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# FORMS OF EXCLUSION:

# RACISM AND COMMUNITY POLICING IN CANADA

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A thesis submitted to the Faculty of Graduate Studies in
partial fulfilment of the requirements
for the degree of
Doctor of Philosophy

Graduate Programme in Sociology
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FORMS OF EXCLUSION: RACISM AND COMMUNITY POLICING

by

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©

# ABSTRACT

This dissertation explores community policing from the perspective of a racial minority. This research is designed to build on the need to draw community policing which cannot be achieved without an understanding of the various forms of exclusion. This study follows up on issues raised by current scholarship and themes noted in an array of state sponsored task forces. Given the wealth of information on community policing, an important goal of this research is to provide much needed and often overlooked ways in which forms of exclusion take place in the discourse on community policing. The politicized rhetoric of community policing signals a rejection of narrow, reactive law enforcement and depoliticized images of policing. What role does racism, law and crime play in elements of community policing as deployed in a range of programmes? This dissertation developes an adaptive strategy, "responsibilization", and strategies of denial in the tension between law enforcement, racism and community policing.

Law plays a central role in the reproduction and legitimation of forms of exclusion. Law as a social construct, is to be detached, objective and a neutral expression

of societal values. In reality, it is an ideological discourse that is shaped by, and reflective of, the interests and experiences of those who participate in society's defining structures. This is exemplified in the documentary analysis of state sponsored task forces. Through the text of law and 'law talk', with a substantive focus on amendments to the *Immigration Act* and the *Canadian Criminal Code*, [ hereinafter called I.A. and C.C.C.] the question of how racism persists, in the presence of deracialised, non-exclusionary texts, is addressed. Emphasis is placed on the power to criminalize as it comes to be institutionalized in both the text of law and 'law talk' in the discourse on community policing.

Theoretically, this study is informed by the critical interpretive perspective. This dissertation argues that community policing as a social accomplishment is contextualized culturally, mediated politically and articulated in an exclusionary form. Exclusion thus plays an integral role in criminalization of a race and the State's quest for legitimacy.

# ACKNOWLEDGMENTS

In the course of perparing this dissertation, I have derived inspiration and made demands on others whose contribution I would like to acknowledge. At the level of support on a day to day basis the name Georga Graham immediately come to mind. Georga has been a constant source of inspiration and encouragement in her own unassuming way. The students at York University and Humber College who took time off to participate in the focus groups, thanks for your support and encouragement. They have been wonderful and agreeable when I demanded more than seemed possible. Their generosity in discussing related issues, all combine to make truly treasured friends and colleagues. To all community members who assisted me in a number of ways; thanks for the time and information that help to guide my work overs the years.

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# INTRODUCTION

This dissertation is for people concerned with the problems of racial injustice in society, in particular state systems of control and regulation. Readers, that is, students and teachers of criminology, sociology, law, policy makers and criminal justice professionals are persuaded that minority ethnic groups suffer substantial inequalities. The past two decades have witnessed a proliferation of research on policing and race relations, a significant proportion of which has been concerned with community policing. The preponderance of written materials on this issue has been impressive. Indeed, it would be no exaggeration to say that the concept of community policing is now ubiquitous in the humanities and social sciences, being invoked not just by the political scientist and the sociologist, but also by the philosopher and the literary critic. No thesis can hope to do justice to the breadth of material and certainly I would disclaim any such pretensions myself. My aim in this dissertation will be considerably more limited. What I attempt to do is to return to some of these original sources, to inquire analytically into the fundamental premise, including my own reflections, realizing that no single theory or intellectual positioning is capable of comprehending the phenomenal complexity of even a moment of experience, assuming the possibility of locating and isolating that elusive moment. Admittedly, more research needs to be specifically directed at race issues. I argue that all criminological research should encompass dimensions of racial differentiation and gender differentiation. Thus, engaging or actually doing both is

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difficult and painful. This dissertation acknowledges the pain and the problems, and aims to assist research on race issues by opening up methodological debates and by presenting a range of theoretical options.

In the process of my research I have encountered many difficulties. Difficulties have, in part, centred on the fragmented and contentious nature of available literature. My library search led me to pursue different disciplines: sociology, cultural studies, criminology, history, politics, social policy, and geography to name a few. In many of these inter-related disciplines, the presence of racism and the concomitant problems which warrant explanation are, at least, legendary, so that theoretical disputes can be fruitful and progressive. Interestingly when it comes to racism and criminology, I found more attention given to definitions of the problem than to productive theorising. It is no secret that in criminology the dominant and 'privileged' theoretical perspective is the administrative perspective.

In analyzing the contributions of theorists writing about whether or not there is a problem of black crime or black criminalisation, or policy researchers arguing about whether there is or is not discrimination by the criminal justice system, there is a real sense in which they are both locked into the black /white dichotomy. Further, theoretical analyses are criticised for offering "speculation" unworried by empirical data, whereas policy research is questioned on the grounds that it endlessly seeks data which are ultimately fruitless in the absence of theoretical postulates. A criminological understanding of racism seems not to have progressed beyond the polarised debate of the 1980's, the

Black/White dichotomy. However, more recently, there have been significant advances in the official acknowledgement of racism (see glossary of terms) in the criminal justice system.

Since this is a dissertation in sociology, my guiding perspective has, of course, been a sociological one, and I have approached the subject matter with an eye to such traditional concerns as the meaning of the term "community", the epistemic questions of its relation to science, and the problems raised by the notion of "community policing". Nevertheless, in what I hope will be regarded as fertile eclecticism, I have not hesitated to draw on material from other disciplines where necessary. My belief is that this has helped to illustrate some of the more abstract points, and has thereby periodically given the discussion to an applied dimension.

It is particularly timely to do a race analysis of community policing today. A number of local, national and international events have supported "law and order" trends and their inter-relatedness to racism, sexism and classism within the "right-wing backlash."[1] A cursory reading of works on racism of the post-Civil Rights Movement era reveals a general consensus that race is not salient. But when race does matter, it is situated within a discourse of criminality. The media, one of the most powerful sites through which societal images are shaped, play a pivotal role in the perpetuation of racism. Mainstream media consistently depict liberalized images of a society that try to

[1]
See R. Ratner and John McMullan "The Exceptional State" in T. Fleming (ed.)
The New Criminoligies in Canada.

move beyond race related problems towards multiculturalism. In light of these developments, race-based identities and policies seem regressive. Such a dynamic achieves for Blackness what talk show host Oprah Winfrey project for the Black women's movement and in like terms what former Lieutenant Governor Lincoln Alexander represents to/in Canadian race relations. Their images produce sophisticated representations infused with complexity, ambiguity and a non-threatening idiosyncrasy. Despite their originality, they do little to empower or positively motivate disadvantaged populations.

In late-capitalism, an era marked by capitalist expansion as seen in globalization, Marxist perspectives have been discredited internationally in light of the fall of the transitional socialist governments in Eastern Europe. Ethnicity/race only exists as long as it does not interfere or determine consumption habits. In the post-NAFTA era, capital has become more and more flexible in crossing national boundaries while at the same time nationalism in the form of "ethnic pride" and "ethnic cleansing" seems to be sweeping many societies. In such discourse, race is restricted to a cosmetic function. This form of discourse make sense and gains popularity, in that it appeals to some of the critical yearnings of Blackness. Was this what Malcolm X and others were moving towards?

It may seem at times that the motive of Black people's emancipatory struggle has been to make race and ethnicity unimportant. Arguably, this has arrived in the late 1990s, as one takes a cursory look at images presented by Hollywood and the mass media.Yet, some may argue that Blacks are dissatisfied with it and suspicious of the underlying

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motives. A critical approach into seeing and reading these images may reveal that not only do policies and laws serve a historically oppressive interest, but these "new" racial views and attitudes thrive on particular misconceptions about empowerment. Somehow, the fate of Black peoples' social struggles, including social justice in Western society became inextricably tied to the end of racism.

Anti-racism as a form to counter racism is counter-productive, in that the discourse keeps whites dominant and at the centre of the debate, in essence reinforcing white supremacy. In most of those debates, whether it is within a particular site, for example, the criminal justice system[2] or policy issues, exclusion automatically means oppression, while inclusion means empowerment. Affirmative Action policies or programs can easily attest to this exclusionary project. Modern-day race policy rushes ahead by applying a simplistic logic that exclusion is bad, and inclusion is good. The equality achieved with this logic is at best asocial, since racial economic equality certainly does not exist[3]. With economic disparities in place, integration is simply a prelude to assimilation.

Some Black thinkers continue to hold up the Civil Rights Movement as an ideal, which, although it may have outlived its utility, has not been discarded by whites. It is

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[2]
See Brian D. MacLean and Dragan Milovanovic (Eds.), 1990. Racism, Empiricism and Criminal Justice. The Collective Press, Vancouver, Canada.This text provides some useful debates that has relevance to Canada.

[3]
See Melvin L. Oliver and Thomas M. Shapiro, 1997:Black Wealth/White Wealth: a New Perspective on Racial Inequality. Routledge, New York and London.

a point of reference for conservative thinkers to demonstrate how far race relations have progressed since the 60's. As American sociologist, Howard Winant, points out "the old recipes for racial equality, which involved the creation of a 'colour-blind' society, have been transformed into formulas for the maintenance of racial inequality". This is all too clear when one looks at the "law and order" debates of the past decade. This was a time which brought forth the Rodney King trial and its aftermath in Los Angeles. In Canada, the shooting of unarmed Black men by the police, the death of Georgina Leimonis in the Just Desserts Cadi robbery and the shooting of Police Officer Todd Baylis in Toronto. All of this occurred against the backdrop of the call for "law and order". In Canada, the Federal Government strongly pushed a "law and order" agenda. On June 15, 1995 the "Danger to the Public" provision of the *Immigration Act* received Royal Assent (See appendix C and D). This Act removes the right of refugee claimants to seek protection in Canada and the rights of permanent residents of Canada to appeal their deportation order to the Immigration Appeal Division of the Immigration and Refugee Board. Further, Bill C-17 *Criminal Law Improvement Act, 1996* [4], gives the police expanded powers of arrest, the power to set terms of judicial interim release and further crime exemption for police and police agents.

This discourse now serves to legitimize the popular and prevailing racial attitudes

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[4] See African Canadian Legal Clinic, February 5, 1997: <u>Brief to the Parliamentary Standing Committee on Justice and Legal Affairs</u>: *Re: Bill C-55, An Act to Amend the Criminal Code (High Risk Offenders)*.

of the day. Essentially, neo-liberal thinkers have allowed an outdated conservative agenda to succeed. That is, the issue of race has been diffused and the public is weary of racism. However, the public keeps a keen eye out for "reverse racism", or any other exclusionary practices exercised by ethnic groups.

Western society introduced the world to the modern concept of race, and it seems fitting that it should take it away as well. As Toni Morrison (1988) notes in "Unspeakable Things Unspoken":

> For three hundred years black Americans insisted that "race" was no useful distinguishing factor in human relationships. During those same three centuries every academic discipline, including theology, history and natural science, insisted "race" was *the* determining factor in human development. When blacks discovered they had specific and revered difference, suddenly they were told there is no such thing as "race," biological or cultural, that matters and that genuinely intellectual exchange cannot accommodate it. In trying to come to some terms about "race" and writing, I am tempted to throw my hands up. It always seems to me that the people who invented the hierarchy of "race" when it was convenient for them ought not to be the ones to explain it away, now that it does not suit their purposes for it to exist. But there is culture and both gender and "race" inform and are informed by it. Afro-American culture exists and though it is clear (*and becoming clearer*) how it has responded to Western culture, the instances where and means by which it has shaped Western culture are poorly recognized or understood (emphasis added), (3).

However, under such circumstances, the construction and ensuing dissolution of race serves particular interests. Today's integrative race policies or colour blind theory and attitudes (clearly an element in Canadian multiculturalism and community policing) are in actuality assimilative policies designed to eliminate or diffuse difference. Such attitudes are shaped to serve the interests of late-capitalism by allowing capitalism the stability that it needs during a transitional or contradictory phase.

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Social perceptions about the law and the economy influences how resources are distributed in certain sectors of society. In this sense, for societies to move into the 21st century and embrace the global economy, race is once again been pushed aside and the economic, intellectual and social investments of the people in these racial groups are diversified.

The logic of late-capitalism produces a racial discourse, which allows ethnicity to flourish as long as it is dispersed and not organised. Here, Black people are treated as packages and sold self-determination through the equal opportunity to consume. Concurrently, Black communities are encouraged to accept social peace at the cost of social justice. It is within this logic that this thesis argues, that community policing serves to maintain the status quo of dis-empowering, rather than empowerment of the Black communities. Further, this thesis serves as a documentation of forms of exclusion through a discourse of community policing.

Chapter one presents an overview of some of the principal approaches that have been taken to the study of racism and criminology. This chapter takes the view that although traditional approaches highlight the problems of racism in society, it is not sufficient in conceptualizing racism today. This chapter advances critical race theory and critical criminology, insofar, that it does not limit the scope of inquiry to state definitions of crime and prefers to include issues of social harm and social justice. The chapter also takes a critical look at the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*. In so doing it seeks to expose and oppose domination rather than

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be complicit in its recreation.

Chapter two elaborates upon the methodogical issues raised in chapter one. Specifically, this chapter looks at law -abiding young Black University and College male students. Utilizing focus groups this chapter captures a specific point-of-view on crime, race and community policing that is so often overlooked.

Chapter three examins the media images of Blackness. This favourable image serves to conceal rather than reveal the forms that race/racism takes in the discourse on community policing at particular moments of the "law and order" 'crises.' This chapter then presents the works of Antonio Gamsci, Livy Visano and others that caution us about hegemony, law, consent and ideology that produce a particular frame, that so-called reasoning becomes the ideological reason in the service of the state.

Chapter four explains the utility of the concept of citizenship in understanding both the ideological and material conditions under which Black people live their lives in Canada. It is argued that exclusion manifests itself through the denial of legal citizenship through immigration policies.

Chapter five looks at the role of the police in community policing from a black viewpoint. I argue that community policing is another form of disciplining society.

Lastly, chapter six highlights and problematises some of the concerns and forms in the discourse on racism and community policing.

# CHAPTER 1

**Introduction**

My aim in this chapter is to present an overview of the principal approaches that have been taken to the study of race issues by criminologists, highlighting some of the most important concepts that have been generated and some of the most valuable insights that have been produced. Some of the major controversies and unresolved contradictions that have arisen within and between different criminological perspectives will be discussed.

It is not my intention to try to provide an exhaustive summary of research undertaken on race and racism in crime and criminal justice. My purpose is, rather to focus on the theoretical allegiances and assumptions that underpin criminological engagement with race issues. Race issues which have been addressed by criminological research can generally be fitted under three main headings:

1) Race and criminality.

2) Race, racism and criminal justice.

3) Racism and criminalisation.

I shall look at how these cluster of issues have been dealt with by the major orientations to criminology, following the descriptions of criminological paradigms used in reviews of the development of British criminology (Rock, 1988). Although, this chapter lies within British styles of doing criminology, it has relevance to Canadian and American styles of doing criminology.

## Theoretical Overview

Much research on race, crime and criminal justice has started from supposed facts and figures of black and minority presence in the penal population. The racial composition of penal and arrest populations is derived from prison statistics, where ethnic information is recorded in the annual census and where the police who record the ethnic origin of all those arrested, cautioned, or referred for protection. Official statistics have been used by mainstream criminologists as a starting point for their investigation of high black crime rates. Mainstream criminologists find explanations for high black crime rates in elements of the culture of members of the so-called underclass or ghetto poor/low-income housing areas. In these accounts, criminal behaviour is a conscious choice of members of social groups who are hostile to or disrespectful of authority in general and the police in particular. They have no strong loyalty to the work ethic, they lack law-abiding parental role models, and they are involved with drugs.

While mainstream criminologists stress the element of choice in the criminality of black ghettos/low-income areas, broader sociological accounts describe the culture of dependence resulting from reliance on welfare benefits, and the effects of affirmative action/employment equity policies in enabling the 'brightest and best' of black community members to leave the ghetto (Auletta, 1982)/low-income areas. These versions of

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underclass theory are reminiscent of the early Chicago School criminologies, which described inner-city areas as zones of transition illustrated by family disorganization and weak informal social controls. A similar explanation have been put forward for crime among the migrant workers and colonial immigrants of Europe (Junger, 1989). Essentially, traditional approaches argue that criminogenic factors of black and migrant cultures are taken as a given, and it is their role in black criminality which is being uncovered, rather than the causes of these (presumed) cultural aspects themselves.

Wherever there is some findings that there exist hostility to police, or lack of enthusiasm in finding work, Neo-conservatives blame those social policies (affirmative action/employment equity, generous welfare benefits), which were designed to help improve the chances of ghetto/low-income residents of finding work or avoiding extreme poverty, rather than the structural unemployment and racism which necessitated the adoption of such policies in the first place (Murry, 1984). The emergence of a black middle class has been taken as evidence that racism is not a significant factor in the production of crime-prone black and minority sub-cultures. Engagement with race issues in criminology can be fitted principally within (a) administrative criminology, which is orientated primarily to issues of criminal justice policy; (b) radical criminology, with its aim of illuminating the fundamental nature of the crime problem; And (c) critical criminology, with its aim of analyzing the nature of the state, and in particular, the exercise of state power (Hudson, 1994).

Mainstream criminology generally applies to criminology that was not or is not

influenced by the paradigm shift away from positivist criminology, developed by the labelling theorists and interactions of the 1960s and 1970s (Young,1988). As Rock (1988), Reiner (1988) and Young (1988) remind us, mainstream criminology is not mainstream in that it is necessarily most numerous or most intellectually dominant, but in that it has not departed from the mainstream positivist-empiricist orientation of applied social science. Although mainstream criminology may be on the theoretical margins, it continues to influence some forms of thinking.

Mainstream criminology can be identified primarily by an absence of concerns with the role of the state in producing crime, the part played by social reactions in producing criminal identities and an absence of any appreciation of crime and criminal justice as contingent outcomes of social-political configurations (Hudson, 1994). Because of its lack of concern with structural factors, one would not expect mainstream criminology to have contributed anything to the understanding of racism. Interventions on race issues have been addressed under the rubric of race/criminality question: what, if any, are the differences between black and white criminals; what are the predictors of criminality among black and other minority ethnic groups? As Reiner (1989,1992), points out, " mainstream criminology poses its questions and therefore produces its explanations at individual and cultural levels of analysis but not at structural levels". Hudson (1994), further reminds us that, "mainstream criminology uses established definitions of crimes, and proceeds by established methods and theories".

The uncritical acceptance of official criminal justice and law enforcement statistics

as accurate indicators of participation in crime is the hallmark of mainstream criminology. One of the significant roadblocks to an informal discussion about crime and race is the perpetuation of detractors. Detractors are statements or propositions about crime that are discussed in a vacuum, divorced from their contexts. James Q. Wilson's discussion of the relationship between White racism and Black crime provides an interesting example of this phenomenon. The argument that White racism is at the root of the problems faced by Black Americans has been defended by others' as well.[1] Wilson, a professor of political science is considered one of the eminent thinkers on crime in the USA.

Wilson's basic thesis, which appeared in a 1992 *Wall Street Journal* editorial, is that if Blacks would stop committing so much crime there would not be so much White racism. His thesis, developed in subsequent writings, suggests that "White racism and White fear of Black and Latino men are justified because Black and Latino men have high rates of crime".[2]   It is fear, Wilson contends, not racism that accounts for the negative perceptions that White people have of Black and Latino men. In fact, Wilson states, "fear can produce behaviour that is indistinguishable from racism."[3]   His tacit conclusion is that the current level of White racism is acceptable, so long as it coexists

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[1]      Robert Weissberg White Racism: The Seductive Lure of an Unproven Theory" Weekly Standard  March 24 1997 : 19.

[2]      James Q Wilson,"Crime, Race and Values," *Society* 91 (November/December) 1992.

[3]      Ibid.

with the current level of Black and Latino crime. At first glance, Wilson's argument sounds vaguely tenable or at least difficult to dismiss. However, a careful consideration of his underlying premise indicates that his thesis raises more questions than it answers.

At core, Wilson suggests the following one-dimensional relationship:

Black crime rates ——⟶ White racism

Two major assumptions undergird Wilson's hypothesis. First, the Black crime rate is the primary source of White racism. Second, solving the Black crime problem rests primarily with the Black communities. According to Wilson, "the best way to reduce racism, real or imagined, is to reduce the black crime rate to equal the white crime rate."[4] He points out that Black men offend at a rate six to eight times greater than the rate for Whites. Accordingly, it is reasonable to expect that White racism will persist until Blacks and Whites offend at an equal rate. Awaiting such a drop in the Black crime rate is neither the best nor the quickest way to reduce White racism. Ignoring the interconnection between crime, poverty, and education, Wilson commands Blacks to rise above their circumstances before they can ask for a reduction in White racism. Indeed, this is a tall order.

Not only does Wilson imply that the Black crime rate is the sole source of White racism, he also places the onus of eradicating White racism upon Blacks. Even if the

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[4]   ibid.

Black crime rate was reduced to equal the White crime rate, how would this affect the amount of White racism? Is Wilson suggesting that if Black and White crime rates were equal, White racism will wither away or decline substantially? Wilson provides neither theoretical nor empirical support for this sweeping assertion. However, this thesis draws upon an interesting configuration: a) White racism surfaced only in response to high Black crime rates; b) Whites have a passive role in the Black crime/White racism dynamic. Simply put, he blames Blacks for White racism and Blacks unfairly use racism as an excuse for criminal activity.

Racism that is "imagined" by Blacks will disappear if the Black crime rate declines. However, what Wilson fails to consider is the definition of "imagined" racism. One is left to guess that this is racism that only exists in the minds of Blacks. How is it that a reduction in the Black crime rate will cause a reduction in imagined racism? Here too he fails to adhere to what is the definition of "imagined" racism. Rather than holding whites accountable for their racism, Wilson allows them to claim victim status. They are victimized by Black crime. As Russell (1998) points out, "Wilson allows the blame for White racism to be placed entirely on Black shoulders. Yet, he charges that Blacks unfairly place all the blame for the Black crime rate on Whites." This line of argument encourages us to think along racially segregated tracks about crime and other societal problems. His argument that Blacks are responsible for Black crime and White racism is

part of the larger societal racial finger-pointing.[5]

The overemphasis on Black crime makes it difficult to see that race and crime is not synonymous with Blacks and crime. More must be done to present the public with a more accurate racial picture of crime, including White crime. Rather than investigating the social processes which contribute the production of statistics, that is, decision-making, activities of legislators in criminalising behaviours, mainstream criminologist like Wilson, take the outcome of these processes as their starting point for the construction of ideological causes about crime rates among sections of the population. Let us now examine more specifically the consequences of this theoretical framework.

**Administrative Criminology**

During the 1980s, administrative criminology, a term which came into common criminological currency, describes the work of criminologists engaged in applied research, aimed primarily at assisting criminal justice and penal system professionals in policy

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[5] The Critical Race Theory movement consist of scholars who are challenging, not only traditional legal paradigms but also critical movements that have developed and evolved in essentialist ways. For the most part, the focus has been on a critique of domestic initiatives, laws, and normative mythologies. Patricia Williams examine racism as a crime. She considers how " the rhetoric of increased privatization in response to racial issues, functions as the rationalizing agent of public unaccountability, and ultimately, irresponsibility". See Spirit- "Murdering the Messenger:The Discourse of Finger-pointing as the Law's Response to Racism": in Baker, D. 1994 Reading Racism and The Criminal Justice System. The movement at its last Conference in November, 1997, at Yale Law School, has refocused its initiatives and include an international focus.

development and decision-making (Hudson, 1994).The objectives of this paradigm are effectiveness and efficiency and a closer match of practice to policy. Conceptually grand theorising is decreased. Much of administrative criminology is commissioned directly or indirectly by government or well established non-governmental agencies[6]. It therefore arises from practice and policy concerns rather than the concerns of scholarly curiosity, theoretical debate and intellectual growth

Admittedly, the administrative perspective in criminology is the dominant and 'privileged' theoretical perspective. Within this approach, a number of different theories are in operation. All of these approaches, however, make discussions of the actor and his or her motivations peripheral to analyzing when, where and how often an act will occur. Routine activities theory (M. Felson and L. Cohen 1979 & 1980; M. Felson, 1994; M. Felson, 1997.) gathers information on how single dwelling homes with young occupants are included in particular cities; how often one uses a ATM (automated teller machine) and the size of consumers goods to predict crime rates. To illustrate such factors elements such as risky behaviour, which includes going out to bars and night clubs; demographic elements, such as the individual's sex and age; and the proximity of guardians, such as police or parents are taken into account.This theoretical perspective

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[6] Here, Normandeau, A & Leighton, B.C. (1990), A Vision of the future *of policing in Canada: Police challenge 2000:* Background document, Ottawa: Solicitor General Canada, and The Report of the Commission on systemic Racism in the Ontario Criminal Justice System *(1995), Queen's Printer for Ontario,* serves as useful examples both at the Federal and Provincial levels of government.

will tell you how likely you are to be raped, assaulted or burglarized but will not venture to discuss the influential behaviour of state agents or the police. Indeed, this dominant epistemology of our time cares very little about the motivations of the offender, as well as his or her history or socioeconomic situation. These predictive models of crime shift our attention away from philosophising about the merits and demerits of fixed institutional arrangements.

Although administrative criminology encompasses both crime and criminal justice, it has, as Cohen (1981) predicted, largely concentrated on criminal justice, an exclusive concern with the operation of the system, rather than the causes of people's coming to involvement with the system as victims, suspects or defendants. Much of administrative criminology's interest in race issues has been focused on whether or not criminal justice and penal system agencies and processes discriminate against people on account of their skin colour or ethnic affiliation.

Unlike mainstream criminology, administrative criminology appreciates that criminal justice records and decisions are the outcome of social processes. It does not concern itself so much with morality of the outcome, but whether the outcomes can be justified by proper adherence to processes and procedures (Hudson, 1993). The response to this predicament has been a recurring ambivalence that helps explain the volatile and contradictory character of recent crime control policy. The efforts of administrative criminology have been unswerving in the production of predictive instruments to aid decision-makers, and monitoring instruments to curb discretion.

Administrative criminology has concentrated on discretion and on individual processes or agencies, rather than seeing criminal justice and the penal system as a whole. It has produced statistical enquiries which, even as they become more methodologically sophisticated, continue to produce findings which contradict each other, and contradict lived experience, particularly black experience. It has contributed much to the better management of the various agencies and processes in the administration of justice but has contributed little to racial justice or to criminological understanding.

## Radical Criminology

If administrative criminology has been influential with policy makers and practitioners, it is 'radical criminology' which has been most influential with academic criminologists. It has brought about an understanding of what is called 'black crime'. The central claim of Radical criminology is that crime and state reaction to crime can only be understood in the context of a fully sociological framework. As such, it is argued by Hudson (1994), "that the nature, extent and location of crime and the nature, extent and location of control can only be explained with reference to the material and ideological relationships that exist within a social formation." To put it more precisely Hudson's (1994) claim then, is that crime in a capitalist society can only be understood in the context of the class relationships generated by capitalism. Such a claim fits well within Young's (1988) definition of Radical criminology. He states:

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that part of the discipline which sees the causes of crime as being at core the class and patriarchal relations endemic to our social order and which sees fundamental changes as necessary to reduce criminality.This is politically at base socialist, libertarian/anarchist, socialist or radical feminist. It quarrels amongst itself- as such a radical mix has throughout history- but it is quite distinct from those parts of the discipline which see crime as a marginal phenomenon solvable with technical adjustments by control agencies which seems all right and in need of no fundamental change (Young, 1988: 160).

It is clear then that Radical criminology sees a high incidence of crime as inevitable in a society characterised by gross inequalities in wealth and opportunity. It merges together the basics of Merton"s (1964) version of anomie theory and Cloward and Ohlin"s (1960) opportunity theory.

Given their understanding of the political economy of crime, radical criminologists maintain that there is bias in the processes of law enforcement and criminal justice. They view statistics of black participation in crime, law enforcement and criminal justice with scepticism (Hudson,1994), but also expects statistics to reflect some real and significant black criminality. Radical criminology, then, does not ask whether race/crime statistics are derived from 'black crime' or from racist law enforcement and criminal justice, but expect them to reflect both (Hudson, 1994). Similarly, research which goes beyond a simple search for racist attitudes among police can provide some explanation of how such attitudes arise and are sustained.

The research conducted by Brown and Willis (1985), Lewis (1989), and the Commission of Inquire into Systemic Racism (1995) over the past three decades have consistently found racist attitudes held by police officers.This scholarship has

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convincingly argued that a 'canteen culture' (Fielding, 1988), carries over from joking with fellow officers to encounters with the public ( McNulty, 1994). It is held that a racist police culture arises because whenever recruits share the racist culture of the group from which the majority is drawn - the macho, authoritarian, prejudiced working class - and that such attitudes were reinforced not only by socialization processes once they entered the force, but also by the confrontational situations in which many encounters between police and black people occur (Jefferson, 1988, Reiner, 1985 and Vincent, 1990)


**Critical Criminology**


The project of critical criminology/critical sociology is to demonstrate the precise ideological constructs deployed at particular historical moments, and the investigation of ideological shifts with a focus on the drift to law and order ( Hall,1980). Gilroy and Sim (1985) reminds us that this involves,

> Moving from securing compliance by rewards to imposing compliance by repression involves the criminalisation of various sub-groups of the disadvantaged, and their marginalisation by legal regulation as well as by economic privation. We can see this in the division of the unemployed into scroungers and genuine claimants, the restriction of rights to housing benefits etc. Black people are, therefore, not the only group to be stigmatised as 'the enemy within' in the ideological drive to blame sub-sections of the powerless for their own predicament.

There is, nothing new about either casting sub-sections of the poor as dangerous and/or

undeserving and the moral panic about law and order. The  law and order "crisis"[7],
argues that 'race' is a common element, a concept which joins together the various
elements of the presentation of "the crisis" as (Solomos et al 1982) calls it. The desire
emphasis by critical sociology on blacks as a particular focus in terms of the
criminalization of (potentially) disaffected sub-groups of the powerless, with a study of
the character and dynamics of what has been termed "New Racism" (Barker, 1981).

The fundamental venue of critical criminologists, is policing as order maintenance,
whereas administrative and radical criminologists have been more concerned with
response to crime.Thus, critical criminologists advance  a position that coercive or
paramilitary policing (see diagram # 1 ) marks the abandonment of concern with crime
in favour of the containment of disorder.  It is a position which shows  how perceptions
of  certain groups of people who are marginalised and excluded, is used as evidence that
containment tactics are necessary (Cashmore and McCauglin, 1991; Jefferson, 1990).
Some (Lea and Young, 1984) would be tempted to lump the crisis of crime and disorder
together, and argue for more realistic policy responses. Within this  Marxian analyses,
much more is lost in understanding, than  gained of  the 'race' issues.  Other critical
criminologists (Hudson,1994) demonstrate  how widespread belief in and fear of crisis has
been used to justify increased police resourcing and (Clarke, 1987) demonstrate how the

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[7] This is a matter of importance for Caribbean peoples since criminalization has been a
key mechanism of social control.Bill C-55, An Act to Amend the Criminal Code (High
Risk Offenders) and sections A70(5), (6) & 77(3.01) of the Immigration Act illustrate
ways in which criminalization is further expanded through citizen and non-citizen.

"collapse of basis for consensus policing" reverts to an increased "drift towards 'military' policing methods" [See Diagram 1].

Like radical criminology, critical criminology offers insights into some of the contradictory evidence produced by administrative criminology, and explains some of the apparently contradictions. Critical criminology does not limit the scope of inquiry to state definitions of crime and prefers to include issues of social harm and social justice. This approach criticizes the existing system of criminal justice as reflecting and perpetuating forms of exclusion and domination that include class, gender, race/ethnicity and heterosexism. Critical criminology seeks to expose and oppose domination rather than be complicit in its recreation. It is an approach where creative and cooperative solutions are sought instead of further repressive tough measures of crime policies to secure an unjust social order. Critical theorists have also been wary of the faith administrative criminologists hold in due process and 'just deserts'. Their appreciation of criminal justice as a homogenising filter has lead to incorporation of the challenge of critical legal theorists to law as a system which treats all fairly. Fitzpatrick (1987) sees the law as resting on assumptions such as procedural equality, free will and general protection of rights which express white, male, middle-class standpoints[8]

Up to this point, the concept of community policing has not been adequately

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[9] A critical sociological approach to law engages in decoding ideologies, rather than searching for 'real' remedies. This approach fits well in attempting to look at "Community Policing", as a form of exclusion.

defined. There is much disagreement amongst criminologists as to what exactly constitutes community policing and the implications therein for communities[9]. As noted previously, the focus of this thesis is not what is community policing, but rather the elusiveness of the concept. Nonetheless, as Murphy (1988), points out,

> The wholesale endorsement of community as both the means and the end of community policing projects and programs presupposes some agreement about the conceptual and empirical validity of community as an identifiable and viable concept. While ideologically appealing, the image of community used in much of the literature is often nostalgic, consensual, geographically limited, and value laden. Police experience to date suggests a more realistic and perhaps useful conception of community as that of a community of interests, requiring some degree of mutual collaboration and agreement. This more limited, yet more empirically precise, conception of community,while less ideologically appealing, may more accurately reflect the reality of the urban policing environment and encourage community policing programs to espouse more modest and achievable objectives.

However, Visano (1994), cautioned us that, " the concept of a community has been appropriated ideologically by the state to legitimate decisions, preserve privilege and maintain authority relations". Such an appropriation facilitates - in other words, standardized, homogenized and universalized - discourses on community policing. It is a discourse that violate and silences the plurality of voices and histories, by denying and flattening the contexts and diversities.This phenomenon can be traced to the emergence of new strategies and techniques, what Garland (1996), called

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[9] George S. Rigakos, 1997, <u>Community Policing: A Critical Meta-Analytic Research Brief</u> provides some of the major working definitions of community policing.

'responsibilization strategy'[10]. Community policing is of particular importance when dealing with issues of race or racism. This focus allows victims of racism to engage in a discourse of criminalization that further privileges the dominant ethos, that is, that race and crime are connected in some form in racially stratified societies. Given the interconnectedness of crime and race, the state alone cannot effectively be responsible for preventing and controlling crime and racism. All citizens as discussed in chapter four must be made to recognize that they too have a responsibility in this regard, and must be persuaded to change their practices in order to reduce criminal opportunities and increase informal controls. The questions to be asked then, are whether these approaches are sufficient and if so, do they lead to racial and social justice. What follows is a critical examination of state discourse on race and crime.

## Official Publication

There is a particular British legacy that still resides in Canada, within the context of the administration of law and order. That legacy lies in the use of Royal Commissions by the British as an administrative strategy for bypassing legal processes

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[10] This involves the central government seeking to act upon crime not in a direct fashion through state agencies ( police, courts, prisons, social work,etc.) but instead acting indirectly, seeking to activate action on the part of non-state agencies and organizations... Its key phrases are terms such as 'partnership', 'inter-agency co-operation', 'the multi-agency approach', 'activating communities', creating 'active citizens', 'help for self-help';see David Garland in The British Journal of Criminology: Vol.36, Autumn 1996 #4: The Limits of the Sovereign State.

to establish a form of unlawful jurisdiction. In writing about his studies on Royal Commissions and Departmental Committees Cartwright (1975:35) reminds us that, "this development was contingent on the separation of parliamentary political offices for ministers and administrative permanent offices for civil servants". Such separation becomes celebrated modes of inquiry, as Burton and Carlen (1979:4) highlights, "they touched with one hand the ancient machinery of forensic inquiry, with the other hand the new method of an inductive experimental science". At such moments in British history, what took place were efficient state apparatuses founded upon empirical knowledge. As quoted in Burton and Carlen (Ibid):

> The question of pauperism and poor-law administration, of crime and penal administration of pestilence and sanitary legislation, and of the evils attendant on excessive manufacturing labour, are conspicuous instances of the effects of commissions of inquiry in reversing every main principle, on almost every assumed chief elementary fact, on which the general public, parliamentary committees, leading statesmen were prepared to legislate (Edwin Chadwick,1937:54).

This knowledge and its attendant institutionalisation into state practices were requirements of the ascendent capitalist class to control the social contradictions produced by an unstable and potentially revolutionary situation. The principle of order, dominates legal and administrative forms as advocated by the radical bourgeoisie. As Burton and Carlen (1979:5) noted, "administrative goal was one of calculated intervention to keep structural contradictions under control so that economic interests could be systematically pursued". At this moment in British history, it is useful here to highlight the use of utilitarianism. Parekh (1974:13), explains "Benthamite utilitarian benevolence did not

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extend to the working and impoverished classes who had neither time nor ability to develop social motives but were doomed to self interest".

At this juncture within the British tradition, inquiries or commissions main function became tools that provide and publicly propagate knowledge of social conditions that would shape the technology of social engineering. As such, the legacy still resides in Canada today, insofar, as inquiries or commissions have a clearly dual function of not only creating information, but manipulating its popular reception. It is the result of a British historical resolution of the tensions between forms of government in a liberal order.

Here we concentrate on official publications; namely, The Commission on Systemic Racism in the Ontario Criminal Justice System (hereafter called the *Cole-Gittens* report), a representative sampling of voluminous reports produced by vast government publishing machines. The idea of "Government publishing machine" is used here in two senses: in the sense of a finished product, that constitutes a text and secondly in the Foucauldion sense. Here, I utilize Gordon's (1980) usage of government, which argues that " it is an assemblage of diverse components, persons, forms of knowledge, technical procedures and modes of judgment and sanction."

Calls for public inquiries are usually prompted by tragic events. Victims want explanations and redress, while also satisfying the broader interest in uncovering systemic failures and preventing future tragedies. The subject matter covered by these investigatory committees are wide-ranging. They have examined issues ranging from contaminated

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blood to mining accidents. However, a substantial proportion deals with my concerns over matters in the administration of law[11].

These inquiries are ad hoc investigative committees that are set up accounting to the prerogative or conventional powers of the government ministers, under the aegis of the Public Inquiries Act 1971 (see appendix A #2). Royal Commissions are established nominally by the crown to investigate and report upon specific matters defined in their term of reference[12]. As Burton and Carlen (1979:1) state, "within these echelons of knowing subjects the judiciary is particularly well represented. Law lords, judges and lawyers are more than twice as likely to chair investigative committees than any other groups, usually academics and businessmen". Foucault's (1991) notion of governmentality has a significance for us here because it suggests alternative ways of thinking the activity of politics. As Rose (1993) points out:

> The forms of power that subject us, the system of rules that administer us, the types of authority that master us - do not find their principle of coherence in a State nor do they answer to a logic of oppression or domination or the other constitutive oppositions of liberal political philosophy - least of all, its ways of dividing the political from the non-political. The force field with which we are confronted in our present is made up of a multiplicity of interlocking apparatuses for the programming of this or that dimension of life, apparatuses that cannot be understood according to a polarization of public and private or state and civil society (286).

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[11] See appendix A

[12] See appendix B

The *Cole-Gittens* Report [13] demonstrates this all too well. Members of this Commission were appointed by the Attorney General, with the help of the respective civil service departments concerned with specific topics of inquiry, they are considered lay experts in the fields of knowledge, relevant to the problems in the administration of justice. This legal presence is considerably higher than departmental committees and provides the reports with their quasi-judicial character. Although, formally non-judicial, some committees have the authority to mandate witnesses to give evidence (as in the Somalia Inquiry) and have at their (the Commission) discretion the right to sit in public or private, and to publish or not to publish any minutes of evidence or information in their findings.

The defining characteristics of investigative committees, their expertise, public, advisory and ad hoc nature are the genesis upon which their claims to impartiality and disinterestedness are founded and protected. Formally, they are neither judicial nor administrative but occupy a consultative space that is technically external to both. This is particularly appropriate, as Burton and Carlen (ibid:2) points out, "when the committee is not determining legislative policy but is investigating the activities of state functionaries". However, with the help of the civil service, these honourary state

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[13] This *Cole-Gittens* Report was undertaken as a result of an initial investigation into racism in Ontario that was conducted by Stephen Lewis at the request of then Premier Bob Rea. The Stephen Lewis Report on Race Relations in Ontario, June 1992, described the prevalence of racism in the Ontario criminal justice system, education and employment. Further, the Report
found that the primary focus of racism in the Black [communities], emphases added.

functionaries produce reports that receive the state's unrehearsed acceptance and are generally ordained as officially recognised discourses.

A set of popular criticism and arguments about investigatory commissions and committees can rightly be made. For example, these criticism ranges from a tactical devices to defray government activity to postponing legislative or other actions while simultaneously demonstrating that particular problems are under administrative review and control[14]. Time is important but not sufficient in explaining the political relevance of "official publications". Burton and Carlen (ibid:6) espouse this clearly in their work on "official discourse". As they write,

> Moreover the recommendations of a report (when not 'white-washed'), being advisory, can be and frequently are ignored. The potentially inconsequential outcome of a report is not conductive to restoring public confidence. Again, as the research role of these committees should be unnecessary given the development of state professionalism, the reports perform 'merely' rhetorical function. Such arguments are usually countered in the literature by pointing out those texts that have been influential, have been implemented and were dependant on lay expertise.

The particular type of investigative committees/commission with which I am concerned grapples with problems in the administration of law and public order. They will be theorised in a specific manner. Clearly, interest is not to evaluate the direct legislative and administrative consequence of official texts. These documents represent a system, of which Burton and Carlen (ibid:7) reminds us, "the intellectual collusion

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[14] The Commission of Inquiry into events of March 18th 1996 at Queens Park, serves as an example here.

whereby selected, frequently judicial, intelligentsia transmit forms of knowledge into

political practices". This process is one that facilitates official arguments and replenish

both established and novel modes of knowing and forms of reasoning. Further, by linking

state functionaries with lay intelligentsia, official discourses on law and order become one

part of the constant renewal of "hegemonic domination"[15]. This practice is one amongst

many, in the process of reproducing specific ideological social relations. This form of

intellectual collusion is a technique of discursive incorporation through which legitimacy

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15  Here I am referring to Antonio Gramsci notion, as "the organizing principle of a
society in which one class rules over others not just through force but by maintaining the
allegiance of the mass of the population. This allegiance is obtained both through reforms
and compromises in which the interests of different groups are taken into account, and
also through influencing the way people think.... This enriching of the meaning of
hegemony is related to the increasing complexity of modern society in which the terrain
of politics has changed fundamentally. In the
age of mass organizations such as political parties and pressure groups, when the
expansion of the suffrage requires any state, however restricted democratic liberties are,
to attempt to maintain the consent of the governed - and with the development of the
educational and cultural level of the population, its ideas, practices and institutions - the
area of the state action expands and the private spheres of society are increasingly
intertwined. In this context the very meaning of political leadership or dominance has
changed as rulers must claim to be ruling in the interests of the ruled in order to stay in
power. Increasingly the demands and needs of society have come to be considered the
responsibility of governments, when once they might have been relegated to the private
sphere defined as outside politics. Ideas, culture and how people view themselves and
their relationships with others and with institutions are of central importance for how a
society is ruled and is organized, and underpin the nature of power - who has it and in
what forms. Thus, as the very nature of politics has changed, the meaning of hegemony,
as leadership, dominance or influence, has in turn evolved. It now also implies intellectual
and moral leadership and relates to the function of systems of ideas or ideology in the
maintenance or the challenge to the structure of a particular society.It is consequently
instrumental not only in the continuance of the status quo but in the manner in which a
society is transformed" (Anne S. Sassoon, in Outhwaite and Bottomore, ed. (1994: 225-
226);The Blackwell Dictionary of Twentieth- Century Social Thought, Blackwell Great
Britain).

crisis are repaired and the reforms they engender are publicly presented.

The interventionist phase of the capitalist state by overtly repoliticising economic relations has concomitantly increased the degree of ideological control required for the reproduction of the total social formation as suggested by Jurgen Habermas (1976), and Stuart Hall *et el.* (1978). Hegemony and legitimacy crises in the interventionist era represent a phenomenal reaction to the state's inability to control the effects of the economic class struggle during a period of restructuring of capitalist relations. Hall (1978) was correct in placing the ideological conflict of law and order debates surrounding matters such as racism, as elements within the hegemonic shifts accompanying changes in British capitalism. As he writes:

> Any profound restructuring of the inner organization and composition of capitalist relations - such as characterised the long transition from laissez-faire to monopoly, or the more intense section of this are where British capitalism found itself.- requires and precipitates a consequent 'recomposition' of the whole social and ideological integument of the social formation (ibid: 225).

The shifts in hegemonic practices considered here are reactions to forms of crises, which result from the restructuring of capitalism into corporatist structures. Such a recompositioning of capitalism has taken forms of increased centralisation, concentration and internationalisation of capital and a consequent revolutionising of labour process[16]. In general terms, the state reaction towards these conflict - everything from racism to transformations in sexual morality - has been to steadily increase the coercive elements

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16 I have in mind here Thatcherism and Reaganism, but more specifically, Ontario's wave of Neoconservatism as practice by the Conservative government, in New Directions: A Blueprint For Justice and Community Safety in Ontario: Vol#3 1994.

of hegemonic control. Hall (1978), asserts that:

> The mobilisation of legal instruments against labour, political dissent and alternative life style, all seemed to be aimed at the same general purpose: to bring about by fiat what could no longer be won by consent - the disciplined society...The growth of political dissent from the mid-1960's onwards, then the resumption of a more militant form of working class political struggle at the turn of the decade, coupled with the pervasive weakness of the British economic base, have made it impossible, for a time, to manage the crisis politically without an escalation of the use and forms of repressive state power (ibid:284, 304).

It is within this broad context that an analysis of the *Cole-Gittens Report* must be situated. Within this discourse, a legitimacy crises is created thruogh which the citizen-reader has direct access to the structures of argument that are open to the state within a formal democratic framework. This thesis highlights the forms, transmission, manipulation of elements and relations realised in Official Discourses. Admittedly, my reading is inevitably selective, a number of questions will be raised. For example, 1) How exactly do members or institutions of dominant white groups talk and write about ethnic or racial minorities. 2) What do such structures and strategies of discourse tell us about underlying ethnic or racial prejudices, ideologies, or other social cognitions about minorities. 3) What are the social, political and cultural contexts and functions of such discourse about minorities? In particular, what role does this discourse play in the development, reinforcement, legitimization and hence reproduction of white group dominance?

Although these questions focus on 'texts' and their cognitive and sociocultural 'contexts', the issues raised in this thesis require a multidisciplinary approach. No single theory or intellectual positioning 'is' capable of comprehending the phenomenal

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complexity of even 'a' moment of experience, assuming even the possibility of locating and isolating that elusive moment. It is within this problematic limitation that I ask the above questions and in doing so, I have utilized a critical discourse analysis in my inquiry.

One of the attractions of discourse analysis is that it is able to integrate such a multidisciplinary study of ethnic or racial prejudice, discrimination and racism. It allows us to make explicit the inferences about social cognitions of majority group members about minorities from the properties of their 'text' and 'talk'.

The methods of political science and the study of law are largely based on discourse. For example, the deliberation of state in decision making, parliamentary debates, laws, regulations, etc., and also with respect to racial or ethnic concern are replete with descoursal problems. Detailed study of these many forms of political discourse reveals underlying sociopolitical and in particular ethnic or racial attitudes of politicians, the strategies of agenda setting,. and the manufacture of the ethnic consensus among many other processes of the politics of ethnic affairs, policing, crime and immigration, to name a few.

In sociology (ethnography), discourse analysis plays a primary role in accounting for the structures of everyday interaction as illustrated in conversations in culturally variable sociocultural contexts. Thus, the majority of group speakers, or more generally people in Western societies may engage in the local production and reproduction of white, Western group dominance (James, 1996), in communicating stereotypes (Baker, 1994) and

more generally in the reproduction of social, cultural, or political hegemony (James 1996). Such studies are not limited to the micro level of everyday interaction in sociocultural contexts, but also involve macro notions such as groups, social formations (Omi and Winant, 1987) or institutions (James, 1996) and especially the mass media.

We see then that discourse plays a central role not only in 'text' studies of the humanities, but also in the social sciences, and virtually all dimensions of the study of prejudice, discrimination and racism (Baker, 1992). Ethnic and racial inequality in social, political and cultural domains are multiply expressed, described, planned, legislated, regulated, executed, legitimated and opposed in countless genres of communicative and discourse events. Such communication and discourse is not mere 'talk and text' of marginal relevance. On the contrary, it is at the heart of the polity, society and culture in their mechanisms of continuity and reproduction, including those of racism.

"There is no knowledge without discourse", (Lacan, in Lemaire,1977:vii) once said. Discourse analysis has displaced epistemology as a form of knowing according to Burton and Carlen (1979:15). This displacement has proceeded in a precarious manner, contradictorily and non-linear in fashion. Traditional discourses have produced one or more savants, such as anthropologist Claude Levi-Strauss, psychoanalysist Jacques Lacan and Marxists, Louis Althusser and Michel Foucault to name a few. I have alluded most frequently to the works of Foucault (1972 1974,1977,1978) . Foucault's works are used here, not to provide a direction about how discourse analysis should proceed, but because, in reading this discourse, and in the absence of the analyst, I have been forced to work

within the analytic space which have made possible the discursive knowledge.

## What is discourse analysis?

Harris provides a useful explanation as to what discourse analysis means. As he explains:

> Discourse analysis is a method of seeking in any connected discrete linear material, whether language or language-like, which contains more than one elementary sentence, some global structure characterising the whole discourse (the linear material) or large section of it. The structure is a pattern of occurrence (i.e. a recurrence) of segments of a discourse relative to each other (in Burton and Carlen:1979,16).

Discourse is rooted in desire, a desire to communicate with an other. Here, I turn accordingly to language, as constituted by both the knowing subjects of the discourse - the speaker and the addressee. I am referring specifically to the *Cole-Gittens Report* and the Black communities and 'through them' the possible objects of that discourse. Consider now, the following quotation from Lacan (1975:61); "The form alone in which language is expressed defines subjectivity. Language says, 'you will go such and such a way, and when you see such and such, you will turn off in such and such a direction.' In other words it refers itself to the discourse of the other". But what is taking place within this discourse (inquiry), between the *Cole-Gittens Report* and the Black communities is contradictory. In so far, that it is a discourse with and of the Black communities directed at capturing future conventionality/forms via an introduction into the present state of relationship between the Black communities and Blacks in the Ontario Criminal Justice

System. It should be pointed out here that this was the first inquiry to utilize anti-black racism and racial minority women, as focal points of analysis of systemic racism[17]. This departs from other inquiries (see note 6) which employ a race relations approach. Such a departure constitutes a considerable movement towards the question of racism. But, there is a particular absence; an absence of class. This absence of class categories within legal and state forms gives the appearance of administrative neutrality. Those who are in the Ontario Criminal Justice System, are 'underprivileged' as a result of their own starting point and the individual attitudes they meet in various aspects of life. Thus, the *Cole-Gittens Report* wish that more black people were middle class and had a 'real stake' in the community, but cannot or does not offer a class theory of racial oppression or a structural theory of any kind.

Interestingly, Foucault (1972:60) stresses that " unlike linguistic analysis, discourse analysis attempts continually to be non-normative, to deny privilege to conventionality". Caution should be exercised here, insofar, that such a departure does not change the relationships between institutional and discursive sites of authority or does not neutralize discursive relations. Thus, the language of anti-racism facilitates a new space and simultaneously individualises the discourse into one that is positivistic in nature. Positivistic discourse, Burton and Carlen (1979:17) reminds us, " tried normatively to close an artificially reified 'gap' between reality and language, discourse analysis, is committed to permanent obstruction of such closure." The aim here is always to specify

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17  See appendix B number 3

particular relationships and conjunctures rather than to erase them by an appeal of /to an ideal order -law and order-.

## State Apparatuses and Official Discourse

Official discourses on law and order are products of the articulation of knowledge as power relations. Like all established discourses, they are signifying practices that demonstrate the effect of ideology on language. An effect is inscribed within a meticulous modality of power. State discourse power, is realised in the materialised practices, which Althusser (1971) calls state apparatuses. This text concerns itself with the ideological discursive mechanisms of state legal apparatuses. The concept of ideological state apparatus (ibid) suggests the association of knowledge and power relations. The objectives of such practices, functions via its attempts - successful and unsuccessful and always unfinished - to repair the fractured image of the state's repressive and ideological apparatuses.

It is a well documented and well-established practice to hold and report on official inquiries into law and order problems. The question of police-community relations tends to capture the public's imagination only during periods of crises. The Young street "disorders" in the aftermath of the Rodney King trial in Los Angeles in 1992 serves as an example. Events such as these attract a disproportionate measures of public attention via the mass media but also serve to highlight the underlying tensions that

characterize everyday relations between the police and racialised minorities in many less-publicized contexts.

Chapter 10 of the *Cole-Gittens Report* deals specifically with community policing. This is not to suggest that the remaining chapters are not of importance. Stenson (1993) provides a useful distinction that give some clarity to the concept of community policing. As he points out, "in policy discourse 'community' usually denotes the desire to foster close human links within troubled and fragmented populations, within alienating and fragmented bureaucracies and between bureaucratic agencies of collective security and external social groups." It is clear then, that, the effort to produced a fixed meaning for such a fluid discursive and practical construction is a project of dubious value. The same applies to policing. Policing, whether or not married to the notion of community, in terms of core functions, for example as: a benign social service (Stenson 1993) as order maintenance (Wilson and Kelling 1982; Reiner 1985); an oppressive force (Scraton 1985), or as part of the attempt to extend the net of surveillance (Taylor, 1980) and disciplinary social control into every corner of life (Gordon 1984; Cohen 1985). Of central concern here is the relationship between the police and some notion of public interest or a public sphere, normally expressed in the form of the state. This may be understood as a benevolent reflection of the general will or an instrument of domination by the powerful. On the contrary, it is argued (Rose and Miller, 1992) " that though the police are involved in ruling and may be involved in repressive practices, it cannot be assumed that they are simply a component of a centrally organised or functioning Leviathan, operating

according to essential principles". Rather, as Johnston, (1992) argues " policing involves a multiplicity of tasks in a multiplicity of settings."

However, the principal means through which social structures are constituted is language and discursive practices that make conceptual distinction through the play of differences. In so far, that for one to be in the Ontario Criminal Justice System, a precondition must first exist. One must either be a suspect, accused or charged with an offence. A central issue here is the role of discursive practices. The use of particular ways of talking, as in Cohen's (1985) "control talk," Manning's (1988) "organizational talk," and Thomas's (1988) "law talk" reflect and constitute what Henry and Milovanovic (1991) calls "narratives that provide the continuity to reproduce social structures of crime and its control, in time and space." For example, it has been shown (Henry, 1988) :

> That when state agencies seek to control economic relations that fall outside national tax accounting, they attach derogatory labels to such activity and attribute to it motives carrying negative connotation. Terms such as the "black," "hidden," "underground,""shadow," "secret," "subterranean," "submerged" economy are used to suggest that the economic relations of those working "off-the-books" are perpetrated by nefarious creatures of the night who are interested unilaterally in pecuniary rewards incommensurate with effort, who are dishonest, and who cannot be trusted.

This, therefore, sets the stage for the control process throughout the criminal justice system.

There is much to cheer about in the *Cole-Gittens Report*. But the apparent attractiveness of this report is based on conservative and theoretically questionable premises. A total of nine major recommendations designed to improve the governance and

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delivery of community policing were made[18]. The formulation of the problem appears on page (336):

> Community policing aims to transform relationships between the police and the community....Many of the challenges facing traditional policing are also found in a community policing system. Among the most important challenges is to respond effectively to public concerns about systemic racism in policing services.

The policing problem which is part of the objective of this chapter is a problem *with* the police. Before attempting an answer to the policing problem, consider "...Initiatives of the Canadian Association of Chiefs of Police, such as the development guidelines for community policing in diverse neighbourhoods" (337). Here we have an indication in understanding the characteristics of neighbourhoods. In other words, the social problems will set the standards for successful policing. Now it is safe to claim that standards are variable and are given a hint that police failure by one set of standards in one neighbourhood may be understandable by other(s) success(es) in 'a' or 'different' neighbourhood. As Van Duk (1993) points out, " this sets the stage for social action and social relations". This speech/talk or expression (ibid) signals various social meanings and categories of social interactions. At the interactional level itself, 'respect' and 'equality' (342) are signalled as formal modes of implementing community policing. Since 'respect'

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18 These include local community committees to establish policing objectives that reflect community needs, action plans to secure equality in policing, guidelines for the exercise of police discretion to stop and question people, and the complaints system to promote systemic monitoring of police practices. For a more details, see pages 427-430 of The Report Of The Commission On Systemic Racism In The Ontario Criminal Justice System, Queen's Printer for Ontario,1995.

and 'equality' markers are mutual here, social power relations seem to be equal in community policing. These 'initiatives' of the Canadian Association of Chiefs of Police also signal social and political dominance in the *Cole-Gittens Report*.

At another level of social relations, that is, relative to the social situation and events talked about, there is no question of formal equality. As noted earlier, the commission is one part of the complex system of criminal justice. In summarizing the 'initiatives', the *Cole-Gittens Report* gives considerable weight to the balance of power in terms of what constitutes a social problem to the Canadian Association of Chiefs of Police. This reference allows or create a space for conservatives elites, who may otherwise be less interested in community policing, but may still take part in the struggle between racism and antiracism, between "un-Canadian behaviour" (338) and the values of multiculturalism.

It is clear that the Association as members of the police institution speak not only as members of that Association, but with several other social identities, such as white and male. This position institutionally entitles them to put the policing position on the community policing agenda. Obviously, it is not only their role as Commissioners that influences the structures and strategies of their speech/talk or position, but their identity as members of the white dominant group.

But, by two paragraphs later, we have a complete reversal. What concerns the *Cole-Gittens Report* at this point in time are:

> These preliminary findings led us to focus on strategies for building confidence in community policing among black and other racialized communities. To develop

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these strategies, we investigated perceptions of racial inequality in policing, practices that contribute to such perceptions and existing responses to community concerns about systemic racism (ibid)

Thus, the problem with policing has now become a problem for policing. Throughout the chapter, the *Cole-Gittens Report* retains this latter stance. There is a crucial an central ambiguity in the arguments for " building confidence in community policing among black and other racialized communities (ibid)". It is left unclear (perhaps deliberately) whether the "community" is being proposed as a means to an end; that is, as a new resource for tackling the problems of crime or racism, or alternatively  the creation of better community feeling is the end which is being pursued and concern about crime merely the means of achieving this end. Most of the literature including the *Cole-Gittens Report* on community policing or community involvement stress and cherish both goals - indeed, that they are in some sense inseparable. But, as we shall see, this fudges the very difficult choices that have to be made in organizing strategies for increasing community involvement. It conceals the political gulf between those on 'the right' who wish to draw on public support to help the forces of law and order; and those on 'the left' who seek rather to empower the disenfranchised so that they can confront existing institutions and hierarchies. But above all, this begs the following important questions. If there already exists some identifiable sense of community to draw upon, what is its nature and potential? Where community spirit and "confidence" (ibid) is lacking, what sort of community will be generated by a focus on crime and racism? In general terms, the aim is to make policing more effective  by securing the co-operation of the Black

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communities. On this premise then, the Black and other racialized communities pose problems for the police.This was made clear by way of a foot note:

> Community policing, as it is being discussed across North America, by no means dismisses law enforcement as an important police function. Rather, it views other methods of problem-solving as more appropriate in the vast majority of cases, and sees these other methods as contributing to more effective law enforcement when the need arise. Police officers are expected to promote communication among those in the community who have conflicting interests and views. Skills gained and relationships developed by police officers through peacekeeping in the community help them deal with more serious problems that require criminal justice processing (336).

The problem, herein, is that racism is located outside the police who are relatively blameless victims of displaced and misplaced aggression among or within communities. Caution should be exercised here, insofar as permitting theorising to exonerate the police institution from responsibility for the antagonism felt by black communities. In so doing, this distortion contributes to the misperception of theory. Furthermore, the society at large which is apparently responsible is not given any form but remains vague. So the racism to which blacks are subject cannot be explained. The problem, therefore, has been displaced onto a shapeless social order in which everyone and no-one is responsible. The specific practice of police officers are relatively unimportant. Figure one helps to illustrate this. However, part of the findings of the commission were: many white people share the perceptions of racial inequality in policing; and widespread perceptions of police discrimination are a potential significant obstacle to successful community policing (341).

What about the problems which the police pose for the Black and other racialized

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communities? In particular, the exercise of the discretion to stop people in cars and on foot. Under Frequency of reported stops (see figure 2), the Cole-Gittens Report found that in order to build confidence in the community, the police must find ways to demonstrate that differential stopping of people because of race alone or in combination with other discriminatory factors is unacceptable (358). This situation is created by the nature of the police services and basic policing methods in law enforcement. Therefore, in order:

> to achieve these goals community policing requires practical guidelines for the exercise of police discretion, training to enable officers to avoid differentials in the exercise of their discretion, and monitoring of police practices. For increased effectiveness, popular education and outreach programs should inform community members of their rights and shared responsibility for community security, as well as the legitimate boundaries of police action (358).

This time, the problem is located not in society at large, but in the subjectivities or false perceptions of black people which the society at large causes. Again this exonerates the police. The conclusion of this style of theorizing is flawed. With reference to this small study outlined in figure 2, there is evidence that black perceptions of discriminatory treatment by the police are reality based and that harassment is probably routine, widespread and normal.There is further evidence of a methodological problem, insofar as, that the lawfulness of police activities[19] is not an instructive criterion to use when

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19 Any discussion of policing must include the recognition of the extraordinary powers of police. Police are empowered by law to interfere with individual liberty in the most severe way. They have the power to question, stop, search, use force and kill people. This extreme power is sanctioned by the state, and therefore the police are the real, front line enforcers of state power. For a specific use of police power see the Criminal Code of Canada and the Police Services Act.

identifying the street harassment of black or other 'marginal' groups. Harassment is lawful, although selecting one ethnic group or race to harass may not be. But certainly a search for illegal behaviour by police officers will lead to the view that the problem is a minority one. The question then is where does the 'misperception lie'? It is inherent the black and other racialised communities or within the *Cole-Gittens Report*.

Just as the misperception theory is made possible by displacement theory, so the rotten apple theory is integrally related to the misperception. This view enables the *Cole-Gittens Report* to assert that "in consultation with the police services and local community organizations, develop guidelines for the exercise of police discretion to stop and question people, with the goal of eliminating differential treatment of black and other racialized people (429)". As mentioned before, the problem with policing is one that individualizes the problem and therefore individualizes the possible solutions. It leads to an emphasis on improved recruitment, improved training and an improved procedure for dealing with the deviant minority and with occasional lapses.

Clearly, all of the above are reasonable suggestions, but the first and last are concerned solely with the quality of individuals and certainly can have no impact on institutional police structural practice,that are deeply embedded within society. Improved training will not help if the institution of policing denies that racism is embedded in police discourse. Further, the rotten apple theory strikes a balance between good and bad policing. However, there is also a danger that exist within this theory. As Cain and Sadigh (1982) argues, "the ideology of police discretion/police professionalism....makes the rotten

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apple theory and its concomitant individual focused remedies necessary. It is not generated by the rotten apple theory: rather the ideology of discretion/professionalism is consistent with it, and renders structural solutions unthinkable as well as inappropriate".

Again, the *Cole-Gittens Report* have thus confirmed the existence of prejudice or racism among the police and within community policing, like many other reports, but have concentrated on racism and prejudice among beat officers. Indeed, does this express a degree of confidence in claiming that racist attitudes would not be sited in the higher ranks of the police?.

Successive shifts in political language about race since the 1970s (see appendix A 1) have delved into the issue of policing and 'black crime' as a central theme. Whether in terms of specific concerns about robberies, street crimes, or with the question of urban unrest, the interplay between images of race and crime has remained an important symbol in the language of community policing. Discourse about the 'black crime' issue have also been overdetermined by the phenomena of civil disorder. The latter helps to explain the increasingly politicised nature of the state response to the two issues. The ideological construction of the involvement of young blacks in armed robberies and other forms of street crimes provide the basis for the development of strategies of control, aimed at keeping young blacks off the streets and keeping the police in control of particular areas which are identified in popular and official discourses as 'crime-prone' or potential 'trouble spots'

It is at this point I part company with Foucault, in particular the metanarrative in

*Discipline and Punish.* It offers a body politics of state punishment and prosecution that

is considered by some postmodernists to be a master narrative competent to critique

contemporary state policing. Yet this work particularly contributes to the erasure of racist

violence. As James (1996) argues,

> his text illustrates how easy it is to erase the specificity of the body
> and violence while centring discourse on them. Losing sight of the
> violence practiced by and in the name of the sovereign, who was
> manifested as part of a dominant race, Foucault universalizes the body
> of the white, propertied male....it depicts the body with no specificity
> tied to racialized or sexualized punishment. The resulting veneer of
> bourgeois respectability painted over state repression elides racist
> violence against black and brown and red bodies.

My attempt here is to show that race is of major importance in any discourse in a

racialized society. Race signifies the 'criminal' not only by his or her act but also by

his or her appearance.[20] Mapping the political terrain is an imprecise craft. However,

boundaries are continuously redrawn through political conflict, compromise and

resignation. Losing one's bearings becomes commonplace when following altered

maps with abstractions about policing and policed bodies. To romanticize or falsify

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[20] A 1994 television documentary by Michael Moore, producer of Roger and Me
illustrated how in the American mind criminality is constructed as a racial marker. The
producer videotaped an African American middle-class man attempting to hail a taxicab
while a block behind him a European American man, an ex-convic who had served
lengthy jail sentences for violent crimes, also tried to hail the same cabs.
Overwhelmingly, the taxi drivers bypassed the black man to pick up the white man. In
this racialized society, white convicts (and ex-convicts) exhibit a higher social status than
black noncriminals and criminals. Whiteness exculpates and signifies the 'normal,' just
as blackness implicates and mark deviance.

the disciplined body, one need only present it as unstructured by race, sex and class. In contrast, rejecting the illusion of an individual in a casteless society made-up of raceless[21] and genderless bodies, one may confront racist and sexist violence in state practices and theories that mask such violence.

The critical and practical relevance of this thesis is that in situations where tolerance, equal rights, and the rule of law are officially respected, discourse may subtly signal contradictions. Taking an anti-racism approach does not set out to discover the factors which have contributed to a black person's predicament but to explain how, in any given situation, racism has created that predicament. It starts with an answer and works its way back towards the question. Anti-racism, by adopting an idealistic paradigm and a simplistic view of racial oppression, has steered us away from those questions which could enable us to develop an adequate explanation of the phenomenon. An adequate explanation must account for the interplay of race, class, gender, social structure, culture and biography, an the ways in which they shape the chances and choices available to groups and individuals in similar structural location. Even moderate feelings of superiority, stereotypes, prejudice and relations of social inequality defining 'modern' racism may be involuntarily presupposed, expressed, or signalled in text and talk. It is a critical discourse analysis that may literally reveal processes of racism that otherwise would be difficult to establish, or that would be

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[21] As promised, race will become a non-issue, according to the Association of Chiefs of Police: See the *Cole/Gettens Report*.

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formally denied by the majority. In this respect a critical discourse analysis may yield an instrument or confirmation of counter ideologies that in turn support dissent and counterpower.

The fact that researchers continue to produce different findings (see appendix A and figures 1 and 2), and that differences are found within the same study, means that any discrimination is attributed to the exercise of discretion. Racial prejudice on the part of individual police officers is put forward as the explanation and the target of intervention, rather than more structural factors. What is missing are social structural factors in the sense of social position of blacks or other minority ethnic groups, or the way that criminal justice itself is structured. As Rudovsky (1982) notes, " the failure of the Court to draw the most obvious of inferences - that police officials are aware of and responsible for brutality of systemic proportions - is grounded more in the political judgement that police departments should be free from judicial or other restraints than in any legal or constitutional principle". Harris (1992), also argues along similar lines: " if a prima facie case of discrimination can be sustained against the criminal justice system, it is a case against individual practitioners which has been conceded, not against the system as a whole, still less the social role of criminal justice and criminalisation."

# CHAPTER 11

## A Methodological Consideration

## Personal and Up Close — Young Black Men Speak on Crime, Race and Community Policing

Forests of paper, volumes of press ink, and millions of research dollars have been

devoted to the plight of the young Black male in North American society[1]. He has been

scrutinized, objectified, and memorialized, so much so, that for most of us "young Black

male" is synonymous with criminality. The negative criminal label is applied as though

one characterization could accurately define such a vast group. Although some people

have suggested that a generation of Black men has been lost, in reality, the criminal

stereotype describes only a fraction of the entire group. A commonly quoted statistic is

that one in three young Black men are under the jurisdiction of the criminal justice

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[1]

It should be noted that police practitioners and academics in Canada have drawn on studies from other countries to inform their policies on policing but there is clearly a need to initiate Canadian research. Unlike Britain, which has the Police Foundation and the Home Office Research and Planning Unit, and the United States, which has the Police Executive Research Forum and the Police Foundation, Canada does not have a national facility for promoting and initiating policing research. Since the April 1993 demise of the Canadian Police College Journal, Canada does not have a vehicle for the dissemination of the results of projects conducted in Canada. Although the comparative lack of research can be attributed in part to Canada's smaller population, without an autonomous institute for Canadian police research similar to those in other western democracies, police research will remain fragmented and peripheral, being primarily conducted in university departments, the Canadian Police College and under contract to federal and provincial governments, subject to haphazard funding. Theories of policing may be taken from other jurisdictions and applied in Canada, but empirical analysis must be located in Canada. See Seagrave (1997) Introduction To Policing In Canada.

system.[2] What often goes unacknowledged is that if 33.3 percent are in the justice system as accused or convicted persons, then 66.7 are not. Specifically, very little media attention is focused on those who are in College or University.

Law-abiding young Black men are frequently overlooked as a resource for analyzing crime and justice issues. To tap this source, focus groups were conducted with young Black male University and College students at York University. While an increasing number of books explore the breadth of black male experience,[3] very little research presents their specific view-points on crime, race, and society.

All Black men enrolled in Crime and Delinquency and Race, Minority and the Legal Order courses, in the Fall/Winter session of 1994 at York University were invited. Black men from Humber College, who were enrolled in the Law Enforcement Certificate Program also participated. Fifteen men agreed to participate. Ten from York University and five from Humber College.The focus group sessions were held at York University in June 1994. Two groups, one with eight participants, the other with seven, each met for one-and-one-half hours. Each participant received five dollars for transportation.The author and a colleague, a Black female graduate student in Sociology, led the focus group discussions. Audiotapes were used. All names used for focus group participants are

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[2] See the *Cole Gittens Report* (1994) for an elaboration on this issue in the Canadian context. Also Marc Mauer and Tracy Huling, "Young Black Americans and the Criminal Justice System: Five Years Later," *Sentencing Project* (1995).

[3] See, for example, Darrell Dawsey, *Living to Tell about It* (1996); Don Belton, ed., *Speak My Name* (1995).

aliases. See appendex F for a sample of questions asked of the focus groups.

## Focus Groups

Participants were first asked to share their reactions to receiving an invitation to participate in a focus group about young Black men. Several young men commented that they were "excited" about the invitation to participate in this research. One student said it is "rare" for the perspectives of young Black men to be solicited. Each participant interpreted "race, crime and community policing" in the question "What does 'race, crime and community policing' mean?" It is synonymous with "Blacks, crime and community policing." Jack, a 22-year-old from Scarborough, Ontario, with a family history in law enforcement, said the terms are used as a way to "reinforce stereotypes..... that certain crimes are committed by Blacks and for the police to be heavy-handed." Noel, a 24-year-old North York, native said, " When I hear those phrases.... I automatically think they're associating Blacks [with] illegal activities and an excuse for the police to spy on us." Robert, age 22, born in Guyana, commented, " It makes me think of something my mother always says, 'They got another Black child on television.' With crime, the media emphasis is always on Blacks." Bob, 25, from Lawrence Heights, North York, echoed Bob's sentiments and said, " Many people don't realize that the media is the only way most Whites [see Blacks]."

## Reflecting on the Criminal Justice System.

More than any other race and gender group, Black men have the greatest probability of contact with the criminal justice system,[4] as both victims and offenders. The young men responded passionately when asked to comment on the criminal justice system. "Racist" and "biased" were the terms invoked most frequently. Clinton, 27, from Mississauga, Ontario, said, "It [the criminal justice system] is just a microcosm of what the larger Canadian society is.....[It] has been more or less an instrument to maintain the racism within the country."

Roy, a 21-year-old born in Jamaica and lived in Canada since age of 5, said, "My mother always told me that the criminal justice system is like slavery. When slavery was abolished, White people tried to find new ways to bring Black people down." Charles, 25, born in Canada of parents from Jamaica and lived in Vaughan, Ontario, referred to the criminal justice system as "a sinking ship," said, "We know certain [policies and strategies] do not work, yet we continue to use them." According to Johnny, the fact that the rights of Blacks are violated through community policing without recourse is evidence of racism in the criminal justice system. He compared the constitutional rights of young Black men to an obstacle course, "[It is] almost like being on one side of a [fifty-foot] wall and you need to get to the other side without being fifty-feet high. What can you do? You try to find a way around it but there doesn't seem to be one."

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[4]

See figure # 1 and chapters 4, 8, and 9 of the *Cole Gittens Report*, 1995.

## Hearing stories, creating boundaries

Given that young Black men have the greatest probability of falling victim of other young Black men,[5] it would be reasonable to expect that they would be fearful of one another. The focus group participants said that whether they would be fearful of other young Black men would depend upon the situation. Roy stated:

> I'm not fearful if I see a Black brother on the street. Really, I'd be more afraid of a White guy than I would a Black guy, simply because I [have] some relationship to the Black guy. I have no problems with one Black guy. But if I see a large group of them with joints [marijuana] in their mouths, wearing gold, I'd be afraid.

Roy's sentiments were echoed by several young men in the focus group. Some noted that if they were travelling alone, the presence of a group of young men, of any race, might be cause for concern. Factors including the behaviour of the individual or group, time of day, physical size and conduct of the approaching person, and how the person is dressed would be evaluated. Overall, the focus group appeared to be fairly discriminating in assessing what constitutes a threat. It may be, I would add, that because these young men are frequently targets of unfair negative stereotypes, they tried not to unfairly stereotype other young Black men.

The participants were asked how old they were when they became aware of the

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[5]

See Amos N. Wilson 1990, *Black-On-Black Violence*, Afrikan World InfoSystems New York, for a critical insight of this.

negative public perception of young Black men. Gary, 24, from Mississauga, was one of the men who said he was aware of the stereotype by age 9. Born and raised in small predominantly white town, in London, Ontario, he recounted a frequent childhood occurrence, "[At the playground in the school yard] everything is cool [until] an argument comes up, then, all of the sudden you're the nigger." Several others said it was comments made by Whites that first made them aware of the negative image associated with Black men.

In response to the question, "How does the stereotype affect you?" most of the men commented that they have grown weary of the negative labels. Others expressed anger. Shawn, from Scarborough said, "It becomes annoying....I don't want to hear about another young Black male and the police." Eon, a 25-year-old from Etobicoke, said he is angry at Whites and Blacks;

> "I'm upset about the negative portrayal of Black men on TV. I'm upset at Whites and Blacks. I'm upset at the media because they [say that] Blacks commit most of the crime. That's not true......but I am upset with Blacks because we perpetuate a lot of the stereotypes ourselves. This gives the police a good reason to be trigger happy and then defend their action[s], by saying that there are fighting crime and the public believe this. Look at all the foolish movies we've made, like *Boys N the Hood* and *Menace 11 Society*."

The participants also discussed their perceptions of law enforcement. Most of the men had heard negative stories about the police.Ten of the fifteen participants came to the conclusion that the police were hired to enforce the law against Blacks. Winston commented, "I was always told that the police are only good people [who wear the uniform]. It is made up of people who lie, people who cheat, people from all walks of

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life. It is made up of guys off the street." In school, Winston learned about "Officer Friendly" and was taught that the police are the good guys. The picture of the pleasant, helpful, resourceful police officer, however, contradicted his direct experience: "It did not take long to realize that the police were not our friends. When I was a child they would come onto our block and tell us not to play basket ball in the in the street. "Go to a park." Well, we didn't have a park to go to and the White kids played hockey in the street, so that was harassment to us."

**Fear and respect**

None of the young men directly acknowledged being fearful of the police. Nevertheless, fear is the word that best describes their motivation for avoiding law enforcement officers. The incongruous result is that the young Black men interviewed are more fearful of the police than of other young Black men. The result is incongruous because they represent the race and gender group with the highest rate of criminal offending, victimization and shot by police [6]. Black men aged 16 to 25, is the one most likely group to need police assistance. However, Black fear of police, and the informal code of silence that it may provoke, has implications for police relations with Black communities.

Another aspect of the fear dynamic is how Black men are perceived by others. The

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[6] See *Cole Gittens Report.*

participants were asked, "In public how do Whites respond to you?" Most said that Whites are afraid of them. Some cited the never-ending insults that go along with being perceived as dangerous, the difficulty getting directions from a stranger, hearing the click of automatic car locks as you walk by, being stopped by police, followed in a store, and asked about crime. Actions taken by Whites or Asian to protect themselves or their property from Blacks are either aggressive moves " towards" Blacks (e.g., watchful eye of a shopkeeper) or aggressive moves "away" from Blacks (e.g., moving away from them on the street).

Strangely enough the young black men describe White fear in ways that could be easily confused with White respect. Roy, who is 5' 8" and stocky, expressed this: "Out in public I will see a White guy coming towards me. He may be 6' 5" and over two hundred pounds and all of the sudden he will step aside and let me pass by. I am shorter and less stocky, but [the White guy] just steps aside and [lets] me pass, no matter what I'm wearing." This kind of reaction from Whites could be interpreted as either respect or fear. Other participants recounted similar experiences of deference from White men and women. At the same time that Black men are cast off as being criminals, they are also celebrated as being hypermasculine. They are idolized as cool, hip, and sexually gifted. These contradictory reactions may encourage some young Black men to capitalize on their macho image. Several of the young men said they believe that some Black men turn to crime and deviance as a self-fulfilling prophecy. That is, many engage in crime because people expect them to. However, none of the participants named a specific

crime. This suggest, that deviance and crime were used interchangeable. Some of the participants expressed concern that crime by Black men is glorified and idolized by both Blacks and Whites alike.

What lessons should we take from the comments of these young Black men? While they have high expectations for themselves individually, they feel encumbered by the negative labels attached to being young, Black, and male. A few pondered aloud how high they would be "allowed" to climb on the economic ladder. Their reflections and experiences with race, from their feelings of invisibility and fear to their feelings of frustration and anger, painfully illustrate the costs of negative stereotyping. The interviews provide us with an understanding of what it is like to be an involuntary, lifelong, walking representation of deviance or a "dangerous supplement"[7]. The focus of the media on the small percentage of young Black men who are criminals has exacted a burdensome toll on the majority who are law abiding. The noncriminal majority is an untapped resource. It may be that the young black men who do not fit the criminal image can help us understand those who do.

## Discussion

Criminologist Daniel Georges-Abeyie, asks, "Does the focus of criminal justice analysis on the formal, easily observed decision-making process obscure or even misdirect

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[7]    This will be developed in detail in chapters that follows.

attention from the most significant contemporary form of racism within the criminal justice system?"[8] He further states "that an examination of the formal stages is insufficient to determine the prevalence of racial bias". Police stops of motorists[9], which constitute an informal stage, determine in large measure who will be arrested and thus who will enter the criminal justice system. Accordingly, the above encounters, which are not subject to official measure, must be included in this thesis. These data help reveal the nature of support for community policing and, equally, how consent gets constructed.

The direct and indirect experiences that Blacks have with the police affect their perception that the balance of criminal justice is tipped against them. Many people would argue that it is unfair to blame the police for being suspicious of Black men. After all, [lets assume] Black men are disproportionately engaged in crime. Then, it is reasonable, that the police disproportionately suspect them of criminal activity. Again, [lets assume] Black men do commit street crimes at high rates -- rates far exceeding their percentage in the Canadian population --. The important question, in spite of our assumption, is, 'are Black men stopped and questioned by the police at a rate that greatly exceeds their rate of street crime'? If so the number of police stops cannot be legally

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Daniel Georges-Abeyie, "The Myth of a Racist Criminal Justice System?" in Brian MacLean and Dragan Milovanovic, 1990 (eds.), Racism, Empiricism and Criminal Justice. His definition of informal stages includes racially derogatory courtroom language; e.g., a prosecutor referring to a Black defendant as an 'animal'.

9

This will be discussed in details in chapter 1V.

justified.

The available research suggests that Black men are stopped and questioned at a rate much higher than the level of their involvement in crime. The few studies on this issue indicate that Black men are significantly more likely to be stopped than anyone else, at a rate far above their rate of __arrest__[10]. One way to determine this is to compare the rate of police stops for Black men with the rate of Black men who are involved in criminal activity. For example, [assuming] that one-third of all young Black men are involved in crime, we would predict that one-third of them would be subject to police stops.

The available evidence indicates[11] that more than one-third of all young Black men are stopped by the police. As yet, no national data have been collected on the incidence and prevalence of police harassment and abuse.

## The 'Why'

So-called objective research does not exist. Research is influenced by the researchers' race, gender, class, their values and principles, academic and social environment. With this in mind, I set out to gather information for this thesis for the past six years. This information was gathered in a way that acknowledges these factors and in a manner that transfers participants into become researchers. To meet this goal requires

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[10]

See note 4

[11]
Ibid.

I adopted a method of research that involved producing knowledge differently, one that would ensure the needs and interests of the Black communities drive the process and not just my needs and academic interests.

As a result I devised an approach that validates experiential knowledge, communal knowledge as opposed to the traditional methods that give primacy to academic, rational knowledge. This is not to dismiss in a rudimentarily fashion the use of qualitative and quantitative research that is still based on a narrow understanding of what constitutes and generates knowledge.

## The results

The results of my method may be measured in terms of changes that are initiated in the lives of individuals and changes within the Black communities. These range from some Black women deciding to go to community meetings to some Black men recognizing that Black women also face the same problem of police harassment and brutality. The knowledge produced by the group was useful knowledge which directed action within the lives of those involved. The process also led to interactions and discussion between the older generation and youths around issues of sexuality, class, nationality and its relevance to racism and community policing. On a larger scale my work prompted more liaising with other communities as well as political activism to ensure adequate services for the communities.

# Chapter 111

## Criminalization: Racializing Crime
## The Colour of Crime

The media portrayals of Blackness is primarily depicted through images of Black men. As detailed below, though the depictions are mostly ones of deviance, there are also enough images of Black success to create public confusion in assessing how Blacks fare in American/Canadian society. The contradictory media portrayals of Blackness are critically analyzed and followed up with an enquiry into the interpretations of young Black men public images and how they view the criminal justice system. At a time when young Black men are the focus of much criminal justice attention, it is critical to discuss their assessment of their image and their reality. Lastly, this chapter concludes with a unique look at Blackness through community policing.

There is a lack of awareness of the forces that shape our perception in regards to how we make sense of our daily experiences. In particular, our attitudes towards crime are moulded so that we are inattentive to the processes that construct our standpoint. The media plays a considerable role in shaping perceptions of crime within our communities, that is, in a (re)selective reconstruction as to what constitutes a criminal event. Crime as reconstructed in the media promotes the practices of the elite class, while criminalizing

the exploited classes. Thus, the media content is primarily ideological rather than entertainment or an educational value, which it ostensibly parades. The mass media is one of the most important agents in the reproduction of ideology because of its central role in socialization. Therefore, crime events are selective ideological reconstruction that reproduced, repaired and maintained the inequalities within society.

Although the majority of us have never been the victim of a crime or charged with a crime, we all have certain images of crime. There are certain perceptions that have been created with regards to class, race and crime.[1] It is both the best and worst of times for representations of Blackness in the media. On television, Blacks are regularly portrayed as lawyers, doctors, nurses, police officers, and best friends. In fact, more Blacks appear in print, radio, and television journals than ever before. At the same time, however, television programs continue to feature updated versions of centuries-old stereotypes. In North America Blacks have been criminalized as a race, as McIntyre (1993) tells us " that European Americans created a social structure for free Whites and enslaved Blacks and viewed free or freed Blacks as unwanted, troublesome and

[1] See D. Baker (ed) 1994. Reading Racism and the Criminal Justice System. Canadian Scholars' Press.I attempted herein, to raise the argument as to how we discussed in private social circles about the perpetrator of crime and how colour plays a significant role, in shaping our perceptions. See also, Katheryn K. Russell, 1998. The Color of Crime. New York University Press, who further the analysis by pointing out that "in the 1990's, several trends caused television to revert to crude one-dimensional images of Blackness. The most remarkable trend has been the proliferation of daytime talk shows.These shows often feature Black guests who talk in loud, profane language (what some would label "Ebonics"), use animated gestures, and freely discuss their criminal involvement or sexual liaisons and sometimes both."

dangerous, and inherently criminal..... "uncivilized and relegated us to the lowest social, economic and political class of their society." In contemporary society the media functions in a particular way to carry on that false legacy. Thus, when the police brutalize or shoot a Black person they are already criminalized. It is not unusual to hear statements such as "they must have being breaking the law." Thus, Blacks are stigmatized as the "dangerous supplement".[1]

The history of the media and popular response to the mugging issue has been analyzed in some detail by Hall et.al. in *Policing the Crisis* (1978). The premise of this study was that the construction of black communities as social problems was the ideological bedrock on which the black youth/urban deprivation/street crime model of mugging was constructed. Mugging as a political phenomenon, according to Hall et.al. became associated with black youth because they were seen as: (a) a social group which suffered the most direct impact of the cycle of poverty, unemployment and social alienation which affects inner city areas; and (b) suffering from the added disadvantage

[1] I would like to think my reading of Caribbean historiography on criminalization is a continuation of some critical works. David Trotman argues, for example, that the criminalization of social behaviour in the 19th century Trinidad was a key feature in preventing the emergence of an oppositional political/cultural space. In fact, Trotman provides a valuable definition of the "dangerous supplement" : "It is precisely because those attributes that were considered nonrespectable were seen as congenitally nonwhite and were invariably labelled criminal that crime was inescapable for those segments of the population who *would not* or who *could not* accommodate", Crime in Trinidad: Conflict and Control in Plantation Society (The University of Tennessee Press, Knoxville, 1986) p. 7. For a more extensive treatment of some of the theoretical nuances of criminality and marginals see Stuart Hall et. al. Policing the Crisis: Mugging, the State, Law and Order (The Macmillan Press, London, 1978) especially Chapter 10, 327-397, from which I borrow quite extensively.

of belonging to a racial group with a 'weak' culture and high levels of social problems, such as broken families and lack of achievement in schools (Hall et al 1978). The power of these images according to this study derived partly from popular common-sense images about race and the inner cities, but also from the feelings of uncertainty which were developing within society as a whole about the position of black communities and their role within the dominant institutions (ibid. 346-9).

Hall et al. note, for example, that even in areas where young blacks were a small minority of the total youth population, the issue of crime on the streets became intimately tied with the category of black youth. This ideological construction became possible because the dominant concern about the 'ghetto areas' focused on the supposed drift of young blacks into a life of crime and poverty.

Interestingly, Canada, specifically Toronto, the discourse for the last twenty years followed along similar lines (see appendix A). Toronto, has long been regarded as a model among North American cities (Lemon, 1984). Caricatured as 'Toronto-the Good,' the city that works, its crime rates are well below those of comparably-sized US cities (Jackson, 1994). However, Toronto's reputation for safety and tolerance has been undermined by a series of events involving police officers and members of the city's black (West Indian) communities that have led to a serious deterioration in the police-community relations (see appendix E) . These events have prompted a questioning of Canada's commitment to multiculturalism, as institutionalized in legislative measures such as the Human Rights Act, the Charter of Rights and Freedoms and The Multiculturalism

Act ( Kobayashi, 1993).

Toronto's somewhat complacent self-image in terms of race relations is epitomized
in one of the city's earliest report on police-community relations, - Walter Pitman's
Report: *Now is not too late*. This is one of the well known reports that is often referenced
in relation to the early 70s. As Walter Pitman reported:

> Toronto became world-renowned in the early 1970s as the great metropolitan city
> in North America which has "made it". In place of racial riots, citizen alienation,
> traffic turmoil, this city had come through the 60s with a reputation for the
> preservation of its neighbourhoods, the creation of an efficient public system for
> police, fire and transportation services, and most important of all, that people of
> all colors, ethnic backgrounds and religious traditions could enjoy its public places
> in safety (1977:22).

However, from around 1989, this favourable image became harder to support as a series
of incidents involving conflict with the police resulted in the death or permanent injury
of several black people, often in very disputable circumstances (see appendix E).
*Maclean's* magazine, reflecting on these events, ran a cover story in January 1989 entitled
"Police Under Fire," referring to the barrage of criticism that had followed police
shootings in Toronto and other Canadian cities.[3] The daily press ran a number of similar
stories with a variety of controversial illustrations including the *Toronto Sun's* cartoon of
a gun-toting black man cheerfully hand-cuffed to a white police officer (16 January 1989).

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[3]  Maclean's maintained that Canadian statistics on fatal shootings by police compared
well with US figures: between 1961 and 1981, Canadian police were responsible for an
average of eight fatal shootings per year compared to the US where police shoot at least
one person per day (9 January 1989).

During Toronto's civic election in October 1991, tensions resurfaced. The issue of "Race and Crime" again made the headlines (Toronto Star 19 October 1991). In this case, the controversy was about the collection of crime statistics, with the accusations of racism being directed at those who favoured the identification of offenders by racial group. Then, following the Rodney King verdict in Los angeles, a peaceful protest march degenerated into a "rampage" along Yonge Street in downtown Toronto, reported in *Maclean's* under the headline: "Young Black and Angry: a Toronto riot spotlights a season of urban tension" (18 May 1992). This was followed by a series of official reports, including a specially-commissioned report on Race Relations in Ontario (Lewis, 1992) and an audit of the "race relations" practices of the Metropolitan Toronto Police Services (Andrews, 1992).

## Police community relations

At this point a brief overview of police-community Relations in Toronto at that time is warranted to contextualize the problematic.Before community police relations could come to dominate community relations, a set of related changes were required to guarantee the new order. The existing community boundaries had to be transformed from intra-community relations structure to a structure of inter-community relations in support of community policing. Intra-community relationships, embodied in monopolies of all kinds, cut into the control capacity of governmentality. The Black communities had to be

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made responsive to the needs of the state apparatus, by removing social control over the communities ( intra-community control ) by reducing the hold of community leaders over the communities. At the same time, state investment in voluntary organizations or Community Board of Directors had to be redirected towards the creation of an infrastructure of communication that could benefit policing without demanding excessive expenditures from the government.

Toronto is now the most ethnically diverse city in Canada, with 42% of the country's minorities, up from 9.4% in 1991 census (Statistics Canada, 1996 census). Such diversity is a fairly recent phenomenon. However, Toronto's population remained predominantly Protestant and British descent (Lemon, 1984). The development of the city's police services clearly reflects this highly sectarian past (Roger, 1984).

Official attempts to improve police-community relations in Toronto date back to the creation of an Ethnic Relations Unit within the Metropolitan police in the early 1970s. At that time the Unit was principally concerned with "the urgent need to understand the problems faced by recently arrived Italian immigrants" (Metropolitan Toronto Police, no date, p.1). The Unit then changed its name to the "Inter-Community Relations Unit" and set up a Black Section in 1975,[4] followed by sections for various other minority groups, in subsequent years. Added to these separate initiatives, the Police Services Board (formerly the Police Commission) adopted a comprehensive Race Relations Policy in

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[4] As a newly arrived immigrant, I was invited to join the Police Services at that time.It was an attractive invitation, but because of the label and the politics surrounding policing, I thought otherwise.

August 1989 including statements on community relations, employment equity, staff development and training, media relations and public complaints (Metropolitan Toronto Police Services Board, 1989). Ironically, this concurred with a rapid deterioration in relations between the police and the black community following a series of police shootings ( see appendix E).

Much of the public debate about these incidents in Toronto focused on the role of the Black Action Defence Committee (BADC) which formed in 1988 to coordinate protest against the killing of Lester Donaldson. BADC was given a hostile press reception, in particular Dudley Laws. Mr.Laws was referred to in *Toronto life* as "Toronto's most infamous radical black activist" (August 1989, p. 30). Mr. Laws described the Toronto police as "the most brutal, murderous force in North America" for which he was immediately sued for defamation by the Metropolitan Toronto Police Association (Share 18 April, 1991).[5] However, Art Lymer, the then President of the Police Association called BADC "a small group of extremists that does not represent or benefit the black community" (Globe and Mail 14 January 1989). As was shown, BADC received support from a number of community groups including the Canadian Jewish Congress, the Chinese Canadian National Council etc (*Now*, Toronto's free weekly community newspaper, 24-30 May 1990).

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[5] Further to this Dudley Laws was prosecuted for assaulting his wife, for which he received a probationary sentence (Toronto Star 10 August, 1991). He was convicted for assisting immigrants in gaining illegal entry into Canada. However, upon appeal the court dismissed the criminal conviction and placed him on two years community service.

After manslaughter charges were brought against PC Deviney in the Lester Donaldson case, Police Association President Art Lymer declared that police morale was at an all-time low. Under such circumstances Lymer called for the resignation of the then Attorney General, Ian Scott. He argued that the charges against PC Deviney was "a political move", inspired by "a small minority of black activists" who were not representative of "the vast majority of the black community which is law-abiding and supportive of the force". Some officers he claimed, had threatened to turn a blind eye to crimes committed by blacks: "Police officers will be reluctant to act and to arrest black people and they'll just take over the city and you'll be back to Detroit" (Globe and Mail 17 January 1989). Far from condemning these remarks as undisciplined or unprofessional, the public rallied around the police. This was demonstrated by way of phone-in programs on radio and television of an overwhelmingly supportive public of the police and public demonstrations by groups such as Citizen Opposed to police Slander (COPS), (Jackson, 1994). Concerns also mounted as some local politicians lent support to BADC's criticisms of the police.

Howard McCurdy (the only black member of the House of Commons at the time) argued that "...police forces are unresponsive to the communities they're serving..Many people feel that police are beyond the control of the community and act as if they're above the law" (Globe and Mail 9 February 1989). In order to consider a more broader range of opinion, we now turn to the evidence submitted to the 1989 *Task Force on Race Relations and Policing*.

On 14 December 1988, following the fatal shooting of Michael Lawson. The then Ontario Solicitor General, Joan Smith, appointed Clare Lewis, the then civilian head of the Metropolitan Police Public Complaints Commission, to chair a Task Force to investigate police community relations throughout Ontario (Ontario,1989). A variety of methods including a questionnaire survey of all police forces in Ontario, an invitation to submit written briefs and a tour of the province to receive oral testimony from groups resulted in 127 submissions from a wide range of groups and individuals.[6] This documentation allows direct insight into prevailing discourses of "race" that embrace various different 'constructions of criminality'.

The Task Force drew our attention to the grievances expressed by many minority groups and suggested that the police may be failing to honour their pledge of serving all members of the public equally (Ontario, 1989). The Report also highlighted complaints of police insensitivity towards visible minority communities and provided further evidence to support the charge of differential policing. Like the Scarman Report on the Brixton "disorders" in Britain (Scarman, 1981), the Lewis report did not sustain the charge of institutional racism.

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[6] The written submissions were held at the office of the Ontario Ministry of the Solicitor General. Access to this material was provided by agreement with Dan McIntyre, Director of the Solicitor General's Race Relations and Policing Unit, due in part of me being a Board Member of the Council of Race Relations and Policing.

**An analysis on evidence presented to the Task Force**

In what follows is an analysis based on a selective reading of the Task Force

evidence. however, I have included material from a range of perspectives, that highlights

a number of different constructions.

> This country ...... was settled by Europeans/Christians people and we intend that
> it remains this way (#106);

> The police should not be on trial for the shotting of these young criminals......
> Every country that let blacks in have lived to regret it ......Jamaicans produce poor
> unfortunate bastards by the thousands...Get your patriots straight (#32).

The relationship between minorities and the rest of Canadian society was also frequently

comment upon.

> The vocal minorities that have sparked your Task Force are but a small part of the
> overall population. I fear in order to pacify them you may alienate the police and
> the majority of people they serve (#41).

The question of "cop culture" (Reiner,1985) was frequently discussed as one of the

mechanisms through which police attitudes towards minorities are formed. This

contribution from someone who had involved in police-community relations training is

typical:

> ..... when this type of training took place... there was a certain amount of
> reinforcement of unproductive attitudes through conscious or unconscious peer pressure
> that could be described as ethnocentrism (#3).

One black parent in submission offered a sensitive analysis of how the press had

responded to criticism of the police. As the parent argued:

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.... each time there is an outcry for justice from the black community, there is an attempt to discredit those who come to the fore, by labelling them 'agitators'. The Dudley Lawses of this society have as much right to peaceful protest as the Art Lymers...... Dealing with attitudes of the police, it is commonly held view in the police service that the police should merely enforce the law without concessions to any one section of the community. Fundamentally, this is not an unfair stance, but in reality it is much too simplistic. When any group of people with different aspirations and cultural backgrounds adopt a style of living, apparently at variance with the norm, it is clearly just not good enough for the police to aver that all must be treated alike. It is right that the integrity of the law should be pre-served, but the means to achieve this end can be different (#33).

Apart from these specific examples, that give some insight into the different ways in which the relationship between "race", crime and policing are conceived. Newspapers and other media provided further insight into popular constructions of criminality. In May 1990 the *Globe and Mail* ran a feature article entitled "What Do Police See Encountering Blacks?". The article included material from an interview with a black lawyer who argued "that police are afraid of blacks. As the lawyer states, "they know intellectually that not all blacks are crooks, but emotionally, in their gut, it's a different story...Toronto police live almost exclusively in a white world and they police black neighbourhood like an army of occupation".

In 1986 a military metaphor was used when police swept through the predominantly black neighbourhood of Lawrence Heights in Toronto, making ten arrests. Local critics of the raid wrote to the *Toronto Star* (30 October 1986) that their community had been "treated as if was occupied by a foreign army". This was not an isolated incident. Other black neighbourhoods had been similarly targeted including a police raid

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on the Malvern Christian Assembly Church in January 1989 and a drug sweep of the Jamestown area in north Etobicoke in July 1989. In both of these cases, members of the black community described events in terms of an "invasion" or "siege" (Toronto Sun 11 January 1989; BADC press release, July 1989).

Additional common constructions include a symbolic opposition between the police and black people such as that reported in the popular magazine *Chatelaine* (February 1991) under the headline " 'white Bias' or 'Black Crime'?: Toronto's race crisis". Interestingly, the police are themselves treated as a kind of visible minority, closely paralleling the way the black community is represented. According to this constructions, the police are seen as a recognizable (quasi-ethnic) group, with a distinct appearance, a common occupational culture, strong internal loyalty and organizational coherence. Here, police-community relations are treated in terms of a theory of mutual mistrust that occurs "naturally" between all such groups. This view is clearly represented in the following quotation from a Haitian police officer in Montreal:

> .....the police force and Montreal's black communities are both suffering from the same syndrome: people are assuming from the criminal actions of a small minority within the black community that the whole community is criminal. In the same way,...there's and assumption that the racist actions of a small minority within the police force mean the whole force is racist. There's a mutual incomprehension.... that no one seems to be correcting (Montreal Gazette 27 July 1991).

Such constructions are widely supported within the professional and social science literature on police-community relations. This example from manual for Canadian law enforcement officers is typical, as Hill and Schiff (1986) tells us,

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On the one hand, certain minority group members, schooled by their history and their own embittering experiences, feel abused by the society at large and suspicious - even hostile - towards the police who are its agents. On the other hand, some police officers, operating under pressure in all communities, are burdened by an additional wariness and tension when dealing with visible minorities.

While there may be a fragment of truth in such common-sense arguments, what Hill and Schiff (1986) failed to appreciate is the unequal power relations that structure every interaction between the police and visible minorities and which make quite untenable the argument that the two groups suffer from the same syndrome.

## Crime Statistics

Current debate about race and crime statistics in Toronto goes back to 1988 when Staff Inspector Julian Fantino commented to the press about the level of crime within the Jane-Finch area, a low-income suburb well-known for its relatively high concentration of black residents. Mr. Fantino maintained that blacks were over-represented in certain kinds of crime. Constituting just 6 percent of the neighbourhood population, he alleged that blacks were responsible for 82 percent of robberies and muggins, 55 percent of purse snatching and 51 percent of drug offenses (Jackson, 1994). A similar debate was taking place in Britain at this time, as to the construction of mugging as a specifically "black crime". While it was widely asserted (Pratt, 1980) that "robbery must be classed as a predominantly 'black crime', Hall et al. and others (1978) had already challenged this

construction, arguing that "the mugging crisis was a form of moral panic, orchestrated around a politically and media-inspired crime wave". Despite the sensitivity of the issue, police officials repeatedly made provocative statements, such as Police Association President Art Lymer's unequivocal remarks on "black crime". In an interview with *Chatelaine* magazine (February 1991) he argued, " there is a problem with black crime out there.... 95% of crack is being distributed by blacks".

The debate about crime statistics has polarised into those who feel that such figures are needed in order to demonstrate the fairness of the criminal justice system and those who feel the data would lead to false inferences about the nature of racialized crime (Toronto Star 12 and 19 October 1991; Globe and Mail 8 February 1992). However, the issue cannot be divorced from, but must be inclusive of, the wider debates over the existence of "institutional racism" within the police services. In Toronto, as elsewhere, there has been an unrelenting reluctance to acknowledge the possibility of police racism even as a reflection of the wider society from which officers are drawn.

## Cultural Racism

Besides the many ways in which racism has been expressed traditionally - overt and covert, direct and indirect, and intentional and unintentional - racism is increasingly expressed through an apparent non-racist code. The result of such "cultural racism", according to Blaut (1992) is that "there is still much racism but few people who can be

unequivocally identified as racist". A key contemporary form of cultural racism is the association between certain geographical locales and particular racialized groups.[7] The process is exacerbated by the fact that many police officers work in these areas live in all-white neighbourhood and have little knowledge, beyond their working lives, of visible minorities. What is clear is no amount of community relations training is likely to redress the balance of a life-time's socialization. As Gilroy (1987) reminds us;

> " It is fruitless, for example, to search for programmatic solutions to discriminatory police behaviour in amendments to the training procedure when professional wisdom inside the force emphasizes a racist, pathological view of black familial relations, breeding criminality and deviance out of cultural disorganization and generational conflict. It this racist theory is enshrined in the very structure of police work, it demands more desperate remedies than merely balancing the unacceptable content against increased 'human relations' training."

## Discussion

The imagery of the alien violence and criminality personified in the 'dangerous supplement' and the illegal immigrant has become an evocative technique in the hands of

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[7]
A name is sufficient to connote the group without any direct reference to "race". In Toronto, a set of associations has been documented by O.J. Joseph (1984), West Indian Youth in Toronto in conflict with the law: Unpublished PhD. Dissertation, York University. "Black crime" he noted, has come to be associated with certain neighbourhoods: Jane-Finch, Lawrence Heights, Regent Park, St Clair-Caledonia etc. These are not inner city ghettos based on the U.S.A. models, but areas of high-rise housing where the racialization of poverty has led to the stigmatization of the whole areas and their inhabitants.

politicians and police officers whose authority is undermined by the political fluctuations of the crisis.[1] For them, as for many working-class Canadians, I would argue is the irresolvable difference between themselves and the undesired immigrants as expressed in the latter's culture of criminality and inbred inability to cope with that highest achievement of civilization - the rule of law.

For most of us, television's overpowering images of Black deviance - its regularity and frequency - are impossible to ignore. Television news, with its focus on violent street crime, also fuel the stereotype of Black criminality. Many local news programs lead off with a crime story - e.g., often showing a Black man hunching over, shielding himself from the camera, being escorted away in handcuffs by police. Though Black women are not usually the focus of crime news, they too have recurring roles. They are frequently shown as battle-weary, grieving mothers, photographed crying over the death or arrest of their sons and daughters. These negative images have been seared into our collective consciousness. It is no surprise that most Canadians believe that Blacks are responsible for committing the majority of crime. No doubt, many of the suspects paraded across the nightly news may be guilty criminals.[9] This is the myth, of what Russell (1998) calls,

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[?] Here I am referring to the contradictions in capitalism as a form of crisis. From these contradictions laws gets formulated. This will be dealt with in details in chapter 4.

[9] Here I do not intend to suggest that Blacks did not or could not commit crimes or to invoke a pastoral definition of the Black communities or the inner cities as places where crime did not occur. I sought instead to refer the reader to the images and representations of Black criminality which seemed to me to have achieved a mythic status in the lexicon of contemporary race politics. See Paul Gilroy (1987) arguments that concerns the "mythical status of Black criminality" in Law, Order and the

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the "criminalblackman." On balance, the picture that comes to mind when most of us think about crime is the picture of a young Black man (Baker, 1994).

Questions that could be raised then, is, how is it that Blacks are widely seen as both symbols of success and deviance? What accounts for these conflicting perceptions of Blacks and blackness? At the core of, the presentation of Blackness is the theme of contradiction. Images of deviance in which Blacks are involved are promoted alongside images of Black achievement.

The picture of Black success is partly presented in the form of fictional media portrayals of Black and White friendships. In the film industry for instance, Blacks and Whites are paired as partners in-crime, blood brothers, co-workers, and friends.[10] These images, however, do not effectively counter negative Black images. This is because sometimes underlying these Black and White pairing and images of Black success are subtle messages of Black deviance. The movies and television frequently portray Black achievement as a "reform" case. The television show *Designing Women*, illustrate this quite well. The black character, played by Anthony Bouvier, was an ex-convict, hired as the gofer for four affluent Southern White women. In the movie The *Shawshank Redemption*, two convicts, one Black and one White, become fast friends. In particular,

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Authoritarian State. Edited by Phil Scraton.

[10] Examples of Black-White buddy movies include Nothing to lose (Tim Robbins and Martin Lawrence), Gridlock'd (Tupac Shakur and Tim Roth), Pulp Fiction (John Travolta and Samuel L. Jackson), Die Hard 3 (Bruce Willis and Samuel L. Jackson) and Lethal Weapon (Mel Gibson and Danny Glover), to name a few.

the Black character, Red, was guilty of murder, while the White character, Andy, had been wrongly convicted of murder.

Another account for why Black success stories do not counterbalance images of Black deviance is that Black success is given a unique interpretation. In the minds of many, Blacks have "made it." In many instances Black superstars are not perceived in terms of their Blackness. A scene from Spike Lee's movie *Do the Right Thing* illustrates this point quite well. Two young men, Pino, who is Italian, and Mookie, who is Black, have a discussion about racism. Pino hates Black people and refers to them as "niggers." In an attempt to point out his racial double standard, Mookie reminds Pino that all of his favourite celebrities are Black (Magic Johnson, Prince and Eddie Murphey). Pino responds, "they're not really niggers.....They're not really Black, they're more than Black."[11] To some Whites, I would add, those Blacks who achieve large-scale success - Michael Jordan, Oprah Winfrey, Michael Jackson - becomes colorless. From this perspective, a credible measure of tangible progress without in any way disturbing the basic class structure of society is presented. While those Blacks who conform to the criminal stereotype remain "black."

Given this complex imagery, it is predictable that Blacks are viewed as emblematic of both success and deviance. The contradictory media representations of Black reflect a double-edged resentment - the threat of both Black crime and Black success. The result, as Russell (1998) argues " is cross-wired thinking about Blacks and

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[11] Spike Lee, <u>Do the Right Thing</u>, Universal Pictures (1989).

Blackness." While the media portrays neutral and in some cases positive images of Blacks, these images cannot compete with the overwhelmingly negative characterizations. This form of exclusion has larger implications for society, insofar, that the widespread negative images of Blackness and crime raise several questions: What is the role of history in understanding today's criminal justice system? Does the criminal justice system discriminate against Blacks? Is there any way to improve the relationship between Blacks and the police? What role does the media play in fostering tension between racial groups? And how can the law be used more effectively to address racial harms against Blacks?

## Hegemony

Any attempt to tackled these questions in relation to community policing must keep in mind the work of Antonio Gramsci, Livy Visano and others that give useful insight and caution in the function of hegemony.

### A Theory of Hegemony, Ideology, Consent

#### a) Hegemony

There are many interpretations of what Gramsci's concept of hegemony. According to T. J. Lears (1982), Gramsci's reformulation of hegemony is the "spontaneous consent given by the great masses of the population to the general direction

imposed on social life by the dominant fundamental group". Visano (1994) points out that

hegemony is established through the "consent of the ruled, a consent secured by the

diffusion and popularization of ruling class views classes," the reproduction of " a

prevailing consciousness [that] is internalized and becomes part of a 'common sense'.

Alternately, according to Carl Boggs, it is

> ...the permeation throughout civil society.... of an entire system of values,
> attitudes, beliefs, morality, etc. that is in one way or another supportive of the
> established order and the class interests that dominate it...To the extent that this
> prevailing consciousness is internalized by the broad masses, it becomes part of
> "common sense";....[12]

Similarly, hegemony could also be understood as Roger Simon posits, "a

relationship not of domination by means of force, but of consent by means of political

and ideological leadership"[13]. As Gramsci writes, the "ruling bloc has to subordinate the

other classes to the requirements of the productive process not just by issuing decrees, but

also through an ongoing transformation of moral values and customs in civil society"[14] -

civil society being the terrain on which classes contest for power, and/or the battle

ground upon which hegemony is exercised.

The definition operating herein combines all the above three elements and which

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[12] Carl Boggs as quoted by Edward Greer "Antonio Gramsci and Legal Hegemony" in Politics of Law: A Progressive Critique, David Kairys, (ed.), p. 305.

[13] Roger Simon, Gramsci's Political Thought - An Introduction, London: Lawrence & Wishart (1982), p. 22.

[14] Colin Sumner (1979). Reading Ideologies: an investigation into the Marxist theory of ideology and law. London, New York & San Francisco: Academic Press.

are related to the dispersal of power within structured belief systems and the consent

which is given to the maintenance of a social totality. Within this context, the exercise

of hegemony is infused into everyday practices through institutions such as the criminal

justice system, the education system, organized religion, the family, folklore, the media

and the law. From a cultural perspective, these institutions are considered "neutral" to the

extent that, according to Gramsci, they operate

> ...without `sanctions' or compulsory `obligations',...[yet they] nevertheless exert a collective pressure and obtain objective results in the form of an evolution of customs, ways of thinking and acting, morality, etc.[15].

However, the seeming neutrality masks the assertion of hegemony. For hegemony to be

asserted successfully in any society, Gramsci also argued that it must

> ...operate in a dualistic manner: as a "general conception of life"..., and as a "scholastic programme" or set of principles which is advanced by a sector of the intellectuals...[Gramsci observed that where] hegemony appeared as a strong force, it fulfilled a role that guns and tanks could never perform...[I]t encouraged a sense of fatalism and passivity towards political action; and it justified every type of system-serving sacrifice and deprivation. In short, hegemony worked in many ways to induce the oppressed to accept or "consent" to their own exploitation and daily misery[16]

### b) Consent

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[15] Antonio Gramsci Selection from the Prison Notebooks, Q. Hoare & N. Smith eds New York: International Publishers (1987), p. 242.

[16] Carl Boggs as quoted by Edward Greer, op.cit.,p. 305.

Consent is integral to the maintenance of hegemony and can be conceptualized as a series of power relationships geared towards the maintenance of a particular status-quo.Consent accomplishes a social complicity on the part of the general population in the enforcement of norms. "Hegemony is the equilibrium," Visano (1994) suggests, "between leadership based on consent and domination based on coercion". I might add that hegemony is a calculated mediation that operates within a liminal cultural space between frontiers and boundaries. However, as such, it is the working out of a "plot" that controls the contradictory space of disequilibrium that exists between "comfort" and the fear of its subversion by the "dangerous supplement".This artificial equilibrium and liminal space must be policed in order to maintain "the pleasure of meaning-giving order" (Rogin 1993: 509)

This consent can be achieved through force but it can also be achieved spontaneously. However, Gramsci's concern is with spontaneous consent; that which is "historically caused by the prestige (and subsequent confidence) which the dominant group enjoys because of its position and function in the world of production"[17]. This consent does not occur in the same way as a political party gains the consent of the people by virtue of winning the most seats in an election.

Gramsci's consent is synonymous with consensus and, according to Lears (1982),

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[17] Antonio Gramsci, op.cit., p 12.

is a "moving equilibrium". By using the phrase "moving equilibrium"[18], the implicit understanding is that hegemony, or the social production of consensus, is subject to a continuous shifting back and forth between the views held by the dominant group and those held by subordinate groups. The middle position or equilibrium is therefore a negotiated position, or a negotiated consensus. Gramsci's negotiated consent/consensus is viewed in relation to cultural practices which are shared by both the dominant and the subordinate groups, for example, religious practices/rituals pertaining to birth, christening, marriage, and death. Likewise, commonalities in trading and arbitration practices become the basis for social inter-action between the dominant and the subordinate groups.

## c) Ideology

Ideology is also integral to Gramsci's definition of hegemony, but it is a concept not clearly defined. Here again Gramsci's intended meaning has to be inferred. Stuart Hall's, Bob Lumley's and Gregory McLennan's interpretation links ideology to "superstructure" and, argues that it "cannot be understood outside

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[18] The concept of "moving equilibrium" is best understood in terms related to the emergence of counter-hegemonic views which are subject to co-optation and incorporation in the views of the ruling or dominant group as a means of re-establishing a new equilibrium or status-quo. It is here I will locate all commission of inquires. They facilitate and function to repair or re-established a sense of hope in the criminal justice system, like any other institution/system.

the...structure/superstructure complex" of the Marxist conception of the state.[19]

The claim is that Gramsci's conception of ideology "...is not judged according to a criterion of truth and falsehood, but according to its function and efficacy in binding together classes and class fractions in positions of dominance and subordination " (ibid., 48). Further, these ideologies can "become compounded, serialized or clustered in ideological formations, such as conversational discourse, theory, law, theology and popular images" (ibid). Hence, there is not only one ideology, but a complex of ideologies operating at any historical moment.

Louis Althusser offers the best explanation of the complex of ideologies in his essay titled "Ideology and Ideological State Apparatuses". In this essay, Althusser develops a general theory of ideology, or what he termed, a scientific theory to replace the descriptiveness of a Marxist notion of ideology as false consciousness. To be falsely conscious implies a "truer" consciousness which is external to the lived reality of the subjugated individual, that is, a reality that is other than the dominant ideology. Althusser's conception of ideology as state apparatuses and ideological state apparatuses are similar to Gramsci's notion of society as consisting of a base and super-structure. Althusser captures what Gramsci might have meant by cultural consent, that is, the accepting and "naturalizing" of certain "bourgeois" ideas and practices by "the masses"

[19]
S. Hall, B. Lumley & G. McLennan, "Politics and Ideology: Gramsci" in On Ideology-Centre for Contemporary Cultural Studies London: Hutchinson & Co. Publishers (1978), p. 45.

which occurs from the immersion of the individual within a matrix of overlapping ideologies, as represented by institutions such as the church, school, family, law, media, the criminal justice system and so on. Within these institutions, which Althusser labelled "ideological state apparatuses", individuals learn know-how "rules of good behaviour...rules of morality, civic and professional conscience which actually means rules of respect for the socio-technical division of labour and ultimately the rules of order established by class domination..."[20]. The dominant ideology within this matrix is the educational institution which Althusser argued allowed for the "reproduction of submission to the ruling ideology for the workers and a reproduction of the ability to manipulate the ruling ideology correctly for the agents of exploitation and repression, so that, they too, will provide the domination of the ruling class "in words"...and in forms which ensure subjection to the ruling ideology"[21]. Further, for Althusser, the ISA's are both the stake and the site of class struggle and where "the role of the ruling ideology is heavily concentrated, the ideology of the ruling class which holds state power..."[22] The ISA's and particularly the educational ISA is heavily policed by the "ruling ideology" and by ruling ideology, we can assume that Althusser meant the dominance of one body of representation over another whether by overt or ideological means.

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[20]
Louis Althusser, "Ideology and Ideological State Apparatuses" in Lenin and Philosophy and Other Essays ed. Brewster, Ben. Bristol: Western Printing Services Ltd., (1971), p. 128.
[21]
Ibid.
[22]
Ibid., p. 142.

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Within Althusser's social totality, individuals are "worked on/over" by the ideological structures amounting to what could be termed the ideological "marking" of the individual. This marking process, from a sociological point of view, is the equivalent of the process of socialization, with the "marking" occurring as an internal (unconscious) process which is manifested externally in practices. These ideological structures function in the capacity of inculcating certain societal values and, for the teaching of diversified and specific practical life skills geared towards the "reproduction of the means of production" which Althusser asserted are "provided more and more outside of production"[23]. Further, this marking process cannot be avoided since as Althusser rightly stated "individuals are born into and live through ideology"[24]; is a process of their conscious existence hence ideology cannot be either true or false. Thus, an Althusserian conception of ideology accommodates the understanding of ideology as the acceptance of a particular status or organization of a civil society, and as it operates at the level of "common-sense". For example, a belief in God, a belief in the need for education, a belief in the rule of law and so on. Or, alternately, one that is perceived to be necessary and sufficient for the existence of any society that subscribes to "law and order" (as opposed to a state of anarchy or lawlessness). The latter conception holds to the notion that it is not necessary for there to be a prediscursive truer knowledge existing somewhere that once exposed will make civil society less repressive. Also, even if there is cognizance of

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[23] Ibid., p. 127.

[24] Ibid.

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how certain classes obtained their positions of dominance, such knowledge would not necessarily result in societal revolt.

There is a certain class reductionism in Althusser's theory of ideology, where all subjects are necessarily class subjects. However, as Chantal Mouffe argues "[w]ithin every society, each social agent is inscribed in a multiplicity of social relations - not only social relations of production but also the social relations, among others, of sex, race, nationality, and vicinity"[25] Mouffe's conception of society is a complex of heterogeneous social relations possessing their own dynamism and it is in this complex that I propose the usage of ideology as linked firmly with symbols; the meanings which they represent, and the function which they serve. It is also the non-coercive part of hegemony, where the political state is bound together without force.Ideology in this context therefore functions in the capacity of "cement[ing] and unify[ing] the social block".[26]

Therefore, it can be argued that cultural (a concept of which I will return to below) consent involves more than just the activities of individual members. The cultural involves collective interaction through daily rituals where it is ensured that people learn, practise and reproduce the dominant ideology. This is similar to Michel Foucault's conception of the "production and circulation of specific regimes of truth - regimes which organize the relations between knowledge and action in specific ways in different fields

[25] Chantal Mouffe, "Hegemony and New Political Subjects: Toward a New Concept of Democracy" in Cary Nelson and Lawrence Grossberg, eds. Marxism and the Interpretation of Culture, Chicago: University of Illinois Press (1988), p.89-90.

[26] S. Hall, B. Lumley & G. McLennan, op.cit., p. 48.

of social regulation".[27]

It would therefore be significant for critical criminologist and critical race theorist to take issues relating to ideology very seriously in that, if we take Althusser seriously, we all at some level inadvertently reproduce our own oppression. It would therefore be in our interest to embrace a concept of ideology given that as C. Wright Mills argues,

> ...the overturning of repressive social hierarchies requires not just the organization of oppositional forces, but the deployment of ideological infantries: the contesting of definitions, the challenging of presuppositions, [and] the recasting of concepts".[28]

However, a creation of new ideologies must start from a clear understanding of how existing ones are manifested and how they function in society. Such an understanding is essential to critical criminologist and critical race theorist in /to projects of creating social transformation, or at the very least, for fundamentally undermining the legitimacy of the existing status quo.

The question that might need to be asked here, is: how is the law implicated in the practise of hegemony. As Vilhelm Aubert asserts, the relationship between law and power has long been noted: "[B]eneath the veneer of consensus on legal principles, a struggle of interest is going on, and the law is seen as a weapon in the hands of those

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[27] T. Bennett, "Putting Policy into Cultural Studies" in Cultural Studies eds. L. Grossberg, C. Nelson, & P. Treichler, Routledge (1992), p. 32.

[28] C. W. Mills, Getting out of the Cave: Tensions Between Democracy and Elitism in Marx's Theory of Cognitive Liberation.Presented at the t annual conference of the Caribbean Studies Association, May 25-27,1988, Guadaloupe.

who possess the power to use it for their own ends".[29]  The following section therefore highlights the linkages between political and legal hegemony which tends to be omitted from race analyses.

### d) Hegemony and the Law

In most societies, the law, even narrowly defined as an institutional system of jurisprudence, should be seen as constituting a principal vehicle for securing the hegemony of the state. Law shapes and is shaped by the state's socio-economic interest. The general activity of law is, however, much wider than state or governmental activity to the extent that, according to Gramsci, it includes the "activity involved in directing civil society in those zones...call[ed] legally neutral, [that is] in morality and in custom generally".[30]

The law exists in the intersection between the dominated and the subordinated groups; in/between the place where the consent of the state is negotiated. This mandate has remained basically intact since the early nineteenth century, that is, "protecting and maintaining the boundary between public and private, or alternately, between private

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[29]
Vilhelm Aubert, Introduction to Sociology of Law 9. 11 (Vilhelm Aubert ed., 1969) quoted in Cheryl Smart "Whiteness as Property" Harvard Law Review Vol.106:1707.  note 72, p 1727.

[30]
Antonio Gramsci, op.cit., p. 159.

property and public power".[31] Not only does law maintain this boundary, but it is also "able to define and separate the private sphere and private autonomy while simultaneously defining[32] zones where public power can be exercised freely and absolutely".[33] At the point where the public and the private spheres meet, the function of the law can be ambiguous in that it can either serve the purposes of the dominant group, or the purposes of the subordinate group, alternately or simultaneously. This ambiguity also contributes to its elevation to a privileged and hegemonic position. As I quote Sumner:

> the legal system is founded upon a series of ritually articulated ideologies which work to the benefit of the dominant class... [and] is but one of several ideological forms which combine to form and reproduce the ideological kernel of class hegemony".[34]

Legal hegemony is intertwined with political hegemony in western liberal societies and in a "modernistic" way, diffuses its worldview onto subordinate groups such that those groups will adopt a legal view as "natural". The hegemony of law is thus dependent on people believing in the necessity for the existence of a legal structure particularly if they adhere to liberal notions of civil society. Legal hegemony is also dependent on its access to the punitive (repressive) institutions of the state's apparatus of social control such as sending someone to prison if he/she breaks the law, imposing fines,

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[31] Antonio Gramsci, op.cit., p. 23.

[32] The process of being able to define reality, also determines hegemony.

[33] Elizabeth Mensch, "The History of Mainstream Legal Thought" in David Kairys, The Politics of Law - A Progressive Critique, p. 23.

[34] Colin Sumner, op.cit., p 4-9.

monetary and otherwise. This equates with Gramsci's conception of the law as being

"...the repressive and negative aspect of the entire positive, civilising activity undertaken

by the State... "[35] It also approximates Michel Foucault's "regime of truth", wherein,

according to Foucault:

> ...the legal apparatus, in both everyday practice and the criticism of institutions,
> one sees the emergence of a new strategy for the exercise of power to
> punish...[and] to make of the punishment and repression of illegalities a regular
> function, coextensive with society; not to punish less, but to punish better; to
> punish with an attenuated severity perhaps, but in order to punish with more
> universality and necessity; to insert the power to punish more deeply into the
> social body.[36]

The law is legitimized through consent, coercion and public opinion. Consent

herein is derived largely from the idea that legality provides the basis for community

living. To the extent that people obey the laws of society is tantamount to ratification or

consent even if there may be specific laws which are problematic. Coercion here can be

the direct state control required to enforce particular laws or it can be coercion linked to

the private sphere and the withholding of particular goods or services with the intent to

punish. Public opinion is also that which is linked to attitudes which are designed to

sanction non-conformist behaviours; the utilization of which results in public

ostricization. This is the law at its most hegemonic stage - legitimatizing the state by

aiding in the "organization of consent - the processes through which subordinated forms

[35] Antonio Gramsci, op.cit., p. 247.

[36] M. Foucault, The History of Sexuality, Volume I: An Introduction.New York: Vintage
Books (1980), p. 81-82.

of consciousness are constructed without recourse to violence or coercion"[37]. It is precisely at this point Black communities are sold social peace at the cost of social injustice.

It should be reiterated that I have been arguing that the functioning of political and legal hegemony are essentially the same, and that the systems of domination which are erected by both, inadvertently or deliberately, are designed to keep women, for example, in the private sphere (or at home) are basically the same. Legal and political hegemony are also synonymous with Eurocentrism, which from a Black perspective developed stereotypes of Blacks as "dependen[t], domestic[..], emotion[al], and sentiment[al]... "[38] This "ideology", that Blacks are the "inferior race", hence have to be protected, is what Nunn (1997) calls "the Eurocentric cultural experience" or "laws which maintains white cultural hegemony through false universal claims and the privileging of the white historical experience." To this end, the law should not be perceived as being benign or neutral, not by anyone and least of all not by Blacks.

### e) Culture

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[37]
Michele Barrett, The Politics of Truth - From Foucault to Feminism, Stanford: Stanford University Press (1991), p. 54.

[38]
Kenneth B. Nunn, 1997. "Law as a Eurocentric Enterprise". Journal of Theory and Practice: Volume xv spring: # 2. The University of Minesota Law School.See also Eugene D. Genovese,1976.Roll, Jordan, Roll: The World The Slaves Made; Vintage Bks New York.

One of the means through which hegemonic order achieves its desired results is culture, which pervades social relations and is both a product and a producer of ideological values and institutional systems. A construct of power relations, culture functions to solidify and perpetuate power through the inculcation of media images and "common sense" beliefs. Visano comments: "Culture , organized on hegemonic principles, is crucial to t he political economy, which in turn depends on instruments of authority to maintain control over capital and profit" (195-6). Moreover, culture drives the imperial frontier forward while insulating it against subversion.

However, there persists an interdependency between policing and criminality similar to that between constructing an ontology of "sameness" ("us") out of "otherness" ("them"). The frontier of order only exists on the basis of non-order that the power lines of hegemony demarcate, the linear divisions from which deviancy may be constructed, negotiated, and submitted to surveillance. However, the violent "cut" of the frontier is also the margin at which the disordering role of the countersubversive is enacted, hence criminalization.

### f) Criminalization

If order is based on the disordering function of relations of warfare, then, as Foucault suggests, "penal justice...is intended to respond to the daily demand of an apparatus of supervision half submerged in the darkness in which police and delinquency

are brought together" (1979:282). He proposes that during the 19th century the "direct, institutional coupling of police and delinquency took place: the disturbing moment when criminality became one of the mechanisms of power" (1979: 283). Thus, the police make use of classifying delinquency to control illegalities and to create the criminal as commodity of a cercarial industry.

A further connection was established, however, between policing and racism and criminality. At the same time as the panoptic system of penal justice created "docile bodies" of the public, the colonial legacy of racism was utilized to differentiate and simultaneously assimilate "non-whiteness" into a criminogenic, racialized category of counter-hegemonic threat. Thus, while the system could isolate and differentiate illegalities and individualized delinquency, the policing function could also demonize and imitate the hegemonic construct of deviancy by representing itself as an army defending the boundaries of delinquency are brought together is specifically the constructed "darkness" of ghettos and inner-city "jungle-ized" colonies. Within this liminal landscape, the police deploy counter-subversive invasion tactics to combat the "monster" of the "otherness" they first reproduce and then cannibalize it as a means of generating power.

The creation of what Stuart Hall terms a "sub-proletariat" or "super-exploited" class of black workers within British cities is actually an internalized re-colonization of immigrants from former colonies. Thus, marginalized urban areas of poverty and high unemployment tend to be transplanted "colonies" of previously conquered and subjugated peoples for the purposes of providing a reserve army of labour (just as people of colour

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were reserve armies of labour in the former colonies). Although accepted as immigrants into the original colonizing nation (Britain), the sub-proletariat underclass, according to Hall, continues to be attributed with the rank of the colonized "other", and is treated educationally, socially, and legally in a paternalistic manner as if its members still remained the "occupied" populace of an imperial possession (362-81). I should argue that this situation is also apparent in Canada, as recent criminal actions against West Indian suspects in crimes (the "Just Desserts" shooting, the highly publicized killing of a police constable in a drug-related killing in the Jane-Finch "corridor") suggest. The Jamaican-Canadians involved are painted as criminal aliens who, despite having lived years in Canada since they were children, brought their "disease" of criminal "otherness" with them from the "disorder" of the distant colonial territory.

In the United States, the original importation of Africans into the Thirteen Colonies for the purposes of slave labour has led, I suggest, to a similar situation where Black citizens are treated as an alien, disorderly presence. Even though "freed" from slavery, Afro-Americans are still represented as bearers of "jungle" behaviour and mentalities which include propensities toward crime and drug use, into white America.

Since the start of the 20th century, anti-drug legislation (in the United States beginning with the passing of the Harrison Act in 1914) has been utilized to engage in surveillance on suspected "dangerous" elements of the population and to segregate citizens on the basis of race and class. Historically, fears of counter-hegemonic forces were situated geopolitical, as drug use was alleged to be concentrated among the poor,

immigrants, and racial minorities. Thus, the drug threat was constructed as being the product of foreign, alien influences as well as being situated within the peripheral regions of urban decay and social dissolution (Lusane 1991).

Black "colonies" are ironically and liminally located in the urban core of cities while white middle-class families have moved to the "peripheries" of suburbia -- escaping, perhaps, to the "pastoral" like promise of new-made frontiers -- once more taming "nature" as a continuing process of modern "civilization". Infantilized as a sub-social "race" incapable of self-management, the black "colony" of contemporary EuroAmerica has been additionally marginalized by abstract notions of hegemonic family values. Ignoring economic and social conditions whereby most black males are denied employment, much government responses have concentrated on the proliferation of black families led by single mothers, and have pinpointed the inherent "weakness" of black family structures as a further etiology of disorder, drug abuse, and criminal production (Solomos and Rackett 1994: 226-7, Staples 1990). As Nancy Armstrong argues: The result...is a single melodrama in which "the family" becomes the victim of crack. This practice invites us to hold specific but nameless individuals responsible for destroying a highly abstract set of roles. The war against drugs is transformed into a war against the women and children who are victims of drugs (23). Anti-drug strategies have served to target black women as producers of criminogenic children who are biologically "programmed" to become gang members, drug dealers, and drug addicts (Davis 182-3).

Never allocated acceptance as members of a regular proletariat, these black inner-

"colonies" of the descendants of former African slaves and of more recent West Indian immigrants are kept predominantly underemployed and forced into adopting the role of a new lumpen proletariat. As the latter, they are often compelled to choose street "hustling" as an alternative means of petty capitalistic survival (Hall 362-81). In fact, the Black Panther movement in the United States in the late 1960's incorporated numerous members of local gangs originally used for protection from white supremacist. The Black Panters attempted to enlist their "dangerous" status as a means of empowerment, emancipation, and counter-hegemonic resistance (Davis 293-300). However, since the Panthers' virtual decimation at the hands of the authorities, the ghetto lumpen proletariat has ironically turned to a more ambitious means of counter-imitating capitalistic activity: plugging into the lucrative and volatile crack-cocaine trade.

The nuclear family unit and standardized suburban household permit discipline and control of the general population, of the "super-exploited" into a panoptic classification of illegality. Furthermore, I maintain that drugs have become a device of double-colonization: firstly, as a means of colonizing the poor and marginalized of the black community -- through addiction and dependence on imitative and commoditized capitalist employment/enslavement by the illegal drug industry -- and secondly, ad commodities of a cercarial system of police surveillance whereby criminal drug use can be utilized as a means of listing, differentiating, isolating, and policing a dangerous and racialized underclass.

The point to be noted in all of this is that a significant section of the Black communities lived on the margins of "official" society and hardly fitted, therefore, the

vision of an urban proletariat. Living in and around Black communities, their presence, at the same time, was a powerful reminder of (a) the precariousness of the material security of the Black communities, and b) the alien standards of judgement that were often deployed against them to 'manners", domesticate and marginalised. However, while this served to permanently exclude and deny these marginal sections, it also provided a freedom and mobility that opened them to a range of discursive possibilities. And it is here that the problem arose.

### A concluding remark

Permanent unemployment/underemployment, marginalization, the criminal depictions often provided by the mass media and sustained by the general public's belief that most Blacks are criminals produced a certain criminality. This phenomenon tended to mark entire communities, resulting in exclusion . And it is this spectre of criminality that haunted middle class Toronto. The emergence of Jane/Finch and Regent Park as the sites of this criminality not only served to telegraph avoidance but also the significant moment in establishing these communities as the "dangerous supplement". And once these communities has been so named and fixed in the imagination of all, the mechanisms of exclusion and social control are inescapable. In other words, the "criminality' of the

communities created a "moral panic"[39] for middle class Toronto and by extension the prevailing hegemony which produced its own "ideological frame" and subsequent response to contain, domesticate and eventually control. Herein lies a call for community policing. It is a call for a form of policing that appears to give Blacks the power to define what is the "order" to be policed. It is a call for community policing to maintain "order" out of 'disordering" Black communities, thus, a form of exclusion.

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[39] The concept of a "moral panic" is taken from Stuart Hall et. al. Chapter 1, "The social history of a Moral Panic", pp.3-28, and intended to suggest the emergence of a social condition that produces a state of politico/ideological dislocation that suddenly throws up the question of social/legal control.

# Chapter iv

## Race, Citizenship and Exclusion.

This chapter will examine the utility of the concept of citizenship in understanding both the ideological and material conditions under which black people[1] live their lives in Canada, and under which they receive discriminatory treatment within the criminal justice system. Citizenship is essentially about inclusion and membership. It will be argued that for black people in the 1990's, formal and informal mechanisms of exclusion serve to deny them their full social, economic and political rights of citizenship. Exclusion manifests itself through the denial of legal citizenship (effected through immigration policies) and denial of social citizenship through the experiences of poverty and racism. A case study will be provided. After a brief discussion of the terminology of citizenship, the concept will be analyses with particular reference to the legal and social policies which both generates and reinforces exclusion.

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[1]. I use the term 'black' to describe all those minority ethnic groups who suffer from discrimination. But there are differences in the experiences of those groups, and when referring to such differences and to literature which uses alternative categories, distinctions will be made.

Marshall (1950) outlined three elements which constituted citizenship: the civil, political and social. The civil element is associated with the rule of law: liberty of the person, freedom of speech and the right to justice. The political element concerns the ability to participate in the electoral process, as representative or to vote. And, the social element consists of a whole range of activities from the right to economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society (Marshall,1981:10). The realization of full citizenship, as Cook reminds us, "involves three different sets of social institutions: the criminal justice system, parliamentary institutions and those institutions concerned with the provision of education and social welfare" (1993:137). However, their contributions to citizenship are, to a degree interdependent, as Barbalet, points out, "a political system of equal citizenship is in reality less equal if it is part of a society divided by unequal conditions" (1988:1).

Implicit within citizenship theory is the assumption that citizenship itself has the capacity to erode such inequalities. Marshall's early works held that "citizenship may unite a society divided across class lines and impose modifications on class" (1950:84). However, thirty years later he further argued that " the right of citizenship inhibit the in egalitarian tendencies of the free economic market, but the market and some degree of economic inequality remain functionally necessary to the production of wealth" (1981:12). As Cook argues, "citizenship may provide a basis of *apparent* equality upon which the structure of capitalist inequality could be built" (1993:137). It is clear then that

citizenship is seen to unite where class divides, but the apparent unity gained through equal legal and political citizenship rights serves to conceal the fundamental economic inequalities inherent within and functional for capitalist societies.

Leaving the functionalist arguments aside, the critical issue here is that full and equal citizenship, involving the elimination of social inequality appears incompatible with the operation of free market economics. It is useful to point out here that as Marshall (1981:11) sees "all who possess the status are equal with respect to the *rights* and *duties* with which the status endowed", fits neatly within the conservatives reworking the concept to emphasize the "duties" of citizenship. This theme is central to the responsibilization strategy (see diagram 1), one of many salient mobilizating technique for community policing. Within this perspective the 'entitlements' of citizenship are conferred only upon those who are responsible and active in carrying out their duties as citizens.

For theorists on the left, the right of citizenship remain the paramount concern. As Lister (1992) puts it:

> Citizenship is defined in social as well as political and legal terms: it denotes the ability to participate fully in the social and political life of the community....Poverty is corrosive of citizenship...For women and members of black and minority ethnic communities living in poverty, the exclusion from full citizenship is often compounded.

It is useful at this point for a brief history of Caribbean immigration, to contextualise the discussion.

Caribbean immigrants began entering Canada at the turn of the twentieth century.

They came primarily to work in the steel mills and coal mines of Cape Breton, Nova Scotia, and around 1911 to the Province of Quebec as domestic labourer. It was the shortage of domestic labourers in this province that prompted the emergence of the first Caribbean domestic Scheme with Canada (Calliste, 1991). Thus between 1922 and 1931, three quarters of the Caribbean blacks who came to Canada were domestic servants. However, many were soon deported because of an imminent fear that they would become a public burden. Nevertheless, Macklin (1992: 688) notes that the deportation coincided with periods of recession, thus, blacks were fired to make room for white servants.

In 1955 a second Caribbean domestic scheme emerged. This scheme resulted from the lobbying efforts of Caribbean government and Canadian employers. The former accused the Canadian government of having racist immigration policies which deterred the entry of Caribbean immigrants into Canada. Canadian employers, on the other hand, fought for the scheme because Caribbean domestics proved to be cheaper to acquire than other groups. Consequently, in 1955 an agreement was reached between Canadian employers, and the governments of Jamaica, Barbados and Canada (Macklin, 1992: 689; Calliste, 1991: 105). "Under the Scheme, single women between the ages of 18-40 with no dependents and at least an eighth grade education were admitted to Canada as landed immigrants on condition that they remain in live-in domestic servants for at least one year" (Macklin, 1992: 689).

Both Macklin (1992) and Calliste (1991) commented that the decision to admit Caribbean domestics as landed immigrants came about primarily because of two factors.

They noted that the first reason was in response to the criticisms that Canada received concerning its exclusionary and racist immigration policy, which many likened to an indentured labour protocol. The second reason was the belief held by both Canadian employers and Canadian governments, that unlike European immigrants, Caribbean immigrants were less likely to leave domestic service at the end of the one year period. As well, Macklin (1992) and Calliste (1991) further noted that the decision by the Canadian Government to establish the 1955 Scheme also came about because the former retained the right to deport a woman at the expense of Caribbean governments, in the first year, if she became pregnant or terminated her contract with her employer (Calliste,1991: 106; Macklin, 1992: 689). Despite this, however, Macklin (1992: 693) observed that under this domestic workers program, 70 percent of the Caribbean immigrants who applied for landed status were successful.

Increasingly, the Domestic Workers Scheme came under attack. It was criticized as being unnecessary in lieu of the proposed changes to Canada's immigration policy. These changes, which placed an emphasis on skills as the main selection criterion for immigrants, occurred in 1962. In addition, the Caribbean Association in Ottawa noted that the Scheme condemned Caribbean women to a second class status in Canada and should therefore be cancelled. Alternatively, the Association suggested that they should be treated as skilled immigrants under Canada's 'preferred'[2] immigration policy. Furthermore,

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2  Note Hawkins, 1991: 27. The Preferred Immigration Policy was established in 1993. It allowed Canada to select immigrants from preferred countries to fill certain occupational positions in Canada. These countries included Britain, Norway,

Caribbean domestics were reportedly being paid less than their white counterparts. Some critics of the Scheme estimated this wage difference to be about $150 per month. In addition, others complained that the small number of Caribbean immigrants admitted under the Scheme did little to curb the increasing unemployment rate in the Caribbean (Calliste, 1991: 106-113).

Caribbean governments were also criticized for their involvement in the Scheme. It was argued that Caribbean governments fostered the 'brain drain' from the Caribbean. Under the Scheme, in order to maintain favourable relations with the Canadian government, Caribbean government's selected people on the basis of skills and education rather than past employment in the domestic service. This practice was further aided by the changes to Canadian Immigration Policy in 1961, which required that the educational requirements for domestic workers from the Caribbean be changed from grade eight to grade nine (Ibid.). As a result, "many women were qualified as teachers and secretaries, but came as domestics because other avenues of immigration were closed" (Bolaria & Li 1988: 201). World events, as explained below, along with the introduction of new immigration policies from the 1960's onwards led to an increase in the numbers of Caribbean immigrants entering Canada.

First, the new policies were aimed at removing racial discrimination, but instead

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Sweden,Denmark, Finland, Germany, Switzerland, Holland, Belgium and France. See also Vaughn Robinson (ed) 1993, _The International Refugee Crisis and Canadian Refugee Policy to 1980: A Historical Overview_: Great Britian: Anthony Rowe Ltd.

established skills as the main criterion in the selection of unsponsored immigrants. Consequently, Caribbean immigrants were able to apply for permanent status in Canada other than through the domestic workers scheme. Second, in 1962 Britain ended its 'open door' policy between itself and its Commonwealth dependencies. As a result Canada and the US became the principal countries of choice for Caribbean emigrants (Anderson, 1993: 38). Thirdly, countries such as Jamaica and Trinidad and Tobago got their independence in 1962. Hence these newly independent Caribbean islands could now conduct diplomatic relations with other countries, as well as negotiate mutually agreed upon immigration policies. Fourth, Caribbean migration during this era was further encouraged by Canada's need to rebuild itself after World War 11. As a result, in both Canadian and American societies, there was a need for middle and upper level skilled workers. "The Caribbean was over-supplied with skilled workers, who because of the underdeveloped state of their own economies were forced to leave their own homeland" (Anderson, 1993: 37).

Between 1962 and 1967 the number of landed immigrants from the Caribbean arriving in Canada was still under 5,000 per year. Many critics maintained that the new regulations were still racist, as they retained policies which favoured the sponsorship of a wide variety of relatives for European immigrants. This privilege was not extended to non-European immigrants (Hawkins, 1991:38-39). Interestingly, the new Immigration Regulations of 1962 sought to eliminate all discrimination based on race, colour or creed. In practice, however, the Immigration Regulation still favoured Europeans. Thus,

Canadian officials "rightly saw that Canada could not operate effectively within the United Nations, or in the multiracial Commonwealth, with a millstone of racially discriminatory immigration policy around her neck" (Hawkins, 1991:39).

In 1970 the United Nations designated 1974 as World Population Year. This made population growth policy a high priority on Canada's national agenda. The aim of this UN declaration was to encourage countries to link population growth with economic and social development. One way Canada had traditionally sought to do this was by allowing more immigrants to enter Canada, and 1974 was no exception. Thus, one of the consequences of this announcement was an increase in the number of Caribbean immigrants entering Canada in that year (Hawkins, 1991: 44). However, it is not my intention to  give a detailed history of the  immigration policy. In a legal sense, citizenship was and essentially still is a device for the administration of immigration control. After a careful reassessment, key themes do emerge from the historical and political literature which help to explain the ways in which the status of citizenship is still formally and informally denied to black people. One such theme is the racialization of immigration and crime issues in Canadian society.

Bill C-44 illustrates this quite well[3]. In this respect, Bill C-44 was an enormous

3      On June 15, 1995, new immigration legislation tabled by then-Minister of Citizenship and  Immigration, Sergio Marchi received Royal Assent in the House of Commons. The legislation, Bill C-44, included several important amendments to Canada's Immigration Act R.S.C. 1985 c. 1-2  with respect to the rights of permanent residents, Convention Refugees and sponsored applicants for immigration deemed to be a "danger to the public" by the Minister of Citizenship and Immigration. The Immigration Minister has long had the authority to issue a security  certificate against a permanent resident or

shift in the Immigration Act, particularly in light of the immediate and future consequences of deportation. Section 70(5) deprives individuals in Canada of their rights to various avenues of recourse from the issuance of a danger opinion and their corresponding removal from Canada. This Bill impacts severely on permanent residents, regardless of the length of time they reside in Canada. Once convicted of certain offenses they would be ordered deported. Section 70(5) removes the right of a permanent resident to an appeal from such deportation order, before the Immigration and Refugee Board (Appeal Division) with respect to the alleged illegality of their removal order or the possible inequity of removing them from Canada. Sponsors, who are Canadian citizens who sponsor a member of the family class for permanent residence in Canada, where the

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other individual in Canada, after having initiated procedures with the Canadian Security Intelligence Service and in the Federal Court on an ex parte basis. Upon issuance of a security certificate against an individual, the individual is rendered inadmissible and liable to deportation from Canada, without a right of appeal to the Immigration and Refugee Board (Appeal Division) (s. 19; 27; 39-40 of the Act). The Act has also vested the Immigration and Refugee Board (Adjudication Division) with the power of detention where individuals in Canada may pose a danger to the public (s. 103(3)). Bill C-44 An Act to amend the Immigration Act and the Citizenship Act and to make consequential amendment to the Custom Act, S.C. 1995, c.15 expanded existing provisions in the Act relating to the Immigration with broad powers to issue an opinion respecting the branches of "dangerousness"of individuals, without consolation or concurrence from other adjudicative branches of government such as the Immigration and Refugee Board of Federal Court. the threshold offense carrying a possible maximum penalty of ten years or more. Additionally, permanent residents, returning residents, visa holders and Convention Refugees appealing removal orders lose their right of appeal if found to constitute, in the opinion of the Minister's delegate, a The Implementation and Impact of the Danger to the Public Provisions Of Subsection 70(5) of the Immigration Act of Canada. A Discussion Paper. Toronto

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Applicant has been determined to be a "danger to the public" also lose their right of appeal, pursuant to subsection 77(3.1)[4].

In light of the insidious nature of the immigration legislation of Bill C-44, it is useful to delve into the social and political context that beset its introduction and immediate implementation against persons in Canada. In January 1994, Sergio Marchi, the then Immigration Minister announced a public consultation process, aimed at setting immigration targets for the next ten years (Noorani and Wright, 1994: 29). This announcement was received with scepticism by anti-racism activists, who felt that Reform Party is influence and a prevailing anti-immigrants climate were behind the government's action (ibid). The former Tory government, it must be remembered, had introduced three major bills on immigration and refugee policy, designed to restrict the number of new arrivals and restrict the appeal rights of refugee claimants (ibid), a theme common in Canadian immigration policy. Further, there was a global shift to the right and Canada, like many other countries began closing its doors to immigrants and refugees. Noorani and Wright (1994) have observed, "that in Europe far-right political parties were helping to frame debates on immigration issues. In Germany, Neo-Nazis

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4  See appendix C. Also, the Operations Memorandum EC 95-05, issued by Immigration Canada on July 17, 1995, sets out guidelines relating to the profile considerations and types of offence which might give rise to a referral for a danger opinion. The provisions would normally apply to persons whose offenses involved violence, narcotics, trafficking, sexual abuse, or the use of weapons, offenses which are punishable by a term of imprisonment of ten years or more. C-44 Enforcement Procedures, Operations Memorandum 95-05, Citizenship and Immigration Canada,
National Headquarters, 17 July 1995 (see appendix D).

torches refugee shelters and immigrants' houses and the government responded by tightening its refugee policy. In Canada, white supremacists groups began to grow in urban centres across the country". The African Canadian Legal Clinic makes similar observation: "In Canada, the anti-immigrant mood was heightened by the recession and extreme right-wing political parties such as the Reform party were gaining in political strength". This political reality and social climate had a profound impact on the shift in the Liberal government's immigration policy. As Noorani and Wright (1994) points out,

> "the rise of the Reform Party and the recession inspired increase in hostility towards immigrants quickly drove the Liberal to abandon their Trudeau era image as the immigrant's party. After coming to power, the government,s rhetoric moved steadily to the right, in accordance with the prevailing anti-immigrant political attitudes and they refused to take the political risks that being pro-immigrant entailed".

Another factor that influenced the government's immigration policy was the 'perception' by Canadians "that a significant number of crimes were being committed by immigrants" (ibid), a perception in part shaped by the mass media. However, two particular cases helps to further make this point. The homicide death of 23 year-old, Georgina Leimonis on April 5, 1994 (Toronto Life,1994:7) and the shooting Todd Baylis, a police constable killed in the line of duty (Cannon,1995:9).

The death of Georgina Leimonis came about during a late night robbery of the Just Desserts Restaurant, in Toronto. The outrage that followed Ms Leimonis's death created a climate of considerable delirium. Torontonians said they no longer felt safe in 'their' city, despite the fact that statisticians and criminologists alike were saying that the crime

rate for reported crimes of a non-violent nature had actually fallen and the reported rate of violent crimes had remained stable for years.[5] Similarly, Todd Baylis, was shot and killed in Toronto in June, 1994, by Clinton Gayle, who had been ordered deported to Jamaica in 1991 (ibid.10) This shooting by a deportee, less than two months after the shooting of Georgina Leimonis, became a point of reference for anti-immigrant lobbyist groups in linking crime to immigration.[6] The political and the social climate fostered the perception of a connection between immigrants and crime. In such a political climate the Liberal government responded to this perception by embarking on a political campaign to rid Canada of its 'undesirables' and to improve its image of being tough on crime (see note 6).

The public frenzy prompted the formulation of a special Royal Canadian Mounted Police task force to track down and deport foreign born criminals[7]. This also triggered the implementation and passage of Bill C-44. It must be remembered that the campaign to 'clean house' was launched in July, 1994 following the death of these two individuals. The

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5 "Toronto's homicide rate, at two in 1000,000 has remained steady for years... Does murder become an issue only when it moves uptown?" "Guns and Roses (Geogina Leimonis murder)". Toronto Life, Vol. 28(9). June, 1994:7.

6 "The government is responding to a perception that there's a wave of crime and it's caused by immigrants. That's patently false, but the government deals in political perceptions." Toronto Immigration lawyer, Cited in "Critics say Law Makers Scapegoat of Immigrant Criminals". Canadian Press Newswire. September,1996

7 "manhunt Police have nabbed 3,600 Alien Fugitives, with 9,000 on the Lam". Maclean's (Toronto- Edition). Vol. 109(33).12 August 1996.

outrageous nature of this politicization of immigrants and crime has been condemned by many lawyers, legal scholars and organizations. Critics noted that the government views of immigrants and criminality as synonymous was used for political gains.[8] However, the position of the government was a plank of the Reform Party, a position that had led Preston Manning a hair-breadth away from becoming the country's official Opposition (Cannon, 1995:1).

The "perception" of criminality attached to immigrants led to renewed calls by Bishop Sotirios Athanasoulas, Head of the Greek Orthodox Church in Canada, for the collection of crime statistics based on race and country of origin, demands for greater police powers, more rights for victims and less concern for the rights of criminals (Cannon, 1995: 11).What is of interest here is that the figure of the 'other' is combined with an intriguing development of spatial metaphors in Canada's law and order discourse. Crime is constructed as a threat to 'inner security', a term which embraces the emphasis by the Justice and Immigration Departments on the protection of the legal order, and simultaneously, individual feelings of confidence in the ability of law to ensure order. Questions about 'inner security' are, thus, regularly used to establish individuals' psychological sense of security and well-being. Their perceptions of safety levels within

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8 "Immigrants with criminality have become a political football....Politicians want to be seen to be doing something and this is doing something. Whether it's the right thing or not is another matter." Gordon Maynard, Canadian Bar Association. Immigration Law Section, Canadian Bar Association 1996 Annual Meeting, cited in "Lawyers Condemn Process for Deporting Dangerous Criminals". Canadian Press Newswire, 27 August 1996.

the communities, of personal safety and, more narrowly, of fear of crime became manipulated. It is clear then that the appeal of the Bishop to 'inner security' plays a role in Canadian criminal justice discourse. Thus, the fear of crime strikes at the heart of a central promise held out by the legal, political, and constitutional order, arguably leaving Canadian society vulnerable to unmanageable moral and perhaps psychic panics in situations of rapidly increasing fear of crime. This in turn raises an interesting set of questions about how such panics have generally been directed against. As argued previously, it is the role of the mass media in shaping perceptions into seeing and non-seeing.

The media may have had a significant role in shaping public and political opinion which led to the passage of Bill C-44. Following the deaths of Ms. Leimonis and Constable Baylis, the Canadian public was overwhelmed with stories linking crimes with immigrants and the flaws in immigration policies[9]. The Toronto Sun ran what many felt

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9  The following are examples of quotes from newspaper stories which illustrate the media's role. "Tuesday April 5. Three men stroll into the Davenport just dessert...randomly gun down patron Georgina Leimonis. Then outrage..Cries go out for tougher gun control legislation, stiffer immigration restrictions". "Guns and Roses (Georgina Leimonis Murder)". Toronto Life. Vol.28(9). June, 1994:7.

"When three men barged into a chic sweet shop called Just Desserts last April, the blast from their sawed-off shotgun reverberated from coast to coast...Leimonis'slaying galvanized Canadian around an issue once seen as a uniquely American obsession: Crime." "Crime, The Perception Gap: Despite What Crime Experts Say, Demands for harsher Penalties are Growing Louder (MacLean's/CTV Poll)".MacLean's Toronto-Edition. Vol.108 (1). January 1995: 28-39.

The Toronto Sun ran a frenzied campaign that practically incited lynching - a photo of a Jamaican-born suspect was headlined "Hang Him". It became clear that this "debate"

was a racist, irresponsible and sensational campaign playing into the perceived link between crime and race.[10] The media did not portray the shooting as isolated incidents. Rather, the media portrayed entire black communities[11], particularly immigrant black people as communities of criminals. The publicity surrounding these two shootings helped to obscure the fact that the suspects in the Leimonis case were Jamaicans only by nationality, having spent most of their formative years in Canada. Interestingly, while this series of events and contextual factors, "tough, armed, dressed for court in their flashy clothes, grinning at the cameras, proven lechers, with their housefuls of fatherless children " (Cannon, 1995: 14) generated a media frenzy and public outcry, there was no such media or public outcry directed at the heinous crimes committed by other immigrants. For example, a white German immigrant, Wolfgang Muehlfellner had killed his wife, burned

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in the Sun was not about immigration, it was about race. Toronto Sun billboards around the city displayed large mug shots of fictitious criminals...with "Deported" stamped on their faces and the paper's slogan, "We'll be there". Arif Noorani and Cynthia Wright, This Magazine December, 1994 and January, 1995.

The Toronto Star also ran headline stories. For example, Just Dessert killing a "cowardly, dirty, filthy act of urban terrorism." Police Chief William McCormack, April 7, 1994.

[10] The Toronto Sun ran a frenzied campaign that practically incited lynching ... a photo of a Jamaican-born suspect was headlined "Hang Him". It became clear that this "debate" in the Sun was not about immigration, it was about race. Toronto Sun billboards around the city displayed large mug shots of fictitious criminals...with "Deported" stamped on their faces and the paper's slogan "We'll be there" (Arif Noorani and Cynthia Wright This Magazine December 1994).

[11] I use the expression "communities" deliberately to indicate that the African/Afro-Caribbean segment of the population is/was not only divided along class lines but contained other internal fractures such as gender, religion, nationality etc.

her body and buried the remains in their backyard. He was later convicted of manslaughter in 1985 and ordered deported in 1988.[12] He appealed and was allowed to stay in Canada until 1994, when his deportation order was stayed (African Canadian Legal Clinic, 1997; 9).

The social climate, political landscape and media hysteria over two high-profile deaths had set the stage for the passage of Bill C-44, and the institution of s. 70(5). As the Canadian-Press-Newswire, points out,

> Legislation that aims to keep criminals out of Canada - or make it easier to kick them out if they get in received royal assent ....the last legislative step needed to become law. Bill C-44, sponsored by immigration Minister Sergio Marchi, will bar refugee claims by people convicted of serious crimes, tighten parole rules for those under deportation orders and toughen the appeals process against deportation. The legislation was said to be a response to public outrage over cases like that of Oneil Grant, charged in the highly publicized 1994 slaying of a Toronto cafe customer [Georgina Leimonis].[13]

The point to be noted in all this is that, this legislation led to a further erosion of the demarcation lines between immigration and criminal law. Tannis Cohen (1988) refers to law as "a two-edged sword that can be wielded to further justice or to persecute and oppress". In the context of racism and law, this statement implies that although law has the ability to protect against racism and foster equality, law remains a principal tool for maintaining racial inequality. However, as illustrated from Canadian Immigration laws

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[12] See Note 10.

[13] "New Laws Tighten Immigration Lobbying Rules (Bill C-44)" Canadian-Press-Newswire, June 16, 1995.

and policies, I postulate that:

- people of European ancestry have been and continue to be the "preferred race" — always welcome in Canada.

- racism is inherent in the Canadian legal system, manifesting itself in both neutral and overt forms; and

- people of non-European ancestry — the "non-preferred races" are excluded and rejected from Canada.

David Matas (1989) sums up the relationship between law and racism in Canada's immigration system in this profound statement: "...to talk of racism *in* Canadian immigration policy.... is being generous. Rather we should talk of racism *as* Canadian immigration policy" [Emphasis in original].

The intersection of race and law has been, and remains a fertile ground for much debate among critical, race and legal scholars.[14] Basically, these scholars represent two schools of thought:; the first school is composed of Marxist, Neo-Marxists, and some civil rights advocates. This school, asserts that the law was established, and exist to advance the interest(s) of the dominant group or class, deliberately ignoring the oppressive effects of the people of colour. The second school championed by liberal theorists posits that law is an appropriate medium for contending, advocating, and obtaining rights against racism.

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[14] See Kenneth B. Nunn, Law as a Eurocentric Enterprise, #2 Law and Inequality: A Journal of Theory and Practice. Vol. xv. 1997. Richard Delgado and Jean Stephancic, Critical Race Theory and David Kairys ed. 1982, The Politics of Law.

However, both schools reveal the contradictions inherent in the law. This thesis, tilts predominantly in favour of the first school of thought, but also conceives the second school as a vehicle for effecting change within an inherently biased legal order.

In Canada, as elsewhere, the history of so-called modern legal institutions depicts law as an instrument used to establish, maintain, and justify the dominance of racial "elites".[15] The logic of law underlaid the institutionalization of Eurocentrism[16] and was used by a nascent capitalist class to establish its hegemony. By obscuring the inequalities created by European domination, law protected and ensured the privileges of the dominant group, while serving as an instrument to control and exploit the majority. Law was not only used to exploit and to perpetrate domination, but it served to justify European domination.

In the contemporary arena, civil rights activists have made significant inroads in criticizing and seeking redress for these skewed application of law. Despite its efforts, the law is still stacked, not only because it constructs a world at once too colourless, but more so because it expressly disfavours people of colour. Athornia Steele (1993), examinans the prevalent myth of a colour-blind nation. She asserts that persons with

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[15] Ibid.

[16] I rely significantly on the work of Kenneth B. Nunn here, in the usage of this term. He adopts a position that law is "Eurocentric" ...because it expresses attributes that are characteristic of European culture. Law in this sense, would be "Eurocentric to the extent it was a tool of prejudice or bias....it may be used to describe the practice of viewing history..science or human practices, from a European perspective, as if Europe was the point of origin or reference for all human affairs.

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political, social and economic power, "including those who manage to obtain a free ride because if their skin colour",[17] continuously promote the notion of colour neutrality within a nation that is blended by various races. This fairly accurate perception of the colour-blind nation extends to the Canadian legal system.

It is clear that the government used the political landscape, social climate and media hysteria surrounding two isolated crimes in Ontario to justify regressive changes to immigration law and policy. The government's policy under s. 70(5) sought to classify individuals as mere immigrants, rather than to focus the substance of Canadian residents long-term relationship with Canada. The result has been the forcing out of Canada of individuals who are *de facto*, Canadian citizens. The policy does not affirm the notion of fundamental equality of citizens and non-citizens before the law. Rather, this legislative policy reinforce, inequality and unequal treatment of Canadians residents in both its implementation and impact.

To summarize, through a discussion of the principal themes underpinning Canadian immigration policy, I have argued that the legal and subjective citizenship of black people in Canada has always been regarded as questionable and problematic. Although, the very word 'immigrant' may now appear dated and inappropriate, the racialised use of the term persist and has an impact upon the everyday experience of black people in Canada. Regardless of their legal rights and place of birth, black Canadian

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[17] See Athornia Steele, The Myth of a color -Blind Nation : An Affirmation of Professor Derrick Bell's Insight into the Permanence of Racism in Society, 22 Capital University Law Review (1993): 589-591.

citizens often find themselves regarded as 'alien', formally within, but informally without, citizenship. In addition, other vocabularies are developing which serve this same function of exclusion. The terms 'refugee' and 'asylum seekers' are no longer positive epithets. But are now increasingly being connected within an essentially punitive discourse around 'dubious claims' to welfare and affordable living.

## The Civil Element

Discussions on the theory of citizenship often focus on a series of positive rights, which grant freedoms and entitlements, such as the rights of living, justice and political rights (etc. such as standing for and voting in parliamentary elections). However, when connected with the issue of race, it is also important to broaden any discussion of the civil element of citizenship to stress 'negative' rights. These include the right of redress and complaint which is essential element in the *Public Complaints Commission* and of more importance, to include a black person's right to walk the streets unencumbered by police or racist attacks. The state is quite slow to respond to the threat that racist attacks pose to this most basic of freedoms. It would be a mistake to write off all racist attacks as the work of fascist organizations, though they may play a part in creating a climate which encourages racial violence.

Against this background, it seems that for many black people in contemporary Canada, even the negative rights of citizenship, that is,- the right to redress, the right to live in the communities without fear - appear illusory. As Donnison (1982) argues, " that

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such negative rights will not be achieved unless the victims of these attacks gain positive

rights to equal status with the rest of the communities in education, jobs, housing etc".

Thus, the civil element of citizenship cannot, to this extent, be separated from the political

and social.


**The Political Element**


According to Statistics Canada 1996 census, those who identify themself as ethnic

minorities account for 16% of the Toronto's population, of 4,232.905. Interestingly, just

as women (who account for 51% of the population in Ontario) are grossly under-

represented with approximately 22 seats in a parliament of 130 seats,[18] so are black

people. There are currently one at the federal level and two at the provincial level.[19]

However, counting the number of black MPs is by no means an adequate measurement

of political participation. As regards to the primary right of political citizenship, - that

is, the right to vote -[20]. Lea and young (1984) have argued, "that black people are

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[18] See Statistics Canada, 1996 Census.

[19]

This information was taken from the Ontario Legislative Library, at that time it may not
have been accurate. But I must be speculative here in guessing that the number is not
greater than the amount that represents women.

[20]

In 1985 a Municipal Act was passed that effectively eliminate all landed immigrants
from voting in Municipal Elections.This Act became effective in 1988. Previously all
immigrants or British subjects were allowed to vote at this level. See R.S.O. 1996: Chap.
32. Sec. 17 (b) (*1*).

marginalised both economically and politically...that political marginality is not merely about possession of the vote but, is above all the exclusion from the ability to form co-ordinated, stable interest groups able to function in a process of pressure group politics". Gilroy (1987) also offers a perspective that help us understand this political element. As he writes;

> It is not that blacks lack the means to organize themselves politically but that they do so in ways which are so incongruent with Britishness that they are incapable of sustaining life! Their distance from the required standards of political viability is established by their criminal character.Thus black crime and politics are interlinked. They become aspects of the same fundamental problem - a dissident black population (117).

This discussion also applies to the Canadian context, because it does not only concern alternative conceptions of politics, but also the notion of Canadianess, a theme echoed throughout this thesis.

Avoiding the danger of complete relativism, it is possible to argue in light of this discussion of racism, immigration and citizenship, that the struggles of black people are more likely to be constituted as criminal than political. This is possible not only because of the powerful "myth of black criminality" (Ibid), but also those involved in such struggles are ideologically constructed as always excluded from full and active citizenship, which by definition includes political participation. For black people, the political element of citizenship is contingent upon the legal element. Thus, the experience of political participation is similarly limited by and constructed within the racialised discourse of exclusion.

## The Social Element

Poverty and the stigma associated with the claiming of welfare benefits has long been associated with exclusion.For welfare benefits claimants in general, social exclusion operates at different levels. Ideologically, through a conservative discourse, that the poor are stigmatised as responsible for their own failure.This is most clearly articulated in the Ontario's Government *workfare* plan. It is a divide between the enterprise culture and the benefit culture. An ideological divide has been created which excluded the poor. This, I argue, constitutes guilt and shame, essential components of the claiming process, both in theory and in practice. In reference to NeoConservatism re-working of citizenship theory, Lister (1990) persuasively argued;

> The New Right focuses upon the duties and responsibilities which citizenship demands rather than the positive rights with which it endowed. They thereby seek citizens who are independent (that is, working!), active (giving to charity, doing voluntary work in their spare time), but lurking behind the active citizen is the successful, self-reliant, enterprising citizen, alias the consuming, property-owning citizen. The unsuccessful and unenterprising are thereby exclude from the ranks of citizens (15).

If social citizenship is defined in terms of equal access to education and social welfare, it can be argued that welfare rationing and institutional racism serve to deny many black people their full citizenship rights. Immigration policy has profoundly influenced social policy. Physical exclusion, by means of tough immigration controls, is accompanied by social exclusions, often through the welfare state. Even when black people formally possess citizenship, they are dispossessed through the institutional racism

of bureaucracies which deter, suspect, stigmatise, check and interrogate them. It is precisely these institutional arrangements which are the cause of black people coming into contact with the criminal justice agencies, whether as victims, suspects or defendants.

I have argued that the legal and ideological construction of black people as excluded from subjective citizenship conditions the social and official responses to them. Therefore, immigration and justice officials operationalise legal definitions of citizenship which effectively render all black people questionable citizens. Concomitantly, black people are represented as unwelcome, unwanted and dishonest in popular and political discourse. Within such a historical, socii-political and legal definitions of citizenship which effectively renders all black people questionable citizens it is hardly surprising that agencies of regulation, whether immigration officials or criminal justice agencies (particulary the police), continue to regard black people as problematic by definition. Both their status and their actions are regarded as suspect. This result has profound consequences for criminal (as well as social) justice.

To possess citizenship is to be a full member of the community and to enjoy the civil, political and social rights which constitutes membership. I have examined the promise and the actuality of citizenship for black people in contemporary Canada. The exclusion from legal and respectable citizenship from full participation in social and political life, exacerbates their legal status and their actions remain questionable and regarded as suspicious. This leaves further a space for criminalization. Criminalization per se is an important feature of the discourse of exclusion. As Gilroy (1987) has argued, "Black lawbreaking supplies the historic proof that blacks are incompatible with the

standard of decency and civilization which the nation requires of its citizenry." Thus, when black people break the law, they are seen to close a rhetorical circle which links race and non-citizenship with criminal activity. For many Black people in Canada the promise of full citizenship has not materialised, but the experience of racism and exclusion continue to be all too real.

**The Police in Community Policing:**
**A Black Viewpoint**

As the most visible arm of the criminal justice system, the police elicit some emotional reaction from practically every component of Canadian society. To many the police are seen as guardians of justice, protectors of life, property, and "the Canadian way". To others, especially the poor and large segments of the minority communities, the police are viewed as oppressive and disruptive forces of control to be avoided at all costs. To a great extent, these differences in attitudes regarding the police stem from the differing cultural, political, ideological, and environmental backgrounds of our Canadian population. This chapter looks at the function of police in community policing. In what follows is not meant as a banal indictment against the police. On the contrary, it is intended to critically analyze the function and role of the police system in community policing.

**The Police and The Public**

Generally, Canadians hold their police officers and police forces in high esteem (Seagrave,1997). An understanding of the extent and nature of this support is important, insofar as it provides insights into why police-community relations policies succeed or fail

and help in comprehending the background to police initiatives. In a nation wide survey, Normandeau and Leighton (1990) found that Canadians were most supportive of their police forces, with nine out of ten satisfied by the performance of their police officers. This overall support was also consistent with the regional findings of Murphy and Clairmont (1990) who showed that 80% of the residences of Nova Scotia described police-community relations as excellent. These figures was also mirrored in Ontario by Yarmey (1991). Overall, Canadians, have positive perceptions of the police, particularly on measures of approachability and enforcing the law (Statistics Canada, 1991).

One of the most visible forms of control is exhibited through the police, and the level of overall support is high as indicated by the above studies. It is important to recognize that certain groups in society are more supportive of the police than others. As was pointed out by Jones (1977) , "we could expect those gaining privileges from the results of police activity to respond favourably toward such an institution". On the other hand, those who view themselves as victims or are victims of the system (see appendix E) tend to be somewhat hostile toward the police. They are alienated in that they have been excluded in a variety of ways (as argued in previous chapters of this thesis) from the mainstream of life. They are treated as outsiders or intruders in Canadian society. To them, the police function to maintain the status quo, that is, white privileged. It would, therefore, appear that, while certain groups within Canadian society do not hold positive views about the police, overall the police receive considerable public support.

## The structural "changes"

Few people would deny that the shape of policing has changed dramatically, if not fundamentally, over the past two decades. The structural changes began in the late 60s and early 1970s, in particular the development of reactive 'fire-brigade' policing, the emergence of a quasi-military 'third force' concealed inside the ordinary police, the expansion of surveillance, in terms both of technology and the number of subjects, have been consolidated.[1] This consolidation, which grew apace in the aftermath of urban unrest of the 1980s and 1990s in Britain, USA and Canada. In Canada during the spring of 1990 it was all too clear in the policing of the Oka crisis[2] and the policing of black people through the Immigration and Citizen Act that policing was problematic. At the same time, formal police powers have been considerably enlarged, most notably expanding into other domains, like the education system in Ontario. But the concern which has rightly focused on these developments has, in general, ignored what may turn

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[1]

See Richard V. Ericson and Kevin D.Haggerty 1997: *Policing the Risk Society*. Their thesis is that society has become more fragmented the focus of police work has shifted from traditional modes of crime control and order maintenance towards the provision of security through surveillance technologies designed to identify, predict, and manage risk. See also State Research, 1981; *Policing the Eighties: the Iron Fist*. London, Pluto Press. And Phil Scraton, 1985; *The State of the Police*. London, Pluto Press.

[2]

See Thomas O'Reilly-Fleming, "The Mohawk-Canada Crisis: Native Peoples, Criminalization and the Justice System" in David Baker(ed) 1994, *Reading Racism and the Criminal Justice system*.Canadian Scholars' Press Inc. Toronto. See also Bill C-44 an amendment to the Canada's Immigration Act R.S.C. 1995.

out to be an equally important development, that of 'community policing', now supported by a range of social and political opinions.

Any critical definition of "community policing" defies simplistic approaches. At times, it seems that there are as many definitions as there are people talking about it, from Police Chiefs who claim that they are doing it, to others who dismiss it as public relations. What it entails in practice is virtually everything from putting officers back on foot patrols through programmes of 'community relations', juvenile liaison, community involvement, through the all-embracing theory of John Alderson, to the 'multi-agency' or 'corporate' approach to policing developed by Sir Kenneth Newman in 1982. What all these approaches and practices have in common is that they involve attempts by the police to deal with people whose support of the police appears to the police to be weak or non-existent, and which therefore requires to be strengthened or harnessed or even created.

The ideological construction of the involvement of Blacks in crime, in particular street crime, provided the basis for the development of strategies of control aimed at keeping young Blacks off the streets and keeping the police in control of particular areas which has become identified both in popular and official discourses as 'crime-prone' or potential 'trouble spots'. It is necessary to examine or re-examine briefly the notion of the consensual basis of Canadian policing, a basis to which much community policing claims to be returning.

## The Myth of Consent

It is the accepted wisdom that the consent of the public lies at the heart of the Canadian policing tradition and much of the writing on community policing harks back to the golden age of policing when the police could count on the active support and consent of the Canadian public. It is doubtful whether such a golden age ever existed, as a growing body of historical work shows (see appendix A #1) and more recently the *Cole Gettens Report* (1995).

In addressing this point I turn to Robert Storch (1981), in which he points out, "that in the -advent of the new, professional police in the mid-nineteenth century- has shown that the imposition of the modern police was widely opposed, often violently, as the police came as unwelcome spectators into the very nexus of urban neighbourhood life." Such resistance continued into the twentieth century and although its form have changed from anti-police riots, its contents differed little. The disenchantment with the police function has led to governmental study of the problem (see appendix A). These studies and subsequent calls for reform are the result of the Canadian peoples being historically torn between a desire for maximum personal freedom and a need for order. In effect the police and the government had recognized this for sometime[3], however

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3

See Clayton Mosher, draft working paper 1994. Crime and Colour, Cops and Courts: Systemic Racism in the Ontario Criminal Justice System: In Social and Historical Context; 1892-1961.It should be noted that within the *Cole/Gittens Report* no reference was made to its findings.

reluctantly they might acknowledge it in public. Community policing work with the Black communities (as developed in chapter 3) existed as a separate and distinct concept of police work. This liaison was and still attempts to deal with the lack of consent and support of various sectors of society. As I borrow from Lawrence Roach (1978), a British police historian on the subject, stated that "every policeman was a community relations officer, seeking ..... to retain and reinforce the goodwill, of the public towards their police force". What brought about this development was not just post-war changes in attitudes towards authority (now seen as 'something' to questioned rather than respected), nor increased social mobility within society as some authors and government reports may show us, but increased "mobility between cultures"[4]. Interestingly, it was this, the same historian argues, "which had broken down the homogeneity of [a] the community to the extent that policemen were no longer able to clearly identify with the people they sought to serve [emphasis added]".

This development of police-community relations work took place at the same time as the Canadian state - followed the pattern of Britain and United states of America - had (re)institutionalised racism in its immigration controls, increasingly intervened in race relations, through anti-discrimination laws and community relations organizations. Like

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4

Here I want to draw attention to the institutionalization of cultural under the Federal Multicultural Act. This Act set the tone for most discourses as waves of immigrants came to live in Canadian society.

those measures, police-community relations was one of the means by which an attempt was made to manage the Black population and mediate its opposition and distrust. But, in looking for the reason for this distrust, the police and official discourse (government inquiry: see appendix A.) located it in their [black] cultural background and social structures[5], rather than in the fact that immigrants from the Caribbean view the police as an occupying force and, quite literally as the enforcement arm of the white establishment.

What is clear, is that, the development of a "specialist" concept of community policing work absolved the police institution in general of any notion that they [it] were accountable to the Black community. Not surprisingly, community policing to date hardly touched the surface of ordinary, everyday racist policing.

As the history of police-black relations in Toronto shows (see appendix A), police-community relations work did nothing to show Canada's Black population that they had reason to trust the police. Rather, police-community relations coexisted with practices (see appendix E) as an example, which affirmed that distrust and, at the same time has placed Black communities as a group apart from [in] the rest of society; A "group" requiring its own special liaison measures thus, a form of exclusion.

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[5]

Here I am making reference to ways in which some Blacks communities carry on their lives that may not fit within the dominant "order". For example late nights' parties with 'loud' music within and among the communities that may prompt a legal response from the state and its agencies.

**From community involvement.........[6]**


Police involvement in communities, whether informally through beat policing or more formally through urban programmes and other inner-city projects[7], have thus placed them in a powerful position. They have access to areas, communities and information which could otherwise not be available to them. They often control money and the allocation of resources, thus, they inevitably come into close contact with other agencies. This inter-agency relationship is never one of equality or a level terrain. The police always emphasized that they are in a unique position to provide leadership, initiative and generally to act as a focal point for joint work. In other words they are in a position to determine priorities, to control the direction of activities and to isolate and marginalised those who disagree or criticize.

At this point I will digress from the central focus (The Police in Community in

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[6]

Generally envisioned as the most effective approach to contemporary policing, community policing provides much of the framework for discussions of the future of policing in Canadian and International circles. See in Canada, Normandeau and Leighton 1990; in the USA, Trojanowicz and Carter 1988; and in Britain, Leon 1989. Despite this widespread consensus, various authors have expressed concern about the implementation, viability, and impact of community policing projects:See Bailey 1989 and Mastrofski 1988.

[7]

To name a few, Council on Race Relations and Policing, Race Relations and Policing Unit, both were funded by the Ministry of the Solicitor General and Correctional Services are now out of existence due to lack of funding. Those that are now in existence are the African Canadian legal Clinic, Toronto's Task Force on Community Safety, Chinatown Community Police Liaison Community, etc. to name a few.

Policing: A Black Viewpoint) to show how information/knowledge presented by the police serves as a tool to marginalize. Here I turn to *Inscription Devices*.

**Inscription Devices:**

The notion of inscription is an important and often relied upon tool in analyses of government (i.e. Miller and Rose 1990; Rose and miller 1992) and ruling (i.e. Smith 1988; Smith 1990). Inscription devices, I suggest, assume an important position in the constitution and re-constitution of "community". That "community" is both an object of knowledge through a detailed analysis of such mechanisms.

A useful definition of 'inscription' is provided by Smith (1988:171); 'Inscription' is used here to point out the practices involved in producing an event or an object in documentary form as a 'fact' about the world". Inscription devices include among others, crime statistics, population censuses, flow charts, surveys and written reports such as police reports or the Minutes of committee meetings. By means of these techniques, as Rose and Miller (1992) points out, "reality is made stable, mobile, comparable, combinable....It is rendered in a form in which it can be debated and diagnosed". Inscription mechanisms are thus types of knowledge which enable the governance of various objects.

However, as Miller and Rose (1990) observe, inscription is a form of governance

in itself. To illustrate, a questionnaire[8] distributed to community police committees asks respondents to indicate the issues that had been examined and responded to by these groups. Committee members are to check off any or all applicable categories. The available choices are: crime/drugs/prostitution; traffic/parking; youth; and, other. In filling out this survey, committee members are urged to think of these issues as distinct from each other. Drugs, for example, are separated from parking. In other areas and for other purposes, however, they are frequently paired together as evidence in the campaigns by police against drugs in the Jane/Finch area. Also, the linking together of crime, drugs and prostitution encourages respondents to regard prostitution as a crime although legally it is not.

The choices available in this survey are included precisely because they are significant to its authors, as opposed to respondents. The issue of race or race relations did not appear, although most of the community organizations at that time was formed on the bases of bad race relations between the police and the Black communities. That the questionnaire is generic further solidifies this point. As a form of governance, techniques of inscription seek to operationalize the desires of authorities. People are linked to various authorities by and through, inscription devices such as surveys,

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[8]

Such a questionnaire was distributed by the police to the Council on Race Relations and Policing Committee. It is a generic survey and was not specifically designed for this particular community policing project. The stated objective is "to find out how you feel about your committee's/group's work and contact with the police". The results of the survey have not been conveyed to the committee. Nor has the committee expressed interest in these results.

questionnaires and reports[9]. Mechanism of inscription are thus, a means of governing at a distance.

**The police survey: a "community" profile**

The survey was distributed in the winter of 1990 by 31 Division's community patrol officers to homes, apartment buildings and businesses within the Jane/Finch area. The questionnaire was designed to elicit the opinions of "community members" on policing issues within this locale in conjunction with the establishment of 31 Division Police Citizens Committee. There is scant information on this survey and even less on its results. Community policing Staff Sergeants with whom I spoke informally, did not have any knowledge of the location of the survey nor its results. Nor were any of the committee members interviewed. Regardless, it is apparent that community policing officers do rely on data derived from this survey in accomplishing of their routine tasks.

Crime rates, for example, are utilized in the performance and evaluation of policing duties. At committee meetings, generally, a report is given by the police regarding the nature and status (e.g. solved or unsolved) of crimes that have occurred in the Jane/Finch "community". In fact, such a report by the community policing patrol is part of the standard agenda. This report often contains references to increasing or

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See appendix F. This is an illustration of how police attempts to control and reduce the level of criticism against them.

decreasing rates of crime. It seems plausible to suggest that the base line for such commentary or comparison is the crime rate that was part of a larger police survey package. Indeed, prior to the survey statistical analyses of crime would not have been confined to nor limited by geographical parameters of the Jane/Finch area. Such analyses would have yielded information about crimes that occurred within the boundaries of 31 Division, an area much larger than the locale in question.

Despite the scarcity of (formal) information on the survey, it can safely assumed that it is standard procedure or protocol for the police prior to and during the initiation of a community-based policing project. Evidence to substantiate this claim is derived from the Ministry of the Solicitor General document *Profiling the Community* (1990b). This report advocates the compilation of a statistical profile of the "community" to be policed. Data are compiled to ensure that policing proceeds in an efficient and effective manner in accordance with the desires and needs of the "community". Since the "community's" needs and desires are subject to change, the profile must be continually updated.

Both the police survey and community profile of which it is part are inscription devices. As such, they generate knowledge of the "community" in a way that makes that knowledge stable, combinable and mobile. Information is amassed that can be used later on in intervention efforts, as previously indicated in the discussion on crime rates.

The police survey and community profile not only enable future intervention efforts, they are also a way of governing at a distance. For example, the aforementioned Ministry of the Solicitor General document (1990b) offers, as possible sources of

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knowledge for a community profile, the following: Neighbourhood associations; Statistics Canada; social service agencies; city/municipal planning departments; business groups; government departments; investigations; community leaders; citizen advocacy groups; schools; police officers; other law enforcement agencies; police research department; and community surveys. Most of these institutions are not tied to the locale of which knowledge is to be provided. "Community", it appears, is constituted "extra-locally" (Smith 1987). As Ericson (1992) note, "community" is constituted by institutions that are not constrained by local or geographical boundaries. The concept of the community is not only elusive but fictive as operationalized by the police.

## ..........to community policing: A taste of Aldersonism

The inter-agency co-operation between the police and other agencies that developed over the years, was either confined to a particular section of society, such as young people under the Young Offenders Act or else limited to one particular geographical part of a police service areas and more often than not, regarded as 'experiments'.

John Alderson (1979) work *Policing Freedom* was and continues to be influential and important, both, because of the practical and theoretical legacy left with other officers and his advocacy for community policing in political quarters. *Policing Freedom*, was a response to what he saw as the era of the "technological cops who rarely meet their

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public outside conflict or crisis". He argued for what was/is called "pro-active" policing, as distinct from policing which is reactive - that is, merely responding to events - or even that which is merely preventive. Pro-active policing has all the elements of preventive policing but goes beyond it, "...setting out to penetrate the community in a multitude of ways...... to reinforce social discipline and mutual trust". What all this signifies, as I may add, is that a high level of co-ordination and co-operation at the various levels of the government is needed. It is with these principals in part the Metropolitan Toronto Police Services embarked on its journey towards implementing a style of Community Policing.

**Black Men and the Police**

As a group, Black men have an endless supply of police harassment stories. These include being mistaken for a criminal, being treated like a criminal, being publicly humiliated, and in some instances, being called derogatory names[10]. Often their encounters with the police arise from being stopped in their cars. They are subject to vehicle stops for a variety of reasons, some legal, some not, including:

    * Driving a luxury automobile (e.g., BMW, Lexus, Mercedes etc.)

    * Driving an old car

    * Driving in a car with a White woman

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[10] See figure 1. Also some of this I have observed as a researcher in ten ride-alongs with a police service in Ontario between 1991 and 1992, as part of data collection.

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* Driving in a car with other Black men

* Driving early in the morning

* Driving late at night

* Driving a rented car

* Driving too fast

* Driving too slow

* Driving in a low-income neighbourhood, known for its drug traffic

* Driving in a White neighbourhood

* Driving in a neighbourhood where there have been recent breakins/burglaries

* Fitting a drug courier profile

It seems that no matter what Black men do in their cars, they are targets for criminal suspicion. It is so commonplace for Black men to be pulled over in their vehicles that this practice has acquired its own acronym: "DWB" (Driving While Black)[11].

Police harassment comes in many forms[12]. It is also demonstrated by the number of times Black men are stopped, questioned (see figure 1) and assaulted by police as they go about their daily lives. There are clear distinctions between police harassment and police brutality. According to Victor E. Kappeler, Richard D. Sluder and Geoffrey P.

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[11]
See Henry louis Gates, Jr., "Thirteen ways of looking at a black man" in The New Yorker: October 1995. Also, David Harris, "Driving While Black : Unequal Protection under the law". Chicago Tribune, March 11, 1997.

[12]
See Office of the Police Complaints Commissioner Annual Report 1995.

Alpert (1994) asserts that police brutality " typically refers to the unlawful use of excessive force", (see also appendix E). For Black men, consistently negative encounters with the police have caused the line between harassment and brutality to become blurred. For Black men, who are more likely to be stopped by the police than anyone else (see figure 1) each stop has the potential for police brutality.

The remarks made by the young Black men who participated in focus groups, as detailed in chapter 2, attest to the general fear that Black men have of the police. Many have developed protective mechanisms to either avoid vehicle stops by police or to minimize the potential for harm during these stops. The primary shield they use is an altered public persona. This includes a range of adaptive behaviours. For example, sitting erect while driving, travelling at the precise posted speed limit, avoiding certain neighbourhoods, not wearing certain head gear and if they do wear a baseball cap - they wear it with the pick to the front - . Black men are used to structuring their encounters with police during car stops: placing both hands on the steering wheel, responding to an officer's questions with "sir" or "ma'am" depending on the gender of the officer and quite creatively, keeping the car radio down before being told to do so. Some Black are wise to take measures like these because studies consistently show that a suspect's demeanour influence whether he will be arrested[13].

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[13]
See *Cole/Gittens Report*. Also Robert Worden and Robin Shepard, "Demeanour, Crime and Police Behaviour: A Reexamination of the Police Services Study Data," Criminology 83 (1996).

The difference in experiences with law enforcement may explain why Blacks, Whites and 'Others' have contrasting impression or belief of the legitimacy and trustworthiness of police treatment of Blacks (See figure 2). However, there is a sense in which all such accounts as explained in this dissertation, can be considered counternarratives, or fragments of them what I call "subaltern knowledge". It is knowledge that dispute the tenets of official culture. They do not receive the imprimatur of editorialsts or of network broadcasters, and if they do, they are not seriously entertained. When they do surface they are given consideration primarily for their ethnographic value. It is an official culture that treats their (Blacks) claims as it does those of Marxist deconstructionists in the academy; These phenomena are treated as things to be diagnosed, deciphered, given meaning - that is another meaning.

Citizens who do not face the daily threat of being detained largely because of their race are unlikely to understand how burdensome these stops can be. To someone who is pulled over by the police once a month for no apparent reason other than his race, the stops take on painful experiences. Race-based policies Russell (1998) tells us, "pit law enforcement against minorities and create an unbreakable cycle". This, in turn, Jones (1977) argues, "generates statistically disparate arrest patterns, which in turn form the basis for further police selectivity by race". Again, as the focus group can attest to 'what many Whites view as the police "doing their job" is viewed by many Blacks as harassment'. Thus, beyond causing harm to Black men, race-based police stops are also harmful to the larger society. There is a societal cost in perpetuating inaccurate

stereotypes, which produces exaggerated levels of fear and more pronounced levels of scapegoating – such as racial hoaxes[14].

Many Blacks believe that their anti-police sentiments are justified by the racially discriminatory practices of the police (see figure # 1 and appendix E). Particularly for young Black men, the police represent Public enemy number one (figure # 2 illustrates this). As Russell (1998) warns us, "giving short shrift to the problem of excessive targeting of Black men hampers our efforts to reduce crime". For example, the perception that black men are unfairly targeted by the police may make some Black judges and jurors less likely to believe police testimony[15]. The spell-over effect may also make some Blacks less likely to report crime and others less likely to cooperate with police investigations. As part of my research points to the issue of police abuse is downplayed in Canada because national data are not available.

**The Shape of Things: A discussion**

If the police and the Canadian criminal justice system function to maintain the

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We all know about the Susan Smith's case in 1994. This is beyond this dissertation and research should be done in this area in Canada. It is an area that the police is documenting offences under the "Hate Crimes" legislation.

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See *Williams v. The Queen*; Dominion Law Reports (4th) June 4, 1998; court file No. 25375. And The ACLC Annual Report 1996 on the *R.D.S. v Her Majesty the Queen* case.

existing societal arrangements we can expect those uncomfortable with, the current arrangement to express some dissatisfaction. Blacks' encounters with the police, the most visible arm of White authority as some may argued, are of a negative nature. Unfortunately, the problem is much larger than White police offices and Black communities. The White police exist and practice their 'art' at the pleasure of a very complex, diffuse, and economic power structure who benefit from the existing arrangements.

Some will argue, as the *Clare Lewis Reoprt and Cole/Gittens Report*, that the addition of Black police officers will create better working relationships between police and Black communities. As a matter of public policy many agencies including the police have adopted such strategies. Fanon (1963) refer to such strategies as neo-colonialism, in that they effectively involve the oppressed in the very system that oppresses them. Another correlate, is that employing Blacks as police officers and in other "civil service" capacities successfully coopts the most able away from the efforts directed towards the collective benefit of Black communities. Actually, there is a residual benefit to White society in this type of arrangement. Black "civil servants" provide other Blacks with a role model that is beneficial to maintaining existing social arrangements. As things presently exist, in order to be considered for the middle class life of "civil servant," one must be a law-abiding citizen who at least outwardly accepts the social customs of Canadian society.

While some deviation is accepted, a drift too far to the right or left virtually

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eliminates most for public employment. So, to a large extent, every Black hired in "the system" pays a double dividend to White society. She/he immediately helps the system function more smoothly and they serve as a role model for the untold numbers to follow. While well intentioned Whites who hire Blacks and Blacks who are hired will have difficulty with these assumptions, it is evident that such hiring practices do result in such an arrangement.

This paradox presents a serious problem to politically conscious people of all colors who are concerned about social justice in society. It suggests that they must move beyond existing assumptions that more Blacks in the service of the criminal justice system will remedy existing problems. Inclusion or exclusion may be only part of a temporary solution. The real issue, or issues may be in developing something entirely new something that more clearly addresses the major institutions which cause the problem. It is argued that community control of the police would go a long way in reducing Black alienation towards the police and the criminal justice system. Law enforcement officials generally oppose community control of the police on the basis that it is inefficient. They maintain that police autonomy maximizes efficiency and reduces the possibility of political influence. Blacks contend that this is only disguising the issue of police racism. However, if we locate police services as complex social organizations, in general, that seek to perpetuate themselves by continually justifying their existence, then we secure a sense of another aspect of the police in community policing.

The problem is not that community policing is not an alternative to reactive

policing. More important, community policing is an attempt at the surveillance and control of communities by the police, an attempt which operates under the guise of police offering advice and assistance, and which is all the more dangerous because it not only merges the activities of different agencies of the state, but does so under the control and direction of the police. As I borrow from the work of Lee Bridges (1982),

> "community policing merges at the local level the coercive and consensual functions of government, enabling the police to wield a frightening mixture of repressive powers, on the one hand, and programmes of social intervention, on the other, as mutually reinforcing tools in their efforts to control and contain the political struggles of the black and working class communities".

This sums up quite well that community policing offers no prospect of greater democratic control of the police and policing. Indeed, community policing has come to the fore precisely at the same time as there has beem widespread demands for greater public accountability and control of the police [16]. As I argued throughout this dissertation that whatever *form* community policing takes, control of community policing remains firmly in the hands of the police.

Instead, we must locate community policing in the context of the increasing disciplining of society by the state. While its implementation and impact have been

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[16] See appendix A and E. As a result of appendix E the Special Investigations Unit was formed in April 1992. The Mandate of the SIU is to investigate in circumstances of serious injuries or death of a member of the public caused by a police officer, see George W. Adams, Q.C. 1998, Consultation Report Concerning Police Cooperation with the Special Investigations Unit. See also *Bill* 105,the Ontario Police Services Amendments Act that folded the Ontario Civilian Commission on Police Services, the Police Complaints Commissioner and the provincial Board of Inquiry into The Police Conduct Commission.

modest and indeed there is a certain deconstructionism going on in police research, there are signs too of a resurgence, a resurgence linked to developments in the police community more than academic support and rooted in an intrusive, aggressive policing style. The latter focusing symbolically on quality of life issues[17], may represent a success for conservative ideologists and be consistent with a Foucault type model of state expansion and control.

Such discipline takes many forms. For example, the use of the family to control children and keep women in the home, the criminalization of whole sections of society, urban programmes, and of course, direct repression by the police using new technologies of repression and unprecedented new powers. Community policing recognizes that such open control may be conter-productive and seek to penetrate communities to break down community resistance, to engineer consent and support for the police, and to reinforce social discipline. It is an aspect of what Stan Cohen (1985), writing of Foucault's "punitive city", has described as a "correctional continuum" which involves "the proliferation of agencies and services, finely calibrated in terms of degree of coerciveness or intension or unpleasantness", which point to a future "when it will be impossible to determine who exactly is enmeshed in the social control system" and hence subject to its jurisdiction and surveillance at any one time.

Community policing is but one aspect of this continuum of discipline and is all

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[17]
See diagram 1.

the more dangerous, because it appears to offer an alternative to unwelcome police practices and strategies and at the sametime a promise towards reducing crime, by building 'community' support thereby improving the social conditions of the inhabitants of Ontario's inner cities. Hence, community policing [usually quite undefined] gains support in all parts of the political spectrum, between classes and among the various 'race', while critical accounts are dismissed as pessimistic or unrealistic, thus exclusion.

# Chapter VI

## Afterwords

The fact that few Canadian academics are sought out to provide insight into issues of police/black relations, particularly police shootings reflects the   general public's estimation of the intellectual class's ability to provide answers to the serious problems of race  in Canada. Part of the reason for such a perception may lie in the priorities that guide the production of knowledge  and the definition of theory. The breadth and complexity of the Canadian policing system and its history has only been approached by a few in the  academia (see Chapman 1978 and Mawby 1990). Each study celebrates the lack of informed critical or a race debate. There are, however, some important studies dealing with an aspect of or a single force within the system. For example, Ericson 1982; Normandeau and Leighton 1990a; 1990b; 1991; Rosenbaum 1994; and Stenning 1992 which generally constitute seminal works. The   lack of academic contributions more generally though would seem to have been partly remedied  by a number of Commissions of Inquiry and Task Forces into the relations with the black communities (see appendix A). In spite of all this, it seems that policing is increasingly being forced towards the forefront of the political agenda in Canada, and especially through community-based policing questions regarding the role of the police in a changing society. Within this

context, the shortcomings of race-relations theory can be separated into at least two categories.

**Beyond the black/White Dichotomy**

Recent books on race, such as Andrew Hacker's *Two Nations: Black and White, Separate, Hostile, Unequal,* and Studs Terkel's *Race: How Whites and Blacks think and feel about the American Obsession,* help to further embed the construction of race relations as a binary opposition. Although the theoretical framing of race relations in Black/white terms has substantial historical and contemporary grounding, the shooting of Edmund Yu reveal that such an essentialism misses many of the factual complexities in contemporary, urban politics. The treatment of Asian Canadians in the media may reflect more about relations between White and Black Canadians than about relations between Blacks and Asians. The embrace of the model-minority myth by the media becomes a bear hug particularly at times when Black/White tensions intensify and White Canadians wishes to discipline Blacks communities. The fact that Asians are the fastest growing immigrant group in Toronto, the oppositional Black/white character of the race-relations debate excludes discussion of the colors in the middle, now inexorable parts of the Black/White spectrum.

White-liberal or progressive guilt has been focused largely on the historic exploitation of Blacks by whites. While there are important structural and historical bases for this

concentration, the contemporary realities and demographics of racial groups in Canada necessitate a broader discussion. Undoubtedly, many scholar-activists' direct involvement with the civil rights movement has been confined to struggles waged by Black communities. However, uncritical acceptance of the dichotomous Black/White character of race relations by such scholars obscures the role of Asians, Native Canadians and people of Indian decent to the detriment of a more differentiated understanding of contemporary race relations, racism and struggles to end racial oppression.

Typically, non-African Canadians/American people of color are categorized as either Black or White if they are discussed at all. Asian and people of Indian decent are often summarily included with Blacks under the "people of color"rubric or sometimes refer to as "The Other". The ubiquitous internalization of the model-minority myth by the general population and academics leads to the invisibility of Asian Canadians in the racial landscape. An awkward silence has descended upon liberal and progressive circles analyzing the event ( the shooting of Edmund Yu). Many publications avoided discussion of Asian Canadians altogether, thereby sidestepping the troubling interracial conflicts among Asian Canadians and Black Canadians. Some boldly categorized Asian Canadians with a contempt usually reserved for the dominant majority, characterizing the immigrant shopkeepers as a primary antagonist of Blacks. Sadly, the neoconservatives' embrace of Asian Torontoians, combined with liberal and progressive neglect or contempt, may trigger a self-fulfilling prophecy of the model-minority myth. Asian Canadians do not identify with European Canadians and see themselves as very distinct. Yet there is a cold

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reception that they received from community organizers, coalition-minded politicians, and progressive intellectuals excludes them from the people of color organizing and theoretical models.

Even in the so-called "Black/Asian conflict," although Asians are necessarily included in the discussion, the conflict is viewed through the lens of Black/white relationships. In other words, how Asian relationships with Blacks are represented and interpreted often depends upon the latter group's relationship to whites. Asian Canadians are instrumentalized in a larger public-relations campaign on behalf of Euro-Canadians. Moreover, important class and gender dynamics become obscured by the emphasis on racial differences, in the discourse on community policing.

The conflict between Asian Canadians and Blacks contains definite cultural differences and racial animosities. But many of the tensions may be class-, rather than racially, based actually reflecting differences between the store owning Asian immigrants and Black customers. Violence between shopkeepers and residents exists in inner cities regardless of which racial group owns the majority of stores. The interests of the entrepreneurial class transcend racial differences. The Black store owner and his/her Asian counterpart stand together on issues of community policing. Both oppose grass-roots community efforts to limit police discretion. This is particularly true for relaxation of the controls placed on the police related to drug enforcement and the use of the SWAT team in response to home invasions. What often results when the public accepts a reduction of civil liberties because of fear is an increase in police deviance associated with the

retraction of those rights.

Scholars of ethnic and racial politics must confront head on the challenges of racial theory for the twenty-first century. In order to do this, a serious effort must be made to incorporate the histories and the contemporary experiences of people of color between the two poles of Black and White on the racial spectrum, especially those of the new and rapidly expanding immigrant groups. Intellectual activists must grapple openly and critically with the position of each community of color within the complexities of race, ethnicity, class and gender relations in a post-industrial society. For example, scholars must address the question of class in the Canadian context. What are Asian "mom and pop" store owners? Petty bourgeoisie? Capitalist exploiters? Self-exploited? Owning poor? Middle class? Diversity within ethnic and racial groups must be acknowledged and incorporated into theoretical analyses to avoid essentializing race and obscuring important differences and contradictions in community policing.

## Structure, agency, and Theories for Action and social Change

Much of the theoretical construction of race relations has employed structural analysis that incorporate a critique of institutional discrimination, historical racism, and modes of economic production. While these factors are important and necessary to understanding the state of contemporary race relations in Canada, an excessively structural analysis presents those subordinated under oppressive systems as "victims" with little or

no recourse. Structuralist social scientists often face problems in contextually understanding their subjects as actors possessing agency. As Michael Burawoy points out,

> Such objective and systemic analyses, whether critical or complacent, have a tendency to degenerate into pessimistic overestimations of the power of the welfare state, the capitalist economy or 'the system.' Too often, the system is seen as all-determining, so that forms of resistance such as innovation, negotiation, and rebellion are not taken seriously (284).

Scholars of ethnic studies, urban politics, criminology and race relations can work to build toward a theory for action, a theory for social change. Such a theory would emphasize the experiences and conditions of the oppressed and of those working directly to improve those conditions. In order to do so, intellectuals activists must know the people and live the experience -- the pains, the challenges, and the realities -- of racism. They must measure the success of theories by their ability to explain racial problems and to provide solutions to difficult problems. If abstract theories do not prove useful to the folks most affected by community policing, they should be abandoned. A respectful and informed partnership must be created in the Freirian tradition to create more relevant research, pedagogy, and theory to assist those suffering in the affected communities. Intellectual activists must know which leadership is respected and acknowledged in different communities. Further, they must consider how change comes about in different neighbourhoods and, what relationships exist between structure and individuals. In short, intellectuals must leave their offices and go to where the problems are in order to understand that about which they claim to be "experts."

The roles of political leadership, individual accountability, and community education must be addressed in order to make the transition from rigid, structure-induced victim perspectives to progressive, activist-based perspectives. Some of the worst problems faced by subordinated communities as I observed during the course of my field work, cannot be resolved or addressed simply by reciting the standard critiques of "the system" or "the man." Serious problems such as drugs, crime, domestic violence, child poverty, homeless people, street people, poverty and interracial conflict clearly have structural roots. But afflicted communities must seek solutions to the toughest problems here and now, since "the system" will not disappear tomorrow. . As one community organizer against substance abuse in Toronto states, "we cannot afford to avoid problems like drugs and crime by saying these issues will get resolved when we change society." In this spirit, Asain-Canadians organizers and intellectuals must work with communities to reject prejudices and stereotypes about other people of color that have been adopted from the mainstream culture. Asian Canadians must address seriously the complaints that too many store owners are rude and disrespectful to darker skinned customers, and search for ways to improve relations. The community cannot use the reality of high crime rates that shopowners face to rationalized unacceptable behaviour. There must be a better understanding of the fearful, bunker mentality of all shopkeepers, regardless of color. While Asian may not have constructed the international racial hierarchy, they can educate one another as to its fallacies. Each community, likewise, can do some soul-searching and admit the truths that could produce a stronger foundation for coalition politics and the

seizing of Toronto's transformative potentials.

Similarly, members of the academic community must critically assess their roles, passive or otherwise, in relations to police shootings in Toronto. Intellectuals of color failed miserably at taking a stand on the shootings of Blacks.Because Asian Canadians academics failed to speak up and condemn the results rendered in the Edmund Yu shooting, they were complicit in accepting the results of the shooting of Blacks as well. Likewise, Black Canadians scholars could have taken a position on this shooting, but failed to do so. Activist scholars must be willing to take a stand on issues and immerse themselves in the problem-solving task. Specific opportunities to intervene to help solve conflicts should not be lost but grasped.

A more open-ended, qualitative approach is required to conduct such community-based research, which is, far beyond the scope of this study. Many traditional methodologies, which emphasize quantitative methods and analysis in order to posit predictions, are not useful in resolving problems of racism. Politics is not a hard science. Even the hard sciences no longer consider themselves "hard." Scholars of ethnic studies, urban politics and racism must capture the human, not the mathematical, element in politics. Problem solving must become the focus. Theory must draw from activists and organizers as the generative sources of themes and solutions. If academics cite Foucault, Cornel West, bell hooks, Barley, Manning, Ericson and Skogan in their discussion on community policing and racism, they should also cite community organizers, such as Dudley Laws in the Canadian context and privilege his and other community organizers

insights, too as "expert."

In the analysis of racial consciousness, politics and policing in the twenty-first century, researchers face new challenges currently unaddressed by both conservative and progressive scholars. A new era recognizing the autonomy and strength of people of color will depend largely on our ability to listen to the voices of the subjects being studied, to position people of color as actors in the research who can provide real insight into the diversity and contingencies constitutive of communities of color. The new scholarship can subvert pervasive perceptions of people of color as either the faceless victims or as romanticized, oppressed revolutionaries carrying out an inevitable historical task and, in so doing, perhaps contribute to a new theory and praxis of empowerment.

## Some Implications for Police Organizations

What are the implications of the argument for police organizations adopting community-base policing? If we accept the arguments for community policing as valid, then it would seem that, at the broadest policy level, some self-examination would occur as to whether the police profession should continue to exist in its current form. It is unlikely, of course, that any profession would willingly dismantle itself or even entertain suggestions for radical change. Police organizations and their cultures are highly adaptive, but they resist fundamental change tenaciously. As this study illustrate, the media and other players structure the public's perception of crime and race. Structural and organizational

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arrangements can be modified to manage public appearances so that the issue of race can continue and even flourish in the organization. Hiring of Black and female officers serves as a useful example here. While this might seem contradictory, police cultures and organizations have a remarkable ability to retain their cultural essence and to continue their activities. As alluded to in these remarks by an officer for a large urban police department;

> Nothing, though, could have prepared me for the avalanche of crime and police coverage here. After about six months, I began to figure out that crime stories, especially for the broadcast journalists, are the fallback. Crime has been going down over the last several years, but crime reporting is going up, and the public's perception has very nearly mirrored the local news reporting of crime. So I said to the media, "We'll never hold information from you. We're just going to be more selective about when we provide you sound and video. Some people said that's managing the news and protested. I said, no we're just managing the message" (Field notes, 1996).

An ethos of autonomy is evident in these remarks that can be looked at further. As the first line of the criminal justice process, police officers make very authoritative decisions about whom to arrest, when to arrest, and when to use force. To this extent the police are the "gatekeepers" to the criminal justice system. Police officers cling to their autonomy and the freedom to decide when to use force. The desire for autonomy often exist despite departmental, judicial, or community standards designed to limit the discretion of street enforcement officers (see *Cole Gittens Report* Chaps.10-11, 1995). Personally defined justice, reinforced by subcultural membership, can lead to abuses of discretion, an issue the *Report* did not attempt to deal with. However, any attempt to limit the autonomy of the police is viewed as an attempt to undermine the police authority to

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control "real" street crime and not as an attempt on the part of citizens to curb police abuses of authority.

Admittedly, contemporary society needs police organizations, but not racism. To the extent, however, that we can reconcile the merit that exists in the logic of community policing, with the drive to self-perpetuate the police organization. There is a need to draw attention or attention *must* be given to the question of race/ racism. Exactly what do we collectively want the primary focus of our police organizations to be? In a general sense there would appear to be at least two basic options available from which to choose.

The first of these options would be to continue with the *status quo* and presume that either *Cole Gittens Report* arguments are wrongheaded altogether or at least do not apply to police organizations, but to other parts of the criminal justice system. The problem with this approach is that current realities seem to suggest that the *Cole Gittens Report* was on to something and that this something has implications for police organizations. On the other hand, the public's perception of safety in society does appear to be declining, when the issue of race and crime is the focus of discussions. Concomitantly, police organizations seem to be drowning in a sea of regulations and busy work, neither of which existed to that extent prior to the institutionalization of community- policing that have occurred this century, particularly in the last thirty years. It is especially sobering to note that community-policing is not an isolated phenomenon. The same themes of community ownership and empowerment appear in virtually every segment of Canadian public life.

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A second option would be to attempt to halt or at least slow the extent to which police organizations focus on community-policing depending on the geographical location, at the expense of the more essential responsibilities of policing, that is, control or management of crime, or delivery of enhanced services that improve the quality of community life and citizens' satisfaction with policing (Haarr and Hultsman, 1997). These latter concerns have been predominantly the focus of community-policing programs (see Manning 1992) across North America. Within the last decade, police departments across Canada and the United States have adopted community-policing philosophies and strategies in efforts to redefine the ends and means of policing. While community-policing is based upon the concept that police officers, private citizens, and local and state agencies can form partnership and work together in creative ways to help identify and solve contemporary community problems related to crime, fear of crime, social and physical disorder, and neighbourhood decay. Community policing is seen as one of the means to reduce and prevent crime, and to protect and enhance the quality of life in an urban environment (Trojanowicz and Bucqueroux 1989; Skolnick and Bayley 1989; Goldstein 1990; Wycoff and Skogan 1993; Rosenbaum 1994).

But caution must be exercised. The very meaning of the concepts of 'community' and 'police' as they located within the objectives of the political economy of utilitarianism, needs to be re-evaluated and expose the different forms it takes. It must be remembered that in the modern era, community itself is constantly disrupted and social life is hierarchically structured, leaving no room for people to create their own community life

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outside of the civil structures which contain them. The forms of social organization which takes place in the typical urban spaces are based not on any sense of 'community' which arises spontaneously from the will of its members but rather developed out of a sense of individualism based on 'privacy', and the discourse of 'rights'. In this sense, people live in so called communities in which they may not even know their neighbours.

It is the position of this study that the sense of 'community' which exist in typical urban neighbourhoods comes from people's concern for their property and its protection. It seems that if we conveniently mix this real-life situation of anonymous social life with abstract notions about supposed communities we ran into conceptual dangers which seriously problematize attempts at developing a critical stance with respect to issues and forms surrounding policing, community and the social order. Suffice to say that Foucault was correct to point out that discussions of community is the modern terrain for the production of 'human subjectivity'.

If any conclusion may be drawn, it is that community-policing as a form of exclusion is a complex, multifaceted, and multidimensional enigma, in a racialised society. Thus, there are no simplistic, quick-fix, cookbook solutions for the problems of racism. Despite these cautionary notes, a complex, interrelated web of suggestions that focus on the police institution needs to be re-presented. At the simplest level, the opportunity structure inherent in the nature of policing presents officers with virtually unlimited chances to engage in racism. Hiring well qualified and capable officers, providing appropriate training and education on race relations, mandating that supervisors

hold officers accountable for their behaviour, and centralizing administrative control are all simple means to impede racism in police organization.Other control mechanisms are suggested as well. Included among them are the development and endorsement of agency guidelines that are clear, practical, reasonable, and workable. Progressive and consistently applied disciplinary schemes are critical. Internal affairs units, the Special Investigate Unit and review boards, if they are able to function with integrity and handle complaints objectively, can be used as checks and balances to minimize police racism.

Although all of these factors are important in the control of individual police officer racism, they alone cannot ensure the control or elimination of racism in the police occupation. In fact, there are other agencies within the criminal justice system that use many or all of these mechanisms, yet continue to suffer from problems of systemic racism. In order to effect significant change in the police occupation, deeper, more fundamental modifications to the existing social order and the police normative structure are indicated.

Police racism serves functional roles for society and the police culture. Thus, society has two options. One is to acknowledge the role of racism in maintaining the culture of the police and the existing social order. Although not a remedy for racism, recognition of the functional aspects of police racism is a foundation from which society can begin to understand the realities of both policing and community-policing. Public acknowledgment of the parameters of police racism would help to dispel myths such as the rotten-apple theory of misconduct, and portrayals of police as loyal social control

agents supportive of the expressed moral order. Unfortunately, this would permit and even encourage racism.

A second, more radical approach would entail modifying the bounds of both society's normative system and the police normative structure. Attaining congruity between the two would obviously be an onerous challenge. Public officials would need to refrain from politicizing crime, capitalizing on citizen fear of crime, imputing a warlike mentality for crime control, linking race and crime, and advancing the misconception that the police can effectively control social disorder and crime itself. The judiciary must send a clear and constant message that police shootings under questionable circumstances will not be tolerated. This then raised the question of 'who controls the police who are charged with controlling the dangerous supplement?' Ambiguities in the criminal law must be resolved by both the legal and law enforcement communities. This means, among other things, that equitable and ethical approaches to attaining justice must be emphasized, while backdoor approaches used to circumvent legal requirements must be discontinued. Administrative customs and practices in the police institution must conform with both the stated law and agency policy. In essence, the radical approach suggests restructuring the law, reordering the social structure, and reinventing police culture.

In the final analysis, Canada must confront the most fundamental question of all: How much social change should be made in an attempt to control or eliminate racism? While this dissertation may not provide an answer to the question, we are reminded that any society may have as much crime and racism as it deserves. It remains unclear

whether or not it is impossible to control police racism. Without substantial social change, however, it seems clear that attainment of this goal by way of community-policing will be improbable at best.

# Glossary of Terms

In framing a discussion on racism it is important to note that according to science, there is only one "race" to which all members of human society belong, no matter their origin, color or other physical features. The concept of race, in a biological sense, is therefore irrelevant and unnecessary. What is important however are the social meanings which physical differences between people are accorded. It is not the presence of objective physical differences that create racism but the ways in which these differences are perceived and given social meanings. Anti-racism in this context is therefore concerned with eradicating the notions of race and racism and the socially constructed myths of multiple "races" that has been used as the justification for one group to exert power over another.

**Bias:**

An opinion, preference, prejudice or inclination formed without reasonable justification that then influences an individual's or group's ability to evaluate a particular situation objectively or accurately; a preference for or against.

**Discrimination:**

The denial of equal treatment and opportunities to individuals or groups with respect to education, accommodation, health care, employment, and services, (including policing), goods and facilities.

**Ethnic Group:**

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A community that is maintained by a shared heritage, culture, language or religion. A human group bound together by ties of cultural homogeneity, with a prevailing loyalty and adherence to certain beliefs, attitudes and customs.

**Prejudice:**

A mental state or attitude of prejudging (generally unfavourably), by attributing to each and every member of a group characteristics falsely attributed to the group as a whole.

**Race:**

A category used to classify humankind according to common ancestry of descent and reliant upon differentiation by such physical characteristics as colour of skin, hair texture, stature, and facial characteristics.

**Racial Discrimination:**

Any distinction, exclusion, restriction, or preference based on race, that has the purpose or results in the nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedom in the political, economic, social, cultural and any other field of public life.

**Racism:**

A system in which one group of people exercise power over another group on the basis of skin colour. An implicit or explicit set of beliefs, erroneous assumptions and actions based upon an ideology of inherent superiority of one racial group over another, and evident within organizational or institutional structures and programs, as well as by

individual thought or behaviour patterns.

Individual Racism: a form of racial discrimination that stems from conscious, personal prejudice.

Systemic Racism: The policies and practices entrenched in established institutions which result in the exclusion or advancement for specific groups of people. Systemic racism manifests itself in at least two ways:

(a) Institutional Racism: racial discrimination that derives from individuals carrying out the dictates of others who are prejudiced or of a prejudiced society; and

(B) Structural Racism: inequalities rooted in the system-wide operation of a society which exclude substantial numbers of members of particular groups from significant participation in its major social institutions.

Cultural Racism: is deeply embedded in the value system of a society. It represents the tacit network of beliefs and values that encourages and justifies discriminatory actions, behaviours and practices.

**Stereotype:**

A false or generalized conception of a group of people which results in an unconscious or conscious categorization of each members of that group, without regard for individual differences.

Figure # 1


Table 10-1: Metro Toronto respondents stopped by the police in the past two years, by race (1992-1994)


|  | Black | Chinese | White |
|---|---|---|---|
| Never stopped | 71.9% | 85.4% | 81.8% |
| Stopped once | 11.3% | 9.9% | 10.2% |
| Stopped two or more times | 16.8% | 4.7% | 8.0% |
| Number of respondents | 417 | 405 | 435 |


Sourse: **The Report Of The Commission On Systemic Racism In The Ontario Criminal Justice System**, Queen's Printer for Ontario: 340;1995

# FIGURE #2

Belief that the Metro Toronto Police treat certain groups differently
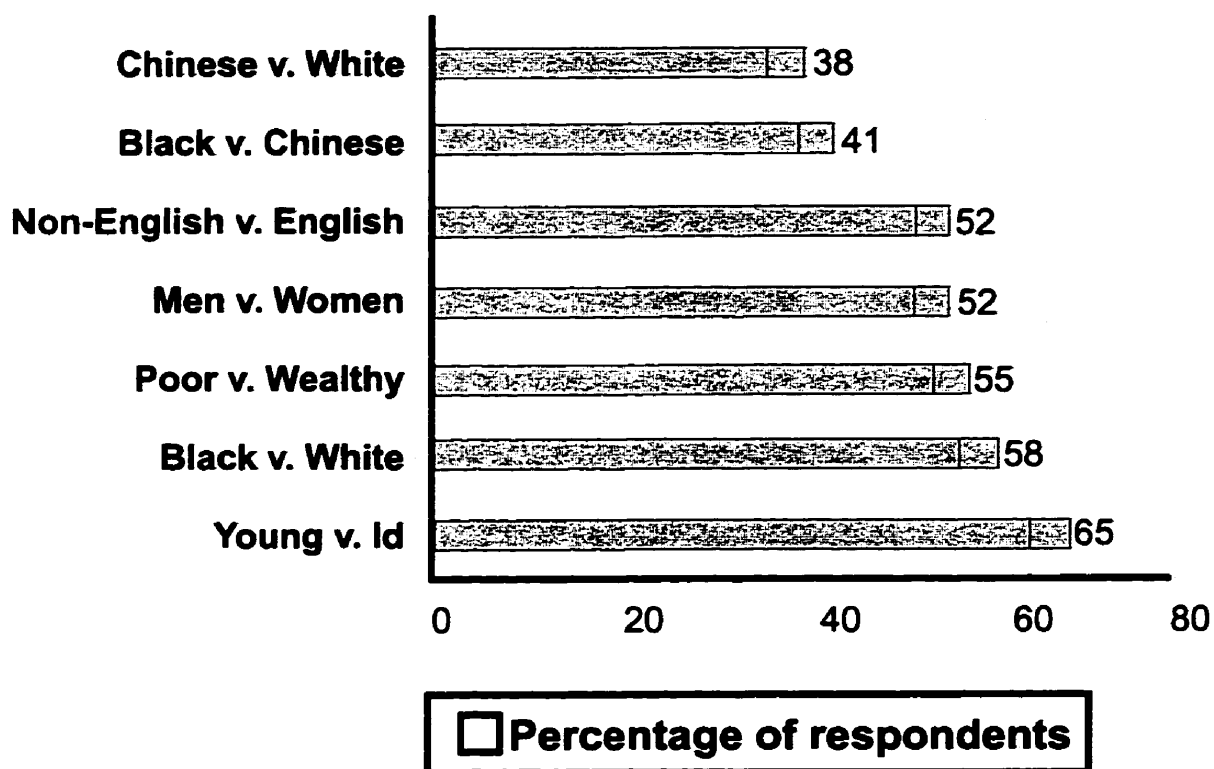
| | Percentage |
|---|---|
| Chinese v. White | 38 |
| Black v. Chinese | 41 |
| Non-English v. English | 52 |
| Men v. Women | 52 |
| Poor v. Wealthy | 55 |
| Black v. White | 58 |
| Young v. ld | 65 |

☐ Percentage of respondents

Source: The Report of the Commission on Systemic Racism in the Ontario
Criminal Justice System, 1995

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**DIAGRAM #1**

economic decay, deprivation, racial discrimination, etc.

⇩

rising level of street crime

⇩

drift towards "military" policing

⇩

alienation of the community

"mobilization" of bystanders"

reduced flow of
information to police

collapse of basis for
consensus policing
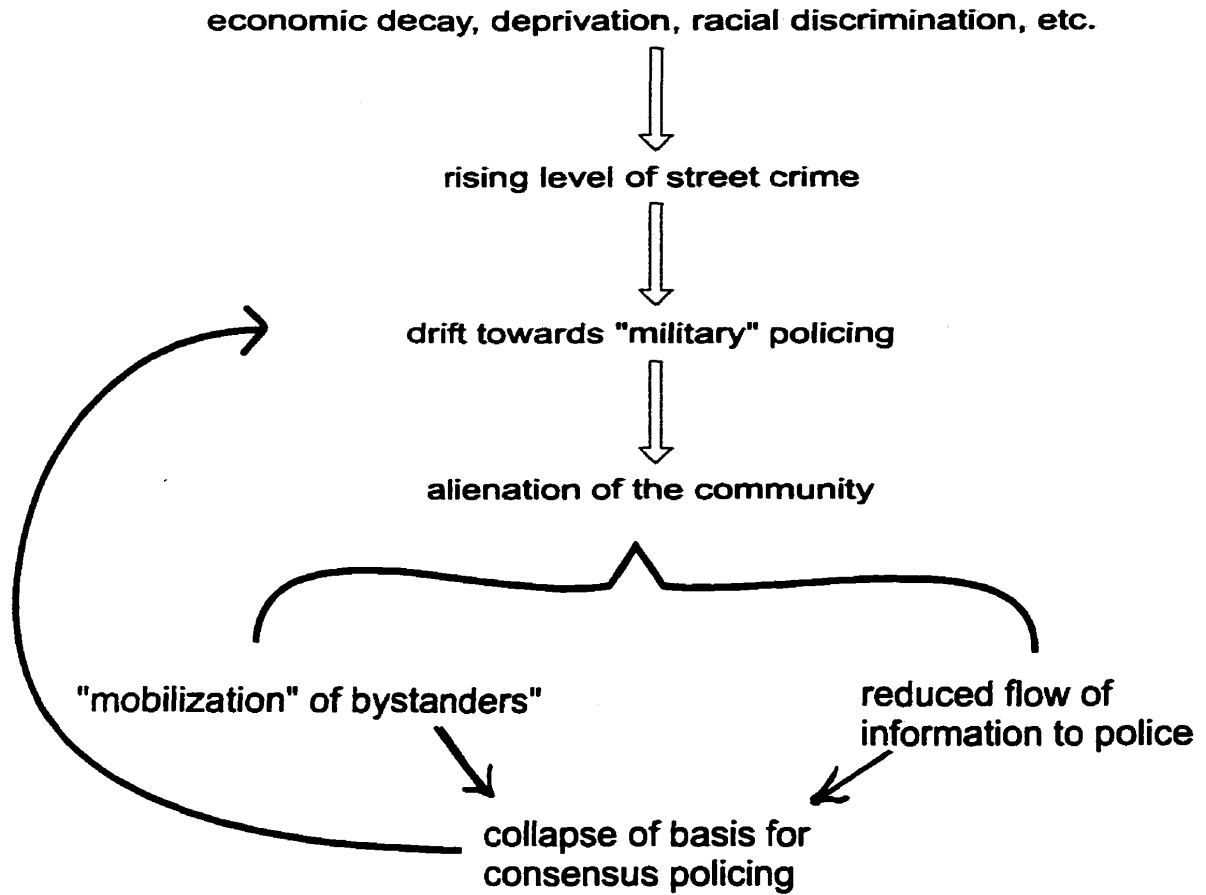
Source: Michael J. Clarke. "Delinquency and Deviant Behavior". *British Journal Criminology*, vol.:27(4), Autumn 1987

## APPENDIX A #1

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3.  Province of Alberta, *Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta*, chair, R. W. Cawsey ("Cawsey Report") (Edmonton: March, 1991).

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6.      Roger Hood, *Race and Sentencing* (Oxford, Clarendon Press, 1992); Ros Burnett and Graham Farrell, *Reported and Unreported Racial Incidents in Prisons*, Occasional Paper No. 14, Centre for Criminological Research, University of Oxford, (Oxford: Centre for Criminological Research, University of Oxford, 1994.

7.      See, for example, Massachussets Supreme Judicial Court, Commission to Study Racial and Ethnic Bias in the Courts, *Equal Justice: Eliminating the Barriers* (Boston: Supreme Judicial Court, 1994); California Judicial Council, Advisory Committee on Racial and Ethnic Bias in the Courts, *1991-1992 Public Hearings on Racial and Ethnic Bias in the California State Court System* (San Francisco: Judicial Council, 1993), and *Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel* (San Francisco: Judicial Council, 1994); New York State Judicial Commission, *Report of the New York State Judicial Commission on Minorities* (Albany: Judicial Commission, 1991); Florida Racial and Ethnic Bias Commission, *Report and Recommendations of the Florida Racial and Ethnic Bias Commission* (Florida Supreme Courts, 1991); Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts, *Final Report of the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts* (Lansing: Department of Management and Budget, 1989); New Jersey Supreme Court Task Force on Minority Concerns, *Final Report*, June 1992 (New Jersey: Supreme Court, 1992).

## Appendix A #2

### A Brief Note on the Public Inquiries Act, 1971

By passing the Public Inquiries Act, Ontario's Legislature gave the province'sCabinet authority to appoint one or more persons as a commission inquiring into matters of public concern. For many Ontarians, the Cabinet's decision to establish the Royal Commission on the northern Environment reflects wide-spread concern about the future of the northern half of the Province.

Usually caled on to deal with issues involving controversy or unusual complexity, commissions of inquiry may sometimes be called Royal Commissions, although this does not change the nature of their powers nor the protections afforded by law to affected persons.

The Public Inquiries Act governs in a general way the conduct and procedure of commissions of inquiry. It requires that a commission accord an opportunity to affected persons to give evidence, to call and question witnesses on related evidence. With minor exceptions, all "hearings" held by a commission's of inquiry must be open to the public. The Act allows a commission's authority to be challenged before the courts to ensure that commissions stay within their terms of reference.

A commission does, however, have wide discretion to conduct its inquiry in the way it thinks best suited to meet its mandate. Thus, a commission may tailor its procedures to fit the subject matter of its inquiry and the needs of interested and affected persons. Obviously, commissions investigating possible wrongdoing will adopt more formal procedures than those called on to formulate social or economic policies.

Commissions are given tasks that normally involve the gathering of information and assessment of its validity. So that commissions can acquire the information they may need, the Public Inquiries Act grants them the power to require any person to give evidence and produce documents relevant to the subject matter under inquiry. The courts may enforce such a request when asked to do so by commissions.

For commissions charged with advising governments on policy , like the Royal Commission on the Northern Environment, informal proceedings and open and voluntary participation by interested and affected persons are most appropriate (Attorney General of Ontario, internal guidelines on commissions. Date unpublished).

# APPENDIX B

Terms of Reference

## Establishment of Commission

The Government of Ontario established the Commission by Order in Council no. 2909/92, dated October 1, 1992, on the recommendation of the Attorney General.

## Commission's Terms of Reference

**WHEREAS** Stephen Lewis, in his Report to the Premier of Ontario, has recommended the establishment of an inquiry into racism and the criminal justice system;

**AND WHEREAS** the government recognizes that throughout society and its institutions patterns and practices develop which, although they may not be intended to disadvantage any group, can have the effect of disadvantaging or permitting discrimination against some segments of society (such patterns and practices as they affect racial minorities being known as systemic racism);

**AND WHEREAS** it is deemed advisable in the public interest to conduct an inquiry into systemic racism and the criminal justice system in Ontario;

**NOW THEREFORE, David Cole** and **Margaret Gittens** shall be appointed Co-Chairs and **Toni Williams, Sri-Guggan Sri-Skanda-Rajah, Moy Tam** and **Ed Ratushny** shall be appointed members of a Commission established to inquire into, report and make recommendations on systemic racism and the criminal justice system in accordance with the following terms of reference:

1.    The Commission shall, without expressing any conclusion of law regarding the civil or criminal responsibility of any individual or organization:

    a)    Inquire into, report and make recommendations on the extent to which the exercise of discretion, at important decision making points in the criminal justice system, has an adverse impact on racial minorities. This inquiry shall include empirical research.

    b)    Inquire into, report, and make recommendations on the treatment of racial

minorities in both adult and youth correctional facilities. Other corrections issues shall be dealt with in conjunction with other criminal justice system issues being reviewed by the Commission, as set out in these terms of reference.

c)  Inquire into, report, and make recommendations on the policies of the Ministry of the Solicitor General with respect to community policing and inquire into, report, and make recommendations with respect to the implementation of community policing in Ontario, including existing community policing models being utilized by police services boards.

d)  Inquire into, (by means of a comparative research study only and without hearings), report and make recommendations on how the criminal justice system should respond to future changes of criminal conduct against justice system officials and personnel involving racial minority victims. No findings or recommendations about any ongoing or completed case are to be made. The Commission shall make recommendations on how the practices, rule and procedures of the justice system should operate to address these changes in the future.

e)  Inquire into current measures that address the issue of preventing systemic racism through the selection, education, training, promotion, and discipline of justice system officials and personnel; report and make recommendations for the improvement of these measures or for the development of others. The selection, education, training, promotion and discipline of police addressed by the Task Force on Race Relations and Policing should be excluded.

f)  Inquire into, report, and make recommendations on the policy making practices of government ministries and agencies with criminal justice responsibilities, and how they could be improved to avoid reflecting or reinforcing systemic racism;

g)  Inquire into, report, and make recommendations on how racial minority communities can participate in the development and implementation of current and future criminal justice system reforms.

h)  Inquire into, report and make recommendations on access to justice services with respect to criminal matters, including criminal legal aid, by racial minorities.

i)     While the issue is not within the mandate of the Commission, the Commission shall consider and make recommendations on the need for future studies into racism inherent in the law.

2.     The Commission shall conduct the inquiry in an innovative and creative way, by such means as public meetings, focus group sessions, written submissions and empirical research studies. The Commission shall consult widely with justice system officials and personnel and shall seek out and use creative methods of ensuring community participation in its process. The Commission may return to the government to request powers under the *Public Inquiries Act* in relation to specific bodies or issues.

3.     The Commission shall utilize anti-black racism as a focal point for their analysis of systemic racism, also recognizing the various experiences and vulnerabilities of all racial minority communities, including racial minority women.

4.     The Commission shall pay particular attention to the impact of systemic racism on racial minority youth.

5.     The Commission shall not duplicate existing studies and shall take into account current government initiatives, where they reflect a systemic analysis, including community participation and address community concerns.

6.     While the subject matter of the Commission shall be systemic racism in the criminal justice system throughout Ontario, the Commission shall focus on urban centres in Ontario.

7.     The Commission, in cooperation with the Provincial Government, shall engage in discussions with the Federal Government with respect to the extent to which the Commission will consider institutions under Federal jurisdiction as they affect the administration of justice in Ontario.

8.     The Commission shall submit an interim report on treatment of racial minorities in both adult and youth correctional facilities to the Lieutenant Governor-in-Council within four months from the date of its appointment. The Commission shall submit its final report to the Lieutenant Governor-in-Council within one year from the date of its appointment.

9.     If allegations regarding individual incidents of wrongdoing are brought to the attention of the Commission, the Commission shall not attempt to investigate them, or make findings of fact about them, and shall refer them to the appropriate

bodies.

All government ministries, boards, commissions, agencies are directed to cooperate fully with the Commission and, more specifically, to provide all relevant information to the Commission, and to exercise their discretion under the Freedom of Information and Protection of Privacy Act in a way which facilitates the work of the Commission. All others involved in the criminal justice system who are independent of government are requested to cooperate fully with the Commission. The Commission shall have authority to engage such counsel, advisors, researchers and other staff and consultants at it deems proper within its budget at rates of remuneration to be approved by the Management Board of Cabinet.

## Appendix C

## THE LEGISLATION

### Section 70 (5)

s. 70(5) No appeal may be made to the Appeal Division by a person describe in subsection (1) or paragraph 2(a) or (b) against whom a deportation order or conditional deportation order is made where the Minister is of the opinion that the person constitutes a danger to the public in anada and the person has been determined by an adjudicator to be

(a) a member of an inadmissible class described in paragraph 19(1)(c), (c.1), (c.2) or (d): or

(B) a person describe in paragraph 27(a.1): or

(c) a person described in paragraph 27(1)(d) who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of ten years or more may be imposed

### s. 77 (3.01)

s. 77(3.01) No appeal lies to the IAD under subsection (3) in respect of a person

(a) with respect to whom a certificate has been filed under subsection 40.1(1) where it has been determined, pursuant to paragraph 40.1(4)(d), that the certificate is reasonable; or

(b) Who is a member of an inadmissible class described in paragraph 19(1)(c), (c.1), (c.2) or (d) where the Minister is of the opinion that the person constitutes a danger to the public in Canada.

## APPENDIX "D"

## DANGER TO THE PUBLIC

The profile described below should be considered by officers when determining whether or not to apply for the Minister's opinion under sections A70(5), (6) & 77(3.01).

## PROFILE

Persons who as a result of their actions, have caused or might reasonably be expected to have caused death or serious physical or psychological harm to persons and/or significant damage to property. For example, this would normally apply to persons whose offences include violence, narcotics trafficking, sexual abuse and the use of weapons.

## NOTE:

Officers seeking a danger to the public finding for persons involved in organized crime 19(1) (C.2), for persons found to be refugees or for visa holders seeking admission at ports of entry, should contact Case Management Branch for individual case assistance.

## CONSIDERATIONS

It cannot be emphasized too strongly that it is not simply the commission of an offence that brings into play "danger to the public" processing. Careful consideration must be given to a number of factors:

- The Nature of the Offence - offences considered dangerous to the public will normally involve violence, weapons, drugs, sexual offences;

- The Circumstances of the Offence - this will allow for consideration of what led up to the offence or the severity of the incident;

- The Sentence - the sentence of the judge in the court case will assist in deciding on the severity of the incident;

- Recidivism - multiple offences will be given greater weight than single offences;

- Humanitarian and Compassionate considerations - any circumstances advanced will be weighed against the factors above.

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Making a recommendation will require an analysis of the actions of the person, both as reflected in the commission of the current offence and as shown in past activities. If, either singularly or cumulatively these activities indicate that the person is described in the profile of "danger to the public", a request for the Minister's opinion, as authorized in A70(5), (6) and 77(3.01), should be initiated.

It is incumbent upon officers to carefully gather and analyze the documentation acquired in support of their recommendation (refer to section 8.1 Procedure for obtaining Minister's Opinion A70(5) Cases (iii) for suggestions), with particular reference to documentation that reflects the sentence imposed by the courts, the nature and the circumstances surrounding the crime(s).

Normally the officer's recommendation should not be at odds with the court's disposition of the offence, for example, where the court imposed a fine with little or no incarceration time. This aspect is important so that it does not appear that the courts and the department have completely different viewpoints as to whether or not the person is a danger to society. However, it should be kept in mind that the conviction registered against the individual and the resulting sentence do not always accurately reflect the circumstances surrounding the offence(s) (EG. plea bargaining).

It may be that based on the nature of the offence and the associated circumstances, a single conviction will be sufficient to conclude that a recommendation to the minister be made. That being said recidivism is an important factor for consideration in any danger to the public request. The person's record should reflect a continuing abuse of the law with the cumulative effect of making the person a "Danger to the Public".

Attachment 1 to this appendix is an example of the report, IMM 5367, which is to be completed when seeking the Minister's opinion. Detailed completion instructions are also provided. IMM 5367 will be available through the ALF system as of July 4/95.

Offers should not hesitate to contact Case Management Branch, NHQ for guidance on any case.

OFFENCES

The following list of offences, is provided to assist officers in determining whether the actions of the person in the commission of these crimes are such that s/he constitutes a danger to the public of Canada. These are the types of offences involving violence, narcotics, trafficking, sexual abuse, and use of weapons, that would normally lead to the conclusion that a person is a danger, depending upon the nature and the circumstances of the offence, the sentence imposed and the issue of recidivism. The list is not exhaustive, i.e. there may be other offences that may lead to a determination that a person is a danger

to the public, based on the profile above.

This list is also not determinative, i.e. a person who has committed an offence appearing on the list may not necessarily be a danger to the public, depending on the nature and circumstances of the offence, the sentence imposed, the issue of recidivism and humanitarian and compassionate factors.

1.      An offence under any of the following provision of the Criminal Code:

(a)  section 76 (hijacking);

(b)  section 77 (endangering safety of aircraft or airport);

(c)  subsection 78.1 (1) (seizing control of ship or fixed platform);

(d)  subsection 81(1) (using explosives);

(e)  section 85 (use of firearm during commission of offence);

(f)  section 87 (possession of a weapon);

(g)  section 151 (sexual interference);

(h)  section 152 (invitation to sexual touching);

(i)  section 220 (causing death, criminal negligence);

(j)  subsection 235 (1) (murder);

(k)  section 236 (manslaughter);

(l)  section 239 (attempt to commit murder);

(m)  section 244 (causing bodily harm with intent);

(n)  section 246 (overcoming resistance);

(o) subsection 249 (3)&(4) (dangerous operation of a motor vehicle causing bodily harm, death);

(p) subsection 255 (2)&(3) (impaired driving causing bodily harm, death);

(q) section 267 (assault with a weapon or causing bodily harm);

(r) section 268 (aggravated assault);

(s) section 269 (unlawfully causing bodily harm);

(t) section 271 (sexual assault);

(u) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);

(v) section 273 (aggravated sexual assault);

(w) sections 279 & 279.1 (kidnapping, hostage taking);

(x) section 344 (robbery);

(y) section 346 (extortion);

(z) section 348 (breaking and entering);

(aa) subsection 430(2) (mischief, danger to life);

(bb) section 433 (arson-disregard for human life);

(cc) section 434 (arson);

(dd) subsection 463(a)&(b) (attempts, accessories); (ee) paragraph 465(1)(a) (conspiracy to commit murder);

2.    An offence under any of the following provisions of the Narcotic Control Act:

(a) section 4 (trafficking);

(b) section 5 (importing and exporting).

3.    An offence under any of the following provisions of the Food and Drug Act:

(a) section 39 (trafficking in controlled drug);

(b) section 48 (trafficking in restricted drug);

# APPENDIX - E

The following people have been shot by police without the benefit of any adjudication of guilt and many without even being charged with an offence. Most of these people died as a result of the police shooting, with little or no accountability by the police for the killing.

| NAME | Date of Shooting | Outcome | Police Force |
|---|---|---|---|
| Andrew "Buddy" Evans | August 9, 1978 | Killed | Metro Toronto |
| Albert Johnson | August 26, 1979 | Killed | Metro Toronto |
| Michael Sargeant | November 20, 1979 | Killed | Metro Toronto |
| Leander Savoury | January 30, 1985 | Killed | Metro Toronto |
| Lester Donaldson | August 9, 1988 | Killed | Metro Toronto |
| Earl Edwards | November 7, 1988 | Injured | Ottawa |
| Michael Wade Lawson | December 8, 1988 | Killed | Peel Region |
| Sophia Cook | October 27, 1989 | Injured | Metro Toronto |
| Marlon Neil | May 4, 1990 | Injured | Metro Toronto |
| T.T. (A young offender) | September 20, 1991 | Injured | Metro Toronto |
| Vincent Gardner | September 26, 1991 | Killed | Nepean |
| Royan Bagnaut | November 3, 1991 | Killed | Metro Toronto |
| Jonathan Howell | November 9, 1991 | Injured | Metro Toronto |
| Raymond Lawrence | May 2, 1992 | Killed | Metro Toronto |
| Ian Coley | April 20, 1993 | Killed | Metro Toronto |
| Albert Moses | September 29, 1994 | Killed | Metro Toronto |
| Tommy Barnett | January 10, 1996 | Killed | Metro Toronto |
| Andrew Bramwell | March 15, 1996 | Killed | Metro Toronto |
| Wayne Williams | June 11, 1996 | Killed | Metro Toronto |
| Faraz Suleman | June 19, 1996 | Killed | York Region |
| Douglas James Payne | 1996 | Injured | Metro Toronto |
| John Braithewaite | 1996 | Injured | Metro Toronto |

| Francis Nicholls | January 1, 1997 | Injured | Ottawa-Carleton |
| Edmund Yu | February 6, 1997 | Killed | Metro Toronto |
| Hugh Dawson | March 30, 1997 | Killed | Metro Toronto |

Source: Report of the Commission on Systemic Racism in the Criminal Justice System.

## Appendix F

### Sample Questions

1.  How do you define the Criminal Justice System?

2.  How do you define law enforcement?

3.  What is community policing?

4.  How do you define community policing?

5.  Have you ever been stopped by the police?

6.  Were you ever charged by the police? If so, what was the offence?

7.  What is the role of police in society?

8.  What does race, crime and community policing mean?

9.  How often do you travel in a group?

10. What was the racial make-up of the group?

11. In what geographical were you stopped?

12. How does negative stereotype affect you?

13. How do you see the media's role in the criminal justice system?

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