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Editorial Office

Department of Political Science and Criminal Justice
Southern Utah University
351 University Blvd., GC406
Cedar City, UT 84720

Phone: 435-586-5429

Fax: 435-586-1925

University Webpage: <http://www.suu.edu/>

Department Webpage: <http://www.suu.edu/hss/polscj/>

Journal Webpage: <http://www.suu.edu/hss/polscj/CIJP.htm>

Editor

Carl Franklin

Associate Editor

Sandi Levy

Assistant Editors

J. Bryan Dial

Daniel Lindsey

Faculty & Staff

G. Michael Stathis - Department Chair – Phone: 435-586-5429; Office GC406N

Political Science

Randy Allen – Phone: 435-586-7949; Office: GC 406E

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Criminal Justice

David Admire – Phone: 435-586-1926; Office: GC 406J

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John Walser - Phone: 435-586-7980; Office: GC 406F

Wayne Williams - Phone: 435-865-8613; Office: GC 406G

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Subscription Information

Critical Issues in Justice and Politics is a refereed (peer-reviewed) journal which contributes to the theoretical and applied nature of justice and politics. We are a scholarly journal which requires all articles to undergo an extensive review process for both content and format. Our emphasis is on the exchange of qualified material in order to generate discussion and extend the often limited boundaries of scholarly exchange.

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Published twice a year (March and September) *Critical Issues in Justice and Politics* focuses on emerging and continuing issues related to the nature of justice, politics, and policy. A special emphasis is given to topics such as policy, procedures and practices, implementation of theory, and those topics of interest to the scholar and practitioner alike.

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From the Editor

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Post-Secondary Education In Prison: Evaluating Program Outcomes

**Charlene Bates Freyberg
Kaplan College**

“The most powerful arsenal is a mind, not a gun.”
-motto of the Lorton Prison College Program

Prison populations in the United States have continued to grow over the past several decades costing taxpayers billions of dollars each year. Despite evidence of the positive effects of educational programming in prisons, many taxpayers and legislators alike have protested providing education to those in correctional institutions. This study examines the effects of post secondary education on identifying outcomes related to post-release success for participating inmates.

This research includes a descriptive analysis of 24 published studies recorded between 1980 and 2001 that examine the effects of correctional education on post release inmate success. The studies were selected based on criteria laid out by the researcher from past studies on post secondary education programs in prisons. The studies included were based on determining a relationship between participation in post secondary education programs while incarcerated and reduced recidivism, post-release employment, and post-release education. Results from these studies indicate that there is a positive relationship between post-secondary correctional education and reduced recidivism, as well as higher post-release employment, and post-release education when combined with participation in post-secondary correctional education while incarcerated.

Introduction

As the prison population in the United States has continued to grow at unprecedented rates over the past decade, correctional budgets have become stressed (Adams et. al., 1994). Federal cuts in support for correctional education programs have been made partly in response to the public “get tough on crime” sentiment. Paradoxically, while many inmates were being denied access to educational opportunities due to lack of financial support, public officials, the media, and the general public were calling for more accountability in correctional education programs (Adams et al., 1994). Researchers in correctional education were challenged to conduct rigorous studies that gave an accurate picture of the effects of correctional education programs and their potential benefits to society.

Nationwide the recidivism rates for those released from prison hovers around 60 percent. In 1999, there were 757,000 black men in federal and state prisons (U.S. Department of Justice, 2000). In 1999, there were 604,200 black men enrolled in higher-education in the United States (U.S. Department of Education, 2000). These statistics indicate that there were 25 percent *more* black men in prison in the United States than were enrolled in institutions of higher education.

The main purpose of this essay is to assess the empirical status of post-secondary correctional education programs. The research question is: do post-secondary education programs in prison reduce offender recidivism? The goal is to identify research that assesses the effects of post-secondary correctional education on inmates focusing on four questions. First, do inmates who participate in post-secondary education programs while incarcerated have lower recidivism rates than non-participants? Second, are participants more likely than non-participants to enroll in education programs when released from prison? Third, after being released from prison do participants have better employment records than non-participants? Lastly, while in prison do participants exhibit fewer disciplinary problems than non-participants?

Adult post-secondary education in prison could lead to a reduction in criminal behavior, increased post-release enrollment in education, better post-release employment, and fewer disciplinary problems while in prison in two different ways. First, inmates could become more conscientious as a result of moral development due to exposure to the liberal arts. “The prisons will benefit because intellectually challenged minds tend to maintain clean institutional records since the inmate, trained at a higher cognitive level, will acquire the ability to respond to situations intellectually and verbally rather than physically” (O’Neil, 1990:29).

Second, inmates may benefit from post-secondary education programs in prison because they have better educational credentials upon release, which could lead to better job opportunities. These two ideas seem plausible, but must be supported by observation and research of actual post-secondary education program participants. Although education may have positive influences on inmates once released, extraneous variables may also affect these outcomes. These variables may include social, psychological, and environmental factors.

This essay is divided into five sections: correctional education history, public opinion, evaluating post-secondary education programs in prisons from 1980 to 2001, race and gender issues, and the future of post-secondary educational programs. This study should have implications for prison program administrators, state and federal correctional policy makers, and educators. In addition, this study should provide the general public with information regarding

the effects of providing post-secondary education opportunities for those who are incarcerated. Finally, this study should provide direction for future research on this topic.

Correctional Education History

The field of correctional education has experienced a great deal of change throughout its history. During the 18th century, correctional education programs were designed to teach inmates to read so they could read the Bible and gain salvation from their sins (Gehring, 1997). The purpose of the “Sabbath School” was to create change in the behavior and hearts of the inmates. By the mid-1800s, more secular education was being taught to inmates. With the Industrial Revolution in the early 1900s, there was an increase in the demand for skilled workers. Schools were seen as a solution to the problems of industrialization, increased crime rates, social unrest, and the need to Americanize vast numbers of immigrants, to the democratic ideal (Eggleston and Gehring, 1986). This philosophy carried over into corrections, where education of inmates was seen as a means to rehabilitate them into good, law-abiding citizens.

The idea that correctional intervention should *reform* offenders - should change who they are so that they will be less criminal - goes back in the United States to the invention of the penitentiary in the first part of the 1800s (de Beaumont and de Toqueville [1800]; Rothman, 1974). The very word “penitentiary” suggests that the prison was *not* to be a place where offenders were merely warehoused or suffered their just desserts, but rather that the experience of incarceration was to *transform* their very spirit and habits of living (Cullen and Gendreau, 2000).

Not until the 1930s did education programs begin to play a primary role in the rehabilitative process and to receive broad acceptance for their potential effect on offenders. These programs focused primarily on academic and vocational education. In the 1960s, post-secondary education began to be offered in correctional settings (Linden and Perry, 1982).

Post-secondary education in the U.S. has been subject to the changing social trends, political climate, and public opinion over the past several decades. Although correctional education has a long history, it was not until after World War II that post-secondary education began to be consistently offered to prison inmates. The opportunity for inmates to participate in college classes was due in part to the veteran’s education benefits which were provided to the veterans of World War II through the G.I. bill. Nothing in the law limited funding access to those veterans who ended up in prison, and as a result, some prison college programs were expanded (Harlow, 2003). Today, correctional education programs, including post-secondary education are prevalent, but observers have

questioned the impact these programs have on inmates while incarcerated and after release.

In the 1960s, rehabilitation through education became the ideal, and increased federal funding helped expand post-secondary correctional education programming (Knepper, 1989). The Office of Economic Opportunity (OEC) funded the Upward Bound program designed to help disadvantaged young people prepare for college. This program was extended into the prisons in 1966 through the Upward Bound Oregon Prison Project. It became a model for Project Newgate, which extended the Upward Bound program in 1971 into prisons in Minnesota, New Mexico, Pennsylvania, Colorado, and Kentucky (Williford, 1994). The project had a full-time education coordinator at each institution and provided college prep work as well as offering college classes. The Newgate programs provided comprehensive services to inmate/students including financial and academic advising, and tutoring. Financial aid was also provided for those inmates who wished to continue their education upon release from prison (Gehring, 1997; Linden and Perry, 1982).

Initially, college courses were provided for inmates on site by college faculty associated with accredited universities and colleges. In the 1960s Project Newgate expanded to include study release programs that allowed inmate/students to attend regular college classes on the campuses of the universities and colleges (Gehring, 1997). Problems developed through the release program and negative public sentiment resulted in the program being cancelled.

The early 1970s were considered the golden age of correctional education in the United States and Canada (Linden and Perry, 1982). Rehabilitation took precedence over the previous correctional philosophies of retribution and punishment, and efforts increased to extend post-secondary education programs to adult offenders. The expansion was influenced by the Basic Education Opportunity Grant (BOEG) program initiated in 1973 (Messmer, 2003). The grants offered financial assistance to low-income students eligible to attend college, and this eligibility extended to prison inmates. These grants were later renamed Pell grants for Senator Clairborne Pell (D-VT) who was a staunch supporter (Messmer, 2003).

Just as post-secondary correctional education was gaining momentum, Robert Martinson's report in 1974 indicating that "nothing works" in the rehabilitation of offenders captured the attention of the media and ignited the fires of critics of prison rehabilitation programs. Martinson's report offered several potential reasons for the failure of educational programs to affect recidivism rates.

First, Martinson indicated that educational programs offered inside prison walls were irrelevant to life on the outside. Secondly, Martinson stated that most

of the correctional education programs used outdated equipment and procedures to provide instruction. A third reason that Martinson offered was that the educational programs could not reverse the impact of incarceration on offenders. Finally, he asserted that there was often no correlation between the education programs and the reasons that individuals became criminals (Gendreau, 1996). Martinson's report reviewed 231 studies of prison programs and is credited with turning the field of corrections upside down, shifting the perspective of corrections from the treatment/rehabilitation model to one of punishment and just desserts (Gendreau, 1996; Holloway, 1986).

Martinson later retracted his "nothing works" conclusion in 1979 and admitted that some correctional programs have shown measurable rehabilitative effects. However, his conclusions set the tone for a shift in corrections ideology from one of rehabilitation and treatment to one that emphasizes swift penalties and retribution (Gerber and Fritsch, 1995). This shift in attitudes was picked up by the media and by critics who were cynical about the use of rehabilitation as a correctional model. Conservatives pointed to Martinson's study as a response to the social chaos of the 1960s and demanded a law and order approach. Liberals blamed the lack of rehabilitation effects on the failure of the Great Society (Gerber and Fritsch, 1995).

Economic, social, and political factors affected post-secondary correctional education in the 1980s. In 1983, the U.S. experienced the worst economic recession since the Great Depression. Government funding for education was being drastically reduced, and the rising cost of higher education was preventing many students from getting a college education (Barton, 1996)

However, Martinson's critics pointed out that he was premature in dismissing *all* forms of intervention. Although few programs can succeed in rehabilitating all inmates, more moderate successes may be possible. Rather than ask, "What works for offenders as a whole?" we must ask, "Which methods work best for which types of offenders, and under what conditions or in what types of settings?" (Palmer, 1976:150)

Public Opinion

It is commonly asserted that the American public is punitive and, by implication, that citizens will not support the rehabilitation of offenders. This theory is only half right. Opinion polls do show that the public is punitive; however, surveys also demonstrate that Americans do not wish to have a correctional system whose *only* aim is to inflict "penal harm" or to warehouse offenders (Cullen and Gendreau, 2000).

In the 1968 Harris poll, 78 percent of respondents chose rehabilitation as the preferred emphasis of prisons (Hindeland et al. 1975, and Applegate et al.

1997). Harris repeated this poll five times until 1982 where support for rehabilitation support was at 44 percent, but still was higher in the polls than protection of society (32 percent) or punishment (19 percent) (McGarrell and Flanagan, 1985). In a 1986 poll, the residents of two major Ohio cities also endorsed treatment. When asked what “should be the main emphasis of prisons,” they more often chose rehabilitation (55 percent and 59 percent) than protection (35 percent and 30 percent) or punishment (6 percent and 7 percent) respectively (Cullen et al., 1990).

In a 1989 Gallup poll, respondents were asked whether it was more important to punish offenders or “get them started on the right road” (Maguire and Flanagan, 1991). Although 38 percent chose punishment, 48 percent said that rehabilitation was more important (Maguire and Flanagan, 1991).

The evidence is now virtually indisputable that citizens favor a correctional system that both punishes *and* rehabilitates (Applegate et al., 1997; Flanagan and Longmire, 1996). For example, Applegate et al. (1997) found in a statewide survey of Ohio residents that more than 80 percent of the respondents agreed that “rehabilitation” was “important” or “very important” goal of imprisonment.

It is noteworthy that policy makers consistently overestimate public punitiveness and consistently underestimate public support for rehabilitation (Applegate et al., 1997). In a 1980 survey of Maryland citizens and correctional elites, the policy-makers believed that less than 40 percent of the public would support community rehabilitation centers for adults, but over 60 percent believed that citizens would favor abolishing parole (Gottfredson and Taylor, 1984). In fact, when actually polled, more than 70 percent of the citizen respondents approved of the rehabilitation centers and less than 30 percent of the respondents wanted to see an end to paroling offenders (Gottfredson and Taylor, 1984).

These polls challenge such a pessimistic view of the public mood of what goals they have for correctional facilities. It confirms that the public desires punishment and that people want to be protected from predatory criminals, but it also appears that the public is still receptive to treating offenders and still believes in rehabilitation. The importance of this observation lies in the possibility of a positive direction for correctional policy in rehabilitation, especially when programs such as post-secondary education have demonstrated a substantial reduction in recidivism.

Measurement Issues And Post Secondary Education Program Selection Criteria

Since Martinson’s report in 1974, hundreds of researchers have studied the relationship between correctional education programs and outcomes such as

reduced recidivism. Measuring correctional education program impact has been no easy task. Many studies have been criticized for their lack of methodological rigor. When no comparison or control group was included in studies, or when control and treatment groups were not adequately matched, favorable outcomes for correctional education were called into question. Many studies used small samples sizes and did not separate out subjects from various educational programs (GED, secondary, and post-secondary). Follow-up times for studies varied from as short as three months to up to ten years (Lockwood, 1991).

First, evaluating any one prison program without regard for the social environment is bound to be problematic. The success of a prison program is affected by many factors beyond its own characteristics. A case in point is provided by studying the causes of recidivism:

To measure the success of a program against the single variable of the absence of reconviction for a criminal does not take into account the many other factors influencing an individual both during and after release. There appears to be a general agreement in the literature that factors such as the offender's previous life history, post-release family and other socio-economic connections, access to opportunity systems, physical and mental health, and a variety other variables contribute substantially to his or her behavior upon release from incarceration. Persons who have experienced correctional training may be favorably affected by the treatment only to have the effects discounted by the fact that they are returned to the same family, the same neighborhood, and the same detrimental social groupings and influences which contributed to their antisocial behavior in the first place. (Enocksson, 1981).

Second, determining the impact of any intervention in corrections is complicated by the problem of self-selection. Usually, it is impossible to assign subjects randomly to an experimental group (inmates participating in the treatment program) and a control group (inmates not in the treatment program). Due to this, self-selection becomes a problem. For example, inmates who volunteer for higher education programs may be more highly motivated than those who do not. If these inmates are found to do better after they are released from custody (by lower recidivism rates), it is difficult to determine whether their post-release success is due to their ambitions or to the success of the program they participated in prison. Unfortunately many studies do not control for such problems.

Third, the most common outcome used to measure correctional program success has been recidivism. Using recidivism as a measure of success has been problematic due to numerous ways in which recidivism has been defined across studies. Three types of post-release statistics, re-arrests, reconviction, and re-incarceration, were used most frequently in studies measuring recidivism. Results of the studies varied depending on which combination of variables and outcome measures were used. This made comparing outcomes of the studies difficult and limited the capability to generalize the results of the post-secondary education programs. Another issue in outcome measurement is the length of the follow-up period, which is important to the effectiveness of rehabilitation programs. From Lockwood's (1991) work we know that many of the post-secondary education programs in prisons have follow-up times ranging from three months after release to ten years. As a general rule, the longer researchers follow subjects, the more confident those researchers' findings become.

Some critics have pointed out methodological weaknesses in the research on post-secondary education programs in prisons, and caution against over-optimistic interpretations:

Studies of the relationship between prison higher education and recidivism give mixed reviews of the impact of prison college programs on recidivism. Some of the studies are flawed by serious methodological problems. Control groups are sometimes not well-matched, sample sizes are often small, and "time at risk" often differs for the subjects in the research. Given a collection of studies of such disparate quality, the question of the efficacy of prison higher education remains. (Lockwood, 1991).

Fourth, hundreds of studies have been conducted in the United States and Canada focusing on the outcomes of correctional education. Many of these studies were carried out by the correctional staff responsible for administering the education programs, which may deal with the organization and administrative aspects of their programs. These studies provide needed information about correctional education, but are not included in this study. The only studies reviewed are studies that deal *specifically* with outcomes of post-secondary educational programs.

Review of Studies

The first study included in this review is from the post-secondary prison program with the University of Victoria (British Columbia) in conjunction with Canada's prisons conducted in 1980. The University of Victoria challenged

educationalists to de-emphasize instruction in the three R's (reading, writing, and arithmetic), and to focus on the *new* three R's (rehabilitation, resocialization, and reintegration) through cognitive restructuring, moral development, and problem-solving and the interpersonal and social skills necessary for the prisoner to function pro-socially in society along with educational development (Ayers et al., 1980).

The first evaluations of the University of Victoria program included sixty-six inmates with grade eight equivalent or higher were *assigned randomly* to the University of Victoria and normal prison routine at two different penitentiaries in Canada (Duguid and Wolowidnyk 1980). Fifty-six subjects (85 percent of the original participants) were available for follow-up *six to eight years* after release from prison. Outcome was defined as having no criminal record, having a steady job, attending school, and avoiding the company of criminal associates (Gendreau and Ross, 1987). The success rates for the experimental groups in prison were 35 percent and 31 percent, while the control group success rates were lower at rates of 21 percent and 26 percent (Duguid and Wolowidnyk, 1980). Process evaluations indicated that the University of Victoria program was having a positive effect both on inmates and staff and on the inmates' behavior in the prisons (Duguid and Wolowidnyk, 1980). In the second University of Victoria study, the experimental group, who had completed at least two terms of coursework (7 ½ months minimum), were compared to a *matched control group* of inmates who had not participated in the education program. After a follow-up period of 20 months, the recidivism rates for the experimental group was 14 percent, while the control group had a 52 percent recidivism rate (Duguid and Wolowidnyk, 1980). Furthermore, the former students "showed impressive sophistication in their thinking on law and politics, criminal behavior, and family relations" (Duguid, 1981:65)

Inmates in Maryland, who earned at least 12 credits in a community college prison program, were much less likely than non-participants to recidivate (Blackburn, 1981). Two studies conducted in New York revealed similar results. In these studies inmates who earned a college degree while incarcerated were less likely to recidivate, but as the authors point out, the inmates' success may have been due *only partly* to their participation in college. These inmates also may have succeeded because they were "more motivated and/or competent than those who do not complete these programs." (Thorpe et al., 1984).

In a statewide study in New York, 26 percent of inmates who earned a college degree in 1986-1987 were re-incarcerated four years later in 1991, where 45 percent non-participants were re-incarcerated during that same time (New York State, 1991). Two studies in Alabama and Ohio revealed that those inmates who were in college programs while incarcerated had lower recidivism

rates as well as better employment history upon release from incarceration (O'Neil, 1991; Holloway & Moke, 1986). Again, in Maryland, lower recidivism was the result of participation in a college education program (Hagerstown Junior College, 1982; State of Maryland 1989). In Oklahoma, lower recidivism rates were observed, but inmates in post-secondary education programs were *not* involved in fewer disciplinary actions than non-participants during their incarceration (Langenbach et al., 1990). In Wisconsin, inmates who participated in post-secondary education programs while incarcerated were found generally to adjust better to parole conditions (Knepper, 1990).

A few studies, however, found no support for the hypothesis that college education leads to reduction in recidivism and to other outcomes. In one Canadian study, researchers discovered no difference in recidivism rates between former post-secondary students and other inmates, but reported, according to prison staff members, that:

“program inmates had better disciplinary records than they had before starting school. Some administrators felt that the program had a stabilizing effect on the prison because of the commitment which the inmates had to make to the college studies (Linden et al., 1984:72)

At the same time, Gendreau and his colleagues (1985) showed that participation in the University of Victoria program at Matsqui Penitentiary did not lead to improved disciplinary records among inmates. They dismiss this finding arguing that the rate of misconduct in that particular prison is so low that any reduction cannot be statistically significant. Similarly in a study in New York State, researchers found little support for the theory that college education reduces recidivism (Lockwood, 1991). In this study, persons with more than 60 college credits were *more* likely to be re-incarcerated than those with fewer than 30 credits (Lockwood, 1991). There are two studies (Knepper, 1990 and Linden et al., 1984) that showed no relationship between college education in prison and recidivism.

The available studies on the relationship between college education and post-release employment and education are methodologically weak, but consistently show positive consequences for society. We should reserve our judgment on these two outcomes.

No definite conclusions can be drawn concerning the relationship between correctional participation in college programs and pre-release disciplinary problems. Of the three studies found, two were methodologically sound, but showed contradicting results. Linden et al. (1984) showed the

expected inverse correlation, but Langenbach et al. (1990) found no correlation between enrollment in prison-based college programs and prisoners' misconduct.

Meta-Analysis

Chappell conducted a meta-analysis using relevant studies reported from 1990-1999 in post-secondary correctional education (PSCE) to assess whether there is a reduction in recidivism for those individuals who participate in college education programs while in prison. In a study of correctional education program completers released in 1990-1991, Jenkins, Steurer and Pendry (1995) found that "the higher the level of education attainment while incarcerated, the more likely the releasee was to have obtained employment upon release...The success of the college graduates is especially notable" (p.21). A recent study shows that inmates with at least two years of college have a 10% re-arrest rate, compared to a national re-arrest rate of approximately 60% (Center on Crime Communities, and Culture, 1997).

As we have crammed more and more offenders into prison, we have simultaneously retreated from the already minimal commitment to help them reenter productive society (Currie p. 165). Indeed, many states have moved beyond their traditional indifference to rehabilitation and now embrace what some criminologists call "penal harm" - the self-conscious use of the "tough" measures to inflict pain and deprivation on inmates in the name of retribution and deterrence (Currie). One sign of this shift is the reemergence of chain gangs, punitive and degrading inmate labor, and prison stripes. Another is the increasing criticism of job training, education, and even drug treatment in prison as frills that make life too easy for inmates.

Half of the country's juvenile facilities are in violation of federal and state laws that require at least minimal education for incarcerated youths (Portner) & (Taylor).

The 1994 federal Omnibus Crime Bill, which eliminated federal "Pell Grant" funding for prison education programs, accelerated the decline. Between 1994 and 1995 alone, the number of state prison inmates enrolled in post-secondary education dropped from 38,000 to 21,000 - this in a population close to 1 million. As of the 1994-1995 academic year, about one-half of state prison systems offered some kind of baccalaureate program: by the following year, only about one-third.

Nonetheless, there are two reasons for supporting a prominent role for rehabilitation in the correctional enterprise: Rehabilitation reduces recidivism, and its use is supported by the public (Cullen and Gendreau, 2000). Optimism remains for continuing to develop secondary educational programs in prison, especially if two conditions are met. First, transitional and post-release services

must be part of the educational program. Linden and Perry (1982) reviewed the evaluation of Newgate prison education programs which were carried out in five separate states. The evaluation showed that the Newgate education program achieved most of its goals but did not influence inmates' post-prison recidivism rates. When the programs were evaluated individually, however, different conclusions were reached. The Pennsylvania program, with the cooperation of Penn State University, insured a smooth transition for prisons to continue their education in regular academic programs (Perry, 1984). Pennsylvania participants had lower recidivism rates than those at the other sites (Perry, 1984).

Conclusion

What we have witnessed in the course of 200 years of American prisons has been a systematic swinging of prison philosophy from left to right and back again, in which prison education has been tossed about. These swings have been tied to political and economic factors. But it is of interest to compare the remarkable similarities in attitudes and actions of those who control the prison. The most liberal moment in prison reformation was the very founding of the prison by the anti-war, anti-death penalty, humanitarian Quakers during the late 1800s. These very same humanitarian concerns were evident in Zebulon Brockway's pro-education, pro-reclamation philosophy 100 years later.

Conversely, we find the "lock them up and throw away the key" attitude, so prevalent in the Auburn system in mid-nineteenth century, and the "get tough on crime" politicians of the past decade. A national survey of correctional staff attitudes conducted by Maguire showed that only eleven states and the Federal Bureau of Prisons reported that academic education is a top priority in their departments (Maguire, 1992). Twenty-six states indicated that education programs enjoy the same level of priority as other treatment programs, vocational, and industry programs, and ten respondents reported that academic programming was a low or very low priority in their departments (Maguire, 1992). While the value of learning seems nakedly apparent, and the benefits of releasing into society a more educated individual ought to be self-evident, it is difficult to convince legislators facing billion dollar deficits and prison administrators facing extremely overcrowded facilities that inmate education ought to be given a high priority.

Probably the best we can hope for is to maintain the current level of education programming and search for ways to encourage inmate motivation while we hope for an improvement in the fiscal and political climate that might allow prisoner education to become a national priority. Successful post-secondary education programs must be intensive, and must be carried out so as to provide the inmates with an alternative community within the prison. Inmates

must receive peer support for their activity and support services should be provided upon release to enable inmates to continue their education and to assist them in finding jobs. Former Chief Justice Warren Burger said it best: “We must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short term benefits - winning battles while losing the war.” (Taylor, 1993:90)

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Robert Kennedy, Lyndon Johnson and the Road to War on Organized Crime: Politics and the Transformation of Ideas to Effective Actions, 1961-1967

James D. Calder, Ph.D.
The University of Texas at San Antonio

President Lyndon Johnson offered a history-making challenge to the power of organized crime when his implementation policy underwrote and carried forward the operational plans of Attorney General Robert Kennedy. This article focuses on LBJ's actions from 1965 to 1966 to transform President John Kennedy's fledgling "war" on the Mob into a more systematic and wide ranging program of investigation, prosecution, and conviction. Transformation represented a significant policy shift, thus permanently altering federal capabilities to breach the influence of organized crime on business and government. The transformation's key element was Johnson's support for the "strike force concept," a decision to fully invoke use of a new weapon that would eventually institutionalize and strengthen federal actions against the Mob for the next two decades.

Introduction

Organized crime is unlikely to attract any political debate in 2008 despite global dimensions and epidemic proportions. Currently, the problem represents one of several major destabilizing forces in many regions of the world. Historically, organized crime has remained a reclusive and unmentionable topic during presidential campaigns. Such events are intentionally rhetorical gatherings to express symbols of hope and positive redirection. Organized crime, by sharp contrast, conjures up images of entrenched corruption and violence, failed or failing principles of governance, intractable greed and manipulation, and absence of policy solutions. Moreover, policies and resources associated with countering even the most blatant forms of criminal enterprise appear to have no natural political constituencies.

But despite these hard realities, post-election decisions have been known to change the direction of the Executive Branch and to elevate ignored ideas to new marching orders. In terms of organized crime, redirection of policy after national elections has occurred three times in more than 100 years - a century in which the American Mafia, or La Cosa Nostra after 1963, built and sustained a significant base of power. First, Herbert Hoover's leadership redirected federal actions to secure the arrest, prosecution, and conviction of Chicago gangster Alphonse Capone (Bergreen 1994; Burner 1978; Calder 1992 and 1993; Schoenberg 1992). Second, the presidencies of John Kennedy and Lyndon

Johnson, the main subject of this article, transformed years of stalled and failed policies into an affirmative action program (Calder 2008). And third, Ronald Reagan carried out a two-front attack on the upper echelons of Mafia family structure and major international drug cartels intended to permanently decapitate the Mafia (McGee and Duffy 1996). The central focus here is on a one year period from 1965 to 1966 when Johnson advanced the Kennedy Justice Department's plans to systematically challenge the power of the LCN.

In mid 1963 President John Kennedy quietly announced a war on organized crime at an event in Honolulu, Hawaii. His Attorney General and brother, Robert Kennedy, had aggressively orchestrated a nationwide attack on the LCN since January 1961, a program carried out with only moderate public attention yet with profound relative success (Kennedy 1960, 1962, 1962-1963; Kennedy and Lowi 1964; Goldfarb 1995). JFK had been unwilling to stridently verbalize support for the war before 1963. His position had been deeply rooted in personal and political reasons. But its effects reinforced a legacy of White House sidestepping and inaction. From 1961 onward RFK, however, recognized that a critical juncture had emerged in the federal role aimed at major gangster organizations (Schlesinger 1979). His work to lead a coordinated strategy took advantage of a gradual evolution in the information resources of federal and state agencies thereby saving what little legacy the JFK administration had in the policy area. JFK's assassination and the transition of executive leadership to Lyndon Johnson put the new president in an ideal position to implement transformation of the fledgling organized crime policy into a domestic policy success.

With few exceptions, the historical literature on American organized crime fails to discuss the policies and politics of post-World War II presidents.¹ In fact, most historians of American social policy have completely ignored the topic, preferring instead to examine such matters as defense and foreign relations, education, social welfare, etc. Unquestionably, for more than a century, organized crime has cast a shadow over economic, political, and social advancement associated especially with urban area development. Criminologists, like the historians, have generally stepped around influences imposed by organized crime on the operations of local and state governments. Criminology's cousin, criminal justice, has largely overlooked the justice

¹ Exceptions to the paucity of historical studies of federal responses to organized crime include Stephen Fox's *Blood and Power: Organized Crime in Twentieth-Century America* and Thomas Reppetto's *American Mafia: A History of Its Rise to Power*. A long list of excellent histories written by journalists and other disciplines has contributed to our knowledge of the twentieth century Mafia and the many characters who have had a part on both sides of the legal system.

system's impotence in the face of corrupting influences. In some major urban centers, gangster syndicates gained control over enterprises and the political institutions that were supposed to contain them. Finally, one can count on two hands the number of political scientists drawn to formal study of organized crime. In recent times, a growing number of them have taken an interest in global phenomena of transnational crime and its destabilizing potential.

This article argues that President Johnson directed a successful forward leap in federal efforts to challenge the power of the American Mafia at a critical time in public policy history. As the new administration's action plans unfolded in the mid 1960s, LBJ was convinced that new directions he had ordered would profoundly advance the war against the Mob well beyond the work of all previous administrations. In doing so, he demonstrated his own brand of leadership grounded in an astute ability to read and respond to a trail of evidence and a willingness to set forth clear priorities underwriting the programmatic actions of his Attorneys General and cabinet departments. In the area of organized crime control, no systematic federal implementation policy had been guided by any of LBJ's predecessors. LBJ relied on an alignment of certain key factors, many of which he had no hand in creating, such as the sudden popular interest in ordinary crime during the 1964 campaign, an increasing awareness of the escalating crime problem by influential intellectuals and politicians, a broadly perceived legacy of failures in national policy against organized crime, and considerable depth and richness of Mafia organizations in government intelligence. The major difference between Johnson and his predecessors was his understanding of the insidious nature of organized crime. He recognized early in his administration that success held strong promise, and that he and the Congress were uniquely aligned to invest resources to transform ideas into actions.

Historical Perspective: Presidents and Organized Crime, 1929-1961

Federal initiatives to take down the American Mafia evolved from policies generated from relatively equal measures of advances and setbacks between 1929 and 1961. Herbert Hoover developed the first presidential policy concerning organized crime. Implementation, however, had only one clear objective: the arrest, prosecution, and conviction of Chicago gangster Alphonse Capone (Calder 1993). Thereafter, Franklin Roosevelt gave fleeting attention to racketeers, leaving the details to his legally capable and pragmatic Attorney General, Homer Cummings, and the image-enhancing heroics of FBI director J. Edgar Hoover. Two decades of economic depression followed by war and post-war international intrigues effectively tabled most concerns for ordinary and organized crime. The Truman years saw little change. A White House-backed

conference on organized crime in February 1950 was intended to expand support for government action at all levels,² but the effort failed to attract congressional attention (Department of Justice, U.S. 1950). Truman's keynote address to conference attendees lacked an energetic tone (Moore 1974: 42-44), and it was not long before he was preoccupied by the war in Korea. Exposure of the depths to which organized crime had reached shifted to the Congress in July 1950 when the ambitious young senator from Tennessee, C. Estes Kefauver (D), opened hearings on conspiratorial ventures of the underworld. The hearings, however, failed to generate a groundswell of public interest or sweeping legislative measures, although some work was done to bring more federal intervention against illegal gambling. Truman, in fact, regarded Kefauver's hearings as little more than political grandstanding in pursuit of a prospective presidential nomination.³

By the mid 1950s, the notion of primary federal responsibility for organized interstate crime had not yet reached political acceptance. With few exceptions, all levels of government were unprepared to cope with a hardened collection of loosely affiliated but deeply rooted gangsters who had taken up residence in several American cities.⁴ Only four Executive Branch functions were arrayed against organized crime at the time. First, the United States Attorneys (USAs) were responsible for bringing indictments and carrying out prosecutions as they had done since 1789. The scope of organized crime, combined with a relative lack of statutory authority, further stymied any meaningful efforts against the problem. The generally small, poorly organized, weakly managed, and profoundly understaffed USA field offices were unsuited

² The keynote address to the conference was not followed by any clear interest in organized crime despite the prominence of the Kefauver hearings. Truman, in fact, took no particular interest in organized crime. The Kefauver hearings extended for nearly two years and had no impact on the outcome of the 1952 presidential campaigns of either political party. Truman's presidency experienced several internal banalities associated with alleged improprieties linked to allegations of connections with friends of the Kansas City mob when he served as a U.S. Senator (Hayde 2007). His administration also suffered from investigations of corruption in the Internal Revenue Service. Truman's second Attorney General, J. Howard McGrath, was forced out of office in connection with the scandals.

³ Truman referred to Kefauver as "Cowfever," and disparaged his seeming hypocrisy for not giving balanced attention to corrupt political activities in his own state of Tennessee (Donovan 1982: 395).

⁴ California was one principal exception. In late 1947 Governor Earl Warren established a comparatively extensive program to address organized crime. His Study Commission on Organized Crime resulted from the intensive work by its chairman, Admiral William H. Standley, and its chief counsel, Warren Olney III. Olney was a later appointed Assistant Attorney General, Criminal Division in the Eisenhower administration. See Warren 1977 for additional discussion of these men.

for any long term commitment. USAs in Chicago and New York had from time to time given priority to the gangster problem but ambivalence, repeated failures, and the influences of local political sensitivities minimized any serious threat they might have posed to local racketeers.

A second organizational source was the Federal Bureau of Investigation (FBI) and its dominant director, J. Edgar Hoover. Unquestionably, Hoover guarded his gate-keeping function over most federal investigative initiatives, especially matters involving racketeers. Presidents, attorneys general, and members of Congress avoided confronting Hoover even to gently promote a more proactive use of his agents against the growing racketeer problem. The Director, of course, argued that the Bureau's authority to act against organized crime prevented broader involvement.⁵ The third federal organization was the Treasury Department and its main investigative units: Harry Anslinger's Bureau of Narcotics (FBN), and the Internal Revenue Bureau (IRB, later IRS) Intelligence Division. FBN had undertaken investigations in the growing international narcotics problem, and had worked quietly to build intelligence files on the leading traffickers (Diamond 1954; McWilliams 1990; Musto and Korsmeyer 2002). By 1956, however, the FBN's effective street work and rich intelligence resources were racked by an internal war among top supervisors (Valentine 2004: 155-157). IRB's Intelligence Division faced significant cutbacks in budgetary resources and damaging scandals during the early 1950s (Abels 1956: 158-183; Baker 1953; Donovan 1982: 372-374; Dunar 1984: 96-120). Finally, a relative newcomer to federal agencies was the Justice Department's Organized Crime and Racketeering Section (OCRS), primarily a small intelligence function quietly created in 1954 without a legislative mandate (Attorney General of the United States 1955 and 1957). OCRS, with only a handful of attorneys, accumulated and correlated information on organized crime and racketeering, or so the charter indicated, serving also as a clearing house for information coming from numerous investigative agencies. By 1957, OCRS was taking credit for an "intelligence" function that gave special attention to the amount and geographical relationships of organized crime. It coordinated with federal agencies to permit a kind of primitive correlation of information, and it participated in liaison activities with state and local law enforcement. Only a small number of prosecutions evolved from its work.

Despite scandals in the Truman Justice Department and the wide open political opportunity presented by the Kefauver hearings, presidential candidate,

⁵ Essentially, the anti-racketeering act (Hobbs Act), the Labor-Management Relations Act (Taft-Hartley), and the Interstate Transportation to Aid of Racketeering were principal laws used by the Bureau against racketeering.

and later two-term president Dwight D. Eisenhower ignored organized crime. In rare press conferences he acknowledged racketeering, but only in response to direct questions. Following the infamous Apalachin gangster conference in 1957 (Kefauver 1968; Moore 1974: 114-134)⁶ all actions against racketeering were handed over to Attorney General William P. Rogers, who had only recently taken the job when Attorney General Herbert Brownell, Jr. resigned.⁷ Brownell had little interest in racketeering matters. The most pressing problems of the times were internal security, Justice Department resources, and congressional probes. Undeniably, Eisenhower was disturbed by illegal foreign narcotics trafficking but his concerns were withheld from public articulation until he signed the Narcotics Control Act of 1956. During the Eisenhower years, in fact, the Justice Department's sluggish ambivalence toward organized crime ultimately became a giant blind spot on the policy screen. Early in 1957 Brownell offered no references to OCRS's slow development as a minor intelligence function. Moreover, he failed to invite briefings or reports outlining what the investigative bureaus had collected or what government actions by investigative bureaus and the United States Attorneys had been undertaken. His interests appeared to be elsewhere (Brownell 1953; Brownell and Burke 1993: 142-162). In the last half of 1957, neither Brownell's or Rogers' records suggest that either of these Attorneys General wished to persuade Ike to pay more attention to the issue.

Organizational resources aside, the Eisenhower administration had been presented with several opportunities for bold action against organized crime after the Apalachin conclave on November 14, 1957. Vito Genovese, the top Mob boss after Lucky Luciano's exile to Italy, and nearly 75 other bosses traveled from New Jersey, New York City, and other more distant points to the estate of Joseph Barbara, Sr. The meeting was planned and sponsored by Genovese and Stefano Magaddino, boss of the Buffalo crime family (Bonanno and Lalli 1983: 209; Mollenhoff 1972). Genovese, according to Luciano's later account, acted out of stupidity, greed, and a lack of common sense for having insisted on the meeting (Gosch and Hammer 1974: 399). Magaddino, one of the last powerful old-time leaders, had convinced Genovese that the previous year's meeting had

⁶ No archival records establish that Eisenhower wanted any briefings on the topic, and his presidential library in Abilene, Kansas contains no relevant file labels regarding organized crime or racketeering. There are minor and incomplete files on racketeering in the records of Herbert Brownell and William Rogers.

⁷ Rogers, although serving as deputy to Brownell from 1953 to 1957, had assumed his full responsibilities only two months before the Apalachin conference.

been held without incident in Apalachin (Talese 1971: 219).⁸ This would be one more meeting of top leaders in a long tradition of such events dating back to the 1920s.⁹ Accommodations for this meeting in particular demanded organizational prowess, multiple telephone communications, contacts with local hotels, and complex travel arrangements.

News of the state police raid on Barbara's house on the afternoon of the 14th served as a wake-up call for the public, the FBI, and Congress. Attorney General Rogers scrambled for facts while FBI director Hoover quickly developed a new interest in piecing together intelligence that had lain dormant in his field offices for several years. Most assuredly, Hoover knew that the Bureau of Narcotics and the Immigration and Naturalization Service had supplied the McClellan Committee chief counsel, Robert Kennedy, with complete dossiers on the Apalachin attendees. At that point, Hoover was forced to compete for the ear of the Attorney General.¹⁰ While the bureaucracy fixed sights on gathering and reporting information, not a public word was spoken from the White House news room. Eisenhower, recovering from a recent heart attack, never mentioned the event despite the extensive national news coverage. Opportunities to seize the high ground of leadership had been bypassed.

A second opportunity to act came after weeks of post-Apalachin scurrying. Once again distractions followed a lack of policy commitment thus confirming Ike's negative legacy of organized crime policy. The post-Apalachin atmosphere thickened as a relentless press corps made daily inquiries about proposed federal responses. Senator John McClellan and chief counsel Robert Kennedy escalated congressional pressures on the Justice Department to move ahead with investigations (McClellan 1962). By March 1958, after four months of work, AG Rogers delegated the federal initiative against racketeer organizations to Milton R. Wessel, an experienced Assistant United States Attorney (AUSA) from the Southern District of New York (Wessel 1960 and 1963). Wessel was asked to develop and manage "Special Group," a small cadre of attorneys reporting directly to Rogers. The task was to build impenetrable cases against the Apalachin attendees and to gather intelligence on racketeer organizations. Wessel later recalled that he was not well suited for the job

⁸ Actually, the immediately previous meeting was held in Binghamton, NY (Gosch and Hammer 1974: 399).

⁹ Bonanno later wrote that these meetings were held every five years and because the previous meeting had been held in 1956, he saw no need for a meeting in 1957 (Bonanno and Lalli 1983: 209).

¹⁰ The Law Enforcement Intelligence Unit (LEIU), a private group formed in 1956 of police intelligence personnel, particularly supported by Western states departments, also supplied information to the Justice Department.

(Wessel 1960: 58).¹¹ It was not long before he recognized that the task was nearly insurmountable in the face of time-consuming travel obligations and managing operations on a shoestring of budgetary resources while struggling to maintain regional offices in Chicago, Los Angeles, Miami, and New York.¹² The FBI and several other investigative agencies were patently unhelpful to Wessel's Group. Immediate conflict arose with FBI Director Hoover, a factor that was increasingly apparent to top Justice Department officials. Hoover's continued recalcitrance was a persistent nightmare for Attorney General Rogers (Demaris 1975: 144), causing Wessel's Group to creatively maneuver to find help where it could. Hoover openly declared opposition to the work of Special Group. After weeks of case preparation, the overall productivity of Special Group declined.

The concept of Special Group held significant promise for the administration's less-than-remarkable record against racketeering. But in the waning months of 1958 Wessel recognized that a broad attack on the Mafia was unrealistic. Simply put, there was too much work under the constraints of severely limited resources. By February 1959, Gerard Goettel, Wessel's deputy chief in charge of Special Group's field operations, observed that the entire effort "had become an albatross around the Attorney General's neck. It had to be quietly stuffed and mounted before it could cause further embarrassment" (Goettel 1960: 36). The Democrat-controlled House Appropriations Committee, displeased with Wessel's inability to produce more than a single case, rejected a request for additional operating funds. Wessel and Goettel released a brief report summarizing Special Group's activities and recommended creation of an Office on Syndicated Crime under the Attorney General's supervision. It also called for actions designed to build interagency cooperation among federal, state, and local authorities (Lynch 1975a: 34; Lynch 1975b: 30). In April, Wessel announced his departure from the Justice Department (Wilkey 2003: 552) but he was persuaded to remain in place until the indicted Apalachin conspirators had been prosecuted. The trial opened in late October 1959, nearly two years after the Apalachin conference. Only twenty defendants remained. The jury received the case on December 17, 1959 and after only two days of deliberations a verdict of guilty was announced. Prison terms ranging from three to five years and fines amounting to \$10,000 each were handed down. The U.S. Court of Appeals heard arguments in June 1960, and to the amazement of many in federal law enforcement, the Court unanimously reversed the convictions. The Court also issued a sharp rebuke that the government's case had not been meritorious.

¹¹ His strength, as he also recognized, lay in his skill in building large cases, as he had done in civil practice (Wessel 1960: 58).

¹² There was also a small Washington, D.C. headquarters operation.

Special Group, therefore, entered the history books as yet another failed mission to push a weakly committed policy uphill to a place where some minor successes could have been counted.

Presidential Campaign 1960: John Kennedy's Avoidance of the Issue

The campaign of 1960 further ignored the issue of organized crime. Neither Richard Nixon or John F. Kennedy referred to the subject or remarked on the post-Apalachin events.¹³ Kennedy was in the best political position to raise the issue since Nixon could not demonstrate that Eisenhower's hands-off practice had yielded movement against the Mob. But after winning the presidency, Kennedy demonstrated only minor interest in organized crime.¹⁴ No speech was dedicated exclusively to the subject and only a small number of references preceded his quick announcement of a "war on organized crime in 1963."¹⁵ Throughout his presidency, in fact, it was clear that organized crime

¹³ Teamster president James R. Hoffa had been extensively investigated by Robert Kennedy and the McClellan Committee. He was under indictment during the campaign of 1960. Mysteriously, the indictment was set aside before the election in November, and it was later discovered that Hoffa had supported Nixon. During the interregnum before John Kennedy took office, Attorney General William Rogers reinstated the indictment (Sheridan 1972: 5). Sheridan concluded, "Richard Nixon's political debt to Jimmy Hoffa was left unpaid."

¹⁴ He mentioned the term "organized crime" in remarks on other main topics on March 24, 1961, April 20, 1961, April 27, 1961, January 11, 1962, and June 9, 1963. On balance, this issue was not alone in this regard. The Democratic Party and JFK also sidestepped discussion of McCarthyism and right wing extremism in the 1960 campaign (Talbot 2007: 36).

¹⁵ He used this term in an Address in Honolulu Before the U.S. Conference of Mayors on June 9, 1963. On January 30, 1961: "Organized and juvenile crime cost the taxpayers millions of dollars...", State of the Union Message; on March 24, 1961, "...collection of Federal revenues and help curb corruption in and out of government, racketeering and organized crime," Special Message to Congress on Budget and Fiscal Policy; on September 13, 1961, "...bills which we hope will aid the United States Government and the people of this country in the fight against organized crime...", Remarks Upon Signing Bills to Combat Organized Crime and Racketeering; on January 11, 1962, "...we have ... secured new weapons to combat organized crime, racketeering...", Annual Message to Congress on the State of the Union; on January 24, 1962 in response to a press question about racketeering in the Stock Market, "I think I would rather have you go back to the Attorney General on it"; on October 10, 1962, "Without the Congress we would not have had the most effective legislation against organized interstate gambling that's been passed since 1934", Remarks in Baltimore at the Fifth Regiment Armory; on October 10, 1962, "...the head of the Royal Mounted Police in Canada stated that a good many big-time gamblers and racketeers here in the United States have been moving across the border...", Remarks to a Group of United States Attorneys; on October 9, 1963 in response to a press question on Joseph Valachi testimony, "...I haven't commented on the Senate procedures and I wouldn't now on this hearing or other hearings."

was not a policy priority.¹⁶ Abdication stalled policy advancement and meant that the Attorney General would carry the plate of responsibilities for legislative initiatives combined with tracking hundreds of gangster prosecutions in the federal courts (Heuvel and Gwartzman 1970). RFK demonstrated that he was up for the job, but here again was another uphill fight that could have benefited from the articulation of clear and convincing presidential commitment. Mere symbols of presidential support had failed several times in earlier years to attract congressional interest in expanded department budgets and new investigative tools.

Frequently cited reasons for JFK's lack of leadership against organized crime include: first, during the campaign he (and Richard Nixon) actively or passively communicated with Mafia characters to solicit funds and votes (Davis 1989: 356; Hersh 2007: 260; Talbot 2007: 136); second, JFK met with or talked by phone with mobsters Johnny Rosselli and Sam Giancana on more than one occasion, often sharing dalliances with women known to have connections to Mafia leaders (Brashler 1977: 209-211; Burleigh 1998: 223; Giancana, S. and C. 1992; Mahoney 1999: 43-50; Reeves 1993: 289-293); third, father Joseph P. Kennedy had had extensive business associations with mobsters (Rappleye and Becker 1991: 204-205; Talbot 2007: 136) and, that as one biographer concluded, "...an infinite capacity for poor judgment and immoral, unethical activity (O'Brien 2005: 496-497); and finally, JFK maintained associations with celebrities, such as Frank Sinatra, who regularly visited with mobsters (Dallek 2003: 281; Talbot 2007: 136). Details behind these broadly stated reasons have added lore to the Kennedy presidency, but it remains entirely unclear whether or not any of these purported reasons affected the outcome of the 1960 election (O'Brien 2005: 497).¹⁷ In terms of the more directly related issue of campaign strategies, Kennedy needed labor's support, a traditional base of the Democratic Party (Shesol 1997: 19) and he could not afford to have public opinion further linking labor unions with labor corruption and the Mafia.¹⁸ In view of the congressional emphasis on labor racketeering, and particularly RFK's work for Senator McClellan, the fear of negative public perceptions of corruption and gangster affiliations was likely to have been a more salient factor in JFK's unwillingness to stridently support a war on organized crime before 1963.

¹⁶ His top five priorities were increasing the minimum wage, health insurance for elderly, federal aid to education, housing, and federal redevelopment of depressed areas (Woods 2006: 378).

¹⁷ However, in the times they were not widely regarded as damaging to the broader context and pace of the Kennedy presidency. Individually or collectively, of course, they were not minor concerns to Kennedy insiders.

¹⁸ JFK avoided the Teamster investigations.

Toward Interagency Cooperation: Robert Kennedy's Policy Leadership

Despite JFK's less-than-enthusiastic engagement of organized crime, he appears not to have wavered in supporting RFK's zeal for the task. RFK's appointment as Attorney General was announced in December 1960. Innuendoes of nepotism abounded. Speculations alleged potential conflicts of interest. Kennedy's inner circle largely ignored these views, and RFK's Senate confirmation was quickly approved (Mahoney 1999: 85).¹⁹ RFK assembled a hard charging staff, developed new departmental operating procedures, and reorganized the Criminal Division to move more indictments to trial (Goldfarb 1995: 42-52). No time was wasted in shaping the fast-paced agenda to multiply investigations and prosecutions. DOJ attorneys were encouraged to expand the number of indictments while RFK pursued congressional approval of new legislative tools to broaden evidence-gathering capabilities and provide stiffer penalties. It was clear to all RFK staffers that the pace of work had not slowed at any time since the new Attorney General had served as John McClellan's chief counsel.²⁰ Regular and spirited staff meetings were admixtures of sporting events, candid debates, and praise for staff work undertaken or completed (Goldfarb 1995: 124-135).

To carry out the fight against the Mafia, RFK desperately wanted to stamp out the ambivalence and procrastination of earlier administrations (Kennedy 1962; Kennedy 1962-63; Kennedy and Lowi 1964). He directed prosecution teams to maximize cooperation across bureaucratic lines. Vital intelligence functions and data were centralized. Emphasis was placed on reliability of investigative reports and high quality evidence in order to achieve more guilty verdicts. These objectives drove significant organizational changes in key departments, such as IRS, Labor, and FBN. RFK understood that changing the FBI's culture could not occur overnight, thus he invested more energy in persuading Hoover to give more agent time to organized crime (Palermo 2008: 52).²¹ Confidently, he also considered the Mafia's organizational prowess vulnerable to attack and that small task force organizations would be better suited to strike more efficiently at locally controlled racketeering groups. This idea had been originally advanced in Thomas E. Dewey's work in New York against Lucky Luciano in the 1930s (Dewey 1935 and 1974; Hughes 1940;

¹⁹ Announcement of RFK's appointment as Attorney General came in late December 1960 following hurried Senate hearings.

²⁰ RFK was reluctant to fill the position in 1961 until JFK and Joseph Kennedy pressured his acceptance.

²¹ Hoover and his loyalists easily maneuvered around changes not invented inside the Bureau.

Smith 1982; Stolberg 1995; Walker 1944) and by Milton Wessel's Special Group in 1958. No successes could be achieved, RFK believed, without substantial improvements in interagency cooperation. Production and sharing of information across bureaucratic lines, he believed, were keys to the success of specialized expertise and jointly staffed teams.

Although RFK had no trial experience, he was particularly adept at dealing with the DOJ bureaucracy and innovating management controls.²² Among plans for change was a proposal to create a special investigative unit inside DOJ targeted exclusively at organized crime. Predictably, Hoover opposed the idea and, according to one observer, offered to retire if it was implemented.²³ RFK scrapped the plan, recognizing that for the moment he needed Hoover. More positively, the Department's new level of morale and its elevated spirit of cooperation were directly attributable to RFK's management style and to the new organizational culture in which hand-picked and highly qualified staff members bonded instantly with the new mission and the AG's operational leadership (Nissman 1999: 7). Staff confidence in departmental authority and RFK's ability to direct and lead without fear were essential factors in trumping the stronger credentials and trial experience of his colleagues (Thomas 1991: 111-112). Significant improvements were noted in communications and interagency coordination. Staff concentrated more on diligent execution of assignments and on making decisions as to winning cases in court.

RFK determined that effective and efficient investigations into Mafia profiteering were unlikely to occur consistently without deployment of court supervised wiretapping and electronic surveillance tools. Essentially his goal was to invade the inner circles of Mafia communications that protected conspiratorial planning. Specifically, he needed to have access to places where phones were present, to the devices and equipment through which telephone communications traveled, to the use of particular types of surveillance tech-

²² Exposure to the inner workings of the mob had come from investigative files, travels to field offices, and intensively active service on John McClellan's Senate labor racketeering committee from 1958-1960. As chief counsel on McClellan's committee, RFK assembled a witness list that included Jimmy Hoffa and selected targets with Mafia associations or active involvement. One of the principal targets was Jimmy Hoffa, since Kennedy had taken aim at labor racketeering. Kennedy was relentless in attacking Hoffa in open congressional hearings. He probed the Teamster boss's most deeply guarded secrets in controlling the trucking industry. Hoffa's verbalized disgust for Bobby Kennedy is legendary. RFK proved a master of comprehensiveness, an artful interrogator, and a skilled investigator able to keep the staff focused on acquiring defensible evidence.

²³ Luther Huston, Public Information Officer to William Rogers, surmised that Hoover told RFK, "If you are going to do that, I can retire tomorrow. My pension is waiting." (DeToledano 1973: 307).

nologies, and to accounting records of phone usage. Additionally, he needed to stop shipments of gaming equipment across state lines, to stop the illicit use of the U.S. postal system, and to regulate the interstate transfer of firearms. These were areas of weak or non-existent authority that agency heads had complained about for years and in some cases had afforded excuses for inaction. RFK also understood that new legislation would supply J. Edgar Hoover with even more ways to justify congressional requests for budgetary increases.

By mid-September 1961 with only minimal remarks, JFK signed into law five pieces of legislation providing new authority to the FBI and other investigative departments: (1) the Interstate Travel Act prohibited travel across state lines to deliver the proceeds of crime, or to commit a violent crime to enable a business engaged in illegal gambling, liquor, narcotics, or prostitution; (2) the Transmission of Betting Information Act criminalized wire communications devices to transmit wagers in interstate commerce or information in aid of placing bets and other particulars; (3) the Transporting Wagering Paraphernalia Act made unlawful the carrying or sending in interstate commerce or through the mails betting slips, records, gambling paraphernalia, tokens, paper or other devices employed in bookmaking, pools, or numbers operations; (4) the Fugitive Felon Act criminalized crossing a state line to avoid prosecution or confinement after committing crimes such as murder, rape, mayhem, and several other felonies; and (5) the Federal Firearms Act prohibited shipment of firearms across state lines or in foreign commerce to persons under indictment or conviction for crimes of violence. Efforts to broaden court authorized wiretapping failed passage due to significant opposition in the Senate. A congressionally-initiated statute supported by the administration was signed in 1962 prohibiting interstate communications facilities to influence the outcome of a sporting event through bribery. A Gambling Machines Act was also signed the same year to broaden existing statutes on interstate transportation of certain gambling devices.

RFK's legislative initiatives paralleled creation of two specialized prosecution units organized to target particularly important racketeering cases. Each was staffed with hand-picked investigative personnel and highly skilled prosecutors. One unit was known as the "Get Hoffa Squad," a component of the Labor Rights Unit within OCRS; the other was a group of area coordinators formed into mobile units or task forces.²⁴ RFK's program of attack was also aided by the institutional histories of the Internal Revenue Service's Intelligence

²⁴ The term "mobile units" was rarely used and only in congressional hearings. Former OCRS personnel do not recognize the term as readily as they recognize "task forces." Special investigations groups had originated with the federal investigation of Al Capone (Calder 1993: 147; Irely 1948).

Division, the Federal Bureau of Narcotics, the Customs Bureau, the Immigration and Naturalization Service, and the FBI (Andrew 2002). Other resources available to him included veteran FBN director Harry Anslinger (until 1962) (Kinder and Walker 1986; McWilliams 1990),²⁵ Milton Wessel (then in private practice) and Thomas Dewey (then retired from private practice and somewhat inclined toward partisan political assistance) were available for informal consultation. He knew that the key to successful team investigations and prosecutions was a well-staffed intelligence system supported by the cooperative participation of federal and state law enforcement agencies (Earley and Shur 2002: 23-33).

The most reclusive of the two prosecution units was the “Get Hoffa Squad.” This group was comprised of twenty staff prosecutors and four special assistants to the Attorney General. It was led by Walter Sheridan, a former chief investigator for the McClellan Committee.²⁶ An “interdisciplinary” Hoffa Task Force was also formed at the Department level to meet and argue various legal approaches to inform Sheridan’s squad about novel ideas to uncover labor corruption. It drew many of its perspectives from work in the Criminal Division’s Fraud Section, and from the Civil Rights, Antitrust, and Tax Divisions (Navasky 1971: 468). Entrenched schemes in the trucking industry had been linked to the Mafia and it was not uncommon for company managements to collude with Hoffa’s Teamster locals (James and James 1965). Kennedy had studied intensively Hoffa’s schemes for taking control of the locals. He knew that he needed the ideas and energies of labor law professionals to get the most out of files supplied by Senator McClellan (Sloane 1993: 176). A decade later Sheridan reflected on the Hoffa Squad, recognizing RFK, not JFK, for building an infrastructure to rid American labor unions of their entrenched associations with organized crime. Sheridan, too, believed that the trucking industry was critical to unfettered interstate commerce. Federal authorities were responsible for using the Commerce Clause to relieve the strangle hold of the Hoffa organization that had been imposed on the companies and the unions. The Squad was originally supervised by veteran OCS chief, William G. Hundley, and thereafter led by Edwyn Silberling, a seasoned expert in complex criminal prosecutions (Brill 1978: 30-31; Hundley 1962-63; Palermo 2008: 52; Silberling 1962).²⁷ The Criminal Division and other departments across the fed supplied

²⁵ Anslinger addressed the narcotics issue in different ways, including public testimony, articles, and books. See Anslinger 1961 as a representative example of his writings.

²⁶ Besides Sheridan, a former FBI agent whose title was special assistant, there were four additional special assistants (Sheridan 1972: 166-167).

²⁷ Hundley, a Republican appointee of AG William Rogers, was appointed special assistant to Robert Kennedy. After RFK selected Edwyn Silberling, a Democrat, moved aside

most of the attorneys and investigators. Some were also hired from local governments. Sheridan's operations widened the investigation of Hoffa's diverse activities requiring the Squad to rely more heavily on the departmental resources of FBI, IRS, Labor, and FBN.²⁸ Ultimately, nearly two hundred indictments resulted. About half of these cases produced guilty verdicts and prison sentences (Brill, 1978: 31; Hersh 2007: 273).

The second interagency innovation introduced by RFK was known as the area coordinators. Units were also supervised by the OCRS beginning in early 1961 and were comprised of attorneys operating in Los Angeles, Chicago, New York, Miami, and when needed, in smaller cities known for Mafia activity.²⁹ In some, locations office space and funding were provided by USAs, but other offices got their resources directly from the Justice Department's Criminal Division. The task force concept, the dream that Milton Wessel had hoped to implement in 1958, offered a key advantage to the permanency of locally specialized operations since travel distances to convene grand juries affected budgets and workloads of the U.S. Attorneys. Efficient management of rapidly increased team/unit case loads improved as local agents of the FBI, IRS, FBN and other agencies cooperated more frequently. Traditionally, these agencies had provided OCRS with significant intelligence on prosecution targets (Andrew 2002; Burnham 1989 and 1996), but much of the information had not been effectively used.

RFK's actions to energize organized crime prosecutions gave OCRS headquarters a life of its own by mid-1963. Field area coordinators and U.S. Attorneys, supported well by various investigative agencies, built comparatively large numbers of defensible indictments and convictions. Interagency cooperation had been greatly improved through RFK's management style and an evolving belief that cooperative assistance in complex cases improved the relative positions of each agency. RFK's interests in the program appeared to soften as he was increasingly preoccupied by a stream of interruptions in the area

but was later brought back to head OCRS in 1962 upon Silberling's unexpected departure. Hundley stayed until 1966, replaced by Henry E. Petersen.

²⁸ The IRS, for example, was uncomfortable with focusing on groups or classes of individuals, especially if it believed that the agency was being asked to fish for tax violations in general. The Labor Department preferred to stay close to its authorities in the Taft Hartley Act and the Labor Management Relations Act. The Customs Bureau and the Federal Bureau of Narcotics warred regularly over territorial disputes in foreign countries tied to enforcing against illegal drug importations.

²⁹ During 1963, teams were also sent to Pittsburgh, PA; Detroit, MI; Newport, KY; Beaumont, TX; Reading and Philadelphia, PA; Youngstown, OH; New Orleans, LA; Toledo, OH; Denver, CO; and Las Vegas, NV.

of civil rights enforcement. Conflicts with FBI director Hoover continued to require time to coax cooperation from the Bureau. Racially motivated incidents, including beatings, church bombings, and abusive police tactics were becoming increasingly commonplace (Hersh, 2007: 338). Fundamental tensions between RFK and Hoover sometimes resulted in outright hostile communications, spurred on by Hoover's unwillingness to accept the young and less formalistic Kennedy and RFK's unwillingness to allow Hoover to dictate the terms of an aggressive program to contain the Mafia.

Tensions between Hoover and RFK moderated somewhat in September 1963 with the impending testimony of Mob informant Joseph Valachi, a Genovese crime family soldier. In the spring of 1962 Valachi had already cooperated with agents of the Federal Bureau of Narcotics, but soon thereafter his considerable value to the government took on new importance to RFK and to OCRS chief Hundley (Cook, in Watters and Gillers 1973: 162; Valentine 2004: 283). On June 22, 1962, Valachi killed another man in the Atlanta Penitentiary fearing that the man was sent by Vito Genovese to kill him (Maas 1968: 273). Months passed as Valachi was charged with the offense and as he negotiated to find himself in a new and more protected position as a government informant. In March 1963 Gerald Shur, an attorney in the OCRS Intelligence Unit, interviewed Valachi, immediately reporting what he had learned (Earley and Shur 2002: 34-35).³⁰ Additional interviews with Valachi by OCRS chief Hundley and FBI agent James Flynn produced a body of information about organized crime never before so comprehensively spelled out nor more useful to employ in conducting direct testimony. Throughout these interview sessions, Valachi regaled his interviewers with details of the Mafia's inside workings. Such accounts made colorful stories for viewers of his congressional testimony in September. The level of information supplied by Valachi eventually forced FBI director Hoover to acknowledge the existence of the Mafia. In keeping with the director's obsession with image control, Hoover conceded in 1964 that he had known about the secret organization for years (Navasky 1971: 9). By 1964, FBI reports were openly referring to organized crime, the Mafia, and La Causa Nostra (*sic*).

RFK, having also met with Valachi, gained a windfall witness, a man who, by sheer force of personality, shaped public opinion about the depths of the Mafia problem, and who, more subtly, supplied evidence needed to validate the Attorney General's efforts and the years of work by field agents and prosecutors. Clearly, the Valachi successes served as a perfect capstone for a war on

³⁰ Shur describes a 13-page memo he wrote in March 1963 at the request of the deputy chief of OCRS. The author has interviewed Shur on other matters pertaining to Valachi's tricky personality and his occasional fits of anger over alleged betrayals by other Mafiosi.

organized crime that was largely carried out by RFK. As successful as he was in leading the attack, its continuation as a vehicle for significant further advancement remained hardly recognized by the President. Aggressive investigation and prosecution had been successful mainly due to RFK's ability to work around so many shifting and often unpredictable policy priorities of his brother's presidency.³¹ OCRS deputy chief, Henry E. Petersen,³² had concluded from a conversation with Robert Kennedy in the fall of 1963 that RFK's work had been so important to the total effort, but it had also been so tenuous (Goldfarb 1995: 255). In essence, the entire program had been built on and buoyed by Robert Kennedy's hard charging initiatives. The tragic termination of the JFK presidency also ended the certainty that had evolved from the work that RFK set in motion. Petersen recalled, however, that RFK had resolved to finish the task started in 1961 (Goldfarb 1995: 255).

By any measure, RFK's leadership in prosecution management resulted in a stellar record of achievements directly attributable to investigative agents and DOJ prosecutors. In organized crime cases alone, new filings of criminal indictments or informations increased from 45 in 1961 to 118 in 1962 to 262 in 1963; actual indictments returned, 121 in 1961, 350 in 1962, and 615 in 1963; and convictions based on trials or pleas were 73 for 1961, 138 for 1962 and 288 for 1963. All investigative agencies escalated activities in support of prosecution work. The Internal Revenue Service Intelligence Division, an exceptionally aggressive element in RFK's overall strategy, measured its work in terms of projects opened by the Washington national office and in the satellite/field offices. On February 24, 1961, IRS Commissioner Mortimer M. Caplin directed his Operations Division to establish a separate group in the Division and to name coordinators in each regional office to monitor organized crime cases and to report regularly to the Intelligence Division (Caplin 1962: 372).³³ Measured in terms of combined organized crime investigative/prosecution projects, there were 180 new IRS projects in 1961, 883 in 1962, and 757 in 1963. In terms of prosecutions completed by convictions for tax evasion, there were 2 in 1961, 76 in 1962, and 242 in 1963. Taxes and fines imposed as a result of IRS organized crime investigations escalated from \$4.4 million in 1961, to \$29.5 million in 1962, and \$37.4 million in 1963. FBI, Labor Department, FBN, Secret Service and many other agencies produced similarly dramatic increases in workload and

³¹ Readers may wish to consider the other hats that RFK was asked to wear, particularly in connection with major national security matters of the JFK administration (Freedman 2000; Stern 2003).

³² Petersen's name has been spelled incorrectly as "Henry Peterson" by many authors.

³³ Caplin to Assistant Commissioner (Operations), LBJ Presidential Library, 2/24/61, JL 3, Box 26.

completed cases against Mafia figures.³⁴

The assassination of President Kennedy in late November 1963 immediately jeopardized RFK's Don Quixote-like organized crime program. The early months of 1964 saw the program threatened from several directions but most importantly from RFK's own loss of focus and an eventual redirection of his depleted level of enthusiasm. Instantly, he was no longer the President's brother (Blakey and Billings 1992; Talbot 2007: 266), and he had come to the realization that he had given nearly a decade of his life to chasing and convicting mobsters and corrupt officials. As Shesol observed, RFK shifted attention to civil rights and poverty, matters of great interest to JFK (Shesol 1997: 166-171) and most likely the kinds of issues in which he could find personal solace. Although John Kennedy had remained at arm's length from direct involvement in RFK's principal goal of undermining the Mob's power, the president's halting engagement with the issue undermined institutionalization of the war on the LCN. It is also reasonable to assume that by 1964, RFK believed that he had already set in motion most of the necessary ingredients for furthering the war. Accordingly, it was time to leave that policy ground for areas that might better represent JFK's spirit. Although some observers characterized RFK's demeanor during the period from December 1963 to September 1964 as zombie-like (Goldfarb 1995: 302), mobster indictments and prosecutions showed no decline.³⁵

Space limitations preclude discussion of other dimensions of the difficult transition between the JFK and Johnson administrations. One aspect of the situation cannot be overlooked. Clearly, JFK's assassination delivered back to FBI Director Hoover the limelight he had lost in recent years. Ignoring the immediate impact on investigations, the sorting of various assassination plots, and the dramatic reassignment of FBI agents away from organized crime cases, Hoover showed his disdain for RFK when he remarked that RFK was just another lawyer at that point. Justice Department direction of the organized crime program, while sometimes chaotic from the weight of heavy caseloads, gravitated back to Hoover's priorities (Goldfarb 1995: 303). Hoover took advantage of the vacuum in leadership by publishing a law review article in mid-1964 outlining his thoughts on a topic he had denied for more than three decades

³⁴ U.S. House of Representatives, Subcommittee of the Committee on Government Operations, Ninetieth Congress, First Session, "The Federal Effort Against Organized Crime" (Pt. 1), April 5, 13, May 16, 1967.

³⁵ OCRS productivity demonstrated that achievements continued to mount in spite of the preceding year's events. Indictments rose from 615 (1963) to 665 (1964) individuals connected with organized crime activities. Convictions also rose dramatically from 288 in 1963 to 593 in 1964.

- organized crime (Hoover 1964). The article, undoubtedly an attempt to demonstrate Hoover's superiority of knowledge, had the advantage of reflection on secret government files and a running record of quiet but denied FBI intelligence gathering. President Johnson, always wary of Hoover's power, confirmed the director's status by announcing in May that Hoover would continue to serve even though he had nearly reached his seventieth birthday (Hack 2004: 339). On balance, however, the intentionally proactive policy of pursuing the Mafia during the RFK years continued to motivate OCRS attorneys to work cases, to build relationships across the investigative agencies, and to overcome any losses in public interest arising from JFK's assassination.

Lyndon Johnson Warms to the Issue

Lyndon Johnson's first days in the presidency were heavily laden with the burdens of his new status. Not unexpectedly, he could not fully consider the crime issue, and organized crime was clearly not among his priorities. But by early spring 1964 he began to formally acknowledge the important domestic policy work that had been accomplished and new initiatives undertaken by the Justice Department bearing signs of significant progress against the Mafia. In the first seven months of 1964 his speeches offered substantially more diverse coverage of the crime issue than had ever been spoken. He was willing to go beyond previous presidential conclusions by claiming a direct link between social conditions and criminality and arguing that the defeat of poverty would equal a defeat of crime.³⁶ His style was to insist upon regular staff reporting. One particularly positive report from Robert Kennedy succinctly summarized progress made in indicting and prosecuting mobsters and their associates. Drawing from RFK's conclusions on January 6, 1964 LBJ delivered a hard hitting statement on organized crime intended to recognize the investigation and prosecution successes and to set the tone for continuing the good work of the Justice Department. To the gathered U.S. Attorneys on July 8, he recognized RFK's work in several federal justice areas, further emphasizing the principle that would also lead the organized crime program for the next year or so: "We do not seek and we do not want...a concept of justice which seeks convictions at the expense of liberty and at the expense of human decency and the expense of liberty and at the expense of privacy."³⁷ The privacy issue in particular, although not dramatically in evidence in early 1964, was gradually evolving in connection with public concerns for government dossiers on citizens and the increasing

³⁶ A president's remarks on any particular policy concern should be read in their entirety to experience nuances of expression, timing, and thematic variations.

³⁷ Public Papers of Lyndon B. Johnson, 1964, 452. Retrieved on January 22, 2009, from <http://www.presidency.ucsb.edu/ws/index.php?month=&year=1964>.

sophistication of surveillance devices. Johnson's specific concerns for these matters must be sidestepped in the interest of brevity, but they ultimately played an important role in restricting the pace of intelligence gathering on organized crime targets. Johnson banned the use of electronic or telephonic listening devices from 1965 to the end of his presidency (Calder 1008).³⁸

Johnson's recognition of RFK's work against the Mob carried special meaning inasmuch as the institutionalization of Justice Department work in this area of overall crime policy had taken years to implement and RFK was surely responsible for the great leaps forward from 1961 to mid-1963. Unquestionably, tensions between LBJ and RFK caused a distancing in their relationship until RFK's departure in September 1964. A sizeable wound was made in the leadership of the Criminal Division's work given some compensation by LBJ's quick appointment of Acting AG Nicholas deB Katzenbach, then serving as Deputy Attorney General under RFK. Katzenbach was a quiet leader with an intellectual demeanor and one who provided the Department with the necessary calming influence following RFK's departure. The transition in Justice's leadership briefly slowed the organized crime initiative particularly among experienced insiders across federal agencies who had been loyal Kennedy appointees. None could be certain of the new administration's approach. LBJ, however, gave no indication that organized crime would suffer any losses in emphasis or that he was in any way displeased with the work that had marked the successes of the past three years. In fact, it was increasingly clear that Johnson intended to further expand the achievements of the RFK years. Part of his elevated enthusiasm stemmed from an astute recognition that strong interagency cooperation was the only effective pathway to undermining the Mafia's entrenched base of power.

Johnson handily won the election of 1964, defeating Senator Barry Goldwater in a landslide victory. While crime had crept into the election politics, LBJ's strategists advised that a range of other social issues such as, civil rights, poverty, juvenile crime, and urban riots needed attention (O'Reilly 1988). Organized crime was not in view, although Johnson appreciated the sentiment expressed during the Kennedy years that organized crime victimized mainly the urban poor (Calder 1982) thus calling for legislation to reduce economic predation and poverty. The election completed, Johnson was in a good position to confirm that the problem of organized crime had not gone away and that new tactics, funding priorities, and the pursuit of significant new results were needed.

³⁸ The author has discussed the implications of this policy in a forthcoming article in [Trends in Organized Crime](#), written with William S. Lynch, former chief of DOJ's Organized Crime and Racketeering Section.

A new staff was in place at Justice, interagency cooperation had reached new heights, and intelligence files on major mobsters had expanded and were shared across agency lines. Objective assessment, however, cannot argue that Johnson's new commitment to a Johnson-led organized crime initiative was supported by the rank and file. But it was clear that any significant internal disagreements would be met with firm words of direction from the White House. Staffers committed to OCRS and the principles behind the attack on the LCN lined up to continue their dedicated work. Their work, in fact, continued to yield even more indictments and convictions. Cooperation among two dozen federal law enforcement organizations had been elevated. OCRS area coordinators had developed strong bonds of teamwork and loyalty in their headquarters and field operations while they had perfected skills in handling larger and more complex racketeering conspiracies. Conviction rates in late 1964 and early 1965 increased once again. The news provided Johnson even more reason to follow his natural political instincts to support successful domestic programs. White House staff urged him to pursue new congressional priorities to increase federal funding for crime control priorities.

New opportunities to push the organized crime agenda grew out of progress reports by Acting Attorney General Katzenbach, one on October 30 and the other in late December.³⁹ Katzenbach was successful in convincing Johnson that demonstrable successes against the Mafia could yield popular political recognition. At year's end, indictments had greatly surpassed those in 1963. Racketeers or associates convicted in 1964 had nearly doubled their number over the previous year. Prosecutions and convictions were undertaken against a diverse collection of organized crime ventures, such as gambling, official corruption, narcotics, income tax violations, labor-management racketeering, and business frauds. Katzenbach offered up his conclusions as to the directions he believed the LBJ policy should proceed: first, organized crime could be reached effectively by aggressive federal law enforcement actions; second, additional assistance was needed to underwrite further state and local involvement in support federal efforts; and third, "racketeering exists only to the extent that the

³⁹ An earlier report on October 30 allowed LBJ to make last minute campaign statements before the November election. On November 1, he gave the press a letter he wrote to Katzenbach on the progress against organized crime, reading in part, "This record results from exceptional efforts by many individuals – your attorneys in the Criminal Division of the Department of Justice, the able agents of the FBI, the Internal Revenue Service, the Bureau of Narcotics, the Secret Service, the Bureau of Customs, and other federal law enforcement agencies. Their work is important and demanding – days and weeks spent away from home, long hours, and physical danger. They deserve the Nation's gratitude." Public Papers of Lyndon B. Johnson, 11/1/64.

American public wants it to exist,” thereby suggesting the need for “...public awareness, public indignation, and public support.”⁴⁰ Clearly, Johnson wanted to broaden the public appeal and engagement to finding new solutions. To achieve that end he appealed to the public to push the Congress toward quick action.

The pace of LBJ’s commitment to organized crime was manifested in several speeches and messages delivered in 1965. His congressional message on law enforcement and the administration of justice on March 8 placed significant emphasis on organized crime,⁴¹ highlighting the need to explore new methods for applying the skills of federal and local authorities.⁴² The gathered members of his Commission on Law Enforcement and the Administration of Justice were informed on September 8, 1965 that he wanted “...to know why organized crime continues to expand despite our best efforts to prevent it.”⁴³ Katzenbach reported on September 13 that he intended to reward Justice Department prosecutorial actions against racketeers on the bases of quality and quantity, that he wanted to focus intelligence work on breaking the “conspiracy of silence,” that he wanted to emphasize actions against complex racketeer schemes, and that he would insist upon expanding the amount of intelligence information on racketeer identities and movements.⁴⁴ The report attracted LBJ’s attention when the President jotted a note of appreciation: “I found your report...most interesting and a good piece to tell the public what we are doing.”⁴⁵ Katzenbach, although not LBJ’s ideal nominee for the job of Attorney General, had clearly captured Johnson’s approval for the work accomplished in the area of organized crime, a positive result of special importance to the morale of attorneys and federal agents hired during the Kennedy administration.

Beyond Words: From Teams to Strike Forces

LBJ appointed the Commission on Law Enforcement and Administration of Justice in July 1965. Commissioners, however, were not instructed to give any particular emphasis to organized crime. The generic topic of “corruption”

⁴⁰ Katzenbach to LBJ, 12/24/64, LBJ Presidential Library, WHCF, FG 135, Box 183.

⁴¹ He terms such as “cancer in the city,” “an entrenched national industry,” “feeds on itself,” “citizen is the loser,” “erodes respect for the law,” and “destroys the underpinning of law enforcement in a community.”

⁴² Special Message to the Congress on Law Enforcement and the Administration of Justice, 3/8/65, Public Papers of Lyndon B. Johnson.

⁴³ Remarks to the Members of the President’s Commission on Law Enforcement and the Administration of Justice, 9/8/65, Public Papers of Lyndon B. Johnson.

⁴⁴ Cabinet Report for the President from the Attorney General, Weekly Compilation of Presidential Documents, Vol. 1, 9/13/65, pp. 258-259.

⁴⁵ LBJ to Katzenbach, 9/14/65, LBJ Presidential Library, WHCF, FG 135.

may have been regarded as an adequate umbrella under which to investigate conspiratorial crime. But planners may also have been concerned about potential political implications for urban restoration policies. Not long thereafter, however, the Commission recognized the need for a special task force on organized crime especially upon consideration of the complexities of the phenomenon and the need for firm, clear recommendations. Johnson's highly respected consultant, Harvard professor Daniel P. Moynihan, wrote to the President in late November 1964 to counsel that research on organized crime had been lacking, that little scholarship had been accomplished since the Kefauver committee hearings, and that solutions were "...about where our effort to counter the threat of Communist military aggression was in the late 1940s." Moynihan suggested that the nation was aware of the dangers posed by the problem but few measures had been proposed to contain it.⁴⁶ Other commissioners urged LBJ to place high priority on identifying the members of organized crime, to building intelligence files, to expanding intelligence operations and planning processes associated with case prosecutions, and to naming the Attorney General as the overall coordinator of the organized crime initiative. The latter recommendation was intended to sustain and increase agency cooperation.

Early in 1966 LBJ's time was largely consumed by the Vietnam War (Schandler 1977), thus reducing greatly the amount of time he had for domestic issues such as organized crime. But by March 9 he had taken note of the sharp increases in federal indictments in Mob cases, shortly thereafter causing him to insist on an intensified prosecution campaign. At the White House in April he reinforced his support for an expanded drive, the need to acquire additional resources for OCRS, and his focus on greater cooperation between the Justice and Treasury departments. On May 5, he delivered a strong message on organized crime to initiate new plans for implementing a range of new options already known in the Justice Department. To the gathered group of federal law enforcement officials he took note of their progress in identifying a larger number of criminal syndicates, in anticipating syndicate activities and ventures, and in the vigorous program of prosecution. But he also wanted to ramp up the effort, and to do that he named the Attorney General as the focal point in the drive against "corporations of corruption."

The new level of progress could be achieved with more "joint efforts," "cooperation of all concerned Americans," and "a new partnership between,

⁴⁶ Moynihan to Johnson, November 30, 1964, LBJ Presidential Library WHCF, JL 3. A recent biography offers a few additional remarks on Moynihan's views on organized crime (Hodgson 2000).

Federal, state, and local governments” to rid the “menace of organized crime.”⁴⁷ For the remainder of that year, LBJ spoke briefly of organized crime on two more occasions⁴⁸ consistently emphasizing and repeating these themes. Late in the summer of 1966 White House staffers worked intensively on improving the resources of federal law enforcement through acquisition of new crime and justice legislation. Policy positions stressed the federal role in solving the problem but also the creation of state-level organized crime units partly funded from federal funds, and special investigating teams in the Justice Department attached to Washington headquarters.⁴⁹ Requisitions were made to add nearly two dozen prosecutors to the OCRS teams, additional money for staff support, and supplemental funds to the FBI and IRS for investigative support.⁵⁰ J. Edgar Hoover could not have been happier. Funds were also sought for a state-of-the-art information system to operate across agency lines and to significantly expand on the Justice Department’s primitive but extensive collection of intelligence files already in operation in a Department special intelligence unit (Earley and Shur 2002). Johnson’s timing was perfect, and the full plate of new initiatives guaranteed new enthusiasm in the ranks of investigators and prosecution staff.

Breaking New Ground by Experimentation

It was clear to many who worked in the Justice Department in the mid-1960s that the attack on the centers of organized crime power required continued innovation and a willingness to invest in experimentation. The war against the Capone mob in President Hoover’s time was won through experimentation. Thomas Dewey’s successes against “Lucky” Luciano were achieved by creative experimentation and raw persistence. Milton Wessel’s plans for Special Group’s work in the late 1950s called for vigorous prosecutions built on cooperation across agency lines, frustrated by lack of administration support. And Robert Kennedy’s intensive campaign against Teamster leader Jimmy Hoffa took giant steps against labor corruption through the “Get Hoffa Squad.” Each of these ventures required interagency cooperation and a recognition by the President that there would be failures and successes in the course of experimenting with new strategies to breach the secrecy barriers of Mafia plans and operations. LBJ

⁴⁷ Remarks at a Meeting with Federal Enforcement Officials to Deal with the Problem of Organized Crime, 5/5/66, Public Papers of Lyndon B. Johnson.

⁴⁸ Remarks to the Delegates to the Second National Conference of United States Marshals, 9/27/66; Remarks to the Delegates to the Conference of State Committees on Criminal Administration, 10/15/66, Public Papers of Lyndon B. Johnson.

⁴⁹ Meeting Minutes for Crime-Justice-1967 Legislation, LBJ Presidential Library, Box 1.

⁵⁰ Carey to Califano, 12/10/66, LBJ Presidential Library, Office Files of White House Aides, Joseph Califano.

appears to have been the first president in the post-World War II era to invest high confidence in the ability of federal authorities to invent and pursue dramatically progressive strategies.

A central idea in the Justice Department's arsenal of initiatives against the LCN (and one that had been consistently perfected since 1961) involved small teams deployed to target specific crime families or corrupt labor leaders. Such units, it was believed, offered the greatest potential for successfully building winnable cases in local federal courts. OCRS, under the leadership of Section Chief Henry E. Petersen, determined that Buffalo, New York was a place worthy of such an investment in resources. Petersen, a veteran Justice Department attorney since the late 1940s (Goldfarb 1995: 126; Mollenhoff 1972) was well versed in the failures and limited successes in the war on the Mafia since that time. His objective fixated on the need for high quality interagency cooperation. Assisted by Special Attorney Robert Peloquin, Petersen organized a small team of seasoned prosecutors supported by a small cadre of federal agents to set up an office in Buffalo under a label of an "experimental group."⁵¹ It seems that during the early planning phases in late 1966, the term "strike force" was unacceptable to the Treasury Department, and thus it was not used to refer to the team until late in 1967 when plans for additional units were underway. Petersen, following his loyalty to the ideas of RFK, was convinced that an intensive program of investigation and prosecution in Buffalo could yield a successful outcome against an old line Mob organization. Petersen was well aware of the frustrations associated with interagency cooperation, especially difficulties in attaining FBI assets through J. Edgar Hoover. Undaunted, he pursued expanded cooperation between OCRS and state police organizations, the Federal Communications Commission, and the Royal Canadian Mounted Police. Intelligence assets in the possession of these and many other agencies would be the key informational sources for developing more comprehensive investigations (Goldfarb 1995: 62-63). Additionally, he secured full support for the Buffalo "experiment" from the Criminal Division's Assistant Attorney General, Fred Vinson, Jr., and from Attorney General Katzenbach.

Plans for the experimental team were intended for implementation in November 1966 with an advance group of personnel arriving in Buffalo to put logistical conditions in order and to begin the cooperative relationships with local police, the United States Attorney, and cross-border associations with the Royal Canadian Mounted Police. Outside of OCRS the effort was unknown since secrecy of operations was essential. Thomas Kennelly, successor team leader to Robert Peloquin, has recalled that project staffing included experienced

⁵¹ The "experiment" was also referred to as an "ad hoc study group."

supervisory federal agents who represented various agencies together with five OCRS prosecutors. They were provided office space in the same physical location to "...direct (force, coax, cajole)... agents toward a common objective in the target region," and to perform duties with no publicity and with the cooperation of non-corrupt elements of state and local law enforcement (Kennelly 2006: 200). Federal supervisory agents were assigned from the Internal Revenue Service, Secret Service, BNDD (formerly FBN), Alcohol and Tobacco Tax Bureau (later ATF), Department of Labor, and Customs (also labeled then a Bureau). J. Edgar Hoover was asked to participate but he declined, a further example of a consistently obstructionist conduct. Local FBI agents supplied intelligence and liaison support, most likely without official recognition from Washington (Kennelly 2006: 200).⁵² Formal FBI acknowledgment aside, Henry Petersen pressed on. His unit's analysis efforts continued to expand. He held to the belief, based on his extensive experience, that federal law enforcement had malingered in efforts against the LCN for too many years and that during this long period of delinquency Mob families from top levels to urban streets had entrenched new criminal enterprises and sophisticated communications channels (Kennelly 2006: 198; Salerno and Thomkins 1969). Symbolically, Buffalo was the place to put an end to this legacy.

By early 1967 Stefano Magaddino, Buffalo's crime boss remained a largely elusive character, although it is now known that the FBI and FBN had assembled extensive intelligence files on his operations. Magaddino's control over organized crime in Buffalo extended to Rochester, and other local cities, and for nearly four decades he retained considerable influence within the La Cosa Nostra Commission. U.S. and Canadian authorities regularly surveilled his operations. RCMP agents assisted U.S. investigators by supplying valuable intelligence linking Magaddino with the powerful Toronto crime boss, Johnny "Pops" Papalia (Dubro 1985; Humphreys 1999). Heroin importation and distribution, a major concern to the FBN, was absorbed by Magaddino when he orchestrated the murder in 1961 of one Albert Agueci (Valentine 2004: 245) after he learned about Agueci's threat to provide the FBI with information

⁵² Hoover wrote to Attorney General Clark on November 24, 1967 to advise his boss of the policy not to assign an agent to the Buffalo strike force. Essentially, he did not want agents working too closely with prosecutors, maintaining the same argument he had given the Congress in 1958 in relation to the Wessel Special Group. Hoover also pointed out how many cases the FBI had investigated "in a continuing campaign against the hoodlum racketeering elements..." U.S. House of Representatives, Committee on Government Operations, Ninetieth Congress, Second Session, "Federal Effort Against Organized Crime: Report of Agency Operations," June, 20, 1968, p. 28.

(Earley and Shur 2002: 47-49). Joseph Valachi, one of RFK's prime sources of information in 1962-63, murdered Albert's brother, Vito, in the Atlanta federal penitentiary in 1962. But Magaddino's history of alienating subordinates delivered considerable leverage to federal agents as they gathered vital information for the Buffalo project's attack on the Magaddino family in 1967. In early 1967, Pascal "Paddy" Calabrese, one of Magaddino's key street captains, provided project staff attorneys with detailed descriptions of the Buffalo mob (Earley and Shur 2002: 49). In addition to insights about the organization structure, operations, and affiliations, Calabrese discussed the intrigues related to the internal Mafia war over a policy to steer clear of illegal narcotics. Commission boss Joseph Bonanno, Magaddino's first cousin, had been abducted from a Manhattan street in 1964 and held hostage until 1965, all allegedly carried out by Magaddino to stop Bonanno's intrusions into Western New York, the Ohio Valley area, and Montreal (Talese 1971: 21-23). Persistent conflicts generated the conditions for war, but the escalation of bitterness proved highly valuable to intelligence gathering efforts aimed at factional defectors.

The Buffalo "experiment" soon ended its study group phase and became known in the Justice Department as Strike Force 1, an initiative targeted mainly at the Magaddino crime family and its associates. Buffalo had become a dangerous place in the mid-1960s and it was a center of Mafia control in Western New York. Magaddino's standing on the Mafia Commission had greatly expanded his profile to federal authorities, but his organization was relatively small and readily identifiable. It was an organization largely ignored even during the aggressive campaigns of RFK (Kennelly 2006: 201). Working relationships between OCRS personnel and Buffalo's U.S. Attorney, John Curtin, were productive and relatively non-competitive, mainly due to Curtin's appreciation of the assistance rendered in prosecuting the Magaddino family (Kennelly 2006: 202).

Attorney General Katzenbach departed the Justice Department in October 1966 mainly due to controversies with J. Edgar Hoover. Immediately Johnson then appointed Acting Attorney General Ramsey Clark, somewhat uncertain that his choice had been the best option (Califano, Jr. 1991: 208). In November 1966 as the plans for the Buffalo initiative were finalized, Clark ordered the U.S. Attorneys to screen all pending cases to ensure that no criminal litigations had been tainted by illegally obtained evidence from wiretaps or electronic devices.⁵³ An important story concerning the Johnson administration's stated hostility toward wiretaps and electronic bugging devices must be avoided here in the

⁵³ Clark to U.S. Attorneys (Memo No. 493), 11/3/66, LBJ Presidential Library, Administrative History of the Department of Justice, Vol. III, Box 2.

interest of space limitations (Johnson 1971: 335-336).⁵⁴ But opposition to such devices never constricted Clark's support for the agent supervisors and attorneys working in Buffalo. Peloquin, Kennelly, and U.S. Attorney Curtin made cooperative decisions about case priorities as the intelligence files expanded with new information coming from informants and defectors from the Magaddino organization. Deputy Chief Kennelly recalled that it was necessary to coordinate efforts with all the federal agencies represented in the various investigations so that a minimum of bureaucratic feathers were ruffled (Kennelly 2006: 202-203). Originally it was expected that the Buffalo operation would last only six months. That expectation, however, was dashed almost from the time of official commencement in January 1967. As the months rolled by regular meetings monitored the advancement of individual cases. Periodically officials attended from the Washington OCRS headquarters. Cooperation across agency jurisdictions proved achievable and manageable. Unique developments were aired during coordination meetings and close council was held before subpoenas were issued, before arrests were made, and before grand juries were convened. FBI personnel concentrated on Mafia-controlled operations. IRS agents investigated tax matters, including tax audits of public officials alleged to have cooperated with gambling syndicates. Labor Department investigators assumed responsibility for matters linking LCN to labor organizations.⁵⁵ Attorney General Clark was particularly interested in regular reporting about the Labor Department's Labor-Management and Welfare-Pension division cases involving labor unions.⁵⁶

By April 1967 the Buffalo strike force advanced rapidly toward indictments and trials. Deputy Chief Kennelly insisted upon continued penetration of the local Cosa Nostra group by close and joint efforts. A total of twenty-six people staffed the Buffalo project.⁵⁷ Organizational features included

⁵⁴ See Beschloss 1997 and 2002 for excellent discussions of this situation.

⁵⁵ "Central to the working design of the Strike Force is the concept of mutual planning, based on the study of combined intelligence and the pooling of experience. Therefore, each participant in the project has the dual functions of participating in the formulation of the group's strategy and coordinating the activities of his agency in the implementation of that strategy. In effect, each investigator acts as a conduit for the dissemination of intelligence information to and from his agency with respect to the other participants. Additionally, the agency representative is directly responsible for ensuring that the project acts in compliance with the internal regulations of his respective agency." "Administrative History of the Department of Justice – The Strike Force Concept," LBJ Presidential Library.

⁵⁶ Clark to Secretary of Labor Willard Wirtz, 10/18/66, National Archives and Records Administration (NARA), RG 85, Department of Labor "Records of the Organized Crime Strike Force," Box 6.

⁵⁷ In attendance were Edward M. Mullin, Theodor O. Thoma (Labor Department); William Beehan (IRS, ATT Unit); Donald Bowler (IRS Intelligence, Los Angeles); Andrew

complete command over the delegation of investigative assignments, intensive supervision and monitoring of case progress, immediate access to incoming intelligence, and a manageable span of control over investigators and prosecutors. In essence, these were the best ingredients of a reasonably well functioning team that worked productively and valued each other's contributions. Added to the internal organizational assets was an informational bridge to the Canadian government through cooperative work with RCMP investigators.⁵⁸ Evidence of unit success was demonstrated in the case against Freddie Randaccio, underboss to Maggadino, and Patsy Natarelli, a Magadinno captain. A Buffalo police sergeant supplied the strike force with critical information concerning Calabrese, Randaccio, and other members of the Buffalo mob. Information coming from Calabrese and others was verified by investigators through cooperative intelligence sharing that represented a milestone in federal interagency work (Kennelly 2006: 205). Strike force cases were persistently built against Randaccio, Natarelli and others. Calabrese's negotiations for special witness protection, in fact, caused the development of yet another innovation, the formal witness protection program (Kennelly 2006; Earley and Shur 2002). Attorneys and investigators who worked in Buffalo continued to praise the experimental project for its achievements in advancing the attack on individual crime families. Individual agencies participating in the Buffalo effort reported back to superiors the specific areas in which they had contributed. Labor Department representatives, for example, candidly reported that they had not been able to make cases in direct violation of federal labor laws, but they had

Berger (Secret Service); Felton Richards (Customs); Philip Smith FBN, Baltimore); Mark Di Lious (IRS, Pittsburgh); Calvin Hill (RCMP); Henry Petersen (OCRs); Robert Peloquin and Thomas Kennelly (Buffalo Project). Reports were given by various participants on cases underway: Undercover agents and informants had been developed; information concerned a Canadian ship used to transport Joe Bonanno from Haiti to Florida was found; Magaddino family found to be involved in many legitimate businesses as well as illegal enterprises; close associations were discovered between the Gambino family and the Volpe brothers in Canada, controlled by Magadinno; Magadinno controlled Local 210, Laborers of Buffalo union; two arrests for major heist of postal money orders. Peloquin planned to brief the Attorney General and to recommend continuation of the Buffalo Project and expansion to other cities. Daniel F. Gill to Thomas R. Donahue, 4/26/67, National Archives and Records Administration (NARA), RG 85, Department of Labor "Records of the Organized Crime Strike Force," Box 4. Henry Petersen wrote to Frank M. Kleiler, 11/16/66, outlining the types of information to be included in reports: labor unions which are consistently complained of in terms of unfair labor practices, strong arm organizing and payoffs from employers; labor unions which have changed pension plans or insurance carriers; welfare or pension funds consistently behind in employee contributions; labor unions consistently controlled or infiltrated by labor racketeers; and employers who are not forced by the union reps to live up to the terms of the contract. Ibid.

⁵⁸ RCMP investigators also worked gambling cases that held international implications.

developed evidence sufficient to convict several leading La Cosa Nostra members of conspiracy to violate federal statutes.⁵⁹ As the strike force program developed in succeeding years, such candor led to inevitable strains between OCRS and agency heads, some of whom insisted upon restricting agent work only to directly connected agency authorities.

Ramsey Clark's appointment as Attorney General in March 1967 added to Johnson's rejuvenation of the organized crime program begun in 1965. Admittedly, Clark has received significant criticism for his opposition to all forms of electronic surveillance (Clark 1971). But he is due credit for urging Johnson in November 1965 to promote congressional approval of several anti-crime measures, including measures useful in fighting organized crime. Clark had suggested that LBJ should determine to rid the business and labor communities of all forms of organized crime, and to attend to illegal narcotics, extortion, bootlegging, and criminal influence in political processes. He concluded that this could be accomplished by focusing public attention on organized crime since "the public is in danger of slipping back in the apathetic attitude toward the problem which existed prior to 1961."⁶⁰ Throughout the remainder of 1966 and in early 1967, LBJ's Task Force on Organized Crime drafted additional recommendations for continuing the initiatives. The final report reflected two highly useful recommendations guaranteed to advance the applications of the strike force concept (Cressey 1967 and 1969). First, it supported team investigations and prosecutions, and second, it supported development of court authorized wiretaps and electronic surveillance, an outright opposing position to LBJ's policy preference.⁶¹ The Strike Force approach, as it had been applied experimentally in Buffalo, had proven exceptionally successful for its one year in operation. It counted 32 indictments directly attributable to the interagency work of the Departments of Justice, Treasury, and Labor. Moreover, it was responsible for the further development of sophisticated intelligence operations and construction of a system for sharing pooled intelligence on the top gangsters in the Buffalo and Rochester areas. An additional White House group headed by Professor James Q. Wilson provided a vital capstone endorsement of

⁵⁹ W. J. Usery, Jr. to Secretary of Labor Shultz, 3/11/69, *Ibid.*, Box 6.

⁶⁰ Clark to Califano, 11/15/65, LBJ Presidential Library, Office Files of White House Aides, Joseph Califano.

⁶¹ Space limitations force the author to withhold discussion of this controversy. It is, however, an important element in the Nixon administration's policy to sharply increase the use of wiretaps and bugs against the Mob under the provisions of Title III of the Omnibus Crime Control and Safe Streets Act.

the Strike Force concept and urged LBJ to expand the activities to between five and ten additional units.⁶²

Concluding Observations: Winnable War, Viable Weapon

The “war on organized crime,” a term first used by President John Kennedy, was not fully engaged until 1966 when the strike force concept reached full recognition by President Lyndon Johnson. The basic ingredients of the concept, not new to Robert Kennedy as he served on the McClellan Committee in the 1950s and later as the most aggressive anti-crime attorney general in modern history, gathered profound momentum from 1961 to 1963. The combination of RFK’s diligence and determination in the face of considerable odds of hostile agency reactions and LBJ’s energetic support, the anti-organized crime policy of the federal government achieved successes never before imagined. So many obstacles had been overcome in Johnson’s ultimate recognition that the war against the LCN was winnable. At the time he could not have predicted its ultimate successes, but his willingness to provide opportunities for, and confidence in, the Justice Department to lead new initiatives marked the beginning of the end of major LCN power. Both RFK and Johnson, as it turned out, made mistakes in the manner in which they managed particular aspects of policy implementation. But considered over the long run of their investments in aggressive, unrelenting forward progress the mistakes cannot trump their constructive actions. Clearly, RFK could have pushed President Kennedy in 1961 to stand forthright in favor of securing more resources to underwrite the anti-organized crime program. And clearly LBJ should have resolved a more reasoned and cautious approach to the use of court supervised electronic surveillance for use in LCN investigations in 1965 and thereafter. JFK, as it was later shown, had been fully compromised as to any more support for RFK’s organized crime work than he actually provided. LBJ, also, either for personal or political reasons, was not in a position to permit the use of electronic surveillance tools that would have allowed more efficient advancement of LCN investigations. Johnson’s presidency, however, can take credit for standing fully behind a policy that multiplied the contributions of Robert Kennedy by further expanding the methodology of the task force concept. His support for the concept provided the climate for a decision making environment within the Justice Department that produced a weapon of investigation and prosecution superiority that the LCN could not overcome.

⁶² “The President’s Task Force on Crime,” LBJ Presidential Library, Box 1, Legislative and Domestic Files. Wilson served as the chairman and Warren Christopher was co-chairman.

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Thucydides and Prognosis: Foresight and Statecraft in History and Modern International Affairs

G. Michael Stathis
Southern Utah University

Thucydides emphasized that the primary requisite of a great statesman was prognosis (πρόγνωσις), the ability to anticipate or foresee, based on accumulated knowledge and experience. What could be described as a sense of correct foreknowledge allowed certain statesmen the ability to perceive the tendencies of society and change or guide them. Thucydides identified this quality in Themistocles and Pericles, but found it wanting in other leaders. Applied to modern statesmen, the presence or absence of prognosis plays a significant role in assessing the process of policy-making and the policies themselves that have so far produced a political quagmire in Iraq. In at least one area, post-invasion planning, it is all too clear that George W. Bush lacked this necessary requisite in the planning and implementation of his pre-emptive war in Iraq. Thucydides, as is well known, intended his work to have timeless meaning and utility. Recent events once again seem to vindicate Thucydides' significance in the development of theories of international relations, in general, and the relevance of his ideas in particular cases in recent international affairs. For Thucydides, statecraft by statesmen who lacked prognosis more often than not led to disaster, a conclusion that aptly applies to the modern case of Bush.

Introduction

Thucydides emphasized that the primary requisite of a great statesman was prognosis, πρόγνωσις, the ability to anticipate or foresee based on accumulated knowledge and experience. What could be described as a sense of correct foreknowledge allowed certain statesmen the ability to perceive the tendencies of society and change or guide them.¹ Thucydides identified this quality in two of his favorite statesmen, Themistocles and Pericles, but found it wanting in other leaders. Applied to modern statesmen, the presence or absence of prognosis can be construed to play a significant role in assessing the process of policy-making, statesmanship, and the policies themselves that have so far produced a political quagmire in Iraq. In at least one area, post-invasion planning, it is all too clear that George W. Bush lacked this necessary requisite in the planning and implementation of his pre-emptive war in Iraq.

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¹ John H. Finley, Jr., *Thucydides* (Ann Arbor: The University of Michigan Press, 1963), 50.

significance in the development of theories of international relations, in general, and the relevance of his ideas in particular cases in recent international affairs. For Thucydides, statecraft by statesmen who lacked prognosis more often than not led to disaster, a conclusion that aptly applies to the modern case of George W. Bush.

Statesmanship

A great deal of importance is placed on the notion of statesmanship in political science, especially by the so-called realist school. The terms leadership and statesmanship make reference to those men and women (consider Cleopatra, Elizabeth I, Catherine the Great, Golda Meir, Indira Gandhi, Margaret Thatcher, or even perhaps Hillary Clinton) who inspire confidence in everyday life, or those who do so as leaders of a community, by deed, word, example, or because they inspire belief in themselves and what they do. We often refer to them as decision-makers since even in democracy this function often falls on the shoulders of one person. Or, as Francis D. Wormuth put it: “the most fateful decisions are functions of the perceptions, the misperceptions, even the inattention of a single man.”¹ We are constantly fascinated, and often mystified, by this function. John F. Kennedy once noted that this process “is mysterious because the essence of ultimate decision remains impenetrable to the observer—often, indeed, to the decider himself.”²

In political science there are a number of ways to look at this phenomenon. Political realism has traditionally put great emphasis on the role of the great statesman, and accordingly, a variety of writers associated with this school of thought have offered views as to what a great leader or statesman should be. Thucydides, an inspiration to political realists but not a realist himself, also emphasized the significance of great leaders and statesmen. According to Thucydides, great statesmen possessed the necessary qualities to lead their city or state to greatness. Less capable individuals often led their people to disastrous ends. The difference between great statesmen and those less endowed was, in the view of Thucydides, determined by one primary characteristic: prognosis.

¹ See Francis D. Wormuth, “The Presidency as an Ideal Type,” *Fortune* 2 (January-February, 1976): 33-34.

² John F. Kennedy, *Forward* (June 1963) to Theodore C. Sorensen, Decision-Making in the White House: The Olive Branch or the Arrows (New York and London: Columbia University Press, 1963), xi.

Thucydides and Prognosis

The essential case for the notion of prognosis is of course presented by Thucydides in his *History*.³ According to Thucydides the “supreme requisite” of a statesman “...is his πρόγνωσις [prognosis] - his ability to foresee - and *History* itself is, in essence, a manual for future statesmen, instructing them in the outcome of conditions destined to be repeated.”⁴ This sense of “correct foreknowledge” should not be interpreted to suggest the idea that Thucydides held that history repeats itself; this is not quite true. Rather, he held that events may “follow a pattern” that if foreseen can be controlled, “...the purpose of the *History* rests on the assumption that, by knowing the natural tendencies of society, you can, if not change, at least guide them.”⁵

For Thucydides, according to Finley, history is an “...interlocking process in which individuals and social forces exert an almost equal power.”⁶ But certain individuals, it is suggested, by knowledge and experience, can recognize certain circumstances, that is prognosis, and guide them toward positive outcomes. And here we understand Thucydides’ emphasis on the enduring worth of his work “...not as a prizewinning exercise in elocution, to be heard and then forgotten, but as a work of permanent value.”⁷ Or as Finley has interpreted this value: “*History* is a guide to future readers to instruct them in the operation of forces, which, if wrong choices are made, will go as he describes but which could go otherwise as a result of right choices.”⁸ Ultimately, the historical lesson presented by Thucydides emphasizes the role of great statesmen who possessed prognosis and guided their respective states to success, if not greatness, and those that did have this quality and led their fellows to disaster. Though he does not tell of the final fall of Athens, Thucydides clearly suggests this according to earlier failures, and the policies of unenlightened leaders.⁹ It was not a predetermined fate, the will of the gods, or a simple case of chance;

³ Thucydides did not give a formal title to his epic work save for a passing reference to *the inquiry* which scholars, especially historians, have taken to mean *the history*. Generally, we note the use of several titles: Thucydides’ History; The History of the Peloponnesian War; The Peloponnesian War or The Peloponnesian Wars and simply The History.

⁴ Finley, Thucydides, 50.

⁵ *Ibid.*, 308.

⁶ Finley, Thucydides, 310.

⁷ Thucydides, The Peloponnesian War, Walter Blanco, trans., Walter Blanco and Jennifer Tolbert Roberts, eds. (New York and London: W.W. Norton & Company, 1998), Book I: 22.

⁸ Finley, Thucydides, 310.

⁹ We learn of the events at the end of the Peloponnesian Wars from other sources especially Xenophon, A History of My Times, Rex Warner, trans. (Middlesex and New York: Penguin Books, 1966).

clearly, by prognosis and proper leadership, Athens could have been guided to a better place in history, as can any state properly led.

Great statesmen, such as his prime model, Pericles of Athens, could lead a state to greatness; poor statesmen, Alcibiades and Cleon of Athens, invariably led their people to disaster. The two figures that Thucydides associated with the quality of prognosis are easy to discern: Themistocles and Pericles, both fellow aristocrats and Athenians. Themistocles himself, of course, cited the potential of a great statesman, “I cannot fiddle but I can make a great state from a small city.”¹⁰ Thucydides also suggested that this is an ability probably limited to those well-born. John H. Finley, Jr. refers to Thucydides’ and Themistocles’ “untutored ability to foresee the course of things;” and to *History* as “a vindication of Pericles’ foresight,” or what Robin Lane Fox refers to as long sight.¹¹ Accordingly, the polis, the city-state of Athens, as any state, is only as free in its policies as the abilities of its leaders to chart a political course, having recognized existing conditions by knowledge and experience; regarding Athens, “She was free only to the extent that an able leader could guide these already existent forces along proper channels.” Clearly, Pericles had this quality, and other Athenians did not.¹²

Neither did Thucydides, or the Hellenes (Greeks) in general, dismiss chance, *tychē* (τύχη), altogether, but clearly they did not see it as either the Hellenistic or Roman sense of *fortuna*. Simply, it was a sense of “sudden and vast change” in circumstances. For Thucydides it covered unexpected but generally minor events. One of them was the plague in Athens that proved to be anything but a minor occurrence.¹³ This happenstance does lead to the logical question of why, given his sense of prognosis, did Pericles not foresee the conditions that could bring about this disaster? It is a question that is unanswered, although a partial answer is found in Thucydides by Victor Davis Hanson: “Later a tired Pericles himself confessed to a worn-out and angry assembly, ‘The plague was the one event that proved greater than our

¹⁰ Sir Francis Bacon’s turn on Plutarch (actually probably more popularly known because of Peter O’Toole in David Lean’s film *Lawrence of Arabia*), “In consequence, whenever in later life he found himself at any cultivated or elegant social gathering and was sneered at by men who regarded themselves as better educated, he could only defend himself rather arrogantly by saying that he had never learned how to tune a lyre or harp, but that he knew how to take a small or insignificant city in hand and raise it to glory and greatness.” *The Rise and Fall of Athens: Nine Greek Lives*, Ian Scott-Kilvert, trans. (London: Penguin Books, 1988), 78.

¹¹ See Finley, *Thucydides*, 308; Thucydides, *The Peloponnesian War*, Book I: 138, and Book II: 60 and 65; and Robin Lane Fox, *The Classical World: An Epic History From Homer to Hadrian* (New York: Basic Books, 2006), 157.

¹² Again, see Finley, 309; and Thucydides, Book VI.

¹³ Finley, *Thucydides*, 312-313.

foresight.”¹⁴ But he does seem to concede that *tychē* represents “...an area of life which could never be subjected to exact prediction,” or, we assume, control.¹⁵ As shall be seen later, Arthur Schlesinger, Jr. recently noted that the simple realization that some things cannot be foreseen is itself a valuable quality for a statesman.

While Pericles is the most prominent example regarding prognosis in Thucydides, and this paper, it is also clear that Thucydides (and Herodotus) made a case for Themistocles as well. Thucydides’ regard for Themistocles almost equaled that for Pericles, and certainly associated him with the quality of prognosis. “He had an innate intelligence that needed neither coaching nor hindsight. He was better than anyone at forming an opinion on the spot with the least deliberation and had a broader picture of what would actually take place in the future.”¹⁶ Or, as Finley put it: “...Themistocles’ untutored ability to foresee the course of things.”¹⁷ This is also suggested in Herodotus. While the vision of the wooden walls is clearly credited to the Oracle of Apollo at Delphi, it seems that it was left to Themistocles to determine that the pronouncement of the Oracle meant a wall of Hellenic triremes that proved decisive at holy or divine Salamis.¹⁸ And his vision regarding Athens’ long walls was almost certainly a case of prognosis.¹⁹ John Hart has interpreted Thucydides to emphasize Themistocles’ foresight regarding the coming fallout between Athens and Sparta (and thus the need for the long walls): “...the foresight clearly consisted of his having foreseen the enmity that would necessarily arise between Athens and Sparta, and having advocated measures to meet it.”²⁰

According to Thucydides, Pericles, perhaps the greatest democratic and visionary statesman in history, was the most prominent example of a statesman that possessed the quality of prognosis but died before he could complete his destiny, while Alcibiades did not and moved Athens to catastrophic and tragic

¹⁴ Victor Davis Hanson, *A War Like No Other: How the Athenians and Spartans Fought the Peloponnesian War* (New York: Random House, 2005), 45.

¹⁵ Finley, *Thucydides*, 313.

¹⁶ Thucydides, 1.137 and 138.

¹⁷ Finley, *Thucydides*, 308.

¹⁸ Herodotus, *The Histories*, Walter Blanco, trans., Walter Blanco and Jennifer Tolbert Roberts, eds. (New York and London: W.W. Norton & Company, 1992), 7.143.

¹⁹ Thucydides, 1.90-93; also see Donald Kagan, *Pericles of Athens and the Birth of Democracy* (New York: The Free Press, 1991), 32-33.

²⁰ Hart also refers to the example in Herodotus recalling Themistocles’ second message to Xerxes, “No Athenian politician, recalling the fate of Miltiades and the crop of ostracisms in the 480s, could count on absolute security of tenure; but actually to hit on the form of insurance policy adopted by Themistocles argues foresight of a singular kind.” See John Hart, *Herodotus and Greek History* (London, Canberra, and New York: St. Martin’s Press, 1982), 152.

defeat in Sicily, the infamous Syracuse campaign. In Book II of his great work, Thucydides details the character and statesmanship of Pericles and states rather clearly that if the Athenians had held to his policies that they would have prevailed against the Spartans and their allies. After he died of the plague, an ironic result of the war, less capable Athenians, those motivated more by ambition and avarice, did not follow those policies with tragic consequences. Donald Kagan summarized the statesmanship of Pericles according to Thucydides as both imperialist and as a peacemaker with a positive spin on both natures. As an imperialist, Kagan notes, "He put an end to imperial expansion and moderated Athenian ambitions. He also put forward powerful arguments, by word as well as deed, to show that empire was both legitimate and in the common interest of all the Greeks."²¹ And as a peacemaker, Kagan emphasizes that "Pericles' grand strategy for Athens was to consolidate the empire by limiting it to a defensible size and by maintaining peace with its two powerful rivals, Sparta and Persia."²² Of course even Pericles could not avoid war, and in the end Persian gold determined its outcome. Even so, as Kagan tells us, the statesmanship of Pericles prevailed. Indeed, he contends that the first ten years of the Peloponnesian War, usually known as the Archidamian War (after Archidamus, one of the two kings of Sparta), should actually be known as Pericles' War, a title not normally coveted by a statesman, "The failure of his plan of moderation and deterrence led to the war, and the strategy that he formulated and insisted upon shaped its course for its first years. It was not until several years after his death that the Athenians departed from his strategy and sought a new way to win."²³ That new approach, often associated with Alcibiades, led to the disaster on Sicily at Syracuse, a campaign that promised expanded wealth and the spread of democratic ideals actually began the decline of Athenian prominence. Thucydides is rather clear that later Athenian statesman lacked prognosis and acted according to much baser human motivations with the expected results.

Henry Kissinger's Variation on Prognosis

In a sense, Henry Kissinger has taken something of a middle road between chance and prognosis. Kissinger emphasizes a sense of intuition rather than accumulated knowledge or experience, though he concedes a minimum level of knowledge is necessary for this quality,

²¹ Donald Kagan, Pericles of Athens and the Birth of Democracy (New York: The Free Press, 1991), 91-92.

²² *Ibid.*, 117.

²³ Donald Kagan, The Peloponnesian War (New York: Viking Press, 2003), 55.

...the successful conduct of foreign policy demands, above all, the intuitive ability to sense the future and thereby to master it. Leadership is the art of bridging the gap between experience and vision...most great statesmen were less distinguished by their detailed knowledge (though a certain minimum is indispensable) than by their instinctive grasp of historical currents, by an ability to discern amidst the myriad of impressions that impinge on consciousness those most likely to shape the future.²⁴

Kissinger also concludes that a successful statesman "...must have a concept of the future," albeit a realistic concept, but ultimately we note that being born with his notion of intuition is a haphazard event left to the caprice of chance, and comes into play as an equally random act, even though once in play it establishes the potential for the control of events.²⁵ Kissinger's remedy for the unpredictable elements here was fairly simple, statesmen should, above all, be properly trained in statecraft, which should never be left to the uninitiated.²⁶ One can only wonder what Kissinger's private thoughts are about American presidents, such as George W. Bush who not only entered office without such training, but who had apparently disdained the advice of those who were properly trained.

George W. Bush and Prognosis

Early in his controversial book State of Denial: Bush at War, Part III, Bob Woodward revealed that when George W. Bush entered office as the 43rd President of the United States, he was almost totally without experience or knowledge in foreign affairs, this in spite of efforts by his father to educate his son via some of his own past advisors in this area. As Woodward put it, "...despite all the tutoring, Bush had no plan for foreign affairs."²⁷ Bush not only lacked prognosis, he was also without the necessary preconditions for this quality: knowledge and experience. Far worse, this did not seem to bother him. Other presidents had taken office without knowledge and experience in foreign affairs but had made up for this by surrounding themselves with able advisors, at least until some knowledge and experience had been acquired. However, time

²⁴ Henry Kissinger, Does America Need a Foreign Policy? (New York and London: Simon and Schuster, 2001), 285.

²⁵ Ibid.

²⁶ See Kissinger, A World Restored: Metternich, Castlereagh and the Problems of Peace 1812-1822 (Boston: Houghton Mifflin Company, 1973).

²⁷ Bob Woodward, State of Denial: Bush at War, Part III (New York and London: Simon & Schuster, 2006), 16.

and inclination were not to be on the side of this president. Initially, he was not inclined to accept tutelage in foreign policy, preferring, as Woodward tells us, on his gut feelings. After September 11, 2001 it was too late. He had to assume the role of statesman, prepared or not. Tragically, the failures of his actions exposed glaring weaknesses, due at least in part, to a lack of foresight. As for the Middle East, Bush has contended that he indeed had a vision for freedom and democracy in the region, but here a distinction must be made between vision as a sense of prognosis and what might be called a messianic vision, what is, in fact, far removed from foresight as a form of blind passion or crusading zeal.

The Failure of Foresight

In a very clever recent op-ed piece in the New York Times, Nicholas D. Kristof suggests that rather than dwell on the popular comparisons of the war in Iraq with the disaster in Vietnam, we should instead review the classics including Virgil's *Aeneid*, and especially Thucydides' *History*. In the latter example, the neocons and George W. Bush bring to mind what Kristof calls the neocons of another day, people like Alcibiades.²⁸ Of course, it is not the first time that the ill-advised, and equally ill-fated, Sicilian expedition has been compared to a modern foreign policy blunder. Years ago it was used to characterize the American debacle in Vietnam. Here Kristof uses it for contemporary effect:

Great Athenian diplomats of the day, like Nicias, warned against military involvement in Sicily, calling it "a war that does not concern us," according to Thucydides. But smooth talking neocons of the day, like the brilliant Alcibiades, said in effect that the Sicilians would welcome the Athenians with flowers. He promised that they would be treated not as occupiers but as liberators.²⁹

For Kristof, of a kind of historical hindsight, knowledge from the classics becomes at least as useful as the quality of foresight, if not an invaluable part of it.³⁰

Perhaps another contemporary spin can be put on this. George H.W. Bush constantly complained, during his presidency, about that vision thing. But

²⁸ Nicholas D. Kristof, "Et Tu, George?" The New York Times, January 23, 2007, 19 (A).

²⁹ Ibid.

³⁰ Among other similar pieces is a brief article by C.L. Max Nikias, Provost of the University of Southern California who draws interesting connections between Thucydides, Aeschylus (*Persians*), and Clint Eastwood's much acclaimed recent film *Letters From Iwo Jima*, "Ancient Greeks Did It: Empathizing With An Enemy," The Japan Times (Online Articles), January 26, 2007.

clearly Lyndon B. Johnson did not possess this supreme requisite in his decision to pursue a war in Vietnam, and neither did Richard M. Nixon in his ill-fated decision to expand the war in Southeast Asia by his order for the secret bombing and the invasion of neutral Cambodia, or even Ronald Reagan when he determined to commit naval and ground forces to Lebanon, albeit as peacekeepers of an odd sort.³¹ The global jury is still out on whether George W. Bush has this supreme requisite, the case of the original justification for a pre-emptive attack on Iraq would seem to suggest a negative answer, however. In his latest work, War and the American Presidency, noted American presidential historian Arthur M. Schlesinger, Jr. concludes that there is indeed an unavoidable connection between knowledge, foresight and statesmanship:

The only antidote to a shallow knowledge of history is a deeper knowledge, the knowledge which produces not dogmatic certitude but diagnostic skill, not clairvoyance but insight. It offers the statesman a sense, at once, of short-run variables and long-run tendencies, and an instinct for the complexity of their intermingling, including the understanding that (as Rousseau once put it) “the ability to foresee that some things cannot be foreseen is a very necessary quality.”³²

And in the final analysis, even the ability to determine that there are events that cannot be anticipated becomes of itself a form of prognosis.

Conclusion

During the presidential election campaign of 2000, and as a newly ensconced president, George W. Bush and his assorted advisors attempted to identify themselves and their foreign policy with political realism. Neither their policies or any member of the administration, least of all Bush himself, have come close to such an approximation. Still, statesmanship based on elements of the realist tradition is something to consider, if a model can be agreed upon. Actually, a formula for the great realist leader or statesman seems simple enough. It must exhibit certain basic qualities as suggested by a number of

³¹ More accurately, but necessarily in an unofficial manner, as a buffer against Muslim militias to support the government of Amin Gemayel that in truth barely governed small parts of Beirut. Reagan’s efforts in Lebanon, and in the Middle East beyond the Persian Gulf, virtually ended when 241 American Marines and 58 French servicemen were killed in a suicide bombing of their barracks in Beirut (October 23, 1983).

³² Arthur M. Schlesinger, Jr., War and the American Presidency (New York and London: W.W. Norton & Company, 2004), 139.

political voices: a spattering of charisma (Max Weber), or some personality at least, a sense of prognosis based on knowledge and experience (Thucydides), a firm understanding of the real world, perhaps a dash of hope, the ability to compromise (Hans J. Morgenthau), the ability to bridge the gap between experience and vision (Henry Kissinger), patience, moderation, and, above, all such a leader must not be a fanatic or a crusader (Raymond Aron, Stanley Hoffmann, and John G. Stoessinger). But simple as the formula seems, and beneficial as this kind of statesman can be, it is curious that truly great statesmen come only now and again. Ironically, as we look at this suggested formula, not only does Thucydides provide one of its essential elements, he also has proven to be one of the most significant inspirations for the other elements and the authors who stated them. Thucydides had no conception of political realism, nor was his purpose to initiate such an academic school of thought, but clearly without him this school and its proponents would have had been found wanting in certain respects. Our modern definitions of the statesman and statesmanship are both the creations of Greek political ideas and the influence of Thucydides, especially his conception of prognosis. Moreover, we continue to see the outcomes of policies made by individuals who lack this vital element of statesmanship. Indeed, those who lack foresight do lead their people to disastrous, perhaps destructive, policies.

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Martin Luther King, Jr.: Justice and the Beloved Community

Ron Large
Gonzaga University

One of the most important elements of Martin Luther King's social vision is his concept of the beloved community. King employs the beloved community both as a social ideal and a practical reality. As a social ideal, the beloved community provides a dimension of hope to the oppressed. As a practical reality, the beloved community entails the creation of a specific political order. King's understanding of justice unifies the ideal and the practical into a comprehensive social vision. Justice expresses the moral demands of God as well as the foundation of the political process. Thus King develops a three-fold understanding of the beloved community: its foundation, its description, and its realization. Relying on the recently published Volume VI of *The Papers of Martin Luther King, Jr.: Advocate of the Social Gospel*, this essay examines these three levels of King's view of the beloved community. The foundation of the beloved community rests on King's notion of God and Jesus as these lead to his conception of human unity. The description of the beloved community examines its visionary and practical elements. The realization of the beloved community relies on King's connection between God's purpose and the creation of social justice. King employs religious, personal, and political elements to develop his vision of justice and the beloved community.

Introduction

It is by now a truism to say that the beloved community was one of the central elements of Martin Luther King's life and work. Many scholars have recognized the importance of community for King. (For example see Kenneth Smith and Ira Zepp. (1974). *Search for the Beloved Community*, Valley Forge PA: Judson Press; Ira Zepp. (1989). *The Social Vision of Martin Luther King Jr*, Brooklyn NY: Carlson Publishing; Walter Fluker. (1989). *They Looked for a City*, NY: University Press of America.) When Ira Zepp (1989) comments that, "King's devotion to the realization of the beloved community was his primary goal. It was the organizing principle of his life and around which all of his thought and activity centered," (p. 207) he expresses a singular moment in the study of King's thought. Zepp mentions several of King's comments to illustrate this point (pp. 207-208). Reflecting on the Montgomery Bus Boycott, King (1986) informs us as to its true goal.

"But we must remember as we boycott that a boycott is not an end in itself; it is merely a means to awaken a sense of shame within the oppressor and challenge his sense of superiority. But the end is redemption; the end is the creation of the beloved community" (p. 140)

For King (1958), the end also contains the means by which it will arrive. “Only through nonviolence can this goal [integration] be attained, for the aftermath of nonviolence is the creation of the beloved community” (p. 220). Where we are going and how we get there encapsulates King’s ethics and offers a vision of what we might become.

This paper examines this vision through three main themes: 1) the foundation of the beloved community; 2) the description of the beloved community; and 3) the path to the beloved community. It relies mainly on King’s own writings; especially the recently published Volume VI of *The Papers of Martin Luther King, Jr.: Advocate of the Social Gospel*. This volume reveals the extent to which the themes of the beloved community, as they filter through the social gospel, shape King’s thinking from early in his career. Thus it becomes possible to trace the arc of King’s developing vision of community rather than viewing his ideas as more episodic and disjunctive. The nascent unity within King’s understanding of community serves to reduce the separation that some have seen between the earlier and later King, particularly after 1966. This separation primarily relies on a distinction between King the persuader and King the activist with the latter more willing to use coercion. For example, David Lewis (1970) writes that King in 1966 “began to identify lucidly the forces that the impoverished Black American was up against. The period of rhetoric--“jive” as the militants called it—was closing and a brief season of political realism had begun” (p. 349). The implication is that the early King was unrealistic as to the political and social realities he faced. The new volume of the King Papers makes clear that this separation of the two King’s is less rigid. Certainly King’s thinking did develop. However, it is less a split than an evolution. In discussing the publication of King’s collection of sermons, *Strength to Love*, the volume’s introduction notes that “editors seemed particularly sensitive to King’s vivid anti-military and anti-war statements” (King, 2007, p. 41) To assuage their concerns, “The Harper & Row editors reduced the emphatic nature of King’s statements and softened his direct calls to act or change” (King, 2007, p. 41). While King did accept the changes for marketing purposes, the original sermon drafts render a more militant and direct King, a King already concerned with where we are going and how to get there.

The Foundation of the Beloved Community

King’s notion of God and, by extension Jesus, grounds his vision of the beloved community. Both of these shape his assessment of how our lives are to be lived and how we are to live together. For King (1992), “God is the personal spirit, perfectly good, who in love creates, sustains, and orders all” (p. 243). Since goodness and love are evaluative concepts, King sees God as “living and

active” with a role to play in “the process of history” (p. 294). Consequently King takes more of an interest in God as an ethical reality than as merely a theological or abstract concept. Although nothing exists apart from God as the creator, King has little use for a purely metaphysical or speculative understanding of the relationship between God and creation. For King, the connection supports a much more practical and specific focus. He wants to understand the fundamental nature of creation in light of the moral qualities that God possess, qualities that underlie creation and which then also impart a moral imperative to our own lives. Simply put, God is not morally neutral. Creation, then, exists and moves in a direction that flows from and toward the goodness of God. Thus, for King (2007), evil can never have the last word. It, too, is bound to what King calls “the permanent structure of God’s goodness” in which “God is working every moment in history for the triumph of goodness” (p. 228). To say that creation is good infers that human beings are to act on and out of this goodness. God’s goodness is not only the basis of creation; it also serves to establish the moral contours of human existence. Our actions must express God’s goodness as well. We can reject God’s goodness and the moral order it sustains, but we cannot deny it. For King, one of the foremost expressions of the moral order is justice.

If “God has made the universe to be based on a moral law” (King, 1994, p. 252) then the primary question turns to the nature of the moral law. King answers that the law must evidence the essential moral qualities that define God. One of these qualities is justice, which then establishes the basis of how King views God’s moral law. If justice is the primary way to express God’s law then our actions must also conform to this law. We can see this attribution of justice in King’s effort to lay the moral foundation for the Montgomery Bus Boycott and to establish the need for resistance. Speaking to the mass meeting on the evening of December 5, 1955, the first day of the boycott, King (1997) tells his audience:

We are not wrong, we are not wrong in what we are doing. If we are wrong, the Supreme Court of this nation is wrong. If we are wrong, the Constitution of the United States is wrong. If we are wrong, God almighty is wrong. If we are wrong, Jesus of Nazareth was merely a utopian dreamer that never came down to earth. If we are wrong, justice is a lie. (p. 73)

King (1997) returns to this theme again on December 20, 1956 to announce the end of the boycott. “But amid all of this we have to keep going with the faith that as we struggle, God struggles with us, and that the arc of the moral universe although long, is bending toward justice” (p. 486). Justice, however, is not the

only foundation of the beloved community. Love is the other characteristic that King associates with God, which is most fully revealed in Jesus.

As with his understanding of God, King's focus on Jesus turns on the ethical qualities and teachings that Jesus embodies. Faith in Jesus is less a matter of belief that Jesus is the savior, son of God, as a theological proposition than it is as an expression of seeing in Jesus the fullness of what and who God wants us to be. In preparing for a Christmas season sermon in Dec 1952 entitled, "After Christmas, What?" King's (2007), outline notes that "We should go away with the conviction that Christ is the revelation of what man ought to be. Jesus revealed not only what God is but what man ought to be" (p. 129). Similarly in December 1958, King preaches the sermon "Christ Our Starting Point" in which he describes Jesus as the entrance to the Christian life. If we begin with God, King holds that we only begin with "our ideas about him." Instead King (2007) argues that we must start with Jesus since "Christ tells us what God is like." King also offers the striking comment that "God is Christ-like" (p. 353) to signify the importance of Jesus.

As Jesus expresses God's nature, he also reveals the moral direction of our own lives. For King, the two are directly connected. We know nothing of God's nature unless we act to live that nature in light of Jesus' life. All that Jesus does and says points to the underlying moral foundation of creation. Even the crucifixion for King (1994) acquires an ethical significance. "Christ's death was not a ransom, or a penal substitute, or a penal example; rather it was a revelation of the sacrificial love of God intended to awaken an answering love in the hearts of men" (p. 190). For King, Jesus becomes the concrete manifestation of God's ethical nature and the example for humanity to follow. We must, King (2007) argues, "live this thing" (p. 453) so that we too can become like Jesus, more like God, and so become more human. King places this ethical vision of sacrificial love as the challenge Jesus offers to a humanity broken by injustice and oppression. For King (2007), Jesus "never ran away from anything," (p. 893); he "didn't stop" when faced with doubt and uncertainty; "he went on" even when alone (p. 277). Yet what is the specific challenge that Jesus represents? What is the example that King wants us to follow?

Of the many things that King says about Jesus, two factors stand out as essential for King's understanding the beloved community: self-love and love of others. Of the many difficulties facing the civil rights movement, King views the lack of self-respect and the corresponding sense of inferiority as one of the most detrimental. The loss of self-love, the absence of self-worth shadows King's efforts to end segregation. Like Gandhi, he realizes that the struggle against racism requires both an internal and external dimension. The first challenge that Jesus sets is the claim of the dignity of the individual. In his sermon,

“Overcoming an Inferiority Complex,” King (2007) centers on Jesus’ affirmation of Zacchaeus’ individual value to showcase the importance of self-worth. “Now it seems to me that that is the first way to overcome an inferiority complex – the principle of self-acceptance” (p. 307). King has Jesus tell Zacchaeus to recognize his worth and value. Self-love is the first step. It permits the individual to recognize and name injustice as a violation of that self-worth. With the recognition and acceptance of self-worth, King moves to Jesus’ second challenge - the love of others. Jesus as the example and Jesus as the story teller provide King with the evidence of what it means to live like Jesus. Relying on Jesus’ own actions revealed through the Sermon on the Mount and particularly the parable of the Good Samaritan, King expresses what he sees as the central core of Jesus’ teachings. We are to love one another and especially the enemy. From multiple sermons on loving one’s enemies (see King (2000), pp. 315-324; King (2007), pp. 126-128, 421-429), King stresses the essential nature of this love as critical for the future of humanity. King (2007) rejects the superficial assertion that the command is unrealistic and holds that, “Instead of being the pious injunction of a utopian dreamer, this command is an absolute necessity for the survival of our civilization” (p. 127). The contrast that King develops then is between the hate that denies community and the love that creates community. Again Jesus is the example. “He did not seem to overcome evil with evil. He overcame evil with good. Although crucified by hate, he responded with a radical love” (p. 489).

The radical love of Jesus and the creative power of God lead King to posit a third foundation of the beloved community, human unity. If we are to love and if we are created in God’s image then the combination of the two establishes the essential oneness of humanity that expresses the dignity of all. For King (1986), the dignity of all and the worth that flows from it are essential givens of human existence. “This innate worth referred to in the phrase the image of God is universally shared in equal proportions by all men” (p. 119). For King, love and creation ground human relationships and also provide the moral thought of our actions. What we do must maintain the basic unity of humanity. Not doing this, not acting to create and sustain community, denies human unity and the moral intentionality of God’s creation. Thus King (1963b) calls segregation the sin of separation (p. 82). In his November 1956 sermon “Paul’s Letter to American Christians,” King (1997) defines segregation as “a blatant denial of the unity we all have in Christ” (p. 418). By placing the example of Jesus at the moral center, we can follow King’s (2007) attack on segregation. “If we are to remain true to the gospel of Jesus Christ, we cannot rest until segregation and discrimination are banished from every area of American life” (p. 326). This condemnation of segregation as separation and disunity continues

throughout his career. The “Letter From Birmingham Jail” shows King’s (1963b) fundamental reliance on unity.

Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit by idly in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. (p. 77)

If we start with Jesus, as King suggests, then injustice and violence move in the opposite direction away from the unity we have with God and, perhaps more importantly for King, away from the unity we have with each other.

The Description of the Beloved Community

King’s description of the beloved community assumes two major forms: the visionary and the practical. The visionary dimension of the beloved community derives from King’s eschatological proclamation of the Kingdom of God. Drawing on the familiar concept of a realized eschatology, King places the Kingdom of God in between the already and not yet. Thus the beloved community is both a present reality and a future hope. In the sermon “Death of Evil on the Seashore”, King (2007) writes that:

“Even though the kingdom of God may remain ‘not yet’ as a universal reality in history, it may exist in the present isolated forms, such as in judgment, in personal devotion, and in some group life. ‘The Kingdom of God’ says the New Testament, ‘is in the midst of you’” (p. 512).

The Dream Speech vividly reminds us of the expectation of the coming Kingdom. King’s use of the refrain, “I have a dream that one day...” is more than a simple rhetorical device. It centers his understanding of the Kingdom as God’s unfolding presence in human history. The visionary dream thus offers hope in what may seem to be a hopeless situation. It gives a reason for those in the struggle to continue the struggle. In addition to its sustaining ability, the Kingdom of God also stands in judgment against the continued injustices of racism and discrimination. The dream, then, stands in contrast to the present reality and shatters the complacency of American society. King thus uses the vision of the Kingdom of God to inspire resistance as well as to expose the sin of

segregation. King's practical analysis of the beloved community derives from his continued critique of American society combined with his notion of how the Kingdom of God finds itself already in our midst.

In his speech against the Vietnam War on April 4, 1967, King castigates the continued American presence in Vietnam. His charges against the war reflect a broad spectrum of opposition. The war drains needed resources from domestic programs; the war exposes the hypocrisy of American claims about freedom; the war perpetuates the view that violence can resolve conflicts; the war places America on the wrong side of the world revolution; the war destroys American and Vietnamese lives. The war is so wrong that King (1986) calls it a "demonic, destructive suction tube" (p. 233). Some see King's criticism of the war as constituting his shift from a passive, polite approach to a more aggressive, militant one. As noted above, this view of King distorts his social analysis and fails to comprehend the depth of his on-going critique of American society. It also limits our understanding of the role beloved community plays in King's vision of society. King's (2007) 1955 sermon "The Task of Christian Leadership Training for Education in the Local Community," speaks of the imperative for religious leaders to save "men from moral bankruptcy" (p. 222). The moral bankruptcy King sees is more than a call for personal introspection; it also exhibits a profound level of social injustice and decay. In 1958, King (2000) laments that America is "losing her soul" (p. 490) by failing to confront the social evils that racism spawns. He makes the same claim years later in the Vietnam War speech. King's prescription for America to reclaim her soul fixes the specific practical aspect of the beloved community – the social gospel.

Given King's own references to the social gospel, it is not surprising that scholars widely recognize the movement's importance for King (see Zepp (1989) pp. 23-70). For example, King (1986) traces the numerous influences on his thinking in his essay "Pilgrimage to Nonviolence" (pp. 37-38). Here he notes the role of Walter Raushenbusch and the social gospel movement. So why mention it again? The answer lies in seeing how the new collection of King's sermons reveals his deeply held and long-running affiliation with the message of the social gospel. If moral decay represents the fundamental social problem then the solution stems from social redemption that King identifies with Jesus and the social gospel. King's sermon, "The One-Sided Approach to the Good Samaritan" from November 20, 1955 illustrates this connection. King often uses the parable of the Good Samaritan to illuminate the significance of Jesus' teachings. In this sermon, King (2007) connects the Good Samaritan with "Christian social responsibility" in order to develop his interpretation of the parable. King stresses the need to follow the Samaritan's example. "Like the good Samaritan [sic] we must always stand ready to descend to the depth of human

need.” However, King moves beyond the individual act of compassion to argue that “there is another aspect of Christian social responsibility which is just as compelling. It seeks to tear down unjust conditions and build anew instead of patching things up.” The one-sided Samaritan only looks “to sooth the effects of evil, without going back to uproot the causes” (p. 240). True compassion cannot ignore the broader social context that surrounds the individual act of compassion. For King the expansion of compassion from the personal to the social also defines the mission of the church. Writing in 1962, his sermon “Can a Christian Be a Communist” bluntly states that “this is what we’ve got to see – that the church has a social gospel that it must be true to” (King, 2007, p. 541). While King’s view of God, Jesus, and human unity provide the conceptual, visionary foundation for the beloved community, the social gospel shapes and directs its practical content. King views his ministry to create the beloved community through the lens of the social gospel.

The first entry in volume VI of the King Papers is an outline for a paper in a course on the Preaching Ministry of the Church that King took in the fall semester of 1948. The outline describes some of the history and function of preaching within the Christian tradition leading to King’s own view of preaching. Perhaps reacting to his own experience, King (2007) writes that “it is my opinion that sincerity is not enough for the preaching ministry. The minister must be both sincere and intelligent. Too often our ministers possess the former but not the latter.” King relates both qualities in what he calls the “dual process” of preaching.

“On the one hand I must attempt to change the soul of the individual so that their societies may be changed. On the other I must attempt to change the societies so that the individual soul will have a chance to change. Therefore I must be concerned about unemployment, slumms[sic], and economic insecurity.”

At age nineteen, this view of preaching ministry leads King to conclude, “I am a profound advocator of the social gospel” (p. 71-72). The following year, King (2007) preaches on “Civilization’s Great Need.” He remarks that our scientific and material progress has outpaced our moral progress. “On the whole our material and intellectual advances have outrun our moral progress” (p. 86). While not necessarily denigrating the need for scientific development, King offers a corresponding moral development that he correlates to the social gospel. He concludes the sermon with a prayerful request to “Help us to work with renewed vigor for a warless world, a better distribution of wealth, and a brotherhood that transcends race or color” (King, 2007, p. 88).

King (2007) continues to connect Jesus, the moral life, and the social gospel in two of his sermons from July 1954: “A Religion of Doing” and “What is Man.” In the first sermon, King rejects the assertion that religion is only a matter of believing. Unless religion is an active, ethical force, King has little use for it. He appeals to his audience, “My friends may I say that a Christianity that worships Christ emotionally and does not follow him ethically is a conventional sham.” King then adds what it means to follow Jesus ethically. “Christ is more concerned about our attitude towards racial prejudice and war than he is about our long processions. He is more concerned with how we treat our neighbors than how loud we sing his praises” (p. 173). Jesus shapes King’s social consciousness and forms this around the notion of the social gospel. King makes the connection even more explicit in the second sermon. He dismisses as superficial and wrong any faith that ignores the relationship between body and soul. King’s human being merges body and soul into a single whole. One cannot exist without the other. Arguing against the neglect of the body, King offers his response.

“As I look at the economic and social injustices existing in our world, I plead for a church that shall be a fountainhead of a better social order. We can talk all we want to about saving souls from hell and preaching the pure and simple gospel, but unless we preach the social gospel, our evangelistic gospel will be meaningless” (p. 176).

The focus on the social gospel establishes the platform from which King criticizes capitalism, colonialism, and militarism. The social gospel gives King the practical expression of social redemption, a way for America to save its soul. The next question is how to get there.

The Path to the Beloved Community

As noted in the beginning of this paper, King looks to nonviolence as the path to the beloved community. The means and ends must cohere. The beloved community requires a means consistent with its vision. King’s Dream is more than a rhetorical device; it also frames the ethical center of a redeemed community. To illuminate the path, we can look at how King employs a theoretical and a practical basis for reaching the beloved community. The theoretical aspect of the beloved community derives from the earlier discussion of God, Jesus, and human unity. These three factors guide King’s analysis of the beloved community. The community cannot be attained unless all three are present as the ethical substratum of our actions. First, our actions must conform

to God's creative purpose of relating to one another in the image of God. Second, what we do must follow the example of Jesus. Third, our deeds must allow for the creation of unity against what King views as the sin of division and discord. These three components surround King's vision of the beloved community. They structure the way we are to think about and imagine what our lives together might entail, for without them community remains a false hope. We can see the loss of community in King's July 1953 sermon "False Gods We Worship." Here King (2007) examines the misplaced nature of our faith as we turn to science, nationalism and money as the source of community and meaning (pp. 130-136). As false gods, these lead to disillusionment. By contrast the sermon "Creating the Abundant Life," proposes a life where we discover meaning through seeing a purpose beyond the self, by living to our highest ideals, and by "affirming an abiding religious faith" King, 2007, pp. 189-191). The beloved community seeks to express these elements, but it does not arrive on its own. There are practical steps upon which the beloved community depends.

If the dream is more than rhetoric; if the beloved community is more than a utopian vision then King needs to offer a plan that will achieve that end. Even though King is killed early in his career and perhaps did not have time to develop a systematic, organized plan, he does show a way toward the beloved community. While nonviolence is clearly the way, it is nonviolence within a broader composition of concepts. First, arising from his criticism of Christianity, King (2007) argues that we must "be more concerned about social justice," that we need to exhibit a "passionate concern for social justice" if Christianity is to have any relevance (p. 148). Second, the passion for social justice must lead to action for social justice. King rejects a faith that does not act. His sermon "A Religion of Doing" from July 1954 constantly makes this point. King's image of Jesus demands an active faith.

"Religion to be real and genuine must not only be something that men talk about, but it must be something that men live about. Jesus recognized that there is always the danger of having a high blood pressure of creeds and an anemia of deeds. He was quite certain that the tree of religion becomes dry and even dead when it fails to produce the fruit of action" (King, 2007, p. 171).

We can see how King (1963a) puts this belief into practice during the formation of the Social and Political Action Committee at the Dexter Avenue Church "to keep the congregation intelligently informed on the social, political, and economic situations" (p. 30). At the end of *Stride Toward Freedom*, King (1963a) outlines a four-point constructive program for the African-American

community: economic self-improvement, voter registration, personal responsibility, and overcoming apathy (pp. 222-223). Even in this nascent form, King looks toward an active, participatory path to the beloved community.

The third element of King's path to the beloved community balances with the passion for social justice and the need for action. These two elements may be interpreted more as being external or outwardly focused. King turns the third component inward. The beloved community also requires a moral self-examination to become the kind of person capable of creating the beloved community in the first place. The moral progress King associates with the demand for social change also reflects onto the individual. Extending beyond King's analysis of social conditions, moral bankruptcy is also a matter for the individual. Thus King establishes a connection between the social and the individual. Returning to King's 1949 sermon "Civilization's Greatest Need," we see this relationship. He writes that "Unless we can reestablish the moral and spiritual ends of living in personal character and social justice, our civilization will ruin itself with the misuse of its own instruments" (King, 2007, p. 87). The beloved community requires that each, the personal and the social, be present. More pointedly, King is not only asking how a society becomes just, he is also asking how a person becomes nonviolent. Again Jesus plays a role as King prescribes the features of nonviolence such as love, courage, compassion, humility, and patience from his understanding of Jesus. A moral character that these qualities shape can meet oppression and injustice without collapsing into bitterness and hate. Thus for King, the beloved community has a dual focus, that of doing and being. Personal and social transformation converge together to form the beloved community.

In examining the three levels of the beloved community, its foundations, its description, and its creation, we can see how King utilizes religious, political, and personal elements to develop his perception of the beloved community. These combine to offer an expansive vision that allows King to see the beloved community as future hope as well as a present reality. The beloved community is a way by which we can judge our moral progress both as a society and as individuals. It is finally what King (2007) wanted us to understand, that we are "tied in a single garment of destiny" (p. 485).

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The Power of Class Actions

Catherine Piché
McGill University

Just like Foucault's Panopticon, the class action is an architectural mechanism for experiments on men and society. Each and every one of us is likely to become a member of a class action filed anywhere in the world. Companies potentially at fault for mass wrongs enter the Panoptic class action machine, invested by its effects of power. Because they know they are being observed by zealous plaintiff lawyers raising the specter of a class action filing, companies are more likely to act in a certain manner, in the socially accepted norm, to comply. Hence, through the appearance of supervision, the class action permits a more efficient enforcement of the law by deterring companies from acting wrongly.

Introduction

The class action invites scrutiny as a generator of power and power relations. At certification, the class evolves from a mass of unconnected individuals to a large litigative entity with extended powers. Lawyers and class action representatives give a voice to common grievances and negotiate with the adversary from a position of aggregated strength. Power is gained through the class action in the opportunity it offers its members to expand their individual disputes into collective proceedings, mobilizing a group that will develop into an independent force for social change.

In his most recent treatise entitled *Mass Torts in a World of Settlement*, Richard A. Nagareda (2007) argues that the modern mass torts class action has an institutional position as a vehicle for governance. He considers class action lawyers to be settlement designers and holders of a privatized "power of governance," and argues that the class action can, in these circumstances, serve as a means for law reform to rival public legislation. He explains:

"The settlements that conclude the vast majority of ordinary tort suits, ... are transactions crafted by agents: lawyers on the defense side ... and lawyers on the plaintiff's side"

Mass torts accentuate the role of lawyers as agents. As in traditional tort litigation, the endgame for a mass tort dispute is not trial but settlement. But the scope of the settlement differs. Here, the most ambitious settlements seek to make and enforce a grand, all-encompassing peace in the subject area of the litigation as a whole. Lawyers, once again, act as the designers of these deals,

and the strategic motivations of lawyers on both sides shape the design of the peace.

“... mass torts have endowed with a power of governance the agents who design the transactions to resolve mass torts disputes on a comprehensive basis. As used here, the term “governance” embraces two related features: the power to alter pre-existing legal rights and the power to make those alterations binding upon individuals in order to advance the greater good. As in the world of government itself, the power of governance wielded by peacemaking lawyers encompasses a power to undertake law reform, to make trade-offs between competing goals, and to impose the chosen trade-offs with finality. (Nagareda, 2007, p. ix-x)

Nagareda’s argument is consistent with the U.S. Supreme Court’s conception of the class action as effectively delegating a power of governance to private individuals to represent a group with similar interests (*Deposit Guaranty Bank v. Roper*, 1980). In effect, in the latter case, the Supreme Court considered the class action as a mechanism designed to replace the State in its regulatory functions:

“The aggregation of individual claims in a classwide suit is an evolutionary response to the existence of injuries unremedied by the regulatory action of the government. Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class action device (*Guaranty Bank*, 1980, p. 339).”

This essay critically discusses Nagareda’s *power of governance* argument in relation to Michel Foucault and Hannah Arendt’s conceptions of power, taken from their treatises respectively entitled *Discipline and Punish* (Foucault, 1995) and *On Violence* (Arendt, 1970). It is argued that Nagareda’s vision is consistent with certain key characteristics of Foucault and Arendt’s conceptions of power, because it considers the class action as a powerful mechanism in which varied power relations are exercised collaboratively by and between lawyers, class action members and judges, evolve through time and generate knowledge.

Power Exercised in Different Ways, Kinds and Forms Through Time: The History of the Class Action

The history of the class action reveals an evolution in the way power is exercised through time. The history begins in medieval England, where groups – such as guilds, parishes and village communities – were at the heart of social organization and politics and relied upon by individuals and by central authorities to govern and enforce rights collectively (Yeazell, 1987, p. 48-9). Unlike the modern class action, medieval group litigation created power relations from the moment the group was formed, simply from the fact of aggregation. Local governors, for example, could represent their citizenry as named representatives (Yeazell, 1987, p. 40).

In the following centuries, the class action evolved, being constantly influenced by its social and political contexts. In the eighteenth century, it emerged as a procedural mechanism with specific characteristics distinct from those that had shaped its early outlines. First, the nature of the class claims brought forward to the courts changed, with the rise of mass torts, consumer protection and securities claims, notably. Second, contrary to its ancestor, the new class action bound class members to judgment irrespective of whether they had properly “joined” the action. When specific legislation was eventually enacted to support its existence, the class action became a mechanism of fundamental and practical importance for consumer welfare, reaching high levels of popularity. Its power and influence grew tremendously.

Nagareda’s extract about the mass torts’ *power of governance* is in accordance with this account of the class action’s historical evolution and with Foucault’s vision of power. In *Discipline and Punish*, Foucault is interested in making public and violent forms of punishment disappear and in seeing a form of surveillance of the soul emerge, particularly through the development of the prison system. Looking at how power should be conceived in modern times, he argues that modern society exercises its controlling systems of power and knowledge through the visibility of Bentham’s Panopticon (Foucault, 1995).

Nagareda (2007) similarly describes the mass torts phenomenon as involving several kinds of power relations, exercised in different ways and forms at different stages of the litigation. While he chooses to focus his argument on settlement as the ultimate endgame in mass torts litigation, Nagareda recognizes that a power (of governance) is created through lawyers’ actions in a trial or settlement context, and that it includes the “power to alter pre-existing rights,” “to make those alterations binding,” and the power “to undertake law reform, to make trade-offs between competing goals and to impose (them) with finality” (Nagareda, 2007, p. ix-x). He views the mass torts system as having evolved

from tort to administration, on account of the sophisticated governing powers of “peacemaking lawyers” (Nagareda, 2007, p. ix-x).

Nagareda is correct in presenting lawyers as true shapers and administrators of mass torts disputes. They seek out and solicit the most adequate class representative(s), structure and argue the most persuasive legal arguments on behalf of the plaintiffs, and select not only the most appropriate but the most favorable forum – and applicable law – for their class action. They often file duplicative suits in different states, provinces and/or countries, and increasingly file cross-border, transnational or international class actions in a way to include the greatest number of class members possible and to guarantee the most extensive recovery. In addition, these lawyers exercise great power over defendants and the court system generally when they subject defendants to great settlement pressure in a way to, in effect, blackmail them. Defense lawyers similarly influence the shaping and administrating of mass torts disputes as they – along with their clients – strategize over offers to settle.

Nagareda’s impressive and strong *power of governance* argument is, however, incomplete. While it explicitly discusses two sources of power – the lawyers and the mass torts system itself, it also under-emphasizes other important sources of power that equally contribute to the mass torts class action’s position as a vehicle for governance (Nagareda, 2007, p. ix). First, power is generated from the class action representative and class action members’ relations with other class action members and parties, as a result of the class action form, of the representative’s special status and of the aggregation of claims. Second, power is generated through the judicial oversight of class actions at the certification and settlement approval stages. Third, power is generated by class action defendants, whose corporate wealth and influence impact the conduct and outcome of the disputes. Fourth, power is generated through the involvement of increasingly popular claims resolution facilities and class action recovery firms, and through the actions of media firms. Generally, what must be underlined is the causal relationship between the *power of governance* (and the power of aggregation) and the deterrent effect felt by defendants sued in a class action context. This relationship gives class actions the power to enforce laws and regulations.

Power as Collaboration: Acting in Concert to Achieve Peace

Nagareda views the modern era of mass torts class actions as one in which lawyers are settlement designers that have a *power of governance* to make and enforce “peace” (i.e., a settlement). Nagareda’s extract suggests that the *power of governance* is exercised individually by these lawyers, a view Arendt rejects. Indeed, a few of the words Nagareda uses in the extract – governance,

design, resolve, wielded, undertake and impose – refer to a power that is exercised in a dominant, controlling and mostly individualistic manner. On the contrary, Arendt's emphasis on the centrality of cooperation and concerted action suggests that power is a product of human action, of the activity of a plurality or group (Arendt, 1970).

A closer reading of the extract, however, connotes that Nagareda's stated *power of governance* actually arises from action taken in concert to achieve a settlement, in a way consistent with Arendt's philosophy. Indeed, Nagareda refers to both class and defense lawyers as "agents" transacting to settle. Moreover, the contemporary definition of his chosen word "agent" is "a person authorized by another (principal) to act for or in the place of him; one entrusted with another's business" (Black, 1990, "agent"), in a way consistent with Arendt's account of somebody "in power" as one "being empowered by a certain number of people to act in their name" (Arendt, 1970, p. 44). In addition, his use of the expressions "peacemaking lawyers" and their power to "make trade-offs," suggests that lawyers are strong negotiators who act collectively in assessing and implementing strategy. This view is consistent with Arendt's conception of power, as resulting from collective action.

Nagareda's extract alternatively suggests that his use of the word "power" is closer to Arendt's definition of "authority." For Arendt, "authority" is a source of power that emanates from a grant of respect and legitimacy, rather than from persuasion or coercion. Nagareda argues that the notion of governance includes the power "to alter pre-existing rights" and to make "those alterations binding to advance the greater good," and that the *power of governance* includes "the power to undertake law reform, to make trade-offs and to impose them with finality" (Nagareda, 2007, p. ix-x). It can easily be argued that a necessary, implicit condition to the exercise of these powers is the need for authority, and that this authority stem from willingness on the class action members' part to respect and give legitimacy to lawyers' actions. In practice, this phenomenon is implicit in the class members' choice not to object or to opt out of the class action or settlement because they, at least partly, rely on the lawyers' authority. Accordingly, Nagareda's extract can also be interpreted to signify that lawyers have an "authority" of governance in the mass torts system.

Power and Knowledge: The Class Action as a Communicative Tool

Mass torts class actions are generators not only of power and power relations, but of knowledge and information. Knowledge and information are created by the collection of an arsenal of facts, general data and statistics that will later be produced in the court records for public or strict confidential trial use, or alternatively, for use in settlement negotiations. They are also created

through the production of class action case law, doctrine and legislation, during, at the close of or after trial. Furthermore, the knowledge and information collected will occasionally be diffused to the public at large through the media. Thus, in addition to its main purpose of aggregating claims, the class action is a mechanism used to communicate information relevant to the action; i.e., a *communicative* tool.

Nagareda's extract relates power to knowledge by treating the mass torts class action as a communicative procedure in keeping with Foucault and Arendt's approaches to power. In *Discipline and Punish*, Foucault studies the concept of investigation in the scientific area, and argues that knowledge contributes to the exercise of power in different ways and contexts, and that power itself can produce knowledge: "there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations" (Foucault, 1995, p. 27). In *On Violence*, Arendt argues that power is the product of concerted action and rests entirely on persuasion; thus, it necessarily arises out of a process of communication.

By arguing that "mass torts have endowed with a power of governance the agents," Nagareda implies that the mass torts system as a subject or discipline creates the *power of governance* (2007, p. ix-x). For him, the flow of data, facts and law generated by the filing of a class action lawsuit following the occurrence of a mass tort gives lawyers a special role, a specific power: a "power of governance." It is this *power of governance* that allows lawyers to further produce knowledge and information in this context. True to Foucault's approach, lawyers are seen as having power because they produce knowledge and as being capable of generating knowledge because they have power.

Furthermore, Nagareda's stated *power of governance* implies a process of communication consistent with Arendt's philosophy of power. To govern, either by exercising continuous sovereign authority or by controlling, directing or having a strong influence over the actions or conduct of another requires the communication of information or ideas to the one being governed. In a mass torts settlement context, lawyers communicate a certain amount of data and facts to class action members, other lawyers and judges. This act of communicating is what gives them power to carry the settlement agreement to fruition and to achieve the ultimate, "grand, all-encompassing" peace of settlement.

In conclusion, just like Foucault's Panopticon, the class action is an architectural mechanism for experiments on men and society. Each and every one of us is likely to become a member of a class action filed anywhere in the world. Companies potentially at fault for mass wrongs enter the Panoptic class action machine, invested by its effects of power and power relations. Because

they know they are being observed by zealous plaintiff lawyers raising the specter of a class action filing, companies are more likely to act in a certain manner, in the socially accepted norm, to comply. Through the appearance of supervision, the class action permits a more efficient enforcement of the law by deterring companies from acting wrongly.

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