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Youth Criminal Justice Policy in Canada

A Critical Introduction

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Dedicated To PJC, E and M

Introduction

Although this short book is generally aimed at students of youth crime, I want to broaden the conversation to include youth who may not be guests of the criminal justice system, but who are nevertheless part of a drift towards punitiveness and social exclusion in Canada.

There are many reasons that Canadian social policy has drifted in this direction. This book describes that drift, its consequences, and where we might go from here. In Chap. 1, I examine the criminalization of youth in early Canada up to the present day. I provide a historical discussion of youth in Canada, paying attention to the widely accepted idea that concepts such as youth, teenagers, pre-teens, and children are social constructions reflecting broader social and cultural values and conditions. As with concepts like gender and "race," social constructionist theorists have long pointed to the ways in which such seemingly objective social phenomena are in fact manifestations of what Berger and Luckmann (1967) call "nomos building"—the process by which people try to impose "meaningful order on experience" which in turn is crucial to the larger project of making official versions of reality come to be taken for granted. Yet such processes are themselves subject to situations in which the "taken for granted" becomes problematic and new versions of reality are constructed in response. In this chapter, then, I attempt to paint a picture of the changing concept of youth and childhood, and how these shifting definitions in turn have been reflected in social and youth justice policy.

In Chap. 2, my objective is to provide an empirical account of young people's experiences of being young in the current economic and social context. In addition, these data are presented in the context of the broader drift in late capitalist societies towards hyper-individuation, the widening gap between the rich and the poor, and the contradictory tendency to deal with these issues by conjuring up policies that at best, offer us more of the same. The chapter then turns to the broader problem of the social exclusion of youth in Canada. Drawing upon the recent work of John Muncie (2008), and Elliott Currie (2004), I focus on what scholars have called the "punitive turn," both within families and within the broader social structure in which the criminal justice system is embedded.

Having presented what I hope will be a useful contextual framework for understanding contemporary youth deviance and criminality, Chap. 3 offers data on the nature and contours of youth offending. I do not wish to provide an overview of the myriad theories that have evolved over many decades purporting to explain youth crime. That task has been accomplished admirably in numerous textbooks and monographs. Instead, I want to draw upon and connect the issues discussed in Chaps. 1 and 2 with these data to offer a critical perspective on youth crime. I provide a set of criteria with which to weigh the validity and reliability of such theories, and then provide a provisional perspective on the causal nexus.

In the fourth and final chapter, I provide a policy agenda that addresses the issues explored earlier in the book. I have always argued that we cannot expect to solve crime with law. Yet increasingly, Canadians have witnessed an almost obsessive compulsion on the part of policy and law makers to trivialize the realities of young people's existence by making and attempting to enforce harsh, harmful, and ultimately ineffective laws. It is my hope that this book will provide a fresh perspective on what in my view has come to be an increasingly narrow conversation on the role of youth in our society, why they sometimes fail to "measure up," and what we can do about it.

Finally, this book was originally supposed to be an updated version of a book I had written on youth and the Canadian criminal justice system in 1999. Since that time, the main legislation governing youth crime has changed. But as I began to plan this book, I realized that although the legislation had changed so too had many other things. Although I borrow heavily from the material I wrote back in 1999, this volume adds other layers to my analysis of the social forces and conditions that shape Canada's youth and children and attempts to integrate this analysis with the broader theme of social control, as well as with the criminal justice response to young people's transgressions.

A Critical Approach to Youth Justice

There is no question that understanding and responding to crime requires taking what goes on in the minds or bodies of individuals seriously, but as with some sociological theories, the case for individual biological or psychological factors is too often overstated. Biological and psychological theories of crime do help us to understand some aspects of, and some types of crime, but fail to explain many other more common crimes, and most variants tend to ignore the relationship between social factors and biological and psychological functioning.

The policy implications of these perspectives focus on treatment and rehabilitation. And while many sociologists by and large support such programs, they also argue that our response to crime should attempt to change the social environment in which biological and psychological factors interact. Kelly (1996: 467) puts the matter more strongly, arguing that treatment programs focusing exclusively on the individual are usually unsuccessful because policy makers and practitioners have

failed to recognize that those being "treated" exist in a social world, to which they must return after treatment. That social world has made demands on them. It has played a central role in making that person who they are, and it will continue to do so after the individual has been "rehabilitated." To ignore this is to completely misunderstand the realities of that individual's life. Not surprisingly, when individual treatment fails the fault is seen as residing with the individual, not in social terms, ironically perpetuating a hopeless cycle of failure. In addition, ignoring the individual's immediate social environment such as peers, parents, and school may be one thing, but individualized treatment cannot deal with the *larger* social environment in which peers, parents, schools, and the offender exist. Put another way, individualized "solutions" to youth crime ignore *larger* social, political, and economic factors, such as the way market societies operate to create schools that set students up for "success" and "failure," marginalize those who do not meet "standards," or create conditions under which families live in poverty from which there is little likelihood of escape.

Thus, this short volume examines youth crime in the context of a critical perspective on youth and society. What does it mean to take a "critical" perspective within criminology? Beginning with the idea that society is characterized by conflict between interest groups over values and resources, critical criminologists argue that it is impossible to separate one's principles from the criminological enterprise (Schwartz and Friedrichs 1994). It is argued that all perspectives on crime have inherent biases towards particular views of the world. Hence, critical criminologists *choose* to examine crime on behalf of the underprivileged or weak. Further, because they locate the causes of crime in the nature of the social structure, critical criminological perspectives generally seek solutions to crime in radically *transforming* the social structure. This book has a specifically Marxist/critical orientation which in itself is a multi-faceted approach.

Critical theories, including those that could be called Marxist in orientation, start with the idea that people make decisions and choices about their actions and lives, but within circumstances they have *not* chosen themselves. Put another way, young people may well choose to commit violent crimes, but critical theorists would be interested in the ways in which social structural factors (such as poverty, dropping out of school, or some other disadvantage) contributed to that youth's decision to commit his or her crime.

Beginning with the idea that human beings are conditioned by their social circumstances, critical theories maintain that factors like exploitation, alienation, power, and social class are central to an understanding of crime, and that crime is a "rational response" to the demands of capitalist society (Gordon 1973; Greenberg 1981). Moreover, such approaches maintain that people learn to commit crime in circumstances where their attachment to the conventional social world has broken down and when they lack legitimate opportunities to participate in conventional social life. Unlike more mainstream theories, however, marxist approaches locate factors like juvenile offenders, their peers, schools, families, and the strain they experience, *within the context of capitalist social relations*. It is capitalism as a

social system, and the relationships that exist within and characterize this system that in the final analysis, are responsible for crime.

For instance, *left idealists* would contend that many youth who commit crime are simply reacting to their position in the class structure. They have little connection with the working world, little or no hope for the future, and diminished life chances and so their crime is a reaction to their circumstances. They are, in effect, modern day "Robin Hoods," whose actions symbolize the plight of the working and underprivileged classes and their resistance to the political and economic system (capitalism) that represses them (DeKeseredy and Schwartz 1996).

There are many criticisms of this position. One of the most important is the empirical fact that the vast majority of crimes committed by working class people victimize other working class individuals, and not the middle or capitalist classes which repress them. Another problem with left idealism is its tendency to assume that being poor or working class automatically predisposes one to commit crime. Again, however, we know empirically that not all poor young people commit crimes and we also know that many harmful crimes are committed by the wealthy and powerful in our society.

Because they dismiss working class crime as inconsequential and as "proto-revolutionary" activity, idealists focus too much attention on crimes of the powerful, thereby ignoring some crucial realities. Moreover, because street crime is ignored in this way, and since the causes of crime are said to be so fundamentally rooted in the nature of capitalism, idealists tend to have very few concrete proposals for reducing crime. Instead, they argue that nothing short of a fundamental "revolution" in the way we produce, a transformation to socialism, will solve the problem of crime once and for all.

More recent, neo-marxist theories of youth crime have made some advances over left idealism. Colvin and Pauly (1983) maintain that adults experiences of authority and control at the workplace create particular perceptions and responses to authority in general. These bonds are translated into family relationships between parents and parents and children, and are reinforced by educational and peer experiences. In short, delinquency is a consequence of the authority bonds that exist in workers' lives. While conditional empirical support for this theory has been found, it remains relatively untested and ignores a range of other factors that contribute to juvenile crime, particularly gender (Simpson and Elis 1994).

More recently, Colvin (1996) argues that crime is linked to the process of social reproduction, defined as involving the institutions of socialization that prepare people for productive roles in society (1996: 60). When such institutions fail to prepare youth for participation in the economy, society loses the productive potential of these individuals, experiences higher costs of welfare and prisons, and higher rates of crime and other social pathologies. Thus, Colvin takes the explicitly marxist position that crime is a consequence of social structural inequality stemming from the class structure of capitalist society which in turn determines the priorities and resources allocated to major institutions of socialization such as families and schools. Kids who do not do well in school or go to disadvantaged

schools, hang out with peers in the same social situation and who come from disadvantaged families are more likely to commit crime.

The keys to reducing crime, then, include better supports for the poor, comprehensive job training, nationwide parent-effectiveness programs, preschool programs, expanded and enhanced public education, service programs that encourage youth to participate in adult and community life, enhanced workplace environments emphasizing democratic control, collective bargaining which encourage the development of self-directed, creative employees, economic investment in industries meeting human needs and services, and a more progressive income tax system (Colvin 1996).

Left realists take some of the arguments made by idealists seriously, but build a much more "practical" or "realistic" theory of crime and what is to be done about it. In addition to arguing that crime is a serious problem for the working class, John Lea and Jock Young (1984: 81) two of realism's most important defenders, argue that the cause of crime can be placed in the context of the equation, Relative Deprivation = Discontent, Discontent + Political Marginalization = Crime. Discontent is a product of relative deprivation because it occurs when comparisons between comparable groups are made which suggests that unnecessary injustices are occurring. Relative deprivation is the notion that people perceive their position in society in different ways and relative to other people. For instance, poor people might not view themselves as worse off than others *if everyone* around them is poor, but in the midst of a society that is blatantly unequal, their perspective might be different. It is "poverty experienced as unfair (relative deprivation when compared to someone else) that creates discontent" (1984: 88). For Lea and Young, political marginalization consists of two components: "isolation from the effective channels of pressure-group politics, and isolation from processes whereby political interests can be clearly and instrumentally formulated" (1984: 214).

In addition, left realists use the metaphor of the "square of crime," to illustrate the relationships between key people and institutions in the study of crime. The square consists of 1. the state, which is responsible for law-making, policing, and sentencing, 2. the general public, which reacts to crime, 3. the offender, and 4. the victim. Thus, Young (1992: 27) argues that:It is the relationship between the police and the public which determines the efficacy of policing, the relationship between the victim and the offender which determines the impact of crime, the relationship between the state and the offender which is a major factor in recidivism.

The implications of this theory are particularly interesting for understanding youth crime because most young people are socialized to believe that the future holds promise, that it can be realized with a little hard work, and that failure to achieve these goals is a failure of the individual, not the system. When their expectations are not fulfilled, they replace legitimate and conventional interests with a "diffuse set of resentments and grievances"—they become discontented. This discontent, when combined with the inability to change things through legitimate avenues (such as voting, or through access to powerful interest groups),