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Citation Information

Boyd, Neil. "The Cruelty of Benevolence: The Release of Delinquents from Ontario's Training Schools." *Osgoode Hall Law Journal* 19.2 (1981) : 237-266.
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol19/iss2/3>

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THE CRUELTY OF BENEVOLENCE: THE RELEASE OF DELINQUENTS FROM ONTARIO'S TRAINING SCHOOLS

By NEIL BOYD*

I. INTRODUCTION

The release procedures of Ontario's training schools are not easily discernable. Though *The Training Schools Act*¹ provides for indeterminate sentences for young offenders, the Act says only of release that, "[t]he Minister . . . may . . . order a child released from a training school upon such conditions as he thinks fit."² The Minister of Community and Social Services is clearly not making release decisions for all Ontario training schools; he is merely held accountable by the legislation. The search for a more accurate "release" context demands that one's attention turn elsewhere, in this instance to regulations made under *The Training Schools Act*.

The regulations provide that the Training Schools Advisory Board shall "review all submissions for wards to be placed in homes and in each case, recommend to the Minister . . . whether or not a placement of the ward be made."³ The Training Schools Advisory Board is apparently constituted in this instance as a kind of juvenile equivalent to the National Parole Board or the Ontario Parole Board. The regulations further provide that, "[t]he progress and development of each ward shall be assessed periodically by the superintendent which assessment shall be forwarded to the [Training Schools Advisory] Board and shall recommend that . . . the ward be placed from the school. . . ."⁴ This clearly hands the responsibility for initiating release procedures to the superintendent of the given training school.

The *Training Schools Manual* of June 1977, gives institutional staff further guidelines regarding the release of juveniles from training schools. The Manual notes:

[i]t is the responsibility of the Superintendent to determine when a student is ready to graduate and to give the Probation and Aftercare Service adequate notice, via a placement referral report. It is the responsibility of the Probation and Aftercare Service to advise the training school regarding the suitability of a particular setting for placement.⁵

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The author would like to thank Judge George M. Thompson and the Training Schools Advisory Board for making this research possible. Thanks also to Professor Richard Ericson, University of Toronto, for his perceptive comments on earlier drafts.

¹ R.S.O. 1970, c. 467.

² *Id.*, s. 19.

³ R.R.O. 1970, Reg. 815, s. 32(a).

⁴ *Id.*, s. 6(b).

⁵ Ont. Ministry of Correctional Services, *Training Schools Manual* (Toronto: Ont. Ministry of Correctional Services, 1977), s. D.

The Manual also notes that the child ought to be involved in the decision respecting placement.⁶

One gleans from these provisions that the superintendents of Ontario's training schools have great discretionary powers with respect to the release of young inmates. While the precise manner of such exercise of power is discussed later in this paper, it is sufficient to note at this point that a child's good behaviour and attitude can win him early release. Bad behaviour, both criminal and non-criminal, can serve to lengthen the institutional commitment.⁷

Ontario's present release procedures are complicated by the concept of wardship. *The Training Schools Act* provides that, "[u]pon admission to a training school, a child becomes a ward of the training school, and the superintendent may exercise the rights and duties of a guardian for the purpose of the care, custody and control of the child."⁸ The Act also allows the Minister to order that the wardship shall cease upon release or thereafter, and provides that, barring such an order, wardship shall continue to be in effect until age eighteen.⁹ The regulations under *The Training Schools Act* provide that the Training Schools Advisory Board shall "review all submissions for the termination of wardship and recommend to the Minister those cases where it is considered wardship of the school should cease. . . ."¹⁰

The concept of wardship appears to be something of an appendage to the actual release procedures discussed earlier. The concept institutionalizes what is essentially a parole system within the juvenile correction framework. The released offender remains under the watchful eye of the aftercare officer until age eighteen. *The Training Schools Act* provides that a miscreant ward may be taken away from his home and placed back in the training school upon the written authority of the Minister.¹¹ In effect, through the concept of wardship, the aftercare officer may control both the criminal and non-criminal behaviour of the ward.

The Training Schools Advisory Board operates under certain rules of thumb in making recommendations concerning termination of wardship. The Board will terminate wardship if the ward has had one year of satisfactory adjustment within the community.¹² Should he fail to meet this standard, the state's wardship will typically terminate upon the individual's eighteenth birthday. The fact that wardship is terminated prior to this age in only twenty percent of cases suggests that long-term wardship is deeply rooted within

⁶ *Id.*

⁷ See documents relating to release, Appendices A, B, C, *infra*.

⁸ R.S.O. 1970, c. 467, s. 17(1).

⁹ *Id.*

¹⁰ R.R.O. 1970, Reg. 815, s. 32(b).

¹¹ R.S.O. 1970, c. 467, s. 19.

¹² Personal discussions with the Board revealed that they will generally terminate wardship after one year of satisfactory adjustment. The judgment as to adjustment will come from the aftercare officer.

the juvenile system, especially in view of the fact that most training school wards are released after their sixteenth birthday. Even the most model sixteen year old often remains under the spectre of wardship until his eighteenth birthday. Indeed, it seems fair to say that most of Ontario's young incarcerates are given a "life" parole—at least within the context of the juvenile system.¹³

II. A THEORETICAL ANALYSIS OF RELEASE PRACTICES

As noted, *The Training Schools Act* provides for indeterminate institutional commitment and indeterminate commitment to wardship. A province-wide experiment that was slated to begin in September, 1978, was to have Family Court judges impose determinate sentences on children committed to training schools.¹⁴ The judges were to prescribe maximum sentences in all cases of institutional commitment. This attempted change to determinate sentencing appears to have been caused, in part, by disillusion with the rehabilitative ideal. There was, at a senior policy level, some rethinking of the rationale behind the legal response to juvenile delinquency. The role of deterrence in disposition was acknowledged and the incarceration of delinquents on the premise of rehabilitation was increasingly seen as problematic.¹⁵

As of September, 1980, the experiment had not yet begun. Resistance from training school personnel and probation and aftercare officers has been substantial.¹⁶ Critical analysis of the nature of indeterminate commitment is tantamount to professional and often personal rebuke, since the diminution of one's powers of help is often seen as an act of condescension.

Wheeler has documented the major theoretical assumptions that underlie indeterminate sentencing.¹⁷ The indeterminate sentence is thought to provide "an incentive for the offender to participate in treatment and thus facilitate rehabilitation."¹⁸ It is also thought to be instrumental in transforming the status of the institution from custodial to rehabilitative. A natural consequence of the indeterminate sentence is indeterminate and individualized release. Indeterminate release is premised on the notion that either administrative boards or treatment staff have the ability to predict the success of rehabilitation efforts. Indeterminateness provides the flexibility that allows the state to release offenders upon rehabilitation. Thus the rehabilitated offender need not be burdened by an "unnecessarily" long sentence.

¹³ Actual data concerning the process of release will be presented in text accompanying notes 111-33, *infra*.

¹⁴ Discussions with George Thomson, Associate Deputy-Minister, Children's Services, yielded this information. This fact was also corroborated with the superintendents of various training schools.

¹⁵ *Id.*

¹⁶ Personal communication from Dick Barnhorst, Programme Policy, Children's Services, Ont. Ministry of Community and Social Services (Sept., 1980).

¹⁷ Wheeler, *The Computerization of Juvenile Correction, Demystification of the Therapeutic State* (1976), 22 *Crime and Delinquency* 201 at 204-206.

¹⁸ *Id.* at 204 and 204n. 16, citing Prettyman, *The Indeterminate Sentence and the Right to Treatment* (1972), *Am. Crim. L. Rev.* 7 at 15.

The claim that the indeterminate sentence creates an incentive for offender rehabilitation is not verified by the empirical literature. Wheeler notes, "[t]here has been no controlled study . . . in which statistically equivalent youthful offenders [have been] randomly assigned to fixed and indeterminate commitments to similar types of institution. . . ."¹⁹ Also, the claim that the indeterminate sentence has transformed custodial institutions into rehabilitative environments is a spurious one. The fact that training schools are seen as last resorts and the burgeoning decarceration movement tend to discredit this claim.

Finally the notion that treatment staff and administrative boards can judge the appropriateness of a given release is suspect. Allen notes of his empirical study of the indeterminate sentence, "[t]he comparison of outcome for 443 boys consecutively released from a maximum security institution for juveniles . . . reveals gross inability of staff members to predict outcome. In only 72 of the 443 cases [16 percent] were the staff able to make such a prediction."²⁰ The empirical literature on predictions of dangerousness similarly strengthens the claim that release procedures cannot be accurately individualized.²¹ The argument that indeterminateness provides more individualized flexibility in release is misleading. The lack of predictive validity suggests that such flexibility in decision-making has no utility.

Indeterminate release, like indeterminate sentencing, is the product of the rehabilitative ideal. A rejection of the rehabilitative ideal leads to a recognition that the legal response to juvenile delinquency must be restructured, or at the very least, rethought. Fox has urged that administrators of the rehabilitative juvenile justice system rethink the sense of their intrusions into delinquent children's lives.²² While such intrusions may well be justified on other grounds, the categorization of this intervention as helpful is clearly not justified. One does not look to the stated motivation of those who wield power over others to determine whether the exercise of such power is aid or punishment, since the loss of liberty may be perceived by these individuals as punishment. Fox notes the comment of Cahn: "though boys throw stones at frogs in sport, yet the frogs do not die in sport but in earnest."²³

Fox advocates that the juvenile court respond to delinquent conduct and not to the delinquent himself; he asserts a child's right to punishment. He argues that decisions respecting the length of sentence ought to be made by the legislature. Treatment staff and administrative boards do not have an

¹⁹ Wheeler, *id.* at 205.

²⁰ *Id.* at 205 and 205n. 21, citing Allen, *The Indeterminate Sentence In America: An Empirical Test*, paper presented to Western Division of American Soc'y of Criminology (May 3-4, 1974).

²¹ See most notably Ennis and Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom* (1974), 62 Cal. L. Rev. 693.

²² Fox, *The Reform of Juvenile Justice: The Child's Right to Punishment* (1974), 25(2) *Juvenile Justice* 2.

²³ *Id.* at 8, citing Cahn, *The Sense of Injustice* (Bloomington: Indiana Univ. Press, 1964) at 113.

expertise which allows them to identify rehabilitated offenders. Their individualized release decisions are thus properly seen as arbitrary. Fox argues that decisions about punishment are properly "a matter of public debate, in a forum where all can be heard and where decisions about seriousness are appropriately made."²⁴

Fox also points to a valuable by-product of a juvenile justice system that simply renders punishment: treatment programmes will have to be sold to the delinquent consumer rather than imposed upon him.²⁵ The legislature would enact a guarantee that no child could be subjected to further punishment, or any deprivation whatever, for refusing to accept treatment.

Ericson argues that many problems face individuals released from penal institutions.²⁶ These are structural problems that cannot be ameliorated by the forced intervention of the juvenile aftercare officer or by the continuation of wardship.

The typical juvenile offender seeks some form of employment upon release. Usually, he is ill-qualified for jobs that have good pay and pleasant working conditions and he is also subject to "the unpredictability implied by the criminal label."²⁷ As Ericson notes, "employers who offer minimal pay and [poor] working conditions [can] capitalise on the ex-inmate's predicament to fill jobs which are normally categorised as undesirable."²⁸

The delinquent's community presents him with another potential problem. Ericson notes that, "[f]or neighbours the fact of criminality stands for much more than an ancillary characteristic of the subject."²⁹ The community may employ a kind of contamination hypothesis; neighbours may prohibit their children from associating with the released delinquent. This prohibition may lead to "a loss of valued friendships, or to surreptitious meetings outside the sphere of influence commanded by parents."³⁰

Thus, the released delinquent will inevitably face certain social constraints; the coerced intervention of the aftercare officer may well be simply perceived as a troublesome addition to these constraints.³¹ The juvenile may

²⁴ Fox, *id.* at 8.

²⁵ *Id.*

²⁶ Ericson, *Young Offenders and their Social Work* (Westmead, England: Saxon House, 1975).

²⁷ *Id.* at 209.

²⁸ *Id.*

²⁹ *Id.* at 208.

³⁰ *Id.* at 209.

³¹ A few comments made of parole in the adult system may closely approximate the perceptions that many juveniles have of their institutional experience:

The best way to get a parole is to start off being a real mess—hostile, aggressive—then taper off, gradually, so the bulls and screws think you're improving—otherwise you won't be noticed.

It's a game—if you're quiet you will be suspected of keeping it all inside, so you might as well have the fun.

From Marcus and Conway, *A Canadian Group Approach Study of Dangerous Sexual Offenders* (1971), 15 *International Journal of Offender Therapy* 59 at 61.

resent the officer's intrusion; he may quite properly believe that the aftercare officer has little, if anything, to offer. Coerced rehabilitation may become an unproductive burden rather than an aid to the juvenile.

These problems of the individualized release process illustrate its potentially oppressive nature. One can begin to see that *coerced* rehabilitation is highly problematic.

In contrast, a fixed sentence would not require a system of coerced reform. The released individual would not have to worry about presenting himself as a properly "rehabilitated" human being. There is no evidence that such a requirement yields any corrective efficacy and it is this lack of evidence that seems to be a concern of Ontario's Children's Services at the present time.³²

It is not clear that even the planned change to determinate sentencing will bring about any significant changes in release practices. Family Court judges are unlikely to prescribe what they perceive as fixed sentences. They will realize that by so doing they are depriving Ontario's training schools of their statutorily expressed reason for existence. *The Training Schools Act* states that the purpose of the training school is "to provide the children therein with training and treatment and with moral, physical, academic and vocational education."³³ The length of such training and treatment cannot be set with any specificity as it is thought to depend upon the individual's physical, academic and vocational progress within the institution.

Ontario's institutional staff generally think of themselves as well-equipped to monitor the child's progress. They believe there will be a continuation of present release practices with a determinate sentencing system.³⁴ The monitoring of the juvenile's progress will simply be restructured so as to accommodate itself to the given sentence. Training school staff also appear to believe that indeterminate release procedures are crucial. These procedures are thought to provide a vehicle for the promotion of institutional control and for the maintenance of a satisfactory level of staff morale.³⁵

What seems most likely, given determinate sentencing, is that Family Court judges will impose sentences that are the limits of incarceration. The sentences will serve to exclude the possibility of unreasonably lengthy detention. As a consequence of the determinate sentence, juveniles will not spend less time in Ontario's training schools, only the possibility of gross abuse will be removed.³⁶

Indeterminate release also flourishes in the adult system which has fea-

³² See most importantly, *Newsletter*, Children's Services, Ont. Ministry of Community and Social Services, No. 4 (February, 1978).

³³ R.S.O. 1970, c. 467, s. 2.

³⁴ Discussions with training school personnel at St. John's, Oakville, Pine Ridge, Brookside and Hillcrest revealed this belief.

³⁵ *Id.*

³⁶ Juveniles may spend less time incarcerated in institutions as a consequence of Ontario's move to decarcerate. It is not clear, however, that the introduction of determinate sentencing will affect the length of any individual's institutional commitment.

tures like earned remission and the National and Ontario Parole Boards. In the juvenile system the case for indeterminate release is thought to be more compelling. The juvenile offender is believed to be more malleable than the adult offender and more likely to benefit from the treatment. As noted, indeterminate release is a product of the treatment ideal. The rejection of indeterminate release demands, then, a rejection of the ideal of coerced treatment. The majority of the staff of Ontario's training schools do not appear ready to reject this ideal. The recommendations of the Training Schools Advisory Board indicate that it is not about to abandon the ideal of coerced treatment.³⁷

A rejection of indeterminate sentencing without a corresponding rejection of indeterminate release procedures deprives no one in the training school system of their alleged expertise. The application of the fixed sentence, however, would reduce correctional personnel to custodial status. The society in which we live does not ascribe much status to humane custodians, as status is more a product of power, prestige and affluence. Anything that diminishes an individual's power and prestige is likely to be met with great resistance.

The change that determinate release demands of institutional staff is a major change in role. Institutional staff who pride themselves upon their positions may be very loath to voluntarily surrender power and prestige. They will naturally believe that they are making a worthy contribution to their community. Self-respect would appear to demand such a viewpoint.

III. ONTARIO'S RELEASE PRACTICES: THE LEGACY

The first Ontario legislation respecting "training schools" was passed in 1874. *The Industrial Schools Act of 1874* was not concerned with the control of juvenile criminality as we now know it.³⁸ The Act provided that:

Any person may bring before the police magistrate any child apparently under the age of fourteen years, . . . (1) who is found begging or receiving alms . . . (2) who is found wandering and not having any home . . . (3) who is found destitute . . . (4) whose parent . . . represents . . . that he is unable to control the child . . . [or] (5) who, by reason of the neglect, drunkenness or other vices of parents, is suffered to be growing up without salutary parental control. . . .³⁹

This Act prescribed fixed terms of confinement for children who met any of these criteria. This Act also provided for an order that such children "be sent to a certified industrial school; which order shall be in writing, and shall specify the name of the school, and the time for which the child is to be detained in the school. . . ."⁴⁰ The length of sentence was to be dependent

³⁷ Consider the following statement from the Training Schools Advisory Board Minutes (Dec. 1, 1977):

[W]e cannot help but be aware of the past history of the relationship between x and his mother and the lack of success of placement therein. In accepting this placement the Board would appreciate it if closer than normal supervision could be given . . . should there be any marked deterioration in x's behaviour, that he be removed to an alternate placement. . . .

³⁸ 1874, S.O. 37 Vict., c. 29 (2d Parl., 3d sess.).

³⁹ *Id.*, s. 4.

⁴⁰ *Id.*, s. 5.

upon the time thought "proper for the teaching and training of the child . . ." and was not "in any case [to extend] beyond the time when the child will attain the age of sixteen years."⁴¹ The Act contained a number of early release options that tended to act against the fixed nature of the given sentence. It permitted a child sent to an industrial school "to live at the dwelling of any trustworthy and respectable person. . . ."⁴² It also allowed the Chief Superintendent of industrial schools to "order any child to be discharged from a certified industrial school, either absolutely or on such conditions as he thinks fit."⁴³ The Act further provided that, "[w]henever it is satisfactorily proved that the parents of any child . . . have reformed and are leading orderly and industrious lives . . . the board of school trustees may discharge said child to the parents. . . ."⁴⁴

The Industrial Schools Act of 1874 can be appreciated as a statute that prescribed determinate sentences in a context of indeterminate release proceedings. The availability of a "good" home was one factor that could dictate early release; the Act did not speak of other factors that might similarly dictate such release. A good home was one in which the parents were "leading orderly and industrious lives." A lack of order and a lack of industry demanded the intervention of the state; the potentially industrious and productive young had to be taught the ethics of the society of the day. The contaminating effects of an unproductive and disorderly slum life had to be excised.

What emerges from the study of release practices under *The Industrial Schools Act of 1874* is the marked similarity to present legislation. Recall that in September, 1978, Ontario judges were to begin imposing determinate sentences in a context of indeterminate release proceedings.

Indeterminate release proceedings in 1874 carried the same philosophical underpinnings as do the present release proceedings. Teaching and training were at the core of the industrial school programme at that time; teaching and training are similarly at the core of present training schools programmes. While the present guidelines of indeterminate release are more precise than the "availability of a good home" guidelines of 1874, it can be argued⁴⁵ that this "precision" represents only cosmetic change.⁴⁶

The state response to juvenile criminality in late 19th century Ontario was to be found in *An Act respecting the Ontario Reformatory for Boys*.⁴⁷ The Act allowed confinement "for an undefined period . . . [p]rovided that such

⁴¹ *Id.*

⁴² *Id.*, s. 9.

⁴³ *Id.*, s. 13.

⁴⁴ *Id.*, s. 23.

⁴⁵ See text accompanying notes 111-33, *infra*.

⁴⁶ For a comprehensive analysis of such development in historical context see Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Sheridan (London: Allen Lane, 1977).

⁴⁷ 1880, S.O. 43 Vict., c. 34 (4th leg., 1st sess.).

boy shall not be detained for a longer time than the maximum term of confinement for which he might have been sentenced for the offence of which he was convicted. . . ."⁴⁸ If indefinitely committed, the boy was to remain incarcerated "until he be reformed or otherwise fit to be apprenticed or bound out, or . . . probationally or permanently discharged. . . ."⁴⁹ The Act contained two possibilities for early release. It asserted that,

[i]n order to encourage good behaviour and industry among the boys in the said Reformatory, and with a view to permitting every boy to earn a remission of a portion of the term for which he was sentenced . . . it shall be lawful . . . to make rules so that a correct record of the conduct of every boy may be made under the mark system.⁵⁰

Good marks were to be given for "good conduct, proficiency in school, and industrious habits."⁵¹ These good marks could secure an early release, "[p]rovided that no action . . . be taken . . . in respect of any boy who has not been at least one year in the said Reformatory."⁵² Early release could also be obtained under section 33 of the Act. The section allowed boys to be apprenticed out to "any respectable and trustworthy person" willing to undertake their care. The boy had to be "over the age of twelve years" and willing to act "as an apprentice to the trade or calling of such [respectable and trustworthy] person."⁵³

Many training schools in present day Ontario have designed early release procedures that closely approximate the earned remission scheme of the 1880 Act. Good work habits, good attitudes, dependability and healthy social relationships can secure early release for today's training school inmates⁵⁴ (see Appendices A, B, C).

In over one hundred years the essence of Ontario's indeterminate release from confinement has remained unchanged. Though the legal machinery of the process has undergone cosmetic transformations,⁵⁵ the reality of coercive rehabilitation remains in existence. From the early decades of the century to the present, available documents, statutory and otherwise,⁵⁶ fail

⁴⁸ *Id.*, s. 28.

⁴⁹ *Id.*

⁵⁰ *Id.*, s. 31.

⁵¹ *Id.*, s. 32.

⁵² *Id.*

⁵³ *Id.*, s. 33.

⁵⁴ The progress reports used in both Hillcrest and Brookside training schools speak of "dependability and attitude, social relations and work habits."

⁵⁵ See most importantly: *The Industrial Schools Act, 1910*, S.O. 10 Edw. 7, c. 105 (12th leg., 2d. sess.); *The Industrial Schools Act, 1931*, S.O. 21 Geo. 5, c. 73 (18th leg., 2d sess.); *The Training Schools Act, 1939*, S.O. 3 Geo. 6, c. 51 (20th leg., 3d sess.), s. 5(5).

⁵⁶ A flavour of correctionalist sentiments is revealed in Vols. 18-70 *Ontario Sessional Papers* 1886-1938, Annual Reports of the Inspector of Prisons and Reformatories of the Province of Ontario. Later publications similarly add to our understanding of the problems of those charged with institutional care of juveniles in Ontario: see, Ont. Dep't of Reform Institutions, 1947-65 *Annual Report of the Department of Reform Institutions* (Toronto: Queen's Printer, 1947-65), Part II: Training Schools.

to indicate any substantial changes in the philosophical underpinnings of Ontario's release mechanisms.

A legislative initiative, *The Industrial Schools Act, 1931*,⁵⁷ created an Industrial Schools Advisory Board, the precursor for today's Training Schools Advisory Board. This Act provided that the Advisory Board "make recommendations pertaining to . . . parole and define the conditions under which [parole may be received]."⁵⁸

In 1939 industrial and training schools within the province merged and thereafter all were called training schools. The *Training Schools Act, 1939*⁵⁹ was very similar in structure to the *Industrial Schools Act, 1931*. The Industrial Schools Advisory Board simply became the Training Schools Advisory Board. The new Act retained the concept of ministerial responsibility that had been established in 1931 for the release of training school wards.⁶⁰ It provided that "[t]he Minister may, at any time, order that a boy or girl . . . be discharged from a training school either absolutely or on such conditions as he may think fit."⁶¹ Section 26 of the Act provided that the Minister may make regulations:

- (b) in regard to all training schools . . .
 - (iii) fixing the age at which and conditions under which boys and girls may be admitted to training schools, the period during which they may be kept at training schools and the conditions under which they may leave or be discharged therefrom.

There were no other release options provided for in the legislation, and under the new section 26 no regulations respecting release were actually passed. The first training school regulations respecting release were passed in October 1970.⁶² These regulations are in effect at the present time.

The essential operating structure of training school release procedures had been established. Ministerial responsibility for release was entrenched; the Training Schools Advisory Board was to "make . . . reports to the Minister" concerning the "wardship, care, health, treatment, conduct and discipline" of training school inmates⁶³ and regulations with respect to inmate release could now be introduced by the Minister. The next thirty years would simply see the shaping of policy within this legislative framework.

At the present time the rhetoric of coercive treatment is still very much in existence. Release from training school is still to be dependent upon clinical judgments as to the adequacy of "rehabilitation." On June 8, 1978, the Honourable Keith Norton introduced the *Training Schools Amendment*

⁵⁷ S.O. 21 Geo. 5, c. 73 (18th leg., 2d sess.).

⁵⁸ *Id.*, s. 37(d).

⁵⁹ S.O. 3 Geo. 6, c. 51 (20th leg., 3d sess.).

⁶⁰ *Id.*, s. 10.

⁶¹ *Id.*, s. 10(c).

⁶² R.R.O. 1970, Reg. 815.

⁶³ *The Training Schools Act, 1939*, S.O. 3 Geo. 6, s. 5(5).

Act into the Legislative Assembly.⁶⁴ A December, 1977, paper from the Ministry of Community and Social Services proposed that, "[a] *judicial hearing should be required before a ward is transferred from a community placement to a training school.*"⁶⁵ Section 7 of the *Training Schools Amendment Act* showed that the government has ultimately backed away from this proposal. The decision to return a ward to the training school will continue to be an administrative decision. The 1978 Act simply provides that the Minister or the "Area Administrator" has the power to order a return to training school.⁶⁶ The Training Schools Advisory Board continues to review submissions regarding the placement of wards;⁶⁷ thus, there is no suggestion that present release procedures are substantially changed by the *Training Schools Amendment Act*. Deviant juveniles continue to be released in accordance with a model that applies coercive treatment. The amount of time served will generally be dependent upon the adequacy of the individual's rehabilitative efforts within the institution.

There is, however, another movement afoot in Ontario corrections. The closures of some Ontario training schools indicate that the government is attempting to de-institutionalize the juvenile corrections system. It is to this movement that consideration is now given.

IV. ONTARIO'S MOVE TO DECARCERATE—IMPETUS, STRUCTURE AND PURPOSE: IMPLICATIONS FOR RELEASE PROCEDURES

On February 2, 1978, the Honourable Keith Norton announced the closure of two Ontario training schools, effective April 1, 1978. In a newsletter from Children's Services, Barnes notes:

[t]he closures are the result of a recent analysis of youths entering the system through the Oakville Reception and Assessment Centre . . . our own evaluations and other research indicate that secure settings, such as training schools, are not effective in serving the majority of children currently in the system. At the same time, we recognize that there are children who require secure care because they represent serious dangers to themselves and to others. Last year, only 22.5 percent of children in training schools fell into this category. Children whose problems are less severe can receive adequate service within their own communities, often while living at home.⁶⁸

In a report from Ontario's Ministry of Correctional Services one sees the beginning of this way of thinking.⁶⁹ The report concerns alternatives to

⁶⁴ Bill 113, 1978 (31st Leg. Ont., 2d sess.).

⁶⁵ Ont. Ministry of Community and Social Services, *Consultation Paper on Short Term Legislative Amendments* (Toronto: Min. of Community and Social Services, Children's Services Division, 1977) at 88.

⁶⁶ *The Training Schools Amendment Act, 1978*, Bill 113, (31st Leg. Ont., 2d sess.), s. 7.

⁶⁷ R.R.O. 1970, Reg. 815, s. 32.

⁶⁸ *Newsletter*, *supra* note 28.

⁶⁹ Ont. Ministry of Correctional Services, *A Review of Alternatives to Incarceration of the Youthful Offender* (Toronto: Ont. Ministry of Correctional Services, Planning and Research Branch, 1976).

the incarceration of the youthful offender. The authors note that children who come into conflict with the juvenile justice system tend to have the following characteristics:

family environments . . . at best, unstable and at worst dysfunctional . . . careers in the school system which are not only frustrating to themselves but also to the school staff . . . siblings or peers who have similar problems of adapting to the various situations in which society has placed them . . . [and] contact with helping agencies prior to their contact with the juvenile justice system.⁷⁰

The authors then suggest that even though these characteristics accurately describe the situation of delinquent youths, "there is no model which establishes these factors as being causal to delinquency."⁷¹

The report notes that research has demonstrated that "the incidence of delinquent behaviour (both criminal and status offence) is widespread *throughout* the juvenile population."⁷² The majority of delinquent youths do not, however, come into contact with the juvenile justice system. The authors suggest that "[t]he lack of a universally acceptable causal model and the extended baseline of delinquency have caused people to question traditional modes of dealing with juvenile delinquency."⁷³ Most traditional approaches to delinquency have been ineffective in producing significant changes in the behaviour of the juveniles concerned. The authors note: "[i]t is felt that the major underlying reason [for failure] is that the traditional approaches do not aid the children to cope with problems in their natural environments. Consequently, the emphasis has now been placed on community based programmes."⁷⁴

Yet the analysis in this particular report goes beyond the simple assertion of a preference for adherence to community based-corrections. The authors note that "it is not certain if even this new emphasis will in fact produce any better results."⁷⁵ They recognize that the traditional response to juvenile deviance has been "to attempt to raise motivation and aspirations in the hope that deviance will then be diminished."⁷⁶ They perceive that "in most instances the means of achieving goals are not altered [and that] increased aspirations may in fact increase the problems the child is experiencing in the family setting."⁷⁷

The authors of this report appear to recognize that societal organization could effectively limit the success of a correctional movement, be it institutional or community-based. The delinquent juvenile of the correctional system is typically unable to achieve a great deal; the goals that he can

⁷⁰ *Id.* at 1.

⁷¹ *Id.*

⁷² *Id.* [Emphasis added.]

⁷³ *Id.* at 2.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 3.

⁷⁷ *Id.*

realistically set for himself are not such as to provide him with any significant upward mobility. Motivations and aspirations may well be raised, but the reality of the delinquent's situation is that he must adjust to a position at the lower end of the socio-economic structure. He cannot reasonably aspire to much success as it is defined in our hierarchically organized society.

The authors of this report nevertheless believe that this difficulty could be resolved within a community-based correctional system. They argue that, "[t]he solution may be either to increase the aspirations of the family rather than the aspirations of the child, or to realign the child's aspirations with achievable goals."⁷⁸ The authors are suggesting that family counselling could provide all concerned with a vision as to what might be accomplished. There is an implicit presumption that the family could pursue its aspirations as a unit whereas the individual could not. The authors also suggest that the child define achievable goals and that the delinquent either ignore or accept his limitations.⁷⁹

Literature from the United States suggests a growing interest in the de-institutionalization of juvenile corrections. A presentation to a Senate subcommittee on juvenile delinquency detailed the failure of juvenile institutions.⁸⁰ In it Skoler notes:

It was perhaps unrealistic to expect that institutions could be effective. An institution, in itself, makes for an artificial situation, unrelated to circumstances which prevail in the outside society that either contribute to lawful behaviour or produce delinquency and criminality. The typical institution is a substitute, forced into artificiality by the very circumstances of confinement.⁸¹

Skoler further argues that community-based corrections force the administrators of the system to focus efforts on rehabilitation. He notes that:

The average community in this nation possesses more resources that can be used. . . . it is only in the community that rehabilitation of the offender can ultimately take place. Here is where he must live, if he is to take place in harmony with the rest of society, and here is where he must be adjusted to the habits and styles of life which will enable him to do so.⁸²

Skoler goes on to argue that community-based corrections are possibly a product of the conceptual revelations of the sixties linking delinquency inextricably with community, environment, and external opportunity as opposed to individual makeup or psychological deficiency.⁸³ Skoler is probably correct in asserting that the socio-cultural change of the sixties provided an impetus for the decarceration movement, yet he fails to follow his analysis

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ United States Congress, Senate, *Detention and Jailing of Juveniles: Hearings Before the Subcomm. to Investigate Juvenile Delinquency*, 93rd Cong. 1st sess. (Sept. 10, 11, 17, 1973) (Washington: U.S. Gov't Printing Office, 1974), Appendix 10, Skoler, "Future Trends in Juvenile and Adult Community-Based Corrections," 435.

⁸¹ *Id.* at 435.

⁸² *Id.*

⁸³ *Id.*

to what appears to be its logical conclusions. If, as Skoler notes, delinquency is inextricably linked to community, it is the community which then must bear responsibility for bringing about changes in patterns of delinquency.⁸⁴

Another presentation to the Senate argued that institutional treatment for juveniles has been reaping too little success to justify the lavish public expenditures being made.⁸⁵ The Citizens' Committee for Children of New York noted that, "[c]are and funds are lavished on buildings, with too little remaining for the care of the children in those buildings. . . ."⁸⁶ The Committee also argued that institutional approaches to the problem of juvenile criminality suffer from important initial drawbacks. They noted that:

the schools are in lonely countryside physically and environmentally far from the communities to which the youngster must return . . . we know that pulling a child out of his own environment is most likely to be harmful and destructive although there may often be good reason to have him live away from his own home.⁸⁷

The Committee outlined two important reasons for the existence of the decarceration movement. It was becoming more and more apparent that training schools were not rehabilitating their young lieges. At the same time many people were beginning to question the costs of institutional treatment. It was quite possible that a community-based correctional system could be run more cheaply, more effectively and even more humanely than an institutionally-based correctional system.

In Massachusetts all training schools were discontinued in the early seventies. Bakal notes of the Massachusetts experience,

The change from institutional to community care for youth . . . came about because this State . . . was failing to effectively rehabilitate juveniles . . . institutions failed for reasons inherent to their aims and operation. Their primary role was custodial . . . the expenditure of energy to keep the children confined, orderly and obedient left practically no time for the requisite amount of individual attention.⁸⁸

What emerges from this analysis is a perception that the coercive treatment model of the institution is about to be set down within a community-based correctional system. The coerced treatment of juvenile deviants is not being impugned, only the institutional framework. Coffey argues of the American experience: "[p]erhaps many states, already recognizing the ex-

⁸⁴ It may seem strange to suggest that one might want to bring about changes in patterns of delinquency. The author is merely introducing a note of caution here. No mass society to date has been able to produce such an informed consensus of values.

⁸⁵ United States Congress, Senate, *Juvenile Confinement Institutions and Correctional Systems: Hearings Before the Subcomm. to Investigate Juvenile Delinquency*, 92d Cong. 1st sess. (May 3, 4, 5, 17, 18, 1971) (Washington: U.S. Gov't Printing Office, 1972), Exhibit 9, Report on the New York State Training School System, findings and recommendations from the Citizens' Committee for Children of New York, Inc., (Dec. 15, 1971) 385-90.

⁸⁶ *Id.* at 387.

⁸⁷ *Id.* at 388.

⁸⁸ Bakal, "The Massachusetts Experience," *Delinquency Prevention Reporter*, April, 1973 at 1-3.

pense and inefficiency of outmoded institutions, must follow the example of Massachusetts and force the creation of small, community-run treatment centres as a means of insuring the rehabilitation of delinquents."⁸⁹ This approach has important implications for release procedures within a community-based correctional framework. In those instances where the delinquent juvenile is ordered to reside in a place of correction within the community, release will once again be dependent upon the adequacy of rehabilitative efforts, but, the delinquent juvenile will now be released from a community-based residence rather than an institutional residence.

At this point one begins to understand the impetus behind the decarceration movement in American and Canadian juvenile corrections. It is generally acknowledged that training schools are not living up to early expectations. The high cost of such institutions is similarly recognized. Most importantly, there is a recognition that juvenile criminality is a societal problem, one that cannot be solved by a general policy of isolating offenders from the community. There is a recognition that young offenders must ultimately function in the society. The institutional setting can do little to help the offender to adjust to a society that will present him with many problems.

Viewed in this light, the decarceration movement appears both humane and sensible. Scull argues, however, that decarceration springs from neither humane nor sensible motives.⁹⁰ He maintains that decarceration

must be viewed as dependent upon and a reflection of more extensive and deep-seated changes in the social organization of advanced capitalist societies. In particular, it reflects the structural pressures to curtail sharply the costly system of segregative control once welfare payments, providing a subsistence existence for elements of the surplus population, make available a viable alternative to management in an institution.⁹¹

Scull is arguing that decarceration has been prompted by purely economic considerations. He suggests that the primary value of decarceration rhetoric, "seems to have been its usefulness as ideological camouflage, allowing economy to masquerade as benevolence and neglect as tolerance."⁹²

What is disconcerting about Scull's analysis is the limited evidence offered in support of his assertions. The existing evidence does not support the notion that decarceration has been *solely* motivated by a state interest in curtailing or eliminating institutional costs.⁹³ In a study of de-institutionalization programmes across the United States, Vinter notes, "[t]he wide variation in the characteristics of states that have deinstitutionalized to a significant

⁸⁹ Coffey, *Juvenile Justice as a System: Law Enforcement to Rehabilitation* (Englewood Cliffs, N.J.: Prentice-Hall, 1974) at 129.

⁹⁰ Scull, *Decarceration, Community Treatment and the Deviant: A Radical View* (Englewood Cliffs, N.J.: Prentice-Hall, 1977).

⁹¹ *Id.* at 152.

⁹² *Id.*

⁹³ Vinter, Downs and Hall, *Juvenile Corrections in the States: Residential Programs and Deinstitutionalization: A Preliminary Report* (Ann Arbor: National Assessment of Juvenile Corrections, Univ. of Mich., 1976).

extent is indicative of *lack of any evidence* that rates of deinstitutionalization are severely limited by basic socioeconomic conditions or other insurmountable circumstances."⁹⁴ The authors of the study state that "[t]he redirection of correctional priorities that deinstitutionalization represents [is not related to the following factors] per capita income, state revenues, industrialization or urbanization."⁹⁵ They conclude that, "[b]ecause the states with well-developed systems of community-based programs are far from being uniformly wealthy or urbanized, we are skeptical of arguments that a particular state is incapable of developing such services."⁹⁶

Interestingly enough, the study seems to suggest that decarceration may actually involve an increase in state expenditure rather than a decrease. In fact, expenditures are a function of the kinds of programmes that are implemented under a general plan of decarceration. In any event, the findings here strongly suggest that the state of the economy has not determined the establishment of programmes of de-institutionalization.

The motivations of those who advocate programmes of decarceration can now be vindicated as laudable. There seems to be no subtle advertent tyranny and no ideological camouflage. Yet the structure of decarceration programmes is another matter. Though conceived of for apparently humane and sensible purposes, these programmes may in fact do more harm than good.

Decarceration typically involves the establishment of group homes within a given community. Though non-residential treatment and counselling centres may come about as a consequence of decarceration, it seems fair to say that the focus has been on the development of group homes, residences for a small group of delinquent children within the community at large.

Koshel notes that it is very important to define "community" in the context of the decarceration process.⁹⁷ He argues that there are two ways of interpreting the word "community." First, community "may refer to the area or areas in which juvenile delinquents lived before they were sent to custodial institutions."⁹⁸ As Koshel notes, "[s]uch communities, for the most part, fall on the lower end of the socioeconomic scale. To ask these communities to take responsibility for their juvenile delinquents seems to assume that they are, in fact, responsible for all aspects of their 'community' life, including unemployment, poor housing, etc."⁹⁹ The group home can amount to another burden for a community that is already beset with social problems.

⁹⁴ *Id.* at 74.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Koshel, *Deinstitutionalization—Delinquent Children* (Washington, D.C.: Urban Institute, 1973) at 41-42.

⁹⁸ *Id.* at 41.

⁹⁹ *Id.*

A second interpretation of "community" assumes that what is being referred to is society as a whole. Koshel notes that,

it should be recognized that the areas that must "almost be forced" to accept the deinstitutionalization of delinquent children will most likely be the very same areas in which those children became delinquent. Middle and upper-middle socioeconomic areas are highly unlikely to accept group homes or group residences for delinquent children.¹⁰⁰

A recent experience in Ontario supports Koshel's contention. Plans for a secure treatment centre were derailed when Oakville residents actively resisted the presence of such a facility within their community.¹⁰¹ Koshel concludes of decarceration, "[a]s with most undesirable public projects, low socioeconomic areas, which are the least organized, will probably be required to bear whatever burdens are imposed by the deinstitutionalization of delinquents."¹⁰²

Scull also accurately describes some of the potential problems of a system of decarceration.¹⁰³ He notes that "for many . . . ex-inmates and potential inmates, the alternative to the institution has been to be herded into newly emerging 'deviant ghettos' . . . within which (largely hidden from outside inspection or even notice) society's refuse may be repressively tolerated."¹⁰⁴ Scull argues that some individuals may turn into "drifting inhabitants of those traditional 'resorts of the down and out,'" some may become "grist" for halfway houses in the adult system and still others may exist by preying on "the less agile and wary . . . 'ordinary' people trapped by poverty and circumstances in the inner city. . . ."¹⁰⁵ While it is not clear that such suffering is really a result of decarceration, Scull does well to describe the kind of life that often faces the inhabitants of a group home. Decarceration does little to alleviate the community problems that are already in existence.

There is one other significant concern with the structure of decarceration. As Vinter notes of the American experience, "[a] number of interested observers have expressed concern that the development of community programs will tend to supplement rather than replace institutions."¹⁰⁶ There is "no correlation between states' per capita daily populations in institutions and those in community-based programs."¹⁰⁷ The absence of such a relationship "indicates that the increased use of community services is *not* accom-

¹⁰⁰ *Id.* at 42. It should be noted that socio-economic areas of middle and upper class dominance might be ill-suited for delinquency placements, in any event. The working and welfare class delinquent might feel socially and psychologically alienated by such communities. The typical delinquent might feel most at home in the poorer areas—those areas that are perhaps least able to cope with the problems in existence.

¹⁰¹ Interview with staff at the Oakville training school (May, 1978).

¹⁰² *Supra* note 97, at 42.

¹⁰³ *Supra* note 90, at 153.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Supra* note 93, at 76.

¹⁰⁷ *Id.* at 77.

panied by lower-than-average use of institutions."¹⁰⁸ Vinter looks more pointedly at the experiences of the ten most deinstitutionalized states and notes:

It was shown that although their average rate of institutionalization was somewhat less than the fifty-state average (13.3 compared to 17.8), their assignment of offenders to community-based programs was sufficiently high to result in a higher-than-average *combined* rate of assignment to both types of facilities (25.6 compared to 22.5).¹⁰⁹

He concludes that "the concerns of those who fear that development of community corrections can lead to expansion of the system appear to be justified. . . ."¹¹⁰

To the extent that Ontario thoughtlessly pursues community-based residential treatment in the future, such concerns may be validly raised in this province as well. There is a real possibility that more children will be deprived of their liberty in the name of community treatment than in the name of institutional treatment alone. Ontario will have to monitor closely its programme of residential treatment.

Indeed, present release procedures alone do more than imply intensive monitoring; a substantial rethinking of our response would appear to be in order.

V. RELEASE PROCEDURES IN PRACTICE: FOUR ONTARIO TRAINING SCHOOLS

As noted, a regulation pursuant to *The Training Schools Act* gives the responsibility for initiating release procedures to the superintendent of the given training school.¹¹¹ It seems fair to say that the decision to release is made at this level. *The Training Schools Manual* says of graduation procedures, "[t]he Superintendent will establish some type of review procedure to monitor the progress and development of each ward and to determine his need for a further period of involvement in the school programme."¹¹² The Manual goes on to note that, "[m]ulti-disciplinary review boards have been a traditional method in training schools of assessing a student's progress, considering his readiness for placement, and preparing the progress reports. This is a recommended procedure for ensuring a regular and systematic review of each student."¹¹³

Multi-disciplinary evaluation has become an important part of the Ontario training school programme. Brookside, Pine Ridge, St. John's and the now defunct Hillcrest training schools all use, or have used, multi-disciplinary evaluation to gauge a student's readiness for graduation. Short descriptions of each of these evaluational programmes reveal that all institutional per-

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ R.R.O. 1970, Reg. 815, s. 6(b) and text accompanying notes 4 and 9, *supra*.

¹¹² *Training Schools Manual*, *supra* note 5, at s. D-9.

¹¹³ *Id.*

sonnel are most concerned with the adequacy of the ward's "rehabilitative" efforts within the training school.

The Pine Ridge training school prides itself in the strongly individualized nature of its treatment programme.¹¹⁴ Incoming students are assessed upon arrival. The institutional staff sit down with the new student and set out criteria that must be met for graduation. Institutional staff do not think it wise to set out identical criteria for all new students. The individual student must work at solving his individual problems.

The programmes designed for Pine Ridge are thought to complement individualized rehabilitation. Some of the new students are assigned to the behaviour modification programme in which they accumulate points that eventually secure release. Other students are assigned to the positive peer culture programme, where the peer group decides when the individual is ready to graduate. Within both of these programmes, students move through the designations of junior, intermediate and senior student before being allowed to graduate. Their movement is determined by their rehabilitative efforts.

The St. John's training school release procedures are somewhat less individualized. The school operates on a note system (see Appendix A). Students work their way through the school's programme by displaying behaviour that is given good grades or "notes" by teachers and counsellors.¹¹⁵ As the student progresses from the "good" to the "honour" section, he gradually receives more opportunity to visit within the community and is given longer visiting hours. Assessment meetings and individual house meetings monitor the progress of students. Recommendations for placement will go from the school's assessment meetings to the individual house meetings.¹¹⁶ Superintendent MacDonald noted that there is no hard and fast rule that predetermines release. Release is not a simple matter of attaining *x* number of points within the note system. The Superintendent suggested that flexibility is needed in order to meet the individual needs of the student.¹¹⁷

Release procedures at the now defunct Hillcrest school and at Coburg's Brookside training school are similar in their structure. All students must move through four stages to be released (see Appendix B). The incoming student is placed in stage one for one month, at the end of which a review board considers whether the ward ought to graduate to stage two. This review board meets every week within the institution and is composed of the assistant superintendent, the academic principal, clinical staff and the housemaster. The review board similarly evaluates progress at the end of stages two, three and four. Stages two and three are typically two months each in

¹¹⁴ Conversation at Pine Ridge training school with Jeff Carr, Assistant Superintendent.

¹¹⁵ Conversation at St. John's training school with Bob MacDonald, Superintendent, elicited this information. Also, see Appendices A, B, C.

¹¹⁶ Conversation at St. John's training school with Bob MacDonald, Superintendent.

¹¹⁷ *Id.*

length and arrival at stage four signifies readiness for graduation. Progress through the stages coincides with an increase in privileges both inside and outside the institution.

At meetings of the institution's review board all concerned staff file an Adjustment and Progress Report (see Appendix C). This report sets out the behaviour that will secure release from training school. The ideal student appears as one who has good "work habits," a good "attitude," "takes responsibility well," is "popular," "takes pride in appearance" and "shows initiative." It is good citizenship that will secure early release. The concerns of training school staff do not seem to rest primarily upon curbing individual criminality. The staff seems more concerned that their young wards find places of "worth" within the existing social structure.

These institutional release procedures are indicative of the prevalence of the individualized treatment model. Institutional staff indicated that the offence the juvenile has committed is of little importance to them.¹¹⁸ The kinds of behaviour that secure early release have already been noted. The behaviour that serves to lengthen institutional commitment is, for the most part, also non-criminal: smoking, refusing to go to school, swearing and abusiveness towards staff, fighting, poor attitude and value standards, talking about escape, spitting fights and butter fights.¹¹⁹ While it is recognized that only excessive displays of such behaviour will result in failure before a review board, it should be noted that this is probably not behaviour that typically demands incarceration. Were a young person to come before the juvenile court accused of these behaviours, a commitment to training school would be an unlikely disposition. Only in the event of serious assaultive behaviour or repetitive property crime would most judges consider the training school option. Incarceration appears to have deprived the training school ward of a right to equal justice. The child on the street will not have his or her liberty deprived by consistently demonstrating poor attitude and value standards; but, the ward of the training school may have his liberty deprived for just such a demonstration.

This abrogation of a right to equal justice results from the use of a model of individualized treatment, the natural outgrowth of the rehabilitative ideal. As the above release procedures depend on the validity of this model, it is necessary to look more closely at its unexamined assumptions.

VI. AN ANALYSIS OF INDIVIDUALIZED TREATMENT: THE THEORY AND THE PRACTICE

The treatment model assumes that crime rates can be reduced by the treatment and eventual rehabilitation of individual delinquents.¹²⁰ Future

¹¹⁸ Conversations with staff at five Ontario training schools. I can only *assume* that the individuals whom I spoke with are representative of those who are employed within the training school system.

¹¹⁹ These behaviours were recited to me by Bill Hazelton, Assistant Superintendent, Brookside training school, Cobourg, Ontario.

¹²⁰ Much of the analysis in this section is greatly aided by: American Friends Service Committee, *Struggle For Justice* (New York: Hill and Wang, 1971) at 40-46.

crimes can be prevented by incapacitating the offender until he is rehabilitated. What is initially problematic is that the focus is placed upon the individual. To the extent that slums, poverty, unemployment and parental neglect can also "cause" crime, a programme of individualized treatment is inadequate.¹²¹ The American Friends Service Committee suggests that:

A prisoner detained to prevent crimes that could be avoided by social reforms may bear a greater resemblance to a scapegoat than to either a patient or a public enemy . . . to the extent that social causation is relevant, the rationale for individualization is undercut. To date, our society has largely ignored this dilemma.¹²²

The treatment ideology also assumes that there is some understanding of the individual causes of criminal activity. Yet, if our understanding is to have any scientific basis, it "must be based on the study of representative samples both of criminals and of control groups of non-criminals. Comparison of the two may reveal factors that distinguish the criminals from the control groups."¹²³ It will then be known what factors or behaviours to remove from the individual delinquent's repertoire.

Very little research has been conducted using control groups of non-criminals. More importantly, "the data about *criminals* are derived from those who have been subject to correctional regimes and therefore identified and made available for study."¹²⁴ The delinquents who form the subject pools of present research are not representative of all delinquents in our society. The delinquents of the middle and upper classes tend to be under-represented. The American Friends conclude of individual causation that:

even if we had a body of adequately controlled research findings it would merely describe the kinds of persons subjected to criminal treatment in a society where race and poverty are major determinants for the application of the criminal label. Such data might afford revealing insights about the administration of criminal justice in such a society, but would hardly provide the basis for a usable science of individual criminal pathology.¹²⁵

Perhaps the most important underlying assumption of the treatment model is that it works. Those who administer the juvenile justice system will often admit to an imperfect understanding of crime causation, yet they always believe that they are actually reforming their young wards. It is this fundamental misconception, a belief in the utility of coercive treatment, that permeates Ontario's system of juvenile corrections.

The American Friends Service Committee suggests minimum methodological standards for evaluating the effectiveness of a treatment programme. These standards are:

(a) comparison with control groups of similar subjects who are not treated; (b) control of other variables, such as maturation or changed environmental or social

¹²¹ *Id.*

¹²² *Id.* at 41.

¹²³ *Id.*

¹²⁴ *Id.* [Emphasis added.]

¹²⁵ *Id.* at 42.

conditions, to negate the possibility that factors other than the treatment process were responsible for the outcome; and (c) reasonably reliable criteria for determining success or failure.¹²⁶

Without these standards the claim that a given treatment has utility cannot be made. The American Friends note that although recidivism can serve as a reliable criterion of success or failure, few studies of treatment meet the other methodological standards set out. There is no study in Ontario that has properly evaluated the effectiveness of training school programmes. Hence, at the present time there is no indication that the treatment provided in Ontario training schools is of any utility.

The criminal justice system relies on a model of individualized justice that is difficult to understand. The American Friends argue that a belief in treatment ideology is a phenomenon akin to religious conversion. They note that there is "an acceptance of what appears to be true and valuable, what we want to be true, even though it cannot be reduced to anything more precise than vague generalities."¹²⁷ This paper suggests that our treatment ideology operates so as to control ways of life as opposed to criminal activity. Such control attempts to immerse delinquents in the ways of a society that values individual industry and economic growth.

An examination of the practice of individualized treatment tends to yield similar conclusions. The *Training Schools Manual* instructs Ontario's superintendents on how to prepare recommendations for inmate release. The Manual notes that, "[w]hen recommending a graduation it is important to submit an up-to-date comprehensive School Progress Report, which clearly documents the ward's response to the whole of the school programme and the reasons for the recommendation for graduation. This, together with the Aftercare Home Inspection Report, is evaluated."¹²⁸ These reports are forwarded to the Training Schools Advisory Board for consideration. A sample of these reports yields valuable insights into the concerns of those who now administer treatment to Ontario's young wards.

For example, Mary was recommended for graduation in December, 1977.¹²⁹ The summary of her file set out the following information:

Mary terminated her relationship with her boyfriend at the end of September. She realized that this was necessary if she was going to make it work in the community . . . Mary has a very mature attitude towards routine and discipline. Mary has recently been given the job of a dishwasher . . . she works two hours each afternoon and reports are that she is handling it very well . . . she feels she has missed too much school up to this point and will consider returning in September. Mary will be attending night school to complete the credits which she is presently working on . . . the family presently resides in a . . . duplex situated in a working class area . . . Mary has her own bedroom. There is a homey, organized atmosphere.

¹²⁶ *Id.*

¹²⁷ *Id.* at 46.

¹²⁸ *Training School Manual*, *supra* note 5, at s. B-5.

¹²⁹ All names have been changed so as to protect the privacy of the wards involved. Other potentially identifying details have also been removed.

This excerpt suggests that Mary's release from training school was independent of any criminal behaviour that she had once displayed.¹³⁰ The institutional staff were pleased that Mary was working and "handling it well"; they were similarly pleased by her intention to resume her education. These vocational and educational efforts appear to have influenced the recommendation for graduation.

Jim was similarly recommended for graduation late in 1977. The summary of his file set out the following information:

Although facing serious economic situations, the Browns are a relatively stable family... Jim is reported to be very sensitive to his problems—comes from a culturally deprived family who moved from a rural setting (to the city). The family was rejected by the community and Jim retaliated by drinking and becoming involved in delinquent associations... a return home is not possible at this point, therefore, a foster home should be tried... Jim has expressed some interest in auto mechanics and this avenue should be pursued... he needs a strong expressive individual he can identify with—is presently too dependent on others. (The foster home) is well-furnished and well-kept... he will attend X school—has pre-registered and has been given a tour of the school.

Jim's release was influenced by his expressed interest in working and in returning to school. One assumes that he has also been relatively well-behaved while in the training school. Jim's criminal activity appears to be unrelated to the school's decision to recommend release.¹³¹ It has been suggested that Jim be placed in a foster home. This, however, has apparently come about as a consequence of the community's rejection of his family and not his own desires. Jim is possibly being made a victim of the intolerance of his new community.

Stewart was also recommended for graduation late in 1977. An excerpt from his file reveals the following:

Stewart's attitude and behaviour have greatly improved (at the training school), where he has responded positively to the programme and staff. He now wants to return to mother and to school... the concern is that although he has responded well to structure, he may not be able to maintain it at home where the degree of structure and control will be minimal... attempts are being made to arrange for a volunteer probation and aftercare officer—also the possibility of lining up some volunteer work for Stewart... it has been made clear to him that if he cannot handle the freedom of his own home, arrangements will be made for alternate placement.

In this instance there appears to be some concern about the possibility of future criminality. The staff is concerned that Stewart's life in the community will not be sufficiently structured. The imposition of structure is seen as a means of resolving the problems that exist. While there is little empirical evidence to suggest that either authoritarian controls or probation supervision will alleviate criminal behaviour,¹³² both such impositions are urged upon

¹³⁰ This particular girl was admitted to training school for theft.

¹³¹ The report recommending release did not contain any reference relating to past criminal activities. The discussions of the Training Schools Advisory Board similarly failed to yield evidence of, or concern with, past criminal actions.

¹³² See Boyd, *An Examination of Probation (1977-78)*, 20 *Crim. L.Q.* 355 at 367-78.

the young ward. The controls that are placed upon the delinquent's behaviour find their bases in essentially unfounded speculation.

Richard was recommended for graduation in December of 1977. An excerpt from his file reveals the following:

he has attended classes (at the training school) for the equivalent of one month—a mature, reliable student, who tries his best in all subjects. At first, he was apprehensive about school but through hard work and a willingness to try, he has produced some pleasing results . . . got a job working . . . earning \$3.00 per hour—parents want him to live at home. While at (the training school), he was involved in working with retarded children and did well. *Graduation home is recommended as he has a job . . .* parents pleased with his progress to date and believe it will continue.

In this case the reason for graduation is made explicit. Richard is to be rewarded for acquiring a job and sticking with it; he is to be granted his liberty for this behaviour. The file also documents Richard's "hard work" and "willingness to try" in an educational setting. The utility of the educational experience is not discussed. It was significant that Richard made efforts to work within the structure that was imposed upon him. More importantly, there is no discussion of the offence for which this young person was committed. All attention has been focused upon the offender.

Lisa was admitted to training school for drinking while under-age. She was recommended for graduation late in 1977. An excerpt from her file yields the following information:

Lisa will always be welcome at home as long as she is willing to abide by rules of the house . . . there seems to be quite a change in Lisa's attitude since her stay at (training school). She speaks of her experience there, feeling that it has helped her see that her former pattern of relating was very destructive . . . the Probation and Aftercare Officer has enrolled Lisa at the local high school . . . she is happy about going there and is still interested in being a hairdresser . . . parents are happy to have her home and feel positively about her. She is easier to handle and has a pleasant disposition. She accepts limits and rules which she did not do before.

Lisa is apparently being released because of her new-found tendency to accept limits and rules. There is no discussion as to the propriety of these rules. There is only an implicit understanding that failure to be obedient could serve to lengthen one's incarceration. The very rules that could dictate either liberty or confinement are not even mentioned, much less thoroughly evaluated. There seems to be no need for the institutional staff to justify any further confinement of an individual. It is sufficient that the individual does not accept the "limits and rules" that have been given him or her. This excerpt also makes note of Lisa's enrolment in high school and her interest in becoming a hairdresser. Once again release appears to be partially dependent upon the individual's active participation in appropriate academic and vocational structures.

VII. CONCLUSION

What emerges from this study of release procedures is a feeling that Ontario's system of juvenile corrections is not primarily concerned with the control of criminal activity. Those who release children from Ontario's train-

ing schools seem most concerned with controlling a way of life. They may believe, despite a lack of supporting evidence, that their efforts indirectly control crime. They may alternately believe that criminality is in fact a secondary consideration. They may perceive themselves as modern day child-savers, reshaping apparently worthless resources into models of good citizenship. The deprivation of liberty that accompanies such a retraining programme becomes an ancillary cost of the greater social good. Humane concern for the future of the ward peacefully coexists with the power structure of the release process.

That release decisions cannot be shown to have any corrective efficacy is all too easily lost in the rhetoric of benevolence. Ontario's evolution towards a treatment orientation is most appropriately viewed as something quite distinct from humanitarian social change. What has been witnessed here is the inadvertent development of a more sophisticated technology of power. What Foucault has said of prison "reform" can again be equally applied to juvenile justice in present day Ontario:

What [is] at issue [is] not whether the prison environment [is] too harsh or too aseptic, too primitive or too efficient, but its very materiality as an instrument and vector of power; it is this whole technology of power over the body that the technology of the 'soul'—that of the educationalists, psychologists and psychiatrists—fails either to conceal or to compensate, for the simple reason that it is one of its tools.¹³³

¹³³ Foucault, *supra* note 46, at 30.

APPENDIX A

ST. JOHN'S NOTE SYSTEM

The teachers and counsellors mark students separately and depending on the number of notes a student received per month he will be placed into a section earned. The section for his academic work and behaviour and division work and behaviour are separated until the end of the month, where they then will be discussed and an overall or final section is given for that month.

Academic School: teachers mark students out of 100 good notes per week (20 per day).

Division: counsellors mark students out of 100 good notes per week.

Section Requirements:

For Academic School are:

Section	Requirements	Average Notes per Week to Meet Requirements
Honour	320 notes*	80 notes
Excellent	280 - 319 notes	70 - 79 notes
Very Good	240 - 279 notes	60 - 69 notes
Good	200 - 239 notes	50 - 59 notes
Fair	160 - 199 notes	40 - 49 notes
Unsatisfactory	120 - 159 notes	30 - 39 notes
Very Unsatisfactory	below 120 notes	below 30 notes

*Penalty notes may be deducted from students if sent to Vice-Principal's office for misbehaviour.

For Division are:

Section*	Requirements	Average Notes per Week to Meet Requirements
Honour	240 good notes and no more than 12 bad per month	60 good; 3 bad
Excellent	200 good notes and no more than 25 bad per month	50 good; 6 bad

Section	Requirements	Average Notes per Week to Meet Requirements
Very Good	175 good notes and no more than 32 bad per month	44 good; 8 bad
Good	160 good notes and no more than 36 bad per month	40 good; 9 bad
Fair**	140 good notes and no more than 44 bad per month	35 good; 11 bad
Unsatisfactory	120 good notes and no more than 48 bad per month	30 good; 12 bad
Very Unsatisfactory	100 good notes and no more than 52 bad per month	25 good; 13 bad

*Any student who goes from one four week section change to another one *without* any bad notes will move up two sections if he meets requirements, but cannot move into the Honour Section.

**Any student in the bottom three sections will be reviewed every two weeks and if their behaviour warrants it they will move up a section.

General:

1. A new student starts off in the GOOD section.
2. A returnee starts off in the FAIR section.
3. The EXCELLENT section goes home twice a month.
4. The HONOUR section goes home every weekend.

Visiting Hours:

HONOUR	— 9:00 a.m. until 8:00 p.m. — OFF property — 11 hours.
EXCELLENT	— 9:00 a.m. until 8:00 p.m. — OFF property — 11 hours.
VERY GOOD	— 12:00 p.m. until 5:00 p.m. — OFF property — 5 hours.
GOOD	— 12:00 p.m. until 5:00 p.m. — OFF property — 5 hours.
FAIR	— 12:00 p.m. until 5:00 p.m. — ON property — 5 hours.
UNSATISFACTORY	— 12:00 p.m. until 5:00 p.m. — ON property — 5 hours.
VERY UNSATISFACTORY	— 2:00 p.m. until 5:00 p.m. — ON property — 3 hours.

APPENDIX B

REVIEW BOARD SYSTEM

Review boards are held each week. The Deputy or Assistant Superintendent, Principal, Clinical Staff and the Housemaster will generally be present. The board will read the reports from house staff and teachers.

- A — Exceptional
- B+ — Very Good
- B — Good (average)
- C — Fair (failing grade)
- D — Poor (failing grade)

All reports submitted are averaged to give a fair mark, and Behaviour Reports are also considered.

Stage One:

When a ward comes to the School, he or she is automatically in stage one for one month. The review board is held the closest Thursday to the day of the month that the ward arrived.

1. Wards in stage one are restricted to the grounds for the first two weeks, but may go out with the house or school after that.
2. Wards are to be under close supervision while in stage one.
3. All passes are restricted to grounds, and for the first two weeks, visits must be in the Administration Building.

When a ward obtains an average of at least B on the board, he or she progresses to stage two. If the average is below a B, the ward must repeat stage one and appear on the board in one month. If the ward gets an A average, he or she will return on the board in one month's time, instead of the customary two month period.

Stage Two:

Stage two is normally two months long, with some exceptions which will be explained later.

1. Wards in stage two may have passes off grounds from 8:00 a.m. to 8:30 p.m. within a 10 mile radius of Cobourg.
2. Wards in stage two may join school clubs or teams.
3. Wards in stage two may be assigned a Church Family.
4. If pass privileges are abused, they can be taken away.
5. Wards in stage two may apply to go to Project D.A.R.E.

Stage Three:

Stage three is normally two months long.

1. Wards who pass into stage three are eligible for a weekend leave after they pass their board.
2. Wards in stage three are eligible for Christmas leave, mid-winter leave and summer holidays.
3. A ward in stage three is eligible for a transfer to a Group Home.
4. A ward in stage three may be considered for a work study programme in the community.

Stage Four:

When a ward enters stage four, he is recommended for graduation. Some wards may be required to have an extended placement programme of home through the week and back on the weekends, and this programme will be used in stage four only.

If a ward fails to return from leave, he could be reverted to stage one.

Any ward who runs away from the School returns to stage one upon his apprehension. If a ward returns on his own after being A.W.O.L., consideration may be given to dropping him or her back one stage, but this depends on the circumstances involved.

A ward who has been returned to the School from a placement in the community (Group Homes included) has the opportunity to leave in three months' time. If a returnee obtains a B+ board, then the next stage will be one-month long instead of two.

APPENDIX C

ADJUSTMENT AND PROGRESS REPORT FOR REVIEW BOARD —
BROOKSIDE SCHOOL

Name _____ Date of Report _____

Please check items in each group which best describe the pupil

<i>Work Habits</i>		<i>Dependability</i>	
Steady worker, takes pride	_____	Takes responsibility well	_____
Does average work, willing	_____	Usually reliable	_____
Indifferent, getting by	_____	Lacks judgment	_____
Careless, needs prodding	_____	Cannot be trusted	_____
Lazy, shirks work when he can	_____	Unreliable, untruthful	_____

<i>Ability</i>		<i>Group Attitude</i>	
Better than average ability	_____	Good group attitude	_____
Capable, follows instructions	_____	Quiet and reserved	_____
Slow, but fair ability	_____	Works best alone	_____
Lacks confidence	_____	Needs constant watching	_____
Little ability to follow	_____	Obstructs work of others	_____

<i>Attitude</i>		<i>Social Relations</i>	
Usually willing, co-operative	_____	Popular	_____ Disagreeable _____
Fairly co-operative	_____	Accepted	_____ Helpful _____
Sometimes difficult	_____	Quarrelsome	_____ Aggressive _____
Insolent, troublemaker	_____	Bad influence, perversion	_____
Resentful of authority	_____	Makes life miserable for others	_____

Which of the following characteristics best describes him/her?

A. Takes pride in appearance	_____	Careless of appearance	_____
B. Well mannered, considerate	_____	Ill-mannered and rude	_____
C. Respected, good influence	_____	Likes to be considered tough	_____
D. Makes good use of leisure	_____	No interest in self-improvement	_____
E. Shows initiative, leader	_____	Easily led, lacks willpower	_____
F. Respects property of others	_____	Destructive of property	_____

Do you consider this ward's performance: "A"—EXCELLENT _____;
"B+"—VERY GOOD _____; "B"—GOOD _____; "C"—FAIR _____;
"D"—UNSATISFACTORY _____

Comments: _____

Number of Periods Covered: _____

LEVEL: _____ SIGNED: _____