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Ideology Over Evidence? The Place of Values Within the Safe Streets and Communities Act

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Abstract

In the context of Canadian policymaking, the alleged 'punitive turn' demonstrated by the Harper government from 2006-2015 was extraordinary. Under this turn, punitiveness coincided with a rejection of empirical evidence (Kelly and Puddister, 2017; Doob and Webster, 2015 2016; Marshall, 2015; Newell, 2013 Mallea, 2010). The controversial bill, the *Safe Streets and Communities Act,* has been regarded as one of the most poignant examples of this rhetoric (Marshall, 2015; Newell, 2013). This thesis investigated the role of evidence and penal populism in policymaking through a content analysis of the legislative debates of the SSCA. Drawing on a neo-Weberian framework this thesis finds that the motives of state actors may be complex, balancing self interest with populism, and concerns for efficiency with moral values (White and Prentice, 2013; Stevens, 2011; Zhao, 2009; Faught 2007; Tickamyer, 1981).

Keywords

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Chapter 1

1 Introduction

The Safe Streets and Communities Act was introduced to the House of Commons as "Bill C-10" by Conservative Justice Minister Rob Nicholson on September 20th, 2011 (Barnett et al., 2012). As an omnibus bill, the SSCA contained five parts and nine separate bills. The most controversial parts of the bill concerned amendments to the *Youth Criminal Justice Act* (YCJA) and the *Controlled Drugs and Substances Act* (CDSA). For example, contested changes to the YCJA included major shifts in the legal language of the bill, which would re-prioritize the goal of the Crown from the protection of the youth offender to the protection of society (Mallea, 2015). Changes to the CDSA were significant as they introduced the first ever mandatory minimum sentencing for drug crimes (Public Prosecution Service of Canada, 2018). There was a wealth of evidence that claimed that the bill would disproportionately impact marginalized populations, such as youth, Aboriginals, and women (Newell, 2013; Marshall, 2015; Lau and Martin, 2012; The John Howard Society of Manitoba and Latimer, 2012; Jarvis, 2012; The Northwest Territories Department of Justice, 2012). The efficiency of the bill's punitive methods was also called into question by many experts. Among these experts were the Canadian Bar Association, the Canadian Foundation for Drug Policy, the Canadian HIV/AIDS Legal Network, and over 500 doctors who signed with the Urban Health Research Initiative in a letter objecting to the bill (Jarvis, 2012). The bill was also criticized for being unnecessary, as crime rates in Canada had been falling steadily since the 1970s

(Comack, Fabre, and Burgher, 2018). Yet, despite much controversy outside and within Parliament, the bill would pass on March 12, 2012, thanks to a Conservative majority.

The SSCA is significant as it provides a microcosm of the alleged "punitive turn" in Canadian criminal policy under Prime Minister Stephen Harper's government from 2006-2015 (Marshall, 2015; Newell, 2013). The Harper government took a 'tough on crime' approach, breaking away from a non-partisan history of evidence-based rehabilitative measures (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Winfield, 2013; Hyshka et al., 2012; Jarvis, 2012; Mallea, 2010). This 'tough on crime' approach coincided with an anti-science rhetoric among the Harper Government, in which evidence was rebuked in areas of criminal policy (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Hyshka et al., 2012; Jarvis, 2012; Mallea, 2010).

The call for punitive policy among state actors is linked to the concept of penal populism. Penal populism is an attempt to win elections by appealing to voters' frustrations through victim advocacy, without concern for the true effectiveness of such policies (Pratt, 2007; Simon, 2007; Roberts et al., 2003; Garland, 2001). Prior to 2006, literature contends that Canada constructed social and political barricades against the globalizing effects of US-based penal populism. This immunity is referred to as Canadian exceptionalism, a discourse of the "Canadian way" of doing justice premised on peace and fairness (Pratt, 2007; Meyer and O'Malley, 2005:8; Roberts et al., 2003). Therefore, Canada had deliberately avoided being 'like the US' by staying away from penal

populism and insisting on evidence-based methods which were proven and fair (Pratt, 2007; Meyer and O'Malley, 2005; Roberts et al., 2003). Why did the Conservative government decide to break with the non-partisan tradition of evidence-based and fair policy, in favour of punitive populism?

Theories of the state attempt to understand the policy choices of state actors. Neo-Weberian theories of the state describe state actors as self-interested; politicians act in a manner that they believe will gain them electoral votes (Stevens, 2011; Saks, 2010; Zhao, 2009; Tickamyer; 1981). In this same neo-Weberian vein, literature suggests that state actors are also guided by their own values and beliefs (Adams and Saks, 2018; White and Prentice, 2013; Zhao, 2009; Faught, 2007). This suggests that state actors may support the punitive SSCA, regardless of the evidence, influenced by their own goals, interests, and values (Adams and Saks, 2018; White and Prentice, 2013; Stevens, 2011; Saks, 2010; Zhao, 2009; Faught, 2007; Tickamyer; 1981).

Through neo-Weberian theory, this thesis examines the legislative debates of the SSCA to discover how criminal and drug policy debates are framed, specifically pertaining to the role of evidence and experts in policymaking (Manning, 2006). Using retrospective qualitative content analysis, this thesis analyzed records of legislative debates to explore the rationales and arguments utilized by both the legislation's supporters and detractors. For the research to develop inductively, it was led by the general research question: What rationales did state actors provide, and what symbolic frames did they draw on, in legislative debates on the SSCA? Guided by this research question, the thesis examines the role of the state and state actors in the process of

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policymaking through an examination of legislative debates surrounding the passing of the SSCA.

The thesis is organized in the following manner. Chapter 2 will review the literature, beginning with sociological studies on the role of the state. I argue that neo-Weberian theories are particularly helpful in explaining the role of the state in terms of the SSCA. The literature review will also describe the use of evidence in policymaking in Canada, and the impacts of penal populism and Canadian exceptionalism in Canada. Lastly, the specific context of the Harper government and the SSCA concerning these topics will be further discussed. Next, in Chapter 3, the methods will discuss the process of the qualitative content analysis of the legislative debates. The methodological framework will be described, as well as the strengths and limitations of this approach. Chapter 4 presents the results. In this chapter, the most common frames utilized by those who support and object to the SSCA are outlined. This section will highlight how frames are often used by state actors to support or challenge legislation. I find that opposition members defend a systemic view of crime, while supporters insist on an individualistic view of crime. Lastly, the discussion in Chapter 5 will put the results into the context of neo-Weberian theory to explore why state actors may promote certain rationales over others. The limitations and possible areas for future research are also discussed in this concluding chapter.

Chapter 2

2 Literature Review

This chapter will provide an overview of the literature which relates to this thesis. The literature review will begin with a discussion of the various sociological theories of the state. Next, the neo-Weberian and Weberian theoretical framework of this thesis will be contextualized. The following sections will review the alleged 'punitive turn' of the federal government under Prime Minister Stephen Harper. Within this section, the influence of penal populism and state paternalism in Canadian policymaking will be defined. Also included in this section will be an overview of the history of evidence-based policy in Canada, including the alleged changes to evidence under the Harper government. With context situated by the literature, the significance of *the Safe Streets and Communities Act* will be introduced.

2.1 Theoretical views of the state

Durkheim, Marx, Weber, Foucault, and Mills offer different frameworks for the sociological study of the state and state actors. For Émile Durkheim, new divisions within the state created after industrialization allowed for the development of modernity and rationality (Badie and Birnbaum, 1983: 11). Under Durkheim's functionalist perspective, the state and society both progressed on forward trajectories (Badie and Birnbaum, 1983). This view, critics say, is inflexible to the vast differences among nation-states, and although Durkheim agrees that societies may differ, he insisted that all states governed in a similar manner (Badie and Birnbaum, 1983). Additionally, Durkheim's functionalist perspective of the progressively evolving state has little empirical merit and fails to

critically analyze complex power relations (Saks, 2010; Badie and Birnbaum, 1983).

Therefore, Durkheim could not capture the complex nature of states and state actors.

Marxist and neo-Marxist theories of the state offer a more critical approach but still fail to capture many nuances of the state (Saks, 2010; Amenta, 2005; Badie and Birnbaum, 1983). For Karl Marx, political and legal superstructures are founded on the economic structure of a given society (Badie and Birnbaum, 1983; Marx, 1970). However, Marx allows for a state which may act autonomously from the economic structure. The state takes various forms and roles among different capitalist countries. These differences may be explained by the unique histories of each specific state (Badie and Birnbaum, 1983; Marx, 1973). However, this nuance can be lost in most contemporary neo-Marxist theories of the state. Bertrand Badie and Pierre Birnbaum (1983) critique Marxist theories of the state. While some of these theories allow for autonomy, many reduce state actors to being only a "loyal agent of the capital" (Badie and Birnbaum, 1983:3). Elizabeth Clemens labels these theories as "instrumentalist" as they describe the state and state actors as only behaving as an instrument of the bourgeois class (Clemens 2016: 90). These 'instrumentalist' theories have also been criticized for offering little empirical basis for their arguments (Clemens, 2016; Saks, 2010; Amenta, 2005; Skocpol, 1985).

Similarly, theories of C. Wright Mills suggest that elite networks spanning various social institutions (such as business, government and military) decided social policy (Mills, 1956; Clemens, 2016). In analyzing the work of Mills and his contemporaries, Clemens (2016), like Mike Saks (2016), asserts that these theories do little to describe the real social processes located in state government. Thusly, Clemens

argues, these theories have left the actions and motivations of state actors as a "black box" (2016: 89).

The work of Michel Foucault offers a more complex view of the state. For Foucault, the state is not a monolithic entity, but rather it is a system of intertwined actors and institutions (Sawyer, 2015). This differs from the Marxist perspective which sees the state as an all-encompassing apparatus of the powerful. For Foucault, political power extends far beyond the state, and into institutions such as the family, the medical field, and prisons (Sawyer, 2015). Foucault describes a modern state which no longer relies on the use of physical force, but instead is concerned with the management and control of populations through bio-power (Clemens, 2016; Drake, 2010; Foucault, 2010, Curtis, 2001). Biopower can be described as the focus on the regulation and management of biological processes, such as birth rates and death rates (Drake, 2010). Foucault theorizes that the populous serves as a political object, wherein statistical data serve as information used to control and shape populations (Curtis, 2001). This is what Foucault refers to as the "governmentalization of the state", the process in which expert knowledge is used to maximize the efficiency of a population (Drake, 2010:47, Curtis, 2001). Frameworks of normative behaviour in state-run areas are shaped by this expert knowledge (Drake, 2010). Individuals who fall outside these ideological frameworks of normative behaviour are disciplined in society through disciplinary power (Drake, 2010). Disciplinary power is carried out through institutions of law and health, such as prisons and psychiatric facilities. Through disciplinary power, the practise of self-regulation, or governmentality, emerges (Drake, 2010).

Although Foucault's theories have been helpful in many critical examinations of policymaking, there were several reasons why these theories were not chosen for this thesis. For Foucault, the state relies on expert knowledge to create the most efficient form of governance (Drake, 2010). However, the *Safe Streets and Communities Act* was passed despite a wealth of expert knowledge which contradicted its efficiency (Azzie, 2015; Comack, Fabre, and Burgher, 2015; Newell, 2013; Marshall, 2015; Cunningham, 2014; Lau and Martin, 2012; Jarvis, 2012; The John Howard Society of Manitoba and Latimer, 2012; The Northwest Territories Department of Justice, 2012). Therefore, Foucauldian theory may be of limited applicability in this context. Secondly, in describing sociological theories of the state, Tracey L. Adams and Mike Saks (2018) assert that Foucauldian theory fails to probe the actions of state actors beyond the influence of governmentality. They assign a goal to policy makers (enhancing governmentality) without directly analyzing the actions and interests of state actors. Lastly, when examining the relationship between professions and the state, Saks (2010) and Adams and Saks (2018) find that tautological theorizing denies state actors autonomy.

When examining the founders of sociological thought, Weber was perhaps the most influential in the development of state sociology and political sociology (Berg and Janoski, 2005; Amenta, 2005; Badie and Birnbaum, 1983). Weberian theory views the state as central to explaining the structure of society, and not just an apparatus or instrument to the elite (Amenta, 2005). Moreover, Weber encourages researchers to focus on what state actors do, rather than focusing on the outcomes of their activity (such

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as capitalist power and governmentality). Therefore, Weberian theory was best-suited for undertaking the analysis of state debates in this thesis.

In his most well-known contribution to state-sociology, Weber offers that the state is an organization with a monopoly on violence, within a given territory (Clemens, 2016: 90; Weber, 1965). For Weber, the monopoly on violence allows the state to maintain legal order over its citizens (Dowe and Hughes, 1986). Weber's definition may still describe most modern states, but it leaves a considerable amount of the state undescribed (Clemens, 2016; Amenta, 2005; Nettle, 1968). The neo-Weberian theory of Edwin Amenta (2005) builds on Weber's definition. Amenta outlines a neo-Weberian model which describes the state as "a set of organizations, but with unique functions and missions" (Amenta, 2005:96). This state operates under the rule of rationality and bureaucracy (Clemens, 2016; Amenta, 2005). However, the state is different from any other bureaucratic organization because it holds legitimate authority over the use of violence in specified territory (Amenta, 2005). Weber's three forms of legitimate authority explain how the state retains the exclusive right of violence (Weber, 1965). The first form of legitimate authority is traditional rule (Berg and Janoski, 2005; Weber, 2007). The most classic example of traditional authority is a monarchy (Dowse and Hughes, 1983). The second type of legitimate authority is rational-legal, in which power is given by a specific legal process (Berg and Janoski, 2005; Weber, 2007). An example of such authority would be Canada's own parliamentary democracy. Lastly is charismatic power, where an outstanding characteristic or attribute bestows an individual with power (Berg and Janoski, 2005; Weber, 2007). History provides many examples of such leaders, from Martin Luther King Jr. to Adolf Hitler (Dowse and Hughes, 1983).

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Other neo-Weberian theorists offer similar theories on the state. J.P. Nettl (1968) and Clemens (2016) expand on the Weberian concept of the state by arguing that the unique cultural and historical backgrounds of a territory shape a state. Clemens defines nation-states as "territorially bounded entities that join a cultural framework of membership" (2016: 26). Similarly, Nettl describes a state as a collective of "functions and structures" which are shaped by the specific history, cultural norms, and constructs of belonging of a given territory (Clemens, 2016:90; Nettl, 1968:562). From these definitions, the cultural make-up of a state is described as vital to the way in which a state is organized and operates.

Contemporary Weberian theory approaches state actors differently, allowing for a more autonomous role. State actors act and operate in their own interests, as well as the interests of others (Adams and Saks, 2018; Clemens, 2016; Saks, 2010). Neo-Weberian theories allow for empirically based explanations of power and social exclusion (Adams and Saks, 2018; Saks, 2010). These theories also analyze the justifications underlying state actors' activity, through concepts such as rationality and values. Thusly, neo-Weberian theory was chosen as the theoretical framework for this thesis. This framework helped to describe the role of state actors in Canadian criminal policymaking.

2.2 Weber and Neo-Weberian theory

According to Weber, processes of rationalization guide the actions of individuals (Breen, 2012; Morrison, 2006). Weber believed that the very purpose of sociology was to interpret and explain social action (Anter, 2014; Breen; 2012; Morrison, 2006 Weber, 2007). Social actions were described by Weber as social behaviour that is perceived to be "subjectively meaningful" by actors. Society at its essence was made up of this

'meaningful' social action, and everything contained within society could be reduced to social action between actors (Anter, 2014; Weber, 2007: 7). According to Andreas Anter's interpretation of Weber's "Basic Sociological Concepts*"*, the state can therefore be reduced to a series of "individual steps from 'action' to 'state'" (Anter, 2014:85; Weber, 2007). When broken down to its very core, society and its institutions are nothing more than series of social actions between people.

Rationality for Weber is situated in specific values; although numerous forms of rationality may exist, Weberian scholars highlight three. The first is formal rationality, which is based on values of efficiency, control, and routine (Breen, 2012: 9; Morrison, 2006; Weber, 2007; Rheinstein, 1954). For Weber, formal rationality is the ruling logic of capitalist society and the form of rationality most utilized by the state (Breen, 2012; Morrison, 2006; Weber, 2007; Rheinstein, 1954). Next is substantive rationality. This can be described as rationality which is premised on pursuing a value or a system of values for its own sake (Kalberg, 1980; Weber, 2007; Rheinstein, 1954). Such values may be based on religious or a spiritually, tradition, or even justice (Breen, 2012; Morrison, 2006; Weber, 2007; Rheinstein, 1954). Lastly, is theoretical rationality, which is based in values of science and intellect (Breen, 2012; Morrison, 2006; Weber, 2007). However, unlike the other two forms of rationality, theoretical rationality is not directly related to any type of social action, as it is a cognitive process (Breen, 2012).

There are two ideal types of rational social actions according to Weber, instrumental-rational (or rational legal) and value-rational (Breen, 2012; Rheinstein, 1954). Instrumental-rational action is premised on calculated decisions based on the most efficient means to achieve an end (Breen, 2012: 10; Morrison, 2006: 359; Weber, 2007;

Rheinstein, 1954). In this type, social actors carefully consider the consequences of their decisions before acting. This includes the consequences that come from other social actors (Morrison, 2006; Weber, 2007; Rheinstein, 1954). Instrumental-rational action is guided by formal rationality. It is shaped by an individual's assessment of what they believe is the most efficient action. Therefore, this type of social action is based on the specific situated knowledge of a social actor (Morrison, 2006; Weber, 2007).

Secondly, value-rational social action is based solely on acting on a value "for its own sake" (Breen, 2012: 10; Morrison, 2006: 359; Weber, 2007; Rheinstein, 1954). This value can be based on "duty, honor, the pursuit of beauty, a religious call or the importance of some cause…" (Morrison, 2006; Weber, 2007:40; Rheinstein, 1954). In this type of social action, the value is perceived as more important than a successful outcome (Breen, 2012; Morrison, 2006; Weber, 2007; Rheinstein, 1954). This type of action is less concerned with weighing the options to choose the best means but is instead focused on pursuing a specific value (Breen, 2012; Morrison, 2006; Weber, 2007). Efficiency and success are still considered but are a much lower priority than pursuing the value itself (Morrison, 2006; Weber, 2007). Value-rational social action is based in substantive rationality, as it is premised on obtaining a value (Breen, 2012; Weber, 2007; Rheinstein, 1954).

Weber also describes two ideal types of non-rational social action. They are affectual social action (based off emotions) and traditional social action (based on habit of everyday life). (Breen, 2012; Morrison, 2006; Weber, 2007). In affectual social action, there is no rational calculation to a means or an end, as the response is triggered by emotions (Morrison, 2006; Weber, 2007). Lastly, traditional social action describes the

everyday rituals and daily habits of life. This type of social action is repeated so frequently, it becomes automatic (Breen, 2012; Morrison, 2006; Weber, 2007).

Weber also addressed the impacts of bureaucracy on the state. Weber viewed the state as a set of administrative bureaucratic institutions (Morrison, 2006; Weber, 2007). Within the state bureaucracy, legitimate authority is achieved through legal means, with laws which bestow the state offices and actors with administrative powers (Morrison, 2006; Weber, 2007). To remain efficient, individuals within the state bureaucracy govern using formal rationality (Morrison, 2006; Weber, 2007). Under this formal rationality, state actors are concerned with achieving the most efficient means to the most efficient ends (Morrison, 2006). Experts within the state bureaucracy tend to be guided by formal rationality and seek to adopt the best means to achieve the desired ends (Morrison, 2006; Weber, 2007).

However, the state, according to Weber, is not shaped only by bureaucracy (Morrison, 2006). Weber described the "levelling effect of bureaucracy" or the conformity of some social norms within the state bureaucracy (Morrison, 2006:385; Weber, 2007). This process is a result of democratic principles, which dictate that the state must be representative of its populous (Morrison, 2006; Weber, 2007). Such "levelling" of bureaucracy could mean the incorporation of public opinion and public consensus in policy, and a demand for a more inclusive and open society (Morrison, 2006; Weber, 2007). This concept demonstrates how value-rational action, guided by substantive rationality, can become incorporated into public policy, even under a state bureaucracy (Morrison, 2006). Therefore, Weber explains how a state's policy may be shaped by different rationalities.

Regarding state actors, Weber believed that state actors rationalized their actions like any other social actor (Weber, 2007). The same social processes that motivated other actors in their social actions, were also present in the state actor (Weber, 2007) Building on Weber's *Politics as Vocation,* Ann R. Tickamyer argues that state actors will act in their own self-interest to advance their career (Tickamyer, 1981; Weber, 1946). This self-interest is not innate to only politicians, but instead applies to most professionals (Saks, 2010; Tickamyer, 1981; Weber, 1946). However, most sociological literature on state actors and politics misses the complexity of state actors in general (Adams and Saks, 2018; Saks, 2010; Tickamyer, 1981). Adams and Saks (2018) suggest that state actors can be self-interested, and that their own desires and biases shape their decision-making. Stevens (2011) describes civil servants in the UK as self-motivated, seeking career advancement by promoting "totemically tough" policies (237). Civil servants often selected evidence which aligned with populist ideologies to impress superiors but failed to advocate for policy which they believed would be effective (Stevens, 2011).

Neo-Weberian theory also aids in explaining the role of evidence in policymaking. Dingxin Zhao (2009) modifies Weber's three types of state legitimacy (charismatic, legal-rational, and traditional) to analyze how legitimate authority has shaped the political landscape in Chinese politics. Traditional legitimacy is modified with ideological legitimacy "to include any value-based justifications of the state power" (418). Ideological legitimacy is defined by Zhao as the state's right to rule based on values, such as political philosophies, religion, or tradition. Ideological legitimacy also replaces charismatic legitimacy. Zhao justifies this decision in claiming that charismatic legitimacy is an "extreme form" of ideological legitimacy (418). Legal-rational

legitimacy is unmodified, defined for Zhao as "legally" elected state power (418). Lastly, Zhao creates a new type of legitimate state power, performance legitimacy, where the "state's right to rule is justified by its economic and/or moral performance" (418). For Zhao, performance legitimacy is an "evaluative process" in which the electorate judges the legitimacy of the state, relying on "common-sense" values (418). Thusly, ideological legitimacy is based on the evaluation of the electorate's values (Zhao, 2009).

The neo-Weberian theories of Zhao (2009) and Tickamyer (1981) highlight the motivated self-interest of state actors to remain in power and to keep their jobs. Additionally, as suggested by Zhao, state actors are driven by ideological party lines and their own ideologies about crime. State actors also anticipate the ideologies of their electoral base (Zhao, 2009). In this way, state actors are guided by not only their own professional rationality, but also by their own values, and the perceived values of the electorate (Zhao, 2009; see also Faught 2007).

Similarly, although not neo-Weberian theorists, White and Prentice (2013) claim that state actors support 'bad' policies to uphold their cultural and gendered values. In interpreting evidence-based arguments for early childhood education, experts were often over-shadowed by normative arguments surrounding families and parenting (White and Prentice, 2013). These findings, like Adams and Saks (2018), Stevens (2011), and Saks (2010) suggest that state actors adopt or cater to the normative beliefs of voters to keep themselves elected.

Based on this literature review, self-interested state actors may promote policies to win votes (White and Prentice, 2013; Stevens, 2011; Zhao, 2009; Tickamyer's, 1981). Additionally, state actors prioritize policy based on their own political or cultural beliefs

on a given issue (Zhao, 2009; Faught, 2007). Therefore, there may be more to state actors than interests of capital or governmentality. The complex role of state actors may have been underestimated in previous literature (Adams and Saks, 2018; Saks, 2010). This thesis addresses this gap, guided by neo-Weberian theory, to analyze the activity of state actors.

2.3. A "Punitive Turn": Canada Before and During the Harper Government

In this section, literature which analyzed the 'punitive turn' under the Harper government from 2006-2015 will be discussed. This literature argues that the federal government made an "unprecedented" punitive turn in Canadian policymaking from 2006-2015. This turn was marked by the adoption of penal populist rhetoric, and a rejection of evidence (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Winfield, 2013; Hyshka et al., 2012; Jarvis, 2012; Mallea, 2010)

2.3.1 Penal Populism

Penal populism can be described as: "the pursuit of a set of penal policies to win votes rather than to reduce crime rates or promote justice" (Roberts et al, 2003: 5). However, penal populism is different than populism in general, as it represents more than what is popular among voters (Pratt, 2007). For John Pratt, penal populism is unique as it taps into the "anger, disenchantment, and disillusionment" of the public (2007:12). This anger stems from the belief that the criminal justice system is more sensitive to the rights of criminals than to the rights of victims and citizens (Pratt, 2007).

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Research has explored the impact of penal populism in governance. Jonathan Simon (2007) argues that within the American justice system, the state is not simply "governing crime" but is instead "governing around crime" (4). Simon suggests that criminal justice governance is omnipresent in all institutions in American society. Crime has become a "significant strategic issue" and crime prevention a focus of governance (Simon, 2007:4). Using penal populism, state actors expand their governance, control and power, in part through a focus on victims -- the "common person whose needs and capacities define the mission of representative government" (2007:19). David Garland makes a similar argument of control and crime in the UK and the US. He describes a "radical shift" in the 1980s in American and British society (3). Under this new form of social organization, there is a new political and cultural order, which Garland refers to as the "crime complex" (2001:139). Culturally, citizens become adjusted to living in a world in which crime is a social fact, as seen with the rise of private security. Politically, policymaking under this new social order is "politicized and populist" (Garland, 2001:13). State actors rely on the rhetoric of individualism to amp up punitiveness in criminal policies. Garland (2001) too argues that state actors evoke emotional appeals for victims. Under the new order, acting on the behalf of victims and their families becomes a legitimate justification for punitiveness. Simon (2007) and Garland's (2001) conceptions of penal populism align with Pratt (2007), who describe punitive populism as a form of 'victim advocacy' which addresses the public's anger.

Up to 2006, research suggested Canada had avoided US-based penal populism (Pratt, 2007; Meyer and O'Malley, 2005; Roberts et al., 2003). For Pratt, Canada has social barriers which have protected against punitive policies; the most notable barrier

being the unique "political determination" of Canada to separate itself from the harsh justice system in the US (2007: 155). Additional barriers were the impact of French liberalism, the separation of justice into provincial and federal responsibility, and the journalistic integrity of news organizations (Pratt, 2007). Roberts et al. posit that penal populism had a "muted" influence on the "policy of restraint" in Canada as compared to other Westernized countries such as the UK and the US (2003: 39). Roberts et al. (2003) and Meyer and O'Malley (2005) also suggested that the unique discourse of Canadian justice prevented penal populism from taking hold.

According to Anthony N. Doob and Cheryl M. Webster (2015 & 2016), throughout Canada's history, there has been a political non-partisan consensus on how Canada's criminal justice system should be governed. This consensus was based around four pillars: the importance of social conditions, the ineffectiveness of harsh punishments to reduce crime, the development of criminal justice policies by expert knowledge, and lastly that policy should address real problems (2015). However, this consensus ended in 2006 with the election of Harper's minority federal government. Since 2006, the shift has been to penal populism (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Hyshka et al., 2012; Jarvis, 2012; Mallea, 2010). This 'punitive turn' was drastically influenced by shifts in the Canadian political discourse, most notably, the disassociation of experts and evidence in policymaking (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Winfield, 2013; Hyshka et al., 2012;

Jarvis, 2012; Mallea, 2010). Subsequently, the focus of policymaking shifted to the individual responsibility of criminals and punitive measures (Doob and Webster, 2016).

James B. Kelly and Kate Puddister (2017) also demonstrate evidence of the punitive turn. Their study examines the "unprecedented" amount of private member bills passed by the Harper Government (407). By the end of the Harper era, the federal government had passed more private member legislation than the previous Chrétien and Martin governments. These private member bills mostly regarded matters of public policy. This was different than most private member bills passed by previous federal governments, which were mostly concerned with "matters of… renaming or establishing national days of remembrance" (Kelly and Puddister, 2017: 393). Among the "unprecedented" amount of bills, 20 were concerned directly with criminal justice policy, or 32 percent of all private member bills passed. Conservative MPs introduced 17 out of the 20 of the bills. Historically, this was unheard of. From 1910-2015, only 33 private member bills concerning criminal justice were passed. In 105 years, 61 percent of private member crime bills were passed under Harper's federal government (Kelly and Puddister, 2017). The passing of such a substantial number of criminal justice bills is "unprecedented" in the context of Canadian history, making Harper's government "a criminal justice policy outlier" (Kelly and Puddister, 2017: 407).

The frequent use of private member bills has additional significance to the 'punitive turn' (Kelly and Puddister, 2017). Private member bills are not reviewed by the Department of Justice (DOJ) for constitutionality. For Kelly and Puddister, this was a "back door" attempt to force through punitive crime legislation which may have not

otherwise passed, such as bills which included mandatory minimum sentencing (2017:404).

Kelly and Puddister also assert that the Harper Conservatives utilized penal populist rhetoric not only in the content of bills themselves, but in the naming of the bills. The authors examined the naming of such Conservative bills as: "C-36 (Serious Time for the Most Serious Crime Act)" (2017:407). The authors compared these titles to criminal justice bills which were passed under the Liberal Chrétien government, such as "C-17 (An Act to amend the Criminal code and certain other Acts)" (407). By using such punitive rhetoric, the government attempts to identify themselves as the "law and order party" (18). Similar themes are seen in Paula Mallea (2010), who argued the Harper government enforced their own brand of penal populism while appealing to voters' fears. This was achieved through theatrical language. For example, bills were named as if they were repairing an unsafe society, as evidenced with the title: "*Safe Streets and Communities Act"* (Mallea, 2010).

Other recent literature agrees that Harper's government did utilize punitive rhetoric. However, this literature also suggests that there has been little change to incarceration rates which correlate with punitive government policy (Goodman and Dawe, 2017; Doob and Webster, 2015). These authors note that the new punitive policies have only been in place for a relatively short period of time, and the effects may not yet be seen in empirical work (Goodman and Dawe, 2017; Doob and Webster, 2015). Regardless, this shift in rhetoric itself was important, especially in the context of studies such as Kelly and Puddister (2017) who offered evidence for an "unprecedented" shift in punitive crime policy (407).

To summarize, prior to 2006, studies argued that social and political barricades prevented punitiveness from taking hold in Canada (Meyer and O'Malley, 2005; Pratt 2007; Roberts et al, 2003). However, more recent literature documents a clear turn to the punitive between 2006 and 2015, evident in the practices and policies of the federal Conservative Government (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Hyshka et al., 2012; Jarvis, 2012; Mallea, 2010).

2.3.2 State Paternalism

According to Pat O'Malley, punitive penal policy and state paternalism are intertwined. O'Malley argues that paradoxical measures respecting both rehabilitation and punishment found in the modern penal system can be explained by the "contradictory elements of New Right politics" (1999: 175). The paradox of the "New Right" is contained in the blend between "nostalgic" neo-conservatism and "innovative" neo-liberalism. Within the realm of "neo-conservative nostalgia", he argues, states act in a paternalistic manner to support punitive criminal justice policies to protect the public (O'Malley, 1999: 189).

Paternalism can be simply defined as "the interference by some outside agent in a person's freedom for the latter's own good" (Le Grand and New, 2015: 17). State paternalism refers to the concept of the state which protects individuals from self-harm "whether they like it or not" (Feinberg, 1971: 105). According to Joel Feinberg (1971), this concept can be likened to parents who interfere with their child's free will to protect them. Under this logic, the state sees itself as the "permanent guardian" of its citizens,

and to act *in loco parentis*, or in the place of the parent (Feinberg, 1971: 105). Line Beauchesne offers a more nuanced definition of state paternalism, in an examination of Canada's drug policy: "…one of the government's roles is to protect non-independent persons, without questioning what constitutes a non-independent person or the meaning of the word protection…" (2000). Through this definition, the "protection" of those who are perceived to be "non-independent" or vulnerable is paramount in state paternalism (Kilty, 2014; Beauchesne, 2000). However, the Canadian state can be uncritical when deciding who needs protection, what these protections should mean, and outcomes of their application (Beauchesne, 2000). When considering these definitions together, state paternalism plays the role of "Mom and Dad know best" to protect vulnerable populations, without critically considering the consequences of such 'protection' (Le Grand New, 2015; Beauchesne, 2000; Feinberg, 1971: 105)

In the context of the Canadian state in general, the Canadian government has had a history of paternalism. This is evident in literature surrounding the treatment of Indigenous peoples. Most prominent is the *Indian Act*, in which the rights of Indigenous people were rewarded or withheld based on whether the individual demonstrated "good moral character" (Henderson, 2006:1; Turpel-Lafond, 1997). Canada's drug laws have also been criticized as being overly paternalistic, with paternalism used "to both protect and to prosecute" (Kilty, 2014: 78). These state paternalistic policies (such as *the Indian Act*) have led to staggering inequalities and destruction among these groups (Kilty, 2014). Similarly, Beauchesne argues that Canada's drug prohibition is based in "legal moralism and legal paternalism", in which those struggling with drug abuse issues are blamed, shamed, and punished (2000:1)

To conclude, state paternalism has historical roots in Canadian policy, specifically criminal and drug policies. Moreover, governments (such as within the US) have used state paternalism to justify punitive penal policy (O'Malley, 1999).

2.3.3 Evidence-based Policy and Politics

Literature agrees that more often than not, Canadian policy-makers incorporate evidence in their policies and take seriously the consideration of evidence in policy-creation (Waller, 2013; Voyer, 2007; Mintrom, 2007; Cornwell, 2006; and Bonta and Cormier; 1999). Evidence-based policy measures in Canadian policy became standard in the 1960s, with criminal justice matters catching on to the evidence-based movement in 1970s (Waller, 2013; Dobuzinskis, Howlett and Laycock, 2007; Mintrom, 2007; Waller, 1974; Waller and Chan, 1974). Previously, the use of evidence-based methods in Canada were limited. Evidence was included in Canadian policymaking after the social development of the world wars (Waller, 2013; Dobuzinskis, Howlett and Laycock, 2007). This shift to evidence-based policy mimicked similar shifts in policymaking in the US and the UK (Waller, 2013; Dobuzinskis, Howlett and Laycock, 2007). Evidence-based movements could also be traced back to the rational and managerial ideologies of social management in the early 20th century (Waller, 2013; Dobuzinskis, Howlett and Laycock, 2007). In criminal policy, evidence-based movements were posited on a shift from deterrence to preventative measures (Waller, 2013; Hughes and Mossman, 2002; Cornwell, 2006). During this time, the public were becoming frustrated with the inefficiency of the criminal justice system. Evidence-based methods were employed to answer the demands of Canadians. The *Uniform Crime Reporting Survey* was created in the early 1960s, and other emerging social science measures followed (Waller, 2013;

Cornwell, 2006). It was during the 1970s that evidence was applied to Canadian prisons, and systems of parole and prohibition, as the state attempted to combat recidivism (Waller, 2013; Hughes and Mossman, 2002; Cornwell, 2006; Waller, 1974; Waller and Chan, 1974). Evidence-based policy measures continued to grow in the 1970s, with the creation of several new taskforces and commissions which generated new Canadian-based research (Waller, 2013; Cornwell, 2006; Waller, 1974). Policy was also influenced by international science, specifically from the UK and the Netherlands (Waller, 2013). The influence of evidence led to the abolishment of the death penalty, reforms to the *Criminal Code*, and safety restrictions on fire-arms (Waller, 2013).

In 1985, Canada faced funding challenges which threatened the future of evidence-based methods. Federal cutbacks would see vital criminological research being defunded, leaving Canada far behind its international counterparts (Waller, 2013). According to Irvin Waller (2013), this lack of funding has continued today. Consequently, social science researchers in need of Canadian evidence must rely almost exclusively on *Statistics Canada*, or substitute with international research (Waller, 2013; Warburton and Warburton, 2004). Others such as Cornwell (2006) and Bonta and Cormier (1999) disagree with Waller's claims concerning Canadian policy. These sources insist that Canadian criminal justice policy research and application thrived from the 1980s onwards (or until the publication of those works). Whereas Voyer (2007) asserts that Canadian policy development is "healthy"; the bigger problem for policy-makers is sorting through almost endless amounts of data.

This literature provides a somewhat contrasting, but mostly cohesive view of Canadian policymaking in terms of incorporation of evidence. It points to a Canadian

government which, overall, regularly embraced the balanced use of evidence in policy (Waller, 2013; Voyer, 2007; Mintrom, 2007; Cornwell, 2006; and Bonta and Cormier; 1999). However, several scholars assert that there was a considerable shift when the Conservatives took power in 2006; this shift escalated with a Conservative majority win in 2011 (Goodman and Dawe, 2017; Doob and Webster, 2015; Azzie, 2015; Winfield, 2013).

In a report on evidence-based policymaking in Canada, Philippe Azzie (2015) discussed two perceived changes in the federal government from 2005-2015, which coincided with Harper's government (2006-2015). These changes were: (1) "a lack of interest in data"; and (2) "the subordination of evidence to politics" (Azzie, 2015: 6). Among areas in which the government treated evidence as unimportant included violent crime. Additionally, vital community and social programs were cut. According to Azzie, this led to the interruption of data collection and policy evaluations (2015). Mark Winfield (2013) analyzed the denial of expertise and evidence within the Conservative government's environmental policy, after their majority win in 2011. This study demonstrated that the federal government under Harper slashed government research budgets and restricted the use of non-governmental evidence in policy. The government also passed debilitating legislative "reforms" to limit evidence-based practises in government procedure, specifically those which evaluated and assessed the federal government (Winfield, 2013:202).

Goodman and Dawe (2017) agree that the Conservative government was in direct opposition with most experts and evidence; however, they accuse the government of intentionally misusing evidence to disguise their punitive measures as "science" (133).

Goodman and Dawe demonstrate how the Conservative government's objection to Vancouver's safe injection site, *Insite*, is an example of this strategy. In objecting to the site, Conservatives claimed that they were insisting on "tough love" by refusing to "enable bad behaviours" (134). The Conservative Government even published an article supporting their unempirical ideology in a "fake academic journal" (134). These efforts were financially backed by the anti-drug organization the *Drug Free America Foundation* (Goodman and Dawe, 2017: 134; Hyshka et al. 2012). Many critics claimed that this misuse of science was "ideology over evidence" (Wodak 2008: 226, as cited in Goodman and Dawe, 2017). However, Goodman and Dawe attributed this to the "triumph of ideology via the strategic manipulation of evidence" (134). According to Goodman and Dawe, the Conservative party under Harper wanted to appear that they were "play[ing] the game of science" (134). Conservatives did not always manipulate evidence in their policy justifications; however, at times evidence was openly ridiculed, or the topic was avoided all together. Goodman and Dawe (2017) suggest that the Conservatives: "happily (for their own job security and power) [created] as little as possible room for opponents to wage counter-insurgency against their policies and political positions" (137). This is consistent with the neo-Weberian authors who insist that politicians' decisions are shaped by what will win them votes, as well as ideology and values (Stevens, 2011; Saks, 2010; Zhao, 2009; Tickamyer; 1981).

The literature demonstrates how the use of evidence in politics may be premised on self-interests (Goodman and Dawe 2017; Stevens, 2011; Saks, 2010; Zhao, 2009; Tickamyer; 1983). However, the words of PM Harper's former Chief of Staff, Ian Brodie, can further illuminate the sentiment of the government under Harper. These

statements were taken from Ian Brodie during a panel discussion on the topic "Does Evidence Matter in Policymaking?" in March 2009, after he was no longer employed by the Prime Minister (Mallea, 2010; Geddes, 2009):

> *On criminal justice policy:* "Politically, it helped us tremendously to be attacked by [sociologists, criminologists, and defence lawyers] because they are "held in lower repute than Conservative politicians… we never really had to engage in the question of what the evidence actually shows about various approaches to crime" (Mallea, 2010; Geddes, 2009)

> *On economic policy:* "Despite economic evidence to the contrary, in my view the GST cut worked… It worked in the sense that by the end of the '05-'06 campaign, voters identified the Conservative party as the party of lower taxes. It worked in the sense that it helped us to win."

These quotes demonstrate not only disdain for experts and evidence, but a calculated move by the government to improve their image, by rejecting 'low-status' social science. The quotes suggest that the government may have seen evidence as less consequential than what is popular. It must be acknowledged that these quotes are only from one member of Harper's staff and are anecdotal. Still, Brodie's comments reveal a disregard for evidence from at least one high-powered individual in Harper's government (Mallea, 2010). When these statements are taken with other literature which demonstrates anti-science rhetoric, it becomes clear there was a shift in attitudes within the federal government (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Winfield, 2013; Hyshka et al., 2012; Jarvis, 2012; Mallea, 2010). This aligns with neo-

Weberian theory, specifically Zhao (2009) and Tickamyer (1981) who propose that politicians are self-interested and act to maintain their power.

Although this thesis focuses on the incorporation or rejection of evidence-based measures and experts in policy debates, there are important considerations to the use of evidence-based measures in policy. Paul Cairney (2016), Katherine Smith (2013), and Michael Yeo (2013) discuss the common false dichotomy between politics and evidence, in which the two are often juxtaposed as being at odds with one another. In this false narrative, science is cast as the only non-partisan and objective alternative to left-wing or right-wing ideologies. Yet, no policy is decided on scientific evidence alone, and policy debates are more complicated than a dichotomous battle between evidence and ideology (Cairney, 2016; Smith, 2013; Yeo, 2013). Evidence is often used as a political strategy, which any state actor may manipulate to their own advantage (Goodman and Dawe, 2017; Edwards, Gillies, and Horsely, 2016). Even more troublesome, states may insist on only 'hard' science. Rhetoric surrounding evidence-based measures and 'hard' science can further exacerbate existing social inequalities in policy by ignoring real-life concerns (Edwards, Gillies, and Horsely 2016).

These studies advise that when incorporating evidence into policy, the choices of state actors are more complicated than whether to include evidence or not. As pointed out by Yeo (2012): "evidence must be protected from politics, but politics must also be protected from evidence" (296). Reasonably, all evidence is at risk of being politicized. It is impossible to separate scientific evidence from the power relations that shape its creation and its use.

This section discussed the alleged 'punitive turn' of the Harper government. Next, the specific context of the *Safe Streets and Communities Act* will be discussed. As will be explained, this much-contested act was a microcosm of the punitiveness and evidence rejection demonstrated under the Harper Conservatives (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Winfield, 2013; Hyshka et al., 2012; Jarvis, 2012; Mallea, 2010).

2.4 The Safe Streets and Communities Act

The Safe Streets and Communities Act was an omnibus bill introduced by federal justice minister Rob Nicholson in the House of Commons on September 20th, 2011, under the name Bill C-10 (Barnett et al., 2012). When the SSCA was introduced, the bill was incredibly controversial, and was met with fierce opposition (Newell, 2013). During parliamentary debates, The House of Commons (HOC) and the Senate were presented with evidence that the bill would be harmful. Opposition parties attempted to debate, but the supporters of the bill failed to engage in discussions outside of "tough on crime" rhetoric (Newel, 2013:219). The bill, which was comprised of nine smaller bills, became official law on March 13, 2012 (Government of Canada, 2017). The bill was divided into five parts (Barnett et al., 2012). Part 1 of the bill pertains to terrorism and amended the *Criminal Code* with the *Justice for Victims of Terrorism Act* and the *State Immunity Act*. Next, Part 2 of the bill amended both the *Criminal Code* and the *Controlled Drugs and Substances Act.* These amendments included minimum sentences for those charged with illicit drug dealing, such as those caught dealing anywhere minors may be present (Barnett et al., 2012). Minimum penalties for the production of cannabis were also

included (Barnett et al., 2012). Additionally, amendments to the *Criminal Code* in Part 2 included mandatory minimums for child sex offenders. Part 3 addressed the *Corrections and Conditional Release Act and the International Transfer of Offenders Act*. The *Youth Criminal* Justice Act was amended in Part 4 to shift the priority of the Crown from the youth offender to the protection of society in general (Barnett et al., 2012). Finally, Part 5 amended the *Immigration and Refugee Protection Act* to protect migrant and immigrant workers from human trafficking and other abuses (Barnett et al., 2012). In this project, since I am most interested in criminal and drug policy, Part 2 of Bill C-10 is the most relevant as it may include discussions of illicit drug trafficking or illicit drug use. However, this thesis examined the entire bill debates, as the various parts of the bill are interconnected.

Upon the SSCA becoming federal law, many provincial organizations and governments became concerned with the possible impacts of the omnibus bill. A report by The Northwest Territories Department of Justice (2012) examines possible financial outcomes from the amendments made to the *Criminal Code,* the *Controlled Drugs and Substance Act* and the *Youth Criminal Justice Act.* The report predicts that the most significant outcome will be an increase in both the number of prisoners and the length of sentences. In another report on possible provincial outcomes, Catherine Latimer and The John Howard Society of Manitoba examines the potentially harmful effects the SSCA may have on recidivism and the rehabilitation of prisoners (2012). According to the report, the SSCA could increase the Manitoban prison population by 25 percent. The report highlights how the SSCA targets Aboriginals, youth, women, the mentally ill, and those with drug dependency issues. Similarly, Joshua Lau and Ruth Elwood Martin

(2012) establish the mandatory minimums of the SSCA will likely result in negative impacts on the physical and mental health of prisoners. The report details how the negative impacts on prisoners' health will be exacerbated in marginalized groups, such as youth, Aboriginals, women, and seniors (Lau and Martin, 2012)

Not only is the SSCA contested by evidence and experts, but it may be unconstitutional. Ryan Newell (2013) examined the SSCA in the legal context of the Supreme Court of Canada decision on *R v Gladue*. In this Supreme Court decision, it was mandated that judges take into consideration the complex social location of Aboriginals when sentencing. Sentencing was to be based on healing and was in part to address the over- incarceration of Indigenous peoples. Newell demonstrates that the SSCA violates this ruling, arguing that it only recreates the legacy of colonialism in Canada (2013).

Due to the SSCA*'s* relatively recent implementation, a literature search turned up no studies demonstrating the direct impact of the legislation, so the effects remain unsubstantiated. Still, this body of literature highlights the potential catastrophic impact of the SSCA on marginalized populations and on the criminal justice system. It also raises questions about debates surrounding the legislation. If there were so many negative arguments against the *Safe Streets and Communities Act,* what were the arguments in favour of it? On what grounds was it justified? Understanding the rhetoric behind the implementation of this law will shed light on criminal and drug legislation more broadly, and how controversial legislation is passed. A review of debates surrounding the bill will reveal how Canadian law-makers viewed the legislation, and

what impact they believed it would have for vulnerable and marginalized populations, and others.

2.5 Summary

In this chapter, different sociological theories of state governance were reviewed. Most attention was paid to the neo-Weberian framework, which highlights politicians as having a variety of interests, values, and goals which shape their legislative decisions. Next, the literature review examined the 'punitive turn' under the Harper government from 2006-2015. This punitive turn had two major characteristics: the use of penal populism, and the rejection of evidence. The highly controversial *Safe Streets and Communities Act* provided a great example of the 'punitive turn'. Critics warned that the bill was too harsh, and that it ignored decades of scientific research which disputed the efficiency of tough on crime measures (Azzie, 2015; Comack, Fabre, and Burgher, 2015; Newell, 2013; Marshall, 2015; Cunningham, 2014; Lau and Martin, 2012; Jarvis, 2012; The John Howard Society of Manitoba and Latimer, 2012; The Northwest Territories Department of Justice, 2012).

This thesis explores why this bill passed in the face of such controversy. More specifically, what rationales did Harper's government use to advance the legislation? This thesis will investigate the presence of penal populism and evidence in these rationales. Did legislators from other parties draw on evidence, penal populism, or other values? In answering these questions, this thesis will shed light on the circumstances surrounding the passage of the SSCA. Moreover, this study will further sociological understanding of policymaking and the role of evidence. As pointed out by Adams and Saks (2018), Saks (2010), and Tickamyer (1981), there is a lack of literature which discusses state actors as

real, autonomous actors. This has left state actors unexamined and trapped in a metaphorical "black box" (Clemens, 2016: 89). This is displayed in the literature surrounding the Harper Government and the SSCA. There is little consideration in these studies of Conservative state actors. State actors are dismissed as pawns working for the elite (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Mallea, 2015; Doob and Webster, 2015). Whether that may be the case or not remains unexplored. This study investigated the interests and values of state actors, and how state actors chose to prioritize evidence and ideologies of punitiveness in their debates.

Chapter 3

3 Methodology

3.1 Research questions

Drawing on the work of neo-Weberian scholars, my study aims to explain how evidence and experts are represented in the legislative debates surrounding the Safe Streets and Communities Act. This thesis analyzed records of legislative debates to explore the rationales and arguments utilized by both the legislation's supporters and detractors. The general research question driving data analysis was as follows: What rationales did state actors provide, and what symbolic frames did they draw on, in legislative debates on the SSCA? Three supplementary research questions were informed by the literature review:

1) How did members of the Conservative party rationalize the bill, and what was the role of evidence and penal populist rhetoric in their rationalizations?

2) In the legislative debates, did the arguments for and against the bill reflect legislators' values, and opinions on what makes an 'efficient' justice system?

3) How are marginalized populations, such as youth and Indigenous populations, regarded in the legislative debates?

Overall, the goal was to shed light on policymaking, and the role of evidence, penal populism and other factors in shaping legislative outcomes.

3.2 Data

The data analyzed were the debates in parliament surrounding the *Safe Streets and Communities Act (*SSCA*)*. More specifically, the parliamentary debates which were the focus of analysis were the Second reading of the bill in both the House of Commons (HOC), from September 21st-28th, 2011, and the Second reading of the Bill in the Senate, from December 12th-December 16th, 2011 (Parliament of Canada, 2017B). The Second Reading of the bill in both houses was chosen, as it is during this part of the policymaking progress when the main intent of a bill is discussed and debated (Parliament of Canada, 2017A). At second reading there is considerable debate and discussion, wherein all political parties justify their support, or lack thereof, for a bill. During the Second Reading in the HOC, the bill would have been in its early stages; however, at this stage the major debate around the primary purpose of the bill (or any bill) would have been made (Parliament of Canada, 2017A). By the time the bill reached the Senate it would be substantially revised. Looking at the debates here allows a consideration of the key concerns and areas of contention surrounding a later version of the bill, by different actors. The purpose of an upper house in the legislative process is to provide some 'sober second thought' (Parliament of Canada, 2017A). What senators had to say about this controversial legislation will shed additional light on the rationales and ideologies invoked by policy makers. Through this methodology, a fuller picture of the bill was obtained, while limiting the wealth of data to more reasonable parameters.

Certain areas of the SSCA pertained to the subject of drugs and crime more than others. Part 2 (which included changes to the *Criminal Code* and *Controlled Drugs and*

Substances Act) and Part 4 (which included changes to the *Youth Criminal Justice Act*) were the most relevant. However, all parts of the bill were included in the study, so the full intention behind the SSCA could be better examined.

The data used in the analysis from both the Senate and The House of Commons were taken from Hansard. The data were copied and pasted into a Microsoft Word document. In total, there were 488 pages of debates from the time periods chosen. The HOC Debates were considerably longer at 367 pages, with the Senate Debates at 121 pages. The data were analyzed by reading through the debates and taking detailed analytic notes (as described in section 3.3).

3.2 Symbolic Framing

This research draws on the methods used in Paul Manning's (2006) symbolic framing theory, which suggested depictions of illicit drugs were constructed in the media through symbolic meanings and representations (Haines-Saah et al., 2014; Manning, 2006). These meanings and representations are based in pre-existing social and historical inequalities. Therefore, a drug is represented in symbolic frameworks "based on the social location of its users" (Haines-Saah et al, 2014:50). For example, the negative representation by the media in terms of youth and illicit drugs may be explained by the social location of youth as a historically marginalized group (Manning, 2006). This relates to my study as I seek to discover how social actors rationalize their arguments for or against drug and criminal policy in the SSCA. However, the ways in which symbolic frames are utilized in this thesis are different. As described in the literature review, state actors often rely on their own ideologies and values when evaluating a policy (White and

Prentice, 2013; Zhao, 2009; Faught, 2007). These belief systems are situated and formed within the normative structures of society (White and Prentice, 2013; Zhao, 2009; Faught, 2007). In this sense, arguments made by state actors can be viewed as symbolic frames reflecting how social actors rationalize drug policy in the SSCA. This framework is useful for identifying the themes and rationales within debates on the SSCA, and for exploring how evidence is situated in these debates. Incorporating this methodological framework allowed for the exploration of the dominant rationales of the SSCA.

3.3 Methodical Strategy

The research methodology used in this thesis was a qualitative content analysis of the legislative documents. The content of the policy and legal documents were closely analyzed to identify dominant symbolic frames and to explore how they are represented in the debates.

In *Qualitative Data Analysis for Applied Policy Research,* Jane Ritchie and Liz Spencer (2002) outline four types of policy analysis: contextual, diagnostic, evaluative, and strategic. In contextual policy research, analysis is undertaken in the form of discovering attitudes, perceptions, and the overall framework of a policy document (304). For this thesis, contextual research was utilized to analyze the main symbolic frames found in the policy documents. Ritchie and Spencer (2002) detail the specific ways in which to undertake a policy content analysis. The descriptive coding methods of Johnny Saldaña (2009) and the symbolic framing methods of Manning (2006) were used to supplement the process and to give further structure and guidance when taking notes, coding, and analyzing.

The steps I used in my research are, in order from the first step to the last:

1. Familiarization

2. Identifying Symbolic Frameworks

3. Indexing

4. Interpretation

3.3.1 Familiarization

In the first stage, the familiarization stage, the researcher must submerge themselves in the data. According to Ritchie and Spencer (2002), the level of immersion will depend greatly on the nature of the research. Saldaña (2009) advised that the reading of the data should be completed two full times or in two passes, each time taking rigorous and descriptive notes. Due to the volume of the data and the time constraints of a master's thesis, one full pass of the parliamentary debate data was made. To compensate for this, very detailed notes, or descriptive notes, were taken on the parliamentary debates, and these notes were themselves examined in another full pass. At this stage, emerging symbolic frames were highlighted as they appeared in this data and in the descriptive notes.

3.3.2 Identifying Thematic Framework

Next, is identifying (or coding) the thematic framework. However, this section was amended as suggested in Ritchie and Spencer (2002). This methodological framework is meant to be flexible and subjective. At this stage, the descriptive notes were re-examined in order to identify the key symbolic frames, as done by Manning (2006). When assessing the symbolic frames in a media content analysis, Manning

assessed the symbolic frames first in the literature, and then in the content analyzed. This is similar to my method, as I first pulled symbolic frames, drawing on the themes raised in the literature review, such as penal populism and evidence-based policymaking. During the analysis of the descriptive notes, I utilized Manning's method by comparing the symbolic frames in the literature, to those found in the content, focusing on the most dominant frames.

When identifying or coding frames, I also drew on the insights of Saldaña (2009) and Owen (2014). Saldaña recommends many coding methods, including descriptive coding. Descriptive coding is a process by which themes, concepts and frames can be identified. Owen utilized Saldaña's method of descriptive coding to identify frames in higher education policy documents (2014). Saldaña and Owen contend that descriptive coding can provide "essential ground work" and a foundation for deeper analysis (Owen, 2014:15). That is, it has the advantage of being able to root out the general and larger frames of a text (Owen, 2014). In policy analysis, the researcher often does not have a definite understanding of what frames may appear in the policy, until after the first stage of coding. Even though the literature review had identified several important themes, I utilized descriptive coding to allow new frames and themes to emerge. This method also facilitated navigation of the complex legal terminology and political rhetoric of the SSCA. The use of Manning's (2006) symbolic framing and Saldaña's (2009) descriptive coding allowed for the themes of the debates to be properly identified and increased the reliability of my coding structure.

In addition to descriptive coding, analytical notes were also utilized at this stage

for researcher reflexivity. Analytical memos are reflective documents, allowing for the

researcher to practise reflexivity in the coding process (Saldaña, 2009). When coding, the

researcher writes on the process and the reasons for making certain coding decisions.

These memos are also useful for recording any problems that may be encountered during

the research process. As coding is a subjective process, this allows for reliability in the

operationalizing of codes and concepts (Owen, 2014). Analytical notes also facilitated

researcher reflexivity. During this research process, analytical notes were used to record

my thoughts and opinions. This strategy helped to reveal, and allow me to overcome, any

latent bias. These notes were made within the first pass of the policy debates and

recorded within the descriptive notes. Such notes were marked as a researcher's note and

colour coded so they would not confuse the coding process. During the coding process,

when the themes of the descriptive notes were re-evaluated, the analytical notes were also

re-evaluated and considered when assigning themes. These notes included many different

aspects, including an opinion about arguments, or notes which may question the validity

of certain comments or statistics. For example, if I strongly disagreed or agreed with a

comment made by a member on the bill, this would be noted. Comments which evoked

an emotional response were also noted. This is evidenced in a small excerpt from the

notes which were made on Hon. Bob Runciman's (Conservative) speech during the

second reading of the Senate:

> "[Runciman comments on] Amendment made by the house Justice committee to
>
> clause 41: [which includes] Mandatory Minimum for [possessing] 5+ [marijuana]
>
> plants

Me: No reason given? Why is this necessary!?! What is difference to society for 4

v. 5, 5v. 6 plants, etc...” [emphasis added to the analytical note for clarity]

As is demonstrated in this example, this allowed any opinions to be expressed in the

open, so that as a researcher, I was aware of my own biases. These comments were made

respectfully, but the notes were made freely and unfiltered. As pointed out by Owen

(2014) and Saldaña (2009) coding is a sensitive, subjective process. This process is

complicated by politics, where topics can turn personal and emotionally charged quickly.

Saldaña quotes Jennifer Mason to justify the use of analytical memos in qualitative

research: “[Reflexivity] in this sense means thinking critically about what you are doing

and why, confronting and often challenging your own assumptions, and recognizing the

extent to which your thoughts, actions and decisions shape how you research and what

you see” (Saldaña, 2009:33; Mason, 2002:5). Saldaña states that the use of these

analytical memos allows for critical thinking and for assumptions to be recognized and

challenged. Additionally, Mason (2002) argues that for researchers to have reflexivity,

there must be “critical self-scrutiny” and “active reflexivity” throughout the research. To

be specific, this is achieved by researchers “tak[ing] stock of their actions and their role

in the research process” (Mason, 2002:7). Mason is also firm in her assertion that

researchers cannot hope for complete objectivity and neutrality. Instead, “they should

seek to understand their role in that process” (2002:7). In this spirit, my use of analytical

memos allowed me to recognize, scrutinize, and challenge my biases throughout the

research process. By recording such personal reactions and nuances freely in the

analytical notes, reflexivity and reflection were enhanced, improving the quality of the

data analysis (Saldaña, 2009; Mason, 2002).

3.3.3 Indexing

Next was the indexing stage. Indexing is achieved by matching up the symbolic frames with specific elements of the text (Ritchie and Spencer, 2002). The process is systematic: frames were applied to the textual contents of the debates. Where, specifically, in the "textual elements" of policy can each symbolic frame be located (Ritchie and Spencer, 2002:311)? This was achieved during the pass of the detailed descriptive notes. Frames which were identified were re-evaluated. These frames were confirmed as being consistent frames within the research. Consistent frames were found to be repeated within the House of Commons debates, the Senate debates or both. Even frames which may not have been directly related to the topic of the research were still recorded, in case they may be relevant in the future. Tags and keywords were added to frames and were recorded so they could be returned to at later stages in the research.

In the coding process, the research questions were revisited. What were the main symbolic frames present? How is evidence regarded or disregarded in the debates? What sort of arguments and rationales are presented to justify the SSCA? Decisions on coding were reconsidered to ensure that frames were not looked over or assumed to be unimportant. Tags and keywords were again re-visited and adjusted to suit the emerging frames.

This coding stage involved both inductive and deductive methods. Inductive methods were used when re-evaluating themes during coding, which kept the research open to all the possibilities for frames which appeared frequently in the debates. Deductively, themes which appeared in the literature were also considered during the

coding process. However, if themes which were found in the literature did not appear after the full pass of the data notes, then such frames were eliminated. This process allowed for the most prominent rationales to appear as themes in the data. Additionally, such consistent coding re-evaluation ensured that frames were not eliminated due to any implicit researcher bias.

In the indexing stage, the range and frequency of the symbolic frames were charted (Ritchie and Spencer, 2002). This practise is advantageous, as it can give intangible elements, such as symbolic frames, a space where they may be easily identifiable and visualized (Ritchie and Spencer, 2002). All symbolic frames were recorded in the chart by the frequency in which they occur. Depending on the exact number of times a theme was discussed in the debate, the frames were organized by frequency, or how many times each theme appeared. Frames were counted using key-words and phrases that were assigned and re-assigned throughout the indexing process. As the frames were organized by volume, charting allowed for the most salient symbolic frames to become apparent. Frames were also broken down into two larger categories of "Opposing" (arguments which opposed Bill-C10) and "Supporting" (arguments which supported Bill C-10). However, some frames were seen on both sides of the debate (although ranging widely in frequency) such as "*Use of Scientific Evidence and Experts*" and "*Use of Personal Experiences, or Anecdotes*". It was in this charting stage that many similar frames were condensed into larger frames. Frames which were similar were grouped to understand the larger debates in the data. For example, "*Use of Personal Experiences*", and "*Use of Personal Anecdotes*" were condensed into one larger category. Collapsing smaller frames into larger frames facilitated identification of the most

important frames in the data. It is important to note that some frames were collapsed into large categories but were still counted separately if a distinction was necessary. For example, the frame "*Concern for vulnerable/marginalized groups*" included the smaller frames of "*Concern for Aboriginals*", "*Concern for Youth*", and "*Concern for the Mentally Ill*". This category was condensed so it would be possible to set aside a frame that would demonstrate *all* concerns for vulnerable populations in general. By including a frame for each group, it was evident what groups generated the most and least concern in debates.

When the themes were first charted, both rationales of opposing (those who opposed the bill) and supporting (those who supported the bill) sides were charted together. However, due to the nature of the debates, the themes appeared in the data in an oppositional manner, with members responding to each other's arguments with their own counter-arguments. It became useful to separate the themes by opposing and supporting rationales to best capture the data.

To count the frequency of themes, tags were used during each pass of the policy debates and descriptive notes. Each potential theme was assigned a tag, or a short-form. Tags were recorded for reference. To minimize researcher bias, most frames used were substantiated previously from the literature, as mandated by Manning (2006). Research remained open to other possibilities outside of the established research, however, the clear majority of arguments within the debates were discussed in the literature. Frequencies were counted using the "Search and Find" tool in Microsoft Word for each specific tag. Although tags were used in both the policy debate document and the

descriptive notes, the tags used in the descriptive notes were the ones counted for frequency. The descriptive notes were created from the policy debates, and the themes in the descriptive notes were scrutinized in the coding process. The intention of the 'tagging' process was to identify the prevalence of key themes, and tagging the descriptive notes was most useful for this process.

Another consideration in this research was the issue of when to apply tags to themes. Often, the same theme, or essentially the same rationale or subject, came up repeatedly, especially in longer speeches. Once a Senator or MP brought up a theme, it was tagged. The same tag would not be applied twice in a speech, unless the theme or frame was brought up again after the subject had shifted to another matter or another theme. A fair consideration with this method is that a Senator or MP may speak at length on one theme and that may be missed in the data. However, this was not the case with these specific policy debates. The specific subjects of debates shifted often. Due to this, counting the tags in this manner most accurately captured the frequency and the attention actors gave to specific themes.

Themes with a frequency of less than 15 tags were omitted or collapsed into larger frames, with a few exceptions. I arrived at the number 15 inductively, after counting the reappearing frames during the coding stage. The response to the frame *Recognizing Concern for Indigenous Communities* was the only exception, with 5 occurrences in the debates on the supporting side of the legislation. This exception was included as it was a direct response to a popular frame on the other side of the debate, and in the literature.

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3.3.4 Interpretation

The last stage in analysing the data was the interpretation stage. At this stage, the methods used here diverged slightly from Ritchie and Spencer's recommendations. According to Ritchie and Spencer (2002), these methods are meant to be flexible and to meet the individual needs of each researcher. It is in this stage that the theoretical framework was applied to the symbolic frames. I also revisited the research question and re-examined the data to identify the principle rationales provided by state actors when supporting or opposing the SSCA, and especially to identify the presence and significance of evidence, penal populism, values and interests in these rationales. The main research question was answered using the frame chart created in the charting process. The most salient themes were previously chosen during this process, so this question was easily addressed relying on the chart. The themes that emerged from the literature review, were found to be relevant in the frame chart and were among the most frequent frames identified. Analysis proceeded with a focus on the frequency and content of the rhetoric on either side of debates, with particular attention to the role of evidence, experts, penal populism, and rationales including voter appeasement and values, and concern for marginalized populations. Tags were returned to again, as were the analytic notes, and the descriptive notes, and the original document to understand the full context of these themes within the SSCA.

3.4 Summary

This chapter presented the methodology used in this thesis. A retrospective content analysis was used to discern the main symbolic frames within the SSCA. More specifically, contextual policy analysis, as outlined by Ritchie and Spencer (2002) was used as the main methodological technique, supplemented by the descriptive coding

methods of Saldaña (2009) and the symbolic framing method of Manning (2006). The

next chapter presents the results of this analysis.

Chapter 4

4.0 Results

This chapter presents the results from the analysis, to answer the main research question "What rationales did state actors provide, and what symbolic frames did they draw on, in legislative debates on the SSCA*?*". The most-common rationales identified have been broken into two sections -- supporting and opposing frames – to capture the rationales and arguments advanced on each side. On the supporting side, the Conservative party of Canada advocated for the SSCA. On the opposing side, the Liberal Party of Canada, the New Democratic Party of Canada, the Green Party of Canada, and the Bloc de Quebecois objected to the SSCA.[1] Table 4.1 provides a summary of the frames and the number of times they appear in debates.

Overall, this research finds that rationales provided by legislators who debated the SSCA reflected broader understandings of crime, values and attitudes concerning justice and the role of the state. The rationales provided by those who supported and those who opposed the bill differed somewhat. Importantly, the supporters held an individualistic view of crime, in which offenders needed to be held accountable. In contrast, members of the opposition embraced a more societal view of crime. Nonetheless, sometimes there was overlap in the kinds of rationales adopted by legislators on both sides.

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[1] There was one Conservative senator, Hon. Pierre Claude Nolin, who opposed the bill. His opposition to the bill was similar to other opposers: he held that there was a lack of evidence to support the bill's effectiveness.

4.1 Tables: Most Frequent Supporting and Opposing Frames

Table 4.1.1: Most Frequent Supporting Frames

Most Frequent Supporting Frames

Frame	Actual Occurrences (on this side)
1. Victim Advocacy	76
2. Safe Streets in Canada	74
3. Harmful Drug Production and Dealing	51
4. Protecting Society from Dangerous Youth	45
5. Offender Responsibility, Punishment and State Paternalism	43
6. Personal Narrative	40
7. Bill has been debated at length	29
8. Use of Scientific Evidence or Experts	26
9. Concern for Indigenous Communities	5

Table 4.1.2: Most Frequent Opposing Frames

Most Frequent Opposing Frames

Frame	Actual Occurrences (on this side)
1. Use of Scientific Evidence and Experts	166
2. Advocacy for Marginalized Populations	103
3. Punitive Penal Populist Rhetoric	96
4. Hidden Cost of Bill C-10	81
5. Canadian Exceptionalism	62
6. Prevention, Rehabilitation and State Responsibility	57
7. Personal Narrative	46
8. Not enough time to Debate Bill	35
9. Removes judge discretion	18

4.2 Findings – Supporting Frames

The most popular frames utilized by members of the Conservative party in supporting the bill included *Victim Advocacy, Safer Streets in Canada, Harmful Drug Production and Dealing, Protecting Society from Dangerous Youth, and Offender Responsibility, Punishment,* and *State Paternalism.*

4.2.1 Victim advocacy

On the supporting side, the most frequent frame was *Victim Advocacy*. Throughout the debates, Conservatives labelled themselves the "party for victims". They argued that the bill would protect victims, and that victims supported the legislation. The bill's detractors were said to be "against" victims. For instance, Justice Minister Hon. Rob Nicholson responded to criticism that he had been 'silent' on the bill's cost as follows:

> Speaker, let me tell members who has been silent. It is the NDP on the cost to victims in this country. We never hear a question about that coming from the NDP and, to be fair, the Liberals as well. They are in on that. The Department of Justice estimated the cost of crime in this country is about $99 billion, of which 83 percent is borne by victims. If the hon. member is worried about the costs, he should start standing up for victims, just to make a change for the NDP (Hon. Rob Nicholson, Conservative Party of Canada, House of Commons Debates).

Nicholson's figure concerning the enormous cost of crime endured by victims was a statistic frequently utilized by the supporters in this frame.[2]

MP Eve Adams (Conservative) also draws on this frame:

I think the fundamental issue here is that we are just expressing far too much sympathy for the criminals when in fact most Canadians would want us to express our sympathy for the victims. That is what this bill does (MP Eve Adams, Conservative Party of Canada, House of Commons Debates).

As demonstrated here, *Victim Advocacy* was used by supporters to cast Conservatives as 'good' people defending the unfortunate and deserving. In contrast, opponents were said to be on the side of 'bad' people who were undeserving. Such rhetoric presents a rather simplistic or 'common-sense' view of crime. There are 'bad guys' (criminals) who need punishment and 'good guys' (victims) who deserve protection and justice.

This frame contains elements of penal populism, which taps into the anger surrounding the perception that the criminal justice system advocates for the rights of offenders over victims (Pratt, 2007; Simon, 2007; Garland, 2001). This is also consistent with the research of Simon (2007) and Garland (2001) who argue that penal populist governance is victim-focused.

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[2] This statistic was taken from a 2008 study by the Department of Justice, as indicated by Nicholson. The study found that in 2008, the estimated indirect costs of crime in Canada was $99 billion. The cost of direct crime was $14.8 billion. According to the study, the 83% of these costs were endured by victims (Zhang, 2008).

4.2.2 Safer streets in Canada

The second most utilized frame by supporters of the SSCA was *Safer streets in Canada*. Just as the name *The Safe Streets and Communities Act* indicates, supporters of the bill claimed that it would make Canada and Canadians safer from crime and criminals. This frame was often discussed as a "mandate" that Canadians gave the Conservative government when they ran for election earlier that year, as the party platformed on crime reform. These quotes from MP Brian Jean (Conservative) and MP Candice Hoeppner (Conservative) demonstrate this rhetoric:

> As noted by the Minister of Justice in his speech to the House last week, this bill reflects the strong mandate that Canadians have given us to protect society and ultimately hold criminals responsible for their actions (MP Brian Jean, Conservative Party of Canada, House of Commons Debates).

> On May 2, Canadians gave us a strong mandate to continue working to build our economy and to focus on keeping our communities safe. We have listened to them and acted on our pledge by introducing this legislation (MP Candice Hoeppner, Conservative Party of Canada, House of Commons Debates).

Supporters insisted that by passing the bill, Canadian neighbourhoods would be made much safer. However, there was little to no evidence ever presented on how specifically the bill would work to reduce crime, other than by putting 'criminals' in prison.

This frame too reflects penal populism. Conservatives argue the policy should be passed because the populous has demanded safer communities (see Roberts et al. 2003).

4.2.3 Harmful Drug Production and Dealing

The third most common frame was *Harmful Drug Production and Dealing*. This frame was used most often to justify the amendments to the *Controlled Drugs and Substances Act*. Within this frame all drug dealing, and drug production are framed as serious and harmful to the community. Drug production (such as marijuana grow-operations) is harmful to society because it destroys property, and chemicals used in production can endanger those living near drug labs. Supporters also claim that drug dealing is harmful to communities because drug dealers frequently target children:

> The legislation before us today will also provide mandatory minimum penalties
> for serious drug offences when such offences are carried out for organized crime
> purposes or if they involve targeting our children. One case where we repeatedly
> see this is with the targeting of areas around schools by drug dealers. I think all of
> us can agree there are few things worse than specifically targeting our children for
> criminal purposes. Deliberately trying to get kids hooked on drugs for financial
> gain is deplorable, which is why I am pleased to support the measures in Bill C-10
> that provide mandatory minimum sentences for those who engage in this sort of
> illegal activity (MP Ryan Leef, Conservative Party of Canada, House of
> Commons Debates).

Although no direct evidence is provided for the concern, MP Ryan Leef (Conservative) implies that there is a frequent and serious problem in communities of drug dealers targeting children. He claims the SSCA will solve this problem through mandatory minimum sentencing. In this frame, drug dealing is seen not only as harmful to the

community, but more specifically, as ruthlessly victimizing the community's most innocent.

This frame was often used as a rebuttal to the opposing frame *Punitive Penal Populist Rhetoric*, where opposers claim that the bill is too punitive and only a political tactic to gain votes. The supporters rebuke those claims by stating that drug production and drug dealing are serious, and therefore warrant punitive measures. For instance, Parliamentary Secretary, Hon. Kerry-Lynne Findlay defended the bill:

> These are strong measures, but they are reasonable, and they are meaningful, and a meaningful response to a problem that is increasing in and plaguing our cities. …. As parliamentarians, we are this country's lawmakers. It is incumbent upon us to see that our laws provide appropriate and adequate measures to address this very serious problem. Some members of the House may be of the view that serious drug offences do not require a response such as the one contained in the bill. However, serious drug crime is a growing problem in Canadian cities and in smaller towns, and a serious legislative response is required. The government has made tackling crime a priority in order to make our streets and our communities safer. This bill is a reasonable, balanced and narrowly structured approach which the government is taking toward realizing this goal (Hon. Kerry-Lynne Findlay, Conservative Party of Canada, House of Commons Debates).

As demonstrated by Findlay, in this frame, drug-dealing is portrayed as a "growing problem" in Canada's communities, and hence "serious legislative response" is required. As with Leef, there is no evidence provided which demonstrates such a problem emerging. Others within this frame did offer evidence, at times, that drug production was

a serious problem. This was seen specifically with statistics on the growing number of marijuana grow-operations on Canada's West Coast. However, outside of these statistics, supporters did not offer much in the way of real evidence that drug dealing harms had suddenly escalated, or that drug dealers were regularly targeting children in Canadian communities. Personal anecdotes or experiences (under the *Personal Narrative* frame) of increasing drug crimes in communities were also used in place of evidence to argue the existence of such problems.

The *Harmful Drug Production and Dealing* frame is also consistent with penal populism, as it appeals to anger over the failure of the existing system to provide adequate punishments for crime. The supporters claim their laws will protect the law-abiding, by punishing those who push drugs on innocent victims.

4.2.4 Protecting Society from Dangerous Youth

The fourth most common frame was *Protecting Society from Dangerous Youth*. Supporters utilized this frame to justify the changes made to the YCJA, which the opposition argued would be harmful to youth populations. In this frame, the supporting side argued that the SSCA will "better protect Canadians against violent young offenders" (Robert Goguen, CPC). One way in which the act was said to protect the public, was by holding dangerous youth accountable for their crimes:

The proposed changes to the *Youth Criminal Justice Act* reflect what we as parliamentarians have been hearing from our constituents. They are concerned about the threat posed by violent young offenders as well as by youth who may commit non-violent offences but who appear to be spiralling out of control

towards more and more dangerous and harmful behaviour. In talking to fellow

Canadians, we have found that they can lose faith in the youth criminal justice

system when sentences given to violent and repeat young offenders do not make

these youth accountable for their actions (MP Brent Rathgeber, Conservative

Party of Canada, House of Commons Debates).

These claims that Canadians need protecting from dangerous youth made by Rathgeber

and other supporters were often justified with the *Personal Narrative* frame wherein

supporters drew on their personal experiences speaking with voters, and as parents

themselves. As with the other frames discussed so far, this frame reflects individualistic

and 'common sense' approaches to crime and justice. Under this rhetoric, the act will

keep 'bad' kids from harming 'good' people. The fear of violent youth expressed in this

frame may be representative of a moral panic surrounding youth as out of control and

dangerous (Silcox, 2016; Schissel, 2008).

This frame also reflects paternalism. Supporters claimed that the youth needed

more punishment to protect Canadians, other youth, and society in general (Le Grand

New, 2015; Beauchesne, 2000; Dworkin, 1976; Feinberg, 1971: 105). Penal populism is

also evident as Rathgeber and others argue the population -- his constituents and "fellow

Canadians" – are frustrated with the current system, which has failed to protect them

from youth who are "spiralling out of control". This frame claims that the SSCA will

protect the law-abiding Canadians from violent youth, and that it will correct a long

history of laws which ignore the rights and needs of fellow Canadians.

4.2.5 Offender Responsibility, Punishment and State Paternalism

The fifth most common frame was *Offender Responsibility, Punishment and State Paternalism*. This frame was often used when rebutting the argument that Bill C-10 would deny offenders opportunities for rehabilitation, thereby increasing recidivism rates. In this frame, supporters of the bill claim that criminals need to be taught a lesson and to be responsible for their own rehabilitation and recovery. Supporters argued that offenders would be deterred from committing crime to avoid harsh punishments. Additionally, this frame also included claims that the state provides the proper rehabilitative tools in prison, and it was up to the individual to best utilize these tools:

> […] Bill C-10 contains amendments that will ensure that rehabilitation, as well as reintegration into the community, is a shared responsibility between offenders and Correctional Service Canada. The question is, what does this mean practically? It means that offenders will be required to conduct themselves in a manner that is respectful of other people and their property. It means that offenders must obey the rules set out by the institution where they are serving their sentence, as well as heed all conditions that govern release. Above all, it means restoring common sense. Offenders will simply not receive benefits for bad behaviour. Offenders will also be responsible to actively participate in their correctional plan…. We firmly believe that with appropriate programs and active participation from both the offender and the corrections system that many individuals can become law-abiding citizens. The successful rehabilitation and reintegration of an offender into a community is a shared responsibility. We are committed to providing appropriate programs to offenders, but it is only fair to expect offenders to do

their part (Parliamentary Secretary Eve Adams Conservative Party of Canada, House of Commons Debates).

As demonstrated by this quote by Eve Adams, under this frame, the offender is responsible if they fail to be rehabilitated after the state provided the opportunity to reform. The bill is described as "restoring common sense" to methods of rehabilitation by punishing the "bad behaviour of criminals". Similar to the *Victim Advocacy* frame, this frame hinged on an individualistic view of crime, in which the cause and solution to crime is to punish and fix criminals.

Supporters often cast punishment as a path to rehabilitation. These comments by Hon. Pierre-Hugues Boisvenu (Conservative) and Hon. Christian Paradis (Conservative) provide an excellent example of this rhetoric:

Punishing someone is not a sin. Punishment is not the opposite of rehabilitation; the two are complementary. The person who commits a crime must reflect upon it. The criminal is isolated and given a sentence: think about what you did to the victims, the damage that was caused, and start thinking about how you can rehabilitate yourself. We will provide you with the tools to do it (Hon. Pierre-Hugues Boisvenu; Conservative Party of Canada, Senate Debates).

We know that opponents of this bill, in Quebec especially, will always pit rehabilitation against deterrence, but these are not exclusive of one another—they are complementary (Hon. Christian Paradis, Conservative Party of Canada, Senate Debates).

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Paternalism is also evident in this frame, as offenders were sometimes compared to children who needed to be taught a lesson. Consider these comments from the Hon. David Tkachuk (Conservative):

> Logic will tell you, however, that rational individuals think about their own consequences. Everyone here who has kids will at one time in their lives have told them to think about the consequences of their actions. It is wise advice and those who ignore it do so at their peril. Those who commit serious and violent offences do so not only at their peril but at the peril of their victims. That is why the consequences are so severe and that is why they should be so severe. I firmly believe that the end result will be that there will be less crime and fewer people going to jail (Hon. David Tkachuk, Conservative Party of Canada, Senate Debates).

Here, Hon. David Tkachuk (Conservative) utilizes the *Offender Responsibility, Punishment and State Paternalism* frame to claim that offenders must be held responsible, and harsh punishments will lead to the deterrence of crime. Tkachuk claims punishing offenders is akin to parenting. Offenders, like children, should take time out to "think" about their actions. Such a response is just 'common sense'.

This frame was often used with the *Personal Narrative* frame. Tkachuk states that he "firmly believes" that these punitive measures will deter crime and lower crime rates. However, this belief is not premised on evidence or any substantial proof, other than the "common sense" and "logic" that this sort of punishment will be effective. Bosivenu and Paradis also give no evidence for their claims that punishment and rehabilitation are complementary processes, or that this combination of practises are effective at all.

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Additionally, the *Victim Advocacy* frame was also utilized in conjunction with this frame, as supporters rationalized that to protect and avenge victims, the penal system had to hold criminals accountable. Such beliefs about punishment and recovery reflect the individualistic view of crime and punishment. If 'bad' individuals could only cooperate with the state and learn to stop committing crime, crime would no longer be a problem.

4.2.6 Personal Narrative

The sixth most common frame was that of a *Personal Narrative*. This frame was also common among the opposing side. Both sides of the debate utilized the frame in similar frequencies, with the opposing side utilizing it 40 times, and the supporting side 46 times. In this frame, personal opinions, emotions, experiences and anecdotes were used as justifications for the bill. This frame was often used with other arguments to support other frames. Most commonly this frame was utilized by referring to past professional experience, such as being a police officer, a lawyer, or even from more personal anecdotes such as conversations with voters, victims, police officers, or experience as a parent. Hon. Bob Runciman's (Conservative) comments on mandatory minimum sentencing give a good example of this frame:

> We believe that certain conduct deserves a consistent approach to punishment. As a personal note, I hear about this regularly because I have the good fortune of hearing the views of rank-and-file police officers on a regular basis. Three members of my family — two daughters and a son-in-law — are front-line police officers (Hon. Bob Runciman, Conservative Party of Canada, Senate Debates).

MP Bernard Trottier (Conservative) cites his experience as a parent as justification for supporting tougher drug laws:

> As a father of young children, I welcome these changes to protect the youngest and most vulnerable members of our society. Bill C-10 would bring forward changes that create tougher sentences for individuals found guilty of the production and possession of illicit drugs for the purposes of trafficking. It would strengthen the laws that deal with young offenders, making sure they are held accountable for their actions and that their sentences fit the crimes that they have committed (MP Bernard Trottier, Conservative Party of Canada, House of Commons Debates).

In both these quotes, it is evident how these personal narratives are shaped by the values of the supporters. For example, MP Bernard Trottier refers to his beliefs in offender accountability, tougher sentences for drug crimes and 'stronger' laws for youth offenders and backs these beliefs with wanting to protect his son "as a parent". Hon. Bob Runciman (Conservative) also ties his personal experience as the father and family member of police officers to the belief that mandatory minimum sentencing provides consistency. These quotes also demonstrate how this frame is used to substantiate other frames. Bernard Trottier advocates for the *Offender Responsibility, Punishment and State Paternalism* frame when he advocates for more punitive laws. The *Victim Advocacy Frame* is also utilized here as Trottier and Runciman both align themselves as protectors of victims and potential victims (children and those who are vulnerable) and police officers.

This frame was powerfully used in the Senate debates, by the Hon. Pierre-Hugues Boisvenu (Conservative) who spoke about his daughter's murder:

Honourable senators, as you know, I have been advocating for victims of crime in Quebec and in many Canadian provinces for eight or nine years now. I will not repeat the story of my daughter, who was murdered by a repeat offender. In 1999, that man raped a woman over the course of 12 hours. For his crime, he received two sentences: 18 months for rape and another 18 months for forcible confinement. The judge thought that since it was the same victim, the same criminal and the same circumstances, the two 18-month sentences could be served at the same time. Therefore, he was incarcerated in a provincial prison. If his sentence had been longer or if he had served it in a federal prison, he would have had a right to services. But he was incarcerated in a provincial prison for 18 months, instead of 36 months, and he was released after serving one-sixth of his sentence: after three months. What message was sent to this offender? The message was that raping and assaulting a woman is not important. For the past month, I have been speaking to a number of media outlets in Quebec, where I have often been the target of personal attacks. Because victims do not have the right to speak. Silence is the victim's prison. But when I created the [Murdered or Missing Persons' Families' Association] association in 2005-06, I wanted to empower victims and enable them to speak out... We must therefore inform Quebecers and Canadians about the content of this bill. Interestingly enough, once people are familiar with the bill's content, they are in favour of it (Hon. Pierre Boisvenu, Conservative Party of Canada, Senate Debates).

This speech represents how the *Personal Narrative* frame was based on emotion, as well as values. Boisvenu brings up his daughter's murder again later in the debates, when challenging Hon. Andy Mitchell (Liberal) on his anecdotal story of knowing a 17-year old offender who was rehabilitated by the Canadian justice system:

> Honourable senators, Hon. Mitchell spoke about the rather touching case of a 17-year-old girl who was rehabilitated with the help of a program. If we take a minor case and generalize, it gives the impression that Bill C-10 will increase the number of young Canadians in prison. Even though I do not like to talk about it, I would like to talk about the other side of the story. My daughter was murdered by a repeat offender who had attacked a woman in 1997 and who had to serve two months in the community…. If this man had received a sentence longer than three months for raping a woman and if he had had the services of a federal prison instead of a Quebec prison, do you think that we could have rehabilitated this man and that my daughter would still be alive today (Hon. Boisvenu, Conservative Party of Canada, Senate Debates)?

For Boisvenu, it is the deeply personal and tragic story of his daughter which motivated his support for the bill. For others, it was sad stories from voters. Anecdotes were used to provide 'evidence' about the merits (or flaws) of the legislation. Ironically, Boisvenu accuses Mitchell of generalizing from only one case to demonstrate that rehabilitative measures are effective. Yet, Boisvenu justified the need for longer sentences on his own personal experience of his daughter's murder.

4.2.7 Bill has Been Debated at Length

The frame *Bill has been Debated at Length* was often used in response to oppositional frame *Bill has been Debated Enough*. Supporters rejected these claims and said that the SSCA has been debated enough in the Senate and House of Commons. In the House of Commons, MP David Wilks (Conservative) makes this point in no uncertain terms:

> Speaker, as I said at the beginning of my speech, this legislation has already spent 79 full hours of debate in this place, not including today. It has been studied at committee for 123 hours for a total of 8 days. I believe that we have studied the bill long enough (MP David Wilks, Conservative Party of Canada, House of Common Debates).

In this frame, supporters also argued that the components of the bill had been introduced into parliament before, under different bills which were rejected by the opposition. Supporters claim that any attempts to extend debate made by the opposition were just a political tactic to stall or block a bill that Canadians had demanded:

> The principles in the bill should not be a surprise to anyone in this chamber. As stated earlier this week, seven of the nine parts of this bill have been discussed in-depth in either the other place or the Senate over the past five years. It has been said by some that the bill is being rushed through Parliament. Honourable senators, I would submit that this allegation does not bear up to scrutiny. There have been three elections fought on these issues, and there have been countless hours of parliamentary debate for the past five years on the merits of most parts of

this bill. I want to point out that Canadians are not buying the allegations that the

bill is being rushed through Parliament. No, Canadians are asking why it is taking

so long (Hon. Daniel Lang, Conservative Party of Canada, Senate Debates).

When the supporters claim that the bill has been debated enough, they are attempting to

minimize and shut down debates surrounding the bill. While accusing the opposition of

stalling the bill for political reasons, supporters used their own political tactic to stifle

more debates, in order to get the bill passed more quickly.

4.2.8 Use of Scientific Evidence or Experts

The eighth most common supporting frame was *Use of Scientific Evidence and*

Experts. Legislators selectively drew on evidence to support the claims they made. This

frame was used by supporters with much less frequency than the opposing side. The most

widely used statistic by the supporting side was a 2008 study by the Department of

Justice, which according to supporters found that the enormous cost of crime, ranging

from $4 billion to 100 billon, was endured by victims This was a specific piece of

evidence used in rebuttal to claims under the opposing frame *Hidden Cost of the SSCA*.

What about the cost of the crime to the victims? There is not a word on that from

the Liberals. In 2008, it amounted to $14.3 billion, even though the third-party

costs and costs to relatives and friends or to others who were hurt and threatened

in the commission of the crime amounted to an estimated $2 billion. Victims,

their family and friends pay to the tune of $16.4 billion, but you never hear a word

about that from those on the other side (Hon. David Tkachuk, Conservative Party

of Canada, Senate Debates).

Other quotes from other House Members claim identical statistics, although different from the numbers provided by Tkachuk:

> What we do see in the 2008 Department of Justice study is that the victims of crime bore 83 percent of the cost of crime in that year in Canada, which was over $99 billion. Costs include costs to property, costs to time off work and costs of injuries. There are so many costs borne by the victims (Hon. Rob Nicholson, Conservative Party of Canada, House of Common Debates).

In these instances, statistics were used to justify the use of the *Victim Advocacy* frame. However, the evidence frame was also used to support and rationalize the other frames, as well.

The biggest use of evidence by supporters was to refute the evidence provided by those who opposed the bill that crime rates were actually decreasing, and hence the bill was not necessary. For example, supporters provided statistics on specific crimes in specific city centres to justify the need for the bill:

> For example, in 2009, in Winnipeg, the violent stuff, sexual assaults, robbery and murder, jumped by 11 percent. That same category of crime in 2008 went up by 14 percent. That is 25 percent in those two years. It is no wonder that an NDP government came to us and asked if we could do something about the legislation (Hon. Vic Toews, Conservative Party of Canada, House of Common Debates).

Supporters also utilized evidence on the "dark figure of crime". The "dark figure of crime" refers to the concept that most crimes go unreported. Supporters claim the "dark figure of crime" was an indication that crime was really on the rise, but that it was

unreported. This was often backed up with the *Personal Narrative* frame, as supporters claimed that voters and constituents expressed that they were being victimized more. In a good example of this, Hon. Vic Toews (Conservative) responds to an NDP member, who asked him why the government felt the need for a punitive bill, in the face of a "20-year decline in crime":

> Speaker, last year, there were 2.1 million reported crimes. Statistics Canada indicates that the rate of reported crimes is going down. Reported crimes dropped to about 31 percent from about 34 percent. The point is that many people have simply given up trying to deal with the justice system (Hon. Vic Toews, Conservative Party of Canada, House of Common Debates).

A few moments earlier, MP Mike Allen (Conservative) made similar comments on the dark figure of crime, and backed this up with numbers from Statistics Canada on certain rising crimes:

> I constantly hear from people in my riding their concerns about crime. There is a notion that crime is going down. I think it is going down because people are not reporting crime. They do not see the use in doing that. Statistics Canada reports increases in pornography, firearms, drug offences, criminal harassment and sexual assault (MP Mike Allen, Conservative Party of Canada, House of Common Debates).

Toews and Allen both used statistics to back their statements that crimes go unreported. Both speakers give the appearance that their statements are backed by scientific evidence, without providing the context for the evidence itself. Through this frame, supporters not

only offered their own interpretation of the data, but also provided statistics to substantiate the rejection of opposition evidence that the bill was unnecessary.

Previous research has argued the Conservatives rejected evidence. In this frame it is clear that they made selective use of evidence to challenge the evidence presented by others. Goodman and Dawe (2017) argued that the Conservative party misused, and even created statistics which favoured their arguments. Without a complete and thorough fact-check of every piece of evidence, it is difficult to know if any false evidence was presented on either side. However, criticism on evidence usage can be made of both sides of the aisle: statistics and figures were often used without the full context given.

Although the Conservatives did not completely ignore evidence, the fact that this frame was not as common as others reveals that evidence did not figure particularly strongly in their arguments in support of the bill. Moreover, evidence which did not support the SSCA was not typically engaged with or rejected as incorrect, but instead was not acknowledged in debates; different evidence was presented instead.

4.2.9 Recognizing Concern for Indigenous Communities

The final commonly used frame by the supporting side was *Recognizing Concern for Indigenous Communities*. This frame was used in a response to the opposition frame *Advocacy for Marginalized Populations*, in which opposers to the bill claimed that the bill would harm marginalized populations such as Aboriginals. At times, the *Advocacy for Marginalized Populations* frame was ignored by the supporting side. When responses were made addressing these concerns they were kept rather short. Within this frame, supporters of the bill recognized that Aboriginals are disadvantaged in the Canadian

justice criminal system, but they argued that this was not particularly germane to the legislation. This is demonstrated with MP Kyle Seeback's response to Jean Crowder's question on what action the government was taking addressing the root causes of crime in Aboriginal communities, such as clean water and adequate housing:

> Madam Speaker, my hon. colleague's question was not particularly what I was talking about. We are talking about introducing legislation to protect Canadians from crime and to support victims of crime. We do have an Aboriginal justice strategy in place that we are working on and working very hard to implement. However, I want to talk to the people who support this legislation (MP Kyle Seeback, Conservative Party of Canada, House of Common Debates).

A similar exchange took place between MP Sean Casey (Liberal) and MP Dean Allison (Conservative):

> MP Sean Casey (Liberal.): What measures are in this bill or otherwise to deal with those vulnerable members of our society with respect to their involvement in criminal law?
>
> MP Dean Allison (Conservative): Speaker, Bill C-10 is about justice. I certainly do not disagree with what the member raises. Some of those programs have been offered through Indian Affairs. Still more can be done and we will continue to work on these issues (House of Common Debates).

Both these exchanges demonstrate how opposer's concerns about the impact of the bill on Indigenous peoples are deferred. The issues are acknowledged as being important, but not relevant to the topic at hand. Supporters claim that the government acknowledges this

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problem and are taking care of it elsewhere in the government, and with promises of "continuing to work" on Aboriginal issues in the country.

Another defense of the bill within the frame *Recognizing Concern for Indigenous Communities*, claims that the bill will advocate for Aboriginal victims. Kevin Sorenson argued the following:

> We realize that there is a high percentage of aboriginals in our penitentiaries, and, yes, that must be addressed as well, but in many cases, there are many aboriginal victims who are standing right there while the offender is locked in prison (MP Kevin Sorenson, Conservative Party of Canada, House of Common Debates).

Here, Sorenson suggests that the SSCA will protect Indigenous victims, seemingly from Indigenous offenders. This quote demonstrates how other frames were used with the *Recognizing Concern for Indigenous Communities* frame. In the case of this quote, the *Victim Advocacy* frame is also represented here, as Sorenson suggests that even though Aboriginals are over-represented, Aboriginal victims should be the real focus of concern.

Concluding, *Recognizing Concern for Indigenous Communities* was used to respond to opposition member's concerns that the SSCA would have negative outcomes for Indigenous communities. Supporters did not engage with such claims, but rather deferred them, saying that they either were not relevant to the discussion of the bill, or that they ignored Aboriginal victims

4.2.10 Summary of Supporting Frames

To summarize, the frames utilized by the Conservatives which supported the SSCA reflected their overarching individualistic view of crime and punishment. Their

simplistic and 'common sense' view of crime, held that 'bad apples' should be punished for hurting victims. Their rationales in support of the bill also reflected penal populism and paternalistic values. For them, it was the state's responsibility to protect victims, by holding criminals accountable and ensuring they were adequately punished. They relied on personal experiences and anecdotes, as well as selective evidence that crime was increasing, and that victims had to bear the brunt of the costs.

4.3 Findings- Opposing frames

When opposing the *Safe Streets and Communities Act*, members of the opposition parties (including the Liberal Party, the New Democratic Party, the Green Party, and the Bloc de Quebecois) drew on many frames including *Use of Scientific Evidence and Experts, Advocacy for Marginalized Populations, Punitive Populist Rhetoric, Hidden Cost of the SSCA, Canadian Exceptionalism,* and *Prevention, Rehabilitation and State Responsibility*. Each of these frames reflect the view that crime was a societal and systemic issue.

4.3.1 Use of Scientific Evidence or Experts

On the opposing side, the most frequent frame was *Use of Scientific Evidence or Experts*. This frame included the use of scientific research and experts to oppose the bill and argued that it would be at best ineffective and at worst a disaster, causing an increase in the prison population. They drew on a considerable body of evidence which warned the bill would be ineffective and harmful (Newell, 2013; Marshall, 2015; Lau and Martin, 2012; The John Howard Society of Manitoba and Latimer, 2012; The Northwest

Territories Department of Justice, 2012). Examples of the use of evidence and experts can be found in these two quotes:

> I have a letter that has three pages of organizations and individual experts who have all studied this legislation, particularly, as it applies to mandatory minimums. They all have come to the same conclusion. There is no evidence that the legislation is warranted and would actually assist our society overall (MP Libby Davies, Liberal Party of Canada, House of Common Debates).
>
> All the studies underline time and time again that, if you put people in jail who do not need to be there, they will become better criminals. Recidivism will rise, and we will have more crime. The studies are so clear, and the science is so clear that it is very difficult to know how a government can stand without shame and argue that somehow this will be to the benefit of a society (Hon. Lillian Dyck Liberal Party of Canada, House of Common Debates).

Drawing on expertise and evidence, they argued the bill was not beneficial nor would it be effective. As was mentioned with the supporting frame of the same name, evidence and experts were often introduced with a lack of full context and explanation. This was common on both sides and might be explained by the lack of time given to each speaker to defend or oppose the bill.

This frame appeared both on its own and in combination with other frames such as *Concern for marginalized populations* and *Prevention, Rehabilitation and State Responsibility* (as will be discussed in the results of these specific frames).

Although both supporters and opposers used this frame, they used it differently. For opposers, evidence was used to support the perspective that crime is a structural and systemic problem. Evidence was used to provide support for their values and view of the world. The frequency with which evidence and experts are used by opposers is indicative of how opposition members value evidence and experts in policymaking. It contrasts to the supporters' preference for 'common-sense' and 'logical' arguments.

4.3.2 Advocacy for Marginalized Populations

The second most dominant frame on the opposing side was *Advocacy for Marginalized Populations*. This frame was anticipated in literature which described opposition to the potential harm that the SSCA may do to communities (Newell, 2013; Marshall, 2015; Lau and Martin, 2012; The John Howard Society of Manitoba and Latimer, 2012; The Northwest Territories Department of Justice, 2012). This frame includes three sub-frames respecting marginalized groups: youth, Indigenous peoples, and the mentally ill. Most concern was expressed about youth. This is logical within the specific context of the SSCA, as the omnibus bill included a controversial bill which pertained only to the *Youth Criminal Justice Act* (YCJA). Before the SSCA, the goal of the YCJA was the protection and welfare of the youth offender. Under the new bill, however, the goal of the YCJA was re-classified to the protection of society. The bill included measures which would lessen the requirements to keep youth offenders in criminal custody. Additionally, under the bill, publication bans surrounding youth offenders could be lifted if a trial judge felt it would 'protect the public'. The opposition raised serious concerns about these punitive sentences and treatments under the *SSCA,* and how such treatments may harm youth offenders. The harm that might come to youth

under this bill was accompanied by the *Use of Scientific Evidence and Experts* frame, including data on effective rehabilitation-based programs for young offenders among jurisdictions in Quebec, the rest of Canada, and world-wide:

> Speaker, rehabilitation is fundamental. I would like the House to know that the Canadian Paediatric Society has also expressed disapproval for the bill. The society reports that changing the youth crime law to allow stiffer sentences for children as young as 14 will have significant negative consequences. The society says the current *Youth Criminal Justice Act* supports rehabilitation and reintegration instead of putting the emphasis on incarceration, and it recommends that the federal government work with the provincial and territorial governments on youth crime prevention strategies that would include early detection and treatment of behavioural and mental health issues that might lead to criminal activity. I will take the example of Texas. In just two years, the focus has been on more education and therapeutic programs and on transitioning back to their home communities so that there is a greater chance for successful re-entry. The result is that youth incarceration rates have been halved in a number of years (MP Kirsty Duncan, Liberal Party of Canada, House of Common Debates).

For the opposition, the best methods for reducing crime concerned societal changes and preventive measures. This meant addressing the systemic issues in marginalized communities created from structural inequalities. This focus on the role of marginalization reflects opposers values, including concern for the marginalized and a commitment to reducing structural inequalities.

Opposition members also expressed concern over Indigenous communities. However, considering the wealth of data devoted to the potential harms of the SSCA to Indigenous peoples, this was less prominent in the debates than expected. Often, the topic was brought up by the opposing side, but only mentioned briefly. However, like with the other two sub-frames, the concern over the harm the SSCA may do to Aboriginal communities was backed up with scientific evidence and advice from experts. Evidence on the over-incarceration of Indigenous peoples was mentioned most often. One example can be found in the House of Commons Speech from MP Sean Casey (Liberal). Early in his speech, Casey briefly mentioned Aboriginal populations, calling the bill, "an act to fill prisons in order to build new ones; an act to take more aboriginals off reserves and put them into prisons". He quickly moved on from the topic onto the effects on the mentally ill, and the punitive nature of the SSCA. Then, later in his speech, he again circled back to the issue of Aboriginals briefly:

> According to the 2006 census, 3.1 percent of our adult population identified themselves as aboriginal yet in the same year aboriginal adults accounted for 18 percent of our prison population in provincial and territorial institutions and 19 percent in federal institutions. The bill would do a lot of bad things for Canada, not the least of which is an increase in aboriginal Canadians in our prisons. How can a government, in any way, be taken seriously when one of the likely results is that the bill would lock up even more aboriginal Canadians? That is a national disgrace (MP Sean Casey, Liberal Party of Canada, House of Common Debates).

Generally, opposition members mentioned aboriginal Canadians only in passing. However, some Senators and MPs on the opposition did take the time to address the issue

more thoroughly, such as Hon. Lillian Eva Dyck (Liberal), who focused her entire

allotted time in the Senate to the impacts the bill may have on Aboriginals, including how

the bill would infringe on the supreme court ruling of R *v*. Gladue. Generally, members

of the opposition argued that it is the responsibility of the Canadian government to deal

with societal issues, not make them worse through incarceration.

The next marginalized group highlighted were the mentally ill. Here too, the

impacts of the bill were discussed, but not in great detail. Speeches focused on how

structural factors, such as a lack of services for the mentally ill, have led to the over-

representation of the mentally ill in prison. Scientific data and literature were often used

to show the harm this bill would do to the mentally ill, but also the broken system which

leaves mentally-ill people to be dealt with by the judicial system. Evidence was provided

to illustrate that there are incredibly high rates of mental illness among the incarcerated in

Canada. Often, as with the youth concerns, examples of other communities which had

successfully dealt with mentally-ill offenders through rehabilitation programs were

highlighted as examples of alternatives to the SSCA:

Overall, the marginalized populations frame, and especially the focus on youth

within this frame, was used to refute and respond to the Conservative frame *Protecting*

Society from Dangerous Youth. It responded to the moral panic of supporters that youth

are dangerous and out of control, with assertions that youth offenders need help, not

punishment.

4.3.3 Punitive Penal Populist Rhetoric

The third most common frame on the opposing side was *Punitive Penal Populist Rhetoric*. This frame was used to critique the penal populism underlying the supporters' rationales. It is neatly captured by MP Frank Valeriote (Liberal):

> Crime is at its lowest rate in nearly 40 years and yet the government is willing to turn around nearly two generations of decreasing crime rates out of ***fear and fiction instead of facts, ideology instead of evidence*** [emphasis added] (MP Frank Valeriote, Liberal Party of Canada, House of Common debates).

MP Sean Casey's (Liberal) remarks on the bill also reflect this frame:

> I will close by saying that the government pretends to be tough on crime. It pretends to care. It is a game for the Conservatives. It is a diversion from the real issues that matter to Canadians…. The government likes to use slogans and gimmicks. It likes to look tough. Many of us on this side are wondering when the Conservatives will get tough on creating jobs, get tough on fighting poverty, get tough on fighting climate change, get tough on fighting for health care and get tough on helping the most vulnerable.   The only thing the government is tough on is the truth and it is Canadians who will suffer as a result (MP Sean Casey, Liberal Party of Canada, House of Common Debates).

Members using this frame accuse supporters of drawing on emotions such as fear, instead of relying on the "facts" and "evidence". Scholars have argued that such tactics are consistent with penal populism (Pratt, 2007). Opposers sought to counter the appeal to emotions by the use of evidence.

4.3.4 Hidden Cost of the SSCA

The frame *Hidden Cost of the SSCA* was utilized by opposers to argue that the bill had hidden costs that the Conservatives were hiding. The bill was said to be extremely costly to provinces. This was premised on the notion that most of the mandatory minimums proposed in the bill were under 2 years, and hence would be served in provincial institutions. Concern was also expressed for the Canadian tax payer, who would be the 'real' bearer of the costs of the bill, according to the opposition. MP Anne Minh-Thu Quach (NDP) provides an excellent example of this frame in the House of Common debates:

> I find it hard to believe that all the Conservative members agree that the government should put the provinces further in debt when they do not have the slightest bit of evidence that the proposed measures will actually make our streets and communities safer. In fact, by taking just 15 minutes to read the news or the press releases issued by experts such as the Canadian Bar Association, we quickly learn that minimum sentences do not reduce crime rates; this could save us $90,000 a day. Minimum sentencing does not work and costs a fortune. The government needs to tell taxpayers the truth by revealing the costs and by explaining the basis for its proposals, particularly those related to minimum sentencing. The government needs to ask taxpayers directly whether they would like it to pass a bill of unknown costs that threatens health and education or whether they would rather the government take the time to ensure that their money is invested responsibly and adopt measures that would truly make their

streets and communities safer. Clearly, Canadians would choose the second option (MP Anne Minh-Thu Quach, New Democratic Party of Canada, House of Common Debates).

As in evident in Quach's speech, this frame was often combined with the *Use of Scientific Evidence and Experts* frame to bolster the argument.

Some provinces directly objected to the bill, while others expressed concerns that their province or territory would not be able to keep up with the financial demands of the bill:

> While increases in the prison population will strain infrastructure and services, [Bill C-10] will also come at an incredible cost to the provinces and territories, a cost that many have indicated they are unable to pay. In my own province of Prince Edward Island, we are already seeing increases of up to 30 per cent in the number of inmates being admitted to our jails as a result of legislation already passed by this government. The numbers are growing faster than our ability to accommodate them. In order to just keep up, the province would need to triple its corrections budget. During this time of economic difficulty, this is incredibly challenging. In addition to Prince Edward Island, New Brunswick, Quebec, Ontario and British Columbia have all spoken out against this bill. Quebec's justice minister, Jean-Marc Fournier, has openly said that Quebec simply will not pay, while Ontario's Premier Dalton McGuinty has made it clear that if the federal government wants to push forward with this legislation it must come up with the money (Hon. Elizabeth Hubley, Liberal Party of Canada, Senate Debates).

With such comments, opposers appeared concerned with more than just budgets, but with cuts which would take away from other needed services. Thusly, this frame was used by opposition members to argue that Canadian tax-payers needed to be protected from wasteful spending, and that public funds could be diverted to more important public services and infrastructure. Such arguments again reveal the societal perspective and values adopted by opposers. They were concerned with the social impacts of the legislation.

4.3.5 Canadian Exceptionalism

In using the frame *Canadian Exceptionalism*, opposers rejected US-style penal populism in favour of the 'Canadian-way' of 'doing justice'. This frame asserted that the punitiveness of the SSCA was fundamentally "un-Canadian". Additionally, this frame claims that this punitive approach has failed in the US, and that even US conservatives, are rolling back these policies. Although this frame is similar to the frame *Punitive Penal Populist Rhetoric* in that it rejected punitive measures, this frame is distinctly different. Within the *Punitive Penal Populist Rhetoric* frame, Conservatives are accused by opposers as supporting the punitive bill only to appeal to voters. The difference with the *Canadian Exceptionalism* frame, is the underlying belief (value) that there is a better, Canadian, approach to justice. These arguments are reminiscent of those in the literature on penal populism, which argued that Canada had avoided a penal populist turn evident in the US (Pratt, 2007; Meyer and O'Malley, 2005; Roberts et al., 2003). The Canadian 'way' of doing justice, according to the opposers, included fairness and evidence-based policy. Hon. Geoff Regan (Liberal.) spoke on the issue, and utilized this frame to assert that the SSCA is fundamentally un-Canadian:

Is that really the model we want to adopt? Do we really want to build prisons, as the Americans have done, without any impact on the crime rate, since the crime rate in the United States is much higher than it is in Canada? When we are looking to take measures to deal with crime, we have to adopt measures that are smart and follow concrete examples of good management in other countries, not from countries whose approaches have been proved a failure…The NDP approach has always been a balanced approach between rehabilitation, restorative justice and addressing the problems in the legal system and the parole system, which would help reinforce what deserves to be reinforced. Again, this bill is all over the map. Instead of addressing this issue more precisely and effectively, the government is taking a scattershot approach and trying to pass something, which in some ways will succeed, ***but in several other very significant ways will completely change Canada's philosophy of justice*** [emphasis added] (MP Guy Caron, New Democratic Party of Canada, House of Common Debates).

MP Jasbir Sandhu (NDP) in the House of Commons also made a similar speech on how the 'American style' SSCA would alter the fundamental principles of the 'Canadian style' of justice:

The bills [in Bill C-10] range from broad changes to our corrections system that are based on a ***failed US-style approach***, to giving the minister absolute power to approve or deny the international transfer of offenders. ***These changes are sweeping and will fundamentally change several aspects of Canada's criminal justice system*** [emphasis added] (MP Jasbir Sandhu, New Democratic Party of Canada, House of Common Debates).

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For the opposers, Canadian justice premised on evidence-based measures for rehabilitation is fairer and effective than US-style punitiveness. Herein, opposers express support for values such as fairness, justice, and efficiency. They argue the act undermines these Canadian values.

Opposers also cited American conservatives, most commonly Newt Gingrich, who had commented on the SSCA and warned the Canadian government that its punitive measures would be ineffective. This quote reflects such rhetoric:

> There is a consensus, with the exception of our friends across the way, that the approach used in the war on drugs was an abysmal failure. Why? Ask people like Newt Gingrich. My goodness, I never thought I would use him for validation, but it turns out he is now. God bless him, Newt Gingrich now says not to do what they did because it is costly and ineffective. California has privatized its prisons. It has more prisoners than it can handle. Judges are forcing the state to release prisoners… What are we going to do? It turns out we are going to adopt its failed policy (Hon. Tommy Banks, Liberal Party of Canada, Senate Debates).

Not only is this punitive style of justice un-Canadian, but it is now rejected by even the most conservative Americans.

Overall, this frame was based on values and beliefs that Canadians are different from (and that our criminal justice system is more effective than) the United States. As can be seen with the quotes presented, the frame *Use of Scientific Evidence and Experts*, was also used in conjunction to document the failure of the US system and warn of the negative consequences of the bill here in Canada.

4.3.6 Prevention, Rehabilitation and State Responsibility

The frame *Prevention, Rehabilitation and State Responsibility* reflected principles and values concerning crime, and how the state should treat offenders. According to the frame, the role of the state should be to prevent crime and promote rehabilitation. Policy should tackle the root causes of crime, such as poverty and a lack of social services. Moreover, opposers claim that rehabilitation should be a priority. This frame was at times utilized by opposers to combat the supporting frame *Offender Responsibility, Punishment and State Paternalism*. However, this frame was used often on its own or combined with other frames, such as *Use of Scientific Evidence and Experts*. Evidence was marshalled to argue that prevention and rehabilitation were more efficient and effective measures in Canada and world-wide. An example of the rhetoric in this frame is found in this quote from the House of Commons debates:

> If the purpose of Bill C-10 really is to make our streets and communities safer, why does it not include more investment in rehabilitation and prevention programs? I know the government does not like statistics, but 80 percent of incarcerated women are in prison for crimes related to poverty, including 39 percent for unpaid fines. These figures released this morning by the National Council of Welfare point to a real problem. The council also noted that the cost to incarcerate a woman who fails to pay a $150 fine is $1,400. I am sure the Minister of Finance will be pleased to hear—and free of charge too—that for every dollar invested in prevention and rehabilitation, the government would save far more in incarceration costs, addiction costs and the cost of crimes committed in prisons themselves. Front-line workers such as social workers, street outreach

workers, school psychologists and counsellors are looking for an opportunity to become more involved on the ground to prevent crime by targeting at-risk groups—young people in distress, people with mental illness or substance abuse problems, and marginalized people. Their work allows would-be offenders to get help and referrals to the services they need. All studies and examples from elsewhere demonstrate that prevention is more effective than incarceration and punishment (MP Anne Minh-Thu Quach, New Democratic Party of Canada, House of Common Debates).

In this specific example, the scientific evidence referred to here is general; however, opposers also drew on decades of research supporting policies which focused on prevention and rehabilitation. The *Personal Narrative* frame was also often used to justify the need for prevention and rehabilitation. MPs provided anecdotes concerning people they knew who were rehabilitated or helped by these policies. They also expressed personal values and beliefs about what justice should be. The frame of *Hidden Costs* was also used often in conjunction with this frame, as part of the evidence that the bill's funds would be better invested in preventive causes. These additional frames were all used to support the values that crime is a social phenomenon, and solutions need to address systemic causes.

Members of the opposition argued that debates surrounding the SSCA reflected a fundamental disagreement over values:

[This] omnibus bill is about principles and priorities. ***At its core it is about values***. If we spend billions of dollars on building unnecessary prisons while crime is receding and putting more people in prison for longer periods of time, that money

cannot be used to invest in: a social justice agenda, child care, health care, crime

prevention, seniors or social housing. At the end of the day, we would probably

have more crime and less justice as a result of this (Hon. Irwin Cotler, Liberal

Party of Canada, House of Common Debates).

Opposition members advocated that criminal justice is also a social justice issue. Crime

emerges out of societal conditions, such as the lack of social services and preventative

crime measures. In contrast, supporters held an individualistic view of society and crime;

they focused on punishment over prevention.

4.3.7 Personal Narrative

The next frame on the opposing side was *Personal Narrative*. It is important to

note that on both sides, *Personal Narrative* was a lower-frequency frame compared to

other frames that emerged, and that both sides in this debate utilized this frame in very

similar frequencies. Like the supporting side, this frame was often used in combination

with other frames, to justify other frames. The opposing side often used this frame

alongside "*Use of Scientific Evidence and Experts*". For example, they would give a

personal story of how rehabilitation worked, but then would present evidence which

backed up their story.

Personal narratives were tied to different values and frames by supporters and

opposers.

Throughout my career as a lawyer and now into my career as a legislator and a

representative of my community, I have reviewed the law as a tool to advance the

issue of social justice whenever possible. While engaged on the committee against

family violence and women in crisis or the Wellington-Guelph Housing Authority

on great projects like Onward Willow Better Beginnings, Better Futures, or

changing Guelph's police response to violence between spouses and changing

court sentencing for offenders by ensuring their enrolment in anger management

programs, not incarceration, I gained a deeper understanding of the complexities

surrounding justice issues (MP Frank Valeriote, Liberal Party of Canada, House

of Common Debates)

In this speech, Valeriote advocated for the use of such prevention strategies per his

former experience as a lawyer. It is clear from this quote that the opposing frame of

Personal Narrative represents values of social justice, rehabilitation and crime

prevention, all of which can be found in the frame "*Prevention, Rehabilitation and State*

Responsibility".

4.3.8 Bill has not been Debated Enough

This frame was utilized by the supporting side to demonstrate a frustration over

the lack of time given to debate the bill. This frame was often counter-argued with the

frame from the supporting side *Bill Has Been Debated at Length*. Supporters argued that

the opposition was only using this frame as a political tactic, to stall the bill. Opposition

members countered that the current government did not want to engage in debate on the

bill and were using their own political tactics to pass a bad bill. Rationales in this frame

included that the supporting side was violating parliamentary procedure by rushing

through the bill, and thereby disrupting the rules of Canadian democracy. Due to the

large volume of the SSCA itself, which is over a hundred pages long, the opposition

claimed that they were not given enough time to debate all the sections of the bill:

As we have heard, Bill C-10 incorporates nine measures that were being studied by Parliament before the spring election. The government combined all these elements, which were covered by rather lengthy bills, in a brick of a bill that is more than 100 pages in length, its omnibus crime bill, in order to pass these measures post-haste. Honourable senators, Canadians expect Parliament to carefully study all bills that are introduced. Unfortunately, the government seriously impeded the other chamber from doing so. As my colleague, Hon. Cowan, said in his speech yesterday, I hope that this chamber will have the time required to scrutinize this bill in a responsible manner (Hon. Claudette Tardif, Liberal Party of Canada, Senate Debates).

Additionally, the opposition argued that this went beyond normal procedure, and was verging on disrupting Canadian democracy:

> *There is a moral, if not ethical, and some would suggest legal obligation, to respect the legislature and parliamentary law*. There is the need to acknowledge that. Just because the Conservative government has the most seats does not mean that it is a little dictator. There is an issue of respect in allowing legitimate debate on important issues facing Canadians. Just because it has a majority does not mean it gets to dictate everything that happens in the country over the next four years, in a dictatorship way [emphasis added] (MP Kevin Lamoureux, Liberal Party of Canada, House of Common Debates).

In this manner, members of the opposition argued the Conservatives were undermining Canadian parliamentary and democratic process. Such arguments may reflect values such as a commitment to democracy, as well as a formal rational commitment to

established procedures. Opposition members positioned themselves as the protector of these values.

4.3.9 Removal of Judge Discretion

The final frame on the opposing side is *Removal of Judge Discretion*. This frame emerges from concern over mandatory minimum sentencing in the SSCA. As with other frames, *Removal of Judge Discretion* represented the opposition's values and understanding of crime as a social problem, resulting from social conditions such as poverty or systemic racism. Opposers claim that mandatory minimum sentencing will take away the ability of the judge to consider mitigating factors and complex contexts to a crime. These factors included poverty, minority status, specifically being Aboriginal, and mental health and substance abuse disorders. MP François Lapointe's (Liberal) quote below gives a good exemplar of this frame:

> Another thing related to this bill that does not make sense is the fact that it affects the right of judges to simply do their work, exercising their right to judge. This is an ideological blunder. It is something that leads us to a sort of limitation on what the law should be and deprives judges of their opportunity to think. What will happen if we tell a judge that the theft of an apple is punishable by a minimum sentence of one day in prison? A judge's job is to determine whether the apple was stolen simply as mischief or whether it was stolen to feed a starving child. Any judge who does his or her work properly would not impose the same sentence in these two cases (MP Francois Lapointe, Liberal Party of Canada, House of Common Debates).

If judges' discretion is removed, the social context of crime – which they view as vitally important -- cannot be considered. Opposition members also argued that removal of judicial discretion would also disrupt the system of justice in Canada. The leader of the opposition, Hon. James S. Cowan (Liberal), expressed these concerns:

> Honourable senators, this is what happens when the legislature usurps the role of a judge. It is often said that the criminal law is a blunt instrument. It is made significantly blunter when it takes away judicial discretion. Last week, Hon. Andreychuk reminded this chamber of what Justice Dickson said: There is in Canada a separation of powers amongst the three branches of government — the legislature, the executive and the judiciary. Our system of justice is built on a careful balancing of the roles divided among Parliament, judges, prosecutors and the police. This balance has evolved over centuries. Honourable senators, mandatory minimum penalties throw this balance out of whack, and there is absolutely no clarity, or even forethought, as to what the new balance will look like (Hon. James S. Cowan, Liberal Party of Canada, Senate Debates).

Underlying this frame are the values of fairness and justice. The removal of judge discretion, according to opposers, has the potential to disrupt the careful balance of the Canadian justice system.

4.4 Summary

To summarize the findings, the frames represented both sides' values about crime and punishment. For the opposers, crime is a systemic and societal issue. Supporters, on the other hand, described crime as an individualistic phenomenon in which 'bad apples'

hurt innocents and need to be taught a lesson. When taking an over-arching view of both frames, it is also clear how values on what the role of the government should be in terms of the penal system also differ. Opposers are concerned with the state's responsibility to provide rehabilitation within the prison system, and to provide options for corrections other than imprisonment, such as drug addiction treatment. The overall goal for the government, for opposers, is to reduce recidivism and prevent crime. For supporters, punishment and rehabilitation are complementary measures, and the offender is responsible for their own recovery while in prison. The offender must pay for hurting innocent victims, and the state has a responsibility to keep the offender away, so they can no longer harm anyone. Supporters of the bill view the overall goal of the penal system as protecting the public from dangerous people through tough sentences. Such values are represented in both sides of the debates through the commonly utilized frames.

Chapter 5

5.0 Discussion

This thesis examined the policy debates surrounding the *Safe Streets and Communities Act* (SSCA) 2012 to discover how drug and criminal policy debates are framed, specifically pertaining to the role of penal populism and evidence in policymaking. The SSCA was a controversial act and much evidence was marshalled to illustrate that the act would negatively impact marginalized and vulnerable populations. Regardless, the act passed. Through a content analysis of legislative debates, this study examined support for and against the act, to enhance understanding of the act's passing, and to identify the values and concerns shaping legislative activity.

The thesis was guided by a general research question: "What rationales did state actors provide, and what symbolic frames did they draw on, in legislative debates on the SSCA?" The results detailed the main symbolic frames, separating the frames by those who supported the bill and those who opposed the bill.

Premised on the literature, three supplementary research questions were specified: 1) How did members of the Conservative party rationalize the bill, and what was the role of evidence and penal populist rhetoric in their rationalizations? 2) In the legislative debates, did the arguments for and against the bill reflect legislators' values, and opinions on what makes an 'efficient' justice system? 3) How are marginalized populations, such as youth and Indigenous populations, regarded in the legislative debates?

In this final chapter, the results of this thesis are put into the larger sociological context of policymaking in Canada. First, this section will include an overview of the results to address the general research question: *"What rationales did state actors provide, and what symbolic frames did they draw on, in legislative debates on the SSCA?"*. Next, there will be a discussion of how the results relate to the sociological literature. This section will also discuss the broader implications of this thesis to policymaking, specifically regarding the place of penal populism, evidence, and state actors. To conclude, there will be a discussion on the limitations of this research, as well as possible avenues for future research.

5.1 Overview of Findings

The results described the most common frames on both the opposing and supporting side of the *Safe Streets and Communities Act.* For the Conservatives, the most common frame was *Victim Advocacy.* In this frame, those who supported the bill argued that the bill was finally putting victims before offenders, and that the bill would represent victims in the criminal justice process. Those who opposed the bill, as well as the former Liberal government, were cast as being more concerned with the rights of offenders than victims. *Safer Streets in Canada* was the second most common frame. Under this frame, supporters insisted that the SSCA*'s* 'tough' laws would keep Canada's streets and communities safe. The third most common frame, *Harmful Drug Production and Dealing* was used by the Conservatives to discuss the dangers of drug production and dealing to Canadian communities and law-abiding citizens. The frame *Protecting Society from Dangerous Youth* was utilized to justify the punitive changes to the YCJA. Supporters argued that such changes were necessary, to protect the public from violent youth

offenders, a concern ignored by previous governments. The fifth most common frame used by supporters was *Offender Responsibility, Punishment, and State Paternalism*. This frame was used to argue that the SSCA would hold offenders responsible for their crimes and punish them for wrong doing. Under this frame, supporters likened offenders to children needing to be 'taught a lesson'. The next most commonly used frame was *Personal Narrative.* In this frame, personal experiences, anecdotes, emotions and opinions were used as justifications for the bill. Next, the frame *Bill has been Debated at Length* was used to argue that there had been more than enough time spent on debating the SSCA. Under the 8th most common frame, *Use of Scientific Evidence and Experts,* the supporting side of the debate included evidence and experts in some elements of their argument. Evidence was used to claim that the crime rate had not gone down, that crime often goes unreported, and that victims are responsible for the enormous cost of crime. Lastly, the frame *Recognizing Concern for Indigenous Communities* was utilized by supporters to acknowledge the unequal position of Aboriginals in the criminal justice system. Despite supporters having some response to concerns about Indigenous people, concerns were most often dismissed as being irrelevant and 'off-topic'. To summarize, the supporting frames contained overarching themes of the party's individualistic views of crime and punishment. The supporting frames represented a 'common-sense' understanding of crime, where 'bad people' victimize innocent people.

For opposition members, the most common frame was *Use of Scientific Evidence and Experts.* Evidence and experts were at the forefront of the concerns for the opposition, and opposition members presented evidence that the bill would be harmful, costly, and ineffective. The second most common frame was *Advocacy for Marginalized*

Populations. Opposers were critical of how the bill would impact marginalized

populations, mainly youth. The third most common frame was "*Punitive Populist*

Rhetoric. Under this frame, opposers argued that the Conservative party was pushing the

SSCA under a punitive rhetoric which appealed to voters' fearful and emotional reactions

to crime. Next was the *Hidden Cost of the SSCA*. This frame expressed concern with how

much the bill would cost and accused the Conservatives of trying to hide the true cost of

the bill. The frame *Canadian Exceptionalism* was utilized by opposers to argue that the

punitive nature of the SSCA went against the fundamental principles of 'Canadian'

justice. Next in P*revention, Rehabilitation and State Responsibility*, the opposition

members described the role that they believed the state should play in matters of criminal

justice. This was premised on a criminal justice strategy which would rely on

preventative measures such as the reduction of poverty, to address the societal problem of

crime. Under the *Personal Narrative* frame, the seventh most utilized frame, opposers

described their own personal experiences and anecdotes as rationales for rejecting the

bill. Lastly, the 9th most common frame was *Removal of Judge Discretion*. This frame

was utilized to express concern over the bill's mandatory minimums, which would lead to

the removal of judicial discretion. Overall, these frames represented values which were

based on a societal conception of crime, in which states needed to consider the most

effective preventative and rehabilitative measures.

In summary, the results reflected the overarching elements of each sides' values

concerning crime and punishment. The results revealed that both parties had opposing

values with respect to crime. For supporters, crime is individualistic and about the 'bad

choices' of 'bad people'. On the other hand, opposition members insist that crime is a social problem, which requires a societal fix, such as alleviating poverty.

5.2 Relation to Literature

5.2.1 Penal populism and the "Punitive Turn" in Canadian Criminal Justice Policy

The first supplementary research question addressed the Conservative Party's use of penal populism and evidence in the legislative debates.

According to Roberts et al (2003), penal populism is "the pursuit of a set of penal policies to win votes rather than to reduce crime rates or promote justice…" (5). In pursuing such policies, state actors utilize penal populism to tap into the public's anger towards the justice system (Pratt, 2007; Simon, 2007; Garland, 2001). Therefore, displays of penal populism often hinge on claims of demanding justice for victims, via harsh penalties for offenders (Pratt, 2007; Simon, 2007; Garland, 2001). Prior to 2006, Canada established a history of avoiding such penal populism, which had swept most the United States (Meyer and O'Malley, 2005; Pratt 2007; Roberts et al., 2003). However, with the election of a Conservative minority in 2006, literature points to a punitive turn in Canadian criminal justice history. This 'punitive turn' is marked by both the escalation of penal populism in criminal justice matters, and the rejection of experts and evidence in policymaking (Goodman and Dawe, 2017; Kelly and Puddister, 2017; Doob and Webster, 2015 & 2016; Azzie, 2015; Comack, Fabre, and Burgher, 2015; Cunningham, 2014; Winfield, 2013; Hyshka et al., 2012; Jarvis, 2012; Mallea, 2010).

As was described in the literature, penal populist rhetoric among the Conservative Party is evident throughout the results. Supporters aligned themselves as the "party for victims" while opposers were cast as 'sticking up for criminals'. They claimed to represent the anger and frustration among 'Canadians' and 'victims' who agree that former governments have not done enough These findings are consistent with the work of Simon (2007), Pratt (2007), and Garland (2001), who argue that penal populism manifests with emotional appeals for victims. Moreover, there is evidence that the Conservatives sought to "govern through crime" (Simon 2007), as representing victims was presented as the "mission" of the Conservative government. Offenders were painted as requiring punishment to pay for their crimes against victims and society. Such elements of penal populism were evident in every major frame on the supporting side.

Penal populism is also evident in the displays of state paternalism throughout supporting debates. According to O'Malley (1999), state actors who engage in penal populism often use state paternalism to justify punitive policies. State paternalism was a reoccurring theme in the supporting frames. Supporters spoke of offenders as being like children, and likened prison time to sending children to "time-out" in which they needed to "think about" their actions.

Conversely, elements of Canadian exceptionalism were apparent in the opposing side of the debates. In the debates, fair and effective "Canadian-style" justice was directly opposed to the punitive and ineffective "American-style" justice. This position is consistent with literature on Canada's resistance to penal populism prior to 2006 of the 'Canadian way' (Pratt, 2007; Meyer and O'Malley, 2005; Roberts et al., 2003). Many legislators advocated for a 'Canadian' alternative approach to justice. If Conservatives

represented a penal populist turn, the members of the opposition continued to resist this turn.

Literature surrounding the federal government under Harper also described a rejection of experts and evidence in policymaking. However, results differed slightly from the literature. The results suggested the Conservatives utilized scientific evidence selectively and sparingly, focusing on costs, and relying on value-driven arguments instead. The Conservatives did not so much reject the evidence brought to challenge the act as alternately declare it irrelevant, draw on their own evidence (selective evidence about cost and crime), and shift the focus of debate away from evidence towards emotional appeals to support victims and punish offenders.

Overall, there is ample evidence that members of the Conservative caucus embraced penal populism and paternalism in their rationales. While they did not entirely reject evidence, they used is sparingly and selectively, generally to support more value-based arguments.

5.2.2 Weber: Values and Social Action

The second supplementary research question was concerned with whether state actors' rationales reflected values and rationality, as neo-Weberians argue. Recall that, for Weber, social action is shaped by different types of rationality (Anter, 2014; Breen; 2012; Morrison, 2006 Weber, 2007). Formal-rational action is instrumental, calculated on obtaining the most efficient means to an end (Breen, 2012; Morrison, 2006; Weber 2007). According to Weber, this is the most commonly used type of rationality within the state, as it is based in efficiency, control and routine (Breen, 2012: 9; Morrison, 2006; Weber,

2007). Following formal rationality, instrumental-rational action is calculated on

obtaining the most efficient means to an end (Breen, 2012; Morrison, 2006; Weber 2007).

A second type is substantive rationality, which is tied to values or a system of values

(Breen, 2012; Morrison, 2006; Kalberg, 1980; Weber, 2007). Value-rational social action

follows substantive rationality where social action is guided by "a value for its own sake"

(Breen, 2012: 10; Morrison, 2006: 359; Weber 2007). Although efficiency is not

disregarded in this type of social action, it is a much lower priority than the obtainment of

the value itself (Breen, 2012; Weber, 2007). Weber identified other types of rationality

including theoretical rationality, but this type is not directly related to any type of social

action (Breen, 2012 Morrison, 2006; Weber, 2007), and was not of focus here.

Formal and substantive rationality were evident in the rationales provided by

legislators for their actions and decisions. Opposition members, for instance, argued that

the bill was not the best means to achieve the stated goals (protect victims and improve

the criminal justice system); rather, they argued evidence suggested that the bill would

create more problems. These rationalizations are tied with formal rationality. Opposers

argued that current formal institutional structures (correctional facilities, judicial

processes) were effective, and could be strengthened to be more effective. At the same

time, opposition members drew on values reflecting the "Canadian way" of meting out

justice, and concern for the interests of marginalized persons in their opposition to the

act. Moreover, opposing members' values reflected a societal and systemic understanding

of crime. Thus, there is evidence of both formal and substantive rationality in the

speeches made by legislators opposed to the SSCA.

Both formal and substantive forms of rationality are also evident in the supporters' rationales for the bill. The results suggested that support for the bill was posited on "tough on crime" and individualistic values, in which the Conservative government claimed that the SSCA would represent victims through punitive measures. In this way, the supporters are guided by substantive rationality and value-rational social action, motivated by an individualistic view of justice. At the same time, supporters were concerned with efficiency – especially in terms of cost. Supporters drew on statistical evidence to argue victims pay the cost of crime, that crime rates were rising in some specific areas, and to demonstrate that crime was going unreported. Yet, despite this selective use of evidence, the results suggested that supporters presented evidence *only* to support value-laden rationales of punishment, justice and individual responsibility. Even when utilizing the scientific evidence, the specific way in which supporters used evidence best falls under value-rational action, guided by substantive rationality.

Opposition members relied on formal and substantive rationality, while the supporting side relied more on substantive rationality, although they tried to argue that pursuing values such as protecting victims would also lead to a more efficient criminal justice system. State actors on both sides of the debate blended their own values throughout their arguments.

5.2.3 Marginalized Voices

The third and final supplementary research question focused on representations of the marginalized in the legislative debates on the SSCA. There is a wealth of scientific studies and reports which described the potential catastrophic effects of the SSCA on marginalized populations (Newell, 2013; Marshall, 2015; Cunningham, 2014; Lau and

Martin, 2012; Jarvis, 2012; The John Howard Society of Manitoba and Latimer, 2012; The Northwest Territories Department of Justice, 2012). Specifically, there was concern over how the legislation would impact youth, due to the harsh amendments made to the *Youth Criminal Justice Act* under the bill (Cunningham, 2014; Lau and Martin, 2012; The John Howard Society of Manitoba and Latimer, 2012). Literature also discussed the potential impacts on Indigenous groups, due to the removal of judicial discretion through the bill's implementation of mandatory minimum sentencing (Newell, 2013; Marshall, 2015; Cunningham, 2014; The John Howard Society of Manitoba and Latimer, 2012; The Northwest Territories Department of Justice, 2012; Lau and Martin, 2012). There was also concern expressed for those with mental illness, the elderly, women, and virtually every social group among the literature (Cunningham, 2014; Lau and Martin, 2012;).

In the debates, youth were a high priority. Opposition members expressed concerns over youth which were identical to the concerns in the literature. Those who supported the bill argued that violent youth offenders would endanger Canadians if the bill was not passed. However, there was much less concern expressed about Indigenous populations. It is worth noting that the focus on youth may be explained by the direct relation to youth offenders in the bill, as it amended the YCJA. Even in this context, the small consideration that Indigenous groups were given by opposition members seemed disproportionate compared to the concern in the literature. Meanwhile, supporters dismissed the issue of Indigenous inequalities as being off-topic from the SSCA. There were also occasional concerns voiced by opposition members over how those with mental illness may receive jail time instead of help under the SSCA.

Voices that were prioritized most in the debates were the voices of victims and offenders. The voices of victims were represented by the Conservatives, who focused most on victim advocacy in their debates. Through their debates, opposition members advocated for the fair and just treatment of offenders. Opposition members claimed offenders should be treated with the most efficient methods, to prevent offenders from creating more victims. In this way, both those who supported the bill and those who objected to the bill were representing victims and offenders throughout the debates.

Literature which described the SSCA as marginalizing certain voices, was partially confirmed. The results proved to be complex. Voices that were prioritized were not necessarily those of privilege, but some marginalized voices were still ignored or silenced. In particular, Indigenous groups' concerns were marginalized, and youth were demonized by the Conservatives. However, other marginalized groups received a great amount of concern, such as victims and offenders, and youth. Additionally, it is worth noting the influence of values over what voices were prioritized. Through their concern for offenders and youth, opposers demonstrated their belief that crime was a societal issue. For supporters, their punitive stance on youth and dismissiveness of Indigenous issues reflected individualistic notions of crime.

5.2.4 Linking Penal Populism, Evidence, Values, and State actors in Policymaking

This study has found that neo-Weberian views of the state and state actors are helpful in understanding legislative debates surrounding the SSCA. This theoretical perspective helps to reveal how penal populist rhetoric, the use of evidence, and the

representation of marginalized voices are all inter-connected, reflecting the values and interests of state actors. Neo-Weberian theory views the state actor as any other social actor: with their own interests and values (Adams and Saks, 2010; Saks, 2010; Zhao, 2009; Tickamyer, 1981; Weber, 2007). According to these theories, state actors often advocate for their own values in policymaking (Saks, 2010; Zhao, 2009; Fraught, 2007). Additionally, self-interested state actors often act in line with the "common-sense" values of the populous to keep their positions as elected officials (Stevens, 2011; Zhao, 2009; Tickamyer, 1981). Therefore, placing this literature in context with the results, the implications for state actors and the SSCA are two-fold. First, as we have seen, state actors debating the SSCA represented their own values and views of the world. Values played out in the framing of punitiveness, evidence, and marginalized populations. Secondly, state actors in legislative debates of the SSCA may have adopted 'common-sense' populist rhetoric to appeal to voters. This was demonstrated by the penal populist rhetoric of the supporters. Therefore, neo-Weberian theory can explain how state actors may have supported or opposed the SSCA based on their own values or in defense of their positions as elected officials (Tickamyer; 1981; Adams and Saks, 2018; Stevens, 2011; Saks 2010; Weber, 2007).

The role of evidence and experts in the SSCA and in policymaking in general can also be further explained through this framework. This study found that the role of evidence in debates on the SSCA was less straightforward than suggested by the literature. Conservatives and opposition members utilized evidence to represent their own values on crime and punishment. Therefore, this thesis helps to discern that, at least at times, evidence can be used to support value-based rationalizations made by state

actors. This supports the work of Cairney (2016), Smith (2013), and Yeo (2012). The

results of this thesis highlight the need for a more nuanced view of evidence, which

understands that the use of any evidence can be a value-based decision by a social actor.

In conclusion, when applying the theoretical framework of Weber and his

contemporaries, the complex role of state actors in policymaking can be better

understood, as opposed to the often-one-dimensional understandings of the state as only

an instrument for the elite. A neo-Weberian framework could be applied to state activity

in future analyses, to allow for the complexities of state actors' policymaking to be better

understood.

5.3 Limitations and Future Research

The thesis investigated the major debates for and against the *Safe Streets and*

Communities Act. In terms of limitations, this research was limited due to the large

volume of data within the legislative debates. This thesis examined only the debates of

this one bill at second reading. A more comprehensive look at legislation, even

legislation on criminal justice policies, might identify additional and alternate frames.

The SSCA was significant and highly controversial; however, analysis of one bill cannot

hope to capture the complexity of a federal government in power for a decade. Therefore,

this study has limited generalizability.

The issue of researcher bias in this study also may be a possible limitation.

However, steps were taken to avoid the influence of researcher bias. As discussed in the

methods, the frameworks of Saldaña (2009) and Mason (2002) were used to increase

reflexivity and lessen researcher bias. In this technique, analytical memos were taken

throughout the entire research process. These memos recorded the justifications behind coding decisions and researcher thoughts and opinions (Saldaña, 2009). As pointed out by Mason (2002), researchers cannot be neutral. Instead, they must work to keep constant awareness of their prejudices and how this may impact the research. Through the analytical memos, it allowed for there to be a persistent awareness of how my biases may impact the outcome of research (Saldaña, 2009; Mason, 2002).

In terms of Canadian policymaking, future research should focus on the complex place of evidence in policy. As the Harper government moves further into the rear-view of Canadian history, the changing place of evidence and experts in policymaking should be examined. Are evidence and experts in policymaking regarded differently under a different federal government? How do the values of state actors impact the role of evidence today? Additionally, future research could investigate the place of penal populism today. What changes, if any, have been made under the current government to step away from such punitiveness in criminal justice policymaking? Future studies could examine if there has been a shift back from penal populism, and whether these changes have been substantial or if they are only rhetorical.

There is also a need for future research regarding the *Safe Streets and Communities Act* specifically. There is a wealth of literature which anticipated the potential dangers and outcomes of the bill (Newell, 2013; Marshall, 2015; Cunningham, 2014; Lau and Martin, 2012; Jarvis, 2012; The John Howard Society of Manitoba and Latimer, 2012; The Northwest Territories Department of Justice, 2012). However, there is a lack of research which examines the actual impacts of the bill thus far. At the writing

of this thesis, there was only one readily available study which examined the impacts of the bill since it was passed in March 2012 (Comack, Fabre, and Burgher, 2015). Therefore, there is a great need for studies which examine the impacts of the *Safe Streets and Communities Act* today.

More generally, future research should focus on the complex nature of state actor activity and decision-making, and how this complexity impacts policymaking. As pointed out in this work, state actors are impacted by a multitude of factors, including their own values, the values of their voting base, and their own self-interest. Yet, most studies on policymaking tend to underestimate the complexity of state actor activity (Adams and Saks, 2018; Saks, 2010). Therefore, further research should focus on how the role of a state actor impacts policymaking, beyond the standard implications of the state as an instrument of the elite. Future research may find Weberian and neo-Weberian theory helpful in teasing out a more nuanced understanding of state actors and their motivations.

5.6 Conclusion

This thesis presented a content analysis of the legislative debates in the *Safe Streets and Communities Act*. The purpose of this study was to discern the major symbolic frames within the bill, specifically related to elements of evidence and penal populism. The results explored how values guided the policy decisions of state actors. For the Conservative party who supported the SSCA, values were premised on an individualistic understanding of crime that called for a more punitive approach. Opposition members advocated for values which were premised on a societal understanding of crime, in which preventative measures were needed over punishment.

With the incorporation of a neo-Weberian framework, the findings of this study

illuminate how the motivations for the inclusion of evidence and ideologies such as penal

populism, lie with the values and self-interest of state actors. In this sense, state actors

represented their own criminal justice values in the SSCA. Furthermore, the values of the

electorate may be prioritized by self-interested state actors, as they seek to gain favour

with their voting base. The implications of these findings suggest that the use of

evidence and ideology in policymaking are valued-based decisions made by state actors.

Future research should focus on this complex role of the state actors, to better understand

their place in policymaking.

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HONOURS AND AWARDS

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2012-2016	Dean's Honor Roll: King's University College
2015	Academic Sociology Award: Department of Sociology, King's University College
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ACADEMIC EMPLOYMENT EXPERIENCE

2016-2018	Teaching Assistant –Introduction to Sociology, Western University, London, Ontario
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