

LAW AND SOCIAL CONTROL IN CANADA

By W.K. Greenaway and S.L. Brickey
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The sociology of law is in the throes of what Thomas Kuhn has called an era of 'paradigm revolution', in which increasing numbers of scholars have come to discard the value consensus model of the legal order.¹ In its stead, they have proposed a theoretical approach which the authors of *Law and Social Control in Canada* label the "critical conflict perspective."² Briefly put, conflict proponents reject the notion that law transcends diverse individual and group differences and reflects a codification of the major social values of society *in toto*. Rather, their position is that law is the means whereby the socially and economically dominant groups in society insure the maintenance of the *status quo*; and that the law in force at any given time is simply the reflection of the will of those who have the political power sufficient to institutionalize their interests at the expense of those who fall outside the power elite.

Although the conflict approach has resulted in a flood of published research in the United States and Britain over the past two decades, the Canadian contribution to conflict theory has been quite meagre, with the noted exception of Lynn MacDonald's book.³ In *Law and Social Control in Canada*, Professors Greenaway and Brickey (who teach in the sociology departments of the Universities of Winnipeg and Manitoba, respectively) have provided a significant addition to the growing body of literature on the conflict model approach to the legal process. Although primarily composed of previously published journal articles, the book contains original essays by both authors, which not only explore law and social control from a conflict perspective, but also tie the selected readings into one cohesive unit.

The book is divided into three sections: Law and the Administration of Justice, Psychiatry and Social Control, and Social Control Organizations. A brief sketch of a representative selection from each section should suffice to introduce the reader to the theme of Greenaway and Brickey's work.

The genesis of drug legislation in Canada is discussed in the first section by Shirley Small in her study entitled, "Canadian Narcotics

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1. See T. Kuhn, *The Structure of Scientific Revolutions* (1970).

2. W. Greenaway and S. Brickey (eds.), *Law and Social Control in Canada* (1978) 1.

3. L. MacDonald, *The Sociology of Law and Order* (1976).

Legislation, 1908-23: A Conflict Model Interpretation." Her thesis is that cultural stereotypes and racism led to the passage of anti-opium laws beginning in 1908.⁴ Even though the medical profession and the patent medicine industry were responsible for far more opiate addiction than the Chinese opium dens in Vancouver, it was the latter which became criminalized. As Small indicates, what happened must be viewed from the context of Canadian racism, which was directed against Chinese and Japanese immigrants and which found expression in the Anti-Asiatic Exclusion League whose goal was to curb emigration from the Orient to Canada.

In the second section, the role of psychiatry as an instrument of social control is explored in Donald Mazer's article, "Mental Illness and the Law." As Mazer notes, Canadian mental health legislation permits the involuntary commitment of persons on the basis of vague psychiatric criteria (such as danger to oneself or to others). The issue of involuntary commitment as a civil liberties concern has only come into its own in the past decade, and Mazer presents a concise view of that concern.

The third section contains Susan Houston's analysis of the genesis of the juvenile justice system in Canada. In "Victorian Origins of Juvenile Delinquency: A Canadian Experience," she presents the thesis that the movement was primarily concerned with the class of landless urban poor in mid-19th century Ontario; and that, although its humanitarian impulse cannot be denied, its primary thrust was towards a form of social control over the wayward youth of the lower middle and working classes. In the United States, Anthony Platt found similar social forces behind the development of the American juvenile court system, which he detailed in his study entitled, "The Child Savers."⁵

Greenaway and Brickey are to be commended for producing the first book of readings with a Canadian content on the conflict model of law and social control. One hopes that they will soon follow with a second volume.

4. *An Act to Prohibit the importation, manufacture and sale of Opium for other than medicinal purposes*, 1908, 7-8 Edw. 7, c. 50; *The Opium and Narcotic Drug Act*, 1911, 1-2 Geo. 5, c. 17; *An Act to amend The Opium and Narcotic Drug Act*, 1920, 10-11 Geo. 5, c. 31; *The Opium and Narcotic Drug Act*, 1923, 13-14 Geo. 5, c. 22.

5. A. Platt, *The Child Savers: The invention of delinquency* (1970).