

Major Issues Relating to  
Organized Crime : within the  
Context of Economic  
Relationships

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*for the STUDY of*

**ORGANIZED CRIME AND CORRUPTION**

**Paper Prepared for the Law Commission of Canada**

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## **Introduction**

Our task in this paper is to expose the concept of ‘organized crime’ to a re-examination process free from the limitations imposed by the traditional ‘baggage’ that accompanies the term. A particular focus will be to situate this form of criminal activity within a context of the economic relationships it requires for its successful conduct. In the tradition of C. W. Mill’s ‘sociological imagination’ we will attempt to look afresh at an old sullied concept. You may well conclude by the end of this paper that while there is serious crime---some of which is very organized, most of which is economically motivated, a small proportionate of which is exploitive and an actual threat to communities---the term “organized crime” serves mainly to camouflage differences and misdirect enforcement efforts.

This paper is divided into six parts (plus a bibliography and an appendix):

- A. Introduction to the Concept and Initial Issues
- B. The Old Paradigm
- C. Emerging Critiques: Counter Paradigms
- D. Theoretical Framework to a New Paradigm
- E. Enforcement and Legislative Responses
- F. Concluding Discussions

### **A. Introduction to the Concept and Initial Issues**

#### **1. Nature and Power of the Rhetoric of Organized Crime**

##### **The Political Nature of ‘Organized Crime’**

While most issues related to social control or moral regulation have a political aspect to them, discussions related to ‘organized crime’ are steeped in politics—from the creation of illegal markets in the first place, to the declarations of the size of the ‘threat’ and the passing into force of extra-ordinary legislation to attack the problem. The advantage of “organized crime” is that it can be whatever the speaker wants it to be---a massive threat, a theatrical legacy, or petty criminals and hoodlum bikers. The lack of consensus around the term, the invisibility of much of the activity, and the natural links into the lives of the public for a large percentage of what are demand driven commodities, allows for a sense of personal relevance and fascination. The complicity of the public through their support for many of these illegal goods and services mixes with evidence of the real, or in other instances exaggerated, violence initiated by some of these organized criminals to create an ambivalent and corruption-vulnerable environment. This milieu encourages distortion and manipulation.

The mention of the words ‘organized crime’ has the power to draw the press, win votes, acquire law enforcement resources, gain public support for various legislative or enforcement crackdowns. The arguments are often intertwined so that the actual ‘organized crime’ issues get lost. For example the rhetoric that served as part of the justification for the renewed funding of the 1996 Anti-Smuggling Initiative, included such matters as: the confirmation of federal leadership, helping Canada meet its international commitments, public visibility of law enforcement and the sending of a message that the federal government was committed to free competition in an open market. All worthy objectives—having little to do with the control of smuggling or organized crime.

The multiple agendas and hidden constituencies complicate the process of formulating, enforcing, and assessing the success of an enforcement policy—and make it difficult or impossible to *reverse* a policy that fails to have any useful effect in terms of its nominal objectives. Some policies of course may also make a situation worse, rather than merely have no impact. As Ron Chepesiuk (1999) documents, the US supply-focused interdiction strategies of their War-on-Drugs have actually spurred the growth of international drug trafficking and has created dangerous repercussions domestically. This prolonged ‘failure’ suggests to critics that other objectives are being served by the strategies.

We will in this paper, attempt to position and contextualize the old debates, clarify the new concept and indicate the evolution of our understanding of the range of criminal activities that should be viewed through the same prism---and those activities that need to be seen and responded to separately.

## 1.1 The Creation and use of ‘Concepts’

Robert Merton (1967) argues that creating a concept is not a passive neutral act but rather an act with real consequences. To use the concept ‘organized crime’ means that this term and everything that is seen to fall under it is deemed to have certain characteristics. Like false statistics, a false or ambiguous ‘label’ can have serious policy and enforcement implications. The word takes on powers that may be totally irrelevant to the activities that fall under its sway. Researchers have been diligent in defending their claims that law enforcement over the years has *preferred* a particular version of organized crime. A monopolistic, highly sophisticated alien-conspiracy model was seen to both aid their resource needs and serve to provide a justification for why their enforcement actions were not having the impact that the public might expect from the resources gained.

Reliance on law enforcement data alone is seen to produce an interpretation that is a biased, one-sided artifice and potentially wrong. Critics point out that even recorded ‘hard data’ such as wiretapped information is transcribed/ summarized/and interpreted by law enforcement officers or prosecutors and become thereby transformed into subjective

documents. Potential bias however is not seen to lie solely with the police. Politicians are seen to *prefer* one definition rather than another due mainly to the plat-forming that the rhetoric allows. In addition to general vote gathering considerations, different constituencies will have different sensitivities and fears that range from the consensual ‘crimes’ that organized criminals may provide to the exploitive activities that they might inflict upon the communities.

Law enforcement and politicians are not however the only players who have turned defining organized crime into an industry. Researchers who have accused these other individuals of manipulating our understanding of organized crime for organizational or personal gain are equally guilty. Organized crime academic “experts” have spent a disproportionate amount of time advancing their own perspective by arguing the deficiency of competing definitions. The final group----the media---- has a particular fondness for anything relating to organized crime and works together or against the other interest groups to define, dramatize, and deliver to the public the various interpretations of the threats posed by organized crime.

## 1.2 Defined by Disciplines

Historians, legal scholars, and economists have all written about ‘organized crime’. However, sociology and criminology have to some extent claimed the field largely for themselves---and even here the amount of empirical research is sparse. The ‘dominance’ over this academic area of study by these two related disciplines has had a direct impact on our understanding of the phenomenon. As Michael and Adler observed over sixty years ago: “The assurance with which criminologists have advanced opinions regarding the causes of crime is in striking contrast to the worthlessness of the data upon which those opinions are based”<sup>1</sup>. In the area of ‘empirical’ data on organized crime, not much has changed—and the criticism must rightly extend beyond criminologists. Greater understanding of organized crime might have been derived from more cross-fertilization across the disciplines. We shall draw from disparate fields for our information and will try to acknowledge much of this limited data. We discuss in some detail the orientation of criminologists to this subject and we argue that the need for a new approach stems in part from the limitations of the traditional approaches.

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<sup>1</sup> Jerome Michael and Mortimer J. Adler. 1933. Crime, Law and Social Science, Patterson Smith, Montclair, N.J. (1991 edition) p. 169.

### 1.3 Regulating Morality

Some of the commodities that have become the main sources of revenue for groups and individuals typically associated with ‘organized crime’ relate to morality offenses. This report cannot review the individuals or the markets without at least in a limited manner acknowledging the ‘campaign’ aspect behind some of the criminalizations of these markets. Research by Joseph Gusfield on the temperance movement<sup>2</sup> or Rufus King on narcotics<sup>3</sup> and a body of additional research by academics such as William Chambliss<sup>4</sup> on the various campaigns to define and suppress other forms of deviance, inform some of our arguments. While we will not make specific recommendations for legalization, the political context in which some of the criminal designations were made are important to our discussions and speak to the political, arbitrariness or the manipulative nature of some of these illicit commodity markets. Morality offenses are the ‘old’ vice offenses. Whether they need to be captured under the heading of ‘organized crime’ is debatable.

### 1.4 Defining Organized Crime---where the problem lies!

Definitions are boring and we would have thought that no longer was it necessary to re-hash what is or is not organized crime. Unfortunately it is still an issue. In brief, if there is no specific types of crimes, types of criminals or even a distinct process that is distinguishable as being ‘organized crime’, or if the term refers equally well to all serious crime, **then it refers to nothing**. In which case the crimes exist but organized crime as a category of crime does not exist. If this were a mere issue of semantics, no one should ponder the issue---this is not the case however. There are direct policy and law enforcement implications to the quest of actually attempting to ‘understand’ the phenomena. This is true not only or even mainly because of the additional police powers and legislative consequences of being seen to be a member of an organized crime operation. More importantly, the term may incorporate what in fact might be very diverse types of criminal activity that therefore ought to be responded to with diverse regulatory and/or enforcement strategies.

As a case in point, the 1998 Porteous/ Solicitor General Canada offers the following definition of organized crime:

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<sup>2</sup> Joseph Gusfield. 1963. *Symbolic Crusade*, University of Illinois Press, Urbana.

<sup>3</sup> Rufus King. 1953. “The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick” *Yale Law Journal*, 62: 736-49.

<sup>4</sup> William Chambliss. 1964. “A Sociological Analysis of the Law of Vagrancy”, *Social Problems* 12 (1):66-77, Fall.

“economically motivated illicit activity undertaken by any group, association or other body consisting of two or more individuals, whether formally or informally organized, where the negative impact of said activity could be considered significant from an economic, social, violence generation, health and safety and/or environmental perspective”. (Porteous, 1998, p.2)

Without the notion of *duration* of criminal activity, without a requirement that there be an *organization*, without mention of the capacity to exert *violence and/or corruption*, then basically organized crime is all significant criminal activity that involves at least two people where there is an economic motivation of some sort. By this definition, most corporate crime, white collar crimes and financial frauds are not only *a part of* organized crime activities but rather they *are* themselves organized crime activities. While we may share a sentiment that these economically motivated offenses have not been treated seriously enough in the past, there is no justification for lumping them under another umbrella term ‘organized crime’.

Another approach to defining organized crime has been to focus on the existence of a unique *process* that makes organized crime activities different from and possibly more of a threat to society—thus warranting extra-ordinary enforcement and legislative capabilities. The characteristics that are usually mentioned are the specific characteristics missing from the Porteous definition—on-going criminal activity; continuing conspiracy among the members of the group; structure greater than any single member; potential to use corruption and/or violence (Beare, 1996). The definition of the 5/ 5/ 5/ rule used in the recent Canadian criminal associations legislation (May 1997) is pretty straight forward and while one might quibble with the arbitrariness of the ‘5’ s versus 4 or 3 etc., there is an insistence on the *pattern* of criminal activity of a particular seriousness, the *association among criminals* (structure or otherwise) and the *duration* over time.

However, we would now argue that even this insistence on a distinct ‘process’ by which serious crimes are committed inadequately resolves the issue of what is seen to be organized crime. For example, the Mollen Commission Report into Corruption in New York Police Department (Mollen, 1994) described the conduct of the police officers assigned to one Brooklyn precinct as a criminal operation, i.e.

- stealing, dealing and using drugs over an extended period of time,
- used extortion and violence,
- falsified evidence,
- recruited members into the group based of their willingness to participate,
- held clandestine meetings and a system of code names,
- used loyalty and physical intimidation to protect the secrecy of their operations from the wider police department.

Therefore with some consensus we can say that the ‘process’ by which these criminals carried out their crimes meets the criteria of being ‘organized crime’. Clearly far removed

from the assumed ‘typical’ organized crime operations. While this example serves to encourage us to look beyond ‘traditional’ ethnic-based operations, this “blinker-less” search for other organized crime operations that meet the standards of a unique criminal process, reveals an array of vastly diverse criminal operations. For example, a body of literature has also documented the involvement of intelligence services around the world in an array of criminal offenses including predatory crimes, money laundering and smuggling operations. While the ‘process’ mimics ‘organized crime’ the definitions are usually different.<sup>5</sup>

During 1999 two significant International Inquiries revealed transnational corruption, financial fraud, intimidation/violence within near-monopoly environments. These reports titled Allegations Regarding Fraud, Mismanagement and Nepotism in the European Commission, (March 15, 1999) and the Report of the IOC (January 24, 1999) are relevant to this discussion only in so far as they help to confuse our definitions of organized crime. In the case of the EC Report the findings indicate a network of opportunism, arrogance, and negligence with pockets of well-organized financial fraud, continuing over a number of years and involving groups of co-conspirators operating within a monopolistic environment. Comments throughout the report speak to the attitude of immunity and apparent rampant corruption—ranging from the unethical to the criminal. In similar fashion, the IOC Report outlines on-going financial frauds and corruption operation on the part of the Salt Lake City Olympic Games Committee and arrogance, neglect and in some cases complicity on the part of the IOC. In both of these examples a protected environment—a monopoly over a source of revenue—allowed a closed group of people to systematically and in some cases criminally benefit.

In these examples there are questions as to where the line is that separates legitimate business transactions from criminal transactions and corruption. Equally important, these examples may point to something more ‘determinant’ of the label of organized crime. Some people and some groups and some activities are easier to label as being “organized crime”—conversely, it is very hard to make the organized crime or corruption label stick to certain people or organizations. A major scandal was necessary in both cases in order to bring it to the public’s attention.

Two final examples will conclude this ‘definitional’ discussion. In Canada over the past decades the public has heard about the infamous Boyd Gang. These bank robbers clearly constituted a criminal association, however they are thought of even today as a ‘gang’ (in fact almost nostalgically—the remaining Boyd brother appears on talk shows and a new book has recently been published) rather than as an organized crime group. However, if the group was ‘ethnic’ or ‘foreign’ would the societal definitions have been the same?

The point being that while we may be prepared to expand the definition of organized crime away from the traditional Italian family stereotypes, there is still something that

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<sup>5</sup> This the main theme of R.T. Naylor, 1999. Patriots and Profiteers: On Economic Warfare, Embargo-Busting and State-Sponsored Crime, Toronto. See also Jonathan Kwitny . 1987. The Crimes of Patriots, New York. And the U.S. Senate Committee on Foreign Relations, subcommittee on Terrorism, Narcotics and International Operations, Drugs, Law Enforcement and Foreign Policy, Washington, 1988.



speaks to perceptions of “dangerousness”. Depending on your view, the criteria for dangerousness may be ethnically based (with racism or ethnocentrism as a potential prism), or commodity based (drugs rather than financial crimes). The point remains however that the ‘processes’ by which the crimes are committed may be identical and the outcome may be that one group is ‘seen to be’ organized crime and the others are not.

Again, to return to the sociological imagination, we shall try to look *through* current definitions into the actual activities that are deemed to constitute organized crime. This ‘looking through’ process often reveals information that is at odds with assumed wisdom. For example, we will be acknowledging throughout this report the increasing information that is becoming available that suggests that *even* in the illegal drug markets, the organization, intimidation, and control within what was seen to be closed criminal organizations may be much less rigid than we had previously been told. Empirical research within Canadian prisons by Fred Desroches (1999) confirms previous information from the US and from Europe that maintains that drug dealers and distributors can and do operate as private entrepreneurs. ‘Organized crime’ however defined, may have little relevance in the lives of the majority of criminals operating in the drug market.

## 1.5 Measuring the Size or Impact of Organized crime

We seem to be seeing a quenchless thirst for any sort of actuarial calculations of the “risk”, “threat”, “size” or “impact” from organized crime, money laundering and the illegal markets that support these operations. However, no matter how firmly the disclaiming statements are worded, the statistics will still take on a life that is undeserved. There are very real reasons why—regardless of the desire for these numbers or the care with which they are gathered/calculated—the numbers themselves must in most cases mean very little:

- because the actual numbers required for the various calculations are not available
- because different things are being measured
- because too many political agendas are becoming involved
- because we are still unwilling to see the tight relationships between the legitimate world and the illegitimate world and therefore the ‘size’ of one economy unavoidably partially overlaps with the size of the other.
- because even the claim that the researchers are creating *better* estimates will produce in fact *worse* estimates. They will be more expensive, have more credibility, but will still be worthless as long as the fundamental deficiencies of data and methodology go unaddressed.

At the most, smaller commodity specific or jurisdiction specific studies can be done to produce some estimates. The assumptions behind the calculations should be clearly

enunciated so that those people who choose to use the statistics will be able to judge their reliability.

This is in contrast to a current attempt by the UN to collect quantitative data on organized crime at an international level. This same survey instrument has been used by the Canadian Centre for Justice Statistics to gather data on organized crime within 16 police services (CCJS 1999). Each new attempt at quantifying the problem allows the writer an opportunity to repeat estimates from previous reports. Hence for example, we read in the CCJS (1999 p.19 *Draft*) report that “the amount of money laundering in Canada is approximately \$17 billion”. The actual Porteous report which CCJS sites offers us estimates ranging from \$5 Billion to \$17 Billion (Porteous 1998). The highest figure is estimated by calculating 2% of Canada’s Gross Domestic Product (GDP). Porteous states:

“Another simpler method to estimate the amount of ML (money laundering) taking place is to employ a ‘rule of thumb’ advocated by some ML authorities, which estimates that the amount laundered in a country is on average equal to approximately 2% of that countries GDP. (Porteous, 1998, p. 26)

This estimate—or ‘rule-of-thumb’—is without foundation. However, other estimates in the Porteous report are less harmless. Regarding the organized crime connection to illegal migration we read that 70% of all refugee status claimants are accepted into Canada. Porteous then uses the ‘undeserving’ 30% figure as a “surrogate for those people who would have used the services of people smugglers at some stage in their journal to Canada” (Porteous p. 18).

## 1.6 Linkages Between the Legal and the Illegal Economies

When we present a snap-shot of the ‘old-paradigm’ related to organized crime that saw these criminals as ‘alien’ to the legitimate society, one can see how attractive this version would be. Unfortunately, it is the interwoven aspects of organized crime that makes it so difficult to detect and control. This is coupled with contradictions generated by the pursuit of both free market reforms and a prohibition on lucrative commodities such as the illicit drug market. Perhaps Peter Andreas has said it best:

“The unleashing of market forces has unintentionally encouraged and facilitated not only legal economic activity, but illegal economic activity as well. Part of the problem is that legal and illegal markets are increasingly intertwined. ... The logic of liberal economic theory, after all, is for the State to conform to the dictates of the market. Although illegal, the drug economy should be seen as part of this process. Neoclassical economics suggests that countries should specialize in exports in which they enjoy a comparative advantage. For some countries this has meant their market niche in exporting illegal drugs”. (U.S. Hearing before the Subcommittee on crime, 1996. P.59-60)

Andreas concludes that these policy dilemmas and contradictions must be acknowledged and confronted:

“...the drug trade must be viewed primarily as an economic activity; that it is actually intertwined with, rather than distinct from the legal economy. This is the less celebrated and rarely acknowledged underside of US Mexican economic integration”. (U.S. 1996, p.60)

## **1.7 Linkages between Economic Regulation and Criminal Law**

Economic regulation and criminal law enforcement have always overlapped. No clear distinction exists between the law enforcement apparatus taking responsibility for offenses under the Criminal Code and economic regulators charged with assuring the economy stays on track. In specific cases there is little distinction between crimes committed for economic motivations and normal economic activities pursued with sufficient zealotry as to step perilously close to, and sometimes over, the dividing line into actions that can bring criminal sanctions. This convergence may be more frequent today for several reasons. These factors are discussed in our section on the need for a ‘new’ approach to looking at organized crimes.

### **Summary**

These issues and debates frame many of the arguments presented in this paper. The context as outlined in these opening pages help to indicate why a ‘new’ approach to understanding the phenomena of organized crime is essential.

## **B: The Old Paradigm**

### **2. The 1967 President's Crime Commission and the Debates**

While the term “organized crime” appears in the literature going back at least into the 1920’s, the 1960’s directly affected how we have come to see this concept. Six consultants worked on the 1967 US President’s Organized Crime Commission to describe the structure and working of organized crime. This Commission included contributions from Donald Cressey, Ralph Salerno, Robert Blakey, Charles Rogovin, Rufus King and Thomas Shelling. Each made his own contribution and there was in fact little consensus in the approaches taken by each of these experts. Ralph Salerno and Donald Cressey presented what has become known as the ‘traditional’ or ‘law enforcement’ perspective.

Commissions have a political life quite distinct from fact finding and in many cases the time provided to the researchers on these working teams is insufficient for the generation of “new” data and “new” solid based interpretations. Having said that, there are still “good” commission reports and “bad” ones. The 1967 Commission served to solidify a vision or version of what ‘organized crime’ in North America was. In particular, organized crime experts have engaged in an aggressive debate regarding the classic work and definition offered by Donald Cressey (1967). The Cressey contribution titled “The Functions and Structure of Criminal Syndicates” was further elaborated upon in Theft of the Nation, in 1969. Cressey’s characteristics of ‘organized crime’ (*The Mafia* or *La Cosa Nostra*) that have become the most debated include:

- the existence of a nation-wide alliance of at least 24 tightly knit Mafia families who control organized crime in the United States;
- these families are Sicilians or of Sicilian descent;
- each family has a hierarchical structure—with the number of levels determined by the complexity and the sophistication of the division of labour of the criminal organization. (The diagram that was included in the 1967 President’s Commission Task Force Report on Organized Crime depicts a rigid structure with a Boss position, under-boss, lieutenants and soldiers);
- the crime families are linked by a nine member “commission” which oversees the activities of the families;
- this confederation controls legal businesses as well of illicit operations.

#### **2.1 The Critics**

Dwight Smith (1975) along with Daniel Bell (1962) Joseph Albin (1971, 1988, 1993) and Alan Block (1980) expressed scepticism in the existence of this tightly organized,

singular, alien, conspiratorial group. The publication of a “tribute” to Cressey in 1988 served to re-open the attack on this particular approach. Joseph Albini accused Cressey of having been co-opted to the monopolistic conspiracy view of OC by his interactions with Joseph Valachi (mob informant) and by his friendship with Ralph Salerno, a veteran New York City detective.

The critics of Cressey see his work as being responsible for an era of enforcement that targeted Italian criminals to the exclusion of other organized criminals and whose work justified an enforcement strategy that relied on a conspiracy interpretation of organized crime. The notion of an alien, all-controlling criminal monopoly, external to the larger society but sapping its wealth is an image that serves the media and law enforcement. In addition, the targeting on Italian-American conspiracies sets aside any accusation of political or police corruption. As Robert Kelly states:

“There seems to be little doubt that many in the law enforcement community found his work congenial: it seems uniquely relevant to their professional aspirations and agendas” (1992).

This is not to imply that law enforcement has engaged in a deliberate manipulation of data. The process is more important and more complex than that. An understanding of police intelligence gathering process reveals that police case-building and intelligence gathering, like research itself, is shaped by beliefs. Cressey relied on the Valachi testimony that fuelled both his own interpretations and the beliefs of law enforcement—whose files he then used as further proof of his own interpretations.

The danger is of course a self-fulfilling process whereby the police, believing in a national criminal conspiracy (in part because of the advantages in this interpretation), focused their attention on these groups and individuals. In police work, one tends to be able to verify the criminal involvement of those groups who are targeted. Over time, if the police focus on Italians, the police files would indicate a dominance of Italian organized criminals, thus confirming the initial belief in the existence of the LCN model. As Kelly states:

“...it may be illuminating to situate Cressey’s project not as “caused by” certain irrepressible obvious features of organized crime in the United States but to regard it as a distinctive picture reflecting conditions of law enforcement interests, strategies and tactics as well as criminological understandings of the phenomenon. ...social theorists always have some conception, not driven by the data alone, which may be either tacit or explicit, of the ills of the society and of possible remedies for them. ...Theories are never simply disinterested efforts to describe and explain social reality” (1992).

The 1967 report, and Cressey’s contribution, provided the framework that has served as a point to be defended or refuted for the decades following its publication. Cressey and the Commission have served as the catalyst for major advances in our understanding of organized crime. Theorists have been tumbling over one another for decades to refute or

to defend the 1967 position on the nature of organized crime in America. In addition to Albini and Smith see Rogovin and Marten, 1992; Lupsha, 1981, Kelly, 1986; Haller, 1990 for refinements on this debate. Later research has rightly challenged several of the Commissioner's interpretations of OC. Others have withstood much investigation.

Leaving aside the more controversial findings, some core ideas from that commission help to enunciate the need for distinct law enforcement strategies against organized crime that have continued to the present (and even these points are subject to some debate):

- the extensive and deep involvement of OC in legitimate business. This became a strong justification for the passing of the Racketeer and Corrupt Organizations Statute (RICO) and likewise the Canadian legislation;
- the accumulation of money—regardless of how it is acquired—makes OC particularly threatening in that these resources can be used to purchase corrupt officials.

## 2.2 Early Understandings of Organized Crime In Canada

The early Inquiries into organized crime in Canada played off of each other and off of the U.S. experience and emphasized the ties between the two countries. When we study the early Canadian discussions on organized crime, it becomes evident that the commissions in the U.S. had a direct impact not only on the way the United States saw and dealt with organized crime but also a direct impact on the Canadian response. For example, it is clear from the timing and the content of the reports and the questions posed by the media, that the U.S. McClellan Commission (1963) and the 1967 report to the U.S. Congress directly influenced the statements from law enforcement officials in Canada and the recommendations put forward by the various Canadian inquiries.<sup>1</sup>

In November 1961, RCMP Commissioner Harvison gave a talk to the Canadian Club in Toronto wherein he stated:

“The American syndicates are showing an increased interest in Canada and they are moving to take over direct control of some existing criminal organizations and to expand their criminal activities. They are already active in the field of gambling, narcotics trafficking, counterfeiting, and in the protection rackets. There are some indications and there is some evidence that the syndicates have already started to treat Canada as an area for expansion of their activities.”  
(Report of the Ontario Police Commission on Organized Crime p.2 and Exhibit 1 p. 127)

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1. In the U.S. the result was the creation of the Racketeer Influenced and Corrupt Organizations (RICO) Statute.

Controversy arose from this talk due partially to the fact that the Commissioner was stating that U.S. controlled syndicates were in Canada—rather than domestically controlled syndicates. The domestic types were seen to be less harmful, less powerful and without the tremendous resources with which to bribe and corrupt.

The notion of American organized crime ‘seeping’ into Canada was compounded by the parallel the RCMP Commissioner drew between the “stepped-up activities against the gangsters in the United states” as compared to what was seen to be an absence of powers for Canadian law enforcement. This debate coincided with the discovery of police corruption in the anti-gambling squad of the O.P.P. The result was two-fold: the creation of the Ontario Police Commission to oversee law enforcement in Ontario; and, the appointment of Justice Roach on December 11, 1961, as Royal Commissioner to examine the extent of crime in Ontario—including organized crime.

The Roach Report drew the same distinction that Commissioner Harvison had made between domestic “organized crime” and what was seen to be the more insidious “syndicate” crime. The Report was released on March 15<sup>th</sup>, 1963, and concluded that while there was “organized crime” in Ontario, it did not exist “to any alarming extent except in the field of organized gambling”. Roach concluded that, there “has never been, as far as I was able to ascertain, any syndicated crime in this province” (Ontario, 1963, Roach Report p. 6).

On August 16<sup>th</sup>, 1963, a short five months later, RCMP Commissioner Harvison gave a press conference at the Canadian National Exhibition. Media asked him specifically about the relationship between U.S. Mafia and the criminal organizations in Canada. With an amazing lack of clarity he stated:

“Now whether it is actual Mafia or whether it is developed along the Mafia lines is a subject of debate among policemen. Certainly the form of organization is *Mafia Like*, their disciplines are Mafia disciplines, so that it follows if the American Syndicates are moving into Canada or attempting to move into Canada then this syndicate’s being organized along Mafia Lines. It’s a Mafia type organization that’s coming in, but to say that it is definitely the Mafia, I just don’t know...(Report of the Ontario Police Commission on Organized Crime P.140 [quoted as it appears in the report.])

The newly created Ontario Police Commission (OPC) requested and received from the Attorney General permission to begin their own inquiry. This 1964 Report of the Ontario Police Commission on Organized Crime quotes at length from the 1963 U.S. Senate Committee hearings and specifically from the testimony of Attorney General Robert Kennedy. The various statements of the RCMP Commissioner on the different involvements of U.S. criminals operating out of Canada was juxtaposed against the statement by Attorney General Robert Kennedy. Kennedy, who was personally directing a concerted attack on organized crime during these years, mentions the Appalachian N.Y. meeting and refers to the developments in organized crime as an “ugly picture” of hoodlums moving into legitimate businesses, via method of violence and intimidation.

The OPC had attended some of the sessions of the permanent Subcommittee on Investigations of the Committee on Government Operations of the U.S. Senate—presided over by Senator John L. McClellan. As part of the Ontario Police Commission Inquiry on Organized Crime, a team from Toronto, including the Chief of Police for Metropolitan Toronto, travelled to Washington to question Valachi regarding comments he had made linking Buffalo N.Y. mobsters to Toronto. Valachi now denied having made these comments, his testimony indicated otherwise.

While at the end of 1963, Metropolitan Toronto Police testified that organized crime had “decreased greatly in the last three years and is described as 50-100% better” (OPC Inquiry, p.70), by 1967, the media had adopted organized crime as a priority issue. The adoption by the media relied heavily on the credibility of U.S. “experts” who informed law enforcement officials, as well as the public. The 1967, U.S. President’s Commission served to instruct Canadians as well as Americans of the threats posed by the infiltration of criminal investment into legitimate businesses:

- The Toronto Star (March 15, 1967, P.9) headlines read “Crime Said Moving In On Business”—this after a visit to Toronto by Professor Charles A. Rogovin, advisor to President Johnson on organized crime.
- In one headline the reader gets a particularly sophisticated business management view of the mafia. The October Toronto Star informs the public that the mafia has completed a ‘feasibility study’ on Yorkville in Toronto in order to determine whether they ought to take over marijuana trafficking in the village. (Oct. 4, 1967, p.1).
- During this same period, Ralph Salerno, another of the “group of 6” U.S. organized crime experts spoke to the Quebec Royal Commission and was quoted by the Toronto Star as predicting that Expo would provide a good opportunity for organized crime (April 21, 1967, p.39).

### 2.3 Further Developments in Canada

What followed in Canada from the 1960’s focus in the United States on organized crime were Federal-Provincial Conferences in 1965 and 1966. On August 8, 1967, the report of the January 1966 Federal/Provincial Conference on Organized Crime was released. The conclusions were quite dramatic. Organized crime was said to be involved in nearly all fields of business and commerce:

“...there is clear evidence that those engaged in organized crime in Canada maintain a close working relationship and personal ties with many of the U.S. crime syndicate...‘the mafia’.” (Toronto Star, August 10, 1967, p.1)



The RCMP Commissioner, in a brief to the Royal Commission, had confirmed that a number of the men identified as being present at the “Apalachin meeting” were presently residing in Canada or had financial interests in Canada. He also confirmed that American racketeers had joined with Canadian residents, who were well known to the police, for a hunting party at the James Bay Goose Club. (This Goose Club meeting of alleged mobsters never entered OC lore with the same notoriety as the Apalachin meeting!)

That 1966 Conference resulted in the creation of the structure of the Criminal Intelligence Service Canada (CISC) with a mandate to monitor and control the spread of organized crime, a recognized need for a centralized police information (CPIC) network and an enhanced training facility for the police community that eventually became the Canadian Police College (CPC).

The ‘threat’ of organized crime was thereby established and a consensus among the police departments confirmed the seriousness of the enemy. Ten years later, the 1977 Quebec Police Commission report, titled The Fight Against Organized Crime in Quebec confirmed, through intercepted telephone calls, that a number of U.S. mobsters were operating between Canada and the U.S. For example, the Cotroni-Violi gang in Montreal was shown to be dependent upon a New York family and in fact acted as a subsidiary branch (Dutil, 1977 p. 100).

What had begun as mere beliefs, rumours and slogans,<sup>11</sup> obtained the credibility of the ‘American experts’. The media now proceeded to link this insidious threat to other societal problems.

## 2.4 Lessons from the Past

Some of these early experiences serve as warnings to the present.

- The dangers of ‘self-fulfilling’ prophecies in our understanding of organized crime. The “vision” as portrayed by the media/ movies, police or politicians *becomes* what organized crime is. The police statistics confirm the correctness of this vision.
- Perceptions of organized crime from ‘elsewhere’ may be presented to Canada as being equally description of our crime problems. These definitions of our organized crime problems are often in lieu of empirical study within Canada. This has continued as a pattern—a criminal situation recognized to be greater in the United States, results in pressure on, or by, Canadian officials to replicate U.S. law enforcement measures. Discussion tends not to question the wisdom of mimicking something that does not seem to be working and replacing a system that may in fact be adequate or superior.

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<sup>11</sup>. Ontario Police Commission, Annual Report, 1966, "Know Organized Crime Today, No Organized Crime Tomorrow," p. 9.

- Early reports provide early warnings of the disadvantages of the split between our policing jurisdictions. For example the 1964 Report of the Ontario Police Commission on Organized Crime, (p.2 and Exhibit 1 p. 127) quotes the Honourable F.M. Cass, Attorney General for Ontario commented that it seemed strange for the Commissioner of the RCMP to be stating that “something must be done about it (syndicated crime)” since the main responsibility would lie with the RCMP. He commented upon the “unfortunate” split between the policing jurisdictions—a lack of co-ordination. He stated:

“The unfortunate division of police responsibilities in this province, however, means that the RCMP is the police force which should first become aware of the appearance of syndicated crime, and unless that information is passed on to the Provincial and Municipal police, and a joint plan of action is developed, there is little likelihood of real success in the battle against organized, and united criminal forces” (1964, P.138.).

## C. Emerging Critiques: Counter Paradigms

The late 1970's to the current time has been a period of contradictory beliefs, policies and enforcement strategies. The counterattack that had been effectively begun with writers such as Smith, Bell, Block and Albini continued *behind* more traditional writings on the nature of traditional, predominantly Italian organized crime. Godfather movies continued to inform the public as to the nature of organized crime and high profile RICO prosecutions of several of the 'big' New York crime families served as proof of the correctness of the "crime-family" focus and of the appropriateness of the existing law enforcement approaches.

### 3. The Social Fabric

Researchers, uninvolved in the "organized crime" debate per se, served to inform much of the later critique and evolution of the concept. Robert Merton's sociological analysis of the political structure and function of political bosses and ward politics (Merton, 1968); Daniel Bell's analysis of "Racket Ridden Longshoremen" (1960) and William Chambliss's early work on corruption and the function of 'power brokers' (1978) laid the groundwork for seeing the linkages between crimes and corruption and the wider political and economic structure. As Daniel Bell stated with reference to why the rackets dominated the docks and the lives of the longshoremen:

"The answer broadly, involves an understanding of the economics of the industry, of the peculiar political relationship between the union and the urban democratic party machine in the port cities, the ethnic patterns within the longshoremen groups, the psychology of the longshoremen as an 'isolated mass' suspicious of the urban community around them, and the 'Chinese warlord' structure of the union itself. ... In our fascination these days with power and manipulation, we often ignore the economic fulcrum underneath" (1960, p. 175, 176)

Bell concludes that the industrial racketeer initially performed a 'quasi-legitimate' economic function and served 'as the cement that bound the structure together'. As Richard Lotspeich emphasizes with regard to the massive changes within Russia:

"If the state does not protect, or if the state itself creates entry obstacles, then open conditions are lost and criminal enterprise and corruption will remain an important feature of the economy". (1995, p.580)

These ties between politics, the economy and organized crime become more 'front center' in the writings of Arlacchi and Gambetta discussed later in this section.

### 3.1 Dealing with Stereotypes and ‘Perfect’ Organized Crime Models

Much of the original stereotype regarding the nature of organized crime has been reinforced by biker gang hype and a preoccupation with drug trafficking to the exclusion of the vast array of other criminal commodities. Police, politicians and the mass media are true partners in the delivery to the public of the seriousness of these particular offenses. We are not suggesting that biker gangs are not criminal and at times violent or that Italian organized crime is not a reality but rather that *even* these operations may be run very differently from popular consensus.

Some of our best information comes to us from investigative reporters—and some of the worst! Yves Lavigne’s Hell’s Angel’s: Taking Care of Business is of the worst sort. The objective seems to be to show that biker gangs are a sort of new, ultra-powerful successor to the Mafia, with similar structure and business interests. The literature makes the mistakes of confusing a political/military (or Mafia-like) structure with a business organization. To be sure there are clubhouses with presidents and treasurers, and members of biker gangs engage in all kinds of illicit activity. But it is a fundamental mistake to equate the gang with the business.

Gang members call on other members for protection when their individual rackets are threatened, but they operate their businesses as individuals. Payments into a common treasury are not percentages of profits or tribute to the leader/godfather but rather are made to sustain group activities and to hire lawyers and bribe regulators. In Lavigne’s book the mistake is made repeatedly. He explicitly equates the club treasurer with a Mafia family *consigliere*, and states that “Chapters invest part of their money in legitimate businesses” thereby confusing the collective with the individual. Later in this section we examine some of the available empirical evidence regarding the realities of drug trafficking, with an emphasis on the independence of many of those people who make their living in this ‘profession’.

### 3.2 Joseph Albini’s Contribution

In contrast to the hierarchical godfather model favoured by earlier writers and still favoured by Hollywood and by some national security types turned organized crime “experts”, Albini painted a picture of a jumble of patron-client relations, family and kinship ties and formal though unwritten contracts. In The American Mafia: Genesis of a Legend, Albini pointed out the difficulties of gathering accurate information within this criminal milieu. He noted that information collected by police and prosecutors for their case-building purposes of trying to prosecute offenders was not immediately useful to those attempting to understand crime as a socio-economic problem. He spent four years interviewing those on both sides of the legal divide, posing quite different questions.

He was perhaps the first to note the terminological swamp in which debates were trapped, i.e., the fuzzy and inconsistent definitions, and the reliance on anecdote and repetition. Attempting to focus on the economic rather than the social, he drew an analogy to the racketeering methods used by the founders of American capitalism in the 19<sup>th</sup> Century (Myers 1907). This suggests that what is at work in the criminal marketplace is more than just “primitive accumulation” in the Marxist sense.

Unfortunately when Albinus tried to define the difference between organized and ordinary crime, he ended up retailing much the same kind of sociological generalities he had previously criticized. Nor did he make much progress towards shifting the debate in the direction of economic rather than social factors. In fact, he made a special point of insisting that “organized crime” and “syndicated crime” (which provided illegal goods and services on an on-going basis) were two quite different phenomena, a position that later proponents of the economic model would dispute. However these later economic analysts would commit an even more serious error. Their claims that illegal goods and services, provided on an on-going basis, required some sort of permanent structure are based on a simple but fundamental error—they assumed that only a single organization can provide a continuous flow of supply. In reality the most reliable flow of supply comes from a myriad of small scale, uncoordinated firms. Having diverse sources for the illicit commodities means that if the regulators knock off one or a few, the market continues uninterrupted.

Albinus’s other key point—a search for victims in cases of enterprise crimes—is a mistake. For example someone who borrows from a loan shark is scarcely a victim. They are people who have been denied access to the formal capital market because they are bad risks. Even the risk of violence may be comparable between the legitimate sources of funding and the loan shark operations. Many small legal collection agencies use intimidation to collect overdue debts, even though admittedly they generally stop short of breaking legs. In reality the use of violence is extremely rare even in the collection of loan shark debts.

### **3.3 “Loose Criminals”: The Union Corse and the French Connection Heroin route**

Though widely overlooked in North America at the time, and still not well known today, French criminologists looking at the nature and structure of the Union Corse, perhaps the first true transnational organized crime group in the modern sense, had already thoroughly discredited the godfather model. In theory it should have been the Sicilian Mafia story all over again:

- a Diaspora of peasants and craftsmen;
- fleeing overpopulation, unemployment and stagnant economic prospects;
- from an island as awkwardly attached to France as Sicily has historically been to Italy;

- speaking their own dialect;
- knit by tight extended family ties and a strong sense of obligation
- treated with scorn by their hosts and spreading from the original home to the mainland and then across the Mediterranean and around the world.

Contrary to the impression conveyed by two box-office successes, the most infamous accomplishment of the Union Corse, namely the French Connection heroin route, far from being a monolith operation, was a set of completely autonomous and episodic transactions. The drug trafficking operations followed quite different and uncoordinated routes to New York, the final destination and market of choice, with breakaway competitors (never punished by violence) a common occurrence.<sup>6</sup>

In reality the Union Corse was not a criminal “organization” but a loose fraternity of like-minded criminal souls who freely formed alliances and partnerships and just as freely dissolved them. They welcomed, as equals, members of Armenian, Turkish and Lebanese origin plus any French thief, counterfeiter or goon who might prove useful.

### 3.4 Enter The Economists

Until quite late in the day the subject of economic crime was of little interest to economists. There were several reasons. One was that it was viewed as a minor aberration that had little impact on the functioning of the economic system as a whole. To this day standard introductory economics textbooks are silent on the nature and consequences of criminal activity. A second was that, once the lessons of the Keynesian Revolution were absorbed, mainstream Anglo-American economics settled down to its main role of providing justification for the free market. As such, economic crime could be largely dismissed as the inevitable product of government meddling with the omniscient free market mechanism, and therefore inherently no different from the impact of non-neutral taxes or other “distortions” like tariffs, quotas and public pension plans.

The first major incursion by an economist into the debate on “organized crime” was a remarkably useful one. To Thomas Schelling (mentioned earlier as being one of the researchers on the US 1967 Crime Commission) the essence of organized crime was not just crime that was organized, but crime that had achieved a noticeable degree of monopoly power. Schelling took on the contention of criminologists of the romantic school that a sort of Mafia Inc. existed, and asked what were the particular conditions under which the family-as-firm could achieve the monopoly power commonly imputed to it. The answer turned in good measure on the economies to be reaped from centralizing the costs of corruption. He also asked what the costs to society were from the criminalization of personal vice. He concluded that criminalization of personal vice:

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<sup>6</sup> The pioneering work was Pierre Galante and Louis Sapin, translated and published in English as The Marseilles Mafia, London: 1979

- increased the dangers of police corruption;
- spread disrespect for the law among formerly law-abiding citizens; and
- encouraged property crime to pay the higher prices that result;
- raised profit rates;
- therefore increasing the chances of monopolization, by giving illegal markets the same kind of protection that tariffs or commodity-price stabilization programs do for legal ones.

In addition, Schelling stressed another role for the traditional organized crime group—the implications of which went relatively unnoticed at the time. He stressed that, what really distinguished the organized crime figure from other criminals was his capacity to extort—sometimes from vulnerable legal businesses like restaurants, but even more so from illegal businesses who could not avail themselves of the protection of the law.<sup>7</sup>

### 3.5 Peter Reuter: The ‘Disorganized’ Concept

Schelling was inclined to take for granted the public stereotype, seemingly supported by most police and academic research, that such monopoly power was the norm. The next important economist to enter the debate took precisely the opposite position. In his Disorganized Crime, Peter Reuter (1983) concluded that the norm was small, competitive firms, constrained by the very fact of illegality to strictly local markets. On the demand side, they were unable to advertise to increase their customer base while on the supply side they were blocked from access to the formal capital market to obtain the funds necessary for expanding their productive capacity.

Reuter found little or no evidence of a traditional organized crime presence in the illegal gambling trade in which it was long assumed to be dominant. His research has had a significant impact on future research on organized crime. It was not however received without some criticism. Reuter’s analysis has been subjected to considerable criticism of two basic types. The first focussed on data:

- that the information from informants was unreliable.
- that the cases examined were all from New York. That made them atypical for in New York, uniquely, there were five separate and competing Mafia families whose power was therefore restricted.
- that in New York police corruption had been so entrenched that law enforcement was of little concern to any but the most unsophisticated little operators that were not linked to organized crime. Since Reuter’s study depended on those who were picked up by the police, the market would appear less ‘organized’ than it might have been.

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<sup>7</sup> His major works on organized crime were collected and published in his Choice And Consequence, Cambridge, Mass.: 1984

The second type of criticism was more market-oriented. It suggested:

- that what might be true at the retail level would probably not hold at the wholesale level where economic size and power were inevitably greater.
- that certain criminal markets are by his own analysis segmented by the difficulties of information flow and the threat of regulators.
- that the illegal gambling market might be quite different (and possibly more fragmented) than other illegal markets.
- that one cannot use the mere presence of many firms to argue that the market is competitive – rather there might well be a whole set of segmented sub-markets within each of which a firm might have significant monopoly power.

These criticisms aside—Reuter’s work had a profound impact and remains the starting point for virtually all economic work arguing the countercase to the old paradigm. This dissenting view by Reuter and a few others has been complemented by work dealing with the actual lives and careers of famous mobsters. Though some authors still grossly exaggerate to cash in on the public appetite for sensational crime stories,<sup>8</sup> others have done a signal service in demystification.

One of the best was the biography of mob legend Meyer Lansky by Robert Lacey. In place of the traditional portrait of the mob financial genius, a sort of chairman of the board and senior economist of Mafia Inc. with a fortune of \$300 million carefully laundering through a complex network of offshore companies and coded bank accounts, Lacey presents a credible view of a small time crook with a big ego who loved the public attention bloated tales of his exploits brought. Far from being some great financial wizard, Lansky’s talents never got beyond arranging the skim from casinos and having some associates cart it in suitcases to Switzerland where most was lost in a bank crash. (Lacey, 1991).

Reuter’s conclusions were reinforced by criminologists who managed to gain direct access to the inner sanctum of so-called organized crime families. The mystery had been – if the organized crime group is not a business, what is it and why does it exist. Although there had been suggestions along the same line before, it was really Annalise Anderson who provided the definitive answer a few years before Reuter’s pathbreaking work was published. According to her, members of an organized crime group when they engaged in economic pursuits operated strictly as individuals or occasionally in small, ad hoc partnerships engaged in a highly competitive criminal marketplace. The ‘group’ itself had quite a different role. Precisely because illicit enterprises have no access to the formal economy and its institutions that provide such services as dispute resolution, property right guarantees, and start-up capital, there is a central role for the crime “family” in the creation of the overall infrastructure necessary for success.

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<sup>8</sup> See for example, the biography of Sam (Moony) Giancanna by his son and brother, Sam and Chuck Giancanna, Double Cross, New York: 1992.



The family, headed by the fictive godfather helps provide social security for the family of imprisoned or murdered members, might put up start-up capital to assist new enterprises, handles the flow of corruption money to the regulators, regulates the use of violence against outsiders and resolves disputes to prevent recourse to violence among members. It is, in short, a form of underground government providing basic services necessary for success in the illegal economy (Anderson, 1979). These conclusions were confirmed with respect to yet another Mafia family, the Bruno family of Philadelphia, by Mark Haller a decade and a half later (Haller, 1991).

Since the mid 1980s when Reuter's work made its mark. The economics of crime has become more popular a subject of study among economists. This, however, has proven more negative than positive. Those involved (including one recent Nobel Prize winner) have focussed on the application of game theory to totally hypothetical criminal decision-marking problems, or the blind application of fancy econometric techniques (ignoring completely the horrendous flaws in the data) to supposedly calculating the size in dollar terms, or the impact on GNP, of criminal economic activity.<sup>9</sup>

### 3.6 Research into Drug Economies

The majority of organized crime writings focus on drugs—due to:

- the estimated size of the illicit drug economy
- the perceived 'threat' posed (by the drugs per se and the trafficking activities),
- the 'supply-and-demand' aspect whereby the supply is seen to come typically from some foreign jurisdiction and hence involve a sophisticated criminal organization to successfully get the illegal drugs into the destination country,
- the assumption that corruption of officials is likely a characteristic of the large operations,
- the early literature that presented us with hierarchical plans and complex differentiated labour within the operations,
- the literature that informed us that members of drug trafficking operations were controlled by fear and force within the organized crime groups.

Recent information however suggests that *even drugs* may not very accurately reflect the 'old' organized crime paradigm. Vincenzo Ruggiero speaks of the 'lumbering legacy' (1993, p. 131) that shrouds organized crime. He makes the argument that typical approaches to organized crime focus on the internal working of the 'group' rather than looking at the external relationships. This idea is developed further in his analysis of drug abuse in London. He argues that rather than a professional, closed organization, he was faced with during his research:

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<sup>9</sup> See, for example, most of the papers in the volume edited by Gianluca Fiorteni and Sam Peltzman, The Economics Of Organized Crime, Cambridge: 1995.

“...assembly-line ‘delinquents’ who were devoid of training, specific skills, and a detailed knowledge of the economy which employs them.... Many of those I contacted were interchangeable and flexible workers, and almost all lacked the work ethic which distinguishes professional labour”. (see Ruggiero 1993a and 1995)

Fred Desroches supports the loose coupling notion of the drug market with his Canadian data.<sup>10</sup> His study of high level drug traffickers in Canada (serving federal penitentiary time) revealed an entrepreneurial market controlled by no single organization but rather a market that is open to individuals and groups with personnel, skills and products that are competitive. Various ethnic groups were involved and often worked together, although for reasons of safety, groups who trusted each other, from the same communities or neighbourhoods, tended to work together.

The respondents spoke of dealing networks that consisted of loosely structured small groups referred to as a gang, family, crew, syndicate or cell—each typically having a specialized divisions of labour. Beyond this loosely coupled syndicate there are users, dealers, suppliers, ex-cons, and other criminals making up the drug/criminal culture.

Business arrangements between higher and lower level dealers is based on what is mutually beneficial. The higher level dealer will strive to expand his business by selecting good sales persons. However, the higher level dealer does not control the lower level dealer. Throughout the research we are repeatedly told that these are loose business arrangement with a high degree of autonomy. The only exception to this was the tendency for the outlaw motorcycle gangs to try to control markets and territories by the use of force—often via control over a strip of bars and clubs. As one dealer stated:

You re basically an individual entrepreneur. Even though I supply them with product, they re not working for me. They re working on their own and I m just their supplier. But there is a lot of loyalty. Believe me, you want to be able to trust people, and you get used to dealing with people. (1999, p. 23)

The emphasis seemed to be on ‘reputation’, i.e., To be a drug dealer, you have to know the people, have the contacts, the knowledge, and the reputation. You cannot buy these commodities”<sup>11</sup>

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<sup>10</sup> Fred Desroches paper on “Drug Trafficking and Organized Crime in Canada: A Study of High Level Drug Networks”, completed in part with funding from the Nathanson Centre. Forthcoming in 2000.

<sup>11</sup> Former drug dealers fresh from prison who have a good reputation and contacts will be ‘fronted’ for his first purchases to put him (her) back into business. Contacts made in prison were found to be very important.

### 3.7 The Changing Nature of the Mafia Mystique: The Arlacchi and Gambetta Debate

Partly because of his important role in current UN drug policy decision making (currently Undersecretary of the United Nations in charge of its Office of Drug Control and Crime Prevention), we have included this section on Pino Arlacchi. Mafia literature has undergone a number of significant changes that reflect perceived changes in the Mafia and its role in the Italian economy. Traditionally Mafiosi were viewed as mediators of disputes in a society where the Italian State had little presence and less authority and/or acted as predators extorting from three sectors of the Sicilian economy – agriculture, urban construction and the huge subsidies the Italian State poured into its poorest and most secession-minded province. Yet the objective was not the accumulation of wealth per se but of status or “honour”. However by one school of thought, whose most influential exponent was Pino Arlacchi, after the mid-1970s the money, first from cigarette smuggling and later from the drug trade, transformed the Mafia. Indeed, it may have been saved from near extinction occasioned by the social and economic transformation of Sicilian society, its modernization and the growth of a civil consciousness in which the old fashioned Mafia-based methods of settling disputes were no longer relevant.

According to Arlacchi the new entrepreneurial Mafia incorporated into its business methods many of the advantages of criminal behavior. As a result of the Mafia entrepreneurs’ capacity to corrupt and intimidate, a Mafia firm could drive down wages, cheat suppliers, defraud customers and tap into underground sources of capital with impunity, all granting it huge advantages over strictly legitimate competitors. Simultaneously, Mafia run businesses left behind the traditional Sicilian bailiwick and began spreading throughout Italy, interfacing with corrupt elements of the major political parties and the right wing underground terrorist network.<sup>12</sup> It was precisely this line of thinking that led to Italy’s famed 1982 Pio La Torre law which created a new crime of ‘Mafia conspiracy’, and which opened up Italy’s hitherto closed banking system to police probes. In many ways this law even more than the American RICO statute was the precursor of the “proceeds of crime” approach to law enforcement now so much in vogue (Arlacchi 1984).

However there were dissenters. Raimondo Castanza (1988) insisted that, contrary to Arlacchi, Mafia firms remained small, oriented to traditional pursuits and short-lived. To the extent they existed they were far less exercises in entrepreneurship than just fronts for recycling dirty money from the usual rackets.<sup>13</sup> Diego Gambetta went much further in his criticism (Gambetta, 1993). Noting that the phrase *la cosa nostra* (or *la nostra cosa*) is actually used by mobsters to refer to their general milieu, but that the FBI insisted on

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<sup>12</sup> His views were made available to an English audience with the publication of Pino Arlacchi, *Mafia Business: the Mafia Ethic and the Spirit of Capitalism*, Oxford: 1986.

<sup>13</sup> For the outlines of the debate see Judith Chubb, *The Mafia and Politics: The Italian State Under Siege*, Ithaca: 1989.

making it synonymous with an actual organization. Therefore he set out to define what makes someone part of the Mafia in economic rather than organizational terms. However unlike Arlacchi he sees the Mafia not as entrepreneurs but as sellers of *protection*, some of which represents extortion but some of which is genuine given the weakness of the legal enforcement mechanism. True, Mafiosi appear in some instances as actual partners in businesses, legal and illegal, but they are brought in as partners precisely because they can provide protection. It is therefore essential to differentiate between the Mafia and certain illegal enterprises in which members of the Mafia might be present. According to Gambetta, we can define the Mafia as that set of firms that:

- are active in the protection industry under a common trademark with recognizable features;
- acknowledge one another as the legitimate supplier of authentic Mafia protection; and
- succeed in preventing the unauthorized use of their trademark by private firms.

According to Gambetta, Arlacchi's fundamental error was to conflate the industry or market being protected with the firm doing the protection. For Mafia protection should not be regarded as merely another productive service being sold, but as part of the overall environment, i.e., the productive infrastructure in effect, within which illegal market activity takes place. This suggests, once again, the correct view of "organized crime" is as a form of governance of the illegal marketplace. And according to Gambetta, again contrary to Arlacchi, far from drugs providing the capital to transform the Mafia into a threat to the entire Italian economy, rivalry over the profits and progressive commercialization of values that came with the riches of the drug trade did more to destroy the Mafia (Gambetta, 1993).

This emphasis on the Mafia as sellers of services to, or parasites extorting from, other enterprises, legal and illegal ones, is, of course, one of the long neglected themes in Schelling's original analysis and observations that were specific to the American not the Sicilian scene. And Peter Reuter developed the notion further, pointing out that much of the power of traditional organized crime in its hay-day came from acting as enforcers – collecting illegal debts, union racketeering and ensuring that cartel arrangements among firms in legitimate industries plagued by cutthroat competition among many small firms.<sup>14</sup>

He subsequently argued that the decline in the need for such protection services was, along with acculturation, reduction in police and municipal corruption and stiffer penalties, the reason why the U.S. Mafia (quite distinct from the Italian namesake) went into such sharp decline as to now be little more than a romantic notion to which the press, the public and the police cling to for their own reasons. (1995).

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<sup>14</sup> Peter Reuter, "Racketeers as Cartel Organizers" in Herbert Alexander (ed.) The Economics And Politics Of Organized Crime, Lexington: 1985. See also Peter Reuter and Diego Gambetta, "Conspiracy Among The Many: the Mafia in Legitimate Industries". This is the sole work of note in Fiorentini and Peltzman, The Economics Of Organized Crime.

Despite these critics, most of whose work did not appear until several years after Arlacchi's pioneering work, Arlacchi's view of an entrepreneurial Mafia, directly or indirectly, had repercussions on the popular literature that proliferated in the 1980s and 1990s. It seemed to provide justification for the view that the legal economy was succumbing to a broadly based criminal assault.

This reached its apogee in the works of the late Claire Sterling. She achieved a degree of fame by peddling nonsense about a global cartel of terrorist groups taking their marching orders from Moscow (1981), and as *perestroika* killed the market for anti-Communist hyperbole she deftly switched to portraying the Sicilian Mafia as the new alien threat to Judeo-Christian Civilization (1990). Then, with the fall of Communism and the disintegration of the Soviet Union, the new theme became the rise of a Russian Mafia made up of black-marketeers, ex-KGB agents and old apparachniks in league with Colombian "cartels" and Mafia families to carve up the whole world into criminal spheres of influence (1994).

Unfortunately this "moral panic" literature does much more damage than merely feeding the public's insatiable appetite for lurid crime stories. It also affects political debate. Even worse it provides the basis for the current trend for intelligence agencies to assume a role in the business of crime control and attempt to convert it into a national security issue. More thoughtful research—some focussing on Russia, including the writings of Stephen Handelman (1995)—takes a different perspective. Rather than 'conspiracy' these alternative approaches look to the links to political structures, economic opportunities, and the diverse groups operating within or between illegitimate markets.

## D. Theoretical Framework to a New Paradigm

### 4. Regulating Criminal Exchanges

We have argued in the earlier sections that much of what gets labeled as ‘organized crime’, has a strong economic component to it—with profit being an objective in the illegal world as it is in business. We have also concluded that there is an intertwining between legitimate business and illegitimate activity. We have also alluded to the fact that while economic exchanges may sit somewhere between criminal and legitimate ‘business’, likewise the exchanges may sit somewhere between conduct that law enforcement and the criminal justice process should respond to and that for which economic regulators should take responsibility.

There are really two questions that must be addressed:

- should the Criminal Code be used to address all economic crimes; and second,
- if the answer is yes—are there valid distinctions between criminals being involved in legitimate businesses and legitimate business persons being involved in crime.

It may be that certain types of economic behavior are indeed of a sufficiently anti-social nature to merit criminal sanctions. It may be that criminal law has intruded too far into realms of activity formerly handled efficiently and fairly by the regulatory apparatus and/or the civil law system. Or it may be that there is greater need to coordinate their various activities to avoid overlap and working at cross-purposes. While some forms of economic/ financial-sector “crimes” are only erratically enforced, the legal rhetoric that now surrounds them has its own dangers in the form of biased or targeted enforcement and corruption.

To understand which response makes more sense, certain basic types of information are required:

- about the nature and structure of criminal markets;
- about the distribution of income and wealth in the illegal sector of the economy; and
- about the precise way in which criminals and their economic resources invade and corrupt legal markets.

Unfortunately objective and dependable information is sorely lacking. All too much of what passes for information consists of oft-repeated anecdote combined with “moral panic” generalizations.

## 4.1 Economic Regulation vs. The criminal law

We would argue that there has been a graduate *increase* in the overlap between economic regulation and criminal law enforcement. Some of these factors are a direct result of an increasing focus of law enforcement on the proceeds of crime:

- One is the propensity to confer on regulators the capacity to themselves initiate criminal action—i.e., the U.S. Securities and Exchange Commission is an obvious case—simultaneous with the propensity to apply criminal law to fields like insider trading. Some of these areas of ‘law’ were formerly regarded as merely a dispute between investors over profit shares and therefore best left to the civil courts. The result is an increase the blurring of responsibilities between civil, criminal and regulatory fields.<sup>15</sup>
- Related to this is the consequences of handing over to front-line workers, such as bank tellers, the responsibility for ‘detecting’ and ‘reporting’ suspicious and potentially criminal financial transactions.<sup>16</sup>
- A third is the orders of magnitude of the sums of money washing through the illegal economy— or at least alleged to be. It is common, for example, to talk of a world Gross Criminal Product of more than a trillion U.S. dollars per annum, and of world drug trade accounts in the order of \$500 billion. An I.M.F.-sponsored study has recently claimed that two percent of world financial flows represent laundered money. While we strongly encourage a certain skepticism regarding these figures, nonetheless, it is clear that in many countries the sums involved are considerable, and, at least at the fiscal level, can have implications that reach beyond the criminal into the macro-economic.
- A fourth factor is the evidently complex relationships between criminal, “informal” and legitimate economic activity. Consider, for example, the situation that prevailed in the garment district of major urban Centres in North America. Capital for these underground enterprises, blocked from the formal capital market by lack of collateral or audit-able books, came from loan sharks specializing in recycling criminal money.

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<sup>15</sup> For example, insider trading was criminalized first in the US with others imitating. In the past, disputes between investors over division of profits were left to civil suits. However on one level insider trading is indeed a serious crime. On the ideological level, the fiction that insider-trading can be detected and sanctioned with any regularity may be essential. Rather than controlling crime, the goal may be to convince small investors that stock markets are not what they appear to be—a crap shoot rigged in favour of the biggest and richest players who inevitably have the greatest access to inside information. Money laundering is another area where the rhetoric of harm may be covering up quite different objectives.

<sup>16</sup> We await in Canada the ‘mandatory suspicious transaction’ legislation that is currently being drafted. The financial sector is encouraged to report suspicious transactions and is protected from any legal repercussions in the cases where they do submit reports to the police, however the system is still a voluntary system.

The trade was organized as a series of small shops dependent upon and paying extortion money to mob-run trucking firms. Yet the output was largely sold to respectable fashion companies and big department stores.<sup>17</sup> Typically they drew their labour force from diverse sources:

- first time entrants into the labour force whose lack of documented history facilitated income and social security tax evasion;
  - moonlighters cheating unemployment insurance agencies;
  - welfare recipients working for cash on the side; and
  - illegal aliens in a state of debt-bondage to the gangs that brought them over.
- A final example, relates to the unanticipated—or ignored—consequences between criminal enforcement strategies and the economy. For example, if the police in North America were ever successful in putting an end of the sale of Jamaican *ganja* (marijuana), on the surface they would have solved a serious crime problem. They would have succeeded in taking away from gangs the profits of trafficking, therefore reducing inter-gang violence; and they might simultaneously reduce any property crime resulting from customers attempting to get the money required to make their purchases.

But the story does not stop there. Deprived of a market, large numbers of Jamaican *ganja* farmers, many of them refugees from the previous collapses of bauxite and sugar, would be driven out of business. They would move en masse into the urban slums, swelling an already enormous problem of urban crime that threatens the country's social stability as well as tourism, by far the most important source of legal foreign exchange. They would also emigrate abroad in increasing numbers, joining the ranks of illegal aliens in North American cities and, along with them, the manpower of the exiled “posses” who would compensate for the loss of *ganja* profit by putting more energy into “crack” and extortion.

Closer to home, the involvement of criminal law into corporate regulation can have a direct impact on the shareholders. An excellent example is the recent YBM Magnex case. Amid allegations that this manufacturer was a front for money laundering, the firm may plead guilty to one count of participating in a conspiracy involving various forms of fraud and receive a \$3-million fine. The difficulty comes in that if this plea scenario should fail, the US attorneys would likely aggressively seize all of the assets. As the receiver warned:

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<sup>17</sup> These relations are explored in greater depth in R.T. Naylor, “From Underworld to Underground: Enterprise Crime, “Informal Sector” Business and the Public Policy Response”, Crime, Law & Social Change, Vol. 24, 1996.



“The criminal overhang is a major risk to the prospect of any potential realization and distribution to the stakeholders of YBM Magnex” (Financial Post, April 8, 1999, p. C1 and C6).

Even if the danger from these economic related offenses were as great as the increased ‘policing’ would imply, there is something bizarre about the juxtaposition of two contradictory trends. On the one side there is the progressive criminalization of disputes between two autonomous economic actors who in the past were expected to resolve their differences through civil proceedings. On the other side is the progressive civilianization of policing, as more and more of the investigation of activities that will lead to criminal rather than civil charges is being delegated to the forensic investigative firms.

## 4.2 Offenders or Offenses: The Problem with the ‘Collective’

Criminology and, by extension, the entire law enforcement apparatus, focus on people as offenders under the criminal code. Offenses exist to define offenders. As a branch of sociology, it is naturally interested in the “who” more than in the “what”. Therefore it largely neglects to scrutinize closely the economic impact of the various offenses, even when dealing with economically motivated crimes. That produces certain weaknesses.

When the focus is on actors rather than actions, there is a serious problem in coming to grips with multiple offenders. Criminology, and the law enforcement apparatus, look to collectives, to aggregations of individuals coming together consciously to perform certain proscribed acts. If the problem for which a remedy in law is sought is clearly larger than anything that could be imputed to an individual malefactor, it is presumed to be the work of a self-aware collectivity—an “organized crime” group. That leads to the semantic swamp in the form of a search of a definition of “organized crime” that relies on the characteristics of the organization more than the economic consequences of the organization’s presumed actions.

Trying to answer the question “who did it” in such terms has also forced the law enforcement apparatus to rely on often dubious notions of conspiracy in order to prosecute groups for single acts, i.e., notion of conspiracy where the participants are not even aware they are ‘conspiring’. By contrast, *an economic view* of aggregating economically motivated offenses, when confronted by actions that in their totality are clearly beyond the capacity of any one individual, aggregating, would move from the individual participant, not to the collective conspiracy, but rather to the “market”. It would assume not only that the whole is qualitatively distinct from the sum of the parts (as does the concept of “organized crime”) but also that the whole exists without the need for any conscious conspiracy by the parts. In effect organization (or disorganization) is merely an incidental factor that explains the particular institutional structure through which an action takes place without necessarily affecting in any discernible way the fundamental nature of the action.

Taking the first view, when a major economically motivated offense occurs that is similar in nature to its predecessors, the immediate impulse of the law enforcement apparatus is to “round up the usual suspects”. Taking the second view, there would be no presumption that the existence of an on-going supply of illegal goods and services must involve the same individuals just because they involve the same market. The presumption would be that, unless there is proof to the contrary, the marketplace is fluid, the actors are variable and entry-and-exit relatively free. There may well be known candidates to suspect, but the market approach would anticipate a greater fluidity of suppliers with less monopolization.

### 4.3 Classes of Criminals

Another weakness with the criminological or more traditional perspective, is that it seems to inevitably create two distinct classes of ‘criminals’ in the eyes of the law—a class of career criminals and a class of legitimate citizens who may from time to time err. This raises obvious problems from the point of view of civil liberties and raises serious potential for ethno-religious stereotyping. Any truth that may have existed in notions of ethnic succession on the crime ladder, or of layers of society trapped in a traditional crime culture, have surely lost much of their relevance in more recent years with greater social, geographic and inter-cultural mobility. Yet locked into the old mind set, criminologists studying “organized crime” and police specializing in chasing it, have simply expanded the list of ethnic groups. To the ranks of Italian ‘organized crime’, they have now added Nigerian, Vietnamese, Chinese, Japanese, Aboriginal, Russian and Aboriginal. Biker gangs become an ‘ethnic-equivalent’ categorization based on the presumed rationalization that bikers are so offensive a species as to rank as a separate ethno-cultural community!

There seems little or no justification for differentiating between the actions of a so-called career criminal engaging in illegitimate business and a career business-person dabbling in crime. The fact that the first may well be a recidivist will probably make his/her crimes smaller and better disguised since he/she has so much more to lose. A recent Montreal police report stated that “approximativement 90% des clubs, bars et brasseries sont controlés par le crime organisé.” Apart from the obvious rejoinder, how did the mob manage to miss the other ten percent, this cry of alarm assumes without proof that bars controlled by persons identified as career gangsters skim more tax-free cash, serve more bootleg booze and cater to a lower class of clientele than those owned by apparently respectable citizens who have never been tainted with a mob association. In reality logic suggests a mob-run business may well be cleaner. Even if it acts as a front or a laundry, successful performance of that function requires that it, above all else, avoids drawing any attention.

## 4.4 Criminal Exchanges: a Typology

Given the fact that diagnosis and prescription have historically focussed on the who rather than the what, on actors rather than on actions, the result has also been to gloss over very real differences in the nature of economically motivated crimes in terms of their *social harm*. Since all are seen to fall under the concept of organized crime, they are presumed to have much more in common than they really do when judged as economic acts.

Economically motivated crimes might be thought of as falling roughly into three, perhaps four, categories<sup>18</sup>:

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**Table One: Economically Motivated Offenses**

Type	Basic Act	Method	Use of Violence?
Predatory	illegal	illegal	usual - primary
Enterprise	illegal	legal	sometimes - secondary
Commercial	legal	illegal	rare – tertiary

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### Predatory Offenses

First are crimes of a predatory nature: everything from purse-snatching to ransom kidnapping to embezzlement falls into this category. Predatory offenses historically have largely defined the evolution, objectives and modus operandi of the criminal justice system. In fact it remains to this day implicitly predicated on the notion that its main task, in terms of economically motivate crimes, is to deal with predatory offenses, even if the reality is quite different. No matter how complex the surrounding apparatus, the core of predatory offenses is simple and direct. They all involve:

- the redistribution of existing wealth from one party to another.
- Such transfers are *bilateral*, involving victim and perpetrator. Though others may be involved in subsequent actions involving the target property, the fundamental act remains a bilateral transfer.

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<sup>18</sup> These distinctions were first made in this form in R.T. Naylor, "From Underworld to Underground: Enterprise Crime. 'Informal Sector' Business and the Public Policy Response" Crime, Law and Social Change, Vol.24, 1996. There the differentiation was made between predatory and enterprise offenses. The third category of commercial offenses were added in R.T. Naylor "Criminal Money Flows: Behind the Myth" address to the ISPAC Annual Conference, Courmayeur-Mont Blanc, September 1998.

- These transfers are *involuntary*, generally using force or the threat of force, though guile may sometimes suffice.
- The victims (individuals, institutions or corporations) are readily identifiable.
- The losses by the victims are simple to determine - the robbed or defrauded person or institution or corporation can point to specific money and property.
- The sums involved, however large in relation to the participants, are small in relation to the economy as a whole, not only for each incident but (except in very rare and, by definition self-limiting cases) summed over the total of all such incidents for the economy as a whole. (Obviously an economy where theft is the dominant mode of transfer of wealth by definition has an existence that is nasty, brutish and short.)
- Since the transfers are involuntary, the morality is unambiguous, i.e., someone has been wronged by someone else.
- Therefore, over and above direct punishment of the guilty party, the policy response is simple - *restitution to the victim his/her property*.

### Enterprise Offenses

Second are enterprise crimes. As we are using this term (note: not as in the CC), these offenses are relatively new, for the most part dating from decisions in the early part of the 20<sup>th</sup> Century to criminalize personal vice. These offenses involve:

- the production and/or distribution of new goods and services that happen to be illegal i.e., recreational drugs or illicit gambling, for example.
- The exchanges are multilateral, much like legitimate market transactions, involving (among others) producers, distributors, retailers and money-managers on the supply side and consumers on the demand side.
- Since the transfers are voluntary, it is often difficult to define a “victim”, unless it is some abstract construct like “society as a whole”, a phrase that, by attempting to embrace all, ultimately includes nothing.
- Although the total sums involved may be considerable, in themselves and in relation to the economy as a whole, provided the transaction remains voluntary, there are no definable losses to any individual from the act itself (though there may be from indirect consequences of the act).
- The morality is accordingly debatable.
- And the preferred policy response is therefore muddled. Since there is no really definable victim, in addition to standard forms of punishment, it has become popular to force the guilty party or parties to forfeit the gains to “society” (or its guardians).

To be sure the contrast between predatory and enterprise offenses is not always so clear. In practice some predatory crimes require enterprise ones to dispose of the merchandise or launder the proceeds. However the underlying act generating the money is unambiguously predatory since it involves an involuntary transfer of existing wealth. On

the other hand, some enterprise offenses are committed in an environment characterized by force or fraud. But the basic act is still a consensual contract between supplier and customer of new goods and services.

There are actually two distinct subcategories of enterprise offenses. The first involves the production and distribution of illegal consumer goods and services like recreation drugs and illicit gambling services. The second involved the production and distribution of illegal producer goods and services. This would include such actions as the provision of illegal alien workers to a sweat shop, loan sharking to an enterprise straitened for working capital or the illicit disposal on behalf of a cost-cutting corporation of toxic waste. When producer goods and services are involved, enterprise offenses began to shade into the next category.

### **Commercial Offenses**

Third is a category that, for want of a better name, might be referred to as commercial crimes, albeit with a meaning quite different from that normally ascribed to the term by police forces with “commercial crime” divisions. These crimes are committed *by* entrepreneurs and corporations. Crimes committed against them would fall into the predatory category. Commercial crimes involve:

- the production of goods and services, which are, inherently legal, but whose methods of production and/or distribution are illegal.
- Since transfers occur within a normal business setting, exchanges are multilateral and, on the surface, voluntary.
- However there are inevitably involuntary elements as well. Fraud can be committed against workers, suppliers, financiers or customers.
- Because of the element of fraud, the morality should in principle be unambiguous- though in reality it is often difficult to differentiate fraud from simply sharp business practice.
- Once the offense is proven, punishment may involve either restitution of misappropriated property or loss of illicit gains or both.

Commercial crimes range from the domain of the unlicensed pushcart operator to the Fortune 500 corporation falsifying cost data on a public sector contract, dipping into the company pension plan to finance a vice-presidential jet or conning customers with worthless product guarantees.

While some commercial crimes have distinctly predatory overtones (telemarketing fraud, for example) that make them fit objects for traditional criminal prosecution, many do not. Yet the tendency in the entire range has been towards criminalization of actions formerly dealt with either as regulatory problems or as issues to be settled by civil litigation.

## Corporate Offenses?

It is possible to define a fourth category, corporate crime that is much less amenable to clear analysis. Here the offense is the indirect consequence of otherwise perfectly legal action. The goods and services are inherently legal and the method of production and distribution conforms to established rules and regulations. But “externalities” (the impact of otherwise legal acts on the broader social, political, economic or ecological environment) lead to powerful anti-social consequences.

A fast-food chain might behave as a model corporate citizen while its product hikes cancer rates at home and hastens destruction of tropical rain forests abroad. An oil company in the normal course of operation might render vast tracts of agricultural land unusable and pump ozone-depleting gases into the troposphere. A baby-food company can leave in its wake an epidemic of infantile nutritional disorders, sometimes causing premature death. Here and only here can it truly be said that the victim is “society”—but so too is the beneficiary. In this murky world of crime without law, actions have to be judged against a higher standard than that defined in the criminal code, and against those actions there is often no institutionalized recourse. Furthermore the problem of balancing, for example, the loss of employment and of tax revenues from clamping down on growing tobacco and selling cigarettes against the costs to public health from their consumption is not one which criminal law can ever hope to deal successfully.

## 4.5 Distribution of the Proceeds: Karl Polanyi

These three (or four) forms of economically motivated crime are distinguished at heart by the differences in their main mode of distribution of the proceeds. In fact there is a remarkable analogy between modes of exchange and redistribution of wealth in legal and illegal sectors of an economy.

It is a central axiom of economic anthropology, developed particularly well by Karl Polanyi, that material possessions can be transferred from hand to hand in three distinct ways.<sup>19</sup> One is by command issued by a central authority - someone instructs that payments be made, usually from those without political-military power to those with it. While the image immediately comes to mind of peasants laying capons and sheaves at the feudal lord’s feet, the same relationship exists today when citizens annually render unto modern Caesars their annual due at tax time. A second is by reciprocal gift exchanges among peers enjoying close personal relations. Though typical of “primitive” peoples, vestiges of reciprocal gift exchanges are certainly present in modern societies, most noticeably at Christmas time. The third, supposedly most typical today, is by market

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<sup>19</sup> These distinctions were first made explicit by Karl Polanyi. On his contributions to the field of economic anthropology, see George Dalton (ed.), Primitive, Archaic And Modern Economies: Essays of Karl Polanyi, New York: 1968

relations in which supposedly objective criteria dominate the pricing process and with it the bilateral or multilateral exchange of value between persons enjoying nominal equality under the laws of the market.

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**Table Two: Modes of Exchange and Redistribution**

<b>Mechanism</b>	<b>Institution</b>	<b>Legal</b>	<b>Illegal</b>
redistribution	power hierarchy	tax and transfer	fealty and/or force
reciprocity	interpersonal relation	gift	fraud
exchange	market	legal sale	illegal sale

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A similar three-fold distinction holds in economically motivated crime. In predatory offenses, the usual method by which transfers occur is through the use of force or the threat of force - this represents an illegitimate use of a command relationship. In commercial offenses, transfers occur through fraud - this can be taken to represent an illegitimate use of a personalized relationship of reciprocal obligation. In the case of enterprise offenses, the transfer occurs through a pure market exchange - ironically, enterprise crimes, commonly seen as the most heinous today, are on another level the most benign.

#### **4.6 Implications of the Four-Fold Distinction**

The distinction between the various types of economically-motivated 'organized crimes' goes beyond the micro level, the level at which the individual acts are carried out. They all have radically different implications at the macro level i.e. that of the economy as a whole.

#### **Economic Crime and GNP Growth**

First, their impact on GNP is quite different. Predatory crimes are crimes purely of redistribution of existing wealth. They do not generate new goods and services and therefore do not increase total income flows. Therefore, barring indirect consequences like the costs of increased security and policing, their net effect on GNP is zero. By contrast, enterprise crimes involve the production and distribution of new goods and services. Judged in strictly economic terms, they should have a positive impact on GNP -

perhaps yielding further proof of the old adage that an economist is someone who knows the price of everything and the value of nothing.

Commercial crimes could have either effect. To the extent that the commission of a commercial offense helps expand the supply of goods and services, it increases total economic activity and therefore expands the amount of income potentially available to the population as a whole. However, that increase may, as a consequence of the commercial offense, be unfairly distributed. But if the crime involves simply applying illegal methods to the production and distribution of legal goods that would otherwise be produced using legal methods, it is a matter purely of redistribution. The supplier gains at the expense of other suppliers and/or customers and/or workers with no net effect on the economy's total production of goods and services.

With corporate crime the net effect depends entirely on how measurement is done. If national income is estimated in the normal way, by examining total value of market transactions, then any production of new goods and services taking place in legal ways unambiguously increases society's total GNP and, with it, economic welfare. But if national income is measured in a broader way to take account of potential depreciation of human and ecological capital, there are all manner of unintended costs which should be subtracted. It is impossible to say a priori what the net effect will be.

### **The Use of Violence**

Violence or the threat of violence is regarded as the most heinous of all criminal offenses. Yet in economically motivated crimes, violence (or its threat) plays a radical different role depending on the specific type of offense. In predatory acts, violence (or its threat) occurs at the primary stage. It is usually a principal tool without which the act could not take place. Therefore legitimate society is directly and deliberately threatened.

By contrast, in enterprise acts violence per se is not required - the exchanges are at fair market value and the transfers of money and goods are voluntary. Violence occurs primarily in a secondary phase, in struggles between rival suppliers over the resulting profits, and it is therefore a direct consequence of the fact that the goods and services are illegal rather than being inherent in the acts per se.

With commercial crimes violence rarely enters, and then only in a tertiary way - when perpetrators attempt to protect themselves not against other perpetrators but against the justice system.

### **The Concept of Corruption**

With the possible exception of drug trafficking no criminal act has achieved greater notoriety in recent years than corruption. Politicians (the major recipients) join with the



international community to implement anti-foreign corruption legislation. The World Bank and IMF have joined the crusade—or led the crusade. Yet corruption remains a catch-all category in which several distinct acts are compounded and often confounded. In the analysis of economically-motivated crime, corruption should logically be seen not as a primary offense but as an instrument of that offense - either facilitating the conduct of the offense or helping to cover it up afterwards.

Clearly predatory acts per se do not involve corruption. Nor, strictly speaking, do enterprise offenses, to the extent the market exchanges involve fair value and free transfer. However corruption can occur as a secondary consequence of both when perpetrators attempt to subvert the law enforcement system to cover up their actions or when corruption is used to cover up the primary act by subverting the justice system.

Corruption is far more commonly the domain of those seeking commercial advantage - it is used to subvert the normal mechanisms for achieving access to services or contracts, which are themselves legal. It is, in short, an illicit payment for a licit good or service, and therefore for the most part falls within the ambit of commercial crime.

### **Money-Laundering**

With all three types of crimes, it may be necessary for the criminal to, first, hide and, later, to “launder” the money to evade detection and enjoy the proceeds. But the role of the authorities in pursuing the money trail is quite different. With predatory offenses, that role consists of finding and restoring misappropriated property with no presumption of taxes on or forfeitures of illegal gains. In enterprise offenses that role may consist of both finding and taxing hidden revenues (the sensible approach) and of finding and forfeiting misbegotten profits (the popular approach fraught with dangers). In commercial offenses that role may include all three - restoring misappropriated (fraudulently obtained) property, finding and taxing hidden revenues and finding and forfeiting misbegotten profits. In all cases fines can be used as a form of punishment of the guilty party - they are quite distinct in logic and purpose from restitution, tax collections or forfeitures.

### **Fiscal Implications**

The major types of economically-motivated crime also differ according to their fiscal implications. With predatory offenses where both the basic act (misappropriation of resources) and the method by which it is carried out (force or duplicity) are illegal, there are no fiscal implications. Income taxes are levied on new net income flows, not on the redistribution of existing ones. Although tax authorities weaned on Eliot Ness reruns may sometimes attempt to take their cut from the proceeds of predatory crime, that makes little sense. Criminals who commit predatory offenses should repay the victims and perhaps incur fines in addition to or instead of prison terms. But logically they should not be expected to pay taxes on their ill-gotten gains since the victim, to whom full restitution

should be made, would end up being the one who bears the burden of the tax. in the form of reduced restitution.

With enterprise offenses, where the basic act (the sale of explicitly banned goods or services) is illegal but the method by which it is carried out (voluntary market exchange) is not, the fiscal implications are also unambiguous. Income taxes are legally due on the proceeds of the sale of any good or service, legal or illegal in nature. Failure to render such taxes to the fiscal authorities adds an additional layer of criminality over and above the basic offense.

With commercial offenses, the situation is more complicated. The basic act is legal (production and sale of legitimate goods or services) but the method (fraud against workers, suppliers, financiers or customers) is not. Whether or not the offense has any fiscal implications therefore depends on the precise instance. Some may involve purely the generation of legal income by illegal means, with all taxes duly paid by the perpetrator. With others tax evasion may constitute a secondary offense. For example, sale of smuggled but otherwise legal goods (evasion of Customs and excise duties) and sale of domestic goods and services for cash (evasion of sales and value added taxes) constitute commercial offenses. The vendor, with intent to increase sales and profits, has failed to collect consumption or indirect taxes due on the sale of a good or service whose sale subsequently generates income. However with a fiscal offense the earner of income, legal or illegal, fails to pay direct taxes due upon the income earned. Two offenses are committed. The first involves a criminal act with respect to methods of production or distribution - the second involves a criminal act with respect to the financial proceeds of acts of production or distribution.

With corporate crimes, the results appear fiscally beneficial. New goods and services are produced, and the corporation, employees, shareholders and customers variously pay income, capital gains and sales taxes. However these might well be more than offset by the external costs, some of which are unloaded onto society as a whole and some of which are directly absorbed by governments in increased spending for public health and environmental cleanup. However, once again, this is a field much beyond the reach of ordinary criminal law.

## E. Enforcement and Legislative Responses

The implications of this three (or four)-fold distinction for law-enforcement are considerable. With respect to economically-motivated crime, the law enforcement apparatus was created first and foremost to deal with *predatory offenses* in which there was an easily defined victim, readily identifiable property that had been misappropriated and a universally accepted solution. The crime and the property issues were inextricably linked and property had to be dealt with only in respect to the underlying offense against a person. Leaving aside exceptional times and places where predatory offenses might adversely affect the overall business environment, the division between police and economic regulator was reasonably clear. To this day the bulk of police training, and the mindset of the law enforcement apparatus remains implicitly tied to the concept of predatory crime.

Typically when the offenses depart from the realm of simple crimes of property redistribution, everything becomes ambiguous due to:

- the moral issues;
- the relevance of criminal law to the offense in question;
- the competence of the law enforcement apparatus; and
- the fundamental question of whether the defined offense reflects genuine social problems or merely expediency and the potential for legislators to pander to loud or influential lobby groups.

Orthodox police methods are too often demonstrably ineffective at dealing with enterprise or commercial (or corporate) crime. The police, charged with guarding the persons and property of 'legitimate citizens', labour under a major handicap. With enterprise offenses their position is rendered awkward by the willing participation of so many members of polite society; and their actions are often ineffective, since they target only the most visible and vulnerable who are also the most easily replaced component of the criminal networks. This leaves the illicit market operating largely unscathed.

With commercial offenses, they are frequently technically unprepared to deal with serious crimes, which involve complex business methods. This in fact is one of the primary reasons for the rise of private law enforcement undertaken by forensic accounting and private security firms. A second difficulty for the public police and the formal justice system is the fact that their actions will trespass onto explicitly political territory. For when crime is committed, not by career criminals (with names that are suspiciously difficult to pronounce), but by otherwise upstanding citizens, they implicitly raise questions about the legitimacy of the very codes of commercial conduct the police are supposed to be enforcing.

## 5.1 Canadian Legislative Reasoning: A Focus on the ‘Proceeds’

The international focus on money laundering and criminal proceeds seemed to develop fairly quickly during the 1980’s and into the 1990’s. However, this international focus was built on an acceptance of two policy decisions that evolved much more slowly:

- to move in the direction of “targeting upwards” to remove the higher echelon criminals; and
- separately, on a decision that seizing and forfeiting the proceeds of crime might be even more critical to the criminal operation than removal of the key individuals.

These two decisions, particularly the concern for the criminal proceeds, brought an awareness of the necessity to trace illicit proceeds through the complex laundering schemes devised by criminals.<sup>20</sup> Canada actively sought out the experiences of the US officials including one of the key US drafters, Robert Blakey, at the time that Canada was beginning to debate and draft a version of the US RICO (Racketeer Influenced and Corrupt Organizations Statute). The success of the US proceeds of crime forfeiture program and an enthusiasm for sharing these riches with foreign police agencies also served to encourage the Canadian police to demand the same access to their seized assets and a sharing protocol.

The influence of the US upon Canada is great—a times merely passively received or resisted, but at other times it is hard to resist (i.e. the offer one can not refuse!). Pressure upon Canada from the United States has within the last ten years taken a fairly aggressive form.<sup>21</sup> This type of extra-territorial reach is not unique to the United States as the international community attempts to achieve greater uniformity. However, the physical border between Canada and the United States compounds enforcement relations between our two countries while at the same time making it necessary for the policing agencies to work closely on the same cases.

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<sup>20</sup> See Beare, 1996 for a detailed discussion on the evolution of countries legislative responses to organized crime.

<sup>21</sup> One of many direct confrontations occurred when US Senator Kerry Commission listed Canada among the 18 highest priority countries deemed to be major money laundering countries and pressured the Canadian government to introduce a currency transaction reporting (CTR) system similar to the US CTR system with the backup threat of being denied access to the US currency clearing system. During 1989, at the US request, a delegation led by Salvatore Martoche, Assistant Secretary of the Treasury for Enforcement in Washington came to Ottawa to encourage the Canadian officials to adopt a US style currency reporting system or at least meet the requirements of the US government in some other manner. Martoche made it clear that the language of the Kerry Amendment was designed to establish parallel systems to those in place in the US.

The historic role of the shared border during prohibition ought to have prepared everyone for the dynamics of the current illicit movement between our two countries and the political positioning on either side. The border is long, largely undefended, with stable banking and investment opportunities on both sides and a large illicit drug market within the United States as well as a huge commercial and financial trade that passes back and forth. Hence any organized crime enforcement issues on one side of the border are shared on the opposite side.

## 5.2 The Issue of the Proceeds of Crime

Given the making money motivation behind organized crime operations, it seems only logical that divesting organized criminals of their ill-gotten proceeds is not only rational but a moral imperative.<sup>22</sup> It is also hoped that this legislative and enforcement strategy serves as a general deterrent to organized criminals. Canada much like the United States allows for the seizure of monies illegally acquired. Unlike the United States however, these monies once seized are shared at the level of government among those jurisdictions who participated in the successful cases but the money does not go back to the police forces who were directly involved in the cases.

Before most other countries had forfeiture laws to enable the seizing of proceeds from organized criminals, the US was actively seizing these illicit proceeds and equally actively sharing the booty directly with the police forces involved in the cases. One US view is that allowing the investigative agency to retain these monies provides the police with an immediate incentive to continue targeting lucrative criminal enterprises.<sup>23</sup> However there is a fairly rich literature that raises serious policy concerns regarding this position.

While Canada has come somewhat more recent to the proceeds of crime and forfeiture form of law enforcement, the position has always been that there are considerable dangers involved in the seized proceeds being able to directly benefit the agency or the individual who has seized them. Traditionally there have been three main concerns raised by Canadian officials. The belief has been that ability of the police to gain directly from the illicit proceeds would :

- bias the system of justice, i.e., that the police would tend to target those criminals that have the type of illicit proceeds (goods and cash) that the police either want specifically for some purpose or that the cash was such that it would be free from third party interests and would therefore be available to come to the police rather

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<sup>22</sup> See Beare, 1996 for a discussion of the transition from targeting upwards rhetoric to a focus on the proceeds of crime and money laundering.

<sup>23</sup> See Beare and Marten "Policing Organized Crime: The Comparative Structures, Traditions and Policies Within the United States and Canada", *Journal of Contemporary Criminal Justice*, Vol.14, #4, November, 1998.

- than to taxation and revenue or back to the victims of the offences;
- encourage the municipal, provincial and federal funders of law enforcement to cut back the budgets and in a real sense make the police and the justice system dependent on the revenue from the forfeitures;
  - jeopardize the working relations between the police and their law enforcement partners as each seeks to gain the largest amount of the proceeds.

At the most basic level the thinking was that the objectivity of justice—appearance and reality—could not allow the police, who have the discretion to determine which cases to pursue, to then benefit from any successful criminal proceeds. British Columbia was the first provincial government who enacted their own legislation for provincial redistribution of these proceeds. The BC legislation allowed for law enforcement initiatives at the discretion of the provincial government to benefit but in no manner were the costs of the original investigation nor on-going policing costs to be covered via these sharing mechanisms.

However, the Canadian resistance to the lure of these funds may be weakening. The 13 Integrated Proceeds of Crime units across Canada are now being funded “on debt” in the sense that the RCMP must repay the operational costs of these IPOC Units to Treasury Board from the forfeitures that they make each year. There is some concern that this funding arrangement is too close to the model that exists in the United States. The police become dependent on choosing cases that will provide them with the required funds.

Nkechi Taifa (1994) argues that the US civil forfeiture laws violate basic tenets of American due process protections: the right not to be punished until guilt is proven beyond a reasonable doubt; the right to be free from unreasonable searches and seizures; the right not to be deprived of property without due process of law; the right to equal protection of the laws; and, the right to be free from unwarranted or disproportionate punishment (p.95). She states:

There exists an unbelievable number of cases in which civil forfeiture is abused or overzealously pursued. For example, in some states and localities, after the police seize property, prosecutors allow them to negotiate settlements with the property owners for the return of their property. This practice has resulted in widespread misuse that some have compared to legalized extortion . (pp.100-101)

In addition to the fear that specific types of cases or types of individuals would be targeted, there was the claim that based on the US experience in a number of jurisdictions the seized assets became built into the police budgets so that over time (a very short period of time) the financial managers adjusted the police budgets to reflect the amounts that they were expected to gain from seizures the effect being to make the police dependent on the seizures. As Taifa (1994) illustrates, under the US Customs Forfeiture fund, the National Drug Control Policy's Special Forfeiture Fund and the US Department of Justice Assets Forfeiture Fund, all money and property seized by the state and federal

agencies is deposited back into the budgets of the seizing agencies. The 1992 study of the US *General Accounting Office* (Asset forfeiture: Improved Guidance, p.6) surveyed how state and local police used the shared assets the first item on a list of sixteen was police officer salaries and overtime .

The poetic justice that saw the criminals in effect having to pay for their own prosecutions has, in the opinion of the critics, turned into an enterprise that takes precedent over any objective of pursuing convictions. Michael Zeldin, former Director of the Justice Department's Asset Forfeiture office states:

We had a situation in which the desire to deposit money into the asset forfeiture fund became the reason for being of forfeiture, eclipsing in certain measures the desire to effect fair enforcement of the laws (Taifa, P. 108).

As quoted in the *New York Times* (May 31, 1993 sec.1 p.1), Zeldin accused his successor Cary Copeland of putting the maximization of seized funds ahead of good law enforcement. Zeldin characterized his Department's orders as saying Forfeit, Forfeit, Forfeit. Get Money, Get Money Get Money (see also Levy, 1996 p. 153 and Cheh. 1994. p.4).

In addition to the accusation of these abuses in police and justice powers, equally serious are the detrimental effects that some critics claim result from these forfeiture powers. The National Association of Attorneys General released a report stating that the financial incentive to law enforcement agencies has created competition among local law enforcement agencies for forfeited resources. This competition was seen to be detrimental to statewide drug enforcement efforts (Taifa p. 109). The accusation is made that the priority being given to chasing the cash and property for personal or organizational gain, may work to hamper the actual apprehension of criminals.

A final critical aspect of the US forfeiture system involves the rewarding of informants who help the Department of Justice to make successful cases. While paying informants has long been a practice in traditional police work, this system of rewards is something quite different. According to Leonard Levy (1996), these New Bounty Hunters testify against associates, set up drug deals (reverse stings), and operate with a freedom from accountability far exceeding that given undercover police agents—who as described by Manning (*The Narcs Game*, 1980), enjoy a vast degree of freedom.

The intentions behind legislation and policing policy may be completely honourable. In the case of civil forfeiture for example, the objective was to bankrupt the Mafia and drug kingpins . State legislation was brought in with the same objective tough enforcement to combat tough organized crime cases. As stated by a Seattle defense attorney: The minute they got it in place they started applying it to the little people (Levy, 1996, p.127). Numerous accounts document the most extreme of these cases homes, planes, cash, vehicles forfeited in situations where no wrong doing is proven or provable.

### 5.3 'Policing' Organized Crime

There is general agreement that inter-agency cooperation is critical in organized crime enforcement—both domestically and with foreign police services. To the extent that agencies designated specifically to do organized crime enforcement are separate from local policing, there is a danger that intelligence will not be shared and cooperation will be sporadic. The challenge becomes how to create a policing capacity with the expertise to carry out the sophisticated organized crime investigations while keeping the officers close to the street-level.

To some extent this difficulty should be mitigated in Canada because of the multi-jurisdictional nature of the Royal Canadian Mounted Police. While the RCMP is the federal police force with federal law enforcement responsibilities that includes such things as primary responsibility for drug enforcement, in addition, the RCMP on contract policing responsibilities involves them in both provincial and municipal law enforcement. In essence this means that the RCMP has greater exposure to a wider array of policing responsibilities.

However, whether or not this eliminates the barriers is questionable. Competition for the “big seizure and the largest bust”, may at times work against true collaboration especially in terms of on-going intelligence sharing. In addition, while the RCMP covers all of Canada as the Federal police force, as well as some jurisdictions at the municipal and provincial levels, the largest cities in Canada and therefore the cities with the greatest likelihood of having a recognized organized crime problem have their own municipal police forces who also develop their own organized crime and drug cases at this local level. Even when the RCMP are operating on contract they are supposed to be policing provincial or municipal priorities rather than Federal statutes.

The difficulty for the RCMP is to ensure that the most qualified officer for a particular task is actually in that position. This is compellingly obvious in areas of responsibility such as economic crime, high technology crimes, and the integrated proceeds of crime units. With the para-military policing structure, promotions too often serve to take the officer away from the area of responsibility where he/she demonstrated their worthiness for the promotion. Each position within the force, has been assigned a particular rank. When an officer is promoted, the task is to find a new position with the appropriate rank for the officer. While you may have a more well-rounded police officer, conversely you have lost a valuable specialist.

People find themselves in units where they have absolutely no aptitude and possibly little interest. In addition to the mismatched police officer—matched to a position in which he or she does not excel, there is the additional issue of the lazy or incompetent officer.

Dead wood (as in many occupations including academe) cannot be fired or demoted without an incredible effort that may still be overturned through the intervention of very



strong grievance or union procedures (the RCMP does not have a union as such). As in all public police work in Canada, there is no bottom-line to meet, no reassessment for continual employment and in some cases a work ethic and work schedules, shifts and performance measurements that work against aggressive, sustained organized crime investigations.

One way to gain expertise within police work is to hire the expertise from outside. While the police are making wider and perhaps increasingly better use of civilians these non-member employees soon discover that there is no career path to keep their salaries from falling behind a competitive position in the private market.

While there is a policy that attempts to give managers of specialized units such as the Integrated Proceeds of Crime Units (13) across Canada greater say as to who joins their unit, successful intervention even in these elite situations is still rare, or at best unpredictable. We speak about the sophistication of the new order organized criminals/transnational criminals and money launderers and yet they are still being policed in Canada mainly by non-specialists units that suffer from a disruptive movement of officers into and out of the areas of specialization.

## 5.4 Relationships Between Sectors of the Criminal Justice System

In Canada, the belief is that each major participant in the criminal justice system namely the police, the Crown, the defense bar, the judiciary, and the government that funds the system are all independent of each other (Martin Report, 1993, p.43). It is no one's responsibility to get a conviction but rather it is deemed to be the independent responsibility of all of the sectors to achieve an accurate picture of the criminal activity and to achieve "justice".

Much is made of the need to balance justice with efficiency and much is made of the need for impartiality of the actions of the prosecutors separate from the actions of the police. Following England's lead where the police are under the Home Secretary and the prosecutions are under the Attorney General, in Canada the police are under the Solicitor General (as of 1966) while the prosecutors are under the Attorney General. During the House of Common debates in 1966 the first Solicitor General of Canada stated:

It seems to me that to invest the authority for the investigative functions of the government in the same person who is going to conduct the criminal process is foreign to the spirit of justice (H.C. Debates, Vol. V., at p. 5524, may 25, 1966, quoted in the *Martin Report*, p. 38)

In brief, separating the investigatory powers from the prosecutorial powers is seen as an important safeguard against the misuse of both. As the Martin's report states:

As a matter of law, police officers exercise their discretion in conducting investigations and laying charges independently of Crown counsel. (Martin Report, 1993, p.37)

For example, *The Donald Marshall Commission* was critical of what the Commissioners saw to be inappropriate pressure on the police by officials from the Attorney General's office, and were critical of the RCMP for putting their working relationship with the AG's office ahead of their duty to uphold the law (Martin Report, p.123).

Certain changes have occurred over recent years that appears to be bringing the police and the prosecutors closer together. While insisting that the bifurcated responsibilities remain separate, there has been an increasing acknowledgment that the police must work closely with the prosecution. Pre or post charge screening in an attempt to reduce the unnecessary burden of cases entering the court system has meant greater communication and negotiations between the police and the prosecution. In addition, landmark court decisions such as *R. v. Stinchcombe* ([1991] 3 S.C.R.326) on disclosure require the police and the prosecutor to make everything uncovered during the investigation available to the defense. This require both agencies to devote resources into the reproduction and the identification of this material. In large, long-term organized crime and money laundering cases this task is enormous.

Perhaps the greatest influence has been the very nature of the transnational cases that the police are trying to develop. Complex transnational cases that require mutual legal assistance from foreign jurisdictions require the involvement of the Department of Justice officials who must work with the RCMP to process and forward the documentation to the foreign jurisdiction. It is now accepted that at a very early stage in even the development of these expensive cases, consultation with prosecutors is advantageous.

This arrangement was formalized in the funding of the original three Integrated Proceeds of Crime (IPOC) units in Montreal, Toronto and Vancouver. The funds acquired to set up these units included resources to designate specific prosecutors to work out of (or in close relationship with) the police officers, forensic specialists and clerical people in the units. Those three pilot organized crime/ proceeds of crime policing units have now been extended to 13 jurisdictions. These units resemble the US style task-force/ strike force approach. Each of the ten new IPOC units, similar to the original three, have dedicated Crown counsel to work with the police throughout the complex cases. In addition to the philosophical concerns related to having the police and prosecutors working together, Nadelmann (1997, p,135) identifies another consideration the prosecutors may be serving less of an over-sight function or advisory function and more as a legitimizing authority for some of the more imaginative/ aggressive or possibly deviant policing strategies..

Whether there is a cost from a justice perspective from this altered working relationship is yet to be determined and if there is a cost, decisions will then have to be made as to whether the gains are adequate to compensate.

## 5.5 Unanticipated Consequences of Policing Strategies and Legislation

What the police and legislators do can have an unanticipated impact on the criminal operations and on society. The challenge is to try to predict and avoid harmful consequences. During the late 1990's Canadian government began to focus on money laundering. There is a fairly direct consequence. If the police target proceeds, then the criminals will need to hide their proceeds better than they previously did. The more sophisticated they get at hiding their proceeds, the more complicated the money laundering becomes, and the more police energy that goes into money laundering enforcement.

We are not necessarily challenging this as an enforcement strategy, however more research needs to be done in order to determine whether these policies are worth the costs that are involved. There have been fairly general statements made about the adversity of having illegitimate proceeds co-mingled with legit proceeds. However this assumes a degree of separation between the legitimate and the illegitimate economies that may not exist. The “costs” must be seen to include the police resources, civil rights, and on occasion ethics.

For example, in June of 1998 the Canadian newspapers ran a 5 day series on the RCMP “reverse-sting” money laundering operation out of Montreal against Colombian drug traffickers. The papers reported on “How :the RCMP helped ‘push’ \$2 billion worth of cocaine” (*Ottawa Citizen* June 11, 1998). Over \$125 million was ‘laundered’ over a four year period by the RCMP. This situation with the undercover money laundering sting operations surely highlights our ambiguity with the status of money laundering. The nature of these operations, i.e., the length of time and the amount of money that was being recycled in this four year project in Montreal, and similar operations in BC and in Toronto, requires thorough analysis by policy makers. In some ways, cases such as these may be like high-speed pursuits that require a calm non-participant to monitor and call-off the operation even while it is going full-tilt ahead. In the case of the exchange house, the money was not even becoming co-mingled with legitimate funds and entering the legitimate economy merely cleaned and on it s way out of the country. Clear police and criminal justice policies must determine the legality and then the appropriateness of these operations.

In the name of fighting organized crime—especially drug trafficking, we have seen a number of violations of rights. The 1998 Report of the Public Inquiry Commission appointed To Inquire into the Sûreté du Québec concluded that part of the feeling of immunity and impunity on behalf of the deviant police officers had to do with their belief that almost any form of behaviour was appropriate in order to ‘fight’ organized crime.

## **5.6 The “Anti-Gang Legislation”**

In May of 1997, in an extremely ‘political’ climate, Canada passed into force “criminal organizations” legislation (Bill C-95). Our report has outlined some of the characteristics of ‘some’ organized crime groups that bring this type of legislation into question. The notion of ‘membership’ is too specifically aimed at only a small percentage of criminal operations i.e., those that are stereotypically thought of as having formal ‘members’. While the legislation does not criminalize the membership, it does provide the police with additional powers that can then apply in these select cases.

If we want a wider, and we would argue a more appropriate, appreciation of ‘organized crime’ or organized enterprise crime, then the legislation must address appropriately the wider forms. No additional legislation will prove to be a panacea that will remove the need for the police to do very difficult, usually expensive and lengthy, and potentially dangerous investigations that are required in order to connect criminals with criminal acts.

## **F. Concluding Discussions of Issues for Inquiry by the Law Commission**

In this final section we will only flag some of the key areas that were mentioned in the body of the report.

### **Unraveling the Various Economic “Crimes” Falling under Organized Crime**

We have tried to make a start at this, but more research should attempt to clarify how the very different offenses ought to most appropriately be addressed by the police and by the justice system. Related to this is the critical need for more in-depth, empirical research, that focuses specifically on criminal markets.

### **Proceeds of Crime and Money Laundering**

Although the entire notion of controlling crime by taking away the capital and the motivation is superficially appealing, there is no proof in logic or in practice that it actually works. There is however ample proof that it can pose a threat to civil liberties and civilian control over police forces. The proceeds approach also involves the police intruding on territory that has historically been the preserve of the revenue authorities and raises serious possibilities of compromising the integrity of a tax system based on confidentiality and self-assessment. This is an area requiring more study due to: the undercover operations that have gained publicity; the lessons from the United States

regarding the impact of having the proceeds go to the enforcement agencies; the recent funding basis for the Canadian IPOC units; and the financial intelligence unit that the federal government has proposed.

### **The Blurring Frontier Between Civil and Criminal Matters**

In the past criminal courts handled matters involving attacks on the social fabric and threats to individual citizens fundamental rights while leaving to the civil courts to resolve disputes between citizens over the distribution of income. However there has been an increasing tendency - of which insider trading is one example - to criminalize income distribution issues. The question is whether this is an appropriate use of the criminal law system.

### **The Role of the State in Legislating Morality**

Underneath the emergence of modern organized crime, however it is defined, is the intrusion of the state into the role of regulatory of individual life-styles, the banning of specific activities that involve strictly free choice by individuals. The question is should the state criminalize personal vice as distinct from merely criminalizing its anti-social consequences (e.g. drunk driving is a crime whereas alcohol consumption is not).

### **The State as an Instigator of Crime**

Most countries have an intelligence service that collects information. The problem comes when they also use those intelligence services to implement covert policy agendas. Intelligence agents are frequent participants in such crimes as drug trafficking, embargo busting and gun running. They frequently do so in conjunction with groups that might well be referred to as organized crime syndicates. This raises some obvious moral dilemmas for states intent on crime control - they sometimes end up facing the unintended consequences of their own actions. To date CSIS has focussed on its information gathering role. The difficulty comes when intelligence agencies go beyond this role. As CSIS and the other Intelligence Agencies around the world move increasingly into 'enforcement' issues related to organized crime issues, clear policies and research may need to address the potential dangers.

### **Appropriate Role for the Police—Private and Public**

We have identified a number of factors that work against the public police in 'organized crime' investigations. Additional resources are no longer the answer, hence organizational changes *and* conceivable a more formally recognized role for the private policing agencies may be necessary.

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## Appendix A

The following is a list of national and international experts—appropriate for the discussion of the issues raised in this report, grouped according to their principle specialization.

### **The Old Paradigm and Its Critics**

Professor Alan Block  
Penn State University

Professor Block's was one of the pioneer critics of the myth of the myth of organized crime as a hierarchically controlled conspiracy. His early research focussed in particular on New York, but it has been widely cited and emulated.

Mr. Frederick Martens

Mr. Martens was for many years a senior officer of the New Jersey State Police (set up their criminal intelligence bureau) with particular responsibility for organized crime control issues. He served as the Executive Director of the Pennsylvania Crime Commission for many years. He is currently director of corporate investigations for Claridge's in Atlantic City and a frequent critical commentator on current approaches to crime control.

### **The Emerging Economic Paradigm**

#### **(1) The Structure of Illegal Markets - Domestic**

Professor Peter Reuter

Peter Reuter was one of the pioneers of the market approach to analyzing "organized crime". His work Disorganized Crime is one of the most influential works written this century on the problem.

#### **(2) The Structure of Illegal Markets - International**

Mr. Francisco Thoumi

Mr. Thoumi is a world renowned expert on the Andean region, crime and drugs. His analysis of the distorting effects of economic crime on legal markets and his examination of the macro-economic consequences of large scale criminal financial flows is unique.

### **Predatory Offenses and Street Crime**

Professor Pierre Tremblay

Professor Tremblay is one of Canada's leading researchers on criminal retail markets and probably among the most respected writers in the country on predatory crimes like credit card fraud and auto theft.

### **The World-Wide Drugs Economy**

M. Alain Labrousse

M. Labrousse is editor of the Paris based Geopolitical Drug Despatch, a unique publication that follows developments in drug trafficking and associated black market activity around the world.

### **Corporate Crime**

Professor Frank Pearce

Professor Pearce was a pioneer of the process of extending the scope of criminology to embrace the "crimes of the powerful", specifically the damage done by large, politically influential corporations.

### **White Collar (Commercial) Crime**

Professor Nikos Passas

An internationally recognized expert in the field of bank fraud and large scale financial malfeasance, such as EEC subsidy fraud. He takes the point of view that to "explain" the origins of crime it is necessary to examine what he calls criminogenic asymmetries in national commercial codes.

### **Financial Fraud**

Professor Michael Levi

Perhaps British's most respected analyst of financial crimes, particularly well known for his investigations of financial and commercial fraud and for dissecting the preventive measures governments and corporations have attempted to erect.

### **State Sponsored Crime**

Professor R. T. Naylor

Specialised in crimes that involve the political system, particularly underground policy objectives. He is an expert in arms trafficking, oil smuggling and various aspects of embargo busting as well as the crimes of intelligence agencies.

Professor Alf McCoy

The pioneer analyst of the relationship between drugs and state policy. His work on South East Asian heroin and its interface with corrupt police, intelligence and foreign policy issues was revolutionary.

### **Asian Organized Crime**

Mr. Willard Myers

His Center for the Study of Asian Organized Crime is among the most respected repositories of information on the growing problem of transnational Asian crime groups. He is a frequent advisor to American and Canadian police and intelligence services.

### **Italian Organized Crime**

Professor Diego Gambetta

Perhaps the best known writer today on the economic nature and operation of Italian crime groups both at home and abroad.

Professor Ernesto Savona

Widely known throughout Europe as an expert in transnational crime, he has also been responsible for much critical work on the proceeds-of-crime approach to crime control.

### **Russian Organized Crime**

Mr. Rens Lee

A widely respected multilingual independent analyst, his works on the Andean cocaine industry are considered among the most analytical. More recently his main field of interest has been organized crime in eastern Europe and the ex-Soviet Union. His most recent book deals with the emerging nuclear black market.

### **Investigating Crime - the Political Dimension**

Mr. Jack Blum

Currently practicing law in Washington, Mr. Blum was formerly chief counsel to various committees of the U.S. Senate. he was responsible for, among many others, breaking the 1970s Lockheed bribes scandal that led to the Foreign Corrupt Practices Act, and more recently the investigations into General Manuel Noriega of Panama and BCCI.

### **Legislative Responses**

Mr. Richard Mosley of the federal Justice

Department has been intimately involved with legislative initiatives aimed at organized crime control for many years, including the recent anti-gang legislation.

### **Policing Responses**

Professor Margaret Beare

Director of the Nathanson Centre, expert in organized crime issues in Canada with an international reputation in the field of police research and crime control.

### **The Position of the Defense Bar**

Mr. John Rosen or Mr. Eddie Greenspan

It would seem important to include in the discussion the reaction of the defense attorneys to the suggested alternative paradigm in the paper. Both of these individuals, besides being distinguished defense attorneys, are associated with the Nathanson Centre.