The British 1998 Crime and Disorder Act: A ‘Restorative’ Response to Youth Offending?

1. INTRODUCTION

The term ‘youth’ is very elastic, as it means different things in different spatial and temporal contexts and/or political systems. However, what these contexts and political systems have had in common is the need to control their delinquent youth. The ‘enterprise’ for controlling the ‘dangerous youth’, known as juvenile justice system, does of course not operate in a social policy vacuum, but co-exists alongside other networks influencing, regulating or controlling the lives of the juveniles, such as child care and education. The primary aim of this article is to examine the extent to which the British 1998 Crime and Disorder Act (CDA) has introduced elements of a restorative approach as part of a mainstream response to youth offending. Moreover, it attempts to examine whether, by introducing restorative justice elements, young offenders are being held more or less accountable for their actions. Occasional reference will be made to the Canadian Youth Criminal Justice Act (YCJA), which came into effect in April 2003, since it shares a number of similar characteristics with the CDA, and serves as a comparative counterpoint. But before moving to the presentation of the relevant sections of the British 1998 CDA and the Canadian 2003 YCJA, it should be appropriate to look at the evolution of the two systems, since it is useful in terms of helping us understand the ways in which the current juvenile systems are influenced.

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2. A HISTORICAL RETROSPECTION ON JUVENILE JUSTICE IN BRITAIN AND CANADA

Generally, juvenile and adult offenders were treated the same in the criminal justice system until the 1830s, in both Britain and Canada. In 1840, a British parliamentary Bill was introduced to give the magistrates the right to sentence young offenders, under the age of twelve. Fourteen years later, under the Youthful Offender Act 1854, reformatories were introduced to ‘educate’ the juvenile delinquents, and in 1857 legislation provided a solid basis for the establishment of the ‘industrial’ schools again for the dangerous youth. Several years later, in 1879, under the Summary Jurisdiction Act, measures were implemented in order that juvenile delinquents could be tried by the magistrates’ courts, thus reducing significantly the number of incarcerated youth. The evolution of juvenile justice in Britain is not that dissimilar from the evolution of juvenile justice in Canada. Not only is there a shared social and political history but the two countries’ juvenile justice systems tend to parallel each other in a number of significant ways in terms of their ideological objectives – although there are notable differences in terms of their respective general features. For example, the key personnel in England and Wales are juvenile justice specialists while in Canada they are lawyers and childcare experts. In England and Wales, the general purpose of intervention is to retrain while in Canada, the focus is on sanitating behaviour and balancing it with appropriate treatment/intervention.

In Britain, these were the main responses to juvenile delinquency in the nineteenth century. However, it was not until 1908 that juvenile justice begun taking shape as a distinctive way of dealing with young offenders. Specifically, as noted by Watson and Austin,

‘The Children’s Act 1908, heralded as the Children’s chapter, was a highly progressive measure; the most important of its provisions was the establishing of the separate juvenile court from which the public were to be excluded’.

This Act also abolished imprisonment for juveniles, set the basis for the creation of borstals and was an amalgamation of welfare and punitive measures. However, the most important aspect of the Act was not its innovation in terms of provisions but the shaping of the concept of the juveniles as being a separate category with special characteristics. The Act has been characterized as embracing a welfare perspective not