

POLICE POWER IN LAW REFORM:
A SOCIO-LEGAL CASE STUDY OF POLICE CHIEF PARTICIPATION
IN THE MAKING OF 1997 ANTI-GANG LEGISLATION

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Abstract

Law-making study has largely overlooked the involvement of the police. While overt examples of police attempts to impact legal reform can be found in police union rallies and association lobbying, a less obvious but possibly more potent form of influence is found in the police's entitlement to speak authoritatively and often unchallenged about crime threats: a facet of their symbolic power. Pierre Bourdieu sees symbolic power as unrecognized capital bestowed on individuals and groups within particular 'fields' of society. This model provides a structured framework to analyze the strategic use of the symbolic power of the police in the creation of criminal law. The central claim of this dissertation, however, is not that the police successfully use their vested authority to achieve law reform objectives. Rather, it is posited that the symbolic power of the police can be appropriated and manipulated by political groups for their own law-making purposes.

The law-making case under examination is the creation of Canada's first 'anti-gang' law passed in 1997, Bill C-95. This law reform was largely attributed to the influence of the Canadian Association of Chiefs of Police (CACCP) in government press releases, House of Commons Debates and in the Senate Review. Subsequent legal analysis of Bill C-95 concurred on the significance of the police to the resulting legislation. Empirical findings from this thesis, however, challenge this perspective and make a case for a more nuanced view of police power. It is argued that police can be at once politically important as a perceived government partner but practically impotent as a participant, in legal reform.

The application of the symbolic power model to the case clearly reflects that police authority over certain crime threats can be an important legitimizing tool for politically expedient legislation created during a perceived crisis. In Bill C-95, an accepted and repeatedly cited rationale for the new law was 'policing need'. The failure of the police to capitalize on their power and have impact on the resulting legislation is a novel and unexpected discovery resulting from document analysis of CACP archives and government communications found through Freedom of Information requests. The study traces the rise and application of the symbolic power of the police in the making of Bill C-95 through an examination of the social and political context of the reform period, the sources of police power, the confluence of factors that increased police leaders' authority in the reform period and the ultimate abuse of this power for political gain.

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INTRODUCTION

The group of words, police, policy, polity, politics, politic, political, politician is a good example of delicate distinctions.¹

Overview

In April of 1997, Bill C-95² became Canada's first anti-gang law. The timing for the enactment of the new legislation was unsurprising. International political pressure from the United Nations to 'get tough' on organized crime was mounting. Domestic demands from Quebec, a province besieged by a seemingly unstoppable motorcycle gang war, had garnered substantial media attention. The pendulum of crime control policy had swung to the right, making law-and-order solutions increasingly popular. Most significantly, it was national election time and political parties could ill-afford to be seen as 'soft on crime'.

What *was* surprising was the apparent level of police involvement in the creation of Bill C-95. In particular, the Canadian Association of Chiefs of Police (CACP) was portrayed by the governing Liberal Party as a major partner in the law reform effort. Liberal rhetoric in the Parliamentary debates surrounding Bill C-95 was rife with reference to consultation with the CACP. Government press releases publicized the significance of Canadian police chiefs to the law-making effort. A jointly organized forum on organized crime³ (CACP-initiated, government-sponsored, and overwhelmingly police chief-attended) was proclaimed by the Liberal Minister of Justice as a decisive

¹ F. Maitland, *Justice and Police* (London: Macmillan, 1885) at 105.

² Bill C-95, *An Act to Amend the Criminal Code (Criminal Organizations) and to Amend Other Acts in Consequence*, 2d Sess., 35th Parl., 1997 (assented to 25 April 1997), S.C. 1997, c.23.

³ National Forum on Organized Crime, Ottawa, ON (27-28 September 1996).

influence on the development of new legislation. Even the Standing Senate Committee on Legal and Constitutional Affairs was told that Bill C-95 was the product of years of extensive government / CACP discussions.⁴

Given the above, it is understandable that Bill C-95 is depicted in the legal literature as legislation overtly influenced by the police. Don Stuart described Bill C-95 as an example of a law created to “remedy various law enforcement concerns,”⁵ citing several legislative provisions that pander to police demands.⁶ Daniel Koenig proposed that “this Act [Bill C-95] responded to a wide range of proposals advanced by the police community.”⁷ An article by Chris Harper simply concluded that the anti-gang law was a “wish list for police.”⁸

This study began with a similar assumption; I too felt that Bill C-95 represented legislation significantly influenced by police demands. While other researchers acknowledged the apparent over-representation of the police in the law-making process,

⁴ “I would have to say that work first began on the organized crime question in early 1995. A group of police officers and Mr. Beauchesne, a lawyer for the Toronto police force who is here today, called upon the federal government to look into organized crime. A task force was created in 1995 and the Department of Justice began to show a special interest in this matter at the Regina Convention of Chiefs of Police in the summer of 1995...In February 1996, submissions were made to the Minister of Justice, Mr. Rock, and to the Solicitor General, Mr. Gray, here in Ottawa by representatives of the Association of Chiefs of Police...” Yvan Roy, Senior General Counsel, Criminal Law Policy Section, Policy Sector, at: *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Second Session Thirty-fifth Parliament*, 63 Session Minutes of Proceedings, Ottawa (24 April 1997), Ottawa [Proceedings of the Senate Standing Committee].

⁵ D. Stuart, “Politically Expedient but Potentially Unjust Criminal Legislation against Gangs” (1997) 2:2 Can. Crim. L. Rev. at 208 [Stuart, Unjust Criminal Legislation 1997].

⁶ For example, with the wiretap provisions he claims “the police rhetoric was bought by politicians, hook, line and sinker” and that “it is hard to think of a provision that would have been more favorable to law enforcement interests.” *supra* note 5 at 213.

⁷ D. Koenig, “Organized Crime: A Canadian Perspective”, in J. Albanese, D. Das, and A. Verma, eds., *Organized Crime: World Perspectives* (New Jersey: Prentice Hall Publishers, 2003) at 66.

⁸ C. Harper, “Prof Slams New Anti-Gang Legislation” (1997) 17 Lawyers Weekly, at 10.

their research focused on the analysis of legislative provisions. In contrast, rather than tacitly presuming police influence, I felt the nature of the police involvement needed to be examined. Important questions remained unanswered: how had the police become significant to the law reform and what was their role in the passage of new law?

Helping to answer these questions would be significant. Any interest group with immoderate influence over the law reform process needs to be exposed. Furthermore, Bill C-95 proved to be ineffectual legislation: if this was the result of excessive police involvement it would be important to illustrate cause and effect. Finally, it was hoped that findings from this particular law-making episode would help predict conditions that could lead the police to play an over-active role in other criminal law reform efforts.

Like the researchers before me, my analysis of the provisions within the legislation pointed towards legal reforms extremely amenable to law enforcement. For example, severe sentencing conditions (invariably popular with the police) and greatly enlarged police powers (in areas such as wire-tapping and search warrants) appear to support a law enforcement agenda. While one could argue that these and similar provisions were necessary to combat organized crime rather than appease the police, it has been persuasively illustrated that pre-existing laws, properly applied, were likely to be as effective as any specific anti-gang laws.⁹

⁹ While Don Stuart made this point after the fact in: D. Stuart, "Politically Expedient but Potentially Unjust Criminal Legislation against Gangs"(1997) 2:2 Can. Crim. L. Rev. 1997 207, Jean-Paul Brodeur predicted, a year before the legislative tabling of Bill C-95, that new criminal penalties, "however harshly they are applied", would have little impact on organized crime. Moreover, his study was specifically commissioned for the law-makers considering anti-gang law. See: Department of Justice and Department of the Solicitor General, "Organized Crime: Trends in the Literature", (Ottawa: May 1996) at 34.

Therefore, the legislative provisions, in combination with the government rhetoric of police partnership, pointed towards substantial police involvement in the creation of anti-gang law. It is easy to see why the existing research on Bill C-95 had assumed this to be the case. However, the course of my research led me to a very different conclusion from that accepted in the literature.

The turning point came by way of Freedom of Information requests regarding the 1996 Organized Crime Forum.¹⁰ In cross-verifying publicly available information with internal government files, I made a surprising discovery: the CACP did not have a coherent legislative proposal for dealing with organized crime nor had they asked for legislation resembling Bill C-95.

This caused a shift in my research focus. It was now important to investigate the actual rather than presumed level of police influence and I adopted a grounded theory methodology investigative approach. Grounded theory examination allows the researcher to incorporate new discoveries as the research is responsive to the situation and the investigator reports on evidence that may disconfirm the original theory.¹¹ Rather than testing a hypothesis, the aim of such study is to discover the theory implicit within the data.¹² What became clear was the need to study CACP records that could hold important

¹⁰ National Forum on Organized Crime, *supra* note 3.

¹¹ G. Miller & R. Dingwall, *Context and Method in Qualitative Research*, (London: Sage Press, 1997).

¹² B. Glaser, *Doing Grounded Theory: Issues and Discussions*, (Mill Valley, California: Sociology Press, 1998).

information relating to the real nature, type and level of police chief involvement in Bill C-95.

Over the summer and fall of 2004 I was granted access to the central CACP archives in Ottawa. The archives contain an extensive history of committee records, memoranda, letters, meeting minutes and printed emails going back to the early 1990s. Contrary to the government pronouncements and views held in the literature, the data collected from these archives explicitly show that the CACP had little impact on the substantive provisions of the law.

This does not mean that the CACP was unimportant to the legal reform. Clearly there was inherent political value in portraying the CACP as a partner in the law-making process. However, the focus of the investigation shifted with the discovery that police were not influential in the way originally assumed. Rather than seeking to prove undue influence, the key to understanding the role of the CACP in Bill C-95 was to be found in understanding their symbolic influence. Why had it become important to portray police leaders as partners to the law reform and what level of impact had they actually achieved?

This thesis is about the political use of the symbolic power of the police in law reform. It will be argued that flawed law was legitimized on the basis of presumed police support. The resulting examination is one that explores the events that led the CACP to have been seen as having had significant influence on Canada's first anti-gang law. This thesis investigates the context of the law-making period, sources of police power, why it

grew in importance during this reform period, and how it became appropriated for politically expedient law-making.

Organization

This study begins with a general introduction, is followed by three main “Parts” and finishes with an analysis and conclusion. Part I provides the socio-political context of the period in which anti-gang law was developed and examines the enormous pressure faced by the federal government to quickly enact tough-sounding legislation in the spring of 1997. In Chapter One (pp 33-43), “The Motorcycle Gang War”, the principal impetus for the legislation is discussed: feuding between the Hells Angels and Rock Machine in Quebec. Embarrassing police rivalries and provincial funding cut-backs to an anti-biker squad help explain why politicians in Quebec were intent on portraying the biker war as a federal responsibility.

Other sources of pressure on the federal government relating to the biker war and organized crime in general are discussed in Chapter Two (pp 44-67), “Pressures on the Federal Government.” This chapter looks at the engagement of other political parties in Canada with the biker war issue and their siding with Quebec in forcing the governing Liberal Party to take action. International concern over organized crime is also examined as a further source of pressure on the Canadian government to show its resolve in this area. The combination of these pressures in the shadow of a looming national election are shown to have forced a rushed anti-gang law announcement, law-making patently directed at Quebec with the intent of appearing tough on crime. Previous well-founded

government reservations regarding the constitutionality and enforceability of anti-gang law disappeared under the mounting pressure and last-minute legislation was tabled under the banner of 'police need'.

The results of this legislative reform are discussed in Chapter Three (pp 68-86), "New Law." The anti-gang law is assessed in relation to previous federal efforts against organized crime and the provisions within Bill C-95 are reviewed. The legal literature on Bill C-95 is found to be highly critical of the legislation's potential effectiveness and the ensuing court cases using the new law are found to have been largely unsuccessful; by all measures, the law was flawed. Part I concludes that as an exercise in expedient political appeasement rather than sound policy development, Bill C-95 was in desperate need of legitimacy.

Part II explores police power as a source of expert authority over crime threats. Chapter Four (pp 90-104), "The Preeminent Police Association – The CACP", introduces the Canadian Association of Chiefs of Police as the largest and most influential police leaders association in the country. Having strong links to government departments and having grown a large lobby presence in Ottawa, the Association is seen to represent the voice of Canadian policing. By the mid 1990s when Bill C-95 was introduced, the CACP had an established reputation as an entrenched policy participant on issues of law-and-order.

Chapter Five (pp 105-123), "Police and Politics", examines the rise of police importance in politics. Notions of police "independence" from government, so important to the establishment of modern policing, are seen to have increasingly given way to more nuanced understandings and increasing acceptance of areas of "interdependence". Although the appropriate level of police / political relationship is still contested, it is clear that there are growing links between these fields. Two major reasons for this trend are increasing political attention to police authority in the criminal justice sphere and growing police assertiveness in the political domain.

Symbolic power is the model that best explains the political value of perceived police support. The theory of symbolic power, most famously developed by sociologist Pierre Bourdieu, is examined in Chapter Six (pp 124-142), "Symbolic Power". Symbolic power is explored through the definitional framework as unrecognized capital bestowed on individuals and groups within particular "fields" of society. This unspoken attribution of expertise and authority has recently been applied to policing where it is perceived as significant yet under-researched in relation to its function and potential areas of impact. A key finding is the variability of the symbolic power of the police; it can become more or less potent depending on societal conditions.

Chapter Seven (pp 143-187), "Controlling the Bikers", illustrates the degree of power that police exert over public understandings of the motorcycle gang threat. Dramaturgical analysis is used to deconstruct the mandates of the opposing groups (police / motorcycle gangs) and explain how motorcycle gangs frustrate police efforts at

social control. Police bias and myth-making are shown to be uncritically replicated through the press and perceived as truth since few other sources of information on motorcycle gangs exist. The chapter concludes that with this degree of influence, motorcycle gangs are readily portrayed as a “dangerous class” and the police seen as the biker experts.

Part II also looks at two conditions that augmented police power over organized crime in general and motorcycle gangs specifically at the very moment that the government was seeking to speedily pass anti-gang law. In Chapter Eight (pp 188-226), “The Climate of Crime Control”, the 1990s criminal justice environment is seen as one heavily influenced by “Right Realism”. The ascendancy of law-and-order in policy initiatives is argued to have made enforcement solutions increasingly popular and tough measures against organized crime acceptable. Organized crime had become a justice issue best dealt with by experts advocating a legislative response.

Chapter Nine (pp 227-248) “Moral Panic”, explores another factor that increased police significance to the organized crime debate in the mid 1990s: rising concern over a seemingly unstoppable motorcycle gang war. The 1995 accidental death of a nine-year-old boy by a misplaced biker bomb is examined as a catalytic moment in the motorcycle gang feuding and one that grabbed the attention of the press and provincial politicians. As a result, the views of police leaders and their demands for federal legislation were increasingly publicized, especially since their tough-sounding solutions aligned with those of an alarmed public. To this point, the thesis concludes that police leaders had

become the ultimate organized crime authority and were ideally positioned to have their views impact the upcoming anti-gang legislation.

Through empirical document analysis, Part III assesses actual police chief influence and makes the case that the CACP were symbolic rather than substantive government partners in the anti-gang law. Chapter Ten (pp.251-262), "The Federal Organized Crime Forums", uses Department of Justice files acquired through the Freedom of Information Act to evaluate CACP contributions to the two 1996 forums. The forums were advertised in Parliament and through government press releases as significant consultation events held mainly between police and policy-makers in the development of Bill C-95. The documents reveal that the police chiefs had an underdeveloped set of legislative proposals that were largely ignored in the subsequent legislation.

Chapter Eleven (pp. 263-289), "Disorganization Surrounding Organized Crime", illustrates why the CACP were unprepared to make real contributions to the policy development. The analysis is drawn from the CACP archived dossiers for their Organized Crime Committee and Law Amendments Committee. At the critical moment when they may have been able to exert influence, the CACP's Organized Crime Committee was closed down. Furthermore, their Law Amendments Committee was over-burdened, under-qualified and in the process of reorganization. The chapter concludes that CACP was in no position to offer meaningful policy input.

Nor were they asked. Chapter Twelve (pp 290-309), “Participation in Law Reform”, finds that the government had little interest or time for external consultation in making Bill C-95. An examination of meeting minutes, legal advisor notes, and correspondences between the CACP and Department of Justice from the CACP archives show minimum contact over organized crime in the mid 1990s and only token requests for police input in the final days before the Bill was announced in Parliament. CACP participation is compared to other law-making initiatives where meaningful consultation took place and found to be lacking. The paucity of the consultation process in Bill C-95 is also supported through an analysis of Quebec Bar Association involvement. The empirical research segment concludes that despite government claims, CACP influence on Bill C-95 was illusory; symbolic police power had been appropriated and substantive police involvement was virtually non-existent.

The Analysis and Conclusion section to this thesis (pp 310-324) finishes with three areas of discussion. The first looks at the postscript to this law-making effort and the disappointment of CACP. The second area of discussion pertains to the law reform that effectively replaced Bill C-95 following four years of frustration with the first anti-gang law. The meaningful CACP involvement in the new legislation (Bill C-24) is juxtaposed against their previous participation. The thesis concludes by reviewing the major finding of this study and the apparent paradox of police power: police can be at once politically important but practically impotent in law reform.

Methodology

Law-Making

Choosing an appropriate research methodology to examine police participation in the making of anti-gang law was an important decision to make at the start of this study. The literature on Bill C-95 had largely judged police involvement on the basis of what had been said. Government representatives gave news briefs to the media where the police were said to be “partners” in reform. In Parliamentary debate, government ministers said the CACP had significant involvement in creating the anti-gang law. When a misplaced biker bomb tragically killed a child, police chiefs said they needed new law to fight organized crime. In response to these pronouncements, the literature on Bill C-95 concluded that police had excessive influence in the law-making.

However, there is often a difference between what groups say and what they do. My initial concern about official statements of police involvement came following a Freedom of Information (FOI) request to the Department of Justice. It showed discrepancies between what the government said was the level of CACP impact in organized crime forums and what the CACP actually contributed. Additional preliminary research demonstrated that inter-police rivalry contributed to an on-going motorcycle gang war and that ensuing anti-gang legislation was largely a symbolic exercise to garner votes in Quebec (both discussed in Part I – Social Political Context). It is not entirely surprising to find that these factors went unmentioned by police and

government officials. For this study, the research challenge was to get beyond what was said or left unsaid.

Realizing that internal CACP documents from the law-making period would be critical to formulating an accurate picture of police chief involvement in Bill C-95, I requested and was granted permission to conduct research in the CACP central archives in 2004. Memos, letters, faxes, meeting minutes, notes and committee files afforded a previously un-accessed historical record of CACP interest in organized crime. Given that CACP records are kept for a ten-year period, I conducted my research between 1994 and 2004. This time-span enabled an examination of CACP organized crime involvement in the years leading up to Bill C-95, in the midst of the reform period, and in the years following the adoption of the anti-gang law.

Studying the CACP archives also proved useful as a means to triangulate primary source documents relating to the anti-gang legislation. Triangulation means using multiple measures of the same phenomenon to assess reliability. In other words, it is a research tool employed to look at evidence from several angles at once; observations from different view-points enable comparisons that support or refute a hypothesis. With the CACP documents it was possible to triangulate primary source data from three disparate areas all relating to the anti-gang law. Although prior research on Bill C-95 had studied Parliamentary *Hansard* records to contextualize the law-making period¹³, in isolation these documents gave a limited picture of actors and events. In this study, information in Parliamentary documents (from the National Library), government files

¹³ See: Moon, *Outlawing the Outlaws* 1999.

(from FOI requests) and police records (from the CACP archives) were compared against one another. This provided “analytic utility”¹⁴ to the research design as the different data sources enhanced the value of the sample set.

The research approach used was one of qualitative content analysis of specific CACP records. A qualitative approach was chosen because of its interpretive focus that “proceeds by extracting themes or generalizations from evidence and organizing data to present a coherent, consistent picture.”¹⁵ Since I hypothesized that anti-gang law was legitimized on the basis of presumed but not actual CACP support, CACP records were essential to the analysis. In using CACP records, a qualitative approach meant examining CACP organized crime communications between 1994-2004 to contextualize the Association’s interest and ability to participate in the 1997 anti-gang reform. A qualitative approach “follows a non-linear path and emphasizes becoming intimate with the details of a natural setting or a particular cultural-historical context.”¹⁶ While some studies benefit from quantitative coding of data, it was important in this grounded theory examination to have broad parameters of inquiry as it was simply impossible to know at the outset what information would be available in the non-public records.

Content analysis was an ideal tool to use in this methodological context. “Content analysis enables researchers to sift through large volumes of data with relative ease in a

¹⁴ Analytic utility is discussed as a major criterion in evaluating research design in, J. Gerring, *Social Science Methodology: A Critical Framework* (London: Cambridge University Press, 2001) at 155.

¹⁵ L. Neuman, *Social Research Methods: Qualitative and Quantitative Approaches* (Boston: Pearson Press, 2003) at 145 [Neuman, *Social Research Methods* 2003].

¹⁶ *Ibid* at 164.

systematic fashion.”¹⁷ I began with a pre-screening of the archives to determine what types of documents were kept and how they were organized. Based on this initial review of documentation, I decided on two sampling approaches. The first was a total sampling of all documents between 1994-2004 of the Organized Crime Committee (OCC) and the Law Amendments Committee (LAC). These were the two CACP committees that had an interest in organized crime and legal reform. In this total sample I read every document and recorded all references to anti-gang law or organized crime efforts. This included reviewing all criminal law resolutions from the LAC and tracking all correspondences from the OCC whether it was run by the CACP (1994, 2000-2004) or CISC (1995-1999).

The second sampling approach was a keyword sample search in the same 1994-2004 time period. Three keyword strings were used: “organized crime” or any variation thereof including “criminal association”, “gang” or “organized racketeering”; “motorcycle gang” including variations such as “biker” or “outlaw club”; and, “anti-gang law”, including permutations like “criminal organization legislation” or “Bill C-95.” Any file label with a keyword (or variation on it) was read. As with the total sampling of the OCC and LAC, I recorded information relating to CACP organized crime initiatives or legislative reform.

This combination of total samples (LAC and OCC) and sampling using keyword strings had the advantage of providing a comprehensive review of records most likely to evince CACP Bill C-95 involvement plus the flexibility of finding information in more disparate areas of the archives. Following the information collection, which included

¹⁷ R. Weber, *Basic Content Analysis* (California, Newbury Park Press, 1990) at *Introduction*.

note taking and photocopying (the archives were not digitalized in 2004), I then analyzed the data. This involved creating a cohesive account of CACP action on organized crime in the time period under examination. My interpretation of this data and the “picture” it presented on CACP anti-gang participation became the basis of the empirical section of this thesis.

Of course, no methodology is perfect and there are inherent problems with content analysis. Foremost among the limitations of content analysis is that research is dependent on the accuracy of the manuscripts. “Unlike oral questioning, a researcher does not ask respondents direct questions to measure variables, but relies on the information available in the text.”¹⁸ Furthermore, content analysis does not allow for a specific question to be posed. In content analysis, answers are sought from amassing and comparing manuscripts and trying to decipher the story within those texts. Specific limitations found in this examination included the occasional repetition of information found in the archives. For example, the sample search sometimes repeated content already found in the LAC or OCC records. Furthermore, missing records (such as absent LAC resolutions from 1998-99) also constrained the extent of examination.

The limitations present in content analysis often make interview-based research methodology a good choice for many studies. With interviews, researchers are not confined to texts and follow-up questions can be asked after preliminary inquiries are made. In the right conditions, “well-trained interviewers can ask all types of questions,

¹⁸ Ibid at 328.

can ask complex questions, and can use extensive probes.”¹⁹ Moreover, one of the greatest advantages of interviews is the potential of discovering un-documented information.

Like content analysis, however, there are also several difficulties with interview-based research. Respondents have been shown to reinterpret questions to make them easier to answer but less accurate with regards to the specific line of questioning.²⁰ The interviewer’s age, appearance, tone of voice and choice of wording all affect how a respondent chooses to answer questions.²¹ Moreover, the fundamentally social nature of the interview has been shown to influence the objectivity of the process and the validity of the data.²² Of greatest relevance to this study is the finding that interview answers are affected by motive to present a particular message when the respondent feels the need to be defensive.²³ Since my research was critical of the actions of the very groups I would need to interview, it was unlikely I would receive open answers.

Ultimately, the choice of methodological approach for this study came down to balancing the advantages and disadvantages between document analysis and interviews to determine which would provide the most reliable data. Since the accuracy of statements

¹⁹ Ibid at 290.

²⁰ See: C. Turner and E. Martin, *Surveying Subjective Phenomena* (New York: Russell Sage Foundation, 1984).

²¹ Neuman, *Social Research Methods 2003*, *supra* note 3 at 290.

²² For example, see: E. Mishler, *Research Interviewing: Context and Narrative* (Cambridge, MA: Harvard University Press, 1986) or, L. Suchman and B. Jordan, “Interaction Troubles in Face-To-Face Interviews” (*Journal of the American Statistical Association*, 85: 232-41) cited in P. Drew, G. Raymond and D. Weinberg (eds.), *Talk and Interaction in Social Research Methods* (London: Sage Publications, 2006) at 9.

²³ D. Mayard and N. Schaeffer, *Standardization in Interaction: The Survey Interview*, in, P. Drew, G. Raymond and D. Weinberg (eds.), *Talk and Interaction in Social Research Methods* (London: Sage Publications, 2006).

from the groups under investigation was under suspicion from the outset, I chose content analysis of documents as the empirical methodology most appropriate for this study.

While a significant amount of sociological-based research focuses on interviews, Bill C-95 presented a case where the veracity of the main actors' pronouncements was questionable and the quality of information received via interviews would be uncertain.

Despite the previously discussed limitations of content analysis, the CACP records provided an expansive collection and the most comprehensive source of documents that could be drawn upon to make inferences of CACP involvement in organized crime during the anti-gang law-making period. The use of the total sample of OCC and LAC records and keyword sample search through all files provided a large resource of information that could be examined to decipher the interest and ability of the CACP to participate in the reform effort. As a recognized methodological framework that was triangulated for validity, qualitative content analysis proved a useful research tool. As will be discussed in the empirical section (Part III), the document analysis in this study led to significant and novel findings.

Legal research is often divided into two categories: research "in" law and research "on" law.²⁴ Research "in" law treats law as its subject and concentrates on analyzing judicial decisions and legislation within the boundaries of legally authoritative texts and materials. It is largely doctrinal in nature. Research "on" law treats law as its object and examines the causes and effects of the law instead of focusing on the rules. Sometimes

²⁴ Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada* (Ottawa: Minister of Supply & Services, 1983).

known as “fundamental research”, this approach sees law as a social phenomenon to be examined rather than taken as given and is generally categorized under the umbrella of socio-legal study. This thesis is firmly rooted in this tradition of research.

Research on law reform is the product of a widening and progressive acceptance of socio-legal study. The research lens is trained on the human process of making law and away from the decisions and precedents culminating from enacted legislation. An interdisciplinary approach adds value to the analysis as it expands perspective and provides alternatives to strict legalistic interpretation. This type of research can be divided into several categories. “Black letter” legal research focuses on the wording of new legislation. It compares and contrasts enacted provisions with existing law. “Impact analysis” research looks at “the actual consequences of legal policies by pinpointing the extent to which formal rules associated with policies produce felt sanctions.”²⁵ This strain of research follows court cases using new legislation to determine its effect.

Unlike either “black letter” or “impact analysis” that focus on reform results, “law-making” study looks at the process that creates legislation. In law-making study (also known as “policy formation”, “law adoption” or “emerging studies”), “researchers must explore the environmental factors lying outside of government as well as those forces within the governmental institutions that determine the formal content of legal policy.”²⁶ Research that concentrates on determining the network of influences that

²⁵ D. Aaronson, T. Dienes, & M. Musheno, *Public Policy and Police Discretion*, (New York: Clark Boardman Company 1984) at 6.

²⁶ *Ibid.*

produces law or seeks to explain the forces that have caused reform are part of a genre known as “law-making” research.

Two broad approaches to this field of study (structured foundations and triggering events) have been well explained by John Galliher who conducted a seminal study on legal methodologies used to examine the creation of the American *Marihuana Tax Act* of 1937.²⁷ The *Marihuana Act* has received great attention from the law community as a blatant example of discriminatory legislation passed with the help of special interest groups. Authors such as David Musto focused on the influence of hostility toward ethnic minorities.²⁸ His approach was considered by Galliher to be an example of the “structural foundations of law”, an approach that looked at societal heterogeneity and our compulsion to ostracize groups that do not fit “the norm” through legislative acts.

Other authors like Becker analyzed the *Marihuana Act* as the result of pressures exerted by the Federal Bureau of Narcotics.²⁹ Galliher sees this approach to law-making as “triggering event” examination, or a methodology that looks into “the tactics, power and motivations of legislative interest groups who sponsor or oppose the legislation.”³⁰ Galliher concludes that a comprehensive law-making study must include both the structural foundations of law and triggering events in the analysis.

²⁷ J. Galliher, “The Study of the Social Origins of Criminal Law” (1980) 3 *Research in Law and Sociology* 301 [Galliher, *Social Origins of Criminal Law*].

²⁸ D. Musto, *The American Disease: Origins of Narcotic Control*, (New Haven: Yale University Press, 1973).

²⁹ H. Becker, *Outsiders: Studies in the Sociology of Deviance*, (New York: The Free Press of Glencoe, 1963).

³⁰ Galliher, *Social Origins of Criminal Law*, supra note 27 at 304.

Law-making has also been studied as a symbolic exercise. The concept of legal reform being pursued for the symbolic objective of enactment more so than for the outcomes that enforcement of the legislation would produce has been acknowledged for several decades.³¹ This highlights the symbolic versus instrumental goals of law-making efforts and acknowledges that law can be created to appease certain groups as readily as being made to reduce social ills.³²

This study considers the intertwining impact of structural foundations, triggering events and the symbolic goals of law-making to understand the role of police chiefs in 1997 anti-gang legislation. It will be argued, for example, that it is significant to consider police bias against outlaw motorcycle gangs as a structural foundation element of their initial interest in new law. Furthermore, the death of an eleven year-old boy will be demonstrated to be important as a moral panic triggering event. Moreover, the pacification of Quebec voters in the lead up to a national election will be argued to have been the symbolic goal of the law-making with little concern being paid to the legislation's substantive value.

The source material for the study is examined against the backdrop of existing academic literature on policing and politics, symbolic power study, the sociology of moral panic events and the politics of law-and-order. Several important concepts from these areas of literature are used to provide a better understanding of the subject matter.

³¹ See, for example: J. Gusfield, 1963. *Symbolic Crusade*, (Urbana: University of Illinois Press, 1963) or M. Edelman, *The Symbolic Use of Politics*, (New York: Free Press, 1964).

³² See: G. Howard, "Garbage Laws and Symbolic Policy: Responses to the Problem of Waste in the United States" (1999) 10 *Criminal Justice Review Policy*, at 257.

The analysis is structured to highlight the role of the CACP in the law-making process with findings contributing to the field of law-making study. Through the examination of actors and conditions that contributed to the reform environment, it is the aim of this study to develop a better understanding of how the police can become symbolically important to the law-making process.

Policy Community

A particularly helpful tool to this law-making examination is found in “policy community” study, a methodological approach that acknowledges the significant impact of non-government actors on legislative reform. In the past, law-making research focused primarily on the procedures within government such as ministry research and legislative adoption processes. However, with the increased importance placed on interdisciplinary critical studies, law reform has become more open to different avenues of inquiry. Research has expanded beyond the machinations of government bureaucracy to explore external influences. These external influences are the focus of policy community inquiry.

Policy community recognizes the importance of external partners and special interest groups to law-making. It involves exploring “the rich variety of state-society relations being uncovered at the meso or sectoral level of analysis.”³³ The policy community approach is important to this study as a means to examine the special police / government relationship and its potential use in policy development.

³³ W. Coleman & G. Skogstad, *Policy Communities and Public Policy in Canada: A Structural Approach*, (Toronto: Copp Clark Pitman Ltd, 1990) at 15.

Policy community is a concept that has been studied from a number of perspectives. While the field of sociology applied the concept to communication practices of modest groups and larger institutions, business scholars used policy community methodology to study relationships instrumental to product innovation.³⁴ Political science adopted the term to describe the relationships of groups and individuals in recurrent contact in the policy arena.³⁵ Applying policy community to interdepartmental government study, Wilks and Wright described policy community as a method to study “all actors or potential actors who share either an interest in a policy area, or a common “policy focus” and who, over time, succeed in shaping policy.”³⁶ In governmental study, Atkinson and Coleman note that “all researchers seek roughly the same objective: a way of describing complex relationships in a particular policy area that will assist in the understanding of policy outcomes.”³⁷

William Coleman and Grace Skogstad are widely considered the primary architects of Canadian policy community study. The authors contend that policy analysis must “refer to actors and relationships in the policy process that take us beyond political-bureaucratic relationships.”³⁸ To them, real insight into policy must include an examination of the communication of interests between government and stakeholders. As

³⁴ W. Powell, “Neither Market nor Hierarchy: Network Forms of Organization” in B.T. Staw & R.L. Sutton, eds., *Research in Organizational Behavior* (Greenwich: JAI press, 1989) 295.

³⁵ J.K. Benson, “A Framework for Policy Analysis” in Rogers et al. eds., *Interorganizational Coordination*, (Ames: Iowa State University Press, 1982) 145 [Benson, Policy Analysis].

³⁶ M. Atkinson & W. Coleman, “Policy Networks, Policy Communities and the Problems of Governance” (1992) 5:2 *Governance: An International Journal of Policy and Administration* at 158 [Atkinson & Coleman], citing S. Wilks & M. Wright, *Comparative Government-Industry Relations*, (Oxford: Oxford University Press, 1987).

³⁷ Atkinson & Coleman, *ibid.* at 158.

³⁸ W. Coleman & G. Skogstad, *supra* note 33 at 154.

such, policy is seen as a broad succession of decisions made in conjunction with interest groups rather than simply the document that results from internal government policy discussions. In their analytical framework, policy systems depend on “the relationships among the particular set of actors that form around an issue of importance to the policy community.”³⁹ Unlike traditional policy analysis, government is not the primary focus of the policy community approach; policy is seen not as what government does inasmuch as how it reacts to situations in consultation with its significant interest groups.

In the policy community approach, relationships determine external impact on policy. The quality and level of contact between a pressure group and government on an issue of shared interest serves to mutually forward a common agenda.

The most successful groups have established two-way contacts within the public service. In a number of instances, interest groups and government departments will reinforce each other.⁴⁰

These special relationships include furthering shared interests through the bureaucracy into the legislature.

The interests of individual departments often go hand in hand with those of special interest groups, and ministers are expected to take up the cause of their departments and their client groups with their cabinet colleagues.⁴¹

The literature suggests that where relationships are familiar and goals are congruent, mutual exploitation can occur: pressure groups use their relationship with government contacts to push for policy change and government ministries use the pressure group

³⁹ *Ibid.* at 26.

⁴⁰ D. Savoie, *The Politics of Public Spending in Canada*, (Toronto: University of Toronto Press, 1990) at 217.

⁴¹ *Ibid.*

support to help legitimize their proposals. In this regard, the policy community approach does not view policy as a representation of how government should act per se. Instead it sees policy as an indication of what agreements have been reached between government and the partners with whom it has regular and routine interaction. The significance of the partnership is measured by the type and amount of consultation that occurs. Thus policy derives from the quantity and quality of interaction between (1) elected politicians, (2) influential public servants, (3) non-government interest groups.

The foundation of significant relationships in the policy community approach presupposes that interest groups have the organizational skills, interests and shared ideology with the relevant governmental department to form significant associations. Groups that meet these criteria gain entrance into what Peter Cowhey describes as the “circles of power”⁴² of policy development. As early as 1973, policy critics found that “elite accommodation [was] inherent in the process of democratic government.”⁴³ Elites, according to Robert Presthus, include the government bureaucrats and legislators who prepare and pass bills. However, of particular significance for law-making study is the finding that the elite coterie also includes interest group leaders who can influence the content of the bills.⁴⁴

⁴² P. Cowhey, “The International Telecommunications Regime: The Political Roots of Regimes of High Technology” (1990) 44 *International Organization*, at 173.

⁴³ R. Presthus, *Elite Accommodation in Canadian Politics*, (Toronto: Macmillan of Canada, 1973) at 4.

⁴⁴ *Ibid.* at 3.

Elite government affiliation has long been a part of western policy culture. Arend Lijphart considers it “the essential characteristic of consociational democracy,”⁴⁵ determined “not so much by any particular institutional arrangement as by overarching cooperation at the elite level.”⁴⁶ Robin Rhodes finds that the elite level connections are marked by stable relationships, confined membership and co-dependence.⁴⁷ In collaborative work, Rhodes and David Marsh posit that special status influence is so considerable to policy development that they describe the policy domain itself as “elite interest group pluralism.”⁴⁸ In summary, a strong, special relationship with government is usually a good predictor of policy impact.

Policy community helps explain how police chiefs were readily perceived as having considerable influence in the law-making process. As will be shown, under the umbrella of the CACP, police chiefs enjoy the type of elite interest group relationship with government departments that policy community study finds correlated to legislative influence. Thus government proclamations of police significance to Bill C-95 went unquestioned at the time of enactment and were subsequently accepted in the literature.

⁴⁵ A. Lijphart, *European Political Systems*, (New Jersey: Prentice-Hall, 1971) at 69.

⁴⁶ *Ibid.*

⁴⁷ R. Rhodes, *Beyond Westminster and Whitehall*, (London: Unwin Hyman, 1986).

⁴⁸ R. Rhodes & D. Marsh, “New Directions in the Study of Policy Networks”, (1991) 44 *European Journal of Policy Research*, at 110.

Studying the Police

This study does not start from the premise that police chiefs have no role to play in law reform. The police perspective can be an integral component of balanced policy making:

It is vital that uniformed leadership be able to speak out publicly when policy is being made relative to areas about which they have legitimate concerns. Saying that one is there to enforce the law rather than make it is quite legitimate after laws have been passed and signed by the Crown into effect. But when there is a parliamentary debate or a public discussion...uniformed police leadership who have direct contact with street reality must not be excluded from the debate.⁴⁹

Thus discussion over police involvement should not be reduced to a facile, dichotomous debate in which the concept is either supported or derided. Rather, debate should focus on the type, level and application of police influence. Although “few would maintain that law reform can proceed in an ideologically demilitarized zone”,⁵⁰ excessive influence is contrary to the ideals of legal reform that include a high degree of public accountability. Sheila McIntyre argues that “the precondition of any reform initiative must be adequate consultations.”⁵¹ Participation, as the Law Reform Commission of Canada has maintained, not only “reinforces and demonstrates the integrity of democratic values;”⁵² it also prevents hegemonic narratives favoring interest group agendas or allowing one group to dominate the policy discussion. For this reason, Atkinson and Coleman warn in

⁴⁹ H. Segal, “Police and Politicians: The Accountability / Independence Conundrum” (Paper presented to the Canadian Police College Executive Seminar RCMP Headquarters Ottawa, 8 April 2002) at 3.

⁵⁰ A. Kaiser, “New Directions for Canadian Criminal Law Reform: Ensuring an End to Complacency” (1993) 13 Windsor YB. Access Just., at 267.

⁵¹ S. McIntyre, “Redefining Reformism: The Consultations that Shaped Bill C-49”, in J.V. Roberts & R.M. Mohr, eds., *Confronting Sexual Assault: A Decade of Legal and Social Change*, (Toronto: University of Toronto Press, 1994) at 310.

⁵² The Law Reform Commission of Canada, Report 32, “Our Criminal Procedure”, p. 27.

their policy community approach to studying policy-making that “greater attention must be paid to the cognitive frameworks of all members of the policy community.”⁵³

If police are potentially among actors sharing a common policy focus who “influence and shape policy outcomes over the long run”⁵⁴, it is material to understand the nature of that influence. At its best “law reform can play a useful role in articulating more clearly the appropriate balance between the demands of law enforcement and a proper regard for *Charter* rights.”⁵⁵ One can assume then that at its worst, law reform can be subverted by an imbalanced favoring of law-and-order agendas and a diminished regard for *Charter* protections. This is why understanding the role of police in legal reform is important. It is also why anti-gang law, legislation seen as having “widen[ed] the scope of offences in order to increase the powers of the police,”⁵⁶ is such a relevant case study.

To date, it has been far too easy to simply label Bill C-95 as the result of excessive police influence. Prominent among those who see the legislation in such a light is Don Stuart who wrote extensively on the Bill in several published papers.⁵⁷ Stuart found the Bill C-95 to be part of a government “law-and-order agenda” conforming to “a

⁵³ Atkinson & Coleman, *supra* note 36 at 176.

⁵⁴ Coleman & Skogstad, *supra* note at 33.

⁵⁵ D. Stuart, “Policing Under the Charter” in Macleod & Schneiderman eds., *Police Powers in Canada: The Evolution and Practice of Authority*, (Toronto: University of Toronto Press, 1994) at 75.

⁵⁶ Stuart, D. “Politically Expedient but Potentially Unjust Criminal Legislation against Gangs”, (1998) 69 *International Review of Penal Law*, at 248.

⁵⁷ *Ibid.* and D. Stuart, “Time to Recodify Criminal Law and Rise Above Law and Order Expediency: Lessons from the Manitoba Warriors Prosecution” (2001) *Manitoba L. J.* 89.

world-wide trend for politicians to pander to law-and-order demands.”⁵⁸ He also felt that the consultative process largely favoured “those of like mind”, whom he suggests are often the police. For example, in reference to new wiretap provisions he finds:

Every change initiated by Parliament has expanded the power, often in response to a police plea for expanded powers to combat organized crime. Little or no evidence as to the ineffectiveness of current laws is provided. In the case of Bill C-95 the claim was never examined by a Parliamentary committee...It is hard to think of a provision that would have been more favorable to law enforcement interest.⁵⁹

Others such as Allan Young similarly posit that police claims of impotence against organized crime facilitated the passage of ill-conceived and arguably unconstitutional legislation.⁶⁰

The critical analysis in this research challenges these assumptions of excessive police influence and offers an alternative hypothesis of police involvement in Bill C-95. It will be illustrated that the police gained a position of prominence over organized crime in general, and outlaw motorcycle gang activity in particular, at a point of time when the federal government was susceptible to political and public pressure to enact anti-gang legislation. This gave Canadian police leaders significant political value as perceived government partners in the law-making process. It will be argued that this partnership was largely illusory, a government obfuscation used to add legitimacy to rushed and poorly-conceived legislation. Rather than helping to create new law, it will be shown that the police were excluded from meaningful consultation at the same time as their position of authority was used to bolster the government reform effort.

⁵⁸ D. Stuart, *supra* note 56 at 264.

⁵⁹ *Ibid.* at 264

⁶⁰ A. Young, “The State that Cried Wolf” (1999) 3 *Nathanson Centre Newsletter* 20 [Young, 1999].

This study will show that Bill C-95 was by no means a police product. While a convergence of circumstances increased police authority over organized crime and outlaw motorcycle gangs in the mid-1990s, their new-found status did not manifest into a position of influence in the drafting of 1997 anti-gang law. To fully understand how the CACP could become symbolically significant yet practically powerless in the law-making effort resulting in Bill C-95, it is important to understand the social and political environment of the reform period.

PART I – SOCIAL-POLITICAL CONTEXT

Bill C-95 was introduced and given first reading on April 17; it was debated at second reading on April 17-18. It was read the second time and referred to a Committee of the Whole, considered in Committee of the Whole, reported with amendments; concurred in at report stage; debated at third reading, read the third time and passed all on April 21. Royal Assent was given on April 25, the Parliament was adjourned on April 27 and the election writ was dropped on April 28.⁶¹

From First Reading to Royal Assent, the speed with which Bill C-95 was enacted was breathtaking. The alacrity of its passage was remarked upon at the time by ministers of Parliament⁶² and after the fact by legal commentators.⁶³ The swiftness of its passage led to complaints by the Quebec Bar Association that the French version it received for comment had not even been proof-read for translation errors.⁶⁴ The haste of the Bill's passage even precluded the opportunity to create a Parliamentary Summary.⁶⁵ The obvious question to this hurried enactment is: why?

The following chapters describe the sequence of events that culminated in Bill C-95. The chronology includes an overview of the motorcycle gang war between the Hells Angels and the Rock Machine, a well known impetus for the new law. Less publicized but potentially more significant was the reaction among Quebec police and politicians to

⁶¹ M. Moon, "Outlawing the Outlaws: Importing R.I.C.O.'s Notion of 'Criminal Enterprise' into Canada to Combat Organized Crime" (1999) 24:1 Queen's Law Journal at 453 [Moon, Outlawing the Outlaws].

⁶² For example: "This Bill will likely become law tonight. I am not thrilled with the process. I still think it is a lousy process not to have a day or two in committee to hear witnesses and consider amendments." See: *House of Commons Debates*, 160 (21 April 1997) at 1550 (Chuck Strahl).

⁶³ Michael Moon noted that the Bill was passed so quickly that "the first section of the legislation was not even fully discussed let alone the remainder of the Bill.": Moon, Outlawing the Outlaws supra note 61 at 458.

⁶⁴ *Memoire Du Barreau Du Quebec Sur le Projet De Loi C-95 – Loi Modifiant Le code Criminel (gangs) et D'Autres Lois en Consequence*, (April 1997), online:

<<http://www.barreau.qc.ca/fr/positions/opinions/memoires/1997/gangs.pdf>>.

⁶⁵ Confirmed at the Library of Parliament, Law and Government Division.

the feuding that labelled the issue a federal responsibility. Cries from Quebec for anti-gang legislation soon became a chorus as all political parties positioning themselves to appear tough on crime during the 1997 national election year.

These domestic pressures were underscored by mounting international pressure, spearheaded by the U.S. and U.N., to fight organized crime. Initially resistant to the law-and-order rhetoric and citing valid constitutional concerns, the government ultimately capitulated to anti-gang demands in the dying months before the election was called. Understandably, the result was a rushed law-making effort that lacked legitimacy and was initially attacked in Parliament as pandering to Quebec votes. However, when the Bill was positioned as responding to “policing need”, criticism subsided and the legislation was speedily passed despite its obvious flaws.

This section is divided into three chapters. Chapter One gives an overview of the outlaw motorcycle war in Quebec that instigated heightened interest and concern over organized crime. Chapter Two studies the domestic and international pressures faced by the federal government to take strong action against the organized crime threat. Chapter Three assesses the legislative provisions and practical utility of the resulting 1997 anti-gang law.

Chapter One: The Motorcycle Gang War

Origins of the Feud

In 1990, Salvadore Cazzetta convinced his brother Giovanni to start their own biker gang that they would call the Rock Machine. The brothers were well-connected to the criminal underworld in Montreal and had ties to the mafia, the French-Canadian Dubois mob and the Irish West End Gang. They attracted members of other biker gangs and for several years profited from the lucrative drug trade in Montreal. They were insulated from reprisal from the other big underworld operator in Montreal, the Hells Angels, because of their network of powerful allies in the city and the Cazzetta brothers' loyal following.⁶⁶

In April of 1992, Giovanni was sent to jail for drug trafficking. In May 1994, Salvatore was caught in a narcotics sting operation and was also incarcerated. With both brothers temporarily off the streets, the Hells Angels felt it was time to take over. In retrospect, the Angels' leaders made the same classic mistake that police leaders have done so many times in the past with organized crime: they felt that without leadership, the organization would quickly crumble. However, as both Jay Albanese and Robert Pursley and Tom Naylor have found⁶⁷, most gangs are loose associations of criminals rather than strictly hierarchical criminal associations. In other words, members operate with relative autonomy and leaders are quickly replaced.

⁶⁶ Much of the information on the formation of the Rock Machine in this section was found in: Y. Lavigne, *Hells Angels at War*, (Toronto: Harper Collins Publishing, 1999) [Lavigne, *Hells Angels*].

⁶⁷ See: Albanese, J. and Pursley, R. *Crime in America*, (Englewoods Cliffs, NJ: Regents/Prentice Hall, 1993). and, R.T. Naylor, "The Theory and Practice of Enterprise Crime: Public Perceptions and Legislative Responses", (Paper presented to the Forum on Organized Crime, Ottawa, September 27-28, 1996).

The Hells Angels attempted to intimidate the Rock Machine in the summer of 1994 by trying to take over all of the drug distribution in the downtown bars of Montreal, but their plan backfired. On July 13th, two members of the Rock Machine entered a Harley-Davidson motorcycle repair shop in Rivière-des-Praries owned by Hells Angels sympathizer Pierre Daoust and shot him dead in retaliation to the Hells Angels encroachment on their drug turf. A full-scale motorcycle gang war had begun:

In 1994, the Quebec chapter of the Hells Angels and the new but apparently well connected Rock Machine motorcycle clubs began battle for control of Quebec's multimillion dollar drug trade.⁶⁸

By the end of 1994, the Sûreté Du Québec listed the biker war at the top of their list of prioritized goals submitted by the Director General of the S.Q. to the Ministry of Public Security.

Shootings, bombings and murder escalated through mid-1990s Quebec. Bombs became a main tool of the rival biker gangs and the shock-waves from biker blasts blew out the windows of residential houses and storefronts. It was only a matter of time before a non-biker was killed and in the summer of 1995 eleven-year-old Daniel Desrochers was accidentally killed by a biker bomb intended for a rival gang member. Michael Moon catches the desperate mood evocatively:

The sum of all the images – explosions rocking the city as two outlaw groups attacked each other with impunity; a child killed by shrapnel as he walked to the corner store; babies in their cribs being showered with glass - had reached an intolerable point. Decisive political action was needed.⁶⁹

⁶⁸ Moon, *Outlawing the Outlaws*, *supra* note 61 at 460.

⁶⁹ *Ibid.*

The impact of the biker war on Bill C-95 cannot be over-stated. Between 1994 and 1997 there had been 424 acts of violence linked to the biker war, including 94 murders, 103 attempted murders, 84 explosions and 142 fire bombings.⁷⁰ The Minister of Justice explained in Parliament that legislation was required “to help with the biker gang problem in Quebec”⁷¹ and the Department of Justice website stated that “Bill C-95 [was] enacted in 1997 in the wake of violent events associated with a turf war between two outlaw biker gangs in the province of Quebec.”⁷² The Bill included specific legislation to target bomb use⁷³, a signature of the warring in Quebec. Furthermore, opposition members in Parliament agreed with legislative measures seen as “broad enough to encompass the groups he [Minister Rock] is targeting like the biker gangs which probably prompted this Bill.”⁷⁴

The significance of the biker feuding to the Bill’s creation is also reflected in the literature. Don Stuart surmises that the combination of an approaching federal election and an appeal from the Quebec Attorney General for measures to address a violent and protracted fight between the Hells Angels and the Rock Machine motivated the Bill.⁷⁵ Michael Moon posits that, “Bill C- 95 was enacted in direct response to a vicious and highly public war that was being carried out in the streets of Montreal”⁷⁶ and he notes, “One need only refer to Hansard, to those frenetic weeks prior to [Bill C-95’s]

⁷⁰ J. Sher & W. Marsden, *The Road to Hell: How the Biker Gangs are Conquering Canada*, (Toronto: Random House, 2003) at 173.

⁷¹ *House of Commons Debates*, 160 (21 April 1997) at 1235 (Hon. Allan Rock).

⁷² Online: Department of Justice <http://www.canada.justice.gc.ca/en/news/nr/2000/doc_25605.html>.

⁷³ S.C. 1997, c.23, amendment to section 82 (2). In this section, Bill C-95 creates the offence of possession of explosives “for the benefit of, at the direction of or in association with a criminal organization.”

⁷⁴ *House of Commons Debates*, 160 (21 April 1997) at 1210 (Hon. Mr. Strahl)

⁷⁵ D. Stuart, “An Entrenched Bill of Rights Best Protects Against Law and Order Expediency”, (1999) 11 *South African Journal of Criminal Law* 325 at 5.

⁷⁶ Moon, *Outlawing the Outlaws*, *supra* note 61 at 455.

introduction, to see that as far as the House of Commons was concerned the debate about organized crime was centred in Quebec...⁷⁷ It would be disingenuous to suggest that this legislation came about for any other reason than as a response to the biker war in Quebec.”⁷⁸

The protracted feuding, government reactions, timing of the legislation and its specific provisions all point to the Quebec motorcycle gang war being the genesis of Bill C-95. In 1994, the biker feuding in Quebec was little known beyond Montreal. By the end of 1995 the full-scale war between the Hells Angels and the Rock Machine had begun to spread beyond Montreal with bombings reported in La Chine, Boisbriand and Saint Luc.⁷⁹ With the death of Daniel Desrochers in the summer of 1995, what had begun as a municipal concern and then a provincial problem had grown into a national issue as news of the violence garnered countrywide press interest.

This section has illustrated that what started as a localized turf war between the Hells Angels and the Rock Machine in Montreal grew through the mid-1990s to become a major crisis throughout Quebec. Although federal anti-gang legislation in the form of Bill C-95 would be enacted in 1997, in 1995 the biker feuding was still largely considered a problem best taken care of by the police. Unfortunately for the Quebec citizenry, their police would be hampered by internal and external factors that would leave them incapable of resolving the biker war.

⁷⁷ *Ibid* at 455.

⁷⁸ *Ibid*

⁷⁹ Lavigne, *Hells Angels*, *supra* note 66 at 48-53.

Failure of the Police

Just over a month following the death of Desrochers in 1995, a special police task force called the Wolverines was created by Quebec Public Security Minister Serge Menard. On 21 September 1995, the day the unit began operations, Sûreté du Québec (S.Q.) director Serge Barbeau boldly announced that the new anti-biker unit would terminate the wave of biker violence. The unit was composed of over seventy investigators from the S.Q., the Montreal Urban Police Department and the RCMP. It had a large budget, experienced police and a clear mandate to stop the biker war.⁸⁰

Unfortunately, corruption, infighting and reduced funding would cause the unit to collapse within a year. A Royal Commission headed by former Chief Justice of the Quebec Superior Court Lawrence Poitras was later to reveal that corruption was rife within senior members of the S.Q. and had caused the forced resignation of Director Barbeau, badly hurting the credibility of the S.Q. at the very time they were supposed to be providing leadership for the special squad. The Commission also found that Michel Arcand, the man running the Wolverines, had impeded the internal investigation into three of his officers. Poitras wrote that Arcand's behaviour was "contemptuous and that his leading of the anti-biker force was 'totally inappropriate.'"⁸¹

⁸⁰ See: Lavigne, *Hells Angels*, *supra* note 66 at Chapter 1.

⁸¹ 1999 Quebec Commission of Inquiry into the Sûreté du Québec (*Poitras Commission*). The commission was to conclude in its 1,700 page report that "a crisis in values has shaken the Surete de Quebec from the beginning of this decade... The concepts of loyalty, integrity, and equality are poorly understood. Any criticism of the organization or its practices made by a member seems suspect." The commission may also have discovered the principal reason for the Montreal police's abandonment of the Wolverines. Reports from the joint forces squad to the Ministry of Public Security were vetted by the S.Q. and they routinely omitted input from the Montreal police

When Montreal police force Detective Lieutenant André Bouchard took over command, S.Q. members, stung by the loss of one of their own at the helm, ignored directives and withheld information. When Bouchard left the Wolverines in August 1996, Montreal police Chief Jacques Duchesneau decided to pull all of his 39 detectives from the joint-forces operation.⁸² The RCMP had a limited role in the unit and were not about to take charge. In Quebec the RCMP policing role, beyond cases of national security or large-scale international drug stings, is largely to support significant provincial and municipal police operations. RCMP working relationships with the S.Q. were already strained as a result of the Poitras Commission and the loss of nearly half of the unit from the Montreal police withdrawal did nothing to improve relations or morale.

The loss of the Montreal police complement to the unit was compounded by reduced funding from the provincial government, eventually leading to a group one-quarter of its initial strength by the end of 1996. This predictably led to an inability to cope with the ongoing violence. Provincial police complaints of the inability of the Wolverines to operate successfully at such a reduced size were forwarded to the National Assembly of Quebec: “The police responsible for the [biker] investigations say that they don’t have enough officers and they ask the government of Quebec what they are thinking of doing to reduce the biker war.”⁸³ The complaints had little effect. The

⁸² The Chief’s stated rationale was that the squad had done what it had been asked to do, pointing towards a six-month lull in biker hostilities (see: Lavigne, *Hells Angels*, *supra* note 66 at Chapter 1). If this was really the case (rather than the more credible explanation of internal squabbling) it is difficult to imagine why the Chief did not reverse his position when the fighting took off again with the demise of the Wolverines.

⁸³ *Débats de l’Assemblée nationale*, (18 Mars 1997) at 1430 (M. Ouimet). Translated by this author from the French.

Minister of Security responded that “it is not only a matter of numbers of police, but it is equally a question, I think, of legislation.”⁸⁴

This dismissal of potential police effectiveness would seem to be a very strange response until one considers the elephant in the room: the provincial government had recently decided on a massive cutback of police funding. This was not exposed until the day before the Minister of Public Security was to meet with federal counterparts and appeal for federal anti-gang legislation. Mr. Lefebvre noted that:

The population of Quebec, for several months, has been worried for its security, since they see no end to the biker feuding, yet the Minister of Public Security will explain tomorrow morning to the mayors of the region of Quebec City and to the Federal Justice Minister Allan Rock the decision of its government to decrease very seriously the Securite de Quebec by diminishing the manpower of the Securite de Quebec by 468 police officers.⁸⁵

At the very moment when police were needed the most, they were to be constrained by budgetary cuts. This would have a profound effect. By late 1996, the biker warring had begun to rise after a period of relative tranquility. In early 1997, it exploded into full-scale hostilities reminiscent of pre-Wolverine 1995. The squad’s operations remained compromised through under-staffing and a reduced budget until revived under a new moniker, the Regional Task Force, in 1999.⁸⁶

⁸⁴ *Debats de l’Assemblée nationale*, (18 Mars, 1997) at 1440 (M. Perreault). Translated by this author from the French.

⁸⁵ *Debats de l’Assemblée nationale*, (19 Mars, 1997) at 1450 (M. Lefebvre). Translated by this author from the French. M. Lefebvre would cite his information source as Volume I, page 223 of the 1997-1998 Provincial Budget.

⁸⁶ An entire book could be written on problems that plagued the Wolverines. Inter-police rivalry, funding disputes between different levels of government, the first inquiry in over fifty years into impropriety within the Surte de Quebec, all hurt the unit. Accusations were lobbed far and wide. At one stage the Associate Deputy Minister of Justice of Quebec, Maro Bildeau, was accused of slowing down Wolverine investigations because he had been a Hells Angels lawyer before the Parti Quebecois appointed him to government - See: Quebec National Assembly debates for October 24th, 1996.

This was unfortunate. The Wolverines could be very effective when they were at full compliment strength, were well-funded and when they managed to put aside their inter-force rivalries. In one 1995 raid, there were “62 arrests resulting in 21 gang members being taken into custody.”⁸⁷ Over a six week period in March and April 1996, they conducted 24 raids, made 35 arrests, laid 78 charges, seized 2 handguns, 22 rifles, a machine gun, 170 grams of cocaine, 154 grams of liquid hashish, 31 grams of marijuana and 440 plants.⁸⁸ Only a few weeks later the Montreal police complement was removed and a few months later the biker violence began to rise once again. For a year following the sensational murder of Daniel Desrochers, the Wolverines, using conventional provisions from the *Criminal Code*, successfully fought back at the biker violence. As summarized by Michel Auger, “They made hundreds of arrests, dismantled several networks, and picked up numerous informers.”⁸⁹ It would appear that funding reductions and a lack of police solidarity had an enormous impact on the course of the war.

Shifting the Blame

The police were not keen to accept responsibility for the failed fight against motorcycle gangs. Instead, Quebec police chiefs began to exert coordinated pressure on the new Quebec Public Security Minister Robert Perreault,⁹⁰ with twelve police chiefs writing to demand funding for keeping track of bars under biker control.⁹¹ The pressure worked and the \$1.2 million project was activated with 70% of the funds coming from

⁸⁷ *Canadian Press Newswire*, (12 June 1995).

⁸⁸ Lavigne, *Hells Angels*, *supra* note 66 at p. 65.

⁸⁹ M. Auger, *The Biker Who Shot Me: Recollections of a Crime Reporter*, (Toronto: McClelland and Stuart Publishing, 2001) at 158.

⁹⁰ Perreault had quickly replaced Serge Menard as Quebec Public Security Minister following the death of Desrochers.

⁹¹ Lavigne, *Hells Angels*, *supra* note 66 at 80.

municipal departments and 30% from the Ministry of Public Security. However, this grant was short lived and the province offered little else by way of support.

As inter-force rivalries grew and provincial/municipal funding waned in the second half of 1996, police officials publicly turned their sights on Ottawa and declared that organized crime had become a threat to national security that required a legislative answer.⁹² Representing the biker problem as one of insufficient legislation made sense from a police perspective. Had they brought attention to the reduced strength of the Wolverines they risked exposing the petty rivalries, jealousies and lack of information-sharing that had been rife within the unit. Even if a reduction of municipal manpower and provincial funding to the police could be proven as primary reasons for the increase in biker warring in late 1996, the ancillary factor of police-force feuding could have been expected to surface. Ultimately, the biker violence continued because sustained police effort did not. As one author neatly surmised, the biker war was largely “a problem which [was] based upon ineffective law enforcement and not on any noticeable deficiency in the existing rules.”⁹³

Months away from an election, Mr. Rock could also afford to state the obvious:

The real problem consists of gathering proof against gang members. The solution, as I see it, is for police agencies to work together more effectively.⁹⁴

Although this may have been an accurate characterization of the biker problem, it did not prove popular in Quebec because, increasingly, the police were able to rally public

⁹² *Ibid.* at 68.

⁹³ Young, 1999, *supra* note 60 at 19.

⁹⁴ *House of Commons Debates*, 140 (18 December 1996) at 1435 (Hon. Allan Rock).

support for federal legislation. Several reckless biker bombings in early 1997 had made the public fearful⁹⁵ and as a result, more sympathetic to police pleas for assistance. For example, on March 21st, Quebec politicians, police chiefs and Daniel Desrochers' mother Josee-Anne Desrochers⁹⁶ appeared on the popular provincial television program *Droit de Parole* where they presented a united front in appealing to the federal government for anti-gang law. When asked by a panelist if the reduction of the Wolverine force was perhaps to blame for the increased biker violence, Ms. Desrochers stood up for the police, claiming that her son's death was due to a dearth of gang-specific legislation rather than any lack of law enforcement effort.⁹⁷

This type of support emboldened police demands for new law. Press conferences were organized where police pleas such as "We can get along day to day, but we'll never be able to dismantle these gangs with existing legislation"⁹⁸ were reported in the newspapers. Since the Poitras Commission and its scathing indictment of police rivalry within the Wolverines would not be released until 1999, it was largely unknown that the police were, at least to some extent, responsible for the continuation of the bloody biker feud.

This chapter has examined the origins of and reactions to the violent motorcycle gang war between the Hells Angels and the Rock Machine that precipitated the enactment

⁹⁵ "In the war between motorcycle gangs, a bomb exploded just across from a child-care centre where babies and children were to be picked up just a few hours after the explosion. The citizens are scared, there have been over twenty storefronts that have been badly damaged." *Debats de L'Assemble nationale*, (18 March 1997) at 1430 (M. Ouimet). Translated from the French by the author.

⁹⁶ Ms. Desrochers' son was the first innocent victim of the motorcycle gang hostilities.

⁹⁷ Lavigne, *Hells Angels*, *supra* note 66 at 210.

⁹⁸ Deputy Montreal Police Chief Sangollo cited in *Le Devoir*, (18 March 1997).

of Bill C-95. What began as a localized turf feud spread through Quebec as police infighting and provincial cut-backs impeded an enforcement solution. Rather than admit to the embarrassing parochial disputes and funding cuts that were contributing to on-going biker violence, the lack of gang-specific federal law became the favored excuse for Quebec police and politicians alike. However, police failures and funding cuts were not the only compelling forces for the governing Liberal Party to take action. The following chapter examines broader sources of pressure at the provincial, national and international level for the enactment of anti-gang law.

Chapter Two: Pressures on the Federal Government

Introduction

As we have seen, it was not only the police who wished to distance themselves from the ongoing biker violence in Quebec. While attention drawn to the police would show an ugly story of enmity amongst officers, the province's handling of the crisis would have revealed that municipal/provincial wrangling over Wolverine funding and manpower was also largely to blame. Like the police, municipal and provincial leaders found it much more convenient to characterize and treat the continuing hostilities as a federal rather than provincial responsibility.

At the same time as these domestic pressures were mounting, the international community was encouraging a tougher stance against organized crime. The United States desired deeper cooperation amongst law enforcement agencies and the United Nations proposed conventions binding nations to act against organized crime. This chapter examines the array of domestic and international pressures faced by the federal government in the mid-1990s to enact legislation targeting criminal associations.

Provincial Pressure

Determining exactly when the Liberals began drafting Bill C-95 is challenging. On the one hand, they claimed up to three weeks before the introduction of the Bill in the House of Commons that there was no intention of creating anti-gang legislation. On

March 12th 1997, Prime Minister Chretien said new law was not needed,⁹⁹ a position echoed by the Minister of Justice five days later.¹⁰⁰ The Parliamentary Secretary to the Minister of Justice and Attorney General of Canada also affirmed the government's position not to legislate anti-gang law on March 20th.¹⁰¹ On the other hand, the Liberals claimed that they had been working on the proposals with the police for some time when on April 17th they announced that "tough new measures to target criminal gang activity" were developed through "extensive consultations with police across Canada."¹⁰²

It is hard to reconcile these two positions. Extrapolating from the March announcements, over 150 pages of Criminal Code amendments were made in less than three weeks following a dramatic policy about-face. However, the April 17th declaration of "extensive consultations" would seem to preclude a frantic three-week law-making effort. The empirical document analysis in this thesis will illustrate that the police had limited consultation on what would ultimately materialize in Bill C-95. Thus although it is possible that some preliminary drafting work was conducted prior to 1997, there is little to indicate this was the case. Instead, the haste of the Bill's passage, the lack of consultations, and the government's contrarian position to legislation over the winter of 1997 all point towards last-minute law-making. The best explanation for this policy capitulation is pressure from Quebec in the lead up to a federal election.

⁹⁹ See *House of Commons Debates*, 143 (12 March 1997) at 8950 (Rt. Hon. Jean Chretien).

¹⁰⁰ See *House of Commons Debates*, 145 (17 March 1997) at 9081 (Hon. Allan Rock).

¹⁰¹ See *House of Commons Debates*, 148 (20 March 1997) at 9278 (Hon. George Kirkby).

¹⁰² Federal Minister of Justice and the Solicitor General of Canada cited in a Department of Justice, News Release, "Federal Government Introduces National Anti-Gang Measures" (17 April 1997).

Political pressure from Quebec for federal anti-biker law stretches at least as far back as 1982 when the municipality of Tracy requested legislation to prevent the Hells Angels from building a bunker house. It would appear, however, that Tracy and its political representatives became increasingly accustomed to their newfound neighbours. Biker hostilities were kept largely private, biker clubhouses became increasingly common and the issue all but disappeared from political consciousness for a decade.

When the Hells Angels / Rock Machine turf war erupted in the mid-1990s, public apathy turned into anger. In June of 1996, Quebec's Deputy Justice Minister and Deputy Attorney General, Michel Bouchard, wrote to George Thomson, Deputy Minister and Deputy Attorney General of the federal Justice Department. In no uncertain terms, he suggested that the department speedily develop law to address the escalating biker war.¹⁰³ Less than a month later, the Quebec Justice Minister, Paul Begin, found political opportunity to further his anti-biker agenda. After supporting a federal initiative to introduce new amendments for proceeds of crime and police seizure provisions, he asked that the legislative amendments also include sections that would specifically target biker groups. In particular, he wanted tools to help the police seize biker money, property, bunkers, armored cars and "their big limousines."¹⁰⁴ In 1996, nothing appeared to be forthcoming from the federal government.

By 1997, the political landscape had changed. A federal election would be called in the spring and the motorcycle gang feuding in Quebec had escalated. On 20 March

¹⁰³ Letter from Michel Bouchard to George Thomson (10 June 1996), acquired through the Freedom of Information Access to Information Act.

¹⁰⁴ *Débats de L'Assemblée Nationale*, (26 June 1996).

1997, Minister Allan Rock met in Quebec City with Attorney General Begin of Quebec and Robert Perrault, Minister of Public Security for Quebec, to discuss the urgent situation in Quebec related to motorcycle gang violence. Bombs had been exploding through Quebec City and Montreal at an alarming rate since the beginning of the year. Present at the meeting organized by the political leaders of Quebec were the mayors of the dozen municipalities most affected by the problem.¹⁰⁵ It was less than a month before a federal election and the timing of the meeting was far from coincidental.

The purpose of the meeting was to enable a united Quebec coalition of political leaders to insist that the federal government “accelerate [its] work on Criminal Code amendments to provide additional tools for police and to deal with gang-related crime.”¹⁰⁶ The municipal leaders were not alone. Sensing the widespread public unease and capitalizing on the political opportunity provided by an upcoming election, the provincial government pushed an organized crime legislation agenda, as evinced in concerns raised by the Solicitor General: “Legal experts from Quebec’s Ministry of Justice and the federal government are working to draft an anti-motorcycle-gang law. Quebec wants the federal Parliament to pass this bill on an urgent basis, before the next election.”¹⁰⁷

The two-pronged pressure approach was less than subtle and the federal government had legitimate concerns about ostracizing the second most populous province

¹⁰⁵ Letter from Justice Minister Allan Rock to CACP member Chief Boothby (27 March 1997), CACP file PRO-9, Vol. 5.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

in Canada during this election period. The Liberal party was facing low approval ratings in Quebec and a charismatic adversary in the leader of the opposition, Lucien Bouchard. Losing the confidence of Quebec was not an option. The possibility of Quebec separation was very real in the mid-1990s; the Meech Lake and Charlottetown Accords had failed and a 1995 provincial referendum in Quebec on sovereignty had almost resulted in a new state. In the midst of this separatist unrest, a violent motorcycle war had broken out which the provincial politicians and police claimed the federal government had the power to stop with new legislation. The motorcycle gang war had become a political issue that was damaging federal Liberal Party popularity in Quebec.

Following the March 20th meeting, the Bloc outlined the concerted pressure it had applied on the federal government regarding the necessity for a legislative response to the biker feuding:

For us in the Bloc Quebecois, this is not just a matter that has been debated here for the past week. It is a very important subject. From the start, the Bloc Quebecois has been highly aware of the problem, because it is very much present in Quebec. As far back as 1995, we tried to convince the minister of the importance of legislation on gangs, of anti-biker gang legislation, of legislation to fight the scourge of organized crime.

You will recall that the Bloc Quebecois had to question the government on several occasions since 1995, that we in the Bloc Quebecois, the official opposition, had to make speeches in this House in order to convince the minister. Press conferences had to be held.¹⁰⁸

The Bloc went on to suggest that the March 20th visit by Mr. Rock to provincial and municipal politicians in Quebec City “had a salutary effect” and that Minister Rock

¹⁰⁸ *House of Commons Debates*, 160 (21 April 1997) at 1810 (Michel Bellehumeur).

“came back saying there was some urgency.”¹⁰⁹ The provincial pressure tactics seemed to be working.

Mr. Rock may also have been feeling the strain of an article published in the *Globe and Mail* on April 1. Written by the Minister of Justice and Attorney-General of Quebec Paul Begin, the strongly worded piece condemned Minister Rock’s proposals from the March 20th meeting with Quebec politicians as “inadequate”, and proposed anti-motorcycle-gang law that would criminalize membership. Demanding that the notwithstanding clause be used to eliminate *Charter* protection for biker group membership, he also suggested that the Quebec populace would not stand for federal inaction: “True the *Charter* protects freedom of association; but does that mean it safeguards and protects the existence of associations of a criminal nature? I cannot accept this proposition, and *I do not believe Quebecers can accept it.*”¹¹⁰ According to Begin, nothing short of strongly-worded legislation would be acceptable in Quebec.

Mr. Bellehumeur (Berthier-Moncalm) of the Bloc Quebecois was most active in pressuring the federal government on the anti-gang law front. Initially aiming to have provisions targeting bikers added to an omnibus Bill (C-17) that had been before the House for over a year¹¹¹, and sensing the mounting pressure on the government to act, he pursued an aggressive approach:

You will recall that on Monday, April 7th, the Bloc Quebecois practically had to threaten the government opposite with amendments that would add provisions concerning anti-biker legislation...The Bloc Quebecois is prepared to support the government 100 per cent on this bill, but considering recent events in Quebec,

¹⁰⁹ *Ibid.*

¹¹⁰ *Globe and Mail*, (01 April 1997) A14. (This author’s emphasis)

¹¹¹ Bill C-17 was officially tabled on March 8th, 1996 and passed its first reading on that same date. Some aspects of the omnibus bill, however, had been introduced in 1994 and 1995.

[the Federal Minister of Justice] should take advantage of this opportunity to amend this bill by including, as requested by Quebec, a provision that would open the way to legislation or provisions dealing with bikers and organized crime.¹¹²

In the balance was a potential combined challenge to the Liberals from the Bloc Quebecois and Parti Quebecois to attempt to introduce provincial anti-biker law. This would undoubtedly have highlighted federal impotence in the face of the biker violence. As Mr. Bellehumeur pointedly told the House; “The minister was forced to admit that sovereigntists are unanimous about the need for this kind of legislation.”¹¹³ If Bill C-17 was not to contain specific biker and organized crime provisions, there was no question as far as the Bloc Quebecois was concerned, that other legislation would have to be devised.¹¹⁴

As the election approached, tirades from the Bloc Quebecois against Liberal crime control policy became a constant refrain in the House of Commons. As usual, Mr. Bellehumeur led the attack:

Now we find the Liberals are trying to make some last minute corrections to try to save face so they can go tell Canadians they are trying to protect victims when they have through their legislation been protecting criminals for three and a half years. For three and a half years we have been criticizing the Minister of Justice. Every time he has brought in a bill he has been soft on criminals and ignored victims. What has he done for victims? He has done very very little.¹¹⁵

Mercilessly, he continued:

¹¹² *House of Commons Debates*, 154 (11 April 1997) at 1300 (Michel Bellehumeur).

¹¹³ *House of Commons Debates*, 154 (11 April 1997) at 1315 (Michel Bellehumeur). He added to this claim saying that “As far as criminal law is concerned and Quebec’s right to have its own anti-biker legislation ... the Bloc and the Parti Quebecois are definitely on the same wave length.”

¹¹⁴ “Bill C-17 is supposed to be the answer to all our problems with crime. Because of C-17, we do not have to pursue legislation we have been demanding for months and even years - anti-biker legislation - to deal with the majority of criminal offences.” *House of Commons Debates*, 154 (11 April 1997) at 1325 (Mr. Bellehumeur).

¹¹⁵ *House of Commons Debates*, 161 (21 April 1997) at 1225 (Michel Bellehumeur).

This Minister of Justice is a joke. This Minister of Justice has certainly not served the justice system well. He has not served victims well. He thinks he can sit here and introduce legislation that suits his whims and the whims of the Liberal Party. They will find out in a few short weeks what Canadians think of their ideas on criminal justice. We may be saying goodbye to quite a few Liberals in the next election. Canadians are fed up to the teeth of this daily ritual of how the Liberals think they are standing up to protect Canadians while at the same time they allow criminals to walk all over them.¹¹⁶

Of course, once the legislation was introduced the Bloc wanted to take as much credit as possible and show that it was their pressure tactics on the federal government that resulted in new law. It was an interesting balancing act. On the one hand, as the official opposition party, it was necessary to disparage Liberal Party proposals; conversely, they could not be seen to oppose legislation that would be popular in Quebec. So the Bloc chastised the government for taking too long but ultimately supported their legislation. Before the third reading of the Bill Mr. Bellehumeur criticized the government:

How many bombs went off in Quebec before the minister decided to take action? There had to be murders. There were marches in Saint-Nicolas, demonstrations by mayors and public pressure. Some innocent people were injured. Members will also recall that young Daniel Desrochers was killed in that gang war.¹¹⁷

Further on he concluded his case:

It took members of the Bloc Quebecois, who are here solely to look after Quebec's interests, to make them understand that there was a problem and that immediate action was required. The Bloc Quebecois has helped the government, has contributed to the drafting of a new provision that had never been seen in Canada. Thanks to the Bloc Quebecois and its repeated representations, the government was convinced to proceed. We are very happy about that.¹¹⁸

¹¹⁶ *Ibid.*

¹¹⁷ *House of Commons Debates*, 151 (8 April 1997) at 1345 (Michel Bellehumeur).

¹¹⁸ *Ibid.*

Fifteen minutes later he supported the Bill, the motion was agreed to, read for the third time and passed.

There is little doubt that political pressure from Quebec was a central reason for the enactment of Bill C-95 and noted as such by the media. The *Toronto Star* reported “Rock has been under pressure from the separatist Quebec government and the Bloc Quebecois to deal with the Hells Angels and Rock machine motorcycle gangs.”¹¹⁹ Correspondences from the Minister of Justice in the final stages of tabling the Bill illustrate the level of pressure he felt to create legislation to appease the province. In a letter to CACP executive member Chief Boothby two weeks before organized crime legislation was introduced in Parliament, the minister explained that “we have now accelerated that work as a result of the urgent request from our colleagues in Quebec” and subsequently, “I am doing my very best to respond as quickly as possible to the request that has been made by Quebec.” He concludes, “I am carefully considering the proposals made by the Quebec Government for ‘anti-gang legislation’.”¹²⁰

Political Opportunism

The chance to attack the Liberals on what had become a ‘touchstone’ election issue was not lost on other political parties. In House of Commons sessions dealing with justice issues in the weeks before the 1997 federal election, the Quebec biker war appears

¹¹⁹ “Anti-gang legislation goes quickly to Senate: Bill targets Quebec’s deadly biker wars” *Toronto Star* (22 April 1997) A 12.

¹²⁰ Letter from the Minister of Justice Allan Rock to CACP member Chief Boothby (27 March 1997).

to have been a platform from which the Reform Party could launch strident attacks on the Liberals' justice policies. There are several examples of this. In an April 8th session in which the biker violence figured prominently in the debate¹²¹, Reform Party Member Jack Ramsay supported Bloc attacks on Liberal crime control efforts:

I would like to feel that the justice minister is beginning to realize that Canadians across the country are looking to him and to the government to do something to protect them, to change the laws, and to put emphasis on penalizing the offenders...Canadians would like to think the justice minister and the government are concerned about their safety and the safety of their children. We really do not get that feeling. The justice minister should and could be doing something to ensure that Canadians are safe in their homes and on their streets. We in the Reform Party find he has fallen far short of ensuring Canadians of that protection.¹²²

The Reform Party attacks were to become increasingly pointed once the legislation was tabled. Critique shifted to focus on what was seen as a Liberal agenda of Quebec appeasement. In a heated debate on April 18th, Reform Party members went on the offensive:

The federal government is reacting to a challenge by the Bloc Quebecois that says the government is doing little to protect Quebecers...it has to give the perception to the Bloc Quebecois that the government is looking after the interests of Quebecers. The Liberals are doing poorly in Quebec. An election is coming a week from now. The government has to act, react and show that it cares. In the process it might be passing bad legislation...It is being fast tracked for the wrong reason...the Liberals are responding and reacting to one provincial government that has threatened to pull out of the country... It is more important to get it right than to get it done quickly. We can get it right and done quickly if we all get together and put our heads to it, rather than the leader of the Bloc Quebecois trying to make political brownie points in Quebec, rather than the justice minister trying to show how co-operative he is in times of urgency and emergency.¹²³

Or, a short time later:

¹²¹ The debate was characterized by less that subtle reminders that tougher laws were necessary "in light of all that is going on in Quebec with the biker war" and asking if the Liberals "had the political will to resolve what is a horrendous problem for Quebec." *House of Commons Debates*, (8 April 1997) at 1130 (Michel Bellehumeur).

¹²² *House of Commons Debates*, 151 (8 April 1997) at 1140 (Jack Ramsay).

¹²³ *House of Commons Debates*, 159 (18 April 1997) at 1355 (Jim Silye).

The Minister of Justice says “this problem is taking place in Quebec and must be dealt with immediately.” He knows it is potentially fertile ground for his party. He knows that it has always been a key to Confederation. It has always been a key to whether or not a party holds a majority and therefore that should be reason enough to act immediately.¹²⁴

Despite its bluster, the Reform Party and other parties of the House never really had a choice but to support the Bill. Since the announcement of the legislation was orchestrated to provide little time for serious debate, the opposition parties of Parliament were left with the options of either being for or against anti-gang law. The best political option became the unlikely compromise of critical supporter, a stance shared by both Reform and the Bloc. House of Commons hearings for the Bill were redolent with politicians playing both sides of the fence: heaping scorn on the Liberals for taking so long to devise legislation and condemning its last minute arrival before the election, yet ultimately allowing the Bill to pass quickly through the House.

International Influence

Beyond pressure from Quebec and political ‘point-scoring’ in Parliament, domestic concerns were not the only driving force behind federal action on organized crime. Through the mid- to late-1990s, members of the international community created conventions and partnerships to stem what was perceived to be a growing threat and Canada was expected to do its part. In the same year that Bill C-95 was passed, the Solicitor General pointedly remarked on the Government’s growing partnerships with international bodies in fighting organized crime:

¹²⁴ *House of Commons Debates*, 159 (18 April 1997) at 1425 (Dale Johnston).

Investigating crimes that cross domestic police jurisdictions is one thing, but dealing with crimes that cross international borders introduces a whole different set of issues. That is why our efforts in fighting organized crime must be done in concert with our international partners and must become even more sophisticated to keep pace with the criminal element.¹²⁵

It was a badly-kept secret that the United States was strongly encouraging Canada to increase its joint law enforcement collaboration. A profusion of Mutual Legal Assistance Treaties (MLATs) were signed between Canada and the United States in the mid-1990s to increase cooperation on organized crime investigations.¹²⁶ After several years of negotiation, Integrated Border Enforcement Teams (IBETs) were established in 1997 in large part to thwart the movement of organized crime.¹²⁷ But the pressure came from even further afield. In 1997, the Solicitor General made the following statement:

The United Nations has expressed alarm at the rising threat of organized crime internationally. We recognize that global problems demand global solutions. We are working with the United States and other partners in Europe, the Americas and around the world in forums such as the United Nations, Interpol, and the Organization of American States. In December, in Washington, I will attend the first ever meeting of G-8 Ministers on organized crime to further our work internationally.¹²⁸

Although the statement was made several months following the enactment of Bill C-95, it reflects the heightened global vigilance through the mid-1990s that would push organized crime to the top of the G-8 agenda by 1997. This pressure to display fortitude against organized crime came from both the United States and overseas.

¹²⁵ Ministry of the Solicitor General News Release, (25 August 1997).

¹²⁶ See: J. Bilton, M. Heeler, P. Stenning, *Regulation of Foreign Investigators' Activities in Canada*, Discussion Paper prepared for the Ministry of the Solicitor General of Canada, (2002).[Bilton, Heeler, Stenning 2002].

¹²⁷ *Ibid.*

¹²⁸ Solicitor General of Canada, Annual Statement on Organized Crime, Solicitor General of Canada presentation to the House of Commons (27 November 1997).

A few organized crime initiatives had been instigated prior to Bill C-95¹²⁹ but 1997 proved to be a watershed year for federal effort. An Anti-Smuggling Initiative that had seen sparse results received additional funding resulting in 17,000 smuggling-related charges in excess of \$13 million and \$118 million in evaded taxes and duties.¹³⁰ Five regional coordinating committees and a national coordinating committee on organized crime were established over the summer of 1997 to bring a multi-agency approach to the issue with both law enforcement and government officials working side-by-side. Integrated Proceeds of Crime units were expanded across Canada combining the resources and expertise of law enforcement, customs agents, crown counsel and forensic accountants to target the ill-gotten assets of organized crime. A Cross-Border Crime Forum in the fall of 1997 was established to improve cooperation and information-sharing between Canada and the United States and pursue offences related to organized crime such as telemarketing fraud and money laundering.¹³¹

Several bills beyond Bill C-95 were also established around the same time period to target aspects of organized crime. Bill C-17¹³² introduced numerous amendments related to powers of search and interim judicial release or bail that could be used in the investigation and prosecution of criminal organization offences. Bill C-8¹³³ created the

¹²⁹ For example, the Witness Protection Program Act came into force in 1996 establishing a formal national program to protect police witnesses.

¹³⁰ This 1997 initiative was highlighted in a 2000 press release. See: Department of Justice, News Release, "Government of Canada Makes Significant Progress in Combating Organized Crime" (11 September 2000).

¹³¹ Bilton, Heeler, Stenning, 2002 *supra* note 126 at 5.

¹³² Bill C-17, *An Act to amend the Criminal Code and certain other Acts*, 2^d Sess., 35th Parl., 1997 cl. 45-46 (assented to 25 April 1997).

¹³³ Bill C-8, *An Act Respecting the control of certain drugs, their precursors and other substances to amend certain other Acts and repeal the Narcotic Control Act in consequence thereof*, 3^d Sess., 35th Parl. 1996 cl. 45 (assented to 20 June 1996).

Controlled Drugs and Substances Act within which the Police Enforcement Regulations provided exemption for police, and others acting under their direction, in the pursuit of money laundering and possession of proceeds of crime offences. The Act enabled police to seize or retain property used or intended to be used to commit substance offences often related to organized crime activity.

In the intervening years between 1997's Bill C-95 and 2001's modifications to anti-gang law found in Bill C-24, the Canadian government continued to ratchet up its fight against organized crime. In October 1998, the government instituted an agreement, the Joint Statement on Organized Crime, to improve law enforcement information sharing. An agreement between the RCMP and U.S. law enforcement agencies provided for reciprocal access to each other's criminal databases.¹³⁴ Money laundering and forfeiture of proceeds of enterprise crime legislation as well as a new Extradition Act¹³⁵ were further heralded as proof of national commitment to the world-wide effort to stem the tide of organized crime. Perhaps as a capstone to this effort, in June 1999 the Solicitor General announced funding in the amount of \$15 million per year for the RCMP to fight organized crime at Canada's three largest international airports: Montreal, Toronto and Vancouver.¹³⁶

The Canadian report card on organized crime initiatives undoubtedly met with U.S. and U.N. approval in time for the completion of the global convention on

¹³⁴ Specifically identifying the need for information sharing on firearms identification.

¹³⁵ *Extradition Act*, S.C. 1999, c.18.

¹³⁶ Department of Justice, News Release, "One hundred RCMP members were added to exclusively target organized criminals who use these airports as points of entry into Canada." (11 September 2000).

transnational organized crime in 2000.¹³⁷ When the Solicitor General announced in 1997 that:

Organized crime is a global problem. The United Nations has recognized it as a priority for the next century and has called on its member-states to declare it public enemy number one,¹³⁸

the Canadian government could say it had done its part including the introduction of anti-gang law.¹³⁹

By the year 2000, the Department of Justice declared its success in having Canada become an international leader on organized crime. Working in the G-8, United Nations and the Organization of American States, it had helped develop and promote international standards to combat organized crime that culminated in a UN Global Convention on Transnational Organized Crime.¹⁴⁰ In less than four years, the Canadian government had gone far in responding to American and UN concerns and in shaping a whole new approach to organized crime.

In the mid-1990s, international concerns had combined with domestic pressures on the issue of organized crime. Politicians in Quebec were strongly motivated to portray

¹³⁷ Note: Compliance with international norms continued to shape Canadian policy regarding organized crime into the new millennium. The new definition of “criminal organization” in Bill C-24 reduced the number of members or an organized crime group from five to three and identified gang activity as having to realizing gain. The definition clearly mirrors the section of the *United Nations Convention on Transnational Organized Crime* adopted in December 2000 that states:

“‘Organized criminal group’ shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses established pursuant to this Convention, in order to obtain, directly, or indirectly, a financial or other material benefit.”

¹³⁸ Solicitor General Andy Scott’s Annual Statement on Organized Crime to the House of Commons, (27 November 1997).

¹³⁹ The international community was also pleased with the Canadian efforts on the Financial Action Task Force on Money Laundering (FATF).

¹⁴⁰ The Convention was drafted by the Ad Hoc Committee established by UN resolution 53/111 of December 1998.

a localized motorcycle gang war as a federal issue. The federal Reform Party had seized on the political opportunity presented by the feuding in Quebec to roundly criticize Liberal justice policies on a national level. The UN and U.S.A. were exerting pressure on the global community to show a strong commitment in the fight against organized crime. These pressures combined with an upsurge in Quebec biker hostilities in the spring of 1997 would have made anti-gang law-making an appealing federal option. Unfortunately, the Liberals were more focused on the political value of passing law before the election than the practical implications of the new law.

Rushed Enactment

The first section of the legislation was not even fully discussed let alone the remainder of the Bill.¹⁴¹

Bill C-95 was introduced in Parliament barely two weeks before dissolution of the House preceding the national election. One might assume that its last-minute inclusion would raise enough concern to prevent its adoption. Yet despite many voiced reservations, Bill C-95 was passed through Parliament in record time. Debate from the House of Commons is significant in illustrating two seemingly mutually-exclusive forces at play: unease with the contents of the proposed legislation and resignation to its inevitability. When the Bill was first introduced, the Reform Party immediately criticized the rushed nature of the proposal:

Mr. Jack Ramsey (Ref.): I wonder why it has taken so long to bring this bill forward. It has to be rushed through the House and we do not have enough time to

¹⁴¹ Moon, *Outlawing the Outlaws* *supra* note 61 at 457.

really establish its constitutionality and enforceability...Now it has to be rushed through the House.¹⁴²

Mr. Jim Silye (Ref.): I am embarrassed to admit it but I believe the justice minister is rushing this bill through more for political reasons than for showing that he cares about the violence in Quebec. He did not care about that a month ago... It is important for us to have the sensibility and the common sense not to rush things through for partisan purposes.¹⁴³

Mr. Dale Wetaskiwin (Ref.): I know we are not supposed to impugn motive but I wonder if this rushed legislation has not been tabled more for optics and political reasons than for justice reasons.¹⁴⁴

After a few days to examine the bill, the critique was even more direct:

Mr. Jack Ramsay (Ref.): It is very important...that we determine the constitutionality and the enforceability of this bill and whether this clause and the allied clause which it creates, that is criminal organization and criminal organization offence, are enforceable and not hollow pieces of legislation.¹⁴⁵

Mr. Chuck Strahl (Ref.): I agree with the minister that the definition is broad enough to encompass the groups he is targeting like the biker gangs which probably prompted this bill. How will the minister ensure this definition does not include other groups that are formally or informally organized? It is a pretty broad definition.¹⁴⁶

Mr. Jack Ramsay, reporting that he was unsure whether the organized crime definition was “enforceable or applicable” said:

It is so nebulous that we may have difficulty ever having the courts determine that an organization is a criminal organization...I have examples of areas of concern where we need constitutional experts and arm’s length lawyers to give opinions because they intervene and conflict with the *Charter of Rights and Freedoms*.¹⁴⁷

It had become clear to all who took the time to investigate the bill in detail that the provisions were underdeveloped and likely susceptible to challenge under the *Charter of*

¹⁴² *House of Commons Debates*, 158 (April 17 1997) at 1720 (Jack Ramsey).

¹⁴³ *House of Commons Debates*, 159 (18 April 1997) at 1355 (Jim Silye).

¹⁴⁴ *House of Commons Debates*, 159 (18 April 1997) at 1425 (Dale Johnston).

¹⁴⁵ *House of Commons Debates*, 160 (21 April 1997) at 1200 (Jack Ramsay).

¹⁴⁶ *House of Commons Debates*, 160 (21 April 1997) at 1210 (Chuck Strahl).

¹⁴⁷ *House of Commons Debates*, 160 (21 April 1997) at 1220 (Jack Ramsay).

Rights and Freedoms. The lack of time to properly assess the merit of the bill was of particular concern:

Mr. Chuck Strahl (Ref.): I hope the minister is right that this bill will stand the constitutional challenge and will do what he wants it to do. But things done in haste this close to an election run the risk of not being done properly...Some [members of Parliament] received the bill Friday or even this morning. We had people who worked on the weekend. Many of us tried to find out exactly what the bill would mean with consequential amendments and all that stuff. It was very difficult to do.¹⁴⁸

Mr. Jim Silye (Ref.): I submit that this is an example of poor governance...Our job here is to present proper and good legislation. What is the point in passing bad legislation? It will just get thrown out in the courts anyway, especially amendments to the Criminal Code. We would be better to have no law at all than to have a bad law.¹⁴⁹

Despite the haste of passage and concern over constitutionality,¹⁵⁰ the legislation was whisked through the House of Commons. A Department of Justice-ordered public – opinion survey taken in Quebec in early April indicated that there was strong support for virtually any type of new legislation:

There was spontaneous agreement with the idea of an “anti-gang law”, even though almost none of the participants knew what it involved. It was impressive-sounding and appeared to be a good idea, even though there was doubt that a law could change anything by itself. The willingness and the necessary means to do what it takes, for as long as it takes, seemed in the minds of the participants at least as important as the law itself.¹⁵¹

¹⁴⁸ *House of Commons Debates*, 160 (21 April 1997) at 1355 (Chuck Strahl).

¹⁴⁹ *House of Commons Debates*, 159 (18 April 1997) at 1355 (Jim Silye).

¹⁵⁰ To be discussed in greater detail in the upcoming chapter, “New Law”.

¹⁵¹ Department of Justice, “Final Report: Measures to Combat Organized Crime” by, Les Études de Marché Créatec, National Achieves (April 1997) at 7, available through the National Archives, Ottawa. This contracted public opinion research was conducted on April 3-4 of 1997. The Introduction begins: “Under our standing offer, the communications Directorate of the Department of Justice would like to conduct urgent qualitative research in Quebec to learn the public’s views on policy proposals or proposals to amend existing statutes with a view to improving measures aimed at combating organized crime.”

Perhaps most telling as to Liberal Party confidence in the guaranteed passage of the bill was how blithely Justice Minister Rock could dismiss the concerns of the leader of Canada's Civil Liberties Association:

Alan Borovoy, for whose views I have the highest regard, expressed concern about whether the bill is overly broad, whether the definitions of criminal organizations are too sweeping so that we will catch in our net those who should not be there and do not deserve to be called a criminal organization...we took respectfully into account the views of Alan Borovoy and others who were concerned about over breadth.¹⁵²

The Liberals could afford to be smug. "Policing need" would prove the ultimate legitimization tool to have the legislation quickly passed through Parliament. Few would dare contest legislation proposed on the basis of public safety in the midst of a motorcycle war and seemingly needed by law-enforcement. In the police, the government found the ultimate ally for the speedy adoption of Bill C-95.

Policing Need

Police officers have made it clear they need improved tools and a mechanism to better coordinate and integrate their efforts to get the job done. I'm confident that this package can help.¹⁵³

In his 17 April 1997 inaugural address to Parliament on Bill C-95, Solicitor General Herb Gray wasted no time in setting the tone for all ensuing government speeches on the necessity of anti-gang law. In the very first paragraph of his speech he references "extensive consultations with police across Canada" that occurred in order to

¹⁵² *House of Commons Debates*, 160 (21 April 1997) at 1230 (Hon. Allan Rock).

¹⁵³ Department of Justice, News Release, (17 April 1997) citing Hon. Herb Gray from the House of Commons Debates.

“address police concerns.”¹⁵⁴ He cited a 1996 National Forum on Organized Crime, which consisted almost entirely of CACP members and associated enforcement leaders, as the impetus behind “the proposals we see here today.”¹⁵⁵ It would not take long for his rhetoric to become repetitive, continually paraphrasing an initial statement that “Police officers have made it clear they need improved tools...to get the job done.”¹⁵⁶ It would not be too great a generalization to encapsulate the entire argument presented by the opening address for Bill C-95 in five words: *police say they need it*.

The theme had been set and became a government mantra throughout the debates. Allan Rock, Minister of Justice, invoked the government’s “collaborative efforts with the police.”¹⁵⁷ Moreover, he announced; “Most of the measures contained in Bill C-95 were proposed by police officers.”¹⁵⁸ When an opposition party member questioned whether the Bill would “give police forces that much more power when they already have the same powers on an individual basis”, Mr. Rock responded “I believe so but, more importantly, the police believe so.”¹⁵⁹ Even months following the adoption of the writ, “policing need” continued to be the cited reason for the passage of the Bill. In November

¹⁵⁴ *House of Commons Debates*, 158 (17 April 1997) at 1705 (Hon. Herb Gray).

¹⁵⁵ *Ibid.* His point of reference was a National Forum on Organized Crime held in September 1996 hosted by the Department of Justice and the Ministry of the Solicitor General but organized to a very large extent by the CACP. The forum is examined in detail in Part Three in the chapter “The Federal Organized Crime Forums.”

¹⁵⁶ *House of Commons Debates*, 158 (17 April 1997) at 1710 (Hon. Herb Gray).

¹⁵⁷ *House of Commons Debates* 158 (17 April 1997) 1710 (Quote of Hon. Allan Rock read by Hon. Herb Gray).

¹⁵⁸ *House of Commons Debates*, 158 (17 April 1997) at 1130 (Hon. Allan Rock).

¹⁵⁹ *House of Commons Debates*, 160 (21 April 1997) at 1225 (Hon. Allan Rock responding to Jim Silye).

1997, the Solicitor General claimed “the Canadian law enforcement community has been the cornerstone of our anti-organized crime efforts.”¹⁶⁰

The rationale for Bill C-95 is most concisely explained in one page from the House of Commons Debates during its second reading. As the guiding justification for anti-gang law, policing need is invoked by Liberal Solicitor General Herb Gray an astonishing six times. It is necessary to be pedantic here in order to properly convey the less-than-delicate method of the Minister. First, the Minister claimed that:

The proposals developed through extensive consultation with police across Canada will give them and other law enforcement agencies better tools to investigate and prosecute those who participate in criminal activity.¹⁶¹

Second, he built his case by suggesting that a broad array of legal minds were in agreement with propositions stemming from the government funded (but largely CACP-organized) national organized crime meeting:

Last September there was a National Forum on Organized Crime hosted by the Minister of Justice and me. The proposals we see here today are based in large measure on the recommendations made to us by the participants in the forum including representatives of police organizations from around the country.¹⁶²

Third, the Minister reiterated the importance of the police suggestions to the legislation:

Again, in response to a recommendation by police organizations at the National Forum on Organized Crime, the Solicitor General of the day will make an annual statement on organized crime in the House of Commons.¹⁶³

Fourth, he quoted the Minister of Justice, Allan Rock as saying:

Thanks to collaborative efforts with the police, we have attained two objectives: we have equipped law enforcement agencies with better tools to combat criminal

¹⁶⁰ *House of Commons Debates*, 035 (27 November 1997) at 1010 (Hon. Andy Scott).

¹⁶¹ *House of Commons Debates*, 158 (17 April 1997) at 1707 (Hon. Herb Gray).

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

gangs, and we have developed a series of measures that ought to stand up better in court.¹⁶⁴

By the fifth iteration of the same theme, even the least attentive member of Parliament could not fail to see that “police need” was the posited crux upon which the legitimacy of the new law was to hang:

Organized crime gangs have increasingly become a threat to the safety of many communities all across the country. Police officers have made it clear they need improved tools and a mechanism to better co-ordinate and integrate their efforts to get the job done... [the legislation] will give important and effective new tools to police authorities across the country to make some important breakthroughs in fighting organized crime wherever it is in the country.¹⁶⁵

Relentlessly, Minister Gray hammers down his message with a final salvo to make sure he has been clear:

I am confident this package can be of great help to the police authorities in ensuring public safety... [it was] made in consultation with law enforcement organizations across the country.¹⁶⁶

The message was clear: opposition to the Bill was opposition to the police. Although this is a tenable position under normal circumstances, to be against the police and tough-sounding law in the midst of a seemingly unstoppable biker war would have been politically inadvisable.

In the House of Commons Committee of the Whole (the final stage before a Bill is sent to the Senate), Mr. Ramsay asked Justice Minister Rock: “To what extent has the department gone outside to get advice and consultation regarding the constitutionality of

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

what we have addressed so far?”¹⁶⁷ Mr. Rock’s answer is illustrative of how Bill C-95 was to be portrayed as a police, and police chief in particular, product.

The process that resulted in the Bill started in 1996. At that time the Solicitor General and I began looking at different available approaches to help the police investigate organized crime. We conducted a seminar with police forces from across the country in February 1996 and received an extensive factual briefing about the nature and extent of organized crime in Canada, including biker gangs but not just biker gangs. Through the period of last summer [1996] and into the fall we in the department looked at possible approaches through legislation. In September of last year we had a national forum on organized crime. When the government of the province of Quebec asked us in March [1997] for legislation to help with the biker gang problem in Quebec, that request accelerated work already under way.¹⁶⁸

The “February seminar” was a meeting between the CACP and federal officials. The “September Forum” was organized between federal departments and the CACP and was comprised of over 75% police attendance.¹⁶⁹ In no uncertain terms Mr. Rock was suggesting that his department’s input on organized crime came almost exclusively from the police. Even the “push from Quebec” was described as simply “accelerating work already under way” that had begun in conjunction with the police.

“Policing need” thus became the ultimate retort to those who challenged Bill C-95 and proved so convincing a tool that the rhetoric was eventually even adopted by the opposition. Mr. Jack Ramsay (Crowfoot, Reform) endorsed the Bill saying “We know the police chiefs and police forces want it. They have been asking for it.”¹⁷⁰ Mr. Bellehumeur (Berthier –Montcalm, Bloc Quebequois) approved of the Bill but felt it did not go far enough in addressing police concerns: “It is a step in the direction of what police forces

¹⁶⁷ *House of Commons Debates*, 160 (21 April 1997) at 1230 (Jack Ramsay).

¹⁶⁸ *House of Commons Debates*, 160 (21 April 1997) at 1235 (Hon. Allan Rock responding).

¹⁶⁹ These forums are discussed in detail in chapter ten, *The Federal Organized Crime Forums*.

¹⁷⁰ *House of Commons Debates*, 158 (17 April 1997) at 1715 (Jack Ramsay).

have been calling for. It is a first step....However, this is nothing compared with what chiefs of police have been asking for, for years in the way of legislation.”¹⁷¹

While prior research has documented the unquestioned authority of the police in the courtroom,¹⁷² it is rare to see this power in Parliament. Not once in the course of the debates was the obvious question raised of whether the police could be wrong. Another question missing from debate was if perceived “need” was being exaggerated for political purposes. Instead, the tone in the House of Commons was that the police know best: “When you want to know what will help the police in what they are doing to combat crime on the streets you go to the police.”¹⁷³ Justice Minister Rock had simply to say that he had created legislation that was “supposed to make the work of the police easier.”¹⁷⁴ Rushed through Parliament and largely impervious to critique, the resulting legislation was, unsurprisingly, far from perfect. The shortcomings of Bill C-95 are the topic of the following chapter.

¹⁷¹ *House of Commons Debates*, 158 (17 April 1997) at 1625 and 1635 (Michel Bellehumeur).

¹⁷² See: J. Skolnick, “Deception by Police” (1982) 1:2 *Criminal Justice Ethics* 40 and Stanley Fisher, “Just the Facts, Ma’am’: Lying and the Omission of Exculpatory Evidence in Police Reports” (1993) 28 *New Eng. L. Rev.* 1.

¹⁷³ *House of Commons Debates*, 160 (21 April 1997) at 1625 (Michel Bellehumeur, consideration in committee of Bill C-95).

¹⁷⁴ *House of Commons Debates*, 151 (8 April 1997) at 1305 (Hon. Allan Rock).

Chapter Three: New Law

The centerpiece of this legislation was a new offence of “participation in a criminal organization.” This criminalized mere membership in a criminal organization and laid the groundwork for the targeted use of new investigative tools to be directed against criminal organizations. These included special peace bonds, new powers to seize proceeds of crime including access to income tax information, a new possession of explosives offence, tougher and consecutive sentencing provisions, greater powers to resort to electronic surveillance and a new reverse onus bail provision for those charged under the new offences...[T]he... extensive police powers read like a police wish list.¹⁷⁵

Introduction

At first glance, the *Act to Amend the Criminal Code (Criminal Organizations) and to Amend Other Acts in Consequence*¹⁷⁶, appeared to provide police with an arsenal of new measures to combat organized crime. It gave police exemption rules for disclosure in obtaining warrants. Police gained more scope to lay charges within the broadened number of offences considered “enterprise crime”. An officer could now automatically lay a first degree murder charge on anyone who had killed another person with explosives in relation to organized crime.

This chapter will show that this apparent bonanza for police was actually a bust. *Charter* challenges were to curtail the application of much of the legislation. Furthermore, establishing gang membership was to prove exceedingly difficult. Moreover, investigations under the Act were long and costly and trials exceedingly expensive. More often than not, Bill C-95 would end up as a plea bargaining tool rather than effective legislation in itself. The chapter examines the results of legislation speedily

¹⁷⁵ D. Stuart, “Time to Recodify Criminal Law and Rise Above Law and Order Expediency: Lessons from the Manitoba Warriors Prosecution” (2001) 28:1 Man. L.J. at 93.

¹⁷⁶ *Act to Amend the Criminal Code (Criminal Organizations) and to Amend other Acts in Consequence* S.C. 1997, c.39.

created, passed under intense pressure, and protected from criticism by allusions to police support.

Existing Organized Crime Law

Bill C-95 was Canada's first anti-gang legislation but not its first organized crime law. Although it is beyond the scope of this study to give a detailed analysis of all Canadian legislation pertaining to organized crime, it is useful to provide a brief legislative history in this area in order to situate Bill C-95. In Canada there is a record of organized crime legal reform initiatives found in mutual legal assistance treaties, special seizure and forfeiture provisions and in means to track money laundering, bank records and asset sharing. What distinguished Bill C-95 from previous legislation is that it defined the term "criminal organization" and created a participation offence.

Two 1970s commissions concentrating on malfeasance in the building sectors of Ontario¹⁷⁷ and Quebec¹⁷⁸ had found corruption, violence and bombings that raised national concerns over organized crime. As a result of the findings of the commissions and from anxiety that the newly enacted R.I.C.O Act¹⁷⁹ in the United States would cause organized crime members to seek refuge north of the border, amendments to Section 312 of the *Criminal Code*¹⁸⁰ occurred in 1975.

¹⁷⁷ Ontario Report, "Report of the Royal commission on Certain Sectors of the Building Industry" by Judge Harry Waisberg, Chairman, vols. 1 and 2. Ottawa: Queen's Printer (1974).

¹⁷⁸ Quebec Police Commission. 1977. "The Fight Against Organized Crime in Quebec." Report of the Commission of Inquiry, presented to the Quebec Solicitor General, Jean L. Dutil (September 30, 1976). Quebec Official Publisher.

¹⁷⁹ Racketeer Influenced Criminal Organizations Act, 18 U.S.C. passed in 1970 as Title IX of the Organized Crime control Act of 1979, Pub. L No. 91452, 84 Stat. 941.

¹⁸⁰ Now R.S.C. 1985, c. C-46, s. 354. The amendments were aimed at preventing possession of illicit gains.

The 1980s and early 1990s saw several reforms that would target organized crime activity. The *Mutual Legal Assistance in Criminal Matters Act*¹⁸¹ was passed in 1988 to assist international law enforcement collaboration on organized crime investigations. The Act enabled the creation of treaties that assisted in the execution of searches and seizures; taking evidence from witnesses; gathering and transferring information and evidence; and enabling police to participate in over-seas investigations.¹⁸² The legislation resulted in much collaborative work between foreign law enforcement bodies and a veritable explosion of MLATs (Mutual Legal Assistance Treaties) and MOUs (Memoranda of Understanding). These would eventually be extended beyond organized crime to include special agreements on terrorism investigations post-2001, especially between Canada and the United States.

Proceeds of Crime legislation (Bill C-61)¹⁸³, passed in 1989, became a new section in the *Criminal Code* and caused amendments to the *Narcotics Control Act (NCA)*, the *Food and Drugs Act (FDA)* and the *Income Tax Act*. The crux of the legislation lay in the classification of proceeds of crime as property obtained as a result of the commission of an enterprise or designated drug offence or through an act that would have constituted an enterprise crime offence or designated drug offence.¹⁸⁴ It also allowed police to search and seize property that could ultimately be forfeited under the new legislation.¹⁸⁵ Income tax documents could now be examined without “laying an

¹⁸¹ *Mutual Legal Assistance in Criminal Matters Act*, S.C. 1988, c.37.

¹⁸² M. Beare, *Criminal Conspiracies: Organized Crime in Canada*, (Toronto: Nelson Canada, 1996) at 162 [Beare, *Criminal Conspiracies*].

¹⁸³ Bill C-61 *Proceeds of Crime Act*, S.C. 1988, c.51.

¹⁸⁴ *Criminal Code*, R.S. 1985, c. C-50, s. 462.3.

¹⁸⁵ This power is granted under a new *Criminal Code* section, s. 462.32.

Information” but through application to a judge under section 462.48 of the *Criminal Code*.

In November 1990, Canada was one of twelve countries to ratify the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.¹⁸⁶ The convention recognized that organized crime was making enormous profit from illicit drugs and that criminal asset seizure would prove one of the best weapons to fight back. Signatories were obliged to create legislation aimed at the seizure of illicit drug-related property and proceeds. Canada’s adoption of the *Convention* led to tougher national laws.¹⁸⁷

In 1991, the original *Proceeds of Crime (Money Laundering) Act*¹⁸⁸ was enacted, requiring many financial institutions to identify customers and to maintain records. Banks, credit unions, trust companies and similar financial institutions were obliged to keep certain transaction records for five years so they could potentially be available as

¹⁸⁶ The 1998 *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* is one of three major drug control treaties currently in force. It provides additional legal mechanisms for enforcing the 1961 Single Convention on Narcotics Drugs and the 1971 Convention on Psychotropic Substances. The Convention entered into force on November 11, 1990.

¹⁸⁷ A concise account of the legislative repercussions within Canada that can be tied to adopting the Convention is found in *Organized Crime: World Perspectives*, (2003) p. 57. Since the early 1990s “there have been additional amendments to the *Criminal Code* and to other Canadian legislation that refined and increased the scope of what originally was designated as an “enterprise crime offense” or a “designated drug offense”; eased the burden of proof, linking the proceeds of crime with the associated crime; strengthened the ability of law enforcement officials to prove money laundering; allowed association with or membership in organized crime to be grounds for not being allowed in Canada; introduced an improved Witness Protection Act (S.C. 1996, c.15) that came into effect June 20, 1996; renamed “designated drug offense” as “designated substance offense” and extended the coverage of prohibited substances, together with their analogues and precursor chemicals; brought up to date and simplified procedural law relating to search and seizure, interception of communications and surreptitious observation; and made participation in a criminal organization an offense.”

¹⁸⁸ *Proceeds of Crime (Money Laundering) Act*, S.C. 1991, c.26.

evidence in criminal investigations. The Act was created “amid pressure on Canada to duplicate the U.S. system.”¹⁸⁹

The *Seized Property Management Act*¹⁹⁰, enacted in 1993, authorized:

...the Minister of Public Works and Government Services to: provide consultative and managerial services of seized property connected to criminal offenses to law enforcement agencies; dispose of this property when the Courts declare forfeiture; and share the proceeds of the disposition in accordance with government regulations.¹⁹¹

The overriding purpose of the Act was to complement other organized crime legislation passed in the preceding years. It led to the creation of a Seized Property Management Directorate to manage assets seized under Proceeds of Crime legislation. The property it managed encompassed anything acquired as proceeds of crime, or anything used to commit a crime. Between 1993 and 2003, the total value of items seized grew from \$13 million to \$71 million and the net proceeds from disposal increased from \$1.5 million to \$12.8 million.¹⁹² However, like all the preceding organized crime legislation, the bill targeted activity and not actors, an omission addressed by introduction of Bill C-95:

Until the enactment of Bill C-95, Canada’s forays into the battle against organized crime had been basically limited to “proceeds of crime” legislation. However that changed with this new “anti-gang” law that not only defined a “criminal organization” but also introduced a “participation offence” for members of such an organization who were not otherwise parties to a crime.¹⁹³

¹⁸⁹ Beare, *Criminal Conspiracies*, *supra* note 182 at 170.

¹⁹⁰ *Seized Property Management Act*, 1993 c.37.

¹⁹¹ Online: Public Works and Government Services Canada

<http://www.pwgsc.gc.ca/text/factsheets/seized_property-e.html>.

¹⁹² *Ibid.*

¹⁹³ Moon, *Outlawing the Outlaws*, *supra* note 61 at 453.

“Anti-Gang” Legislation

Bill C-95 was introduced by the Minister of Justice, Mr. Rock, as legislation focused on the offence of participating in a criminal organization and accompanied by new definitions and provisions in the *Criminal Code*:

These include a new peace bond designed to target gang leadership and make it difficult for criminal organizations to carry out their criminal activities. New powers will allow police to seize the proceeds of organized crime activity and with a judge’s order to access income tax information related to gang activity. New *Criminal Code* offences and penalties will target the use of explosives in criminal gang activity. New sentencing provisions in the *Criminal Code* will be aimed at criminal gangs, including the delay of parole eligibility for certain criminal organization offences, and measures will support increased police surveillance of gang activity.¹⁹⁴

The provisions found within Bill C-95 would seem to be highly beneficial to the police. Bill C-95 established the concepts of “criminal organization”, “criminal organization offence” and “participation in a criminal organization offence” into the *Criminal Code*, the cornerstone of the new legislation being the participation offence. While the offence does not criminalize membership in a criminal organization per se, it provided a definition for organized crime to which other new *Criminal Code* provisions can be applied. A “criminal organization” was defined as any group, association or other body consisting of five or more persons, whether formally or informally organized,

- (a) having as one of its primary activities the commission of an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more and
- (b) any or all of the members of which engage in or have, within the preceding five years, engaged in the commission of a series of such offences.¹⁹⁵

¹⁹⁴ *House of Commons Debates*, (17 April 1997) at 1705 (Herb Gray).

¹⁹⁵ *Criminal Code*, R.S. 1985, c. C-50, s. 2 (definition).

Section 183 of the *Criminal Code* was amended to give greater scope for use of electronic surveillance by allowing police to apply directly for a judicial authorization. This authorization did not require the judge to be satisfied that electronic surveillance was necessary whereas in all other applications (i.e. non-criminal association cases) it must be proved that it is the only possible recourse.¹⁹⁶ Renewals could be made up to a year in length and the notification period could be extended for up to three years.

Section 487.3 modifications allowed for orders to be sealed and disclosure rules to be bypassed. When a third party such as a confidential informant was involved in providing the information for the search warrant in a criminal organization investigation, the rules of right to discovery by the accused no longer applied on the grounds that disclosure would “compromise the nature and extent of an ongoing investigation.” In principle, this caused the balance between law enforcement interests and accused rights to be tilted strongly in favor of the police.

Several other changes to the *Criminal Code* seemed to be favorable to law enforcement interests. Explosives, the weapon of choice in the motorcycle feuding, were targeted in several ways. Under section 82.1, the penalty for possession of explosives without lawful excuse was increased to fourteen years imprisonment and under section 231 (6.1) death that results from unlawful possession of an explosive automatically warranted a first-degree murder charge. Section 82 (2) dramatically increased the

¹⁹⁶ Under section 185 (1.1) and 186 (1.1) of the *Criminal Code of Canada* electronic surveillance is allowed when “other investigative procedures have been tried and have failed or it appears they are unlikely to succeed or that the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using other investigative procedures.”

sentencing guidelines for the unlawful possession of explosives from five to fourteen years.

Section 515 (6) (a) created an exception to the reverse onus clause that is normally applied to pre-trial detentions: those charged with a participation offence could now be held without the state having to show cause. Section 810.01 could force any person to enter a peace bond if the judge was satisfied that an informant had reasonable grounds to believe the individual would commit a criminal organization offence, a provision criticized by Alan Borovoy of the Canadian Civil Liberties Association as “punishment by clairvoyance.”¹⁹⁷ Sections 490.1 and 490.9 addressed forfeiting property related to criminal organization offences, permitting police to target fringe members of gangs or persons with a very limited role in gang offences.

Flawed Law

Although Bill C-95 appeared to be tough new legislation that police would embrace as a set of useful legal tools to fight organized crime, much of the new law proved unenforceable. Firstly, the definition of “criminal organization” satisfied no one. The main police complaint was that it was too restrictive.¹⁹⁸ It required evidence of a minimum of five members, some of whom committed in the previous five years a series of offences subject to imprisonment for at least five years, and police further had to prove that the gang’s primary activity was committing crimes. But the chief complaint of law

¹⁹⁷ *Globe and Mail* (8 April 1997) A2.

¹⁹⁸ The police complaints about the definition of “criminal organizations” found in Bill C-95 were outlined in: *Speaking Notes for an address by Marc St-Laurent, Deputy Chief, Montreal Urban Community Police*, (Senate Committee on Legal and Constitutional Affairs, November 2001).

enforcement agencies was that criminal organizations could easily get around the definitions by setting up satellite groups and having subordinate groups commit crimes for them. In contrast, legislation introduced in 2001 (Bill C-24) required only that police prove the existence of a group of at least three people whose main objectives included committing or facilitating the commission of crimes for the purpose of realizing gain. Police felt the less onerous 2001 definition enabled them to reach not only the individuals in the organization who actually commit the crimes, but all the hidden leaders who plan the crimes.¹⁹⁹

While the police found Bill C-95 definition too restrictive, legal academics considered it too broad. The definition was decried as extending too far beyond a cohesive gang committed to illicit activity and could be applied equally to very low level members of an organized gang or loose associates in crime. Moreover only one member of the group needed to have committed a series of offences within five years and there was no requirement of gang continuity.²⁰⁰ The definition of organized crime in Bill C-95 stood in marked contrast to more precise and widely accepted definitions. Since 1988, for example, the International Criminal Police Organization (INTERPOL) had characterized a criminal organization as “a group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption.”²⁰¹

¹⁹⁹ *Ibid.*

²⁰⁰ Stuart 1998, *supra* note 5 at 210.

²⁰¹ Definition from INTERPOL’s First International Symposium on Organized Crime at St. Cloud, France, May, 1988, as quoted by Christopher Blakesley, “The Criminal Justice System Facing the Challenge of Organized Crime: Section II. The Special Part” (Presented to 16th International Congress of Penal Law, Budapest, Hungary, 1999).

Although a universally accepted definition of organized crime has never been articulated, that codified in Bill C-95 was particularly expansive.

Other sections of the Bill were also deemed problematic.²⁰² Amendments to section 467.1 created a new crime for a criminal organization member who takes part in an offence committed in association with the organization:

Everyone who:

- (a) participates in or substantially contributes to the activities of a criminal organization knowing that any or all of the members of the organization engage in, or have, within the preceding five years, engaged in the commission of a series of indictable offences under this or any other Act of Parliament for each of which the maximum punishment is imprisonment for five years or more and,
- (b) is a party to the commission of an indictable offence for the benefit of, at the direction of or in association with the criminal organization for which the maximum punishment is imprisonment for five years or more, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

This provision was dangerously close to guilt by association, a premise normally considered contrary to the very principles of common law.²⁰³ The potential breadth of this definition was even more enormous than the often disparaged “wide-net” of the American R.I.C.O. Act that as a minimum requires a “pattern of racketeering activity.”²⁰⁴

The pervasive problem with all of these amendments was over-breadth. Bill C-95 could refer to any Act of Parliament and could presumably capture acts of political

²⁰² Much of the following analysis of the legislative amendments draws upon Don Stuart’s excellent critique of Bill C-95: “Politically Expedient but Potentially Unjust Criminal Legislation against Gangs”, (1997) 2 (2) Can. Crim. L. R., 139.

²⁰³ With the notable exception of “conspiracy”.

²⁰⁴ RICO is the Racketeering Influenced and Corrupt Organizations Act - 18 U.S.C. ss. 1961-1964.

dissent and civil disobedience.²⁰⁵ Don Stuart predicted in 1997 that there would be challenges to the constitutionality of the Bill based on its expansive nature, particularly in its use of open-ended criteria such as ‘involvement in a criminal association’ and expansive definition of a criminal organization. He described Bill C-95 law built on the characteristics of over-breadth and imprecision.²⁰⁶ For this reason, the Bill became more valuable as an inducement to plea-bargaining than as a usable law.²⁰⁷ To prosecutors, section 7 challenges under the *Charter* (that protect against legislation that is wider than necessary to achieve its objective) could be seen as a constant threat.

Several other areas of Bill C-95 were deemed problematic. Sentencing provisions allowed for a maximum punishment of up to fourteen years with few constraints on the articulated reasoning for a particular sentence length. Furthermore, there was little differentiation made between principal and peripheral gang members. These very obvious flaws within the Bill, according to Michael Moon “illustrate[d] the political expediency underpinning the legislation.”²⁰⁸ In his study published a full two years after Bill C-95’s enactment, he was surprised to report “[t]hat there are currently no reported cases where the Crown has sought at trial the penalty enhancements that the legislation provides.”²⁰⁹ Although this could at the time have been attributed to the newness of the law, it would prove an omen for most cases using Bill C-95.

²⁰⁵ Moon, *Outlawing the Outlaws*, *supra* note 61 at 509.

²⁰⁶ Stuart, *Politically Expedient*, *supra* note 5 at 207.

²⁰⁷ This flaw was particularly obvious in *R. v. Pangman* (2000), 32 C.R. (5th) 272 (Man Q.B.) where 33 of 35 accused plead down to lesser charges.

²⁰⁸ Moon, *Outlawing the Outlaws*, *supra* note 61 at 497.

²⁰⁹ *Ibid.* at 499.

When four accused were charged with trafficking illicit narcotics and charged under the new “participation” offence found in Bill C-95 in 1997 the case was heralded by the Department of Justice as the “test case” for Bill C-95²¹⁰. At the 1998 trial in Kingston, Ontario, not one of the accused was convicted under the anti-gang law when a plea bargain was reached for one of the accused for the trafficking offence.²¹¹ The following year, thirty-five alleged members of a native gang in Manitoba were charged with participation in a criminal organization along with drug and weapon offences. Although the Department of Justice may have been premature in calling the Kingston trial the test case for Bill C-95, there was little doubt that the ‘Manitoba Warriors’²¹² trial was a real test for the federal anti-gang legislation. Several factors point towards this. A new courthouse was built specifically for the case and thirty-five special detention boxes were constructed for the accused where each was chained to the floor during proceedings. Furthermore, a glassed-in public gallery was created in such a way to prevent viewing of witnesses or the jury. Of the thirty-five persons accused with the participation offence under Bill C-95, two guilty pleas were registered. Professor David Deutscher was later lamented that the trial was too complex, with too many accused and too many charges to have a chance of success.²¹³

²¹⁰ “Biker Gang Eyes Kingston” *Kingston Whig Standard* (18 April 1998) A1.

²¹¹ “New anti-gang law not tested in court” *Kingston Whig Standard* (5 May 1998) A1.

²¹² *R. v. Pangman* (2000), 32 C.R. (5th) 272 (Man Q.B.).

²¹³ Thirty of the accused were convicted of drug trafficking but the participation offence was too difficult to prove for the very large majority. David Deutscher made his remarks in a C.B.C. Magazine program, “The Indian Courthouse” (15 November 1999).

Police sting *Operation Amorce*²¹⁴ reached trial in the same year as the Warriors Trial, and also proved costly and of limited success. The Montreal Urban Committee Police Department (MUCPD) organized crime squad had attempted to dismantle the narcotics operation of the Rock Machine, one of the two main outlaw motorcycle gangs battling in Quebec. The investigation, which took over a year and cost over \$2.5 million, resulted in the charging of eight gang members under Bill C-95's criminal organization offence. Despite evidence of gang involvement for all persons charged, two of the accused were acquitted because the Crown was unable to show sufficient evidence under the stringent requirements of the new law. It was virtually impossible to prove that the members knew that other members of their group had, in the previous five years, committed at least two drug trafficking offences. A further set-back occurred when two of the accused were acquitted because the evidence showed that they had both been involved in trafficking less than three kilograms of marijuana, an offence subject to only three years in prison rather than the five year sentence requirement provision found in Bill C-95. Therefore, the inability of the prosecution to prove knowledge on the part of the accused of the trafficking offences committed by other gang members plus insufficiently long criminal records for the other accused set half of those charged free. Of the acquitted, the MUCPD claimed that three instantly resumed business with the Rock Machine and the fourth was scouted by the Hells Angels.

²¹⁴ The following example was drawn from: Notes for an address by Marc St-Laurent, Deputy Chief, Montreal Urban Community Police Department on Bill C-24, An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts (Address to the Senate Committee on Legal and Constitutional Affairs, November, 2001). Case citation: *R v. Leclerc*, [2001] R.J.Q. 747 (C.Q. Crim. & Pen. Div.).

While more anti-gang cases were to eventually reach the courts, the early cases had sent a clear message to police and prosecutors: laying charges under the new legislation was not resulting in many convictions. For example, in the first three major cases using Bill C-95's new "participation" offence (*Criminal Code s. 467.1*) of 45 persons charged only 8 were convicted.²¹⁵ Within three years of the adoption of Bill C-95, government meetings were underway to address its shortcomings. After four years it had been effectively replaced by Bill C-24. Police and prosecutors were later to admit that Bill C-95 had been almost unusable, complaining that it was "too complex and too narrow in scope."²¹⁶

The ineffectiveness of the Bill suggests it was not drafted with careful consideration. The limitations and paucity of planning are well summarized by Michael Moon:

At the functional level, there was no attempt to delimit the scope of this legislation, perhaps because there was no debate to determine what it was that the legislation was actually supposed to address. As a result, Bill C-95 [was] written broadly to cover all indictable offences punishable by five years or more in jail under any Act of Parliament, committed by one or more persons who associate with any group of five or more criminally-inclined people. Practically speaking, could anything be more expansive?²¹⁷

Academics were joined by others in the legal establishment in criticizing the Bill. In 2000, clearly frustrated with the Manitoba Warrior trial, Roland Penner, Attorney-General for Manitoba, declared Bill C-95 "politically motivated, expensive and

²¹⁵ 1) *R v. Leclerc*, [2001] R.J.Q. 747 (C.Q. Crim. & Pen. Div.), 8 co-accused and 4 convicted; 2) *R v. Stadnick*, [2004] Q.J. No. 1004 (Q.C. S.C.), 2 accused and both resulted in convictions; 3) *R. v. Pangman* (2001), 154 C.C.C. (3d) 193 (Man. C.A.), 35 accused, 2 pled guilty.

²¹⁶ The definition of criminal organization found in Bill C-24 (2001) that replaced the Bill C-95 definition was attributed to concerns of the police and prosecutors. "Highlights of the Organized Crime Bill", *Backgrounder*, published by the Department of Justice, 05 April 2001.

²¹⁷ Moon, *Outlawing the Outlaws*, *supra* note 61 at 502.

constitutionally invalid.”²¹⁸ Manitoba’s Assistant Deputy Attorney General Rob Finlayson reported that “Bill C-95 [was] cumbersome and difficult to work with.”²¹⁹ Manitoba Justice Minister Gord Mackintosh issued a statement that the province “has officially gone to Ottawa to help forge the working of a new anti-gang law”²²⁰ to replace the inadequate provisions found in the existing legislation. Many prosecutors feared that Bill C-95 was unconstitutional, that the Supreme Court would likely reverse any convictions, and that the legislation would prove too expensive to enforce because the investigations would require enormous police and justice department resources.²²¹ Although *R. v Carrier*²²² would eventually uphold the constitutional validity of the “participation” offence (*Criminal Code* section 467.1 was found not to violate section 7 of the *Charter* for either vagueness or overbreadth) this was not a forgone conclusion in the initial years of the law. Even after the constitutionality was upheld, the difficulty and expense of mounting cases continued to hinder investigations.

In 2001, “Operation Printemps”²²³, resulted in several “participation” offences under the Act but to label this as a Bill C-95 success story is misleading. “Operation Printemps” was a very unusual case that evinces the benefits of having a mole within a motorcycle gang rather than the utility of new investigative powers found within the anti-

²¹⁸ “Gang-related Charges Dropped Against Alleged Warriors” *Globe and Mail* (8 July 2000).

²¹⁹ “Rough Ride for Justice” *Winnipeg Sun* (19 January 2001).

²²⁰ *Ibid.*

²²¹ J. Sher & W. Marsden, *The Road to Hell: How the Biker Gangs are Conquering Canada*, (Toronto: Random House, 2003) at 225.

²²² *R v. Carrier* (2001), 44 C.R. (5th) 158 (QCSC).

²²³ “Operation Printemps” saw numerous Hells Angels members charged with “gangsterism” offences in March 2001 (*Leclerc v. R.*, *supra* note 204, per Sansfacon J.C.Q.) but by this time the legislation was already being amended. Even with several convictions under the anti-gang law, the trial was disparaged for its “excessive length, complexity and cost.” – see: D. Stuart, “Time to Recodify Criminal Law and Rise Above Law and Order Expediency: Lessons from the Manitoba Warriors Prosecution” (2001) 28:1 *Manitoba Law Journal* 89 at 103 [Stuart, Manitoba Warriors 2001].

gang law. Known as source C-2994, Mr. Kane, the mole, was at times responsible for over ninety per cent of the information received by police on biker activities in Quebec that ultimately resulted in the 2001 trials.²²⁴ The source fell into the lap of the police when Kane called an RCMP officer to sell insider information. It was his insider information rather than any particularly helpful provisions within Bill C-95 that helped with the springtime roundup of feuding bikers.

Another line of criticism against Bill C-95 was that there was no need for new legislation, just better policing of existing law. Don Stuart pointed out “Canada has very strong laws against group criminality, murder, bombing, illegal drugs, proceeds of crime and Canada’s police services have wide powers respecting seizure, the authorization of electronic surveillance and few limits on undercover operations.”²²⁵ Case law had already established that intent to commit an offence was sufficient for a conviction.²²⁶ “Conspiracy” to commit a crime (summary or indictable) was another avenue for pursuing organized criminal groups. Kent Roach posits that “If organized crime is a rising problem in Canada, the answer lies in increasing policing and prosecutorial resources, not in new offences.”²²⁷

At one time even the Quebec Minister of Public Security admitted that better enforcement, not legislation, was most important to reducing the biker warfare. Mr. Rock

²²⁴ Daniel Sanger quotes RCMP Sgt. Verdon: “Ninety per cent of the information transmitted to S/Sgt. Levesque comes from source C-2994...He depends greatly on the information transmitted by C-2994 and it is very important for the force to keep this source.” See: Daniel Sanger, *Hell’s Witness*, (Toronto: Viking Press, 2005) at Chapter nine.

²²⁵ Stuart, *Manitoba Warriors 2001*, *supra* note 223 at 96.

²²⁶ See *R v. Deutsch* (1986), 27 C.C.C. (3d) 385.

²²⁷ K. Roach, “Panicking over Criminal Organizations: We Don’t Need Another Offence” (2001) 44 *Crim. L. Q.* 1. at 3.

made much of this fact when rebutting attacks by the Bloc Quebecois that it was not acting fast enough to make new legislation:

This is not an easy question of just passing another law. In fact, the Quebec Minister of Public Security, Mr. Menard, clearly said: "We do not need new laws. We need the police forces to work on collecting evidence against organized crime."²²⁸

Interestingly, Mr. Menard's statement was made when the biker feuding was still in its infancy. Only as the fighting grew and the large provincial expense of policing the bikers became apparent did federal law become 'essential'.

Imprecise, largely unsuccessful in court, and of questionable necessity, Bill C-95 was legislation that was derided in the academic literature and was unpopular with prosecutors and police. The 1997 legislation was neither a carefully-considered nor a legally successful federal effort against organized crime. Perhaps the largest benefits of the Bill were the amendments that followed. For example, the *Accelerated Parole Review* provisions of the *Corrections and Conditional Release Act* were amended to ensure that persons convicted of a criminal organization offence were not eligible for the program. The federal government also undertook to study in detail several organized crime related topics including: providing Canada-wide jurisdiction for police officers carrying out investigations in association with police of local jurisdictions; expanding the scope of crimes subject to the money laundering provisions of the *Criminal Code*; and developing proposals to target legitimate business that assists organized crime.

²²⁸ *House of Commons Oral Question Period*, (21 September 1995) at 228 (Hon. Allan Rock).

It was unfortunate that the level-headed analysis occurred after anti-gang law had been passed. The flaws inherent within Bill C-95 had to be revealed through exhaustive investigations, expensive trials and poor conviction rates. With the adoption of Bill C-24 in 2001, Bill C-95 was effectively replaced. In combination with the revival of joint-force operations in Quebec, their creation in Ontario, and the establishment of dedicated police / prosecutor teams in both Quebec and British Columbia, the 2001 legislation was to make a substantial impact on organized crime operations in the new millennium. In the mid-1990s, Bill C-95 did little but create false hope.

Summary

Part I has examined the social-political context under which Bill C-95 was developed and the resulting legislation. Chapter One studied the growth of a motorcycle gang war in Quebec that pitted the Hells Angels against the Rock Machine. It discussed the temporary establishment of an effective anti-biker joint-forces police squad (the Wolverines) that fell apart due to internal rivalries and reduced provincial support. Neither the police nor the province was willing to accept responsibility for the squad's demise or the subsequent revival of the biker feuding.

Chapter Two reviewed the political pressures faced by the federal government to respond to the organized crime threat in an election year. Politicians in Quebec were keen to characterize the motorcycle gang war in its province as a federal responsibility. Unlikely alliances were created in the House of Commons as parties ganged-up on the

Liberals to discredit their handling of organized crime. On the international stage, Canada was being pressed by the UN and U.S. to take a firm stance against organized crime.

Chapter Three examined the resulting legislation. It began by giving an overview of Canadian legislative efforts against organized crime activity and detailed the provisions found in Bill C-95. The chapter described the Bill as flawed law bearing the weaknesses of rushed legislation. In combination, the chapters in Part I explain the context in which Bill C-95 was rushed through Parliament, despite the law reform's many defects, on the much advertised basis of 'police need'.

PART II: POLICE POWER

The police's entitlement and capacity to speak about the world is seldom challenged. They start from a winning position.²²⁹

Part II explores why the police were significant to the law-making process as symbolic partners of government. Chapter Four begins by giving an overview of the police association central to this study, the CACP. Chapter Five conducts a literature review and examination of symbolic power and specifically, the symbolic capital of the police. Chapter Six explores police control over motorcycle gang understandings. The remainder of Part II then examines two factors that increased police importance in the law-making period: the climate of crime control and moral panic, in chapters seven and eight.

Although not immune to scandal or impervious to critique²³⁰, police generally occupy a special position of trust within the justice system. A Canadian opinion poll taken shortly before Bill C-95 was created indicated vast public support for the police.²³¹ Policing literature finds that most Canadians “have traditionally been very supportive of the public police. This is reflected in positive public opinion polls, special institutional and legal status and generous government expenditures on policing.”²³² This popularity is bolstered by faith in the institution of policing as a vital component in the fabric of society. Even unpopular individual police actions do little to tarnish this overall

²²⁹ I. Loader, “Policing and the Social: Questions of Symbolic Power” (1997) 8: 1 *British Journal of Sociology*, at 18.

²³⁰ For example, see the well recognized work of: C. Shearing, *Organizational Police Deviance: Its Structure and Control*, (Toronto: Butterworths, 1981).

²³¹ Public Opinion poll cited by: Susan Eng, “Police must earn the public trust they need” (1992) 6:8 *Canadian Speeches* 8.

²³² C. Murphy, “Policing Postmodern Canada” (1998) 13:2 *C.J.L.S.* at 6.

impression since “the authority of the police may be regarded as legitimate in spite of people’s objections to particular police practices.”²³³

These positive attributions to the police may be accentuated in Canada where good government, peace and order are founding principles of our nationhood. For example, the national law enforcement agency (RCMP) is imbued with special importance and seen as “an expression of continuing patriarchal authority and, indeed, therefore a metaphysical symbol of ‘order’ itself.”²³⁴ Disdain for anti-social acts and public disorder in Canada further strengthens the authority we entrust to the police:

In Canada there is a tendency to seek an exceptionally high level of protection from crime. This has produced a willingness to trust the police with a level of power out of all proportion to the crime threats involved.²³⁵

This trust, according to Canadian research, leads the police to unavoidably become involved in the process of legitimization. Maurice Martin gives the example of Canadian community groups who seek affiliation with the police to bolster their image: “In gaining that recognition from the police, it gains the stamp of legitimacy, often a highly desired status, and possibly some latitude in behaviour.”²³⁶ Police chiefs have a particularly strong impact in this area. As the representatives of the policing community they can have significant impact on the public’s view of local government, law, and

²³³ R. Morgan & D.J. Smith, *Coming to Terms with Policing*, (New York: Routledge, 1989) at 219.

²³⁴ I. Taylor, “Martyrdom and Surveillance: Ideological and Social Practices of Police in Canada in the 1980’s” (1986) 26 *Crime and Social Justice*, at 63.

²³⁵ A. Borovoy, “The Ambit of Police Powers” in *When Freedoms Collide: The Case for Our Civil Liberties* (Toronto: Lester and Orpen Dennys, 1989) at 95.

²³⁶ M. Martin, *Urban Policing in Canada: Anatomy of an Aging Craft*, (Montreal: McGill-Queen’s University Press, 1995) at 145 [Martin, *Urban Policing* 1995].

justice.²³⁷ The following chapter studies the Canadian Association of Chiefs of Police, the most influential police chief organization in Canada and the association credited with having been an important government partner in the creation of Bill C-95

²³⁷ A. Andrews, "Structuring the Political Independence of the Police Chief" in W. Geller ed. *Police Leadership in America: Crisis and Opportunity*, (New York: American Bar Foundation, 1985) at 12.

Chapter Four: The Preeminent Police Association - The CACP

CACP Significance

There are several important reasons why the CACP was the obvious choice for this examination of police participation in law reform. The CACP was the only police association directly referenced in the organized crime parliamentary debates that resulted in the enshrining of Bill C-95 and federal press releases specifically cited the needs of Canada's police leaders when explaining the impetus for new law. Moreover, the CACP was responsible for spearheading the two national forums on organized crime hosted jointly by the Department of Justice and the Ministry of the Solicitor General in the year preceding Bill C-95, forums declared seminal to the law reform process.

Anti-gang legislation is not the only instance of the CACP being proclaimed a government partner in law reform. For example, in 1997, the Solicitor General credited the "strong support" provided by the CACP with assisting in numerous initiatives such as: DNA legislation; anti-smuggling and proceeds of crime initiatives."²³⁸ The CACP is used to representing the police view to government on a range of criminal issues.

Through its member police chiefs and other senior police executives, the CACP boasts that it "represents in excess of 90% of the police community in Canada."²³⁹ The CACP purports to represent municipal, regional, provincial and federal police. For example, following consultation with the Canadian Police Association (CPA) over

²³⁸ Hon. Andy Scott, Speaking Notes (address at the Canadian Association of Chiefs of Police 92nd Annual Conference, 25 August 1997, Fredericton).

²³⁹ Online: CACP Website <<http://www.cacp.ca/english/general/History/HistoryEng.htm>> at 1.

proposed amendments to the *Telecommunications Act* in 1998, the CACP issued a resolution to the Department of Justice declaring:

that the Canadian Association of Chiefs of Police, *on behalf of all member law enforcement agencies*, request that the Canadian Radio-television and Telecommunications Commission confer upon law enforcement agencies a special designation status...²⁴⁰

To a large extent, CACP importance in the law reform arena is generated by recommendations and resolutions arising from its committees. Efficient law enforcement and security provision are its founding principles which it achieves through “active liaison with various levels of government and departmental ministries having legislative and executive responsibility in the matter of laws and policing.”²⁴¹

Over the course of approximately 100 years, the CACP has steadily built up its presence as the most significant police association in the country. In its own immodest admission, it “is regularly called upon to appear before and make submissions to Parliamentary Committees on new legislation.”²⁴² In the early 1900s, the association had neither the organizational capacity nor proximity to government to influence policy in any meaningful way. By the end of the twentieth century, however, it had achieved a position of prominence and was meeting regularly with federal officials. Although an exhaustive history of the CACP is beyond the scope of this study, a general chronology is

²⁴⁰ CACP Law Amendments Committee (LAC) Resolution: Telecommunications Act – Special Designation Status for Pt. VI and Pt. XV Orders. Emphasis added by author.

²⁴¹ Online: CAPC website <<http://www.cacp.ca/english/>>

²⁴² Letter from CCAP to the Office of the City Clerk, City of Vancouver (27 August 1998) entitled Urban Safety Commission Report (CACP Archives).

useful to understand how it had achieved the position of credible law reform partner by the time policy for Bill C-95 was being devised.

History

First known as the Chief Constables Association of Canada (CCAC), the Canadian Association of Chiefs of Police (CACP) was established on September 6th, 1905. Roughly fifty police officials, mostly from Ontario and Quebec, formed the association.²⁴³ From the beginning, it was interested in influencing policy impacting criminal law. As police historian Greg Marquis writes, “[T]he founders of the CCAC recognized the benefits of group lobbying in the area of Criminal Code amendments. Parliament, it was thought, would pay more attention to a national organization than to a series of individuals.”²⁴⁴ Their lobbying was based on a belief in a distinct class of habitual criminals for whom there was no remedy except stricter criminal laws.²⁴⁵ To this end, they sought to influence government law-making:

Their crime-fighting ethos was most apparent when the association attempted to guard police prerogatives by sending resolutions and delegations to the Justice Minister... Yearly changes to the *Criminal Code*, as the CCAC recognized, often reflected the activities of pressure groups more than clearly-stated governmental policy.²⁴⁶

Early on, the CCAC discovered that their agenda fit neatly into two categories: more police powers and criminalization of more offences. Their strategy for achieving these results included:

²⁴³ Greg Marquis, “Canadian Police Chiefs and Law Reform: The Historical Perspective”, (1991) 33 (3-4) Can. J. Crim. 385 at 387 [Marquis, Police Chiefs 1991].

²⁴⁴ *Ibid.* at 388.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.* at 389.

Resolutions and deputations to the Minister of Justice aimed at removing ambiguities or widening the scope of offences in order to increase the powers of the police and courts and active liaison with various levels of government and departmental ministries having legislative and executive responsibility in the matter of laws and policing.²⁴⁷

By the 1920's, the CCAC had already carved out a particular niche within the pressure group community. Their right-wing stance led them to be the main critics of groups who had anything less than a punishment agenda for law-breakers. While the social service workers of the era were prone to argue that moral transgressions and deviance sprung from environmental factors²⁴⁸, the CCAC pressed for "heavy sentences for serious cases; anything less would endanger the public and demoralize the police."²⁴⁹ In this, the CCAC were like their American counterparts who saw social workers as nothing more than the "uplifters" of a bygone era and criticized their views, declaring that "sentimentality will never prevent crime."²⁵⁰ The CCAC ridiculed interest groups that lobbied for proactive social action as "sentimentalists and sob-sisters."²⁵¹ Their strongly worded messages, however, had little impact since the association was unorganized and had little contact with government.

Police organizational skills and access to government increased greatly in the latter half of the twentieth century. Having changed its name from the CCAC to the CACP in the 1950s and incorporated as a non-profit organization in 1968, the police

²⁴⁷ *Ibid.*

²⁴⁸ D. Owrn, *The Government Generation: Canadian Intellectuals and the State, 1900-1945*, (Toronto: University of Toronto Press, 1990) at Chapter 1.

²⁴⁹ Marquis, *Police Chiefs 1991*, *supra* note 243 at 391.

²⁵⁰ S. Walker, *A Critical History of Police Reform: The Emergence of Professionalism*, (Lexington: Lexington Books, 1977) at 104.

²⁵¹ Marquis, *Police Chiefs 1991*, *supra* note 243 at 393

association consolidated its resources and made repeated requests for federal financial assistance.²⁵² By 1972, it had a permanent secretariat and staff that was supported by governmental funding and could be recognized, as Donald Savoie says of similarly assisted organizations, as one of several “interest groups that owe their existence to government, without whose financial support some of the best-known would not exist.”²⁵³ Sponsored by government and facilitated in their efforts to establish regular communication with law-makers, the CACP had arguably ascended within ranks of elite pressure groups which:

constitute a principal channel through which various major interests in the country can participate in the making of public policy, [and] help legitimize not only specific policy outputs but also the system which produces those policies.²⁵⁴

As such, the CACP had a chance to be one of what Donald Savoie calls “the active players in the policy and decision-making process in Ottawa.”²⁵⁵ This is evident in their newfound links to government departments responsible for criminal law reform.

In addition to professional concerns and the implementation of specific federal criminal justice policies, the CACP remained interested in criminal law. Its law amendments committee assumed a new importance. The Department of Justice, under which many of the government’s legal activities had been centralized, was in charge of criminal law amendments. The CACP secretariat enhanced the possibilities of regular consultation with officials from these two departments, plus agencies such as Statistics Canada and the National Research Council.²⁵⁶

Clearly the increased organization and access created more opportunities to participate in law reform. These, however, were necessary but not sufficient conditions

²⁵² *Ibid.* at 396.

²⁵³ D. Savoie, *The Politics of Public Spending in Canada*, (Toronto: University of Toronto Press, 1990) at 217.

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.* at 216.

²⁵⁶ G. Marquis, *Policing Canada’s Century: A History of the Canadian Association of Chiefs of Police*, (Toronto: University of Toronto Press, 1993) at 397 [Marquis, A History 1991].

for real impact. For much of the past quarter-century, a prevailing liberal ethos was reflected in justice policies incongruent with CACP aspirations. The liberal political climate during this period is reflected in criminal law reform that legalized homosexuality, abolished the death penalty, redrafted the young offender law and considered legalizing marijuana as a result of the LeDain Commission. Perhaps signifying the disposition of the period, even the *Criminal Code* came under scrutiny by the 1982 criminal law review.²⁵⁷ In other words, police and public attitudes were not aligned. This created an inhospitable environment for a police association attempting to secure more police powers and criminal offences. According to Greg Marquis, the 1982 institution of the *Charter of Rights and Freedoms* “reconfirmed the declining status of the police in terms of influencing criminal law.”²⁵⁸

This by no means suggests police views had lost all significance. Concern over crime issues aligns public and police perspectives and can have an effect on policy regardless of the prevailing political mood. For example, the 1962 creation of the Ontario Police Commission was greatly due to public unease over organized crime.²⁵⁹ “As a result of public and police concern ... the federal and provincial governments held a conference on organized crime”²⁶⁰ a few years later that would set a new and tougher tone for the issue. Thus even in liberal and progressive periods of crime control, the police are able to maintain much of their clout. In spite of the abolition of capital

²⁵⁷ P. Healy, “The process of reform in Canadian criminal law”, (1984) 42 U.T. Fac. L. Rev. 16 at 17.

²⁵⁸ Marquis, A History 1991, *supra* note 243 at 403. For a competing view see: M. Mandel, *The Charter of Rights and the Legalization of Politics in Canada*, 2nd ed. (Toronto: Thompson Educational Publishers, 1994).

²⁵⁹ Marquis, A History 1991, *supra* note 243 at 398.

²⁶⁰ *Ibid.*

punishment that police vociferously opposed in 1976, “the police retained informal but significant political support because of public concern over crime.”²⁶¹ For example, a Peace and Security legislation package passed in 1976 brought about tighter restrictions on gun control and tougher parole laws, much sought by Canadian police.

Throughout the social changes of the second half of the twentieth century, many of the conservative attitudes of the CACP remained relatively intact despite more liberalizing social trends. In the 1970s and 1980s they opposed reducing restrictions on parole and prison tickets of leave, capital punishment abolition (especially in the case of murdered police),²⁶² rehabilitation measures for young offenders, and many of the individual rights provisions in the *Charter of Rights and Freedoms*. In their 1984 recommendations to the Law Reform Commission of Canada, the CACP urged “a return to a respect for the ‘rule of law.’”²⁶³

The world-view of the CACP is not unique within policing circles. Robert Reiner suggests that conservative crime control values permeate most Western policing groups and are therefore present in their lobbying efforts. In Britain he has found that

These attitudes have been openly translated into political campaigning. Police associations have on numerous occasions actively lobbied for reactionary political candidates, and in support of specific right-wing policies.²⁶⁴

²⁶¹ *Ibid.* at 399.

²⁶² Note: In 1984 police even *demonstrated* on Parliament Hill to call for the reinstatement of capital punishment.

²⁶³ D. Stuart “Policing Under the Charter” in R.C. Macleod & D. Schneiderman eds. *Police Powers in Canada: The Evolution and Practice of Authority*, (Toronto: University of Toronto Press, 1994) at 75.

²⁶⁴ R. Reiner, *The Politics of the Police*, (Oxford: Oxford University Press, 2000) at 96.

By the time a motorcycle gang war of unprecedented proportions broke out in Quebec in the early 1990s, the CACP were perfectly positioned to have a real influence on any resulting law reforms. Archibald Kaiser noted in 1993 that "the fading of liberal influence has left the law reform agenda in the hands of conservatives or at best centrist elements."²⁶⁵ This was a political climate where it appeared that police opinions could matter to criminal law reform debate. For example, the Minister of Justice and Attorney General of Canada specifically cited police as "interested individuals" requested to "share their ideas and experience" for law reform at the 1993 meeting of the Society for the Reform of Criminal Law.²⁶⁶

Organized crime was plainly an issue that the CACP felt they should share their ideas and experience. In a news release issued the year following the enactment of Bill C-95, the CACP stated:

Over the last few years the CACP has made a concerted effort to inform the Federal Government of the magnitude of the problem. Organized crime represents a serious and ongoing problem across Canada which affects many Canadians directly and indirectly. The CACP has, over the last several years, been actively encouraging Government to commit to the fight against organized crime, firstly, by acknowledging the seriousness of the problem and more significantly by committing resources to investigate and prosecute those involved.²⁶⁷

How organized the CACP were in having a coherent position heard and how inclined the federal government was to listen will be addressed in Part III. At this stage, in terms of

²⁶⁵ A. Kaiser, "New Directions for Canadian Criminal Law Reform: Ensuring An End To Complacency" (1993) 13 Windsor YB, Access Just at 265.

²⁶⁶ P. Blais, "Speaking Notes for the Honourable Minister of Justice and Attorney General of Canada to the Society for the Reform of Criminal Law" (Paper presented to Society for Reform of Criminal Law, 28 June 1993, Justice Information)

²⁶⁷ CACP Media Release, (25 November 1998), CACP file Pro 6 Vol 27.

understanding how the CACP was situated leading up to Bill C-95, it is clear that by the mid-1990s the CACP had forged strong links to government, established itself as the preeminent police pressure group in Canada, was operating within a conservative climate and had maintained their traditionalist stance towards crime control. The CACP now had the potential to be an important player in crime control and law reform debates, a position enhanced by their increasingly active role as lobbyists.

Lobby Power

The *Lobbyists Registration Act*²⁶⁸ sets out four basic principles underlying lobbying: free and open access to government as an important matter of public interest; the legitimacy of lobbying public office holders; the transparency of the process; free and open access to government for those that register under the Act. Lobbying is defined as an activity where a person/group,

communicates with federal public office holders, whether formally or informally in an attempt to influence the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs.²⁶⁹

New amendments, creating regulation for disclosure of activities and mandatory registration of all lobby organizations, came into force mere months before the passage of Bill C-95.²⁷⁰ For the first two years, the CACP complied with the Act and was listed in the public registry of the Office of the Integrity Commissioner as an 'In-House' Lobby organization under section 7 (1). In compliance with its disclosure obligations, the

²⁶⁸ *Lobbyists Registration Act*, R.S.C. 1985, c.44 (4th Supp.)

²⁶⁹ *Ibid.* at "Points for Consideration".

²⁷⁰ The *Lobbyists Registration Act*, *supra* note 257, came into force January 31, 1997. It is managed by the Lobbyists Registration Office, Office of the Integrity Commissioner.

association provided a description of its organization and membership, a retrospective and current description of its lobby subjects and a list of the government institutions it had or would consider lobbying.²⁷¹ Also included in the CACP disclosure were its communications techniques (meetings, presentations, telephone calls and written communications via paper/electronic format).

The CACP initially provided information to the registry but soon found that they could apply for exemption by making the case that they were not being paid directly from the organization.²⁷² In 1998 the president and director of the CACP were exempted from registration and by 2000 most of the executive was also exempt from the Act. When the association was asked to respond to the Parliamentary Review of the legislation in 1999, they argued that section “c.” of the Act stipulates that organizations must only register if the sum total of time spent by the employees of the organization in lobbying equals 20 percent of the duties of one employee. On advice from counsel and in a letter to the Office of the Ethics counselor they successfully declared immunity on these grounds.

What the *Registration Act* and *Lobbyists’ Code of Conduct*²⁷³ were unable to oversee even when the CACP did provide information, however, was the unofficial communications that occur on a regular basis between the CACP and the Department of Justice and the Ministry of the Solicitor General. As seen in the previous section, the

²⁷¹ Letter to the Office of the Ethics Counsellor, Lobbyists Registration Branch, from CACP Executive Director Bryan Mconnell, 98/04/03. CACP catalogue file: Law-1-5, Document 3-1998092-1.

²⁷² The Act demands registration of “an individual who, for payment[s] on behalf of any person or organizations...undertakes to (a) communicate with a public office holder...” s. 5 (1) (a). CACP officials are not salaried from the CACP. They continue to be paid officers of their own police force and their efforts with the CACP are considered part of their regular duties.

²⁷³ Lobbyists *Registration Act*, supra note 260 and the Lobbyists’ Code of Conduct contained at s. 10.2 of the *Lobbyists Registration Act*.

CACP had achieved privileged access to government by the 1990s. The nature of this relationship and regularity of contact meant it was unlikely that all communications were recorded or that every discussion and message was necessarily documented as official communication.

This type of relationship is precisely what the new transparency measures were attempting to regulate. Thus CACP withdrawal from the regulatory oversight system can be considered a defeat of the spirit of the *Act* and *Code*, that they had previously complied with, rather than proof of non-lobby group status. Indeed, there is little question even from within the police community that the CACP, regardless of definitional semantics, is still considered a lobby group. For example, the Ottawa-Carleton Police Service wrote the CACP in 1998 “requesting support in *lobbying the federal government to enact legislation* that protects front line emergency service providers.”²⁷⁴

By their own admission, the CACP was active on several legislative fronts since the early 1990s. For example, in 1993 and 1994, the Law Amendments Committee of the CACP claimed to have “made representations to Government on the Young Offenders Act [YOA].”²⁷⁵ These representations appear to have been heard; the Department of Justice began its 1993 Annual Report section on the YOA by referring to the level of controversy and outrage within the police community over the legislation. Furthermore, in the area of the release of dangerous offenders, in 1994 the CACP made sure that its committee “met with an official of the Department of Justice to ensure that they

²⁷⁴ Letter from the Ottawa-Carleton Police to CACP (26 October 1998), CACP file –COM-6, Vol.8. Author’s emphasis.

²⁷⁵ Report of the Law Amendments Committee (1993-1994). CACP file – COM-6, Vol. 8.

continued to be aware of the police position.”²⁷⁶ Asked to comment on provisions for new organized crime legislation in 2001, the CACP asserted that it was “engaged in the progressive modification of criminal law and in questions that touch societal security.”²⁷⁷

In the mid-1990s, the CACP developed strategies for answering questions about its lobbying inclinations and created rote answers for its members to use when asked about its lobbying role. For example, to the question “Is the CACP a lobby group?” members were encouraged to reply:

The CACP is a professional organization concerned with the professional excellence of its members and with considering the best way to achieve peace, security and justice in society. To that end, we certainly try to influence, encourage or promote reasonable solutions to policing problems but we do not advance our own interests. Most professional organizations act in the same way.²⁷⁸

During the same time period, however, the CACP Law Amendments Committee clearly saw their function as representing the interests of their organization:

A significant part of our work is the presentation of the position of the Canadian Association of Chiefs of Police to either the House of Commons Standing Committee on Justice and Legal Affairs or the Senate Standing Committee on Constitutional and Legal Affairs.²⁷⁹

A few years later in responding to a public information request regarding CACP involvement in reform of the General Part of the *Criminal Code*, the organization was

²⁷⁶ *Ibid.*

²⁷⁷ “CACP Remarks to the Standing Senate Committee on Legal and Constitutional Affairs” (21 November 2001). This author’s translation from the French.

²⁷⁸ Revised CACP Questions and Answers, (25 August 1997), COM - 6, Vol. 6.

²⁷⁹ Letter from Law Amendments Chair Brian Ford to CACP President Chief Vincent MacDonald (20 August 1995), COM - 6, Vol. 8.

candid in taking credit for having been responsible for shaping many areas of criminal law in recent years:

The police were directly involved in changes to section 25 of the *Criminal Code of Canada* introduced by Minister of Justice Kim Campbell and more recently to section 33 introduced by Minister Rock. In recent years, there also have been two Omnibus Bills passed and another before Parliament right now which, cumulatively, have created significant changes to the *Criminal Code of Canada*.²⁸⁰

Through the 1990s, the CACP maintained interest in trying to influence government policy. In 1994, the Chair of the CACP Law Amendments Committee expressed his “fervent belief that the police community, and the Canadian Association of Chiefs of Police in particular, remain diligent in advancing our perspective on legislation which affects the safety of our communities and our officers.”²⁸¹ Furthermore, in the mid 1990s and through 1997, the CACP was diligently paying lobby dues.

Although they were able to shed the official label of “lobbyist” in 1999, in every sense of the statutory definition except the amount of *official* time spent on lobbying efforts, the CACP still fits the definition of a lobby group. For example, in 2001 the CACP joined with the Canadian Police Association (CPA), the Canadian Centre for Missing Children and the Canadian Centre for Victims of Crime in supporting the Canadian Alliance’s motion to establish a national sex offender registry.²⁸² In a 2004 bid for further investigative powers in accessing electronic records, the *Globe and Mail* reported that “police chiefs”, in their push for new law, were “lobbying the federal government for legal amendments” and that “the Canadian Association of Chiefs of

²⁸⁰ Letter from CACP Executive Director Bryan McConnell to Francois Lareau (12 November 1998), CACP file: Pro- 6, Vol. 27.

²⁸¹ *Report of the Law Amendments Committee* (1993-1994). CACP file-COM-6, Vol 8.

²⁸² “Alliance pushes for sex-offender registry” *Ottawa Citizen* (10 March 2001) A3.

Police will issue a public statement on so-called lawful access measures.”²⁸³ The article depicts federal government consideration of new legislation as a result of years of police insistence that wiretapping provisions established in 1974 were grossly out of date.

Although resistant to paying the registration fees for lobby group status, there is little doubt that lobbying has been a significant function of the CACP over at least the past two decades. During this period, the CACP has spent time as a registered lobby organization, has been active in the sphere of government legislation, and has admitted to trying to influence governmental decisions in both internal and external correspondences. In addition, they were perceived to be a lobby group by the media. Regardless of their official legal status at the time, the CACP were clearly a lobby group when Bill C-95 was passed, and as such could have been expected to advance a strong position on organized crime.

CACP interest in organized crime, however, was not congruent with that of government and their lobby efforts can best be described as too little too late. When the CACP/CISC (Criminal Intelligence Service Canada) Organized Crime Committee stated that one of their key roles would be “to lobby for changes in municipal regulations, provincial statutes, or federal legislation,”²⁸⁴ the government was already in the process of having its own organized crime agenda passed through Parliament in the form of Bill C-95, supposedly with CACP support. It was not until 1999 that a coherent message

²⁸³ “Police to seek greater powers to snoop” *Globe and Mail* (23 August 2004) A1.

²⁸⁴ “A Canadian Strategy for Combating Outlaw Motorcycle Gangs”, CACP/CISC Organized Crime Committee, (11 April 1997).

began to be articulated by the CACP and it became possible that the Committee could develop into “a lobby group to effect change.”²⁸⁵ In 1997, however, all that would have been apparent to any casual observer of legislative reform was that the CACP was a criminal policy lobby group and that they were being cited by government spokespersons as having been important partners in the creation of anti-gang legislation.

Summary

This chapter has examined the significance of the CACP to criminal law reform. Begun as a small organization on the cusp of the 20th century, it grew to become the voice of the Canadian police establishment in Ottawa and the country’s preeminent policing association. Having forged a close relationship with federal government, retained its conservative views on crime control, and known to have a vested interest in criminal policy reform, the CACP is readily seen as an influential lobby group. This perception is compounded by the positive attributions Canadians give police generally. Thus when the Liberal Party claimed to have created anti-gang law in close consultation with the CACP, they were invoking legitimacy associated with the police.

²⁸⁵ Untitled CACP notes from the CISC Organized Crime Committee meeting, 9 March 1999.

Chapter Five: Police and Politics

Political use of police support has not always been a popular option. At one time there was a clear demarcation between policing and politics that was not to be blurred. This is no longer the case. Increasingly, independence has turned into interdependence in many areas of mutual political / police interest. This chapter examines the increasingly close relationship between police and politics and builds on the existing research to propose that eroding notions of independence may contribute to growing police significance in particular law reform efforts.

Three main themes of the political / police relationship are examined to illustrate how legislative proposals created under certain circumstances can be legitimized by the perception of police support. The first theme is related to the malleable concept of the political independence of the police. The second theme, growing political / police interdependence, studies contributing factors and rising concern with the evolving relationship. The third theme, police politicking, studies the growing involvement of police in the political sphere and the concomitant increasing significance of the police to policy debate.

The Concept of Independence

The concept of independence between the police and politics has evolved over time. In broad terms, the direction of change has seen more rigid doctrine increasingly replaced by more flexible understandings. Although never embraced as an 'absolute', the perception of independence was more robustly portrayed as a clear division between police and politics in the early years of policing. More recently, this distinction has been challenged as an antiquated concept.²⁸⁶ Why the theory of independence was created, maintained and is now being re-evaluated illustrates the complex relationship between politics and policing and why it deserves careful examination.

The reasons why policing and politics have long been seen as distinct are found in the early days of the police in Britain, the birthplace of contemporary Canadian policing and the model for Canadian police practice. The concept of the British police was fashioned with deliberate care in the early 1800s since its public acceptance was by no means guaranteed. British labour riots in the 1820s and 1830s put down forcefully by parliamentary ordered military units created a sense of public unease with government use of force.²⁸⁷ Undoubtedly this disquiet had an impact on government members who could only be too keenly aware of recent events in France and the United States that had led to complete dissolution of state power. It is of little surprise given the circumstances that it was deemed essential to create a police that would be seen as an agent of public,

²⁸⁶ "It has become an outdated notion to view the terms police and politics as inimical." per M. Martin, *Urban Policing in Canada: Anatomy of an Aging Craft*, (Montreal: McGill-Queen's University Press, 1995) at Preface, xii.

²⁸⁷ See: C. Emsley, *The English Police: A Political and Social History*, 2nd ed. (London: Longman Press, 1996).

rather than political, aims.²⁸⁸ There was a keen realization that “public acceptance depended upon the police not being seen as political.”²⁸⁹

Substantial efforts were made to distance the English policing model from that being developed in France. Early French policing was quite literally “a form of political activity through the police”²⁹⁰ in which police were used primarily to gather information on citizens perceived to be a threat by the unstable French governments of the period. To counteract any suggestion that British policing was following this model, Sir Robert Peel (largely credited as the father of modern policing), and his contemporaries were mindful to promote Anglo policing as far removed from direct state control. Despite their best efforts, French policing affected perceptions of early British efforts; in 1830, the *Poor Man’s Guardian* considered the British police to be tantamount to the French spies, calling the service “the minion and paid servant of the Government.”²⁹¹

However, the idea of a police force vested in the public interest took hold mid-century in the midst of credible government initiatives aimed at curbing the social ills of the Industrial Revolution and a quickly urbanizing society. Labour laws, child protection and increasing democratization created by a government trying to maintain support during a period of dramatic political upheavals paved the way for acceptance of a new

²⁸⁸ For a detailed account of the need for a modern police, see: T. Critchley, *A History of Police in England and Wales*, 2nd ed. (London: Constable, 1978).

²⁸⁹ R. Reiner, *The Politics of the Police*, 3rd ed. (Oxford: Oxford University Press, 2000) at 54 [Reiner 2000].

²⁹⁰ P. Stenning, “Police and Politics: There and Back and There Again?” in R. Macleod & D. Schneiderman eds., *Police Powers in Canada: The Evolution and Practice of Authority* (Toronto: University of Toronto Press, 1994) at 232.

²⁹¹ *Poor Man’s Guardian*, 11 October 1830, at 3.

entity called the public police.²⁹² According to police historian Robert Storch, “it was necessary to create a professional, bureaucratically organized lever of urban discipline”²⁹³ during this period of major social upheaval. It was in this environment of progressive change that policing was introduced and, after a time, largely accepted.

This acceptance was also based on carefully considered impression management, or as Robert Reiner posits, “the insistence on suppressing indications of overt political control or partisanship softened the initial conception of the police as a tool of government oppression.”²⁹⁴ The police were accepted as “the embodiment of the rule of law rather than of an executive power wielded by the government.”²⁹⁵ This association with the principles of law rather than the machinery of government garnered the police an air of respectability and a special position within the public imagination. As Laurence Lustgarten has found,

Most people regard law in an idealized way, as the apotheosis of fairness and justice. Hence law enforcement is seen, not so much as requiring higher standards than other government services but not as a service at all – as something higher than the merely political.²⁹⁶

In 1864, *Chamber's Magazine* announced that the police “know nothing of politics; the man in blue preserves his neutral tint...[T]he good old cause of order is the

²⁹² For an overview of progressive change in Britain during this period, see: L. Seaman, *Victorian England: Aspects of English and Imperial History 1837-1901*, (London: Routledge, 1995).

²⁹³ R. Storch, “The Plague of Blue Locusts: Police Reform and Popular Resistance in Northern England 1840-57” (1975) 20 *International Review of Social History* 89.

²⁹⁴ Reiner 2000, *supra* note 292 at Chapter 5.

²⁹⁵ S. Uglow, “The Origins of the Police”, in S. Uglow ed., *Policing Liberal Society*, (Oxford: Oxford University Press, 1988) at 29.

²⁹⁶ L. Lustgarten, *The Governance of the Police*, (London: Sweet and Maxwell, 1986) at 163.

only side the policeman supports.”²⁹⁷ The degree of disassociation expected of the police from politics was enshrined in rules that would seem unnecessarily restrictive today. For example, British police were not allowed to vote at any level of politics until the end of the 19th century²⁹⁸ and as late as 1979, the Commissioner of the Metropolitan London Police announced his abstention from voting as a public gesture designed to demonstrate his continued political independence.²⁹⁹

The Commissioner’s symbolic act, however, belies a fundamental misappropriation of the independence principle to policing at large. Individual police acts are not representative of the organizational ties between police and the political sphere as governance is at the heart of policing. As far back as 1795, when the concept of state-run policing was first being seriously explored in England, policing was envisioned “as a vast body of work which encompassed the whole art of government in the sense of the regulation, management and maintenance of population.”³⁰⁰ Although policing has changed since this definition was derived, it nonetheless set out the blueprint for modern Anglo-American policing. Put simply, modern policing, from its very beginnings, was designed to be the political arm of public control.

²⁹⁷ Cited from: W. Miller, *Cops and Bobbies*, 2nd ed. (Columbus: Ohio State University Press, 1999) at 13.

²⁹⁸ Reiner 2000, *supra* note 289 at Chapter 2.

²⁹⁹ D. McNee, “The Queen’s Police Keepeth the Peace” *The Guardian* (25 September 2000) at 25. Cited in: Reiner, 2000, *supra* note 279 at 55.

³⁰⁰ P. Colquhoun, 1796. *Treatise on the Police of the Metropolis explaining the various Crimes and Misdemeanors which are at present felt as a pressure upon the Community, and suggesting Remedies for Their Prevention, by a Magistrate*, 2nd ed. (London: H. Fry for C. Dilly, London, 1975 republication of 1797 work). Reference from: D. Garland, “The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society” (1996) 36(4) *Brit. J. Crim.*, 445 at 447.

While independence proved crucial to early popular acceptance of the police in the 1800s it increasingly became a topic for critical analysis in twentieth century. In the 1960s a more nuanced understanding of independence began to be explored by criminologists such as J. Q. Wilson who found the police to be acutely aware of their surrounding political environment when he studied the relationship between political concerns and operational police practices.³⁰¹ His pioneering work was followed by other probing criminologists. For example, in 1972 Jerome Skolnick described the police as “a social organization created and sustained by political processes to enforce dominant conceptions of public order.”³⁰² To Skolnick, the police are a political tool used to acquire social conformity. This more critical vein of inspection had lifted the taboo from recognizing a link between politics and policing and caused the relationship to be subjected to a greater degree of scrutiny.

Twenty years later Robert Reiner went a step further by suggesting that “policing is at the heart of the functioning of the state, and central to an understanding of legal and political organization.”³⁰³ In other words, policing, as per Reiner, is a direct expression of state governance. Later he would write:

This notion of the political neutrality or independence of the police cannot withstand serious consideration. It rests on an untenably narrow conception of ‘the political’, restricting it to partisan conflict. In a broader sense, all relationships which have a power dimension are political. Policing is inherently and inescapably political in that sense.³⁰⁴

³⁰¹ J. Q. Wilson, *Varieties of Police Behavior: The Management of Law and Order in Eight Communities*, (Cambridge: Harvard University Press, 1968) at 233.

³⁰² J. Skolnick, “Changing Conceptions of the Police”, in *Great Ideas Today*, (Chicago: Encyclopedia Britanica, 1972) 41.

³⁰³ R. Reiner, “Policing a Postmodern Society” (1992) 55(6) *Mod. L. Rev.* 761 at 762.

³⁰⁴ Reiner 2000, *supra* note 289 at 8.

Because police have the power to enforce laws, Reiner argues, they are *a priori* political. He also contends that partisanship is only the disreputable tip of the police/politics iceberg and that our attention should focus to a far greater degree on what lies beneath the surface. Wilson, Skolnick and Reiner's works illustrate the degree to which the perception of the police had been transformed, from independent organization to a reflection of government itself.

Early conceptions of legitimate force assisted in this transformation. Max Weber pioneered the use of force study when he conceptualized the state as the exclusive institution for the exercise of legitimate force.³⁰⁵ Egon Bittner applied this idea to policing when he classified police as the domestic specialists in the exercise of legitimate force.³⁰⁶ Thus legitimate force must come from a legitimate state but is realized through the police. Recognition of this shared role in force likely helped steer scholars towards examining the intertwined nature of policing and politics. Shearing and Wood, for example, recently defined modern policing as the promotion of safety and security for places in which people can live, work and play.³⁰⁷ In this definition the policing role sounds remarkably like that of a government ministry, further blurring the traditional divide between the two.

One of the greatest set backs to conceptions of independence occurred during the *Front de Liberation du Quebec* (FLQ) crisis. Although Canada has been acknowledged as

³⁰⁵ See, A. Kronman, *Max Weber*, (California: Stanford University Press, 1983) at 37-40.

³⁰⁶ E. Bittner, *The Functions of the Police in Modern Society*, (Washington: National Institute of Mental Health, 1970).

³⁰⁷ J. Wood, & C. Shearing, "Securing Safety on Campus: A Research Note" (1998) 40(1) *Can. J. Crim.* 81.

“one of the most democratic polities the world has ever seen”³⁰⁸ the 20,000 warrantless raids conducted during the 1970 FLQ uprising was seen by many as a harsh and overly-broad political reaction.³⁰⁹ The overreaction also severely tested belief in police independence. Austin Turk cites the incident as an example of how “rapidly and drastically the service emphasis of ordinary policing can be shifted to control minimally restrained by the safeguards for which that tradition has been especially notable.”³¹⁰

Today, independence remains a topic of much debate within the academic community. For example, following the 2001 APEC affair in which it was alleged that police pepper-sprayed protesters under political direction, Philip Stenning bemoaned the lack of a realistic independence definition:

Although it is clear that some notion of police independence is thought to be appropriate, there appears to have been very little clarity or consensus among politicians, senior RCMP officers, jurists (including the Supreme Court of Canada), commissions of inquiry, academics, or other commentators either about exactly what police independence comprises...³¹¹

Evidence of growing inquiry on the nature of independence is also found in the 2002 Spring edition of *Police Practice and Research*. Summarizing a prevalent theme throughout the issue the editors write, “regardless of the [policing] model, one important aspect of police is their inextricable link to politics.”³¹² Modern scholarship appears to have discredited the independence dogma and opened the concept to inquiry.

³⁰⁸ A. Turk, *Political Criminality: The Defiance and Defense of Authority*, (USA: Sage Publications, 1982) at 118.

³⁰⁹ From the raids, 465 persons were detained, 16 were charged with seditious conspiracy and other offences, and none were convicted. For a detailed discussion see: Turk 1982, *supra* note 298 at 119-120.

³¹⁰ Turk 1982, *supra* note 298 at 118.

³¹¹ P. Stenning cited in: W. Pue, *Pepper In Our Eyes*, (Vancouver: UBC Press, 2000) at 3.

³¹² J. Eterno & E. Silverman, “Guest Editor’s Introduction: Corruption in Perspective” (2002) 3(1) *Police Practice and Research*, at 3.

Nevertheless, older notions of independence persist for good reason. In democratic societies, order maintenance depends on large-scale public acquiescence to police authority; only undemocratic police-states achieve order through continuous application, or threat, of force. Since the legitimacy of Western policing was founded on the idealized notion of independence, there is a natural hesitancy on the part of the state to dispel an illusion that has become deeply embedded in the public conscience. Independence, like concepts of equal justice or unqualified democracy, is a functional ideal of symbolic importance that guides just society.

Canadian efforts to uphold the ideal of independence have focused mainly in two areas:

In Canada, the two principal strategies for presenting the police as 'non-political' have involved the reform of police governance arrangements and restrictions on political involvement by police officers.³¹³

Yet the ties that bind police to politics are often more subtle and nuanced than these more obvious areas of political disengagement. As symbolic purveyors of untainted justice³¹⁴, the police are imbued with inherent value. "Independence" has given police credibility when they address issues that concern public welfare. Perversely, the very independence governments sought to bestow on police has made them an important government ally.

³¹³ Stenning 1994, *supra* note 285 at 211.

³¹⁴ Lustgarten 1986, *supra* note 296 at 163.

Under the microscope of critical criminologists, the 'sacred totem' of independence is now tottering.³¹⁵ Constructed on the premise that their impartiality was to be central to their legitimacy³¹⁶ an idealized notion of police independence has become as entrenched as the commonly held belief that the vast majority of police work is on-the-streets crime fighting.³¹⁷ Recent critical study, however, has caused a greater degree of acceptance of political / police affiliation than was previously allowed. The nature of this affiliation and the growing importance of the police to government crime control initiatives are explored in the following section.

Growing Interdependence

To date, the best documented explanation of growing political / police affiliation is from Britain where the impact of modern conservative politics (initiated by Margaret Thatcher and sustained to a large degree by Tony Blair and his 'Third Way' politics) has been conducive to closer ties. Since Canada has similar policing traditions, government structures and recent political transformations as Britain, by proxy we can infer how Canada too may have developed an environment amenable to greater police / political collaboration. Of course, there are differences between Britain and Canada that will account for specific divergences. Overall, however, Britain is the country most similar to

³¹⁵ Detailed explanation of the interpretations of the scope of police independence are found in, P. Stenning, "Someone to Watch over Me: Government Supervision of the RCMP" in W. Pue ed., *Pepper in Our Eyes: The APEC Affair* (Vancouver: UBC Press, 2000).

³¹⁶ W. Miller, "Police Authority in London and New York City 1830-1870" (1975) (Winter) *Journal of Society History* 81.

³¹⁷ Peter Manning found that a very small proportion of policing time is actually spent on crime fighting with most time being spent on court preparation, office duties, paperwork and the like. See: Peter Manning, *The Narcs' Game*, (USA: MIT Press, 1980).

Canada where extensive government / police study exists from which we can draw reasonable generalizations about the Canadian situation.

After the tumultuous decade of the 1970s (examined in Chapter Eight, *The Climate of Crime Control*), traditionally conservative police views on law-and-order began gaining favour with the British public.³¹⁸ Police leaders became more vocal in social policy debates and conservative politicians began to adopt the increasingly popular police rhetoric. On the cusp of the 1980s, Robert Reiner observed in the lead up to a British national election that, “a stream of strikingly similar and much-publicized pronouncements appeared from police spokesmen and Tory politicians as part of what the media dubbed the ‘great debate’ on law-and-order.”³¹⁹

Reiner also noted several events that marked an “increasingly explicit political involvement of the police”³²⁰ a “police-Tory symbiosis”³²¹, and a “more open accord between the police and the Conservative government.”³²² By the mid-1990s; “Seeking to be ‘tough on crime and tough on the causes of crime’, New Labour courted the police assiduously.”³²³ This indicated “the return of a degree of consensus about policing, and about their symbolic importance to a vital objective for any government.”³²⁴ Politicians had come to realize that the police were an important ally in crime control initiatives. The

³¹⁸ E.P. Thompson, *Writing by Candlelight*, (London: Merlin Press, 1980).

³¹⁹ Reiner 2000, *supra* note 289 at 72.

³²⁰ *Ibid.*

³²¹ *Ibid.*

³²² *Ibid.*

³²³ *Ibid.* at 11. Emphasis added.

³²⁴ *Ibid.* at 11.

symbolic importance of the police was rising in lockstep with the popularity of tough crime control.³²⁵

While British authors like Robert Reiner have studied growing police / political interdependence, no such extensive examination has occurred in Canada. There is, however, police research from Canada that is useful in beginning this line of inquiry. Maurice Martin noted in 1995 that although Canadian police usually exert little influence “when it comes to developing significant programs that affect security,” the opposite is true “when high rates of violent crime tap support for law-and-order reactions.”³²⁶ In other words, like British police, the opinion of Canadian police gains importance in a law-and-order environment. Martin’s research also finds that Canadian police confer a “stamp of legitimacy” to groups that they choose to support.³²⁷ As trusted members of the civil society and as “the first visible representatives of government and established society in a community, the police unavoidably become involved in [the] social process of legitimization.”³²⁸ The combination of legitimizing power and increased significance in high-crime periods imbues the police with political importance.

Reiner notes that “The police remain pivotal – at least symbolically – to a crucial policy concern of the public: crime.”³²⁹ Police have the capacity to reify public crime concerns and thus have the potential to validate political assertions of necessary anti-

³²⁵ See in particular, D. Garland, *The Culture of Control: Crime and Societal Order in Contemporary Society*, (Chicago: University of Chicago Press, 2001) at Chapter 1, for a discussion on the resurgence of the retributive model of crime control.

³²⁶ Martin, *Urban Policing 1995*, *supra* note 236 at 34.

³²⁷ *Ibid.* at 144.

³²⁸ *Ibid.*

³²⁹ Reiner 2000, *supra* note 289 at 10.

crime measures. As William Chambliss finds, “politicians [are] supported by a staunch ally in creating panic over crime: the law enforcement bureaucracies.”³³⁰ To the political establishment this makes the police a valued partner and one that can help simplify the complicated debate between balancing effective crime control measures and maintaining constitutional safeguards. When crime concern becomes the overwhelming motivation for legislation, governments can pass laws quickly without the inconvenience of lengthy research, significant policy consultation, or intense debate.³³¹ In such periods, the police can help to validate the government initiatives as necessary crime control measures.

Many legal critics “are united in challenging the view that the definition, diagnosis and management of crime are issues best left to politicians and experts in the public agencies mandated with the tasks of crime control.”³³² In other words, crime issues benefit from open inquiry rather than closed decision making. Moreover, because the management of crime is confined to a limited number of actors there is a correspondingly limited amount of criticism.³³³ The potential result: police get more powers, politicians pass more uncontested legislation, but the public is not necessarily better served.

Canada is particularly vulnerable to this type of policy making. Paul Rock suggests that criminal justice reform is an area in which “powerful or favoured groups [are] over-represented.”³³⁴ He posits that “the intricate interdepartmental and

³³⁰ W. Chambliss, *Power, Politics, and Crime*, (Colorado: Westview Press, 1998) at 30.

³³¹ See for example, M. Barton, D. Barlow, D. & T. Chirisos, “Economic Conditions and Ideologies of Crime in the Media” (1995) 41(1) *Crime and Delinquency*, at 3.

³³² K. Stenson, “The New Politics of Crime Control” in K. Stenson & R. Sullivan eds., *Crime, Risk and Justice: The Politics of Crime Control in Liberal Democracies* (USA: Willan Publishing, 2001) at 27.

³³³ *Ibid.* at Chapter 1.

³³⁴ P. Rock, “Governments, Victims and Policies in Two Countries”, (1988) 28(1) *Brit. J. Crim.* 47.

intergovernmental negotiations in Canada give a conciliatory and diplomatic appearance to proposals...achiev[ing] an added measure of authority as a result.”³³⁵ Given this insular policy environment, it is understandable how government policy proposals that appear backed-up from a credible and trusted authority could escape closer scrutiny.

The Canadian situation is also compounded by a general elimination of research positions within government departments in Canada.³³⁶ Policy previously supported by rigorous “outcomes studies” and analysis must now source its legitimacy from elsewhere. David Garland feels the decline in research has led criminal justice policy to become increasingly populist and malleable.³³⁷ A recent editorial comment in the *Journal of Criminology and Public Policy* contends that “the politics of criminal justice policy-making are anything but scientific.”³³⁸ As a result of fewer voices being heard in policy debate, perceived police support for policy initiatives assumes increasing significance.

Although Philip Stenning observed that a clarification of the relationship between the federal government and the police had been demanded but never produced³³⁹ as far back as 1978, it took a national scandal in 1997 to bring wide attention to the issue. The Asia Pacific Economic Cooperation (APEC) affair, involving speculation that police had acted at the government’s behest in forcibly removing protesters, drew attention to

³³⁵ *Ibid.*

³³⁶ M. Beare, “Policing with a National Security Agenda”, research paper produced at the Nathanson Centre for the Study of Organized Crime and Corruption, Osgoode Hall Law School, York University, 2003 (unpublished) at 13.

³³⁷ D. Garland, *The Culture of Control: Crime and Societal Order in Contemporary Society*, (Chicago: University of Chicago Press, 2001) [Garland, 2001] is rife with reference to this trend.

³³⁸ Editorial reply (2002) 27(2) *Journal of Criminology and Public Policy*, (editorials).

³³⁹ P. Stenning, “Red Serge and Dark Clouds: Some thoughts on the Hughes report on the policing of the 1997 APEC conference” (2002) 10(3) *Literary Review of Canada* 13.

“the democratic governance of the police, in particular the relationships between police and elected government.”³⁴⁰ Coincidentally, the rising concern over the mix of politics and policing occurred in the same period as Bill C-95 was being whisked through Parliament on the strength of the Liberal’s claim of having created the legislation following extensive consultations with police. Even with the interest generated over APEC, however, it remained difficult to know where to draw boundary lines:

There is no consensus, either in academic writing or in judicial decisions, as to what is the proper relationship between the federal government and the RCMP...[T]he extent to which police independence extends to other situations remains uncertain.³⁴¹

Although the nature of political / police affiliation remains clouded, the increasing importance of the police to government crime control initiatives seems clear. In Britain, this phenomenon has been well documented and in Canada it would appear that the conditions are highly amenable. A central factor to this growing partnership is the degree to which police have become comfortable acting in the political sphere.

Police Politicking

Often viewed as the “linchpin of the justice system”³⁴², police enjoy a prominent position in the field of law enforcement. As we have seen, historically this position has been disassociated from politics but under critical examination has been found to have many interdependent traits. One of the most obvious signs that independence from politics has become an outdated conception is modern police politicking. This section

³⁴⁰ *Ibid.* at 11.

³⁴¹ *Ibid.*

³⁴² Marquis, *A History 1991*, *supra* note 243 at 387.

illustrates how police, increasingly attuned to the political process that seeks their support, are often willing participants in the politicization of crime. While contemporary scholarship illustrates that on a broad level police work “is inherently political”³⁴³, this does not mean that every type of political involvement should be considered in the same way. Police activism requires close monitoring since their social standing gives them an advantage with regards to influence.

At the start of the 1980s, police were seen to have a limited role in politics.³⁴⁴ By the mid-1980s, however, the police had not only begun to exert influence but some scholars even started advocating for *increased* political involvement by the police.³⁴⁵ The shift even prompted a few bold police pronouncements similar to that of the Executive Director of the International Chiefs of Police, that it was “almost unprofessional to sit silently on the sidelines while legislative issues [are] hammered out by politicians and special interest groups.”³⁴⁶ The 1991 creation of the Police Leadership Institute in America, with its focus on helping “police chiefs become more astute in managing the rosters of actors that define their political environments,”³⁴⁷ evinced American police awareness of their newfound political power.

This phenomenon was also observable in Canada. Lisa Bruvelaitis found that during the 1980s police made little use of their elevated social position, and that while

³⁴³ R. Hunt & J. Magenau, *Power and the Police Chief: An Institutional and Organizational Analysis*, (New York: Sage Publications, 1993) at 27 [Hunt & Mageneau 1993].

³⁴⁴ I. Wilson, “Political Awareness in Policing”, in D. Pope & N. Weiner eds., *Modern Policing*, (London: Croom Helm, 1981).

³⁴⁵ W.K. Muir Jr. “Police and Politics” (1983) 2(2) *Criminal Justice Ethics* 3.

³⁴⁶ J. Vaughn, “Police and Politics” (1988) 55(10) *The Police Chief* 8.

³⁴⁷ Hunt & Magenau 1993, *supra* note 343 at 27.

“interest groups [were] perceived to have a more influential position with the government than in the past, the police rarely acknowledge[ed] their own power in this regard.”³⁴⁸

Initial forays in political activism were heavy-handed and roundly criticized. An early 1980s Toronto mayoral election marked one of the first times a Canadian police association strongly spoke out against a political incumbent.³⁴⁹ This caused consternation and prompted a chiding from the *Globe and Mail* newspaper that it would be wise for the police not to be too vocal about their views.³⁵⁰ The public rebuke had a cooling effect on the police and the CACP issued a press release stating that it would restrict its involvement in partisan politics. By 1992, however, humility had been replaced by haughtiness when the Metropolitan Toronto Police Association “mounted an aggressive political campaign against the NDP government...that enjoyed the explicit support of other police associations.”³⁵¹

This shift fits with findings from other Canadian research of the period.

Bruvelaitis discovered that Canadian police were “finding it necessary to partake in alternative and more vocal means by which to have their concerns met by the government.”³⁵² Perhaps seeking to improve their status following limitations imposed on their powers with the enactment of the *Canadian Charter of Rights and Freedoms* in

³⁴⁸ L. Bruvelaitis, *Mechanisms for Ensuring Police Accountability in Ontario and Police Attitudes Towards Them* (1993), Master of Sociology thesis, University of Windsor [unpublished archived at University of Windsor Libraries] at 91 [Bruvelaitis Thesis, 1993].

³⁴⁹ P. Stenning, “Police and Politics: There and Back and There Again?” in Macleod, R. and Schneiderman, D. eds., *Police Powers in Canada: The Evolution and Practice of Authority*, (Toronto: University of Toronto Press, 1994) His study of the Metropolitan Toronto Police is in relation to political independence.

³⁵⁰ For further discussion, see P. Stenning 1994, *Ibid.* at 228.

³⁵¹ *Ibid.*

³⁵² Bruvelaitis Thesis, 1993 *supra* note 348 at 4.

1983³⁵³, Canadian police became very active in the 1990s. In Ontario for example, police unions openly opposed both the creation of the Special Investigations Unit and the Ontario Police Complaints Board.³⁵⁴ Union activity had grown through the decade to the extent that by 1997, the Metropolitan Toronto Police Union was sending its executive to Texas for activism training out of which the infamous ‘True Blue’ campaign was born.³⁵⁵ The increased political activity of the Canadian police in the 1990s prompted scholars like James Robb to note that “the role of Canadian associations as spokespersons for a particular police viewpoint, or as lobbyists, deserves far more attention than it has received.”³⁵⁶

Summary

In the early 1990s, Lisa Bruvalaitis observed that “police have become more willing to act in the political system, and are quite effective given their powerful position. They are able to gain public attention by conveying the potential dangers to public security.”³⁵⁷ Under the right conditions, police views were being heard, and more

³⁵³ A dispirited assessment of police influence following enactment of the *Charter* is evident in the words of RCMP Chief Superintendent J. Ryan : “the police have had little success in initiating changes in legislation through parliament...” See, J.T.G.Ryan, *The Canadian Charter of Rights and Freedoms: Its Impact on Law Enforcement* (1992) [unpublished paper written for the College of National Defense, Kingston, Ontario] at 35.

³⁵⁴ For a full discussion of police attitudes and actions towards the creation of these bodies, see Bruvalaitis, Thesis 1993, *supra* note 348, especially Chapter 3.

³⁵⁵ The “True Blue” campaign was an example of police politicking at the lowest level. Stickers to affix to a vehicle’s front windshield were tele-marketed to the public and proceeds went to the Toronto Police Union. It was feared that roadside treatment from the police could be dictated in part by the presence or absence of any such sticker. Many politicians rightfully opposed the campaign – and many of those that did complained of harassment by Union executives. Eventually, the municipal government ordered the cessation of the “True Blue” campaign yet the Union never offered an apology.

³⁵⁶ J. Robb, “The Police and Politics: The Politics of Independence” in R.C. Macleod & D. Schneiderman, eds., *Police Powers in Canada: The Evolution and Practice of Authority* (Toronto: University of Toronto Press 1995)160 at 179.

³⁵⁷ Bruvalaitis Thesis 1993, *supra* note 348 at 60-61.

significantly, were increasingly expected to be heard. Reticent to overtly participate in the political arena as late as the 1970s, police associations became emboldened and were increasingly willing to have their views heard by the 1990s.

This chapter explored how the police have become important in the area of criminal justice policy and a valued partner in government crime-control initiatives. High levels of public confidence in the Canadian police continue to make them a trusted voice on crime. Long considered independent from politics, growing relationships of interdependence between the police and government have been found to be mutually beneficial in periods of significant crime concern. Political activism has made the police confident within the political environment and increasingly accepted on the public stage. The cumulative effect of these various factors is that when police and public crime concerns align, police become a valuable political partner in proposing solutions.

Chapter Six: Symbolic Power

Introduction

The political value of conveying partnership with the police is best understood in light of the incredible resource police have at their disposal: symbolic capital. This police power is wielded by virtue of their office and elevated position within society. The symbolic capital of the police has been considered “at least as important as their direct instrumental effectiveness in dealing with crime and disorder.”³⁵⁸ This symbolic function is fundamental to understanding how the CACP became significant as a perceived ally of the Liberal Party in passing Bill C-95. This chapter will study symbolic power and its application to policing as a framework for understanding how perceived police support could become crucial to law reform.

Symbolic Power Theory

[a] power of constituting the given through utterances, of making people see and believe, of confirming or transforming the vision of the world and, thereby, action on the world and thus the world itself, an almost magical power which enables one to obtain the equivalent of what is obtained through force (whether physical or economic), by virtue of the specific effect of mobilization.³⁵⁹

In *Pascalian Meditations*, symbolic power is explained by Bourdieu as the primary currency of exchange in a social economy. It is recognized as having value by the social agents who contribute to a field of practice and is perpetuated to the extent that

³⁵⁸ N. Walker, “Defining Core Police Tasks: The Neglect of the Symbolic Dimension” (1996) 6(1) *Policing and Society*, at 60.

³⁵⁹ P. Bourdieu, *Language and Symbolic Power*, (Cambridge: Polity Press, 1991) at 191 [Bourdieu, *Language* 1991].

it succeeds in obtaining belief about its existence.³⁶⁰ In other words, if others believe in the importance or power of an individual or group in a specific area, that power is reified. Power, however, need only be understood subtly on a cataleptic level rather than overtly. In the case of the police, it is unnecessary for them to un-holster their pistols to have their power in the area of law enforcement recognized and understood by the public.

In *The Logic of Practice*, Bourdieu notes that the power of actors are at once internally recognized or unconsciously understood by others but rarely verbalized. The unconscious nature of the signaling of power, hidden but at the same time recognized by all, has thus been described as one of society's best and worst-kept secrets.³⁶¹ Again the example of the police fits well within this framework. While most people obey police directives, few take the time to process the grounds or legitimacy upon which the individual directive is based. Their power to make directives is complicitly obeyed without being evaluatively understood.³⁶²

Bourdieu incorporates symbolic power into his broader theorizing in which the ruling ideas of a social system are related to structures of class and power and how these are legitimated and perpetuated. Symbolic power is seen as one of four fundamental types of capital. Economic capital relates to command over economic resources such as money and assets; social capital is incurred through societal position and networks of support;

³⁶⁰ P. Bourdieu, *Pascalian Meditations*, (Cambridge: Polity Press, 2000) at 166.

³⁶¹ P. Bourdieu, *The Logic of Practice*, (Cambridge: Polity Press, 1990) at 112-113.

³⁶² See: R. Sykes & J. Clarke, "A Theory of Deference Exchange in Police-Civilian Encounters" (1975) 81(1) *American Journal of Sociology*, at 584.

cultural capital is bestowed on those with particularly valued skills and education; and symbolic capital is a source of power available to those with accumulated prestige or honour. As such, symbolic capital can incorporate one or all three other types of capital in its makeup.

In *Language and Symbolic Power*, Bourdieu argues that language is part of the process of developing prestige and honour, and that it should be viewed not only as a means of communication but also as a medium of power through which individuals pursue their own interests and display their practical competence.³⁶³ Actors deploy their accumulated linguistic resources and implicitly adapt their words to impact their audience. Possessing mastery over the language of a debate increases symbolic power in that area.

The symbolic power framework has been applied to several disciplines. For example, David Kertzer³⁶⁴, Richard Merleman³⁶⁵ and Roger Cobb³⁶⁶ have explored how symbolic power manifests in the political arena. Furthermore, Michele Foucault³⁶⁷, Steven Lukes³⁶⁸ and Keith Dowding³⁶⁹ have each studied which symbols in different

³⁶³ See: Bourdieu Language 1991, *supra* note 359 at Chapters 1-3.

³⁶⁴ D. Kertzer, *Ritual, Politics, and Power*, (New Haven: Yale University Press, 1988).

³⁶⁵ R. Merlman, *Language, Symbolism, and Politics*, (Colorado: Westview Press, 1992).

³⁶⁶ R. Cobb, *Cultural Strategies of Agenda Denial: Avoidance, Attack, and Redefinition*, (USA: University of Kansas Press, 1997).

³⁶⁷ M. Foucault, *Discipline and Punish: The Birth of the Prison*, (New York: Vintage Books of Random House Inc., 1975).

³⁶⁸ S. Lukes, *Power*, (New York: New York University Press, 1986).

³⁶⁹ K. Dowding, *Power*, (Minneapolis: University of Minnesota Press, 1996).

fields are significant to conveying power. To date, however, there have been few connections made between policing and symbolic power.

Studies by Neil Walker, Ian Loader and Mopas and Stenning represent the most important work on the symbolic power of the police. The symbolic power of the police is addressed by Walker as a socially cohesive force important to the public order of a nation.³⁷⁰ A loss of symbolic power of the police is considered a great detriment to the functioning of the state. Loader is more critical in his appraisal and proposes that additional study is needed because of the potential for grievous abuse of authority by the police.³⁷¹ Applying the work of Walker and Loader to a Canadian context, Mopas and Stenning found symbolic power reflected in the growing private police industry and questioned “why people ‘voluntarily’ comply with private security demands.”³⁷²

There is a distinction that needs to be made between types of power from the outset. ‘Street power’ has been the traditional area of power study for the police. Landmark works in this area come from authors such as Bittner³⁷³ and McBarnett³⁷⁴ who focused on the police’s sanctioned ability to use force as their base of power and legitimacy. This field of study is important when studying subjects such as compliance

³⁷⁰ N. Walker, “Defining Core Police Tasks: The Neglect of the Symbolic Dimension” (1996) 6(1) *Policing and Society* 53 [Walker, Core Police 1996].

³⁷¹ I. Loader, “Policing and the Social: Questions of Symbolic Power” (1997) 8(1) *British Journal of Sociology*.

³⁷² M. Mopas, & P. Stenning, “Tools of the Trade: The Symbolic Power of Private Security – An Exploratory Study” (2001) 11(1) *Policing and Society* at 1.

³⁷³ E. Bittner, *The Functions of the Police in Modern Society*, (Washington: National Institute of Mental Health, 1970).

³⁷⁴ D. McBarnet, “Arrest: The Legal Context of Policing”, in S. Holdway, ed., *The British Police*, (London: Arnold Publishing, London, 1979) at 24.

rates and the parameters of forceful police intervention. Debate in this area surrounds the legal ability of the police to use force. Police use of force, especially lethal force, is openly discussed in the newspapers, debated publicly after critical incidents and in many jurisdictions, under the purview of special investigations units.

Symbolic power, on the other hand, “is a power that can be exercised only if it is recognized, that is misrecognized, as arbitrary.”³⁷⁵ The police shooting of a civilian is not treated arbitrarily; the “street” power of the police to do so comes under close scrutiny when it occurs and the officer must defend his/her actions. Similarly, force and its physical denotations, such as a baton, handcuffs and pistol, are obvious sources of power whose use we consciously evaluate. Past introductions of retractable batons, ‘mushroom’ bullets, pepper spray and the current debate over electrocution “tasers” are use-of-force options advanced by the police, yet ultimately approved by public offices that control policing budgets.

What is often “misrecognized” as arbitrary is the degree to which we unconsciously defer to police perceptions of crime. While it can be argued that all persons and groups have social constructions through which they see the world,³⁷⁶ those of the police are particularly important because they directly affect our well being. As the purveyors of safety and security and those in whom we entrust the legitimate use of force,

³⁷⁵ Bourdieu, *Language* 1991, *supra* note 359 at 172.

³⁷⁶ See: E. Goffman, *The Presentation of Self in Everyday Life*, (New York: Doubleday Anchor Books, 1959).

the police have great scope to affect society with their views. As the “experts” in crime control, police belong to the type of group that Bourdieu argues “monopolize symbolic power in society.”³⁷⁷

Early Research

There are several areas from which the police accrue symbolic power. One source of police power derives from their presentation in popular culture and entertainment. In 1983, Alan Clarke traced the portrayal of police through television programs over two-and-a-half decades to examine whether police maintained their elevated social status over time. Noting that “the majority of people had little or no contact with the police” he argued, “It is precisely in an area where such a lack of knowledge exists that the realism of police stories operates, presenting an image of the police which exerts a strong hold on the public imagination.”³⁷⁸

Following television programs such as Britain’s *Dixon of Dock Green* created in the 1950’s to American programs such as *Chips* in the 1970’s, Clarke concluded “the myth about the police goes largely unchallenged” and “the cluster of ideological values that characterized the police then has remained remarkably unchanged to the present day.”³⁷⁹ Clarke demonstrated through media analysis that police enjoy a romanticized

³⁷⁷ Bourdieu, *Language* 1991, *supra* note 259 at 172.

³⁷⁸ A. Clarke, “Holding the Blue Lamp: Television and the Police in Britain” (1983) 19 *Crime and Social Justice* 44 at 45.

³⁷⁹ *Ibid.* at 48.

position as crime fighters infused with “honesty, integrity, [and] dedication to duty.”³⁸⁰ Clarke refers to programs such as *Chips* and comments that “The very fact that a series like this can still be made, and to a large audience will seem authentic, is eloquent testimony to the power of the myth of the omnipotent police force.”³⁸¹ More recently, the longevity and popularity of *Law and Order* to which even the current fad of gritty realism has not altered the underlying theme of the noble pursuit of justice by law enforcement, helps maintain the police mystique.

Another area that contributes to police power is the police uniform. In 1984, Robert Mauro conducted controlled experiments on the impact of police clothing using pictures of persons described as police officers in various forms of dress. The purpose of the study was to test the findings of a series of studies performed when police in Menlo Park, California, changed their paramilitary uniforms for dress pants and blazers. The previous studies had found the “casual” dress provoked less violence but Mauro’s more thorough experiment demonstrated an inverse correlation between violence and police uniforms. He also found that “[O]fficers wearing traditional uniforms were perceived as more honest, more active, more helpful, more competent, more “good”, more valuable, faster, and as possessing better judgment.”³⁸² In short, a professional uniform conferred “expert” status.

³⁸⁰ *Ibid.* at 46.

³⁸¹ *Ibid.*

³⁸² R. Mauro, “The Constable’s New Clothes: Effects of Uniforms on Perceptions and Problems of Police Officers” (1984) 14(1) *Journal of Applied Social Psychology* at 42.

That same year, Brad Bushman found “that compliance significantly increased as perceived authority increased.”³⁸³ In his study, levels of authority were portrayed through dress styles, with a “bum” (the study’s terminology) symbolizing the least authority and a firefighter the most. Unlike Mauro, the aim of this study was not to examine the influence of attire, but rather to discover the role of authority on compliance: attire was simply one conduit through which authority could be displayed. The results demonstrated that people seen to be in positions of authority benefit from increased public compliance. Bushman concluded:

Perceived authority is apparently an important variable influencing compliance. These findings suggest that those holding authoritative positions have a great responsibility, especially when making requests of others.³⁸⁴

Building on these findings, Stephen Mastrofski et al.³⁸⁵ studied compliance rates to verbal police requests by “examin[ing] occasions when patrol officers made explicit their desire that citizens ‘behave themselves.’”³⁸⁶ The study found that compliance levels were not significantly improved by police actions that included confrontational/aggressive displays or a greater number of police at the scene. However, it was found that a high level of compliance could usually be expected through the use of appropriate language. The study concluded that “any police suggestion, request, command, or threat is fraught with implications of legal control... On the street, this outlook is captured in references to

³⁸³ B. Bushman, “Perceived Symbols of Authority and their Influence on Compliance” (1984) 14(6) *Journal of Applied Social Psychology* at 506.

³⁸⁴ *Ibid.* at 508.

³⁸⁵ S. Mastrofski, J. Snipes & A. Supina, “Compliance on Demand: The Public’s Response to Specific Police Requests” (1996) 33(3) *Journal of Research in Crime and Delinquency* 269.

³⁸⁶ *Ibid.* at 270.

police officers as ‘the law’.”³⁸⁷ Moreover, language was found to have even greater impact than coercion or force.

Research into entertainment portrayals, attire, and language indicate that police are amongst the professionals to whom Bourdieu’s theory of symbolic power can be applied. Cultural representations help maintain the myth of police omnipotence and the police uniform has been found to bolster their professional status. Furthermore, the authority of office, combined with language that indicated that position, has been seen to be a tool for compliance. The studies indicate that police are imbued with honour and prestige, are viewed as professionals and can exert their power without resorting to coercion or force. This research was an important factor in setting the scene for future study that directly applied symbolic power theory to policing. Another factor was research on sources of police power.

Sources of Power

Discretion is understood to be a necessary aspect of policing due to “the ever-present reality of scarce resources and the ambiguity of the law.”³⁸⁸ Police do not have the manpower to detect every transgression of the law and must be relied upon to make priority choices on what laws to enforce. Furthermore, the law cannot be applied to every situation without some subjective interpretation; there can simply never be enough laws to cover all permutations of human conduct and circumstance. As one precedent-setting

³⁸⁷ *Ibid.* at 271.

³⁸⁸ M. Brown, *Working the Street: Police Discretion and the Dilemmas of Reform*, (New York: Russell Sage Foundation, 1988) at 4.

case in the United States has found, “It is entirely obvious that [the police] must exercise a sound discretion as to how those means shall be applied for the good of the community.”³⁸⁹

Discretion confers an immediate authority on the police in the public arena, or as Tom Bowden describes it, “in the court of the first instance – the street.”³⁹⁰

The range of discretionary powers which they possess makes it possible for them to apply, especially in rapidly moving crises, their own interpretation of the law within the wider boundaries of strategy already determined by the government of the day.³⁹¹

Thus discretion, by virtue of its power of persuasion and enhancement of authority, contributes to the symbolic power base of the police.

Positive perceptions also add to the symbolic power of the police. Work by Ian Taylor on the public image of the RCMP suggests that although perceptions and reality are often at odds in the world of Canadian policing, positive views of the police prevail.³⁹² He finds this astounding considering what he sees as the reality (albeit his cynical view) of much of the policing role: a profession that spies on its own citizens, abuses emergency situations and seeks more power in government.³⁹³ The lack of investigation on growing police powers, Taylor postulates, has less to do with a faultless

³⁸⁹ K. Williams, *Textbook on Criminology*, (London: Blackstone Press, 1991) at 25-26, citing *Gowan v. Smith* (1909) 57 Mich 443; 122 NW 287 (Michigan Supreme Court).

³⁹⁰ T. Bowden, *Beyond the Limits of the Law*, (London: Penguin Books, 1978) at 14.

³⁹¹ *Ibid.* at 26.

³⁹² I. Taylor, “Martyrdom and Surveillance: Ideological and Social Practices of Police in Canada in the 1980’s” (1986) 26 *Crime and Social Justice* at 62-63.

³⁹³ *Ibid.*

performance on the part of the Mounties than to an enduring myth of the “goodness” of the force.

Regardless of whether one concurs with Taylor’s views of the RCMP, it is hard to disagree with his assessment of their popularity. The annual memorial service to fallen officers in Ottawa is a good example of this perception and how it helps to further police power. The service is described as the elevation of the police task to a primary place in the public political agenda, and the associated acceleration of a public acceptance of the police’s political perspectives on the need for a much more intensively disciplined and generally widely policed society.³⁹⁴ In the service, the honour and prestige Bourdieu associates to groups with symbolic power is evident. It is also clear that police are able to use these attributes to have their preferences known.

Myth, as seen in the example of the RCMP, shapes collective Canadian impressions of the police and is one the most important source of their symbolic power. The mythic power of the police stems in large part from their own belief (or professed belief) in their ability to control crime, a theme explored by several policing scholars. Philip Rawlings notes that in their quest to control crime, the police:

have obtained more extensive legal powers, more money and more officers...All of which reinforces the idea that crime control through law enforcement is possible for skilled and adequately resourced officials.³⁹⁵

³⁹⁴ *Ibid.* at 61.

³⁹⁵ P. Rawlings, “The Idea of Policing: A History” (1995) 5(2) *Policing and Society* 129 at 143.

Of course, even the most skilled and resourced police will never completely control crime since effective crime control measures depend on much more than enforcement. Poverty, family structure and education (to name but a few) are variables equally as important as enforcement in controlling crime. However, generating and internalizing a belief that crime control can be achieved through policing ensures that there is always room for the police to request more resources. Thus crime control is the ultimate myth for infinite police requests.

Rawlings suggests this myth needs to be examined to uncover “the mythological nature of the project of crime control and order maintenance by a state bureaucracy.”³⁹⁶ In order to sustain the illusion of their ability to control crime, police declare themselves “experts” on crime issues and subscribe to the idea that they possess the skills to single-handedly preserve order. The myth is so entrenched in the police psyche that it goes beyond resource requests to have become a founding embodiment of their societal role.

This role is supported by the values of authoritative intervention and symbolic justice that are attributed to and internalized by the police.³⁹⁷ Both are:

demonstrative, to show offenders and the public that a regime of law exists...Authoritative intervention and symbolic justice are important services in any society...Somebody needs to do these things.³⁹⁸

³⁹⁶ *Ibid.* at 144.

³⁹⁷ D. Bayley, *Police for the Future*, (New York: Oxford University Press, 1994) at 34.

³⁹⁸ *Ibid.* at 34-35.

Whether it is as controllers of crime or representatives of authority and justice, policing is as much what it embodies on an abstract level as what it accomplishes in the real world. In their analysis of deference to the police, Richard Sykes and John Clark postulate that “the officer is symbolic of the law, the ultimate Weberian rational legal basis of social authority in modern societies. In this sense he may be said to symbolize the sacred in the Durkheimian sense.”³⁹⁹

Peter Manning may provide the most holistic and inclusive theory of how police myths contribute to police power. As well as the police and public, he finds media and government complicit in upholding a “magical” aura around policing, “locked into the police version and rendition of crime, its consequences and levels, and [...] supportive, each for quite different reasons, of the fictive policy of ‘full enforcement.’”⁴⁰⁰ He suggests that through the “management of appearances [and] propagation of the police myth of crime control”⁴⁰¹ police contribute to their mythical status. This status is then perpetuated by government and the media and disseminated to the public.

The “sacredness” of police work enhances their symbolic clout. The police personify “the epitome of the sacred/secular... while the criminal represents the apotheosis of evil.”⁴⁰² The dichotomy lends itself to easy press reporting and is accessible

³⁹⁹ R. Sykes & J. Clarke, “A Theory of Deference Exchange in Police-Civilian Encounters” (1975) 81(3) *American Journal of Sociology* 584 at 588.

⁴⁰⁰ P. Manning, *Police Work*, 2nd ed. (New York: Waveland Press, 1997) at 297

⁴⁰¹ *Ibid.* at 267.

⁴⁰² *Ibid.* at 288.

to the public as it is the basis of many entertainment plot lines. Most importantly, it is a useful tool for structuring (and simplifying) political debate as:

the more important disagreements about the causes of crime, the restrictiveness of the law, the utility of punishment and force, and the conflicts between classes and age groups that crime represents are submerged.⁴⁰³

As seen from the above, police power is largely sustained on an ideological or myth basis. It is not so much what police do as what they represent through concepts such as crime control and sacredness. The authority and prestige bestowed on police through these representations fit well within Bourdieu's framework for symbolic power.

Recent Applications to Policing

Current research on the symbolic power of the police finds it to be alive and well. Ian Loader and Neil Walker have arguably made the most significant research contributions in this area. Whereas Loader sets out a notional framework for the police's symbolic power, Walker studies its application in the maintenance of state authority. The work of both researchers is examined here to see how Bourdieu's theory of symbolic power can be applied to the policing context.

Ian Loader has found that despite attempts to account for symbolism in policing, there is a dearth of study in the symbolic power of the police and that "[p]olice sociology has ... devoted insufficient theoretical and substantive attention to comprehending the

⁴⁰³ *Ibid.*

symbolic power of the police as a social institution.”⁴⁰⁴ The modern concept of symbolic power forwarded by Bourdieu, he says, can be traced to Durkheim’s work on professional ethics and civic morals which found that “when collective ideas and sentiment are obscure or unconscious, when they are scattered piecemeal throughout society, they resist any change.”⁴⁰⁵ The symbolic power of the police is one such obscured idea embedded in the subconscious of society.

Building the case for a connection between symbolic power theory and police practice, Loader speaks to the elevated position of policing.

The link between policing and social order seems an obvious one... when the police speak they already occupy a place in the order of things that authorizes their right to pronounce about the world.⁴⁰⁶

Drawing on experiments such as Bushman’s authority study and Mauro’s attire impact trials, the author also attributes physical displays of the police as social status reminders:

The iconography of policing – the handcuffs, fingerprints, cop shows, uniforms, photofits, picture postcards, memoirs, cars, sirens, helicopters, riot shields, and so forth – connect with and re-articulate dispositions towards, and fantasies of, policing that already pertain within the wider culture.⁴⁰⁷

Thus, prior research into symbolic power plus an understanding of identified sources of police power lead to a better understanding of the symbolic power of the police.

Exploring the interconnectedness of these areas, Loader finds four ways that “social meanings” of police are made and transmitted: routine practice (labeling: i.e., who

⁴⁰⁴ I. Loader, “Policing and the Social: Questions of Symbolic Power” (1997) 8(1) *British Journal of Sociology* at 5 [Loader, Policing 1997].

⁴⁰⁵ E. Durkheim, *Professional Ethics and Civil Morals*, (London: RKP, 1957) at 87.

⁴⁰⁶ Loader, Policing 1997 *supra* note 404 at 4.

⁴⁰⁷ *Ibid.*

is “evil”- reminiscent of Manning’s findings), police voice (news management of crime), fictional dramatizations (portrayal of police in the media) and iconography (power of uniform and public respect).⁴⁰⁸ These “social meanings” define the parameters of Loader’s theoretical framework for the symbolic power of the police.

Significantly, Ian Loader predicts the potential for misuse saying “the symbolic power of the police has numerous and for the most part damaging effects.”⁴⁰⁹ One aspect of this misuse is adherence to a single conceptual basis (police viewpoint) for problem analysis, which narrows societal views of crime and social order. Another damaging effect is the perception that police can handle crime without help and that all they require are the right legal tools to get the job done (as Manning has also found).⁴¹⁰ Most significantly for this study, however, is Loader’s appreciation of the fact that police power becomes particularly significant in times of crisis:

It is of course true that the affective attachment people feel towards policing creates an underlying reservoir of support upon which the police can rely. It is also tempting for the police to draw upon this diffuse support at times of crisis.⁴¹¹

The ability to draw public support from the strength of the affective attachment people feel towards policing may be particularly useful for those creating social order policies. As representatives of the law enforcement community, Loader found police chiefs to be particularly powerful in this regard; “Chief constables [are] *legitimate namers* – their

⁴⁰⁸ *Ibid.* at 10-11.

⁴⁰⁹ *Ibid.* at 11.

⁴¹⁰ See previous section, “Sources of Power”.

⁴¹¹ Loader, *Policing 1997 supra* note 404 at 10-11.

power, that is, of ‘authorized, public, official speech which is spoken in the name of and to everyone.’”⁴¹²

Whereas Loader voices concerns of misuse, Walker worries about the ramifications of too little symbolic police power. Walker feels the symbolic power of the police acts as a cohesive force that improves society and argues that a reduction in public police responsibilities and its distribution to private agencies will have an adverse effect on public order. He stresses that although previous work has concentrated on the symbolic value of policing along the instrumental lines of police objectives, such as crime deterrence or reducing fear of crime, not enough attention has been paid to the positive social effects of highly visible symbols of the law.⁴¹³

Police power to “label” or define commonality is perhaps their most authoritative and important social role:

Police organizations are very effective in conveying meanings about persons through linking them to criminal activity or otherwise implicating them in the operation and success or failure of the criminal justice system. One of the ways in which this assumes a wider cultural significance is where categorical claims are made about the involvement of certain social types in crime or the criminal justice process more generally.⁴¹⁴

Although such practices can be discriminatory and prejudiced, Walker defends “categorical claims” of “certain social types” by the police as a necessary social function

⁴¹² I. Loader & A. Mulcahy, “The Power of Legitimate Naming: Pt. I: Chief Constables as Social Commentators in Post-War Britain” (2001) 41(1) *Brit. J. Crim.* 42. Loader cites in this quote from: P. Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field” (1987) 38 *Hastings L.J.* 838.

⁴¹³ Walker *Core Police* 1996, *supra* note 370 at 55.

⁴¹⁴ *Ibid.* at 57.

that promotes social stability. He concludes that to ignore the symbolic power of the police in social control is “to undermine public confidence in the state’s commitment to a coherent conception of public security.”⁴¹⁵ This seems to be understood in Canada where, “in the past three decades the position of the police has been undermined by social change – a more heterogeneous and better educated population – a more critical media, and greater devolution to individual and legal rights.”⁴¹⁶ However, a governance model that provides generous funding and resources to law enforcement has thus far maintained their status as a professional and respected entity. As Alan Borovoy has found, “the police remain powerful, largely because of Canadian political culture.”⁴¹⁷

Summary

This chapter has examined the theory of symbolic power and its application to policing. It began with an analysis of symbolic power theory, its use in early studies and congruence with police research. Symbolic power was found to be bestowed on the police through their social prestige and authoritative position and may be especially important in Canada where the RCMP has a significant place in the public psyche. Sources of police power were then examined to explain the origins of the symbolic influence of the police and a review of recent police research illustrated the parameters and identifiable uses of symbolic power in policing.

⁴¹⁵ *Ibid.*

⁴¹⁶ G. Marquis, “Canadian Police Chiefs and Law Reform: The Historical Perspective” (1991) 33(1) *Can. J. Crim.*, at 386.

⁴¹⁷ A. Borovoy, “The Ambit of Police Powers” in *When Freedoms Collide: The Case for Our Civil Liberties* (Toronto: Lester and Orpen Dennys, 1989) at 95.

Bourdieu notes that in examining symbolic power we become aware of its origins.⁴¹⁸ This enables the making of informed decisions on the areas in which we value its manifestation and encourage its presence. It also exposes the areas where it does not belong. Neil Walker has found that symbolic power enables police organizations to be very effective in conveying meanings about persons and groups.⁴¹⁹ Motorcycle gangs are a group whose public characterization is not just influenced but largely dominated by the police. The following chapter explains how police have been able to control the definition of motorcycle gangs and how this was to become important in the organized crime debates preceding Bill C-95.

⁴¹⁸ Bourdieu, *Language* 1991, *supra* note 359 at 275.

⁴¹⁹ Walker, *Core Police* 1996, *supra* note 370 at 57.

Chapter Seven: Controlling the Bikers

Symbolic power, acquired through social authority and prestige, can be a useful tool for the police in a number of order-maintenance roles. In its appropriate place, the symbolic power of the police benefits the public. However, the police, like all organizations, have a natural bias against those who impede their mandate. For the police, that mandate is to maintain order and one group that stands above the rest in hindering this accomplishment is the outlaw motorcycle gang.

This chapter describes the antipathy that police have towards biker gangs and the police's ability to control perceptions of the biker threat. The impression management of bikers by the police was extremely important in the creation of Canadian anti-gang law which was legislation ostensibly designed for organized crime in general but acknowledged as a direct response to biker activity.⁴²⁰ With a near-monopoly of knowledge on motorcycle gang activity, police were naturally considered vital players in anti-gang law development.

The theoretical framework of dramaturgy, a method of sociological analysis that focuses on social control and emphasizes message transmission and interpretation⁴²¹ can be used to examine the policing of bikers. The presence of similar presentational strategies but opposing goals ensures that relations between the police and outlaw motorcycle gangs are particularly rich to evaluate from a dramaturgical perspective.

⁴²⁰ See D. Stuart, *Politically Expedient* 1997, *supra* note 5 at Introduction, and M. Moon, *Outlawing the Outlaws* 1999, *supra* note 5 at Chapter 1.

⁴²¹ P. Manning, *Police Work*, 2nd ed. (New York: Waveland Press, 1997) at 6 [Manning, *Police Work* 1997].

While the symbolic power of the police helps to explain their ability to control popular conceptions of bikers, perceptions of police control over the biker threat highlight police importance as presumed partners to law-reform.

Outlaw motorcycle gangs (bikers), touted by the United Nations as “the number one security threat to Canada”⁴²² before the 9-11 terrorist attacks, have given credibility to police claims of motorcycle gang menace. As the socially accredited experts on motorcycle gangs, police were valuable as perceived supporters of Bill C-95.

Dramaturgical analysis, social control, media help, police bias, and biker myth all elucidate how police control public understanding of motorcycle gangs and the biker threat. In the following section, dramaturgical analysis shows how some groups manage the impressions of others and why the police are particularly well positioned to generate opinions on bikers.

Dramaturgical Analysis

Dramaturgical analysis is a sociological framework used to deconstruct the ingrained messages in social control relations to reveal fundamental motivations.

Dramaturgical sociology emphasizes messages and how they are interpreted. It views society as based on symbolic communication, and explores the tensions between performance and being. It draws from information theory, systems theory, and varieties of structuralism based on the interpretation of information and its role in the coordination and integration of interaction.⁴²³

Although dramaturgy has had various applications within long-standing sociological

⁴²² A. Alvazzi Del Frate, O. Hatalak, U. Zveki, 2000. “*Surveying Crime: A Global Perspective*”, Proceedings of the international conference of the United Nations Interregional Crime and Justice Research Institute (UNICRI), Rome.

⁴²³ Manning, *Police Work 1997*, *supra* note 421 at 7.

research including studies of individual interactions⁴²⁴ and politics⁴²⁵, it is particularly suited to an understanding of policing, a profession that relies on costumes, deference displays and, as we have seen, symbolic power. Indeed, “dramaturgy assumes that action is symbolic and governed by meanings that exercise influence over behavior.”⁴²⁶

Erving Goffman developed a sociological model of dramaturgical analysis that views the “self” as a social product. If an audience accepts our forwarded self-presentation, we are successful in defining who we are. This enables individuals and groups to define social situations, control message transmission, and accentuate or devalue aspects of self. A “front stage” identity is created in which the “idealized” impression is transmitted and the public receives the “dramatic realization”. This enacted environment depends on “an individual’s active role in advancing a particular conception of self to others”⁴²⁷ and using “expressive strategies in the management of a socially creditable impression”⁴²⁸ as they control and interpret interaction. In their “front stage” external surroundings, groups such as police “co-operate to present to an audience a given definition of the situation”⁴²⁹ and thus seek to control their environment. “Back stage” (the internal environment), “where the performance of a routine is prepared”, groups plan strategy to achieve maximum impact.

⁴²⁴ E. Goffman, *The Presentation of Self in Everyday Life*, (New York: Doubleday Anchor Books, 1959) [Goffman 1959].

⁴²⁵ J. Gusfield, *Symbolic Crusade*, (Urbana: University of Illinois Press, 1963).

⁴²⁶ *Ibid.*

⁴²⁷ C. Lemert & A. Branaman, *The Goffman Reader*, (Cambridge: Blackwell Publishing, 1997) at lii.

⁴²⁸ *Ibid.* at xxxii.

⁴²⁹ Goffman 1959, *supra* note 424 at 238.

In the context of policing, the internal environment refers to police academies, stations and even locker rooms whereas the external environment would include citizen encounters, public conferences and relations with the press. Although strategies may be set internally, their external acceptance determines outcome. Dramaturgical success depends upon the degree to which social reality is created internally and accepted externally. Of course, as we have seen from the analysis of symbolic power, police start from an advantaged position in having their reality externally validated.

Few professions depend on what Erving Goffman describes as “the symbolic power of drama and presentational strategies”⁴³⁰ as heavily as the police. Peter Manning contends that “police seize upon particular aspects of their activities to dramatize their effectiveness, efficacy, and utility vis-à-vis their stated goals.”⁴³¹ Although this occurs to some extent in other professions (e.g. doctors), police have immediate tools at their disposal to powerfully communicate their role such as a uniform, authorized use of violence and powers of discretion. Considering that “popular sentiment towards policing is marked by a high ‘fantasy content’ regarding what the police can and should do”⁴³² and that “the police, in their omnipotence and potential ‘everywhereness’ are imagined as ‘guardians’”⁴³³, police hold a uniquely potent position from which to symbolically communicate their messages. As a consequence, they are largely unchallenged in evoking their own vision of social reality.⁴³⁴ It is this self-dramatization and perceived

⁴³⁰ *Ibid.* at 16.

⁴³¹ Manning, *Police Work 1997*, *supra* note 421 at 35.

⁴³² N. Elias, *Involvement and Detachment*, (Oxford: Oxford University Press, 1987) at ‘introduction’.

⁴³³ Loader *Policing 1997*, *supra* note 391 at 3.

⁴³⁴ Manning, *Police Work 1997*, *supra* note 421 at 35.

invincibility that veils policing in myth and lends strength to their communications with the world. Their symbolic power reinforces message acceptance.

Goffman uses “teams” to “refer to any set of individuals who co-operate in staging a single routine.”⁴³⁵ The major aspects of Goffman’s “teams” include internal regulations, peer acceptance, recognized codes of conduct and united presentation fronts. Teams perform to communicate messages, frame events and to have their situational definitions acclaimed. Social power, claims Goffman, derives from an accepted and persistent mis-framing or skewing of reality to fit within one team’s social construct.

Dramaturgical analysis can also be used to understand how image is controlled. Expanding on Goffman’s model, Harold Garfinkel postulates that every time a team is dramatized as evil, a “degradation ceremony” is performed which elevates the goodness of the designators as it demonizes the designees.⁴³⁶ Brissett and Edgley find it not “the least bit astonishing that we reserve our most devastating labels of deviance for those who are unwilling to play at all,”⁴³⁷ where the term “play” means conforming to societal norms. The power used by dominant teams to label other teams is “independent of the necessarily different and conflicting moral experiences of the individuals involved [and] is necessary to maintain social order in our society.”⁴³⁸ In the context of policing motorcycle gangs, some officers have had unremarkable experiences while others have

⁴³⁵ Goffman 1959, *supra* note 424 at 79.

⁴³⁶ See: H. Garfinkle, “Conditions of Successful Degradation Ceremonies”, in J. Manis & B. Meltzer, eds., *Symbolic Interactionism* (New York: Allyn and Bacon Press, 1972).

⁴³⁷ D. Brissett & C. Edgley, *Life as Theater*, (Chicago: Aldine Publishing, 1975) at 260.

⁴³⁸ *Ibid.* 267.

had negative encounters; however the overall policing message is that bikers are a societal threat.

The police do not always act alone in their message transmissions. In Goffman's dramaturgical analysis, a "team" possesses a fluidity that enables players to join when solidarity is necessary and it does not have to be based on social structure or social organization.

A team, then, may be defined as a set of individuals whose intimate co-operation is required if a given projected definition of the situation is to be maintained. A team is a grouping...in relation to an interaction or series of interactions in which the relevant definition of the situation is maintained.⁴³⁹

Two extended team players that can prove vital in supporting police views are the press and politicians.

Of the many accounts of press support for the police, perhaps none has been studied as intensively as the Toxteth riots in Britain. The press reporting that occurred has come to be seen as desperately one-sided in favor of the police with media attention concentrating on the "need" to equip the police with the latest riot gear.⁴⁴⁰ Research found "that the media helped to generate this police 'need' in the public culture"⁴⁴¹ despite ample evidence that prior to the riots "there were a lot of incidents of harassment, drug planting, people being criminalized for trivial reasons [and] heavy handed

⁴³⁹ Goffman 1959, *supra* note 424 at 104.

⁴⁴⁰ C. Summer, "'Political Hooliganism' and 'Rampaging Mobs': The National Press Coverage of the Toxteth Riots", in C. Summer ed., *Crime Justice and the Mass Media*, (Cambridge: Institute of Criminology, University of Cambridge, 1982) at 25.

⁴⁴¹ *Ibid.* at 24.

policing.”⁴⁴² Notwithstanding the questionable policing practices leading up to the riots, the message conveyed through the press was that which was most acceptable to the police.

By studying numerous examples of this type of press support, Richard Ericson concluded that “the reporting of crime incidents can have social-control effects.”⁴⁴³ In other words, our views of what is acceptable are largely informed by media accounts. When the press becomes a medium for police communications, a powerful team has been created to impact our beliefs.

Another team player is found in the political arena. With Bill C-95, Liberal Party interest in portraying bikers as a foe worthy of tough new laws made police views useful to the law reform effort. As a perceived partner of the police, Liberal law-making gained credibility. In dramaturgical terms, the political message transmission required an appearance of conforming to police definitions of the biker threat and seeming to adopt police solutions.

In considering the interests of police, press and politicians, the potential for a mutually supportive team becomes apparent. Each player benefits by being a team-member: the police could expect to gain additional control via new policy, the press generate news interest and politicians receive increased popular support. Thus a sequence of mutual reinforcement occurs when police define a situation over which they wish to

⁴⁴² *Ibid.* Citing: BBC News (4 July 2001).

⁴⁴³ R. Ericson, P. Baranek & J. Chan, *Visualizing Deviance*, (Toronto: University of Toronto Press, 1987) at 68.

exert control, the press transmit this message and create public interest, and politicians, responding to popular opinion, create new policy. The teamwork involved in this process is known as deviance amplification, an “amplifying spiral of official reactions.”⁴⁴⁴ As “team” players respond to their needs, whether it be selling newspapers or garnering votes, they subconsciously co-operate in advancing the situational definition.

Goffman’s dramaturgical analysis explains how police can use their symbolic power to forward messages and how a supporting “team” furthers this communication. Aided by the press and politicians, police have the potential to frame a definition of a group over which they wish to exert more control. To the police, this is very appealing since, as the following section will illustrate, social control is at the heart of policing.

Police Mandate and Biker Threat

Some of the foremost researchers in police study contend that the primary purpose of policing is not enforcement but “ordering the population.”⁴⁴⁵ Bittner argues that the police use law “as an all purpose control device”⁴⁴⁶ while Ericson proposes that police are “front-line agents in the ‘reproduction of social order.’”⁴⁴⁷ Describing how “the police maintain power and authority” Manning claims that “symbolic sources of power are

⁴⁴⁴ R. Ericson, “The Police as Reproducers of Order” (citing L. McDonald, 1976) in K. McCormick & L. Visano, eds., *Understanding Policing* (Toronto: Canadian Scholars’ Press, 1992) at 162 [Ericson, Order 1992].

⁴⁴⁵ *Ibid.* at 194.

⁴⁴⁶ E. Bittner, *The Functions of the Police in Modern Society*, (Washington: National Institute of Mental Health, 1970) at 108.

⁴⁴⁷ Ericson, Order 1992, *supra* note 444 at 163.

essential to agencies of formal social control such as the police.”⁴⁴⁸ Thus social control is well established in the literature as a central component of the policing mandate.

Social control involves practices developed by groups which enforce or encourage conformity in social settings.⁴⁴⁹ Manning gives one of the most detailed explanations of the social control mandate of the police. He explains that police “seek to control both the inputs they process and outputs they produce,”⁴⁵⁰ giving them tremendous power to decide what is worthy of special attention. Groups unfavorable to the police can become enforcement targets, thus get arrested more frequently and then fulfill the original police assessment. The “message” of who is to be viewed as a threat becomes largely police generated and the result is a self-fulfilling prophesy. Thus a central aspect of policing is the existence of a ritualized system of affirming social order. In this section, Manning’s construct is explored and compared to police actions towards biker gangs in the period leading up to Bill C-95. Through this examination, means by which social control is exerted including impression management and media support are illustrated.

Manning sees the drama of policing as the maintenance of social control through impression management directed at preserving a sense of public morality. Thus social control, defined as “social reactions to behavior defined as deviant [and] violations of norms,”⁴⁵¹ can be affected by different policing means. For example, symbolic power can

⁴⁴⁸ P. Manning, “Community Policing as a Drama of Control”, in J. Greene & S. Mastrofski eds., *Community Policing: Rhetoric or Reality*, (New York: Praeger Publishing, 1987) at 27.

⁴⁴⁹ D. Jary & J. Jarry, *Collins Dictionary Of Sociology, Second Edition*, (London: Harper Collins Publishers, 1995).

⁴⁵⁰ Manning, *Police Work 1997*, *supra* note 421 at 10.

⁴⁵¹ A. Clark & J. Gibbs, 1965. “Social Control: A Reformulation” (1965) 12 *Social Problems* at 401.

work to “sanctify the myth of command and control and mystify the nature of police practices”⁴⁵² thereby increasing the legitimacy required for social control measures. The strongest type of social control occurs through “embed[ding] the control function into the “woodwork” where its presence is unnoticed but its effects are ever present.”⁴⁵³ Similar to Bourdieu’s conception of symbolic power, the strength of social control is dependent on its unconscious acceptance.

Clifford Shearing and Philip Stenning illustrate the unconscious acceptance of policed social control in their study of order maintenance at Disney World. In the theme park “order maintenance is established as a voluntary activity”⁴⁵⁴ where dressed-up Donald Ducks and Mickey Mice adopt policing functions in handling the crowds. Despite the garish costumes, Shearing and Stenning find that the authority of the Disney characters is rarely challenged. Social control, even in this least expected location, is achieved through complicit consent to those acting in a policing role.

To a great extent, police self-manage their own image as crime fighters. This is not difficult as “the police crime-fighting image is one readily accepted by the general public.”⁴⁵⁵ Most people have limited interaction with police and are inundated with television programs dramatizing the excitement of criminal investigations. As crime fighters, police take on a mythical status that is out of proportion to their actual function.

⁴⁵² B. Forst & P. Manning, *The Privatization of Policing*, (Washington: Georgetown University Press, 1999) at 74.

⁴⁵³ C. Shearing & P. Stenning, “From the Panopticon to Disney World: The Development of Discipline”, in A. Doob & E. Greenspan, eds., *Perspectives in Criminal Law* (Aurora: Canada Law Book Co., 1985) at 74.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ R. Sykes & J. Clark, “A Theory of Deference Exchanges in Police Civilian Encounters” (1975) 81(3) *American Journal of Sociology*, at 584.

Emile Durkheim found that “we see society constantly creating sacred things out of ordinary ones.”⁴⁵⁶ The police can be seen as one such sacred entity and they are ideally situated to adopt a glorified role. Combined with entertainment portrayals they also benefit from their role in the justice system.

Men of power normally use various strategies of mystification to construct the appearance of common moral experience... This is especially apparent in the realm of legal and judicial decision making, in which power and mystification are combined in complex ways to provide a general sense of justice.⁴⁵⁷

Described by Phil Cohen as “the law”⁴⁵⁸, police are the front-line managers of crime control. Although prominent criminologists debunk the notion that police control crime,⁴⁵⁹ “theorists recognize that the explanation that is given for the behaviour, rather than the behaviour itself, is meant to serve a definite function for the organization.”⁴⁶⁰ In other words, crime is the ostensible “raison d’être” of the police. By constructing an image of crime-fighters, police “have obtained more extensive legal powers, more money and more officers”⁴⁶¹ and perhaps more importance to criminal law reform initiatives.

In addition to crime fighting and arguably a more critical form of police impression management is their ability to create impressions of others. Under the social control mandate “policing is an exercise in symbolic demarking of what is immoral,

⁴⁵⁶ E. Durkheim, *The Elementary Forms of Religious Life*, Trans. By J.W. Swain, (New York: Collier Books, 1961) at 11.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ P. Cohen, “Policing the Working Class City” in B. Fine et al. eds., *Capitalism and the Rule of Law* (London: Hutchinson Press, 1979).

⁴⁵⁹ See, for example: R. Ericson, “Representing Order” (1991) or J. Skolnick, “Deception by Police” (1982).

⁴⁶⁰ M. Beare. *Selling Policing in Metropolitan Toronto: A Sociological Analysis of Police Rhetoric – 1957-1984* (Doctoral thesis, Columbia University, New York, 1987) at 9[Beare, *Selling Policing* 1987].

⁴⁶¹ *Ibid.*

wrong, and outside the boundaries of acceptable conduct.”⁴⁶² In acting out the public’s and their own perceptions of the nature of evil,⁴⁶³ police encourage a classification of certain groups as reproachable. In turn,

They also act as an amplification system in that they increase the importance of the threat of evil to the public through their public pronouncements, their actions, and the media response and attention to them...the police act as negotiators of reality – they provide for deviant people a conception of their delicts, a ready-made role, so to speak, and confront deviants with it.⁴⁶⁴

Bikers, through their many representations of non-conformity, are readily categorized by police as a dangerous class of citizens and are a prime target for social control. This classification is reinforced by films and books that sensationalize the evil nature of bikers.⁴⁶⁵ In Manning’s social control theory, “the police both reflect on and seek to manipulate the collective impressions their audiences accept.”⁴⁶⁶ With bikers this is an easy task since the public has already been primed by the entertainment industry. Bikers, decisively typecast as a nefariously uncontrollable element, reside firmly within the social control dominion of the police.

Manning postulates that “a dramaturgical view of social control concerns the ways in which events are marked and set apart from other events.”⁴⁶⁷ In the context of anti-gang law, this serves as an apt description of how alarm over the killing of eleven-

⁴⁶² Manning, *Police Work* 1997, *supra* note 421 at 319.

⁴⁶³ *Ibid.* at 272.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ The classic film example is *The Wild Ones*. Over 30 years old, the film has become an iconic template for public understandings of the “evil” biker. Books include Yves Lavigne publications such as *Hells Angels at War* (1999) or Peter Paradis’ *Nasty Business* (2002). The popular biker genre was largely influenced by the “gonzo” reporting of Hunter Thomson (H. Thompson, *Hells Angels*, (New York: Modern Library, 1967) who began writing about Californian biker gangs in the 1960s and 1970s.

⁴⁶⁶ Manning, *Police Work* 1997, *supra* note 421 at 10.

⁴⁶⁷ *Ibid.* at 35.

year-old Daniel Desrochers in 1995 by a misplaced biker bomb⁴⁶⁸ was extricated, distilled and capitalized upon by police as proof of the biker threat to society. The police message changed from pre-Desrochers complacency, “police haven’t even bothered to deny that they don’t mind bikers killing each other and criminal associates,”⁴⁶⁹ to post-Desrochers crackdown, “Police chiefs declare public war against bikers.”⁴⁷⁰

In an interesting twist on one of Manning's conditions for social control, police weakness and their inability to protect society from bikers, ended up being one of their greatest assets. Manning argues that:

The police, operating within the context of other organizations with whom they negotiate for power, seize upon particular aspects of their activities to dramatize their effectiveness, efficacy, and utility vis-à-vis their stated goals.⁴⁷¹

However, leading up to Bill C-95, it was the supposed inability of the police to deal with bikers that was dramatized to create further tools of social control. For example, Montreal Deputy Police Chief’s statement: “I would like to be able to reassure the people or guarantee special peace, but I can’t”⁴⁷² speaks volumes about transmitting a lack of control message. Police may use a variety of presentational strategies to achieve their social control goals and dramatizations of ineffectiveness may be a particularly effective technique.

Additional presentation techniques are used by the police to gain social control.

Margaret Beare has researched the importance of “crime-fighting/crime control” and “the

⁴⁶⁸ A full explanation of this event is detailed in Chapter Nine, “Moral Panic”.

⁴⁶⁹ *Canadian Press Newswire*, (21 September 1995).

⁴⁷⁰ *Globe and Mail*, (31 May 1996) A4.

⁴⁷¹ P. Manning *Police Work* 1997, *supra* note 421 at 35.

⁴⁷² *Globe and Mail* (11 August 1995) A7.

isolation of a Dangerous-Class” as presentational strategies aimed at increasing police importance.⁴⁷³ Promoting policing through crime control rhetoric involves selling “the public on the value of the crime control police actions, in return for increased resources and community support.”⁴⁷⁴ This technique was used by police targeting bikers in the period prior to Bill C-95. In purporting “that the situation is quickly growing beyond [police] control” Deputy Chief Pierre Sangollo “called on Ottawa to enact anti-gang laws.”⁴⁷⁵ The obvious suggestion is that “increased resources” (new law) will improve “crime control police actions” (social control) and thereby reduce the biker threat.

Beare’s second finding on police presentation techniques, “the isolating of a dangerous-class”, involves “the police force’s interpretation of where the threat to the society is coming from, and what essential services the police can provide to combat this threat.”⁴⁷⁶ Through the 1990s, Canadian police made it abundantly clear that bikers were a social menace requiring special policing effort such as zero- tolerance biker road stops, public education campaigns, and controlled media operations.⁴⁷⁷ These actions fit what Beare finds “cannot be seen as ‘causal’ nor as sheer ‘rational’, but rather the police aim for the accumulative effect of numerous selling efforts.”⁴⁷⁸ Particularly helpful to these selling efforts is the police / press “teamwork” model introduced in the previous section. Policy created in reaction to a dramatized threat is often, as Peter Manning finds, “largely

⁴⁷³ See: Beare, *Selling Policing* 1987, *supra* note 460.

⁴⁷⁴ *Ibid.* at Introduction.

⁴⁷⁵ B. Cane “Montreal Mayhem: biker gang violence claims innocent victims”, *Maclean’s* (21 August 1995) at 14.

⁴⁷⁶ Beare, *Selling Policing* 1987, *supra* note 460 at 114-115.

⁴⁷⁷ See section *Impotent Initiatives* in Chapter Eleven “Disorganization Surrounding Organized Crime”.

⁴⁷⁸ Beare, *Selling Policing* 1987, *supra* note 460 at 85.

a police/media construction, [in which] governmental action is seen as both relevant and effective.”⁴⁷⁹

Help from the Press

On August 17th 1995, a *Globe and Mail* article began: “The biker bomb that killed 11-year-old Daniel Desrochers in Montreal showed the public the ugly face of organized crime...”⁴⁸⁰ The following day the newspaper followed up with a lead title: “Police Seek Funds to Fight Gangs”⁴⁸¹ in which the columnist took a decidedly sympathetic stance to the police position. Of course, the combined message was that police were insufficiently resourced to control biker gangs. This fits Manning’s findings that “increasingly, the mass media shape and provide contexts for the representations of social action.”⁴⁸² Unfortunately, what the press gain in communicating a police message they lose in their objectivity.

Although it is beyond the scope of this section to conduct an exhaustive media analysis of 1990s organized crime reporting it is worthwhile noting how police messages were communicated through the press. Especially relevant were signs of symbolic support for the policing aim of social control.

⁴⁷⁹ Manning, *Police Work* 1997, *supra* note 421 at 279.

⁴⁸⁰ “Montreal’s Biker Bomb” *Globe and Mail* (17 August 1995).

⁴⁸¹ “Police Seek Funds to Fight Gangs” *Globe and Mail* (18 August 1995).

⁴⁸² Manning, *Police Work* 1997, *supra* note 421 at 7.

Press dependence on police accounts is a well-recorded phenomenon.⁴⁸³ Police have the greatest overall information on crime as a result of being involved at almost every level of the justice system. For example, in a criminal occurrence police are engaged starting from the point of investigation, through to the arrest, as witnesses in court trials and even in enforcing subsequent court-imposed conditions and bail requirements. As such, they are valued by the press as having important insight into criminal matters. However, a reliance on police messages can lead to being influenced by their views.⁴⁸⁴

In the mid-1990s the press turned largely to the police for information on the escalating biker war in Quebec. Predictably, the ensuing articles were often from a police point of view:

“The Nation’s Police Declare War on Bikers”⁴⁸⁵

“Police Chiefs Declare Public War Against Bikers...”⁴⁸⁶

“...Hells Angels Spreading, Police Say”⁴⁸⁷

“RCMP Predicts Hells Surge...”⁴⁸⁸

The evidence of the police voice in these articles is no accident. In the 1990s, police leaders directed their officers to use the media where possible to convey a consistent message of biker danger. In 2001, a senior Staff Sergeant in an RCMP anti-gang task force in Alberta revealed the police tactics. Robert Stenhouse disclosed an

⁴⁸³ *Ibid.* at 8.

⁴⁸⁴ See: G. Wheeler, *Reporting Crime: The News Reliance as Textual Mediation of Police / Media Relations* (Master’s Thesis, Centre of Criminology, University of Toronto, 1986) [unpublished].

⁴⁸⁵ *Globe and Mail* (31 April 1996).

⁴⁸⁶ *Globe and Mail* (31 April 1996).

⁴⁸⁷ *Globe and Mail* (22 July 1996).

⁴⁸⁸ *Globe and Mail* (24 July 1997).

“unethical national strategy of using media to scare the public”⁴⁸⁹ about bikers. For this revelation, Stenhouse was charged by the RCMP for contravening his police oath of secrecy and was consequently fired. Refusing to “co-operate in staging a single routine”⁴⁹⁰, Stenhouse violated the fundamental rule of Goffman’s teams and was expunged. Stenhouse’s “betrayal” had broken the rules of teamwork requiring “loyalty to one’s team and one’s teammates to provide support for the team line.”⁴⁹¹

Given police interest in shaping press reporting of biker activity and press dependence on police accounts, it is unavoidable that a particular point-of-view would be included in media representations. It has been recognized that “media are now used by the police to heighten their own power and control over the definitions and consequences of deviance.”⁴⁹² While biker gang activity may be questionable, one must also question the integrity of the biker gang reporting. What needs to be understood is the predisposition of those who largely control the dissemination of biker information.

Police Bias

There aren’t bikers under everyone’s bed...I don’t mean to demean some of the concerns police forces have in trying to deal with sophisticated criminal activity, but we have to be very careful. I urge you not to respond to emotional rhetoric just because it seems timely.⁴⁹³

⁴⁸⁹ “Leak Lands Cop on Stand” *Calgary Sun* (24 February 2001).

⁴⁹⁰ Goffman 1959, *supra* note 424 at 79.

⁴⁹¹ *Ibid.* at 85.

⁴⁹² P. Manning, “Community Policing as a Drama of Control” in J.Green & S. Matrofski, eds., *Community Policing – Rhetoric or Reality* (Westport CT: Greenwood Publishing, 1987) at 42.

⁴⁹³ William M. Trudell (Chair, Canadian Council of Criminal Defence Lawyers) at the Standing Committee on Justice and Human Rights, Hearings on Bill C-24 (May 15, 2001) at 1155.

Dramaturgical study suggests that social control and crime-fighting are central to the police mandate. What happens when a marginalized group displays a very obvious public disregard for obedience to police mandates? In biker culture, we find the antithesis to an orderly society and a flaunted mockery of police control. This has not endeared biker gangs to the police.

This chapter has so far examined *how* police exert control over perceptions of bikers. *Why* they would have particularly strong views on biker activity needs further clarification. This section provides an analysis of police and biker relations and suggests that bikers have been labeled a modern “dangerous class”. To explain this rivalry requires an examination of the non-conformity of bikers, the engendered institutional bias of the police, their operational prejudice and the public’s acceptance of police views.

Bikers represent the quintessential non-conformists. Although profit through illegal activities may have become a large part of biker operations⁴⁹⁴, this alone does not define who they are. While bikers are pulled by the market forces of demand, supply and revenue maximization, their core values appear little changed from the rebel lifestyle that took-off in 1950s California. Identifying the continuance of the non-conformist biker self-projection is essential to explaining the persistent police antipathy towards bikers. The uncanny similarity of bikers to police, in a number of regards, may feed this animosity.

⁴⁹⁴ *Outlaw Motorcycle Gangs*, Metropolitan Toronto Police Training Video, 1997.

Hunter Thompson's 1967 classic, *Hells Angels*⁴⁹⁵, is a good place to start investigating the rebel biker image as it was the book that first brought bikers to the forefront of public attention. Asked to write an article on the new "weird phenomenon of motorcycle gangs"⁴⁹⁶, Thompson joined a California chapter of the Hells Angels to conduct ethnographic reporting. In 1967, Thompson spent a year riding with the Angels, "a symbol of everything that made Middle America nervous."⁴⁹⁷ He saw bikers as a unique group, one that ostensibly exists for the main purpose of being counter-culture. His now famous introduction to the world of bikers describes the ultimate rebel:

Outlaw motorcyclists wearing chains, shades and greasy Levis ... The Menace is loose again... like Genghis Khan on an iron horse, a monster steed with a fiery anus... long hair in the wind, beard and bandanas flapping, earrings, armpits, chain whips, swastikas and stripped-down Harleys flashing chrome...⁴⁹⁸

From a Canadian perspective and continuing in the ethnographic style of Thompson, Daniel Wolf rode with and reported on Alberta's "Rebel" biker gang in the 1980s. He notes that the non-conformist lifestyle remains the mainstay of biker activity.

Ironically, the appeal of outlaw clubs to their members is very different from what the public understands. Outlaw bikers view themselves as nothing less than frontier heroes, living out the 'freedom ethic' that they feel the rest of society has largely abandoned. They acknowledge that they are antisocial, but only to the extent that they seek to gain their own unique experiences and express their individuality through their motorcycles.⁴⁹⁹

After riding with the club, Wolf believed that bikers fit somewhere between the "convenient stereotype of 'criminal deviants' used by the police and the stylized self-conscious image outlaws have of themselves as 'frontier heroes.'"⁵⁰⁰ Other writers such as Michael Lyman confirm the biker continuance of a non-conformist lifestyle well beyond the early years in California. On the cusp of the 1990s he wrote:

⁴⁹⁵ H. Thompson, *Hells Angels*, (New York: Modern Library, 1967) [Thompson 1967].

⁴⁹⁶ *Ibid.* at 'Introduction'

⁴⁹⁷ *Ibid.*

⁴⁹⁸ *Ibid.* at 3.

⁴⁹⁹ D. Wolf, *The Rebels: A Brotherhood of Outlaw Bikers*, (Toronto: University of Toronto Press, 1991) at 9 [Wolf, Brotherhood 1991].

⁵⁰⁰ *Ibid.*

It should be noted that bikers strive to live lives unlike others in the community. They therefore reject accepted social norms and have adopted their own morals, ethics and norms.⁵⁰¹

This rebellious persona was well evidenced during the mid-1990s Quebec biker war. Yves Lavigne recorded the maintenance of an 'us-against-them' mentality in biker culture, at one point describing the Hells Angels vendetta with the public as a war in which bikers "fight society in many ways on many fronts."⁵⁰² This clearly reflects the biker ethos represented in the 1% patch: "All outlaw bikers wear the 1% inside a diamond shape as a tattoo or patch to indicate they are proud to be the 1% of motorcyclists who live outside the law."⁵⁰³

Sociological analysis of bikers is consistent with these journalistic appraisals. Members of reactively deviant groups such as biker gangs are thought to suffer from status deprivation. Because of this, through appearance and demeanor, bikers present themselves as "bitter and dangerous losers to the surrounding society."⁵⁰⁴ The deviant subculture to which bikers belong is thought to develop through social interaction based on shared values, beliefs and norms which violate conventional traditions.⁵⁰⁵ Club mottoes such as: "The Angels Do Not Forget", "We Are The People Your Parents

⁵⁰¹ Lyman, M. *Gangland: Drug Trafficking by Organized Criminals*, (Illinois: Charles Thomas Publisher, 1989) at 5.

⁵⁰² Y. Lavigne, *Hell's Angel's: Taking Care of Business*, (Toronto: Ballantine Books, 1987) at 443.

⁵⁰³ *Ibid.* at 79.

⁵⁰⁴ J. A. Quinn, *Outlaw Motorcycle Clubs: A Sociological Analysis*, (Masters Thesis, University of Miami, 1983) [unpublished] at 19.

⁵⁰⁵ D. McDowell, *Outlaw Motorcycle Gangs: The Nature of their Deviant Subculture* (1995) (unpublished sociological essay, Niagara Regional Police Force) at 6.

Warned You About” or “Outlaws Forever, Forever Outlaws”⁵⁰⁶ affirm biker’s sense of toughness and separateness as well as their interest in cultivating an “evil” reputation.

Labeling theory⁵⁰⁷ further supports the notion that deviant groups such as bikers participate in a social process that creates a subculture enabling them to be accepted within a group that is outside the parameters and rules of mainstream society. This does not appear to have diminished over time. Recently documented biker participation in rituals and deviant acts⁵⁰⁸ demonstrate a continued commitment to an unorthodox lifestyle. Thus standards of social control, accepted by the majority of society, continue to be spurned by bikers.

It is hardly surprising that the caretakers of social order maintain an inherent dislike of bikers who pride themselves on a lack of obedience to authority figures. Police Officers display respect to civilians at a point just below the level of respect offered by civilians.⁵⁰⁹ Bikers, however, reject established deference exchanges, creating conflict in their encounters with police. Since bikers present an affront to police social control presentations, they garner police attention and loathing.

⁵⁰⁶ *Ibid.* at 10.

⁵⁰⁷ For the classic texts on labeling theory, see: E. Lemert, *Social Pathology: A Systematic Approach to the Theory of Sociopathic Behaviour*, (New York: McGraw-Hill, 1951) and H. Becker, *Outsiders: Studies in the Sociology of Deviance*, (New York: Free Press of Glencoe, 1963).

⁵⁰⁸ McDowell 1995, *supra* 505 at 18.

⁵⁰⁹ Sykes & Clark, *supra* note 362.

In “*Gang Members and the Police*”, Werthman and Piliavin note that “when suspect after suspect becomes hostile and surly, the police begin to see themselves as representing the law among a people that lack proper respect for it.”⁵¹⁰ It is this non-acquiescence that can be seen to infuriate police and create institutional bias. The expression of this bias has changed little over the years.

In February 1966, a Florida police official was quoted in *Men’s Peril* saying,

These punks with their cycles and their Nazi trappings have it in for the world and for everyone in it. They’re a menace, a damned serious menace that’s growing bigger every year.⁵¹¹

In 1997, a Niagara Region police official made an affidavit in court testifying that,

Outlaw gang members pose a threat to police and society at large. This is a very real threat as my experience has found that the outlaw biker will lash out violently at any threat real or perceived and, after the mayhem, will show no outward sign of guilt or remorse for his actions.⁵¹²

The police message has remained remarkably consistent over the years: bikers are a certifiable menace to society.

Sometimes police attitudes against bikers are displayed in “front-stage” loathing. In his biker trial affidavit, Detective constable Doug Paterson of the Ontario Provincial Police clearly illustrated the familiar rhetoric of the police: “Motorcycle gang members

⁵¹⁰ C. Werthman & I. Piliavin, “Gang Members and the Police”, in *Police: Six Sociological Essays*, (USA: John Wiley & Sons Inc., 1967) at 57.

⁵¹¹ Cited in: Thompson 1967, *supra* note 495 at 85.

⁵¹² I. McGlip & C. Dassios, C. “Affidavit Compilation of Ontario Police Testimony Against Outlaw Bikers”, Affidavit of D. MacDowell, 28 Nov. 1997, Osgoode Hall Law School, Toronto.

pose a constant threat to Police and the Community.”⁵¹³ Taking his description one step further, however, he unveiled the level of police loathing usually hidden in police presentations: “Hell, they know what kind of scum they are...it is [often] unknown what the biker is doing but for certain he just finished, is just about to start, or is in the middle of doing, something illegal.”⁵¹⁴ This revealing commentary is normally “backstage”, as both Goffman and Manning describe non-presentational communication. The level of loathing disclosed in court only hints at the quantity of institutional bias.

Criminological literature findings confirm the police bias. Daniel Wolf found many instances of police resentment when he dressed as a biker for field study. In recording officers’ impressions, a consistent bias was revealed and perhaps aptly condensed in a quote from detective Sergeant Hall of the Ontario Provincial Police “Bike gangs are like a cancerous growth, you have to keep right on top of them.”⁵¹⁵

Describing police bias towards targeted groups, John Van Maanen echoes Peter Manning’s construct of policing as an exercise in symbolic branding of the immoral. He notes that “as policemen, they and they alone are the most capable of sensing right from wrong; determining who is and who is not respectable.”⁵¹⁶ Skolnick,⁵¹⁷ Neiderhoffer,⁵¹⁸

⁵¹³ I. McGlip and C. Dassios, C. Affidavit of D. Patterson, 12 Nov. 1997, Osgoode Hall Law School, Toronto.

⁵¹⁴ *Ibid.*

⁵¹⁵ Wolf, *Brotherhood* 1991, *supra* note 486 at 265.

⁵¹⁶ J. Maanen, “The Asshole in Policing” in J. Maanen & P. Manning, eds., *A View from the Streets* (USA: Goodyear Publishing, 1978) at 222.

⁵¹⁷ J. Skolnick, *Justice Without Trial*, (New York: Wiley Publishers, 1966).

⁵¹⁸ A. Neiderhoffer, *Behind the Shield*, (New York: Doubleday Anchor Books, 1967).

and Rubenstein⁵¹⁹, refer to non-conforming groups as “symbolic assailants” who threaten police supremacy and are thus firmly entrenched in police mentality as an “against us” group. Failing to meet police expectations in interaction situations (i.e. deference displays, compliance) groups such as bikers are “stigmatized and treated harshly.”⁵²⁰ In some cases, “certain ‘deviant’ lifestyles are stigmatized and defined as criminal.”⁵²¹ Police attitudes towards bikers would seem to be evidence of an institutionalized belief in biker criminality.

The loathing of bikers may be perpetuated through the acclimatization practices of police institutions. Bias is not innate but learned. It is more likely to be the result of induction into a mind-set rather than the product of a few bad officers.

It is a rarely recognized that the conduct of the police may be related to the character and goals of the institution itself...that it may not be the men who are good or bad so much as the processes and design of the system in which they find themselves.⁵²²

Training practices from Canada’s largest municipal police force support the notion that biker loathing is cultivated within the ranks. The Metropolitan Toronto Police training video “Outlaw Motorcycle Gangs”⁵²³ contains stories that are meant to verify the extreme danger bikers pose to police. Main examples used in the video include a situation where police were locked in the cells by bikers in Hollinger, California, in the 1940s, two Peel

⁵¹⁹ J. Rubenstein, *City Police*, (New York: Farrar, Straus and Giroux, 1973).

⁵²⁰ Manning, *Police Work 1997*, *supra* note 421 at 248.

⁵²¹ B. Forst & P. Manning, *The Privatization of Policing*, (Washington: Georgetown University Press, 1999) at 69.

⁵²² K. Davis, *Discretionary Justice*, (Chicago: University of Illinois Press, 1971) at 93.

⁵²³ “Outlaw Motorcycle Gangs”, C. O. Bick Video Productions, Metropolitan Toronto Police, Toronto. *Author’s Note*: The video was used as part of the in-house training program in 2000. This video was distributed to police stations where officers were instructed to view this and other videos as part of their annual training.

Region officers harassed at a Paradise Rider clubhouse in 1998 and pictures of a shotgun hidden within the handlebar of a motorcycle. However, none of these examples resulted in an officer being harmed. In Hollinger, the police were released within two hours, in Peel, the officers were surrounded but untouched, and in the handlebar story⁵²⁴, no shots were ever fired. Designed as a warning, upon careful examination the video can actually be seen as an advertisement of biker restraint. Nevertheless, the intended message was to remind officers that bikers are bad.

Incantations of similar events as proof of threat may not be strong evidence yet biker danger has become an institutionalized mantra of the police. Summarized in the findings of *R. v. McCurrach* in which police wished to prove the criminality of the Hells Angels:

Police officers have voiced the opinion that those factors exist, but no evidence in support of the opinion has been put forward. An opinion without a foundation does not acquire one simply through repetition.⁵²⁵

The judge concluded that police had not proved their case that the most notorious of motorcycle gangs (Hells Angels) were criminals. Instead, he alluded to a fixed police mindset.

This fits with this author's experience as an Officer with the Ontario Provincial Police. In his famous and much cited analysis of police indoctrination, John Manning found that: "By vicariously sharing the exploits of his predecessors, the newcomer gradually builds a common language and shared set of interests which will attach him to

⁵²⁴ *Author's Note*: First heard by this author at the Ontario Police College in 1994 and at every police talk on bikers since.

⁵²⁵ *R. v. McCurrach* (2000), 270 A.R. 207 at para.199. (Prov. Ct. (Crim. Div.).

the organization until he too has police experience to relate.”⁵²⁶ Training to become a police officer at the Ontario Police College, I attended lectures emphasizing the criminality of bikers. In the first few years of general duties I was sent to numerous “biker workshops” despite the lack of any biker presence in my jurisdiction. In the police locker room there were many stories describing the evil ways of bikers although few officers had much experience with bikers themselves and the majority of the stories stemmed from the hearsay of other officers.

Transferred to a new detachment, I asked fellow officers what kind of public threat, if any, they felt outlaw motorcycle gangs posed and what experience they personally had with bikers. Interestingly, none of the officers spoken with had experienced a dangerous situation in pulling-over a biker, although all had had contact from road-stops and traffic violations. Instead, they cited training classes and work-place anecdotes as main influences on their perceptions.

Although conscious of the possibility of a constructed organizational definition, the vigorous reiteration could not but help shape impressions. The message was clear; bikers were the number one threat. Critiquing the methodology with which the officers involved in biker squads acquire their training, it was noted in *R .v. McCurrach* that police:

⁵²⁶ J. Mannen, “Observations on the Making of Policemen” in: J. Mannen & P. Manning, eds., *Policing: A View from the Streets* (USA: Goodyear Publishing, 1978) at 298. The observations informing this piece were largely drawn from the Doctoral research of William DeLint.

are never given the opportunity to consider an opposing view. They are not permitted to weigh the views, and decide which they accept. The lectures become not a forum for considered analysis, but a method of indoctrinating police officers.⁵²⁷

Ironically, it is the similarity between police and bikers that likely furthers the institutional bias. As John Lee has found, police are subjected to “stereotyping by outsiders, stigmatization based on visible signs (e.g., uniform), a feeling of being collectively misunderstood, and a tendency to band together against outsiders.”⁵²⁸ This description would apply equally to bikers. Indeed, there is an uncanny number of ways that police and motorcycle gangs have organizational similarities yet vie for influence from opposing spheres. In this respect, the groups are unintended near-identical opposites.

Status and authority, two of the leading organizational goals for the police⁵²⁹, are also goals that bikers seek through their deviance displays. The hierarchical structure of the police with constables, sergeants, and chiefs is mimicked in the documented hierarchy of some biker groups such as the Hells Angels or Rebels⁵³⁰ with strikers, sergeants at arms and club leaders. The uniforms and standard apparel of both bikers and police transmit similar messages of affiliation and power. The subsumed authority of the police

⁵²⁷ *R. v. McCurrach*, *supra* note 512 at para. 167.

⁵²⁸ J. Lee, “Some Structural Aspects of Police Deviance in Relations with Minority Groups” in C. Shearing, ed., *Organizational Police Deviance: Its Structure and Control* (Toronto: Butterworth Publishing, 1981) at 51.

⁵²⁹ D. Aaronson, T. Dines, & M. Masheno, *Public Policy and Police Discretion: Processes of Decriminalization*, (New York: Clark Boardman Co., 1989).

⁵³⁰ See Y. Lavigne, *Hells Angels, Taking Care of Business*, (Toronto: Ballentine Books, 1987) and D. Wolf, *The Rebels: A Brotherhood of Outlaw Bikers*, (Toronto: University of Toronto Press, 1991).

has been thoughtfully argued to be a sanctioned use of violence⁵³¹; bikers rely on the same (although unsanctioned) source of authority. Displays at funerals, deference expectations, organizational secrecy and outsider status all show similarities that police would likely not care to admit they share with the outlaw gangs.⁵³² In many respects, bikers parody police control tactics by enacting similar message transmissions from a position beyond police domain. Future study may reveal how the psychological dissonance of comparable traits vs. organizational goals adds to police / biker rivalry. For the purposes of this thesis, it is sufficient to say that the similarity likely engenders a police mindset of an adversary worthy of special consideration.

Media data from a Department of Justice study reflect the institutionalized but little-evidenced public threat posed by bikers. The *Environmental Scan on Organized Crime Media in Canada*⁵³³ assessed press reporting of organized crime between January 1995 and March 2001. In the study, the content of the articles was analyzed to see how much of the reporting was done with verifiable evidence. Bikers received more newspaper coverage than any other organized criminal group. Biker articles also received more “no evidence cited” classifications than any other group. By the amount of media attention paid to bikers we are led to assume that they are one of the greatest threats. Although this is not empirically proven, it is supported by the police.

⁵³¹ Perhaps most elegantly in: E. Bittner, *The Functions of the Police in Modern Society*, (Washington: National Institute of Mental Health, 1970).

⁵³² For example the Vancouver Police Department has advertised itself as: “The biggest, most well-equipped, most feared gang in British Columbia.”

⁵³³ M. Beare & J. Ronderos, *Environmental Scan on Organized Crime Media in Canada*, Department of Justice Research Report, 2001.

The “back stage” institutional police bias is often manifest in “front stage” operational prejudice. Sykes and Clark noted “police officers routinely violate norms emphasizing the consistent or equitable treatment of citizens - two of the strongest factors stated are demeanor and social class.”⁵³⁴ Road-stops are a perfect example of norms-violation practiced by police towards bikers. In 1991 and 1992, the Paradise Riders Motorcycle Club was repeatedly stopped on their way to clubhouse parties by police citing the potential danger of large gatherings of bikers.⁵³⁵ In 1997, Hells Angels members were detained for one-and-a-half-hours after leaving a “patchover ceremony” in Red Deer Alberta so police could “gather information.”⁵³⁶ In this case, Inspector Webb of the R.C.M.P. testified that “It is incumbent upon police agencies to maintain a very visible presence and *control* [author’s emphasis] with respect to these gangs.”⁵³⁷

In both cases the courts found police were unfairly treating biker gangs. Police publications advocate the road-stop policy suggesting “every time you [have] a chance to make contact with a biker you [do] just that.”⁵³⁸ This despite court testimony that finds, “decades of roadside stops have yielded few arrests, convictions or proof of criminal

⁵³⁴ Sykes & Clark 1975, *supra* note 362 at 12.

⁵³⁵ See: *Brown et al. v. Regional Municipality of Durham Police Service Board* (1999), 131 C.C.C. (3d) 1 (Ont. C.A.).

⁵³⁶ “Organized Crime in Canada: A Quarterly Summary of Recent Events”, July to September 2000, CISC Report. This article is citing the case of, *R. v. McCurrach*, *supra* note 511.

⁵³⁷ *R. v. McCurrach*, *supra* note 511 at note 69, Exhibit 27, Tab 8.

⁵³⁸ B. McQuillan, “Talking with Dinosaurs” *Blue Line: Canada’s National Law Enforcement Magazine*, (November, 1998).

activity.”⁵³⁹ Seen by police as “opportunistic scavengers who prey on the weak”⁵⁴⁰, bikers are targeted with a policy suggestive of prejudice.

Expert testimony on bikers from the mid-1990s illustrates how an organization’s mind-set can become manifest. In one biker case, key witness Inspector Donna McDowell of the Niagara Regional Police testified that:

Based upon my experiences with and research of these individuals and groups it is my opinion that Outlaw Motorcycle Gangs are Organized Crime Gangs which are growing at a rapid pace both in number of members as well as in control of criminal markets. Outlaw gangs pose a threat to police and society at large.⁵⁴¹

McDowell’s court testimony labels all bikers as criminals. To strengthen her case, she cited the (accidental) killing of Daniel Desrochers as proof of biker danger to public safety. To establish the danger of bikers to innocent children and show “this is not an isolated incident”, she searched back to 1988 to find a collaborating occurrence. The length to which McDowell goes to substantiate the operational police prejudice is surprising. The 1988 incident did not occur in Canada (it transpired in Texas) nor was the involved child killed.⁵⁴² Summing up her testimony with a clear reference to pro-police anti-gang writer Yves Lavigne’s book, *Hells Angels: Taking Care of Business*⁵⁴³, McDowell concluded:

⁵³⁹ *R. v. McCurrach*, *supra* note 511 at para. 211.

⁵⁴⁰ M. Giles, “Symposium Centers on Biker Gangs”, *Blue Line: Canada’s National Law Enforcement Magazine*, (May, 2000).

⁵⁴¹ McGlip & Dassios 1997, *supra* note 499, see Affidavit of McDowell, point #4.

⁵⁴² Harm of any kind to a child is serious but the point made here is that McDowell could not find another instance of a child being killed by a biker, even looking back several decades and including other countries in her search.

⁵⁴³ Note: Since his 1987 publication, Lavigne has become more jaded towards police efforts with bikers – see Y. Lavigne, *Hells Angels at War*, (Toronto: Harper Collins Publishers, 1999).

Anyone, be it police, rival gangs, or innocent bystanders be they elderly or children, who stands in the way of a biker 'taking care of business' stands a very real prospect of being seriously injured or killed.⁵⁴⁴

Exaggerated accounts of biker activities are a negative result of police bias.

Purposeful deceit is even worse. Police have been known to suppress evidence on bikers that does not fit with the construction of their dangerous image. Staff Sergeant Jean Pierre Levesque of the R.C.M.P. worked as national coordinator of the Outlaw Motorcycle Gang Project of the Canadian Security Intelligence Service (CSIS) through the 1990s and was a top police expert on bikers. He had knowledge that assault charges against members of the Hells Angels for attacking Vancouver police officers had been dropped⁵⁴⁵ but continued to use the incident as proof of the biker threat to police. When cross-examined as an expert witness on motorcycle gangs in a subsequent trial, Levesque was found "not to have circulated to members of the police intelligence community...the fact that the Hells Angels who were charged were acquitted."⁵⁴⁶

In the benchmark case *R. v. Mohan*, the Supreme Court found that the admissibility of expert evidence was dependent upon the application of certain tests including "the adequate qualification of the expert."⁵⁴⁷ Experts are expected to have substantive knowledge of the subject before the court and be objective in their analysis. This is not usually a role played by the police as their role is normally confined to being

⁵⁴⁴ McGlip & Dassios 1997, *supra* note 498, see Affidavit of McDowell, point # 13.

⁵⁴⁵ Charges that members of the Hells Angels had attacked Vancouver police officers were found to be unsupportable. *R. v. McCurrach* (2000), 270 A.R. 207 at paras. 195-203.

⁵⁴⁶ *McCurrach*, *ibid.* at para. 203.

⁵⁴⁷ *R. v. Mohan*, [1994] 2 S.C.R. 9 at 20.

witnesses for the prosecution. Yet who but the police have expert knowledge of bikers? Unlike a pathologist, psychologist, professor or other accredited professional who can become an expert in their field, there is no defined profession for becoming intimate with the world of motorcycle gangs. Even those few anthropologists who have made forays into the biker world are rarely privy to the criminal side of operations. By default, courts hear expert testimony on bikers from those who loath them.

Operational prejudice towards bikers has continued over fifty years despite reduced police targeting of other marginalized groups. Drug enforcement has long been a convenient tool to oppress minority groups.⁵⁴⁸ Past examples include connections made between Chinese and opium and Mexicans and marijuana.⁵⁴⁹ Today, many groups other than biker gangs supply the public's unwavering appetite for illicit drugs yet bikers remain a main group singled out for enforcement. On a more general level of targeting, "such diverse categories as winos, hobos, unemployed drifters, labour union organizers, Japanese, blacks, long-haired youth, and homosexuals have been appropriated by the police as their property."⁵⁵⁰ Open police-targeting of these groups, however, is no longer acceptable unlike the blatant targeting found in biker road-stops. Italians, previously tainted by police presumptions of links to the Mafia, have assimilated into North American society to the extent that group bias has become antiquated. Police targeting of

⁵⁴⁸ Note: Theorists argue that minority oppression is open for any group lacking power. Ed Cray depicts this police abuse of authority as "police property" (E. Cray, *The Enemy in the Streets*, (New York: Anchor Books, Garden City, 1972) while Lorenne Clark and E. Lewis refer to "ownership" (L Clark & E. Lewis, *Rape: The Price of Coercive Sexuality*, (Toronto: Women's Press, 1977)).

⁵⁴⁹ See: P. Adler, *Constructions of Deviance: Social Power, Context, and Interaction*, 3rd ed. (USA: Wadsworth Publishing, 2000).

⁵⁵⁰ J. Lee, "Some Structural Aspects of Police Deviance in Relations with Minority Groups" in C. Shearing ed., *Organizational Police Deviance: Its Structure and Control* (Toronto: Butterworths Publishing, 1981) at 53.

Blacks has been mitigated (at least outwardly) by the impact of the civil rights movement and a concern for Human Rights. Bikers, however, have neither assimilated nor been protected by anti-discrimination efforts. In other words, police forces can display an outward prejudice against bikers with little fear of reprisal or backlash.⁵⁵¹

Perhaps more than any other group, motorcycle gangs continue to frustrate the social control mandate of the police. Not only are they often involved in criminal activity but they openly display their disregard for public order. Through their many message conveyances (dress, demeanor, disregard for social norms) they cast themselves as outsiders, sometimes ignored by the public but always of keen interest to the police. It is reasonable to assume that police would welcome public adherence to stricter policing of bikers.

In the mid-1990s, police views on bikers found a receptive audience in Quebec. Frustrated by the seemingly unstoppable feuding, bikers at large were denounced. Mirroring sentiment of previously outraged publics, bikers became the new dangerous class. Allan Silver's description of the perceived threat of "the criminal, vicious, and violent" is apt for the alarmed Quebec populace:

⁵⁵¹ Interestingly, while *R. v. McCurrach* (2000), 270 A.R. 207, and, *Brown et al. v. Regional Municipality of Durham Police Service Board* (1999), 131 C.C.C. (3d) 1 (Ont. C.A.) did find for the motorcycle gangs, a recent profusion of specialized biker squads would seem to suggest that that police attention has not diminished.

It was much more than a question of annoyance, indignation, or personal insecurity; the social order itself was threatened by an entity whose characteristic name reflects the fears of the time – the ‘dangerous classes.’⁵⁵²

What Al Capone’s illegal liquor distribution and associated violence in 1940s Chicago did for the public reputation of Italians in the mid 20th century, the drug war violence of the Hells Angels and Rock Machine achieved for bikers in 1990s Quebec. Bikers, who had long co-existed with the public in what Margaret Beare describes as a “symbiotic relationship,”⁵⁵³ were now vilified. This is consistent with Alder and Alder’s observation that:

[t]he degree to which other people will respond to a given act as deviant varies greatly. A person believed to have committed a given ‘deviant’ act may at one time be responded to much more leniently than he would be at some other time...At various times, enforcement officials may decide to make an all-out attack on some particular kind of deviance.⁵⁵⁴

Particularly important to the public change of opinion was the killing of Daniel Desrochers. Police messages on biker danger could then rely on a current incident, an innocent child victim, and Canadian content. Although routinely hampered by the inability to acquire reliable informants, infiltrate gangs, or produce unequivocal evidence, police claims of biker danger gained credibility. Previously reliant on biker hyperbole, the death of one eleven-year-old boy instantly bolstered police accounts of the biker threat. In the public, the police had found an ally to further their bias.

⁵⁵² A. Silver, “The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot” in J. Bordua, ed., *Police: Six Sociological Essays* (New York: John Wiley & Sons Inc, 1967) 3.

⁵⁵³ M. Beare, *Criminal Conspiracies: Organized Crime in Canada*, (Toronto: Nelson Publishing, 1996) at 54.

⁵⁵⁴ P. Alder & P. Alder, *Constructions of Deviance*, (USA: Wadsworth Publishing, 2000) at 79.

Unfortunately, this bias can lead to an overblown threat perception. In an Ontario biker trial Detective Constable Doug Paterson testified that “[t]here are many stories...of women being abducted off of the street and raped by the entire gang during a party. Many such incidents are documented and true.”⁵⁵⁵ Upon close scrutiny, however, it is unclear how many of these incidents are in fact true. The problem with the officer’s statement is one that beleaguers much of police-proffered biker testimony, namely that repeatedly cited accounts are often more myth than fact.

Myth Making

The proverbial abduction and gang rape scenario is one of the ultimate biker myths used by police. Its origins date back to a *New York Times* sensationalized cover story from 1964 which brought bikers to the attention of the American nation. The headline, “Hells Angels Rape Teenagers, 4,000 Cyclists Invade Monterey”, understandably caused a sensation. But it was inaccurate. Hunter Thompson points out that:

[t]he incident never occurred...The word ‘alleged’ is a key to this art. Other keys are ‘so-and-so said’ (or ‘claimed’), ‘it was reported’ and ‘according to’. In fourteen short newspaper paragraphs, the Times story contained nine of these qualifiers...The two most crucial had to do with the Hollywood lead and the ‘alleged gang rape’ last Labor Day of two girls, 14 and 15 years old, by five to ten members of the Hell’s Angels gang on the beach at Monterey.⁵⁵⁶

In fact, all charges were dropped when the complainants were unable to positively identify their assailants, when one of the girls failed a lie-detector test, and when a

⁵⁵⁵ McGlip & Dassios 1997, *supra* note 449, see Affidavit of Doug Patterson, point #13.

⁵⁵⁶ Thompson 1967, *supra* note 482 at 34.

doctor's medical exam "found no evidence to support charges of forcible rape."⁵⁵⁷ However, the truth was irrelevant in spawning what has become the classic evil representation of bikers: "The *Times* is a heavyweight even when it's wrong, and the effect of this article was to put the seal of respectability on a story that was, in fact, a hysterical, politically motivated accident."⁵⁵⁸ Despite the inaccuracy, the article was quickly followed up by *Time* magazine and *Newsweek*. Astoundingly, it continues to be alluded to by police in Canadian biker trials more than four decades later. Perhaps unsurprising given the lack of incidents, police appear to have to prove the societal menace posed by bikers using the same few anecdotes, whether proven to be true or not, *ad infinitum*.

Myths are "widely held but false notion(s)."⁵⁵⁹ In instances such as the legendary gang rape mentioned above, they can become the subject of an amplifying spiral of official reactions that overlook basic facts. This section examines the contradictions in "expert" knowledge on bikers that is consistent with information based largely on myth. Reliance on the police, a biased source because any organization is biased against that which impedes its mandate, may not provide objective facts. Myth-making is examined to understand how police assertions regarding bikers go largely unchallenged.

As the California gang rape myth illustrates, the uncritical acceptance of police allegory as fact is problematic. In the 1998 Metro Toronto Police video production

⁵⁵⁷ *Ibid.* at 24.

⁵⁵⁸ *Ibid.* at 35.

⁵⁵⁹ K. Barber, ed., *The Canadian Oxford Dictionary*, (Toronto: Oxford University Press, 1998) s.v. "myth".

Outlaw Bikers, detective constable Greg Zwizdayk gives a history of the development of outlaw gangs and states “no Asians or Blacks are ever allowed into [biker] membership.”⁵⁶⁰ This blanket claim is contradicted by ethnographic findings such as those of Hunter Thompson who rode with the Hells Angels and speaks of encounters with Asian bikers. While it would be possible to equivocate and say that membership rules could have changed since Thompson’s research period, what is relevant is the overbreadth of Zwizdayk’s statement that includes bikers both present and past. This typifies the loose generalizations made by police “experts” who are seldom challenged regarding their knowledge.

Conflicting knowledge of bikers abounds. Anthropological writers disagree on whether bikers usually participate in the legitimate workforce. While Sewer claims that bikers often “work in marginal blue-collar jobs [and] others run small businesses,”⁵⁶¹ Quinn argues biker activity usually “precludes [the biker from] holding a steady job since club business may take him on extended trips out of town.”⁵⁶² Likewise, sociologists’ findings frequently contradict police assertions. For example, McIntyre and Henderson argue that “not all motorcycle gangs engage in criminal activity”⁵⁶³ which directly contradicts the court testimony of Inspector McDowell who declares “all members of such gangs are involved to some degree in criminal activities and either have criminal

⁵⁶⁰ “Outlaw Motorcycle Gangs”, C. O. Bick Video Productions, Metropolitan Toronto Police, Toronto.

⁵⁶¹ A. Sewer, “Biker Business” (1992) *Fortune* 126 (12) at 118.

⁵⁶² J. Quinn, *Outlaw Motorcycle Clubs: A Sociological Analysis* (Master’s Thesis, University of Miami, 1983) [unpublished] at 39.

⁵⁶³ J. McIntyre & A. Henderson, “Outlaw Motorcycle Gangs” in *The Business of Crime*, Canadian Federal Government Information Paper, 1981 at 23.

records or, if not, are nonetheless involved in criminal activity.”⁵⁶⁴ Most significantly, one police officer’s court room evidence can conflict with that of another officer. Staff Sergeant Levesque testified that his mandate was “to expose the outlaw motorcycle gang (sic) for what they really are, organized crime”⁵⁶⁵, while Sergeant Richards testified in the same trial that, “I would personally never say that the Hells Angels motorcycle club or corporation is a criminal organization. I wouldn’t think—I—I wouldn’t.”⁵⁶⁶

Anthropologists, sociologists and the police each claim biker expertise and yet none can agree on their knowledge. With so many conflicting renditions of expert knowledge, biker “truths” appear tantamount to myth.

When myth is uncritically accepted as fact, the administration of justice may fall into disrepute. This is particularly likely when evidence is unverifiable. Since “virtually all information on criminal activity is collected by the police or prosecutors,”⁵⁶⁷ the conflicting evidence on bikers is rarely heard. This lack of critical counter-point can make for a self-fulfilling prophesy. Faulty intelligence can:

influence police efforts in ways that reinforce the original misinformation. If the justice system believes a particular type of crime or criminal is an especially major threat, there will be more investigations, and likely more cases dealing with that particular type of crime or criminal.⁵⁶⁸

The simple law of averages dictates that the more you look, the more you will find. By targeting bikers, police can continue to “prove” the nefariousness of bikers.

⁵⁶⁴ McGlip & Dassios 1997, *supra* note 502, see Affidavit of Donna McDowell, point # 10.

⁵⁶⁵ *R. v. McCurrach* (2000), 270 A.R. 207, Levesque, Transcript, p.2554, 11. 9 – 27; p.2555, 11. 1 – 7.

⁵⁶⁶ *R. v. McCurrach* (2000), 270 A.R. 207, Richards, Transcript, p.2783, 11. 10 –16.

⁵⁶⁷ R. Naylor, “The Theory and Practice of Enterprise Crime: Public Perceptions and Legislative Responses” (Ottawa Discussions Paper presented to the National Forum on Organized Crime, September 27-28, 1996) at 2.

⁵⁶⁸ *Ibid.* at 1-2 (Naylor is citing M. Beare, *Criminal Conspiracies: Organized Crime in Canada*, (Toronto: Nelson Canada, 1996) at 30.)

Central to motorcycle gang myth is its pervasiveness. It is present in police constructs, the courtroom, and the public mind. While many factors contribute to the biker's disreputable image, foremost amongst them may be biker acquiescence to the stereotype. The self-perpetuated 'evil' reputation embraced by bikers firmly situates them within the crime mythology paradigm and ensures that police portrayals are readily accepted.

Not unlike Greek mythology, modern crime myths must follow certain themes for success. There must be 'virtuous' heroes, 'innocent' victims, and 'evil' villains who pose a clear and certain threat to the audience. Only then can crime myth reach its potential. Characterizations common among myths in crime and criminal justice include: (1) the identification and targeting of a distinct deviant population; (2) the presence of an 'innocent' or 'helpless' victim population; (3) the emergence of brave and virtuous heroes; (4) the existence of a substantial threat to established norms, values, or traditional lifestyles...Groups most vulnerable to myth targeting are those who are easily distinguishable from the dominant social group.⁵⁶⁹

The above description of modern crime myths would appear to have been written with the mid 1990s Quebec biker war in mind. Meeting the standards for Greek mythology, police cast themselves as beleaguered but virtuous heroes, Daniel Desrocher was portrayed as the ultimate innocent victim and bikers became a clear threat to the public. The characterizations common among myths in crime were also well represented. Bikers, a distinct deviant population, were identified and targeted. The citizenry of Quebec clearly felt helpless. Our policing heroes were willing to do anything possible - with the right tools. The biker threat took on gigantic proportions that appeared to

⁵⁶⁹ V. Kappeler, M. Blumberg, & G. Potter, *The Mythology of Crime and Criminal Justice*, 3rd ed. (USA: Waveland Press, 2000) at 17.

endanger everything the populace held dear. Finally, who better than the bikers to play the menacing threat easily distinguishable from the dominant social group? As if made for an ancient Greek play with each archetype in place, the drama in Quebec cast bikers as the perfect villains.

There are many dynamics that contribute to the image of bikers as villains. As discussed, presentational strategies of police focus on showing bikers to be a societal menace and media and entertainment accounts contribute to these impressions. The 'evil' image is further perpetuated by self-stylized bikers keen to flaunt their 'rebel' status and faulty police intelligence that is accepted despite contradictions. Several reinforcing feedback loops exist: between the police and press, police to police, and police and public. Behind the many message transmissions of the biker threat the common denominator is the police.

Perhaps of greatest difficulty in differentiating myth from fact is the enigmatic knowledge of the police. Using the rhetoric of danger, Police biker 'expert' Robert MacDonald, proposed in court that "Members of outlaw motorcycle gangs pose a specific threat to law enforcement officers."⁵⁷⁰ This claim was accepted without burden of proof. He continued his testimony with the following *fact* about bikers: "Of the 450 members in Ontario ALL (court transcriber's emphasis) are involved in some fashion with the drug trade."⁵⁷¹ Both claims would seem *prima facie* un-provable.

⁵⁷⁰ McGlip & Dassios 1997, *supra* note 499, see Affidavit of Robert MacDonald, point # 4.

⁵⁷¹ McGlip & Dassios 1997, *supra* note 499, see Affidavit of Robert MacDonald, point #3.

Although testimony expressing an opinion is generally inadmissible in court, accepting the opinion evidence of expert witnesses is a long-established principle of common law.⁵⁷² Experts may even base their opinions on hearsay evidence.⁵⁷³ In the majority of biker cases, the ‘experts’ are the police. Although expert witnesses are subject to cross-examination, little can be done to verify expansive claims such as MacDonald’s because there is a dearth of expertise beyond the police. As a result motorcycle gang myth is often accepted as truth.

Police perpetuations of and contributions to biker myth are understandable in light of the obstacles encountered in trying to control a group that does everything possible to remain beyond control. Margaret Beare notes that:

[p]olicing outlaw motorcycle gangs is problematic for the same sorts of reasons that it is difficult to police ethnic gangs. First police efforts to infiltrate these clubs are hampered by strict membership and initiation rites, and by the expectations that members will commit certain criminal acts. Second, informants are rare due to the threat of retaliation. Finally, outlaw clubs have begun to use sophisticated counter-surveillance equipment and security on their premises.⁵⁷⁴

Often frustrated in their enforcement efforts, myth-making helps assuage the police’s limited success. The gaping deficit in the police performance mandate with bikers is similar to that left by police inability to stem the tide of illegal drug trafficking where narcotics officers are “rarely able to achieve what they formally claimed or even

⁵⁷² Recently reaffirmed in: *R. v. K (A.)* (1999), 137 C.C.C. (3d) 225 (Ont. C.A.) at par. 71.

⁵⁷³ *R. v. Abbey*, [1982] 2 S.C.R. 24, at p.40.

⁵⁷⁴ M. Beare, *Criminal Conspiracies: Organized Crime in Canada*, (Toronto: Nelson Canada, 1996) at 80-81.

described as their aims.”⁵⁷⁵ Myth-making helps reduce the contradiction between police presentations of control and biker exhibits of defiance and disguise the failure of police enforcement efforts.

What makes biker defiance particularly painful to the police is how openly it is flaunted. Clearly, the Mafia, Colombian cartels, Asian gangs and white-collar insider-trading rings, like bikers, are wary of the police and make insider investigations difficult. A main difference between bikers and other organized crime groups, however, is their visible presence. Motorcycles, patches, large group outings and clubhouses are meant to make sure that their presence is known. In other words, their dramaturgical message transmission is designed to say not only are they bad, but beyond the reach of the police. This tarnishes the police construct of the keepers of social order. Thus the myth is born: to salvage their image police willingly confer epic powers on bikers. Espoused by the police (as evidenced in their trial affidavits), amplified through the press (obvious from newspaper reports), and distorted through the entertainment industry (as found in Yves Lavigne’s books), bikers are made to epitomize the underworld of crime. By constructing a near-invincible adversary, police requests for additional legal tools to fight the menace appear legitimate.

The more successful police are at having a threat believed, the more the threatening group is distanced from protections afforded to the average society member. Instead, they become seen as ‘outsiders’ meriting more restrictions and less justice

⁵⁷⁵ P. Manning, *The Narcs’ Game*, (USA: MIT Press, 1980) preface xi.

system safeguards. Once outsiders have been removed from the ‘insider’ flock, ‘insiders’ become increasingly comfortable with the idea of imposing harsher measures to protect themselves from those outside. Ultimately, “the we / they distinction is used to develop crime control policy [and] enact criminal laws.”⁵⁷⁶ This type of societal ostracizing is particularly well suited to outlaw biker gangs already existing on the margins of society.

In the mid 1990s there were concerted efforts by both police and motorcycle gangs to control impressions of the feuding between the Hells Angels and the Rock Machine. While no one could deny the violence, the bikers characterized the feuding as ‘in-house’ whereas the police emphasized its significant danger to the public.⁵⁷⁷

Both sides wage a war of words against the truth, to woo society and maintain their comfortable status. The line is fine between bikers and cops, and it doesn’t get any thinner than in the heat of war, where the truth is the first casualty. Both sides distort and suppress facts to deceive the public and themselves.⁵⁷⁸

Police, however, have the upper hand in image-management since they start from a position of public trust. It mattered little how much of the violence had been contained within the biker community or whether the killing of Desrochers was purely an accident. By virtue of the biker war, the negative impression of bikers was accentuated and few dared to defend such an unpopular group. Instead there was widespread acceptance of their threatening status. A villain had been identified and the group who would know how to put things right, of course, was the police.

⁵⁷⁶Kappeler, Blumberg & Potter, *supra* note 569 at 19.

⁵⁷⁷ This is significant because bikers killing bikers creates much less anxiety than bikers killing regular citizens. As will be noted in Chapter Nine “Moral Panic”, there was little public pressure for new law until Daniel Desrochers was killed despite a large death toll preceding his demise.

⁵⁷⁸Y. Lavigne, *Hells Angels at War*, (Toronto: HarperCollins, 1999) at 1.

Summary

Police witnesses repeat things they have been told simply because those things support the witnesses' preconceived conclusions about the Hell's Angels. The problem is not a lack of sincerity; the problem appears to be a lack of objectivity.⁵⁷⁹

Police appear to sincerely believe that bikers pose a societal threat worthy of special law. This chapter explained why this mind-set exists. Dramaturgical analysis was used to deconstruct the message transmissions of the police and their control over the biker image. The social control mandate of the police exposed police vulnerability to biker non-conformity. Media reports reflected police communications and validated their concerns. Police bias and myth making were shown to be the results of police inability to manage a group that rages against regulation. We have seen that police 'expertise' on bikers is routinely accepted by an audience pre-conditioned to view outlaw motorcycle gangs as villains.

Exposing the inherent and inevitable bias, loathing and myth creation in the policing of bikers ultimately brings into question the reliability of police accounts and the objectivity of their 'expert' knowledge. Critical study of organized crime is routinely challenged by the lack of reliable information sources. Outlaw motorcycle gangs firmly fit this mold. A significant amount of what is known about bikers has been delivered by a single source, the police. The veracity of police knowledge is largely unchallenged despite the use of questionable police practices to manage the information output. These practices include recycling biker anecdotes based largely on hearsay, using dubious biker

⁵⁷⁹ *R. v. McCurrach* (2000), 270 A.R. 207, note 69, at para. 17.

'evidence' as court testimony and indoctrinating bias in police training to ensure consistent message transmissions. As a result, the motorcycle gang image is largely controlled by the police.

The police / biker relationship was a critical component of the 1997 organized crime law-making effort. Trusted police were contrasted against deviant bikers to largely paint the debate over ostensibly police-supported legislation as one of choosing good over evil (a reductionist argument that has been more recently used to successfully pass anti-terrorist legislation). Since police control the biker message, who better to legitimize law directed at biker activity?

Chapter Eight: The Climate of Crime Control

Increasingly, criminal justice policy is marked by sensationalist hyperbole and, indeed, a high degree of irrationality about crime and what to do about it.⁵⁸⁰

The 1990s crime control environment was another contributing factor to police significance in anti-gang legislation. This chapter argues that the documented rise of a Right Realist perspective in Western criminal justice created an ideal environment for enforcement-based solutions pertaining to organized crime. Using a morality-based and punitive approach to criminality⁵⁸¹, Right Realism found a receptive audience in modern styles of neo-conservative governance during the 1990s. The appeal of Right Realist populist politics, exploiting “the dangerousness of crime, and the foreign or alien nature of the criminal”⁵⁸² furthered the lure of law-and-order solutions in garnering votes. Organized crime, little understood but readily viewed as dangerous and foreign, was a perfect fit for a crime control paradigm that viewed criminality as the product of miscreant outsiders.

This chapter suggests that the rise of Right Realism in Western crime control provided an environment conducive to harsh laws against organized crime and receptive to resolutions that appeared to derive from the law enforcement community. To understand how a conceptual shift in crime control impacted Canadian law-making, it is critical to explain both the origins and manifestations of Right Realism. Although most of

⁵⁸⁰ R. White & F. Haines, *Crime and Criminology – An Introduction*, (Oxford: Oxford University Press, 2000) at 148 [White & Haines 2000].

⁵⁸¹ J. Young, “Thinking Seriously About Crime: Some Models of Criminology” in M. Fitzgerald, G. McLennan & L. Pawson, eds., *Crime and Society: Readings in History and Theory* (London: Routledge & Kegan Paul, 1981) 89.

⁵⁸² White & Haines 2000, *supra* note 580 at 138.

the criminological realism research originates from countries other than Canada, its scope is global and has distinct bearing on the Canadian crime control situation of the 1990s. The first section of this chapter examines the rise of realism and its link to a changing political climate. It introduces the historical and political context of the realist perspective that gave rise to both Left and Right theories of crime control. The second section studies the schism between the competing models of the Left and Right and the dominance of the Right in criminal justice policy by the 1990s. The third section argues that organized crime understandings proved particularly resonant with the Right Realism perspective and policing prescriptions. Police, already bestowed elevated social status and control over motorcycle gang understandings, were to become even more important to law-and-order under the 1990s crime control climate.

The Emergence of Realism

Criminology appears to have become dominated by a refusal to think of the big picture and a piecemeal reaction to the pressing demands of the political right.⁵⁸³

Crime control has shifted rapidly in the past twenty years. A plethora of theoretical speculation abounds as to why this has occurred but a consistent theme is the rise of a 'realist' philosophy. Its early premise that "realism focuses on lived realities"⁵⁸⁴, was innocuous in its attempt to redress public disenchantment with what was perceived to be the failings of previous models of control. But by the 1990s, its effect on crime control

⁵⁸³ W. Morrison, *Theoretical Criminology: From Modernity to Post-Modernity*, (London: Cavendish Publishing Limited, 1995) at 19.

⁵⁸⁴ R. Matthews & J. Young, J. 1992. "Reflections on Realism", in J. Young & R. Matthews, eds., *Rethinking Criminology: The Realist Debate*, (London: Sage Publications, 1992) at 38.

policy was notable for its “punitiveness which [came] to characterize prominent aspects of government policy and political rhetoric.”⁵⁸⁵ This section will look at realism from the perspective of its genesis and association to political change.

Unlike criminological paradigms such as labeling theory, which focuses on social reactions to crime, the core of realism is purported to reside in practical interventions that reduce criminal behaviour. As a result, the focus shifts to the effects of criminality on both the offender and the victim and away from the causes of crime. Since crime is seen as a real problem, public fear of crime is seen as having a rational basis. The need for the new approach found in realism was the result of critical assessments of prior theoretical models to mitigate the rise of crime in the west. As Braithwaite argues:

The present state of criminology is one of abject failure in its own terms. We cannot say anything convincing to the community about the causes of crime; we cannot prescribe policies that will work to reduce crime; we cannot in all honesty say that societies spending more on criminological research get better criminal justice policies than those that spend little or nothing on criminology.⁵⁸⁶

It was in this milieu of disenchantment that realism came to shape the crime control debate.

Since “public attitudes about crime are shaped by political activity,”⁵⁸⁷ it is unsurprising that criminological theory is also influenced by the political landscape.

History illustrates that conservative attitudes towards crime tend to reflect a conservative

⁵⁸⁵ D. Garland, “The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society”, 1996 36(4) *Brit. J. Crim.*, at 445.

⁵⁸⁶ J. Braithwaite, “The State of Criminology: Theoretical Decay or Renaissance?” (1989) 22 *Austl. Crim. & N.Z.J.* at 129.

⁵⁸⁷ S. Herbert, *Policing the Contemporary City: Fixing Broken Windows or Shoring up Neo-Liberalism?*, (London: Sage Publications, 2001) at 457.

political environment. For example, swelling incarceration rates⁵⁸⁸ during a neo-conservative resurgence in many Western societies can be seen to mirror the growth of the asylum populations in ultra-conservative Victorian England in the second half of the nineteenth century. Realist criminology, born in the latter half of the twentieth century falls into this mould and is largely a product of its political environment.

While the growth of civil liberties in the 1960s gave rise to a criminological concern with human rights, a changing social situation over the following decade redirected theoretical considerations. As a reaction to the economic downturn that began in the mid-1970s (most concretely symbolized by the oil embargo) and the uncertainties that ensued, an economic rationalist approach gained prominence. While criminology had previously been concerned with the risk of unrestrained state authority, arbitrary power and violations of civil liberties⁵⁸⁹, these factors began to lose their importance to a populace now more concerned with their own private welfare. This mind-set catalyzed a resurgence of right-wing politics and was epitomized by the emergence of fiscally conservative and 'practical' policies in the 1980s and 1990s that morphed into views on crime espoused by conservative-driven governance.

Since the coming to power of conservative leaders such as President Reagan in the United States and Prime Minister Thatcher in the United Kingdom, correctional and criminal questions have become the object of intense politicization in Anglo-Saxon countries.⁵⁹⁰

⁵⁸⁸ N. Rose, "Governing Risky Individuals: the Role of Psychiatry in New Regimes of Control" (1998) 5(2) *Psychiatry, Psychology and Law*, at 184.

⁵⁸⁹ D. Garland, *The Culture of Control: Crime and Societal Order in Contemporary Society*, (Chicago: University of Chicago Press, 2001) at 12 [Garland 2001].

⁵⁹⁰ J.P. Brodeur, "Policing Appearances" in S. Scheingold ed., *Politics, Crime Control and Culture* (London: Dartmouth Publishing, 1997) at 136.

Like Britain and the United States, Canada's economic and social woes were vented through increasing punitive crime control measures. Canadian researchers explain this phenomenon in the following way:

Internal crises brought on by the economic recessions of the early 1980s and 1990s - along with the erosion of the social welfare net, deepening class divisions, and other conflicts based on race, gender, sexuality, ability and age - fostered a climate of insecurity and resentment in liberal democracies for which causes must be found and blame attributed.⁵⁹¹

Crime was the perfect political scapegoat for all that was perceived to have gone wrong.

Reflecting popular opinion and the new political climate, criminological theory began to adopt two conservative precepts that became fundamental to the realist approach: 1) a belief in remorselessly rising crime rates in modern societies and 2) a conviction that established policies for dealing with crime had ultimately failed. Popular culture reflected these beliefs in the emergence of such films as *A Clockwork Orange* and *One Flew Over the Cuckoo's Nest* where rehabilitation as a part of crime control was equated with unaccountable state intervention and professional abuse of authority. The opposition to previous methods opened the floodgates for a plethora of tough-on-crime initiatives begun in the 1980s including initiatives variously labeled 'prison works', 'three-strikes', 'truth in sentencing', 'no frills prisons', 'adult time for adult crime', 'zero-tolerance', and 'tough on crime, tough on the causes of crime'.⁵⁹²

⁵⁹¹ S. Boyd, D. Chunn & R. Menzies, *[Ab]using Power: The Canadian Experience*, (Halifax: Fernwood Publishing, 2001) at 12.

⁵⁹² F. E. Zimring, "Populism, Democratic Governance, and the Decline of Expert Authority: Some Reflections on "Three Strikes" in California" (1996) 28 Pac.L.J.

Interestingly, although there have been different interpretations of the realist theme, there has been little questioning of the general idea that a radically changed approach to crime was necessary. In the context of rehabilitating offenders for example, the realist approach became that of ‘throwing out the baby with the bath-water’ as rehabilitative practices were greatly reduced. Although negative findings in the evaluation of rehabilitative efforts are nothing new, such findings are usually instrumental in improving selection and classification, rather than being used to dismantle the whole concept of treatment. It could have alternatively been argued that rehabilitation efforts were either under-funded, under-mined by an overarching punitive framework, misguided by under-trained justice workers, or lacking individualized treatment approaches and follow-up.⁵⁹³

However, a reappraisal of current practices was not to occur. Instead, “in the context of increasing economic hardship and an ideological swing to the Right, supported largely by an economic rationalist mentality, there was a rise in “law-and-order” politics.”⁵⁹⁴ This atmosphere was hardly conducive to even the most patently necessary offender treatment plans. In a whole-hearted subscription to the ‘nothing works’ philosophy, even programs that had proved their value were curtailed or cut. For example, a major U.S. study had found that 21 % of people incarcerated for violent crime were intoxicated at the time of the offence and that 75% of the inmate population were deemed to require substance abuse treatment.⁵⁹⁵ Yet during the 1990s less than 17% of

⁵⁹³ Garland 2001, *supra* note 588 at 64.

⁵⁹⁴ White, R., Haines, F. 2000. p. 137.

⁵⁹⁵ S. Belenko & J. Peugh, “Fighting Crime by Treating Substance Abuse” (1998) 15(1) *Issues in Science and Technology* 53.

the inmate population was able to receive substance abuse treatment as a result of a reduction in treatment operating budgets.⁵⁹⁶ Similarly, a Canadian study following 654 federal male prisoners who were released between 1973 and 1993 and who had been enrolled in a post-secondary prison education program in British Columbia, found the cohort had a much lower rate of recidivism compared to offenders not enrolled in the education program.⁵⁹⁷ The program was cancelled in 1993 as part of federal cost-savings.

The net result of a realist approach that no longer emphasized treatment was a re-channeling of criminal justice policy efforts from rehabilitation to punishment and into the arms of the enforcement ‘experts’. Conservative Republican Barry Goldwater’s sensationalistic “crime in the streets” rhetoric of 1964 was arguably a precursor to a major shift in crime control ideology.⁵⁹⁸ Accompanied by the economic crisis of the 1970s, the setting was right for a conservative philosophy that claimed Liberal efforts had failed and argued that control was the essential tool for crime reduction.⁵⁹⁹ Initially, the reform appears to have suited every political stripe. Uggen writes:

‘Nothing works’ satisfied conservative political reactions to the apparent disorder of the 1960s, liberal sorrow over perceived failures of the Great Society, and the ideological persuasions of those academics whose truly social visions of deviance asserted that only radical social change could have an impact on crime.⁶⁰⁰

⁵⁹⁶ *Ibid.*

⁵⁹⁷ S. Duguid, C. Hawkey, and W. Knights, “Measuring the Impact of Post-Secondary Education in Prison: A Report from British Columbia” (1998) 27 *Journal of Offender Rehabilitation* 88.

⁵⁹⁸ T. Gest, *Crime and Politics: Big Government’s Erratic Campaign for Law and Order*, (Oxford: Oxford University Press, 2001) at Chapter 1.

⁵⁹⁹ For a comprehensive description of the shift towards conservative control of the crime agenda see: K. Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics*, (New York: Oxford University Press, 1997); K. Bottomley & C. Coleman, “Law and Order: Crime Problem, Moral Panic or Penal Crisis?” in *Law and Order and British Politics* (Vermont: Gower Press, 1984); M. Brake & C. Hale, *Public Order and Private Lives: The Politics of Law and Order*, (London: Routledge, 1992); S. Hall et al. *Policing the Crisis: Mugging, The State and Law and Order*, (London: Macmillan, 1978).

⁶⁰⁰ C. Uggen, “Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism” (2000) 67 *American Sociological Review* (2000) 370.

More recent reflections from criminologists critical of the ideological shift appear to agree that conservative principles rather than a lack of other alternatives motivated the new crime model. David Garland sees the political adoption of 'tough on crime' as a thinly-veiled state retreat from crime responsibility that has become a whole-hearted acquiescence to public demand for harsh new law.⁶⁰¹ Inherent in Garland's point is a suggestion of a political sleight-of-hand. Public furor over economic instability created the need for a crime scapegoat upon which to vent and direct blame.⁶⁰²

In a different vein, Steve Herbert argues that the rise of a punitive approach is a by-product of the withdrawal from welfarism.⁶⁰³ He contends that the "simultaneous emergence of get-tough policies on crime and the delegitimation of welfare is no mere coincidence."⁶⁰⁴ The welfare label of 'disadvantaged' merely shifted to the realist label of 'dangerous', replacing rehabilitation with restraint as the new rational model. The ideological capitulation to the changing political environment is well represented by Walker's pessimistic assertion that, "[i]t is wishful thinking to believe that additional research is going to uncover a magic key that has somehow been overlooked for 150 years."⁶⁰⁵ As a result, realism grew like an angry weed, watered by the thwarted hopes of eradicating crime and nourished by the rising sun of conservative politics.

⁶⁰¹ D. Garland, "The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society" (1996) 36 *British Journal of Criminology* 4.

⁶⁰² Indeed, the purpose of some legislative enactments appears to be little more than to create an illusory perception of control.

⁶⁰³ S. Herbert, *Policing the Contemporary City: Fixing Broken Windows or Shoring up Neo-Liberalism?*, (London: Sage Publications, 2001) at 458.

⁶⁰⁴ *Ibid.*

⁶⁰⁵ S. Walker, *Sense and Nonsense about Crime: A Policy Guide*, (California: Pacific Grove, 1989) at 231.

Critics skeptical of the motivation behind realism solutions to crime like Garland and Herbert have well-founded concerns. The bedrock of realism is a belief in rising crime found through crime rate statistics. Yet crime rates are a highly unreliable reflection of real crime.⁶⁰⁶ Even the type of evidence that realists would present to justify the need for a radical new approach is clouded in doubt. The *Third United Nations Survey of Crime Trends and the Operations of Criminal Justice Systems* attempts “to discuss changes in recorded crime over the first three surveys (1970-85).”⁶⁰⁷ This survey is useful as its scope coincides with the rise of realism. However, its findings are hardly a conclusive foundation on which to base a criminological paradigm shift. Although total per capita crime figures increased in Western Europe and North America over the fifteen-year span of the report, the report suggests that “these variations may be largely a factor of administrative and reporting practices.”⁶⁰⁸ The combination of adding more police with whom to lodge crime complaints and enhancing the technological means to better record reported crime predictably leads to a growth in crime rate statistics. Thus the use of crime rates to justify a switch in crime control practices has little merit.⁶⁰⁹ The paucity of the central argument for the reform of the realists is glaring and is a fundamental reason to believe that conservative politics, rather than sound policy decisions, high-jacked the criminal justice agenda.

⁶⁰⁶ For a comprehensive discussion on problems inherent in using crime rates as a real measure of crime see: R. Hogg, “Perspectives on the Criminal Justice System” in M. Findlay, S. Egger & J Sutton, eds., *Issues in Criminal Justice Administration*, (Sydney: George Allen and Unwin, 1983).

⁶⁰⁷ U.N. Survey of Crime Trends and Operations of Criminal Justice Systems, on line: www.uncjn.org/stats/wes.html

⁶⁰⁸ M. Findlay, *The Globalisation of Crime: Understanding Transitional Relationships in Context*, (Cambridge: Cambridge University Press, 1999) at 21.

⁶⁰⁹ For example, victimization surveys are often used in establishing crime rates yet are a highly subjective, and thus often inaccurate, measure of crime.

Nevertheless, a belief in a soaring crime rate became a fixture in justice circles. In Canada, authors such as Kimon Valaskakis warned that the 1990s would see crime spiral upwards as economic conditions deteriorated. Valaskakis predicted that a volatile business cycle, dislocations in labour markets, and increasing international mobility due to globalization and the U.S.-Canada Free Trade Agreement would lead to increased criminal behaviour. He surmised that “as turbulence is the major characteristic of our times, we must expect higher crime-rates related to that factor.”⁶¹⁰

Reacting to a perception of rising crime rates, a conviction of the impotence of treatment models, and most significantly, changing politics, the realist movement reduced rehabilitative efforts and embraced tougher punishment models. But realist theory, although cohesive in its mandate to do something ‘practical’ about the problem of crime, was soon fractured by a divergence in approaches, creating two distinct theoretical camps, Left Realism and the New Right. Both of these approaches are examined in turn.

Left Realism

Left realist theory grew as a counterbalance to some of the more punitive and controlling aspects of the realist movement. Subject to the conservative law-and-order politics increasingly pervasive through the late 1980s, many criminologists from the left realized they would have to defer to the ‘nothing works model’, define crime as a major problem, and work within the existing justice system. This section briefly defines Left Realism and its proposals for crime control. Its quick demise in the face of obvious

⁶¹⁰ K. Valaskakis, “Economic trends and the future of policing: What to expect from the Truculent Nineties” (1991) 33(3) Can. J. Crim. at 261.

internal contradictions goes far in explaining the ascendancy of right realism through the 1990s.

Like realism writ large, Left Realists believe there exists a rational basis for public fear of crime. Unlike traditional leftists, they reject Marxist ideology and feel that the politicization of crime now requires an approach that can be seen as proffering immediate action. As a reactionary theory, Left Realism is best understood through what it rejects as much as through what it proposes. Squeezed between the growing dominance of the 'right' in realism, and the perceived impracticality of Marxist doctrine, the left realists discard the ideologues. Both orthodox and critical criminological methods are seen as impractical. This move can be seen as largely being a self-preservation mechanism to avoid the fate of critical criminology that "has been left battered and bruised by the ebbs and flows of politics, history and theory over the past few decades [and] ontologically confronted by the perennial challenge of 'relevance.'"⁶¹¹

The New Left rejects the ability of past theoretical models to understand crime and bases its critiques in two broad groupings. First, it discards theories that are seen to fixate on the operation of agencies of control (included in this category is subcultural theory). Second, it rejects theories that focus extensively on the experiences of criminals resulting in their categorization as either victims (interactionist theory) or political activists (Marxist criminology). Instead, the New Left attempts to synthesize numerous constructs to encompass the entirety of factors which affect crime. Components of

⁶¹¹ R. Hill, "Facing Change: New Directions for Critical Criminology in the Early New Millennium?" (2002) 3(2) *Western Criminology Review*, at 1 [Hill 2002, *Critical Criminology*].

previous theory are adapted into a newer left 'realistic' view of crime that focuses on the victims of crime and the social origins of crime, particularly the cultural background of criminals.⁶¹²

Although left realism shares an outlook most similar to that of the critical criminologists, it defines crime in the positivist tradition of laws and law-breakers. The theory proposes that any study of criminality must consider the impact of the 'square of crime' that uses two dyads namely social action/reaction and victim/offender. Crime rates in the square of crime, "are generated not merely by the interplay of these four factors, but as *social relationships* between the various points on the square."⁶¹³ Thus Left Realism tries to maintain its socially-minded dignity despite having to work within existing systems by viewing crime as a product of *relationships*. The three relationships that it views as essential to crime control are: 1) between the police and the public (enforcement efficiency) 2) between the victim and the offender (impact of crime) and 3) between the state and the offender (rate of recidivism).

Still tied to socialist principles, Left Realism views victims of crime to be members of the urban working class. While statistics remain essential to the left realists, they concentrate on victim's self-reports rather than police-generated statistics. White and Haines write that "the aim of the surveys is to monitor people's needs concerning crime and then develop policies that accurately reflect those needs."⁶¹⁴ With a focus on victims

⁶¹² *Deviance and Social Control, Unit: New Left Realism* at 3, online: <www.sociology.org.uk>.

⁶¹³ J. Young, "Recent Paradigms in Criminology" in M. Maguire, R. Morgan, R. Reiner, eds, *The Oxford Handbook of Criminology*, (Oxford: Clarendon Press, 1994) at 103. Original emphasis.

⁶¹⁴ White & Haines 2000, *supra* note 580 at 160.

over offenders and given the political context of the period, Hill writes that “what emerged was a brand of ‘left realism’ dominated by the imperative of ‘taking crime seriously’ and dedicated to the study of crime and policing in the inner city.”⁶¹⁵ This approach is largely attributed to Jock Young.

Young’s contribution to Left Realism is a result of his empirical surveys of crime in London that found “relative deprivation, differential policing and a host of other factors were responsible for the construction of the crime problem.”⁶¹⁶ Perhaps by understanding the politics of the day and knowing that his findings would be hard to dismiss if his methodology followed convention, Young relied on positivist categorizations. He did not challenge the definition of crime, but rather concentrated on standard ‘street crime’ and relied almost exclusively on developing policing solutions.⁶¹⁷

Despite this utilitarian method, many aspects of Young’s theorizing remain true to left philosophy. Young views the cause of crime as relative deprivation, lack of access to the political sphere and mistreatment by the police. Despite laying responsibility at the feet of the offender, offending is not considered entirely an act of free will. Further, Young views communities rather than the state as the central area of crime control, with individual communities directing policing efforts.⁶¹⁸ Crime control must occur through a multi-pronged approach including “better policing, greater community involvement, protecting and empowering the victim, and dealing with the structural problems that

⁶¹⁵ Hill 2002, *Critical Criminology*, *supra* note 611 at 7.

⁶¹⁶ *Ibid.*

⁶¹⁷ White & Haines 2000, *supra* note 580 at 158.

⁶¹⁸ *Ibid.* at 158-159.

cause offending...[prioritizing] intervention on the level of causes of crime over actions which take place after the crime has been committed.”⁶¹⁹

The tight-walk of Left Realism between maintaining true to its socialist roots and working within the existing system unavoidably led to criticism. White and Haines enumerate a number of specific complaints (uncontested definition of crime, narrow scope of victimization, narrow response options, lack of realistic penal policy, belief in the liberating capabilities of criminal law)⁶²⁰ of what made the theory untenable. Moreover, in sacrificing some ideology of the Left, Left Realism ostracized many of its natural supporters. Perhaps hardest to reconcile was its trust in policing solutions. Efforts to increase policing options (even those that try to make the police more accountable to the community) were not popular with ardent left-leaning ideologues who see police as the apparatus of capitalist oppression. These inherent contradictions weakened the acceptance of a compromised Left position within the dominant conservative environment.

Jock Young and the Left Realists’ attempt to shape crime policy in the midst of a conservative revival was a remarkable crusade that managed to have some effect on crime policy. At a minimum, it raised the profile of crime victims to both the police and parliament. It is Ontario Provincial Police policy, in areas where Victim Services Programs are offered, to contact the Victim Services office and for a Victim Services officer to accompany a police officer to crime scenes if appropriate victims are identified

⁶¹⁹ Young 1994, *Recent Paradigms*, *supra* note 613 at 107.

⁶²⁰ White & Haines 2000, *supra* note 580.

(for example, to interview occupants of a house that had been burglarized). This service began in Ontario in the early 1990s. In the political arena, victim's rights' groups became an increasingly powerful lobby force in Parliament through the 1990s. As David Garland notes "the feelings of the victim, or the victim's family, or a fearful, outraged public are now routinely invoked in support of new laws and penal policies."⁶²¹

Fundamentally, however, Left Realism was destined to lose dominion over the realist approach. Inspired by the conservative politics of law-and-order, realism was from its genesis bound to forward a retribution, rather than rehabilitation-based crime control agenda. Despite rejecting Marxist ideology and incorporating elements of prior theory with a focus on the victim, the Left Realist message had limited influence in crime policy beyond the notable exceptions of restorative justice and victim's rights. Instead, the main focus of crime strategy over the past two decades has been populist politics forwarding tougher sanctions. The New Right is largely responsible for this.

Rise of the Right

Wicked people exist. Nothing avails except to keep them apart from innocent people. And many people, neither wicked nor innocent, but watchful, dissembling, and calculating of their opportunities, ponder our reaction to wickedness as a cue to what they might profitably do.⁶²²

Conservative politics have been highly influential in shaping the realist perspective. Left Realism, in an attempt to remain current, addresses crime as a "real"

⁶²¹ Garland 2001, *Culture of Control*, *supra* note 576 at 9. Also, see: P. Rock, *After Homicide: Practical and Political Responses to Bereavement*, (New York: Oxford University Press Inc., 1998).

⁶²² J.Q. Wilson, *Thinking about Crime*, (New York: Basic Books, 1975) at 235-236.

problem requiring “real” solutions while attempting to remain true to its socialist principles. The New Right, in contrast, is thoroughly intertwined in conservative law-and-order policies. This section examines the work of the most important New Right theorist, James Q. Wilson, considers the relationship between criminological theory and politics, and studies the political use of the New Right.

In Wilson’s seminal books *Crime and Human Nature* and *Thinking About Crime*, he positions himself as a proponent of Right Realism by addressing criminology through right-wing philosophy and politics.⁶²³ His theorizing was influenced by Van Den Haag’s *Punishing Criminals* which emphasized that modern capitalism is based on a system of winners and losers. The winners must be unfettered in enjoying their rewards for hard work without having their gains taken away by the losers.⁶²⁴ In this sense, enforcement efforts must concentrate on the losers, that is, the poor and the marginalized who are considered more prone to crime. To maintain this model, interests of order override those of social justice, illustrating the fundamental divide between the Left and Right Realists. Two broad consequences follow:

Right Realism does not challenge the criminal law as currently defined by the State (i.e. the relatively powerful in society), and it centers its efforts on attacking ‘street crime’ to the exclusion of all other offences.⁶²⁵

To Wilson, crime is simply seen as an “evil” requiring a vigorous and concentrated response. Thus he largely rejects rehabilitative models that view the

⁶²³ J.Q. Wilson, *Crime and Human Nature*, (New York: Simon and Schuster, 1985); and, J.Q. Wilson. *Thinking about Crime*, (New York: Basic Books, 1975).

⁶²⁴ E. Van Den Hagg, *Punishing Criminals: Concerning a Very Old and Painful Question*, (New York: Basic Books, 1975).

⁶²⁵ K. Williams, *Textbook on Criminology*, (London: Blackstone Press, 1991) at 464.

offender as a predestined actor requiring treatment and concentrates on “the individualistic nature of offending.”⁶²⁶ Since ‘root causes’ are extremely difficult to measure empirically they are not worth pursuing. Instead, Wilson calls for a focus on social control models and a clear distinction between criminals and non-criminals. Because crime cannot be eliminated from society, his logic contends, the state should concentrate on reducing crime’s impact on people.

Wilson’s focus on tough governmental involvement in crime reduction as espoused in the famous “Broken Windows”⁶²⁷ essay is the major theme adopted within the neo-conservative political climate of the late 1980s and 1990s.⁶²⁸ Tenets gleaned from his writings on crime control include opposition to the decriminalization of minor offences, the ‘incapacitation’ of recidivists, a loosening of the rules of due-process, and certain and consequential punishment. Although some are quick to label Wilson a partisan conservative bearing only the appearance of a criminological scholar, this may be an over-generalization since he opposed “those conservatives who merely believed in more police, more prisons, and more power to the judiciary.”⁶²⁹ Nevertheless, Wilson’s punitive mantra and intolerance for minor transgressions resounded with conservative politicians. The appointment of Wilson to Criminal Justice Advisor for the Reagan

⁶²⁶ R. Burke, *An Introduction to Criminological Theory*, (London: Willam Publishing, 2001) at 37.

⁶²⁷ J.Q. Wilson & G. Kelling, “Broken Windows”, (1982) 239(3) *The Atlantic Monthly* 29. This theory speculates that crime occurs when it appears that there are no immediate consequences for socially unacceptable action. The analogy refers to a decrepit building that has broken windows. Since there are so many broken windows already and no one seems to care, why not break yet another? Swift and direct consequences, it is proposed, would prevent more windows from being broken or more generally socially unacceptable acts from being perpetuated.

⁶²⁸ Wilson had many more propositions for explaining crime control (spiral of decline, control efforts extending beyond illegal activities, etc.) that extend beyond the scope of this paper. Included are those the author feels contributed most significantly to the political landscape.

⁶²⁹ Cited in: M. Maguire, R. Morgan, & R. Reiner, R. eds., *The Oxford Handbook of Criminology*, 3rd ed. (Oxford: Oxford Press, 2002) at 97.

administrations is likely the strongest indicator of a convergence of theory with practice. The New Right had become synonymous with modern American crime control.

In using a law-and-order platform to become elected mayor of New York in 1994, Rudolph Giuliani relied upon Police Commissioner William Bratton to fulfill his election mandate. Bratton, depending almost entirely on Wilson's crime premise, began his war on crime by concentrating on low-level offenders and offenses in public spaces. Fredrick Solomon writes:

Crime control through order maintenance was consistent with Bratton's belief in the relationship among disorder, public safety fears, and serious crime. The philosophical underpinning of this belief was drawn from the oft-cited Wilson and Kelling 'Broken Windows' article.⁶³⁰

Indeed, New Right thought had permeated societal conceptions of justice to the extent that:

Competition between the political parties to show that they are tough on crime has included efforts to intimidate judges and the removal of state court judges from office by voters after campaigns in which capital punishment was the central issue.⁶³¹

Global inclinations appear to have mirrored the American political landscape. By the end of the 1970s,

Given the trend towards economic and social polarization, and given the apparent electoral appeal of law-and order scapegoating, it also [became] the case that New Right criminology dovetail[ed] with New Right politics generally.⁶³²

⁶³⁰ F. Solomon, "Order-Maintenance Policing: Some Implications for the Criminal Justice System" (Paper prepared for the annual meetings of the Law and Society Association, Vancouver, B.C., May 29-June 1, 2002).

⁶³¹ S. Bright, "Casualties of the War on Crime: Fairness, Reliability and the Credibility of Criminal Justice Systems" (1997) 413(51) *Miami Law Review* 2.

⁶³² White & Haines 2000, *supra* note 580 at 150.

By the 1980s, stark rhetoric such as that epitomized by Margaret Thatcher's famous utterance, "we have to be careful that we ourselves don't make it easy for the criminal"⁶³³, reflected the dawn of a new era in crime policy.

But while theory can be seen as influencing politics, the reverse is more difficult to decipher. The economic downturn of the late 1970s is widely seen to have been responsible for alienating the poor, causing a backlash against unions and even promulgating the rise of rebellious music. But largely appearing as an afterthought tacked on to the litany of economic consequences in this "ideological swing to the Right, supported largely by an economic rationalist mentality" is the assertion that there would by necessity be "a rise in 'law-and-order' politics."⁶³⁴

On its own, this generalized position on changing crime control policy appears more a deterministic conclusion than a necessary outcome. It still does not explain why criminology had to follow the conservative trend. Perhaps the missing link is exposed in the writings of Richard Hill who found that "the old guard of traditional criminology, *backed by government grants* and new research agendas... [meant] that the traditional advocates of positivistic research had never really gone away."⁶³⁵ Thus government funding incentives for projects imbued with conservative values may have influenced the direction of criminological research.

⁶³³ P. O'Malley, "Risk, Power and Crime Prevention" (1994) 25(2) *Economy and Society* 266.

⁶³⁴ White & Haines 2000, *supra* note 580 at 137.

⁶³⁵ Hill 2002, *Critical Criminology*, *supra* note 611 at 5. Emphasis added.

This government / research relationship is essential in explaining how politics can affect theory.⁶³⁶ Further, it is important in understanding how some overly-harsh and questionably effective policies may be instituted. For example, 'Three Strikes'⁶³⁷ has been a burgeoning criminal justice program in the United States for the past decade, proving especially popular in the more conservative southern states. With an overwhelming concentration on petty crime and lacking a treatment aspect, it is clearly a product of the New Right. Yet recent research finds that the program has "virtually no impact on the courts, local jails or state prisons...or any appreciable impact on crime rates."⁶³⁸ Few government resources were spent testing the scientific soundness of the politically popular justice policy.

The implementation of theory valued by conservative politics has caused criminological perspectives to evolve. As Christopher Lasch submits, the left 'gospel' of criminology was largely dismissed to acknowledge some of the 'legitimate' concerns behind the expansion of contemporary conservatism.⁶³⁹ Perhaps Stanley Cohen spoke most directly to this relationship between criminal justice theory and politics when he noted that:

In response to increasing crime rates, the emergence of the [Right], the consolidation of discrete law-and-order campaigns into a permanent political stance, and the supposed discrediting of the optimistic, liberal solutions of the

⁶³⁶ For a detailed explanation, see: *The Canadian Journal of Criminology*, 1999 Special Issue, Vol. 41, No. 2. The articles examine the changes in the structure of government, in particular, the rise in influence of partisan political staff at the expense of the influence of (presumably non-partisan) public servants.

⁶³⁷ In 1994, Section 667 of the *California Penal Code* was amended so that following two serious or violent felonies a third non-violent or non-serious felony could be treated as a serious offence with a correspondingly serious sentence (*California Penal Code, Title 16, Section 667*). Through the 1990s, several other U.S. states enacted their own 'three strikes' laws.

⁶³⁸ J. Austin, J. Clark, P. Hardyman, & D.A. Henry, "The Impact of 'Three Strikes and You're Out'" (1999) 1(2) *Punishment and Society*, at 131.

⁶³⁹ C. Lasch, "What's Wrong with the Right" (1986) 1 *Tikkun*, 23.

sixties, mainstream criminology nudged itself in various neo-liberal, neoconservative, and old conservative directions...The heritage of liberal criminology is denounced, the search for causes is proclaimed a waste of time (because this does not lead to immediately feasible forms of intervention), and solutions are sought in the restoration of traditional authority and in varieties of punishment, deterrence and incapacitation.⁶⁴⁰

The criminological literature is replete with references to the wedding of rightist criminology and conservative policies. Wayne Morrison notes that the idea of creating a society devoid of crime was 'quietly replaced' with the ideas of containment and the management of criminal offenders.⁶⁴¹ As proof, he cites the rise of target hardening, opportunity theory, humane confinement, 'just deserts' punishment, and differential policing (community policing for safe areas and militaristic policing for tough areas) as indicative of a constricted criminological outlook. Braithwaite supports this idea by noting that criminologists have become pessimists, having found that their "science has largely failed to deliver criminal justice policies that will prevent crime."⁶⁴² This sentiment is echoed by many criminologists and perhaps most damningly by Robert Martinson's conclusion that "the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism."⁶⁴³

Generally, it appears that the dominance of the Right in criminological theory and criminal justice policies can be understood through a feedback loop: theory that advances conservative notions is adopted into policy and conservative values permeate theory by

⁶⁴⁰ S. Cohen, *Against Criminology*, (New Jersey: Transaction Books, 1988) at 19-20.

⁶⁴¹ W. Morrison, *Theoretical Criminology: from Modernity to post-modernism*, (London: Cavendish Publishing, 1995) at 18.

⁶⁴² J. Braithwaite, "Reducing the Crime Problem: A Not So Dismal Criminology" in P. Walton & J. Young, eds., *The New Criminology Revisited* (London: Macmillan, 1998) at 49.

⁶⁴³ R. Martinson, "What works? Questions and Answers about Prison Reform" (1998) 135 *The Public Interest*, at 25.

way of political recognition and funding. This relationship is furthered by the growth of law-and-order populist politics that depend on New Right appeal.

The Popularity of Law-and-Order

The cozy relationship between New Right theory and conservative politics is particularly suited to populist tactics. If it is true that the economic downturn of the 1970s precipitated a backlash against liberal aspirations, it is possible to understand how public antipathy for offenders and treatment programs gave way to a punitive framework. The following section examines the political use of this backlash.

Politicians understand that public fear is an exploitable resource. Instead of addressing this fear by further democratization and empowerment of the public, as proposed by the Left Realists, the fear of crime was found to be:

[m]ost amenable to manipulation for political ends. Fears and insecurities about jobs, education, and so on can be allayed (at least in part) by governments espousing strong law-and-order rhetoric in order to secure their political popularity...the law-and-order debate [is] dominated predominantly by the Right in politics.⁶⁴⁴

Political parties appear irrelevant and impervious to this agenda. American Democrats, British Labourites and Canadian Liberals alike adopted a law-and-order stance that previously would have been left to only the most right-leaning parties. What emerged in the 1980s and 1990s claims David Garland, “[was] a narrowing of debate and a striking convergence of the policy proposals of all the major political parties.”⁶⁴⁵ This debate was

⁶⁴⁴ White & Haines 2000, *supra* note 580 at 170.

⁶⁴⁵ Garland 2001, *Culture and Control*, *supra* note 588 at 13.

led by “the dominant voice of crime policy...that of the fearful, anxious members of the public.”⁶⁴⁶

In response, populist politics focusing on punitive measures became an electoral necessity. The Canadian criminologist Jean-Paul Brodeur found that the most immediate result of politicizing crime is an oversimplified presentation of the problem to the public for the institution of ‘politically profitable’ measures.⁶⁴⁷ Tough-sounding legislation with a punishment focus fits well within this framework. A particularly significant finding for the present study is that “the get tough approach that has generally been associated with populist appeals to the public at large...has proved to be electorally expedient and attractive, even if the consequences of the adoption of such measures leave something to be desired.”⁶⁴⁸ An example of this is found in Britain where “punitive approaches created and involved, amongst other things, a 60 per cent increase in the budget for the police (whose performance, measured by a crime clear-up-rate, nonetheless dropped).”⁶⁴⁹

The political awareness of the need to appear ‘tough on crime’ has resulted in the support of numerous questionable pieces of legislation. Although U.S. examples such as ‘Three Strikes’⁶⁵⁰ are often used to illustrate this point, it is more than an American phenomenon. The extensive criminal investigation law developed over the past few decades in New South Wales, Australia, has recently been explained as “the result of the

⁶⁴⁶ *Ibid*

⁶⁴⁷ J.P. Brodeur, “Politics, Crime Control and Culture” (1994) 5(2) *Journal of Human Justice* at 136.

⁶⁴⁸ White & Haines 2000, *supra* note 580 at 138.

⁶⁴⁹ K. Williams, *Textbook on Criminology*, (London: Blackstone Press, 1991) at 463.

⁶⁵⁰ Note: Jason Ziedenberg (Toronto Star 09 Nov 2000, page A39) claims ‘Three Strikes’ was “a California law that solidified then Republican Governor Pete Wilsons’ re-election.” (*California Penal Code, Title 16, section 667*).

increasing political sensitivity of law-and-order.”⁶⁵¹ Similarly, the development of recent Irish organized crime law has been viewed as stemming from an ill-considered political reaction to overheated populist sentiment.⁶⁵² In both cases, researchers argue that unduly harsh laws were the result of an increasing focus on punishment solutions. Richard Burke writes that “in short, populist conservative crime control strategies tend to place far more emphasis on the stick than the carrot.”⁶⁵³

Populist conservative crime control strategies also tend to focus on the “other”. White and Haines write that populism “appeals to people on the basis of “us” versus “them” [and] them, whoever they are, are viewed as being parasites and destructive to the social body.”⁶⁵⁴ The malevolent public mood that is considered to have spawned the punitive ethos is most demanding on those who are seen as a drain on the general purse. Thus the ‘parasites’ become the ‘other’ onto which we can foist harsh legislation. As a result,

[a] key element in this objective has been policies targeted at groups described as the ‘underclass’, people concentrated in run down inner-city and peripheral council housing estates, and who have developed a ‘dependency culture’ and values alien to ‘mainstream society’ such as the rejection of work, reliance on benefits and idleness.⁶⁵⁵

While Left Realists encourage empowering this ‘underclass’, the New Right and its punishment focus on populist politics is more interested in ostracizing and

⁶⁵¹ Richard, J. 2001. “Powers and Responsibilities: Reforming NSW Criminal Investigation Law”, Doctoral Thesis, Faculty of Law, University of New South Wales.

⁶⁵² S. Kelleher, *Moral Panic, Organized Crime and the Threat to Civil Liberties in Ireland*, (Master of Laws Thesis, Osgoode Hall Law School, 1999).

⁶⁵³ R. Burke, *An Introduction to Criminological Theory*, (United Kingdom: William Publishing, 2001) at 38.

⁶⁵⁴ White & Haines 2000, *supra* note 580 at 138.

⁶⁵⁵ “The New Right” (28 November 2002), online: <<http://www.lincoln.ac.uk/spp/charlie/grand/newright/who.html>>.

incarcerating the 'other'. Wilson's' writings directly support the creation of the criminal other as Herbert writes that "Broken windows reinforces an 'othering' of the criminal population that allows state actors to justify being tough on crime."⁶⁵⁶

Both punishment and 'othering' have become distinctive aspects of the populist politics under the New Right. Directed towards the appeasement of a law-and-order inclined public and eschewing practical decisions for expedient legislation, "policy is now more frequently a collective anger and righteous demand for retribution rather than a commitment to a just, socially engineered solution."⁶⁵⁷

It was in this crime control climate that justice policies of the 1990s were developed and Canada was no exception. Canadian research from this period indicates that the media had become replete with images of rising crime rates, predatory strangers, street violence and crime warfare "that came to signify our worst anxieties about a society facing danger and decay."⁶⁵⁸ This was not quickly abated and "by all appearances, our pan-Canadian obsession with 'the crime problem' has been surging to ever more elevated levels since 1990 [which] justify repressive laws and nurture policies that make everyone less free."⁶⁵⁹ Canada's first anti-gang law was developed in this atmosphere and was advertised as responding to the needs of the purveyors of law-and-order, specifically the police.

⁶⁵⁶ Herbert 2001, *supra* note 587 at 458.

⁶⁵⁷ Garland 2001, *Culture and Control*, *supra* note 588 at 10.

⁶⁵⁸ R. Ericson, P. Baranek & J. Chan, *Representing Order: Crime, Law, and Justice in the News Media*, (Toronto: University of Toronto Press, 1991) at 111.

⁶⁵⁹ S. Boyd, D. Chunn & R. Menzies, *[Ab]using Power: The Canadian Experience*, (Halifax: Fernwood Publishing, 2001) at 11-12.

The Organized Crime Threat

Up to this point, this chapter has demonstrated that by the mid-1990s, crime control policy was largely dictated by the tenets of realism, the ascendancy of the Right and the popularity of law-and-order perspectives. This section introduces the concept of organized crime as a construct particularly amenable to the populist politics of the New Right. Its rise into public conscience, its amorphous definition, and its classification of the foreign or “otherness” nature of crime illustrate organized crime’s fit within the new crime control paradigm.

The history of the organized crime threat in Canada largely mirrors developments that occurred in the United States. Margaret Beare noted that the American *McClellan Commission* of 1963 and the 1967 *Organized Crime Report* to the United States Congress “directly influenced the statements made by law enforcement officials in Canada, as well as the recommendations put forward by various Canadian inquiries.”⁶⁶⁰ Beare found that historically the growth of the organized crime rhetoric “that served as a catalyst for new law enforcement powers and unique proceeds of crime legislation in Canada stemmed largely from the U.S experience,”⁶⁶¹ and further noted that “U.S. commissions had a direct impact on the way not only the United States but also Canada saw and dealt with organized crime.”⁶⁶² Thus organized crime understandings from the U.S. were exported to Canada and were more apt to be adopted in a crime control climate amenable to law-

⁶⁶⁰ M. Beare, *Criminal Conspiracies: Organized Crime in Canada*, (Toronto: Nelson Canada, 1996) at 140.

⁶⁶¹ *Ibid.*

⁶⁶² *Ibid.*

and-order solutions. Even the main American legislative response to organized crime, the R.I.C.O. Act,⁶⁶³ spawned Canadian studies on organized crime that arguably laid the groundwork for later Canadian legislation.

Although it is possible to trace preliminary interest in organized crime to the publication of the U.S. Senate's *Kauver Committee* findings in the 1950s⁶⁶⁴ it was not until the 1970s that organized crime began to be perceived as a threat capable of disrupting social life and requiring legislative intervention. Following the 1969 *President's Crime Commission*, made famous by Donald Cressey's hair-raising accounts of the organized crime threat⁶⁶⁵ (mostly gleaned from the now discredited Mafia informant Joe Valachi), public attention focused on organized crime. The Commission's report became the mainstay of organized crime understanding and was to color perceptions of organized crime for the next thirty years. In the 1980s, when the *President's Commission on Organized Crime* reported to President Regan, the "mafia" construct, suffuse with all of its mythology, was still seen as "the dominant factor in organized crime."⁶⁶⁶

Conflicting accounts of the nature and extent of organized crime are of little importance to the level of political attention paid to the subject. Robert Naylor makes a strong case that organized crime can simply be used as an excuse for more security

⁶⁶³ Racketeer Influenced and Corrupt Organizations Statute, 18 U.S.C. passed in 1970 as Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 941 (1970).

⁶⁶⁴ U.S. Senate (1951), Special Committee to Investigate Organized Crime in Interstate Commerce, 3rd Interim Report, s. rep. No. 307, 82nd Cong., 1st Sess. 150 (1951).

⁶⁶⁵ D. Cressey, *Theft of the Nation*, (New York: Harper and Roe, 1969).

⁶⁶⁶ S. Kelleher 1999, *supra* note 638 at 62. This organized crime model persisted despite persuasive prior research by Francis Ianni that largely discredited the construct. See: F. Ianni, *A Family Business: Kinship and Control in Organized Crime*, (New York: Russell Sage Foundation, 1972) at 43 [Ianni 1972].

spending when other threats are not readily apparent.⁶⁶⁷ With the retreat of the Cold War at the end of the 1980s and before the terrorism threat of the new millennium precipitated by the attacks on the World Trade Centre and the Pentagon, the 1990s were largely a security vacuum into which, Naylor argues, organized crime fear found its niche.⁶⁶⁸ By 1996, “Fighting International Organized Crime” had for the first time become an official national security issue for the United States.⁶⁶⁹

Significantly, the threat of organized crime appears to have paralleled the rise of New Right philosophy. Both grew out of the 1970s to gain prominence in the 1980s and 1990s and survive credible attacks from the criminological community⁶⁷⁰ to retain a dominant position in crime control policy. While Wilson’s New Right theorizing suggested a loosening of due process to enable police to better do their job, the threat of organized crime served to create “shifts in legal codes to eliminate some of the constraints imposed by traditional presumptions in favor of due process.”⁶⁷¹ Conceptions of both organized crime and the New Right were responsible for a rise in populist law-and-order legislation by the 1990s, including Bill C-95. Canadian legal expert Don Stuart found that the Canadian anti-gang law was one of a list of tough measures adopted in this climate.

⁶⁶⁷ R. T. Naylor, “From Cold War to Crime War: The Search for a New ‘National Security Threat’” (1995) 1(4) *Transnational Organized Crime* 37.

⁶⁶⁸ *Ibid.*

⁶⁶⁹ P. Lupsha, “Transnational Crime Versus the Nation State” (1996) 2(1) *Transnational Organized Crime* 21.

⁶⁷⁰ For example Jock Young’s attack on the New Right (J. Young, “Thinking Seriously About Crime: Some Models of Criminology” in M. Fitzgerald, G. McLennan, & L. Pawson, eds., *Crime in Society: Readings in History and Theory*, (London: Routledge & Kegan Paul, 1981); and Ianni’s criticism on conventional organized crime perceptions (Ianni 1972, *supra* note 666).

⁶⁷¹ Naylor 1995, *supra* note 667 at 38.

No better evidence of the law-and-order agenda can be offered than to point to the wider array of Government bills that received Royal Assent on April 25, 1997, two days before Parliament was dissolved for the federal election.⁶⁷²

The malleability of the organized crime definition easily lends itself to New Right interpretations. Deciding upon a definition of organized crime has never been easy and choosing what constitutes 'organized' activity is the crux of the difficulty. How many people, what degree of sophistication and what type of activity are the types of questions that complicate attempts at straightforward definitions. Timothy Bynum writes that

[o]ne of the principal problems in the study of organized crime is the lack of a consistent definition. Perhaps, because of the dominance of the popular conception of organized crime, few writers worry about the precise definitions.⁶⁷³

While Frank Hogan's famously positivistic definition of organized crime being "two or more persons engaged in criminal activity"⁶⁷⁴ may appear minimalist, the amount of crime this definition would ensnare renders it useless. Yet narrower definitions tend to target only one sector of organized crime activity, thereby giving Hogan-like definitions sustainability. The concept of organized crime remains so vague that numerous writers feel it is applicable to common activities of the capitalist state.⁶⁷⁵ Although common-

⁶⁷² Stuart 1998 *supra* note 45 at 264.

⁶⁷³ T. Bynum, "Controversies in the Study of Organized Crime" in T. Bynum, ed., *Organized Crime in America: Concepts and Controversies*, (New York: Criminal Justice Press, 1987) at 3.

⁶⁷⁴ P. Reuter & J. Rubenstein, 1978. citing Frank Hogan in, "Fact, Fancy and Organized Crime" 53 *Public Interest*, at 46.

⁶⁷⁵ See for example: W. Chambliss, "State Organized Crime", in W. Chambliss & M. Zats, eds., *Making Law: The State, The Law and Structural Contradictions* (Bloomington: Indiana University Press, 1993); R.T. Naylor, *Patriots and Profiteers: On Economic Warfare, Embargo Busting and State-Sponsored Crime*, (Toronto: McClelland and Stewart Inc., 1999); H. Glasbeek, *Wealth by Stealth: Corporate Crime, Corporate Law, and the Perversion of Democracy*, (Toronto: Between the Lines Press, 2002).

sense would dictate that “law enforcement efforts to control organized crime should begin ideally with an explicit definition of the problem,”⁶⁷⁶ this has not been the case.

It is this amorphous nature of organized crime definitions that makes it particularly amenable to political interpretation. This was one of the main concerns of Jean-Paul Brodeur when he was asked to comment on the Canadian organized crime law-making initiative.⁶⁷⁷ He warned the Department of Justice that there are “considerable risks involved in using a concept such as organized crime, which rests more on stereotypes and clichés which have been accepted as models than on any systematic examination of the practices grouped under the label in question.”⁶⁷⁸ But if overly-simplified populist politics are the result of a New Right dominance in crime control policy, it is understandable why Brodeur’s warning was not heeded. David Garland points out that crime policy has ceased to be a bipartisan matter that can be devolved to policy professionals.⁶⁷⁹ Instead, unclear definitions and cliché-driven understandings can become the basis for new law.

As previously outlined, the concept of the ‘other’ is instrumental in driving the politics of the New Right. This is another area where organized crime understandings fit well with the philosophy of the New Right. The ‘alien conspiracy thesis’ (in which organized crime is posited as a foreign introduction) was the foundation of the 1967

⁶⁷⁶ R. Kelly, “The Nature of Organized Crime and its Operation” in *Major Issues in Organized Crime Control*, (Washington: Northwest Policy Centre, 1987) 8.

⁶⁷⁷ J. P. Brodeur, “Organized Crime: Trends in the Literature” Report submitted to the Department of Justice and the Department of the Solicitor General, May 1996.

⁶⁷⁸ *Ibid.* at 4.

⁶⁷⁹ Garland 2001, *Culture and Control*, *supra* note 588 at 13.

President's Crime Commission. Peter Lupsha argues that positioning organized crime as a problem with the other rather than a creation of our own culture was a convenient explanation to absolve the state from responsibility.⁶⁸⁰ It seems to matter little that the 'alien' theory was readily dismissed by scholars in the criminological field.⁶⁸¹

The notion that 'wicked people' exist for whom there is no solution save incarceration is also present in perceptions of organized crime. These people represent the 'other' in both New Right and organized crime perspectives. Wilson popularized the notion of "wicked people" for the New Right and as a result offenders were ostracized to the extent of being politically presented as "not being members of the human race (for example, they are described as 'animals' or 'savages')." ⁶⁸² Organized crime, with its connotations of Mafioso ethnic affinities and underworld affiliation is also easy to portray as an 'outside' activity run by 'wicked' people.

Perhaps U.S. Senator Bob Kerry's assertion that, "organized crime is the new communism, the new monolithic threat"⁶⁸³ is one of the clearest indications of the inclusion of organized crime in the populist politics of the New Right. Undefined, unrepentant in its blame of the "other" and coinciding with the rise of the Right, it is hardly surprising that organized crime has become the latest vehicle of the law-and-order mandate. The period was now ripe for an influx of anti-organized crime policy.

⁶⁸⁰ P. Lupsha, "Individual Choice, Material Culture and Organized Crime" (1981) 19(1) *Criminology* at 3.

⁶⁸¹ Of particular note in this area: J. Albin, "Donald Cressey's Contribution to the Study of Organized Crime" (1988) 34(3) *Crime and Delinquency* 338.

⁶⁸² White & Haines 2000, *supra* note 580 at 138.

⁶⁸³ Cited in: Naylor 1995, *supra* note 667 at 37.

This is not to suggest that valid concerns regarding organized crime did not exist in the 1990s. The expansion of globalization and new technologies raised legitimate worries about new avenues for the spread of organized crime. As widening network possibilities for illegal enterprises flourished, there was just cause for an expansion of cooperative international efforts. What was less obvious, however, was the need for a proliferation of severe domestic legislation. Bill C-95 appears to fit within this wider Western trend towards questionably necessary and harsh anti-gang laws.

American crime control of the 1990s saw a flurry of tough policy directives aimed at organized crime. In 1993, a major report was presented by senior intelligence officers to congress petitioning for a national hearing on the organized crime threat.⁶⁸⁴ In 1995, President Clinton issued a “Decision Directive” focused on organized crime.⁶⁸⁵ This was followed in 1996 with organized crime being specifically added to an updated *National Security Strategy*.⁶⁸⁶ That same year, the *Brown/Rudman Commission* on “The Roles and Capabilities of the United States Intelligence Community” devoted an entire section to a discussion of the organized crime threat.⁶⁸⁷ As with general criminality under the New Right in the 1990s, the paucity of evidence with regards to an increased threat did not inhibit a plethora of new policy initiatives for organized crime.

⁶⁸⁴ R Godson & W. Olson, “International Organized Crime: Emerging Threat to US Security”, National Strategy Information Centre Paper, August 1993.

⁶⁸⁵ P. Lupsha, “Transnational Crime Versus the Nation State” (1996) 2(1) *Transnational Organized Crime*, at 21.

⁶⁸⁶ “Enlargement and Engagement: National Security Strategy of the United States” (Washington, DC: GPO, Feb. 1996) at 25.

⁶⁸⁷ “Report of the Brown/Rudman Commission on the Roles and Capabilities of the United States Intelligence Community” (Washington DC: GPO, March 1996).

Academic propositions to account for the mushrooming of organized crime concern in America are varied. For example, Michael Woodiwiss discovered that despite exaggerated American committee findings based on little investigation, the committees nonetheless succeeded in placing organized crime in the public consciousness as a subject of national alarm.⁶⁸⁸ Similar to the use of questionably reliable crime rates to justify severe legislation directed at street crime, inconclusive but alarming commission findings appear to have forwarded the rising organized crime threat hypothesis.

Perhaps Robert Kelly is the author most comprehensively critical of American organized crime policy. He saw organized crime conceptions,

not as 'caused by' certain irrepressible obvious features of organized crime in the United States but ...as a distinctive picture reflecting conditions of law enforcement interests, strategies and tactics as well as *criminological understandings* of the phenomenon.⁶⁸⁹

In other words, perceptions of organized crime were shaped in relation to understandings of law enforcement need and the ideology of the New Right. Organized crime became an American policy concern of the 1990s as the result of a little-substantiated belief in a growing threat. This belief was also evident in Canada where Federal Solicitor General Andy Scott referred to "the menace of organized crime" and his conviction that "organized crime gangs have increasingly become a threat to the safety of many communities."⁶⁹⁰ With such dire assessments during this period, legislation would have

⁶⁸⁸ M. Woodiwiss, *Crime Crusades and Corruption: Prohibitions in the United States, 1890-1987*, (Ottawa: Barnes & Noble Books, 1988). In particular, he notes the continued hold of the Mafia myth on the American public imagination from the now much debunked Kefauver Committee findings.

⁶⁸⁹ R. Kelly, "The Nature of Organized Crime and its Operation" in *Major Issues in Organized Crime Control*, (Washington: Northwest Policy Centre, 1987) at 6. Emphasis added.

⁶⁹⁰ Solicitor General of Canada, News Release, "Major Study on Organized Crime Confirms Need for National Strategy, Solicitor General Andy Scott tells Chiefs of Police"(24 August 1998).

seemed a reasonable option and Bill C-95 with its detailed *Criminal Code* amendments to address organized crime, an appropriate bill.

The reliance on a legislation-based approach to organized crime reduction, however, has been questioned on several fronts. American authors Albanese and Pursley contend that:

It is, of course, unlikely that the imprisonment of organized crime leaders will eliminate organized crime. In fact, there is a great deal of evidence to suggest that organized crime will exist as long as there is a demand for goods and services that cannot be obtained legally. It can also be seen that incarceration of organized crime leaders produces a new, younger leadership more prone to violence.⁶⁹¹

Canadian criminologist Jean-Paul Brodeur posits that:

Relying on the criminal justice system as the main and indeed only means of fighting organized crime is a self-defeating strategy which will ultimately lead only to the reproduction of organized crime...however harshly they are applied, penalties are not sufficient to eliminate organized crime.⁶⁹²

The policy direction of legislation against organized crime, however, had been gaining momentum since the end of the 1980s with *Mutual Legal Assistance in Criminal Matters Act*⁶⁹³ being passed in 1988, two proceeds of crime enactments following in 1991⁶⁹⁴ and 1992⁶⁹⁵, and the *Seized Property Management Act* (Bill C-123)⁶⁹⁶ being created in 1993.⁶⁹⁷

⁶⁹¹ J. Albanese & R. Pursley, *Crime in America*, (Englewoods Cliffs, NJ: Regents/Prentice Hall, 1993) at 66.

⁶⁹² Brodeur 1996, supra note 677 at 33-34.

⁶⁹³ *Mutual Legal Assistance in Criminal Matters Act*, S.C. 1988, c.37.

⁶⁹⁴ *Proceeds of Crime (money laundering) Act*, S.C. 1991, c. 26.

⁶⁹⁵ *Proceeds of Crime (money laundering) Regulations*, C. Gas. 1992. I. 1744.

⁶⁹⁶ *Seized Property Management Act*, S.C. 1993, c.17.

⁶⁹⁷ More information on these Acts is found in Chapter Three, "New Law".

Anti-gang law in Ireland from the 1990s also illustrates the global scope of New Right crime control strategies in dealing with organized crime. In 1994, the *Criminal Justice Act* made a dramatic transition from previous criminal law provisions by allowing for the forfeiture of the proceeds of crime. It was described as having “a wide-ranging framework...backed up by tough confiscation provisions.”⁶⁹⁸ This was followed in 1996 by the *Organized Crime (Restraint and Disposal of Illicit Assets) Bill*⁶⁹⁹ that led to major infringements on the rights of the accused with regards to rights to silence, length of detention without charge, and bail provisions.⁷⁰⁰

Akin to the rhetoric espoused by populist politicking under the New Right, the policy debates leading up to the new Irish laws were rife with references to the public threat posed by organized crime and the need for extraordinary solutions. When the leader of the Labour Party, a member of the governing coalition in Ireland at the time, demanded “new and radical structures for mounting an all-out assault on organized crime”⁷⁰¹ he was not reacting to any empirical evidence of an increased threat. Furthermore, when the leader of the opposition in the Irish parliament stated “we need to act quickly and we should stop getting caught up in the niceties of law”⁷⁰² he could be seen to be simultaneously reflecting the law-and-order rhetoric of the Right and the documented assault on common law principles created by an exaggerated organized

⁶⁹⁸ Financial Action Task Force, *Annual Report 1993-1994 at 17-18* online: <<http://www.oecd.org/fatf/reports.htm>>.

⁶⁹⁹ The passage of this Bill as a moral panic event is written about in detail in Shane Kelleher's, “Moral Panic, Organized Crime and the Threat to Civil Liberties in Ireland” (Master of Laws Thesis, Osgoode Hall Law School, 1999) [unpublished].

⁷⁰⁰ At the time that this dissertation was being written the legislation was being challenged under the European Convention on Human Rights.

⁷⁰¹ Cited in: Kelleher 1999 *supra* note 699 at 146.

⁷⁰² *Ibid.*

crime 'threat'.⁷⁰³ Little evidence of a greatly increased threat existed but law-and-order politicking enabled new law to be created in less than a month.

Similar to Wilson's certainty of the irrevocable 'wickedness' of many criminals, Kelleher notes that the result of the new Irish legislative amendments was a clear movement of focus and determination of guilt from the trial to the pre-trial investigation. This is a concept found in the forfeiture provisions of Bill C-95⁷⁰⁴ and long in existence in America through the R.I.C.O Act.⁷⁰⁵ It would appear that new concepts of crime control had pervaded the Irish legal system. Having seen the degree to which the United States embraced New Right theory in its justice policies, it is perhaps less than surprising that the policy process that led to the 1996 *Organized Crime Bill* was considered in some quarters to be "an American solution to an Irish Problem."⁷⁰⁶

Obviously, many factors influence the criminal justice policy direction of sovereign states around the globe and a litany of particular circumstances can be raised as factors for consideration. What is striking in the above examples, however, is the similarity of policy direction with regards to organized crime during the same time period. From a policy perspective, Canada and Ireland showed remarkable interest in organized crime in the 1990s without clear proof of a growing threat. Most illustratively,

⁷⁰³ Note the similarity to Robert Naylor's postulation that organized crime, "creates shifts in legal codes to eliminate some of the constraints imposed by traditional presumptions in favor of due process" (R. T. Naylor, "From Cold War to Crime War: The Search for a New 'National Security' Threat" (1995) 1(4) *Transnational Organized Crime*) at 66.

⁷⁰⁴ Found in the *Criminal Code* amendments to Sections 490.1 and 490.9.

⁷⁰⁵ *Racketeer Influenced Criminal Organizations Act*, 18 U.S.C. passed in 1970 as Title IX of the *Organized Crime Control Act* of 1979, Pub. L No. 91452, 84 Stat. 941

⁷⁰⁶ J. Meade, *Forfeiture and Due Process* (LL.M Thesis, Osgoode Hall Law School, 1996)[unpublished] at 53.

the resulting laws in Canada and Ireland appear to reflect many of the themes encompassed by the New Right in following the American crime control solutions. As Don Stuart noted in his study of Canadian organized crime law in 1997 “there appears to be a world-wide trend for politicians to pander to law-and-order demands.”⁷⁰⁷ He is not alone in his assessment. The proceedings from an international conference conducted barely six months after Bill C-95 was passed in which reports from several countries were presented found that:

[p]oliticians gain popularity and votes by looking ‘tough on crime’, especially organized crime...Sadly, often the news media exacerbate the problem by pandering to public fear and appetite for salacious material. Outcries from interest groups are shrill, raising the cost to anyone who wishes to promote reasoned and constitutional laws. This all creates an atmosphere that tends to ignore the larger picture and which may actually hurt the battle against crime, while damaging human rights and democracy.⁷⁰⁸

The preceding examples support the notion that Western organized crime policies closely mirrored the shift in crime control philosophy under the New Right. Even countries such as the former Hong Kong, when still governed by Britain, followed this tendency. Lionel Yip noted in 1996 that in Hong Kong “since the mid 1980s, there has been a quantitative and qualitative change in the approach to the control of organized crime, from a passive to an active approach against organized crime.”⁷⁰⁹ Thus Bill C-95 is but one example of a general submission to Right Realist solutions to organized crime in which law-and-order experts advanced to the forefront of the debate.

⁷⁰⁷ Stuart, *Unjust Criminal Legislation 1997*, *supra* note 5 at 8.

⁷⁰⁸ C. Blakesley, “General Report: The Criminal Justice System Facing the Challenge of Organized Crime” (1998) 69 *International Review of Penal Law*, at 4.

⁷⁰⁹ L. Yip, *The Development of Organized Crime Legislation in Hong Kong: Traditional and Contemporary Approaches* (Master of Laws Thesis, University of Hong Kong, 1999) at 1.

Summary

So a Ruler ought not to mind the disgrace of being called cruel, if he keeps his subjects peaceful and law abiding, for it is more compassionate to impose harsh punishments on a few than, out of excessive compassion, to allow disorder to spread, which leads to murders or looting.⁷¹⁰

By the 1990s, Western crime control had undergone a major transformation. The theory that came to represent the new criminal justice outlook, Right Realism, prescribed punishment and advocated instituting tough new laws. Organized crime was increasingly targeted and enforcement became the over-arching approach to crime control. In this climate, the providers of order were to gain elevated status and become a trusted voice in prescribing solutions. As discovered in other law-reform study, “police have been extremely influential, and this must be understood in the context of the influence of law-and-order politics in recent years.”⁷¹¹

In 2001, David Garland came to the conclusion that the criminal justice policy-making process was profoundly politicized and populist.⁷¹² He was dismayed in finding an environment that had replaced the professional with public opinion and was shocked to discover an alliance amongst political parties with regards to law-and-order mandates. Most of all, he was saddened to find an atmosphere repugnant of rehabilitation but sympathetic to sanctions. Garland had found the reality of the New Right.

⁷¹⁰ N. Machiavelli, *The Prince*, D. Wooten, editor and translator, (Cambridge: Hackett Publishing, 1995) at 51.

⁷¹¹ K. Anderson, *Powers and Responsibilities: Reforming NSW Criminal Investigation Law* (Doctoral Thesis, Faculty of Law, University of New South Wales, 2001) at 409 [Anderson Thesis 2001].

⁷¹² Garland 2001 Culture and Control, *supra* note 588 at 13.

Significant social and political change in the 1970s ushered in new attitudes towards the treatment of crime. In the 1980s, conservative policies began to drive the crime control agenda as populism was “exaggerating the dangerousness of crime and the foreign or alien nature of the criminal.”⁷¹³ In the 1990s “there was a welter of new legislation [and] a volatile pattern of policy development.”⁷¹⁴ Organized crime became a prime target of the new criminal justice environment and law enforcement solutions gathered significant public support.

⁷¹³ *White & Haines 2000, supra* note 580 at 138.

⁷¹⁴ *Garland 2001, supra* note 588 at 20.

Chapter Nine: Moral Panic

Despite a law-and-order crime control environment, public concern over the Hells Angels / Rock Machine biker war remained largely within Quebec in the early 1990s. Through the first half of the decade, the violence was confined within the biker community and garnered little national attention. However, on August 9, 1995, a remote detonation bomb was placed in a Jeep parked in the Montreal district of Hochelaga-Maisonneuve. Eleven-year-old Daniel Desrochers and his friend Yan Villeneuve were playing in front of the school across the street from the Jeep when Marc Dubé got in and the bomb was detonated. Dubé, at the time thought to be an associate of the Rock Machine and a Hells Angels target⁷¹⁵, was killed instantly. While Villeneuve received superficial cuts, Daniel was struck in the head by a piece of flying shrapnel, went into a coma and died in hospital on August 13. Immediately, the biker war gained national new coverage and the public became outraged. A moral panic had begun:

More than any other single event in the biker war, the killing of Daniel Desrochers galvanized public opinion. Images of the carnage on the street and his funeral packed with tearful schoolchildren were flashed on TV screens across the country.⁷¹⁶

This chapter considers the impact of Desrochers' death and how it aligned public opinion with police views of outlaw motorcycle gangs. Already considered the 'experts' on biker activity, police threat assessments gained newfound importance. Moral panic is

⁷¹⁵ Marc Dubé turned out to be another innocent victim. His Jeep had recently been accessorized with the distinctive 'mag' wheels of Rock Machine puppet gang- member Normand Tremblay and he was wrongly targeted.

⁷¹⁶ J. Sher & W. Marsden, *The Road to Hell: How the Biker Gangs are Conquering Canada*, (New York: Random House, 2003) at 71.

argued to have contributed to the symbolic power of the police during a crime control period amenable to enforcement solutions.

Definition of Moral Panic

Stanley Cohen is considered the pioneering scholar of moral panic study. In his classic text, *Folk Devils and Moral Panics*⁷¹⁷, Cohen examined public and official reactions to gang fights between the Mods and Rockers in Clacton, England. He focused on the responses of five segments of society, namely the press, the public, agents of social control (law enforcement), lawmakers / politicians, and lobby groups. With regards to the press, he characterized the coverage of moral panic events as “exaggerating attention, exaggerating events, distortion, and stereotyping.”⁷¹⁸ The media and the attention it pays to crime incidents, according to Cohen, is a critical component in generating panic.

Despite the exaggerations and augmentations that accompany moral panics, there must be an initial triggering event. Erich Goode and Nachman Ben-Yehuda explain that the media may well be “infused with hysteria about a particular issue or condition”⁷¹⁹ but if this does not resonate with a tangible incident for the public, there is no moral panic. Contemporary writers on moral panic confirm the need for a catalyst that shocks the public conscience.

⁷¹⁷ S. Cohen, *Folk Devils and Moral Panics*, (London: MacGibbon and Kee, 1972) [Cohen 1972].

⁷¹⁸ Cohen 1972, *supra* note 717 at 38.

⁷¹⁹ E. Goode & N. Ben-Yehuda, *Moral panics: The Social Construction of Deviance*, (Oxford: Blackwell Press, 1994) at 26.

A panic is rarely baseless. The literature on moral panics does not seek to deny the existence of crime or crime waves. Rather, it highlights the fact that the reaction to crime does not necessarily follow in any direct or obvious sense from the 'reality' of crime. Moral panics operated according to additional variables, and illustrate the fact that the reaction to crime is itself deserving of study and analysis.⁷²⁰

Cohen's definitional model continues to be the decisive framework for examining moral panics. He classifies a moral panic event as:

[a] condition, episode, where a person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereo-typical fashion by the mass media; the moral brigades are manned by the editors, bishops, politicians and other right thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. It is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folklore and collective memory; at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way society conceives itself.⁷²¹

Stuart Hall added to this definition the additional condition of "experts... talk[ing] 'with one voice' of rates, diagnoses, prognoses and solutions."⁷²² The death of Desrochers fits all of the above conditions for a moral panic:

- a) The bikers emerged to become a threat to societal values and interests.
- b) The Canadian media stylized and stereotyped their reporting style of the biker turf war.
- c) The moral brigades were manned by the right thinking police and politicians.

⁷²⁰ Anderson Thesis 2001, *supra* note 711 at 198.

⁷²¹ Cohen 1972, *supra* note 717 at 1.

⁷²² S. Hall & C. Critcher, T. Jefferson, & B. Robert, *Policing the Crisis: Mugging, the State and Law and Order*, (London: MacMillan Press, 1978) at 10.

- d) The “Wolverines” special police squad was resorted to as a way of coping.
- e) The contract killings decreased yet received more press attention.
- f) The turf war which had been in existence for two years suddenly appeared in the limelight with Desrochers’ death.
- g) The child’s killing produced changes in legal and social policy with the introduction of Bill C-95.

These themes are explored throughout this chapter. The first section studies the death of Desrochers as a catalyst for moral panic. The second explores the reaction of the media to this event. Section three examines the reaction of the police and politicians and section four compares the results of the crisis to the Irish moral panic that occurred during the same time frame and also led to organized crime law. The final section discusses the repercussions of the accidental killing for police significance in the organized crime debate and the political response.

Catalyst

There is little doubt that the death of Daniel Desrochers was an important moment in the creation of Bill C-95. Sanger writes that “[t]he anti-gang legislation was set in motion by the bombing death of young Daniel Desrochers in August 1995,”⁷²³ while Koenig suggests that “the resulting public uproar was instrumental in the enactment of new legislation targeted at outlaw biker gangs.”⁷²⁴ The initial reaction, however, was to

⁷²³ D. Sanger, *Hell’s Witness*, (Toronto: Viking Press, 2005) at 241 [Sanger 2005].

⁷²⁴ D. Koenig, “Organized Crime: A Canadian Perspective”, in J. Albanese, D. Das & A. Verma, eds., *Organized Crime: World Perspectives* (Toronto: Prentice Hall, 2003) at 54.

blame the police. The days following the killing are described by Julian Sher and William Marsden in the following way:

The public outcry was aimed more at the police than at the bikers. Why couldn't the police and the government protect citizens from a handful of thugs? Suddenly, it was no longer good enough for police to shrug off the latest gang killing as a 'settling of accounts.' Calls swamped the office of the Montreal police chief, Jacques Duchesneau. 'People are asking why this is happening – they're not living in Beirut,' Deschesneau told a press conference at the time.⁷²⁵

Sanger also found that police were being held accountable.

The outrage against the bikers had been turned in the direction of the police and their apparent indifference to ending the conflict. It was widely believed that the authorities were quite happy to stand back and cheer as two criminal groups went after each other with whatever weapons were available.⁷²⁶

At an August 10, 1997, press conference Pierre Sangollo, Assistant Director of Investigations for the Montreal Police, responded to the public anger by throwing his hands in the air. He said that police were overwhelmed and that the public could expect more bombings. Sangollo claimed to have warned the bikers to settle their accounts by means other than bombs stating that "I cannot order them to use something other than explosives. But I wish they would listen. You can take care of someone without having bystanders killed."⁷²⁷ Neither police nor the public seemed overly concerned with more biker deaths; moral panic had made the bikers the enemy.

The negative attention brought to bear on the police provided an opportunity for police to have their requests for anti-gang law heard; "Two days after the bombing, one of Montreal's top cops had appealed publicly for stiff anti-gang legislation that would

⁷²⁵ Sher & Marsden, *supra* note 716 at 147.

⁷²⁶ Sanger 2005, *supra* note 723 at 99.

⁷²⁷ Cited in: Lavigne *Hell's Angels*, *supra* note 578 at 45.

enable more severe crackdowns on criminal motorcycle gangs and organized crime in general.”⁷²⁸ For much of the citizenry this would be the first time they would hear about the making of anti-gang law. Soon the cry ‘new law’ would be taken up by the Mayor of Montreal, provincial politicians and Daniel’s mother, Josee-Anne Desrochers. As a result, blame was placed at the feet of the federal government.

According to an RCMP’s source within the Hells Angels, the bikers realized that the accidental murder of Desrochers had been a terrible mistake. Dany Kane, a Hells Angels informant for the RCMP, told his police handlers that the gang’s leadership had banned bombing without express instructions from senior members mere days before Desrochers was killed. The directive was not followed which contravened not only the instructions but a fundamental rule of bikers, “[a]ccording to the Hells Angel philosophy, you can’t kill the children of even your worst enemy.”⁷²⁹ After Desrochers was killed, the Hells Angels issued a press release claiming they had not been responsible.

Although it would take over a year-and-a-half between the killing of Desrochers and the enactment of new law, the boy’s death became the touchstone upon which much of the sentiment for new law rested. Police used Desrochers as proof of the biker threat, local politicians rallied around his cause, and his demise was repeatedly cited in the legislative debates. In one of the first sittings of the House of Parliament following the summer recess of 1995, the oral question period concerning the *Criminal Code*

⁷²⁸ *Ibid.*

⁷²⁹ D. Sanger 2005, *supra* note 723 at 97.

commenced with a query about what the government was going to do “in the wake of the car bomb that killed an innocent eleven-year old boy.”⁷³⁰

The first attempts to have anti-gang law passed were directly attributed to Desrochers. “On February 29, 1996, in response to the Desrochers killing, Mr. Real Menard (Hochelaga-Maisonneuve, BQ) moved for leave to introduce a private member’s ‘anti-gang’ bill in the House of Commons.”⁷³¹ This private member’s bill⁷³² and one subsequently entered by Mr. Roberge⁷³³ were defeated but showed that public sentiment in Quebec had been galvanized by the young boy’s death.⁷³⁴

In the days leading up to the passage of Bill C-95, it became evident that the Liberals were going to use Desrochers’ death to support their anti-gang law platform. Justice Minister Allan Rock told the House of Commons that in a private meeting with Ms. Desrochers, she had told him that “the most important thing to her was that the bill might help the police to find the people who are responsible for her son’s death.”⁷³⁵ Mr. Rock then portrayed his government as the champion of the victim:

There are few more eloquent explanations of why we are moving quickly on the bill. I think of that grieving mother. I think of that eleven-year old boy who lost his life. I think of a gang war that continues. We do not know from day to day where another bomb might be found or where it might be exploded.⁷³⁶

⁷³⁰ *House of Commons Oral Question Period*, (21 September 1995) at 1430 (Micheal Bellehumeur).

⁷³¹ Moon *Outlawing the Outlaws*, *supra* note 61 at 457.

⁷³² The bill did not receive a first reading.

⁷³³ Bill S-10, An Act to amend the *Criminal Code* (criminal organization) was introduced and given first reading on June 18, 1996. As its predecessor, Bill S-10 did not survive the second reading.

⁷³⁴ Ultimately, Bill C-95 was promised as a measure to decrease public panic in Quebec: “Justice Minister Allan Rock promised the legislation [Bill C-95] last week to calm fears in Quebec, where a deadly biker war has raged for years.” *The Toronto Star*: “Anti-Gang Legislation goes quickly to Senate”, April 22, 1997, A5.

⁷³⁵ *House of Commons Debates*, 158 (17 April 1997) at 1310 (Hon. Allan Rock).

⁷³⁶ *Ibid.*

There is little doubt that the death of Desrochers had a significant impact on perceptions of the biker war. Media stories surrounding his killing brought national attention to the horrible carnage in Quebec. Josée Desrochers, Daniel's mother, became a recognizable public spokesperson to rail against the atrocities. The situation had aligned public and police perceptions of the motorcycle gang threat and created an environment amenable to an authoritative law-and-order response. Once the police made their plea for new law it did not take long for municipal and provincial politicians from Quebec to respond by exerting pressure on the federal government. Desrochers had become synonymous with the need for extra measures and the police had found the martyr for their cause.

Motorcycle Gangs and the Media

Historically, motorcycle gang activity in Canada and in Quebec specifically, received limited negative exposure in the press. In the decade preceding the turf war, local newspaper articles describing the motorcycle gangs in Quebec speak of a comfortable coexistence between the gangs and the public.

Neither in Sorel nor in Laval, where the Hells Angels have also moved in, is there anyone – at least among the people *La Press* talked to - who has a major complaint about them, unless it is the noise of their motorcycles.⁷³⁷

Indeed, bikers appear to have managed their public relations well. A study using a sample of 120 newspaper articles about gangs published in Canada in the early 1990s reported

⁷³⁷ *La Press* (11 August 1982) A11. Cited in: Brodeur 1996, *supra* note 677 at 17. (Brodeur credits: M. Alain, "Les motards "Onepercenters" au Québec: Histoire de la contraction d'une population de 1968 à 1988", Master's Thesis, Université de Montréal, 1992).

that “the highly visible motorcycle gangs seem[ed] to have succeeded in developing a symbiotic relationship with a number of communities.”⁷³⁸

When the Quebec biker feud between the Hells Angels and the Rock Machine began in 1994, the national press wrote more articles on biker activity such as, “Montreal wants inquiry into bike war”⁷³⁹ or “Bikers fighting for space behind bars”⁷⁴⁰, but the reporting was sporadic and the biker feuding attracted little public interest.

The media were quick to decide that the death of Daniel Desrochers was a pivotal moment in the biker war. While the *Globe and Mail* had been covering the biker mayhem prior to Desrocher’s demise, it had taken a dispassionate fact-finding approach to its reporting. For example, a few weeks before the fateful bomb exploded in Hochelaga-Maisonneuve, the newspaper ran an article that simply tallied the number of biker and biker associates killed as a result of the war.⁷⁴¹ In the months that followed, a pro-law mandate was unquestionably evident. Now headlines announced “We need laws against organized crime”⁷⁴² or “Time for Canada to legislate against gangs.”⁷⁴³ The bikers had become “folk devils.”⁷⁴⁴ Aided by “media coverage of crime stories often focused on the

⁷³⁸ This study was cited in: Brodeur 1996, *supra* note 677 at 18.

⁷³⁹ *The Globe and Mail* (23 March 1995).

⁷⁴⁰ *The Globe and Mail* (2 February 1995).

⁷⁴¹ “Body count mounts in fighting among Montreal’s biker gangs” *Globe and Mail* (19 July 1995).

⁷⁴² *Globe and Mail* (17 August 1995).

⁷⁴³ *Globe and Mail* (30 December 1995).

⁷⁴⁴ Note: Stanley Cohen wrote of the moral panic and media over-reaction to the mods and rockers era of the 1960’s. He described the perceived threat to public safety as a ‘folk devil’. See: Cohen 1972, *supra* note 717.

innocent person victimized by the evil stranger”⁷⁴⁵, the bikers had been labeled outsiders deserving tough legal sanction.

A simple title and lead-article newspaper analysis using the *Globe and Mail* revealed just how much attention the national media was paying to the biker war. Using the search words ‘organized crime’ in the four-year-period preceding Desrochers’ demise (August 1991- August 1995) resulted in 101 ‘hits’ while the subsequent four year period (August 1995 – August 1999) resulted in 153 ‘hits’, a 51% increase. More telling were the results of the same test on the search words ‘motorcycle gang’. While 17 “hits” were recorded in the four years preceding Desrochers’ death, 49 were found in the following four years representing an increase of 188%. Although rudimentary, the analysis does suggest an altered press focus following Desrochers’ death. The biker feuding in Quebec figured prominently in a very large majority of articles following Desrochers’ death.

Not only had the press changed their focus, but their language had become more graphic and hysterical. In devastating detail, the national press described the killing in the manner of tabloid sensationalism. For example, a witness was reported to have described the incident as follows:

‘I saw this guy flying through the air,’ recalled Yan, a quake in his voice, tears welling in his blue eyes... ‘Part of his head was on the grass beside me.’⁷⁴⁶

⁷⁴⁵ *Ibid.*

⁷⁴⁶ B. Cane, “Montreal Mayhem: Biker Gang Violence Claims Innocent Victims” *Maclean’s* (21 August 1995) at 14.

The media were also quick to find the authoritative figures who had the solutions to restore order. The *Globe and Mail* newspaper reported that “Police hope public rage over killing prompts reform”⁷⁴⁷ and that “Police chiefs declare public war against bikers.”⁷⁴⁸

As per Cohen’s definition of moral panic, the media reports became increasingly ‘stylized and stereo-typical’ in reporting the incidents. After the death of Desrochers and following a spate of increased biker activity in early 1997, newspaper reports focused on the cries for a legislative solution with headlines such as “How to fight organized crime: The public mood is to ‘get tough’”⁷⁴⁹, “Why we need to outlaw membership in motorcycle gangs”⁷⁵⁰, “Gang Bill not all Quebec wanted: Conditions apply to biker arrests”⁷⁵¹, and “Rock enters biker-war fray: Public anger prompts meeting with Quebec.”⁷⁵²

The press now conformed to a pattern of reporting on the evils of bikers and the need for more control. The opinions of the ‘experts’ on how to restore order had become important and there was an increased level of hostility toward those involved in the “threatening behaviour.” All of these outcomes are natural consequences of a moral panic.⁷⁵³

⁷⁴⁷ *Globe and Mail* (15 August 1995).

⁷⁴⁸ *Globe and Mail* (31 May 1996).

⁷⁴⁹ *Globe and Mail* (18 April 1997).

⁷⁵⁰ *Globe and Mail* (01 April 1997).

⁷⁵¹ *Globe and Mail* (17 April 1997).

⁷⁵² *Globe and Mail* (20 March 1997).

⁷⁵³ Goode & Ben-Yehuda 1994, *supra* note 719 at 33.

The effect of the media on shaping the moral panic was instrumental. Similar to the media furor surrounding the infamous Kefauver Committee's findings that "helped to shape public perceptions of organized crime in the United States,"⁷⁵⁴ the media treatment of the Desrochers incident brought Canadians a similarly biased view of our own organized crime. Taking the analogy a step further, Desrochers may have been the Canadian Joseph Vallachi⁷⁵⁵ in reverse. Vallachi gave the United States an image of organized crime to despise and join forces against. Desrochers, on the other hand, provided Canadians with an innocent victim to rally around.

The disproportionate attention given to the boy's death compared to that generated by the dozens of other victims of the biker war is perplexing unless we consider who may have encouraged a moral panic. Peter Reuter notes that "[o]ne particular incident of violence may lead to no reaction by the police, while another similar one may produce outraged demands from the populace for sustained enforcement against the particular activity."⁷⁵⁶ Assistant Chief Sangollo's dismissive concern over biker deaths but despair over being able to prevent further 'innocent' victims⁷⁵⁷ sent a clear message that the public had to get involved. As Cohen noted in his definition of a moral panic, the crisis "is something which has been in existence long enough, but suddenly appears in the limelight."⁷⁵⁸ Police were more than willing to oblige by

⁷⁵⁴ R. Kelly, "The Nature of Organized Crime and its Operation" in *Major Issues in Organized Crime Control*, (Washington: Northwest Policy Centre, 1987) at 19.

⁷⁵⁵ Joseph Vallachi was a mafia informant whose (now-questionable) testimony almost single-handedly supported the creation of American organized crime legislation.

⁷⁵⁶ P. Reuter, *Disorganized Crime: The Economics of the Visible Hand*, (USA: MIT Press, 1983) at 5.

⁷⁵⁷ Cited in: Lavigne 1999 *Hells Angels*, *supra* note 578 at 45.

⁷⁵⁸ Cohen 1972, *supra* note 717 at 1.

illuminating the public with their expert opinions on the threat level posed by their arch-nemesis.

Police and Political Reaction

Following the sequence of moral panic dictated by Stanley Cohen, the media response galvanized the officials into action. The 'moral brigades' began to be manned as the 'right' thinking people and socially accredited experts began to pronounce their diagnoses and solutions. Particularly evident were the pontifications of the police.

Within days of Desrochers' death, Montreal's Deputy Chief held a news conference, "to demand that judges hand down stiffer sentences [and] called on Ottawa to enact anti-gang laws."⁷⁵⁹ The opinion of Ben Friedman of the organized crime division of the United States Department of Justice was quoted in the Canadian press two months after Desrochers' death describing R.I.C.O. (*Racketeering Influenced and Corrupt Organizations Act*), the main U.S. legislation used against organized crime, as "a useful tool."⁷⁶⁰ Around the same time, Lieutenant Lou Barbaria, considered an expert for the New York State police on biker gangs, was also apparent in the Canadian press commenting on how "well-funded national anti-gang task forces are also an effective way of dealing with the phenomenon."⁷⁶¹ In retrospect, it appears that these U.S. experts had clairvoyant abilities. Within a month of their pronouncements an anti-gang task force was created.

⁷⁵⁹ Cane, *Maclean's*, *supra* note 746.

⁷⁶⁰ "Tougher, US anti-gang law may help fight bikers" *Canadian Press Newswire* (14 September 1995).

⁷⁶¹ *Ibid.*

The Wolverines⁷⁶² anti-gang task force fit Cohen's third requirement for a moral panic; a means of coping was resorted to. This 70-member anti-gang squad comprised of municipal, provincial, and federal officers, dealt exclusively with Quebec motorcycle gangs. Its success was evident in the statistics it was able to report within the first few months of its formation. Over 700 sticks of dynamite, 680 detonators, 31 grenades, and more than 200 firearms were seized as well as 62 arrests resulting in 21 gang members being taken into custody.⁷⁶³ For the following year when the Wolverines were operating at full strength, the biker gang violence was decreased.⁷⁶⁴

Yet the media, pandering to an aroused public, tenaciously continued to report any biker activity and support enforcement solutions. Similar to the situation with Cohen's Mods and Rockers whose fighting slowed while the media attention picked up, Quebec's turf war appeared to be declining while, at the same time, the media frenzy increased. This phenomenon speaks to Cohen's description of the moral panic condition disappearing, submerging or deteriorating and becoming more visible.

This was of great advantage to the police. An opportunity had arisen to have their loathing of bikers taken seriously as the media began to sensationalize the threat factor.

The explosions in the night could become even more frequent if police don't get more legal muscle to go along with the increased resources they've allocated to the biker battle.⁷⁶⁵

⁷⁶² A combined forces anti-biker police squad. See: Chapter One, "The Motorcycle Gang War".

⁷⁶³ "Anti-Gang squad nets weapons and ammunition in Montreal" *Canadian Press Newswire* (6 December 1995).

⁷⁶⁴ A more detailed analysis of Wolverine impact is found in Chapter One "The Motorcycle Gang War".

⁷⁶⁵ *Canadian Press Newswire* 1995, *supra* note 763.

The morality play, already underway, did not go undetected and the police felt confident enough in the 'get tough' atmosphere to let it show.

Until now, police haven't even bothered to deny that they don't mind bikers killing each other and criminal associates, as they have done about two dozen times in the past two years. But Desrochers' death has changed things.⁷⁶⁶

The desires of the police were so well taken care of by the press, they had only to wait until the ensuing public outrage caught the attention of the politicians. It would not take long.

As seen in Chapter Two, when Mr. Real Menard, Bloc Quebecois Member of Parliament for Hochelaga-Maisonneuve, the Montreal suburb where Desrochers was from, received immense pressure from his constituency to lobby for anti-gang law, he responded by tabling an anti-gang law private member's bill.⁷⁶⁷ When a spree of biker bombings similar to that which killed Desrochers occurred in 1997 (following the little publicized reduction of the Wolverine Squad), the Reform Party also called for legislation. Soon the Liberals announced Bill C-95. Demand for a legislative solution had started following the death of Desrochers and become an all-party mantra. In the words of Stuart Hall, the politicians had learned to "speak with one voice"⁷⁶⁸ about the threat. When Daniel Desrochers came to figure prominently in the Parliamentary debates that resulted in Bill C-95, the final condition for moral panic had been met. The tragedy of Desrochers' accidental killing had become an event that had "serious and long-lasting repercussions and [had] produced such changes as those in legal and social policy."⁷⁶⁹

⁷⁶⁶ *Canadian Press Newswire* (21 August 1995).

⁷⁶⁷ See: House of Commons Routine Proceedings (29 Feb 1996).

⁷⁶⁸ Hall et al. 1978, *supra* note 722 at 10.

⁷⁶⁹ Cohen 1972, *supra* note 717 at 1.

Repercussions

Public panic gives police power. Seeking police protection is a natural byproduct of trusting an authority figure in a time of crisis. This instinct is particularly strong in Canada where the symbolic power of the police is high.⁷⁷⁰ Although there may be initial concerns that the police are not doing enough, the trust level in the police remains intact.⁷⁷¹ At first incensed with police for not being able to protect an eleven-year-old boy, the public anger would soon turn on politicians to help police fight organized crime.

On August 10, the day following the bombing, Montreal mayor Pierre Bourque wrote to the Federal Justice Minister saying police lacked the tools to stop the biker war in Quebec.⁷⁷² On Friday August 11, Inspector Jean Ostiguy, leader of the Montreal police major crime unit, made the first public request for legislation that would grant police the power to arrest anyone belonging to a gang. Following contact from the Montreal police, Desrochers' father voiced the need for anti-gang law at his son's funeral and his mother began to speak out for new law at police-run press conferences. When the House of Commons reconvened from its summer break on September 21, Minister of Parliament Michael Bellehumeur (Bloc Quebecois) got right to the point:

Can the Minister of Justice tell us if his government still thinks that the current provisions of the *Criminal Code* are sufficient to allow police forces to wage an effective fight against this kind of crime?...When will the minister table in this House amendments to the *Criminal Code* that would meet police demands?⁷⁷³

⁷⁷⁰ Discussed in the previous chapter, Symbolic Power, this is also a theme explored in: M. Mopas & P. Stenning, "Tools of the Trade: The Symbolic Power of Private Security – An Exploratory Study" (2001) 11(1) *Policing and Society*.

⁷⁷¹ Maurice Martin found that for cases of continuing violence in Canada "where such incidents persist, public concern about police competence is unlikely to arise, given the conventional support for and trust in the police." Martin, *Urban Policing 1995*, *supra* note 236 at 144.

⁷⁷² Lavigne 1999, at 578.

⁷⁷³ *House of Commons Oral Question Period*, (21 September 1995) 228 (Michael Bellehumeur).

Two days later, the Wolverines joint-forces police squad had been formed. In testimony to the *Quebec Commission of Inquiry into the Sûreté du Québec*, Sûreté Director Serge Barbeau describes his surprise:

I had for months asked the Minister of Public Security [Mr. Menard] for special funds to put together a squad comprised of all police agencies in Quebec to tackle outlaw bikers. One afternoon, Saturday the 23rd of September, Menard showed up at my office at 4 o'clock. He had a meeting with the prime minister at 5 o'clock. He told me: 'Mr. Barbeau, if you want something, this is the time because it's true things are not going well.' We only have to read the newspapers from that time to see that, I think it had even become a political crisis....

We looked at a plan, we came up with some idea, a scale of what we needed in terms of a budget, and at ten to six that same day, Mr. Menard called me and confirmed that the prime minister had just given me a special budget and I had to start the next morning.⁷⁷⁴

The explosion that killed Daniel Desrochers had sent shock waves through the citizenry and forced political action. Prior to the fateful car bomb, there had been scant concern for public safety; "except for one brief moment in 1995, when shrapnel from a Hells Angels bomb ripped the life from an innocent boy, Quebecers have become inured to biker violence."⁷⁷⁵ That brief moment would have a lasting effect. By the spring of 1997, renewed biker violence caused opposition members in the House of Parliament to ask "why the government waited for two years after that little boy was killed as a result of organized criminal activity before the bill [C-95] was brought in"⁷⁷⁶ and newspapers ran articles such as "Anti-Gang Bill Merits Swift Passage."⁷⁷⁷ Desrochers death, public fear and police prompting would set the stage for Canada's first anti-gang law.

⁷⁷⁴ *Quebec Commission of Inquiry into the Sûreté du Québec (Poitras Commission)*. Testimony of Sûreté du Québec Director Serge Barbeau.

⁷⁷⁵ Y. Lavigne, *Hells Angels at War*, (Toronto: Harpers-Collins Publishers Ltd, 1999) at 9.

⁷⁷⁶ *House of Commons Debates*, 158 (17 April 1997) at 1720 (Jack Ramsay).

⁷⁷⁷ *Toronto Star* (18 April 1997), A 27.

Moral Panic and Organized Crime Law

Moral panic may be a common ingredient in modern anti-gang laws if the experiences of Canada and Ireland are representative of current trends. Recent Irish history is particularly illustrative of how a moral panic can lead to rushed anti-gang legislation. When Irish crime reporter Veronica Guerin was killed by a criminal gang member, a moral panic ensued that led to the enactment of legislation imposing large restrictions on civil liberties.⁷⁷⁸ It is worth providing a short overview of the similarities between the Canadian and Irish situation to illustrate that a pattern may exist in how moral panic has affected organized crime law development.

The death of Guerin caused huge public dismay and almost immediately, the police declared their powers insufficient to combat the organized crime elements tied to the murder. In remarkable similarity to the Canadian police, the Irish police displayed blatant disregard towards the gang-member carnage that, like the biker war in Quebec, had been occurring for some time prior to the moral panic event.

A recurrent theme in the news was reference to, depending on the report, between 12 and 15 'gangland assassinations' in the years prior to the Guerin murder. These homicides received little prior press attention, perhaps because they were instances of what Commissioner Culligan called 'thieves killing thieves.'⁷⁷⁹

Soon the Irish media began to support the police in their calls for increased powers to combat the organized crime threat. Sensational reports on organized crime activity ensued and the public became alarmed. Politicians reacted by swiftly creating new law

⁷⁷⁸ For a full explanation of the effect of moral panic on Irish organized crime law see: Kelleher 1999, *supra* note 699.

⁷⁷⁹ *Ibid.* at 12.

and passing it through Parliament in record time. Long after the fact, the legislation was found to have many constitutional weaknesses.⁷⁸⁰

In Ireland, as would come to pass in Canada, the death of one person became a catalyst for reform. In both countries, various groups would capitalize on the panic and perpetuate the alarm. The media had an exciting story to sell and politicians could gain short term popularity by appearing tough on crime. In addition, moral panic was found to boost the significance of the police in the organized crime debate. In retrospect this seems intuitive.

When the police and the general public are convinced of the guilt of certain individuals but these individuals continue to function with impunity, there is a strong temptation to alter the rules of the game so as to tilt the balance of advantage in favor of the forces of law-and-order.⁷⁸¹

Perhaps panic is a common prerequisite for organized crime legislation. American R.I.C.O. legislation was developed under a Mafia scare and Irish organized crime law has been investigated as an overreaction to the murder of a journalist. In Canada we appear to follow the same legislating trend when it comes to organized crime. In 1997, the death of Daniel Desrochers was an emotional touchstone that made police demands for new legislation increasingly popular with the public. "Daniel Desrochers' death had galvanized public attention in a way no other incident in the biker war would."⁷⁸²

⁷⁸⁰ See: note 700 in Chapter Eight.

⁷⁸¹ P. O'Mahony, *Crime and Punishment in Ireland*, (Dublin: Roundhall Press, 1993) at 29.

⁷⁸² Sanger 2005, *supra* note 723 at 99.

Summary

This chapter explored how the death of Daniel Desrochers became a moral panic event that served to bind police warnings with public concern over the motorcycle gang war. When an upsurge of biker violence hit Quebec in 1997⁷⁸³, “members of the public were understandably outraged and frightened.”⁷⁸⁴ Media publicity, political awareness of public anxiety and Josée Desrochers’ public pronouncements of support for the police all served to entrench the police as an important player in finding a solution to the continued feuding.

Stanley Cohen’s discovery that authority figures gain heightened importance in a perceived crisis⁷⁸⁵ was amply evident in the aftermath of Desrocher’s death. The Wolverines were created at great expense and policing solutions became prominent in the public media. Politicians from Quebec took up the cause of new legislation advanced by law enforcement leaders. Police, it would seem, had become central to the anti-gang law debate.

Part II of this thesis has examined police power and its significance to anti-gang law. The first chapter in Part II provided an overview of the police association declared essential to the government law-making, the CACP. As the largest representative body of

⁷⁸³ A particularly abhorred act was committed on March 8, 1997, when an explosive-laden car detonated in front of a Hells Angels clubhouse in Maisonneuve. The explosion wreaked damage throughout the area even causing “shards of glass [to fall] in the crib of a month old baby.” (*Globe and Mail* (20 March 1997), A 4). The danger to the general public no doubt served as a reminder of Desrochers’ plight.

⁷⁸⁴ Stuart, *Unjust Criminal Legislation 1997*, *supra* note 5 at 209.

⁷⁸⁵ Cohen 1972, *supra* note 717 at 1.

police leadership in Canada and an increasingly powerful lobby group, the CACP are the nation's most influential police association.

The following chapter, "Police and Politics", explored how police have become an important player in criminal justice policy and thus an important ally to government crime control initiatives. Police independence from politics has increasingly evolved into interdependence and police politicking has made the views of law enforcement more prominent in the public arena.

Chapter Six provided a detailed theoretical study of the symbolic capital of the police. It outlined Bourdieu's theory of symbolic power and discussed sources upon which symbolic power relies. Mythologizing of the police profession was examined as an explanation for sustained police authority and symbolic power, along with the authority it confers on police pronouncements, was shown to be at its greatest when police and public concerns are aligned.

Chapter Seven used dramaturgical analysis to explain the power that police exert over the public's understanding of motorcycle gangs. It discussed the police mandate of control, the defiance displayed by biker gangs, and the willingness of the media to convey police portrayals of the biker threat. Police loathing of outlaw motorcycle gangs and their significant control over public perceptions of bikers was also examined as a means of police having their internal biases accepted externally. This enables the police to monopolize popular opinion of bikers. The chapter concluded by showing that when a

motorcycle gang war broke out in mid-1990s Quebec, police were already well-positioned as biker experts.

Chapters Eight and Nine highlighted two significant factors that enlarged police authority over the organized crime threat in the period leading up to Bill C-95. New Right criminal justice theory has been seen to shape policy-making in the 1990s and support law-and-order solutions. The existence of a “Moral Panic” explained how public and press views on organized crime came to align closely with those of the police.

Part III of the thesis conducts an empirical examination to determine the actual impact of the police, and the CACP in particular, on the resulting legislation. To this point, the study has established the significance of police leadership in the reform period. It is now essential to determine whether police could translate this accrued power into legislative impact. The Liberal Party positioned Bill C-95 as legislation created with significant CACP involvement and the legal literature on Bill C-95 has concurred with these government pronouncements. Part III challenges these assumptions by critically examining police participation in the law-making process. It is argued that the symbolic power of the CACP became a political tool to legitimize expedient but flawed law.

PART III: ASSESSING INFLUENCE

Introduction

The empirical work in this section begins by studying CACP impact on the 1996 *Organized Crime Forums*. These forums were repeatedly cited through the House of Commons Debates as having influenced the shape of the legislation and as being the main venue for police chiefs to make their anti-gang demands. The analysis in this section is based on an examination of documents obtained from the Department of Justice and Ministry of the Solicitor General through Freedom of Information requests.

The analysis continues with an in-depth exploration of archived CACP records of involvement in the law-making process that resulted in Bill C-95. Internal correspondences, committee meetings, conference notes, legal briefs and contact with government officials are analyzed to assemble a comprehensive picture of the CACP's role. Preceding chapters in this study have contextualized the law making-period, provided a theoretical framework for assessing police power, and explained how police leadership had achieved a position of importance with regards to organized crime and motorcycle gangs. Part III empirically examines primary source documents to determine the type of influence police chiefs actually realized.

On the surface, it would seem that everything was aligned for the CACP to have a major impact on Bill C-95. The ongoing biker war and its creation of political pressures faced by the government nearing a national election had made new legislation attractive. Police, having control over general understandings of the motorcycle gang threat and

garnering public support in a time of crisis had become a natural ally for consultations on new law. The climate of crime control and a moral panic had elevated police authority to speak on organized crime, making them publicly popular and politically invaluable.

The challenge at this point is to establish whether these factors translated into police impact on the ensuing legislation. Government press releases and pronouncements in Parliament would have us believe this to be the case, a position thus far accepted in the academic literature. To test this assumption, it is necessary to look behind the political posturing and beyond the generally accessible documents.

Chapter Ten: The Federal Organized Crime Forums

At the [September 1996] Forum, Canada's police urged government to give them the tools to do the job. And that is what we have done...We listened to police and passed tough, comprehensive anti-gang legislation. Canada's police have said, 'Give us the tools and we will do the job'. And that is what we are doing. We acted on law enforcement's call...the Canadian law enforcement community has been the cornerstone of our anti-organized crime efforts.⁷⁸⁶

On first inspection, two federally-run organized crime forums held the year before the adoption of Bill C-95 appear to indicate a high level of CACP involvement in the law-reform. Both forums were instigated at the request of the CACP and participation at the forums consisted almost entirely of law enforcement leaders. Moreover, the purpose of both forums was to create a venue to have police concerns expressed. This chapter examines these forums and their impact on the reform process.

The 1996 February and September forums were not public events. To obtain information on the organization, participation and topics of the forums two *Freedom of Information* (FOI) applications were made to the Access to Information and Privacy Office in Ottawa. Transcripts were eventually acquired from Department of Justice. They include records from the Department of Justice and the Ministry of the Solicitor General. The information received through these requests is subject to the usual caveats attached to all FOI information.⁷⁸⁷ Needless to say, many consultations occurred behind closed doors

⁷⁸⁶ *House of Commons Debates*, 039 (27 November 27 1997) at 1015 (Hon. Andy Scott).

⁷⁸⁷ The author acknowledges both the subjective choice of the Information Access Officer and that some intelligence "has been deleted from the enclosed records under section 15 (1) - the national security provision - of the Act". (Quote source: letter received from Duncan Roberts, Coordinator Access to Information and Privacy, Department of the Solicitor General: dated July 17, 2001.) As one author argues, the very mechanism intended to make government more transparent often leads to the reverse: "Access to

and sensitive discussions were deleted from the transcripts. Substantial vetting by the FOI office resulted in many missing paragraphs with “confidential” stamped on the page in their place. Nevertheless, the documents provide a good overview of what topics were discussed and whether CACP proposals introduced at the forums were to become significant to the ensuing anti-gang legislation.

February Forum

In February, 1996, federal officials met with representatives of the Canadian Association of Chiefs of Police to discuss the issue of organized crime.⁷⁸⁸

The February 9, 1996 *Organized Crime Forum* was jointly held by the Ministry of the Solicitor General and Department of Justice⁷⁸⁹ but had been initiated by the CACP. This type of arrangement is not unusual for the CACP. More so than any other police association in Canada the CACP has “active liaison with various levels of government and departmental ministries having legislative and executive responsibility in law and policing.”⁷⁹⁰ In his opening remarks to the police leaders, Solicitor General Herb Grey immediately acknowledged CACP intentions:

You believe additional measures are needed to get at the roots of organized crime groups. You have organized this Forum to discuss additional legislative and non-legislative measures which are needed to achieve this goal.⁷⁹¹

Information legislation tends to make them [government agencies] even less frank.” D. Savoie, *The Politics of Public Spending in Canada*. (Toronto: University of Toronto Press, 1990) at 115.

⁷⁸⁸ “New Criminal Anti-Gang Measures”, *Department of Justice Backgrounder*, online: <<http://canada.justice.gc.ca/en/news/nr/1997/prgangbk.html>>.

⁷⁸⁹ In a hand-written inter-office government memo “Re: Seminar on Organized Crime –Feb 9, 96” it states, “as per the attached letter, you will note that the Department of Justice and Solicitor General will share costs - Memo from Sussie Natel, Department of Justice to E. J. Bridges, Department of Justice and Joanne Pelland, Department of the Solicitor General, dated March 19, 1996.

⁷⁹⁰ Online: <<http://www.cacp.ca/english/general/History/HistoryEng.htm>> at 1.

⁷⁹¹ Herb Grey, Solicitor General of Canada, “Opening Remarks” (Address to Organized Crime Forum, Ottawa, Ontario, February 9, 1996). Obtained through Freedom of Information request (herein, FOI).

The purpose of the Forum had been known long in advance. Since the death of Desrochers, police chiefs had been demanding new law in the press.⁷⁹² In his welcoming letter to the police leaders, the Deputy Minister of Justice wrote “we will discuss openly issues related to organized crime in Canada,”⁷⁹³ bringing a sense of unified purpose to the discussions. The Deputy Minister’s speaking notes provide evidence of signaling solidarity with the policing concerns. Much attention was paid to increasing the police “tool kit” to fight organized crime with little mention of improving policing success under current laws and powers. This approach was echoed by the Solicitor General:

I am working with the Minister of Justice to see what further initiatives we can undertake to pursue and intensify the fight against organized crime, in cooperation with other Canadian police forces...Tougher legislation does have a place in the overall government strategy to reduce crime.⁷⁹⁴

The speeches were just what the CACP wanted to hear. Although there were no specific agreements, the groundwork had been set and it was decided that a future round of talks would occur later in the year. The meetings between the police and government leaders reflect Atkinson and Coleman’s policy community understanding that “in closed forums societal and state actors develop consensual arrangements.”⁷⁹⁵ The CACP assumed they were partners in the process of developing new legislation.

⁷⁹² See Chapter Nine, “Moral Panic”.

⁷⁹³ Letter from George Thomson, Deputy Minister of Justice Canada, to Police Leaders (26 January 1996), FOI.

⁷⁹⁴ Herb Grey, Solicitor General of Canada, “Opening Remarks” (Address to *Organized Crime Forum*, Ottawa, Ontario, 9 February 1996). Obtained through FOI.

⁷⁹⁵ Atkinson & Coleman 1992, *supra* note 36 at 165.

September Forum

The second Organized Crime Forum was held over two days, September 28–29, 1996. This was the more significant of the two forums for several reasons. First, it represented the final and largest federal organized crime forum to be held before Bill C-95 was announced seven months later. Second, the forum was the most inclusive federal meeting inviting participation beyond government and law enforcement. Finally, it was the event most frequently cited by government representatives in Parliamentary debates as evidence of the Bill being a response to police requests. As we have seen, this was to assume enormous importance in passing the law through the legislature.

As in the February Forum, the intention of the September forum was to discuss CACP concerns:

The Canadian Association of Chiefs of Police, Mr. Sangollo and others have made it quite clear to us at the first Forum and on other occasions that the police need help to deal with this threat...The police and the courts need to have the tools that can effectively deal with the organized crime of today and into the next century.⁷⁹⁶

Early drafts of the “Proposed List of Participants” found in the FOI material reveal that initial plans included only public servants and police leaders. Closer to the forum date, perhaps in the interest of portraying transparency, it was deemed wise to invite other participants. Despite this concession, the mandate remained the same. Leading the list of

⁷⁹⁶ Nick Discepola, Parliamentary Secretary to the Solicitor General of Canada (Speaking notes for the National Forum on Organized Crime, Ottawa, September 27, 1996). Available at the Government of Canada web site, online: <www.sgc.gc.ca>.

Proposed Forum Objectives was the objective “To assess the recommendations of the police.”⁷⁹⁷ This message was also made abundantly clear in the general invitation:

The Forum in September will follow-up on discussions that Ministers Rock and Gray had with police representatives in Ottawa in early February, and will address the full range of issues identified by the police at that time.⁷⁹⁸

The opportunity for police leaders to influence government direction on organized crime looked very real. Even the main planning session speaks to high-level police inclusion as it was jointly run by the Assistant Deputy Solicitor General and the Assistant Commissioner of the Royal Canadian Mounted Police.⁷⁹⁹ This would seem to indicate that the CACP were well positioned to have their interests heard since “personal contacts with Cabinet members and higher civil servants are the most effective methods used by group representatives.”⁸⁰⁰

The opportunity for influence also appeared likely due to the exclusivity of opinion sought by the government. The September *National Organized Crime Form* has been widely criticized in the academic literature as a charade that gave only the pretense of a genuinely open consultative effort. Michael Moon describes the meetings in the following way:

⁷⁹⁷ Planning Session (July 11, 1996 – Ottawa) Preparations for the September, 1996 Forum on Organized Crime. Obtained through FOI.

⁷⁹⁸ Invitation to Commissioner Thomas B. O’Grady, President, Canadian Association Chiefs of Police, third paragraph, undated. Obtained through FOI.

⁷⁹⁹ Undated letter of invitation “to participate in a one-day planning session in preparation for the Forum on Organized Crime” introduced “on behalf of myself [Assistant Deputy Solicitor General] and Assistant Commissioner Terry Ryan of the Royal Canadian Mounted Police.” Obtained through FOI.

⁸⁰⁰ R. Presthus, *Elite Accommodation in Canadian Politics*, (Toronto: Macmillan of Canada, 1973) at 175.

While the government did call a National Forum held in Ottawa on September 27-28, 1996, little thought was given to determining what organized crime was; its existence was accepted as a predetermined truism.⁸⁰¹

Don Stuart was even more critical:

Consideration of whether any measures were necessary was thus a question not on the [Forum's] agenda. This is typical of the current sham of Government consultation. The fix is in before opinion is sought.⁸⁰²

Ostensibly designed to “bring together a variety of experts from within and outside government to examine the problem of organized crime in the Canadian Context”⁸⁰³, of the 57 Forum participants, 47 were police leaders or strong police supporters (Federal and Provincial Government members and the Private Sector/Business community surrounding security industries). Of the remaining 10, only 4 would challenge law enforcement (3 university professors and Allan Borovoy of the Canadian Civil Liberties Association).⁸⁰⁴ These attendees were *persona non-grata* when the closed doors discussion were to take place:

The last half-day will be dedicated to operational issues and information sharing. These latter discussions on the Saturday afternoon, will be closed to non-government participants.⁸⁰⁵

⁸⁰¹ Moon, *Outlawing the Outlaws* 1999, *supra* note 61 at 455.

⁸⁰² Stuart 1997, *supra* note 5 at 209.

⁸⁰³ Introductory invitation paragraph (for example –to Mrs. Lynn I. Sprackelin, Q. C., Deputy Minister of Justice and Deputy Attorney General of Newfoundland), undated. Obtained through FOI.

⁸⁰⁴ Participant List, *National Forum on Organized Crime* (September 27/28, 1996), Ottawa, Participant List. Obtained through FOI.

⁸⁰⁵ Second paragraph of invitation to attend, in letters to both 1) Commissioner J.P.R. Murray of the Royal Canadian Mounted Police and 2) Dr. Naylor of McGill University. Obtained through FOI.

Although it is unknown what was discussed in the “closed” Saturday meetings as they were not to be found in the FOI documents, it was clear that additional academic or civil liberty group opinions were not welcome.

There would be strong reason to believe that that the police view was what mattered most at the forum. Of the six discussion papers listed for presentation, four were originated by police forces or CISC.⁸⁰⁶ Positions that were at times critical of police opinions were presented by Jean-Paul Brodeur and Robert Naylor who both warned of rushing to the conclusion that anti-gang legislation was a necessity. Brodeur acknowledged that the death of Desrochers had caused “mounting pressure to increase the powers of the courts and the police.”⁸⁰⁷ Nevertheless, he posited that the diversity of organized crime operations “show that it is futile to seek a uniform strategy focused solely on the criminal organizations themselves to solve the problems raised by organized crime.”⁸⁰⁸ Instead, he suggested that underpinning factors that lead to organized crime need to be addressed rather than focusing solely on a criminal justice solution.

Robert Naylor took a similar position against legislative amendments based on amorphous definitions and group-targeting. He proposed that “the whole focus on

⁸⁰⁶ Note - Papers were presented from: 1) Jean-Paul Brodeur, Director, International Centre for Comparative Criminology, “Organized Crime: Trends in the Literature”; 2) Robert Naylor, Professor of Economics, McGill University, “The Theory and Practice of Enterprise Crime”; 3) Pierre Sangollo, Assistant Director, Montreal Urban Police Department, “The Police Perspective on Organized Crime”; 4) Tim Killam, Inspector, RCMP Proceeds of Crime Branch, “Organized Crime and the Business Community: The RCMP Perspective”; 5) Tom Burns, Superintendent, Director, Criminal Intelligence Service Canada, “Criminal Intelligence and Information Sharing: CISC Discussion Paper”; 6) J.D. Neily, Inspector, Commercial Crime Section, RCMP, Milton Detachment, “Task Force and Joint Operations: A Practical Discussion of Applications to Assist in Combating Organized Crime.”

⁸⁰⁷ Brodeur 1996, *supra* note 677 at 20.

⁸⁰⁸ *Ibid.*

criminal associations instead of criminals raises some obvious problems” including driving the groups “further underground and mak[ing] intelligence gathering even more difficult.”⁸⁰⁹ In advancing his point, Naylor argued: “Not only has the case for targeting associations of criminals never been convincingly made, but there is an alternative perspective that should be considered.”⁸¹⁰ This perspective, he continued, should focus on actions rather than actors and the market context that drives organized crime activity.⁸¹¹ Both Brodeur and Naylor supported their positions by extensively citing Canadian data and sources from the fields of sociology, criminology, economics and law. Following their presentations, it was time for the CACP to make their case for new law.

CACP Requests

The police discussion paper specifically related to new legislation⁸¹² stood in stark contrast to the presentations of Brodeur and Naylor. “The Police Perspective on Organized Crime” was presented by Pierre Sangollo, CACP representative and Assistant Director of the Montreal Urban Community Police Department. In his presentation he built the police case for requiring anti-gang law. However, the presentation was noteworthy for its lack of detail and support. He cites a grand total of five external sources including an *Economist* article related to organized crime in Eastern Europe that bore questionable relevance to the Canadian situation. Furthermore, his dependence on dramatic metaphor such as calling organized crime “a massive attack on the fabric of

⁸⁰⁹ R. T. Naylor, “The Theory and Practice of Enterprise Crime: Public Perceptions and Legislative Responses” in *Forum on Organized Crime*, September 27-28, 1996, Ottawa, Discussion Papers at 53.

⁸¹⁰ *Ibid.* at 53-54.

⁸¹¹ *Ibid.*

⁸¹² The other three papers focused on improving coordination among enforcement units.

society”⁸¹³ and his exposure of utopian goals, such as dealing a “mortal blow”⁸¹⁴ to organized crime, did little to legitimize his cause.

At the end of his presentation, Sangollo outlined seven proposals put forward by the Criminal Intelligence Service of Canada (CISC) Organized Crime Committee under whose auspices CACP members had been working to develop a plan for new law.⁸¹⁵ The proposals were:

- 1) Regulation requiring financial institutions to report the names of person requesting \$1000 notes or the elimination of such bills.
- 2) Requirements for reporting the movement of large sums of money.
- 3) The classification of casinos as financial institutions that must report the exchange of large sums of money or \$1000 bills.
- 4) Imposing a fee on documents sent to the defense under disclosure requirements.
- 5) Longer sentences for persons convicted of crimes and found to be members of a criminal organization.
- 6) Lesser burden of proof for wiretap authorizations or access to information of those suspected of being a member of a criminal organization.
- 7) Further protection of the identity of an informant.

Proposals relating to the \$1000 bill had been a concern of the police for some time and could be found in previous CACP resolutions. It was not a particularly ambitious approach to organized crime and one that required no immediate action from the federal government. The fourth proposal concerning imposing a fee on disclosure documents

⁸¹³ P. Sangollo, “The Police Perspective on Organized Crime” in *Forum on Organized Crime*, September 27-28, 1996, Discussion Papers, at 4.

⁸¹⁴ *Ibid.* at 5.

⁸¹⁵ These proposals had been sent to the legal counsel of the Montreal Urban Community Police, Metropolitan Toronto Police and the Ottawa-Carleton Regional Police before being forwarded to federal justice representatives.

would have caused a maelstrom of protest from the legal community and was subsequently ignored. The requirements for money movement would eventually be addressed and the final three proposals bear some resemblance to *Criminal Code* amendments under Bill C-95. Proposals five, six and seven are related to changes to sections 467.1⁸¹⁶, 183⁸¹⁷, 487.3⁸¹⁸ of the *Code* respectively. Nevertheless, the great majority of reform measures in Bill C-95, including such significant areas as criminal participation, explosives, bail provisions, search warrants, forfeiture or the definition of organized crime, have little to do with the CACP proposals announced at the Forum.

Summary

Don Stuart claimed that the September Forum was a case of the fix being in before real opinion was sought.⁸¹⁹ If there was a fix at this stage, it did not belong to the police. In law-making, consultation is the first step that shapes proposals. As such, consultation is the window of opportunity for interest groups to have an impact on reform. The September forum was the ideal opportunity for the CACP and affiliated

⁸¹⁶ Amendments to *Criminal Code of Canada*, *supra* note 165, Section 467.1: Every one who: (a) participates in or substantially contributes to the activities of a criminal organization knowing that any or all of the member of the organization engage in or have, within the preceding five years, engaged in the commission of a series of indictable offences under this or any other Act of Parliament for each of which the maximum punishment is imprisonment for five years or more, and (b) is of a party to the commission of an indictable offence for the benefit of, at the direction of or in association with the criminal organization for which the maximum punishment is imprisonment for five years or more – is guilty of an indictable offence and liable to imprisonment for term not exceeding fourteen years.

⁸¹⁷ Under *Criminal Code of Canada*, *supra* note 165, Section 183 police were given the option of applying for judicial authorization in the case of crimes in association with a criminal organization regarding an offence that carries a minimum sentence of five years.

⁸¹⁸ Grounds to deny access to information to obtain a search warrant are found in amendments to *Criminal Code of Canada*, *supra* note 165, Section 487.3 (a) (1). The grounds include any information that would: (i) compromise the identity of a confidential informant, (ii) compromise the nature and extent of an ongoing investigation, (iii) endanger a person engaged in particular intelligence-gathering techniques and thereby prejudice future investigations in which similar techniques would be used, or (iv) prejudice the interests of an innocent person; and for any other sufficient reason.

⁸¹⁹ Stuart 1997, *supra* note 5 at 209.

enforcement leaders to come to the table with a cohesive set of proposals. The CACP had instigated the meetings, shared in their organization, gathered the most important government law-making representatives, and made numerous presentations. Furthermore, enforcement leaders comprised over three quarters of the attendance list.

Of course it would be unreasonable to expect every CACP demand to be enshrined in law. However, more success could have been expected considering the level of involvement they had in the Forum. Instead, it was surprising to find that the CACP presented a disparate package of proposals given that they had over six months between forums to formulate a reasonable package of reforms. Equally surprising was that with a biker war raging around them, the CACP chose not to focus exclusively on substantive organized crime issues but voiced mundane concerns such as imposing a fee to cover police photocopying costs of disclosure documents.⁸²⁰ Despite Sangollo's bluster, there was no viable CACP blueprint for stopping the biker war.

Representing the Minister of Justice and Attorney General, the Honourable Herb Gray introduced Bill C-95 to Parliament on September 17, 1997 in the following way:

Last September there was a *National Forum on Organized Crime* hosted by the Minister of Justice and me. The proposals we see here today are based in large measure on the recommendations made to us by the participants in the Forum including representatives of police organizations from around the country.⁸²¹

⁸²⁰ Only the most cynical would think the CACP intention was to dissuade disclosure requests.

⁸²¹ *House of Commons Debates*, 158 (17 April 1997) at 1705 (Hon. Herb Gray).

From this pronouncement we are led to decipher two strong messages. The first is that the September Forum was seminal to the construction of the Bill. The second is that the legislation was substantially created around police recommendations. Both are questionable at best. While there is ample evidence of an elite relationship between the CACP and the federal law-making bodies, there is little to substantiate claims that the CACP had significant impact on the government organized crime agenda as a result of the forums. As per policy community understandings, there was a definite potential for policy impact. Unfortunately for the CACP, this potential was not realized.

Chapter Eleven: Disorganization Surrounding Organized Crime

What is evident from the examination of the *Organized Crime Forums* is the CACP's disorganization regarding serious legislative propositions. While a biker war raged, police leaders seemed unable to formulate practical remedies. The best way to discover why this was the case is to examine internal CACP files related to the committees that would have been responsible for developing proposals: the *Organized Crime Committee* and the *Law Amendments Committee*. The majority of information presented in this and following chapters was acquired from CACP archives.

Closure of the Organized Crime Committee

Organized crime figures prominently with all law enforcement organizations and the CACP is no exception. It is a significant enough concern to the CACP to even merit its very own committee. The *Organized Crime Committee* (OCC) is charged with representing the CACP's interests in the issue and ensuring that it gets the attention the association feels it deserves. A key tenet of the committee's mandate⁸²² is to influence policy making:

⁸²² *Mandate of the Organized Crime Committee* from the CACP website: online: <www.cacp.ca>. Additional points in the mandate include the following:

- Governed by the Imperative of public safety, security and quality of life impacting all citizens of Canada and their communities, the CACP Organized Crime Committee undertakes to lead and strengthen cooperation and coordination amongst law enforcement agencies in the fight against organized crime.
- The Committee proposes to invite, evaluate and promote innovative law enforcement initiatives against organized crime through leadership in both national and international levels, through public communications, awareness and education and through advocacy with regard to policy and legislation.
- The CACP Organized Crime Committee determines to forge partnerships and model action plans to guide a unified law enforcement response to the threat of organized crime in Canada.

Through strategic decisions guided by information and intelligence from the greater law enforcement community and beyond, the Committee will promote policy development and action against organized crime.⁸²³

Like all special committees within the CACP, the OCC's job is to create resolutions that focus CACP work and make proposals for concerted action. The OCC should have had the perfect opportunity to impact Bill C-95. The public was ready for forceful action and politicians were being swayed towards legislative solutions. Thus it is somewhat surprising to find that the OCC was inoperable when Bill C-95 was enacted.

Between 1995 and 2000, the CACP shut down its *Organized Crime Committee*. A 1998 letter from a past member to the Executive Director states that "the CACP stood down its *Organized Crime Committee* in favour of a coordinated effort within Criminal Intelligence Services Canada (CISC)."⁸²⁴ CISC had long held the role as a central coordinating body for enforcement efforts and with the designation of CISC⁸²⁵ as the national body for organized crime law-enforcement communications, the CACP felt its committee was either redundant or obsolete. Additional internal correspondences explain that the association had "folded-up" its committee and promised CISC its full support. In response to a member's inquiry for information on the status of the committee in 2000, the President explained that "the CACP no longer has an organized crime committee, having set it aside several years ago."⁸²⁶ Official CACP involvement in organized crime had been reduced to providing two liaison officers for CISC-run meetings.

⁸²³ *Ibid.*

⁸²⁴ CACP Correspondence files, 1998.

⁸²⁵ Mandate of CISC Organized Crime Workshops: "Provide the facilities for the sharing of criminal intelligence among all Canadian law enforcement agencies." CISC OCC file.

⁸²⁶ CACP Correspondence file (dated 10 April 2000).

Not everyone was pleased with the new arrangement. After three years without its own committee and following the enactment of anti-gang law that was of questionable benefit to the police, CACP members began to speak up in 1998. Never one to mince words, Chief Fantino of the Toronto Police Service declared the new CISC-run committee too intimate with government. Although the new committee was supposed to “link police and other agencies across the country...to put together the ‘big picture’ regarding organized crime in Canada,”⁸²⁷ he saw an ulterior role of the new committee as wresting the policy debate on organized crime from non-government entities. The committee now included representatives from the Ministry of the Solicitor General, the Department of Justice, Correctional Services of Canada, Finance Canada, the Canada Customs and Revenue Agency, and the Citizenship and Immigration Office in addition to two CACP representatives.

Fantino became increasingly suspicious of the committee’s real motivation when repeated complaints about Bill C-95 were stonewalled at meetings and he became frustrated that, “nothing seems to be coming forward and there are no deliverables.”⁸²⁸ Obviously chagrined with the impotence of the new CISC-run committee he wrote the Executive Director of the CACP:

My concern follows the rather obvious political agenda that seems to have been infused into the fight on Organized Crime. Not that visionary and proactive political leadership is not appreciated on such a critical public safety issue. What is troubling me is the fact that our long-established leadership role, efforts, advocacy and pleadings about the threats to public and Police Officer safety posed by Organized Crime, have, in the main, been discounted in favour of an infusion

⁸²⁷ Solicitor General of Canada, “National Action Plan on Organized Crime”, Discussion Draft, June 1998.

⁸²⁸ Extract from the Minutes of the Board of Directors Meeting, (26-27 April 1998).

of a politically generated agenda whose bureaucratic architects are basically devoid of any meaningful appreciation and experience about the critically complex issues that have impact.⁸²⁹

In reference to a 1998 government-led press conference in Vancouver in which politicians assumed the police rhetoric as their own,⁸³⁰ Fantino also wondered “what would be left to the CACP if the government was taking over?”⁸³¹ Unhappy that the CACP message was being ignored and convinced of a conflict of interest in being part of a committee comprised of federal employees, Fantino resigned from the CISC-run committee.

Chief Fantino was not alone in his concerns. Other CACP members began to wonder whether the government’s intent was to appear to be speaking for the police when setting their own agenda.⁸³² The Vancouver incident seemed to have caused a general epiphany among CACP members as meeting minutes recount members’ anger at being “discounted” as the organized crime experts and frustration that the federal government was attempting to be perceived as the voice of law enforcement on organized crime. There was an uneasy feeling among the CACP that they were performing a solidarity routine with the government while not having their own position advanced. The reactions at the Board meeting documented in the minutes show a growing awareness that organized crime had become a heavily politicized issue.

⁸²⁹ Letter from Chief Fantino to the Executive Director, (1 September 1998).

⁸³⁰ *Ibid.* Fantino was particularly incensed when he overheard the Solicitor General say he “intended to bring motorcycle gangs to their knees”, a catchphrase Fantino was known to use regularly and that he felt was disingenuous coming from its current source.

⁸³¹ *Ibid.*

⁸³² *Ibid.*

By 2001, the CACP had had enough. Having been used unwittingly in government propaganda efforts and ignored in deliberations of significance⁸³³, the CACP reinstated its own committee and placed Julian Fantino at its head. The rebirth of the CACP Organized Crime Committee was largely a reaction to five years of impotence covering the period in which Bill C-95 had been passed. Certainly the Chairman felt that way. Three years previously he had expressed the view that “political expediency had co-opted the CACP into an orchestrated ‘optical illusion’ that controlled the rhetoric about the lack of tangible deliverables, critical resources and contemporary legislation.”⁸³⁴ By not having a committee of their own, the CACP had been ignored and their concerns diluted and open to manipulation.

It is of not surprising that following five years of what it felt was ineffective action, the CACP once again struck out on its own. What is a significant revelation, however, is that even before the committee’s demise, there appeared to be little CACP interest in creating legislation that targeted gangs. The *Organized Crime Committee Report* of 1994 (its final year before the five-year closure) concentrated exclusively on smuggling operations across Canada (tobacco/liquor/weapons/drugs) with no mention of the escalating biker violence in Quebec nor the need for anti-gang laws.⁸³⁵

Allusions to committee interest in shaping legislation in the final year of its existence (1994) have proven to be ‘red herrings’ as far as understanding the CACP’s

⁸³³ For example, the governments showed no interest in CACP efforts to establish a National Strategy to Combat Outlaw Motorcycle Gangs in 1997.

⁸³⁴ CACP Board of Director’s Meeting (1998).

⁸³⁵ *Organized Crime Committee Report* of 1994 submitted by committee chair Thomas O’Grady.

interest in specific anti-gang measures. For example, the *Issues for Resolution* stemming from the May 22-25 1994 CACP *Organized Crime Conference* cited three “critical areas” that impacted police operations dealing with organized crime, namely the *Immigration Act* and its application, lack of controls in government contracting, and legislative inadequacies in the *Criminal Code*⁸³⁶ (pertaining to large-sum reporting requirements for financial institutions).⁸³⁷ Given the growing atrocities in Quebec and increasing public concern with biker violence during this period one could have expected that the committee was considering more specific measures to target criminal organizations.

It did not appear that the *Law Amendments Committee* (LAC) of the CACP was interested in taking up organized crime issues either. Between 1995 and 1997, not a single resolution addressed organized crime. However, as will be seen in the next chapter it is hard to fault the LAC. Resolutions are based on other committee submissions to the LAC where they can be discussed and a written recommendation for action made.⁸³⁸ Without a CACP organized crime committee in the mid 1990s, the organization lacked the necessary platform to bring organized crime issues forward to be made into resolutions that could be officially presented to government.

⁸³⁶ *Summary of Issues for Resolution*. Canadian Association of Chiefs of Police *Organized Crime Conference: May 22-25, 1994*.

⁸³⁷ In fact this specific recommendation by the CACP was acted upon. The Statement on Organized Crime by Federal Solicitor General Andy Scott reports that: “The federal government will introduce legislation this session to create new financial reporting requirements on suspicious transactions and the cross-border movement of currency...this legislation is being developed in response to recommendations from the law enforcement community, who need a better tool to track organized crime money laundering.” Solicitor General of Canada, News Release, (27 November 1997).

⁸³⁸ See: “Committees and Functions” online: <<http://www.cacp.ca/english>>.

Impotent Initiatives

The best opportunity for CACP impact on organized crime during this period was also its biggest disappointment. Despite the closure of the OCC, a small group of police leaders decided to create its own task-force to forward organized crime concerns. The *Comitee Sur L'Adoption D'un Projet de Loi Anti-Crime* (CAPLAN) or, as translated by this author, the *Anti-Crime Law Adoption Project Committee* was led by the Assistant Director of the Montreal Urban Police Service, Pierre Sangollo, London Police Chief Julian Fantino and Assistant RCMP Commissioner Giuliani Zaccardelli. Within its fold were several police specialists and lawyers. CAPLAN's mandate was to develop its own legislative code to address organized crime investigation.

In 1995, committee members met with both the Minister of Justice and the Solicitor General of Canada to "brief them on the state of organized crime in Canada and on their proposal for change."⁸³⁹ Other private consultations occurred between CAPLAN members and the Department of Justice over the following year.⁸⁴⁰ Despite CACP backing, a proposed legislative agenda and success in Departmental contact, CAPLAN's efforts proved to be in vain.

In no uncertain terms, the CACP dismisses the idea that it, or its CAPLAN committee, was the driving force behind Bill C-95. To the contrary, the association was adamant in stating on the record that:

⁸³⁹ CACP "Draft Remarks for Speech to Parliament on Bill C-24" (21 August 2001).

⁸⁴⁰ *Ibid.*

In 1997, a series of high profile crimes in Montreal led to intense public pressure to affect some major changes to the *Criminal Code*. This led to Bill C-95...*Bill C-95 did not incorporate the CACP or CAPLAN approach.*⁸⁴¹

It appears that any organized crime efforts put forward to the government by the CACP during this period were ignored. At the CACP Annual Conference in Regina in August 1995, the idea for a National Strategy to Combat Outlaw Motorcycle Gangs (NSCOMG) was first discussed.⁸⁴² The timing was not by chance; Daniel Desrochers had just been killed. Receiving overwhelming encouragement at the conference⁸⁴³, work began in earnest to formalize the concept of a national strategy. By February 1996, the CACP had devised a plan that was subsequently adopted by the joint CACP/CISC Organized Crime Committee.

The operational approach had three objectives. The first was to provide a national vision which set goals on combating outlaw motorcycle gangs. The second was to educate and sensitize all levels of government and law enforcement while the third objective was to lobby for tougher laws. The lynchpin of the strategy was based on raising public awareness of the Outlaw Motorcycle Gang (OMG) threat. This was to be accomplished through a concerted media effort aimed at “informing” the public of the great threat posed by bikers.⁸⁴⁴

⁸⁴¹ *Ibid.* Author’s emphasis.

⁸⁴² It would seem that lacking their own OCC, NSCOMG provided CACP members an in-house forum for addressing organized crime concerns.

⁸⁴³ The initiative was “widely supported by the Canadian Association of Chiefs of Police” A Canadian Strategy for Combating Outlaw Motorcycle Gangs”, CACP/CISC Organized Crime Committee, (11 April 1997).

⁸⁴⁴ Police education tactics aimed at garnering public support targeted several topics in the mid-1990s. For example, in 1997 the CACP conducted a study showing that front-line police officers were experiencing difficulties in enforcing impaired driving charges. The study concluded that license suspensions, vehicle impoundment and alcohol ignition interlocks should be considered (CACP, Press Release: “Canadian Police Officers Perceive Problems in Enforcing Impaired Driving Laws” (24 August 1998). Another

The entire National Strategy is predicated on the principal that Canadian citizens have the right to live in a society where the music of the streets is not the sound of gunfire, where their children are not killed by anonymous bombs and the currency is not drugs.⁸⁴⁵

The strategy was formalized on April 11, 1997 when twenty-five police executives from across Canada met and agreed to ask the federal government for funding. Unfortunately for the organizers, the situation may well be described as too little too late. By the spring of 1997, the Department of Justice and the Ministry of the Solicitor General were already busy drafting Bill C-95 and failed to pay great attention to the police strategy.

Letters requesting federal support for NSCOMG in April were responded to by the Solicitor General with little enthusiasm.⁸⁴⁶ Frustration on the part of the CACP finally boiled over and a stinging letter was sent in response.

It was believed that our funding proposal, submitted at the request of and with the support of then-Justice Minister Allan Rock, as detailed in my correspondence of April 22, 1997, would not be dismissed subsequently with the formation of the Government that followed.⁸⁴⁷

initiative in the same time period concentrated on "increasing public awareness" as well as "initiating changes to the *Criminal Code*" regarding the sexual abuse of children (CACP, Press Release, "Children in Canada Are Not Safe" (7 November 1997). Over two hundred professionals were invited to attend a co-sponsored conference by the Solicitor General of Canada and the CACP to bring attention to the issue and several press releases were issued. The CACP hoped to raise the profile of organized crime in a similar manner.

⁸⁴⁵ "A Canadian Strategy for Combating Outlaw Motorcycle Gangs", CACP/CIDA Organized Crime Committee National Strategy Outline, (11 April 1997).

⁸⁴⁶ In the response, the Minister said the ideas presented would not receive federal support at this time. Ironically, a few years later, the government saw fit to steal a page from the strategy it had earlier spurned. In the 1999 *National Action Plan on Organized Crime*, the Ministry of the Solicitor General described the need for "public education to raise Canadians' awareness about organized crime and to encourage community action as an integral component of an effective strategy."

⁸⁴⁷ Letter from Chief Fantino of the *National Strategy to Combat Outlaw Motorcycle Gangs* to Solicitor General Andy Scott, (13 November 1997).

Evidently, the CACP felt misled. Sounding suspiciously like castigation for having broken a deal, the CACP representative explained to the new Minister that police chiefs had been loyal in backing the federal government's initiatives on organized crime and deserved better:

Quite honestly, Minister, I would be more comforted knowing that you did not personally read the relevant items of correspondence before responding in such a disconnected fashion.⁸⁴⁸

Berating the minister, however, was ultimately counter-productive and Chief Fantino's petulance came abruptly to an end. Ultimately, the *National Strategy* was put to rest because the CACP executive realized that pushing the campaign too aggressively would alienate the association from government leaders.⁸⁴⁹ Since diplomacy is required to maintain good relations, Fantino's disappointment could not be allowed to compromise channels of communication between the CACP and government. In retrospect, it is interesting to note that a campaign designed to raise fear levels within the public was not halted on principle but rather to preserve a relationship.

Thoroughly ignored on its CAPLAN initiative and the *National Strategy to Combat Outlaw Motorcycle Gangs*, the CACP began to question the wisdom of having largely forsaken its autonomous organized crime committee during such an important period. New programs, such as the 1996 *National Initiative on Organized Crime* were led by CISC with CACP included as a supporting party. Despite pledges to help "eradicate" illegal activities and press statements claiming that the "CACP and CISC executives [were] calling on the public and on all levels of government to help combat organized

⁸⁴⁸ *Ibid.*

⁸⁴⁹ Fantino was possibly being seen as a CACP liability by this stage.

crime”⁸⁵⁰ the CACP realized that the joint initiative was not forwarding their interests and had little impact on policy that they felt would make a real difference.⁸⁵¹

Shortly after Bill C-95 had been passed, the CACP withdrew from the CISC-run *Organized Crime Committee*. The CACP then re-deployed its old strategy of maintaining a special relationship with the powers that be. In a gentle overture to a new Solicitor General in 1999, the CACP suggested that:

Now that you have had the opportunity to get acquainted with our Executive Committee members, I believe it would be appropriate to ask you to meet with Chief Lindsay and a small delegation of members of the CACP to discuss Organized Crime.⁸⁵²

In summary, it is quite apparent that the mid-1990s were a particularly weak period for CACP organized crime initiatives. In 1994, the CACP *Organized Crime Committee* showed no interest in anti-gang law. In 1995, it was closed down for five years. The CISC-run *Organized Crime Committee* that the CACP then joined was politically submissive. Proposals from the *Anti-Crime Law Adoption Project Committee* (CAPLAN) were rejected and the *National Strategy to Combat Outlaw Motorcycle Gangs* was ignored. Chief Fantino, may have been right to find the situation intolerable.

Despite all this evidence of impotence, the CACP was credited for having worked closely with government in creating Bill C-95. From an outsider’s perspective, the paradox was that the CACP appeared to have achieved its largest organized crime

⁸⁵⁰ CACP/CISC, Joint News Release (30 May 1996).

⁸⁵¹ Minutes of the Board of Directors Meeting, (26-27 April 1998).

⁸⁵² Letter from Bryan McConnell, CACP Executive Director, to the Honourable Lawrence MacAulay (19 February 1999).

lobbying victory at the exact moment that it was most disadvantaged; when the OCC, its arm for pushing organized crime initiatives, had been severed and other initiatives were ignored. The following sections will show, from the perspective of the CACP, how hollow the “victory” of Bill C-95 actually was and how the lack of an autonomous OCC was but one of many hindrances to their influencing new law.

Lack of Leadership from the Law Amendments Committee

One might reasonably assume that with the closing of the CACP *Organized Crime Committee* (OCC), the *Law Amendments Committee* (LAC), an overarching body within the CACP for law reform efforts, could have taken up the cause and assume a leadership role on the issue of organized crime. This was not the case. In the years preceding the enactment of Bill C-95, the LAC was rudderless on organized crime without input from the OCC and insufficiently organized to champion the issue on its own. In the mid-1990s other issues were to take priority and organized crime was left behind.

This section will demonstrate that reform in the LAC came too late for the committee to have any real influence on Bill C-95. Instead, the failure of the CACP to have meaningful impact on the anti-gang law may have been a major catalyst for the reform of the LAC. Below, I discuss the role of the LAC, the locus of its efforts in the mid-1990s and its attempts at reform.

The work of the LAC typically stems from two sources. One source is requests it receives from its own membership. The Committee considers the merit of forwarded

proposals and makes recommendations for action to the Board. The other source from which Committee action originates is the Department of Justice. The LAC is called upon to join consultations with the Justice Department and as the legislative process evolves, it prepares and submits the CACP position as a brief to the appropriate Parliamentary Committee.

The LAC has the responsibility to review legal issues, assess the impact of planned legislation, develop the position of the CACP, and advise the President and Executive on matters related to potential changes in the law. A significant part of committee work is the presentation of the CACP position to the House of Commons *Standing Committee on Justice and Legal Affairs* or the Senate *Standing Committee on Constitutional and Legal Affairs*. This involves the preparation of a formal brief and often an appearance at the Committee Hearings. The objective of LAC work, as expressed by the Chair in 1995, is “to remain diligent in advancing our perspective on legislation which affects the safety of our communities and our officers.”⁸⁵³

Considering the amount of attention given to “police needs” for new anti-gang legislation by the Liberal representatives in April 1997, one would assume that the CACP *Law Amendment Committee* (LAC) had been vociferously active on the topic. Surprisingly, little from LAC records supports this assumption. In November of 1993, the Committee had decided to restructure itself in order to more effectively apply its resources. The committee created five working groups to ensure that topics of major concern would be thoroughly addressed. The groups were established to deal with the

⁸⁵³ Report of the Law Amendments Committee to the CACP Annual Conference in Regina, 1995.

Young Offenders Act, Release of Dangerous Offender Legislation, Witness Protection, Handling Agents, and Excessive Use of Force. Despite the growing motorcycle gang war in Quebec, a working group on the issue was not established. Although it could be argued that the LAC considered organized crime to be the purview of the OCC (still in existence at this time) it is surprising that there is no record of contact between these groups at such a crucial period.

In 1994, the Report of the *Law Amendments Committee* outlined several pieces of legislation before Parliament including the *Young Offenders Act* and the *Correctional Release Act*. Amendments to gun control restrictions were also of prime interest to the Committee. The Chair noted that “these all require a careful and thoughtful response from the police community and from this Association.”⁸⁵⁴ Still no mention was made of organized crime.

The June 1995 meeting of the LAC addressed gun control (Bill C-68), high risk offender legislation, lawful interception of communications, and the lawful use of pepper spray.⁸⁵⁵ The LAC appeared before Parliamentary Committees an unprecedented four times.⁸⁵⁶ These appearances and the input of the LAC were significant during this period. For instance, on May 3, 1995, the CACP (represented by the LAC) appeared before the Commons *Standing Committee on Justice and Legal Affairs* to express its views on gun control. Two amendments explicitly requested by the CACP were passed by the House of

⁸⁵⁴ Law Amendment Committee Chair, (Introductory remarks to the 1994 Law Amendments Committee Report, 1994).

⁸⁵⁵ Agenda for 15-16 June, 1995 meeting of the CACP *Law Amendments Committee*.

⁸⁵⁶ Letter from Brian Ford, Law Amendments Chair, to CACP President Chief Vincent MacDonald (20 August 1995).

Commons the following month. Similarly, on May 12, 1995, members of the LAC were invited to attend a small-group session on high-risk offenders. The importance of this meeting was underscored by the personal attendance of both the Minister of Justice and the Solicitor General.

In its efforts to have an impact on numerous topics at once, the LAC lost sight of organized crime. Working behind the scenes, a small but dedicated group tried to prevent organized crime from being completely ignored. Recorded as an initiative of the *Montreal Urban Community Police*, CACP members Julian Fantino, Rusty Beauchesne and Pierre Sangollo⁸⁵⁷, along with lawyers Vincent Westwick and Denis Asselin worked together to finalize a proposal for the 1995 Annual CACP Conference in Regina on “anti-mafia law.”⁸⁵⁸ However, the LAC annual report indicated that gun control and the *Young Offenders Act* reform were the “major commitments” for 1995-1996, leaving little room for additional initiatives. Proposals related to organized crime were surrendered to seemingly more pressing needs.

Two main causes can be identified as diverting LAC attention from organized crime during this period. On the one hand, its resources were employed trying to influence other legislative issues. On the other hand the LAC felt the CISC-run *Organized Crime Committee* of which the CACP was now a member would see to organized crime issues. Regardless of the cause, the effect was that organized crime was

⁸⁵⁷ The initiative helps explain the significant role played by Pierre Sangollo in the 1996 *Organized Crime Forums* since he was the Assistant Director of the *Montreal Urban Community Police* at the time.

⁸⁵⁸ Report of the Law Amendments Committee, 1995, at 7.

to remain dormant within the LAC during the period when its intervention could have had the greatest impact on anti-gang law reform.

The CACP seemed to be aware that there was a problem with some issues not getting proper attention from the LAC. In 1994 it proposed a strategy “to focus its efforts on major topics to ensure quality submissions rather than spreading its resources too thinly.”⁸⁵⁹ The LAC also realized that it required more legal expertise. In a 1995 letter the LAC outlined that admitting more lawyers would “assist in the preparation of briefs and presentations to Parliament, as well as providing general advice to the Committee and the Canadian Association of Chiefs of Police.”⁸⁶⁰ OPP Commissioner Gwen Boniface, a trained lawyer, progressed through the ranks of the LAC during the 1990s to become its Chair by 1998.

By the start of the following decade, the LAC was serving factums and presenting oral arguments in Supreme Court of Canada hearings.⁸⁶¹ The reform of the LAC during the later half of the 1990s also enabled the Committee to turn its sights on anti-gang initiatives as seen by its ‘intervener status’ in the Supreme Court of Canada appeal of

⁸⁵⁹ Internal CACP correspondence from the Chair of the Law Amendments Committee to the CACP President, (August 1994).

⁸⁶⁰ Letter from LAC to Toronto Chief Julian Fantino (27 June 1995), inviting lawyer Bruce Brown to work with the LAC.

⁸⁶¹ Under the LAC stewardship of Boniface, the CACP was granted motion for leave to intervene in the 2000 Supreme Court decision of whether section 8 of the *Charter* mandates a warrant as a prerequisite for a complete strip search conducted incident to an individual’s arrest (*R. v. Golden* (2001), 207 D.L.R. 4th 18 (SCC)).

Brown et al v. the Durham Regional Police Services Board in 2000.⁸⁶² Unfortunately, the emboldened presence of the LAC arrived too late to assist with Bill C-95.

Ironically, the improved functioning of the LAC may be credited to a great degree to the failure of the committee to influence Bill C-95. At the same time that Bill C-95 was being whisked through Parliament, LAC associate and former *Organized Crime Committee* member Thomas O'Grady suggested that the LAC follow the more structured practices of the International Association of Chiefs of Police (IACP) in pursuing law reform objectives. In particular, it was proposed that the CACP ought to closely track the legislative initiatives of its committees and top amongst the considerations for change was "to make clear the importance the CACP places on the need for legislative change in areas not yet considered, or accepted by government."⁸⁶³ One week following the passage of Bill C-95 the CACP proposed introducing a bolder approach to influencing legislation.

There are further indications that the failure of the LAC to be involved in anti-gang law instigated internal reform. For example, four months after legislative enactment of the new law the CACP Board of Directors resolved that the first issue on its 1997-1998 agenda would be the formulation of a "set agenda" for the LAC. Furthermore, the Police Futures Group was created to assist with leadership and "to give early warning of

⁸⁶² *Brown v. Durham (Regional Municipality) Police Force* (1999), 131 C.C.C. (3d) 1 (C.A.). The case dealt with a police road check program that targeted the Paradise Riders motorcycle gang. The gang brought an action for damages, an injunction, and a declaration that the police conduct was unlawful. In dismissing their action, the trial and appeal judges declared that the police road stops did not violate section 9 of the *Canadian Charter of Rights and Freedoms* because they were not arbitrary. The gang appealed to the SCC but eventually withdrew from the process for undisclosed reasons.

⁸⁶³ Minutes of the CACP Board of Directors Meeting, (27-28 April 1997).

emerging issues.”⁸⁶⁴ Moreover, the first objective of the 1998 CACP Strategic Plan was “advocating legislative reform, resources allocation and policy improvements with the people of Canada and their governments.” A coincidence in the timing of LAC change and Bill C-95’s enactment is possible. However, the urgency over LAC reform at the exact moment that Bill C-95 was passed is strongly suggestive of a correlation.

LAC restructuring efforts appear to have worked. The Committee took on a significant number of important issues in the late 1990s and into the new millennium and expanded its workload to encompass many more initiatives than it had attempted earlier in the decade. For example, five major parliamentary presentations were made in the one-year period following the passage of Bill C-95.⁸⁶⁵ The Committee had expanded its working group topics and was writing detailed briefs to the Minister of Justice such as its extensive submission on Extra-Provincial Police Jurisdiction in 1998.⁸⁶⁶ In 1999, the LAC addressed Parliament on Consecutive Sentencing legislation (Bill C-251) and Omnibus Bill C-51 (including the *Corrections and Conditional Release Act*). The Committee was also acting with greater professionalism. Rather than depending entirely on its own legal team, it sought external advice on issues such as whether to be active against the decision in *R v. John Robin Sharpe*.⁸⁶⁷

⁸⁶⁴ CACP, News Release, (26 August 1997).

⁸⁶⁵ Presentations by the Law Amendments Committee before Parliamentary Committees between May 1997 and May 1998: *An Act to Amend the Criminal Code of Canada and the Interpretation Act* (Powers to arrest and enter dwellings), (5 November 1997); Regulations Pursuant to the *Firearms Act*, November 24th, 1997; The Feeney Bill, (15 December 1997); *DNA Identification Act*, (17 February 1998); *Child Custody and Access Review*, (6 May 1998).

⁸⁶⁶ These would become a significant part of the 1999 Uniform Law Conference agenda.

⁸⁶⁷ *R. v. Sharpe*, [2001] 1 S.C.R. 45 (S.C.C.). The CACP sought advice on whether to challenge the Supreme Court if it decided that there were no constitutional mechanisms for Parliament to criminalize possession of child pornography.

In 1999, the new mission statement of the Law Amendments Committee read:

In partnership with relevant stakeholders, to lead progressive change through reviewing and evaluating proposed legislation, proposing amendments to the *Criminal Code* and federal and provincial statutes, representing the Association to relevant audiences on issues regarding proposed or pending legislation, and recommending resolutions to the membership.⁸⁶⁸

It defined its goals as:

working towards developing initiatives to advocate legislative reform; liaising with appropriate government departments for joint development of policies to address issues related to policing; liaising with Justice and Legal Affairs committee members and other parliamentary members on an annual basis to keep them apprised of policing issues and concerns.⁸⁶⁹

The LAC mission statement is indicative of a major shift for the CACP over the 1990s.

The terminology within the mission statement (*reviewing and evaluating proposed legislation... developing initiatives*) showed that the pervasive results-based management ethos of the 1990s had been adopted by the CACP. The Committee felt the creation of a Strategic Plan would “assist in bridging the gap between where the Committee is now and where it would like to be”⁸⁷⁰, suggesting they were less than pleased with its past record of achievement.

By the new millennium, the Committee had hit its stride. The LAC forcefully lobbied the government on many issues, tabling specific suggestions for *Criminal Code* amendments for police officer criminal liability, internet luring and requesting changes to both the *DNA Identification Act* and the *Controlled Substances Act*. The Committee also asked the Minister of Justice to improve lawful access to electronic communications and data for police. Furthermore, the LAC was invited to submit comments on the proposed

⁸⁶⁸ Law Amendments Committee – 1999 Strategic Plan.

⁸⁶⁹ Ibid

⁸⁷⁰ Ibid

legislative changes to the *Competition Act* and the *Competition Tribunal Act*. During this process, members of the LAC were formally invited to participate in the consultation process through policy forums.

Most significantly, the strengthened LAC in combination with the newly resurrected *Organized Crime Committee* contributed substantially to new organized crime law in 2001. In contrast to the limited responses of preceding years with regards to CACP organized crime initiatives, the Solicitor General sent a lengthy and detailed correspondence to the CACP regarding LAC resolutions made in 2000. His conciliatory comments (“I look forward to the continued input of the CACP” [or] “We intend to consult closely with the CACP in this development process”⁸⁷¹) proved a genuine effort to solicit CACP input. LAC resolutions, such as limited statutory exemption for police in criminal investigations, were to have significant influence on the direction of the new legislation.

Following a period of major reform through the 1990s, the LAC had a strong legal team, an aggressive mandate and was actively pursuing its interests. It was even seeking external communication tools such as writing articles for the CACP Newsletter and Magazine and posting material on the CACP website. The Committee also made concerted efforts to identify and track parliamentary bills. Bill C-95 could have benefited from this vigilance. Instead, it provided the impetus for significant LAC change. Had the Committee undergone its changes earlier and if it had had the support of a CACP-run OCC, the ensuing 1997 legislation may have been quite different.

⁸⁷¹ Letter from Solicitor General MacAulay to CACP Executive Director McConnell (25 October 2000).

A Dearth of Organized Crime Resolutions

Another measure of CACP disorganization regarding organized crime during the period leading to the passage of Bill C-95 is found through research of their resolutions. Criminal law amendment resolutions passed by the CACP are forwarded to the Department of Justice and department action on the resolution is recorded by the CACP. Typically, formal interaction with the Department of Justice is via a resolution requesting a specific legislative provision.

The LAC keeps a record of action taken on behalf of its membership when positional letters or meetings with Department of Justice representatives are initiated. For example, on the issue of creating a registry for police informers, the LAC created a position paper declaring non-endorsement of the Department of Justice proposal. The success or failure of these resolutions in becoming law is not what is of greatest importance since determining causality is highly problematic in the decidedly unscientific realm of law-making. Resolutions, however, are significant as a means of measuring both the interest and resolve of an organization on issues that it considers important.

Assembling a comprehensive study of all CACP resolutions from the 1990s is difficult since several years are missing from the archives. There are, however, sufficient records to gain a general sense of resolution goals and thus the law amendment interests of the CACP during this period. This section examines resolutions passed in the five-year

period preceding Bill C-95 (1992-1996), where there are records for each year, and any recorded federal responses from this period.⁸⁷²

In 1992, seven criminal law amendment resolutions were passed. Three related to the *Young Offenders Act* (YOA) including a resolution that the Act apply to all persons under the age of sixteen that it allow for the exchange of information on young offenders between police services and CISC, and that the *Criminal Code* be applied to children under twelve years of age who had committed serious crimes or were involved in habitual criminal behaviour. In the fourth resolution during this period, the Association urged increased fingerprinting and photographing for more *Criminal Code* offences, in the fifth it asked for the creation of a dual procedures offence for indecent exposure to children under the age of fourteen and the sixth resolution related to legislation that would permit police access to telephone listings. Organized crime was represented in only one resolution that year which was support for the tabling of Bill C-86 aimed at hindering foreign organized crime from becoming established in Canada. Youth related concerns were clearly prioritized in 1992.

Interest in youth crime continued to be a priority in 1993. The CACP urged the amendment of Section 16 of the YOA to allow for easier transfer of young offenders to adult court when they are charged with serious crimes. They also requested legislation that would enable police to apprehend and charge children under twelve years of age and asked for a provision to the *Criminal Code* that would impose liability on any adult

⁸⁷² CACP resolutions and federal responses for this section are compiled from the archived Law Amendment Committee files, COM 6, Vol. 6-9.

encouraging the criminal activity of a young person. Furthermore, they recommended that open custody for young offenders be contingent upon their conduct while in secure custody.

The only non-youth criminal law resolutions passed in 1993 were re-affirmations of long-standing and previously introduced resolutions. These included requesting that marijuana possession remain a criminal offence, soliciting legislation that requires disclosure of the pending release of dangerous offenders, and asking for more restrictions on temporary absences/early releases/parole of violent and drug trafficking related crimes. It appears that 1993 marked both a youth-focused year, and a year to reiterate previous positions. Despite the fact that this year was also when Quebec biker hostilities turned into significant warring with assassinations and bombings, there were no resolutions passed on the issue.

Firearms became the main focus of CACP criminal law reform resolutions in 1994. This was the first year that federal government responses to CACP resolutions were recorded in the archives and the year in which Quebec biker hostilities began to garner considerable media and public attention. The first six resolutions of the year (including banning replica firearms and imposing a lifetime prohibition on firearm possession following a conviction of having used a firearm in a criminal offence) were reported as being supported under Bill C-68. Dangerous offender legislative amendments also received much consideration from the CACP, in particular, release disclosure and

post-release conditions, and were marked as under consideration by the Department of Justice and Ministry of the Solicitor General in the CACP files.

In, 1994 legislative amendments were also requested of the Citizenship and Immigration Ministry to exclude non-Canadians convicted of a crime in Canada from applying for refugee status and asking that a deportation order be immediately issued. The response from the Minister of Citizenship and Immigration was that these specific suggestions made by CACP were under consideration as were resolutions regarding information sharing amongst criminal justice agencies.

Despite movement on a wide range of interests in 1994, organized crime remained largely unaddressed. The only resolution that even tangentially related to organized crime was a request to make financial institutions required to record and report to Canada Customs and Revenue Agency all transactions over \$10,000. The CACP resolution urged governments at all levels to compel individuals and corporations entering into contracts to sign a waiver enabling a thorough background check of their financial history. Initially the Justice Minister replied that this would prove too expensive to implement but then said he wished to follow up on the issue with the *CACP Organized Crime Committee*. In an ironic and perhaps prophetic twist, the Committee was in the process of closing its doors and would be defunct by the following year.

One would have expected 1995 to be a year rife with organized crime resolutions since the biker war that had been simmering in Quebec was in full public view with the

much-publicized killing of eleven-year-old Daniel Desrochers. At the very moment that police and public sentiment against bikers aligned and Quebec police chiefs were demanding greater powers, no CACP resolutions were forthcoming. Although a large number of resolutions were passed, not one pertained to anti-gang law. A host of the resolutions passed in 1995 dealt with reducing the amount of time police spend in court which the Justice Department simply responded to by referring the association to Bill C-17 (*Criminal Law Improvement Act*) which was designed to reduce the time police officers spend on procedural issues. Other resolutions dealt with prostitution, young offenders, motor vehicle theft and DNA.

Some of the resolutions are strongly suggestive of the LAC having created too diffuse a resolutions mandate. Operating on so many fronts, resolutions show signs of having been created without a great deal of consideration. One resolution recommended legislation providing for a minimum mandatory consecutive penalty of four years for the use of a knife during the commission of an indictable offence. The Justice Minister rightly responded that it would be difficult to justify harsher penalties for the use of a knife than the use of a firearm in the commission of serious offences. Another resolution recommended amendments to the *Criminal Code* that would require motor vehicle manufacturers to install anti-theft devices. The Justice Minister simply pointed out that this was not a matter that could be addressed by the *Criminal Code*. In total, ten recommendations were simply “not supported” and three received no response at all. This seems to have been a year in which the CACP was prolific but unfocused in its resolutions.

1996 and early 1997 was the final time period for CACP resolutions to have effect on the anti-gang law that was to be passed in April of 1997. This was also the year before a major overhaul of the Law Amendments Committee was to begin, much improving its resolution process.⁸⁷³ Despite CACP participation in the *National Organized Crime Forum* held in September of 1996, organized crime was again left off the resolutions agenda. As we have seen, the CACP was very involved in the forum but did not present a strong proposal for tackling organized crime.⁸⁷⁴ Instead, 1996 saw vehicle theft at the top the CACP priority list creating six resolutions. Other resolutions dealt with the national drug strategy, firearms and accountability of merchandise shipment. Anti-gang resolutions were nowhere to be found.

Between August 1996 and August 1997, numerous appearances by the CACP were made before the *Standing Committee on Justice and Legal Affairs* as well as the *Standing Committee on Health*. Presentations were made on Bill C-27, involving child prostitution, child sex tourism and criminal harassment. Other bills included C-55 (high risk offenders) C-68 (gun control and regulation) and C-8 (Controlled Drugs and Substances Act). Resolutions were reached and forwarded to government regarding using the Internet with intent to engage in sexual acts with a child, entry and search without a warrant, having the *Young Offenders Act* apply to all persons under sixteen years of age

⁸⁷³ See previous section, "Lack of Leadership from the Law Amendments Committee".

⁸⁷⁴ See Chapter Ten, "The Federal Organized Crime Forums".

and permitting police access to telephone customer listings.⁸⁷⁵ Despite the breadth of activity, none targeted criminal associations.

Summary

At the very moment when the CACP could have had impact on organized crime legislation, it was in a state of disorganization. The *Organized Crime Committee* had been closed down, independent initiatives were having little impact, and the *Law Amendments Committee* was overburdened, under-organized and in a process of renewal. Resolutions from the LAC were scattered and few focused on organized crime. As a result, the CACP was seriously compromised in its ability to develop cohesive organized crime proposals. In combination, this goes far in explaining the insignificant contribution of the CACP to the 1996 Organized Crime Forums.

The internal disorder vis-à-vis organized crime had external results. Influence on organized crime legislation in the 1990s lagged substantially behind CACP success in other areas. The following chapter reviews CACP involvement in and influence on major legal-reform initiatives of the mid-1990s as a juxtaposition to their impact on anti-gang law reform.

⁸⁷⁵ Legislative LAC resolutions for 1997.

Chapter Twelve: Participation in Law Reform

Mid-1990s Comparisons

Neither the CACP's Organized Crime Committee (OCC) nor its Law Amendments Committee (LAC) appears to have had significant impact on federal organized crime policy in the mid-1990s. While Liberal Ministers positioned 1997 anti-gang amendments as responding to police leader's stated needs, it is significant to discover that the CACP committees responsible for acting on organized crime concerns were not in a position to have much influence. This in combination with CACP impotence in the Organized Crime Forums begins to cast a shadow of doubt on the Liberal Party claim.

Another way to examine CACP influence on Bill C-95 is to compare the organization's level of involvement with the Bill with their degree of participation in other reform efforts during the same period. It is important to acknowledge that the contributions from law-makers, input from other interest groups and the shaping of proposals to fit political needs all contribute to the complexity of finding a direct relationship between interest group input and final legislation. Even when interest groups declare victory in having their demands met it is difficult to know whether their goal was already the course of action most favorable to and predetermined by the government in power. Nevertheless, significant involvement via government-requested position papers, official representations and legislative committee inclusion are all indicators of influence.

Having previously studied the LAC from the perspective of its lack of involvement in organized crime issues, this section reviews the committee's major legal reform contributions in the period surrounding the anti-gang law reform. CACP LAC files are kept for a ten-year period and at the time of this researcher's access, dated back to 1994. To accurately measure CACP impact on the consultation process leading to the enactment of Bill C-95, this section studies the five-year period contiguous to the legislation; 1994 to 1999. This enables at least two years of pre and post Bill C-95 comparisons of CACP participation in law-reform initiatives instigated by the Department of Justice.

It is important to consider two significant aspects about CACP involvement in Bill C-95 when reviewing other reform efforts. First, the CACP received the proposed amendments less than two weeks before the Bill was introduced in Parliament. Second, the CACP did not participate in any government standing committees focused on the proposed Bill.⁸⁷⁶ This stands in marked contrast to CACP participation in other reforms in the same period where either reasonable time to consider amendments, or invited involvement in government committees (and sometime both) was provided. The six reform initiatives included here are those documented in LAC files as having included significant CACP input.

⁸⁷⁶ No external groups were invited to participate in the *House of Commons Standing Committee on Justice and Legal Affairs* meetings on Bill C-95 and the CAPC did not attend the *Standing Senate Committee on Legal and Constitutional Affairs* meeting related to Bill C-95 despite a wide variety of participants. Attendees at this meeting were: from the Department of Justice - Mr. Yvan Roy (Senior General Counsel, Criminal Law Policy Section, Policy Sector), Mr. Fred Bobiasz (Counsel, Criminal Law Policy Section, Policy Sector) – from the Canadian Civil Liberties Association, Mr. Alan Borovoy (General Counsel) – from McGill University, Professor Parick Healy (Faculty of Law). Attendee list from: Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Second Session, Thirty-fifth Parliament, 1996-1997.

(1) Young Offenders Act (YOA)

In 1994, the Law Amendments Committee (LAC) was invited to make representations to government on the YOA. When the Department of Justice prepared to introduce legislation later that year to amend the Act, the LAC was given over two months to study the proposed amendments and prepare a position paper.⁸⁷⁷

A number of concerns were expressed. Central amongst these was that the penalties were too light and would not be taken seriously by youth or the community. The CACP enumerated additional concerns on behalf of the police community including how cumbersome and time consuming the provisions were for minor offences. These constraints could cause statements to be excluded from trial for technical reasons.⁸⁷⁸ As a result of their concerns, the CACP was asked to appear before the *House of Commons Standing Committee on Justice and Legal Affairs* where they submitted a brief and made a presentation.

These opportunities for dialogue were maintained as new amendments to youth justice initiatives continued through the 1990s. In 1998, the Minister of Justice announced a new youth strategy and the CACP was invited to a consultation meeting in Ottawa on youth justice due-process issues. The consultation process led in 1999 to an invitation to the CACP by the Research and Statistics Division of the Department of Justice to participate in a national research project on “Police Discretion related to

⁸⁷⁷ A special committee was formed at the Montreal meeting of the CACP in 1994 that was specifically tasked with preparing comments for inclusion in the position paper.

⁸⁷⁸ *New Youth Criminal Justice Legislation: Implications for the Police*, Highlights from the 1998 CACP positional paper for the *Youth Criminal Justice Act*.

Youthful Offending.”⁸⁷⁹ Feedback from the CACP continued to be sought as changes were proposed and the CACP were asked to appear before the *Standing Committee on Justice and Human Rights* on Bill C-3 (Youth Criminal Justice Act) in February 2000. In total, the CACP was a significant government consultation partner for over six years.

(2) Reform to Sentencing and the Corrections and Conditional Release Act

In 1994, the Minister of Justice introduced two bills (C-41 and C-45) expanding the sentencing options available to the courts. Amendments to the Act began in the summer of 1994 and a position from the CACP was formulated during the fall. The CACP was asked to present its position on the Act before the *Commons Standing Committee on Justice and Legal Affairs*. The CACP was disappointed when the resulting Act had less robust sentencing provisions that the association had argued for.

Four years later, the CACP firmly supported opposition Member of Parliament Albina Guarnieri when she proposed amendments that would ensure mandatory consecutive sentences for sexual offences and create discretionary power for courts to order consecutive parole ineligibility periods for multiple murderers. She personally wrote the Executive Director asking for CACP “input and support” in the Justice Committee hearings.⁸⁸⁰ The House of Commons voted 81 to 3 in favor of her proportional justice Private Member’s Bill.⁸⁸¹ Echoing language found in earlier CACP reports, the Honourable Ms. Guarnieri asked members of the house “to defy the predator

⁸⁷⁹ Letter from CACAP to attention of Executive Director McConnell (11 January 1999).

⁸⁸⁰ Letter from M.P. Albina Guarnieri to CACP Executive Director (4 November 1998).

⁸⁸¹ Office of MP Albina Guarnieri, Press release, (23 October 1998).

protection industry by ending volume discounts for rapists and murderers.”⁸⁸² It was clear that the CACP had been significant supporters of the reforms.

(3) Gun Control

In contrast to sentencing reform, gun control was an issue on which the CACP sided firmly with the government. Since the early 1970s when they passed a series of National Conference resolutions seeking tougher standards for gun ownership, the CACP had been an outspoken lobby group on the subject.

Bill C-68, introduced in Parliament in 1995, launched a series of far-reaching proposals for tracking gun ownership including a national registry system. The CACP were immediately invited to appear before the *House of Commons Standing Committee on Justice and Legal Affairs* (May 3rd, 1995). Supportive of the Bill overall, small amendments put forward by the CACP were quickly adopted and the Bill was passed within a month.

The CACP was then asked to be one of the first witnesses to be heard by the *Senate Standing Committee on Constitutional and Legal Affairs*. With the amount of CACP involvement for gun control initiatives, by 1997 the Association had prepared a standardized response for public questions on the matter:

The position of the CACP in support of gun control is well known. Certainly, it will not be a panacea but we believe it will save lives. Also, preventing the illegal and dangerous use of firearms is very much a front-line policing concern. We see the function taking its place among our other priorities and activities.⁸⁸³

⁸⁸² *House of Commons Debates*: Bill C-251, 1st Session, 36th Parliament 1997 (Albina Guarnieri).

⁸⁸³ CACP Revised Questions and Answers, (25 August 1997).

Doomed to suffer from unforeseen expenses and rampant non-compliance, this Bill nevertheless swiftly passed through Parliament while being strongly supported by the police.

(4) Uniform Warrant Return Policy

A Resolution on Uniform Warrant Return Policy from the Federation of Canadian Municipalities (FCM) endorsed in 1998 highlights the ability of the CACP to network its position for effect even when it is initially not asked by government for its input. A CACP presentation on the issue at the *FCM Standing Committee on Community Safety and Crime Prevention* caused the CFM's the National Board of Directors to "endorse a resolution on non-returnable warrants similar to the one endorsed by the Association of Police Chiefs."⁸⁸⁴ As a result of collaboration between the FCM and CACP, a brief was prepared and sent to the Solicitor General that read

Be it resolved that the Federation of Canadian Municipalities support the Canadian Association of Chiefs of Police, and urge the Minister of Justice and the Solicitor General of Canada to meet with their provincial/territorial counterparts with a view to establishing uniform warrant return policy, applicable throughout Canada.⁸⁸⁵

Subsequently the CACP was invited to participate on a government committee studying the topic. Initially, the CACP was not invited to participate in the reform effort but the association was able to exert influence by joining forces with the FCM.

⁸⁸⁴ Letter from the FCM to CACP Executive Director Ford (16 December 1998).

⁸⁸⁵ Carried December 1998 Federation of Canadian Municipalities Board Decision.

(5) Criminal Harassment

Seeking feedback from the CACP on proposed changes to criminal harassment law in 1998, the Department of Justice (DOJ) wrote “we welcome your views on such an amendment.”⁸⁸⁶ Stating the issue as an amendment to section 264 of the Criminal Code of Canada to increase the maximum penalty from five to 10 years of imprisonment, the document outlined the areas for commentary. These included the effect of the amendment, background and experience with the previous law, documents in support of the amendment, arguments against the amendment and issues for discussion. The CACP was given over six weeks to respond in writing to the proposed reform.

(6) Police Immunity

Police immunity serves as another good example of CACP consultation with government on upcoming legislative reform and one specific to organized crime. In this instance, the reform was sparked by the case involving *John Campbell and Salvatore Shirose v. Her Majesty the Queen*.⁸⁸⁷ Due to the Supreme Court decision stemming from a 1998 police road stop, numerous types of police investigations could no longer be carried out or could only be carried out in a restricted manner that significantly lessened the chance of law enforcement success. Police could no longer pose as buyers, sellers or transporters of illicit goods and cargo without coming into violation of the law. The core of new legislation involved creating immunity for police for otherwise illegal acts committed during the course of their work.

⁸⁸⁶ “Criminal Harassment Consultation Document”, Department of Justice. (6 August 1998).

⁸⁸⁷ Consultation with respect to a possible legislative response to *John Campbell and Salvatore Shirose v. Her Majesty the Queen*, [1999] 1 S.C.R. 656 (S.C.C.), Department of Justice Criminal Law Policy Section letter sent to the CACP April 5th, 2000. **Note:** Document marked “CONFIDENTIAL: For Consultation Purposes Only”, therefore detail of the correspondence is excluded from this study.

In 1999 the CACP supported and approved a Canadian Association of Police Boards (CAPB) resolution to express support for the Solicitor General and Minister of Justice in the development of a statutory exemption regime for officers having to partake in certain criminal activities during a bona fide investigation.⁸⁸⁸ Following its joint action with the CAPB, the CACP developed its own resolution and presented it to the Solicitor General.⁸⁸⁹ On October 5, 2000, the CACP was asked to participate in a roundtable consultation hosted by the federal government on this matter.⁸⁹⁰ The Department of Justice then sent the CACP detailed amendments it was proposing and highlighted those issues on which it was seeking advice. After six months of consultations, legislation was introduced. Although the resulting legislation did not meet every police request, overall it was highly favorable to police interests.⁸⁹¹

In contrast to the examples cited above, other legislative amendments of interest to the police passed with little opportunity for the CACP to provide meaningful input. Two examples stand out; dangerous offender and self-induced intoxication legislation.

⁸⁸⁸ Resolution Approved at the Annual Meeting of the Canadian Association of Police Boards – Resolution 99-11: Protection for Police Officers, (August 1999).

⁸⁸⁹ CACP Resolution 2000-8.

⁸⁹⁰ Acknowledged in a letter from the Solicitor General MacAulay to CACP Executive Director McConnell, dated 25 October, 2000.

⁸⁹¹ Other examples of legitimate government/CACP consultation in the mid-1990s are referenced in the files but with limited background information. For example, the consultation on the feasibility and implications of electronic disclosure in 1999 is another instance of meaningful consultation. The Uniform Law Conference passed a resolution: “That a joint study be conducted of the standards for the electronic disclosure of evidence by the Canadian Bar Association and Canadian Association of Chiefs of Police in consultation with relevant federal, provincial and territorial government departments and other interested/relevant professional associations.”

Release of Dangerous Offenders

In anticipation of expected legislation in the fall of 1994, members of the LAC met with officials from the Department of Justice to “ensure that they continue to be aware of the police position.”⁸⁹² Although their efforts resulted in one more meeting with high-ranking government representatives⁸⁹³, this encounter was to be their last on the issue as government advanced its own agenda.

Self-Induced Intoxication (Bill C-72)

Following a Supreme Court decision to acquit an individual of a serious crime on the basis of intoxication, the Government quickly introduced new legislation. The LAC complained that “there was no Committee hearing into this Bill, nor the usual consultation process.”⁸⁹⁴ The CACP had been left behind.

Legislation relating to: Young Offenders, Conditions for Release, Gun Control, Uniform Warrant Return Policy, Criminal Harassment, and Police Immunity are examples of the CACP having genuine influence. In each instance, the CACP was either meaningfully involved in government committee considerations of the reform topic or was given adequate time to provide input to government proposals (and sometimes both). These are significant indicators of reform participation. Real consultation takes time as genuine partners in reform are required to think through then formulate responses to

⁸⁹² Report of the CACP Law Amendments Committee, 1993-1994.

⁸⁹³ On May 12th, 1995, a consultation session was co-hosted by both the Minister of Justice and the Solicitor General of Canada and attended personally by both ministers included representation from the CACP.

⁸⁹⁴ Law Amendment Committee files, COM - 6, Volumes 6-9.

government suggestions. In turn, government representatives must take the time to consider feedback then decide whether to adopt external recommendations.

CACP involvement in release of dangerous offenders and self-induced intoxication legislation were both noticeable for not having either of these indicators of collaboration present and the CACP achieved little influence in either. The lack of committee involvement or meaningful consultation was also to be the unfortunate hallmark of CACP participation in Bill C-95.

Bill C-95

Up to this point, we have seen that CACP committees had little impact on Bill C-95 and that the Association's effort and involvement in law-reform were not focused on organized crime. This section looks directly at CACP / Government interaction on the anti-gang law and tests the veracity of government claims to significant police consultation in the making of Bill C-95. Some of these claims are produced below:

The Department of Justice began to show a special interest in this matter [organized crime] at the Regina Convention of Chiefs of Police in the summer of 1995... The Minister of Justice instructed his officials to try and draft a Bill based on the work that had been done in 1996 and on the work undertaken by the chiefs of police."⁸⁹⁵

The proposals, developed through extensive consultations with police across Canada, will give them and other law enforcement agencies better tools to investigate and prosecute those who have participated in criminal gang activity.⁸⁹⁶

⁸⁹⁵ Submission of Mr. Yvan Roy, Senior Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice, to the Standing Senate Committee on Legal and Constitutional Affairs, Issue 63 [Bill C-95], Thursday, (24 April 1997).

⁸⁹⁶ Government of Canada, News Release, "Federal Government Introduces National Anti-Gang Measures" (17 April 1997).

We listened to police and passed tough, comprehensive anti-gang legislation. The Canadian law enforcement community has been the cornerstone of our anti-organized crime efforts... At the forum, Canada's police urged governments to give them the tools to do the job. And that is what we have done.⁸⁹⁷

On March 27, 1997, the Minister of Justice wrote CACP Executive Member David Boothby that he was "examining a host of concrete changes to the *Code* that I believe will assist police in their work."⁸⁹⁸ He asked:

for any comments or suggestion you might have for action that might improve the criminal law or provide police with other effective tools in their continuing efforts. I should emphasize the short time period available to us to complete this work: I would like to take action during the week of April 8th next.⁸⁹⁹

The problems with this request were manifold. One of the difficulties that was immediately apparent was that there were no "concrete changes" that could be addressed. Instead of detailed proposals, the Minister sent broadly worded plans relating to judicial interim release, search warrants, wiretapping, sentencing guidelines and recognizance orders for gang members.⁹⁰⁰

Another problem was that the CACP was caught by surprise. There is no documentation to be found in the CACP archives that indicates knowledge of the Minister's interest in developing legislation.⁹⁰¹ The circumstantial evidence is backed up by a particularly illuminative document from CACP files. Six pages of handwritten notes

⁸⁹⁷ Solicitor General, "Organized Crime" (Address to Parliament on the State of Organized Crime, November, 1997) with reference to the September 1996 CACP-run Organized Crime forum.

⁸⁹⁸ Letter from the Minister of Justice to CACP member Chief Boothby (17 March 1997).

⁸⁹⁹ Letter from Minister of Justice Rock to Chief D. J. Boothby (27 March 1997).

⁹⁰⁰ *Ibid.*

⁹⁰¹ A host of CACP correspondence in the winter of 1997 in preparation for its annual conference is completely bereft of organized crime considerations. Moreover, the CACP liaison officers to the CACP/CISC Organized Crime Committee (Chief Fantino and Assistant-Director Sangollo) voiced nothing about the upcoming legislation in the committee's final meeting, just weeks prior to the anti-gang law enactment. If government plans had been known, it would seem reasonable to assume they would have at least been raised as a topic for discussion.

were found under the title “CISC Sub/Committee on Anti-Organized Crime Legislation - 99/03/09 – Bryan.”⁹⁰² Several documents in this time period bear the same signature as that of “Bryan” thus the signature could be compared to establish that the notes were written by CACP Executive Director Bryan McConnell. The notes do not suggest prior meaningful government consultation with the CACP.

Under the heading “Vince-History” (Vince Westwick, CACP Legal Advisor) the notes explain that in 1994, Rusty Beauchesne⁹⁰³ had met with federal officials about organized crime and that a “multidisciplinary group [was] put in place by the Solicitor General’s office”⁹⁰⁴ to consider legislation. This group, Westwick clarified, was ineffective because it was “too big and unwieldy.”⁹⁰⁵ “In 1994,” he explained, “[o]ur work had set us up to offer up a package.”⁹⁰⁶ According to the transcript the Ministry had lost interest and the proposal package was never completed. Following input from Westwick’s history, McConnell notes that Rusty Beauchesne had summarized the outcome in the following way: “lessons learned – be prepared for the day when the politicians come looking.”⁹⁰⁷ In other words, despite apparent federal indifference to police initiatives, the CACP felt it should have been ready to react to the last-minute government anti-gang proposals in 1997.

⁹⁰² These notes were found in the 1999-2000 CACP file Pro-9 and will be referred to as: Notes of Bryan McConnell - CISC Sub Committee on Anti-organized Crime Legislation (9 March 1999).

⁹⁰³ Lawyer for the Toronto Police Service and CACP legal advisor.

⁹⁰⁴ Notes of McConnell, *supra* note 902 at 2.

⁹⁰⁵ *Ibid.*

⁹⁰⁶ *Ibid.*

⁹⁰⁷ *Ibid.*

However, even if the CACP had been prepared, it would have been nearly impossible to respond to what came next. The actual “Proposals Under Consideration”⁹⁰⁸ would not be received by the CACP until they were faxed from the Office of the Minister of Justice and Attorney General of Canada to the attention of Executive Director on April 7.⁹⁰⁹ In what must have been a frantic 48 hour period, the police legal advisors Neal Jessop and Scott Newark tried to address the proposals as they put together a three page response that was completed by April 9.⁹¹⁰ Their correspondence is highly revealing and worth presenting in detail here.

As you know, the Justice Minister has promised action on organized criminal activity with legislation expected early next week. We have received an outline of issues being considered by the Justice Department and I have spoken twice with officials within Mr. Rock’s office to get a better sense of what the amendments entail. Before getting into an analysis, I should offer the following general observations:

1. **Here we go again.** Mr. Rock’s propensity for last second legislation is again on display. As we both know, this issue has been on the table, especially from

⁹⁰⁸ Proposals Under Consideration, from the Department of Justice (faxed to the attention of Mr. Brian McConnell, 7 April 1997): **1.** That a member of a gang can be brought before a provincial court judge by an Attorney General for the purpose of seeking an order under or similar to that proposed in s. 810.2 (see C-55). **2.** That part VI of the Code be amended: to eliminate the “last resort” requirement re. authorization in respect of gangs; to permit an authorization to investigate a pattern of criminal activity without having to specify a specific offence; to dispense for longer periods of time within which notice is to be given; to extend the validity of the period of the authorization beyond the present 60 days; to make it clear in the law that powers of entry in relation to the installation and removal of devices are available or incidental to any authorization. **3.** That the search warrant part of the Code be amended to permit warrants based on reasonable suspicion to enter onto private property or places which are generally open to the public (or where property is posted against trespassing when that property belongs to or is controlled by a gang) overtly or covertly to use their senses of sight and smell to obtain information or evidence. **4.** That there be a codification of a procedure to seal search and other warrant informations to obtain and report in respect to the execution of these warrants. **5.** That the proceeds part of the Code be expanded to cover proceeds in relation all serious Code and federal offences. **6.** That the proceeds part of the Code be amended to permit access to Income Tax information for all proceeds offences. **7.** That there be a forfeiture provision to permit the forfeiture of instrumentalities of Code offences modeled on the CDSA. **8.** That the provisions in relation to bail and interim release be modified to require an individual to show cause why detention is not justified for individuals believed to be a gang member in relation to offences believed to be gang related. **9.** That gang membership be an aggravating factor for sentencing purposes and for delaying parole eligibility. **10.** That the Code be modified to permit anonymous juries. **11.** That the murder provisions of the Code be modified to make it a first degree murder to use explosives to cause the murder.

⁹⁰⁹ Fax found in CACP dossier: “Organized Crime Project – General – Pro 9 Vol. 4.”

⁹¹⁰ Letter from Scott Newark to Neal Jessop (9 April 1997) regarding Organized Crime Proposals, from CACP dossier: Organized Crime Project – General – Pro 9 Vol.4.

the CACP since at least 1994, and with an estimated ten days of House time remaining before an election, these amendments are produced. This is not the way to make effective, thorough and sustainable criminal law and the short time frame creates pressure which should not be present. Given the frequency with which this has occurred, it may well be that this process is deliberate and thus manipulative.

2. **The window is closing.** Our expectation is that a maximum of 15 (and more likely 10) days of House time exists. Thus, every hour spent on debate is precious and if, for example the Government chooses to push some of the useless provisions these amendments contemplate, they will be consciously choosing not to act on other tangible, important matters such as DNA Data Banks, restoring victim rights taken away in C-45, completing C-55 and “fixing” conditional sentencing via C-17.⁹¹¹

Further on in the letter, frustration with both the limited time to respond to the proposals and the restricted amount of information provided are obvious:

No draft proposal has been forwarded to us. Obviously, this is the cornerstone on which all else will be built. It must be broad enough to cover outlaw motorcycle gangs, ethnic gangs, triads, mafia, and youth street gangs but narrow enough so as not to capture unintended “nuisance” like criminals. This will be essential given the certainty of Charter challenge. The fact that it is not available at this date is troubling to say the least.⁹¹²

The letter criticizes much of the Bill, citing areas that are “cosmetic or repetitious” and noting concern over “not having seen any of the language to be used.” Of greatest disappointment are the consequential provisions:

In addition to securing a conviction and proving membership at the time in a criminal organization, the Crown would, I’m told, need to show that the offence was committed in furtherance of or at the direction or behest of the criminal organization. This makes an already unlikely process even further difficult and thus, virtually useless. My sense is that the Government will try and sell this feature of the amendments as “tough” measures and, to be blunt, we should not permit this attempt to mislead to take place. Real alternatives to these illusory options exist and they should be either adopted or considered rather than rushing

⁹¹¹ Organized Crime Proposals, from CACP dossier: Organized Crime Project, General: Pro 9 Vol.4, p. 1.

⁹¹² *Ibid.* at 1-2.

ahead with more 'say one thing, do something else measures' for which the Canadian justice system is infamous.⁹¹³

The lawyers were right. As we saw in Chapter Three (New Law) the combination of securing a conviction, proving membership plus proving it was done in relation to a criminal organization was considered onerous by many prosecutors and was a major stumbling block for the legislation. The letter concludes, "Not having seen any of this it is difficult to do more than offer these admittedly general observations."⁹¹⁴

Reactions from the Association's legal advisers also leave little doubt that the CACP had no idea that law was being made until the very end of March. Telephone calls had to be made to the Department of Justice just "to get a better sense of what the amendments entail."⁹¹⁵ The last-minute-legislation was clearly seen as politically motivated and having little to do with police chiefs' interests.

It is unsurprising that the CACP did not respond to the Department of Justice with any substantial proposals of their own. First, there was no time given that the legal resources of the CACP are very limited compared to the Department of Justice and they did not have a fleet of lawyers at their disposal to carefully respond to each issue. Second, they may have realized that the Department of Justice would not have time to add any new suggestions even if they were carefully submitted. Third, the CACP may have decided that the government was only going through the motions of open consultation and that they were already married to their approach. It could well have been a

⁹¹³ *Ibid.* at 2-3.

⁹¹⁴ *Ibid.* at 3.

⁹¹⁵ Internal CACP correspondence from April, 1997.

combination of all three. Regardless of the reasons, the recommendations returned to the Department of Justice consisted of requesting “continuing discussions” with the Minister’s staff.⁹¹⁶ At this late stage of policy development, there was really nothing else the CACP could do.

What is clear from reviewing CACP participation in other government legislative initiatives of the 1990s is the presence of certain indicators that suggest meaningful inclusion. One was partaking in government committee hearings. Another was significant and long-term participation in the consultation process. Both were sadly lacking in the development of Bill C-95.

Internal reactions of the CACP suggest they had been taken aback by the Minister of Justice’s anti-gang initiative. By their own account, the CACP were amiss in not having a set of organized crime proposals at the ready. They also showed dismay with the provisions devised by the Ministry of Justice, hardly the reaction one would expect had they been a real party to the reform effort. In fact, police chiefs were given no real opportunity to comment on the Bill before it was whisked through Parliament. Furthermore, what little commentary the CACP could come up with in time, went largely unheeded.

One can imagine the degree of skepticism that would have met the Solicitor General’s announcement of the *National Organized Crime Coordinating Committee’s*

⁹¹⁶ Further meetings with the DOJ did not result in significant changes and Justice Committee hearings did not take place.

aim “to bring law enforcement issues to a forum where we can find solutions together”⁹¹⁷ or the degree of hypocrisy accorded the Solicitor when he stated “the heart of our anti-organized crime strategy is bringing all concerned agencies together...Cooperation is the hallmark of our efforts.”⁹¹⁸

In fairness, it must be acknowledged that the CACP were likely important in bringing attention to the issue of organized crime. They had been voicing concern over the topic to government officials since at least 1994 and in 1996 they had been instrumental in convincing the government to host a national forum on organized crime. However, there is an important distinction between bringing attention to organized crime and being a significant partner in the development of new anti-gang law.

Illusory Consultation: Evidence from the Quebec Bar Association

One group that bears special consideration at this stage is the Quebec Bar Association (QBA). Like the CACP, the QBA were given a last-minute opportunity, without prior warning, to comment on the government proposals that were to be introduced in the House of Commons. By showing the extent of QBA participation, it is possible to get a better understanding of the overall integrity of the consultation process that led to anti-gang law.

⁹¹⁷ Solicitor General of Canada, News Release (25 August 1997).

⁹¹⁸ Solicitor General Andy Scott’s Annual Statement on Organized Crime to the House of Commons, (27 November 1997).

Formed in 1849, the QBA represents 17,000 members and has a mandate to safeguard the values of a free and democratic society. A central tenet of the QBA is the protection of the public and the study of laws meant to serve this purpose. Law-reform in the *Criminal Code* is considered one of the important obligations of the QBA because of its impact on all Canadians including the Quebecers.⁹¹⁹ Given the importance of the QBA in Quebec, its participation in the development of law that was to reduce the motorcycle gang feuding in the province is worthy of special examination.

Unfortunately, much like the CACP, the QBA had almost no time to form a position on Bill C-95. In its opening remarks on the draft proposals, the QBA stated that by the time it had the opportunity to read and react to the provisions tabled by the Minister of Justice, the Bill had already been referred to the *Senate Committee on Judicial and Constitutional Affairs*. In spite of its justified reservations in participating in a rushed process, the QBA decided that:

because of the importance of law project C-95, the Quebec Bar Association has tried to formulate comments in the goal of improving the focus of the law. Despite the hurry of the Federal Government to proceed to the adoption of the law project, we hope that the comments of the Quebec Bar Association can be considered by the legislature.⁹²⁰

Clearly questioning the motives of the Federal Government, the QBA cited the pressure of public opinion as being fundamental to the federal effort. In addition they

⁹¹⁹ “Memoire Du Barreau Du Quebec Sur le Projet De Loi C-95 – Loi Modifiant Le code Criminel (gangs) et D’Autres Lois en Consequence” [Author’s translation: “Memorandum of the Quebec Bar Association on Law Project C-95 – Law Amending the Criminal Code (gangs) and Other Laws in Consequence”]. Barreau du Quebec, (April 1997).

⁹²⁰ “Memorandum of the Quebec Bar Association on Law Project C-95” (April 1997) at 4. **Note:** all citations from this document have been translated by the author.

queried why Bill C-95 was needed when newly adopted measures had not been given sufficient time to show their impact⁹²¹ and wondered how one legislative enactment was to have an effect on the globally-linked operations of modern organized crime.⁹²² Putting these reservations aside and deciding that the label ‘organized crime’ was simply the generic term used for law focusing on outlaw motorcycle gangs,⁹²³ the QBA did voice substantive reservations regarding the Bill.

The creation of an offence for participation in a criminal association, the cornerstone of the new law, created an unambiguous reaction from the QBA: “The Quebec Bar Association recommends that the federal government not create a new criminal act of participation in gang activities and to completely abolish article 11 from the law project.”⁹²⁴ Furthermore, the QBA declared Article 8 of the Bill redundant explaining that creating a first degree murder offence for homicide committed under direction of a criminal gang would change nothing in actual jurisprudence. It noted that premeditation would be implicit in the gang involvement thus would already contain the first-degree charge.

⁹²¹ The QBA cited the Witness Protection Program (L.C., 1996, c.16) new electronic surveillance measures for police, and proportional sentencing provisions (*Criminal Code*, *supra* note 176, Amendment L.C., 1995, c.22) as recent federal measures to combat organized crime. Furthermore, Bill C-17, which was to confer additional investigative powers to the police, was at that moment being considered by the Senatorial Committee on Justice and Constitutional Affairs.

⁹²² The QBA quoted Antonio Nicaso as support for this argument: “The new world of crime belongs to everyone and no-one. The potential benefits are too important for language, ethnicity or geography to risk operations. The political transformations in Eastern Europe, the speed of global communications, the possibility of transferring huge sums of money with the click of a button all make gang wars and refusal to collaborate outmoded.” This author’s translation from: A. Nicaso & L. Lamothe, *Dans les Couloirs Du Crime Organisé, Le Role Strategique du Canada a L’Aube du 21e Siecle*, (Montreal: Les Éditions de L’Homme, 1996) at 37-38.

⁹²³ “Memorandum of the Quebec Bar Association on Law Project C-95”, April 1997, p. 4.

⁹²⁴ “Memorandum of the Quebec Bar Association on Law Project C-95”, April 1997, p. 7.

The QBA also remarked on the redundancy of installing a provision that conditional discharge would not be afforded to gang members until a minimum of half the sentence or ten years had been served. It found, correctly, that a judge already had the power to make such stipulations. Finally, it warned that the procedural aspects of the law were likely to create expensive, costly and time consuming mega-trials. Of course the Bar was proved correct.⁹²⁵ Unfortunately, all of these concerns were ignored.

One could question why the Department of Justice bothered to send its proposal to the CACP or QBA days before the legislation was presented in Parliament when feedback was ignored. Perhaps the way to answer this question is to imagine the alternative. If they had not sent the draft there would have been an outcry that consultation had not taken place. There was no real danger of having to take QBA or CACP comments serious since it could simply be argued that there was no time.

The type of government “inclusion” of the QBA in the development of Bill C-95 supports the notion that the making of anti-gang law was not a consultative process. Perhaps the only consolation for the CACP was that they were not alone in being superficially involved at the last possible minute. A few days before Bill C-95 was announced in Parliament, Reform Party Justice Critic Art Hanger noted that “[t]here is an anti-gang [Bill] coming forward. What shape that it is going to take is anybody’s guess.”⁹²⁶ The QBA and CACP knew its shape, did not like what they saw, voiced their concern, and were completely ignored.

⁹²⁵ See Chapter Three, “New Law.”

⁹²⁶ *House of Commons Debates*, 155 (14 April 1997) at 1645 (Art Hanger).

ANALYSIS AND CONCLUSION

The Postscript: Police Disappointment

Six months following the enactment of C-95, Solicitor General Scott announced “anti-gang legislation is being used right now.”⁹²⁷ Somehow he forgot to mention that it was being used with little success. With the law barely on the books, it began to be criticized. At the August 1997 Annual General Meeting of the CACP, three months following Bill C-95’s enactment, members were already discussing how Bill C-95 would “be extremely difficult to prove in Court.”⁹²⁸ Within a year, the law was to be roundly condemned. At the 1998 *Anti-Organized Crime Legislation Committee* meeting jointly hosted by Criminal Intelligence Service Canada (CISC) and the CACP, the disappointment was palpable. In a session entitled *Update on C-95*, the committee heard that only two prosecutions under the new law were underway. The minutes of the meeting record that the group suggestion was “stronger legislation.”⁹²⁹ One of the committee members was to declare that Bill C-95 was “dated”, that “other countries have better law”, and that Canada was experiencing a dire “need for changes to organized crime legislation.”⁹³⁰

Police were frustrated for several reasons. The new wiretap provisions in *Criminal Code* Section 18 were extremely difficult to use. The threshold for acquiring judicial authorization to use electronic surveillance required the submission of enormous,

⁹²⁷ Solicitor General of Canada, 1997 Annual Statement on Organized Crime.

⁹²⁸ Minutes from the Law Amendments Committee meeting at the 1997 Annual General Meeting of the CACP.

⁹²⁹ “RCMP Federal Services vs. Organized Crime”, Meeting minutes, (24 April 1998).

⁹³⁰ “RCMP Federal Services vs. Organized Crime” presentation by Tim Quigley, (24 April 1998).

time-consuming affidavits, often over 1500 pages.⁹³¹ Furthermore, participation was hard to establish. As the Deputy Chief of the Montreal Urban Community police pointed out “[u]nder the law as it currently stands, it is very difficult to prove that a criminal organization exists, even where that group comprises members of a motorcycle gang that openly portrays itself as a criminal organization.”⁹³²

Perhaps the legislation’s most serious flaw was its susceptibility to *Charter* challenge. In announcing Bill C-95, the Solicitor General had claimed that “Working with the police, we have achieved two objectives: we have given law enforcement agencies better tools to help in their efforts against organized crime; and we have developed a package that will be less open to challenge in the courts.”⁹³³ However, the “tools” that were bestowed on police were creating cumbersome mega-trials that were sapping law enforcement resources and *Charter* challenges were proving the number-one impediment to successful prosecutions.

The Federal Government must have had a sense of CACP exasperation. In 2000, the Department of Justice had a News Release specially delivered to the CACP to remind them of government efforts against organized crime.⁹³⁴ In addition, new initiatives began to be announced. When the Federal-Provincial-Territorial (FPT) Ministers responsible for

⁹³¹ Notes for an address by Marc St-Laurent, Deputy Chief, Montreal Urban Community Police Department on Bill C-24, An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts, to the Senate Committee on Legal and Constitutional Affairs. (November, 2001).

⁹³² *Ibid.*

⁹³³ Government of Canada, News Release, “Federal Government Introduces National Anti-Gang Measures” (17 April 1997).

⁹³⁴ A Department of Justice, News Release, emailed to the CACP *Law Amendments Committee* at the specific request of the Deputy Solicitor General (11 September 2000).

Justice promised to devote more resources to tracking organized crime via improved technology, the CACP responded positively through a statement by the Chair of its *Law Amendments Committee*:

I am very pleased that the Ministers responsible for Justice from across Canada have given recognition to the serious issues surrounding organized crime and have committed to support police efforts in fighting organized crime.⁹³⁵

Nothing, however, could sufficiently hide the inadequacies inherent within the anti-gang law at the end of the decade. The motorcycle gang war in Quebec was still raging and there were few successful prosecutions under Bill C-95. Furthermore, the CACP was not alone in their disappointment. In a letter addressed to the Solicitor General from the Executive of the Criminal Intelligence Service of Saskatchewan (CISS) the CISS Chairman complained bitterly about the ineffectual legislation.⁹³⁶ Significantly, a Montreal Urban Community Police Department (MUCPD) representative said “that Bill C-95 had proven difficult to enforce and largely ineffective in fighting organized crime.”⁹³⁷ It had become increasingly clear that Bill C-95 had to be replaced.

⁹³⁵ CACP Media Release, (25 November 1998), CACP file Pro. 6 Vol. 27.

⁹³⁶ Seeking assurances that better legislation would be expeditiously underway, the letter voiced frustration with the existing condition. It also evinced a certain level of despair: “we understand that very little, if anything, has materialized.” Letter from the Chairman of CISS Saskatchewan to Solicitor General Lawrence Macaulay (4 May 1999).

⁹³⁷ MUCPD presentation to the National Sub-committee on Organized Crime, 16 October 2000.

Fixing the Flawed Law: Bill C-24

Our disappointment with Bill C-95 is matched by our delight with Bill C-24... We are therefore enthusiastic and confident about the future, because this Bill [C-24] to fight organized crime at last meets our expectations.⁹³⁸

Dissatisfaction with Bill C-95 was to become the platform upon which Bill C-24 was created and this time the CACP was ready and invited to contribute. By the end of the 1990s the CACP was well on its way to having its *Organized Crime Committee* reinstated, its *Law Amendments Committee* reorganized and the Association was motivated to see better law enacted after several years of futile efforts to implement Bill C-95. Pierre Sangollo summarized the CACP's frustration as "a lack of effective legislation targeting the fight against organized crime."⁹³⁹ In contrast, Bill C-24 would come to be seen as effective legislation created with significant CACP involvement.

In 1998, Solicitor General Andy Scott asked the CACP for feedback on a preliminary government report assessing other country's organized crime legislation.⁹⁴⁰ Later that year, the CACP was invited to collaborate in making a report entitled *Organized Crime Activity in Canada, 1998: Results of a Pilot Survey of 16 Police Services*.⁹⁴¹ The survey was to become a significant referral document for a subsequent Parliamentary Sub-Committee on Organized Crime. In 1999, the CACP were invited participants to the *National Workshop on Organized Crime*.⁹⁴² The National Workshop generated a private follow-up discussion held between the Solicitor General and the

⁹³⁸ Notes for an address by St-Laurent, *supra* note 931.

⁹³⁹ CACP presentation by Pierre Sangollo to the House of Commons *Sub-Committee on Organized Crime*, (16 October 2000).

⁹⁴⁰ National Reference Group Communicator, Bulletin #4, (May 1998).

⁹⁴¹ Letter from John Turner, Chief of the Policing Services Program, Statistics Canada, to CACP Executive Director McConnell (20 May 1999).

⁹⁴² Held on April 24th, 1999.

CACP. Shortly thereafter, the Ministry of the Solicitor General had its *National Action Plan on Organized Crime* sent to the CACP for comment.⁹⁴³

By the end of 1999, when it was becoming clear to everyone that the current organized crime legislation was not working⁹⁴⁴, a government committee was formed to study possible solutions. The CACP were to become major players. The sub-committee's mandate was to find solutions through discussions "with persons working for law-enforcement agencies, and experts and individuals interested in the war on organized crime."⁹⁴⁵ Given the opportunity to express its views on organized crime, this time the CACP was ready and sufficiently organized to oblige. In comments to the subcommittee, CACP representatives stated that:

The CACP would like new legislation to combat organized crime...we would like legislation to offset the effects of the 'Stinchcombe' ruling, or limit the disclosure of evidence in organized crime cases...Reversal of the burden of proof could also apply to such matters as obliging members of organized crime to justify the possession of their assets.⁹⁴⁶

When the CACP were asked for their suggestions in the government committee hearings, the association had a list of specific demands. The main CACP requests were

⁹⁴³ Letter from Solicitor General Andy Scott to CACP Executive Director Bryan McConnell (June 11, 1998).

⁹⁴⁴ When it was moved that "this House instruct the Standing Committee on Justice and Human Rights to conduct a study of organized crime, to analyze the options available to Parliament *to combat* the activities of criminal groups," Mr. Bellehumeur was quick to request that the motion be amended to read "*combat effectively*" ("Order of Reference", Extract from the *Journals of the House of Commons* of 30 November 1999) The perceived need to re-evaluate the existing legislation was patently obvious: the motion, as amended by Mr. Bellehumeur, was agreed to on a division of votes of two-hundred-and-fifty-four 'yeas' to zero 'nays'.

⁹⁴⁵ Introductory remarks, *House of Commons Sub-Committee on Organized Crime*, (16 October 2000).

⁹⁴⁶ CACP presentation by Pierre Sangollo to the House of Commons Sub-Committee on Organized Crime, 16 October 2000.

for uncomplicated wire-tap authorizations, reduced obligations for disclosure, reverse onus provisions for gang members and “less complicated” legislation.⁹⁴⁷

Subsequently, the Committee made eighteen recommendations, many of which shared the same concerns as those raised by the CACP. Recommendations seven and eight related to simplifying wire-tap authorizations, recommendation thirteen asked to “simplify the rules related to disclosure”, recommendation ten suggested a reverse onus be placed on criminal gang members in relation to asset seizure by the police and recommendations three and five sought to make the legislation more useable.⁹⁴⁸ By the time a final draft was created and the CACP was asked to comment to the *Standing Senate Committee on Legal and Constitutional Affairs*, the Association was more than willing to endorse the new law saying “police need the tools found in Bill C-24 to assist in the investigation and prosecution of organized crime.”⁹⁴⁹ Although the new provisions

⁹⁴⁷ *Ibid.*

⁹⁴⁸ *House of Commons Standing Committee on Justice and Human Rights Ninth Report on Organized Crime:*

Recommendation 7: Amend sections 184 and following of the *Criminal Code*, dealing with judicially authorized audio and video surveillance, to increase in non-criminal organization offences from 60 days to 120 days the periods for which such activities can be authorized and renewed.

Recommendation 8: Review and amend the provisions of Part VI of the *Criminal Code* so as to streamline and simplify the requirements and practices involved in the judicial approval and renewal of audio and video surveillance as law enforcement investigative strategy.

Recommendation 13: Amend the *Canada Evidence Act* to codify and simplify the rules related to disclosure.

Recommendation 10: Amend the *Criminal Code* so that there is a reverse onus (dischargeable on a balance of probabilities) placed on a person convicted of an enterprise crime, a designated substance offence, a criminal organization offence, or money-laundering, whose assets have been seized, to prove that these assets have not been acquired or increased in value as the result of criminal activity. If the convicted person is unable to discharge this burden of proof to the satisfaction of the court, these assets would be declared to be forfeited.

Recommendation 3: Amend sections 2 and 467.1 of the *Criminal Code* to reduce the number of participants in a criminal organization from 5 to 3.

Recommendation 5: Amend sections 2 and 467.1 of the *Criminal Code* to remove the requirement that some or all of the members of the criminal organization have committed indictable offences within the preceding five years.

⁹⁴⁹ Standing Senate Committee on Legal and Constitutional Affairs, (21 November 2001).

do not confirm that CACP requests were directly made into parliamentary recommendations, the degree of similarity suggests that this time the Association's input was taken seriously.

Also in line with proposals from the CACP, the new *Criminal Code* provisions included a simplified definition of "criminal organization" and broadened police powers to forfeit the proceeds of crime and to seize property that was used in a crime. Furthermore, CACP remarks to the Standing Senate Committee, included "a strong submission...that there needs to be in place processes to respond to situations of intimidation when they are occurring."⁹⁵⁰ This provision had not been included prior to the CACP presentation. Subsequently, section eleven of the Bill adopted the offence of intimidating a justice official. The police chiefs may also have had an impact on the particularly sensitive issue of criminal immunity for police involved in organized crime investigations. A well-researched presentation on the topic was made "to be able to alleviate some of your concerns."⁹⁵¹ Degrees of criminal immunity were to become one of the most controversial aspects of the Bill.

⁹⁵⁰ "CACP Remarks to the *Standing Senate Committee on Legal and Constitutional Affairs*" (21 November 2001).

⁹⁵¹ The justification for police release from criminal liability was summarized as: 1) the provisions simply codify what has been the criminal law in practice 2) no previous police abuse speaks to no future abuse 3) built-in protections in the Bill would prevent abuse 4) policing is highly regulated 5) courts will continue to hold police accountable 6) only specially trained investigators will be in a position to commit criminal acts 7) police services will create further accountability measures 8) organized crime investigations require the provisions.

With the adoption of these reforms, the CACP took credit for its “critically involved role”⁹⁵² in the legislative reform. Although it is beyond the scope of this study to evaluate the realization of Bill C-24, it would appear that it has met with better success than its predecessor as several successful gang trials speak to its utility.⁹⁵³

In concluding its speech to Parliament on the introduction of Bill C-24, the CACP clearly showed its support for law that had been created with its significant participation.

While the police community does not always agree with the detail of legislative amendments, this particular piece of legislation is very significant... Firstly it is practical. This provides police with some reasonable and do-able investigative approaches.⁹⁵⁴

The Association expressed particularly strong approval for the expansion of the definition of criminal organization. The new definition of a “participation offence” was seen as “a practical and reasonable solution...providing police with opportunities to ‘crack open’ the investigative log jam in criminal organizations.”⁹⁵⁵ Overall, Bill C-24 was the kind of anti-gang legislation the police chiefs desired, in no small part due to their active involvement in its creation. This time when the Solicitor General intoned: “This Bill will give police the tools they have asked for to bolster their ability to infiltrate destabilize and dismantle criminal organizations,”⁹⁵⁶ it was true.

⁹⁵² CACP “Draft Remarks for Speech to Parliament on Bill C-24” (21 August 2001).

⁹⁵³ The new Bill experienced greater success in conviction rates (Eight ‘participation’ charges in Ontario resulted in: “All eight plead[ing] guilty to belonging to a criminal organization.” *Canadian Press Newswire / London Free Press*. 8 October 2003), and application of forfeiture rules (Halifax: Bikers' clubhouse forfeited to feds.) *Charlottetown Guardian*, (30 January 2003) A1).

⁹⁵⁴ “CACP Remarks to the *Standing Senate Committee on Legal and Constitutional Affairs*”, (21 November, 2001).

⁹⁵⁵ *Ibid.*

⁹⁵⁶ Ministry of the Solicitor General News Release, “Government of Canada Steps Up Fight Against Organized Crime”, (5, April 2001).

The Significance of Symbolic Support

Policing remains a semi-sacred entity whose mysterious workings point to the role of law, authority and power in an increasingly secularized society.⁹⁵⁷

This thesis examined police participation in law-reform. It conducted a case study of CACP involvement in the making of 1997 anti-gang law, legislation politically portrayed as having been constructed through a long consultation process with the police. The central question to be answered was: what kind of influence did police chiefs really have on Bill C-95? The data collected to answer this question was from many sources including House of Commons Debates, Senate Committees, Department of Justice files obtained through the Freedom of Information Act and the archives of CACP Headquarters in Ottawa.

Part I of the thesis illustrated why the Federal Government felt compelled to enact Bill C-95. Although the governing Liberal Party was initially against creating new legislation, mounting tensions in the months before a national election caused a last minute capitulation to anti-gang requests. The resulting legislation was rushed, flawed and clearly in reaction to Quebec pressure tactics. "Policing need" was positioned as the leading rationale for the Bill.

Part II of the thesis explored the police power and the political value of police support. The CACP were shown to be the most important police leaders association in Canada and, by the 1990s, a respected voice in criminal policy debate. An examination of

⁹⁵⁷ Manning, *Police Work 1997*, *supra* note 421 at 319.

the evolving relationship between police and government illustrated growing political recognition of the value of partnering with police. The concept of symbolic power was introduced as a means to understand how police naturally occupy a position of authority over crime threats and accrue more importance in times of perceived instability. Police were shown to have near-monopolistic authority over public understandings of outlaw motorcycle gangs.

The final chapters of Part II also showed the augmentation of police power with respect to organized crime and motorcycle gangs during the law-making period. Crime control policy was shown to favor enforcement solutions and organized crime was perceived as a growing threat. Moral panic triggered by the death of an innocent child led the public to side with police views of motorcycle gang atrocity. Police and the CACP in particular had become the ultimate political ally to support last-minute anti-gang law.

The empirical analysis of Part III revealed that the role of the CACP was symbolic rather than substantive. At the 1996 *Organized Crime Forums* the CACP did not contribute substantial legislative proposals to be enshrined in new law. At the time, the Association's various committees were not sufficiently organized to advance strong policy positions and the CACP were not asked to contribute to the upcoming legislation in any important way. However, "policing need" was the crux upon which the legitimacy of the Bill C-95 was enshrined:

The Canadian law enforcement community has been the cornerstone of our anti-organized crime efforts and will continue to be. I would in particular like to recognize the efforts and commitment of the police community in helping to keep the public informed about the organized crime problem, and providing us with

their advice on how to address it...This government has consulted closely with law enforcement...Canada's police urged governments to give them the tools to do the job. And that is what we have done...We listened to police and passed tough, comprehensive anti-gang legislation.⁹⁵⁸

The use of the symbolic power of the police was very much in evidence in this and many similar government pronouncements. Suggestions of "close consultations" and having "listened to the police" helped justify the need for new law. Having gained importance and authority in the law-reform period, police could be used to convey integrity over the law making process. Symbolic power, "what creates the power of words and slogans...the belief in the legitimacy of words and of those who utter them"⁹⁵⁹ explained the emblematic value of the police as a perceived government partner.

This thesis argued that the enlarged symbolic capital of the police chiefs was politically appropriated to legitimize expedient but flawed law. It was posited that in order to deflect allegations of relenting to Quebec pressure tactics and to buttress the Bill's legitimacy, the legislation was portrayed as having been constructed with significant input from the CACP. This was done at a time that police authority over organized crime and motorcycle gang issues was significant and the CACP appeared to have been meaningfully involved in government sponsored forums on organized crime.

Using the symbolic power of the police for political gain may on the surface seem benign. Unlike the APEC Affair where police were alleged to have pepper sprayed

⁹⁵⁸ Solicitor General Andy Scott's Annual Statement on Organized Crime to the House of Commons, (27 November 1997).

⁹⁵⁹ Bourdieu, *Language* 1991, *supra* note 359 at 170.

protesters under political duress,⁹⁶⁰ Bill C-95 did not involve physical abuse of power. Instead, police had their position of prestige used to prop-up ill-conceived law. Although no one was pepper sprayed in the passage of new legislation, the public was blinded to alternatives by the rhetoric of “policing need”. The harm lay in the deceit; a placebo of tough sounding legislation was provided rather than a real solution to the biker war. For the rest of the 1990s, Quebec would continue to be awash in gang violence.

The objective of this study was to examine the real nature, type and level of police chief involvement in Bill C-95. Bill C-95 had been depicted in the academic literature as legislation significantly influenced by the police. Instead of significant influence, however, I found that the police actually had marginal quantifiable impact. The symbolic power of the police had been misappropriated for political use. This finding is a novel paradox of police power: police can be at once politically important yet have limited practical impact on law reform.

This is not to say that police influence can be ignored. Police chief demands for anti-gang laws following the death of Desrochers garnered national press attention and the police leaders were a major presence at the Organized Crime Forums. It is not unreasonable to assume that had the police been better prepared, substantive impact on Bill C-95 could have been achieved.

⁹⁶⁰ As described in detail by: W. Pue, *Pepper In Our Eyes*, (Vancouver: UBC Press, 2000).

It is also important to realize that despite their substantive failure, they may have won a significant symbolic victory. The level of national interest in organized crime was in no small part due to the cumulative effect of police presentation strategies. Police chiefs bemoaned their inability to fight organized crime with existing laws, warned that they could not prevent more innocent deaths, and mounted a national strategy aimed at “educating” the public on the societal threat posed by outlaw motorcycle gangs.

It is hard to imagine any other group being able to operate in this fashion. However, rather than being labeled a self-interested group intent on expanding their powers and resources through fear, police authority was enhanced and their credibility relied upon to pass anti-gang legislation. While police chiefs may not have achieved their ideal law, without their influence there may not have been any legislation at all or legislation with significantly less scope.

It is also likely that the symbolic victory of the police in Bill C-95 was significant for their more substantive role in Bill C-24. Being “seen” to have been important in Bill C-95 gave the CACP more leverage to participate instrumentally when anti-gang law was revisited in 2001. Given their government pronounced position as partners in 1997, the CACP were expected to participate in the more formal process of developing Bill C-24 through active departmental consultations and Senate committee involvement. The seat the police were claimed to have occupied in 1997 with regards to organized crime gave them a real voice at the table in 2001.

The findings of this thesis open possibilities for new research from several perspectives. Law-making study needs to take a closer look at the participation of the police. The fact that government reference to police importance was uncritically accepted in the legal literature underscores the larger issue of misappropriating interest groups for political gain. This issue has been discussed by Kent Roach with regards to victims groups⁹⁶¹ and may be more prevalent than realized. The fact that legal authors such as Michael Moon⁹⁶², Don Stuart⁹⁶³ and Daniel Koenig⁹⁶⁴ forwarded the political message unchecked highlights the need for further study in this area. Another result of this study is the applicability of symbolic power theory to law-making. Future criminological research could conduct a broader examination of criminal law-making efforts to assess the presence and role of the police. It would be interesting to see if the government appropriation of symbolic police power was an isolated occurrence caused by a very particular set of circumstances or if it is more commonly used to legitimize reform.

To date, there have been few attempts to marry legal and criminological scholarship relating to law-reform. This study's contribution is to have done so through an examination of Canadian police chief participation in a particular law-making effort. Although there is currently but a handful of published socio-legal studies on police

⁹⁶¹ K. Roach, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice* (Toronto: University of Toronto Press, 1999).

⁹⁶² M. Moon, "Outlawing the Outlaws: Importing R.I.C.O.'s Notion of 'Criminal Enterprise' into Canada to Combat Organized Crime" (1999) 24(1) *Queen's L. J.* 451.

⁹⁶³ D. Stuart, "Politically Expedient but Potentially Unjust Criminal Legislation against Gangs" (1997) 2(2) *Can. Crim. L. R.* 139.

⁹⁶⁴ D. Koenig, "Organized Crime: A Canadian Perspective", in J. Albanese, D. Das & A. Verma eds., *Organized Crime: World Perspective*, (New Jersey: Prentice Hall Publishers, 2003).

elites⁹⁶⁵ and police leaders are notoriously cautious to open their doors to researchers,⁹⁶⁶ it is hoped that the novel findings from this thesis will encourage further study of police chiefs and their role in law-reform.

⁹⁶⁵ The most notable exceptions being: R. Reiner, *Chief Constables*, (Oxford: Oxford University Press, 1991); D. Wall, *The Chief Constables of England and Wales*. (London: Aldershot & Avebury, 1998); I. Loader & A. Mulcahy, "The Power of Legitimate Naming: Pt. I: Chief Constables as Social Commentators in Post-War Britain" (2001) 41(1) *Brit. J. Crim.* 4; I. Loader & A. Mulcahy, "The Power of Legitimate Naming: Pt. II: Making Sense of the Elite Police Voice" (2001) 41(2) *Brit. J. Crim.*; and of course in Canada, G. Marquis, "Power from the Street: The Canadian Municipal Police" in R. Macleod & S. Schneiderman, eds., *Police Powers in Canada: The Evolution of Authority*, (Toronto: University of Toronto Press, 1994).

⁹⁶⁶ Perhaps the most famous example of police prudence in this regard was exhibited by Robert Reiner's seven-year wait to gain permission from the British Association of Chief Police Officers to conduct a study of their organization. See "Introduction" in: Reiner 2000, *supra* note 282.

BIBLIOGRAPHY

APEC Report: "Recommendations", commissioned to Ted Hughes, Q.C., submitted 31 July, 2001.

Aaronson, D. Dines, T. Masheno, M. *Public Policy and Police Discretion: Processes of Decriminalization*, (New York: Clark Boardman Co., 1984).

Adler, P. and Adler, P. *Constructions of Deviance*, (U.S.A.: Wadsworth Publishing, 2000).

Albanese, J., Das, D, Verma, A. *Organized Crime: World Perspectives*, (New Jersey: Prentice Hall Press, 2003).

Albanese, J. and Pursley, R. *Crime in America*, (Englewoods Cliffs, NJ: Regents/Prentice Hall, 1993).

Albini, J., "Donald Cressey's Contribution to the Study of Organized Crime" (1988) 34(3) *Crime and Delinquency*, 338.

Alvazzi Del Frate, A., Hatalak, O., Zveki, U. "Surveying Crime: A Global Perspective" (2000) Proceedings of the international conference of the United Nations Interregional Crime and Justice Research Institute (UNICRI), Rome.

Anderson, K. *Powers and Responsibilities: Reforming NSW Criminal Investigation Law* (Doctoral Thesis, Faculty of Law, University of New South Wales, 2001).

Atkinson, M., Coleman, W. "Policy Networks, Policy Communities and the Problems of Governance" (1992) 5(2) *Governance* 158.

Auger, M. *The Biker Who Shot Me: Recollections of a Crime Reporter*, (Toronto: McClelland and Stuart Publishing, 2001).

Austin, J., Clark, J. Hardyman, P. and Henry, D. A., "The Impact of 'Three Strikes and You're Out'" (1999) 1(2) *Punishment and Society* 131.

Baker, R. and Meyer, F. *The Criminal Justice Game*, (U.S.A.: Duxbury Press, 1980).

Backgrounder, "Highlights of the Organized Crime Bill", published by the Department of Justice, (5 April 2001).

Barber, K ed., 1998. *The Canadian Oxford Dictionary*, (Toronto: Oxford University Press, 1998).

Barton, M., Barlow, D. and Chirisos, T. "Economic Conditions and Ideologies of Crime in the Media" (1995) 41(1) *Crime and Delinquency* 3.

- Bayley, D. *Police for the Future*, (New York: Oxford University Press, 1994).
- Beare, M. "Policing with a National Security Agenda", research paper produced at the Nathanson Centre for the Study of Organized Crime and Corruption, Osgoode Hall Law School, York University, 2005.
- Beare, M. "Policing with a National Security Agenda", research paper produced at the Nathanson Centre for the Study of Organized Crime and Corruption, Osgoode Hall Law School, York University, 2003.
- Beare, M. and Ronderos, J. *Environmental Scan on Organized Crime Media in Canada*, Department of Justice Research Report, 2001.
- Beare, M., Naylor, R. T. "Major Issues Relating to Organized Crime: within the Context of Economic Relationships", Law Commission of Canada, April 1999.
- Beare, M. & Martens, F. 1998. "Policing Organized Crime: The Comparative Structures, Traditions, and Policies within the United States and Canada" (1998) 14(4) *Journal of Contemporary Criminal Justice*, 398.
- Beare, M. *Criminal Conspiracies: Organized Crime in Canada*, (Toronto: Nelson Canada, 1996).
- Beare, M. *Selling Policing in Metropolitan Toronto: A Sociological Analysis of Police Rhetoric – 1957-1984* (Doctoral thesis, Columbia University, New York, 1987).
- Becker, H. *Outsiders: Studies in the Sociology of Deviance*, (New York: The Free Press of Glencoe, 1963).
- Becker, H. "Labeling Theory" in Adler, P. and Adler, P. eds., *Constructions of Deviance: Social Power, Context, and Interaction*, (U.S.A.: Wadsworth, 2000).
- Beckett, K. *Making Crime Pay: Law and Order in Contemporary American Politics*, (New York: Oxford University Press, 1997).
- Belenko, S., and Peugh, J. "Fighting Crime by Treating Substance Abuse" (1998) 15(1) *Issues in Science and Technology* 53.
- Benson, J. K. "A Framework for Policy Analysis" in Roger et al. eds., *Interorganizational Coordination*, (Ames: Iowa State University Press, 1982).
- Berki, R. N. *Security and Society: Reflections on Law, Order and Politics*, (London: Dent & Sons, 1984).

Bilton, J. Heeler, M. Stenning, P. *Regulation of Foreign Investigators' Activities in Canada*, Discussion Paper prepared for the Ministry of the Solicitor General of Canada, 2002.

Bittner, E. *The Functions of the Police in Modern Society*, (Washington: National Institute of Mental Health, 1970).

Blaise, P. "Speaking Notes for the Honourable Minister of Justice and Attorney General of Canada to the Society for the Reform of Criminal Law, *Justice information*, Ottawa, (28 June 1993).

Blakesley, C. "General Report: The Criminal Justice System Facing the Challenge of Organized Crime" (1998) 69 *International Review of Penal Law* 4.

Blue Line: Canada's National Law Enforcement Magazine, "Symposium on Biker Gangs" (May 2000).

Blue Line: Canada's National Law Enforcement Magazine, "Talking with Dinosaurs" (November 1998)

Borovoy, A. "The Ambit of Police Powers", in *When Freedoms Collide: The Case for Our Civil Liberties*, (Toronto: Lester and Orpen Dennys, 1989).

Bourdieu, P. *Pascalian Meditations*, (Cambridge: Polity Press, 2000).

Bourdieu, P. *Language and Symbolic Power*, (U.S.A.: Harvard University Press, 1991).

Bourdieu, P. *The Logic of Practice*, (Cambridge: Polity Press, 1990)

Bourdieu, P. "The Force of Law: Toward a Sociology of the Juridical Field", (1987) 38 *Hastings L.J.* 805.

Bottomley, K., Coleman, C. "Law and Order: Crime Problem, Moral Panic or Penal Crisis?" in *Law and Order and British Politics*, (Vermont: Gower Press, 1984).

Bowden, T. *Beyond the Limits of the Law*, (Great Britain: Penguin Books, 1997).

Boyd, S. Chunn, D. and Menzies, R. *[Ab]using Power: The Canadian Experience*, (Halifax: Fernwood Publishing, 2001).

Braithwaite, J., "Reducing the Crime Problem: A Not So Dismal Criminology" in Walton P., Young, J. eds., *The New Criminology Revisited* (London: Macmillan, 1998).

Braithwaite, J. "The State of Criminology: Theoretical Decay or Renaissance?" (1989) 22 *Aust. J. Crim. & N.Z.* 129.

Brake, M., Hale, C. *Public Order and Private Lives: The Politics of Law and Order*, (London: Routledge, 1992).

Bright, S. "Casualties of the War on Crime: Fairness, Reliability and the Credibility of Criminal Justice Systems", (1997) 51 *Miami Law Review*, 413.

Brissett, D. and Edgley, C. *Life as Theater*, (Chicago: Aldine Publishing, 1975).

Brodeur, J. P. "Organized Crime: Trends in the Literature" Report submitted to the Department of Justice and the Department of the Solicitor General, May 1996.

Brodeur, J. P. "Policing Appearances" in Scheingold, S. ed., *Politics, Crime Control and Culture* (Great Britain: Dartmouth Publishing, 1997).

Brodeur, J. P. "Politics, Crime Control and Culture"(1994) 5(2) *Journal of Human Justice* 136.

Brown, M. *Working the Street: Police Discretion and the Dilemmas of Reform*, (New York: Russell Sage Foundation, 1988).

Bruvelaitis, L. *Mechanisms for Ensuring Police Accountability in Ontario and Police Attitudes towards Them*, (Master of Sociology Thesis, University of Windsor 1993).

Burke, R. *An Introduction to Criminological Theory*, (United Kingdom: William Publishing, 2001).

Bushman, B. "Perceived Symbols of Authority and their Influence on Compliance" (1984) 14(6) *Journal of Applied Social Psychology*, 501.

Bynum, T. "Controversies in the Study of Organized Crime" in Bynum, T. ed., *Organized Crime in America: Concepts and Controversies*, (New York: Criminal Justice Press, 1987).

CACP Website at

<http://www.cacp.ca/english/general/History/HistoryEng.htm>

Canadian Consultative Group on Research and Education in Law, *Law and Learning* (1983).

Canadian-Press-Newswire. "Boy who became the first innocent victim of biker war dies", (13 August 1995).

Canadian-Press-Newswire. "Tougher, US-style anti-gang law may help fight bikers", (14 September 1995).

Chambliss, W. "State Organized Crime", in Chambliss, W. and Zatz, M. eds., *Making Law: The State, The Law and Structural Contradictions*, (Bloomington: Indiana University Press, 1993).

Chambliss, W. *Power, Politics, and Crime*, (Colorado: Westview Press, 1998).

CISC General Report. "Organized Crime in Canada: A Quarterly Summary of Recent Events", July-September 2000.

Clark, A. and Gibbs, J. "Social Control: A Reformulation", *Social Problems*, No. 12, spring edition, 1965.

Clark, L., Lewis, E. *Rape: The Price of Coercive Sexuality*, (Toronto: Women's Press, 1997).

Clarke, A. "Holding the Blue Lamp: Television and the Police in Britain" (1983) 19 *Crime and Social Justice* 44.

Cobb, R. *Cultural Strategies of Agenda Denial: Avoidance, Attack, and Redefinition*, (U.S.A.: University of Kansas Press, 1997).

Cohen, P. "Policing the Working Class City" in Fine, B. et al. eds., *Capitalism and the Rule of Law*, (London: Hutchinson Press, 1979).

Cohen S. *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, (U.K: Basil Blackwell, 1972).

Cohen, S. *Against Criminology*, (New Jersey: Transaction Books, 1988).

Coleman, W., Skogstad, G. *Policy Communities and Public Policy in Canada: A Structural Approach*, (Toronto: Copp Clark Pitman Ltd, 1990).

Colquhoun, P. *Treatise on the Police of the Metropolis explaining the various Crimes and Misdemeanors which are at present felt as a pressure upon the Community, and suggesting Remedies for Their Prevention, by a Magistrate*, Second Edition, 1796, re-published in 1975, by Fry, H. and Dilly, C. Reference from: Garland, D. "The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society" (1996) 36(4) *British Journal of Criminology* 445.

Cowhey, P. "The International Telecommunications Regime: The Political Roots of Regimes of High Technology" (1990) 44 *International Organization*, 178.

Cray, E. *The Enemy in the Streets*, (New York: Anchor Books, 1972).

Cressey, D. *Theft of the Nation*, (New York: Harper and Roe, 1969).

- Critchley, T. *A History of Police in England and Wales*, 2nd ed. (London: Constable, 1978).
- Dairys, D. *The Politics of Law*, (New York: Pantheon, 1982).
- Davis, K. *Discretionary Justice*, (Chicago: University of Illinois Press, 1971).
- Department of Justice, News Release, "Government of Canada Makes Significant Progress in Combating Organized Crime"(11 September 2000).
- Department of Justice, News Release, "Federal Government Introduces National Anti-Gang Measures"(17 April 1997).
- Department of Justice Canada, News Release, Speech of Herb Grey, Solicitor General of Canada (17 April 1997).
- Deviance and Social Control, Unit: New Left Realism, at: <http://www.sociology.org.uk>
- Doern, G.B., Phidd, R.W. *Canadian Public Policy: Idea's Structure, Process*, 2nd ed., (Scarborough: Nelson Canada, 1997).
- Dow Jones Electronic Information Search of *Globe and Mail*, Headline and Lead article search August 1991 – August 1999. Key word search: (1) Organized Crime (2) Motorcycle Gangs; at <http://nrstg1s.djnr.com/cgi-bin/DJ>
- Dow Jones Electronic Information Search of *Maclean's Magazine*, full text search – "Daniel Desrochers", "Innocent victim", *Maclean's* 08/29/1995/ "Montreal Mayhem: biker gang violence claims innocent victims" 08/21/1995 at <http://nrsth1s.djnr.com/cgi-bin/DJ>
- Dowding, K. *Power*, (Minneapolis: University of Minnesota Press, 1996).
- Drew, P., Raymond, G. and Weinberg, D. (eds.), *Talk and Interaction in Social Research Methods* (London: Sage Publications, 2006).
- Duguid, S., Hawkey, C. and Knights, W. "Measuring the Impact of Post-Secondary Education in Prison: A Report from British Columbia" (1998) 27 *Journal of Offender Rehabilitation*, 27.
- Durkheim, Emile. *The Elementary Forms of Religious Life*, translated by Swain, J., (New York: Collier Books, 1961).
- Durkheim, Emile. *Professional Ethics and Civil Morals*, (London: RKP, 1959).
- Edelman, M. *The Symbolic Use of Politics*, (New York: Free Press, 1964).

- “Editorial Reply”, (2002) 27(2) *Journal of Criminology and Public Policy* 2.
- Elder, C. and Cobb, R. *Political Use of Symbols*, (New York: Long Man Press, 1983).
- Elias, N. *Involvement and Detachment*, (Great Britain: Oxford University Press, 1987).
- Emsley, C. *The English Police: A Political and Social History*, 2nd ed. (London: Longman Press, 1996).
- Eng, S. “Police must earn the public trust they need” (1992) 6 *Canadian Speeches* 8.
- Ericson, R., Baranek, P. and Chan, J. *Representing Order: Crime, Law, and Justice in the News Media*, (Toronto: University of Toronto Press, 1991).
- Ericson, R., Baranek, P. Chan, J. *Visualizing Deviance*, (Toronto: University of Toronto Press, 1987).
- Eterno, J. and Silverman, E. “Guest Editor’s Introduction: Corruption in Perspective” in (2002) 3(1) *Police Practice and Research* 1.
- “Final Report: Measures to Combat Organized Crime”, Submitted to the Department of Justice by, Les Études de Marché Créatec, (April 1997) at 1-23.
- Financial Action Task Force, Annual Report 1993-1994 at <http://www.oecd.org/fatf/reports.htm>
- Financial Action Task Force, Annual Report 2002/3 at http://www.fintrac.gc.ca/publications/annualreport/2002/3_e.asp
- Findlay, M. *The Globalisation of Crime: Understanding Transitional Relationships in Context*, (United Kingston: Cambridge University Press, 1999).
- Fisher, S. “Just the Facts, Ma’am’: Lying and the Omission of Exculpatory Evidence in Police Reports” (1993) 28 *New Eng. L. Rev.* 1.
- Forcese, D. “Police Unionism: Employee-Management Relations in Canadian Police Forces”, (1980) 4 *Canadian Police College Journal* 2.
- Forst, B. and Manning, P. *The Privatization of Policing*, (Washington: Georgetown University Press, 1999).
- Foucault, M. *Discipline and Punish: The Birth of the Prison*, (New York: Vintage Books of Random House Inc., 1975).

Galliher, J. "The Study of the Social Origins of Criminal Law" (1980) 3 *Research in Law and Sociology* 301.

Garfinkle, H. "Conditions of Successful Degradation Ceremonies", in Manis, J and Meltzer, B eEds., *Symbolic Interactionism*, (New York: Allyn and Bacon Press, 1972).

Garland, D. *The Culture of Control: Crime and Societal Order in Contemporary Society*, (U.S.A.: University of Chicago Press, 2001).

Garland, D. "The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society" (1996) 36 *Brit. J. of Crim.* 4.

Geller, W. *Police Leadership in America: Crisis and Opportunity*, (New York: Praeger, 1985).

Gerring, J. *Social Science Methodology: A Critical Framework* (London: Cambridge University Press, 2001).

Gest, T. *Crime and Politics: Big Government's Erratic Campaign for Law and Order*, (Oxford: Oxford University Press, 2001).

Giles, M. "Symposium Centers on Biker Gangs", *Blue Line: Canada's National Law Enforcement Magazine*, (May 2000).

Glasbeek, H. *Wealth by Stealth: Corporate Crime, Corporate Law, and the Perversion of Democracy*, (Toronto: Between the Lines Press, 2002)

Glaser, B. *Doing Grounded Theory: Issues and Discussions*, (Mill Valley, California: Sociology Press, 1998).

Globe and Mail, "Gang-related Charges Dropped Against Alleged Warriors"(08 July 2000).

Godson, R. and Olson, W. "International Organized Crime: Emerging Threat to US Security", National Strategy Information Centre Paper, August 1993.

Goffman, E. *The Presentation of Self in Everyday Life*, (New York: Doubleday Anchor Books, 1959).

Goldsmith, Andrew. *The Impact of Police Collective Bargaining Upon Municipal Police Management in Ontario, 1973-1984: A Socio-Legal Analysis*, (Doctoral Thesis, University of Toronto, 1986).

Goldstein, A. *Delinquent Gangs: A Psychological Perspective*, (U.S.A.: Research Press, 1991).

Goode, E., Ben-Yehuda, N. *Moral panics: The Social Construction of Deviance*, (Oxford, Blackwell Press, 1994).

Government Press Office. "Enlargement and Engagement: National Security Strategy of the United States" Washington D.C., February 1996.

Government Press Office. "Report of the Brown/Rudman Commission on the Roles and Capabilities of the United States Intelligence Community", Washington D.C., March 1996.

Green, J. and Matrofski, S. *Community Policing – Rhetoric or Reality*, (Westport: Greenwood Publishing, 1987).

Greenwood, M. "Apprehended Insurrection and the Administration of Justice in Canada: An Historian's Viewpoint" (typescript); published as "L'insurrection apprehende et L'administration de la justice au Canada", (1979) 34 *Revue d'Histoire de L'Amerique Francaise*, 1980.

Gusfield, J. "Introduction" in Burke, K. ed., *On Symbols and Society*, (Chicago: University of Chicago Press, 1989).

Gusfield, J. *Symbolic Crusade*, Urbana, (University of Illinois Press, 1963).

Hall, S. et al. *Policing the Crisis: Mugging, The State and Law and Order*, (London: Macmillan, 1978).

Hall, S, Critcher C., Jefferson T., Clarke, J., Roberts B. *Policing the Crisis*, (London: Macmillan Education Ltd, 1978).

Harper, C. "Prof Slams Anti-Gang Legislation", (1997) *Lawyer's Weekly*, 17.

Healy, P. "The process of reform in Canadian criminal law", (1984) 42 *University of Toronto Faculty of Law Review*, 16

Heclo, H. "Issue Networks and the Executive Establishment", in King, A., ed. *The New American Political System*, (Washington: American Enterprise Institute, 1979) 78.

Herbert, S. *Policing the Contemporary City: Fixing Broken Windows or Shoring up Neo-Liberalism?* (London: Sage Publications, 2001).

Hill, R. "Facing Change: New Directions for Critical Criminology in the Early New Millennium?" (2002) 3 *Western Criminology Review* 2.

Hogg, R., "Perspectives on the Criminal Justice System" in Findlay, M., Egger, S. J., Sutton, J. eds. *Issues in Criminal Justice Administration*, (Sydney: George Allen and Unwin, 1983).

House of Commons Sub-Committee Report on Organized Crime 1997, at <http://www.parl.gc.ca/InfoComDoc/36/3/JUST/Studies/Reports/SCMRP01-E.htm>

Howard, G. "Garbage Laws and Symbolic Policy: Responses to the Problem of Waste in the United States" (1999) 10 *Criminal Justice Review Policy*, 257.

Hunt R. and Magenau, J. *Power and the Police Chief: An Institutional and Organizational Analysis*, (New York: Sage Publications, 1993).

Thompson, H. *Hells Angels*, (New York: Ballentine Books, 1969).

Ianni, F. *A Family Business: Kinship and Control in Organized Crime*, (New York: Russell Sage Foundation, 1972).

Jary, D., and Jary, J. *Collins Dictionary of Sociology*, (Glasgow: HarperCollins, 1995).

Kairys, D. *The Politics of Law*, (New York: Pantheon, 1982).

Kaiser, A. "New Directions for Canadian Criminal Law Reform: Ensuring An End To Complacency" (1993) *Windsor YB*, Access Just, 13.

Kappeler, V. Blumberg, M. Potter, G. *The Mythology of Crime and Criminal Justice*, 3rd ed. (Illinois: Waveland Press, 2000).

Kelleher, S. *Moral Panic, Organized Crime and the Threat to Civil Liberties in Ireland*, (Master of Laws Thesis, Osgoode Hall Law School, 1999).

Kelly, R. "The Nature of Organized Crime and its Operation" in *Major Issues in Organized Crime Control*, (Washington: Northwest Policy Centre, 1987).

Ketzer, D. *Ritual, Politics, and Power*, (New Haven: Yale University Press, 1988).

Kingston Whig Standard, "New anti-gang law not tested in court" (5 May 1998) at A1.

Kingston Whig Standard, "Biker Gang Eyes Kingston" (18 April 1998) at A1.

Koening, D. "Organized Crime: A Canadian Perspective", in Albanese, J., Das, D. and Verma, A. eds., *Organized Crime: World Perspective*, (New Jersey: Prentice Hall Publishers, 2003).

Kronman, A. *Max Weber*, (California: Stanford University Press, 1983).

Lasch, C. "What's Wrong with the Right" (1986) *Tikkun*, (1).

Laumann, E., Knoke, D. *The Organizational State*, (Madison: University of Wisconsin Press, 1987).

Lavigne, Y. *Hells Angels at War*, (Toronto: Harper Collins Publishers, 1999).

Lavigne, Y. *Hells Angels, Taking Care of Business*, (Toronto: Ballentine Books, 1987).

The Law Reform Commission of Canada. "Our Criminal Procedure", Report 32.

Lee, J. "Some Structural Aspects of Police Deviance in Relations with Minority Groups" in Shearing, C. ed. *Organizational Police Deviance: Its Structure and Control* (Toronto: Butterworths Publishing, 1981).

Lemert, C. and Branaman, A. *The Goffman Reader*, (Cambridge: Blackwell Publishing, 1997)

Lemert, E. *Social Pathology: A Systematic Approach to the Theory of Sociopathic Behaviour*, (New York: McGraw-Hill, 1951).

Levine, J. P., Musheno, M. C., Palumbo, D. J. *Criminal Justice: A Public Policy Approach*, (New York: Harcourt Brace Jovanovich Inc., 1990).

Lijphart, A. *European Political Systems*, (New Jersey: Prentice-Hall, 1971).

Loader, I., Mulcahy, A. "The Power of Legitimate Naming: Pt. I: Chief Constables as Social Commentators in Post-War Britain" (2001) 41(1) *Brit. J. Crim.* 41.

Loader, I., Mulcahy, A. "The Power of Legitimate Naming: Pt.II: Making Sense of the Elite Police Voice" (2001) 41(2) *Brit. J. Crim.* 252.

Loader, I. "Policing and the Social: Questions of Symbolic Power" (1997) 8(1) *British Journal of Sociology*, 1.

Lukes, S. *Power*, (New York: University Press, 1986).

Lupsha, P. "Individual Choice, Material Culture and Organized Crime" (1981) 19 (1) *Criminology* 3.

Lupsha, P. "Transnational Crime Versus the Nation State" (1996) 2 (1) *Transnational Organized Crime*, 21.

Lustgarten, L. *The Governance of the Police*, (London: Sweet and Maxwell, 1986).

Lyman, M. *Gangland: Drug Trafficking by Organized Criminals*, (Illinois: Charles Thomas Publisher, 1989).

Maanen, J. "The Asshole" in: Maanen, J. and Manning, P. eds., *Policing: A View from the Streets*, U.S.A.: Goodyear Publishing, 1978).

Machiavelli, N. *The Prince*, Wooten, D. editor and translator, (Cambridge: Hackett Publishing, 1995).

Maclean's Magazine "Montreal Mayhem: Biker gang violence claims innocent victims" (21 August 1995).

Maclean's Magazine. "Montreal Mayhem: Biker Gang Violence Claims Innocent Victims" (21 August 1995).

Macleod, R. C., Schneiderman, D. *Police Powers in Canada: The Evolution and Practice of Authority*, (Toronto: University of Toronto Press, 1994).

Maguire, M., Morgan, R. and Reiner, R. (Eds) *The Oxford Handbook of Criminology*, 3rd ed., (Oxford: Oxford Press, 2002).

Maitland, F. *Justice and Police*, (London: Macmillan, 1885).

Mandel, M. *The Charter of Rights and the Legalization of Politics in Canada*, 2nd Edition, (Toronto: Thompson Educational Publishers: 1994).

Manning, P. *The Narcs' Game*, (U.S.A.: MIT Press, 1980).

Manning, P. *Police Work*, 2nd ed. (New York: Waveland Press, 1997).

Marion, N. *A History of Federal Crime Control Initiatives, 1960-1993*, (Connecticut: Praeger Publications, 1994).

Marquis, G. *Policing Canada's Century: A History of the Canadian Association of Chiefs of Police*, (Toronto: University of Toronto Press, 1993).

Marquis, G. "Power from the Street: The Canadian Municipal Police" in Macleod, R. C., and Schneiderman, D. eds., *Police Powers in Canada: The Evolution of Authority*, (Toronto: University of Toronto Press, 1994).

Marquis, G. "Canadian Police Chiefs and Law Reform: The Historical Perspective", (1991) 33 (3-4) Can. J. of Crim. 385

Martin, M. *Urban Policing in Canada: Anatomy of an Aging Craft*, (Montreal: McGill-Queen's University Press, 1995).

Martinson, R. "What works? Questions and Answers about Prison Reform", (1998) *The Public Interest* 135.

Mastrofski, S. Snipes, J. Supina, A. "Compliance on Demand: The Public's Response to Specific Police Requests" (1996) 33(3) *Journal of Research in Crime and Delinquency* 269.

Matthews, R., Young, J. "Reflections on Realism", in Young, Jock and Matthews, Roger eds., *Rethinking Criminology: The Realist Debate* (London: Sage Publications, 1992).

Mauro, R. "The Constable's New Clothes: Effects of Uniforms on Perceptions and Problems of Police Officers" (1984) 14(1) *Journal of Applied Social Psychology* 42.

McBarnet, D. "Arrest: The Legal Context of Policing", in Holdway, S. ed., *The British Police* (London: Arnold Publishing, 1979) 24.

McClulloch, J. 2001. *Blue Army: Paramilitary Policing in Australia*, (Australia: Prentice, 2001).

McCormick, K. and Visano, L. *Understanding Policing*, (Toronto: Canadian Scholars' Press, 1992).

Mcdougall, A. *Policing in Ontario: The Occupational Dimension to Provincial-Municipal Relations*, (Doctoral Thesis in intergovernmental relations, University of Toronto, 1991).

McDowell, D. *Outlaw Motorcycle Gangs: The nature of their Deviant Subculture*, (undergraduate sociological essay archived with the Niagara Regional Police, 1995).

McGlip, I. and Dassios, C. *Affidavit Compilation of Ontario Police Testimony Against Outlaw Bikers*, (Toronto: Osgoode Hall Law School, 1997).

McIntyre, J. and Henderson, A. "Outlaw Motorcycle Gangs" in *The Business of Crime*, (Canadian Federal Government Information Paper, 1981).

McIntyre, S. "Redefining Reformism: The Consultations that Shaped Bill C-49" in Roberts, J. V., Mohr, R.M. eds., *Confronting Sexual Assault: A Decade of Legal and Social Change*, (Toronto: University of Toronto Press, 1994).

McNee, D. "The Queen's police Keepeth the Peace" *The Guardian*, 25 September 1979, at 25, cited in Reiner, Robert. *The Politics of the Police*, 3rd ed. (London: Oxford University Press, 2000).

McQuillan, B. "Talking with Dinosaurs", *Blue Line: Canada's National Law Enforcement Magazine*, (November 1998).

Meade, J. *Forfeiture and Due Process* (Master of Laws Thesis, Osgoode Hall Law School, York University, Toronto, 1996).

- Memoire Du Barreau Du Quebec Sur le Projet De Loi C-95 – Loi Modifiant Le code Criminel (gangs) et D’Autres Lois en Consequence, (April 1997).
- Merlman, R. *Language, Symbolism, and Politics*, (Colorado: Westview Press, 1992).
- Metropolitan Toronto Police Training Video, “Outlaw Motorcycle Gangs” (1997).
- Miller, G., Dingwall, R. *Context and Method in Qualitative Research*, (London: Sage Press, 1997).
- Miller, W. *Cops and Bobbies*, Second Edition, (Columbus: Ohio State University Press, 1999).
- Miller, W. “Police Authority in London and New York City 1830-1870”, (1995) 81 *Journal of Society History*, 95.
- Ministry of the Solicitor General News Release, “Government of Canada Steps Up Fight Against Organized Crime”, (5, April 2001).
- Mishler, E. *Research Interviewing: Context and Narrative* (Cambridge, MA: Harvard University Press, 1986)
- Moon M. “Outlawing the Outlaws: Importing R.I.C.O.’s Notion of ‘Criminal Enterprise’ into Canada to Combat Organized Crime”, (1999) 24(1) *Queen’s Law Journal* 451.
- Mopas, M., Stenning, P. “Tools of the Trade: The Symbolic Power of Private Security – An Exploratory Study” (2001) 11(1) *Policing and Society* 1.
- Morgan, R., Smith, D. J. *Coming to Terms with Policing*, (New York: Routledge, 1989).
- Morrison, W. *Theoretical Criminology: From Modernity to Post-Modernism*, Cavendish (Great Britain: Publishing Limited, 1995).
- Muir, Jr, W. K. “Police and Politics” (1983) *Criminal Justice Ethics* 2.
- Murphy, C. “Policing Postmodern Canada” (1998) 13(2) *Canadian Journal of Law and Society* 1.
- Musto, D. *The American Disease: Origins of Narcotic Control*, (New Haven: Yale University Press, 1973).
- Nadelmann, E. “The Americanization of Global Law Enforcement: The Diffusion of American Tactics and Personnel” in McDonald, E. ed., *Crime and Law Enforcement in the Global Village* (Ohio: Anderson Publishing, 1997).
- Naylor, R. T. *Patriots and Profiteers: On Economic Warfare, Embargo Busting and State-Sponsored Crime*, (Toronto: McClelland and Stewart Inc., 1999).

Naylor, R. T. "The Theory and Practice of Enterprise Crime: Public Perceptions and Legislative Responses" from National Forum on Organized Crime, Ottawa, Discussion Papers (27-28 September 1996).

Naylor, R. T. "From Cold War to Crime War: The Search for a New 'National Security' Threat", (1995) 4 *Transnational Organized Crime* 37.

Neideroffer, A. *Behind the Shield*, (New York: Doubleday Anchor Books, 1967).

Neuman, L. *Social Research Methods: Qualitative and Quantitative Approaches* (Boston: Pearson Press, 2003).

Ng, Y. *Ideology, Media and Moral Panics: An Analysis of the Jaques Murder*, (Master's Thesis, Centre of Criminology, University of Toronto, 1981).

Nicaso, A., Lamothe, L. *Dans les Couloirs Du Crime Organise, Le Role Strategique du Canada a L'Aube du 21e Siecle*, (Montreal: Les Editions de L'Homme, 1996).

O'Mahony, P. 1993. *Crime and Punishment in Ireland*, Roundhall Press, Dublin.

O'Malley, P. "Risk, Power and Crime Prevention", (1994) 25(2) *Economy and Society* 2.

Ontario Report. "Report of the Royal commission on Certain Sectors of the Building Industry", Judge Harry Waisberg, Chairman, Vols. 1 and 2. Ottawa: Queen's Printer, 1974.

"Outlaw Motorcycle Gangs", C. O. Bick Video Productions, Metropolitan Toronto Police, Toronto.

Overton, J. "Dissenting Opinions" (1991) 15 *Perception* 1.

Owram, D. *The Government Generation: Canadian Intellectuals and the State, 1900-1945*, (Toronto: University of Toronto Press, 1990).

Palango, P. *The Last Guardians: The Crisis in the RCMP – and in Canada*, (Toronto: MacClelland and Stuart, 1998).

Paradis, P. *Nasty Business*, (Toronto: HarperCollins Publishers Ltd., 2002).

Pasquino, P. "Theatrum Politicum: The Genealogy of Capital - Police and the State of Prosperity", in Burchell, G., Colin G. and Peter M. eds., *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991).

Poor Man's Guardian, (11 October 1830).

- Powel, Walter. "Neither Markey nor Hierarchy: Network Forms of Organization", in *Research in Organizational Behavior*, Staw, B. T., Sutton, R. L. (Eds), (Greenwich CT, JAI press, 1989).
- Presthus, R. *Elite Accommodation in Canadian Politics*, (Toronto: Macmillan of Canada, 1973).
- Pross, P. *Group Politics and Public Policy*, (Toronto: Oxford University Press, 1986).
- Pue, W. *Pepper In Our Eyes*, (Vancouver: UBC Press, 2000).
- Quebec Commission of Inquiry into the Sûreté du Québec. Poitras Commission, 1999.
- Quebec Police Commission. "The Fight Against Organized Crime in Quebec." Report of the Commission of Inquiry, presented to the Quebec Solicitor General, Jean L. Dutil (Montreal: Quebec Official Publisher, 1997).
- Quinn, J. *Outlaw Motorcycle Clubs: A Sociological Analysis* (Master's Thesis, University of Miami, 1983).
- Rawlings, P. "The Idea of Policing: A History" 1995 5(2) *Policing and Society* 129.
- Reiner, R. *The Politics of the Police*, 3rd ed. (Oxford: Oxford University Press, 2000).
- Reiner, Robert. "Policing a Postmodern Society" (1992) 55(6) *The Modern Law Review* 761.
- Reiner, R. *Chief Constables*, (Oxford: Oxford University Press, 1991).
- Reiner, Robert. *The Blue Coated Worker*, (Cambridge: Cambridge University Press, 1978).
- Reuter, P. and Rubenstein, J. "Fact, Fancy and Organized Crime" (1978) *Public Interest* 53.
- Reuter, P. *Disorganized Crime: The Economics of the Visible Hand*, (U.S.A.: MIT Press, 1983).
- Rhode, R.A.W., Marsh, D. "New Directions in the Study of Policy Networks" (1991) *European Journal of Policy Research* 44.
- Rhodes, R.A.W. *Beyond Westminster and Whitehall*, (London: Unwin Hyman, 1986)
- Roach, K. "Panicking over Criminal Organizations: We Don't Need Another Offence", (2001) 44 *The Criminal Law Quarterly* 1.

- Roach, K. *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice* (Toronto: University of Toronto Press, 1999).
- Robb, James. "The Police and Politics: The Politics of Independence", in Macleod, R. C. & Schneiderman, D. eds., *University Police Powers in Canada: The Evolution and Practice of Authority*, (Toronto: University of Toronto Press, 1995).
- Rock, P. *After Homicide: Practical and Political Responses to Bereavement*, (New York: Oxford University Press Inc., 1998).
- Rock, P. "Governments, Victims and Policies in Two Countries" (1998) 28 *Brit. J. Crim.* 1.
- Rose, N. "Governing Risky Individuals: the Role of Psychiatry in New Regimes of Control" (1998) 5 *Psychiatry, Psychology and Law* 2.
- Rubenstein, J. *City Police*, (New York: Farrar, Straus and Giroux, 1973).
- Ryan, J. T. G. "The Canadian Charter of Rights and Freedoms: Its Impact on Law Enforcement", College of National Defence, Kingston, Ontario, 1992 [unpublished].
- Sanger, D. *Hell's Witness*, (Toronto: Viking Press, 1995).
- Sangollo, P. "The Police Perspective on Organized Crime", from Forum on Organized Crime, September 27-28, Discussion Papers, 1996.
- Savoie, D. *The Politics of Public Spending in Canada*, (Toronto: University of Toronto Press, 1990).
- Seaman, L. *Victorian England: Aspects of English and Imperial History 1837-1901*, (London: Routledge: 1995).
- Segal, H. "Police and Politicians: The Accountability / Independence Conundrum" Paper presented at the Canadian Police College Executive Seminar, RCMP Headquarters, Ottawa (8 April 2002).
- Seized Property Management Act (Bill C-123, 1993) at http://www.pwgsc.gc.ca/text/factsheets/seized_property-e.html
- Sewer, A. "Biker Business"(1992) 126 *Fortune* 12 (30 November 1992).
- Shearing, C., Stenning, P. 1985. "From the Panopticon to Disney World: The Development of Discipline", in Doob, A. and Greenspan, I. eds., *Perspectives in Criminal Law* (Aurora: Canada Law Book Co. 1985).

- Shearing, C. *Organizational Police Deviance: Its Structure and Control*, (Toronto: Butterworths, 1981).
- Sheingold, S. "The Politics of Street Crime and Criminal Justice" in Joseph, Lawrence ed. *Crime Communities and Public Policy* (Illinois: University of Illinois Press, 1995).
- Sher, J., Marsden, W. *The Road to Hell: How the Biker Gangs are Conquering Canada*, (Toronto: Random House, 2003).
- Silver, A. "The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot" in Bordura, D. ed. *Police: Six Sociological Essays* (U.S.A.: John Wiley & Sons Inc., 1967).
- Skolnick, J. "Deception by Police" (1982) *Criminal Justice Ethics* 40.
- Skolnick, J. "Changing Conceptions of the Police", in *Great Ideas Today*, (Chicago: Encyclopaedia Britannica, 1972).
- Skolnick, J. *Justice Without Trial*, (New York: Wiley Publishers, 1966).
- Solicitor General of Canada News Release. "Major Study on Organized Crime Confirms Need for National Strategy, Solicitor General Andy Scott tells Chiefs of Police" (24 August 1998).
- Solicitor General of Canada, News Release, (25 August 1997).
- Solomon, F. "Order-Maintenance Policing: Some Implications for the Criminal Justice System". Unpublished paper, annual meetings of the Canadian Law and Society Association, Vancouver, B.C., (29 May 2002).
- Solomon, P. "The Policy Process in Canadian Criminal Justice: A Perspective and Research Agenda" (1981) January, *Canadian Journal of Criminology* 1.
- Speaking Notes for Mr. Dick Discepola, M.P., Parliamentary Secretary to the Solicitor General of Canada", National Forum on Organized Crime, Ottawa (September 27, 1996), *Government of Canada web site, www.sgc.gc.ca*.
- Speaking notes for the Honourable Lawrence Macaulay, P.C., M.P., Solicitor General of Canada, Saskatoon Canadian Association of Chiefs of Police Annual Conference. "Strong and Safe Communities: Building a Better Future for Canadians" (19 August 2001).
- Standing Senate Committee on Legal and Constitutional Affairs, (21 November 2001).
- Standing Senate Committee on Legal and Constitutional Affairs, (24 April 1997).

Stenning, P. "Red Serge and Dark Clouds: Some thoughts on the Hughes report on the policing of the 1997 APEC conference", in (2002) 10(3) *Literary Review of Canada* 11.

Stenning, P. "Someone to Watch over Me: Government Supervision of the RCMP" in Pue, Wesley ed., *Pepper in Our Eyes: The APEC Affair* (Vancouver: UBC Press, 2000).

Stenning, P. "Police and Politics: There and Back and There Again?" in Macleod, R. and Schneiderman, D. eds., *Police Powers in Canada: The Evolution and Practice of Authority*, (Toronto: University of Toronto Press, 1994).

Stenson, K. "The New Politics of Crime Control", in Stenson, K., Sullivan, R. eds., *Crime, Risk and Justice: The Politics of Crime Control in Liberal Democracies*, (USA: Willan Publishing, 2001).

Storch, R. "The Plague of Blue Locusts: Police Reform and Popular Resistance in Northern England 1840-57" (1975) 20 *International Review of Social History* 61.

Stuart, D. "Time to Recodify Criminal Law and Rise Above Law and Order Expediency: Lessons from the Manitoba Warriors Prosecution" (2001) *Manitoba L. J.* 89.

Stuart, D. "An Entrenched Bill of Rights Best Protects Against Law and Order Expediency", (1999) 11 *South African Journal of Criminal Law* 325.

Stuart, D. "Politically Expedient but Potentially Unjust Criminal Legislation against Gangs", (1998) 69 *International Review of Penal Law*, 245.

Stuart, D. "Politically Expedient but Potentially Unjust Criminal Legislation against Gangs", (1997) 2(2) *Can. Crim. L. R.*, 207.

Stuart, D. "Policing Under the Charter" in Macleod, Schneiderman eds., *Police Powers in Canada: The Evolution and Practice of Authority*, (Toronto: University of Toronto Press, 1992).

Sumner, C. *Crime, Justice and the Mass Media*, (Cambridge: Institute of Criminology, University of Cambridge, 1982).

Sykes, R., Clarke, J. "A Theory of Deference Exchange in Police-Civilian Encounters" (1975) 81(3) *American Journal of Sociology* 584.

Taylor, I. "Martyrdom and Surveillance: Ideological and Social Practices of Police in Canada in the 1980's", (1986) 26 *Crime and Social Justice* 60.

The New Right, at
<http://www.lincoln.ac.uk/spp/charlie/grand/newright/who.html>.

Thompson, E. P. *Writing by Candlelight*, (London: Merlin Press, 1980).

- Thompson, H. *Hell's Angels*, (New York: Modern Library, 1967).
- Turk, A. *Political Criminality: The Defiance and Defense of Authority*, (USA: Sage Publications, 1982).
- Turner, C. and Martin, E. *Surveying Subjective Phenomena* (New York: Russell Sage Foundation, 1984).
- U.B.C Book Review of *Pepper in our Eyes* at <http://www.ubcpress.ca/books/pdf/chapters/pepper/>
- U.S. Senate, Special Committee to Investigate Organized Crime in Interstate Commerce, Third Interim Report, S. Rep. No. 307, 82nd Cong., 1st Sess. 150 (1951).
- Uggen, C. "Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism" (2000) 67 *American Sociological Review* 1.
- Uglow, S. "The Origins of the Police", in, Unglow, S. ed., *Policing Liberal Society*, (Oxford: Oxford University Press, 1988).
- United Nations Report. UNCICP Survey on Organized Crime. (September 2000).
- Valaskakis, K. "Economic trends and the future of policing: What to expect from the Truculent Nineties" (1991) 33 *Can. J. Crim.* 3.
- Van Den Hagg, E. *Punishing Criminals: Concerning a Very Old and Painful Question*, (New York: Basic Books, 1975).
- Van Maanen, J. "The Asshole" in Van Maanen, J., Manning, P. eds., *Policing the Street*, (California: Goodyear Publishing Company, 1978).
- Vaughn, J. "Police and Politics" (1988) 55 *The Police Chief* 10.
- Walker, N. "Defining Core Police Tasks: The Neglect of the Symbolic Dimension" (1996) 6(1) *Policing and Society* 53.
- Walker, S. *Sense and Nonsense about Crime: A Policy Guide*, (California: Pacific Grove, 1989).
- Walker, S. *A Critical History of Police Reform: The Emergence of Professionalism*, (Lexington: Lexington Books, 1977).
- Wall, D. *The Chief Constables of England and Wales*, (Aldershot: Avebury, 1998).
- Weber, R. *Basic Content Analysis* (California, Newbury Park Press, 1990).

- Werthman, C. and Piliavin, I. "Gang Members and the Police", in Bordua, D. ed., *Police: Six Sociological Essays*, (Chicago: John Wiley & Sons, University of Chicago, 1967).
- Wheeler, G. "Reporting Crime: The News Reliance as Textual Mediation of Police / Media Relations" (Master's thesis, Centre of Criminology, University of Toronto, 1986).
- White, R., and Haines, F. *Crime and Criminology – An Introduction*, (Oxford: Oxford University Press, 2000).
- Wilks, S., Wright, M. *Comparative Government-Industry*, (Oxford: Oxford University Press, 1987).
- Williams, K. *Textbook on Criminology*, (London: Blackstone Press, 1991).
- Wilson, J. Q. *Crime and Human Nature*, (New York: Simon and Schuster, 1985).
- Wilson, J. Q. and Kelling, G. "Broken Windows" (1982) Mar. *The Atlantic Monthly* 1.
- Wilson, I. "Political Awareness in Policing", in Pope, D., Weiner, N. eds., *Modern Policing*, (London: Croom Helm, 1981).
- Wilson, J. Q. *Thinking about Crime*, (New York: Basic Books, 1975).
- Wilson, J. Q. *Varieties of Police Behavior: The Management of Law and Order in Eight Communities*, (Cambridge: Harvard University Press, 1968).
- Winnipeg Sun*, "Rough Ride for Justice" (29 January 2001).
- Wiseman, N. "Hand in Glove? Politicians, Policing, and Canadian Political Culture" Macleod, R. C., Schneiderman, D. eds., in *Police Powers in Canada: The Evolution and Practice of Authority*, (Toronto: University of Toronto Press, 1997).
- Wolf, D. *The Rebels: A Brotherhood of Outlaw Bikers*, (Toronto: University of Toronto Press, 1991).
- Wood, J., Shearing, C. "Securing Safety on Campus: A Research Note" (1997) 39 *Can. J. Crim.* 3.
- Woodiwiss, M. *Crime Crusades and Corruption: Prohibitions in the United States, 1890-1987*, (Ottawa: Barnes & Noble Books, 1988).
- Yip, L. *The Development of Organized Crime Legislation in Hong Kong: Traditional and Contemporary Approaches* (Master of Laws Thesis, University of Hong Kong, 1996).
- Young, A. "The State that Cried Wolf", (1999) *Nathanson Centre Newsletter*, No. 3.

Young, J. "Recent Paradigms in Criminology" in Maguire, M., Morgan, R., Reiner, R. eds., *The Oxford Handbook of Criminology* (Oxford: Clarendon Press, 1994).

Young, J. "Thinking Seriously About Crime: Some Models of Criminology" in Fitzgerald, M., McLennan, G., Pawson, L. eds., *Crime and Society: Readings in History and Theory* (London: Routledge & Kegan Paul, 1981).

Young, J. *The New Criminology Revisited*, (London: Macmillan, 1998).

Zimring, F. E. "Populism, Democratic Governance, and the Decline of Expert Authority: Some Reflections on "Three Strikes" in California" (1996) *Pacific Law Journal* 28.

TABLE OF LEGISLATION AND CASES

Legislation

Bill C-27, *An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation)*, 2^d Sess., 35th Parl. 1997 (assented to 25 April 1997).

Bill C-8, *An Act Respecting the control of certain drugs, their precursors and other substances to amend certain other Acts and repeal the Narcotic Control Act in consequence thereof*, 3^d Sess., 35th Parl. 1996 cl. 45 (assented to 20 June 1996).

Bill C-17, *An Act to amend the Criminal Code and certain other Acts*, 2^d Sess., 35th Parl., 1997 cl. 45-46 (assented to 25 April 1997).

Bill C-51, *Corrections to the Conditional Release Act (Omnibus Bill)*, 1st Sess., 36th Parl., 1997 cl. 46-47 (assented to 11 March 1999).

Bill C-46, *An Act to amend the Criminal Code – Production of Records in Sexual Offence Proceedings*, 2^d Sess., 35th Parl., 1997 cl. 44 (assented to 25 April 1997).

Bill C-95, *An Act to Amend the Criminal Code (Criminal Organizations), and to Amend Other Acts in Consequence*, 2^d Sess., 35th Parl. 1997 (assented to 25 April 1997).

California Three Strikes Legislation, 1994, *California Penal Code Section 667 (b) through (i)*.

Criminal Code, R.S.C. 1985, c. C-46.

Criminal Law Improvement Act, S.C. 1997, c. 18 ((Bill C-18).

Charter of Rights and Freedoms, R.S. Q. c. C-12, s. 10 (Part I of the Constitution Act, 1982, Schedule B of the Canada Act).

DNA Identification Act, S.C. 1998, c.37.

Extradition Act, S.C. 1999, c. 18.

The Lobbyist Registration Act, R.S.C. 1985, c.44 (4th Supp.)

Mutual Legal Assistance in Criminal Matters Act, S.C. 1988, c. 17 (Bill C-158).

Proceeds of Crime (Money Laundering) Act, S.C. 1991, c.26.

Proceeds of Crime (Money Laundering) Regulations, C. Gas. 1992. I.1744.

Proportional Sentencing Provisions (Criminal Code Amendment), S.C. 1995, c. 22.

Racketeer Influenced Criminal Organizations Act, 18 U.S.C. passed in 1970 as Title IX of the *Organized Crime Control Act* of 1979, Pub. L No. 91452, 84 Stat. 941.

Seized Property Management Act, S.C. 1993, c. 17.

Witness Protection Program Act, S.C., 1996, c.15.

Cases

Brown et al. v. Regional Municipality of Durham Police Service Board (1999), 131 C.C.C. (3d) 1 (C.A.).

Gowan v. Smith (1909) 57 Mich 443; 122 NW 287 (Michigan Supreme Court).

John Campbell and Salvatore Shirose v. Her Majesty the Queen, [1999] 1 S.C.R. 656 (S.C.C.).

R. v. Abbey, [1982] 2 S.C.R. 24 (S.C.C.).

R v. Carrier (2001), 44 C.R. (5th) 158 (Q.C.S.C.).

R v. Deutsch (1986), 27 C.C.C. (3d) 385 (S.C.C.).

R. v. Golden (2001), 207 D.L.R. 4th 18 (S.C.C.).

R. v. K (A.) (1999), 137 C.C.C. (3d) 225 (C.A.).

R v. Leclerc, [2001] R.J.Q. 747 (C.Q. Crim. & Pen. Div.).

R. v. McCurrach (2000), 270 A.R. 207. (Prov. Ct.(Crim. Div.).

R. v. Mohan, [1994] 2 S.C.R. 9 (S.C.C.).

R. v. Pangman (2000) 32 C.R. (5th) 272 (Man Q.B.).

R v. Sharpe, [2001] 1 S.C.R. 25 (S.C.C.).

R v. Stadnick, [2004] Q.J. No. 1004 (Q.C. S.C.).

R. v. Stanley and Manno, [1995] B.C.J. No. 3076 (B.C. Prov. Ct.).