Union. The nature of this section is historiographical as I believe it is important to examine what research has already been done in the area and present it in light of what I believe to have occurred. The purpose of this section is to examine the selected urban reform movements in light of their contribution to child centred reform in late nineteenth and early twentieth century Ontario.

Toronto is the focus as it was the dominant city in Ontario in the late

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<sup>62</sup> Backhouse, supra note 8 at 202.

nineteenth century. Toronto experienced the brunt of social problems, including poverty, poor housing, improper nourishment, high infant mortality rates, unemployment and sanitation problems<sup>63</sup>. Conditions of the lower and working classes were deplorable and it was clear to those of the upper classes that something needed to be done. Not all members of society were interested in child welfare; generally it was the affluent members of the middle class who had become influential through urbanization and industrialization, who felt that participation in the urban reform movement, through a variety of ways, was necessary. Governments at the provincial and federal levels were facing an urban crisis and among the more obvious problems of urbanization such as poverty, there was an increase in saloons, prostitution, gambling, 'bad girls', and a decrease in church membership.<sup>64</sup>

An awareness of children living in terrible conditions soon arose and there was an effort to remove these children from the urbanizing effects of the city. The Children's Fresh Air Fund was created in 1888. Emphasis was put on the word 'fresh' as volunteers removed poor children from the city for a few short hours into the rural areas for the day and filled them with good food and fresh air. The problem was that after a day in the country these children were then deposited back into the same conditions that had led the reformers to believe that a rural outing was necessary in the first place. Another example of society reaching out to the poorer children of the city rests in the creation of the Santa Claus Fund. In 1888, child welfare reformers

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<sup>63</sup> J.M. Bumsted, the Peoples of Canada: A Post-Confederation History, (Toronto: Oxford University Press. 1992) at 83.

<sup>64</sup> Jones and Rutman, supra note 40 at 121-122.

threw a Christmas party for the poor children of the city. Again, at the end of the day the children were returned to the slums. Both the Fresh Air Fund and the Santa Claus Fund enjoyed continued success for many years.<sup>65</sup>

By participating in both funds, either through voluntarism or financial means, many wealthy and middle class Torontonians believed they were contributing to the moral and social obligations they felt were necessary towards less fortunate children. These organized activities were seen as an opportunity to instill in poorer children religious, moral ideals. Mannerly behaviour was encouraged as well as a clean appearance.<sup>66</sup> These efforts were seen as essential to middle class reformers but it is doubtful if the children found much use for their newfound skills once they were back in the slums.

It is important to note that while many in society were involved in some way in the reforms surrounding children, middle class women played a particularly active role. It is also important to note that the middle class reformers worked within their own perceptions and most reformers were from the middle class. According to Sutherland, Canada's middle class in the late nineteenth century was made up of the following groups: prosperous farmers, skilled artisans and craftsmen, public employees, the commercial and business occupation, clergy, lawyers, judges, doctors and dentists. With the exception of the farmers, most resided in the urban areas.<sup>67</sup>

Before delving into specific reform movements, it is important to the research

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<sup>65</sup> Jones and Rutman, supra note 40 at 31-32.

<sup>66</sup> Ibid. at 33-34.

<sup>67</sup> Sutherland, supra note 1 at 14-15.

at hand to clarify the tension between middle and working class values. I do not want to claim that the working class did not have a value base, or that the middle class had a much higher set of values than the working class. What is important to remember is that members from both these classes were coming from different perspectives.

Members of the middle class were concerned about working class children corrupting their own children. As well, many of these neglected and/or delinquent children could be found roaming the streets. Begging children found on the streets tended to conflict with the prosperous, pure and clean image that Ontario wanted to project in the interest of nation building. Members of the working class were concerned with surviving daily life and hoping to improve the lives of their children. This is reflective in the practice of committing one's own child to an industrial school in hopes of him or her learning a useful trade. Members of both classes certainly had value bases but the middle class, the more dominant class had concerns about the image of the nation and their own children's interests.

### *Religiously Based Reforms*

Legal and historical scholars such as Richard Allen, Carolyn Strange and Mariana Valverde have clearly established the importance of the relationship that existed between urban and moral reform movements and Christianity. The religious make-up of pre-confederation Canada was cut along regional lines, Lower Canada remained predominately the realm of the Roman Catholic Church, while Upper Canada had a large Protestant following along with some Catholicism. The established church of the Upper Canada colony was the Church of England which

was entitled to financial support from the state.<sup>68</sup> By the mid nineteenth century other churches such as the Methodist church began to gain support in the province. Unlike the Anglican and Catholic churches, the Methodist church relied heavily on evangelicalism, mass participation in revivals and the emotional preaching of the salvation of God. As J.M. Bumsted has noted : "For many in the establishment, violent passion and populism went hand in hand with revolution".<sup>69</sup> Perhaps a revolution did occur because by the late nineteenth century Canadians were faced with Darwinism and a great questioning of traditionally accepted beliefs had begun.<sup>70</sup> Society within Ontario had changed radically during the late nineteenth century; if revolution had been foreseen by those of the religious establishment, it would be one fought on an intellectual front.

The Social Gospel was the passion behind the majority of social reform movements from 1890 to 1939. The roots of the Social Gospel can be found in the theological debates that arose during the last third of the nineteenth century. Throughout this time many arguments arose about the place of science and religion in society, biblical criticism, positivism and philosophical idealism.<sup>71</sup> It was believed by members of society who had embraced the idea of liberalism and free thought that the only way for the churches to make themselves relevant and influential again was to

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<sup>68</sup> Bumsted, supra note 23 at 257.

<sup>69</sup> Ibid., at 260.

<sup>70</sup> Michael Gauvreau, "Beyond the Half-way House: Evangelicalism and the Shaping of English Canadian Culture", Acadiensis (Spring 1991) at 162-165.

<sup>71</sup> Ramsay Cook, The Regenerators: Social Criticism in Late Victorian English Canada (Toronto: University of Toronto Press, 1985) at 8.



align the church with social issues.<sup>72</sup>

Is it fair to say that the Social Gospel was a method or means for religion to recreate itself in a new society? Perhaps this was the case; clearly religion and the belief in God was not enough to satisfy the need of those who saw moral degradation and industrialism as co-dependant. The Social Gospel, as with many other reform movements of the time, was a response to the weakening family structure, increased poverty and perceived moral crisis that was tearing through Canadian society in the late nineteenth and early twentieth century.

Nineteenth century evangelicalism had set the stage for the Social Gospel. Evangelicalism was not based on the formality of theological issues or the religious hierarchies which ruled other churches, but on the belief that religion should be active, and should be played out in society.<sup>73</sup> The Social Gospel incorporated the key ideas of evangelicalism in its suggested reforms. Social problems were now seen as society's problems and not so much the problem of the individual.<sup>74</sup> The movement combined religious and social reactions to a changing society, and used a collectivist approach towards social problems. Its members believed industrialization and urbanization produced an individualistic society, a detrimental side effect according to followers of the movement. Where other reform movements placed blame on individuals themselves, the Social Gospel centered the blame on an urbanizing

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<sup>72</sup> R. Cook, *supra* note 71 at 132.

<sup>73</sup> Gauvreau, *supra* note 70 at 162.

<sup>74</sup> Richard Allen, *The Social Passion: Religion and Social Reform in Canada, 1914-28*, (Toronto: University of Toronto Press, 1971) at 6.

society that was losing touch with sound moral and Christian traditions.<sup>75</sup> The movement strove to awaken the social consciousness and align members of society in solving the social ills of the day.<sup>76</sup> The concept of brotherhood was fundamental to the Social Gospel movement. There was a call from the movement for Christian businessmen to act in accordance with morality and Christian values and lend their support, both financial and through volunteer work, to aid in various reform movement.<sup>77</sup>

The Social Gospel was a religious movement above all else, and its premise was to spread Christian influence into the social realm and 'save' people. Its participants believed that intervention by the public into the private realm had become a necessity. Thus, Social Gospelers personified the shift in Canadian society from the private to the public sphere. Despite the theological elements of the movement, the Social Gospel did not consider itself to be a theological movement, but rather a response to human needs.<sup>78</sup> According to the beliefs that underlay the Social Gospel, everyone in society was responsible for the existence of an imperfect world. Just as the way from life to death was through discovering the Kingdom of God, so was the way from social unrest to social order.<sup>79</sup>

The Social Gospel movement was more than just about social reform, it was

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<sup>75</sup> Turner and Turner, supra note 25 at 33.

<sup>76</sup> Allen, supra note 74 at 16-17.

<sup>77</sup> Cook, supra note 71 at 183.

<sup>78</sup> Allen, supra note 74 at 4.

<sup>79</sup> Bumsted, supra note 23 at 16-17.

about social duty and the role that a good Christian played in society. Many Christians already believed in the benefit of social action was a way of life and a religious duty. But the Social Gospel had put a new spin on the matter and instead of the individual becoming a source of salvation, it was society acting through the state that would ultimately lead one to salvation. As a writer to *The Week* in the 1880's put it: "Christianity begins reform from within, socialism from without".<sup>80</sup>

### *The 'Cult of Motherhood'*

Woman were traditionally at the centre of issues dealing with religion and the family. It was increasingly perceived by many middle class women that a breakdown of family cohesion had begun in the rapidly urbanizing society. It was a short step to reform activism when such breakdowns were seen as a threat to the existing social order.<sup>81</sup> Out of this emerged several social movements including the Women's Right Movement. Within the movement was two main branches, the suffragists who were fighting for the enfranchisement of women and the maternalists who were promoting the 'cult of motherhood'. Both these branches found that they worked with and against each other at different times. The Women's Movement became a large part of the child welfare reform movement. Through their fight for better protection for children, women came to be socially constructed in a new way. A new belief about women as mothers was glorified and promoted in society. Under the guise of

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<sup>80</sup> Cook, supra note 71 at 76.

<sup>81</sup> T.R. Morrison, "Their Proper Sphere: Feminism, the Family and Child-Centered Social Reform in Ontario, 1875-1900," Ontario History 68 no. 1 (1976), at 45-47.

maternalism Canadian women were able to extend their roles from the domestic sphere into the public. T.R. Morrison describes the idealized version of woman during the late nineteenth century as one where the mother held together the family and stood as a nurturing, moral and spiritual leader of the family. Essentially 'woman' and particularly 'mother' were meant to personify superiority in both morality and religion. It was quite an image to live up to this expectation, yet the majority of women in Ontario during the late nineteenth century aspired to be such a noble being.<sup>82</sup> Constance Backhouse calls this elevating of the role of mothering the 'cult of motherhood'.<sup>83</sup>

What is most important about the 'cult of motherhood' is that increasingly many middle class women felt it was their duty to add their 'mothering' touch to current social problems. The family, it was argued, was simply a "mini-state" and since women successfully governed the family through religion and morality, then the same method could be applied to society as a whole. Carolyn Strange argues that many women saw their roles as mothers and wives as a civic duty, and therefore felt it was natural to extend their roles into society.<sup>84</sup>

As the concept of motherhood developed in the late nineteenth century, so too did a new recognition for the emotional life of the child. There was a new belief in the influence of the environment on children, in that the actions of a parent could

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<sup>82</sup> Morrison, supra note 81 at 47.

<sup>83</sup> Backhouse, supra note 8 at 202.

<sup>84</sup> Carolyn Strange, Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930 (Toronto: University of Toronto Press, 1995) at 194.

have drastic consequences for a child.<sup>85</sup> An article in The Globe on October 15<sup>th</sup> 1890, shows that this ideal of mothers moulding their young strongly existed: "...for the woman whose high and honorable office it is to preside over the home and to mould the minds of children in those years when impressions are so easily made".<sup>86</sup> Thus, women began to emphasize the need for stable, secure and loving families. It was believed that security, Christianity and morality instilled at an early age would act as a preventative measure against future crime.<sup>87</sup> Clearly, mothers played a large role in the development of the 'new childhood'.

The construction of the woman as a dutiful housewife and a doting mother was one that was personified through many organizations, ideals and institutions of the time. Two examples embodying the ideal of the 'new woman' were the rise of domestic science in the public school system and the Woman's Christian Temperance Union. The importance of these examples is that the domestic science phenomenon embraced the ideal of woman as mother wholeheartedly and without question. The WCTU, on the other hand, embraced the ideal but also used it to further their goals and empower themselves.

The rise of domestic science in the public school system acts as a clear example of the powerful use of middle class discourse to mobilize reform. Under the

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<sup>85</sup> Sharon Cook, 'Through Sunshine and Shadow': The Woman's Christian Temperance Union, Evangelicalism and Reform in Ontario, 1874-1930 (Montreal & Kingston: McGill-Queen's University Press, 1995) at 77.

<sup>86</sup> "The Advancement of Women" The Globe 15 October 1890 at 4.

<sup>87</sup> Wendy Mitchinson, "Early Women's Organizations and Social Reform: Prelude to the Welfare State", in The Benevolent State: the Growth of Welfare in Canada, ed. A. Moscovitch and J. Albert (Toronto: Garamond Press, 1987) at 78.

leadership of Adelaide Hoodless domestic science was brought into the public school system with enthusiasm. Hoodless argued that: "You purify society when you purify the home".<sup>88</sup> Hoodless, consistent with maternalistic beliefs, argued that mothers made an indelible mark on their children which ultimately shaped society.

Therefore, good politicians and honest men were the product of a mother's nurturing love during the formative years.<sup>89</sup> Like many reformers of the time she believed that a potential source of familial disruption was the tendency to 'blur' the boundaries of the male and female sphere. She argued that: "The subversion of the natural law which makes man the breadwinner and woman the homemaker cannot fail to have an injurious effect on social conditions, both morally and physically."<sup>90</sup> The reference to natural law again emphasized the importance of religion and purity to this ideal.

Central to Hoodless' beliefs was that the existing standardized training children received in the public school system was inappropriate. Males and females were perceived as different and had different roles to play in society and education should recognize, reflect and emphasize these differences. Future mothers, as all young girls were seen to be, could play a preventive role in social reform by learning at a young age domestic skills and scientific child rearing.<sup>91</sup> Where young boys had a need to learn mathematics and science, a young girl needed only to know the basics

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<sup>88</sup> Morrison, supra note 81 at 67.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Sutherland, supra note 1 at 173.

of these disciplines so as to run a household efficiently<sup>92</sup>. By training the future mothers in correct theories of child rearing and domestic skills, then perhaps future social problems could be prevented. The Minister of Education, George Ross, responded favourably to the idea and offered financial support, asking Hoodless to write a text book. Domestic Science for Public Schools was published in 1898, and young girls across Ontario began their training as mothers and wives.<sup>93</sup>

The text itself is riddled with regulatory discourse. In the preface to the text book Hoodless states: “physiology and temperance principles permeate the whole course of study. In addition to these are the direct lessons, provided by the practice work, in neatness, promptness and cleanliness.”<sup>94</sup> The ideals of purity and temperance echo throughout the book. Reformers feared that many young working class girls were not receiving the proper education regarding domestic duties from their mothers. In this way the middle class women could step in and take part in the forming of new ideas, and ultimately regulate the lower classes through their children. These young girls were seen as shaping future generations and contributing to the task of nation building. Hoodless makes this clear as she dedicates the book: “To the school-girls, and future housekeepers of Ontario . . . ”.<sup>95</sup>

The Women’s Christian Temperance Union also serves as an excellent

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<sup>92</sup> Morrison, supra note 81 at 67.

<sup>93</sup> Adelaide Hoodless, Domestic Science for Public Schools, (Toronto, 1898) at 5-8.

<sup>94</sup> Ibid., at 6.

<sup>95</sup> Ibid., at 8.

example of the middle class discourses placed on the working class. The WCTU fought against the 'demon rum' and was particularly concerned with the safety of women and children who fell victim to the drunken rages of husbands and fathers.<sup>96</sup> Temperance-supporting women felt that they had a special duty to protect these women and especially the children as men had obviously failed them. Intemperance was not only seen as a challenge to middle class life but also as a threat to society on the whole. Blaming intemperance for social disorder was a reflection of class status as many WCTU members were married to lawyers, doctors and business men. As the majority of convicted criminals were perceived to drink, the WCTU had equated alcohol with criminal activity. The link was then further developed to children. That is, if children could be deterred from drinking, the future crime rates would be significantly reduced.<sup>97</sup>

The main goal of the Temperance movement and of the WCTU was to use prohibition as a means of preventing social disorder.<sup>98</sup> The WCTU was not always a supporter of the enfranchisement of women but as they were forced to meekly stand by and watch men vote, they realized the vote could become an invaluable tool to the temperance movement.<sup>99</sup> The solution was to use suffrage as a means to get the vote which would enable the temperance leaders to vote Canada 'dry'. In this way, these

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<sup>96</sup> Wendy Mitchinson, "The WCTU: 'For God, Home and Native Land': A Study in Nineteenth-Century Feminism", in A Not Unreasonable Claim eds. Linda Kealy (Toronto: Women's Educational Press, 1979) at 151.

<sup>97</sup> Ibid., at 154

<sup>98</sup> S. Cook, supra note 85 at 8.

<sup>99</sup> Mitchinson, supra note 96 at 157.



women neglected to use the suffrage movement as a means for their further advancement and equality in society. Instead, they clung to the vote as a way to pass the social reforms they believed were necessary to keep women firmly entrenched as the moral guardians of society and the family.<sup>100</sup> It is important to note that support for women's suffrage did not negate the belief in separate spheres for men and women<sup>101</sup>.

Thus, throughout the latter part of the nineteenth century the cult of motherhood grew and gained a great amount of support. With the dawn of a new century the 'new womanhood' was firmly entrenched in society and the social reform movement was greatly aided by maternal social feminists. The introduction of domestic science in the public school system furthered the entrenchment of middle class values and ideals in the minds of young Ontarians. Not only did it redefine the woman's role in the house, it allowed reformers to believe that young girls would take home some of the middle class values and ideas and apply it to their future families. Even if the mother of future generations was not from an Anglo-Saxon background, at the very least she would be rooted, to some degree, in middle class Anglo-Saxon values and practices. The WCTU had a dual function for women of this period. First, it allowed women to fight for the preservation of the home. Secondly, the union allowed women to engage in activity outside of the home in an

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<sup>100</sup> Mitchinson, supra note 96 at 166.

<sup>101</sup> Morrison, supra note 81 at 61.

acceptable manner.<sup>102</sup> In this way women were able to carve out a place for themselves in society. Sharon Cook argues that the WCTU's mission was central to the construction of a middle class as the principles of sobriety, duty, thrift and family were at the foundation of the middle class consciousness.

### Conclusion

As Ontario was transformed from an agriculturally based, rural society to an industrial urbanized province, the state and members of society found themselves running to catch up with developments. Ontario society was experiencing massive levels of unanticipated poverty, unemployment and poor living conditions. As society continued to become industrialized, the rate of people moving into the city increased steadily and the crime rates reflected this. At the same time the state developed at federal and provincial levels, becoming more democratic but also more interventionist, extending its reach further into civil society and expressing ambitious new plans of social regulation. Public support was crucial for the development of these interventions. This came from members of the middle class, united under various moral regulation movements. The ultimate objective was the transformation of the lower classes into compliant citizens that would share in Anglo-Saxon middle class Protestant values. Crime prevention became a major focus of the moral regulation movement. Influenced by the Social Gospel, maternal feminism, the Women's Christian Temperance Union and other social purity and urban reform

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<sup>102</sup> Mitchinson, supra note 96 at 153.

movements, the development of schools and child welfare legislation reflected a new vision of childhood. Child welfare became integral to the building of a stable, capitalist and moral nation.

As the Canadian state evolved from the colonial period to the post confederation period, society also changed and in many ways these two entities were reflective of each other. Coupled with moral regulation, we can see the dramatic push during the post confederation period, typically 1867-1893, in legal interventions and legislation examined in the next chapter.

In applying these themes, it is important to be reminded of the effects of industrialization and urbanization because out of these grew poverty, over crowding and crime. Children were sent out to work in the ever expanding work force to supplement the family income. Many were neglected or abused as their parents, in the struggle to survive in a world of infrequent employment and economic hardship, fell into despair. Out of industrialization and urbanization also grew the urban reform movement to help rectify the problems of the city. In effect, the problem and the solution came out of the same source. The research to follow would be seriously flawed if I were to assert that a 'class conspiracy' was occurring on the part of the upper and middle classes. Nor were they only trying to sweep these children out from the view of the public eye for the benefit of capitalism. On the other hand, it is also unfair to state that the upper classes were involved in the child welfare movement solely for the benefit of the children.

The regulation of both delinquent and non-delinquent children arose within an unique period of Canadian history. Not only were groups who dominated the

state beginning to recognize some serious flaws in how the country's young people were treated, but related issues such as poverty, crime, unemployment and violence were faced with greater urgency. Out of the accumulating pressures of industrialization and urbanization, and all that grew out of it, the more affluent members of society came to organize a variety of reform movements. Clearly, there were benefits to the privileged in society in pressuring the lower classes to accept middle class values. But the great amount of good that grew out of these reform movements cannot be discounted.

### *Chapter Three: The Law and Legal Responses*

The previous chapter set out the political and social context for this study. The thesis now turns to the legal context, focusing on legislative initiatives concerning children. The enactment of these laws were not isolated from the forces discussed in the last chapter. They reflected pressures from reform movements and the social regulatory ambitions of the state.

As noted earlier, it was much easier for the state to respond to public concern for children than it was for the state to launch the campaign itself. State intervention into the private sphere, and in this case the family, had been long discouraged as the family was a deeply entrenched institution itself, at the centre of the prerogatives of male authority. What is interesting about the law examined in this chapter is that it clearly illustrates a shift in the patriarchal ordering of the family and the role of the state regarding children. The struggle to override historical practices, expressed within the common law regarding the family, was a source of tension between the courts and legislatures demonstrating that the application of new initiatives was not always as straight forward as hoped. In an effort to implement new policies and legislation, public opinion, legislators, judges, reformers and those being regulated were constantly ensued in struggle.

The Canadian responses to delinquent and non-delinquent children evolved during the nineteenth century, from a loosely set network of ways to rid the state of the burden of an orphaned child, to the state playing a more active role in the lives of

these children. This chapter will move through the years of legislation and public policy regarding the protection of children, the treatment of young offenders and the general care for all children in state institutions. We will begin with Ontario in the late eighteenth century, with the first piece of legislation passed in Upper Canada in 1799 regarding the maintenance of children, and will move to the incorporating of the industrial schools and the eventual development of the Children's Aid Society. What is fundamental to this chapter is the changing role of the law and how this affected the processes of state formation and nation building.

The primary purpose of this chapter is to conduct a chronological review of the legislation passed on the provincial and federal level pertaining to the welfare and maintenance of delinquent and non-delinquent children. This account relies heavily on the work of Richard Splane regarding social welfare policy passed in Ontario from 1791-1893. I will adopt Splane's time framework for this chapter, that is I will divide the legislation into three periods: pre-union period, union period and post-confederation period. Each period shows the expansion of the state's social responsibilities, in some cases very clearly, and there are features of the state's approach toward children that are characteristic of each period. This chapter also briefly overviews the older common law approaches to children and examines how the new legislative initiatives were received by the courts.

Historically, before the nineteenth century legislative initiatives, the state had very little desire to get involved in any aspect of the private sphere, and the family was at the core of this realm. Common law reflected this by deferring to the traditional prerogatives of the male head of the family. The father or husband was

the undisputed head of the family. For my purposes I consider the family to be an institution in itself, in fact the family was much like the state since both institutions were patriarchal and hierarchal in nature. Constance Backhouse informs us that the full weight of patriarchal English common law was transferred to Upper Canada/Ontario.<sup>103</sup> As a result, women suffered greatly under the law in cases of rape, divorce, child custody, and abortion. Fathers and husbands had complete and total control over their wives and children in all areas, including property and discipline. Children were the property of the father, and thus answered to him on all matters and he could condemn them to labour if he wished. Separated spouses had few or no rights of maintenance, divorce was extremely difficult to obtain, and the father had the automatic right of custody. Backhouse informs us:

The family functioned under hierarchal structures, and at the pinnacle stood the father, women were subordinate to men, and children were subordinated to adults...Since the male head of the household generally controlled family property it seemed only logical that he should have sole authority and control over the children.<sup>104</sup>

Since the law was reluctant to interfere with the father's wide common law rights, many women and children found themselves in unbearable situations upon family breakdown. As the nineteenth century continued to change and the urban centre became a permanent fixture in Canadian society, the family was forced to change along with it. It was recognized that mothers and children left destitute posed social dangers. As a result, issues of separation, maintenance and child custody were

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<sup>103</sup> Backhouse supra note 8 at 75.

<sup>104</sup> Ibid., at 201.

re-examined and in some cases legislated improvements for women and children were made. A problem existed when the new laws and judges who interpreted the law were in disagreement. Judges sometimes resisted the legislative interventions into the family, preferring the older common law.

Child custody serves as an example of this. The provincial government amended the child custody laws which had previously favoured the father, to include the 'best interest of the child'. That is, a child was to be placed with the parent who would be of the most benefit to the child. While this may seem to be a triumph for women, the legislative amendment to the law was purely discretionary in nature. The law had been changed but it was ultimately up to a judge to determine which parent would best serve the needs of the child. In practice judges tended to interpret the best interests of the child in the new legislation in a patriarchal or traditional fashion, and more often than not the father was awarded custody.<sup>105</sup> "This was a clear throwback to the traditional common law position, and indicated a considerable reluctance to permit the new legislation to undermine a fathers authority within the family".<sup>106</sup>

This brings us back to Strange and Loo's idea of 'law in action' and 'law on the books', introduced in chapter two. Clearly the new legislation had little effect on the practice of judges typically placing children under the custody of the father. It is important to keep the intended effects of the law (law on the books) in perspective

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<sup>105</sup> Backhouse supra note 8 at 205-212.

<sup>106</sup> Ibid., 212.



with the actual results of the law (law in action). It is only with the application of new laws by new institutions and agencies that operated separately from the courts that initiatives really took effect. The courts would take longer to shift.

The legislative initiatives reformers pushed for regarding child welfare and juvenile justice would shatter the protective shell around the family. As reform initiatives gained momentum in the later decades of the nineteenth century, the family found itself being pushed further into the public sphere, and the father's right to total control over his children was challenged. I do not want to give the impression that patriarchal structures were completely deconstructed through legislative reforms. But I do want to demonstrate how the role of law changed from taking a 'hands off' approach to private family matters to becoming an intrusive player in family affairs and ultimately legislating itself into the familial institution.

Concern for the well-being of children was in the hands of private volunteers who donated time and money to the cause. While the common law expressed official reluctance to become involved in family matters, the need to protect children who were homeless or neglected was recognized in England. Although these initiatives were not state sponsored, it is important to note that influential members of society did not turn a blind eye to issues of child welfare. In 1522, some citizens of London petitioned the King to allow them to use the Palace of Bridewell for the purpose of lodging the poor and to train children in industrial habits. By 1788 the Philanthropic Society of London had set to work to rescue and reform children. They attempted this by setting up a cottage system to house the children under proper supervision. The children, namely boys, were trained in agriculture with the hopes

they would lead an industrious life.<sup>107</sup> Thus the concern for the protection of children was not a new concept. What was new was the eventual public financial support and acknowledgment that the state did have a legal duty to protect and support those who could not do this for themselves. What we see is that the legislation evolved from simply removing children from the streets away from the public eye, to placing them within state sponsored institutions with safeguards designed for their 'best interests'.

#### Pre-Union Period (1791-1840)

The Canadian child welfare movement gained great momentum during the latter part of the nineteenth century, but its beginnings can be found in the tail end of the eighteenth century. Despite the absence of poor laws, and perhaps because of it, Upper Canada led all the British colonies in the development of child welfare legislation, with *An Act to Provide for the Education and Support of Orphaned Children* passed in 1799. Under this act two Justices of the Peace could bind a child into apprenticeship until the age of twenty-one.<sup>108</sup> The Orphans Act, as it was referred to, essentially rid the state of the problem of dealing with orphans as it allowed for the children to be forced into a master/apprentice relationship. The Orphans Act, clearly set out that if a child or children were abandoned or orphaned by a parent or parents then that child could be entered into an indenture contract by a magistrate:

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<sup>107</sup> "Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario". Ontario Sessional Papers 54 Victoria, no. 18. at 49

<sup>108</sup> "An Act to Provide for the Education and Support of Orphaned Children" Statutes of Upper Canada, 1799, at c.3.

...it shall be lawful for the Town Warden of any Township where such child or children shall be, by and with the approbation and consent of two of his Majesty's Justices of the Peace, to bind the said child or children as apprentices, until he, she, or they, shall have attained the age of twenty one years in the case of males, and eighteen in the case of females, and an indenture to this effect, under, their hands and seals, and counter signed by two Justices of the Peace, shall be good and valid in law.<sup>109</sup>

What is particularly interesting about the legislation is that it took into account mothers. The Orphan's Act, stated that if the father died or left the children with the mother, then it was the mother's decision, with the approbation of two Justices of the Peace, if she wished to bind her children into apprenticeship or not.<sup>110</sup> The act also provided that if any family member was willing to take the child in, then the town wardens need not bind the child into apprenticeship.<sup>111</sup> Finally, if the orphaned child had reached the age of 14 then consent was needed before he/she could be bound to an apprenticeship.<sup>112</sup> Throughout this legislation it is interesting to note that there is no list of obligations for either party involved. In later legislation, the duties the apprentice owed to the master and vice versa were clearly listed and defined; as well the consequences for not meeting these responsibilities were also laid out. Under the 1799 legislation it seemed that there was an assumed knowledge about what exactly it meant to be an apprentice.

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<sup>109</sup> "An Act to Provide for the Education and Support of Orphaned Children" Statutes of Upper Canada, 1799, c.3. at s. 1.

<sup>110</sup> Ibid., at s.2.

<sup>111</sup> Ibid., at s. 3.

<sup>112</sup> Ibid., at s. 4.

Splane has noted three main problems with this legislation: first, the act failed to indicate that the child/apprentice needed to be properly cared for. Secondly, the act failed to provide the apprentice with a means to protect him or herself against abuse or neglect from his or her master. Finally, the act failed to make any public provision for a child who was unable to be placed as an apprentice.<sup>113</sup> Yet the importance of the Orphans Act of 1799 was that it was the first act to deal with the support and maintenance of children.<sup>114</sup> Despite the obvious failings of the legislation it must be put in the context of 1799 where a child was deemed as property and an invasion into a 'man's home' was both unheard of and unacceptable. It was only appropriate to intervene on behalf of orphans because they were inadvertently placed into the public sphere and became the government's responsibility.<sup>115</sup>

*An Act to Provide for the Maintenance of Persons Disabled, and the Widows and Children of Such Person as May be Killed in His Majesty's Service* was passed in 1813. The Militia Pension, as it was called, was important to the welfare of children as it made provisions for children who had lost fathers during the war of 1812. The act provided that the widow and children of a soldier killed in the service would receive 20 pounds per year from the government.<sup>116</sup> An orphaned child had to be

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<sup>113</sup> Splane, supra note 3 at 215.

<sup>114</sup> Ibid., at 231.

<sup>115</sup> Ibid., at 215.

<sup>116</sup> "An Act to Provide for the Maintenance of Persons Disabled, and the Widows and Children of Such Persons as May be Killed in His Majesty's Service" Statutes of Upper Canada, 1813, c. 4.

orphaned through the death of a father in service to be eligible for state support. This slight shift in public responsibility was a significant step, but not one that applied to all children in need.

1827 saw the passing of the next major act regarding children. The *Guardian Act* dealt with the tricky question of who was responsible for a child whose father had died and mother was still alive.<sup>117</sup> As previously noted, under the English common law mothers had few rights regarding their children. The *Guardian Act* provided that a judge of a probate or surrogate court may appoint a guardian for a child under the age of 21.<sup>118</sup>

The issue of dealing with orphaned or abandoned children had become a great concern for Upper Canadians during the pre-union period. As settlement continued to increase so did the number of orphaned and neglected children. The death toll on the immigration ships was high, and many children arrived in the new world either orphaned or without one parent.<sup>119</sup>

It is important to note that this pre-union legislation did not refer to any form of abuse or neglect. The main concern of the legislators was to pass laws that would remove the burden of fatherless children from the state. With the exception of the Militia Pension Act, financial provisions for orphaned or neglected children were not set out. Further, there was no system of protection in place for children who entered into apprenticeship or guardianship. The measures nonetheless opened the

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<sup>117</sup> "The Guardian Act", Statutes of Upper Canada, 1827, c. 6.

<sup>118</sup> Ibid.

<sup>119</sup> D. Owen Carrigan, Juvenile Delinquency in Canada (Concord: Irwin Publishing, 1998) at 3.

door slightly to more extensive state intervention.

These legislative responses are indicative of pioneer Canada attitudes regarding charity. The fear of simply handing out charity to citizens reflects the reluctance of Upper Canada to adopt the English poor laws. A citizenry who relied heavily on the state would only cause future problems as children would grow up expecting charity as adults instead of finding gainful employment. The Minors and Apprentices Act was an important law to ensure that poor children would grow up knowing hard work and skilled in a trade. This belief would later be echoed through the development of the industrial schools.

#### Union Period (1840-1867)

The Union Period saw great changes in the move towards protecting neglected and delinquent children. During this period Upper Canada experienced a large population growth and, as the urban areas grew faster than expected, many children were neglected, starving and mistreated.<sup>120</sup> It was during the 1850's and 1860's that there was first talk of a phenomenon called juvenile delinquency and the problems that existed regarding children and the urban centre. Consequently it is during this period that we see the first pieces of legislation regarding delinquency in Upper Canada. Spence notes that the government responded to the rise in juvenile crime in a reactive rather than pro-active manner, thus the majority of state action was in the development and establishment of prisons for young offenders. Again,

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<sup>120</sup> Carrigan, supra note 119 at 6.

this new criminal legislation foreshadowed the development of the industrial schools system.

*An Act to Amend the Law Relating to Apprentices and Minors* was passed in 1851, and later slightly amended in 1859.<sup>121</sup> The purpose of the act was to improve on the provisions set out in both the Orphans Act of 1799 and the Guardianship Act of 1827.<sup>122</sup> It is with this piece of legislation that it is clearly defined what duty the apprentice owed the master and what the master was responsible to the child for. The act clearly laid out in section 5 that the duty of an apprentice to a master was as follows: "...That every Apprentice shall, during the term of his Apprenticeship, faithfully serve his Master, shall obey all lawful and reasonable commands, and shall not absent himself from his service, day or night, with his consent".<sup>123</sup> Essentially the apprenticed child was to be at the service of the master at all times. The duty of the master as set out in section 4 " ...suitable board, lodging and clothing, or such equivalent therefor as may be mentioned in the Indenture,.... and shall also properly teach and instruct, or cause him to be taught and instructed in the art and mystery of

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<sup>121</sup> "An Act to Amend the Law Relating to Apprentices and Minors" Canada Statutes, 1851 c.11, Consolidated Statutes of Upper Canada, 1859, c. 76.

<sup>122</sup> This legislation allowed a parent, guardian or other person responsible for a child 14 years of age or older to have him or her bound into apprenticeship with his/her consent until the age of majority. Any child over 16 years of age without a guardian could enter into a master/apprentice relationship on his or her own initiative with the consent of a master. The act further stated that any child whose parent or guardian was in a common gaol or if the child was dependant on any public charity, then he or she could be bound into apprenticeship with his or her consent by any public official.

<sup>123</sup> "An Act to Amend the Law Relating to Apprentices and Minors" Canada Statutes, 1851 c.11, at s. 5.

his trade or calling".<sup>124</sup>

What is most interesting about this act is that for the first time there were safeguards put in place to protect to some degree the apprentice. A complaint could be made against a master based on grounds of cruelty or improper clothing, food or lodging. If the complaint was found to be valid, then the sanction for the master was a fine of up to five pounds and/or imprisonment for up to one month on the default of the fine. The termination of the indenture contract on the part of the child was restricted to the courts of the quarter session.<sup>125</sup> An apprentice wishing to make a complaint against his or her master would face a great deal of delays and difficulties. Unfortunately for the child, the most vulnerable party, the act failed to take into account the unprotected position of an apprentice. It would be fairly difficult for the child to initiate a complaint without the master finding out about it. Unlike the apprentice, the master could, at any time, break the indenture contract. There were a variety of reasons that the master could be released from his obligations towards the apprentice, such as a refusal to obey commands. If an apprentice broke the contract without the approval of the quarter session courts then he or she could be jailed for up to one month. If the child ran away then more rigorous action could be taken and the child could face up to three months in jail.<sup>126</sup>

The remainder of the period saw the rapid development of institutions for

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<sup>124</sup> "An Act to Amend the Law Relating to Apprentices and Minors" Canada Statutes, 1851 c.11, at s. 4.

<sup>125</sup> Ibid., at s. 6.

<sup>126</sup> Splane, supra note 3 at 222.



orphaned, destitute and delinquent children. During the 1830's homes for orphan children and unwed mothers began to develop. Also the push for compulsory education and public schools was gaining momentum. This is reflective of a new attitude toward social responsibility that was emerging within society. The move to develop institutions for children gained momentum in the 1850's and first appeared in the larger communities. As was usually the case, these institutions were fueled by women's volunteer work and funded by private organizations with minimal financial assistance from the state.<sup>127</sup>

The development of children's institutions marks an important development in the history of child welfare. Children's homes were originally intended as a place for children to stay while they awaited an apprenticeship contract. Soon it became apparent that there was a need to establish a long term system of care. Some of the homes were religiously based, and while some were specifically for either boys or girls, the vast majority accepted both.<sup>128</sup>

While most of these homes did receive some sort of provincial financial support, incorporation was not a guarantee for financial assistance. According to Splane's research, in 1866 seven institutions for children and unmarried mothers were receiving financial support from the provincial government. Of the seven homes, five received \$640.00, one received \$480.00 and one received \$320.00 a year.<sup>129</sup> Further, there were no provisions set out in the legislation for the inspection

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<sup>127</sup> Splane, supra note 3 at 225.

<sup>128</sup> Ibid., at 226.

<sup>129</sup> Ibid.

of these homes until 1857.<sup>130</sup> *An Act Respecting Prisons for Young Offenders* laid out the following in section 4: "The Inspectors and each of them appointed under the aforesaid Act shall have and perform the same powers and duties, with respect to each of the said Reformatory Prisons, as are vested in or to be performed by them or one of them as Inspectors of the Provincial Penitentiary of Canada...".<sup>131</sup> It is interesting to note that there was no time frame given. That is, there was no provision set forth as to how many times the young people's institutions were to be inspected. Even then the only record of an inspection was to the Boys Home in Toronto in 1861 on an invitation of the board in an unofficial capacity.<sup>132</sup> These homes were not official industrial schools, but acted as orphanages. Industrial schools sponsored and monitored by the provincial government would not be legislated into effect until 1874 and only upon an amendment a full decade later would the first one officially open.

As juvenile crime continued to rise, it was becoming evident that both legislation and institutions to deal with law-breaking children were needed. In pioneer Canada children found guilty of committing serious offences found themselves within the walls of Kingston Penitentiary.<sup>133</sup>

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<sup>130</sup> "An Act Respecting Prisons for Young Offenders" Consolidated Statutes of Upper Canada 1859, c. 107.

<sup>131</sup> Ibid., at s.4

<sup>132</sup> Splane, supra note 3 at 227.

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Carrigan, supra note 119 at 18-19. As of December 31<sup>st</sup> 1852 there were 477 inmates at Kingston. Of this number thirty seven were between the ages of twelve and sixteen, and seventy one were between the ages of sixteen and twenty.

*An Act Respecting the Trial and Punishment of Juvenile Offenders* was passed in 1857.<sup>134</sup> This act stated that:

Every person charged with ... the commission of any offence which is simple larceny, or punishable as simple larceny... [and does not] exceed the age of sixteen years, shall, upon conviction thereof ... be committed to the Common Goal or House of Correction within the jurisdiction of such Justices, there to be imprisoned with or without hard labor, for any term not exceeding three months, or, in the discretion of such Justices, shall forfeit and pay such sum, not exceeding twenty dollars...<sup>135</sup>

Young people who committed serious offences would find themselves tried as any other citizen and subject to the options regarding sentencing as an adult.

While the title of this act looked to be promising, in reality it did very little to help young people in conflict with the law. The act essentially laid out the rules to be followed during the trial of a young person. But it should be noted that there was nothing unique about the trial of young people. The rules were set down regarding witnesses, conditions of recognizance, applications of fines and so forth. What was lacking was consideration of age, and that a young age may require a unique set of rules. It would not be until the passing of the *Juvenile Delinquents Act* of 1908, almost 50 years later, that a real improvement would be made regarding the trial of young people.

During the same year, *An Act Respecting Prisons for Young Offenders* was

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<sup>134</sup> "An Act respecting the trial and punishment of juvenile offenders" Consolidated Statutes of Canada 1859 c. 106.

<sup>135</sup> Ibid., at s.1.

passed.<sup>136</sup> Finally, legislation had been passed to provide for prisons especially for young people. Section 1 of the act states that; "...two buildings, one to be situated in Lower Canada, and one in Upper Canada, to be used as Prisons for the confinement and reformation of such offenders are hereinafter specified...".<sup>137</sup> Each reformatory was to have both a Roman Catholic and Protestant Chaplain.<sup>138</sup> It had become clear that there was a great need to remove children who were not guilty of serious crimes from penitentiaries where there was a greater potential for abuse both by older prisoners and guards. Further, by moving the younger offenders to a separate building there was a hope that the children would turn to an industrious lifestyle and not be further schooled in crime by older inmates. It is important to note that it was not mandatory to place young people in these reformatories, it was only a sentencing option.

During the union period the apprenticeship legislation remained the main method for dealing with orphaned children, although two new practices had emerged: adoption and children's institutions. Adoption was a viable option to many families without children to help with the daily chores of running a farm or business. With regard to the development of children's institutions it is the post-confederation period where the child welfare movement really takes off regarding both delinquent and non-delinquent children. The plight of neglected and destitute

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<sup>136</sup> "An Act respecting the trial and punishment of juvenile offenders" Consolidated Statutes of Canada 1859 c. 106 at s. 1.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid. at s. 2.

children was amplified within society as the pressures of urbanization and industrialization took their toll. It is also during this period that we see a rise in the development of institutions and legislation for the delinquent child. What was desperately needed was a link between the public school system and the reformatory. This would come in the form of the Industrial Schools Acts of 1874 and 1884. These institutions were recognized by the law as a home for children who had been in trouble with the law or were orphaned and in need of an education and moral training.<sup>139</sup>

During the union period we see the themes of nation building and state formation beginning to be played out in child-related legislation. Moral regulation, the 'new childhood' and reform movements in civil society will play a much more active role in the post-confederation period. Through the building of private children's homes and separate institutions we can see the move to the institutionalized manufacturing of productive citizenship.

The incorporation of prisons for young offenders, and the several acts regarding juvenile delinquency are all representative of this institutionalized response. Much like the example of child custody, judges were free to use their discretion in sentencing juvenile offenders. Unfortunately for many young people the phrases 'in the discretion of such Justices' would mean time spent in adult prisons and the federal penitentiary. There was no significant piece of legislation that would change the trial procedures for young people until the passing of the Juvenile Delinquents

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<sup>139</sup> Splane, *supra* note 3 at 229.

Act in 1908, but it is important to note that the bulk of government initiatives during the union period was geared toward developing institutions for children who were either in danger of breaking the criminal law or had already done so. It would be in the post-confederation period that reform movements would rise up in an effort to not simply respond but prevent crime and immorality. Although we can see these reform initiatives foreshadowed in the development of privately run children's homes, the mass public would not embrace the campaign until after confederation. During the union period the state takes a reactive stance to the problems facing Canadian children.

The division of powers created by confederation led to years of struggle and debate between the provincial and federal government regarding children. As we have seen, the federal government had jurisdiction over issues such as the criminal law and divorce. The provincial government was responsible for education and social welfare issues. Many of these children were trapped between requiring help from the social welfare and punishment under the justice system.

#### Post-Confederation Period (1867-1893)

The first piece of substantial legislation regarding children in the post-confederation period was an amendment to the Orphans Act. Until the 1874 amendment all the previous amendments back to the 1799 legislation tended to reaffirm the power of the master over his apprentice. This amendment introduced the rights of minors as apprentices. The apprentice now had both the right and means to bring forth a complaint, through another adult, against his or her master for

cruelty or neglect.<sup>140</sup> This was an important recognition by the state that there was a need to protect children against potential harm.<sup>141</sup>

Even more important was the Industrial Schools Act of 1874, an important Act for neglected and dependant children. This measure and the amendment that follows it in 1884 forms the focus of this research. Although discussion of the schools is elaborated in the two chapters that follow, it is useful to outline the legislation here in the context of the other legislative initiatives. These schools were a response to the need for a new institution between the public school and the reformatory.<sup>142</sup> The reformatory was seen as too punitive for a wayward child who was not in conflict with the law. Since the vast majority of working class children did not attend public school on a regular basis, many members of society also felt that working class children were not receiving a proper education. Loyalty to the British Crown, a respect for hierarchy, solid Christian values and a good sense of morality were considered essential for working class education from middle class perspectives. With the development of Industrial Schools, these middle class values and ideals were taught in hopes of reforming the delinquent or wayward children.<sup>143</sup> These objectives clearly relate to the themes of nation building, state formation and moral regulation examined in the last chapter.

While the industrial schools act of 1874 was an important one it would not be

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<sup>140</sup> “An Act Respecting Apprentices And Minors”, Statutes of Ontario 1874, c.19 at s.18.

<sup>141</sup> Ibid.

<sup>142</sup> Splane, supra note 3 at 248.

<sup>143</sup> Strange and Loo, supra note 4 at 30.

until 1884 that the schools would be legislated into existence. An amendment to the act termed *An Act to amend and consolidate the Acts respecting Industrial Schools* was assented to on March 25, 1884.<sup>144</sup> For ten years after the passing of the original act no school was built or developed. This amendment provided that a school board could delegate this responsibility to any incorporated philanthropic institution.<sup>145</sup> After the amendment was passed industrial schools for both boys and girls began to crop up across Ontario, answering the need to train, and in some cases reform, incorrigible children.

Throughout the mid 1870s to 1880s concern for the welfare of children was developed through institutional programs. The protection of non-delinquent children within the home had not yet developed and these children were still without official rights and protection. This again stemmed from the idea that the government could not and would not enter a 'man's home'. Children were seen as the responsibility of the parents, and what they saw fit to do with their children regarding discipline and upbringing, was nobody's business but the parents', particularly the father.<sup>146</sup> During the 1880's and 1890's there was a growth in the number of English Canadians who began to exert a new attitude toward children, and began to see them more as individuals and not so much as contributors to the family income.<sup>147</sup> A shift

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<sup>144</sup> "An Act to amend and consolidate the Acts respecting Industrial Schools" Statutes of Ontario 1884, c. 46.

<sup>145</sup> Ibid., at s. 5.

<sup>146</sup> Sutherland, supra note 1 at 28.

<sup>147</sup> Splane, supra note 3 at 28.



in attitudes toward the child was reflected in society and ultimately in the law. Slowly, there was a move in the common law to begin deconstructing the patriarchal structure of the family. Power was being removed from the father and the state was beginning to intervene into the private sphere. Patriarchy was not disappearing however, instead it was being transferred from the hands of the father to the hands of the state.

At this point it is necessary to take a brief break from an overview of legislation and return to the reform movements introduced in chapter two. John Joseph Kelso, one of Canada's leading child reformers was perhaps the most well known child advocate of the time, although there were many others who contributed to the movement, such as Beverly Jones and W.H. Howland. Kelso was deeply affected by personal experience and as a young man saw two young children weeping on Young Street in downtown Toronto. When he approached the children he learned that they had been told by their father to bring home twenty five cents or suffer a beating. Thus, the children stayed on the street begging fearful of returning home without the money. Kelso spent the night seeking out a charitable institution to take the children.<sup>148</sup>

This ultimately led Kelso to assist in the development the Humane Society of Toronto in 1887. The society emerged out of public concern for the cruel and neglected treatment of animals and children. The Toronto community was very

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<sup>148</sup> Jones and Rutman, supra note 40 at 21.

supportive by providing both financial means and volunteer services.<sup>149</sup> It was this support of a close-knit group of prominent Protestant business men and professionals that enabled the establishment and maintenance of the Toronto Humane Society.<sup>150</sup> There was a strong belief held by Kelso and the other supporters that the government should not intervene. The goal was to keep charitable organizations privately funded and manned by volunteers. Government intervention into the charitable services was frowned upon by many reformers.<sup>151</sup> While reformers discouraged intervention, they also called for legislation that would further their means. The workings and organization of these private organizations were meant to be kept in private hands. The financial support and legal authority needed to protect and/or reform children was to come from the state. Here we can see the foundations of a quasi-public system of child protection.

One of the Society's greatest achievements was the influence it held over the development of child welfare legislation. The society particularly influenced three developments in the late 1880's and early 1890's; the child protection legislation of 1888, the appointment of the Royal Commission on the Prison and Reformatory System of 1890, and the founding of the Children's Aid Society of Toronto in 1891.<sup>152</sup>

By 1888 the Toronto Humane Society realized it lacked the authority to deal

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<sup>149</sup> Splane, supra note 3 at 265.

<sup>150</sup> Jones and Rutman, supra note 40 at 21-22.

<sup>151</sup> Ibid., at 75-76.

<sup>152</sup> Splane, supra note 3 at 266.

with neglected children and it was recognized that an authoritative body was needed to look out for the protection of children. This is where they realized that they did in fact need the state's authority to further their cause. The main legislation at this point was still the Orphans Act of 1799. This legislation did not serve the need of protecting children in abusive relationships because it dealt only with orphans and apprentices. The only act that had the power to take a child from a parent was the *Industrial Schools Act*, but this did not serve the needs of children in abusive situations at home because it dealt primarily with delinquent children and those found wandering the streets.<sup>153</sup> To solve this problem Kelso, Beverly Jones, a Toronto lawyer, and other members of the Toronto Humane Society drafted a bill and presented it to the Premier on the February 12 1888. The bill was accepted and passed one month later as an *Act for the Protection and Reformation of Neglected Children 1888*.<sup>154</sup>

This act worked to reaffirm the authority of the courts to commit wayward and delinquent children to Industrial Schools. As well, the act allowed for neglected wayward children to be sent to children's homes.<sup>155</sup> In both circumstances the child could be kept until age 18 and the cost of care, of up to two dollars a week, was carried by the municipal government where he or she was a resident at the time of

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<sup>153</sup> "An Act to amend and consolidate the Acts respecting Industrial Schools" Statutes of Ontario 1884, c. 46, at s. 9.

<sup>154</sup> "An Act for the Protection and Reformation of Neglected Children", Statutes of Ontario 1888, c. 40.

<sup>155</sup> Ibid., at s. 2.

committal or placement.<sup>156</sup> As well, the act took care to ensure that the children were institutionalized according to their faith.<sup>157</sup>

Child reformers had succeeded in influencing public policy at the provincial level. The 1888 act was important in that it established a public financial responsibility for neglected children, and the creation of more institutions for neglected children. However, there were some limitations to the act, namely that it only dealt with institutional care of children and really did little to help children in unhealthy or potentially dangerous situations. Furthermore, power had not been given to enter the homes of parents who were suspected of abuse or neglect and remove the children. Kelso and his colleagues at the Humane Society recognized this and began to petition for better protection of all children, not just those that were wayward or delinquent.<sup>158</sup> This was a push by reformers to call upon the state for increased state intervention.

The Royal Commission on the Prison and Reformatory System of 1890 helped to further advance the public knowledge about child welfare and its findings will be discussed fully in the next chapter. The Commission was setup to address correctional problems on a wide scale but also looked at the Industrial Schools, the causes of youth crime and the rescue of destitute children<sup>159</sup>. In an effort to curb

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<sup>156</sup> “An Act for the Protection and Reformation of Neglected Children”, Statutes of Ontario 1888, c. 40. at s. 6.

<sup>157</sup> Ibid., at s. 5.

<sup>158</sup> Jones and Rutman, supra note 40 at 29-30.

<sup>159</sup> “Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario”, supra note 107 at 1-5.

future criminal behaviour, the Commission suggested that the rights of parents be forfeited if they were found of wilfully neglecting their children.<sup>160</sup> The Commission reviewed Industrial Schools around the world and then looked at Ontario's system offering recommendations to improve the industrial schools system within the province.<sup>161</sup>

As a direct result of the findings of the Commission and by the hard work of the reformers the Toronto Children's Aid Society was established in 1891. Andrew Jones and Leonard Rutman point out that the 1890's were a turning point in child welfare legislation due to the pressure from the Prisoners Aid Association led by Samuel Blake and W.H. Howland. These two prominent men were appointed by the provincial government as a response to the Royal Commission on the Prison and Reformatory System of Ontario.<sup>162</sup> Reformers pushed these men to recognize the growing problem of child neglect, stressing the need for stronger powers to protect children from neglect and harm.<sup>163</sup> Kelso proposed that all neglected, dependant and delinquent children should be sent to Industrial Schools and from there should find a home in a good religious and rural setting.<sup>164</sup> Thus, Kelso began to develop his idea of the foster home. The tension between supporters of the industrial schools and

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<sup>160</sup> "Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario", supra note 107 at 40.

<sup>161</sup> Ibid., at 40-2.

<sup>162</sup> Jones and Rutman, supra note 40 at 48.

<sup>163</sup> Dorothy Chunn, From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880-1940 (Toronto: University of Toronto Press, 1992) at 35.

<sup>164</sup> Jones and Rutman, supra note 40 at 49-50.

supporters of the foster home began.

In 1891 it was recognized that a separate institution must be established that dealt solely with child protection. The first meeting of the Children's Aid society was held on July 3<sup>rd</sup> 1891 and Kelso was named president.<sup>165</sup> The society would deal with all questions affecting children, most importantly it would deal with neglect and indifference from parents. The society wanted to reform police procedure to give more power to enter a home and remove a child who was a victim of abuse or neglect.<sup>166</sup> The Children's Aid Society of Toronto would become the first organization to deal exclusively with child neglect and abuse. The CAS' mandate was to come to the aid of suffering children but it was also to prevent future crime as reflected in the society's motto: "It is wiser and less expensive to save children than to punish criminals."<sup>167</sup>

Again there was a large emphasis on voluntary efforts. It was believed that a voluntary non-governmental character was crucial to the success of the CAS. Kelso was adamantly opposed to excessive government involvement, writing: "...benevolent societies have a tremendous advantage for good since they can draw largely upon the zeal, cooperation and liberality of Christian people while, in a direct state work, all these powerful agencies are completely alienated".<sup>168</sup> The underlying benefit to many social welfare movements, according to their proponents, was that

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<sup>165</sup> Jones and Rutman, supra note 40 at 52-56.

<sup>166</sup> Ibid., at 56-57.

<sup>167</sup> Ibid., at 58.

<sup>168</sup> Ibid., at 75-76.

they stemmed not from an impersonal government but from the community.

Bill 109 introduced in April of 1888, was meant to provide for the care and reformation of children neglected or ill-treated by parents or guardians. When introduced to the House of Commons for the first time by Mr. O'Brien, jurisdictional issues were raised. O'Brien addressed these promptly by stating:

The Bill, so far as the first two clauses are concerned, is similar to the Bill already passed by the Ontario Legislature. The other clauses go a good deal further than that measure does. I have to admit at the outset that this Bill travels on that very narrow debatable ground lying between the civil jurisdiction of the Provinces and the criminal law as administered by the Dominion.<sup>169</sup>

Here we can see that issues of jurisdiction did play an important role in the passing of child welfare legislation. Did new legislation that would ultimately protect children but punish parents through criminal sanctions cross jurisdictional lines? This was an area that required a great deal of delicacy since tensions were already rising between the two levels of government. Again, the federal state had hopes of distancing itself from both private matters and social welfare matters, preferring instead to leave this up to the provinces. The Bill was eventually turned down but important jurisdictional issues had been raised.

The passing of *The Prevention of Cruelty to and Better Protection of Children Bill, 1893* was yet another important piece of legislation regarding children. It was often called the 'Children's Charter' because it aimed to respect and protect the child. Children were no longer seen as property of the family but had rights of

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<sup>169</sup> Canada House of Commons Debates v. 25, 2<sup>nd</sup> session, 25 April, 1888. p.963.

citizenship, and male family prerogatives regarding children clearly eroding in the law. Central to the new legislation was the prosecution of those found to abuse or neglect children; upon a finding of guilt fines of up to one hundred dollars and imprisonment of up to three months could be imposed.<sup>170</sup> Children found to be neglected or abused would be placed with the CAS, which was given wide powers to bring forward anyone whom they suspected was neglecting or abusing children, or teaching them immoral behaviour such as theft.<sup>171</sup>

The act also further developed the foster home which was essential to the mandate of the legislation.<sup>172</sup> Finally, the CAS was given powers to remove neglected children from the home. The legislation provided that the CAS would be set up to have powers to act as police constables in enforcing the Child Protection Act and the Industrial Schools Act. Officers of the society would be able to enter a home that was suspected of neglect or abuse and, without a warrant, remove the child or children and bring them before a judge who would determine neglect and/or cruelty.<sup>173</sup> These powers were what the 'child savers' had worked for. The ultimate goal was to have strong powers granted to voluntary societies to intervene in the best interest of the child. This Bill was so significant because it was the first to deal with the rights and protection of non-delinquent children. On October 20<sup>th</sup> 1893 the CAS

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<sup>170</sup> "An Act for the Prevention of Cruelty to, and Better Protection of Children", Statutes of Ontario 1893, c. 45 at s. 2.

<sup>171</sup> Ibid., at s. 4.

<sup>172</sup> Ibid., at s. 11(3).

<sup>173</sup> Ibid., at s. 5.



of Toronto was officially incorporated under the Children's Protection Act of 1893.<sup>174</sup>

In 1893 Kelso was appointed by the Ontario government as the first Superintendent of Neglected and Dependant Children.<sup>175</sup> His responsibilities included enforcing the 1893 legislation, setting up other CAS and supervising their progress, maintaining the paperwork and producing annual reports.<sup>176</sup> By 1895, 29 societies were formed and Kelso had been instrumental in most of them; by 1899 the number had risen to 35.<sup>177</sup>

While the majority of the state's attention on the provincial level during this period was on issues of child welfare, both levels of government also began to address juvenile delinquency. The *Canadian Criminal Code* of 1892, set out clearly age limits for children who broke the criminal law. It codified the common law by stating that children under seven years of age could not be convicted of an offence.<sup>178</sup> The reasoning behind this was that those under the age of seven did not have the mental capacity to formulate the difference between basic elements of right and wrong. However, the Code took this further than the common law by setting out limitations for those children between the ages of seven and fourteen. Before this such matters were left to judicial discretion. Section 10 of the Code read as follows:

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<sup>174</sup> Jones and Rutman, *supra* note 40 at 72. During the first year under the new powers the CAS investigated 414 cases and gave 181 children shelter.

<sup>175</sup> Ussel, *supra* note 5 at 116.

<sup>176</sup> "An Act for the Prevention of Cruelty to, and Better Protection of Children", *Statutes of Ontario* 1893, c. 45 at s.9.

<sup>177</sup> Jones and Rutman, *supra* note 40 at 74.

<sup>178</sup> *Canadian Criminal Code, 1892*, at s. 9.

"No person shall be convicted of an offence by reason of an act or omission of such person when of the age of seven, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct, and to appreciate it was wrong."<sup>179</sup>

### Conclusion

The three periods covered show the motives and influences reformers and legislators were working within. The pre-union period dealt with the growing number of orphans within pioneer Upper Canada, the union period concerned itself with the issue of juvenile delinquency and the urgent need to correct the problem at the sentencing level, and the post-confederation period dealt mainly with the plight of abused and neglected children and the creating of quasi-public organizations and policies to deal with the problem.

During the pre-union period, the push was on relieving the state of any responsibility toward orphaned children. Juvenile delinquency and issues of child welfare had not yet arrived on the scene. If a child was found to be guilty of a crime then he or she was simply tried and sentenced as an adult, and upon a finding of guilt would be required to serve his or her sentence in a common gaol or reformatory alongside adult inmates. If a child was being abused by the father or master during this period then the state would simply turn a blind eye as they respected the paternal authority that dominated the family in colonial Upper Canada.

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<sup>179</sup> Canadian Criminal Code, 1892, at s. 10.

Delinquent children received the most attention during the union period but the attention they received was an attempt at reacting to the problem through institutionalized care; it would not be until the early twentieth century that any great moves were made to protect these young people within the justice system itself. During the union period the law was viewed as the means to correct the problem and certainly not as the source of the problem. In this way it is clear why during the union period the state responded to delinquent children not with protective legislation but through institutionalized means.

It is during the post-confederation period that we see the greatest moves made towards protecting abused and neglected children. During the post-confederation period the 'new childhood' was influential in that it shaped the ideas of reformers and legislators alike. The 1888 children's protection legislation was a provincial act that responded to the growing number of neglected children that were populating the city streets. The 1893 children's charter was also passed by the provincial government but had more intrusive powers attached to it. The act was important to the fight to save children and one that is reflective of how important the idea of the 'new childhood' was since saving the neglected child had become a national issue, and one that merited more authoritative legislation. Not only were the best interests of the child now important but the best interests of the nation was also important. Children who were neglected were prone to dirty and immoral behaviours and this would surely lead to criminal activity. Even if the child escaped the lure of a life of crime could he or she be trusted to grow up into an industrious and moral citizen? The fate of the dominion of Canada rested in the hands of children and while the

children from the upper levels of society were trusted to become competent and compliant adults, those from the lower levels were viewed as particularly dangerous.

The children's charter of 1893, the creation of the office of the superintendent of neglected and dependant children, and the incorporation of the Children's Aid Society demanded co-operation with each other. The legislation was the key as it granted the powers of removal to the CAS and the powers of monitoring and inspection to the office of the superintendent. These were all state sponsored and worked to further the state's aim of keeping a safe distance from the private sphere of the family. Although the legislation granted the CAS to remove a child from the father's care if abuse or neglect was suspected, the CAS remained a quasi-public institution and so the state did not have to play a direct intrusive role; instead they were kept at a safe distance, providing only the legal power and not the physical means of removing a child.

The work of the industrial schools during this period is also important and will be further discussed in the following chapters. The schools were an institutional response to the needs of removing children from the streets and moulding them into productive citizens. But the children taken from abusive and neglectful homes were usually placed in these institutions on a temporary basis. The main push was to have these children placed within foster homes where a loving family environment would foster the new skills and attitudes that reformers were aiming to achieve. In this way the industrial school became an institution for children who were found guilty of petty crimes. These children, viewed as more dangerous to the middle class way of life were subsequently trained in a skill or trade and taught the fundamentals of

religion, reading, writing, morality and hygiene. At the very least these children, already tempted by crime, and/or vice could be reformed and the disastrous effects of their previous environments mitigated.

What then can be said of the role of law? Clearly the law had evolved from taking a completely 'hands off' approach to the family to one where it would override the father's and mother's rights to guardianship of their own children. The courts initially resisted new legal initiatives and tended to defer to the older common law. New agencies were developed to more fully implement the new legislative interventions. The law expressed a social policy agenda that was different from both the mother country and Canada's neighbours to the south. In an attempt to encourage the childlike innocence and purity of Canada, reformers and legislators were scrambling to cope with social issues such as child neglect and juvenile delinquency. Crime rates as a whole were a problem but it was believed that there was a much better chance of reforming the children than there was in reforming adults. If the children could be saved then surely the dominion would continue to flourish.

The courts played a changing role as well. Traditionally judges tended to favour the old English common law. New legislative initiatives in the 'best interest of the child' required them to look beyond the traditional administration of justice. Industrial schools became an option for delinquent children with the passing of the 1884 amendment to the industrial school act. New child welfare protection legislation allowed them to place children under the care of the Children's Aid Society as opposed to traditional children's homes. Clearly there was a wide variety

of options open to judges, but many still clung to the common law and presumed to be acting in the best interests of the child.

An important theme running through this chapter is the idea of public responsibility toward a child in need. Originally the state took little initiative to support orphaned or destitute children other than legislating them into a master/servant type relationship. Towards the end of the union period there was a slight change of thought as the plight of the neglected and/or abused child comes into play. But it is not until the post-confederation period that the state becomes an active participant in providing for children in need of care and protection.

#### *Chapter Four : Ontario's Industrial School System*

The purpose of this chapter is to focus on the industrial school system in Ontario. In particular, it examines the development of the schools, the government policy towards the schools, the legislative responses, curriculum, and the effects on the juvenile justice system the school promoters aimed to change. The preceding three chapters have been designed to give the political, social and legal contexts for the research to be presented in this chapter. The industrial school system was an important stepping stone in the struggle to create a separate justice system for young people, one that its proponents claimed significantly addressed child welfare and juvenile justice needs. The industrial schools answered the need to house children found on the street and/or guilty of petty offences. The schools filled the gap between obtaining an education through the public school system, the need to care for these children in an orphanage, and punishment and reformation through a common gaol or reformatory. The schools attempted to embrace all of these concepts and gear their reform and educative efforts specifically toward children who were perceived to be destined toward a life of crime and immorality. The ultimate goal was the production of healthy and competent future generations of working and lower class children.

The most logical place to begin an analysis of the industrial schools is to ask what prompted reformers, community leaders, legislators and prison officials to create the industrial school system. As we have already seen, reformers enthusiastically supported social welfare projects during the late nineteenth century.

At the root of Victorian reform movements lay a perception that criminal behaviour was linked to an urbanizing society and moral decline. Middle class Victorian reformers tended to look upon these youngsters as potential future criminals.<sup>180</sup> J.J. Kelso, the 'child's friend', assumed that middle class members of society were less prone to crime than their working and lower class counterparts as reflected in the following statement: "It is true that occasionally a young man of good family and occupying a position of trust gives way to temptation and falls to the criminal ranks, but he seldom remains there, usually retuning after a short time to law-abiding citizenship".<sup>181</sup>

The industrial school system was a response to the need for an institution to house neglected, delinquent and pre-delinquent children that was not as harsh as the reformatories of the 1850's and 1860's, but provided stricter guidelines and rules than the existing public school system which experienced high absentee rates.<sup>182</sup> What was important to reformers and legislators alike, was the need to remove children from the provincial prisons, and later federal penitentiaries, that tended to foster criminal behaviour. What then can be said of the delinquent child? How did the state alter its attitude and policy toward these children? Under English Common law delinquent children were seen to be essentially the same as adults. A child under the

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<sup>180</sup> Susan Houston, "Late Victorian Juvenile Reform: A Contribution to the Study of Educational History" in Approaches to Educational History (Manitoba: University of Manitoba, 1981) at 15.

<sup>181</sup> J.J. Kelso, "Neglected and Friendless Children" in Canadian Magazine II (January 1894) at 213.

<sup>182</sup> Paul Bennett, "Turning 'Bad Boys' into 'Good Citizens': The Reforming Impulse of Toronto's Industrial Schools Movement, 1883 to the 1920s" (Ontario History, vol. 78 no. 3, 1986) at 212.



age of seven was presumed to be unable to have the mental capacity to understand basic morality, that is, the difference between right and wrong. However, a child between the ages of seven and fourteen was believed to have some ability to distinguish between the two concepts. Clearly the older a child, the more likely that he or she would be to distinguish between the two principles and therefore was more likely to be held accountable for his/her actions. Any child over the age of fourteen would be forced to bear the full weight of the law.<sup>183</sup> In cases where children were held liable for their actions the industrial schools were open as an option for the child to carry out their sentence.

Since young offenders and adult offenders generally received similar treatment under the law at this time it was not uncommon to see children as young as seven awaiting their day in court in a county jail alongside adult offenders. Upon a finding of guilt these same children were then transported to adult prisons to serve their sentences in the same conditions and circumstances as their adult counterparts. Thus, provincial and federal correctional institutions became schools of crime as these children ultimately learned the 'tricks of the trade' from more experienced adult offenders. Opportunities for rehabilitation and education were limited at best in these institutions. Consequently, many children went from being simply 'delinquent' to becoming permanent members of the 'criminal class'.<sup>184</sup>

The industrial schools marked an important shift in state intervention.

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<sup>183</sup> Criminal Code of Canada 1892 s.9 & 10.

<sup>184</sup> Bennett, supra note 182 at 209.

Reformers were initially calling for the state itself to set up completely new institutions for delinquent and neglected children. Eventually, a second generation of reformers took a look at the situation and decided that private and volunteer based organizations such as the Children's Aid Society and the foster home were indeed the best place for delinquent and neglected children, and eventually began to campaign for the closure of state sponsored institutions such as the industrial schools. Thus, as state intervention increased in certain areas, reformers made a claim on saving the children again. However, the state continued to play an important role. This time reformers relied on the state as a way to remove the children from prisons and homes and place them within the private sphere, typically the foster home. Thus, the modern attitude that state officials guided by legislation and regulation were the best judge of what was necessary for the well-being of a child was not abandoned but was refined. This strong belief in that the best interests of the child could be determined by legislators and administrators rather than privately, justified the wide state interventions into the family surveyed in the previous chapter.<sup>185</sup>

Juvenile delinquency and child welfare issues had come to the front of social welfare concerns by the 1880's. The attempt to secure the success of Canada was of grave concern. The industrial schools seemed to answer the need for a place for these quasi-criminals to be taught and reformed. If the public school system was ill-equipped to keep these children in the classrooms, a place they clearly did not want to be given the truancy records, and the reformatory was too harsh an environment

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<sup>185</sup> Ursel, supra note 5 at 111.

for a young boy or girl intent on making mischief, then where were these children to be placed? In this way the industrial schools answered a dire need in society. They would reform, train and instruct incorrigible children, all the while preserving a hierarchal and class structured society in which they existed.

### Legislative Debates

Prior to the passage of legislation regarding the industrial schools, there was a series of debates held within the provincial legislature. It was anticipated that a great deal of research materials would be made available through reference to these debates. Strangely enough, not much was recorded about either the original 1874 legislation or about the 1884 amendments that followed. During this time in Ontario there was no official reporter in the provincial legislature as found in the House of Commons or the Senate at the federal level. Instead, the debates were documented by newspaper reporters and called the newspaper Hansards.

The 1874 industrial schools act was first introduced into the provincial legislature as Bill 131, a Bill respecting Industrial Schools, on February 27 1874, by the Attorney General Mr. Mowat.<sup>186</sup>

It was believed that schools would be established by private effort in Toronto and the principal cities immediately. Many persons were anxious that these schools should be established, and therefore it was thought right to submit the Bill to the House.<sup>187</sup>

The introduction of this Bill was a response to the growing need to remove neglected

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<sup>186</sup> Ontario Legislative Assembly, Journals, 1874 at 87.

<sup>187</sup> Ontario Legislative Debates 1874, Newspaper Hansards March 6<sup>th</sup> 1874.

children and street vending children city streets. There is no evidence of select committees or reference to government commissions. We must assume that the government was responding directly to outside reform pressure and a climate of public concern.

During the readings and eventual passing of the Bill little was reported in the newspaper 'Hansards'. As a general rule they simply stated that the Bill was read for a first, second, or third time. It was during the second reading of the Bill on March 6<sup>th</sup> 1874 that some debate was generated regarding the Bill. Mowat stated that it was time for the industrial schools to take 'practicable shape'. The idea had been before the Toronto school board for some years.<sup>188</sup> Legislation found from the 1860's indicates that industrial schools had been established through private efforts. These schools were neither publically funded nor monitored. There was no legal power in place to enrol a child within these homes. Instead, these acted as orphanages for children who were old enough to learn a trade and obtain a basic education.<sup>189</sup>

What is key to the passing of the industrial schools act is that this legislation would provide the legal power needed to remove a child found either begging on the street, orphaned, destitute or neglected by parents, or if the parents presented to a magistrate that their child was 'incorrigible'. As well, schools established under this legislation would be monitored and later funded by the provincial government to

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<sup>188</sup> Ontario Legislative Debates 1874, Newspaper Hansards March 6<sup>th</sup> 1874.

<sup>189</sup> "An Act to incorporate the 'Boy's Home' of the City of Toronto" Statutes of Upper Canada 1861, c. 114. And "An Act to Incorporate *The Girl's Home and Public Nursery* of the City of Toronto" Statutes of Upper Canada 1863, c. 63. And "An Act to incorporate the Children's Industrial School of the City of Hamilton" Statutes of Upper Canada 1864, c. 145.

some degree. Schools established through private efforts previous to the industrial schools legislation lacked the legal power to place these children within a school. The proposed legislation granted a magistrate the right to remove these children from the streets and presumably keep them out of trouble. The thrust behind the proposed legislation was to deal with the increasing problem of street children.

Mowat informed the legislative assembly during the second reading that the Bill had been fashioned after existing American and Imperial legislation. While it was not explicitly reported it is interesting that mention was made of American and Imperial advances made in this area.<sup>190</sup> This concern of falling behind American and British advances would be raised again in the debates surrounding the passing of the Juvenile Delinquents Act of 1908.

Mention was also made of government funding. While Mowat made it clear he was not asking for public funding, it was implied that funding would certainly help in the success of the schools. "He [Mowat] did not propose to ask for a grant for these schools at present, but whether it might be though, hereafter, proper to make such a grant would be a matter for consideration".<sup>191</sup> It was assumed that much of the financial burden would be met by public charities. Other members of parliament echoed this belief that government aid would be helpful to the success of the schools.

Mr. Cameron noted that:

He [Cameron] regretted the Government did not see it's way clear to making an appropriation for the assistance of these schools at their

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<sup>190</sup> Ontario Legislative Debates 1874, Newspaper Hansards March 6<sup>th</sup> 1874.

<sup>191</sup> Ibid.

commencement. Of course that might be done by means of charity, but he thought it would be a great advantage if they received Government aid at their establishment.<sup>192</sup>

It was further provided that if the Government saw fit to grant any money for the support of the schools it would be done so on the work that each school did. I am assuming that this related to the type of training that the school would offer. Mowat again agreed that financial support would be helpful but that he preferred to wait until the next session to see what could be done if these schools were indeed a success.<sup>193</sup>

As the members would soon find, the schools did not enjoy any success after the passing of this initial piece of legislation. The burden was too much for private charities and the municipality to carry. Not only would the schools have to be built, they would have to be staffed, and the children fed, clothed and taught. It appears strange to me that the provincial government was willing to put legal power behind the idea of these schools but was not willing to offer financial support. This act seemed to be one that looked good on the books but was in fact relatively difficult to put into action. Nonetheless, the Bill went to committee on March 10<sup>th</sup> 1874 and with minor verbal amendments the Bill was read for a third time and passed on the March 16<sup>th</sup> 1874.

A decade later it had become clear that the Toronto Board of Education was in no position to open an industrial school. Amendments were made that allowed

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<sup>192</sup> Ontario Legislative Debates 1874, Newspaper Hansards March 6<sup>th</sup> 1874.

<sup>193</sup> Ibid.

the board of education to delegate the responsibility to philanthropic organizations and further provisions for financial support were made.

On February 29<sup>th</sup> 1884 Bill 60, "An Act respecting Industrial Schools", was introduced by the member of parliament representing Middlesex, Mr. Ross.<sup>194</sup> The Bill was referred to committee on March 17<sup>th</sup> 1884 where again minor wording changes were made. It was suggested by Mr. Meredith that the duty of care for a child within these schools should not be imposed on the municipality. Ross responded that only a dollar a week could be collected from the family of the child in case there was not a parent or other person liable for the support of the child.<sup>195</sup> Thus it appeared that the financial burden would continue to fall on public charities, the municipal government and the parents or guardian of the child. The Bill was read for a third time on March 24<sup>th</sup> 1884 and passed. After the passing of this amendment, schools were established fairly quickly.

### The Industrial Schools Acts

As we saw in the previous chapter, the *Industrial Schools Act* of 1874 granted public school boards the right to establish custodial and educational institutions for certain children. These new schools were defined as: " A school in which industrial training is provided and in which children are lodged, clothed, and fed as well as

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<sup>194</sup> Ontario Legislative Assembly Journals 1884 at 99.

<sup>195</sup> Ontario Legislative Assembly Debates Newspaper Hansards at 1884.

taught...".<sup>196</sup> For the purposes of the act, the term 'children' was a person under the age of fourteen. As well, that child had to be committed to such a school by a police magistrate. The child was to be kept at the school for any length of time it took to complete his or her training but not beyond the sixteenth birthday.<sup>197</sup> The list of reasons for sending a child to such a school is quite lengthy but children could be committed to such an institution for any one or more of the following: begging, wandering the streets without a proper home, without proper guardianship, if the child was destitute due to death of parents or if surviving parent was serving time in a penal institution, if the family environment was encouraging a life of vice and idleness, and finally if the child's parents approached a magistrate and committed their child for being incorrigible.<sup>198</sup> Through this means, working class children would at the very least be assured a minimal education, focussing on the fundamentals of reading and mathematics, and would learn a trade. It was hoped that by instilling industrious habits into these children the future crime rate would be greatly reduced and the criminal class would be stopped at the source. As well children would be provided with a home and suitable employment.<sup>199</sup>

Oddly enough, for a decade after the passing of the 1874 legislation, as suggested in chapter three, not one school board exercised its right to establish a

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<sup>196</sup> "An Act to amend and consolidate the Acts respecting Industrial Schools" Statutes of Ontario 1884, c.46, at s.2.

<sup>197</sup> Ibid., at s. 9.

<sup>198</sup> Ibid., at s. 7.

<sup>199</sup> Proceedings of the Second Ontario Conference on Child Saving, Toronto. October 18-19 1895 at 26.



correctional and educational institution. Paul Bennett attributes this failure to create the schools as a reluctance of trustees to extend normal spheres of responsibility to these institutions. As well, money was scarce in the late 1870's and early 1880's.<sup>200</sup> As seen through the debates, funding for these schools was a serious issue. Who should be responsible for these children? Clearly if a child had committed a crime or was engaging in immoral behaviour, then the child's parents should have some responsibility toward their child's upkeep. There was a fear that if parents were not made financially responsible then there would be a flood of parents dropping off their children at the school's door. Thus, parents were responsible for contributing up to one dollar a week for the maintenance of their children.<sup>201</sup> If the child did not have parents or a guardian then the municipality that the child came from would absorb the cost.<sup>202</sup>

Therefore, all responsibility fell on the school board, clearly the daily maintenance of the schools was expensive not to mention the fact that the children did not go home at night and therefore needed constant supervision, clothing and food.

After a decade had passed provincial legislators recognized the failure of the school boards to establish industrial schools and altered the legislation so that school boards could delegate the authority to establish such schools to any incorporated

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<sup>200</sup> Bennett, supra note 182 at 212.

<sup>201</sup> "An Act to amend and consolidate the Acts respecting Industrial Schools" Statutes of Ontario 1884 at s. 22.

<sup>202</sup> Ibid., at s. 25.

philanthropic society.<sup>203</sup> Although the industrial school would be run by the philanthropic society and monitored by the Industrial Schools Association, it would be affiliated with the school board which had delegated the responsibility.

In order to further ensure that the legislation was put to use, the category of children eligible to be committed to an industrial school was expanded to include children found guilty of a petty crime. Section 7(6) states any child: “ Who has been found guilty of petty crime, and who, in the opinion of the Judge or Magistrate before whom he has been convicted, should be sent to an Industrial school instead of to a gaol or reformatory”.<sup>204</sup> Thus, there was a shift in the courts using this method as an alternative to provincial or federal prisons. The original 1874 legislation had focussed its work on children found begging on the street or those children that were neglected by their parents. Children found on the street were not always destitute; many times they were working as newspaper boys or street vendors. The schools were meant to give these children a basic education and/or trade so they could grow up to find gainful employment. By extending the definition of who was eligible to attend an industrial school, legislators were recognizing the growing problem of juvenile delinquency. As well, the schools could be seen as a second chance for a child guilty of a petty offence; the reformatory environment was harsh and one that would not afford a child guilty of a petty offence much opportunity for reform. Within the schools these children would stand a better chance at rehabilitation.

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<sup>203</sup> “An Act to amend and consolidate the Acts respecting Industrial Schools” Statutes of Ontario 1884, c.46, at s.5.

<sup>204</sup> Ibid., at s. 7(6)

Even before the first school had opened its door a move was made to remove the authority from the public hand and place it in the hands of private charities.<sup>205</sup> The state still retained a great deal of authority, they simply shifted much of the financial responsibility onto volunteer societies. The changes instituted by the provincial legislators appeared to have got the ball rolling. As a result, a distinguished group of Toronto businessmen, politicians and community leaders came together in an effort to create a school for the purpose of training youngsters in an industrious trade. On May 16<sup>th</sup> 1887, the Governor General, the Marquess of Lansdowne, officially opened the Victoria Industrial School for Boys in Mimico, located just outside of Toronto. One month later the first boy was enrolled in the school and the industrial schools system in Ontario was on its way.<sup>206</sup> The school was created as an institutional training school and was affiliated with the Toronto Public School Board. Pupils, at least at first, were supplied through the Toronto Board's Truancy Department.<sup>207</sup> Five years later, recognizing the need for a similar institution for girls, the Alexandra Industrial School for Girls was opened in east Toronto. By the turn of the century two more schools existed, the St. John's School for Catholic Boys located in east Toronto, and the St. Mary's School for Catholic Girls in Toronto. By December 30<sup>th</sup> of 1901, the combined enrollment of all four

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<sup>205</sup> Ursel, supra note 5 at 112.

<sup>206</sup> Sutherland, supra note 1 at 106.

<sup>207</sup> Bennett, supra note 182 at 215.

schools totalled 226 children.<sup>208</sup> It may appear to be a small number but considering the schools were essentially run on a volunteer basis and depended heavily on financial donations, the number is actually quite substantial.

The Industrial Schools Association was formed to encourage and promote the development of educational institutions for neglected and delinquent children.<sup>209</sup> It was intended that the association would keep a watchful eye on the schools and since it was a philanthropic society it was led and supported by community leaders.<sup>210</sup> The real force behind much of the industrial schools movement and consequently the promoters of the industrial schools association was William Howland and Beverly Jones. Each played different yet important roles; Howland acted as the public promoter of the schools while Jones worked behind the scenes securing the desperately needed financial funds and legal needs of the schools. Both worked closely with the Victoria Industrial School for Boys.<sup>211</sup> Howland's role as a public figure and as the Mayor of Toronto in 1886 allowed him to publically promote the necessity and the importance of the schools. He was a strong supporter of child welfare and enthusiastic about the good these schools could do both for the children and for the city of Toronto. Jones, a lawyer who had worked for the Canada Permanent Savings and Loan Company, used his expertise to manage the legal and financial needs of the schools. "If Howland's approach was that of a promoter and

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<sup>208</sup> Sutherland, supra note 1 at 107.

<sup>209</sup> Jones and Rutman, supra note 40 at 19.

<sup>210</sup> Bennett, supra note 182 at 213.

<sup>211</sup> Ibid., at 214.

sometime visionary, Jones' efforts were clearly those of a down-to-earth, pragmatic institution builder".<sup>212</sup> The industrial schools movement owed a great deal of its success to reformers and promoters such as Jones and Howland. Typically it is J.J. Kelso who receives much of the credit regarding children, but Kelso's work was mostly geared toward helping neglected children and keeping all children out of state institutions such as the industrial schools.

Many reformers, including Kelso, blamed the increasing crime rate on "...the neglect of child-training in the homes of vice and drunkenness".<sup>213</sup> It appeared appropriate at the time to place children who were falling victim to neglect and abuse within an institution that could provide a 'good' environment. What reformers failed to recognize was that these schools housed a large number of children, and while they may not have been in an environment that supported drunkenness they were not always carefully attended to as school promoters liked to claim. Children who were not guilty of a petty offence did not live in a large house with kindly adults pampering or caring for them. Instead, these children lived a very regimented life. Every facet of life was carefully scheduled for these children, including play time. The amount of play time was far less than the amount of time they spent working.

It is important to stress that there were different motivations for the development of the industrial schools. Some used it for the purposes of neglected children while others used it to treat delinquent children. However, the result of these mixed objectives was that children found guilty of criminal offences under the

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<sup>212</sup> Bennett, *supra* note 182 at 215-216.

<sup>213</sup> Sutherland, *supra* note 1 at 17.

provincial law, and later under dominion law, intermingled with children whose only crime was that they were born to neglectful or abusive parents.

### Curriculum and Organization of the Schools

The major advantage the industrial schools had over other types of institutions for juvenile offenders is what has been referred to as the cottage system. This system provided that a small group of children were assigned to a 'cottage' which was supervised by a married couple that acted as the father and mother of the new 'family'. This married couple effectively were known as a matron and a guard and were there to instruct, discipline and train the children in everyday chores. The hope was that this system of a pseudo mother and father would restore a family feeling within the children and with it would follow family values, a respect for hierarchy and industrious habits.<sup>214</sup> Each child within the cottages was trained in a trade for the boys, and housekeeping in the case of the girls, they attended day school and Sunday school, and participated in drill and sports with children from the other cottages.<sup>215</sup>

Carolyn Strange and Tina Loo argue that the industrial schools worked to reaffirm class divisions. That is, the industrial schools worked to ensure that working class children would grow up to become working class adults. Whereas in the public school system boys were trained as clerks and bookkeepers, the boys in the industrial

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<sup>214</sup> Bennett, supra note 182 at 217.

<sup>215</sup> Jones and Rutman, supra note 40 at 101.

schools were trained as manual labourers and tradesmen.<sup>216</sup> Middle class reformers of the time were also revamping the public school system and they aimed at establishing a system of provincial education that would ensure that boys would grow up to be industrious, sober and honest breadwinners, and that girls would grow up to be proper housewives.<sup>217</sup>

In an address delivered by Reverend D.H. Macvicar before the Ontario Teachers Association meeting in Toronto on August 14<sup>th</sup> 1879, the importance of morality in education was discussed.<sup>218</sup> This address touches on some of the fundamental principles and ideals behind education in late nineteenth century Canada. There existed at this point in time a close connection between criminal activity and education; it was believed that the lack of education some children were receiving would ultimately lead them into crime. Macvicar opens his address by speaking about ethics and morality:

Subtle points of casuistry and questions of right and wrong, of duty, what ought and what ought not to be are constantly canvassed; and unfortunately very many persons dogmatise and pronounce upon them blindly without having received any systematic or scientific instruction. Surely this natural and universal disposition to deal with ethical subjects should not be ignored by the educator... knowledge of the fundamental facts and principles of ethical science, and of their practical application in everyday life, should be made an essential

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<sup>216</sup> Strange and Loo, *supra* note 4 at 50.

<sup>217</sup> Sutherland, *supra* note 1 at 93.

<sup>218</sup> "Moral Culture: An Essential Factor in Public Education", delivered by Reverend D.H. Macvicar, Principal of Presbyterian College Montreal. Delivered before Ontario Teachers Association, Toronto. August 14 1879.

factor in public education.<sup>219</sup>

Upon first reading this address I was struck with the question of is he proposing that only the educated can discuss morality? Or is he implying that one must be 'schooled' in morality in order to be moral? Although I can not ascertain with certainty his intentions regarding these questions, it does appear to be clear that he was suggesting that morality may not be a God given matter anymore, that perhaps not all members of the upper class are born naturally virtuous. In fact I find this to be most interesting because of what it says about the working and lower class; in this way he is indirectly indicating that even those from the lower classes, if placed in the right environment, could rise up to become virtuous beings.

Reformers and legislators of this time had long associated crime with 'idle hands'. Reverend Macvicar emphasized the importance of training the body to do the mind's work, in this way he was encouraging all school systems to have more physical activity in the curriculum.<sup>220</sup> Years later, and after the development of industrial schools these views were still reflected. Thomas Hassard, superintendent of the Victoria Industrial School in 1894 informed his colleagues at a conference on child saving that: " In our institution we try to keep everyone of them busy at all time, because idleness is a source of crime. If we allow a boy to be idle we at once lose control..."<sup>221</sup>

Michael Katz, while researching reform schools in Massachusetts has arrived

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<sup>219</sup> Macvicar, supra note 218.

<sup>220</sup> Ibid.

<sup>221</sup> Proceedings of the Second Ontario Conference on Child Saving, supra note 199 at 26.



at four goals held by reformers attempting to reform wayward youth; authority, kindness, enlightenment of consciousness and employment.<sup>222</sup> The idleness of hands was thought to be what drew many children into criminal activity. The theory was that when one was not busy, presumably either working, sleeping or praying, then one would be tempted by vice. Thus, a carefully constructed daily schedule was created to keep the children busy, assuring that no hands would be idle. Katz sums up quite nicely: "...the old couplet hath truth, if not poetry, 'Satan finds some mischief still - for idle hands to do'".<sup>223</sup>

### Discipline

Issues of discipline were clearly important for those running a school full of unruly children. Corporal punishment was no stranger to the children in these schools. I do not want to suggest that these children were beaten unmercifully (although some undoubtedly were) but school organizers of the time along with some reformers saw corporal punishment as an effective way to deal with a disobedient child. Kelso himself in writing an article for the *Canadian Magazine* in 1894 stated: "In other cases the speediest and most salutary punishment would be a birching sufficient to call forth tears and promises of repentance".<sup>224</sup>

The use of corporal punishment was a major point of concern for reformers

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<sup>222</sup> Michael Katz, The Irony of Early School Reform: Educational Innovation in Mid-Nineteenth Century Massachusetts, (Cambridge: Harvard University Press, 1968) at 194.

<sup>223</sup> Ibid.

<sup>224</sup> Keslo, supra note 181 at 216.

and legislators as was clearly demonstrated at the second Ontario Conference on Child Saving in Toronto in 1895. Here Senator G.W. Allen expressed his concern about the lack of any legislation calling for the state to sentence a boy to 'a good whipping'. Upon introducing a Bill to the Dominion Senate the previous year regarding juvenile offenders he had left out a clause that would allow for corporal punishment for fear the Bill would be thrown out.<sup>225</sup> Senator Allen went on to conclude that boys sentenced to a few hours in jail were often not punished enough and often walked out feeling as though they had bested the law. "But a boy does not regard himself as a hero if he is sentenced to a little corporal punishment. I think that is something that will take the conceit out of him...".<sup>226</sup> Other participants wholeheartedly agreed with him and many expressed concern for the rising crime rate and the apparent lack of respect for legal authority. Rev. J.R. Black, representing Kingston, noted that parents were as much to blame as the children: firstly, for allowing their children to get in trouble, and secondly for not applying strict discipline after the fact.<sup>227</sup> Reverend S. Card, Chaplain of the Ontario Reformatory for Boys seems to have summed up the issue for everyone by stating: "...there is much more reformatory power in the end of a birch than in putting them in cells".<sup>228</sup>

Thus the industrial school had become an agent of the criminal justice system when dealing with delinquent youth. The original mandate to help 'friendless'

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<sup>225</sup> Proceedings of the Second Ontario Conference on Child Saving, *supra* note 199 at 24.

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*, at 25.

<sup>228</sup> *Ibid.*, at 24.

children had been replaced by one that dealt with giving petty criminals a second chance. I would go further to state that the schools also relieved much of the pressure from the provincial reformatories. Within the school setting these petty criminals could receive their punishment by having their liberty severely curtailed, and at the same time they could gain something from the experience, presumably an education. The schools and the criminal justice system began to work closely together. Research in the following chapter will show how juvenile justice legislation came to depend in some respects on the schools for support. The Royal Commission Report sums up the problems of juvenile delinquency and the growing influence of the schools. In many ways the report is foreshadowing the co-operation of the schools and the criminal justice system.

#### Royal Commission Report, 1891

The 1890 Royal Commission inquiry into the prison and reformatory system in Ontario was introduced in the last chapter. It was chaired by J.W. Langmuir and the final report was submitted to the provincial government on April 8<sup>th</sup> 1891.<sup>229</sup>

The purpose of the commission is outlined in the report as:

...to collect information regarding Prisons, Houses of Correction, Reformatories and the like, with a view of ascertaining any practical improvements which maybe made in the methods of dealing with the criminal classes in the Province, so far as the subject is within the

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<sup>229</sup> "Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario", supra note 107 at 1.

jurisdiction of the Provincial Legislature and Government...<sup>230</sup>.

The commission had seven main goals that they set out to achieve regarding the prison and reformatory system in Ontario. Two directly related to delinquent children; the first was to find any improved means for conducting and providing industrial schools. The other goal regarding children was to find any improved means for "...rescuing destitute children from a criminal career."<sup>231</sup> Clearly the growing problem of juvenile crime had caught the attention of the provincial government. The investigation was carried out in five Ontario cities: Toronto, Hamilton, Kingston, Ottawa, and London. The commissioners did not limit themselves to the Ontario experience but visited correctional institutions in New York, Massachusetts, Ohio, and Michigan, as well as receiving relevant reports from Britain, Ireland and other European countries.<sup>232</sup>

The commissioners also noted that the first goal of the inquiry was to identify the chief causes of crime within the community. There are seven chief causes of crime according to the commissioners' findings and they are as follows. The first is the lack of proper parental control over children and the neglect of children largely due in part, according to the inquiry findings, to excessive drinking. The report goes on to add " ...that the great majority of criminals begin their career of vice and crime at an early age, and that where there are many juvenile offenders there will in time be

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<sup>230</sup> "Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario", supra note 107 at 5.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid., at 6.

many criminals unless proper methods of prevention and reformation be employed".<sup>233</sup> This clearly reflects the middle class Victorian fear of an increased future crime rate.

The second chief cause of crime was intemperance. Many of those called to testify before the inquiry claimed that alcohol and crime were inextricably interwoven.<sup>234</sup> Following this logic, the third chief cause of crime was the hereditary transmission of evil from parents to children. Clearly in line with Victorian reform it was believed that some people, namely the lower classes, were born inherently evil.<sup>235</sup> The fourth cause of crime was idleness, a theory that will be picked up upon further in the chapter. The fifth cause of crime was the desire to have money for luxury.<sup>236</sup>

Poverty was listed as the sixth cause of crime, although the report was careful to note that poverty itself is not a crime but the conditions that follow tend to foster criminal behaviour. For example:

... the poor are often compelled to find lodging in crowded lanes and courts and alleys in which the worthless, the drunken and the criminal dwell, and though the parents may escape the contamination of the foul moral atmosphere of such places, the children whom they cannot confine to their miserable abodes, who must seek amusement and recreation on the streets are unavoidably exposed to the corrupting

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<sup>233</sup> "Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario", supra note 107 at 40.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid., at 41.

<sup>236</sup> Ibid., at 41-43.

influences....<sup>237</sup>

The inquiry goes on to blame the state for neglecting the prevalence of vice and crime in society as the seventh cause of crime.<sup>238</sup>

After studying the current system within Ontario regarding juveniles the commission came up with 16 recommendations that directly related to children. There are some that stand out as more important as others and they will be addressed briefly here. First, the commission recognized the importance of the industrial school as different from the reformatory system and encouraged the state to have an industrial school in every city and large town. Further the commission encouraged judges and magistrates to use the industrial schools as an alternative to incarcerating a child within a prison.<sup>239</sup> The commission also recommended that children under fourteen years of age should not be publically arrested and detained, that these children when arrested should not be held in a common gaol but a place entirely away from the police station. Further, it was recommended that a child under fourteen years of age should be tried in a special court. If that child was found to be guilty then he or she should never be incarcerated in a common jail and should only be sent to a reformatory as a last resort. The emphasis was on placing children

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<sup>237</sup> "Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario", supra note 107 at 44-5.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

within the industrial school system if that child had to be incarcerated.<sup>240</sup> Clearly, the commission was setting the stage for legislation such as the Juvenile Delinquents Act of 1908. There was also a recommendation for the increased use of suspended sentences for young offenders, as well it was recommended that a probationary system be introduced.<sup>241</sup> Although the findings of the inquiry dealt exclusively with Ontario, the nature and results had a national impact. Consequently after its publication there was a heightened awareness in Canada regarding juvenile crime.<sup>242</sup>

### 'Incorrigibility' and Indeterminate Sentences

What was the definition of a delinquent child in the late nineteenth and early twentieth century Ontario? The obvious answer is of course those children that broke either provincial or dominion law, but there existed some children who did not commit a crime yet were considered to be pre-delinquent. With reform movements in full swing it appeared that shared social assumptions among middle class reformers and legislators produced new notions of delinquency. Was a child found wandering a street enough to be categorized as delinquent in late nineteenth and early twentieth century Ontario? Apparently for reformers at the time, it was as many children fell into the trap of being termed 'incorrigible'. It would have been useful if at least this term had been clearly defined but it was left open ended and thus was

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<sup>240</sup> "Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario", *supra* note 107 at 60.

<sup>241</sup> *Ibid.*

<sup>242</sup> D. Owen Carrigan Crime and Punishment in Canada, a History (McClelland & Stewart: Toronto, 1991) at 413.

subject to wide interpretation.

Susan Houston argues that since delinquency in the Canadian context was not clearly defined as either a state or condition, the law acted as a reminder to the members of the working and lower class that it was in fact the middle class who ruled. Houston goes on to state: "...the image of the law as an instrument of the dominant ideology in the determination of such cases brought home to working-class families and to reformers alike the realities of class and power which circumscribed their lives".<sup>243</sup> Clearly, in the Ontario experience the determination of criminal activity and the consequences for such activity were defined by existing dominant social attitudes.

Superintendent McKinnon of the Victoria Industrial School attempted to give an explanation of incorrigibility. Most of his boys who had been sent to him for being incorrigible had "...slept out all night, ran away from home, refused to go or were suspended from school, and had 'proved unmanageable by the parents or teachers'".<sup>244</sup> School records for the Victoria Industrial School show that of the first 50 boys sent there, 25 had been placed there for being incorrigible.<sup>245</sup> A child destined to go wrong usually committed a series of 'crimes' before completely falling into the criminal class. The first offence was usually truancy from school; when the child was not in school then he was free to discover the lure of gambling, smoking, alcohol and other vices. This would eventually lead to more advanced criminal

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<sup>243</sup> Houston, supra note 180 at 13.

<sup>244</sup> Sutherland, supra note 1 at 104.

<sup>245</sup> Ibid.



activity.<sup>246</sup> It was firmly believed that a child left alone would give into temptation. It was important for children to be in school since along with the family and church, school is where children learned morality. If they could not be trusted to attend school regularly then society would legislate them there indefinitely.

Under the 1884 *Industrial Schools Act*, a parent could commit his or her child to these institutions if they could convince a judge or magistrate that their child was destined for trouble if he or she was not institutionalized.<sup>247</sup> Subsequently, the child could find him or herself in an industrial school for up to five years without ever committing a crime. Section 7 (4) of the act states: " Whose parent, step-parent or guardian represents to the Judge or Magistrate that he is unable to control the child, and that he desires the child to be sent to an Industrial School under this Act."<sup>248</sup> Thus, working class parents held an element of control over this situation. It is interesting to note that the American experience was similar and many working and lower class children found themselves committed to training schools indefinitely for the crime of 'stubbornness'.<sup>249</sup>

Since incorrigibility was not clearly defined it was essentially up to the interpretation of the presiding magistrate or judge. The same can be said for those children who were found to be neglected. Again, these children could find

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<sup>246</sup> Katz, *supra* note 222 at 172.

<sup>247</sup> "An Act to amend and consolidate the Acts respecting Industrial Schools" *Statutes of Ontario* 1884, c.46, at s.7(4).

<sup>248</sup> *Ibid.*, at 7 (2).

<sup>249</sup> Katz, *supra* note 222 at 179-180.

themselves growing up within government institutions because their parents had neglected to take their parental duties seriously. Certainly this was not necessarily a bad thing since many of these children were left to their own devices on the streets and in desperate need of care.

Since the decision was ultimately left up to the discretion of a judge there were some major inconsistencies in the system. What was the deciding factor in what led some children to the reformatory and some to an industrial school for the same crime? Presumably, the judge would use his discretion and what little he knew about the child to determine if an industrial school would be of any use to the future of the delinquent child. In truth, many children, male and female, were still sentenced to serve their time in either a provincial or federal institution with adults. The detrimental effects of this and the possibility for abuse have already been noted in previous chapters but the very real fact is that despite the opportunity, support from society and legislators, the industrial schools were not always used to their full capacity. Bennett asserts that some magistrates simply did not approve of or did not know about the schools. Since it was not mandatory to send a child to such a school, the decision was ultimately left up to the magistrate or judge.<sup>250</sup> Neil Sutherland addresses the problem of consistency in his work:

Canadian courts of the time handled the children appearing before them with little consistency from one court to another and one appearance to the next. Some youngsters were lectured or let off with a warning, others were given suspended sentences, and many were sent

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<sup>250</sup> Bennett, *supra* note 182 at 219.

to gaols, reformatories, industrial schools ....<sup>251</sup>

New forms of state intervention were designed to implement ambitious new strategies of social intervention and moral regulation. Since this 'new society' fostered the concept of the new childhood, many old practices regarding children and the criminal law had to be re-evaluated. What was to be done with children who violated municipal, provincial or dominion law? Was it really fair or beneficial to society and the child to house criminals of all ages together? It had become obvious to some that perhaps deterrence was not the only principle to kept in mind when sentencing young people. The Prisoners Aid Association, an organization that focussed primarily on adult offenders, had developed an agenda for the treatment of juvenile offenders by 1890. The agenda included special courts for young offenders, less detention time, and qualified personnel in the prisons and industrial schools. More importantly this organization believed that the length of the prison term was secondary to the rehabilitative potential of the young person. That is, rehabilitation of the child was more important than the prison term, therefore the period of detention should be arrived at according to the length of time the judge believed it would take for the child to be rehabilitated, for better or worse.<sup>252</sup> Clause 6 in the *Prisoners' Aid Association Report* states the following:

Industrial schools and reformatories should not be considered as places for punishment, but should be utilized wholly for the reformation of character. The young persons sent to the institutions should not be

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<sup>251</sup> Sutherland, *supra* note 1 at 101.

<sup>252</sup> Carrigan, *supra* note 242 at 412-413.

committed for any definite period, but they should be detained until reformation is attained irrespective of the time required.<sup>253</sup>

Unfortunately, most children ended up on the short end of the deal and subsequently spent longer periods of time in jail for crimes that deserved a much lighter sentence had they only been fortunate enough to be considered an adult under the law.

Kelso's main concern was neglected and dependent children, not delinquent children. He wanted to use the industrial schools as a temporary shelter for neglected and abused children. He clearly favoured removing children from the home of neglectful or abusive parents, but he felt even more strongly about permanently distancing the children from their natural parents. Indeterminate sentences in an industrial school were strongly encouraged but more as a way of keeping the children from their parents and a life of vice and immorality and less about giving the children a good education. Kelso was a firm believer in the foster home. Thus, the industrial school became a temporary residence for children in need of homes, and the indeterminate sentence served this purpose well as it would be near impossible for a parent to remove his or her child from the clutches of the state.<sup>254</sup>

Kelso was against the institutionalizing of children if there existed another opportunity for them. He and the warden of the Central Prison in Toronto had developed a scheme over the years. Throughout the 1890s Kelso and the warden intervened in many children's sentences and had them placed within a foster home.

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<sup>253</sup> "Report of the Commissioners Appointed to Enquire into the Prison and Reformatory System of Ontario", supra note 107 at 9.

<sup>254</sup> Jones and Rutman, supra note 40 at 50-51.

When a magistrate or judge would sentence a child to a reformatory or industrial school sometimes they would have to spend some time in the Central Prison before room was made available. Upon hearing about a boy coming to the prison the warden would inform Kelso who would then find a place for the boy in a foster home. "The diversion, of course, was a contravention of regulations, but both officials conspired in the practice for a number of years".<sup>255</sup>

What is interesting about the offence of incorrigibility is the flexibility it allowed parents to commit their own children to these schools. Here, there can be seen an element of power being exerted by the lower and working class parents. As already mentioned, a parent could go to a local magistrate and claim in a personal statement that their child was in fact incorrigible. As a general rule parents claimed one of four things: the child was often truant, has been sleeping out, kept bad company and unless the child was put under restraint he or she would fall victim to vice and lead an idle life. In effect this was a way for lower and working class parents to ensure that their children had a fighting chance in a rapidly changing society. At the very least, in an industrial school they would be forced to attend day school and would be afforded the opportunity to learn a useful trade. Susan Houston concludes that despite relatively scarce evidence on the matter sending a child to an industrial school was a rational response to economic and social constraints.<sup>256</sup>

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<sup>255</sup> Carrigan, *supra* note 242 at 414.

<sup>256</sup> Houston, *supra* note 180 at 19-21.

## Conclusion

The industrial schools legislation was important to Ontario reform initiatives in many ways. The original 1874 legislation granted the legal power needed to remove children who were not orphans from the street and place them within institutions where they could be manufactured into productive citizens. While this legislation was not exercised it emphasized an important point. The provincial government was recognizing the need to care and reform these children. Issues of financial support and provincial monitoring are secondary to the importance of the law here. By recognizing the need to remove these children from the streets and situations of neglect the state was backing reformers in their goals.

With the amendments of 1884 the schools were thrust into action. Coupled with increased support this new amendment extended the definition of an incorrigible child to one that was guilty of a petty offence. The legal ramifications of this was great. No longer would children be forced to carry out their sentences within the reformatory, now there was another option open to them, the industrial school. Under no means was a judge under any legal obligation to sentence a child to an industrial school. Since the schools were merely a sentencing option it was still ultimately up to the judge to act in the 'best interests' of the child. As we have seen in chapter three, the criminal justice system was reluctant to give up its reliance on the old English common law. Thus children, despite the establishment of the industrial schools, were still within provincial reformatories and common gaols. The problem may have been addressed through the passing of such legislation but it was by no means solved. Simply legislating something into action did not necessarily mean that

it was carried out.

The philosophy underlying the industrial schools underwent a great deal of change during the decade between the original legislation was passed and the amendment. The original mandate was focussed on neglected and dependant children, it was not until the focus shifted to include delinquent children that the schools began to develop. This extending of the sphere demanded the co-operation of the criminal justice system with the industrial schools. Believing that these schools could be beneficial to delinquent children, school supporters agreed and encouraged the opportunity to reform Ontario's delinquent youth. It would be in the years after the *Act for the Prevention of Cruelty to and Protection of Children*, 1893 that the schools really began to work with the criminal justice system. With the increase of the foster home the schools were now mostly filled with delinquent children, and the 'school of crime' that was so despised by reformers in the reformatories was reinventing itself within the industrial schools.

Clearly the state could not ignore the cost saving advantages of putting child welfare and juvenile justice in the hands of volunteer societies. The foster home model ran on a volunteer basis, whereas an institution such as the industrial school was a financial burden to maintain. Kelso's constant fight to remove children from state institutions was recognized and was in part motivated by cost-cutting opportunities. The 1893 legislation regarding the protection of children changed the face of child welfare policies for delinquent and neglected children in Ontario. This act shifted the responsibility for 'making children good' from the hands of the state to

private voluntary societies.<sup>257</sup> As organizations such as the Children's Aid Society cropped up throughout Ontario and eventually Canada, industrial schools and other juvenile institutions experienced a decline in enrollment as state involvement in moral regulation of children was decreased. Thus, members of the public and private spheres worked together in an effort to reform delinquent children. The state essentially relinquished some authority although it retained control over criminal law, while the less serious offences such as incorrigibility was left to the private sphere. This cooperation of public and private institutions and legal and non-legal personnel marked the beginnings of what some have termed socialized justice.<sup>258</sup>

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<sup>257</sup> "An Act for the Prevention of Cruelty to, and Better Protection of Children", Statutes of Ontario, 1893, c. 45.

<sup>258</sup> Strange and Loo, supra note 4 at 52.



***Chapter Five: The Decline of the Industrial Schools and the Passing of the Juvenile Delinquents Act of 1908***

As the Industrial Schools continued to evolve during the early twentieth century, it had become apparent to reformers and legislators alike that the original intent and purpose of the schools too had evolved. What had begun as an institutional branch of organized philanthropy to house neglected and abandoned children had evolved into a children's prison meant to house juvenile delinquents that could not be placed with the foster care system. As the reformatories for children were being phased out and replaced with new institutions with the passing of the Juvenile Delinquents Act, the schools were becoming the final destination for Ontario's child 'criminal class'. This final substantive chapter is devoted to the change that these schools underwent. Were the schools affected by the changing face of reform movements or were they undercut by the passing of the Juvenile Delinquents Act of 1908, the 'last resort' for those children unable to be placed within a foster home? Could it be that foster home supporters finally won the fight based on the 'best interest of the child', or did simple economics win out? Perhaps it is a combination of all these things. What is certain, however, is that these schools and institutions underwent dramatic changes during the early twentieth century and with increased severity after the passing of the 1908 Juvenile Delinquents Act.

Chapter four's aim was to introduce the reader to the industrial school system focussing on curriculum, government policies, legislative initiatives and public support. I then related all of the above to the five main themes of this thesis. The

previous chapter ended on a positive note, that is, I ended when the schools had reached their peak, roughly about the same time as the passing of the 1893 children's protection legislation. This chapter will focus on how the industrial schools survived and ultimately redesigned themselves in the face of a changing reform movement philosophy toward 'good' and 'bad' children, the provincial government's economic policies, and the development of new federal government initiatives designed to 'protect' delinquent children supported by the creation of a separate juvenile justice system.

What these developments show is that the state did not withdraw from the regulation of the lives of the targeted children. The roles of the provincial and federal governments changed and repressive interventions were elaborated and refined, partly in response to problems with the industrial schools. At the provincial level the state shifted the responsibility to the Children's Aid Society and the foster care system. This did not mean that it stepped out of interventionist and regulatory schemes. Instead, the provincial state retained some measure of control over institutions that operated at a quasi-public level and sought to reduce expenditures. At the federal level the state achieved a comprehensive system of repressive control via new legislation, namely the Juvenile Delinquents Act.

This chapter does not attempt to present a comprehensive examination of the origins and passage of the Juvenile Delinquents Act. Rather, it is intended to highlight how experiences with the industrial schools contributed to the development of the Juvenile Delinquents Act and to present the final chapter of the story of the industrial schools in Ontario.

### Continued Decline of Schools

The 1893 Ontario *Act for the Prevention of Cruelty to, and better Protection of Children*, was much more widely accepted and practised than the 1888 legislation regarding child protection. The effectiveness of this act was due in part to the rapid establishment of Children's Aid Societies. A consequence of this was that the catch phrase used by reformers, 'new childhood' now gave way to 'the best interests of the child'. There was a push to place children who were neglected or abandoned within a family setting. Furthermore, it was believed that children who had been neglected, abandoned or abused should not be allowed to mingle with children who were termed delinquent in anyway. What is key, however, is that children guilty of delinquency were now being pushed through the Children's Aid Society and into foster homes in hopes of rescuing them from a life of crime. Society had spoken, the best place for a delinquent or neglected child was within a family home, one that would foster a better lifestyle filled with good health, Christianity and morality. As well, a good home would act as a preventative measure against future crime.<sup>259</sup> The uplifting of these children from the lower echelons of society to middle class standards was the goal of reformers. Children left to their own devices in such situations of neglect and dependency would be left to fend for themselves and would surely turn to a life of crime. The Royal Commission report of 1891 echoed this belief citing a poor home life as a major cause of crime.<sup>260</sup> Thus, as previously

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<sup>259</sup> Sutherland, *supra* note 1 at 17.

<sup>260</sup> "Report of the Commissioners Appointed to Enquire into the Prisons and Reformatories System of Ontario", *supra* note 107 at 40.

discussed, the foster home had become the favoured solution for dealing with both delinquent and non-delinquent children . Not only would this keep children from institutionalized care but it would also answer the province's cost-saving needs, since the foster care system was run to some degree on a volunteer basis.

A great deal had changed from the onset of the industrial schools movement in the 1870's. During the 1870's there still existed a strong belief in general deterrence and retributive justice. By the time the 1890's rolled around rehabilitation had become the favoured means and message when dealing with young people. Thus the 1880's were a transitional stage for juvenile justice and child welfare. By the late 1880's a new and second generation of 'child savers' were beginning to favour the use of the foster home as a rehabilitation family model of justice as opposed to the strict discipline found in the provinces juvenile reformatories. The industrial schools fell at the centre of the spectrum between a liberal new way of dealing with children via the foster care system and the traditional disciplinary style of the reformatories.

Prior to the 1893 child protection legislation a problem existed for child reformers who were attempting to aid children who had committed a crime. As a general rule the most common crime committed by children was larceny, a criminal offence under the Criminal Code and therefore under dominion jurisdiction. Thus, reformers could only help a small minority of young offenders<sup>261</sup>. Recognizing that the 1888 protective legislation did not grant 'child savers' any jurisdiction over criminal offences, the campaign began for separate trials for young people. In 1893

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<sup>261</sup> Jones and Rutman, supra note 40 at 101-2.

the newly codified Criminal Code of Canada read as follows:

The trials of all persons apparently under the age of sixteen years shall, so far as it appears expedient and practicable, take place without publicity, and separately and apart from that of other accused persons, and at suitable times to be designated and appointed for that purpose.<sup>262</sup>

As was the case with the majority of tradition-changing legislation passed at the time, not all police magistrates found it either expedient or practicable to try these young people separately. It would not be until 1908 that separate trials for young people would become mandatory. What these developments suggest is that some aspects of the regulation of 'problem' children were being delegated to institutions that operated at a distance from the state, while sophisticated state repressive measures under progressive labels such as 'best interests' and 'rehabilitation' were being elaborated.

Placing children within a family setting tended to work well with the nation building and state formation campaigns that were being consciously and unconsciously conducted across the province. A 'good' family was the Canadian ideal and one which society, and the federal and provincial governments were attempting to encourage. Children from the lower rungs of the social ladder could be absorbed into these families and while they received the required dose of love and morality, as dictated by Kelso and the local Children's Aid Society, they also conveniently enough would lose touch with their former lives and adopt a more middle class mind set. I do not want to diminish the efforts of many of the foster

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<sup>262</sup> Criminal Code of Canada, 1893 at s. 550.

parents. Indeed, I believe they were answering the need to house these children. I tend to agree that a child taken from an abusive and negative environment would fare much better in a home setting than in an institutional one along with 50 or 60 other unfortunate children. What I am attempting to show is the shift in institutions and methods used to achieve the same end: a moral, productive young adult defined from the standards of privileged reformers and law-makers.

The bottom line remained the same, children were regarded as special and required special attention, but more importantly, children became adults. The social, economic and political needs of the province and ultimately the nation, came to depend on the effective formation of good citizenship. Whether a child was neglected or delinquent had little relevance for the final product. If the child was neglected then he or she followed a preventative route, if delinquent he or she followed a rehabilitative route. Both of these paths were designed, administered and monitored by the same group of reformers, legislators and government administrators. What changed was the means.

The family itself may be viewed as an extension of institutional social regulation. In this way I believe that the new foster homes were institutional forms that were similar to the industrial schools. There may have been fewer children, less regiment and possibly less potential for abuse and exploitation, but the product was the same - a child would grow up and contribute in a positive manner to the country both socially and economically. The foster home, as much as it was promoted, was developed and maintained upon the same principles and philosophies as previous methods. Religion and morality were fundamental to one's childhood, hard work as

a child meant hard work as an adult and a respect for social ordering and the British crown meant a governable populace. Foster homes and the juvenile delinquents systems, no less than the industrial schools, served to reinforce the hierarchies that ruled the lives of Canadians during the late nineteenth and early twentieth centuries.

The industrial school system was in trouble, but the reformatories were on the brink of closure. The changing population, the creation of the juvenile court system and the child's court movement meant that many more children were now being treated and prosecuted as criminals instead of wayward youth.<sup>263</sup> Kelso and child reformers, trumpeting the new philosophy of the best interests of the child began to get involved. With their position secure regarding child welfare many child savers now turned to juvenile delinquency, and while the industrial schools were deemed inappropriate for petty criminals, the provincial reformatories were institutions that reformers deemed cruel and therefore not in the best interests of the child or the future of the Dominion. As a result, the wheels were set in motion for the eventual closure of these institutions. The fight was not a hard one or a long one and by the early years of the twentieth century both the reformatory for boys in Penetanguishene and the refuge for girls had closed their doors.<sup>264</sup>

The Penetanguishene Reformatory for Boys officially closed its doors in 1904. The closure was seen as a triumph for supporters of a new juvenile justice system but

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<sup>263</sup> Paul Bennett, "Taming 'Bad Boys' of the Dangerous Class": Child Rescue and Restraint at the Victoria Industrial School, 1887-1935" in Historie Social/Social History, vol. XXI n.41 (Mai-May 1988), at 94.

<sup>264</sup> Sutherland, supra note 1 at 118.

there were serious repercussions for the industrial schools.<sup>265</sup> When the boys reformatory closed, the provincial government made no moves to build a new one. Instead the province, at Kelso's persuasion, had the boys placed within a foster home or an industrial school, and any future cases were to be dealt with through the child's local Children's Aid Society or the nearest industrial school. Many claimed that this closing was a great success because 4 years later none of these boys was found in the federal penitentiary. Where were they? These boys of the 'criminal class' had simply migrated to the industrial schools which were now acting as a juvenile jail. In reality the industrial schools had replaced the provincial reformatories for young people and had become the favoured institution for placing boys and girls who displayed delinquent behaviours. Since the reformatory for boys had shut down with few problems, the Ontario Refuge for Girls began downsizing in 1908.<sup>266</sup>

### Setting the Stage for Juvenile Justice

The idea of separate trials for children was not unique to the early twentieth century. Legislation prior to 1908 provided this as an option for those under 16 years of age.<sup>267</sup> In 1894 the federal government passed an act that set the stage for a great deal of juvenile reform to follow. *An Act Respecting Arrest, Trial and Imprisonment*

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<sup>265</sup> Bennett, supra note 263 at 94.

<sup>266</sup> Sutherland, supra note 1 at 118.

<sup>267</sup> Criminal Code of Canada, 1893 at s. 555.



*of Youthful Offenders* was passed in parliament on July 23 1894.<sup>268</sup> This act was an assertion of the federal government's jurisdiction over criminal law and a way to consolidate all the older provincial legislation for the past concerning trial procedures of young people dating back to 1857 legislation dealing with the speedy trial and punishment of young offenders. The act's main achievement was the separation of young people from older criminals during their arrest and trial. As well, provisions were made for the privacy of the young person and for the Children's Aid Society having a role in recommending alternative sentences.<sup>269</sup> However, it would not be until the Juvenile Delinquents Act was passed that further advances would be made toward a completely separate system of justice for young people.

The 'child's court movement' reflected a push to have not only separate trials but a completely separate court system, complete with specialized judges and officers of the court, rules in regards to questioning an under age witness, and sentencing and trial regulations. The principal idea was to remove delinquent children from the police and assize court system, and place them within a specialized system that encouraged reformation and rehabilitation in a paternalistic 'best interests of the child' framework.<sup>270</sup> While Kelso has been credited with much of the advances made in child welfare, W.L. Scott, president of the Ottawa Children's Aid Society, was a catalyst for the quest for a separate juvenile justice system.

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<sup>268</sup> "An Act Respecting Arrest, Trial and Imprisonment of Youthful Offenders" Statutes of Canada, 1894.

<sup>269</sup> Carrigan, supra note 242 at 414-5.

<sup>270</sup> Sutherland, supra note 1 at 119.

Scott believed that Ottawa and those delinquent children within the city's Children's Aid Society would benefit from a child's court and parole system. It was an extremely hard task trying to keep track of the large number of children within the system and in an effort to give them a second chance Scott and other members wanted to supervise these children within the community, preferably through a foster home. Scott had wanted to do this under previous child legislation but he soon discovered that new legislation was needed to achieve his goal. Realizing he needed some help from other communities, Scott broadened the scope of his project not only to a provincial scale but to a national one. Once it had become a national issue, ideas from other communities and provinces came pouring in. Scott, a lawyer and social reformer, had just the political connections needed to pull this off. His father was Senator R.W. Scott, secretary of state in Sir Wilfrid Laurier's government. Scott, with the aid of his father and Senator F.L. Beique, began drafting the Bill which would eventually evolve into the Juvenile Delinquents Act.<sup>271</sup>

In April of 1907 Senator R.W. Scott introduced the Juvenile Delinquents Bill into the Senate. The Bill sparked discussion and debate around issues of increasing crime rates, juvenile delinquency, and the fate of the nation itself. During the second reading of the Bill Senator Ellis told his fellow members that while the statistics showed there was an increase in crime, the statistics also failed to indicate that there had also been an increase in legislation pertaining to the criminal law. Using Sunday Observance and prohibition as examples, he went on to say that in previous years the

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<sup>271</sup> Sutherland, supra note 1 at 120.

same acts were committed without criminal repercussions.<sup>272</sup> I find it interesting that he tried to dispel some of the myths or moral panic around crime. During his speech Ellis also noted that when reading the newspaper and coming across an article about college boys playing pranks on their young classmates, society tends to dismiss this as youthful pranks. When these same pranks are played by boys from the lower classes the prank suddenly develops into a criminal offence.<sup>273</sup>

...when the sophomores have to assert their power over the freshmen, and when the coming graduate has to show to the man below how much superior he is. Here the young men are fitted up by the state to occupy very important position in life, some barristers, some doctors.... if a waif were to do anything like some of the things which are reported in the newspapers as being done by students, he would soon find himself at the bar of justice, and have to answer to the police magistrates for the wrong he had committed.<sup>274</sup>

Other members expressed concern for provincial rights and the fate of the industrial schools. Senator Beique pointed out that the Bill was not intended to interfere with the industrial schools in anyway and was intended: "... to redeem them [delinquent children] in their early years, and make good citizens of them".<sup>275</sup> This did not dispel jurisdictional concerns for some members. Under the proposed Bill the federal government would be legislating into action youth courts and youth detention centres. Under the constitution this fell under the jurisdiction of the

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<sup>272</sup> "An Act respecting Juvenile Delinquents" Debates of the Senate of the Dominion of Canada, 1906-7, at 887-888.

<sup>273</sup> Ibid., at 890.

<sup>274</sup> Ibid.

<sup>275</sup> Ibid., at 892.

provincial governments. Despite a clause that stated that the federal legislation would only go into effect if the provinces wanted to establish these courts and detention centres many members of the House and the Senate had problems with blurring jurisdictional lines. Senator Cloran informed the Senate that the British North America Act did not allow the federal government to create either courts or reformatories for provincial means. He then went on to say that he understood that the clause within the new Bill did not remove this right from the provinces but allowed them to apply federal legislation through the creation of these courts and detention centres. Cloran and other members had a problem with enacting a law that may very well have been unenforceable without the cooperation of the provincial governments. "...it [the law] would be useless because we would have no machinery to enforce it".<sup>276</sup>

With the exception of Ellis, there was general acceptance that there was a problem with current legislation that dealt with young people and the manner in which it was imposed. As a whole the Bill was responded to favourably but the jurisdictional issues caused continued concerns. The Minister of Justice asked Scott to remove the Bill and give the Senate further time to consider it; Scott complied. Both father and son were eager for parliament to pass the Bill at the next session.<sup>277</sup>

In May of 1908, Senator F.L. Beique introduced another Bill into the Senate which was very similar to the one introduced the year before by the elder Scott.

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<sup>276</sup> "An Act respecting Juvenile Delinquents" Debates of the Senate of the Dominion of Canada, 1906-7, at 893.

<sup>277</sup> Sutherland, supra note 1 at 121.

Beique put forth an effective argument and the Bill was considered again by the Senate. During the second reading of the new Bill Senator Coffey raised concern about having the police court and the new 'children's court' in the same building. He went on to say that the name of the court did not matter since it was under the same roof and the children would still be in the vicinity of adult offenders and crime.<sup>278</sup> This matter was of great importance to him as he believed that any stain upon a child's life would carry into adulthood. Despite the cost of setting up a separate building or area to house these new courts Coffey felt that the expense was much less now than it would be in the long run. In the spirit of nation building Coffey stated:

...but for large centres of population the expenditure of a sum of money should have slight weight in the minds of municipal authorities when contrasted with the saving and guardianship of children whose after lives mean much for Canada. To us of this day belongs the task of transforming them as much as we may into useful citizens.<sup>279</sup>

Again we can see the importance of producing a 'good', productive, and above all governable populace to ensure the future success of the Dominion.

Another point of contention was brought forth by Senator Macdonald and this referred to the punishment of parents. Under the proposed Bill, section 28 provided that the parents were to be held responsible for crimes committed by their children either through imprisonment or by a fine of five to fifty dollars. Macdonald noted that most of the families were poor and this would have little effect. While it was agreed that there should be an element of punishment for the parents of

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<sup>278</sup> "An Act respecting Juvenile Delinquents" Debates of the Senate of the Dominion of Canada, 1907-8, at 976.

<sup>279</sup> Ibid.

delinquent children he felt that this fine was too onerous.<sup>280</sup> When finally passed the Juvenile Delinquents Act had in fact not reduced the severity of the penalty but increased the fine to up to five hundred dollars and/or imprisonment for a period not exceeding one year.<sup>281</sup>

It is interesting to note that the industrial school's future was a point of issue for some members. Senator Power informed the Senate that; "When this Bill becomes law, it will, to a certain extent, put the industrial schools throughout the country out of business".<sup>282</sup> What Power was referring to was the fact that in the original Bill there was no real provision made to send children under 16 to an industrial school but rather to the detention centres (that still needed to be built), or they would be absorbed into the foster care system. Beique argued that he believed his Bill would not interfere with the schools, only that a smaller number of children may be sent there. "It is not my understanding of the Bill that it will interfere with the industrial school. Of course there may be smaller numbers sent to the industrial schools, because other means will be tried before having recourse to that...".<sup>283</sup> Nonetheless, an amendment was made to the Bill that made it impossible for a judge to release a child from an industrial school without a report of the superintendent of

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<sup>280</sup> "An Act respecting Juvenile Delinquents" Debates of the Senate of the Dominion of Canada, 1907-8, at 979.

<sup>281</sup> "An Act respecting Juvenile Delinquents" Statutes of Canada, 1908 c.40, at s. 29.

<sup>282</sup> "An Act respecting Juvenile Delinquents" Debates of the Senate of the Dominion of Canada, 1907-8, at 1038.

<sup>283</sup> Ibid.

neglected and dependent children of the province.<sup>284</sup>

Another point of clarification was made by Senator Beique when he was asked about children who turned 18 during the term of their sentence. Beique responded by asking an amendment be made to the Bill to have all children, once under the control of the act, to remain wards of the court until the age of 21.<sup>285</sup>

The Bill then went to the House of Commons where the Minister of Justice, A.D. Aylesworth, presented it as a government measure. There was far less debate surrounding the Bill in the House than there was in the Senate, although the debate in the House was much more aggressive. For example, the M.P. for Simcoe, Mr. Lancaster, protested strongly during the third reading against the passing of the Bill because he felt it would seriously affect the character and liberty of every Canadian child. He went on to state that the Minister of Justice had hastily presented the Bill:

Here is an Act respecting juvenile delinquents, brand new law, brought in during the dying hours of the session, containing thirty-five sections, and after midnight we are asked to pass, but not consider it. It affects the liberty, the character and the treatment of every little child in this country. I am not going to stand for this Bill going through with this most uncalled for haste, and I think the Minister of Justice is not doing his duty in trying to rush it through in this way.<sup>286</sup>

The debate continued and grew increasingly heated with various hidden insults given by various members. The Bill was then discussed in some detail during this

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<sup>284</sup> "An Act respecting Juvenile Delinquents" Debates of the Senate of the Dominion of Canada, 1907-8, at 1038.

<sup>285</sup> Ibid.

<sup>286</sup> Ibid., at 12400-1.

third reading in an attempt to calm the tensions and issues raised.<sup>287</sup>

An issue brought up by Mr. Lancaster was the idea of the child not being afforded the right to trial by jury. In an attempt to protect the child from the public it was put forth that there be no place for a trial by jury within a youth court.

Aylesworth echoed this intent: "The objection to trial by jury is the publicity; the whole idea is to avoid that".<sup>288</sup> Eventually the section that prevented trial by jury won out, despite Lancaster's vehement arguments. Thus, the Bill passed third reading and was passed into law on July 8, 1908.

What is interesting is that throughout all the readings of the Bill concern was raised about Canada being 'behind' other nations in issues of juvenile delinquency. Constant reference was made to advances made in this area in European countries and especially in England and the United States. There seemed to be a fear of how it would look to have Canada still using antiquated methods and practices when dealing with juvenile delinquency. This appears to be a manifestation of concerns about nation building and the state formation of modern citizenship. Canada was trying to portray itself as a progressive, forward-looking nation, and the state was concerned about moulding compliant identities, targeting young people in conflict with the law. These progressive yet repressive measures under criminal law jurisdiction complemented the restructuring of responses to children at the provincial level.

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<sup>287</sup> "An Act respecting Juvenile Delinquents" Debates of the House of Commons of the Dominion of Canada, 1907-8, at 12400-3.

<sup>288</sup> Ibid., at 12404.



### The Juvenile Delinquents Act, 1908

Within the act itself one can find distinct definitions of what it meant to be a child, and especially a delinquent child during the early twentieth century. Under the act a child was a boy or girl under the age of sixteen years.<sup>289</sup> A juvenile delinquent merited a much more extensive definition:

...any child who violates any provision of *The Criminal Code*, chapter 146 of the Revised Statutes, 1906 or of any Dominion or provincial statute, or of any by-law or ordinance of any municipality, for which violation punishment by fine or imprisonment may be awarded; or, who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute.<sup>290</sup>

The intended effect was that the Juvenile Delinquents Act would have complete jurisdiction over any child involved with the law in any way, provided that child was not transferred to adult court by the youth court.

The Juvenile Delinquents Act was one that viewed children as special and fundamentally different from adults, so different that a separate system of justice was needed. Reading through the act there is a lot of reference to 'the best interest of the child and the community'. In this way the act was attempting to balance the needs of both the child and the community. Clearly if a child committed murder then the community would be fearful for their safety; in this situation the needs and protection of the community would win out. Section 16 (5) of the act requires the court to take

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<sup>289</sup> "An Act respecting Juvenile Delinquents" Statutes of Canada, 1908 c. 40 at s. 2(a).

<sup>290</sup> Ibid., at s. 2(c).

into account "...the child's own good and the best interests of the community..."<sup>291</sup>

But if a child committed petty theft, then the emphasis was on granting a second chance or at the very least not to have one misguided event ruin the child's life.

Section 31 of act makes this clear as it provides that : "...as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance".<sup>292</sup> This set the stage for the system of juvenile justice that was to exist within Canada.

Stemming from this philosophy, the act legislated into place a variety of safeguards regarding the protection of the child's identity and future. For example, section 14 of the act allowed a judge to conduct the trial of a child in an informal manner as long as the proper administration of law was not compromised.<sup>293</sup> Section 10 dealt extensively with the privacy that should be awarded to the child under the act. The trials were to be private and without publicity, under no circumstances was the name of the child to be printed on the trial report. Further, the trial could be held in a private place other than the courtroom. A judges chamber or another private room in the court house or municipal building was deemed appropriate.<sup>294</sup> In an effort to fully ensure that the children were kept separate from any publicity and adult offenders, section 10 (2) further stipulated that: "...an interval of half an hour must be allowed to elapse between the close of the trial or

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<sup>291</sup> "An Act respecting Juvenile Delinquents" Statutes of Canada, 1908 c. 40 at s.16(5).

<sup>292</sup> Ibid., at s. 31.

<sup>293</sup> Ibid., at s. 14.

<sup>294</sup> Ibid., at s. 10.

examination of any adult and the beginning of the trial of a child".<sup>295</sup> Clearly there was an emphasis on protection of the child within the law.

The act dealt extensively with jurisdictional issues, reflecting concerns expressed during its passage, and the success of the act would ultimately depend on the cooperation of both the provincial and federal governments. As set out in the British North America Act, 1867 the federal government was given exclusive jurisdiction over the criminal law and the provinces jurisdiction over its administration. The provincial government had also been given jurisdiction over the civil status of persons. Thus the act defined delinquency as an act committed by a boy or girl under the age of 16 at any level of law.<sup>296</sup> Since the provinces were accorded the right to set up courts at certain levels the federal government had to depend on the provinces to do their share and set up youth courts and detention centres. Consequently the Juvenile Delinquents Act would only be put into force after the provinces had developed both detention homes and juvenile courts. Section 34 of the act clearly states:

This Act may be put in force in any province, or in any portion of a province, by proclamation, after the passing of an Act by the legislature of such province providing for the establishment of Juvenile Courts, or designating any existing courts as Juvenile Courts, and of detention homes for children.<sup>297</sup>

Therefore the passing of the Juvenile Delinquents Act itself did not in itself create a

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<sup>295</sup> "An Act respecting Juvenile Delinquents" Statutes of Canada, 1908 c. 40 at s. 10(2).

<sup>296</sup> Sutherland, supra note 1 at 121.

<sup>297</sup> "An Act respecting Juvenile Delinquents" Statutes of Canada, 1908 c. 40 at s. 34.

separate system of juvenile justice. It took the cooperation of the federal and provincial governments to implement the Act.

Once the provinces had developed these detention homes and juvenile courts, the Act granted the juvenile court wide powers. Section 16 of the Act provided that no matter the severity of the crime the youth court had complete jurisdiction. It was then up to the discretion of the court if the crime was to be considered an indictable offence and if the child should be transferred to adult court. Once in adult court the youth court lost all jurisdiction as the child would be treated as an adult and for all legal purposes was considered an adult.<sup>298</sup>

The youth court also had a wide variety of options available to them when sentencing a child who had been found guilty of a crime, the only stipulation being that the court act in the best interests of both the child and the community. These options ranged from giving the child over to the Children's Aid Society or an industrial school. The act absolutely forbade the court to sentence a child to any institution or home that housed adult offenders such as the penitentiary or a common gaol.<sup>299</sup> "No juvenile delinquent shall, under any circumstances, upon or after conviction, be sentenced to or incarcerated in any penitentiary, or county or other jail, or police station, or any other place in which adults are or may be imprisoned".<sup>300</sup> The act also provided for juvenile court committees and probation officers to advise juvenile court judges on how to deal and communicate with

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<sup>298</sup> "An Act respecting Juvenile Delinquents" Statutes of Canada, 1908 c. 40 at s. 16.

<sup>299</sup> Ibid., at s.22

<sup>300</sup> Ibid.

children.<sup>301</sup>

### Effect of the Juvenile Delinquents Act on the Industrial Schools

The schools were directly affected by the passing of the Juvenile Delinquents Act, although I hesitate to claim that the act was solely responsible for the schools' decline. In the fourth report of the Superintendent of neglected and dependent children for the year of 1896, Kelso informed the reader that:

The industrial schools question has occupied a good deal of public attention during the past year, owing largely to the decrease in the number of committals to these institutions. There has been considerable speculation as to the cause of this decline, but there can be no doubt but that the popularity of the Children's Aid movement, and the simplicity and economy of newer methods, has had much to do with it.<sup>302</sup>

Despite the fact that this report was filed almost 8 years before the passing of the Juvenile Delinquents Act, it is clear that the stage had already been set for the decline of these schools. A new appreciation for childhood which had influenced child reform initiatives during the early years of the child welfare movement had reinvented itself to now included those children under the control of the law. When the schools first opened there existed no other institution for children who had fallen into evil ways. In fact, Kelso asserts that during the 1880's it was not uncommon to see parents bringing their children before the magistrate in an effort to get their

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<sup>301</sup> "An Act respecting Juvenile Delinquents" Statutes of Canada, 1908 c. 40 at s.23 & 24.

<sup>302</sup> "Fourth Report of work under the Children's Protection Act of Ontario" 1896, at xvii.

children off the streets and in hopes of them securing an education, a trade and hopefully a prosperous future.<sup>303</sup> With the changing face of these schools there was not a move to enrol one's child anymore; instead of a 'boarding school for the poor' these schools eventually became an institution steeped in criminal activity and aggression. The closing of the reformatories had transformed these schools into a prison for children guilty of crimes more serious than larceny or petty theft.

A fear that was expressed during parliamentary debates and within society itself was that with the passing of the Juvenile Delinquents Act the schools would eventually be forced to close. This was not the case; in the 1908 report of the Superintendent of neglected and dependent children it was reported that the schools' population was in fact increasing.<sup>304</sup> Yet the schools continued to decline in terms of a healthy atmosphere and initial reform policies, the school had become, in many ways, like the provincial reformatories that had been closed earlier. From 1906 to 1908 the total population for the four industrial schools in Ontario increased from 351 to 413 children.<sup>305</sup> It appeared that more children were being prosecuted as criminals and since there no longer existed a reformatory for either boys or girls they were being sent to the schools.

Legislators like Scott and other reformers generally felt that the new act had effectively met the demand for a separate system of justice for young people. Indeed

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<sup>303</sup> "Fourth Report of work under the Children's Protection Act of Ontario" 1896, at xviii.

<sup>304</sup> "Sixteenth Report of work under the Children's Protection Act of Ontario" 1908, 83.

<sup>305</sup> Ibid.

it did in many respects. "In a very real sense, therefore, those responsible for its passage could look upon the new Juvenile Delinquents Act as a great triumph for the idea of family-centred care of problem children".<sup>306</sup> It effectively consolidated into one act many of the advances made during the tail end of the nineteenth century regarding young people and crime. The emphasis was on rehabilitation and the foster care system was being trumpeted as an environment conducive to rehabilitative practices.

The Juvenile Delinquents Act bridged a jurisdictional gap between the provincial and federal government regarding children. While the Act represented advances in setting out distinct roles and procedures for children, I think its most important advance was that the best interests of the child were no longer solely in the hands of the judiciary. Previous legislation that tended to challenge traditional rules was often not supported by the courts as we saw in chapter three. Instead, the government at both levels had a larger role to play in determining the 'best interests' of the child. Again we see that patriarchy was not displaced but simply transferred. Nonetheless, the Juvenile Delinquents Act represented a comprehensive repressive measure that extended nation-wide and empowered officials with wide discretionary powers over the lives of children in conflict with the law. A detailed study of this measure is beyond the scope of this thesis.

Perhaps it is not fair to claim that there was a decline in the schools but a new development. There was a need to house children within society. What had

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<sup>306</sup> Sutherland, supra note 1 at 123.

originally been institutions meant to house children guilty of petty municipal and provincial offences and/or neglected children had become the equivalent of a child's prison. In the interest of building a nation that was governable the state, coupled with efforts by reformers, was essentially separating the good from the bad. The 'good' children, those worthy of a second chance, were placed within foster homes. The 'bad' children, those destined to spend a life in crime and poverty were not as lucky in finding a place in the foster care system and were forced to reside in the schools, which by the turn of the twentieth century had become a hardened environment emphasising discipline and order.

As such issues of overcrowding, lack of proper support and poor management plagued the schools. In an effort to survive, the schools were forced to take in older children, those up to 16 years of age, in accordance with the new Juvenile Delinquents Act. As such, by 1910, only 2 years after the passing of the Act the schools' population was made up of older boys who had been hardened due to their experience with the criminal law.<sup>307</sup> The schools continued to receive criticisms in the face of a changing reform movement. Paul Bennet informs us that:

The school, [Victoria Industrial School] which had begun in June of 1887 with such great enthusiasm and reforming zeal, gradually deteriorated into a dilapidated, 'cold-blooded state institution' in the 1920s and was finally ordered closed by the Ontario public secretary in December 1934 amid sensational public accusations that it was a 'barbarous and antiquated' institution.<sup>308</sup>

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<sup>307</sup> Bennett, supra note 182 at 225.

<sup>308</sup> Ibid.



Economics had a great role to play in the decline of the schools.

Philanthropic efforts trumpeted by reformers such as Kelso and Scott were much more economically efficient. Depending upon the state to run institutions such as the industrial schools had become a burden for both those who were running the schools and for the government itself. The Juvenile Delinquents Act was based upon the existence of such institutions but this federal legislation did not provide the financial support for the schools. Instead, this fell onto the provinces. The foster care system was run with little state support as it was primarily a volunteer effort. Thus philanthropic efforts were favoured over state sponsored institutions.

### Conclusion

The demise of the industrial schools coincided with the decentralizing of measures at the provincial level, notably the increased importance of the Children's Aid Society and foster homes. This did not represent a withdrawal of the state from the lives of children. Rather, the state's interventions were made more cost effective, enlisting the support of non-state institutions, and most significantly were extended in the repressive sphere through the passage of the Juvenile Delinquents Act. This introduced a comprehensive and targeted system of control over the lives of children in conflict with the law. While interventions were developed at both levels of government, an earlier intervention, the industrial schools, became increasingly irrelevant.

## *Conclusion*

The research presented in this thesis has shown the changing pattern of state intervention into the lives of delinquent and/or neglected children during the late nineteenth and early twentieth century in Ontario. The state was involved in the lives of these children to some degree throughout the nineteenth century but the level of direct intrusion into the family sphere changed over this time. The industrial schools have been at the centre of this research. I believe the industrial schools are an important point in the nineteenth century developments since this is one intervention where we can see with particular clarity the state participating directly in the task of reforming and rehabilitating children. Through the passing of the industrial schools legislation and the creation and maintenance of these schools, the provincial government was sending a strong message. Children who were either deemed to be delinquent or pre-delinquent needed to be institutionalized in order for them to be transformed into 'good' citizens. Once reformed they would re-enter society and presumably fulfill their place in society as hard working, industrious, healthy and, above all, compliant citizens.

This research was not aimed at all children, indeed most children in Ontario and Canada led normal lives and were not institutionalized apart from their exposure to public schooling which, of course, also developed throughout the nineteenth century. This research has been directed to those children who either came in contact with the criminal law or who were neglected or dependant. Middle class reformers, intent on making the world a better place for these children, were working within mixed objectives. True, there was a problem with child poverty and neglect but there

existed another agenda. These children cluttered up city streets, they were unkept, many were involved in street vending and they were perceived by middle class reformers as the future criminal class. I believe that these movements were as much about 'saving' these children as they were about keeping the city streets free of troublesome youngsters and reducing future crime rates.

There have been five basic themes that were introduced in chapter two and have run through this thesis: nation building, state formation, moral regulation, the 'new childhood' and reform movements in civil society. These five concepts have set the social and political context for the research within this thesis. Each touches upon the ideas and objectives behind the industrial schools, child welfare legislation and juvenile justice in some way.

What was fundamental to the development of legislation and institutions directed at reforming, housing and training children was that middle class concerns were addressed and government initiatives were implemented to ensure that Canada's future would rest in the hands of competent adults and good citizens. If the citizens did not share the views or ideals of the dominant social interests and governments, then the nation was sure to fail encountering deepening conflict and crisis. Canadian middle and upper class reformers and politicians alike understood that the key to the success of the country lay in the hands of the children. These children, some neglected, some delinquent, needed to be taught to respect prevailing hierarchies and institutional structures within society and a compliant and governable populace would follow.

Judging the morality of others fell into the hands of middle class reformers.

The state certainly had a part to play in the task of moral regulation but it was the reformers that took the first active initiatives, making it easier for the state to get involved in an area that it was traditionally somewhat removed from. Perceived notions about the evils of alcohol, illicit literature, sex and other social vices penetrated the minds of middle class reformers and in turn was played out in reform propaganda. Middle class society was obsessed with reform initiatives though not all were geared at children, many were focussed on women and the daily lives of the working class.

Regulatory schemes intended to manage the moral nature of these groups were widespread and penetrated every facet of daily life and the law was an important means of intervention. In the case of children it ranged from public schooling to criminal justice. In the research presented here moral regulation played a large role within the industrial schools. Children were not only trained in a trade but were schooled in religion and middle class values. Young girls were taught the basics of housekeeping and child rearing, their ultimate goals in life. Young boys were discouraged from gambling and drinking and told of the evils that ensued once one had partaken in these evils. Underlying these regulatory schemes was an emphasis on family. Girls were told that their roles as women was to be a wife and mother and boys were told that their role was that of the breadwinner. The emphasis was on producing Canadian citizens and ones that would be brought up within middle class values and ideals.

The fear of working class children becoming part of the criminal class was then expanded to all children. Many middle class reformers feared that poorly

brought up children would have an influence upon those children from the middle and upper classes who were properly brought up, but may suffer a moment of weakness and be susceptible because of proximity in urban settings. It is this attitude that justified the reformers' beliefs in encouraging the state, via organizations such as the Children's Aid Society, to enter a home and remove the children if it were deemed that the home life was not suitable. This also encouraged the idea of segregation and the separation of public schools. This did not necessarily mean that these children were to be elevated to the middle class. On the contrary, these children were intended to remain within the working class, but they were to pass on to their future children middle class philosophies values.

The image of Canadian childhood underwent drastic changes from colonial times to the beginning of the twentieth century. The idea of 'child', originally regarded as a miniature adult, evolved into philosophies about protecting and managing both delinquent and non-delinquent children. Who was really responsible for these children? Clearly parents were responsible for their children but what happened when the parents were perceived to have failed in this task? Legislators, through pressure from reformers about the perceived evils of the home life of lower and working class children, stepped into the private family sphere and legislated accordingly.

The law played a central role in this transformation. As I have shown, the English common law before the nineteenth was steeped in patriarchy. Traditional patriarchal common law was displaced, to some degree by the new legislative initiatives as set out in chapter three. These new legislative initiatives blurred the line

between the public and private sphere resulting in increased regulation of the family. Receiving pressure from new legislation did not necessarily change what occurred in the court rooms. In fact, more than not judges initially clung to the old English common law as the best and only way to deal with these children. Whereas in the traditional common law the father was seen as knowing what was best for his family, particularly the children, the state eventually stepped in as the patriarchic figure to more actively determine what was best for these children. The implementation of the 'best interests' philosophy was left in the hands of officials whose values tended to reflect privileged or middle class male attitudes. How could these men know with certainty and objectivity what was truly in the best interests of these children?

Section 7(6) of the 1884 Industrial Schools Act is reflective of the 'best interests' philosophy. The section, recommending that children found guilty of a petty offence be sent to an industrial school as opposed to a provincial gaol or reformatory, gives the impression that society felt that these institutions were too harsh an environment for these children. The law reflected two positions; on the one hand the law gave the option to judges to place children in the industrial schools answering societies concern about the harshness of the reformatories, on the other hand sentencing children to institutions meant only for juveniles was not made mandatory. Thus, the power still lay with the judiciary and they could deem what was in the best interest of the child based on what little they knew of the child and his or her circumstances. It was only with the passing of the Juvenile Delinquents Act of 1908 that the judiciary was forced to sentence juveniles to institutions developed specifically for young people.

As expressed in the law, the state had long taken a 'hands off' approach towards children. As chapter three has shown there was a drastic shift in state intervention expressed through legislation beginning with the 1799 Apprentice and Minors Act to later legislation such as the 1893 'Children's Charter'. The government at all levels had taken the plunge into the private sphere and once there it was impossible to remove the state from the family. Consequently, during the 1870's and 1880's we see a building frenzy of children's institutions with the industrial schools at the centre. The provincial government reacted to perceived social problems through the only means it had, building institutions and passing repressive legislation. It would not be until the 1890's that reformers would again pressure the state. This time the state was asked to remove itself from its role as child protector and reformer and delegate the responsibility to organizations such as the Children's Aid Society who, backed by the legal power of the state, decided that they could act in the 'best interests' of the child. This did not mean that the federal or provincial state removed itself from the lives of these children. Instead they worked in the shadows and allowed private organizations to do the work, saving both money and the image of a neutral state. Many of the state initiatives meant improvement in the lives of children but it also meant a dramatic increase in the role of the state, for better or worse.

Legal initiatives were reflective of social demands in many respects. As society reacted to the perceived increase in juvenile delinquency the state was forced to react. As shown through the legislative debates surrounding the Industrial Schools acts and the Juvenile Delinquents act, Canadian and Ontario legislators were

concerned with preserving Canadian identity and being different than their American and British counterparts. There was a strong desire to maintain Canadian purity and identity through this legislation. The goal was to react to the problems of juvenile delinquency such as the Americans and British had but with a Canadian touch. Thus, children were to be taken off the streets and housed in schools where they could obtain a basic education and not clutter up Ontario's streets, whereas London was overrun with 'beggar children'. With regards to juvenile delinquency Canadian children were to be reformed through Christianity and education (in theory) so that when they were released they would not recommit and contribute to the growing perceived problem of juvenile delinquency as the Americans were experiencing.

How does the research presented here relate to the events of today? That is, what have Canadians learned from the industrial school experience? What I see to be the most fundamental theme emerging from the research is the need for the juvenile justice system and the Children's Aid Society to co-operate more effectively. During the late nineteenth and early twentieth century children were seen to be either delinquent or neglected and depending on which category a child fell into determined if that child received punishment or sympathy. Children involved in criminal activity generally need help from both systems. I feel that we still fall into the trap today when dealing with delinquent and/or neglected children. One group evokes compassion and the other fear. If the juvenile justice system and the Children's Aid Society could find a way to co-operate more effectively then possibly we could help as many children as we aim to punish.

The industrial schools system also shows us that the more things change the



more they stay the same. The schools were introduced in an attempt to eliminate the reformatories and to ease the social pressure of neglected children. Eventually the reformatories did close down and the 'troublemakers' the industrial schools were trying to avoid slowly moved in and within no time the industrial schools soon resembled the earlier reformatories - hardened schools of crime for young people. Similarly we see the same idea happening today. Sentencing goals continually change. In the 1980's there was a push for rehabilitation of youth and taking a softer approach to juvenile crime than in previous years. The pendulum has swung back again and society is demanding harsher sentences and laws regarding young offenders. It appears that Canadians are continually changing their minds from generation to generation on how to best deal with young people in conflict with the criminal law.

This thesis shows that with the introduction of systematic state intervention into the lives of perceived troubled children, regulatory initiatives cannot be separated from repressive ones. The industrial schools and other legislative initiatives such as child protection legislation were meant to help children but at the same time they were also meant to regulate them. Quasi-public organizations such as the Children's Aid Society and the foster care system were excellent examples of how the state lent its power to the cause of regulating children. The state stepped in to monitor the workings of these organizations and granted the Children's Aid Society the legal power needed to enter a private citizen's home and remove his or her children. The industrial schools stand as an excellent example of the shift in patriarchy within society. Children once under the rule of their father were now

under the rule of the state within the walls of the industrial schools where they were educated in Christianity, morality and middle class values.

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