

U.S. Organized Crime Control Policies Exported Abroad

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Abstract

To a great extent international law enforcement has been ‘Americanized’ in recent decades. This essay examines aspects of this process. It traces the significant part the United States (US) government’s efforts to establish a global drug prohibition regime played in the export of organized crime control policies, before more closely examining the process as it played out in Canada. Three key responses to organized crime—the Racketeering Influenced and Corrupt Organizations (RICO) Act, Currency Transaction Reporting mechanisms (CTRs), and Criminal Associations Legislation — can be traced directly to a deliberate initiative by the United States to export to Canada and to the wider international community specific policies, legislation, and bureaucratic machinery. The essay concludes with a brief account of the export of administrative approaches to organized crime. It traces the route by which the US model became the international model and briefly examines with what consequences. (144 words)

Introduction

On a weekend in late January 2011, newspapers around the world heralded the ‘biggest Mafia round-up’ ever as US officials arrested over 120 alleged mobsters (Raab, 2011). There had been major mob arrests previously and each wave of arrests served to confirm the effectiveness of the US response to organized crime, and served to highlight the potential threat posed to society from one specific form of organized crime—the structured, membership-based mafia families. The impact of US organized crime policies on foreign jurisdictions is undeniable and highly controversial. In this chapter we argue that the American view of organized crime and the responses to those threats have become the international responses. In some cases the international community has sought out the advice and expertise of the US in countering their

domestic crime problems, but in many matters greater pressures have been exerted in the quest to ‘harmonize’ enforcement ideas around the globe—with US providing the ‘standard’. Further, as the reoccurring mobster sweeps suggest, structural conditions that promote or at least facilitate organized crime remain in place and receive inadequate attention.

There is a difference between the view of US as offering a model for combating organized crime that is merely imitated by foreign jurisdictions, versus a deliberate strategy on behalf of the US to encourage, pressure, or coerce international jurisdictions to comply. The rhetoric takes on a moral tone with the US needing to provide the leadership. In 1997 Senator John Kerry wrote about the need for the globalized world to harmonize their policies and practices with the US taking the lead:

Just as it is abundantly clear that America cannot go it alone against global crime and terrorism, it is equally obvious that only America has the power and prestige to champion that cause, forge the alliances, lead the crusade. We’ve done it twice before—in World War II and in the fifty-year struggle against communism. And we must do it a third time, and for the same reasons as before, so that those who would impose their will through deception and violence are vanquished and defanged (Kerry, 1997, 193).

Speaking in support of the 2000 United Nations Convention against Transnational Organized Crime (UNTOC) to a United States congressional committee, Samuel Witten, a legal advisor at the State Department, noted that the U.S. could comply with the Convention’s criminalization obligations without the need for new laws. ‘The value of these Convention provisions for the United States’, he argued, ‘is that they oblige other countries that have been slower to react legislatively to the threat of transnational organized crime to adopt new criminal

laws in harmony with ours' (Andreas and Nadelmann, 173). Witten, like Kerry, was illuminating an aspect of a process that Ethan Nadelmann has described as the 'Americanisation of International Law Enforcement'. 'The modern era of international law enforcement', he elaborated is '

one in which U.S. criminal justice priorities and U.S. models of criminalization and criminal investigation have been exported abroad.

Foreign governments have responded to U.S. pressures, inducements, and examples by enacting new criminal laws regarding drug trafficking, money laundering, insider trading, and organized crime and by changing financial and corporate secrecy laws as well as their codes of criminal procedure to better accommodate U.S. requests for assistance.

Foreign police have adopted U.S. investigative techniques, and foreign courts and legislatures have followed up with the requisite legal authorizations. And foreign governments have devoted substantial police and even military resources to curtailing illicit drug production and trafficking... By and large, the United States has provided the models, and other governments have done the accommodating... (Nadelmann, 1993, p. 470)

Nadelmann's claim has been substantiated by, for example, studies of organized crime control policies implemented in Italy, the Netherlands, Germany, France, Spain, the United Kingdom, Denmark, the Czech Republic, Poland, Switzerland, Albania, Russia. American practices and precedents have strongly influenced remarkably similar changes in all these countries including institutional reforms, such as the creation of new, more centralized, policing agencies, and laws addressing the use of informers and wiretaps, plus laws that make criminal

association an offense (Fijnaut and Paoli, 2005, pp. 625-1042; La Spina, 2012, this volume). The political rhetoric and crime journalism that has accompanied these changes often showed clear American influences, as illustrated by the headline and first sentence of the UK *Guardian* newspaper's announcement of the establishment of the Serious and Organised Crime Agency (SOCA) by British Prime Minister Tony Blair in 2006: 'Blair launches FBI-style crime agency' followed by 'Tony Blair said today that Britain's new FBI-style crime squad would make "life hell" for the "Mr Bigs" of organised crime' (*Guardian*, 3 April, 2006). Similar claims were made at the launch of the next British FBI in October 2013.

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One increasingly visible indication of U.S success in exporting its organized crime control policies is the increasing ubiquity of organized crime control training programmes. The FBI and other American law enforcement institutions pioneered these programmes in the 1970s and have since trained thousands of officers not only from America but from all over the world. In 1995 under President Bill Clinton, the United States set up International Law Enforcement Academies (ILEAs) in numerous countries including Budapest, Hungary; Bangkok, Thailand; Gaborone, Botswana; and Roswell, New Mexico where police are trained in enforcement techniques involving crimes such as drugs, trafficking in people and, more recently, cyber-crime, including pornography and terrorism.

Once drugs and other forms of organized crime became linked to 'national security', the training offered by the US shifted somewhat. The 2008 US federal budget included \$16.5 million to fund an International Law Enforcement Academy in El Salvador, with satellite

operations in Peru. The objective has been to train an average of 1,500 police officers, judges, prosecutors, and other law enforcement officials throughout Latin America per year in “counterterrorism techniques.” This focus on security and anti-terrorism issues, rather than more general police training in drug control, brought with it controversy regarding what was actually being taught. Salvadorans refer to the ILEA as a new ‘School of the Americas’ (SOA) for police—and are aware of the controversial history to some of these training programmes.

SOA atrocities came to light with Washington Post reporter Dana Priest’s discovery, in September 1996, of SOA torture training manuals, and later with the acquisition by the founder of SOA Watch, Father Roy Bourgeois, of a previously classified list of SOA graduates, many of whom were recognized as leaders of death squads and notorious counterinsurgency groups (Community in Solidarity with the People of El Salvador, 2007).

The number of foreign officers receiving training has been doubling each couple of years—in 1999 5,047 students from 173 countries gained training at these academies and by 2002, that number had reached 10,115 (King and Ray, 2000, 404). In addition to training administered in the foreign jurisdictions, many more police and other enforcement officials travel to the United States for training. Quoting Nadelmann: “The U.S. had extended its law enforcement reach by improving the way other countries do business. The success of the U.S. Drug Enforcement Administration (DEA) internationally, particularly in Europe, is attributed to the “Americanization” of foreign drug enforcement” (Nadelmann, 1993. 247). As of February 2010, the Federal Bureau of Investigation (FBI) had offices in 70 cities overseas and the DEA had offices in almost 90 (Bayley and Nixon, 2010, 7).

Although, as Andreas and Nadelmann demonstrate, there has also been a ‘Europeanization of International Crime Control’, in recent decades, there is no doubt that the United States has done most to set the international agenda on the analysis and control of drugs, organized crime and transnational organized crime (Andreas and Nadelmann, 2006. 237-41). “Major international agreements, that the United States played an instrumental role in creating”, they write “have built on and reinforced each other and provided models for future agreements” (245).

A thorough examination of this Americanisation process and the extent to which US legislative and institutional have been copied abroad is beyond the scope of this paper, we will however trace the significant part the American effort to export? (or establish) a global drug prohibition regime played in the export of organized crime control policies, before more closely examining the process as it played out in Canada. This chapter concludes with a brief account of the export of administrative approaches to organized crime. It therefore traces the route by which the US model became the international model and briefly examines with what consequences.

1) From International Drug Control to Transnational Organized Crime Control

Exporting Drug Prohibition

The process of exporting of American organized crime control policies followed closely that of exporting American drug control policies and, as we shall see in this first section, the process of Americanisation began more than a century ago. The origins of American efforts against the use

of certain types of drugs can be dated to the late 19th century when missionaries wrote exaggerated and alarmist reports on the devastation caused by opiate addiction amongst people in China (Newman, 1995). In response to these and other claims that tended to focus on the behavior of foreigners or racial minorities at home, American campaigners helped shape an international drug control system under the auspices of the League of Nations before the Second World War and at the end of the war were even better placed to shape the drug control policies of the United Nations (Musto, 1987; Taylor, 1969).

As Bewley-Taylor and others have documented, American influence, primarily represented by Commissioner Harry Anslinger and his Federal Bureau of Narcotics (FBN), permeated the personnel of the post-war UN drug control bureaucracy and ensured that the US had a considerable impact upon the creation and implementation of international drug control legislation. American influence lay behind, for example, the 1953 Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in and Use of Opium. The protocol empowered a UN agency to employ certain supervisory and enforcement measures, such as requests for information, proposals for remedial measures, and sometimes the imposition of an embargo on the importation or exportation of opium, or both. In other words it was an attempt to control opium at source. Although this aim had been incorporated in earlier drug control agreements, no working machinery had been provided for enforcement. 'Some sort of international watchdog was necessary to keep the recalcitrant nations in line', Anslinger wrote at the time, '... The Protocol signed today will help close these gaps' (Bewley-Taylor, 1999, 92-93). The American response to both drugs and organized crime has since been consistently about closing gaps in national and international control mechanisms (54-101).

At the same time as the United States was working through the League of Nations and the United Nations to influence the direction of international drug control policies, US officials were also assuring that individual nations pursued drug control policies in harmony with their own. In 1929 Canada, our case study to be examined later, led the way by modeling its Narcotic Control Act on the American 1914 Harrison Act, with severe criminal prohibitions aimed at illicit trafficking (King, 1972, 14). In the immediate aftermath of the Second World War the American authorities worked to Americanize the drug control policies of the defeated Axis powers, Germany, Japan and Italy (Bewley-Taylor, 63-4). Federal Bureau of Narcotics (FBN) agents in the 1940s and 1950s, as Ethan Nadelmann has narrated, became ‘briefcase agents’: ‘Constantly on the go, they maintained contact with high-level police throughout Europe and the Middle-East, developed informants, pressured local police and their governments to do more against drug trafficking ...’ (Nadelmann, 1993, 133).

They met resistance from political officials by countering with threats. As Rome-based FBN agent Charles Siragusa recalled in his memoir, *The Trail of the Poppy: Behind the Mask of the Mafia* (1966),

‘The police overseas almost always worked willingly with us. It was their superiors in the governments who were sometimes unhappy that we had entered their countries. Most of the time, though, I found that the casual mention of the possibility of shutting off our foreign-aid programs, dropped in the proper quarters, brought grudging permission for our operations almost immediately’ (Siragusa, 1966, 212).

Anslinger, Siragusa and other FBN agents made the Mafia and, in particular, New York gangster, Charles ‘Lucky’ Luciano, central to the international trade in drugs which was thought

erroneously to have its hub in Italy. When a major heroin ring was broken up in San Francisco in 1952, for example, the FBN told the *New York Times* and other newspapers that “Luciano was behind it” and “was controlling all drug smuggling from Italy.” Similar claims were repeatedly made and never questioned (Bernstein, 2002, 118). Building on these unsubstantiated claims, media outlets consistently portrayed the multitude of drug markets as highly centralized ‘mafia’ structured operations that posed a direct ‘national security’ threat to American and later ‘international security threat’ to the whole world. In the popular crime literature of the 1980s and 1990s these claims were recycled as “historical background” to the evolving international organized crime problem. Claire Sterling, one of the best-selling and influential crime writers, for example, claimed that Luciano “understood the laws of supply and demand, the benefits of scale, the advantages of a transcontinental operation joining raw material procurement to manufacturing to transport and marketing. He was the seminal force behind what became the biggest commercial enterprise in the world: the multinational heroin conglomerate” (Sterling, 1900, 100). Luciano’s better biographers have shown these claims to be nonsensical (Scaduto, 1976; Newark, 2010). Properly researched studies have shown that most notions about centralized control of drug markets are built on flimsy foundations. “Monopoly control is rare” and “market power seems elusive”, according to Peter Reuter’s summary, based on the scholarly literature on drug markets (Reuter, 2000, 320).

While the 1953 UN Opium Protocol was thought to have been a good start in the direction of complete international drug control, Harry Anslinger and his supporters felt that the UN 1961 Single Convention did not build on this. John E. Ingersoll, Director of the Bureau of

Narcotics and Dangerous Drugs (BNDD)¹, was sent to a special session of the U.N. Commission on Narcotic Drugs (CND) in the Autumn of 1970. His brief was to point out the perceived weaknesses and initiate the first part of a United Nations plan which, in Ingersoll's words 'could develop into an effective worldwide program' (Ingersoll, 1970). The Convention's primary weakness, according to the American delegation, was the fact that it rested 'essentially upon faithful cooperation by all parties in the context of their national decision rather than upon effective international measures'. The United States thus decided that the Single Convention had to be amended to 'curb and, eventually prevent entirely' the illicit drug traffic. The proposed amendments had two basic objectives: firstly 'to establish enforceable controls and appropriate international machinery to assure compliance, and, secondly, to provide inducements to Parties to perform faithfully all their treaty obligations'. The flip side of 'inducements for compliance' is 'negative sanctions for failing to meet obligations'—a strategy that runs through the US led developments toward harmonization. Ingersoll's delegation bluntly told the UN's Division of Narcotic Drugs (DND) that it:

will be expected to pursue their present activities more vigorously but will have to assume new and important responsibilities'. These new responsibilities were to include 'a capacity for the planning and implementing of technical assistance programs to assist countries ... in the establishment and improvement of national drug control administrations and enforcement machinery, the training of personnel required for these services...(Commission on Narcotic Drugs, 1970).

¹ The Bureau of Narcotics and Dangerous Drugs was the successor agency to the FBN which had to be abolished in 1968 after a scandal revealed endemic corruption including the protection of drug traffickers within the agency.

Thus the long-term effort to ‘direct’ the international communities’ response to drugs became US formal policy. To institutionalize the process of exporting drug control policies the Bureau of International Narcotic Matters (INM) was created in 1978 in the State Department. INM existed first and foremost as a ‘policy shop’, representing America in international dealing with drugs, with the DEA and other drug enforcement agencies. It also helped organize crop eradication and other anti-drug measures and prepare the annual International Narcotics Control Strategy Report on global drug production, traffic and what it terms drug abuse. This report and the drug control certification process that INM managed from the late 1980s decided whether other countries were taking measures in line with prohibition policies. Essentially the INM helped manage the effort to harmonise other countries’ drug control policies along American lines. US drug control policy was held up as a model for other countries to follow.

All the INM’s work continues to the present day but in the early 1990s its remit was expanded to include money laundering, arms or other contraband, human trafficking and other forms of transnational crime. Accordingly in 1995 its name was changed to the Bureau of International Narcotics and Law Enforcement (INL). Today, the INL’s main task is to work towards the implementation of America’s International Crime Control Strategy. It developed this with other agencies in 1998 ‘as a roadmap for a coordinated, effective, long-term attack on international crime’. In the pursuit of this aim American diplomats work incessantly through multilateral and bilateral forums to define what the INL calls ‘global norms for effective criminal laws’ which are in effect American norms. The INL also ‘actively’ encourages ‘foreign governments to enact and enforce laws based on these norms’ (US State Department, 2011).

American diplomacy’s most significant success during the 1980s was the negotiation of the United Nations Convention against Illicit Traffic in Narcotics and Psychotropic Substances in

1988. In the same year that the US congress reported on widespread increases in the production, manufacture and traffic of illicit drugs, UN member states undertook moves to strengthen international legislation against drug trafficking. David Stewart, Assistant legal advisor to the State Department and a member of US delegation to the International Conference where the convention was adopted noted that: “The US participated actively in the negotiation of the Convention, and many of its provisions reflect legal approaches and devices already found in US law.” (Stewart, 1990, 387). The Convention, which is essentially an instrument of international criminal law, has at its core Article 3; “Offences and Sanctions.” As the UN Commentary to the Convention notes, the treaty deviates from the earlier drug conventions by requiring Parties to “legislate as necessary to establish a modern criminal code of criminal offences relating to various aspects of illicit trafficking and ensure that such activities are dealt with as serious offences by each State’s judiciary and prosecutorial authorities (United Nations, 1998, 48). As such the 1988 Convention significantly extended the scope of measures against trafficking, introduced provisions to control money laundering and seize the assets of drug traffickers, to allow for extradition of major traffickers and improved legal co-operation between countries. The Convention can be seen as a significant stage in the internationalization of American drug prohibition policies and remains an impediment for any country wishing to pursue alternative drug control policies.

Exporting Transnational Organized Crime Control

The convention came into force at the same time as the international community was beginning to make its responses to the forces of globalisation and the collapse of the Soviet Union. Journalists and television documentary makers were also finding ways to update their

organized crime formulas. Of these, the aforementioned Claire Sterling, did most to popularize and internationalize three themes that permeated the popular literature: organized crime groups as giant multinational corporations of crime, organized crime as an international security threat, and the need for ‘best practice’, usually American, organized crime control techniques to be applied by police forces across the globe. In 1994 her book *Thieves’ World: The Threat of the New Global Network of Organized Crime* (published in the UK as *Crime Without Frontiers*) developed these themes and illustrated the shift from the total preoccupation with the Italian Mafia to the view that similarly structured criminal groups were forming a global partnership— Sicilian and American Mafias, Colombian drug cartels, Chinese Triads and Japanese Yakuza had joined with the Russian Mafia to mount a full-scale attack on Russia and Europe to plunder both. ‘America’ she emphasized, ‘was the first to realize the futility of trying to cope on its own. It has been urging other nations for years to work together on drugs, money laundering, counterfeiting, fraud – to perceive modern organized crime to be the planetary phenomenon it is’ (Sterling, 1994, 251).

In 1994 the United Nations held the World Ministerial Conference on Organized Transnational Crime in Naples and demonstrated that ideas that had no empirical support dominated international discourse on organized crime at the highest levels. United Nations Secretary-General Boutros Boutros-Ghali, set the tone of the conference with his opening address. Organized crime, he began, ‘has become a world phenomenon. In Europe, in Asia, in Africa and in America, the forces of darkness are at work and no society is spared...’. It ‘scoffs at frontiers’ he continued, ‘and becomes a universal force. Traditional crime organizations have, in a very short time, succeeded in adapting to the new international context to become veritable crime multinationals. It ‘undermines the very foundations of the international democratic order.

Transnational crime poisons the business climate, corrupts political leaders and undermines human rights. It weakens the effectiveness and credibility of institutions and thus undermines democratic life' (UN 1994. Quoted in Woodiwiss and Hobbs 2009, 117). Boutros-Ghali concluded with what was already becoming a familiar call to international co-operative action.

It is clear from studies of the background to this conference that it represented a coincidence of interests between the US, the member states of the European Union and the internal politics of the UN itself (Elvins, 2003). It provided an international forum for a global conspiracy theory of organized crime that reflected the views of Sterling and her sources mainly from the American intelligence and law enforcement community. Many speakers at Naples implicitly or explicitly emphasized the success of US-approved organized crime control strategies.

The main result of the conference was to put the elaboration of the United Nations Convention against Transnational Organized Crime (UNTOC) at the centre of discussion. This process culminated in December 2000, when representatives of more than a hundred countries met in Palermo, Sicily to sign up to the Convention in principle, and 23 September 2003 when it came into force, having been ratified by the required number of states. Nations that have ratified the UNTOC Convention have committed themselves to the type of American measures deemed to be effective in combating organized crime by the U.N.

Having successfully internationalized their approach to organized crime, Washington, via the UNTOC Convention, also hoped to strengthen the global drug prohibition regime. This was implied when an attachment to a draft of the convention put the 'illicit traffic in narcotic drugs or psychotropic substances and money-laundering', as defined in the 1988 UN convention, at the top of its list of serious crimes (United Nations, General Assembly, 1999, 52-3).

The following Canadian case study focuses on the export of the Racketeering and Corrupt Organizations (RICO) Statute, Currency Transaction Reporting and Criminal Associations Legislation, and illustrates ways in which international amendments and other formal and informal mechanisms effected major changes in the policing and criminal justice systems of sovereign nations.

2) Canada as a Case Study

Canada and US share a long border so it is understandable that the influence of the US on Canada might be greater than elsewhere—however evidence as we have described reveals that the influence is in fact global. Each major inquiry or legislative thrust in the US had wide repercussions internationally. In many cases, key Canadians have played a role in spreading the US preferred responses to transnational crime. Evidence reveals that Canada's Colonel Clement Sharman was a very significant ally of Anslinger and helped him dominate the early years of UN drug control policy - culminating in the various anti-drug conventions. In 1988, the then Assistant Commissioner of the RCMP Rodney Stamler, played a major role in the discussions that led to the creation of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Beare 1996. 147). These transitions away from traditional domestic law and domestically framed policies and procedures and into an environment of internationally negotiated agreements were not made without evidence of a tension that continues until today. Canada wishes on one hand to cooperate internationally and yet also to “maintain itself in the highly insular, sovereign camp, bound by jurisdictional entanglement” (Currie 1998). Perhaps more currently this tension relates in part to the *Charter of Rights and Freedoms* which serves to

protect the 'rights' of Canadians, rights that may not be protected elsewhere. With specific reference to the impact on Canada, we examine in this section three key anti-organized crime enforcement tools, which were either 'born in the USA' or advanced by the US.

The development of legislation, policies, and police practices in the US became the model that the US preferred for Canada. The 1967 US President's Crime Commission Task Force on Organized Crime served as an early alert to Canadians as well as Americans of the various threats from organized crime. US definitions and US perceptions of what and who were the organized criminals directly influenced Canadian media, politicians, and academics. While at the end of 1963, Metropolitan Toronto Police testified that organized crime had "decreased greatly in the last three years" and was described as "50-100% better" (Ontario Police Commission Inquiry, 1964. p.70), by 1967 the media had adopted organized crime as a priority issue. This prioritizing of organized crime by the media relied heavily on the credibility of U.S. "experts" whose concern regarding the infiltration of criminal investment into legitimate businesses was packaged for Canadian consumption (Beare & Naylor 1999):

- A visit to Toronto by Professor Charles A. Rogovin, advisor to President Johnson on organized crime, resulted in the following headline in the *Toronto Star* "Crime Said Moving In On Business" (March 15, 1967, 9).
- 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/67, being held in Montreal, would provide a good opportunity for organized crime (April 21, 1967, 39).

- The *Toronto Star* informed the public that the mafia had 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, 1).

Most alarming to Canadians was the message that the criminals who were moving into Canada were in fact an extension of US crime families. 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 Joseph Valachi, a prominent Mafia turncoat, regarding comments he had made to the 1967 US President’s Crime Commission linking Buffalo N.Y. mobsters to Toronto. Specific links were drawn between local criminals and the New York crime families. While never gaining the notoriety of the 1957 Apalachin meeting of crime families, a number of US racketeers from Detroit were claimed to have met at the James Bay Goose Club in northern Canada on September 30, 1958—either for a hunting party or for more sinister purposes such as a meeting to discuss plans for US mafia members to move into Canada (*The Sun* 1961). The RCMP accepted the latter explanation and the media headlines announced: “Big US Crime Spreading here, police brass warn” (*Toronto Star* August 1967 p. A1). The stage was set—now Canada had to respond to this perception of a growing criminal invasion from over the border. Whether the threat was as great, and whether the nature of the threat was as it was portrayed, are separate questions. The threat became identical to the mafia-type depiction of organized crime within the US.

Three key responses to organized crime—RICO, Currency Transaction Reporting mechanisms (CTRs), and Criminal Associations Legislation—can be traced directly to a deliberate initiative by the United States to export to Canada and to the wider international community these specific policies, legislation, and bureaucratic machinery.

RICO Comes to Canada

Despite the enactment of the Omnibus Crime Control and Safe Streets Act of 1968 to combat organized criminals, the US federal government still believed that they lacked adequate tools to combat criminal *organizations*. Title IX of the Organized Crime Control Act of 1970 created the Racketeer Influenced and Corrupt Organizations Act (RICO)², which is considered by many to be the single most important piece of organized crime legislation enacted (Jacobs. 2006). RICO has become one of the dominant tools used in organized crime prosecutions within the United States. The arrests of Mafia figures are claimed to have been accomplished in large part due to wiretaps and informants—and the lengthy sentences that can be received from a RICO conviction are claimed to have weakened the legendary vow of *omertà* or code of silence. (Bonavolonta and Duffy 1997; Volkman 1999; Griffin and Denevi 2002; Kaplan, 2001)

Although it was seldom used until the early 1980's by the end of that decade it was serving as the model for 'fighting organized crime' internationally. Four factors lead to the international spread of this approach—first were the extremely successful mob movies followed by some widely publicized success with the RICO trials against the US crime families. A third factor was the success of the US in informing the international community that foreign jurisdictions were not immune and were at risk of being entwined in the 'octopus' of global organized crime, deemed to be based largely on illicit drug profits. The fourth factor was the wide publicity given to the amount of money that countries could gain from the seizure and

² RICO is codified at 18 U.S.C. § 1961-1968. See also *Organized Crime in the United States: Trends and Issues for Congress* by Kristin M. Finklea, December 22, 2010. <http://www.fas.org/sgp/crs/misc/R40525.pdf>

forfeiture of criminal proceeds, and under civil forfeiture to provide restitution /compensation to the victims.

Making the criminal pay, while victims, governments, and police departments gained, became the mantra. Each of these four above mentioned factors played upon Canada and led to the creation in 1989 of the Proceeds of Crime Legislation and the more recent legislation that followed to target money launderers and suspected terrorists. Once a country took that first step toward mimicking aspects of the US RICO model, other amendments followed in turn, as threats shifted from drugs, to organized crime more generally, and later to add the threat of terrorism to the mix. While some procedural aspects of RICO were rejected due mainly to differences in the two Federal justice systems—the shared focus became ‘going after criminal proceeds’ and lengthened sentences. The route that led to this legislation reveals considerable direct US involvement.

During the 1980’s Canada actively sought out the experiences of the US officials including the key US RICO drafter, Robert Blakey. Professor Robert Blakey was invited to Ottawa twice (1982 and 1983) to advise on the creation of a ‘made-in-Canada’ version of anti-organized crime legislation. At one of these meetings, Blakey was accompanied by Steven Zimmerman, Office of Chief Counsel for the DEA, Brian Murtagh, Acting Attorney-in-Charge of the US Organized Crime Strike Force 18,³ and Stephen Horn, member of the American Bar Association Committee on the prosecution and defense of RICO cases. Six months later a second workshop was held—this time with US and UK officials—and again with Robert Blakey (Canada 1982 & 1983). These meetings were part of a larger Federal-Provincial Enterprise

³ The United States Strike Force was created in the late 1960s for the purpose of finding and stopping illegal racketeering. It was formed in a congressional effort led by Robert Kennedy. See US General Accounting Office. 1989. Report to the Chairman, Permanent Subcommittee on Investigations Committee on Governmental Affairs--Issues Regarding Strike Forces. <http://archive.gao.gov/d25t7/138558.pdf>

Crime Working Group that was studying the status of organized crime and organized crime enforcement and legislation in Canada. The result was the 1983 *Enterprise Crime Study Report* (Canada 1983). This report found that Canadian legislation was deficient in two ways: it focused on single criminal transactions by single criminals rather than the activities of groups of criminals (such as the crime families within the US) and also the existing forfeiture provisions were too restrictive.

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, not only its own police forces, but also making offers to share with its foreign enforcement colleagues who were involved in the various joint-force investigations—while knowing at the time that Canadian legislation would not allow this sharing to occur. The inability of the Canadian police to capitalize on these offers caused much debate within Canada and intense lobbying by Canadian police forces. The apparent success of the US proceeds of crime forfeiture program and an enthusiasm for sharing these riches with foreign police agencies served to encourage the Canadian police to demand the same access to their seized assets and a sharing protocol with foreign jurisdictions. By 1998, the United States was pursuing what they themselves called “an aggressive program to strengthen asset forfeiture and sharing regimes”. By that date Canada, Switzerland, Jersey and the United Kingdom had each shared forfeited assets with the United States (US State Dept. 1998 International Narcotics Control Strategy Report).

If an additional catalyst was needed to propel Canada toward new legislation the Pinto case served that role (Canada. Royal Bank of Canada v. Bourque et al). A Colombian

businessman—also described as a member of Colombian parliament—was arrested by the FBI in 1983 for his part in a massive \$40,000,000 US conspiracy to launder money. A small portion of this money, approximately \$600,000 US, had been deposited into an account under the name Agropecuria Patasia Ltd. at the Royal Bank in Montreal. Under the existing Canadian legislation only tangible and portable money or property derived from crime could be seized by authorities. Money that was mingled in a bank account was deemed to be ‘intangible’ (*Gazette 1985*). According to Mr. Justice Lamer the bank account could be seized if there was a victim, but drugs were considered to be a victimless crime. This case was mainly a US case with numerous US criminals—and yet it served to provide Canadian police with the incentive to demand the same tools enjoyed by the US officials and to be able to share in the seized illicit proceeds. Likewise it drew US attention to what they perceived to be weaknesses within the Canadian legislation.

In addition to criminal forfeiture, RICO allows for the state or private victims to sue civilly to recoup “treble” damages (i.e., the defendant must pay to the plaintiff three times the amount of damages that have been determined by a court). The civil asset forfeiture provisions of RICO focuses on property, not people and therefore no person need be actually charged (US GAO Report 1998). In the opinion of the critics, the quest for criminal proceeds by law enforcement in the US had turned into an enterprise that took precedent over any objective of pursuing justice (Levy 1996, p.153; Cheh 1994 p.4). Michael Zeldin, ⁴former Director of the Justice Department’s Asset Forfeiture office states:

⁴ As quoted in the *New York Times* (May 31st, 1993 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”.

“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 Nkechi. 1994).

This was one aspect of the US model that was rejected by Canadian officials who feared that if police forces were to gain directly from the forfeiture of criminal proceeds, there would be too great of an incentive for this policy to bias the prioritizing of criminal investigations and to hamper the collaboration across jurisdictions. Easy, quick forfeitures rather than the lengthy but possibly more serious investigations and a ‘competition’ for seizures were the concerns. However, to date Canada has rejected, at the federal level, both civil forfeiture and also the policy in the US of returning forfeited proceeds directly to police forces. Seven Canadian provinces have civil forfeiture legislation – British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia (Krane 2010).

There is no doubt however that the RICO model had a major impact on legislative changes in Canada and that Canada, like many other countries, used it from which to extract concepts around which domestic legislation could then be shaped (Gastrow 2002. p 22). In relation to the RICO legacy, the Canadian 1989 Proceeds of Crime Legislation created a distinct criminal offence for possession of the proceeds of crime and money laundering. The legislation allowed for much broader criminal forfeiture than was previously available under the Canadian Criminal Code. Police could now seize, restrain, and forfeit assets –both tangible and intangible that were derived from various criminal and drug offenses. Originally the legislation applied to only 24 offences that were deemed to be ‘enterprise crimes’ plus designated drug offenses. That list has since been expanded to include virtually all indictable offenses and more recently even

some additional offenses that are seen to be associated with the activities of criminal organizations—11 so called ‘signature activities’ or organized crime operations.

In August 2010 the federal government publically announced new regulations that designated several "signature activities" of criminal groups as being ‘serious offences’. Before these changes (which were made on July 13th by order-in-council), the criminal acts perpetrated by criminal organizations had to meet the definition of "serious offence" as described under subsection 467.1(1) of the Criminal Code. However, the government’s concern was that some criminal activities of so-called criminal organizations failed to meet this criterion because the offenses were not “indictable offences punishable by sentences of five years or more”. In those cases the police and prosecutors could not use the many special procedures available in organized crime investigations and prosecutions in areas such as peace bonds, bail, wiretaps, proceeds of crime and parole eligibility (Stratton 2010). The ‘signature activities’ include the following gambling related offenses:

- Keeping a common gaming or betting house.
- Betting, pool-selling and bookmaking.
- Committing offences in relation to lotteries and games of chance.
- Cheating while playing a game or in holding the stakes for a game or in betting.
- Keeping a common bawdy-house.
- Various offences in the Controlled Drugs and Substances Act relating to the trafficking, importing, exporting or production of certain drugs. (CBC News 2010)

Currency Transaction Reporting (CTR)

While RICO was beginning to prove itself to be effective against the traditional Mafia families and therefore one could imagine other jurisdictions evaluating this degree of success, the US had other components that they argued required universal harmonization. The enforcement focus had moved ‘up’ from targeting customers, to distributors, to the higher level ‘king pins’ and eventually landed on the money. The US Bank Secrecy Act (1970)—also known as the Currency and Foreign Transactions Reporting Act—required financial institutions in the US to assist the government in fighting money laundering. This Act established requirements for record keeping and reporting by private individuals, banks and other financial institutions. With ‘winning the war on drugs’ as a priority, the Bush (Sr.) administration turned to a new type of law enforcement agency. The US established their Financial Crimes Enforcement Network (FinCEN) in April 1990 by Treasury Order Number 105-08 (Grabbe 1995 p 33-44). Its original mission was to provide a government-wide, multi-source intelligence and analytical network to support the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes. The 1984 US Presidential Commission on Organized Crime had declared “money laundering to be the lifeblood of organized crime”. In 1988 a ‘confidential’ but much quoted report by the RCMP and the DEA detailed how millions of dollars of drug money was crossing the US-Canada border annually. This unverified and already dated report was leaked to the public and served to support the US complaints that the international community—including Canada—was letting the US down in their fight against money laundering (Beare and Schneider. 2007. 9). This criticism from the US continued through the 1990’s.

While US pressure on Canada has at times been intense, a direct confrontation occurred when the US listed Canada among the 21 "highest priority countries" deemed to be major money laundering countries. No empirical data offered publically to justify this classified list and the US Treasury refused to make public the full list to the US General Accounting Office's Money Laundering subcommittee. However Ottawa was informed of their place on the list and the follow-up meeting with US officials confirmed this listing. The Kerry Amendment (Section 4702 of P.L. 100-690) to the Anti-Drug Abuse Act of 1988 mandated that foreign nations must require financial institutions to report deposits of U.S. \$10,000 or greater, and that mechanisms be established to make this information available to US law enforcement officials. Basically countries were being told to replicate the US Currency Transaction Reporting (Tracking) (CTR) System. Upon failure to do so, sanctions are to be imposed against non-cooperative countries (US GAO 1991). Headed by the Senator Kerry Commission, by November 1990, the US had 'made formal approaches' to 18 countries that the US considered to be of prime concern. According to the 1991 GAO Report on Money Laundering, when approached by US officials, "no country had declined to discuss implementation of section 4702". In Senator Kerry's own words:

"...I insisted that US laws require major money laundering countries to adopt laws similar to ours on reporting currency, or to face sanctions if they didn't. ... the Clinton administration is taking the Kerry Agreement idea one step further—advising what President Clinton calls 'egregious money laundering centers' that if they don't change their ways, the United States will ...make these centers feel our pain." (Senator John Kerry 1997, p. 152)

During 1989, a delegation led by Salvatore Martoche, then Assistant Secretary of the Treasury for Enforcement in Washington⁵ 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 United States—with the backup threat that failure to do so would result in a country being denied access to the US currency clearing system.

An interesting debate appears in the 1991 GAO *Money Laundering Report* as to whether or not bullying countries to conform was the most effective method in order to secure compliance with these US laws. Initially Treasury appears to have taken the view that it is “not necessary to threaten countries with sanctions” and that a “heavy handed approach by the United States may work against obtaining currency reporting information”. By 1990 however, Treasury is described as having “taken a more positive view” of the clout that is to be found in section 4702 (US GAO 1991. p. 58).

In a 1998 report from the US Bureau for International Narcotics and Law Enforcement Affairs, Canada was again designated as of ‘primary concern’ for international money laundering—falling alphabetically between Burma and the Cayman Islands (US Department of State. 1998). These US rankings were of course met with opposition from those countries listed, especially since the US itself had been involved in a number of high profile laundering cases. On the basis of research carried out by John Walker, the US was the “#1” country for being both the origin for dirty money and the destination of laundered money (Walker 2000; Beare & Schneider 2007. 70).

⁵ From 1988 to 1990, Martoche served as an Assistant Secretary of the Treasury overseeing law enforcement under President Reagan and President George H. W. Bush.

At this stage, Canada had no equivalent body to FinCEN. Canada's response to the challenge of making financial transactions more accountable had been a 'recording' involving the retaining of bank records, supported by a voluntary suspicious-transaction reporting to police, and the 'good practices/know your customer' approach to banking, rather than a mandatory reporting system (Beare 1996). This Canadian model did not involve mandatory reporting and there was no centralized mechanism into which transaction reports were to flow.

Amid the pressure to duplicate the US system, Canadian officials attempted to determine the actual gains from the US CTR system. US officials had claimed that it alerted law enforcement officials to cases that had previously been unknown to them (i.e. 'rang bells'), rather than merely revealing the presence of additional illicit proceeds during on-going investigations. Canadian Department of Justice officials were supplied with a list of US cases as proof of their claims—however, their trip down to FinCEN revealed that in every case the actual investigation had been prompted by alternative sources of evidence. These findings were confirmed by Michael Levi's UK based research:

Overall, despite being sincerely believed in by their adherents, it is arguable that in the context of the United States, where there are many banks and where cash transactions reports are made on paper, currency-reporting requirements are an example of an over-trumpeted intelligence methodology, since except in targeted investigations, the system has neither the capacity to input the data rapidly (within six months) nor the capacity of putting the information to sound operational use. (Levi 1991)

The US system is now fully computerized and is again claimed to be an essential tool in the fight against money laundering. In May 1994, its mission was broadened to include

regulatory responsibilities and therefore “created a single anti-money laundering agency that could combine regulatory, intelligence, and enforcement missions” (Pike 1998). Arguably from an originally false set of claims, internationally a massive ‘industry’ has evolved that now includes the creation of the international Financial Action Task Force (FATF)⁶, with the regional FATF offices, and the Egmont Group, which consists of a network of Financial Intelligence Units (FIU’s) such as the original US FinCEN body. In 2008 the permanent headquarters of the secretariat of the Egmont Group was opened in Toronto Canada and as of 2010 the president of Egmont announced that there were 120 FIUs from around the globe as members of their network:

This reflects the ever-increasing global commitment to work together across borders and regions in the exchange of financial information and intelligence, to fight ML and TF activities. (Egmont group 2010)

Driven by the work of the US and the Financial Action Task Force (FATF), the ‘required’ uniform standard now requires mandatory reporting of suspicious transactions and reporting of large transactions. Canadian legislation and policies are now in compliance with the demand of the international community—and with the US. Canadian legislation moved progressively through the following pieces of legislation—each broadening and deepening the attached powers for surveillance and policing specific to anti-money laundering. Bill C-22

⁶ Quoting from their site, “The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a ‘policy-making body’ that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html

Proceeds of Crime Money Laundering Act was enacted in 2000 and was amended one year later to include terrorist financing (PCMLTFA).⁷

It is impossible to separate the influence of the US from the influence of the FATF—in many ways the FATF gave the US an international voice. Canadian legislation reflects their combined power to exert direct influence on Canadian policy making. As concluded by the FATF Canadian Evaluations of 1997 and 2008 (FATF 2008). Canada was one of the last of the G8 countries to have mandatory ‘currency transaction reporting’ for large and/or suspicious financial transactions and was considered to be tardy in establishing a financial intelligence unit (FIU). Canada basically had to enact this legislation. This legislation⁸ made mandatory the reporting of suspicious transactions, created a cross-border reporting requirement, and also created FINTRAC (Financial Transactions Reports Analysis Centre of Canada). Six years later, PCMLTFA was amended a second time with Bill C-25, (An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act). This 2006 amendment to the PCMLTFA broadened the record-keeping and reporting measures applicable to financial institutions and intermediaries (Canada 2006). Under this legislation, money services, businesses and foreign exchange dealers had to register, and it allows FINTRAC to disclose additional information to law enforcement and intelligence agencies. In addition to other enhancements, the legislation broadened the ability of Canadian agencies to share information with their foreign counterparts.

The international demand for compliance with money laundering laws has moved forward with incredible speed—but with what consequences we do not know (Beare &

⁷ Amended *The Act to Facilitate Combating the Laundering of Proceeds of Crime*. Post 9/11, this piece of legislation was changed to *Proceeds of Crime (Money Laundering) and Terrorist Financing Act in 2001*).

⁸36th parliament, 2nd Session, Edited Hansard, No.79, Wednesday April 5, 2000 [1525-1725] and No. 80 Thursday April 6, 2000 [1110-1250].

Schneider 2007). Valsamis Mitsilegas describes the process by which money laundering counter-measures evolved toward greater 'harmonization' in Europe:

Through its association with transnational organized crime, it was perceived to threaten interests ranging from human life to the social fabric per se and state stability and sovereignty. The use of credit and financial institutions for money laundering purposes on the other hand, added to these categories the threat to the soundness and stability of the financial system as a whole. (Mitsilegas 2000)

The disaster of 9/11 and the sweeping of terrorism into the mandate of the Financial Action Task Force (FATF), culminated in a life-time mandate for that organization. If the FATF was at all concerned about obtaining a renewed lease on its mandate, by October 31 2001 (post 9/11) its future was assured. FATF issued new international standards to combat terrorist financing in addition to their original preoccupation over money laundering. The core work of the FATF since its creation in 1989 has been to combat money laundering (40 Recommendations), and since 2001, terrorist financing (9 Recommendations, FATF 2008-2012). This focus on money laundering is now over twenty years old and the FATF has become increasingly aggressive in the measures to enforce harmonization of anti-laundering strategies. What had begun as peer-evaluative, consensus-building exercise became a black-listing regime under the year-long FATF presidency by the United States. The former United States Treasury Undersecretary for Enforcement, Ronald K. Noble, became the FATF President for its seventh round during 1995-1996. A list of "Non-Cooperative Countries or Territories" (NCCTs) is now compiled and maintained by the FATF with the threat that "counter measures" in the form of negative sanctions could be directed against such countries. The 2011 list includes ten countries with 'deficiencies' in their anti-laundering and anti-terrorist procedures, and an additional two countries (Iran and the

Democratic People's Republic of Korea) where the FATF is calling for member countries to apply 'counter-measures' to further encourage compliance (FATF Public Statement - 28 October 2011).

Intensive anti-money laundering campaigns, multi-national agreements and diverse political pressures to conform, harmonize, and sanction have at best produced unverifiable compliance results. The rhetorical hype could not have been greater—likewise, the massive money laundering related cases involving negligence and/or corruption within financial banking institutions could also not have been greater. Banks in countries around the world have been found implicated in schemes and scams—including the major banks in major cities. In some laundering cases the most prestigious banks, rather than the smaller 'off-shore' so-called havens, have played a prominent role. One example would be the estimated \$7billion to \$15 billion of Russian Capital flight laundered through the Bank of New York between 1996-1999 (Beare & Schneider 2007, 224-228). But the US is not alone. A June 2011 report from the UK Financial Services Authority (FSA) suggests:

Britain's banks, large and small, have done little to mend their ways since findings 10 years ago that 15 City firms played a central role in laundering up to \$1.3bn of funds linked to former Nigerian dictator Sani Abacha. Those firms received nothing more than a private censure. Leaks later revealed that among those to have done at least some business with the Abacha regime were Barclays, HSBC, NatWest, and the London branches of Deutsche Bank and Commerzbank (Bowers 2011).

Obviously some cases have been successful and some sophisticated launderers have been prosecuted. As one enforcement tool among many, the strategy has merit. The danger lies in the

exuberant expectations that overcome concerns for rights and protections of citizens. False promises and fraudulent claims are also of concern. The 2010 WikiLeaks revealed government cables sent by Secretary of State Hillary Clinton and senior State Department officials, which indicate that in contrast to the US insistence that the harmonized measures to control money laundering and terrorist financing are essential and are having success, the truth appears to be less positive. The cables catalog a list of laundering methods that are being used that are in no way impacted by the measures that have been put in place under all of our anti-laundering legislation and policies (Lichtblau & Schmitt. 2010).

Criminal Associations Legislation

When countries were beginning to appreciate the loose criminal networks and the blurring of legitimate and illegitimate operations, and the appreciation of ‘harms’ not captured by traditional organized crime—the international community moved to criminalize ‘criminal associations’ and proceed along what critics might agree to be the well-worn path that depicted organized criminals as distinguishable ‘bad guys’ in a capitalistic sea of ‘good guys’. Nations that ratified the 2000 United Nations Convention against Transnational Organized Crime (UNTOC) Convention committed themselves to the type of measures deemed to be effective in combating organized crime—to criminalize the conduct of “organized criminal groups”. This works best of course when the criminal operations resemble a more traditional mafia-type or gang structure rather than the fluid networks of the more sophisticated operations or the even more elusive ad hoc connections that are made and unmade almost spontaneously.

As already mentioned, all of the components of the US anti-organized crime strategy can be found to be replicated in this UN Convention. One of the key requirements of those who ratified the UN Convention was to pass legislation to criminalize four separate specific crimes. Article 5 of this Convention outlines what countries are agreeing to in terms of the “criminalization of participation in an organized criminal group” and it specifies the terminology that described the criminal acts of participation, facilitating in, counselling, and/or the actual commission of crime involving an organized criminal group.

A contradiction appears in the series of UN responses to organized crime and now replicated by the western governments. In 2002, a UN’s report emphasized the diversity in the various organized crime operations. Based on an international survey, their report presented five typologies—i.e. different structures and different methods of operation (United Nations. UNCICP 2002). Rather than rigid organized crime families and structures, organized crime in some jurisdictions, and for some criminal markets, was found to consist of loose, networks with fluid involvement of participants rather than ‘members’ as such. And yet, during the same period of time the UN Convention follows a very different approach and serves to encourage harmonization on matters pertaining to transnational organized crime as understood along the more traditional structured approach.

Canada ratified this Convention in May 2002 and new Canadian legislation was proclaimed in January of that same year. In Canada, Bill C-95, known as the anti-gang legislation, introduced into Canadian law the notion of “Participation in a Criminal Organization” as a triggering mechanism for additional powers for the justice system and enhanced sanctions for the convicted. Bill C-95 was followed by Bill C-24 in 2002 (An Act to Amend the Criminal Code (Organized Crime and Law Enforcement)). Bill C-24 serves as a

confirmation of the government's commitment to the 'membership' perspective. The new legislation (C-24) brought Canada more in line with the United Nations Convention Against Transnational Organized Crime (UNTOC) and, more in harmony with the U.S. approach to 'the threat of transnational organized crime'.

3) The Example not Followed: Administrative Approaches

"Bernard Madoff says banks and funds were 'complicit' in \$90bn fraud" (Rushe, 2011),

"111 charged in Medicare scams worth \$225 million" (Kennedy, 2011),

"Guns to Mexico flowing like drugs to the other direction" (Schachter, 2010).

"Mexico's 'war next door' linked directly to the United States: Federal Authorities say traffickers are now entrenched in 270 American cities" (Potter, 2010).

If proof were needed, these recent headlines, along with the many that accompanied the mafia arrests noted at the beginning of this chapter, indicate that organized criminal activity is still damaging and destructive in the United States after more than 40 years of organized crime control. There is no doubt that U.S. federal and local police and prosecutors, using the RICO statute and other organized crime control powers, did well to put serious criminals such as Tony Salerno, Tony Corallo and John Gotti and hundreds of other American Mafiosi behind bars (Lynch 1987; Blumenstein 2009), and that adaptations of RICO, in particular, have had their own successes in many other countries. However, as a neglected aspect of the New York Mafia story shows, had effective regulatory structures existed before the 1990s many of these gangsters would not have been able to exert such control over sections of the city's economic life in the

first place. Imaginative US administrative solutions to organized crime—at least as part of the anti-organized crime strategies—may be what the world should be copying.

In 1987 New York State Governor Mario Cuomo began to address the city's organized crime problems by setting up the Construction Industry Strike Force (CISF) which included state and local prosecutors, detectives and accountants. The strike force not only initiated a large number of criminal prosecutions against Mafiosi, but it usefully deployed the insights on the criminal side of the construction industry gained from these cases and made significant proposals across a broad front in a serious effort to purge the industry of organized crime. Examples, noted by Cyrille Fijnaut, included the proposal to establish a special anti-corruption bureau in the construction industry, the appointment – at the cost of the big construction companies – of special inspectors to audit major projects for compliance with building regulations, and in the case of non-compliance to report this to the appropriate administrative and justice authorities (Fijnaut, 2002, 17).

Perhaps the anti-organized crime model that ought to be exported is the monitoring mechanism that is referred to as an Independent Private-Sector Inspector General (IPSIG) oversight system. Within the United States an IPSIG is an independent, private sector firm with legal, auditing, investigative, and loss prevention skills, that is employed by an organization (voluntarily or by compulsory process) to ensure compliance with relevant law and regulations and to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organization provide sources. IPSIGs attempt to solve the dilemma of what can be done if organized criminals have entered into or gained control or influence over legitimate businesses or organizations that employ large numbers of legitimate workers and supply necessary services. The organizations cannot be closed down—and yet the organized criminal influence must be

eliminated. In some cases the criminality might mean a loss of dollars but in situations regarding borders and ports there are significant security considerations. The IPSIG process was in operation most prominently at Ground Zero following 9/11. Knowing that the clean-up would turn into a corrupt, fraudulent, money grab by mostly everyone with access to the clean-up resources (including actual organized criminals), Mayor Giuliani's officials selected four accounting firms (IPSIGs) to monitor the clean-up by overseeing the construction work in each of four quarters. A fifth firm, KPMG carried out standard auditing responsibilities at the site. The Integrity Monitors reported to the Department of Investigation forming an additional layer of oversight (Lupkin and Lewandowski, 2005, 6-19).

In Canada suggestions have been made for an embedded auditor – a system whereby a court would order that government regulatory inspectors be placed within a convicted corporation to monitor compliance for a period of time (Archibald, Jull, Roach 2004). In the United States the auditors are private companies that are paid by the corporation or operation that is being monitored. Whichever model is used, the idea is based on a recognition that criminals look for every opportunity to corrupt officials and to criminally infiltrate businesses and vulnerable businesses and services will be exploited.

In June 1996 Mayor Rudolph Giuliani supported the New York City Council's decision to create the Trade Waste Commission (TWC) with the explicit goal of eliminating mafia-connected waste-hauling companies. The TWC was structured as a regulatory agency with a law enforcement agenda. Its executive officers, attorneys, monitors, and police detectives were recruited for their experience in related investigations and prosecutions. As well as checking for mobster involvement in waste-hauling companies, the TWC also sought to strengthen the customers' position by setting maximum rates, regulating contract duration and keeping

customers informed of their rights (Jacobs & Gouldin, 1999, 175-6). By the late 1990s customers were paying between 30 and 40 percent less to have their waste removed. Historically, the gangsters who owned and operated New York waste companies had set their own rates, retained contracts through force and observed very few customer rights! Other local initiatives addressed problems that the city's corrupt political infrastructure had left to fester for decades. The city's regulatory and licensing powers, for example, were used to attempt to limit the control over the Fulton Fish Market of gangster-dominated unloading companies. (Woodiwiss, 2005, 81-2)

The European nation most influenced by the New York administrative approach to organized crime control has been the Netherlands. Dutch policy makers, particularly those who attended the influential Dutch-American Conference on Organized Crime in The Hague in 1990, were concerned about organized crime activity within the legal economy and became convinced that a control effort based solely on a police repressive approach would be inadequate and needed to be supplemented by an approach involving various agencies in local governments (Fijnaut and Jacobs, 1991; vi). In 2003 largely as a result of this new perception of the organized crime problem, the Netherlands passed the BIBOB Act (Bevordering Integriteitsbeoordelingen door het Openbaar Bestuur – Ensuring Integrity of Decisions by Public Administration). This act and other measures require the Dutch police to perform new warning and advisory tasks, involving using information from their criminal investigations to alert other public and private agencies and thus allowing for a more 'joined up' approach to organized crime control. There are problems with this approach such as the quality of police information, inter-organizational relations, and cultural differences, and these will need to be faced but they are a step towards limiting the damage of organized crime (Terpstra, 2012).

Despite the clear benefit to the people of New York, the United States government has not championed the use of broad administrative alternatives in its foreign policy. Putting checks and balances on business activity, whether this is organized by public or private bodies or by a combination of both, does seem to hold out some prospect of successfully curtailing the opportunities for successful organized criminal activity in legal markets so long as the administrative process is transparent and those involved are accountable. However, there remains little prospect of successfully combating organized crime in illegal markets such as drugs as long as the global prohibition model perpetuates a “one size fits all” approach.

Conclusion

The verdict of America’s Wickersham Commission investigation of organized crime in 1931 still applies: “Intelligent action requires knowledge not, as in too many cases, a mere redoubling of effort in the absence of adequate information and a definite plan” (Smith, 1991, 149-151). As we have seen, much more than a redoubling of effort has occurred since Wickersham, involving indeed a multiplication and internationalization of effort, with little impact made on the extent of organized criminal activity overall. More fully effective organized crime control policies would need to be based on more rigorously researched foundations than mafia mythologies spread by Harry Anslinger and other Cold War warriors. Properly conducted research, however, may turn up some unpalatable realities, particularly about the war on drugs. It may be found, to quote Henry Barrett Chamberlin writing at the beginning of the 1930s when the counterproductive effects of alcohol prohibition were clear to most, that “some of the very best intentions of American idealists have supplied the pavement for the hell of organized crime”

(Chamberlin, 1931-1932). In contrast, enforceable laws and a broader administrative approach may prove to deliver some measureable impact in the international effort to control organized crime.

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