Thinking About the Prevention of Organised Crime

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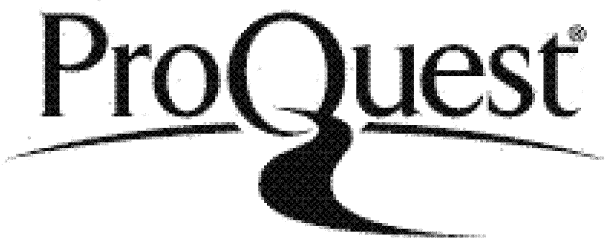

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Abstract

The object of this study is to provide an empirical account of the nature and scope of home invasion robbery, an emerging form of serious and organised crime in Canada. This is situated within the ongoing definitional debate of what constitutes organised crime. It is also contextualised with anomie theory to elaborate the impact of American Empire upon Canada through the intertwined vehicles of law and political economy. A case study of home invasion robbery is provided that illustrates the spectrum of criminal enterprise this phenomenon is linked to or represents. I also provide an analysis of the rise in the use of financial intelligence in Canada's fight against serious and organised crime, and the links this may entail with respect to home invasion robbery.

Acknowledgements

I am very thankful that Professor Dr. Michael Levi agreed to supervise my doctoral research project. I value the challenging comments and suggestions he has offered and the base of knowledge and experience which underpins his contributions.

Special thanks to those who encouraged and supported me during the years of study up to this point in my academic career. These individuals are well aware of who they are and the extent to which I value their contributions.

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CHAPTER ONE:

INTRODUCTION

Introduction

This study aims to provide an empirical account of the nature and scope of home invasion robbery, an emerging form of serious and organised crime in Canada. It situates these activities within the prevention and control apparatus with a particular focus on financial intelligence. The principal data source is case law as well as participant observation in selected areas of the Canadian law enforcement and intelligence community. Direct use of the latter experiences is constrained by secrecy and legal issues. Therefore, they were used to inform my use of a range of secondary research materials.

The impetus for this study derived from two factors. First, the development of a paper (Hicks 1998) which articulated the need for a programme of organised crime prevention. This combined a concern with the limitations of standard organised crime control strategies and some of the under-appreciated linkages between crime and organised crimes. It also included discussion of the potential of preventive approaches to diversify from the field of crime, in a complementary fashion, into more comprehensive efforts to tackle organised crime. I used this paper as an opportunity to survey the research literature, to identify prospective thesis supervisors and to market, later, my doctoral research interests toward

particular academics. Serendipitously, the article was published in a volume of a journal in which my future thesis supervisor had contributed an article.

Second, in the employ of the International Centre for the Prevention of Crime (ICPC) located in Montreal, I was charged with the role of principal investigator for a research report. The report was to examine residential break and enter (burglary) and, the emergence of a terrifying criminal phenomenon that had been receiving much media attention, home invasion robbery. Commissioned in 1999 by the National Crime Prevention Centre (NCPC) of the Government of Canada, a draft was completed for departmental use with a short-turnaround time and a revised version subsequently published by the ICPC (Hicks and Sansfacon 2001). Among other items, the research requested was to draw upon international experience on trends and consequences of these phenomena, various strategies and responses and the identification of effective preventive approaches.

The depth and breadth of available information on home invasion robbery was decidedly sparse, this notwithstanding a determined international trawl for information under the usual constraints imposed by short-term projects. The taskmasters were pleased with the product, but I was not satisfied with the extent of knowledge I was able to glean. During my time in Montreal, I had the good fortune of being introduced to senior officials in Criminal Intelligence Service Canada (CISC), a network of police/criminal intelligence across Canada. Through this forum, I began to understand that there were additional under-explored

dimensions to home invasion robbery. The novelty and opaque nature of the topic captured my interest as a potentially suitable topic for scholarly study.

The research for this thesis has been undertaken during a period of substantial change in my professional circumstances; a diversity of experience that has contributed substantially to my knowledge base in the study of organised crime and the specific phenomenon of study. I left behind my employment with ICPC in the fall of 1999, but continued to contribute on a consultancy basis to various projects. From 2000 through to the summer of 2003 I lectured in criminology at the University of Ottawa, this in addition to various consultancies on crime prevention and organised crime issues as well as maintaining professional association with CISC. From the summer of 2003 to late 2005 I was employed with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), a unique opportunity to view organised crime activities through the lens of a national financial intelligence unit.

Chapter Contents

In chapter two, I provide a review of the literature on serious and organised crime alongside efforts to define this phenomenon. It begins by exploring the distinction between two models, disorganised crime versus the mafia-octopus (disaggregated crime versus the Godfather), which underlie many interpretations of this topic area. I then provide a selective overview of official definitions from the United States, Canada, the European Union and the United Nations. My attention

then turns to assessing the importance of social context in understanding organised crime as a participant in illegal and legal activities. Issues of social context are used to highlight the underlying dimensions of the linear (mafia-octopus) and non-linear (disorganised crime and network) arguments.

I argue that the literature tends toward disorganised crime and inter-related markets as indicative of the bulk of 'organised crime activity'. Official definitions of the phenomenon have a long history of linear arguments of a presumed concentration toward populist images of a mafia-octopus. Nevertheless, official definitions have more recently (post-United Nations Convention Against Transnational Organised Crime 2000) given way to recognising the non-linear arguments of disorganised crime and network structures. Unfortunately, whilst the definitions have expanded to include a broad range of serious crimes, the Godfather imagery has lost little of its cachet or power as a (misleading) social metaphor. A situation of denotative expansion and connotative intransigence continues to impede clearer understanding of what organised crime is and how it fits into contemporary society.

In chapter three, I address critical issues on the evidence base for the study of organised crime as well as articulating an appropriate methodology for a case study on the social organisation of a serious crime, home invasion robbery (HIR), presented further below.

It is not at all clear that standard scientific positivist methods are appropriate in the field of organised crime study or the construction of a helpful evidence base in this area. It is difficult to answer basic questions about the state of the evaluation literature, or to assess the size and scope of this problem or the assessed level of threat. Few programme evaluations are conducted, and those that exist tend to be basic pre-post designs using privileged operational data, often from enforcement agencies. Efforts to estimate the size of organised crime profits and the extent of money laundering typically involve little in the way of rigorous methodology and a distinct inflationary tendency.

The problems of studying organised crime are compounded by several key factors. Certain observers may exercise considerable influence over knowledge about the phenomenon and who is permitted to gain access to study the subject matter. The mass media provide the most accessible form of knowledge on this topic, though their coverage often tends to portray an explicit or implicit mafia-octopus. The executive branch of government, and law enforcement in particular, may limit funding, access and/or attempt to obscure evidence for certain topical areas of study.

Notwithstanding the acute and chronic difficulties of studying organised crime, academic researchers have employed a range of techniques to study various forms. These methods have included participant observation, observation, interviews with victims/offenders/enforcement/government, examination of police and court files, and other methods such as economic analysis based on the prices

of illicit commodities. Many of these efforts have required that the methods are tailored to the phenomenon of study. In developing my thesis, I employed a range of methods.

This included participant observation in the fields of criminal and financial intelligence that, although I could not use these directly for legal and ethical reasons, helped to inform my use of other sources of information. These included case law, the published and grey market literature, media reports and scholarly literature.

In chapter four, I assess the challenge of social regulation in general and with particular attention to organised crime. I discuss selected insights from anomie theory. These include Durkheim's insight that anomie results from the absence of society in the failure to achieve social regulation. It also includes Merton's insight that anomie results from the presence of society in the failure to achieve a balance between goal achievement and the suitability (morality) of the available means. then turn to the claim that Durkheim and Merton may be control theorists, and I highlight that in control theory individuals are freed to engage in deviance whereas in Durkheim and Merton individuals are pressured toward deviance.

I then shift from issues of causation to responses with respect to particular approaches to social regulation. These approaches illustrate the limitations of applying standard control orientations in general and especially with respect to those involved in organised crime. The analysis addresses general deterrence

(the wider population), specific deterrence (at-risk individuals), incapacitation, and rehabilitation. In the case of the first three responses, we find questionable capacity to reduce or prevent organised crime. Such groups have available numerous techniques and tactics to circumvent or displace risks. Further, rehabilitation has not been properly tried.

The chapter also includes discussion of Durkheim's legal evolution thesis. Therein, he argues that as society becomes more complex, moving from mechanical to organic solidarity, repressive (punitive) law is progressively replaced with restitutive (restorative) law. Although there are a number of critics of the legal evolution thesis, Durkheim posed a key problem of whether modern law can retain its own moral force and be something more than mere politics: a point taken up by post-modern refinements of the 'moral panic' thesis. The control of organised crime is an area that illustrates the continuing drift toward the narrow concerns of positive law.

In chapter five, I examine the sociological foundations of institutional anomie theory (IAT). These foundations involve the rise of the doux-commerce and self-destruction theses (Hirschman 1982) of market society. Respectively, the eighteenth century Enlightenment view that markets help to perfect human society and the nineteenth century Industrial revolution view that markets have a corrosive effect on human society. Building upon these ideas, IAT offers a macro-criminological model to examine structural causation. It posits that a market-oriented imbalance in social institutions may cause criminogenic tendencies in

various parts of society and simultaneously undermine institutional and individual observance of social rules.

I then examine key issues relating to the ideas of globalisation and empire. In particular, the post-World War II view of globalisation as a system of economic means to improve the condition of humanity and social organisation. This was followed by the late-1980s shift toward a view of globalisation as a system of economic means apparently operating for its own abstract purposes. These issues are then linked to the concept of empire (over imperialism) in the contemporary period of United States dominance.

My analysis then turns to how Canada experiences several anomic trends. Canadian sovereignty is not assaulted directly by an imperial aggressor but rather national participation in contemporary Empire compels a market-oriented focus in social institutions. This produces considerable inter-related problems and limits the ability of social institutions to regulate individuals and society. Despite the successes of the market-oriented society, those individuals and groups who find themselves marginalised represent a substantial problem to Canadian society.

In chapter six, I provide a case study of home invasion robbery as an example of serious and organised crime. I am not arguing that all HIR cases are organised crime, either in the sense that they meet stereotypical notions or that they necessarily fit neatly into official definitions. This is central to debates and issues raised in the thesis about the evolving definitions of 'organised crime' (See

Chapter Two). Not the least of these issues is that the term itself and official definitions are problematic, and they are often unhelpful when examining the variable organisation of serious crimes. My aim is to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise.

I begin with a range of definitional issues relevant to the discussion of HIR. This includes discussion of the two most proximate categories for HIR, residential break and enter (RB&E) and robbery, as defined by the Criminal Code of Canada. I then turn to the definition of HIR, which is not a distinct crime category but rather a subdivision of the categories of RB&E and robbery. The narrow definition focuses on robbery that occurs in a private dwelling. The broad definition focuses on a robbery, or any RB&E involving a violent offence, that occurs within a private dwelling. Given the potential overlap in the broad definition, a given incident should only be counted once and as the more serious offence. I also provide a brief discussion of definitional issues relating to serious and organised crime, and I discuss how HIR exhibits, and is linked to, a spectrum of criminal enterprise

I then turn to attempt to quantify the magnitude of the HIR problem. This is no straightforward task given that HIR does not exist as a distinct official crime category. For this reason, Uniform Crime Reports (UCR 1) that contain a nationally representative picture of police-recorded crime cannot be used to identify HIR incidence. It is possible to gain some idea of incidence using the more detailed UCR 2 survey of police-recorded crime. However, UCR 2 represented less than 50% of the national volume of police-recorded crime and, therefore, it

does not provide a representative picture of Canada as a whole or any of its regions. The General Social Survey (GSS), which includes a criminal victimisation component, provides some insights. However, the GSS does not have sufficient sensitivity to provide reliable statistics at a national, or census metropolitan area, level. The International Crime Victims Survey (ICVS) is a comparative instrument and its typically small sample sizes (around 2,000) for each country produce sampling errors that make precise domestic estimates of existing crime categories problematic. Thus, the ICVS does not have sufficient sensitivity to be able to provide a reliable or precise estimate of the sub-category of home invasion robbery.

Then I provide an overview of 25 examples of HIR, 16 drawn from case law and 9 from newspapers. These are assessed using the 5Is analytical framework (Ekblom 2003) and its eleven generic causes of crime to assess the social organisation of this phenomenon. My particular aim in using the framework is to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise. I then turn to the Canadian policy response specific to the problem of home invasion robbery.

I try to highlight explicitly the profitability inherent in each of the examples (where the information is available), and there are a number of quite profitable examples that could be flagged by money laundering controls. The pertinent AML legislation in Canada and elsewhere by no means limits itself to 'organised crime' as that is commonly understood. Anti-money laundering controls can identify and be used to

target a broad spectrum of serious crimes. This may result objectively from sums over $10,000 (objective reporting) and/or from sums that are incompatible with the individual's income and profile with a financial institution (subjective suspicious transaction reports that can potentially be triggered at any monetary amount). There are limits to what money laundering controls can achieve, and I am critiquing the idea of what such controls can achieve when they are ostensibly directed at 'organised crime'. When in reality, these controls are directed at the finances generated by (potentially) any serious predicate crime (i.e., monies or convertible assets).

In chapter seven, I discuss the rise of anti-money laundering (AML) controls and a national financial intelligence unit (FIU) in Canada. Although many persons may think that AML relates primarily to organised crime, as it is commonly understood, and drug trafficking, these controls cover a broad range of serious and organised crimes. This diversity may include virtually any proceeds of crime as well as so-called 'hot money'. This occurs where otherwise legitimate actors attempt to evade taxes and engage in deposits or wire transfers to convert or conceal such monies. To follow-up on the case study in chapter six, I will also discuss how AML controls may potentially detect or affect the phenomenon of home invasion robbery.

Financial intelligence may be considered the vanguard of efforts to tackle serious and organised crime. Its purported centrality in the anti-crime arsenal should

therefore, also provide useful insights into more general aspects of the prevention and control of serious and organised crime.

The chapter begins with a brief discussion of getting inside a FIU, in particular the author's involvement with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). It discusses the difficulties of obtaining and using information about this very secretive area of public policy and operations. I then provide an overview of the policy and operational structure in Canada such as the jurisdictional division of governmental and investigative responsibilities.

Attention is then focused on issues surrounding the creation of FINTRAC in 2000. These include the domestic and international pressures for its creation, the substantive components of the reporting regime, and key components of FINTRAC's design. The discussion also looks at the operational potential of FINTRAC. This includes its tactical mandate via the disclosure process, levels of analysis that are possible in context and the potential utility of external enforcement/intelligence and open source databases.

I also examine FINTRAC as representing an example of policy transfer from the United States but with a Canadian twist. Its design features are specific to the legal and cultural rules in Canada. These design features, in turn, have an effect on the potential impact of FINTRAC. This has resulted in a variety of public criticisms of the institution. I provide a brief discussion on Phase II of FINTRAC's

legislative mandate, which is a response to various criticisms and a general deepening of the AML controls in Canada.

Finally, I explore how AML controls may potentially detect or affect the phenomenon of home invasion robbery. This includes discussion of how HIR, as a serious and/or organised crime, can generate sufficient proceeds to trigger investigative interest and/or AML detection. This is especially the case with respect to the more organised examples discussed above, and, in particular, with respect to the multi-billion dollar marijuana grow operation (MGO) industry.

CHAPTER TWO:

DEFINITIONS OF SERIOUS AND ORGANISED CRIME

> A Calabrian chicken decided to become a member of the mafia. He went to a mafia Minister to get a letter of recommendation, but was told that the mafia did not exist. He went to a mafia judge, but he also told him that the mafia did not exist. Finally he went to a mafia mayor, and he too told him the mafia did not exist. So the chicken went back to the henhouse, and when the other chickens asked he answered that the mafia did not exist. Then all the chickens thought he had become a member of the mafia and became afraid of him.
>
> — Luigi Malerba (Hess 1970: 190-191)

Introduction

The present chapter provides a review of the literature on serious and organised crime alongside efforts to define this phenomenon. It begins by exploring the distinction between two models, disorganised crime versus the mafia-octopus (disaggregated crime versus the Godfather), which underlie many interpretations of this topic area. I then provide a selective overview of official definitions from the United States, Canada, the European Union and the United Nations. My attention then turns to assessing the importance of social context in understanding organised crime as a participant in illegal and legal activities. Issues of social

context are used to highlight the underlying dimensions of the linear (mafia-octopus) and non-linear (disorganised crime and network) arguments.

In this chapter, I argue that the literature tends toward disorganised crime and interrelated markets as indicative of the bulk of organised crime activity. Official definitions of the phenomenon have a long history of linear arguments of a presumed concentration toward populist images of a mafia-octopus. Nevertheless, official definitions have more recently (post-United Nations Convention Against Transnational Organised Crime 2000) given way to recognising the non-linear arguments of disorganised crime and network structures. The new Europol mandate appears to abolish the term organised crime and substitutes this with 'serious crime'. Unfortunately, whilst the definitions have expanded to include a broad range of serious crimes, the Godfather imagery has lost little of its cachet. A situation of denotative expansion and connotative intransigence continues to impede clearer understanding of what organised crime is and how it fits into contemporary society.

Disorganised Crime vs. the Mafia-Octopus

Many accounts of organised crime may be divided between two competing views: (a) the "disorganised crime" model of flexible associations that service demand for outlawed goods and services; and (b) the "mafia-octopus" model of hierarchical associations that service the outlawed desires, strive for monopoly (or oligopoly) control, and corrupt 'legitimate' social structures. Proponents of the disorganised

crime model typically fuse theory and detailed empirical analyses of specific criminal activities or sectors to illustrate characteristic fluidity in disaggregated criminal markets. Journalists (Lippmann 1931a,b) sometimes portray the disorganised crime model. But this model is most commonly associated with the empirically derived preference of academics (Albini 1971; Hess 1970; Ianni 1974; Levi 1981 1987; Levi, Bissell and Richardson 1991; Levi and Handley 1998; Mativat and Tremblay 1997; Morselli 2006; Naylor 2002; Potter 1994; Reuter 1983 1995; Smith 1971 1976 1980; Thoumi 1995; Tremblay, Cusson and Morselli 1998).

Proponents of the mafia-octopus model usually (avoid theory and) focus on empirical analyses, often of highly selective or confidential data, to show the machinations of (potentially) centralised criminal conspiracies. Journalists (Charbonneau 1976; Handelman 1993 1995; Kaplan and Dubro 2003; Lavigne 1987; Robinson 1999; Sterling 1990 1994; Stock 2001) often portray the mafia-octopus model. It is the typical confidential-data-derived preference of politicians, government commissions and law enforcement agencies (in the case of North America, Criminal Intelligence Service Canada 2002; Kennedy 1960; Kerry 1997; President's Commission on Law Enforcement and the Administration of Justice 1967; Québec Police Commission 1977a,b). Academics and journalists (Anderson 1965; Cressey 1967 1969; Lindesmith 1941a; Maas 1968 1997) who theoretically bypass, or gain access behind, the veil of legal and bureaucratic secrecy also tend toward the mafia-octopus model.

The competition between the disorganised crime and mafia-octopus perspectives continues to assume a central place in much of the debate about organised crime.

Separating between the denotative and connotative aspects of definition (Sheptycki 2003), the former has progressively expanded to an ever larger range of activities and offenders (disorganised crime), and the latter steadfastly retains the popularised notions of elaborate criminal conspiracies (mafia-octopus). In simple terms, serious crime and organised crime are being fused together in an unwieldy composite. This is one way of sidestepping unease about definitions, as is the formation of superagencies or mega-departments, such as (in the richer Common Law countries) the Australian Crime Commission, the Serious and Organised Crime Agency (SOCA) in the United Kingdom, the Department of Homeland Security in the United States and the Ministry of Public Safety in Canada. The denotative-connotative pattern above has had an unfortunate effect on definitions and understanding of what constitutes organised crime. Specifically, it leads many to the conclusion that the tentacles of an octopus are at work despite wide variations in the degree of activity and association patterns amongst offenders. Its consequent and unfortunate policy effect is that it oftentimes facilitates an undifferentiated official response to markedly different forms of criminal organisation (Beare 2003).

Official Definitions – A Selective Overview

United States

The lack of uniformity in applicable definitions between agencies, departments, and countries has long been a key barrier to the coordination of effort within and between nations. The President's Commission on Law Enforcement and the Administration of Justice (1967: 437) offered the following definition:

> Organised crime is a society that seeks to operate outside the control of the American people and their governments. It involves thousands of criminals, working within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legitimate governments. Its actions are not impulsive but rather the result of intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits.

An agreement amongst major U.S. enforcement agencies in 1979 arrived at the following two complementary definitions:

> (1) Organised crime refers to those self-perpetuating, structured, and disciplined associations of individuals or groups, combined together for the purpose of obtaining monetary or commercial gains or profits, wholly or in part by illegal means, while protecting their activities through a pattern of graft and corruption.

(2) Organised crime groups possess certain characteristics which include but are not limited to the following:

A) Their illegal activities are conspiratorial;

B) In at least part of their activities, they commit or threaten to commit acts of violence or other acts which are likely to intimidate;

C) They conduct their activities in a methodical, systematic, or highly disciplined and secret fashion;

D) They insulate their leadership from direct involvement in illegal activities by their intricate organisational structure;

E) They attempt to gain influence in Government, politics, and commerce through corruption, graft, and legitimate means;

F) They have economic gain as their primary goal, not only from patently illegal enterprises such as drugs, gambling and loan-sharking, but also from such activities as laundering illegal money through and investment in legitimate business. (General Accounting Office 1981: 10-11)

Organised crime is portrayed above as a mafia-octopus. This official/populist paradigm has long-standing currency in the United States and it holds a powerful influence over public opinion, official definitions, and policy in many jurisdictions (Woodiwiss 2001 2003). An early example in the late-nineteenth century related

to the killing of eleven imprisoned Italians in New Orleans. The Congressional Representative for Massachusetts argued that the lawless acts of the lynch mob, led by men of good standing, was in part prompted by their belief that those killed were,

> ...members of the Mafia, a secret society bound by the most rigid oaths and using murder as a means of maintaining its discipline and carrying out its decrees. Of the existence of such a society no reasonable man can, I think, have any doubt.... There was a further popular belief that this society was not only responsible for the murder of the chief of police, but that it was extending its operations and that it was controlling juries by terror, and that it would gradually bring the government of the city and the State under its control. This belief, no doubt, was exaggerated, but it was certainly not without foundation. (Lodge 1891: 603-604)

At this historical juncture, we see the emergence of the persistent alien mafia conspiracy thesis (Hawkins 1969; Smith 1976 1980). Nonetheless, lawlessness in late nineteenth and twentieth century did not primarily reflect the wholesale importation of the Italian (Sicilian) mafia. In late nineteenth and early twentieth century Chicago, for instance, localised gang activity gave way to gangsterism in parallel with a shift from frontier ethics to a more rigid 'legitimate' opportunity structure. With money as the common bond, crime assumed its role as handmaiden to local machine politics in advancing the interests of specific social

groups and profiteers (Nelli 1969: 376, 389). The introduction of national alcohol prohibition in 1920 further helped, but did not determine, the development of American gangsterism.

By the 1970s observers were pointing to the emergence of a new mafia in America comprised of Blacks and Hispanics with more fluid organisational structures and methods to respond to the dynamics of illicit markets (Ianni 1974). Less able to systematically corrupt officials but significantly more violent than the preceding Godfather paradigm, the new competitive market criminal organisations presented less potential for galvanising public and official opinion as well as new challenges for investigators (Reuter 1995). However, the mafia-octopus view of criminal organisation was renewed, possibly for an indeterminate term, with the post-Soviet rise of the so-called Red Mafia or Russian Mafiya (Anderson 1995; Rawlinson 1998a,b). The imagery of an actively or passively corrupt (ex-communist) state, supporting an imperialistic drive for criminal market dominance, underpinned constructions of the new evil empire (Handelman 1993 1995; Sterling 1994).

The flexibility of the Octopus construct is demonstrated by the Racketeer Influenced and Corrupt Organisations (RICO) Statute (1970): Title 18 of the United States Code, Section 1961(4) defines (criminal) enterprise as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity". In enforcing this federal statute, the Federal Bureau of Investigation (FBI) defines

"organised crime as any group having some manner of a formalised structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and generally have a significant impact on the people in their locales, region, or the country as a whole". (FBI 2006)

Canada

Prior to 1997, the Criminal Code of Canada (CCC) did not per se define organised crime. The 1989 Proceeds of Crime legislation referred to enterprise crime offence (s. 462.3 CCC) as inclusive of a range of offences relating to corruption, prostitution, gambling, extortion, fraud, serious violence, designated drug offences, laundering the proceeds of crime, and other offence categories. The characteristics of organised crime could be deduced with reference to the specific offences alone, and/or the cross-referencing of offences (s. 462.3 CCC), in relation to acts, omissions, conspiracies, attempts, accessories, and/or the associated disposal of any property, benefits or advantages whether directly or indirectly obtained. Nevertheless, in serving the convenience of identification, the descriptive cross-references for the concept of enterprise crime offence were not to be used to interpret the meaning of the section (Greenspan 1994: 619). The concept of enterprise crime offence thus provided, at least implicitly, the notion of the pursuit of profit and/or power being the central motivation as well as the involvement of such actors in serious criminal offences. However, it said little

about the social organisation of crime behind the descriptive cross-references of enterprise crime.

Following the enactment of Bill C-95 (1997), the Criminal Code of Canada defined organised crime (S. 467.1) as a specific type of criminal organisation. It referred to any group, association or other body consisting of five or more persons, whether formally or informally organised:

> (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.

Bill C-95 was designed to target Outlaw Motorcycle Gangs (OMGs). The legislation was prompted by the violence of biker wars (Hells Angels versus the Rock Machine) in the province of Quebec and the city of Montreal, and the resultant pressure these regions exercised upon the federal government. The prevailing popular account of OMGs is that of a mafia-octopus (though derived from an historic outlaw group of disorganised criminals), a national and international criminal confederation that controls drug distribution, prostitution, and other illicit markets (Lavigne 1987; Quinn 2001). If criminal organisations conformed to stereotypical public understandings, the C-95 definition would be

adequately inclusive of OMGs as well as other generic profit-motivated examples (who are involved in much of their own dirty work) such as East-European-based groups like the Russian Mafiya, and Traditional/Italian- based groups like the Cosa Nostra.

The reality is that the C-95 definition did not capture the essence of contemporary organised crime. This law was criticised by enforcement officials, academics and others for being too rigid in terms of classification and for being too difficult to operationalise and apply against target groups. Indeed, C-95 was used to modest success against OMGs, and as a questionable sledgehammer against the reduced insulation of street gangs involving mostly young persons (Federation of Canadian Municipalities 2000). The core failure of the C-95 definitional strategy was its very high entry-barrier which tended to exclude the fluid nature of criminal organisations. In contrast to the popular imagery of OMGs as a mafia-octopus, the organisational structure is actually quite fluid and cellular, combining core membership with networked projects and use of arm's length sub-contractors.

European Union

Authorities in Europe identify eleven characteristics of criminal organisation that provide substantive evidence for the label of organised crime. The European Union definition (Adamoli et al. 1998:8-9; Europol and the European Commission 2001: 42) requires that a minimum of six characteristics be present. The first four are mandatory criteria: (1) Collaboration among more than two people; (2)

Extending over a prolonged or indefinite period (referring to stability and (potential) durability); (3) Suspected of committing serious criminal offences, punishable by imprisonment for at least four years or a more serious penalty; and (4) Central goal of profit and/or power. A minimum of two further characteristics must be present from the remaining seven criteria: (5) Specialised division of labour among participants; (6) Exercising measures of discipline and control; (7) Employing violence or other means of intimidation; (8) Employing commercial or business-like structures; (9) Participating in money-laundering; (10) Operational across national borders; and (11) Exerting influence over legitimate social institutions (polity, government, justice, economy).

Europol (2007) recognises the multi-dimensional aspects of organised crime involvement in activities that are (wholly or partially) illegal. It is anticipated that from 2008 onwards the scope of work in Europol will shift from 'organised crime', which attributes qualities to criminality to 'serious crime' with its impact, and harm falling upon individuals and collective victims.

United Nations

While containing subtle (and not so subtle) differences, the European and Canadian definitions are quite complementary and consistent with respect to core characteristics. The points of convergence include the motivation for profit or power, which is deemed to be the core raison d'être. It includes the involvement of two or more actors in a structured/disciplined association (formal or informal)

that continues for some time. It also includes the engagement of actors in serious criminal offences as well as other linked activities that are wholly or partially illegal. To many observers two or more people do not appear to do justice to the populist mafia imagery and it is difficult to think of what this definition would exclude. Thus, some jurisdictions operationalise more formalised notions of the social organisation of enterprise crime such as those that flow from continued enforcement of the RICO Statute (1970) in the United States.

Despite core similarities, the above definitions could hardly respond to demands for a unified definition to address the phenomenon of cross-border crime (Dobovšek 1996). The concept of transnational crime, coined by the United Nations Crime Prevention and Criminal Justice Branch in 1974, implicitly adds several sets of ideas to the concept of organised crime (Bossard 1990: 5; Mueller 1998). First, the crossing of a border by people, things, or even criminal will. Certain criminals, fugitives, terrorists, and others may attempt to cross a border (which may be a crime in itself) during which they commit a crime or are on their way to commit a crime. The crime may be attached to specific illegal activities (e.g., white-collar crime, money laundering, corruption, terrorism or significant forms of violence), or to certain illegal objects (drugs, illegal aliens, firearms, artwork, intellectual property, etc.). The crime may also involve no physical passage across borders but refer instead to the exercise of criminal will, typically effected by electronic and communications technology (e.g., computer crime, corruption, money laundering and infiltration of legitimate business).

Second, transnational crime adds the idea of international recognition of a crime by at least two involved states, or by one state wherein the crime has been committed. Without recognition in law by the state in which such a crime was committed or, in the case of remotely-effected crimes, without one state recognising the laws of another or possessing similar laws, a crime has not (from a legal standpoint) been committed. Whereas the concept of organised crime explicitly (in most definitions) includes more than one actor, serious transnational crimes typically involve organised criminal activity but may be conducted by an independent actor (Mueller 1998: 2: Reuter and Petrie 1999: 8). Despite more than a quarter century of currency, the widespread official popularity of transnational crime is quite recent. The vogue of transnational crime accompanied the flurry, beginning in the 1990s, of government concern about (international) organised crime and the need for standardised definitions and multi-lateral cooperation (Edwards and Gill 2002; Harfield, 2008; Passas 1999a; Ruggiero 2000b; Savona 1995).

The United Nations Convention Against Transnational Organised Crime (2000) was introduced in a high-level signing conference convened in Palermo, Italy, December 12-15. The central purpose of the Convention was "to promote cooperation to prevent and combat transnational organised crime more effectively". The scope of application was the subject of extensive negotiations as elaborated in Article 3. The convention applies to four offences (participation in a criminal organisation, laundering the proceeds of crime, corruption, and

obstruction of justice as per articles 5, 6, 8, 23, respectively). In addition to the four specific offences, the convention also applies to any "serious crime" as articulated by Article 2, paragraph (1)(b) if, in either case, the offence is "transnational in nature" and if it "involves an organised criminal group". Article two, paragraph (2), addresses the question of whether an offence is "transnational in nature". It includes offences committed in more than one state and offences committed in only one state if they are prepared, planned, directed, controlled or have substantial effects in other states, or if they are committed by an organised criminal group which is active in more than one state. This provision generally determines whether the Convention will apply to the "prevention, investigation and prosecution" of offences covered by the Convention, but this is subject to more specific rules set out in some of the Articles of the Convention and Protocols. For example, Article 18, paragraph (1), which deals with mutual legal assistance, refers to requests for assistance when the requesting State Party "...has reasonable grounds to suspect..." that the offence is transnational in nature, which makes it possible to use such a request in an attempt to find out whether this is the case.

For the purposes of the Convention, article 2 defines an "organised criminal group" as a structured group. A non-random organisation, a structured group exhibits formal or informal association and/or roles for its members, but does not require continuity of membership. It involves at least 3 members, exists for a period of time, and involves participants acting in concert for the purpose of

committing crimes specified in the Convention or serious crimes (e.g., punishable by four years imprisonment or a more serious penalty) in order to obtain financial or material benefit. The convention also compels parties, under the provisions of article 5, to establish as a criminal offence, when committed intentionally, participation in a criminal organisation.

In April 2001, the Government of Canada proposed Bill C-24. It was passed by the House of Commons in June 2001 and came into force in January 2002. In compliance with the Palermo Convention, C-24 provides the following definition under the Criminal Code of Canada:

> 467.1(1) Criminal organisation means a group, however organised, that
>
> (a) is composed of three or more persons in or outside Canada; and
>
> (b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences [an indictable offence punishable by five years imprisonment or more, or another offence prescribed by regulation] that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.
>
> It does not include a group of persons that forms randomly for the immediate commission of a single offence.

The above simplifies the (previous C-95) Canadian definition of criminal organisation in several ways. It reduces the minimum number of persons from five to three. It no longer requires evidence of a series of crimes occurring over a given period (only offences relevant to the case). It also covers all serious crimes inclusive of those prescribed by regulation. This legislation allows for enforcement and prosecution of individuals who: participate in or facilitate the activities of criminal organisations (467.11); commit indictable offences for the benefit of or in association with a criminal organisation (467.12); and direct or indirectly instruct others to commit offences for the benefit of or in association with a criminal organisation (467.13).

The maximum penalties include imprisonment for five years, fourteen years, and life, respectively. Sentences relevant to criminal organisation offences are to be served consecutively to any other offence sentence, regardless of whether the given offence is connected or unconnected to a series associated with the particular event and organisation (467.14).

The core elements of the Palermo-inspired definition are the: (a) non-random association of three or more persons; (b) commission of serious offences and/or offences prescribed in domestic criminal law and/or the UN Convention; and (c) pursuit of material benefit including financial benefit. This newly minted model of definitional harmonisation offers a truly breathtaking conflation of serious crime, organised crime, and transnational organised crime. It also adds further confusion to efforts at unpacking the disorganised crime and mafia-octopus debate. While

the official definitions focus on the question of what the phenomenon is from the narrow standpoint of legal targeting of individuals and aggregations thereof, such definitions conveniently sidestep the more pressing questions of why criminal organisations exist and how they fit within the social context. Context is critical to this understanding.

Criminal Organisation and Social Context

The Linear Argument

The nature of a given criminal organisation can be discerned with reference to the patterns and processes of social interaction, the analytically separable, yet interdependent, "structures of activity" and "structures of association", geared toward the achievement of criminal objectives (Cohen 1977: 97-100). The concept of activity structures refers to the chain of techniques used to conduct a crime(s). The concept of association structures refers to the techniques associated with creating and maintaining the social bond. McIntosh (1971 1973 1975 1976) lists four types of criminal organisation that accompany, and predominate within, the opportunity structures associated with the progressive political and economic centralisation of modern Western civilisation:

> Picaresque: the hierarchical and military-style organisation characteristic of the violent robbery activities and nomadic lifestyle of pirates and bandits (in the rural pre-industrial context);

Craft: the egalitarian and flat organisation characteristic of the non-violent activity of largely sedentary pickpockets and burglars (in the urban pre-industrial context);

Project: the combination of a flat organisation of core members and hierarchical organisation of peripheral members characteristic of the advanced planning involving robbery of large-scale commercial targets (in the emerging urban industrial context);

Business: the variable forms of vertically-integrated and networked organisational structures characteristic of involvement in racketeering activities, that is, extortion/protection and the distribution of illicit goods and services (in the urban industrial context).

Implicitly or explicitly, many observers may view macro-evolutionary change through a linear lens, a Darwinian focus on competitive selection, incremental, adaptive, and hierarchical change. The typology that McIntosh constructed, rather impressively given limited data then existing, identifies a general trend of symptomatic expressions of criminal organisation. It further intimates the evolving professionalisation of the underworld accompanying the development of Western countries. The linear argument may be appealing for its simplicity. However, it fails to take into account that societies in any given historical period create a range of opportunities for illegal enterprise. In simple terms, many of the forms of crime identified by McIntosh may appear in a given society and there is no reason

to expect a linear progression or concentration toward more 'advanced' forms (cf. Bauman 1998: 59; Gould 1980). Indeed, McIntosh herself opposed the view that there was a linear progression to business forms of organisation.

Clearly, there is a need to go beyond the linear argument and to identify and employ a more instructive and analytical method to understand illegal enterprise. Naylor (2003) helps to clarify the economic logic behind profit-driven crimes with a tri-partite model: predatory, market-based and commercial. Predatory crimes are "purely transferral" given the involuntary nature of bilateral property extraction from victims, whereas market-based crimes are "partly functional" given the (more-or-less) voluntarily nature of multilateral exchange for illicit goods or services (United Nations International Drug Control Programme 1997: 150). Commercial crimes are apparently voluntary given the multilateral trade in legal goods and services, but also involuntary given the illegal (fraudulent) methods of manipulating market values to the disadvantage of victims. The business model is the referent for the partly functional transaction and common (i.e., popular and pre-Palermo Convention) notions of what constitutes organised crime. The picaresque, craft, and project models are primarily examples of the purely transferral transaction, and these may, under certain circumstances, be labelled as organised crime. Ideal types of criminal organisation may not correspond with all, or even many of the characteristics of real organisational forms, including patterns of centralisation, within a given context. Clearly, we should not be

seduced by the periodisation of the McIntosh typology (Levi 1998c: 340) nor by the overly mechanical centralisation implicit in the linear argument.

For instance, many observers will tend to equate racketeering, as the quintessential form of modern organised crime, with the twentieth century, and piracy and banditry with the late seventeenth and early eighteenth century. Nevertheless, this ignores various examples of the presence of unexpected types of criminal organisation and the culture-specific overlapping of such forms. Throughout antiquity and across the geographic diversity of Greece, Italy, Egypt and other countries, one finds concurrent and/or separate examples of extortion and racketeering, advanced financial fraud, craft crime, and banditry and piracy (Hopwood 1999; van Wees 1999). An organised system of racketeering in eighteenth-century France was conducted by gangsters known as "chevaliers d'industrie" (Saintonge and Saintonge 1938). In eighteenth-century Holland, there existed apparent linkages between marginal populations, craft criminals, roving foreign bandits, and largely sedentary urban bandits who engaged in crime as a part-time supplement to their legitimate transportation occupations (Spierenburg 1998). The persecution suffered by John Hancock – the first signer of the Declaration of Independence – did not result from his putative status a (suspected) smuggler. Rather, his persecution in the pre-Independence period reflected his determination to pursue his legal rights when confronted by the personal, political, and economic motivations of British revenue racketeers (Dickerson 1946).

Patterns of Centralisation

Equally puzzling are patterns of centralisation. Sometimes 'less mature' forms of criminal organisation are able to establish business-like racketeering, and other times the pattern will be reversed. For example, banditry may develop into a permanent racketeering organisation, typically where it achieves control over an unpoliced territory or accommodation with the local elite. Such accommodation may include a fix against enforcement pressure or a contract for the bandits to provide policing services.

Similar to an autocratic monarch, the "stationary bandit" presented with stable opportunities for racketeering activities may be guided by an "invisible hand" to limit the rate of theft (taxation) and provide public goods such as peace and order (Hobsbawm 1969a: 55-56, 87; McGuire and Olson 1996; Olson 1993). While social justice sensibilities may be at play, the economic imperative is to provide adequate encouragement for citizens (victims) to produce more output, or additional resources that may be available for extraction. The bandit-racketeer often suffers for the crudity of his/her technique as well as market conditions. This form of organisational centralisation is therefore quite vulnerable to shifting political currents and enforcement pressure, a lesson experienced by the Kray and the Richardson brothers in 1960s London (Levi 1981: 65, 75).

Craft crime may move toward, or be subsumed by, business organisation where entrepreneurs are able to exert control over the activities of the autonomous craft

organisation. This may occur in two cases. First, a substantial quantitative increase in the pool of people who require the training and coordination services of an entrepreneur (fence) occurs because law enforcement has significantly increased the risk in marketing (as opposed to stealing) stolen goods (e.g., the Fagin phenomenon). Second, an entrepreneur (fence) has managed to secure protection from law enforcement for a group of craftsmen, and the former is thus able to secure control under the threat of withdrawing protection (McIntosh 1973: 47).

Where an entrepreneur (fence) is able to offer either improved training and coordination, or protection from law enforcement, this can enable sustained qualitative change and larger-scale activities than regular craft crime. Nevertheless, the basic craft technique remains vulnerable to external pressures. It is not clear that this underlying vulnerability is mitigated by over-reliance upon the capacity of an entrepreneur (fence) to bribe, charm and control his patrons (law enforcement) and clients or subordinates (thieves). While its core of professional criminals provides some insulation, project crime may also be subject to centralisation processes where an entrepreneur and/or mafia groups are in a position to offer substantial capitalisation needed for specific projects. This in addition to protection from rivals and law enforcement and/or the threat of betrayal to the latter if the criminals do not come onside.

Networks and the Non-Linear Argument

The stark contrast of disorganised crime and the mafia-octopus may not be helpful in analysing actual forms of serious and organised crime. The nature of organised crime makes it a "permanently transitional sector" exhibiting hybrid forms of activity and association to exploit available opportunities (Arlacchi 1979: 66-72). The middle-range of networks offers variable levels of fluidity and coordination that are useful to maximise returns and reduce risks in the uncertain environment of informational capitalism (Castells 1998; Thorelli 1986). Cellular structures are today ubiquitous in both legitimate and illicit enterprises as evidenced by widespread patterns of contract and ad hoc employment of internal and external human resources, overlapping patterns of governance and core groups of "protection entrepreneurs" (Gambetta 1993). The rise of networks in contemporary capitalism further problematises the identification of the essential characteristics of serious and organised crime. On the one hand, we do not know the relative predominance of disorganised crime versus mafia-octopus organisation (Naylor 2002) and there is no reason why this should be consistent in different societies either over time or contemporaneously. On the other hand, the nodal distribution of power through local, regional and transnational networks adds to the analytical challenges of determining whether one has uncovered tentacles, a part of the octopus itself, or a small school of (independent) squid.

Some argue that, for the purposes of definition and understanding, it is important to separate markets from criminal organisations. Whereas the supply of illicit

goods and services is typically disorganised with no inherent tendency toward centralisation, criminal organisations persist with a developmental path that may not be predicated upon involvement in, or the dynamics of, illegal markets (Paoli 2002). Indeed, a number of the major organised crime groups (e.g., camorra, 'ndrangheta, Sicilian mafia, etc.) pre-date many of the current illegal markets. Many of the illicit markets may be immune to monopoly or oligopoly control, but the profitability of these same markets may also provide "the central core of underworld business", the protection market which initiates and sustains large-scale organised crime (Schelling 1967: 78; 1971: 79).

The market to produce and sell trust in the form of protection guarantees over economic transactions may also be disorganised. Nonetheless, specific aspects of protection as a commodity, such as the need to establish enforceable property rights (Jennings 1984: 321), are likely to "foster the growth of...a succession of territorial monopolies...in the protection market" (Gambetta 1988: 134). Participation in illegal activities is often accompanied by a lack of trust which can induce a norm-less state of social relations. Actors involved in illicit activities may be experiencing pervasive anomie (given the absence of trust) as a function of the illegality of their work, but this also adds value to those extra-market forces which are perceived to be capable of fostering goal achievement and contractual compliance (cf. Levi 1981: 82, 119).

Neither economic efficiency associated with illicit markets, nor monopoly control, offers an adequate explanation for the organisational logic of organised crime.

The polyvalence of such groups implies a multi-faceted logic as the basis for organisational culture, goals and structure (Paoli 2002: 63-64, 73). Organisational logic will also be driven by the particulars of a given context. Indeed, large-scale and hierarchical racketeering organisations as portrayed in the Godfather films do not fit in every time and space given the variability of infrastructure, tastes, competitive and law enforcement pressures and other variables.

For instance, British organised crime is dominated, not by the vivid colour of mafia-octopus conspiracies as preferred in the United States, but rather the modest-scale and shabby grey of middle-aged, white, and home-grown career criminals of the variety portrayed in the Minder television series (The Economist 2001). These Minder-type syndicates run streamlined but diversified networks, offering a very efficient, or competition resistant mechanism for engaging in drug distribution, armed robbery, fraud, and trade in illegal cigarettes. While such networks may possess a comparative advantage domestically, these may also impair the capacity to control domestic markets and attract foreign investors who are seeking reliable outlets for diversification and economies of scale. Though British crime, as is the case for British industry, is simply too profitable for many investors to resist (Levi 1976). Other countries, such as Canada, are more open to cultivating home-grown talent as well as effective or de facto franchises of foreign industry (Cressey 1969: 155-157; Cressey 1972: 2-3; Mann and Hanley 1968: 152-153).

Chief Superintendent Ben Soave, a leading (former) RCMP gang-buster, argues that a consolidated Organised Crime Inc. is apparent in the joint enterprise linkages, cooperation, and coordination between multinational gangs (Stock 2001). A specialised division of labour is deemed to exist, with some parties concentrating on leadership and policy coordination (Italian-based or traditional), technology and computer expertise (Asian-based), money laundering and extortion (East European-based), and distribution and enforcement (Outlaw Motorcycle Gangs or OMGs). Others dismiss the multi-ethnic complex that is deemed to constitute organised crime (Criminal Intelligence Service Canada 2002) as merely a pluralist revision of the much-derided alien mafia conspiracy thesis (Hawkins 1969; Potter 1994; Smith 1976 1980). The global pluralist theory of serious and organised crime promulgated by the Palermo Convention serves to further obfuscate the disorganised crime and mafia-octopus debate. Also lost in this debate is the possibility that we do not face a zero-sum game as more and less organised crime may co-exist without necessary tension within and between nation-state boundaries. Whilst it generates a spectacularly inclusive model of what constitutes organised crime, the Palermo Convention also conveniently sidesteps issues of context and linkage between the upperworld and the underworld (Woodiwiss 2003: 22-24). What is more, greater or lesser amounts of organised crime may be capable of coexistence (symbiotic or otherwise) within and between nation state boundaries. A zero-sum game is not, necessarily, what we confront at the domestic and international level.

Government Protection (State Racketeering)

At root, official definitions represent the choices made by the police and other state agencies of social groups and activities that are considered dangerous threats to the integrity of the state and its agencies (Levi 1998c: 335; Reuter and Petrie 1999: 12; Ruggiero 2000b). The Palermo Convention offers wonderfully elastic definitional boundaries. It constitutes an unequivocal and ongoing act of gerrymandering the definitional boundaries (Woolgar and Pawluch 1985). For notwithstanding the selective enforcement imperative given inevitable resource constraints, the new definitional harmonisation provides the maximum possible discretion to state and enforcement officials as to the expansive range of deviant acts and actors who may be viewed and treated as (transnational) organised crime. Whereas the denotative definition of organised crime has been expanded to the wide domain of all designated and "serious crime", the connotative dimension of (domestic and transnational) mafia-octopus criminal conspiracies retains its popularity and status (Sheptycki 2003).

It is important to question the underlying assumptions of the new definition and its policy implications. The official (Palermo-style) definitions of organised crime are inherently problematic because they merge an expansive range of activity and association structures into an unwieldy composite, ostensibly to be addressed by the enforcement architecture and officialdom. They further avoid substantive issues of how criminal organisations work in practice and how these phenomena fit into the policy environment of contemporary social structure.

The conspiratorial imagery of the mafia-octopus offers a saccharine model for public consumption. Nevertheless, the "artificial unity" ascribed to the category of serious crimes is misleading (Naylor 2003: 83) as is the neat dichotomy between the pathological and the normal:

> ...the pathological forms of a phenomenon are no different in nature from the normal ones, and consequently it is necessary to observe both kinds in order to determine what that nature is. Sickness is not opposed to health; they are two varieties of the same species and each throws light on the other (Durkheim 1895: 79).

The law enforcement concerns with detecting whom and what tend to unduly narrow understanding to issues such as the means, goals, individuals, activities, behaviour, or money. Improved understanding could be achieved with a process-oriented focus focussing on how forms of crime develop and co-exist, how they capitalise upon opportunities and neutralise social control efforts in a given context (Adamoli et al. 1998: 4, 9; Cohen 1977: 100; McIntosh 1975; Woodiwiss 2001).

Well repressed in the thinking behind official definitions, the alleged growth and pervasiveness of organised crime is primarily linked to the structural problems wrought by the "criminogenic asymmetries" of anomic market-oriented policy (Passas 1999a). The use of globalisation as a synonym for civility and progress on the one hand, or disorder and chaos on the other, contributes little to

intellectual clarity (Bauman 1998: 57-59; Hirschman 1982). However, the profusion of the market-oriented society underscores the desire for freedom to participate in, and to obtain protection from, the forces of glocalisation (Robertson 1995) or the reciprocal currents of local and transnational forces. The role of government and public policy is critical in this regard, for as the American political historian Charles Tilly puts it:

> [If we] consider the definition of a racketeer as someone who creates a threat and then charges for its reduction. Governments' provision of protection, by this standard, often qualifies as racketeering. To the extent that the threats against which a given government protects its citizens are imaginary or are consequences of its own activities, the government has organised a protection racket. Since governments themselves commonly simulate, stimulate, or even fabricate threats of external war and since the repressive and extractive activities of governments often constitute the largest current threats to the livelihoods of their own citizens, many governments operate in essentially the same ways as racketeers. There is, of course, a difference: Racketeers, by conventional definition, operate without the sanctity of governments (Tilly 1985: 169, 171).

Organised crime is not a mere blight upon the social landscape as it serves a number of social purposes, both in the illicit and licit economy. Indeed, it has become in some societies a significant force in the legitimate economy as a

provider of trust for transactions, an entrepreneurial entity, and even a provider (and allocator!) of social service such as low cost housing. This is more often recognised in selected countries such as Colombia, Italy and Russia (Anderson 1995; Clawson and Lee 1996; Gambetta 1993; Hess 1970; Handelman 1995; Rawlinson 1998a,b; Sterling 1990 1994). Nevertheless, this can also be a fact in many countries, including wealthy industrialised nations.

Conclusion

The present chapter provided a review of the literature on serious and organised crime alongside efforts to define this phenomenon. It began by exploring the distinction between two models, disorganised crime versus the mafia-octopus (disaggregated crime versus the Godfather), which underlie many interpretations of this topic area. I then provided a selective overview of official definitions from the United States, Canada, the European Union and the United Nations. My attention then turned to assessing the importance of social context in understanding organised crime as a participant in illegal and legal activities. Issues of social context were used to highlight the underlying dimensions of the linear (mafia-octopus) and nonlinear (disorganised crime and network) arguments.

In this chapter, I argued that the literature tends toward disorganised crime and interrelated markets as indicative of the bulk of organised crime activity. Official definitions of the phenomenon have a long history of linear arguments of a presumed concentration toward populist images of a mafia-octopus.

Nevertheless, official definitions have more recently (post-United Nations Convention Against Transnational Organised Crime 2000) given way to recognising the non-linear arguments of disorganised crime and network structures. Unfortunately, whilst the definitions have expanded to include a broad range of serious crimes, the Godfather imagery has lost little of its cachet. A situation of denotative expansion and connotative intransigence continues to impede clearer understanding of what organised crime is and how it fits into contemporary society.

The following chapter delves into the evidence-based with respect to the study of organised crime and discusses the theoretical and methodological orientation for the study of home invasion robbery.

CHAPTER THREE:

METHODOLOGY

> We must study what is significant, not what best fits conventional methodologies.
>
> — Maria Los and Andrzej Zybertowicz (2000)

Introduction

The present chapter addresses critical issues on the evidence base for the study of organised crime as well as articulating an appropriate methodology for a case study on the social organisation of a serious crime, home invasion robbery (HIR), presented further below.

It is not at all clear that standard scientific positivist methods are appropriate in the field of organised crime study or the construction of a helpful evidence base in this area. It is difficult to answer basic questions about the state of the evaluation literature, or to assess the size and scope of this problem or the assessed level of threat. Few programme evaluations are conducted, and those that exist tend to be basic pre-post designs using privileged operational data, often from enforcement agencies. Efforts to estimate the size of organised crime profits and the extent of money laundering typically involve little in the way of rigorous methodology and a distinct inflationary tendency.

The problems of studying organised crime are compounded by several key factors. Certain observers may exercise considerable influence over knowledge about the phenomenon and over who can gain access to study the subject matter. The mass media provides the most accessible form of knowledge on this topic, though their coverage often tends to portray an explicit or implicit mafia-octopus. The executive branch of government, and law enforcement in particular, may limit funding, access and/or attempt to obscure evidence for certain topical areas or study.

Notwithstanding the acute and chronic difficulties of studying organised crime (and a relatively low prestige - especially in North America - for non-quantitative research), academic researchers have employed a range of techniques to study various forms. These methods have included participant observation, observation, interviews with victims/offenders/enforcement/government, examination of police and court files, and other methods. Many of these efforts have required that the methods are tailored to the phenomenon of study. In developing my thesis, I employed a range of methods. This included participant observation in the fields of criminal and financial intelligence that, although I could not use directly for legal and ethical reasons, helped to inform my use of other sources of information. These included case law, the published and grey market literature, media reports and scholarly literature.

The Evidence Base for the Study of Organised Crime

Beginning with the study of medicine and progressively expanding to encompass many other disciplines, the concept of evidence-based research and policy[1] has earned a wide following amongst politicians, policy-makers and academics (Council of Europe 2001; Petrosino et al. 2001). Although the concept enjoys remarkable currency, a consensus as to what it actually means has not yet emerged in the field of criminology. The debate may be divided amongst the quantitative and qualitative camps. First, there are those who advocate a (largely) quantitative programme of scientific positivism (Farrington 1997 1998 2002; Farrington and Petrosino 2001; Petrosino et al. 2001; Sherman et al. 1997 2002; Welsh and Farrington 2002a). Second, there are those who advocate for realism (Pawson 2002a,b; Pawson and Tilley 1997 1998a,b). This includes a focus on the importance of context and theory building about factors that enable or inhibit change (Annie E. Casey Foundation 1998; Connell et al. 1995; Fulbright-Anderson et al. 1998; Kubisch et al. 1997 2002). Indeed, the successes and failures of many programmes, such as the United Kingdom crime reduction programme, cannot be properly understood through the lens of scientific positivism alone (Hough 2004).

Operating in relative degrees of accordance with the tenets of the Campbell Collaboration (http://www.campbellcollaboration.org), the positivists are engaged

[1] The following three paragraphs on evidence-based research and policy are adapted from Hicks (2004: 3-4).

in the centralised accumulation and dissemination of systematic reviews on scientific evaluations. Scientific evaluation refers specifically to "what works" as measured by rigorous attention to the internal validity between a given programme(s) and its effect(s). Greater credence is afforded to individual and cumulative studies that utilise the gold standard of scientific research, a fully experimental design including random assignment to experimental and control conditions. The greater the deviation from this standard – for instance, pre-post measures with multiple matched groups, pre-post without controls and one-shot correlative studies – the lesser the value of the individual study and the lesser its cumulative relevance for the base of evidence (what works, what does not, and what's promising).

By contrast, change theorists and realists are less interested in isolating the question of what works to the internal validity of a given programme and its effect(s). The gold standard of random assignment may be appropriate in the context of testing the effectiveness of therapeutic medicines in a clinical or quasi-clinical setting (for a dissenting opinion see Illich 1976/1995). However, such standards may constitute a decidedly alien method when applied in a non-clinical community context that involves complex chains of actors, relationships and social structures (cf. Farrington 1997 1998; Pawson and Tilley 1998a,b).

The persistence of the disorganised crime and mafia-octopus debate is connected to the definitional issues discussed in the previous chapter as well as to the issues discussed below on how we know about organised crime. The latter may be

revealed through the consideration of selected research questions about our knowledge of organised crime, key groups of observers who influence our understanding and the links between methodology and the portrayal of this phenomenon.

Selected Research Questions

A number of core research questions spring from the discussion above. What is the state of the evaluation literature in this area? What is the size and scope of this problem or the assessed level of threat?

Evaluations of prevention and control initiatives directed at organised crime appear to be a rare occurrence. This is substantiated by the paucity of evaluations published in the official or grey literature and, where available, that may be subject to further empirical scrutiny. Some substantive international reviews of efforts at evaluation initiatives (Levi and Maguire 2004: 407; Schneider et al. 2000: 7) reveal that where relevant data were made available to the reviewers, such studies typically involve no more than a decidedly rudimentary pre-post assessment (excluding matched or randomised controls) using the privileged operational data of the agency (typically law enforcement) concerned. There appears to be an absence of a common frame of reference for both the target phenomenon as well as standards for evaluation. It may not be practical to think that evaluations of organised crime control initiatives could achieve the positivist gold standard. The ethics of random assignment may be decidedly problematic with respect to the

serious harms involved in organised crime. Moreover, differential access to data can make it difficult or impossible for future researchers to reproduce or replicate studies.

Further challenges to an evidence-based approach are highlighted by efforts to assess the level of threat or the size and scope of organised crime. Throughout the 1990s it has been popular to ascribe the threat level in the context of estimates of money laundering. The Financial Action Task Force (FATF) began the charge with its 1990 estimate of $300 billion in global illicit drug proceeds, the bulk of which was deemed to be available for laundering (van Duyne 2002: 62). The International Monetary Fund (IMF) followed with the estimate that two to five per cent of global Gross Domestic Product (GDP) represents laundered funds involving some $500 billion in the study year (Quirk 1996). The UN topped the debate with an estimate that organised crime syndicates worldwide gross $1.5 trillion per year with, presumably, a substantial portion of this available for laundering (United Nations Development Programme 1999: 42; United Nations International Drug Control Programme or UNDCP 1997: 123-124). Unfortunately, each of these efforts provided little in terms of coherent and systematic methodology that may guide further research.

Building on these foundations, a government-sponsored study in Canada attempted to "assemble and aggregate the best information available... original research, interviews, and classified and unclassified materials... on the [domestic] impact of selected organised crime activities" (Porteous 1998: 1). The study

attempted to assess economic impact on the basis of significant activities which involve revenue for organised crime and (direct and indirect) costs and/or losses for society and the commercial sector. The study attempts to shift the focus of the organised crime debate "from questions of form to issues of substance" (Porteous 1998: 2). For ease of presentation, I have subdivided the data below according to cost (social and government costs) and benefits (illicit revenue and/or profits):

Social and Government Costs:

- $1.4 billion in conservatively estimated drug-related social and commercial costs (limited to factors such as health care, reduced productivity, and direct enforcement);
- Billions of dollars of hazardous waste dumping (aggregate costs not quantifiable given present intelligence infrastructure foci), with one tonne of such waste costing $9,000 (estimated health care and loss of life costs, but excluding clean up costs);
- $1.5 billion in losses due to alcohol, tobacco, and jewellery smuggling (government tax losses, excludes losses to legitimate retailers operating outside the illicit market);
- $5 billion minimum in economic crimes such as securities, telemarketing, and insurance fraud (losses to industry and citizens);

- $1 billion in losses due to counterfeit goods including clothing, computer software, and pharmaceuticals (lost revenues to legitimate producers);

- $600 million in motor vehicle theft costs (insurance industry costs); and

- $120 - $400 million in costs due to illegal immigration, involving an estimated 8,000 to 16,000 migrants (government costs for refugee processing and care)

Illicit Revenue and/or Profits:

- $7 - $10 billion illicit drug market (revenues based on seizure and interdiction data); and

- $5 - $17 billion in laundered money (50-70% of which is estimated to derive from illicit drug revenues, and the maximum range being derived from the International Monetary Fund estimate that 2% of global GDP is laundered money).

This study is decidedly problematic. It provides only passing indirect references to supporting documentation with no appended bibliography, no clear identification of the methods for data collection, lack of systematic presentation of data (see original which tends to confuse profits and revenues, and costs or losses), and often vague allusions as to how estimations were arrived at. Though admittedly

an initial attempt and "far from the last word" on the subject area (Porteous 1998: 1), this study offers little questioning of form and context which serves to obfuscate the substance of its own inquiries as well as impeding replication or further research.

Each of the above estimates is derived from a decidedly imperfect base of knowledge. This particular field of study suffers from a variety of problems, including non-existent or questionable methodologies, indirect indicators of supply and demand with large margins of error, and mathematical incoherence combined with the generation of "facts by repetition" (van Duyne 2002; Passas 1999b). Putative claims about the size of organised crime revenues, profits, laundering and suggested prolific growth of the same may be reduced to the following: "...adding up all the guesswork proves nothing except that [enhanced] arithmetic [and better models] can produce larger figures" (Hobsbawm 1969b: 686). We might also postulate that much of the suggested growth in organised crime revenue can be attributed to the expansion of definitional boundaries, the growth in the number of predicate offences from drugs and other designated offences to the wide domain of all serious crime. Moreover, the understanding of what constitutes money laundering activity has itself been subject to flexible expansion, to include virtually any disposition of the proceeds of crime (van Duyne 2003).

A broad review of much of the available international literature on the extent of money laundering summed up the evidence as follows: "the macroeconomic estimates are methodologically flawed, while the available microeconomic

estimates lack credible empirical foundations" (Reuter and Truman 2004: 10). This area continues to leave unaddressed or under-addressed a number of important empirically issues in need of further research at the micro- and macro-level of analysis. This includes studying the differential distribution of the tangible and intangible costs and benefits (inclusive of realisable revenue following depreciation etc.) across various types of serious crime, whether predatory, market-based, commercial or hybrid forms (Levi and Osofsky 1995; Naylor 2003). This would also include further research as to the extent of illicit profits, whether initially generated without or within the system, manifest in international flows of trade and finance (de Boyrie et al. 2005; Pak et al. 2003; Walker 1995). Efforts to more systematically address these issues could help to avoid the (separate and cumulative) error of directly equating gross financial wherewithal with the capacity to mobilise and achieve goals, a financial mafia-octopus. Crystallised power is tied to a diversity of social and economic relationships that can dwarf the nominal value of financial reserves under the control of any particular entity (Ferguson 2001: 161).

A continuing lack of systematic and comparative data sets on serious and organised crime led the United Nations, in the late 1990s, to conduct a pilot survey to develop benchmark data. The pilot survey was distributed to a number of countries for testing. In Canada, the survey was tested with the following two objectives (Sauvé 1999). First, the research aimed to gather quantitative data via the distribution of the survey to a non-representative sample of 16 police agencies

(e.g., Royal Canadian Mounted Police, Ontario Provincial Police, la Sûreté du Québec, and selected urban-regional services) who deal with organised crime. Second, the project aimed to analyse the produced data to describe the characteristics of organised crime in Canada. All 16 agencies representing 69% of publicly-recorded crime (and probably the greater part of most recorded and un-recorded serious crime) participated, with a total of 72 respondents (N=72). Readers should be cautioned that due to the sampling procedures and the absence of inter-regional comparisons (to protect the confidentiality of respondents) that the data provide a non-representative picture of organised crime in Canada. Given the uncertainties it is not clear how one could be assured that one in fact had a representative sample.

The survey revealed (figure in parentheses represents percentage of organised crime groups cited as possessing or exhibiting, according to survey respondents, the specified characteristic):

- Common core characteristics: motivation for profit and/or power (96%), use of violence (93%), longevity of activities (92%), and engaged in serious criminal offences (92%);

- Common peripheral characteristics: discipline over its members (88%); operating at the national level (83%), money laundering (80%), international activities (74%), use of legitimate businesses (71%), specialised tasks (68%), and exercising influence or corruption (50%);

- Membership: male-dominated (90% in three-quarters of groups, 100% in over four-tenths of groups), 15 or more principal members (56%) and associate members (71%), and groups having less than 5 principal members (11%) and associate members (8%);

- Crimes frequently committed: drug trafficking (88%), extortion (71%), illegal firearms traffic (71%), prostitution (63%), vehicle theft (60%), counterfeit goods/fraud (56%), and gambling or illegal schemes (50%);

- Crimes least frequently committed: illicit traffic in endangered species (8%), illicit disposal of waste (7%), and child pornography (3%);

- Networked operations: links with other criminal groups (93%) and of these at the national level (85%) and at the international level (81%), to promote cooperation and goods and services exchange (88%), expertise and skills (58%), personnel (51%), and facilities (43%), and cooperative international orientation across North and South America (51%) and Europe (26%).

Criminal organisations in Canada are often the subject of police investigations and criminal charges. For the year 1997, charges were laid against most of the known organisations (54%), with many charges relating to drugs (44%), homicide (23%), and assaults (18%). Of the major organised crime groups considered as national law enforcement priorities (Criminal Intelligence Service Canada 1998) at the time of the survey, the most prevalent were (of organisational members with

percentages rounded): Outlaw Motorcycle Gangs (38%), Asian-based (20%), Italian-based (16%), Aboriginal-based (14%), and Eastern European-based (13%). (Though what proportion of criminal activities these groups represent is unknown and undiscussed.)

The five major groups exhibit considerable similarities in terms of common core and peripheral characteristics, moderate to high-levels of membership, involvement in characteristic and frequently committed crimes such as drug trafficking, and interests in diversification of the range and scope of their activities. There are also differences and specialisation, with OMGs tending to focus on trafficking in cocaine, firearms, and explosives, Asian groups focusing on trafficking in heroin and extortion schemes, Italian groups focussing on drug trafficking and illegal schemes relating to gambling and extortion, Eastern-European focusing on counterfeit and fraud, and Aboriginal groups focussing on firearms, alcohol and tobacco. In contrast to other organised crime groups, the five major groups are distinct in the size and scope of their activities and structure, but also in terms of their networked capacity at the national and (less so for Aboriginal groups) international level (Sauvé 1999).

Of course, the above data represent law enforcement understandings/perceptions of serious and organised crime and of who is a 'member' of particular groups. The data admittedly offers a non-representative sample but does coherently map out the methods used and provides helpful insights. This does not negate continuing problems with falsifiability, given that the data represent the privileged

view of law enforcement. It does raise a number of important issues in need of further empirical research, not the least of which includes the variable linkages between serious and organised crime by type of criminal activity, groups involved and the extent of organisation. The concept of serious crime typically refers to terrorist and mafia-type activities, which might quantitatively comprise 3% to perhaps 20% of overall criminal activity (Vourc'h and Marcus 1996: 41, 50-52), but which exercises variable qualitative scope over the petty crime of un-organised individuals that is deemed to be of much greater concern to citizens (Cressey 1972: 20).

This begs the question of how much crime rates, and the associated costs and benefits, might be reduced if the organised crime component (domestic and transnational) was effectively reduced. It is axiomatic that the volume of crime offers a vast complex of learning and performance structures (Cloward and Ohlin 1960) within which to develop, recruit, and mobilise talent to achieve desired goals. In Canada, work was undertaken to develop and implement a system of coding police-recorded crime to include a variable on whether the crime was committed by or for the benefit of a criminal organisation and the type of organisation (Ogrodnik 2002). Although the list tends to follow the ethnic- or regionally-based categorisations used by law enforcement, the proposed variable offers the prospect of additional insight into the distribution of organised crime involvement in serious crime. This was intended to be pilot tested in 2006-07 and potentially rolled-out thereafter. This initiative bears similarities to the United

Kingdom Organised Crime Notification Scheme (OCNS) and the associated challenges of generating reliable and valid data on a phenomenon that can be like shifting sand (Gregory 2003).

The state of the evaluation literature in this area along with efforts to assess the size and scope of organised crime tend to point to an underlying pattern. Sheptycki (2003) argues that the pattern is a continuing reliable consensus of experts as to the grave and mounting threats posed by a host of the usual suspects. An implicit mafia-octopus tends to be conjured in the process of gathering evidence through tautology, opaque or non-existent methodology, and the absence of empirical support that may be subjected to replication and assist further research. None of the criminologists involved in longitudinal studies have expressed any real interest in studying 'organised crime' as part of their research.

Key Observer Influences

The state monopoly on the use of coercive force and the challenge to it posed by the use of privatised violence presents further challenges. The development of a valid and reliable understanding of organised crime must acknowledge the implications of the threat or use of privatised violence against key observers who in turn influence the knowledge base.

Through television, print, and radio, the mass media provides the most widely accessible forms of knowledge about organised crime. With significant variability according to the particular jurisdiction the public consciousness may be filled with

several recognisable forms, including: Italian, Colombian, Asian, Outlaw Motorcycle Gangs (OMGs), and the Russian Mafiya. Although often unrelated to the complex and fractured relationships for many criminal organisations sensationalised coverage persists with the caricature of integrated corporate hierarchies of acts and actors, the mafia-octopus (Charbonneau 1976; Handelman 1993 1995; Kaplan and Dubro 2003; Lavigne 1987; Robinson 1999; Sterling 1990 1994; Stock 2001). Even high quality and detailed reportage tend to project, and sharpen reader appetite for, portrayals of organisational hierarchies and powerful criminals engaged in blatant lawlessness. For instance, the noble pursuit of the truth is in far too many jurisdictions a sufficient warrant for intimidation and assault, kidnapping for ransom and terror, attempted murder and murder (García Márquez 1997: 77; Rawlinson 2000: 357; Reporters Without Borders < www.rsf.org >; Solyom 2000; Stille 1995).

If the Mafia-octopus concept has eroded at all in media accounts, the image of hierarchical criminal organisation was renewed (possibly for an indeterminate term) with the 1990s rise of the Russian Mafiya (Rawlinson 1998a: 346, 353). The imagery of an actively or passively corrupt (ex-communist) state, supporting an imperialistic drive for criminal market dominance, underpinned constructions of the new evil empire (Handelman 1993 1995; Sterling 1994).

Mafia conspiracies offer a valuable and saleable consumer commodity (Los and Zybertowicz 2000: 204) as well as a superficial means to describe the object of study. Profit motives aside, the systemic threat to reliability and validity comes

from uncritical reliance upon particular sources, sometimes offenders or victims, but more typically officialdom and law enforcement. Personal and bureaucratic interests may encourage deliberate or inadvertent misrepresentation and critical truth seeking, which will vary according to the absence and/or presence of negative and positive sanctions within a specific organisational culture. Thus, despite the comfortable symbiosis of objectives between the enforcement community and the mass media (Naylor 2002: 30) the latter may offer a useful outlet to make public information that would otherwise tend to be minimised or suppressed. Media with an inside track and/or a critical eye can produce information that offers fragments of insight that, when subject to careful analysis and especially when combined with other information sources, provides helpful evidence on the phenomenon of organised crime. Given the access problems for outsiders, in practice it may prove difficult to distinguish what careful analysis would look like, as opposed to a priori acceptance or cynicism.

Executive Branch and Law Enforcement

Official information about organised crime suffers from the unhealthy compression and distance between government and quasi-government agencies and other influences. Strategic planning depends on operational knowledge (with open source information as a supporting cast); operational practice relies upon strategic planning; and insiders and outsiders study the phenomenon based on security clearances and the training that accompanies privileged access. Indeed, oligarchic networks of high-level public and private officials may elaborate

definitions and policy in a near vacuum from other direct influences (Lowi 1964: 679-680). Highly compartmentalised information ensures that neither internal nor external factions are likely to possess (or be able to acquire) the requisite authority to integrate systematically information across various domains. Institutions that are positioned to integrate information often find themselves subject to levels of secrecy that rise beyond the standard controls extant in the various sensitive strategic and operational areas that feed into the collector agency. Compartmentalisation may be disrupted by external events which allegedly highlight failures (e.g., the September 11, 2001 terrorist attacks and purported intelligence breakdowns), but the new opportunities presented for internal and external factions may further inhibit outside scrutiny even where there exists a diversity of pressure from high-level political capital (General Accounting Office 1997a).

The academic community offers perhaps the most dispassionate voice. Organised crime threats and intimidation are an omnipresent problem and concern for researchers, even though academics are rarely targeted (Rawlinson 2000: 353). The dispassionate nature of the inquiries may explain this in part, in addition to the penchant of academe for making offers no one can understand. The latter is probably best characterised by the variety of dialects associated with the academic division of labour between law, criminology, sociology, economics, political science, and other disciplines. Distinctive interests and theoretical preferences have tended to impede the integration of knowledge about organised

crime (Cohen 1977: 103). Diversity of academic and quasi-academic literature is not an inherently negative feature, quite the contrary many would argue. Nevertheless, the construction of a synthetic evidence-base is problematic where the underlying phenomenon is highly variable by type and context, and the diversity of experts appear content to continue to watch a thousand flowers bloom (Reuter and Petrie 1999).

The prospects for interdisciplinary study are certainly limited by the sheer volume of research literature as well as other barriers to integrated knowledge development. In civil society there is no simple equation between the truth and success given that certain tangible entities appoint ambassadors or professors or give state salaries (Rousseau 1762: 65). Students of organised crime confront a variety of interrelated problems relating to relative autonomy for investigation, available funds for research, and the career prospects of studying crime versus serious crime, the latter almost invariably a part-time specialisation. Furthermore, the vast majority of part- and full-time professional opportunities to study organised crime are located, paraphrasing the evocative words of Hobbs (2000: 167, 174), in or closely related to the "gulags" mandated to generate official knowledge. The student of organised crime will often find that her ability to conduct studies free from violence or interference flows from implicit or explicit permission, typically granted by agencies of the executive branch of the state and/or pertinent criminal organisations. Researchers may also face the stark conflict between the standards and ethics of their discipline and those in the

operational field. For instance, the implicit or explicit premium placed on loyalty over honesty and truth amongst those admitted into the rarefied population of secret societies and secret services (Greene 1980: 77).

Beyond the Difficulties – Selected Research Studies

Knowledge about organised crime is generated through an interactive and dynamic process. At root, this is grounded in the competitive balance between criminal technology and control/observer technology. That is, information that criminals (and where there are identifiable and forthcoming victims) voluntarily or involuntarily reveal and the methods used to control or observe groups or activities (Gambetta 1988; McIntosh 1975). Our current mode of knowledge in this area is decidedly problematic. In large measure, this is because the labyrinth of power currents tends toward containment within the framework of "policy-based evidence" rather than "evidence-based policy" (Christie 1986; Glees 2005; Pal 1987: 110, 119).

The development of an evidence-based approach to the study of organised crime is bedevilled by myriad factors. Perhaps more than many other areas of social scientific inquiry the evidence base on the "permanently transitional sector" (Arlacchi 1979: 66-72) tends to be more opaque, inaccessible and resistant to standard research methodologies. The evidence base may often involve the explicit or tacit use of obscure or privileged data which entails a fundamental challenge to social scientific standards that studies and their conclusions may be

falsified or verified. The validity and reliability of the separate and cumulative evidence must therefore be treated with a healthy dose of scepticism. Scholars in this area face an ongoing set of interrelated issues on how we build knowledge in this area. These include the establishment of standards for data quality, means to assess the validity (or falsifiability) and reliability of evidence across multiple information sources (whose evidence and can we trust it), and the pervasiveness of the influence of state-sponsored priorities (Adamoli et al. 1998: 4, 9; Hobbs 2000; Levi 1998c: 337; Levi and Maguire 2004; Maguire 2000: 128). Resolving the evidence-based debate is beyond the author's scope, but it represents an ongoing challenge for the community of scholars working in this genre. The acute and chronic problems discussed above should not dissuade, but rather draw attention to a particular balancing act. That is, studying what is significant and employing theory and methods tailored to develop systematic knowledge on the subject matter. The student of organised crime is confronted with a set of choices. These choices express the underlying message: who the researcher is, the goals and means of the research, the nature of the subject matter, and articulation of what our discipline is and what it should be (Haines and Sutton, 2000; Kuhn, 1983; Slaughter and Ratner, 1999).

Academic researchers have identified and exploited a number of pathways into obtaining and exploiting relevant data on organised crime.

Cressey (1967 1969) was able to gain privileged access to law enforcement data, including reports, police observers, informants and wiretap information.

Hess (1970) was able to acquire access to police archives and court records in Sicily.

Smith (1971 1980) developed a theory of a spectrum of illegal enterprise.

Albini (1973) focused on American social structure, and issues of consumer demand.

Ianni and Reuss-Ianni (1972) engaged in participant observation to study a particular mafia family in New York, including its social organisation and activities. Ianni (1974) also drew upon the insights of black and Puerto Rican ex-convicts formerly engaged in organised crime.

Reuter (1983) examined the illegal bookmaking, numbers and loan sharking markets in New York City from an economic perspective. He drew his evidence from interviews with police, prosecutors, criminal informants and official files.

Levi (1981 1987) drew upon the insights of victims, offenders and case information to study frauds. Drawing upon police, banking and government informants as well as case information and documentation, Levi (1991) and co-authors (Levi and van Duyne 2005; Levi and Gilmore 2002; Levi and Reuter 2006) have addressed the anti-money laundering regime.

Gambetta (1993) used transcripts of offender confessions, historical and judicial records and observation of wholesale markets.

Potter (1994) used observation, official and historical records to explore the nature of organised crime in an Eastern U.S. industrial city in decline.

Morselli (2006) used the memoirs of ex-members of organised crime and drug traffickers.

Previous authors have identified a number of helpful pathways to study serious and organised crime. However, the particular methods typically have to be adapted to the phenomenon of study.

Methods Used for the Present Study

In determining the methods I would employ for this study, I had considered the use of interviews with HIR offenders to assist in determining the social organisation of this criminal activity. This option was discounted due to the nature of home invasion robbery and how it is treated by the criminal justice system. First, it is a statistically tiny phenomenon. It occurs in communities across Canada, in urban, suburban and rural areas that are wealthy as well as poor and a number of reasons may lead to one home being the target over another. My intention was to discuss this as an issue across Canada. The lack of funding for this research would have constrained any offender interviews to my home city or those nearby. I anticipated that those incarcerated for HIR would tend to be lower-level cases and that access to higher-level cases in a limited market would be opportunistic at best. I could reasonably expect that higher-level cases would tend to be weeded out because of charges not being laid, plea bargains, and the

near inviolability of informer privilege in Canada. In terms of possibilities for ethnographic research, the explicitly violent and transitory nature of the phenomenon, and its distribution across the second-largest country in the world by geographic land mass, does not make it amenable to direct observation.

My vantage point for research was also linked to my association with agencies concerned with criminal intelligence and financial intelligence. My time behind the veil of legal and bureaucratic secrecy has shaped my understanding of organised crime and the context that surrounds it. By the time I had joined FINTRAC in 2003 it was becoming increasingly difficult to speak to any outsiders (see chapter seven). The agencies I associated with are exceptionally secretive and rigorously controlled. All who gain access to this circle are subject to vetting inclusive of intensive scrutiny of their background and associations and/or required to obtain high-level security clearance.

Thus constrained by practical considerations, I chose to use unobtrusive methods in order to study my subject matter. This involved literature reviews for the chapter on definitions of serious and organised crime and the elaboration of anomie theory. For the case study of home invasion robbery and my analysis of FINTRAC in the context of Canada's prevention and control systems, I employed mixed methods.

The home invasion robbery case study chapter addresses definitional and statistical issues about the size and scope of the problem. I also review a

selection of case law (N=15) drawn from the LexisNexis/Quicklaw database for all Canadian criminal cases during the period 1998 through 2002. Home invasion is not a specific offence under the Criminal Code of Canada, and it may be charged and prosecuted under a variety of separate or cumulative charges that could range in relative seriousness from theft to murder. My search thus used the broad concept of home invasion resulting in three hundred and ninety-five examples that were then manually parsed to ninety-six cases that met the parameters for inclusion. Factors for inclusion generally refer to the characteristics of home invasion identified in the landmark decision in the case of R. v. Matwiy, judges referring to the offence as a home invasion, and the narrow and broad definition used by Statistics Canada. The cases used for analysis were drawn from seven of the ten Canadian provinces, and assessed using the 5Is analytical framework (Ekblom 2003). These findings are then discussed in terms of the risk and responses that have been invoked to address HIR.

Case law is a reliable source given the adversarial nature of court proceedings and the validation provided by judges. While this data source has strong internal validity, its external validity in representing HIR may be questioned. This may be related to several factors, including under-reporting by victims concerned about reprisals or drawing enforcement attention to illicit activities in which they may be involved. It may also be related to general and specific detection problems and attrition in criminal justice procedure. The identification of incidents may prove to be more difficult where there are threats as opposed to violence producing

substantive injury, and it may be difficult to isolate offenders where they employ techniques to obscure their identity. Cases that are detected and offenders identified may also evade court processes through plea-bargaining or cases not prosecuted where the offenders are providing service to enforcement agencies as criminal informants or other such contributions.

The FINTRAC chapter examines the rise of this institution in the context of prevention and control mechanisms in Canada. Through participant observation over two-and-a-half years beginning in 2003, I was able to glean considerable information about the structure and function of this organisation, both internally and in respect of its relationships with outside bodies. Members of this agency are precluded from divulging certain types of information by law and ethical obligations. Legal self-protection and ethical accountability infer that I cannot use my experience directly, but there is no restriction against the use of my experience to interpret and assess in the light of open source information. I piece together a serpentine road map of data to show the rise of this institution, key aspects of its mandate, it operational potential, and an assessment of its potential impact in preventing and reducing serious and organised crime.

This study will also draw upon a broad range of secondary data. This includes published and grey market literature, media reports as well as scholarly research.

Conclusion

The present chapter addressed critical issues on the evidence base for the study of organised crime as well as articulating an appropriate methodology for a case study on the social organisation of a serious crime, home invasion robbery (HIR) discussed in chapter six.

It is not at all clear that standard scientific positivist methods are appropriate in the field of organised crime study or the construction of a helpful evidence base in this area. It is difficult to answer basic questions about the state of the evaluation literature, or to assess the size and scope of this problem or the assessed level of threat. Few programme evaluations are conducted, and those that exist tend to be basic pre-post designs using privileged operational data, often from enforcement agencies. Efforts to estimate the size of organised crime profits and the extent of money laundering typically involve little in the way of rigorous methodology and a distinct inflationary tendency.

The problems of studying organised crime are compounded by several key factors. Certain observers may exercise considerable influence over knowledge about the phenomenon and who can gain access to study the subject matter. The mass media provides the most accessible form of knowledge on this topic, though their coverage often tends to portray an explicit or implicit mafia-octopus. The executive branch of government, and law enforcement in particular, may limit

funding, access and/or attempt to obscure evidence for certain topical areas or study.

Notwithstanding the acute and chronic difficulties of studying organised crime, academic researchers have employed a range of techniques to study various forms. These methods have included participant observation, observation, interviews with victims/offenders/enforcement/government, examination of police and court files, and other methods. Many of these efforts have required that the methods are tailored to the phenomenon of study. In developing my thesis, I employed a range of methods. This included participant observation in the fields of criminal and financial intelligence that, although I could not use directly for legal and ethical reasons, helped to inform my use of other sources of information. These included case law, the published and grey market literature, media reports and scholarly literature.

The following chapter addresses issues pertaining to law and anomie theory.

CHAPTER FOUR:

LAW AND ANOMIE

> When law is detached from justice, it becomes a compass without a needle. — Jacques Ellul (1964: 299)

Introduction

This chapter assesses the challenge of social regulation in general and with particular attention to organised crime. It discusses selected insights from anomie theory. These include Durkheim's insight that anomie results from the absence of society in the failure to achieve social regulation. It also includes Merton's insight that anomie results from the presence of society in the failure to achieve a balance between goal achievement and the suitability (morality) of the available means. then turn to the claim that Durkheim and Merton may be control theorists, and I highlight that in control theory individuals are freed to engage in deviance whereas in Durkheim and Merton individuals are pressured toward deviance.

I then shift from issues of causation to responses with respect to particular approaches to social regulation. These approaches illustrate the limitations of applying standard control orientations in general and especially with respect to those involved in organised crime. The analysis addresses general deterrence (the wider population), specific deterrence (at-risk individuals), incapacitation, and rehabilitation. In the case of the first three responses, we find questionable capacity to reduce or prevent organised crime. Such groups have available

numerous techniques and tactics to circumvent or displace risks. Further, rehabilitation has not been properly tried.

The chapter also includes discussion of Durkheim's legal evolution thesis. Therein, he argues that as society becomes more complex, moving from mechanical to organic solidarity, repressive (punitive) law is progressively replaced with restitutive (restorative) law. Although there are a number of critics of the legal evolution thesis, Durkheim posed a key problem of whether modern law can retain its own moral force and be something more than mere politics. The control of organised crime is an area that illustrates the continuing drift toward the narrow concerns of positive law.

Anomie and Control Theory

Emile Durkheim

Conducting reviews of literature for the Revue Philosophique, Durkheim was exposed to Ferdinand Tönnies classic paper on Gemeinschaft and Gesellschaft [Community and Society] published in 1887 (Aldous, Durkheim, and Tönnies 1972). Borrowing from Tönnies, Durkheim described in The Division of Labour in Society (1893) the modernisation process as the transition from mechanical to organic solidarity. Under mechanical solidarity, social units are small and self-contained, sharing very similar circumstances, work, and values and little contact with other social groups. Within this pre-industrial model there is only very general division of labour, and solidarity is grounded in the uniformity or resemblance of its

members who are isolated from the outside world (Aron 1967: 12). In the organic society, social units are combined into a larger and highly-organised political structure of interdependent, but nevertheless autonomous and specialised groups. The transition to this form of solidarity is fostered by individuation that, in turn, has been prompted by the division of labour (Merton 1934: 320). Deviant behaviour and crime may be induced by the pathological state of anomie that can accompany societal transition toward the organic form.

For Durkheim (1897: 252-256), anomie occurs when society is, temporarily, disrupted by severe crises or sudden desired transformations, unable to exercise control and set limits on individuals and their goals. Anomie occurs as an acute state during periods of rapid social change associated with socio-economic crisis or expansion, and as a chronic state in the sphere of industry and trade. Durkheim argues that,

> ...as the conditions of life are changed, the standard according to which needs were regulated can no longer remain the same....The scale is upset.... Time is required for the public conscience to reclassify men and things. So long as the social forces thus freed have not regained equilibrium, their respective values are unknown and so all regulation is lacking for a time. (Durkheim 1897: 253-254)

Sudden social change induces the "anomie of scarcity" and/or the "anomie of affluence". This serves to foster differential pressures that reduce social regulation

and increase the probability of deviant behaviour. Individuals cast into a lower status as the result of economic crisis may find that society is ill-positioned to offer help, and that limiting potential recourse to deviance requires a quick lowering of individual desires to match the new standard of living. Individuals cast into a higher social status as the result of an economic boom may find that, as previous standards have become obsolete, they experience pressure toward un-restrained aspirations. In the sphere of industry and trade, the dictates of progress provide that such activities should be freed of "all regulation" or any "limiting authority", and that any initiative toward "restraint seems like a sort of sacrilege" (Durkheim 1897: 255). Anomie is a chronic state in this domain, as is the potential for deviance, due to the boundless greed aroused.

The absence of society, or more precisely the failure to achieve social regulation, is what Durkheim views as the abnormal or pathological phenomenon of anomie to be fought against (Agnew 1997: 31; Passas 1995: 93-94). Individuals are not freed by the absence of society to satisfy their desires in the most expedient manner. The insatiable and unrealistic human aspirations for unlimited or unattainable goals, often deemed to derive from the individual, are instead created by the induced state of anomie (Adler 1995: 275; Agnew 1997: 31; Passas 1995: 93). It is thus important to emphasise the social (rather than individual) origins of anomie. This is evident in Durkheim's distinction between physical and social needs. Whereas physical needs are often regulated by an individual's organic structure such as the cues provided by a satiated stomach, social needs such as

desires for status and power are "an insatiable and bottomless abyss" (Durkheim 1897: 247). The state of anomie associated with the proliferation of social needs is then further exacerbated by the strain of failing to achieve goals combined with a lack of discipline over the human "passions". The "inextinguishable thirst" of desires beyond the command of individual means is a "constantly renewed torture" which "throws open the door to disillusionment", and the desires become more undisciplined under the very conditions which require greater discipline (Durkheim 1897: 247, 253, 285). The absence of society is important, then, not because it increases freedom but because it increases the frustration/anger (or strain) that drives individuals to deviance (Agnew 1997: 31).

Robert K. Merton

Building upon an initial interest in the work of Durkheim, Merton (1934) subsequently proceeded to develop a conception of anomie specific to America in the mid-twentieth century. With the classic essay "Social Structure and Anomie" (1938), and other works (Merton 1957 1964 1968), Merton developed the concept of anomie into a general theory of deviant behaviour in which unfulfilled aspirations were a central concern and normlessness was not. For Merton, anomie (or deviance) was the by-product of the socially structured disjunction between the cultural (and individual) goal of pursuing achievable wealth (the American Dream) and the limited access to legitimate means (opportunity structure) for achieving such normative-induced measures of success (Pfohl 1985: 211). The essential problem for Merton is the disjunction or lack of fit between

culture and the opportunity structure. This anomic condition tends to dissipate the regulatory force of social and legal norms particularly within certain sub-cultural groups (Messner & Rosenfeld 1994: 12).

Merton views anomie as resulting from the presence of society, and that associated deviance is a function of the lack of equilibrium between fundamental elements of social structure (Adler 1995: 276; Agnew 1997: 37- 38; Passas 1995: 93-94). Anomic breakdown could be attributable to a disproportionate focus on specific goals or ends, especially when combined with only "slight concern" with the means for attaining such goals (Merton 1938: 673). This cultural imbalance was deemed to present a 'universal' problem for all citizens. However, Merton did not assume that human nature entailed limitless passions or that turning to deviance is an automatic adaptation to strain (Merton 1938: 677; Merton 1968: 207). Rather, he noted that distorted aspirations are generated amongst certain individuals or groups. Pressures toward the more visible forms of deviation may be experienced most strongly amongst those of the "lower strata" (Merton 1968: 198), but the "strain toward innovational practices" (Merton 1938: 678) offers no immunity to the upper-classes (Passas 1995: 99).

The anomie of affluence may lead to "Faustian aspirations". That is, the stress of ever escalating and insatiable demands for achievement (Merton 1964: 221). Actual achievement of goals may become unrewarding rather than ever-escalating. Goals may become "trivialised" by the respective individual and the social order where access is easy and abundant (Simon and Gagnon 1976: 361),

and where the experience of achievement is much less than portrayed in the individual or collective imagination (Bauman 1998: 85; Merton 1964: 221). Many individuals are likely to hold more limited goals as their realistic objective, but the lower classes may tend to vocalise unattainable goals whereas the higher classes may tend to vocalise unlimited goals. Further, the selection of higher or broader strata as comparative reference groups for individual achievement levels may fuel deviance as an adaptation to relative deprivation (Agnew 1997: 38-44).

Unlimited and Unattainable Aspirations

Hirschi (1969: 3) asserts that "one of the purest examples of control theory" is offered by Durkheim, particularly given his view that deviant behaviour is an "automatic consequence" of deregulation or a lack of controls. Suppression (or fear of suppression) of the egoistic and unlimited desires of humans produces conformity in control theory, and thus all that needs to be explained are the weakness of controls (Bernard 1995: 82-83). This theory does not equate with the work of Durkheim or (guilty by association) the work of Merton. Such ideas severely distort and negate the important differences between anomie and control theory as well as obscuring the complementary theorising (despite differences in fundamental points of emphasis) of Durkheim and Merton (Agnew 1997: 27-29, 45; Bernard 1995: 81). Though there are a number of differences between anomie and control theory, much of this stems from the question of human nature and its relationship to social structure. Contrary to the control theory view of humans as

purely Hobbesian self-interest, Durkheim and Merton explicitly put forth a dualistic view of human nature.

Durkheim's rejection of "individualistic-utilitarian positivism" (Merton 1934: 320) continued in Merton's recognition that neither "imperious biological drives" nor the calculations of homo economicus offer the "sole regulating agencies", but that the appearance of such a situation may instead be induced by an exaggerated cultural emphasis upon "pecuniary success and ambitiousness" (Merton 1938: 672, 680682). The dualism of self-interest and social motivations toward cultural values requires the invocation of reciprocal forms of regulation and social solutions. Increased controls on individuals may offer solutions for linear problems, but enhanced controls often miss the mark when it comes to dynamic problems (Bernard 1995: 89).

Both Durkheim and Merton describe anomie as an induced social state wherein individuals are pressured (rather than freed as in control theory) into deviance, and that unlimited individual goals are more often a reflection of social strain as opposed to human avarice (Agnew 1997: 31-35). The physical and social interests of individuals should largely be achievable through conformity. In an anomic state, however, the devaluation of self-interest as an embedded feature of the 'legitimate' division of labour pressures individuals to pursue goals using the most effective and efficient means with little regard to issues of legitimacy. Deviance is a result of the absence of society for Durkheim and the presence of society for Merton. Unlimited goals, reflected in the thirst for "novelties, unfamiliar pleasures,

[and] nameless sensations" (Durkheim 1897: 256-257), may indicate that individuals or groups have failed to set limits, that society has failed to help them do so, or that some reject the societal limits imposed (this may be a fortiori in the contemporary period of mass advertising and consumerism). This expresses the idea that deviance is fostered where anomie flourishes (not an automatic result of loosened controls), where the structure of self-interest is deregulated and some actors find that it is in their interests to commit crime (Bernard 1995: 85-89). Unlimited goals, reflected in the American dream of "monetary success [which] is conveniently indefinite and relative" (Merton 1968: 190, 193), impose a chronic disjunction between 'legitimate' institutional means and cultural goals or values and a "definite pressure" toward deviation (Merton 1938: 672). This expresses the view that the social values of American culture are weak or anomic and that individuals are readily (though by no means automatically) overwhelmed by the goals-means disjunction and the Hobbesian desire for economic success (Bernard 1995: 82-83).

Those who are most likely to reject societal limits, to a significant degree, for both Durkheim and Merton, are those at the extreme edges of the social continuum. This includes the marginal populations suffering the anomie of scarcity (unattainable goals) who have little to lose by not adhering to the prevailing norms, and the "sovereign individuals" of the anomie of affluence (unlimited goals) whose wealth deceives them into believing they depend on no one else (Davidson and Rees-Mogg 1997; Durkheim 1897: 254; Simon and Gagnon 1976).

Alongside the proliferation of such concentrations that accompany industrial progress, anomie can become an endemic pattern within the social structure. Rather than a means to an end, industry has instead become "the supreme end of individuals and societies alike", with economic values sanctified as the "apotheosis of well being" and placed as transcendent "above all human law" (Durkheim 1897: 255). The anomie-inducing effects of utilitarian motives in economic life became an omnipresent feature of the utilitarian and entrepreneurial culture of advanced American industrial society (Passas 1995: 96). A society over-run by such utilitarian guiding principles fosters "strain toward dissolution" or the dissociation of social structure and individuals, and pushed to the extreme, "predictability virtually disappears and what may be properly termed cultural chaos or anomie intervenes" (Merton 1938: 681-682).

Strain associated with the pursuit of unlimited or unattainable goals are largely ignored topics in research (Agnew 1997: 32). However, such topics offer considerable potential for studying the causes and consequences of contemporary anomie, to elaborate the progressive intensification of the processes described by Durkheim and Merton. If we accept the assertion that "probably relatively few people are afflicted with insatiable aspirations" (Cloward and Ohlin 1960: 83), then it follows that greater analytical focus should be placed on the more generalised pattern involving the pursuit of limited goals via limited means. Nevertheless, if our interest is crime and deviance, it is important to focus upon the increased probabilities associated with unlimited or unattainable goals.

Such goals are most likely to arise "when society or its organs fail to set reasonable limits on individual goals or society specifically encourages the pursuit of unlimited [or unattainable] goals, and when individuals are not attached or committed to society or its organs, such as family, peers, school, mass media, and work" (Agnew 1997: 35). In the contemporary period of globalisation there are few limits placed on the push toward unlimited and unattainable goals, and commitments and attachments (whether increasing or decreasing) to social institutions are generating perverse effects.

As we emerge from the "Age of Extremes" (Hobsbawm 1994), perhaps only to see it intensify further, anomie appears to be built-in to much of the international social landscape. This serves to generate and reinforce the anomic constituencies in which deviant and aberrant behaviour flourish. Enhancing prospects for social regulation, and the prevention of organised crime, requires an improved understanding of the role of unlimited and unattainable goals within the anomic constituency. The Western-led programme of globalisation has encouraged the pursuit of unregulated self-interest that is not in the common good of the global social order. At the same time, the West decries the exaggerated self-interest that is defined as 'criminal' and tries half-heartedly to control the behaviours induced by the very conditions that have been created.

I will now move from issues of causation into the area of responses and particular approaches to social regulation. These approaches illustrate the limitations of applying standard control orientations to anomic individuals and groups, and

organised crime especially. Moreover, I argue that the regulatory potential of the law is being eroded by the neo-liberal control policy agenda.

Deterring Organised Crime

Theories of social regulation typically divide into two historical traditions, the utilitarian and the retributive. Utilitarians are concerned with the social utility of punishment, wherein the purpose is to deter crime by promoting pro-social individual choices and to thereby optimise societal resource allocations (Becker 1968; Ehrlich 1973). Retributivists, on the other hand, are concerned with meting out punishments which are proportionate (or scaled) to crime seriousness, including the degree of harm created by the conduct and the extent of the actor's culpability (von Hirsch 1992: 81). The utilitarian-preventive approach primarily attempts to curtail additional or further offending behaviour, whereas the retributive-restorative approach attempts to re-establish a balance that has been disrupted. In the modernist representation of the utilitarian-retributive dichotomy the overall goal is the achievement of procedural and substantive 'justice', through fairness demonstrated in due process and equitable sentencing reflected in a balance between community protection and proportionality in punishment. Contemporary penal policy tends to over-emphasise utilitarian considerations, due in part to the 'primitive' philosophy of lex talionis associated with pre-modern retributive penal policy. Given the competing values and interests in a society, crime policy may be (arguably) balanced to the extent that such policy is afforded generalised legitimacy by the public. Faith in market society and the rule of law

may be derived from false consciousness or social consensus, but more importantly, such beliefs are functional and necessary elements of the liberal and neo-liberal enterprise (Cotterrell 1999: 98-99; Levi 1981: 266; Pratt 1999).

Jeremy Bentham and other proponents of utilitarianism suggest that punishment deters the probability of offending behaviour through several mechanisms. These mechanisms include the following (Abel and Marsh 1984: 70; Becker 1968; Ehrlich 1973 1981 1996; Meier and Johnson 1977; Polinsky and Shavell 1998; Salop 1979; Sherman 1990 1993; Tauchen et al. 1994):

- General Deterrence: establishing standards of morality through public education on acceptable forms of behaviour;
- Specific Deterrence: increasing the fear or prudence of individuals who are engaged in (or might consider engaging in) offences;
- Incapacitation: making it difficult or impossible for an offender to break the law through surveillance and/or imprisonment;
- Rehabilitation: opening prospects for reforming deviants.

Does punishment deter the commission of offences? Do organised crime control efforts serve to reduce, displace, stimulate, or produce a combination of effects, and on what factors do these impacts depend? In relation to the broad concept of organised crime it is difficult to adequately analyse these issues. It is helpful to focus upon particular forms of criminal organisation and the associated

implications of deterrence-control mechanisms. The reader may recall the chapter two discussion of McIntosh (1971 1973 1975 1976) who lists four types of criminal organisation that accompanied the emergence and advance of modern Western civilisation: picaresque, craft, project, and business.

The example of Outlaw Motorcycle Gangs (OMGs) illustrates the asymmetrical state of current forms of criminal organisation. The characteristics of OMGs are, at the superficial level, outwardly picaresque - as exemplified in their historic outlaw status and associated violence; but they are also business-like in their national and international criminal confederation and associated control over drug distribution, prostitution, and other illicit markets (Lavigne 1987; Quinn 2001). If OMGs represent picaresque organisation, they could not persist for long once confronted by sustained enforcement pressure. If OMGs represent business organisation, they could persist to the extent that the surrounding social organisation (including crime control) has been sufficiently co-opted or corrupted. OMGs are the most heavily targeted criminal organisation in Canada given their over-representation as organised crime members in correctional institutions. Yet this group persists. Is this due to inadequate enforcement pressure or has social organisation been sufficiently corrupted?

While there may be some useful and valid insights in answering both the above questions, I argue that the key reason for OMG persistence is a misunderstanding of both its internal organisation and its relationship to wider social organisation. The OMG model is business-project crime articulated in the form of a cellular

network. The organisation is not primarily driven by wolf-pack (picaresque) behaviour or by a centralised and hierarchical control structure (business). Rather, units undertake a diversity of projects, some ad hoc and others planned, and collaboration with internal and external partners occurs according to instrumental needs and tactical or strategic alliances and relationships such as family and friends. Though there will be further operational divisions, the two main groups are those who predominantly represent unattainable goals or the anomie of scarcity and those who represent unlimited goals or the anomie of affluence. The first group is dominated (though not exclusively) by generalists, impulsive situational offenders who seize upon opportunities to commit crime. The second group is dominated (almost exclusively) by specialists, compulsive offenders who create or stimulate (and/or seize upon) opportunities to commit crime. Specialists are the core group of organised crime actors, but generalists do most of the "dirty work" as arm's length participants in a dispersed network, specifically as aspiring (or partial) members and as contractors for specific tasks.

If we were to set about "gearing up" (Ekblom 1997) for crime prevention, the present control-deterrence focus is rather lacking because the criminal justice panopticon (at least in the context of Canada) focuses upon generalist offenders and appears to suffer from myopia in the case of organised crime and its core group of specialists. Further, the control-deterrence orientation serves to mask the elusive and protracted causal chain that manifests (or is made to appear) as organised crime. This process is helped by erosion of the legal order evident in

the over-emphasis upon the technical concerns of deterrence. The assumptions and practice of deterrence are symptomatic of an architecture which provides an appearance of 'toughness' which is, in practice, difficult to deliver against organised crime. This can be observed in the contradictions of organised crime control in relation to general and specific deterrence, incapacitation, and rehabilitation.

General Deterrence

The law serves an educative and moralising function as it illustrates to citizens, which acts are subject to penalties, with variable sanctions indicating the level of social opprobrium. While the predominant focus in relation to organised crime is on utilitarian concerns, cursory attention is paid to retributive concerns so as to reflect the moral reflex of the public toward punishing such deviants. Allusions to serious harm and elevated offender culpability are captured in the retributive imputation of organised crime dangerousness, a key warrant to justify enhanced punishment for such actors. Nevertheless, it is the supposed preventive utility of the deterrent effects of punishment, which form the bedrock of organised crime control policy.

It is perhaps plausible that the threat of punishment deters the average person from engaging in criminal activities. It would be difficult, however, to prove this in relation to those who indirectly support organised crime by purchasing illicit drugs for instance, and for the recidivist offenders who more directly support, or are

actively involved with, organised crime. For a variety of reasons that have nothing to do with punishment, people will engage in a range of separate or overlapping behaviour including conformity, relatively minor offending such as drugs possession, to active participation in criminal organisations. General deterrent effects will be quite differential depending upon individual predispositions, opportunity structures, and the presence of formal and informal controls.

How does one establish organised crime general deterrence as compared with ordinary general deterrence? An a priori assertion of deterrence is clearly insufficient (Lebow and Stein 1989). This applies to ordinary individuals, but is considerably amplified in the case of organised crime participants given the low visibility and secrecy which attend their activities. Although research tends to point toward stronger support for the effects of general rather than specific deterrence, the most salient factors in both cases relate to the certainty, celerity, and severity of punishment (Clark 1988; Cook 1980; Employment and Immigration Canada 1993; Erickson and Murray 1989; Fattah 1983; Sherman 1990; Wilson 1983; Zagare 2004). We should expect that certainty and celerity of punishment relating to organised crime are rather weak. Confidential data from North America and Europe reinforces the funnel-like effect that common-sense would intimate. Few cases are identified, fewer still are investigated, and only a small fraction will reach the stage of successful prosecution. The prohibitive costs and time-consuming nature of such investigations serve to limit the certainty of being formally noticed, let alone prosecuted or punished. Both white-collar crime and

organised crime illustrate these difficulties although in many industrialised countries a predominantly regulatory approach is used for the former but not the latter.

Legal penalties are merely a cost of doing business for criminals. The critical difference in respect of criminal organisations is the distribution of risk for the imposition of legal penalties. Patterns of association and activity are likely to be altered so as to minimise detection, but legal pressures are unlikely to substantively curtail the problem of organised crime. For instance, OMG use of business-project-style corporate networks is no accidental organisational formation. The instinct for continued profitability fosters organisational flux which diffuses detection risk to the periphery, often through the use of buffers or "cut outs" who are typically non-criminals and/or criminal generalists, while retaining the benefits of capitalisation amongst the core of criminal specialists (Dorn et al. 1998; McIntosh 1973: 44-45). It is not clear that deterrence theory can adequately address such patterns. It is more likely that deterrent effects may serve to promote further professionalisation of organised crime, a process that typically includes enhancing and expanding the organisational base of human and social capital. Deterrence must therefore transcend the status of symbolic reassurance for the "punters", a perceptual barrier to be crossed amongst existing or prospective offenders who possess wide differentials in organisational allegiance, access, and range of planned or ad hoc network activities to which they are parties (Levi 1987: 256, 278; Pfohl 1985: 73-74).

Further, the articulated cellular network of OMGs, and other organised crime groups, implies a degree of agency beyond that of individuals or of groups. It implies the agency of a corporate actor or a persona ficta, a fictitious person that has a certain legal standing like a natural person but has no physical corpus (Coleman 1993: 2). I am not arguing that this persona ficta does not exist, but rather that it is an elusive organisational construct despite the reality of its consequences. I am also arguing that the nature of OMGs and some other organised crime forms are corporate in character. The word corporation typically evokes images of large-scale bureaucracies, but the functional utility of such cumbersome (modernist) structures have progressively eroded. Network technologies offer potential efficiencies — which may be used to overcome the historical competitive advantage of vertically-integrated and centralised hierarchies — for organisational coordination alongside competitive and decentralised production (Castells 2001). This organisational formation offers a logical path to capitalise upon demands for lean production, disposable cells, and optimal profitability alongside marginal organisational risk. The core of the corporate actor is not merely the sum of its constituent parts, it is, sui generis, a living and breathing composite. It reflects the strengths of its individual components, and is designed to shed its frailties according to need and/or circumstance.

Specific Deterrence

The interests of organised crime are well served through a narrow upperworld focus on the assumption of free will and individual responsibility. These fundamental tenets of deterrence, and the consequent application in control strategies, are integral to existing and future innovations in criminal organisation. Marked increases to the certainty and celerity of punishment represent a limited option due to the prohibitive costs these impose upon the criminal justice system. These costs may be financial or procedural as demonstrated in efforts to transform systems to deal with organised crime and terrorism (Harfield 2006). An optimal response to this problem is possible. Mathematically, the same deterrent effect may be achieved by severely punishing a few offenders or by less harshly punishing a larger number of offenders, with the former option being preferred as it is more cost efficient (Becker 1968: 184). This mathematical approach may be a trite perspective on human beings who differ in their appetite for risk, and use cognitive approaches to assess risk rather than use of a cold calculus. Where organised crime participants are successfully detected, prosecuted and adjudicated, the penalties prescribed in law may be quite severe. This may include imprisonment for many years or life, asset forfeiture, or in some countries death.

Nevertheless, the control-deterrence paradigm is quite troublesome because it is primarily oriented to mopping up generalists, participants who may have, in relative terms, more to gain from criminal participation than they might lose if

caught. The paradigm has much greater difficulty in dealing with specialists, who may have more to lose (as an individual and in organisational terms) and thus attempt to secure better insulation against law enforcement. This situation necessarily entails greater organisational use of criminal generalists, including more immature forms of criminal organisation such as picaresque gangs. The Third World and marginalised areas of the developed world may have held (and perhaps continue to hold) a comparative advantage in the supply of, and demand for, criminal labour (Arlacchi 1991: 15). Nonetheless, industrialised countries have substantially improved the prospects for illicit entrepreneurs, notably through expanded internal and external access to supplies of criminal labour generated via the institutionalised processes of globalisation and a wider range of activities/service 'industries' in which they can be employed.

Criminals who find that plying their trade has become risky, due to increases in enforcement technology, may respond in a number of ways. They might physically migrate toward relatively 'unprotected' locations (McIntosh 1975). Some may adopt a cross-border approach and earn arbitrage from (legitimate and/or illicit) exchanges and/or capitalise on the weakness of jurisdictional controls or coordination (Levi 1981; Porter 1996; Robb 1992; Tuteleers and Hebberecht 1998). Others may persist locally with upgraded skills, move on to different activities, or simply persist with 'primitive' methods in spite of increased enforcement risk and the availability of improved technologies to reduce such risk (Mativat and Tremblay 1997). They might also engage in some or many over-

lapping local, regional, and transnational networks of crime (Castells 1998; Hobbs 1997 1998). The contemporary context of globalisation-induced problems fosters, alongside the growth of unlimited or unattainable goals, a greater diversity of networked criminal opportunities. Whether organised criminals dispense violence, are involved in drugs distribution, or other money-making ventures will reflect individual characteristics (vision, temperament and skill sets) as well as their affiliations and roles in organised crime operations. Given means that are nominally important for issues of efficiency and effectiveness, prevention efforts aimed at limiting achievement of unlimited or unattainable goals may well be "doomed to failure" (Agnew 1997: 33). This argument is oriented to individuals, but it is especially important with respect to individuals operating under allegiance to corporate organisation.

Adequately confronting the challenges of organised crime control, and specific deterrence against individuals with unlimited or unattainable goals in particular, requires attention to a number of troubling issues. All persons who may benefit from, or be harmed by, a given policy could be treated equally. Nevertheless, weighting persons equally denies the significant differentials in the quantity and quality of resources available to various individuals. It is especially troublesome with respect to the differentials between generalists and specialists involved in networked criminal organisations. There is an ongoing need to confront the variable potential and pitfalls of organised crime control policies. This should include an honest account of differential degrees of suffering or pain amongst

persons being punished, a key challenge for retributivists (Levi 1981: 116; Levi 1987: 330), and the differential impact of punishing persons in a networked organisation, a key challenge for utilitarians.

Within the flexible domain of organised crime research and policy, a common metric to assess benefits and costs is needed to account for such differentials. Although benefit-cost analysis is not sufficiently developed for wholesale application to crime policy, it can provide useful support for marginal decision-making and help to level the analytical field with respect to differences in actors' resources and the variable impact of policy (Cohen 2001: 25, 45). Extending this logic to those whose freedom may be (or is) diminished by control efforts could provide a useful limit upon both utilitarian and retributive philosophies. Such a limit offers a potentially useful guide for dealing with the criminal sub-population as well as affected third parties. The manipulation of "old tools in new workshops" (Smith 1980: 362) may fuel the "alleged imperialism" of economic analysis (Fiorentini and Peltzman 1995b: 2), but caution is needed in extending the economic approach to organised crime policy. It is very difficult to attribute the distribution of costs and benefits with respect to criminal organisations and control policy, in part because control policy may become a perch that facilitates the "core technology" of organised crime (Beare 1996: 39; Smith 1971). For instance, the prohibition of illicit drugs creates a profitable market for criminal organisations.

Under conditions of allegiance to a persona ficta organisation, generalists and specialists alike may exhibit considerable hubris despite facing the potential of

serious formal penalties. Under S. 467.1 of the Criminal Code of Canada those convicted of a criminal organisation offence may be sentenced to as much as fourteen years imprisonment, to be served consecutive to any punishments for offences linked to organisational criminality. The C-95 (1997) provisions of this section are limited to the five or more individuals who participate in, or substantially contribute to, criminal organisation activities. This combined with the knowledge that members are engaged in serial criminality for (certain) serious offences involving punishment for a maximum of five years or more, and that the particular individual is a party to (at least) one such serious offence. The C-24 (2001) provisions of this section are lowered to include groups of three or more individuals, no longer requiring evidence of serial criminality, and expanding the range of included offences to all indictable and serious offences. The new provisions also differentiate degrees of maximum punishments based on levels of association and activity with a criminal organisation, including five years for participation, fourteen years for committing indictable offences, and life for leaders of such groups.

The C-95 provisions were intended to address the core group of organised crime actors, of OMGs in particular. However, the investigative and evidentiary barrier was quite high requiring substantive investigation on no less than five individuals. The Crown would have to prove that these individuals knowingly contributed to serial criminality for the benefit of a criminal organisation, and would further have to prove that each party was involved in at least one serious related offence. The

C-95 tools were more useful to target lower level street gangs that emulate OMGs, and may be linked to the more mature biker-organisations. The C-24 provisions lower the investigative and evidentiary barrier for targeting those associated with OMGs (and organised criminals in general). Contemporary penality often promotes the cost efficiency of heavier punishments for a smaller number of offenders over lighter punishments for a greater number (Becker 1968: 184). In the present case, however, this policy preference appears to be giving way to another interest. This is expressed in raising the (general) probability of detection/conviction which may serve to reduce problems of over-deterrence and under-deterrence (Bebchuk and Kaplow 1992: 369). Nonetheless, this new optimal equilibrium to account for those who respectively, over-estimate and under-estimate the probability of detection/conviction, will continue to centre on criminal generalists (who are easier to detect and successfully prosecute), even though marginal increases may be achieved in the prosecution of criminal specialists.

I do not mean to imply that specialists are invulnerable to detection and prosecution, but rather to highlight the differential susceptibility of corporate actors to legal tactics against them. The corporate actor of organised crime not only possesses greater resilience against legal tactics, but also is better positioned to convert penalties into political capital such as building the mystique of individuals or criminal groups even where they are successfully targeted by the justice system. A deterrence orientation may be helpful at times in targeting specialists,

including the leadership of cells or regional organisations. Take for instance, the case of Maurice "Mom" Boucher, the reputed leader of the "Nomads", an elite branch of the Montreal Hells Angels Chapter (Humphreys 2000; Malarek 2002). Boucher was suspected of ordering the killing of two prison guards in 1997. He was acquitted by a jury in his first trial in 1998, but there were concerns that jurors had been intimidated by the stone-faced glares coming from Hells Angels sitting in the court gallery. In his second trial, with additional measures to protect the identity of jurors, Boucher was convicted. In early May 2002, Boucher was sentenced to life imprisonment with no parole eligibility for twenty-five years. A further example is found in the case of Terry Adams, dubbed the "British Godfather", one of the most notorious and long-standing underworld bosses in the United Kingdom. His conviction on one charge of money laundering required years of sustained enforcement pressure by various agencies including bugging conducted by MI5 (Bennetto 2007). He has an estimated fortune of £11 million without any work history and he was not paying taxes, and yet his sentence on the single charge was seven years and £750,000 confiscation for laundering £1.1 million.

Some observers highlight the importance of damage to reputation upon charge or conviction, that is, the collateral penalties for which monetary costs imposed may exceed those of formal penalties (Karpoff and Lott 1995; Lott 1992). These penalties can include lost income during criminal justice processing and incarceration, reduced access to prospective employment opportunities and/or

reduced future income from legitimate sources, in addition to a range of possible formal and informal exclusions. Reputational penalties may be very relevant for the average offender and some corporate offenders, but one might be sceptical about the relative value of collateral penalties against those substantively involved with OMGs. Indeed, Boucher's reputation was likely elevated amongst the biker sub-culture following the prison guard killings, and especially following the acquittal of the Nomads' leader. This is another reason why speedy trials are a deterrent, but only if they lead to a conviction.

Members of OMGs may also be well-positioned to make their conviction difficult, by applying their individual and/or organisational resources. They might intimidate jurors, purchase high-quality legal representation or claim poverty and acquire legal aid. Some may question the value of the latter option, of legal representation retained for free (no cost to the defendant), but OMG members perhaps possess greater reputation and agency to promote counsel quality assurance in comparison to typical legal aid recipients. Having been subsequently convicted and sentenced for ordering the murders, Boucher's life sentence may further his own reputation (at a significant opportunity cost to himself and, perhaps, the organisation) and that of the Hells Angels, insofar as this organisation is considered to represent a credible threat to state power. Further, the exercise of specific deterrence against Boucher, and his 'incapacitation' in prison, signifies the opportunities for others to strive for promotion in the OMG organisational matrix.

Incapacitation

At face value one would suspect that offenders are deterred from, or incapable of, breaking the law when confronted by the possibility or reality of incarceration. However, capitalising upon the "inverted efficiency" (Foucault 1979: 271) of the criminal justice system is perhaps best demonstrated by the various specialised techniques and new networks cultivated during residence in prison, the so-called 'academies of crime' (Findlay 1999: 144; Hobbs 1997: 59; Levi 1998b: 433, 435). In addition to the offer of training and recruitment facilities, prisons may also become battlegrounds. The Hells Angels and Rock Machine (the latter now absorbed into the Bandidos) biker war in Quebec also included a struggle for control of the Bordeaux jail in Montreal, a facility with a reputed $7 million annual trade in various illicit drugs (Sanger 1995). The possibility for organised crime, or 'incapacitated' organised criminals, to continue to break the law is not per se achieved by incarceration. However, a case may certainly be made that punishment channels the actor and his/her behaviour, but it is unclear that this achieves greater control over organised crime. It may instead be a further component in the expanded regulatory potential of organised crime. That is, it expands markets and profits from selling drugs in jail and solidifies the position of gangs as providers of services and governance for prisoners.

Punishing the body of the persona ficta of organised crime has proved a difficult challenge, in terms of both efficiency and substantive utility. Nevertheless, this has not impeded the United States, the undisputed lead innovator in organised

crime control policy. The U.S. enacted the Omnibus Crime Control Act (1968) and the Organised Crime Control Act (1970), the Currency and Foreign Transactions Reporting Act or Bank Secrecy Act (1970), and the Racketeer-Influenced and Corrupt Organisations or RICO (1970). The first components provided stronger enforcement tools such as wiretapping provisions, and coerced witness testimony before a grand jury, to target major drug traffickers and organised criminals. The second component required that imports and exports of financial instruments be reported, via a form commonly called CMIRs, for amounts over $5,000 (raised to $10,000 in 1980) and collected by U.S. Customs since 1977 (Feige 1997). The third component enabled civil and/or criminal prosecution by the state or private actors to strip organised criminals of business organisations they had nefariously infiltrated as well as other assets as damages. Although RICO was the centre-piece from the 1970s to the early 1980s, by the mid-1980s and 1990s the Bank Secrecy Act was assuming centre stage. This policy shift marked a change from the focus on "targeting upwards" through street-level actors to kingpins, toward a top-down focus on proceeds of crime and international law enforcement to detect and prosecute the concentrated financial gain of upper echelon actors (Beare 1996: 144-146; Naylor 2002: 17-18). It has not been shown whether these policies have served to reduce or prevent organised crime.

Some countries hold the reputation of offering a "welcome wagon" for organised crime (Humphreys and Eby 2000). Purportedly lax controls, such as those in Canada, are considered to offer an "extremely comfortable safe haven" for

criminal enterprise (German 1995: 8). This reputation appears to reside internally amongst the law enforcement and intelligence community, and externally amongst U.S. and international enforcement and regulatory interests (Beare and Martens 1998: 403). Canada implemented its Proceeds of Crime Act (1989) which allowed for asset forfeiture proceedings, and created a system of voluntary reporting by financial services of suspicious transactions. Under continuing pressure from the U.S. and international bodies such as the Financial Action Task Force (FATF), Canada introduced Bill C-22 (Royal Assent 29 June 2000). In order to combat laundering of the proceeds of crime, inter alia this Bill created a system of mandatory reporting of financial transactions over $10,000 and of transactions deemed suspicious, and inaugurated the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). The Act requires that those in financial institutions maintain records of client transactions, to report all prescribed transactions, and to report every transaction for which there are reasonable grounds to suspect money laundering. Failure to comply with reporting requirements may result in the following penalties: on summary conviction a maximum fine of $500,000 and/or six months imprisonment; and on indictment a maximum fine of $2,000,000 and/or five years imprisonment.

Policies targeting money laundering and the proceeds of crime have become popular and ubiquitous, particularly in the context of the post-September 11th drive to detect and seize the finances of suspected terrorists. Through Bill C-36 (Royal Assent 18 December 2001), Canada's anti-terrorist legislation, FINTRAC

reporting requirements were extended to "hawala" and other informal money transfer businesses and charities effective 14 June 2002. Despite the wave of enthusiasm, some observers are sceptical of the methods and value of targeting money laundering and proceeds of crime. Research into underground banking systems or informal value transfer systems (IVTS) such as Hawala suggests that it is not a major vehicle for 'dirty' money. Primarily used by ethnic groups for legitimate purposes or for minor regulatory offences such as tax avoidance, IVTS is only occasionally used by criminal entrepreneurs because such informal networks have limited capacity for volume and because other alternative methods of transfer are widely available (Passas 1999b: 67). Other observers are iconoclasts. For instance, one commentator labels the prohibition on money laundering an "artificial and contrived offence", and argues that asset forfeiture is a "washout" because it targets the firm rather than the industry and the conditions that sustain such enterprise (Naylor 2002: ix, 259). The assumption that asset forfeiture really damages organised crime should be treated with considerable scepticism. Despite the intrusions into the privacy of financial institutions and individuals, and the highly resource-intensive nature of conducting fiscal investigations, very little in the way of proof has been advanced to demonstrate the extent of the laundering problem or the effectiveness of these methods in countering organised crime.

The emerging international network of financial intelligence units (FIUs) might signal a "key area of vulnerability for organised crime", or, more plausibly, that

control interests may only be keeping pace with the increasing sophistication of layered transactions prompted (at least in part) by increasing controls (Pinner 1996: 18-21). That elusive persona ficta, invariably, will not sit still under the weight of control pressures to target organised crime assets. Such pressures can be circumvented in a number of ways. One of these ways is to neuter the asset, or for organised crime to reduce its fiscal liability in the asset (i.e., rent or lease) while still retaining it for day to day use. For instance, a home may be bought by an organised crime figure, often through a buffer(s), and mortgaged to the maximum limit with a 'respectable' bank. If the asset is subsequently seized, it is the property of the bank that has been confiscated (unless, depending on the form of legislation, it can be demonstrated to the court that the bank is knowingly facilitating a bona fide "purchaser" for value). Within this type of case, little real value has been lost by the organised crime figure, save the residual cost of rent or interest payments.

Moreover, a 'respectable' bank is unlikely to exhibit complacency while its assets are confiscated, and the enforcement community will face definite and substantial legal challenges should they fail to return bank property. Seized organised crime assets will often have a depreciated value on the market resulting from aesthetic concerns and safety. Who would want to own a house formerly in the possession of the Hells Angels — you never know who might show up for dinner or for a murder mystery evening? Additionally, organised crime groups may adopt the view that if they cannot possess the asset then no one will. In the province of

Quebec, OMGs have adopted this approach, and have burned to the ground properties that have been seized from them. The insurance industry is highly unlikely on the basis of actuarial calculation alone to accept risk liability for OMG seized assets. Such properties are thus either uninsurable, with the new owner assuming full risk and the virtual impossibility of a mortgage, or requiring government-guarantees, with the taxpayer footing the bill for losses. This may not be a major issue in other countries or it may be a topic that is avoided or never even considered in published material.

The limitations of the contemporary money laundering/asset forfeiture method are perhaps best made with reference to Durkheim's (1897: 327-329) description of suicide control methods in Christian societies since 452 AD. Often viewed as a crime in itself, suicide would result in denial of various rites such as a proper funeral and burial in the church graveyard. But this did not stop the problem. Material penalties were then added to religious penalties. The suicide victim could be tried before competent authorities and, if found guilty, the property of the suicide victim would be diverted from the heirs of the deviant to the baron or the local government. When asset forfeiture failed to solve the problem, new penalties were added. Various tortures were devised to put a stop to the deviant act of suicide and to deter citizens from committing this crime: dragging the corpse through the street, burning the corpse, throwing the corpse upon a garbage heap, piercing the corpse sideways with a stick, and burying the corpse on a highway without ceremony or under five feet of water in the sand. Despite the popularity of

such tactics throughout Europe, surprisingly little effect was demonstrated in controlling the deviant phenomenon. As the prescribed reactive "penalty could in no way affect the guilty person", its impact upon suicide victims or the suicide rate were non-existent (Durkheim 1897: 329).

As a means to prevent organised crime activity, asset forfeiture should prove of equal effectiveness, as this method demonstrated when inflicted upon suicide victims up to the 18th century in Europe. The commitment of the suicide victim and organised crime to their activities would appear to be rather resolute. The former clearly lacks the agency to resist, post facto, the prescribed penalty. The latter possesses the agency of a corporate actor, that elusive persona ficta. Some readers may feel that the comparison between suicide control and organised crime control is unreasonable. Certainly, the socio-historical context and the opportunity structures for both sets of phenomena are markedly different, as are the relative levels of agency that may be manifested by the actors. But the underlying point here is that, at its core, the tactic or the technique of asset forfeiture has not changed over the centuries. As a centre-piece, rather than being explicitly recognised as one tool in a (potentially) broad-based strategy, asset forfeiture offers a stale tactical agenda exhumed from dust-ridden law books and passed-off as state-of-the-art problem-solving. What is more, this fails to take into account historical considerations that led to the abolition of asset forfeiture. In late nineteenth century Canada, for instance, asset forfeiture was abolished, in part,

due to the recognition that forfeiture may foster escalating criminality amongst those left destitute by the provisions (Beare 1996: 146).

I do not deny that asset forfeiture-focussed enforcement may be potentially useful in organised crime control. The popularity of this method is largely due to its widespread appeal to a variety of punitive sensibilities from general and specific deterrence, to retribution, and (assuming assets to be the life blood of organised crime) incapacitation (Levi 1987: 334). It may also prove useful in terms of developing intelligence, the annoyance and/or incapacitation factor against targeted organised crime cells, and in purifying the proceeds of crime through its use to fund certain enforcement and crime prevention activities. Perhaps the key element is that asset forfeiture offers a complementary plug toward credible deterrence, to bridge the gap between maximum legal punishments and fines (Bowles, Faure, and Garoupa 2000). The desire of society to purge itself of practices it abhors, through cathartic tactics such as asset forfeiture, has a seductive but nonetheless circular appeal. The focus on money laundering and asset forfeiture is an implicit (if not explicit) admission of policy failure. The fact that crime pays is made evident by the illicit generation of assets in spite of laws dealing with underpinning offences. The degree of escalation in penal technologies to target such assets thus offers a useful index by which to measure the extent of underlying as well as forthcoming policy failures. Although in fairness, this argument could be applied to any escalating measure, which may begin to show progressively diminishing returns.

Rehabilitation

In dealing with organised crime, deterrence-control must only be one part of a more broadly-defined approach. Bentham's elaboration of utilitarianism, set out as an ideal to aim for, has become in Foucault's opinion "...a deep description of the actual nature of modern punishment" (Garland 1990: 163). In all fairness it should be pointed out that the limits to utilitarianism, as expressed by Bentham, have been largely ignored by proponents of control-deterrence approaches to crime. The idea that we shouldn't punish where it is unprofitable, or where it is needless, has often been ignored (Primoratz 1989: 23). Punishment may be considered unprofitable and therefore unjustified if the evil it consists of is greater than the evil it prevents. In isolation from other strategic approaches, organised crime control is a contributing factor to that which it ostensibly seeks to prevent. It may also prove, when extended to extremes, to reduce the scope of democratic values and the associated individual freedoms. Punishment may also be considered needless where its aims can be achieved by other, non-punitive means, such as various measures of social policy and education. It is not clear whether such non-punitive measures have been considered as a means to prevent organised crime in Canada or other Western countries.

In summary, deterring organised crime is a considerable challenge. This phenomenon appears resilient to general and specific deterrence, incapacitation, and little has been done to determine possible avenues for rehabilitation. The internal problem is the over-emphasis on issues of supply rather than a balance of

supply and demand issues (Naylor 2002: 10). The external problem is that organised crime continues to effectively and efficiently capitalise on the currents related to the spread of anomie or criminogenic asymmetries (Passas 1999a). That is, the expanding opportunity structure of supply and demand for illicit goods and services generated by the unfolding process of Western-led globalisation. Extending a partial approach will not magically result in success, no matter how vigorously it is pursued. Through a focus on the primacy of the individual, the law is largely incapable of dealing with the corporate behaviour of organised crime:

> Our legal codes and courts are virtually irrelevant when it comes to organised crime. But they are equally irrelevant when it comes to regulating multinational corporations. The point is not that there is a moral equivalence between [organised crime] and multinationals, but that our laws are meaningless when it comes to international operations, whether criminal or corporate. (Saul 1992: 334)

Human beings, and corporate actors in particular, do not properly fit neatly-reasoned boxes of good and evil, the situations and the actors are far more complex (Turow 1993 1996). In spite of this complexity, the solutions remain surprisingly simplistic and, when failure is encountered, as it inevitably is, the response is usually more of the same.

The Legal Evolution Thesis

Understanding the nature of law and its relationship to the evolution of social organisation provides key insights, both in relation to where the methods of control have broken down and where law becomes an agent of, rather than a bulwark against, moral decay. In the Division of Labour (1893), Durkheim suggested that as societies move from mechanical to organic solidarity, from simple to complex social organisation, there is a shift from the punitive sanctions of repressive law toward the civil (or restorative) sanctions of restitutive law. Legal evolution thus accompanies evolution in the division of labour, with the latter being the cause of the former, but with each reinforcing the other. In this macro-level model, repression of deviations from prevailing norms reflects a 'primitive' society of dependence, whereas the ongoing regulation of interactions and infractions through restitution between parties reflects a complex society of interdependence (Adler 1995: 272). This highlights a quantitative reduction in the intensity of controls and a corresponding qualitative increase in the refinement of dispersed controls. The quantitative-qualitative transition is intended to foster through subtle and positive means, rather than heavy-handed and negative means, that persons should find it in their interests to obey the law (Bernard 1995: 86).

A number of observers reject the legal evolution thesis. A synthesis of such critiques underscores that the developmental pattern of the legal evolution thesis offers too smooth and functional an evolution to fit with the asymmetries of penal history (Garland 1990: 48-49). Durkheim is rebuked for over-emphasising the

transition from the repressive law of 'primitive' society toward the restitutive law of complex society, in spite of temporal and spatial evidence to the contrary. Further, the artificial dichotomy lacks reference to intermediate stages of legal development in addition to the continuing struggle between different methods in a given context. That Durkheim apparently "gets it wrong" (Garland 1990: 49) is more a reflection of misunderstandings and misinterpretations of the legal evolution thesis. The unit of analysis is not legal history or legal ideas, but rather the social conditions of mechanical and organic solidarity, and thus:

> The legal evolution thesis is an initial presentation of a problem for legal theory to solve: what is the moral essence of complex societies that modern law expresses (and must express in order to retain its own moral force and be something more than 'mere' politics)? (Cotterrell 1999: 91)

Following Hobbes too closely results in an ongoing failure to recognise and evaluate the shifting sands of both the means and objectives of the post-Fordist state. This shift is primarily about the supplanting of law by economics, and the transnational ideological sea change which underpins this transition (Lowi 1992). Law is continuing to drift toward a narrow focus on technical aspects of positive law. In the unfolding reductionism we find at the cutting-edge an obsessive focus on efficiency (optimal and actuarial calculation) as the emergent central criterion for technical law. The "new penology" (Feeley and Simon 1992) offers the utopian promise of clinical calculation and crime prevention in contemporary risk society.

However, constellations of risk do not occur in "depoliticised social ether" and there is a troubling (friendly) relationship between actuarial justice and 'primitive' vengeance (Rigakos 1999: 145). Repressive applications of national or transnational law (criminal and/or civil) cannot and will not, post facto, resolve the sheer scale and complexity of crime problems being induced by the profusion of the market-oriented society.

Perhaps law and its enforcement (grounded in control formulations) will only produce nominal results at best and organised crime will flourish regardless (Kos 1997). fear that the power of organised crime has increased even as the weight of enforcement pressure increases, but the existing state of knowledge precludes validation or falsification of this assertion. Some may view this charge of iatrogenesis as defeatism best expressed in the phrase "nothing works" (Martinson 1974) or justifying further and rapid escalation of control techniques. Instead, my aim is to highlight that the fight against organised crime should not continue to be dominated by tactical approaches at the expense of strategic approaches. Tactics are expedient procedures for promoting desired ends over the short-term. Strategies, on the other hand, consist of the science/art of planning and directing an evolving method for achieving specific goals over the short-, medium- and long-term.

The answer lies not in simply doing more of the same but rather in an evolved and evolving approach to social regulation.

Many of the levers of social regulation that can reduce organised crime and related problems are clearly beyond the scope of utilitarian applications of law and criminal justice. As Jeremy Bentham explicitly recognised, only in a just society can utilitarian theory be both effective and just (Newman 1978: 206). Not a mere cognitive question, justice depends on a certain set of objective and subjective elements of social organisation. An endangered concept in the risk society, justice needs to be reformulated to limit the counterproductive exercise of state power and to foster non-repressive approaches (wherever possible) which reduce rather than exacerbate crime problems (Hudson 2002). We have not really progressed beyond Hobbes' view of the state as a mechanism of social control (be it panoptic or otherwise), rather than it being an expression of the legitimacy conferred upon it by citizens (Saul 1995: 162-3). Within a democratic paradigm, effective social control must necessarily involve reciprocal rights and obligations between citizens, the state, and state agents of social control.

Greater effectiveness (as opposed to the efficiency of much existing control policy) requires a broader view of social regulation and what works in achieving this end. We need to embrace the richness, often misunderstood, of the Durkheimian conception of law and anomie. As a Jew and with the experience of rabbinical training, Durkheim used law in the dual sense of the word within the Torah which embodies: (1) "positive legal injunctions"; and (2) "the law in a larger, more living sense, the law as an intuitive, inward experience of how things should be" (Cayley 1997: 20-21). Effective social regulation requires that the individual

both accept the authority of society or its organs, and recognise as just the limits that are set. This denotes that the power of social regulation must by "obeyed through respect, not fear", force and physical restraint do not automatically restrain the human appetite or the heart (Durkheim 1897: 248-249, 252).

The failure to foster a culture of lawfulness (Godson 2000), or the spirit of law, underlies the embedded insecurity of our age. If we examine specific practices and transformations in the exercise of social power it appears that we are witnessing governance not of organised crime but rather governance through organised crime (Sheptycki 2003). Organised crime is used as a warrant to justify the assertion and expansion of state power in various domains, especially prior to 2001. The putative rise of an un-governable tide of globalisation and serious crime throughout the 1990s (in spite of statistical evidence to the contrary for many indices, see next chapter) and into the new millennium has provided an excellent opportunity for the re-assertion and/or expansion of state power. The phenomenon of home invasion robbery (HIR) emerged during this period in Canada. HIR seems antiquated, nonadaptive and almost atavistic within the context of an advanced and wealthy society. The Canadian state should have little problem in preventing and suppressing such predatory (or picaresque) forms of serious crime and yet the phenomenon of HIR exists and persists.

Conclusion

This chapter assessed the challenge of social regulation in general and with particular attention to organised crime. It discussed selected insights from anomie theory. These included Durkheim's insight that anomie results from the absence of society in the failure to achieve social regulation. It also included Merton's insight that anomie results from the presence of society in the failure to achieve a balance between goal achievement and the suitability (morality) of the available means. then turned to the claim that Durkheim and Merton may be control theorists, and I highlighted that in control theory individuals are freed to engage in deviance whereas in Durkheim and Merton individuals are pressured toward deviance.

I then shifted from issues of causation to responses with respect to particular approaches to social regulation. These approaches illustrate the limitations of applying standard control orientations in general and especially with respect to those involved in organised crime. The analysis addressed general deterrence (the wider population), specific deterrence (at-risk individuals), incapacitation, and rehabilitation. In the case of the first three responses, we find questionable capacity to reduce or prevent organised crime. Such groups have available numerous techniques and tactics to circumvent or displace risks. Further, rehabilitation has not been properly tried.

The chapter also included discussion of Durkheim's legal evolution thesis. Therein, he argued that as society becomes more complex, moving from mechanical to organic solidarity, repressive (punitive) law is progressively replaced with restitutive (restorative) law. Although there are a number of critics of the legal evolution thesis, Durkheim posed a key problem of whether modern law can retain its own moral force and be something more than mere politics. The control of organised crime is an area that illustrates the continuing drift toward the narrow concerns of positive law.

The following chapter turns to the impact of political economy in respect of issues relating to organised crime.

CHAPTER FIVE:

POLITICAL ECONOMY AND ANOMIE

> [N]othing assures us that these conditions are normal. For we must not be dazzled by the brilliant development of sciences, the arts and industry of which we are the witnesses; this development is altogether certainly taking place in the midst of a morbid effervescence, ...in a pathological state just now accompanying the march of civilisation.
>
> — Emile Durkheim (1897: 368)

Introduction

In this chapter, I examine the sociological foundations of institutional anomie theory (IAT). These foundations involve the rise of the doux-commerce and self-destruction theses (Hirschman 1982) of market society. Respectively, the eighteenth century Enlightenment view that markets help to perfect human society and the nineteenth century Industrial revolution view that markets have a corrosive effect on human society. Building upon these ideas, IAT offers a macro-criminological model to examine structural causation. It posits that a market-oriented imbalance in social institutions may cause criminogenic tendencies in various parts of society and simultaneously undermine institutional and individual observance of social rules.

I then examine key issues relating to the ideas of globalisation and empire. In particular, the post-World War II view of globalisation as a system of economic

means to improve the condition of humanity and social organisation. This was followed by the late-1980s shift toward a view of globalisation as a system of economic means apparently operating for its own abstract purposes. These issues are then linked to the concept of empire (over imperialism) in the contemporary period of United States dominance.

My analysis then turns to how Canada experiences several anomic trends. Canadian sovereignty is not assaulted directly by an imperial aggressor but rather national participation in contemporary Empire compels a market-oriented focus in social institutions. This produces considerable inter-related problems and limits the ability of social institutions to regulate individuals and society. Despite the successes of the market-oriented society, those individuals and groups who find themselves marginalised represent a substantial problem to Canadian society.

The Sociological Foundations of Institutional Anomie Theory

In the contemporary period, and one would suspect in many others, crime is less opaque than political economy. The former attracts more attention because it is more easily understood and its effects seem more real and proximate. Crime touches "...our sense of how fragile social order is, how rare justice is, and how near we feel violence and disorder often are, both out in society and within ourselves" (Salutin 1997). The effects of crime seem all around us, reported in superficial and/or infinite detail in the media. The causes of crime and facilitating factors are well-ingrained in the public consciousness, including money, hate,

love, drugs and weapons. The causes and facilitators of domestic and international political economy, on the other hand, are distant variables that are not easily understood by the vast majority of people. Of the social structures that "exert a definite pressure" toward certain behavioural patterns (Merton 1938: 672), those induced by the law are more directly observable and may (by-and-large) be discerned, whereas those induced by economic organisation are less directly observable and are quite difficult to discern (Durkheim 1895: 57).

Some commentators argue that market-oriented society is largely a positive force offering economic growth and rising living standards for the world and its people (Davidson and Rees-Mogg 1993 1997; Drucker 1993; Friedman 1982; World Bank 1995 2005). Other commentators argue that this it is largely negative, or that it contains a considerable number of negative aspects, including fostering increasing stratification between rich and poor. These observers (Barlow 2005; Buchanan 1998; Castells 1998; Clarke and Barlow 1997; Currie 1991; Greider 1997; Kaplan 1998; Luttwak 2000; Mander and Goldsmith 1996; Monbiot 2000; Rifkin 1996; Taylor 1990 1999; United Nations Development Programme 2006) are concerned that market-oriented society will involve a dismal future for the world and its people whilst much of the benefits will go to multinational corporations. In spite of the opaque nature of the influence of contemporary economic organisation, the institutions and instruments of global political economy and market-oriented society have emerged as a major target of discontent at the close of the twentieth and beginning of the twenty-first century. Significant

demonstrations in various parts of the world have been held, and have to varying degrees disrupted, conferences and summits of the Group of 7 (G7), World Bank, International Monetary Fund (IMF), World Trade Organisation (WTO) as well as meetings promoting regional trade via forums such as the Summit of the Americas.

At face value, we should expect to find some relationship between political economy and crime. Consequently, interest in this topic has been widespread in sociological, criminological and economic thought on whether market capitalism enhances or erodes the moral order of society (Rosenfeld and Messner 1997: 222). Prior to the Enlightenment, human happiness and unhappiness was generally attributed to luck or chance and other unalterable causes such as the will of God. The rise of modernity and rationalism prompted cognisance of the growing influence of social and economic structure in generating differential life chances (Hirschman 1982: 1463; Merton 1968: 202-203; Merton 1995: 12). Since the end of the Second World War, however, especially but not at all exclusively in North America, the mainstream of sociology and criminology has been largely uninterested in the issue of political economy and crime. Indeed, studies on such issues have tended to be "identified as a quaint preoccupation of the academic specialist but of no immediate practical policy relevance" (Taylor 1998: xiii). The ongoing development of interdependent market-based societies compels reconsideration of this neglected topic at both the macro- and micro-level. These

issues have been given serious consideration in several contributions (Cohen 1988; Reiner 2007; Ruggiero 2000a, 2006).

The Doux-Commerce Thesis

The doux-commerce thesis is a product of the political, economic and moral philosophy of the Enlightenment. It combined the 18th century European ideas of secular human progress and the perfectibility of humanity (Hirschman 1982: 1463-1464; Zeitlin 1981: 12). Two objects, the free individual and the state, dominated social thinking during this period and social progress attached to solidifying the association between the two. Observers argued that the primary interest of absolute monarchs and the church was that "...the people should be weak and wretched, and that it should never be capable of resistance" to the Sovereign will (Rousseau, 1762: 105). Throughout 18th century Europe, however, it was being recognised that traditional society was impeding social advance and the diffusion of its benefits to the populace. Up-rooting the chains of feudal tyranny necessarily involved an effort to dissolve the relative power of absolute monarchy and the church as well as intermediate social groups including the patriarchal family, guilds, and universities (Nisbet 1943b: 157-158). There was, nonetheless, one particularly important nexus needed to connect the two supreme rational entities. Montesquieu (1749/1961. Vol.

2: 8, 81) argued that commerce and civility (or manners) are reciprocally related and that the causal relationship flows from commerce which "...polishes and

softens [adoucit] barbaric ways as we can see every day" (Hirschman 1982: 1464). Enhancing the circulation of wealth and money associated with markets would brush away the cobwebs of irrational behaviour associated with traditional society. Like the flow of purifying water through a system of conduits, it was believed that markets would mitigate the excesses of absolute monarchy and the church by improving the common weal in a new secular moral order (Illich 1986: 42-43).

Under the doux-commerce thesis, the market would serve as a bulwark against deviant and/or aberrant behaviour. A benefactor was still required, for protection against political despotism and to enshrine a rational social structure that fostered capital accumulation and the diffusion of douceur. Later observers recognised that (the promise of) inalienable individual rights were required for the diffusion of commerce and its social benefits. Without such guarantees, the tyranny associated with "political despotism" and absolute monarchy might be supplanted by the "tyranny of the majority" under the auspices of the state, a situation no less threatening to the establishment of a "good condition of human affairs" (Mill 1859: 63). Achieving the necessary balancing act between the individual and the state required a set of viable policy prescriptions. Montesquieu attributed the English with the greatest progress of peoples in commerce, freedom and civility (Weber 1920: 45). Published on the eve of the American Revolution, The Wealth of Nations (1776) provides the quintessential reference point for the philosophy of laissez-faire. Adam Smith argued that an unregulated market of individuals

pursuing their self-interest would foster, as though led by an invisible hand, the accumulation of financial, human and social capital. Within his "system of natural liberty", the sovereign state (Leviathan-Shackled) would possess only three duties: (1) defence of the nation against foreign aggressors; (2) administration of justice to defend against internal injustice or oppression; and (3) establishing and maintaining certain public works and institutions, such as public education, where profit would be insufficient to attract individual investors but where it may significantly contribute to the "great society" (Smith, 1776: 745). As the logic of market capitalism and its accompanying social structure unfolded during the industrial revolution, idealistic notions about douceur would increasingly conflict with actual experience.

The Self-Destruction Thesis

The self-destruction thesis is a product of the political, economic and moral turmoil associated with the 19th century emergence of the Industrial revolution. This thesis put forth the critique that market capitalism "cuts from under its feet the very foundation" of the processes of social production, a system which produces and reproduces "its own grave-diggers", those who have a vested interest in supplanting the existing social structure (Marx and Engels 1848: 102). Proponents argued that accumulation of financial capital (and money, the new metric of all relations) was being achieved through market mechanisms which depleted human and social capital, corrupting the social structure from top to bottom. The bonds of local community (and the social responsibilities of feudal

lords) were severed as peasant welfare shifted from a focus on rural life and subsistence farming to urban life and industrial employment. Faced with more anonymous and heterogeneous population and the market as the arbiter of welfare, it was argued that the prevailing ethic would be nothing more than the "icy water of egotistical calculation..., naked self-interest, [and] callous cash payment" (Marx and Engels 1848). Market capitalism was thus generating, not douceur, but rather self-destructive tendencies. Individuals were encouraged to "sacrifice the best qualities of their human nature", and pursue "the brutal indifference" of self-interest (Engels 1846: 36-37).

The advance of absolute and/or relative deprivation created powerful temptations toward deviance that were, at times, so extreme that the "penalties of the law [provided] no further terrors" (Engels 1844: 126) to induce restraint. The expansion of routine and impersonal market transactions, and its corrosive effect on human relations, facilitated centralisation of economic and political power within the nation state, the arbiter of the 'public interest'. Critics noted that financial affairs would almost invariably trump the common good because the "executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie" (Marx and Engels 1848: 91). Whilst the market would require fluid economic policies to promote capital accumulation and industrial investment, countering its corrosive effects would require an expansion of state regulation. Maintaining and reproducing order was vital as problems associated with market capitalism provoked an increasingly class conscious

proletariat, and a seemingly inevitable socialist revolution (Hirschman 1982: 1467). Marx proposed that the thin separation between market and state should be eliminated, that the sovereign state (Leviathan-Unbound) should usurp all means of production and act as the architect of social and economic progress.

Clearly, the doux-commerce and self-destruction theses are overly-deterministic. The first offers the tautology of a "naive functionalism that stipulates that markets necessarily produce the morality necessary for markets to function", ignoring the non-economic institutional context upon which market transactions are grafted. (Rosenfeld and Messner 1997: 210). The second neglects the prevalence and durability of capitalist societies and their respective differences. Once we relinquish the ideologies supporting the two theses, we can demonstrate that the moral foundation of market-oriented societies are in alternating states of depletion, replenishment, and the simultaneous overlapping of both processes (Hirschman 1982: 1483). The relative balance between douceur (integrative forces) and erosion (destructive forces) will be conditioned by the temporal and spatial context in which they occur.

Institutional Anomie Theory (IAT)

Institutional anomie theory or IAT (Messner & Rosenfeld 1994a; Rosenfeld and Messner 1995; Rosenfeld and Messner 1997), building upon the foundation provided by the doux-commerce and self-destruction theses, provides a macro-criminological model to examine structural causation. The model can be usefully

applied to examine the probability of deviance and crime and its relationship to market-oriented economies. Institutional anomie theory looks at the division of labour and interaction between several institutional forms: polity (or law), economy, family, and education. In this macro-criminological approach to analysis, the task is articulate the probabilities of crime linked to the "institutional balance of power": (1) the social conditions (cultural and institutional patterns) in which markets generate differential consequences; (2) the processes by which social conditions may lead to crime; and (3) the paradoxical interdependence and conflict between major social institutions (Rosenfeld and Messner 1995: 169; Rosenfeld and Messner 1997: 212). The theory pays particular attention to the progressive intensification of institutionalised economic dominance, and its consequences for deviance as proposed by Durkheim and Merton. The former argued that this type of anomie is a product of the absence of society wherein the shift from mechanical to organic solidarity (Gemeinschaft to Gesellschaft) deregulates institutional social controls just as economic objectives are recklessly flaunted. The latter argued that this type of anomie is a product of the presence of society wherein a social structure promotes an inordinate emphasis upon goal achievement, but with little attention to the moral status of the available means.

Market-Oriented Power Imbalance

Employing techniques of elaboration and integration, IAT also draws on insights from related criminology discourse such as control theory (Hirschi 1969). Emphasis is placed upon bonding which is believed to exert a considerable

regulatory effect on individual behaviour. The regulatory importance of bonds to social institutions has been enhanced by progressive economic intensification and associated development in the size and complexity of social structure. The relative regulatory effectiveness of social institutions within a cultural environment of economic intensification, however, paradoxically fosters the very behaviours that are subject to the restraints imposed by social institutions (Rosenfeld and Messner 1997: 219). The decline of the moral order may be attributed to an "institutional balance of power" tipped toward market-driven orientations within both economic and non-economic spheres (Messner and Rosenfeld 1994a: 75-88). At a macro-social level, the ongoing integration of economic and non-economic institutions may be imperceptible to many. At the micro-social level, patterned symptoms of moral decline may become perceptible as dominant market orientations force continued devaluation of the non-economic sphere. In a society overrun with market orientations, "the pursuit of private gain becomes the organising principle of all areas of social life — not simply a mechanism that we may use to accomplish certain circumscribed economic ends" (Currie 1991: 255).

Capitalist ethics may be depicted on a continuum with "asceticism" at one extreme and the "anomic ethic" at the other. Asceticism involves a macro-social balance between the immanent and the transcendental, an ethic which blends the pursuit of individual and social goals within a social structure providing clear direction as to the legitimate use of available means. In The Protestant Ethic and the Spirit of Capitalism (1920), Weber discusses the fusion between religious and bourgeois

values that provided a necessary step for the emergence of capitalism. Wealth was the product of craftsmanship, of hard work in a life-long calling that fused individual identity with one's contribution(s) to society. The socially approved means for the enjoyment of material rewards, obviated by the norms of ascetic or frugal living, centred on the investment of capital into further production and accumulation, and church-building donations intended to bring one's community closer to God. Work and capital accumulation are thus in a mutually-reinforcing symbiosis at the immanent and transcendent level (Rosenfeld and Messner 1997: 215).

In contradistinction to the causal flow posited by Montesquieu, other observers felt that "any inner relationship between certain expressions of the old Protestant spirit and modern capitalist culture were to be found" as flowing from religious characteristics such as the record of asceticism or piety (Weber 1920: 45). Though it may certainly have provided an initial base for capital accumulation, the immanent-transcendent balance of asceticism was undermined by the constraints on individual enjoyment of acquired wealth (Rosenfeld and Messner 1997: 215). This disjunction constrained the incentive for continuing capital accumulation by the individual. Indeed, subservience to theology in moral and natural philosophy fostered the view that the perfection of virtue would derive only from austere behaviour. It was "almost always inconsistent with any degree of happiness in this life [resulting from the] ...liberal, generous, and spirited conduct" of individuals engaged in market-based social interaction (Smith 1776: 830).

The Anomic Ethic

In contrast to the ascetic ethic, the anomic ethic results from the macro-social imbalance between the legitimate means available for achieving market-oriented success goals, and the micro-social focus on the technical efficiency, rather than the moral status, of available means (Merton 1938). The utilitarian disposition toward technical efficiency rather than moral status progressively collapses the distinction between the immanent and transcendental, the means and ends of wealth. The pursuit of self-interest takes on the role of means and ends. Economic dominance stimulates the anomic ethic at the macro- and micro-social level by progressively undermining the regulatory potential of social institutions and corroding the ethical choices of individuals (Rosenfeld and Messner 1997: 214, 216). Aside from the periodic variance that emerges among individuals, and the prevailing orientation toward conformity with norms (Merton 1938), the most pure manifestation of the anomic ethic will tend toward a strict economic-utilitarian calculus:

> In the most rigorous expressions of capitalistic ethics, crime is simply another economic activity that happens to have a high price (jail) if one is caught. There is no social obligation to obey the law. There is nothing that one 'ought' not to do. Duties and obligations do not exist. Only market transactions exist. (Thurow 1997: 159)

The dominant behavioural standard is unlikely to be either the purely self-interested and under-socialised homo economicus, or the socially-driven and over-socialised actor of many sociological theories. Of greater interest than this raw dichotomy between the under-socialised (Becker 1968) and the over-socialised (Wrong 1961) actor, are the individual, social and institutional relations in which such behavioural patterns are embedded (Granovetter 1985: 490). The probability of deviant behaviour, in the IAT framework, principally relates to the institutional balance of power and its effects on morality and ethics. The moral foundations of capitalist society are likely to be, consistently replenished where there is a reasonable institutional balance of power, or continuously eroded where the economy dominates the institutional balance of power (Rosenfeld and Messner 1997: 217).

An imbalance of institutional power may foster "criminogenic asymmetries" defined as "conflicts, mismatches and inequalities in the sphere of politics, culture, the economy and the law" (Passas 1999a: 400). The relative balance between douceur and erosion can help in specifying the nature and causes of deviance. For instance, a significant (widening) gap between de jure and de facto social norms may promote an institutional crisis (Thoumi 1995: 67-68). Throughout the social structure, such a crisis can lead to the industrial production of "perverse social capital" which reinforces decision-making toward deviance and crime as normative behaviour (Rubio 1997: 808). The globalisation of industry and trade is a key factor underpinning an institutional power imbalance in many countries.

Globalisation and Empire

Post-World War II – Part A

Krehm (1997) argues that, following the Second World War, there have been two globalisation movements. Globalisation I (the Global Great Society) occurred immediately following the war, and continued up to the 1980s. Globalisation II (the Juggernaut),which is addressed in further detail below, apparently began to take shape in the 1980s, and advanced rapidly with the collapse of the former Soviet Union. In the first period of globalisation, the prevailing aim appeared to be the realisation of social and economic goals: a capitalist world order that would raise the living standards and quality of life of the mass of people and head off communist influence. This version of globalisation involved a strong commitment to a mixed economy, a generally doux-commerce view operating within the restraints imposed by the expanded regulatory intervention of the nation-state. This maternal approach to social policy has a relatively short history among industrial nations, particularly in North America, dating back to the end of the Second World War (Kristol 2000). Within this version, the welfare state operates based on compassion, providing a safety net that offers ongoing support to those experiencing misfortune in the market economy as well as to an expanding proportion of the population viewed as in need of help or support, for instance, the undeserving poor.

The maternal welfare state owes its impetus, in large part, to women's suffrage and increased participation in public life (Lott and Kenny 1999), but the more common referent relates to ideological concerns following the Second World War. With the forces of democracy triumphant over fascism, but still facing the potential threat of communism, an opportunity was created for the establishment of a strong democratic-capitalist order at the domestic and international level. This democratic-capitalist order was intended to rival all foes, not only in terms of promoting the welfare of its population, but also in generating a powerful national-international economic substructure that would underpin the development and expansion of the Global "Great Society". As President Franklin Delano Roosevelt argued in a 1941 speech:

> We have learned too well that social problems and economic problems are not separate water-tight compartments in the international any more than in the national sphere. In international affairs, economic policy can no longer be an end in itself. It is merely a means for achieving social objectives. (Sharp 1944: 931-932).

In order to counter the self-destructive tendencies of capitalism, and the potential attractiveness of communism, an institutional framework needed to be developed to establish capitalism as the pre-eminent system for organising the world. This system of global organisation included establishment of the International Monetary Fund (IMF), the World Bank, the United Nations System of National Accounts (UNSNA), and the economic underpinnings of the Modern Welfare State. The

IMF would offer financial support to assist industrialised countries in the process of structural adjustment toward progress. The World Bank would provide similar facility for the developing world. The UNSNA would provide the international/domestic model for calculating progress, measured via the Gross Domestic Product (GDP), and the revenue stream on which the Welfare State would sustain itself. President Truman's 1949 announcement of a modernist "Big Push", to remedy poverty in the developing world, signalled a global expansion that was perceived as the invocation of a programme of universal American interests (Goudzwaard and de Lange 1995: 1112). A new "internationalist" outlook was promoted among Americans, the construction of a stable and prosperous international economic system that would promote progressive humanism, with the United States as leader and centre of the global convergence (Greider 1997: 16-17). This "One World" programme of "internationalism" (Willkie 1943), mocked by Republican Congresswoman Clare Boothe Luce as "globaloney", could no longer be ignored with the widespread recognition of "global interdependence" by the seventies (Schulzinger 1983: 46).

Post-World War II – Part B

The second post-World War II globalisation movement is termed by Krehm (1997) as Globalisation II (The Juggernaut). This period apparently began to take shape in the 1980s, and advanced rapidly with the collapse of the former Soviet Union. In this second period of globalisation, the prevailing aim appears to consist of pure economic goals: rapid market expansion and accessibility, unending growth and

profits, with little regard to the social consequences or concern to head off the apparently redundant threat of communism. This paternal approach to social policy enjoys a longer historical tradition, dating back to the turn of the 20th century in North America and earlier in Europe (Kristol 2000). Within this version, the welfare state operates on the basis of sympathy, providing a safety net that offers temporary support to those experiencing misfortune. The temporary nature of the support is aimed, not at building dependency upon the support mechanism, but rather to cultivate self-reliance and individual life skills to cope with the difficulties of life.

At the end of the Second World War (Globalisation I), these two sets of ideas were complementary and mutually reinforcing. The institutions of globalisation, the UNSNA, IMF, and World Bank would provide the means, an economic substructure for the construction and expansion of the Great Global Society. The institutions of national social welfare would serve the ends, the material and ideological enabling and enrichment of citizens. These two sets of ideas and the associated institutions grew enormously over the decades, and reinforced each others' development. The punctuated equilibrium of the late 1980s (Thurow 1997) led to a radical questioning of this symbiotic relationship. The welfare state system was deemed to have become bloated and inefficient. The means to achieve social welfare objectives, the global economic substructure, had decided that its sibling required market-based correction. The means took on the role of both means and ends. Today it seems common-sense that the welfare state has

outgrown much of its utility, and requires much trimming, if not outright abolition for its rampant inefficiencies (Davidson and Rees-Mogg 1997). In his classic work, The General Theory of Employment, Interest, and Money (1936: 383-384), Keynes wryly remarked:

> [T]he ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences are usually the slaves of some defunct economist.... I am sure that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas. Not, indeed, immediately, but after a certain interval; for in the field of economic and political philosophy there are not many who are influenced by new theories... so the ideas which civil servants and politicians and even agitators apply to current events are not likely to be the newest. But, soon or late, it is ideas, not vested interests which are dangerous for good or evil.

Keynes contribution to the creation of the modern welfare state is widely known, however, his many other contributions are largely un-recognised or under-recognised. The irony of the above material is that the current macro- (globalisation) and meso-micro- (welfare state) level debates are actually a competition between two sets of Keynesian-inspired ideas and institutions. Keynes figured prominently in the creation of: (1) the economic underpinnings of

the Welfare State; and (2) Globalisation institutions such as the World Bank, and to a lesser though not insignificant extent, the International Monetary Fund (IMF), and, in collaboration with Sir Richard Stone, the United Nations System of National Accounts (UNSNA) (George and Sabelli 1994; Waring 1989). Given the above quotation, Keynes may have been well aware of the potential for abuses of his ideas. What remains unclear is the degree to which contemporary structures of political economy reflect a 'natural evolution' of Keynes' ideas or the opportune historical conditions for stakeholders to "renounce allegiances" (Schumpeter 1946).

The modernist "Big Push" and its asymmetrical later cousin impacted heavily upon the financial circumstances of many countries. Though there has been some respite in recent years, the entire debt of the developing world amounted to some $1.35 trillion in the 1990s (Goudzwaard and de Lange 1995: 15), and debt service payments by developing countries in the year 2000 amounted to some $78 billion (United Nations Development Programme 2001: 111). This financial albatross limits the institutional capacity of countries to invest in the development of its citizens, and to buffer them against market forces. While the impact on industrialised nations such as Canada (discussed further below) may be more subtle, the trend is quite similar.

Empire

A longer-range view of the relationships between capitalism, the state and its citizens, is helpful in understanding the contemporary manifestation of Empire and the seeming paradoxical impacts it produces. Hardt and Negri (2001) emphasise three phases.

The first phase involved the emergence of large-scale industry from 1848 to 1914. This involved individual work being tied increasingly to the functioning of machines controlled by the capitalist class. Overseeing but providing little interference between workers and capitalists, the state would focus on imperial expansion (invasion) and control of non-capitalist territories to generate raw materials and markets for other goods.

The second phase continues the development of large-scale industry from 1914 to 1968. It involves the rise of an increasingly complex division of labour and the emergence of the mass worker. More involved in regulating the relationship between workers and capitalists, the nation-state focuses within its own borders because imperial intentions create tension and conflict with other nation-states. At the same time, this also tends to impede the flow of trade and social relationships between nation-states.

The third phase follows from the year 1968 and involves the automation and computerisation of production. The division of labour is more complex and abstract and workers are involved in social networks of production. The state

must manage increasingly diffuse relationships between workers and capital. This spells the emergence of 'Empire' in which nation-state sovereignty is undermined by appeals to transnational values of democracy, multinational corporation access to markets, and the management of culture, knowledge and communication.

Hardt and Negri (2001: 160-183) argue that current United States dominance reflects the third phase, the development of 'Empire' rather than imperialism. Countries are drawn into the ambit of the prevailing network power, the United States and, in many instances, may find themselves confronting American-style problems. This is perhaps nowhere more acute than in Canada, a nation-state that is closely tied to the United States in terms of geography, history and trade.

The Peaceable Kingdom

Whereas the American constitution guarantees "life, liberty and the pursuit of happiness", Canada presents the alternative constitutional guarantee of "peace, order and good government" which "combines a vigorous American-style capitalism with the social provision and socially liberal attitudes of Western Europe" (The Economist 2005: 9). While the commitment to a market society seems undiluted, the latter commitment has come under increasing strain in recent decades. The "peaceable kingdom" (Antonides 1978) confronts similar generalised problems to those faced by other nations in the present era of post-Fordism (Taylor 1999) or informational capitalism (Castells 1998). The Canadian experience is specifically bound up in the depth and breadth of ties to, and

growing integration with its largest trading partner the United States. Patterns of extreme and (un- and/or under-) recorded violence seem endemic to the diffusion of the American way of life (Currie 1997) and, consistent with IAT, I argue that HIR reflects in Canada a similar construct which facilitates social conditions conducive to the industrial production of anomie and "perverse social capital" (Rubio 1997). I will restrict my analysis below to the issues of public debt and its management as well as education and its relation to employment.

Debt, Deficit and Other Liabilities

Examination of statistics on Canada's debt presents a bleak outlook over the short-and medium-term. Emes and Kreptul (1999) argue that this is troubling problem in terms of the:

- Federal debt which stands at $584 billion
- Total obligations and liabilities of all levels of government (local, provincial/territorial and federal) which stands at over $3.5 trillion
- Overall liabilities which represent 410% of GDP, and 1,018% of exports
- Total liabilities per person amount to $115,772 per citizen or $243,632 per taxpayer

Some consider this level of liability (for debt, debt guarantees, contingent liabilities, contractual commitments and programme obligations) unsustainable.

For instance, Emes and Kreptul (1999) argue that Canadian governments would have to tax 100% of all income for over four years to eliminate the debt and fully fund all programmes; and government re-structuring to respond to deficits to-date represents a small fraction of the ongoing changes that must be made to restore a sustainable financial involvement of government. Proponents of a conservative approach, such as the Vancouver-based Fraser Institute think tank authors above, argue for a continued need to restructure government programmes. This prevailing view of the financial state of affairs conveniently ignores the topic of causation: why dramatic increases in deficits and debts have occurred. The federal debt was $56 billion in 1974-75, over $400 billion in 1989-90, and $584 billion in 1999. At this debt load and interest rate, Canada's debt service liability is about $42 billion annually.

Though Canada eliminated its deficit by the mid-1990s, its continuing economic challenge relating to debt can be traced to the mid-1970s and deliberate public policy decisions that were intended to set Canada up to participate in the emerging global economy. Social programmes continue to be blamed for deficits and debts, but spending is only one part of the equation. For instance, for the period 1975-76 to 1990-91 if unemployment insurance revenues were deducted from the overall cost of social programmes, there would be no net increase in the ratio of social programme spending to GDP. If unemployment revenues were not deducted, social programmes contributed 2% to the growth of the federal debt over this period. By contrast, spending on the criminal justice contributed approx.

8% to the growth of the federal debt over this time period. What's the other part of the deficit/debt equation, Revenue, and it is a crucial part of the equation. Tax changes in the 1970s reduced government revenues substantially. These changes included tax burden shifts, from corporations to individuals, and from income taxes to consumption taxes. In 1979, the Finance Department estimated that the effect of these changes was to lower federal revenues by $14.2 billion. By comparison, the federal deficit for 1979 was $11.6 billion. Nevertheless, the bulk (70%) of the increase in spending relative to GDP was the result of the lacklustre economic growth and elevated debt charges associated with "stagflation" and its implications during the 1970s and 1980s (Mimoto and Cross 1991).

Educational Access

For much of human history, access to education was an inaccessible privilege for people without financial means. Indeed, prior to the invention of printing (a "vendible commodity"), scholars and beggars were synonymous terms; where the former were indigent they may be granted licenses by the university to beg as a means to support their continued education (Smith, 1776: 152). Public education and the development of social sciences in particular, formed key elements of Durkheim's (1897) vision for a new secular moral order. Abilities, skills and knowledge acquired by individuals constitute the development of human capital and, collectively, networks of social capital for further education and employment markets. Those who do not do well in the educational system (and who have little access to other forms of capital, social and economic) will find little opportunity for

further education and are often not well equipped (save the very fortunate or highly-talented) to expand their economic opportunities beyond low-paying work.

Since the 1960s rhetoric of equality of opportunity, rapid growth in post-secondary education has been systematically oriented toward the certification of individuals, profitability of institutional product(s), and the industrial production of graduates who set the standard for the consumption levels to which all other members of society will aspire (Illich 1971: 35). Education is degenerating into a utilitarian means for economic-employment goals. Despite the commercial clarity linking human performance, educational means, and goal achievement, the education-employment system in Canada (and I suspect many other countries) has gone awry. For the high- and low-achiever alike, contemporary social structure delivers progressively less even while it extracts an ever-increasing share of citizen time and resources.

Many individuals within (and particularly those excluded from) this matrix embody considerable risk. That is, they possess or exhibit aspirations for market success but the 'legitimate' pathways are either inaccessible and/or unaffordable, or are simply too lengthy, serpentine, and unrelated to economic-occupational goals. Aspiration demands greatly exceed the supply of viable and reasonable education and employment opportunities.

The twentieth century was a period of marked transformation for the Canadian education system and citizens. Whereas school-aged child attendance in

education was modest at the turn of the century, due to an agriculturally-focussed society, by the end of the century post-secondary graduates outnumbered those with grade nine. Students have been successfully encouraged to prolong their education so as to fulfil rising expectations for work opportunities, upward mobility, and an improved standard of living, for themselves in particular and society in general (Clark 2001). This has generally proved to be beneficial for individuals and Canadian society, in spite of the inevitable economic fluctuations, and periodic crises, that occur within a capitalist society. In the 1990s, however, this social contract (which had been temporarily breached on previous occasions) was seriously undermined. Enrolment was flat for post-secondary education even while it became the standard for borderline employability status, marked rise in costs further depleted family resources that were flat since the 1980s, and the nexus between educational training and suitable job opportunities eroded.

Bouchard and Zhao (2000) argue that the educational paradox of the 1990s may be understood with reference to five trends: (1) enrolment slow-downs and/or decreases; (2) sharp tuition increases; (3) continuing enhanced returns for university graduates relative to the lesser educated; (4) a higher drain on family resources and marked increases in student indebtedness; and (5) consequent effects upon equity in educational access. The reason for using data from a decade ago is that it establishes key trends immediately prior to the 1998 to 2002 period that is the focus of the home invasion robbery case study in chapter six. First, from 1991 to 1997, full-time new entrant participation in Canadian

universities remained flat with an overall increase approaching 2%. By contrast, part-time new entrant participation in university dropped nearly 63% from 1992 to 1997. Second, tuition costs have skyrocketed and show no signs of abatement in trajectory. In 1997 constant dollars, undergraduate arts tuition increased from $1,448 in 1986/87 to $2,655 in 1996/97. Further, using 1999 constant dollars, tuition fees for an average undergraduate arts programme rose from $1,595 in 1988/89 to $3,379 in 1999/2000, nearly a 212% increase (Clark 2001: 22). Third, whilst the costs have increased, the relative benefits of university education remain. Graduates of 1995 reported in 1997 the following average income relative to educational attainment: $23,400 for trade or vocational, $25,700 for college, $32,000 income with bachelors, and $47,000 for Master's and Ph.D.'s. Rates of employment were (and are) higher amongst university than non-university graduates (85% versus 75%, and 50% for those with grade 8 education). The gap tends to widen over time as university graduates start at higher earnings levels, and they are less likely to be affected by economic cycles and unemployment.

Fourth, the relative benefits of post-secondary education are eroded by high costs, which deplete family income (flat since the 1980s) and hobble students with rising indebtedness. As a share of family income (in 1997 constant dollars) comparing 1986/87 to 1996/97, tuition costs rose from 2.5% to 4.6%, and the total costs (tuition, fees, accommodation, meals) rose from 8.9% to 9.9%. Average family income since 1980 has risen only 1% after adjusting for inflation and, not

surprisingly, students are more indebted with 1995 bachelor's graduates owing an average of $13,300 upon graduation, an amount 140% higher than that of the class of 1982 (Clark 1998: 2425). From 1980/81 to 1997/98, student fees as a percentage of university revenues rose from 10% to 20%. This may be attributed to reductions in federal and provincial government funding. Fifth, while the effects of these trends have been widespread, the most significant impacts have been experienced by individuals of lower socioeconomic status. Indeed, amongst low and middle socio-economic status individuals, 1986 participation rates were respectively 13.7% and 14.5%, and in 1994 18.3% and 25.3%. The gap in participation rates is continuing to widen and impacts most significantly on poorer students who are more dependent on financial aid and are more likely to study on a part-time basis (while working full- or part-time). Participation rates amongst high socio-economic status individuals were at 33% in 1986, and continue to rise modestly.

High school education is simply inadequate to access employment that offers a living wage. Progressively, post-secondary graduation is becoming the standard for employability, but it provides few guarantees for decent employment opportunities. Of 1995 graduates surveyed in 1997, 80% had found jobs, but only 40% who were working full-time had jobs that were directly related to their training (typically higher-paying), and 30% of were still engaged in low-paying service sector jobs (Canadian Centre for Social Development 1999: 27, 47-48, 53). Those high school students who possess sufficient literacy for employment must

compete with post-secondary students, not for reasonable labour market opportunities and a living wage, but rather for low-wage service sector jobs (i.e., traditional retail sector employment, part-time, little security, few or no benefits). Contemporary post-secondary graduates may be "holding their own" in relative earnings even though they confront "stunted expectations" (Finnie 2000), however, the disjunction between the goals and the 'legitimate' means is inducing considerable strain upon Canada's young people at multiple points along the scale of socio-economic statuses. Moreover, while averages may not look so bleak, the median is a deceptive message (Gould 1985). Students face "differential pressures" to find well-paying jobs that will allow them to repay student loans, at an average of $13,300 for 1995 graduates, but with 22% owing more than $20,000 and 14% owing less than $5,000 (Clark 1998: 25). Students are compelled to gamble, with varying degrees of intelligent calculation, indebtedness against employment prospects in a destabilised opportunity structure.

An Anomic Division of Labour

The shift from Fordist industrial organisation toward post-industrial or post-Fordist organisation (Bell 1967a,b, 1973; Taylor 1999) is a process that promotes an anomic division of labour. This is most acutely evident in the declining labour market position of young people in many industrialised countries, including Canada. Some argue that this unfolding process, "while...arduous and unsettling for many, ...ultimately creates employment opportunities for many more [however]

accessing the [information age] earnings potential will require much education and skills-training" (Crompton and Vickers 2000: 12-13). The empirical evidence for young persons is not as comforting as the above position. With stagnant economic growth and high inflation or "stagflation" during the 1970s, and follow on effects into the 1980s, inconsistent growth was paired with a rapid expansion in labour market stratification. That is, the division between primary and secondary labour markets, between well-paying and stable jobs and the reduced wages and insecurity of mainly service sector jobs (Hagan and McCarthy 1997: 127).

For the period 1970-1999, the service sector grew from 62% to 73% of total employment in Canada. Excluding (generally well-paid and full-time) public sector employment, nine of ten part-time jobs are in the service sector wherein average weekly earnings are $554 (versus $777 for the goods sector), but can be much lower on average for sub-groups, for instance, $210 average for food and beverage workers. Secondary labour market jobs are dominated, though not exclusively, by young persons who pay into, but are largely excluded from, several mechanisms of public protection against market forces. In a 1998 survey, fully 68% of youths aged 15_24 were ineligible for (un)employment insurance because they had never worked, quit their last job, or did not meet the minimum required days of insurable work. While technology and workforce reorganisation since the 1970s reduced the returns to workers under the age of 35, the 1990s were a watershed. While productivity increased, wages remained flat, and firms controlled labour costs through workforce re-organisation (use of short-term

contracts and self-employment) and by avoiding the hiring of new workers. Young persons were neglected in the dismal 1% overall job growth in the first half of 1990s, and in the economic renaissance of robust economic growth and expansion of full-time employment opportunities in the second half of the 1990s. Unemployment in 1998 stood at 6.9% for those aged 30_64 and 15.2% for those aged 15_24, and less than 50% of all youth aged 15_19 had jobs during the summer of 1997, down from 66% in 1989 (Canadian Centre for Social Development 1999: 53). (Crompton and Vickers 2000)

Fortunately, there are some 'legitimate' means of escape from this pathological opportunity structure, but these pathways are somewhat exclusive. Canada enjoys good access to a vast buffer for domestic policy failure, the United States. There is much concern about the so-called "brain drain", the movement of talented labour from Canada to the United States. A study on university graduates (Frank and Bélair 2000) reveals that while relatively few are going to the United States overall, it is significantly tapping Canada's most talented labour. Of 1995 graduates, 4,600 or 1.5% of 300,000 moved to the U.S. between 1995 and 1997. Those who left tended to be the top performers, that is within the top 10% of their graduating class, and particularly amongst those holding Master's or Ph.D.'s. Most found better work opportunities and higher salaries in the U.S. Median salary for bachelor degrees in Canadian dollars was 42% higher in the U.S., $43,400 versus $30,500. Fully 82% of those who left in 1995 were still in the U.S. as of March 1999. Additionally, 80% had acquired or were planning to seek

permanent resident status in the U.S. in 1999. Curiously, 43% indicated that they planned to return to Canada. The somewhat paradoxical finding may be related to an interest in retaining access to both labour markets. For the very talented and highly-educated, the gravitational pull of the expansive U.S. opportunity structure is indeed seductive.

The Canadian opportunity structure is inadequate to absorb its internal resources of human capital. Whereas the talented and/or highly educated may pursue the broader American opportunity structure, the redundant peasantry lacks the flexibility to 'legitimately' exit the anomic division of labour. Poverty and affluence may well hold little explanatory power as isolated variables, but these take on renewed resonance for crime causation within a context of institutionalised anomie, of systematic scarcity and affluence. Confronted with such structural contradictions,

> appreciable numbers of people become estranged from a society that promises them in principle what they are denied in reality. And this withdrawal of allegiance from one or another part of prevailing social standards is what we mean, in the end, by anomie. (Merton 1964: 218)

Young people continue to bear the brunt of concentrated anomic social currents. These derive from inherited and modern evils of Western societies, from the development of market capitalism and the incompleteness of that development (Marx 1867: 4). Given its history, it would be misleading to portray Canada as

anything other than a trade-based nation, whether mercantile or institutionalised quasi-free market. What is interesting about Canada's contemporary economic pursuits is how it expresses a conscious drive toward participation in global markets. More presciently it expresses a (semi-)conscious drive toward the unfolding logic of manifest destiny (Pratt 1927), the expansion of U.S. influence and dominance across the North American continent. Accompanying Canada's industrial production of perverse social capital, persons affected by the anomic currents are experiencing a gravitational pull toward networks of "criminal capital" (McCarthy and Hagan 1995 2001) to foster goal achievement. Individuals are not freed to engage in deviance and crime in my perspective, rather individuals are pressured into this by a system in which education contributes little toward a stable career, and provides few advantages in the 'competition' for a scarce supply of well-paying jobs. Further, high school students are railed against their university counterparts in a pathetic 'competition' for low-paying service sector jobs that the latter 'desperately' require to reduce or merely contain rising indebtedness. The key labour issue in the information age is not the "end of work" or "when work disappears" (Rifkin 1996; Wilson 1996), but rather the qualitative condition of workers and the low-skilled and vulnerable in particular (Castells 1998: 149).

The limited availability of, and differential access to, legitimate or illegitimate learning and performance structures may well have been a problem throughout much of the twentieth century (Cloward and Ohlin 1960). Since the 1990s,

however, the legitimate opportunity structures have become destabilised to the point that these are dissolute for a substantial number of the Canadian population. Home invasion robbery, which I explore in the following chapter, is a curious phenomenon that highlights the anomic state of Canadian society.

Conclusion

In this chapter, I examined the sociological foundations of institutional anomie theory (IAT). These foundations involved the rise of the doux-commerce and self-destruction theses (Hirschman 1982) of market society. Respectively, the eighteenth century Enlightenment view that markets help to perfect human society and the nineteenth century Industrial revolution view that markets have a corrosive effect on human society. Building upon these ideas, IAT offers a macro-criminological model to examine structural causation. It posits that a market-oriented imbalance in social institutions may cause criminogenic tendencies in various parts of society and simultaneously undermine institutional and individual observance of social rules.

I then examined key issues relating to the ideas of globalisation and empire. In particular, the post-World War II view of globalisation as a system of economic means to improve the condition of humanity and social organisation. This was followed by the late-1980s shift toward a view of globalisation as a system of economic means apparently operating for its own abstract purposes. These

issues are then linked to the concept of empire (over imperialism) in the contemporary period of United States dominance.

My analysis then turned to how Canada experiences several anomic trends. Canadian sovereignty is not assaulted directly by an imperial aggressor but rather national participation in contemporary Empire compels a market-oriented focus in social institutions. This produces considerable inter-related problems and limits the ability of social institutions to regulate individuals and society. Despite the successes of the market-oriented society, those individuals and groups who find themselves marginalised represent a substantial problem to Canadian society.

The following chapter provides a case study of the phenomenon of home invasion robbery.

CHAPTER SIX:

A CASE STUDY OF HOME INVASION ROBBERY (HIR)

Introduction

In this chapter, I will provide a case study of home invasion robbery as an example of serious and organised crime. I am not arguing that all HIR cases are organised crime, either in the sense that they meet stereotypical notions of permanent hierarchy or that they necessarily fit neatly into official definitions. This is central to the earlier debates and issues raised in the thesis about the evolving definitions of 'organised crime' (See Chapter Two). Not the least of these issues is that the term itself and official definitions are problematic, and they are often unhelpful when examining the variable organisation of serious crimes. My aim is to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise.

I begin with a range of definitional issues relevant to the discussion of HIR. This includes discussion of the two most proximate categories for HIR, residential break and enter (RB&E) and robbery, as defined by the Criminal Code of Canada. I then turn to the definition of HIR, which is not a distinct crime category but rather a subdivision of the categories of RB&E and robbery. The narrow definition focuses on robbery that occurs in a private dwelling. The broad definition focuses on a robbery, or any RB&E involving a violent offence, that occurs within a private dwelling. Given the potential overlap in the broad definition, a given incident

should only be counted once and as the more serious offence. I also provide a brief discussion of definitional issues relating to serious and organised crime, and I discuss how HIR exhibits, and is linked to, a spectrum of criminal enterprise.

I then turn to attempt to quantify the magnitude of the HIR problem. This is no straightforward task given that HIR does not exist as a distinct official crime category. For this reason, Uniform Crime Reports (UCR 1) that contain a nationally representative picture of police-recorded crime cannot be used to identify HIR incidence. It is possible to gain some idea of incidence using the more detailed UCR 2 survey of police-recorded crime. However, UCR 2 represented less than 50% of the national volume of police-recorded crime and, therefore, it does not provide a representative picture of Canada as a whole or any of its regions. The General Social Survey (GSS), which includes a criminal victimisation component, provides some insights. However, the GSS does not have sufficient sensitivity to provide reliable statistics at a national, or census metropolitan area, level. The International Crime Victims Survey (ICVS) is a comparative instrument and its typically small sample sizes (around 2,000) for each country produce sampling errors that make precise domestic estimates of existing crime categories problematic. Thus, the ICVS does not have sufficient sensitivity to be able to provide a reliable or precise estimate of the sub-category of home invasion robbery.

Then I provide an overview of 25 examples of HIR, 16 drawn from case law and 9 from newspapers. These are reviewed using the 5Is analytical framework (Ekblom

2003) and its eleven generic causes of crime to assess the social organisation of this phenomenon. My particular aim in using the framework is to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise. I then turn to the Canadian policy response specific to the problem of home invasion robbery.

I have tried to highlight explicitly the profitability inherent in each of the examples (where the information is available), and there are a number of quite profitable examples that could be flagged by money laundering controls. Whilst to a greater or lesser extent in various countries, money laundering legislation may have been created to deal with organised crime and drugs trafficking in particular, the pertinent legislation in Canada and elsewhere by no means limits itself to 'organised crime' as that is commonly understood. Anti-money laundering controls can identify and be used to target a broad spectrum of serious crimes, however 'organised'. Reports may result (irrespective of suspicion) from sums over $10,000 (objective reporting) and/or from sums that are deemed incompatible with the individual's income and profile with a financial institution (subjective suspicious transaction reports that can potentially be triggered at any monetary amount).

Definitional Issues

Break and Enter and Robbery

Before attempting a definition of HIR, it is necessary to define and discuss the two most closely associated offences, breaking and entering and robbery. The Criminal Code of Canada offers the following definitions:

Breaking and Entering:

S. 348(1) Every one who

(a) breaks and enters a place with intent to commit an indictable offence therein,

(b) breaks and enters a place and commits an indictable offence therein, or

(c) breaks out of a place after

(i) committing an indictable offence therein, or

(ii) entering the place with intent to commit an indictable offence therein,....

Robbery:

S. 343 Every one commits robbery who

(a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;

(b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;

(c) assaults any person with intent to steal from him; or

(d) steals from any person while armed with an offensive weapon or imitation thereof.

B&E focuses upon illegal entry into and exit from a place, often a building, for the purpose of committing, or with intent to commit, an indictable offence. In the absence of contradictory evidence that could raise a reasonable doubt, it is presumed that the activity alone constitutes sufficient proof of having committed or having a general intent to commit an indictable offence (Section 348(2)). Offences against residential premises typically occur when the residents are not at home, and offender objectives include the theft of cash, convertible property (e.g., electronic equipment), and in some cases vandalism. In the case of robbery, the Crown is required to prove both the commission of the offence as well as demonstrate specific intent to commit an indictable offence, plus the use and/or threat of violence. An attribution of specific intent is context-dependent, and derives not only from the explicit or implicit actions of an accused but also a reasonable fear of (potential) violence that is perceived by the victim. The maximum penalty prescribed by Canadian law is 14 years or life imprisonment for B&E occurring, respectively, in any place other than a dwelling or in a dwelling house (S. 348(d)). The maximum punishment for robbery is imprisonment for life (S. 344). The severity of the law with respect to B&E offences is, however, largely a symbolic statement of moral opprobrium, given the low rates of detection, police clearance, and prosecution.

Home Invasion Robbery (HIR)

For the purposes of this essay residential breaking and entering or burglary is often denoted below by the acronym RB&E or by the term residential burglary. Home invasions represent a difficult crime category, one that bridges the distinction between RB&E and robbery. Representing a small subdivision of both these offence categories, HIR tends to elude consistent definition and classification. Kowalski (2000: 5) suggests two complementary approaches to capturing the HIR phenomenon:

- Narrow definition: a robbery occurring in a private dwelling; and
- Broad definition: a robbery, or any RB&E involving a violent offence, occurring in a private dwelling (with overlapping incidents counted only once as the more serious offence)

The purist form of HIR is represented by residential robberies that entail specific intent in the instrumental use of threats or actual violence to affect a theft. The borderline form of HIR is represented, largely, by RB&E offences that entail general intent and are then combined with the use of threats or violence.

The Alberta Court of Appeal in the landmark case of R. v. Matwiy defined a home invasion robbery as existing where an individual(s):

> (a) plans to commit a home invasion robbery (although the plan may be unsophisticated), and targets a dwelling with intent to steal money or

property, which he or she expects is to be found in that dwelling or in some other location under the control of the occupants or any of them;

(b) arms himself or herself with an offensive weapon;

(c) enters a dwelling, which he or she knows or would reasonably expect is occupied, either by breaking into the dwelling or by otherwise forcing his or her way into the dwelling;

(d) confines the occupant or occupants of the dwelling, even for short periods of time;

(e) while armed with an offensive weapon, threatens the occupants with death or bodily harm; and

(f) steals or attempts to steal money or other valuable property.

This definition tends to locate HIR under the narrow definition, the category of robbery with specific intent found in the convergence of confrontation, weapons, confinement, threats and theft of property. One could envisage examples that are substantive home invasions but do not fit so neatly under the narrow definition. For instance, a victim may return home to an offence in progress or an offender may select a target home that is mistakenly believed (even with reasonable due diligence) to be unoccupied at the time. Even without the explicit presence of weapons, an offender may represent a credible threat against a victim (for example if he belongs or appears to belong to a group that has a reputation for

serious violence). An offender may also engage in violence to affect a theft where circumstances produce a confrontation. A vulnerable citizen such as an elderly person may feel sufficiently threatened by a young adult or youthful offender so as not to resist a theft. Whereas the Alberta Court of Appeal has provided the key components of a viable definition, the parameters should not exclude broad definition cases of HIR in which the elements of the crime may indicate general intent. Under many circumstances, offenders should be presented with the opportunity to avoid confrontation with victims they believed were not at home, to not threaten or exact violence and only to use sufficient force to escape and avoid confrontation. These factors demarcate the boundary between a residential burglary and a broad definition home invasion. The definition used here is focused on initial intention in order to draw some practical divisions. Nevertheless, initial intention can be supplemented, or superseded, within the dynamics of 'slippery slope' crimes and the associated phenomenological experience (Katz 1988).

Serious and Organised Crime

One remaining definitional issue is whether home invasion robbery is an example of serious and organised crime. Recalling the discussion in chapter two, there is a basic division between disorganised crime and the mafia-octopus. The examples of HIR discussed further below support the disorganised crime model; there is little or no empirical evidence that would substantiate a Godfather model even in the more organised examples. The phenomenon is a serious crime that typically

involves offences with more than four years imprisonment as a maximum penalty. Moreover, home invasion emerged as a significant public and policy concern in late-1990s Canada and remains a topical issue that afflicts many parts of the country.

Before addressing whether HIR meets existing definitions of serious and organised crime, it is important to consider the social context surrounding this phenomenon. Home invasions are a consistent theme in the annual reports of Criminal Intelligence Service Canada (1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006). These reports implicate Asian Organised Crime and Outlaw Motorcycle Gangs as being behind much of this activity in relation to illicit drugs and other efforts at market control. Members of the recognisable organised crime groups may not often be directly involved in such activities given the risk of detection. Street gangs or 'wannabee' members may perform home invasions at the behest of these groups (as subcontractors or potential recruits), or such activities may reflect individuals and groups that are independent of key criminal organisations. The variable involvement of independent actors and typical criminal organisations may also relate to key drivers such as the marijuana market. One economic estimate indicated a value of $5.7 billion wholesale and $19.5 billion retail for the marijuana market across Canada (Mulgrew 2005). While some of this volume is oriented to the internal Canadian market where 7.5% of the population are current users and 23% have used marijuana at least once in their lifetime, the goldmine market is exporting to the United States (Easton 2004).

The Hells Angels and Vietnamese groups tend to dominate the commercialised marijuana industry, and they may prefer to exert control over the wholesale aspect of the business. Nevertheless, the market is diverse with many small and medium-sized growers. This diversity is central to what police believe is increasing competition and a turf war between growers that involves home invasions and booby trapping to protect their property (Fong 2000). This competitive market derives from the profits that can be made, notwithstanding the risks from law enforcement and competitors. It is hardly surprising that a market will have many new entrants when an occupant with a 10 square metre room can generate more than $100,000 from cultivating marijuana; this over a one-year period involving 100 plants with the average value of a mature marijuana plant estimated at $1,000 (Boyd 2000).

Few of the home invasion cases discussed below will meet the earlier definitions of organised crime, as these definitions too often focussed on rigid rather than fluid activities and associations. Several of the cases do tend to approximate the United Nations Convention on Transnational Crime (2000) definition. Readers may refer to chapter two for a more complete discussion, but the key elements may be summarised as follows. The Convention defines an "organised criminal group" as having formal or informal association and/or roles involving at least three members, and its participants act in concert to commit crimes specified in the convention (or serious crimes with four years imprisonment or more) for the purpose of obtaining a financial or material benefit. The cases below demonstrate

a spectrum going from examples of low-level offenders trying to maintain a drug habit by targeting the elderly and vulnerable, to examples of medium- and high-level offenders involved in gang disputes and theft of valuable legal and illicit goods. I am not trying to argue that the former represent or are necessarily linked to 'organised crime'. My goal is to illustrate the spectrum of a phenomenon affecting Canada and to highlight variability in the organisation of crime.

Magnitude of the Problem

Before delving into the social organisation of HIR in the case study information below, it is important to first identify the magnitude of the problem. The first approach to assessing magnitude is "incidence", that is the number of cases that become known as recorded by official police data or other sources. The second approach to assessing magnitude is "prevalence", that is how widespread the problem is or the number of victims within a specified population as recorded by victimisation surveys, and other sources of information. My attention is focused on HIR within the context of Canadian crime statistics, but readers may refer to Maguire (2007) for a detailed review of contemporary crime statistics issues in the United Kingdom.

Incidence

Even if we disregard unreported and unrecorded offending, it is tricky to determine with accuracy the incidence of HIR offences using official data. This stems from disparities in the definition and classification of HIR offences between different

jurisdictions, and the exclusion of a specific offence category under the Criminal Code that may permit HIR to be captured in the collection of the general wave of the Uniform Crime Reports (UCR 1). The UCR 1 survey offers a representative national survey of virtually all police recorded crime. Aggregate level statistics on HIR are documented in the detailed UCR 2 survey of police recorded crime, a sample that is not representative of Canada as a whole or any of its regions. In 1999, UCR 2 data were collected from a non-representative sample of 164 police agencies in seven provinces, representing 46% of the national volume of police recorded crime.

Using the UCR 2 we may identify incidence for residential robbery (narrow HIR definition) as well as the combination of residential robbery and RB&E with a violent offence (broad HIR definition, with overlapping cases counted only once as the more serious offence). In 1999 Canadian police agencies recorded 1,154 (narrow definition) and 2,449 (broad definition) incidents of HIR, so the more inclusive approach would more than double the rate. Thus, HIR incidence is distributed almost evenly amongst the narrow definition (47%) and the broad definition (53%). Of total robbery incidents recorded in the UCR 2, some 5.3% occurred at a place of residence. By contrast, only 1% of B&E incidents involve a violent offence (nine out of ten incidents occurring at a place of residence) and, typically, the confrontation will be limited to an assault. Of the offences captured by the UCR 2 survey, reported HIR represents at most 0.2% of total crime incidents (1,169,836), 0.3% of property crime incidents (821,414), or 1.6% of

violent crime incidents (149,929) (Canadian Centre for Justice Statistics 2000: 51, 54; Kowalski 2000: 5). Of course, such measures disregard dollar value and the economic & social impact of HIR compared with other offences.

The statistical probability of the average citizen becoming an HIR victim appears to be minuscule. This statistical improbability will be of little comfort to those who have been victimised by, or may fall victim to, a home invasion. Moreover, standard cautions regarding data interpretation are greatly amplified given the definition, sampling, and other problems that obfuscate the volume and distribution of risk for HIR.

Clearly, we should expect that reported HIR incidents would over-represent offences targeting those who are not substantively involved in criminal activity and will tend to focus on cases where victims, especially vulnerable groups such as the elderly, are caused fright and harm. Indeed, 1999 data on residential robberies from the UCR 2 survey indicate that: (a) 18% of victims were 60 years of age or older (a marked contrast to 3% of violent crime victims); and (b) 58% of incidents involve the presence of a weapon, typically a firearm (22%), or cutting instruments such as a knife (21%) (Kowalski 2000: 5).

Some observers may reasonably expect that home invasions will generally be treated and recorded as RB&Es where only minor violence occurs and as residential robberies where any substantive violence and harm occurs (Hurley, 1995). However, those who are involved in criminal activity may be presumed to

be less likely to report a home invasion for fear of attracting unwanted official attention. Others who are not involved in criminal activity may be fearful of reporting due to the potential threat of further privatised violence: a fear that is likely to be all the stronger if they believe the imagery of HIRs and organised crime in Canada purveyed by CISC.

Prevalence

Police recorded statistics reflect only those cases reported to authorities, which leaves observers with the "perennial bugbear" (Maguire 1982: 10), the unknown dark figure of the extent of crime problems. The 1999 General Social Survey (GSS) revealed that 37% of all victimisation incidents were reported to police. The highest and third highest reporting rates were, respectively, 62% of RB&E incidents and 46% of robbery incidents. High reporting rates for these types of criminal victimisation may be attributed to a sense of civic duty, to help catch and punish offenders, for the purposes of insurance claims, and to obtain protection or stop an incident. Approximately 25% of Canadians 15 and over suffered one or more incidents of criminal victimisation in 1999. Of the 8.3 million incidents of total criminal victimisation, 7% or 587,000 incidents (rate of 48 per 1,000 households) were cases of RB&E victimisation, and nearly 3% or 228,000 incidents (rate of 9 per 1,000 population 15+) were cases of robbery (not limited to HIR) victimisation. Consistent with definitions used in the Criminal Code, the GSS defined residential break and enter as "illegal entry or attempted entry into a residence or other building on the victim's property", and robbery as "theft or attempted theft in which

the perpetrator had a weapon or there was violence or the threat of violence against the victim". The survey revealed that in robbery (not limited to HIR) victimisation incidents, 51% involve a stranger to the victim, 49% involve more than one offender, 69% involve an offender aged 18-34, and 84% of offenders are male. Such survey data are not available for RB&E victimisation incidents (Besserer and Trainor 2000: 3, 19, 21).

The GSS data provides useful insights into the "dark figure" of the broad category of RB&E and robbery, but provides no insight into the problem of HIR. This is primarily because the HIR numbers are too small, in quantitative terms, for such a broad based survey. In other words, such a representative population survey instrument does not possess sufficient sensitivity to capture many (quantitatively) small scale problems. Moreover, victimisation surveys use the household as the unit of analysis and/or as the base for those 15 and over who are included in the survey. It is possible that those who might be at higher risk for RB&E victimisation and HIR, particularly in cases related to organised crime, may be less likely to be included in the survey, report fully their experience, or to have their higher risk adequately portrayed. Greater effort to identify and include high risk groups would not likely skew the overall results, given the relatively small proportion of incidents they represent, but it may well demonstrate a different profile of risk.

This still leaves the question of the overall prevalence for HIR. With an estimated 12,163,000 households and 587,000 incidents, the victimisation prevalence for RB&E in 1999 was 4.8%. With an estimated 24,260,000 persons aged 15 and

over and 228,000 robbery incidents, the victimisation prevalence for robbery (not limited to HIR) in 1999 was 0.9%. Using the UCR 2 numerical guidelines above that 5.3% of robberies occur at a place of residence and 0.9% of B&E incidents involving violence occur at a residence, the extent of HIR victimisation may have included as many as 5,283 residential robberies (0.02% prevalence) and 12,084 RB&E incidents involving violence (0.099% prevalence) in the 1999 GSS.

Theoretically, it should be possible to estimate with greater precision the volume of HIR using Canadian victimisation survey data. In the United Kingdom, many data sets including criminal victimisation are freely available to academics who register with the appropriate data archive. Statistics Canada does make available selected victimisation data sets that relate to commonly requested items but not specialised items. Detailed data sets and specialised information from Statistics Canada appear to be made available on a fee basis only, whether for academics, other Government departments or the public.

Nevertheless, I made email and phone inquiries with Statistics Canada about the availability and possibilities of analysing victimisation data for evidence of home invasion robbery distribution, concentration, etc. My inquiries produced the following information results. The GSS involves an initial sample of 26,000 respondents and then drills down into the various relevant social and victimisation categories. The method of coding responses means that victimisation is counted once in its most serious category. This means that the proximate category for home invasions is robbery. Robbery represents some 9 incidents per 1,000

population or less than 1% of the GSS database. According to Statistics Canada officials, subdividing this further into robberies that occur in a home produces numbers that are "too small to be published at a national level" and this makes "it impossible to provide reliable statistics on robbery even at a CMA [census metropolitan area] level for home invasions" using GSS data.

Comparative Victimisation Data

The 2000 International Crime Victims Survey (van Kesteren et al 2001: 1), or ICVS (See Table 1), revealed that averaged across 17 industrialised countries, 21.3% of respondents reported being victimised once or more for 11 categories of criminal victimisation. The eleven categories included: car theft, theft from car, car vandalism, motorcycle theft, bicycle theft, burglary, attempted burglary, robbery, personal theft, sexual incidents, and assaults and threats. Criminal victimisation in Canada (for the four categories of most concern to this study) is substantially higher than the average of the surveyed countries: 11 crimes (10.5%), burglary (21.7%), attempted burglary (21.7%), and robbery (11%). For the four categories of crime and the 10 countries included in the table below, Canada's rank order is as follows: 11 crimes (5th), burglary (3rd), attempted burglary (4th), and robbery (4th). Australia, and England and Wales, rank as the 'leading' jurisdictions for criminal victimisation. The overall rate of victimisation, compared with Canada, is 20.6% higher in Australia and 9.9% higher in England and Wales. Canadians should not, however, be overly cheerful about our comparative rates of criminal

victimisation, particularly given the United States and its 8th place finish and its 12.7% lower rate for overall victimisation.

Table 1: 2000 International Crime Victims Survey

Prevalence Victimisation Rates — Percentage (%) Victimised Once or More

Country	11 Crimes	Burglary	Attempted Burglary	Robbery
17 Countries (average)	21.3	1.8	1.8	0.8
Australia	30	3.9	3.3	1.2
Belgium	21.4	2	2.8	1
Canada	23.8	2.3	2.3	0.9
England &Wales	26.4	2.8	2.8	1.2
France	21.4	1	1.3	1.1
Japan	15.2	1.1	0.8	0.1
Netherlands	25.2	1.9	2.7	0.8
Scotland	23.2	1.5	1.9	0.7
Sweden	24.7	1.7	0.7	0.9
U.S.	21.1	1.8	2.7	0.6

Source: van Kesteren, Mayhew, Nieuwbeerta (2001: 178-179)

Victimisation in the year preceding the survey.

According to the 1999 GSS, the victimisation prevalence for RB&E was 4.8% of Canadian households, a stark contrast to the 2.3% rate reported in the ICVS. This disparity may reflect the "fairly wide sampling error on ICVS estimates" resulting from typically small sample sizes of around 2,000 persons (van Kesteren et al 2001: 1). Small sample sizes relate to the economic feasibility of conducting an international survey. This may certainly affect data comparability with larger national survey instruments, but not the comparability between jurisdictions as per the objective of the common instrument. In the countries surveyed for the purposes of this chapter (Australia, Belgium, Canada, England and Wales, The Netherlands, South Africa, and the United States), residential B&E is an all too common form of crime victimisation experienced by citizens.

Unfortunately, it is not possible to use 2000 ICVS data (available freely online) to provide meaningful or precise estimates of HIR. This edition of the survey involved a Canadian sample size of 2,078 respondents. The ICVS data above indicates 2.3% of respondents reported being the victim of a burglary, 2.3% the victim of an attempted burglary, and 0.9% the victim of a robbery. Respectively, this means that nearly 48 respondents were the victim of a burglary, nearly 48 were the victim of an attempted burglary, and nearly 19 were the victim of a robbery. The ICVS sample sizes make it difficult to provide precise estimates on existing crime categories within a given country. The survey does not appear to have sufficient sensitivity to unpick existing categories, orto provide reliable or accurate data on the sub-category of home invasion robbery.

Home invasion robbery may be viewed as an insignificant problem from a quantitative perspective. The same, of course, would apply to homicide. The demonstrable and potential rates of incidence and prevalence for HIR are miniscule compared to many other crimes notwithstanding reasons to be sceptical of the representativeness of the data. It is the qualitative dimension, the terrorising of direct victims and the potential impact on public safety that makes HIR a valid object of social concern and inquiry. Studying the spectrum of the social organisation of HIR can help us to appreciate the risks that this phenomenon poses.

Case Study of Home Invasion Robberies

This section examines sixteen (N=16) case studies of home invasion robbery drawn from case law for the period 1998 through 2002. These are supplemented by nine (N=9) examples drawn from Canadian newspapers for the same period. This involves twenty-five (N=25) examples in total. Each case is presented separately to permit an overview of a selected spectrum of HIR examples. The cases are then assessed using the 5Is (Ekblom 2003) analytical framework (See the tabular representation in Appendix A), specifically its eleven generic causes of crime, to assess the social organisation of this phenomenon. The eleven generic causes include: criminality (predisposition), resources to avoid crime, readiness to offend, resources for crime, anticipation of risk, effort and reward, offender presence in situation, target person or property, target enclosure, wider environment, absence of crime preventers, and crime promoters. My aim in using

the 5Is framework is to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise. Readers may refer to chapter three for discussion of the methodology.

Examples from Case Law

R. v. A.J.C.

In August 2001 in the province of British Columbia, a young offender and an adult along with an accomplice who remained unknown to authorities robbed and terrorised a family. The perpetrators had come to the knowledge that the family had enjoyed financial success from their jewellery store and had further learned when a time lock safe would open in the morning. Upon arriving with two shotguns (without ammunition), pepper spray, a knife and duct tape, the group made various threats to and demands of the victims. The offenders used cell phones to facilitate their communication and concealed their faces with hockey (goalie) masks and clothing. When the robbery began, there was only a 76-year-old woman present: she suffered a pre-existing heart condition and spoke little English, and was treated roughly, bound and gagged and faced yelling and swearing from her assailants.

About fifteen minutes after the incident began, at around 5:45 p.m. a 15-year-old returned home accompanied by a 13-year-old friend. The two teenagers were bound but not gagged. With guns held to their heads, a discussion took place about taking $50,000. The perpetrators realised they would have to wait for the

teenager's mother to arrive in order to realise the large sum. The perpetrators ransacked the house taking $300 and some electronic equipment until 7:30 p.m. when the teenager's mother arrived home. At gunpoint, she was taken to the living room and there she was bound but was not gagged. One of the accomplices took $1,700 from the mother's purse but again the group was convinced that the husband, who was still at the store, would have to be involved to acquire the large sum of money. The 76-year-old woman was becoming extremely distraught and had trouble breathing because of the gag. After the offenders extracted a promise of silence from her, one of the offenders removed the duct tape gag that took with it a layer of skin, thus causing further pain to the elderly woman. The young offender took the teenager as hostage and in addition to being bound; he was blindfolded and hooded with a jacket. It was made clear that the teenager would be held as a hostage until the funds were provided to the group, and the young offender drove away in the family vehicle with the teenager in the trunk of the car. There were a couple of telephone conversations between the mother and father and shortly after 8:00 p.m., he arrived home.

Upon entering the home, the father was confronted by a gun pointed at him and an order to come into the house. He instead ran outside, shouted to his neighbours for help and used his cell phone to call police. While fleeing the scene one of the group called the young offender to advise that the plan had collapsed and the teenage victim was left abandoned in the trunk (boot) of the family vehicle around 8:30 p.m. The young offender returned to the vehicle to open the trunk,

but did not untie the victim who had to make his way home. The two main offenders in this case had extensive prior criminal records. The victimised family continued to live in fear of one of the accomplices but, interestingly, they did not wish to identify the accomplice for fear of being branded a "rat". The victims were all thoroughly traumatised by the incident notwithstanding that there were no significant physical injuries. They sold their house and car to help forget about the incident and their emotional and mental health has continued to suffer and has been reflected in decline of the family business and impairment of the teenager's school life.

R. v. Bergman

In 1998 in Abbotsford, British Columbia, Dawn Amanda Bergman and a male companion broke into a home in order to obtain money to purchase drugs. They entered through an open window to a ground floor apartment, demanded money under the threat of beating up the 87-year-old widow they confronted. Her refusal prompted the two offenders to conduct a fruitless search of the apartment. Bergman ripped the telephone from the wall and the senior's complaints resulted in her being pushed to the floor as many as three times by the defendant. The male companion fled the scene upon realising the elderly woman was hurt (a pelvic injury that subsequently required hospitalisation for six days). The female offender stole a small television as well as a small box of silverware and then left the apartment. The two offenders were aware that an occupant was present

before the confrontation began. Bergman was a drug addict and had a lengthy criminal record, mainly for theft and a couple of assault counts.

R. v. Bernier

In 1997 in Sooke, British Columbia David Clayton Bernier and as many as three others, including one young offender, broke down the door of a house and proceeded to the basement suite at about 5:30 p.m. They shouted to the occupant "police, on your hands and knees", they handcuffed the victim and ordered him to face the wall. They told the victim they were looking for money or dope (marijuana), and the victim directed them to $300 on the dresser, they took the money but found no marijuana. The victim was struck on the head with the butt end of a firearm that caused bleeding. The victim reported that the firearm was a gun or rifle weapon but he was unable to identify any of the invaders. Fortunately, the owner of the house and his family were not upstairs at the time of the invasion. When the owner returned at 8:00 p.m. he found his place ransacked and missing were electronic items with a combined value of less than $5,000.

Two days before the incident Bernier had asked two acquaintances visiting his home if they knew any places where people had pot (marijuana), and when one said she did, he said he wanted the information so he and his friends could go and steal the marijuana. On the day of the incident, the two friends who had visited Bernier accompanied him and two other men so that the female acquaintance could identify the target house. The acquaintances were dropped off

and told they would get a phone call later that night. The participants in the invasion were displeased with the female acquaintance that had identified an incorrect target and it was communicated that the group would take a couple of thousand dollars to compensate for the misinformation as well as the publicity the invasion had provoked in the local media.

To intimidate the acquaintances into producing the funds, Bernier read one of the acquaintances a newspaper article about a recent murder where the victim was apparently burned to death. He indicated that one of the parties to the invasion had committed the reported murder. It appears the funds were paid. Although the evidence did not prove beyond a reasonable doubt that Bernier was directly involved in the home invasion, his participation in the planning and his possession of some of the proceeds and a shotgun was sufficient for conviction. Moreover, a separate witness also testified that Bernier had asked her if she knew any places that had marijuana in the house and she had declined to comment. In the judgment of the court Bernier was found to be part of a home invasion gang and that he participated in a common criminal enterprise to raid marijuana grow houses. The court also found little evidence of planning in that the group seemed to act on an ad hoc basis.

R. v. Cooper

In September 2000 near Labrador City in the province of Newfoundland Douglas Lee Cooper committed a residential burglary and theft while masked. He claimed

that he was only interested in breaking in to find money (which yielded little results) and that he did not intend to harm a sixteen-year-old girl who was home alone asleep in her basement bedroom. He entered the home through an unlocked window and was wearing a black ski mask, gloves, dark clothing and was armed with a large hunting knife. He entered the girl's bedroom and assaulted her causing serious wounds to her neck, face, hand, abdomen and liver. He claimed that the bedroom door was closed but unlocked and that he simply opened it. When the girl jumped out of bed he claimed that in the ensuing struggle she was unintentionally injured. In short, he argued that this was simply a burglary gone wrong.

He argued that he only went into the home the once, that he did not know the girl was at home or in her room when he entered it. The court found that Cooper had entered the house on more than one occasion and that he had found the knife used in the assault within the home. The girl testified that she always locks her bedroom door and leaves the television on, especially if she is alone. The court also found that he knew she was present and was not in any way surprised to find her there and he further closed the door behind him as demonstrated by the blood spatter on the inside of the door. The judge found that Cooper closed the door behind him, went over to her bed, held her down and put a knife to her throat. When she struggled to get up, her throat was cut and she started to fight for her life. In the ensuing struggle, she received additional injuries but managed to survive the attack.

R. v. Curtis

In December 1998 in the province of Manitoba a couple went shopping for the evening and returned home to go to bed about 10:30 p.m. Michael Curtis spent most of that day at a local hotel and returned home around 3:45 a.m. from his drinking session. His residence was next door to the victimised couple whom he knew. He decided to break into the couple's residence to look for money to buy cocaine given that he did not have sufficient monies. He wore a balaclava and removed the bathroom window from the home to gain entry and a search through the kitchen led to a wallet and car keys. Finding no money in the wallet Curtis decided to search the victim's bedroom and the intruder picked up an eight-inch butcher knife from their kitchen.

The male occupant awoke and confronted the accused and a struggle took place. The male victim was stabbed twice to his upper left arm and once to the upper left abdomen area. Curtis immediately left the home and fled in the victim's car. Although the struggle only lasted for seconds, the knife had punctured the liver, diaphragm, pancreas and stomach. The male victim's heart stopped during the ambulance ride to the hospital, but he was revived, and he was in a precarious state for a few days. The police located Curtis the next day and found him in possession of the male victim's briefcase and the female victim's watch. The intruder's bloody clothing was found nearby, as was the victim's vehicle in which was found the bloodied knife that was used in the assault. The intruder had an

extensive criminal record involving robberies, thefts, parole violations and efforts to escape from custody.

R. v. DaSilva

A couple was driving along well-lit streets in Toronto, Ontario sometime after 10 p.m. in January 1999. Two adults and one young offender driving in a stolen vehicle randomly chose the couple to be their victims. However, the offenders had engaged in pre-planning to work in concert with one another. The offenders intentionally crashed into the rear of the other vehicle and then proceeded to drag the couple from their car. The victims were kicked and punched, sprayed in the face with mace. The trio drove off in the car of the victims with the male owner in the trunk and the female in the back seat and they were taken to an underground parking garage. Repeated demands were made for money and the production of personal identification numbers (PIN) to bank accounts, hesitation on the part of the victims was met by the adult offenders with repeated blows to the head and face of the victims.

When the female victim indicated her purse, credit cards and other valuables were in her home the victims were pressured to reveal their address and to provide the necessary security access codes. DaSilva went upstairs to an apartment in the building of the parking lot and he obtained a replica semi-automatic firearm (pellet gun) which was given to the young offender to guard the two victims whilst the adult offenders robbed the victims' home. Another vehicle was stolen from the

parking garage and the victims were driven to another location and placed under the supervision of the young offender. The young offender received a cell phone call at

1:20 a.m. requesting verification of the security access code for the home of the victims, the victims provided the information under demand backed up with menaces. The home of the victims was robbed of jewellery and other valuables and these along with the victims were transported back to the original parking garage.

The victims were separately taken up to the apartment where DaSilva had obtained the pellet gun and continued demands for PIN numbers to bank accounts were backed up with beatings to the head and facial area of both victims. DaSilva revealed a semi-automatic handgun that he placed to the male victim's head and began cocking the gun to intimidate. At 5:00 a.m., the two adult offenders left the young offender in the apartment to guard the victims. The young offender fell asleep and the victims were able to make their escape at around 9:30 a.m. The young offender was immediately arrested and the property recovered while the two adults were arrested in the next few days in cities proximate to Toronto. Both adult accused held serious criminal records involving multiple convictions for crimes of violence. The justice in this case viewed cars as extension of our homes and that the carjacking acted as an entry point to what became, in effect, a home invasion.

R. v. Harris

In April 1999 in Halifax, Nova Scotia Paul Harris a woman and a young offender met at a coffee shop. The young offender had indicated his wanting to do a break and enter to obtain money and the woman introduced him to Harris who was willing. The pair identified a target home of potentially wealthy people two blocks from the coffee shop where they met on two to four occasions. On the evening of the incident they went on the property around 9:30 p.m., the owners were startled and called the police who later arrived to find no one suspicious in the area and cleared the call at

10:04 p.m. The duo had been at the home on at least two other occasions and had cut the screen on the kitchen window as much as possible each time without being caught. On returning to the coffee shop, the woman told the two that if people were present then it would no longer be a break and enter, that it would be a home invasion where people could get hurt and they could get a minimum sentence of six years imprisonment. The elderly couple was awake later than usual because of what had taken place earlier.

At 11:30 p.m., the female victim went to close the kitchen window (which was generally left open) and she felt a large gush of wind. She opened the blinds to close the window and then Harris and the young offender jumped through the open window into the kitchen. The female victim ran to the hallway screaming for her husband, the young offender pushed her, and the female victim broke her hip

as she fell to the floor. Harris came upon the male victim who was holding a small saw. After being struck by the saw and bleeding from his knuckles, Harris disarmed the male victim and then began to kick, punch and strike the victim with his wood walking stick until it shattered. The victim was left drifting in and out of consciousness. The young offender pulled the phone off the wall and one of the two intruders cut the exterior phone lines. Among other items that they stole included $1000 as well as jewellery, electronics, credit cards, chequebooks and the male victim's war medals. The female victim asked the offenders to help her husband and to leave a light on in the house so she could see where she was going. Harris and the young offender refused her request, rubbed down the house to remove fingerprint evidence and then left the couple in the dark. Early the next morning, the female victim was finally able to pull herself into a chair at her front window and attract the attention of a neighbour who then called for help.

The invaders had taken a taxi to the apartment of the woman they had met with in the coffee shop and the stolen property was divided between the three. Whilst at the apartment, the young offender called emergency services to request assistance for the elderly couple. Emergency services returned their call because of inaccurate information on the location of the problem but the female resident denied that there was any problem. The trio went to a pharmacy to buy hair colouring products and Harris tried to colour his hair. At the crime scene, the police found a fingerprint that was later identified as belonging to the young offender. Two days later the police saw the young offender and Harris and both

were arrested. They were in possession of a knife, screwdriver, rubber gloves and a ski mask and were on route to do another robbery (the particular target was unclear). On being placed in the police car, the young offender indicated that Harris had accompanied him on the night of the break and enter. In his statement, Harris described that as the victim was pushing the kitchen window down he felt his blood pressure go up and that there was no way out. The female victim required a full hip replacement and the male victim suffered major brain damage and that his physical and psychological functions are impaired to the point that he will require twenty-four hour care for the remainder of his life.

R. v. H.(D.G.)

In the province of Alberta, a 17 year old with a crack addiction was seeking money to fund his drug addiction. He had been performing odd jobs for a 69-year-old woman who lived alone. Although he planned with two accomplices to rob the senior, it appears the young offender proceeded on his own, while masked, to enter the home at night. The victim was unexpectedly at home watching television. The offender disconnected the phone line, pushed the victim out of her chair onto the floor (hurting her arm and knee), demanded money, called her a "bitch" and, with a closed fist, struck the victim's face. The victim was again pushed to the floor. The offender then entered the victim's bedroom to remove her purse from a hiding place under the bed and then he fled. The purse contained $350 as well as an un-cashed cheque for over $18,000. The offender had a previous record for one count each of assault and theft. A police check stop

several days later resulted in the offenders arrest whilst in a vehicle with two others, a hash pipe and a small quantity of crack cocaine were seized.

R. v. Ivan

In April 1999 in the village of Sussex Corner, New Brunswick, Stephen Andrew Ivan purchased gasoline for his vehicle but he did not have enough money to pay for the purchase. He left a false name and the correct license plate number (for his recently acquired vehicle) with the gas station/convenience store attendants. It appears that the offender broke into the convenience store in the early morning hours. This was confirmed by the offender's fingerprints on an empty rum bottle and footprints found inside the store including on the orange "closed" sign that had fallen from a broken window. Subsequently at about 1:30 a.m. the offender went to a mobile home park some 200 meters or less from the store and knocked on a door asking for the use of a telephone as his car had (supposedly) broken down. After pretending to make several calls, he asked the woman occupant (the only other occupant was her 10-year-old boy) for money and she offered him $20 because she felt intimidated. He then ripped the phone off the wall and took her bankcards. When she refused to provide the PIN number, he threatened "Good let's get your little boy back out here". She gave him the PIN number and he put a fingernail file to her throat and pushed her neck and head back. He also threatened to tie her up. The victim's confinement continued for approximately 45 minutes. Following up on a 911 emergency call from the mobile park the police noticed the offender's car driving with no lights and heard the tires squealing. Mr.

Ivan was pulled over and arrested for impaired driving. He later claimed to have been intoxicated by alcohol as well as prescription medication and opiates. The police found the bankcards of the victim on Ivan's person. Ivan had a lengthy record of 48 previous convictions including robbery, break and enter and theft.

R. v. J.C.

In April 1998 in the province of Ontario, a young offender entered the bedroom of a couple and the husband woke at around 3:30 a.m. to find a masked intruder with two large knives. The intruder was slashing at his legs and he felt his body wet from the other wounds that had been inflicted. The wife awoke screaming and she managed to grab the intruder's sweatshirt. She retreated to the bed bleeding as she was slashed about her head, ear and her hands. The intruder took a chair from the next room and removed his mask as he sat down by the door. He indicated that he intended to kill them at about 4:30 a.m. The reason he provided for why they were going to die was that they had abused their daughter and did not want her to continue her friendship with the youth. The couple's daughter was in the room next door and she called the parents of her boyfriend indicating that they should come to the house, as "it was a matter of life and death". The father of the offender arrived and when he asked who had attacked them they told him to take his son home.

The victims then called emergency services to report the home invasion. As later evidence revealed the HIR formed part of a plan between the young offender and

his girlfriend. She spoke to him about the beatings and sexual abuse she allegedly suffered, her controlling parents and that she wanted them out of her life. She was an active participant in the plan, she let him into the home once her parents fell asleep and she was talking with him in a room adjacent to her parent's room about the plan to stab them. Further, she was listening in the adjacent room while the attack took place, she pushed the chair forward for the young offender to sit on and she passed paper and a pen when her mother said she wanted to prepare a will. When the mother asked her to get help, the daughter replied "Mum, this is only psychological". The daughter along with her parents reported a false description to the police that the assailant was a black man with a Jamaican accent. After being charged with obstruction of justice and public mischief and detained, the girl told a social worker that the slashing was her idea and that it seemed like the only way out was to remove her parents from her life.

R. v. Jones

In December 1998 at Saltspring Island, British Columbia, Kevin James Jones, his brother and another adult party broke into a home around 3:30 a.m. A male adult and his girlfriend occupied the home. Upon hearing the sound of the front door being forced open, the male victim went to the front door. Three males screaming, "Police, search warrant, get on the ground" confronted him. The offenders carried flashlights and one held a handgun which he used to strike the victim on the face.

This victim was hog-tied with plastic flex-cuffs, duct tape and a plastic strap and items were placed over his head to obstruct his view. He did not see the faces of the offenders throughout the incident but did hear his girlfriend approach and believed she was laid down beside him for a while. He could hear the offenders ransacking the home and hear them talking. The invaders said they were there for the marijuana grow operation, they expressed their disappointment at finding only eight plants in the basement, and they threatened the male victim if he didn't reveal where the rest of the drugs were located and any drug monies. Whilst the female victim was taken toward the male victim's location, she saw that the offenders were wearing gloves, toques and dark jackets that had the word "POLICE" in yellow lettering. For a while the female victim was placed beside her boyfriend, she was also hog-tied and had a blanket placed over her head.

One of the offenders (Kevin James Jones) said "Interrogation time" and took the female victim into a room where she was asked if there was anything else, he should know about. Her refusal to provide information was met with the offender sexually fondling her, then removing her clothes and sexually assaulting her. He re-dressed the victim and told her to stay put and be quiet adding, "Do you know whose neighbourhood this is? It belongs to H.A." (a phrase the victims interpreted as referring to the Hells Angels). Before the offenders left, the female victim could hear them threatening that they would be back and that one of them would stay behind to make sure the victims did not do anything. As things became quiet, the male victim managed to free himself and released his girlfriend. Aside from the

eight marijuana plants, $40 cash had been taken, the phone had been ripped out of the wall, the home ransacked and the offenders left a large set of tire tracks in the fresh snow of the driveway. Jones had a criminal record and was on probation at the time of the offence. The court noted the planning involved in this incident and the offenders' use of a weapon, the assailants posing as police, the use of scanners (to listen for possible police response) and the clear premeditated nature of this armed robbery. Police suspected the trio of involvement in other home invasions conducted in the lower mainland of British Columbia.

R. v. K.(J.)

Mr. K. and two others, one adult and one young offender, targeted an 85-year-old World War II veteran living in his own home in the province of Ontario. A break and enter of the young offender's own home had been conducted by the trio and they assessed the victim's home as a suitable target. The young offender knew the grandchildren of the victim. There had been some planning and scoping of the target location. While they had believed nobody would be at home during the break and enter, upon opening a door to the landing, they could hear sounds of occupancy and proceeded regardless. The young offender confronted the victim in the kitchen and the victim resisted. Mr. K. grabbed the victim by the foot and dragged him off the young offender onto the floor. The other adult offender entered the kitchen and directed the other two to search the home. The direction is followed even though Mr.

K. (who had no prior knowledge a weapon was present) sees the other adult offender draw a butcher's knife from a homemade sheath up his sleeve and the former sees an arm motion toward the victim and the victim's hand over his stomach with blood coming out between his fingers. The search netted a modest amount of money and some costume jewellery. Once the two returned downstairs the elderly victim was seen in dire circumstances lying in a pool of blood. The trio then left the house to go to another location and then they cleaned up and divided the modest spoils.

R. v. Simmonds

In 1995, William Bedford was discovered secured by duct tape to a tree near Hope, British Columbia. He had died from a minimum of two .22 caliber gunshots just below his left eye. Bedford was a drug dealer and he owned a construction company, the accounts of which were used to launder drug money. It appeared that Bedford's construction office was ransacked and $25,000 in cash had gone missing after Bedford went missing. Simmonds was interested in purchasing one or two kilograms of cocaine at the rate of $40,000 per kilogram, with Susan Popp acting as the go-between. Tim Smith and Mike Frank, who were friends of Simmonds, were also involved in the incident. Bedford was drunk and not available to go to one meeting, and then did not arrive for an agreed second meeting to conduct the drug transaction. While Popp and Simmonds drove in a rental car to a location close by to watch for Bedford's arrival, Smith and Frank had left in their truck and returned a half hour later . The victim had been

kidnapped (from his hotel), his mouth and eyes covered and hands restrained with duct tape, and he was bloody and beaten up. At the time of their arrest, Tim Smith and Mike Frank had records for weapons offences, violence and a conviction for a home invasion in which they both participated. Both men denied knowledge of the kidnapping, confinement or murder of Bedford. The 1995 investigation did not result in any charges relating to the death of Bedford.

In early 1999, Simmonds sought to acquire membership in an unspecified motorcycle-gang and criminal organisation. Simmonds indicated to members of the organization that he was involved in a $120,000 cocaine deal with respect to Bedford before he was found murdered. Before being allowed to join as a member and participate in more profitable activities, Simmonds was told that he would have to demonstrate total loyalty to the leader of the organisation and be completely honest about any previous criminal activities. When asked why he was involved in the killing of Bedford, Simmonds indicated that the former owed him $90,000 but that he had no apparent intention of paying and was avoiding Simmonds. Despite continued beatings while taped to a tree, Simmonds recalled that Bedford did not cooperate in disclosing the location of drugs or monies. Simmonds indicated that he fired the fatal shots and that Tim Smith was present at this point. Members of the Royal Canadian Mounted Police (RCMP) were running the fictitious criminal organisation, using the so-called 'Mr Big Strategy' to elicit confessions and key investigative information. Later under arrest, Simmonds denied the scope of his involvement and argued that he had stated this to be

more appealing for membership in the criminal organization. He argued that Tim Smith and Mike Frank committed the violence and murder, with the former shooting the gun in the presence of the latter without Simmonds or Popp being present. Simmonds said he went to the remote location to see if Bedford was alive and to confirm whether Smith and Frank were trying to cut them (Simmonds and Popp) out of their part of the drug deal. Simmonds was arrested outside the Beford residence where he had been drinking and fell asleep in the rental car.

R. v. Taing

In January 1996 five or six men, two of whom were unmasked, entered a residence at gunpoint (an imitation handgun) in the province of Alberta. The occupants were a couple along with their two daughters, one a teenager and the other a two-year-old. The invaders searched the home looking for money and valuables. They were not satisfied with what they found. They threatened that they would hold the infant for ransom. The mother then offered to take the men to a jewellery store that was owned by the family. The two unmasked men took the mother to the store. The others, including Taing, remained at the residence to confine the other members of the family. Approximately $70,000 in jewellery was removed from the store and the culprits then returned to the home. The two unmasked men were arrested shortly after the robbery. A former girlfriend of Taing identified the offenders whom she said divided the jewellery at her home and she said that Taing had described the events of the robbery to her. Shortly following the robbery, one of the offenders showed a piece of the stolen jewellery

to a neighbour who the former knew to be a trained goldsmith as well as the brother of the woman's family who had been victimised. The item was impressed with a mark that the goldsmith recognised as belonging to his sister's family.

R. v. Varga

In 1998, Timothy Varga and three other men executed a plan in the province of Alberta to rob a specific victim of marijuana as well as the proceeds of his marijuana sales. Three of the men, one armed with a baseball bat, approached the home. Also armed with a baseball bat, the victim confronted the men outside his home. The victim was attacked, forced into his home and forcibly subdued, losing a tooth during the initial encounter. Two of the assailants went in search of the marijuana and were later joined by the offender who had remained in the offenders' vehicle to load (an unspecified quantity) of marijuana into their vehicle. During this time, Varga was alone with the victim for a half-hour, and the former had beaten the latter from head to foot with the baseball bat of the victim. The aim of the beating was to get the victim to disclose the whereabouts of proceeds from the sale of marijuana. A further incentive to talk was introduced by Varga poking the victim five times with a steak knife that caused superficial wounds. The other offenders tried to dissuade Varga and even kicked away the steak knife but the assault continued. Despite this, no money was found as the victim lay incapacitated and bloodied on the floor. Varga instructed one of the others to bind the deceased with tape, but the victim's body was sufficiently bloody that the tape would not adhere. Prior to the group leaving the scene, one of the men

disconnected the telephone thereby limiting the victim's potential access to help. The victim was later found dead in his living room. At the time of the incident Varga was on parole for robbery, use of a firearm during the commission of an offence, break and enter and theft. Two of the others had criminal records, but the third had none.

R. v. Confidential-A

In 1998, several adults and one young offender engaged in a home invasion with the aim of recovering a debt for cannabis (marijuana). The apartment where the leader of the group was living was used as a location for those wishing to pick up drugs. The group leader advanced the young offender two ounces of marijuana and repayment was to be in three days. The young offender later explained that he had advanced the drugs to a third party and had been unable to collect payment. At 2:30 a.m. on the day of the incident, a group of six made masks for themselves and set off with the intent to beat up the third party who had received the drugs advance. Six persons entered the apartment and proceeded to the bedroom, three entered and began punching and kicking the victim, who curled up in a ball on the floor while he received punches and kicks to his side, head and stomach. The victim's girlfriend who was also in the bedroom at the time recognised one of the persons engaged in the assault when one offender accidentally pulled off the disguise of another. The group leader threatened the girlfriend with a small axe and told her to shut up or he would kill her too. He

further threatened her with a potential sexual assault, but one of the other attackers told him to leave her alone.

The victim tried to protect his head with his hands as he was struck repeatedly with the small axe. However, the victim's right hand and left baby finger were virtually amputated and there were multiple lacerations that penetrated the skull and entered the victim's brain tissue. The bleeding was profuse with blood spatter on the walls and ceiling and blood spilled onto the carpet. All those involved in the attack returned to the group leader's apartment, where he washed blood from his weapon and leg and a green garbage bag was used to dispose of their bloodied clothing. The attackers then left the apartment and the weapon was discarded in a shopping mall parking lot before they proceeded on to a friend's house.

Examples from Newspapers

Whilst the case law contains some clearly organised examples of home invasion robbery, this source does tend to over-emphasise examples at the low- to medium- end of the spectrum. It would appear that the examples are often reported in the case law to denounce the activity and to confirm and expand upon the precedents in prior cases of sentencing offenders involved in home invasions. Thus, I will now turn to newspaper sources to highlight selected examples of more organised cases that tend not to be represented, or are only nominally represented in the case law. It is not clear why not all of these cases are

represented in the case law. However, a number will involve plea bargaining or informer privilege.

A – Aboriginal Gangs

In 1999, two male and two female adults kicked in the back door of an inner-city house in Edmonton just past 6 a.m. One of the invaders was a member of the Manitoba Warriors and one of the females indicated affiliation with the Indian Posse, both of these groups are Western-based aboriginal gangs. Apparently conducted in retaliation for a previous home invasion by another aboriginal gang, this example involved the offenders breaking in, demanding where the Red Alert gang members were, and threatening to kill them. An 18-year-old male member of the Red Alert was beaten. A samurai sword was used to nearly sever the hand of a 21-year-old, break the arm of a pregnant 17-year-old, and leave a 13 centimetre cut on the arm of a 14-year-old girl. One of the female offenders slashed a 15-year-old girl with a butcher knife, and then she stabbed the 17-year-old in the shoulder, and then proceeded to stab the 14-year-old girl at least five times. Two adult offenders were convicted of aggravated assault and possession of a weapon, while the prosecution stayed charges against two others not directly involved in the violence. The convicted male received a sentence of 8½ years, whereas the 7½ years of the convicted female was reduced to 2 years due to her aboriginal heritage and hard life of parental abandonment, heavy drug and alcohol use, teenage motherhood, flight from domestic abuse and involvement with members of the Indian Posse (Kent, 1999).

B – Small Vancouver Ring

Between 1997 and 1998, a group was involved in a string of home invasions in Vancouver, British Columbia. These included Justin Lance Perrier (21), Chung Tien (George) Wang (25), Casey Edward Gerald Smith (22), Chi Cheong Raymond Chan (no age given), and Jean Guy Lahn (19). The first of the two were convicted whereas the remaining three faced a new trial. The offenders were well organised in a number of respects. One of them dressed up as a deliveryman in order to gain access to the homes with the initial consent of the occupant(s). Victims were often beaten, bound and gagged while their homes were searched for money and valuables. The offenders used surgical gloves to avoid leaving fingerprints, carried a police scanner to monitor possible emergency responses, and one had six rolls of tape and a list of potential victims with names in Chinese and English at his home. The suspects were arrested due to the good fortune of one of the victims being on the telephone (at the time of the attack) and being able to call for help, and the continuing pressure of a Vancouver region police task force of 60 members (Hall 1999).

C – Large Vancouver Ring

From 1994 to 1999, possibly a dozen people were involved in ring that committed some fifty-four home invasions that targeted senior citizens. During an incident in 1997, one adult (21) and two young offenders (one female and one male) broke down the back door to the home of an elderly couple in the early morning hours.

They beat the elderly couple severely, one of whom died from their injuries. The other victim was able to make a phone call for help. The object of this invasion appeared to be the theft of various items including electronic equipment from the home. The offenders were frightened away by the sound of approaching emergency vehicles. They made their getaway in a stolen vehicle. The accused were all arrested together within a few days. At the time of arrest, the three offenders were in a vehicle in the company of a middle-aged Vietnamese-Canadian man, 42-year-old Eddie St. Pierre who was never charged in the incident. This man had been involved in several legitimate businesses; however, he self-identified himself to authorities as a cocaine dealer. Police probed links between this group (the identified offenders and the Fagin-like middle-aged male) and a larger group of home invaders (Morton 2000; Proctor 2000). In a connected example from 1998, three people were charged for a robbery in which eight family members were attacked, some pistol-whipped, and the offenders took $200,000 in jewellery, cash and gold. Police charged three adults including two females (aged 21 and 22) and one male (32) who were believed to be responsible for home invasions in British Columbia and Ontario. Police linked the 1997 and 1998 cases to a jewellery store and suspect that the invaders had received client lists from the jewellery storeowner with identification of valuable objects to guide their targeting. At the time of the arrest in the 1998 case, police seized 41 diamonds, along with a passport, gold jewellery and a replica handgun (Morton 2000; Proctor 2000).

D – Small Montreal Ring

A North-Montreal, Quebec, home invasion ring was investigated over 10 months in 1999. This resulted in the arrest of two ringleaders, Benoit Richer (23) and Eric Sirois (25) and the expected arrests of five more individuals. The group was suspected of stealing tens of thousands of dollars in property over the previous two years. During one home invasion, the masked men wielded stun guns, attacked the three residents and burned them, including a pregnant 17-year-old. The invaders managed to escape undetected, in part with the aid of a police scanner (Lampert 1999).

E - Large Montreal Ring

In 2002, Chenier Dupuy (26), seven of his lieutenants, and forty-two other members of the Bo-Gars street gang were charged with over 200 charges relating to a series of home invasions. The charges included armed robbery, sexual assault, attempted murder, drug and weapons trafficking. One of the ways in which the targets were selected was if they had advertised weapons for sale in newspapers; gang members would turn up as prospective purchasers but would rob the victims (The Montreal Gazette 2002).

F – Firearms Cache

In 1999, a 79-year-old woman in Scarborough, Ontario was confronted by four men who broke into her home around 2 p.m. on a Monday afternoon. One man choked her and pushed her to the floor, and she suffered a cut to her face and a

bloody nose. Three other men ransacked her home, and the men grabbed four handguns and fled the scene. When police arrived to the home invasion call, they found a weapons cache and seized 43 rifles and shot guns, one crossbow, and 3,000 rounds of ammunition. Charges of improper storage were pending against the weapons owners who were relatives of the elderly woman (Abbate 1999).

G - Teen Groups Target Marijuana Grow Operations (MGOs)

In 2002, police discovered that two groups of teenagers (some of them local high school students) were attempting home invasion robberies of two marijuana grow operations. The suspects were to be paid a fee for delivery or a set amount for each pound of marijuana delivered to a broker who had contracted the teenagers' services. (O'Brian 2002)

H – Asian Groups Target Marijuana Grow Operations (MGOs)

In 1999, a group of five to eight men arrived at a Surrey, British Columbia home armed with baseball bats and machetes. Answering a 1 a.m. knock at the door, the 30-year-old boyfriend of the homeowner reported that two men knocked down the back door as a man armed with a handgun entered through the front door. The male victim and the 27-year-old female fled the home in opposite directions. Two men caught the male victim and beat him with a baseball bat and a machete, resulting in the victim requiring stitches to his head and arm. It appeared the motive for the home invasion was drug-related as it contained 50 marijuana

plants. The male and female victims were both Vietnamese as were, reportedly, all but one of the attackers (Culbert 1999).

I – Dai Huen Jai

In a 1998 case, Vinuse News MacKenzie and his family awoke to the sound of breaking glass. As they looked down from the second floor staircase they saw four or five people who shot at them, striking his mother in the leg, his father in the chest and MacKenzie in the head. MacKenzie was affiliated with gang members, primarily through his brother who along with five others was acquitted of a gangland slaying in 1994. The police believe that the targeting of MacKenzie's home was deliberate and that the offenders believed they would find guns, drugs and money. The invaders included three young offenders (ages 15-16) of Chinese descent along with Jin Min Zhou and Hak Chau Wong (both 25). Wong had been ordered deported from Canada in 1994 but the order had been delayed by appeals and court proceedings. Police suspected that the home invasion had been organised by the Big Circle Boys, also known as Dai Huen Jai, an Asian gang to which Wong was linked. According to an Asian organised crime expert with the Criminal Intelligence Service of Canada (CISC), Dai Huen Jai is the pre-eminent Asian crime network in Canada. With some five hundred members in Vancouver, Toronto, and Montreal, this organisation is a flexible business enterprise in which a Dai Lo (older brother) runs an individual cell to maximise income from a range of illegal enterprise. This may include drugs importation, extortion, credit card counterfeiting and fraud, gambling and robbery. According to

the Canadian Bankers Association, Dai Huen Jai was alone responsible for $44 million in losses due to counterfeit credit cards in 1997. (Kines 1998; Kines and Ouston 1998)

Assessment of Cases with the 5Is Framework

Criminality (predisposition)

The intent that accompanies participation in a home invasion is an unambiguous indicator of predisposition. Individuals are demonstrating general intent where they participate in a residential break and enter (residential burglary) and reasonably believe that no one is at home. If these individuals avoid confrontation, and leave the scene upon realising someone is at home then they will continue to demonstrate only general intent to commit a crime.

If these individuals approach the home knowing someone is at home (or they find someone to be at home) and they continue in the commission of the crime, then they are demonstrating specific intent. This is core to the distinction between a residential break and enter and a robbery (see the definition discussion above). The former involves general intent to cause harm without having direct contact with victims. The latter involves specific intent to cause harm through the direct use (or threat of use) of violence against victims.

More broadly, a predisposition toward criminality should be assumed where people have shown willingness to engage in serious or organised crime activities (Levi and Maguire 2004: 433).

Resources to Avoid Crime

Resources to avoid crime, as a category, are somewhat helpful in distinguishing variable levels of organisation in the HIR cases. Many of the cases involve members of society who are engaged in a criminal lifestyle or a marginal existence complemented by criminal lifestyles and extensive criminal records. The low-level cases tend to involve those struggling to feed a drug addiction or meet subsistence needs that do not appear to be being met within the legitimate social structure of society. The medium- to high-level cases involve those who appear sufficiently clever that they should be able to meet their needs in the legitimate world. In both cases, participation in HIR may be reflective of the anomic division of labour discussed in chapter five. That is, opportunities to earn a living wage may simply not be available to those noted in the low-level cases or, in the medium- to high-level cases, the value of such resources may be too small relative to what can be earned in criminal activity.

Readiness to Offend

At face value, the motivations toward participation in HIR are not very prescriptive in determining variable levels of organisation. In twenty of the examples, the motivation generically related to money, drugs, or valuables. There are differences in the scope of that motivation, however, with some targeting suspected marijuana grow operations (Bernier, Jones, Varga) or known drug dealers (Simmonds). In other cases the motivation was revenge for alleged

abuse (J.C.) or to intimidate a rival gang (Newspaper A), to recover a debt for marijuana received (Confidential-A), or to steal weapons (Newspaper E, F). The latter four are more prescriptive in indicating greater organisation.

Resources for Crime

The primary skill required for home invaders is the capacity to threaten or use physical violence and to overwhelm victims as necessary. This may involve a willingness to severely injure, terrorise and, in some cases, the victims may be killed whether this was intended or not. In the examples above, only one individual died (Varga). The expressive rather than instrumental use of violence can help the general reputation and make future extortion work easier for organised crime members and aspiring members. Home invasions may be conducted on a low-cost basis with minimal or no resources for crime. For instance, there are cases where no resources are apparent (Bergman), the phone line of the victim was disconnected (H., Ivan) providing the resource of time to offenders. In other examples, there are no apparent additional resources involved (Newspaper E, F, G) despite the offenders targets being weapons theft and theft from a marijuana grow operation, respectively. Some involve only nominal resources such as a balaclava and a knife (Curtis, J.C., K.) combined with a screwdriver and rubber gloves (Harris), or a replica gun (Newspaper C, Taing) along with mobile phones and cars (DaSilva). Other examples illustrate that the choice of resources indicates the willingness to inflict potentially severe and life threatening harm upon victims or resources to avoid detection. The former are indicated by the use of an

axe (Confidential-A), a samurai sword and butcher knife (Newspaper A), baseball bats (Newspaper H, Varga) baseball bats and machetes (Newspaper H) that are sometimes combined with or use firearms separately (A.J.C., Bernier, Newspaper I, Simmonds). The latter are indicated by the use of police scanners along with stun guns (Newspaper D) or gloves, restraints/handcuffs (Jones) and a list of potential victims (Newspaper B).

Anticipation of Risk, Effort and Reward

The anticipation of risk, effort and reward should provide important insights into the variable organisation of HIR. The high-end of the rewards in the HIR examples, include:

- $200,000 in jewellery, cash and gold (Newspaper C)
- $70,000 in jewellery, and modes money and other valuables (Taing)
- 50 marijuana plants of unspecified value (Newspaper H)
- Unspecified value of weapons (firearms) and other property (Newspaper E, F)
- $25,000 stolen cash, and perhaps $80,000 worth of cocaine (Simmonds)

- Tens of thousands of dollars suspected stolen by ring over two years (Newspaper D)

- An un-cashed cheque for over $18,000 (H.)

Each of these examples involve values of money or convertible assets that if saved after being resold, are likely to trigger both objective and subjective reporting under money laundering legislation (see chapter seven). Upon trying to submit such values (even after division amongst co-offenders) into a financial institution, it is not clear that any of the suspects have a profile that would justify such a deposit. This creates a further detection risk beyond that of conducting a home invasion(s), including revenge by victims or detection by the police using standard enforcement means. Clearly, the un-cashed cheque would likely require a suitable female accomplice with appropriate fake identification in order to cash the cheque.

It would be unwise to focus solely on anticipated and actual profitability as the only reward. Intangible (and ultimately more profitable) reward may be derived from intimidating rivals or competitors to potential secure greater dominance in criminal markets (Confidential-A, Newspaper A, I). This may involve the use of contracted third parties to create fear for independents involved in the market for illicit cultivation of marijuana (Newspaper G).

It seems clear that the bulk of home invaders tend to underestimate the risk and effort relative to the rewards. The rewards can be as low as $20 (Ivan) or a small

television and a box of silverware (Bergman). Even where the rewards are more significant at $1,000 and unspecified values of jewellery, electronics and credit cards, the offenders involved do not appear to be engaging in any accurate calculation of risk and effort versus reward. Most of these lower value amounts are unlikely to trigger anti-money laundering reports; however, subjective reporting is always possible where the value of deposits does not meet with the client's profile.

The privatised use of violence attracts substantive law enforcement attention and the returns are generally poor or modest. Where the returns are more significant, the predictable problem is convertibility and this takes either talent or access to networks that are capable of converting assets while mediating the risks. That is, individuals or groups acting independently of the more recognised 'organised crime' groups may find it necessary to work with such groups to reduce risk and to more successfully launder the proceeds from their criminal activity.

Offender Presence in Situation

In some of the examples above, a lone individual commits the robbery (Cooper, Curtis, H., Ivan, J.C.). Seven of the examples involve three offenders (A.J.C., Bernier, DaSilva, Harris, Jones, K., Newspaper A). The remainder involve four or more offenders, with some examples involving a ring of as many as twelve or up to fifty possible participants (Newspaper C, E), not all of these necessarily participating in each invasion. Not all of the individuals will be active participants

in the home invasions per se. Some will act as go-betweens and/or fences to introduce parties (Harris, Simmonds) or provide client lists as possible targets (Newspaper C).

Target Person or Property

In terms of risk in home invasions, the key target is the assets or property in the possession of the person at home rather than the household and the assets it contains. This is necessarily the case in HIR as the offenders attempt to extract maximum value by terrorising victims. Household security features seem to be a secondary consideration, as discussed in the next section. As noted above, the most common target is money, drug monies, or valuables. However, sometimes the target is more related to the person, such as inter-gang violence to intimidate rivals and secure shares in a criminal market. It may also involve raiding locations of individuals thought to have successful businesses, whether legitimate (A., Taing) or illegitimate (Newspaper H, Varga).

Target Enclosure

The target enclosure for home invasions is the household and it does not present a substantive barrier in the majority of the examples above. Some examples involve ruses to gain entry to the home, including dressing up as postal delivery personnel (Newspaper B), posing as a prospective purchaser of newspaper-advertised goods (Newspaper E), or purposeful car accidents and car-jacking the occupants and then robbing them and their home (DaSilva). Nevertheless, most

involve simply entering through unlocked windows or doors, breaking down doors or windows, or the method is unspecified and may simply involve pushing past victims once they open their door.

Wider Environment

Linkages to the wider environment, which I shall delimit to the wider criminal environment, offer helpful insights into the variable organisation of HIR. The knowledge that most of the offenders in the examples discussed above have criminal records is only helpful in a generic way. What is more helpful is to look at those examples where the offenders are more substantively connected to various criminal markets. For instance, those who are involved in ongoing raiding activities targeting marijuana grow operations (Bernier, Jones, and more substantively, Newspaper H) or sub-contracting others to raid such targets (Newspaper G). We should include those activities linked to markets in weapons and/or drugs trafficking (Newspaper E, F). Finally, gang rivalry and intimidation are also important indicators of variable organisation in its links to the wider criminal environment (Confidential A, Newspaper A, I).

Absence of Crime Preventers

Unfortunately, the HIR examples above demonstrate a chronic absence of crime preventers. There is typically no intervention from neighbours, either intervening directly or calling police. It is likely that neighbours or passersby did not hear or see anything that they would deem suspicious. Victims who do receive help from

neighbours or passersby usually have to go to great lengths to secure the attention of such persons. Offenders will often cut the phone line and thereby add further delay to crime preventers arriving at the scene. Homes and properties in Canada are often much larger than those in the United Kingdom. Isolation may thus be easier to achieve in Canada in urban, suburban, or in rural or remote areas. Readers should note that the data set did not include failed HIR attempts where the presence of crime preventers may have deterred or dissuaded would-be offenders. The nature of home invasion also makes it difficult for victims to act as crime preventers. Few victims appear to secure their home against unwanted entry, and those who attempt to confront invaders may receive worse injuries. Victims often have difficulty in identifying their attackers, and in some cases, they offer no description or give a false description to avoid reprisals or other potential consequences.

Crime Promoters

This is an important area in identifying variable HIR organisation. This includes where an accomplice appears to have identified the target by disclosing the success of a legitimate jewellery business (A., Taing), or a legitimate jewellery business discloses its client list to HIR offenders (Newspaper C). It also includes third parties identifying or potentially identifying suspected marijuana grow operations for raiding (Bernier, Newspaper H), and where the victim(s)' involvement in illicit drug activity attracts negative interest (Jones, Simmonds). In other examples, the victim avoids payment for drugs received (Confidential A), or

is involved in efforts to intimidate a rival gang through the use of home invasion (Newspaper A, I). Some victims may inadvertently advertise for a home invasion by publicising the sale of weapons (Newspaper E), or the offenders may learn of a weapons cache through unidentified third parties (Newspaper F).

In concluding this section, it should be noted that the 5Is framework focuses on offender and situational causes and victims are only featured "indirectly because they play remarkably diverse roles" (Ekblom 2003: 249). Among other things these roles may include being the target or occupier of the target location, acting as a crime preventer, or promoting crime by being careless or provocative. Clearly victims can play a role in reducing their risk of being subject to a home invasion or mitigating its consequences. However, in attempting to understand the causes of HIR we should try to avoid blaming the victim, given the harm and trauma they may suffer. The consequences can range from the loss of monies and property, emotional trauma, serious physical injuries such as brain damage and death. It can undermine a victim's faith in their fellow human beings and society and some victims face continued suffering that reduces their ability to function at work or school. However low the risk of being victimised, this sort of harm is conceivable to a broad spectrum and this helps to explain the asymmetric impact home invasions can have with respect to fear of crime and concerns about community safety.

Few of the examples above could meet the stereotypical view of organised crime (see chapter two for a more thorough discussion of the issues highlighted below).

Experts indicate the presence of Asian groups and Outlaw Motorcycle Gangs (OMGs), but the involvement of these groups is only explicit in one of the examples discussed above. The majority of the cases do not correspond to earlier official definitions of what constitutes organised crime. Nevertheless, a number do meet the United Nations Convention Against Transnational Crime (2000), or Palermo Convention, definition of organised crime. All nine of the newspaper examples could be included under this definition, along with the case law examples of Jones, Simmonds, Taing, Varga and Confidential A.

The Policy Response to Home Invasion Robbery

Continuing reportage on home invasions and prosecutions stressed the image of 'ideal victims' alongside modest attention to MGOs (Tibbetts 2000). The public concern was sufficient for Ottawa to consider several options such as creating a new offence category specific to home invasions, having the new offence contain a mandatory minimum penalty of 4 years imprisonment, or to make home invasion an aggravating factor in sentencing guidelines for judicial determinations. To my knowledge, these tough options were the only ones given consideration. No analysis or consideration was given to the sorts of options that might have emerged from a detailed look into the issue and the preventive points that could be derived from the 5Is framework.

Other commentators argue that the drive to expand the imposition of mandatory minimum penalties further expresses the bankrupt status of punitive "quick fix"

sentencing principles (Campbell 2000), and the "cult of mindless toughness in justice policy" (Cayley 1998: 71). Moreover, U.S. experience aimed at enacting a new and specific offence category has shown that constitutional and other considerations tend to dilute the practical utility of such laws, despite the symbolic gains that may be achieved (Hurley 1995).

An Aggravating Factor in Sentencing

The federal minister of justice preferred to pursue, among several available options, making home invasion an aggravating factor in sentencing (Tibbetts 2000). This option neatly sidestepped the potential constitutional challenges that a new offence category and especially mandatory minimum sentencing might attract. In March 2001, the Government of Canada introduced Bill C-15 (the Omnibus Bill, HIR and other selected provisions were subsequently separated out to form Bill C-15A) that would compel judges to treat home invasion as an aggravating factor in sentencing. To my knowledge, there was no opposition to this component of the legislative development. Fear of violence provided the warrant and the new provision only served to formalise a pattern of sentencing that had already been adopted by the judiciary (see below). Upon receiving Royal Assent, Bill C-15A (passed by the House of Commons October 18, 2001) added the following provision to the Criminal Code:

> 348.1 If a person is convicted of an offence under any of subsection 279(2) or sections 343, 346 and 348 in relation to a dwelling-house, the

> court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence, (a) knew that or was reckless as to whether the dwelling-house was occupied; and (b) used violence or threats of violence to a person or property.

These provisions do not add a great deal with respect to existing trends in how the courts treat home invasion incidents. Rather, the addition of section 348.1 will merely formalise the current course of jurisprudence. In a landmark case, the Alberta Court of Appeal established the precedent that:

> The starting point for sentences for a home invasion robbery... should be eight years. The use of actual force against the occupants, the causing of injuries to any of them, a prolonged detention, terrorisation, the discharge of firearms, gang activity or acting in concert with others, prior record for violent offences, the theft of substantial sums of money or valuable property, are all considered to be aggravating factors. Some examples of mitigating factors might include the youthfulness, or other circumstances, of the offender, a lack of planning, or an early guilty plea. (R. v. Matwiy 1996)

Courts across Canada have continued to apply this precedent whilst adjusting the sentence for particular offences and offenders. Downward adjustments in

sentencing tend to be used in the case of younger persons and those who demonstrate greater potential for rehabilitation. Upward adjustments in sentencing tend to be applied in cases where there is elevated terrorising of victims and where victims suffer very serious harm or fatal injuries. Canadian precedents may often in practice be limited to the provincial or territorial jurisdiction (or even municipal jurisdiction on certain issues) where the decision took place. Courts across the country may take note of and apply external precedents. Of course, this is more likely where Courts of Appeal or higher-levels of the judiciary issue decisions. Decisions from the Federal Court of Canada have impact across the country and decisions are definitive precedents in the case of the Supreme Court of Canada, the last step of the appeals process.

A Right to Firearms for Self-Protection?

Home invasions are an affront to the value of public safety. However, many believe that it constitutes more, that HIR is "a personal attack on sacred and fundamental principles" (Hurley 1995: 9). Specifically, a householder's right to unmolested enjoyment of their property and personal safety. With a crime as offensive as home invasions, we invariably hear the call that citizens should have the right to firearms with a view to protecting themselves and their property and deterring would be offenders. Despite stringent gun controls in Canada, the Canadian Charter of Rights and Freedoms (1982) guarantees, among other things, the right to "life, liberty and security of the person" under section 7. Thus, Canadians may be immune to prosecution where they use weapons to defend

their constitutional rights. Indeed, a Justice of the Provincial Court of Alberta dismissed charges of possession of a weapon dangerous to the public peace (s. 87) against an accused, arguing that:

> Apropos of the [Criminal] Code's self-defence, provisions [s. 34-42], broad statements claiming that gun possession by ordinary Canadians for self-defence purposes is illegitimate contradict current Canadian law. Even if voiced by someone high within government such statements are at their best innocent misrepresentations of law. ...Yearly, across Canada, innocent persons are deprived of life by murderers, of liberty by kidnappers, and of security of the person by arsonists, home invaders, rapists, robbers and thieves. ...Intelligent Canadians who believe they, at some point in life, might well be victimised by a criminal attack of the types discussed are not being phobic. They are being realistic.
>
> ...[Discreet forms of self-protection] against both four-legged and two-legged predators...[and other forms of] 'home invasion risk insurance coverage' all have one thing in common. They all manifest a desire and an attempt to exercise or realise upon their four s. 7 Charter rights. ...They reject paternalistic platitudes voiced to persuade ordinary Canadians to leave their protection in the hands of government. They understand perfectly that, no matter where one fits on Canada's social ladder, depending solely on big government to protect oneself from

> criminals is a big mistake a big mistake that sometimes costs decent Canadians their lives. Intuitively or otherwise, they know justifiable self defence does not constitute vigilantism despite proclamations of those who would have the populace believe it does. (R. v. Bray, 1999)

Positions such as those expressed above are invariably premised on the view that if offenders perceive that they have a reasonable prospect of facing an armed householder they will be less inclined to commit the offence (Sheremata 1996, 1998; Slobodian 1999a,b; Tonner 1999). At face value there may be some appeal to the "More Guns, Less Crime" thesis (Lott 1998) and the general appeal to arm the citizenry. Nevertheless, practical problems intervene to undermine the potential effectiveness of this approach as a means to prevent home invasions. Prospective victims would have to always be on guard, ready and capable of deploying their weapon with little or no notice, and face the potential that their use of weapons may escalate the situation or their weapon may be seized and used against them (Kellermann et al 1995; Suter et al 1996).

Observers might find it difficult to appreciate just how much this issue has penetrated public consciousness in Canada. I will offer an illustrative example. In Montreal a five-man drug investigation team conducted a pre-dawn raid involving a dynamic entry with the use of a battering ram (Ha 2007). A couple and their teenage son occupied the home. The father believed this was a home invasion. He fired four shots from a legally registered firearm toward the intruders, and the police returned ten shots. A 42-year-old constable was killed during the shooting.

I suspect that in most industrialised countries a person, who kills another human being, particularly when the deceased is a police officer, will be highly unlikely to be granted bail, pending trial. In this case, the judge believed the account provided by the defendant and he was granted bail. The defendant faced charges of murder and attempted murder along with firearms offences, and police seized four loaded handguns, 0.3 grams of cocaine and 1.7 grams of marijuana among other items. The defendant was later acquitted.

I am not aware of projects or strategies in Canada that have been developed and implemented to (directly) tackle the phenomenon of home invasions. These problems are addressed by the existing architecture of the criminal justice system.

Conclusion

In this chapter, I provided a case study of home invasion robbery as an example of serious and organised crime. I did not argue that all HIR cases are organised crime, either in the sense that they meet stereotypical notions or that they necessarily fit neatly into official definitions. This is central to the earlier debates and issues raised in the thesis about the evolving definitions of 'organised crime' (See Chapter Two). Not the least of these issues is that the term itself and official definitions are problematic, and they are often unhelpful when examining the variable organisation of serious crimes. My aim was to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise.

I began with a range of definitional issues relevant to the discussion of HIR. This included discussion of the two most proximate categories for HIR, residential break and enter (RB&E) and robbery, as defined by the Criminal Code of Canada. I then turned to the definition of HIR, which is not a distinct crime category but rather a subdivision of the categories of RB&E and robbery. The narrow definition focuses on robbery that occurs in a private dwelling. The broad definition focuses on a robbery, or any RB&E involving a violent offence, that occurs within a private dwelling. Given the potential overlap in the broad definition, a given incident should only be counted once as the more serious offence. I also provided a brief discussion of definitional issues relating to serious and organised crime, and I discussed how HIR exhibits, and is linked to, a spectrum of criminal enterprise

I then turned to attempting to quantify the magnitude of the HIR problem. This was not a straightforward task given that HIR does not exist as a distinct official crime category. For this reason, Uniform Crime Reports (UCR 1) that contain a nationally representative picture of police-recorded crime cannot be used to identify HIR incidence. It is possible to gain some idea of incidence using the more detailed UCR 2 survey of police-recorded crime. However, UCR 2 represented less than 50% of the national volume of police-recorded crime and, therefore, it does not provide a representative picture of Canada as a whole or any of its regions. The General Social Survey (GSS), which includes a criminal victimisation component, provides some insights. However, the GSS does not have sufficient sensitivity to provide reliable statistics at a national, or census

metropolitan area, level. The International Crime Victims Survey (ICVS) is a comparative instrument and its typically small sample sizes (around 2,000) for each country produce sampling errors that make precise domestic estimates of existing crime categories problematic. Thus, the ICVS does not have sufficient sensitivity to be able to provide a reliable or precise estimate of the sub-category of home invasion robbery.

Then I provided an overview of 25 examples of HIR, 16 drawn from case law and 9 from newspapers. These were assessed using the 5Is analytical framework (Ekblom 2003) and its eleven generic causes of crime to assess the social organisation of this phenomenon. My particular aim in using the framework is to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise. I then turned to the Canadian policy response specific to the problem of home invasion robbery.

I have tried to highlight explicitly the profitability inherent in each of the examples (where the information is available), and there were a number of quite profitable examples that could be flagged by money laundering controls. Whilst money laundering legislation may have, to a greater or lesser extent in various countries, been created to deal with organised crime and drugs trafficking in particular, the pertinent legislation in Canada and elsewhere by no means limits itself to 'organised crime' as that is commonly understood. Anti-money laundering controls can identify and be used to target a broad spectrum of serious crimes. This may result objectively from sums over $10,000 (objective reporting) and/or

from sums that are incompatible with the individual's income and profile with a financial institution (subjective suspicious transaction reports that can potentially be triggered at any monetary amount). There are limits to what money laundering controls can achieve, and I am critiquing the idea what such controls can achieve when they are ostensibly directed at 'organised crime'. Whereas, in reality, these controls are directed at the finances generated by (potentially) any serious predicate crime (i.e., monies or convertible assets).

In the following chapter, I turn to a major policy and operational development in Canadian efforts to address serious and organised crime, the creation of a national financial intelligence unit.

CHAPTER SEVEN:

THE CONTEXT OF ORGANISED CRIME PREVENTION AND CONTROL IN CANADA

Introduction

In this chapter, I will discuss the rise of anti-money laundering (AML) controls and a national financial intelligence unit (FIU) in Canada. Although many persons may think that AML relates primarily to organised crime, as it is commonly understood, and drug trafficking, these controls cover a broad range of serious and organised crimes. This diversity may include virtually any proceeds of crime as well as so-called 'hot money'. This occurs where otherwise legitimate actors attempt to evade taxes and engage in deposits or wire transfers to convert or conceal such monies. To follow-up on the case study in the previous chapter, I will also discuss how AML controls may potentially detect or affect the phenomenon of home invasion robbery.

Financial intelligence may be considered the vanguard of efforts to tackle serious and organised crime. Its purported centrality in the anti-crime arsenal should therefore, also provide useful insights into more general aspects of the prevention and control of serious and organised crime.

The chapter begins with a brief discussion of getting inside a FIU, in particular the author's involvement with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). It discusses the difficulties of obtaining and using

information about this very secretive area of public policy and operations. I then provide an overview of the policy and operational structure in Canada such as the jurisdictional division of governmental and investigative responsibilities.

Attention is then focused on issues surrounding the creation of FINTRAC in 2000. These include the domestic and international pressures for its creation, the substantive components of the reporting regime, and key components of FINTRAC's design. The discussion also looks at the operational potential of FINTRAC. This includes its tactical mandate via the disclosure process, levels of analysis that are possible in context and the potential utility of external enforcement/intelligence and open source databases.

I also examine FINTRAC as representing an example of policy transfer from the United States but with a Canadian twist. Its design features are specific to the legal and cultural rules in Canada. These design features, in turn, have an effect on the potential impact of FINTRAC. This has resulted in a variety of public criticisms of the institution. I provide a brief discussion on Phase II of FINTRAC's legislative mandate, which is a response to various criticisms and a general deepening of the AML controls in Canada.

Finally, I explore how AML controls may potentially detect or affect the phenomenon of home invasion robbery. This includes discussion of how HIR, as a serious and/or organised crime, can generate sufficient proceeds to trigger investigative interest and/or AML detection. This is especially the case with

respect to the more organised examples discussed above, and, in particular, with respect to the multi-billion dollar marijuana grow operation (MGO) industry.

Inside a Financial Intelligence Unit (FIU)

There is a substantial and growing literature on money laundering, terrorist finance and financial intelligence units (Beare 2003; Beare and Schneider 2007; Biersteker and Eckert 2007; Cuellar 2003; Levi and Reuter 2006; Reuter and Truman 2004; Schneider 2004; van Duyne et al. 2002, 2003, 2004). However, other than their annual reports, there is a paucity of accessible literature on the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). The few examples of systematic analysis in relation to this institution tend to focus on particular and specialist concerns (Murphy 2006) or superimpose external models that do not encapsulate the institution (Beare 2003, Thompson and Turlej 2003). This gap in research is troubling given the public resources devoted to this institution and its potential impact upon residents and the broader society. This impact may be positive in the form of improved targeting of those involved in serious and organised crimes for investigation, prosecution and the seizure of assets as well as the reduction of such crimes. This impact may also be negative in respect of the threat it may pose to privacy as well as the potential for criminal and civil liability that is created for disclosed parties.

The author of this work was a member of FINTRAC for some two-and-a-half years beginning in 2003. Through participant observation I was able to glean

considerable information about the structure and function of this organisation, both internally and in respect of its relationships with outside bodies. As a pre- and post-condition of employment, members are precluded from divulging information on several levels. First, the unauthorised disclosure of information that could directly or indirectly identify individuals or entities who were the subject of a report or a disclosure is a criminal offence. Unauthorised disclosure may be prosecuted as a serious criminal offence with severe penalties of up to five years imprisonment and/or a fine of $500,000 dollars. Second, there is a more general restriction against the public release of privileged internal information as provided for in internal policies consistent with, for instance, the Code of Ethics for federal employees.

As a matter of legal self-protection and ethical accountability I will not cross either of the research limitations above. There is in place no restriction against the use of my experience to interpret and assess in the light of open source information. I have no ethical qualms about the indirect use of my participant observer experience, given that my status as a postgraduate researcher was made plain in an email that my manager dispatched to the entire organisation on my first day of employment. I am not disclosing to the reader privileged information about FINTRAC, but rather piecing together a range of materials to illustrate general and specific aspects and the probable range of its operations and its potential impact for crime reduction. These findings should be capable of validation and replication by others who may review the (otherwise serpentine and opaque) roadmap of

evidence I have assembled and other items that may become available over time. The findings of successive scholars in this area could be further enhanced through a course of participant observation within the agency.

Information about the Centre is most readily available in respect of the public release each autumn of an Annual Report that is first provided to Parliament and then released to the public. It is of little surprise that the publication trumpets the organisation and its work and that this precipitates a wave of media publicity: such is normally the case with Annual Reports of many intelligence and law enforcement bodies. Typically this involves coverage of key findings such as the dollar values of detected money laundering and terrorist finance. Related media coverage tends to divide into two camps, the proponents and the critics. This polarised reportage can be linked to the "ultra-secretive" nature of the agency and the consequent lack of systematic information to interpret it. Beyond cursory attention to FINTRAC's annual report and the associated media, there is a substantial amount of largely untapped open source information. Analysis of the language of the enabling legislation is central, both for the purposes of this work and for understanding the AML regime in Canada. The Annual Reports contain various potential insights and this may be complemented by books and articles, committee hearings of the Canadian Parliament, public consultation documents and external reviews by agencies such as the Auditor General of Canada. Media accounts are not to be frowned upon as a source of information. Aside from the

general reportage on the Annual Report, newspaper clips may reveal a wealth of information about FINTRAC.

One of the more helpful contributions in the AML research literature is provided by Levi and Reuter (2006). Their work offers insights into the proliferation of the anti-money laundering regime at the international level. This has occurred at a rapid pace from the late-1980s onward through various supranational bodies such as the Financial Action Task Force (FATF) founded at the impetus of the Group of Seven (G7) leading industrial nations, the World Bank, the International Monetary Fund (IMF) and the United Nations. They also provide considerable insights into the domestic AML situation mainly in the United States and selected comparisons with the United Kingdom and other jurisdictions as well as insights into the possible effectiveness and efficiency of the AML regime. Of greatest utility for the present study, Levi and Reuter (2006) offer a helpful template to assess other AML regimes in respect of its components and subcomponents and possible broader implications. This offers the framework within which I may conclude this work with an assessment of the nature and scope of AML policy transfer from the United States and the potential impact of FINTRAC to prevent and control serious and organised crime in Canada.

An Overview of the Policy and Operational Structure

This section provides an overview of the policy structure and separation of responsibilities at the federal, provincial and municipal level. It then provides an

overview of the operational structure and division of responsibilities between major actors such as the RCMP, other federal agencies and the major police agencies. There are a wide range of institutions with mandated responsibilities for the prevention and control of serious and organised crime in Canada. The key policy branch is headed by Public Safety and Emergency Preparedness Canada (PSEPC) which has ministerial responsibility for federal criminal justice as well national security issues such as terrorism. Entities which report to the Minister of PSEPC include the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS), the Canada Border Services Agency (CBSA), Correctional Services Canada (CSC), Criminal Intelligence Service Canada (CISC) and other institutions. Additionally, Canada's security and intelligence functions are complemented by contributions from other departments. This includes the Department of National Defense through its Intelligence Division (J2) as well as the signals intelligence of the Communications Security Establishment (CSE) and intelligence units of various other departments such as Foreign Affairs, Justice Canada, Transport Canada and Revenue Canada. It also includes an operational contribution from the Department of Finance in the form of Canada's national financial intelligence unit, FINTRAC. Specialised units of the Privy Council Office (PCO), which are linked to the Prime Minister and Cabinet, analyse and distribute signals intelligence as well as offering broader policy coordination and integrated intelligence assessment.

A simple note on the division of powers and responsibilities amongst the federal, provincial and territorial, and municipal governments may be helpful for readers unfamiliar with Canada. Please note that some of the divisions are overlapping. The federal government is responsible for national policy development (e.g., the Canada Health Act), defence and foreign affairs, and it has sole jurisdiction to enact criminal legislation. The provinces and territories receive policy direction from the federal government, and the former are responsible for the implementation and delivery of policies (e.g. providing health services, enforcing criminal laws, etc.). Under policy direction from the province or territory, municipalities deliver local services and provide criminal and by-law enforcement.

The RCMP is the only federal police force and it enforces federal statutes. In a number of cases the RCMP is also under contract to provide policing services at the provincial and municipal level. Aside from the provinces of Ontario, Quebec and Newfoundland (the RCMP shares responsibilities with the Royal Newfoundland constabulary) the RCMP acts as the provincial police. With the exception of Ontario and Quebec as well as major centres across the country, the RCMP is often contracted to provide municipal policing services. The RCMP plays a key role in the investigation of financial crime in Canada, not least through their leadership in bodies such as the Integrated Proceeds of Crime Units (IPOCs). The IPOC bodies operate in major Canadian centres and combine the work of other investigative and revenue agencies to coordinate and target money laundering investigations.

Notwithstanding the key AML role of the RCMP, the structure of policing and security and intelligence structures to deal with organised crime is diversified and complex. For instance, CISC facilitates criminal intelligence sharing and development across the country and the agency has over 380 members. One might imagine that issues of strategy and coordination in tackling organised crime regularly arise. Some may view financial intelligence as critical to improved success. As I shall explore in greater detail below, FINTRAC is simultaneously at the centre and the periphery of efforts to tackle serious and organised crime. This bifurcation has had considerable influence on the potential impact of the institution and the Canadian AML regime.

Creation of FINTRAC

Canada has long been an active supporter and contributor to international institutions and the pursuit of multilateral policy goals. As a contributor and supporter to the United Nations and the group of leading industrial nations, Canada is a party to various international agreements including the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs Psychotropic Substances (the Vienna Convention) and the recommendations of the FATF beginning in the early 1990s. The Proceeds of Crime Act (1989) embodied much of the enforcement, prosecution and forfeiture mechanisms necessary to address laundering tied to drugs and other designated offences within Canada and to support international processes such as mutual assistance. The Act also included a system whereby financial institutions could provide voluntary suspicious

transaction reports (VSTRs) to police, typically the RCMP, for further investigation. Readers who would like additional information on the historical developments relating to Canada may turn to several sources (Beare 1996; Murphy 2003).

Despite this legislation, Canada was the subject of criticism for being soft on organised crime in general and financial crime in particular. These criticisms emanated mainly from domestic and international law enforcement as well as a general sentiment from the U.S. that Canada was not contributing sufficiently to the cause. In the context of international political economy, the reputational risk of appearing to be soft on money laundering could have considerable consequences across various industry sectors and for the country in general. Moreover, in the late 1990s Canada was at risk of being named by the FATF as one of the countries that had failed to take sufficient steps to address money laundering (Cordon 2006). Being included on a blacklist of Non-Cooperative Country or Territory (NCCT) would be politically very embarrassing in addition to the potential economic consequences (Levi and Gilmore 2002).

FINTRAC was brought into formal existence via the Proceeds of Crime and Money Laundering Act (PCMLA 2000). The mandate expanded to include terrorist finance under the Proceeds of Crime, Money Laundering and Terrorist Financing Act (PCMLTFA 2001), both to implement the UN Convention and as part of the post '9/11' global anti-jihad pressure. Unless otherwise stated below I shall refer to these two pieces of legislation as the PCMLTFA or the Act for the purposes of continuity. The expanded mandate formed a part of a wide-ranging

legislative overhaul, that is, an omnibus anti-terrorism bill which was drafted and rapidly pushed through Parliament in short order following the attacks of 11 September 2001. My focus here is delimited to the PCMLTFA and FINTRAC. The driver behind the 2001 legislation should not require explanation. It should be noted that the PCMLA and its successor represented an intensification of tensions that had been building and then reached the stage of an imperative. American patience was dwindling with regards to the relative inaction of its northern neighbour on the issue of money laundering and the push for policy transfer was considerable. There was even a threat that Canadian access to U.S. electronic payment systems such as FedWire might be terminated if suitable policy action was not forthcoming in a timely fashion. This threat was considerable given the breadth and depth of economic ties between the two countries. The payment system termination threat was issued by Senator John Kerry, Chair of the U.S. Senate Banking Committee (Beare and Martens 1998: 403).

In summary form, the Act ushered in a reporting regime imposed upon financial institutions to maintain records and to report prescribed financial transactions as well as the reporting of all currency and monetary instrument imports or exports over a prescribed value. It created FINTRAC (hereafter referred to also as 'the Centre') as an independent agency to receive the reports mandated above and to analyse and assess these together with other information available to the Centre. Where there existed reasonable grounds to suspect that information would be relevant to investigating an offence of money laundering, terrorist finance or a

threat to the security of Canada, FINTRAC was authorised to disclose designated information to police forces and other specific federal agencies under particular conditions. The Centre was also authorised to engage in research and education to inform the public, reporting entities and the law enforcement community about the nature and extent of financial crime and effective measures of deterrence and detection. Additionally, the Act created offences for failing to report prescribed transactions as well as for the inappropriate disclosure or use of FINTRAC information.

Substantive Components of the Reporting Regime

To build upon the above summary, the reporting regime ushered in considerable requirements upon a range of institutions and associated practitioners. Entities included in the reporting entity (RE) framework included traditional financial institutions (FIs) such as banks and credit unions, life insurance companies, securities dealers and portfolio managers as well as certain investment dealers, foreign exchange, money services businesses (MSBs), Crown Agents that accept deposits or issue money orders, accountants, real estate brokers, casinos, individuals transporting large sums of currency across the border and others under various conditions involving the provision of financial services. The REs were required to provide to FINTRAC several types of reports, including:

- Suspicious Transaction Report (STR)
- Large Cash Transaction Report (LCTR)

- Electronic Funds Transfer Report (EFTR)
- Cross-Border Currency Report/Cross-Border Seizure Report (CBCR/CBSR)
- Voluntary Information (VI)
- Financial Intelligence Unit Queries (FIUQ)

In respect of LCTRs, CBCRs and EFTs, the trigger for reporting is an objective criterion, that is, transactions involving $10,000 CAD or more must be reported. On the other hand the trigger for an STR report is subjective, that is, where the reporting entity is suspicious of transactions a report must be filed. It is worth noting that this differs from voluntary STRs which, under the Proceeds of Crime Act (1989), could be reported to police agencies for follow-up or investigation. The subjectivity of STR reporting may obviously engender a diversity of reasons why some transactions are reported and these may involve transactions of various amounts. The Centre may also receive voluntary information from any agency or person in Canada. Any individual or agency may submit voluntary information to the Centre; however, we may reasonably assume that most VI derives from the police and other investigative agencies that may in turn receive disclosures which could assist their inquiries or investigations. Finally, foreign financial intelligence units that have signed a reciprocal Memorandum of Understanding (MOU) with the Centre may submit information that, in part, requests whether FINTRAC can contribute additional information to the investigations of other jurisdictions.

Certainly, the capacity of REs to file such reports requires a substantive programme of record-keeping and regulation to ensure compliance. The record-keeping would necessarily entail that know your client processes be adhered to, as well as documenting all the key components required to fill in the prescribed report forms.

Those who import or export currency or monetary instruments over $10,000 across the border are required to file a CBCR with the Canada Customs and Revenue Agency (CCRA); this reporting was later referred to the Canada Border Services Agency (CBSA) following a re-structuring of federal departments in 2004. Those who fail to report the cross-border transportation of such amounts are at-risk of having their funds seized, which would in turn generate a CBSR.

Key Components of FINTRAC's Design

The Act created an agency to receive the mandated reports, to analyse these with other information lawfully available to the Centre and provided it with a mandate to disclose operational and strategic information. FINTRAC is one of several quasi-governmental organisations that are known as "separate agencies" (equivalent to Non-Departmental Public Bodies in the United Kingdom); other examples include the Canadian Security Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP). These agencies are the official representatives of the government on mandated issues and as a part of government they are also subject to many of its policies. Separate agencies are also given latitude to

pursue their policy and operational mandate. In the case of FINTRAC this latitude is evident in its political accountability, the peculiarities of its status as an independent agency and its organisational structure. Before addressing these issues, it is important to distinguish between tactical and strategic levels, as defined by FINTRAC. Tactical information or intelligence explicitly identifies individuals or entities who may be the subject of a report or an analysis conducted by the Centre. Strategic information or intelligence is aggregated and does not directly or indirectly identify individuals or entities.

The Director of FINTRAC is accountable to report to the Minister of Finance. This accountability extends to policy issues and the strategic direction of the Centre as well as the filing of an Annual Report that is presented before Parliament. This accountability does not extend to operational matters. It is unlawful and a serious crime under the PCMLTFA for any person to divulge to any party (including the Minister) any (tactical) information that could directly or indirectly identify individuals or entities who are the subject of a report or internal analysis. This bar has only one caveat, the strictly limited exception that allows for disclosure to investigative agencies under prescribed conditions. That is, where there are "reasonable grounds to suspect that the information would be relevant to investigating an offence", FINTRAC is required to disclose the information to the appropriate investigative agency. Investigators are the only recipients of a disclosure and, by law, the Minister of Finance may not receive from FINTRAC any information that could directly or indirectly identify individuals or entities. This

operational window is further constrained by two factors. First, disclosures may lawfully only include a limited set of prescribed data called "designated information" (further information below). Second, the PCMLTFA requires that FINTRAC operate at "arm's length" with respect to all the agencies to which it may disclose.

FINTRAC is therefore perhaps best represented in metaphoric terms as a black box. It functions as a repository of flows of incoming information into which only authorised persons (designated employees) can see and its delimited tactical product may be made available to a limited investigative audience. The arm's length concept invokes a permanent distance and lack of familiarity between the Centre and investigative agencies. The latter are not permitted access to FINTRAC databases nor are they allowed to submit queries (only give voluntary information) or in any way attempt to direct the operations of the Centre. Given the secrecy which attends the mandated reporting as well as voluntary information from investigative agencies and foreign FIUs, it may be a reasonable supposition that, in practice, FINTRAC operates at arm's length to all bodies with which it may interact. Indeed, the Centre is exempt from warrants issued by Canadian courts and need only respond to specific compulsory court processes such as those issued by the Federal Court of Canada at the request of an investigative agency, namely "production orders" that compel the release of an analytical report supporting a disclosure and ostensibly adding further substance to its designated information.

The Director of FINTRAC enjoys broad authority in terms of the structure of the agency and its human resources, including but not limited to departmental divisions, appointments, policies and pay scales. This authority is intended to empower the Director to set about meeting policy and operational objectives in the way he or she sees fit. This is not tempered by the influence of civil service unions, as FINTRAC is a separate employer and not a part of the public service per se.

Strategic information or intelligence may be released to a wide range of parties. However, such information must not be capable of directly or indirectly identifying individuals or entities, as this would constitute the offence of unauthorised disclosure. We might expect that a broad range of aggregated information could be made available. This information sharing may be limited in practice because the data holdings of investigative agencies and reporting entities may make direct or indirect identification of tactical information a possibility. These problems could understandably be worsened in respect of strategic information relating to disclosed cases and laundering practices. The imperative to share aggregate information but avoid unauthorised disclosure should tend to push strategic information sharing toward generalities and sanitised content. This is a problem not just for FINTRAC but for other bodies in the organised crime and financial intelligence arenas: from Europol Organised Crime Threat Assessments to FATF typologies exercises.

The structure and design of Canada's AML regime may be puzzling to observers. The Act was designed to establish a balance between detection and deterrence of serious financial crime as well as the privacy rights of Canadians. In this respect, the Centre acts as a passive or non-investigative analytical body mandated to disclose "designated information" to CSIS, the RCMP and other investigative agencies where the information would be deemed useful to the "investigation of ML, TF or threats to the security of Canada". An analysis of the debates surrounding the creation of the PCMLTFA is beyond the scope of the present work. Readers may be contemplating the policy evaluation question as to whether any gaps or failures are due to theory problems or implementation issues. These questions are illuminated in the context of the operational potential of the Centre and discussed further below.

Operational Potential of the Centre

The secrecy surrounding its operational activities does not permit any direct insights to be drawn about the analytical processes and technologies employed by the Centre. That having been said, we can discern various possibilities given the input and output variables that are linked to this institution. It is perhaps most profitable to begin with the outputs and connect these back to the inputs.

The Disclosure Process

The primary product of FINTRAC is its disclosures to law enforcement agencies. A disclosure provides identifying (tactical) information about individuals or entities

whose transactions are deemed relevant to investigating financial crime. The financial crime which is the primary focus here is money laundering (to which is added terrorist finance and threats to the security of Canada). Under the Criminal Code of Canada (s. 462.31(1)) Parliament provided the following definition:

> Every one who commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with the intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or those proceeds was obtained or derived directly or indirectly as a result of (a) the commission in Canada of a designated offence; or (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

As Murphy (2003: 6) notes, this was limited in the 1990s to designated offences, but by 2001 the list was abandoned in favour of including all serious (indictable) offences save those excluded by regulation. With such a broad and flexible net it is difficult to determine the parameters of what would not constitute laundering once the individual has any awareness or wilful blindness toward their involvement in disposing of proceeds of crime (van Duyne 2003).

The breadth of what may constitute laundering offers a stark contrast with the scope of information that may be included in a disclosure from FINTRAC. Disclosures are limited to "designated information" which may include the following categories:

- Names and addresses of persons and companies involved in the transactions and for the former, the date of birth, citizenship and several identification documents
- Transactional details such as the type of currency or monetary instrument and amount, dates and times, and transit and account numbers
- Reporting entity information on the name, address and type of business which effected the transaction
- Public information about the transactions and persons or entities that are contained in a particular report.

Financial intelligence may contribute to investigations through the identification of individuals or entities at three levels: (1) those who are already known to investigators; (2) those who are unknown to investigators but may be linked to known examples; (3) and those who are unknown to investigators. A straightforward method would be for investigators to search a disclosure for the names of individuals or entities identified in voluntary information they had

previously submitted to the Centre. Investigators may also begin to add additional dimensions to their inquiries where viable connections are present or can be drawn. In the case of those who are unknown, investigators would need to initiate a preliminary investigation to determine whether there may be sufficient evidence to warrant investigation.

FINTRAC does not indicate the depth and breadth of information that may be deemed relevant to an investigation. We should assume that it provides information about offenders, those who appear to be participating in suspicious transactions. This leaves open the question of how far the inculpatory net reaches. Disclosures may contain information about the families, friends and acquaintances who may contribute in various ways to the activities of those who are directly involved in a scheme. It could also include accountants or other professionals who acted on behalf of suspected companies or dealers even if there may not be evidence that they were conspirators. This is a logical application, given the inclusion of those who contribute or support criminal organisations under the United Nations Convention on Transnational Organised Crime (2000) and parallel domestic legislation.

This also begs the question of far the exculpatory net reaches. In cases of fraud-related money laundering, for example, we should expect that information on victims will often be crucial to identification of the patterns necessary for investigation and prosecution. Given the complexity of some schemes there might also be overlap of roles where a victim (or an apparent victim) is also an offender.

It is unclear as to whether "non-adverse" information may be relevant to an investigation. The term non-adverse could apply to individuals or entities that may attract concern by virtue of parallels to suspect transactions (e.g., amount volumes, dispositions, etc.). It may also include individuals whose transactions have no basis for suspicion other than temporal or spatial proximity to suspect transactions (e.g. a person conducts a transaction immediately before or after someone suspected of laundering). Both of these non-adverse examples could provide useful insights to determine which transactions are suspicious as compared with standard sets of transactional behaviour.

It is not indicated how a disclosure is structured in presentational terms. Given that disclosures can relate to hundreds of transactions involving millions of dollars it would seem that recipients are faced with lengthy lists of tombstone data. It is unlikely that disclosures contain any information that would assist investigators in differentiating between the spectrum of possibilities within the broad domains of inculpatory and exculpatory information. Recipients would only be able to draw such distinctions with reference to materials they already had on hand or generated by further investigation.

The reader should note that the scope of designated information precludes the provision by FINTRAC of a narrative which explains why the information may be relevant to an investigation. It bears repeating that to divulge information outside the scope of designated information constitutes unauthorised disclosure, as discussed above. The arm's length concept ensures that tactical information

released by the Centre is unidirectional, and investigative agencies are not permitted to make a query to FINTRAC at any point, including queries for additional information they may believe is pertinent in respect of a disclosure. These agencies may submit further voluntary information and/or they may apply to the Federal Court of Canada for a production order which offers access to the underlying analytical report supporting a disclosure.

From its inception to the end of March 2006, FINTRAC reports that it has received 9 production orders (FINTRAC 2006: 11). The volume of production orders seems quite low given the 610 disclosures of this time period (see below). This may reflect difficulties in obtaining a production order and/or investigator expectations on the extent to which an analytical report may assist their inquiries. I have noted above the tombstone information that can be included in a disclosure. Perhaps the main contribution that may be provided by an analytical report is the thinking behind how connections are drawn and why certain patterns are deemed to be suspicious. In practical terms this could include link charts, assessments using indicators and known typologies, and reference to information from external databases.

Levels of Analysis

Given the discussion above it would seem that FINTRAC could most easily please its investigative stakeholders by focusing on Level I persons or entities that are already known to investigators and, to a limited extent, Level II persons or entities

that are unknown but linked to known parties. To put this in simple terms, satisfying investigators over the short-term can be achieved by providing disclosures that correspond to the substance of voluntary information. This primary level of analysis may be described as a have-name-will-search approach.

If the Centre is able to add further dimensions to an investigation, it may provide financial intelligence on Level II persons or entities. Investigators may be very interested in this information over the short- to medium-term provided that the linkage to known cases can be drawn with reasonable effort. For instance, family and friends who live at the same address as those who are directly involved in laundering money. Here we have a second level of analysis which may be described as correlative. The goal here is matching variables based on hard or soft links. Hard links would include items that provide substantive evidence such as account information; and soft links would include items such as behaviour that corresponds to known typologies (e.g. repeated deposits involving large gym bags full of cash).

Over the medium- to long-term the Centre may add new dimensions to investigative knowledge and prosecution potential through the identification of Level III persons or entities (i.e. persons who are unknown to investigators). This tertiary level may be described as advanced analysis. In practice name-searching, correlation and advanced analyses may be overlapping and mutually reinforcing. For example, searching for names drawn from voluntary information and correlative matching may highlight networks of activity beyond the scope of what

Table 2: Volume of Mandated Reports to FINTRAC

	200102	2002-03	2003-04	2004-05	2005-06
Suspicious Transaction Report (STR)	3,772	17,358	14,794	19,113	29,367
Cross-Border Currency Report/Cross-Border Seizure Report (CBCR/CBSR)	—	650	29,369	75,821	54,506
Large Cash Transaction Report (LCTR)	—	226,916	2,792,910	3,658,462	6,003,488
Electronic Funds Transfer Report (EFTR)	—	1,859,237	6,689,626	7,077,675	8,887,093
Total Reports	3,772	2,104,161	9,526,699	10,831,071	14,974,454

Source: FINTRAC Annual Report (2006: 17)

is known to investigators. The primary and secondary analyses will also build a pool of information on hard and soft links that can contribute to the development of indicators and typologies to identify networks of activity. Name-driven searches are clearly dependent upon the voluntary information provided by investigators and this is also, to a certain extent, the case in correlative searching. Advanced analyses should be able to function with some degree of independence from voluntary information and this should increase over time. We should expect that this independence will remain relative rather than absolute, given that

investigators are best placed to document the novel activities that emerge and recede and how criminal activities evolve.

In contrast to criminal intelligence databases, the overwhelming majority of information contained in FINTRAC databases is non-adverse. That is, the information pertains to legitimate transactions that are conducted by Canadians and this may account for more than ninety-five per cent of the data holdings. Name-searching approaches could perhaps be achieved with a limited set of data, possibly STRs on their own would suffice. Instead, the Centre receives a comprehensive set of mandated reports and claims that nearly one hundred per cent of reporting is received electronically. The sheer volume of incoming information is striking (See Table 2) with more than 37 million mandated reports for the period 2001-02 through 2005-06. Aside from STRs which could involve various amounts, the other mandated reports involve amounts of $10,000 or more.

The suite of mandated reporting and the volume of these reports are, of course, critical to the analytical prospects for name-searching and even more so for correlative and advanced analyses. As the data set grows over time and analytical experience deepens, the hard and soft links should become tighter and more refined in identifying suspect transactions.

External Databases

Mandated reports may be complemented by access to external databases and the Centre is authorised to negotiate its access to law enforcement and intelligence sources as well as open source or public information databases. I am not aware of any open source discussion of the external databases to which FINTRAC has access. However, there are several highly probable sources. One would be the Canadian Police Information Computer (CPIC) which is run by the RCMP and is used by Canadian enforcement agencies for mundane activities through to specialised collections of information. An example of the former includes police in their patrol cars searching vehicle registration, license and address information through a CPIC link. An example of the latter includes criminal record checks against individuals.

Other useful policing databases could include the criminal intelligence holdings of major Canadian enforcement agencies, including the RCMP and Criminal Intelligence Service Canada (CISC). Open source private sector databases that could be useful in adding context to an analysis of FINTRAC data could include credit agencies such as Equifax and comprehensive reference services for business and legal information such as Lexis/Nexis.

While the analytical possibilities are numerous, it is important to recognise the limitations that may result from FINTRAC's design. Its limitations are focused on core design principles: the imperative to maintain an arm's length relationship to

law enforcement and potential disclosure recipients; and the prohibition on unauthorised disclosure. Transmission of tactical information is constrained to the voluntary information and disclosure process. It would take considerable imagination to describe a scenario under which a FINTRAC analyst could discuss any case information with members of an enforcement agency, let alone with Money Laundering Reporting Officers from banks and other regulated institutions, without running the risk of making an unauthorised disclosure. A strategic level discussion such as sanitised cases is also problematic, given that you may be addressing yourself to those who investigated the relevant case or its details may be well known amongst the investigative community. It may not matter in theory to discuss issues that investigators are already aware of: however, the line for unauthorised disclosures would tend to prompt a conservative stance for both personal survival and the avoidance of institutional scandal.

Another limitation relates to FINTRAC's use of external databases. Given that a portion of its interests in external data may relate to tactical intelligence gathering, any recording of user activity is inherently problematic. The interest of a FINTRAC analyst in particular persons or entities could be determined by the operators of an investigative database or the operators of open source databases. It is not clear whether the Centre minimises these risks through insularity or whether suitable conditions can be negotiated with database operators.

Arguably, the most significant limitation is imposed by the legislatively required distance between the Centre and investigative agencies. This removes many of

the prospects for back-and-forth interaction and learning that would stimulate rapid growth in analytical skills and knowledge. More systematically, it intimates the possibility of an ongoing disjunction between the tactical and strategic alignment of FINTRAC and investigative agencies.

Policy Transfer with a Canadian Twist

The Canadian AML regime represents an effort to emulate systems that have been pioneered and promulgated internationally. The epicentre of the design and proliferation of AML and related systems is the United States, the pre-eminent advocate and marketer of crime controls to deal with serious and organised crime in the twentieth and early twenty-first century (Andreas and Nadelmann 2006). A cursory review may lead some to conclude that, with the implementation of the PCMLTFA, Canada has caught up to its neighbour. The United States had begun to build its AML regime in the 1970s and by the 1990s most of the architecture was well established. All the generic prevention and enforcement components noted by Levi and Reuter (2006) and Reuter and Truman (2004) are in place in Canada. The prevention component includes administrative/regulatory sanctions, regulation and supervision, reporting and customer due diligence. The enforcement component includes civil and criminal confiscation and forfeiture, prosecution and punishment, investigation and predicate crimes. Moreover, there is a dedicated financial intelligence unit in Canada, FINTRAC, which can interact with Canadian stakeholders and other FIUs.

Nevertheless, policy transfer is by no means a linear process. It has symbolic and substantive dimensions and is powerfully shaped by the mediating influence of the policy-making context of different political, legal and cultural rules (Jones and Newburn 2006). While FINTRAC is symbolically very similar to its most proximate analogues, it is a very different institution in substantive terms. Among other conclusions the Auditor General of Canada (2004) found that FINTRAC was labouring under unusual safeguards by international standards. These focus on a strict legislative framework, including the arm's length principle and the circumscribed disclosure process. Other comparable FIUs are free to develop much closer links and flows of information with law enforcement agencies. For instance, the Financial Crimes Enforcement Network (FinCEN) and the Australian Transaction Reports Analysis Centre (AUSTRAC) offer query access to member enforcement agencies. Others are more directly embedded in the law enforcement matrix such as the former National Criminal Intelligence Service (NCIS) which was merged in 2006 with several other agencies into the United Kingdom Serious Organised Crime Agency (SOCA).

The Context of Political, Legal and Cultural Rules

The peculiarities of FINTRAC's design are certainly the product of a specific context of political, legal and cultural rules. Policy initiatives at all levels of government in Canada are required to adhere to the Charter of Rights and Freedoms (1982). Initiatives which run afoul of the Charter may be subject to challenge, and courts may undertake several options such as entering exceptions

or declaring legislation to be unconstitutional and therefore of no force or effect under Canadian law. The need to develop and implement Charter-friendly policy is thus an imperative for policy-makers. Rights and freedoms under the Charter are guaranteed "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" (Section 1).

The Supreme Court of Canada articulated the benchmark standard for testing the constitutionality of policies that are found to impinge on rights or freedoms in the case of Oakes (1986). Two principal criteria must be satisfied for a given policy to pass the test. First, it must be demonstrated that the objective of a policy relates to concerns which are pressing and substantial in a free and democratic society. Second, the means chosen to achieve the objective must pass a three-part proportionality test:

> (1) the measures adopted must be carefully designed to achieve the objective in question. The measures must not be arbitrary, unfair or based on irrational considerations but rather must be rationally connected to the objective.
>
> (2) the means, even if rationally connected to the objective, should impair as little as possible the right or freedom in question.
>
> (3) there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom and the objective which has been identified as of sufficient importance.

In the Oakes case, the accused was charged with possession of a narcotic for the purposes of trafficking. Persons so charged faced a reverse onus under the Narcotic Control Act (1961) which required the accused to prove the drugs in their possession were not for the purpose of trafficking. In effect the accused was faced with the burden of having to prove guilt for one offence (possession) in order to escape conviction for a more serious offence (possession for the purpose of trafficking). The court found that the legislation violated subsection 11(d) of the Charter, the right to be presumed innocent until proven guilty. The relevant section of the act was declared unconstitutional because of the absence of a rational connection between the proven fact of drugs possession and the presumed fact of intent to traffic.

Kiedrowski and Webb (1993) discuss the implications of jurisprudence that has modified the Oakes principles. First, revisions of the rational connection test have made it easier to place limits on Charter rights. Policy makers need only establish a credible basis for a particular legislative approach. A consensus in the literature or research on a given issue is not required. Second, the little as possible test has been revised such that the effectiveness of a given policy becomes the central issue. Measures chosen by Parliament may be considered acceptable where alternative measures, which are less Charter offensive, would also be less effective. The first two elements of the proportionality test are the critical components of the Oakes process. The third element, the effects component, has rarely been used by itself as a basis for disallowing a challenged provision.

It is within the context of the Oakes test that we can begin to understand the strict legislative framework of the PCMLTFA and the structure and function of FINTRAC in particular. Given the international legislative and enforcement attention to money laundering and terrorist financing it is clear that these represent a pressing and substantial concern. The design is intended to achieve a balance between the need to detect and deter serious financial crime and the protection of Charter rights. The collection of private financial information creates the potential for the violation of the privacy rights of Canadians and the disclosure of information allows access without a warrant for enforcement agencies.

Thus, the crux of the constitutionality question revolves around two issues: (1) whether this policy is rationally and credibly connected to the goal of detecting and deterring serious financial crime; and (2) whether the effectiveness of this policy could be matched or exceeded by a less Charter offensive alternative. A less Charter offensive alternative was available prior to the PCMLTFA in the form of Voluntary Suspicious Transaction Reports (VSTRs) which financial institutions could report to police and the option of investigators seeking a judicial warrant for further transactional details. One would find it hard to believe that these measures would be nearly as effective as the PCMLTFA provisions although I am not aware that any systematic study has been undertaken to disprove it.

The more penetrating issue appears to be the rational and credible connection between the policy and its goal. It is useful at this point to note again the tri-partite division of analytical levels (name-searching, correlation, and advanced analysis)

and the known through unknown status of persons for investigators. This is a didactic tool which assists our understanding of the design and operational potential of the Centre.

Law enforcement agencies are not permitted to have access, without a warrant, to the personal financial information of Canadians. FINTRAC is a vehicle through which enforcement agencies may, under prescribed and controlled conditions, receive financial intelligence on transactions that are deemed to be suspicious and relevant to investigating laundering. What is more, the arm's length relationship to enforcement is a further assurance that FINTRAC will not function or be perceived to function as a query access database for investigators. Its design is intended to balance privacy rights with the needs of those investigating serious financial crime. Its design and status as an independent agency has a further intention. Specifically, that an agency dedicated to analyse laundering should enhance governmental objectives to identify, seize and forfeit the assets of those involved in serious financial crimes. This implies that with the passage of time FINTRAC should be able to enhance the scale and scope of asset targeting under proceeds of crime and related legislation.

Assessing the Potential Impact

In practical terms the rational connection between the policy and its goal should emerge over time in the demonstrable value-added that FINTRAC contributes to the targeting of larger networks and persons little known or unknown using

traditional investigative techniques. The first four years of FINTRAC's operational status demonstrate a modest rate of disclosures and an impressive growth of more than ten-fold in the value of disclosed transactions, over $5 billion in 2005-06 (See Table 3).

Table 3: FINTRAC Disclosures and Dollar Values

	2002-03	2003-04	2004-05	2005-06
Disclosures	103	197	142	168
Value (millions)	$460	$696	$2,048	$5,004

Source: FINTRAC Annual Report (2006: 8)

Readers should not be seduced by the prolific dollar values. FINTRAC provides no accounting for how it arrives at the aggregate values and (recalling the discussion of inculpatory and exculpatory information above) therefore the safe ground is to assume these values cover the widest possible terrain. In the absence of some detailed information on accounting methods, the reader is also left with the untested assumption that the number of disclosures and aggregate values are discrete variables from year to year. Indeed, there may be overlapping

of disclosure numbers and aggregate values. We should also expect considerable attrition because FINTRAC is disclosing where it has reasonable grounds to suspect the information would be relevant to those investigating a laundering offence. The information can only be validated by investigators. Conversely, FINTRAC cannot properly be blamed if there are insufficient resources to follow up its tactical disclosures, unless it could legally provide data more helpfully than it does so as to assist prioritisation by investigators.

The Senate of Canada Standing Committee on Banking, Trade and Commerce (2006) conducted a review of the PCMLTFA. A variety of evaluative insights were offered by the RCMP Deputy Commissioner, Federal Services and Central Region. He noted that the RCMP had received a total of 382 disclosures from FINTRAC (ostensibly from its inception) and of these:

- 9% identified individuals who were new or unknown to investigators
- 14% provided additional information to ongoing investigations
- 16% contained insufficient information to proceed with an investigation
- 25% were the direct result of previous voluntary reports submitted by the force
- 29% were associated with concluded investigations where sufficient resources were available

- 53% of the disclosures were concluded for reasons such as no criminality detected, insufficient information, no predicted offence, and dated information or lack of investigative resources.

Readers will note that the percentages add up to more than one hundred and that the information thus relates to overlapping categories. It is also worth noting the Deputy Commissioner's comments regarding VSTRs that private businesses continue to disclose directly to the RCMP. He argued that these tend to contain more information that what is contained in FINTRAC information and that the inclusion of a narrative with the VSTRs helps investigators prioritise the at times voluminous lists of transactions.

The RCMP statistics on FINTRAC disclosures do not provide overwhelming evidence of a rational and credible connection between the policy and the goal. That having been said, the mandate is in its early stages and it should be a reasonable assumption that disclosures may become more focused and relevant to investigators as time passes. Also, in fairness to FINTRAC it is not obvious what would be an appropriate yield from STRs and other transaction sources or, for that matter, from voluntary information provided by investigative agencies. In terms of value-added, the Centre should contribute to the bottom-line of the government's policy, enhancing the scope of assets targeted and seized. The Seized Property Management Directorate (SPMD) provides a helpful baseline of statistics (See Table 4). Several cautions should be noted in interpreting SPMD statistics. Seizures are not necessarily disposed of within the same year and

assets are depreciated by factors such as the costs of asset management and the business, living and legal expenses of a defendant. Some materials are unsafe for sale and are destroyed. Assets are returned to the owner in the event of a not guilty verdict. Further, assets may be held under the PCMLTFA and other provisions such as drug laws and certain sections of the Criminal Code.

Table 4: Seizures and Net Forfeitures of Proceeds of Crime in Canada

	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05
Value of Seizures ($ millions CAD)	31	33	45	35	36	39	71	56	96
Net Forfeitures ($ millions CAD)	10.3	15.6	19.6	12.7	8.2	8.3	12.8	18	15.3

Source: Seized Property Management Directorate (SPMD).

Like many other FIUs, the Centre must depend upon cooperation with a wide range of stakeholders a function which would tend to be more complicated in Canada due to the requirement of an arm's length relationship. This creates a challenge for evaluating the PCMLTFA initiative as multiple stakeholders are left with an ill-defined responsibility for monitoring what happens to the FINTRAC

disclosures they receive. The Auditor General of Canada (2004) found that the absence of a comprehensive monitoring system for disclosures renders it impossible to assess the value of disclosures, to make improvements to these over time, and to assess overall impact in reducing money laundering and terrorist financing. In terms of the Oakes test, this means that there continue to be many unknowns in respect of both the rational and credible connection test and the effectiveness and least possible impact on Charter rights test.

Public Criticisms

The Auditor General of Canada (2004) has provided, thus far, the most detailed public critique of FINTRAC. This institution is not often the subject of criticism and many critiques that arise tend to remain at a general level, a function of the difficulty in penetrating a highly secretive agency. The criticisms that are voiced publicly tend to focus on FINTRAC having either "rubber teeth rather than real fangs" (Thompson and Turlej 2003) or that it is part of a movement toward a domestic and international criminal justice panopticon (Beare 2003). Advocates of the former approach tend to focus on providing the police and other investigative agencies with as many tools as possible to crack down on those involved in financial crime. These parties appear to draw satisfaction from the prolific input and output variables that have been generated and promote for ongoing increases. Advocates of the latter stance are concerned about the demonstrable effectiveness of these measures and the implications it is having upon privacy rights, business interests and the broader society.

As noted above, the bulk of media attention on FINTRAC tends to occur around the time of the release of the annual report each fall. Of course, the audit report generated a range of negative media reports (cf. Gordon 2004; Howlett and Waldie 2004; Ward 2004). These and others repeated the findings of the audit report and added a touch of sensationalism in arguing that the agency was hamstrung by privacy concerns, that its information had not led to one single prosecution, and that investigators were not impressed with the agency. In several respects the audit report findings and the associated reportage involved superficial and misplaced critiques. For instance, FINTRAC began making volume disclosures in 2002-03 and laundering investigations may take several years to complete. Also, the agency was not hamstrung by privacy concerns as it continued to make disclosures, the real question was the limitations created for investigators confronted with lists of transactional details and no narrative.

In the months that followed the report, many of the audit critiques were described by FINTRAC's Director as "dated" and out of step with significant advances that had been made by the agency, most notably large increases in the dollar value of disclosures (Gordon 2005). This was followed up by FINTRAC's Senior Deputy Director responding to nagging audit critiques with the following: "You have to remember the auditor general's report now is two years old it was a snapshot taken very early in our history, and we've come a long way (Gordon 2006).

Money Laundering Controls and Home Invasion Robbery

In December 2006, an Act to Amend the PCMLTFA received Royal Assent. Once the legislation comes into force, it will introduce several changes. An analysis of the minutiae of the amendments is beyond the scope of the present work and would be unprofitable given that the implementation of most of the provisions will be delayed to the summer of 2008. It is useful to note several of the changes at a general level. Customer due diligence will be enhanced and special due diligence will be introduced to monitor correspondent banking relationships and foreign politically exposed persons. Reporting entities will be required to report attempted suspicious transactions. A registration regime for money service businesses will be introduced. The amended legislation also aims to improve information sharing between the Centre, law enforcement and domestic and international agencies.

As FINTRAC approaches and enters the second phase of its legislative mandate several questions arise. Will the amended legislation improve the capability to prevent and reduce financial crime and the underlying predicate crimes? Will the amended legislation and its implementation overcome systemic issues that may impede the effectiveness of the regime? These are questions for further research on this topic. However, readers will appreciate the limits that these changes may generate given the constitutional issues that continue to be reflected in the maintenance of the arm's length relationship and a circumscribed disclosure process. There is not the space here to evaluate these issues broadly, rather I

shall focus on AML controls with respect to the potential impact on HIR and linked criminal enterprise.

Home invasion robbery is a serious crime, and in its medium- to high-level manifestations, it could be classified as organised crime under the United Nations Convention (2000) and parallel domestic legislation in many countries. In its more organised form, HIR generates substantial monies, from $25,000 to as much as $200,000 from one incident as discussed in the previous chapter. The focus of laundering controls is, of course, on monies and assets. Explicitly or implicitly, one might assume that laundering controls target 'Mr Big' cases involving only large amounts of money, millions or tens to hundreds of millions. The reality is that many of the cases triggered or assisted by AML controls tend to target 'low-hanging fruit'. This is a by-product of AML typically being viewed as a complement to existing investigations rather than as an analytic resource and guide to generate new cases not already under investigation (cf Beare and Schneider 2007; Cuellar 2003).

HIR seems more about violence than about money. Nevertheless, HIR is a predicate offence that generates proceeds of crime. Unless those involved spend all the resources, financial institutions are obliged to demonstrate due diligence and report on clients whose deposits and other financial transactions do not match their income or profile. What FINTRAC discloses is secret aside from the sanitised cases it presents in its Annual Report and on the website. However, if a network involved in HIR and other activities is under investigation by police, they may

submit voluntary information to FINTRAC. Any transactions linked to predicate offending and money laundering may be disclosed. Except for the higher-dollar volumes (or the examples that could be classified as organised crime in the previous chapter), it is unlikely that FINTRAC would disclose on this independently.

This brings us back to one of the under-represented categories of HIR in the examples discussed in the previous chapter; those linked to marijuana grow operations (MGOs). I suspect (though available data does not allow proof) that a large minority and perhaps a majority of HIR cases in Canada are MGO-related. This relates to the value of the trade, which has been estimated at $5.7 billion wholesale and $19.5 billion retail for the marijuana market across Canada (Mulgrew 2005). Although the number of MGOs is not known, more people are drawn into this highly lucrative (though dangerous) enterprise each year. It is hardly surprising that a market will attract thousands of participants where a 10 square metre room can generate more than $100,000 from cultivating marijuana; this over a one-year period involving 100 plants with the average value of a mature marijuana plant estimated at $1,000 (Boyd 2000).

The dollar volume of the marijuana market and the diversity of participants involved makes the targeting of MGOs for HIR a highly-lucrative albeit risky enterprise. With AML controls in place, those running MGOs may, in addition to holding marijuana, tend to have large values of cash on-hand given the risks of depositing these proceeds with a financial institution. Unless the marijuana grower

has a reliable method or outlet to launder their proceeds of crime, they have to store their monies and introduce it slowly into financial system or face the risk of detection, prosecution and forfeiture. Thus, the popularity of home invasion robbery, in part, reflects the paradoxical effects of proceeds of crime enforcement and AML controls. HIR also offers a form of market discipline as targeted independent producers may find that it is in their interests to engage the protection and (laundering) services of established groups like the Hells Angels and Asian (Vietnamese) gangs. This helps to explain the durability of HIR in contemporary Canada

Conclusion

In this chapter, I discussed the rise of anti-money laundering (AML) controls and the national financial intelligence unit (FIU) in Canada. I addressed the common incorrect perception that AML relates primarily to organised crime, as it is commonly understood, and drug trafficking. Instead, these controls cover a broad range of serious and organised crime. This diversity can cover virtually any proceeds of crime, including tax evasion. I explored financial intelligence as it portrays itself as being the vanguard of efforts to tackle serious and organised crime. This supposed centrality offered useful insights into several aspects of the prevention and control of serious and organised crime.

The chapter began with a brief discussion of getting inside a FIU, in particular the author's involvement with the Financial Transactions and Reports Analysis Centre

of Canada (FINTRAC). It discussed the difficulties of obtaining and using information about this very secretive area of public policy and operations. I then provided an overview of the policy and operational structure in Canada such as the jurisdictional division of governmental and investigative responsibilities.

I then focused on issues surrounding the creation of FINTRAC in 2000. These included the domestic and international pressures for its creation, the substantive components of the reporting regime, and key components of FINTRAC's design. The discussion also looked at the operational potential of FINTRAC. This included its tactical mandate via the disclosure process, levels of analysis that are possible in context and the potential utility of external enforcement/intelligence and open source databases.

I also examined FINTRAC as representing an example of policy transfer from the United States but with a Canadian twist. Its design features are specific to the legal and cultural rules in Canada. These design features, in turn, have an effect on the potential impact of FINTRAC. This resulted in a variety of public criticisms of the institution. I provided a brief discussion on Phase II of FINTRAC's legislative mandate, which is a response to the various criticisms and a general deepening of the AML controls in Canada.

Finally, I explored how AML controls may potentially detect or affect the phenomenon of home invasion robbery. This included discussion of how HIR, as a serious and/or organised crime, can generate sufficient proceeds to trigger

investigative interest and/or AML detection. This is especially the case with respect to the more organised examples discussed above, and, in particular, with respect to the multi-billion dollar marijuana grow operation (MGO) industry.

I know turn to the conclusion to this thesis.

CHAPTER EIGHT:

CONCLUSION

This study aimed to provide an empirical account of the nature and scope of home invasion robbery, an emerging form of serious and organised crime in Canada. It situated these activities within the prevention and control apparatus with a particular focus on financial intelligence. The principal data source was case law as well as participant observation in selected areas of the Canadian law enforcement and intelligence community. Direct use of the latter experiences was constrained by secrecy and legal issues. Therefore, they were used to inform my use of a range of secondary research materials.

In chapter two, I provided a review of the literature on serious and organised crime alongside efforts to define this phenomenon. It began by exploring the distinction between two models, disorganised crime versus the mafia-octopus (disaggregated crime versus the Godfather), which underlie many interpretations of this topic area. I then provided a selective overview of official definitions from the United States, Canada, the European Union and the United Nations. My attention then turned to assessing the importance of social context in understanding organised crime as a participant in illegal and legal activities. Issues of social context were used to highlight the underlying dimensions of the

linear (mafia-octopus) and non-linear (disorganised crime and network) arguments.

In this chapter, I argued that the literature tends toward disorganised crime and interrelated markets as indicative of the bulk of organised crime activity. Official definitions of the phenomenon have a long history of linear arguments of a presumed concentration toward populist images of a mafia-octopus. Nevertheless, official definitions have more recently (post-United Nations Convention Against Transnational Organised Crime 2000) given way to recognising the non-linear arguments of disorganised crime and network structures. Unfortunately, whilst the definitions have expanded to include a broad range of serious crimes, the Godfather imagery has lost little of its cachet. A situation of denotative expansion and connotative intransigence continues to impede clearer understanding of what organised crime is and how it fits into contemporary society.

In chapter three, I addressed critical issues on the evidence base for the study of organised crime as well as articulating an appropriate methodology for a case study on the social organisation of a serious crime, home invasion robbery (HIR) discussed in chapter six. It is not at all clear that standard scientific positivist methods are appropriate in the field of organised crime study or the construction of a helpful evidence base in this area. It is difficult to answer basic questions about the state of the evaluation literature, or to assess the size and scope of this problem or the assessed level of threat. Few programme evaluations are

conducted, and those that exist tend to be basic pre-post designs using privileged operational data, often from enforcement agencies. Efforts to estimate the size of organised crime profits and the extent of money laundering typically involve little in the way of rigorous methodology and a distinct inflationary tendency.

The problems of studying organised crime are compounded by several key factors. Certain observers may exercise considerable influence over knowledge about the phenomenon and who can gain access to study the subject matter. The mass media provides the most accessible form of knowledge on this topic, though their coverage often tends to portray an explicit or implicit mafia-octopus. The executive branch of government, and law enforcement in particular, may limit funding, access and/or attempt to obscure evidence for certain topical areas or study.

Notwithstanding the acute and chronic difficulties of studying organised crime, academic researchers have employed a range of techniques to study various forms. These methods have included participant observation, observation, interviews with victims/offenders/enforcement/government, examination of police and court files, and other methods. Many of these efforts have required that the methods are tailored to the phenomenon of study. In developing my thesis, I employed a range of methods. This included participant observation in the fields of criminal and financial intelligence that, although I could not use directly for legal and ethical reasons, helped to inform my use of other sources of information. These included case law, the published and grey market literature, media reports

and scholarly literature. In chapter four, I assessed the challenge of social regulation in general and with particular attention to organised crime. I discussed selected insights from anomie theory. These included Durkheim's insight that anomie results from the absence of society in the failure to achieve social regulation. It also included Merton's insight that anomie results from the presence of society in the failure to achieve a balance between goal achievement and the suitability (morality) of the available means. then turned to the claim that Durkheim and Merton may be control theorists, and I highlighted that in control theory individuals are freed to engage in deviance whereas in Durkheim and Merton individuals are pressured toward deviance.

I then shifted from issues of causation to responses with respect to particular approaches to social regulation. These approaches illustrate the limitations of applying standard control orientations in general and especially with respect to those involved in organised crime. The analysis addressed general deterrence (the wider population), specific deterrence (at-risk individuals), incapacitation, and rehabilitation. In the case of the first three responses, we find questionable capacity to reduce or prevent organised crime. Such groups have available numerous techniques and tactics to circumvent or displace risks. Further, rehabilitation has not been properly tried.

The chapter also included discussion of Durkheim's legal evolution thesis. Therein, he argued that as society becomes more complex, moving from mechanical to organic solidarity, repressive (punitive) law is progressively

replaced with restitutive (restorative) law. Although there are a number of critics of the legal evolution thesis, Durkheim posed a key problem of whether modern law can retain its own moral force and be something more than mere politics. The control of organised crime is an area that illustrates the continuing drift toward the narrow concerns of positive law.

In chapter five, I examined the sociological foundations of institutional anomie theory (IAT). These foundations involved the rise of the doux-commerce and self-destruction theses (Hirschman 1982) of market society. Respectively, the eighteenth century Enlightenment view that markets help to perfect human society and the nineteenth century Industrial revolution view that markets have a corrosive effect on human society. Building upon these ideas, IAT offers a macro-criminological model to examine structural causation. It posits that a market-oriented imbalance in social institutions may cause criminogenic tendencies in various parts of society and simultaneously undermine institutional and individual observance of social rules.

I then examined key issues relating to the ideas of globalisation and empire. In particular, the post-World War II view of globalisation as a system of economic means to improve the condition of humanity and social organisation. This was followed by the late-1980s shift toward a view of globalisation as a system of economic means apparently operating for its own abstract purposes. These issues are then linked to the concept of empire (over imperialism) in the contemporary period of United States dominance.

My analysis then turned to how Canada experiences several anomic trends. Canadian sovereignty is not assaulted directly by an imperial aggressor but rather national participation in contemporary Empire compels a market-oriented focus in social institutions. This produces considerable inter-related problems and limits the ability of social institutions to regulate individuals and society. Despite the successes of the market-oriented society, those individuals and groups who find themselves marginalised represent a substantial problem to Canadian society.

In chapter six, I provided a case study of home invasion robbery as an example of serious and organised crime. I did not argue that all HIR cases are organised crime, either in the sense that they meet stereotypical notions or that they necessarily fit neatly into official definitions. This is central to the earlier debates and issues raised in the thesis about the evolving definitions of 'organised crime' (See Chapter Two).

Not the least of these issues is that the term itself and official definitions are problematic, and they are often unhelpful when examining the variable organisation of serious crimes. My aim was to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise.

I began with a range of definitional issues relevant to the discussion of HIR. This included discussion of the two most proximate categories for HIR, residential break and enter (RB&E) and robbery, as defined by the Criminal Code of Canada. I then turned to the definition of HIR, which is not a distinct crime category but

rather a subdivision of the categories of RB&E and robbery. The narrow definition focuses on robbery that occurs in a private dwelling. The broad definition focuses on a robbery, or any RB&E involving a violent offence, that occurs within a private dwelling. Given the potential overlap in the broad definition, a given incident should only be counted once as the more serious offence. I also provided a brief discussion of definitional issues relating to serious and organised crime, and I discussed how HIR exhibits, and is linked to, a spectrum of criminal enterprise

I then turned to attempting to quantify the magnitude of the HIR problem. This was not a straightforward task given that HIR does not exist as a distinct official crime category. For this reason, Uniform Crime Reports (UCR 1) that contain a nationally representative picture of police-recorded crime cannot be used to identify HIR incidence. It is possible to gain some idea of incidence using the more detailed UCR 2 survey of police-recorded crime. However, UCR 2 represented less than 50% of the national volume of police-recorded crime and, therefore, it does not provide a representative picture of Canada as a whole or any of its regions. The General Social Survey (GSS), which includes a criminal victimisation component, provides some insights. However, the GSS does not have sufficient sensitivity to provide reliable statistics at a national, or census metropolitan area, level. The International Crime Victims Survey (ICVS) is a comparative instrument and its typically small sample sizes (around 2,000) for each country produce sampling errors that make precise domestic estimates of existing crime categories problematic. Thus, the ICVS does not have sufficient

sensitivity to be able to provide a reliable or precise estimate of the sub-category of home invasion robbery.

Then I provided an overview of 25 examples of HIR, 16 drawn from case law and 9 from newspapers. These were assessed using the 5Is analytical framework (Ekblom 2003) and its eleven generic causes of crime to assess the social organisation of this phenomenon. My particular aim in using the framework is to examine how HIR exhibits, and may be linked to, a spectrum of criminal enterprise. I then turned to the Canadian policy response specific to the problem of home invasion robbery.

I have tried to highlight explicitly the profitability inherent in each of the examples (where the information is available), and there were a number of quite profitable examples that could be flagged by money laundering controls. Whilst money laundering legislation may have, to a greater or lesser extent in various countries, been created to deal with organised crime and drugs trafficking in particular, the pertinent legislation in Canada and elsewhere by no means limits itself to 'organised crime' as that is commonly understood. Anti-money laundering controls can identify and be used to target a broad spectrum of serious crimes. This may result objectively from sums over $10,000 (objective reporting) and/or from sums that are incompatible with the individual's income and profile with a financial institution (subjective suspicious transaction reports that can potentially be triggered at any monetary amount). There are limits to what money laundering controls can achieve, and I am critiquing the idea what such controls can achieve

when they are ostensibly directed at 'organised crime'. Whereas, in reality, these controls are directed at the finances generated by (potentially) any serious predicate crime (i.e., monies or convertible assets).

In chapter seven, I discussed the rise of anti-money laundering (AML) controls and the national financial intelligence unit (FIU) in Canada. I addressed the common incorrect perception that AML relates primarily to organised crime, as it is commonly understood, and drug trafficking. Instead, these controls cover a broad range of

serious and organised crime. This diversity can cover virtually any proceeds of crime, including tax evasion. I explored financial intelligence as it portrays itself as being the vanguard of efforts to tackle serious and organised crime. This supposed centrality offered useful insights into several aspects of the prevention and control of serious and organised crime.

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Appendix A – Table 5: Home Invasion Robbery Under the 5Is Analytical Framework

	Criminality (predisposition)	Resources to Avoid Crime	Readiness to Offend	Resources for Crime	Anticipation of Risk, Effort and Reward	Offender Presence in Situation	Target Person or Property	Target Enclosure	Wider Environment	Absence of Crime Preventers	Crime Promoters
Case Law											
A.J.C.	General and/or specific intent	Criminal lifestyle offenders	Motivation to acquire money and convertible property	Firearms without ammunition Knife Pepper spray Duct tape Hockey (goalie) masks	$50,000 expected $2,000 and electronic equipment stolen	1 Young offender 1 Adult male 1 Unidentified accomplice	Family owned jewellery store 2 adults, elderly woman, 2 teenagers (Faced yelling and swearing and questioning at gunpoint	At time of entry to house a 76-year-old woman was present		No neighbour involvement despite father yelling for help from his yard, used his own mobile phone to call police	Jewellery business success likely identified by accomplice, family fearful and would not identify this person

Bergman	"....."	Female offender drug addicted with lengthy criminal record	Motivation to acquire money for drugs purchase	Telephone ripped from wall	Small television and a box of silverware	1 Adult female 1 adult male	87-year-old widow (pushed to the floor, pelvis injured)	Entered via ground floor apartment window	Connection to drugs market	No neighbours intervened	Male was enabler, but he left once seeing the elderly woman was hurt
Bernier	"....."	Criminal lifestyle	Motivation to steal money, drugs (marijuana), stole electronic items	Handgun or rifle Handcuffs	$300 Less than $5,000 in electronic items No marijuana found Via threats of violence Bernier received $2,000 from those who misidentified the target property	1 Male 1 Young offender Possibly two others	1 male lodger (handcuffed, struck on the head with butt end of firearm) Owner of the property not home at time of incident	Broke down door of house	Connection to marijuana market, Bernier part of common criminal enterprise to raid marijuana grow houses	No involvement of neighbours	Bernier requested from friends where to go to steal pot, female acquaintance misidentified the target

Cooper	"....."	Unspecified whether he had criminal record	Motivation to steal money	Ski mask, gloves, dark clothing, large hunting knife (located in home on previous entry by offender)	No ostensible reward, apart from inflicting violence and injury	1 Male	16-year-old girl (assaulted with knife)	Entry through unlocked window		Young girl at home alone for the incident and previous occasions when offender had entered	No other parties involved
Curtis	"....."	Criminal lifestyle	Motivation to steal money to buy cocaine	Balaclava, butcher knife from victim's kitchen	No ostensible reward, although fled in victim's car and was arrested in possession of briefcase and watch owned by the couple	1 Male	Couple next door known to offender, male victim suffered stab wounds	Removed the bathroom window to gain entry		No neighbour intervention, when offender entered bedroom he was confronted by the male victim	

DaSilva	"....."	2 adults held extensive criminal records for violence	Motivation to steal money, including demands for bank cards and PIN passwords	Car, replica semi-automatic handgun (pellet gun), mobile phones	Jewellery and other valuables were stolen (unspecified value)	2 Adults 1 Young offender	Randomly selected car driving by	Rear-ended car, couple attacked and later taken to their home to continue robbery		If there were passerby on the road, none stopped to help	
Harris	"....."	Unspecified whether offenders had criminal records	Obtain money	Knife, screwdriver, rubber gloves and a ski mask. Cut the exterior phone line and ripped phone from the wall Rubbed down the house to remove fingerprint evidence	$1,000 and an unspecified value in jewellery, electronics, credit cards, etc.	2 Adults (one female) 1 Young offender	Elderly couple considered potentially wealthy. Male victim was beaten and suffered brain damage, female victim was pushed and fell breaking her hip	Home visited twice, in part to cut screen on kitchen window (that was often left open) and was used as the entry point		No intervention from neighbour until next day (victim dragged herself to front room window) Male victim tried to defend using a small saw	Adult female acted as match-maker for the two males who committed the actual robbery

H.(D.G.)	"....."	Recent criminal lifestyle with one conviction each for assault and theft	Motivation of money to fund crack and marijuana habit	Offender proceeded on his own despite planning with two other accomplices Mask, disconnected the phone line	$350, and un-cashed cheque for over $18,000	17-year-old male	Elderly woman (hurt her arm and knee when pushed to the floor)	Entered the home at night, not clear the point of entry		Neighbours did not intervene, but a police check stop several days later result in arrest	Victim had engaged the young man to do odd jobs which gave him knowledge of the home
Ivan	"....."	Lengthy record for burglary, theft and robbery	Motivation of money to pay for gasoline (petrol) he owed for vehicle	Ripped phone from the wall	$20 and bank cards plus the PIN, but did not get to use the latter before arrest	1 Adult	Female occupant of mobile home, and 10-year-old boy was present but not victimised	Gained entry by asking to use the phone, and saying that his car had broken down		Neighbours did not intervene, but victim or a neighbour called police	Indirectly, the convenience store that provided offender with gas without payment

J.C	"....."	It appear that the offender did not have a criminal record	Motivation to exact revenge for alleged abuse	Mask, two large knives	As the motivation was revenge, it is not clear that there was any tangible reward	1 Young offender	Couple (both received various slashes and were bleeding)	Girlfriend of the offender let him into the house		Neighbours did not intervene, daughter did not intervene The daughter and parents gave a false description to police	Daughter alleged couple were abusing her, she planned with her boyfriend for him to commit the offence
Jones	"....."	Central defendant had criminal record, and he and others suspected of many other offences	Motivation of stealing marijuana and drugs money	Jackets with POLICE lettering, firearms, gloves, toques, plastic flex-cuffs, duct tape, police scanner, phone ripped from the wall	Eight marijuana plants (unspecified value), $40	3 Males	Couple hog-tied, blanket thrown over their head Female sexually assaulted, male struck on the face with handgun	Front door forced open	Believed to be raiders of marijuana grow operations	Somewhat remote location, no neighbour intervention	Involvement of the couple in growing marijuana attracted negative attention

K.(J.)	"....."	Unclear if the offenders had prior records, unclear if victim had locked doors and windows	Motivation to steal money and other items	Butcher's knife	Modest (unspecified) amount of money and some costume jewellery	2 Males 1 Male young offender	Elderly male, suffered stab wound to his stomach	Household, unclear whether offenders broke in or door was open		No neighbour intervention	Young offender knew grandchildren of the victim, which may have contributed to targeting
Simmonds	"....."	Two offenders most likely involved in the shooting and murder had previous records for weapons, violence and both were convicted for involvement in a previous home invasion	Motivation to steal drugs and drug money	Firearm, duct tape	$25,000 cash stolen from construction office, unclear if two kilos of cocaine worth $80,000 were stolen from the victim	3 Males 1 Female	Victim a known drug dealer	Hotel room, unclear the manner in which victim was kidnapped	Victim a known drug dealer who laundered proceeds through his construction company	Apparently, no one at the hotel intervened	Offenders drawn toward victim due to his illicit activities, and $90,000 debt apparently owed to one of the offenders

Taing	"....."	Whether offenders had previous records is unclear	Motivation to steal money, and valuables including jewellery	Imitation handgun	$70,000 in jewellery removed from the family store, undisclosed modest money and valuables from the home	5 or 6 Males	Couple with two daughters, offenders appeared to have some knowledge the family owned a jewellery store	Household entered at gunpoint (imitation handgun)		Neighbours did not intervene	A member of the victims' extended family may have released information about the jewellery business
Varga	"....."	Three of the offenders had criminal records, but one had no record	Motivation to steal marijuana and drug money	Baseball bat, duct tape, steak knife from victim's kitchen, phone disconnected	Unspecified quantity and value of marijuana stolen, no drug money located by offenders	4 Males	Man running a marijuana grow operation, he was beaten head to toe with the baseball bat, superficial wounds from the knife	Home, unclear the specific manner of entry	Offenders were raiders of marijuana grow operations	No apparent neighbour intervention	

Confidential-A	"....."	Criminal records of the group unclear	Motivation to recover debt for marijuana received	Masks, an axe	No apparent reward was retrieved in drugs or money, appears to have been about reputation of leading drug dealer	5 Adults 1 Young offender	Couple who had received two ounces of marijuana advanced from the group leader via the young offender. Male victim was beaten and struck repeatedly with the axe, female victim was threatened with injury and sexual assault	Apartment	Linked to marijuana market	No apparent intervention from neighbours	Victim had taken drugs and appeared to be avoiding payment

Newspaper Examples											
A	"....."	Unclear whether offenders have criminal records, but quite likely	Motivation to intimidate rival aboriginal gang, and revenge	Samurai sword, butcher knife	Intimidation and reputation are the reward rather than monies or assets per se	2 Males 1 Female	Rival aboriginal gang, victims received cuts, broken arm, stab wounds, and a nearly severed hand	Inner-city home entered by kicking down the back door	Gang rivalry and intimidation, related to markets for drugs, prostitution, etc.	No neighbour intervention	Gang of the victim had committed previous home invasion against the gang involved in this incident
B	"....."	Unclear whether offenders have criminal records	Motivation to steal money and valuables	Surgical gloves, police scanner, rolls of (duct) tape, and a list of potential victims	Undisclosed value of money and valuables	5 Males	Individuals believed to have money and valuables at home, victims often beaten bound and gagged	Entry to homes gained by dressing as postal delivery		No neighbour intervention	An unidentified person(s) was likely involved in listing potential victims

C	"....."	Unclear whether offenders have criminal records	Motivation to steal money, jewellery and other valuables	Replica handgun	$200,000 in jewellery, cash and gold from one incident, unspecified money and valuables in the other incident	Ring of 12 suspects, two reported incidents with three involved in each incident	Elderly, one beaten to death, another pistol-whipped	Entry to homes achieved by breaking down doors		No neighbour intervention	Middle-aged male in apparent Fagin-like role Jewellery store owner provided client lists to the ring
D	"....."	Not indicated whether offenders have criminal records, but likely given their gang lifestyle	Motivation to steal money and property	Stun guns, police scanner, and masks	Suspected of stealing tens of thousands of dollars over two year period	7 males including two ringleaders	Method of targeting potential victims not clear	Method of entry to homes unclear		No apparent neighbour intervention	

E	"....."	Individuals linked to a gang	Motivation to steal weapons and other property	Unclear what resources were used	Unspecified value of weapons and other property	50 members of a street gang, including the leader and seven lieutenants	Acting as prospective purchasers of advertised weapons, other unspecified targeting methods used	Entry acquired by acting as prospective buyer of advertised items	Links to markets in trafficking weapons and drugs	No apparent neighbour intervention	Many victims had advertised products (weapons) valuable to the gang and its network(s)
F	"....."	Offenders not identified	Motivation to steal weapons	No additional resources apparent	Unspecified value of four handguns	4 Males	Elderly woman, when police responded they found a cache of 43 rifles and shot-guns, one crossbow, and 3,000 rounds of ammunition	Home broken into, unspecified manner	Likely links to weapons trafficking on the part of the offenders (the weapons appeared to be legally owned but improperly stored)	No apparent neighbour intervention	Offenders had somehow learned the elderly woman had weapons on the premises, or had learned that her relatives held weapons at her home

G	"....."	Unclear whether teenagers had existing criminal record, but unlikely	Motivation to steal marijuana for a fee	None apparent	Unspecified fee for stolen marijuana	2 groups of teenagers, unspecified numbers	Homes containing suspected marijuana grow operations	Method of entry unclear	Links to marijuana grow operation		Teens service contracted by a broker, unclear if the broker linked to major crime groups (Asian, or biker gangs)
H	"....."	Criminal records or background of offenders unclear	Motivation to steal marijuana and drug money	Baseball bats, machetes, and handgun	50 marijuana plants (unspecified value)	5 to 8 Males	Marijuana grow operation, victims and all but one of the attackers Vietnamese	Entry acquired by breaking down back door	Links to marijuana trade	No apparent neighbour intervention	Home was identified by undisclosed party(ies),
I	"....."	Unclear whether offenders had criminal records, although one of the males was the subject of ongoing legal proceedings relating to his deportation order	Motivation to find guns, drugs and money	Firearm	Not specified whether monies or assets were acquired, intimidation may have been stronger motive	2 Males and 3 Young offenders (all of Chinese descent)	Individual affiliated with a rival gang through brother, primary target shot in head, two other non-fatal victims	Entry was achieved by breaking glass of door or window	Links to gang rivalry, and competition with a major Asian criminal network	No apparent neighbour intervention	The victim's direct or indirect involvement in gang activity attracted the attackers