

**Communities, Contraband and Conflict:
Considering Restorative Responses to Repairing
the Harms Implicit in Smuggling
in the
Akwasasne Mohawk Nation**

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Executive Summary

The present study consists of three parts. First, the current research and literature on organized crime in Canada, and Aboriginal organized crime in particular, are summarized and critiqued. It is observed that while research on organized crime in Canada is limited in both quantity and quality, research on Aboriginal organized crime is almost non-existent. Searches in the latter area revealed only three articles directly focussing on cross border activity as a form of Aboriginal organized crime, although reference to cross-border activity as a manifestation of organized crime does occur in a range of sources on Mohawk Iroquois people. The field is ripe for more detailed and disciplined investigation.

The second part of this study provides a preliminary portrayal of the impact of cross-border activity on the people who reside in Akwesasne, based primarily on interviews and the limited research on the trade. It is clear that smuggling causes a wide range of both direct and indirect harm in the community, only a small portion of which is detected by law enforcement and amenable to extant restorative justice options available to Akwesasne. It is observed in this part of the study that the single most compelling factor in both documenting harm and mobilizing community agency to respond to it and those who perpetrate it is the ambivalence of many Mohawks to the trade itself.

Following this, the third part of the study describes the current 'restorative repertoire' in Akwesasne, and theorizes about the potential of a broad-based restorative initiative which engages community crime prevention by targeting Mohawk ambivalence around cross-border activities. A proposal for a much larger research project directed to the definition, development and evaluation of such a project occupies much of this final component of the study.

Introduction

Our people in Akwesasne have shown that they are against smuggling; they have co-operated with police, and our own Mohawk police have made a number of drug busts. Cigarettes are perhaps the least of our worries. Drugs, liquor, and automatic weapons, all of which are harmful to our people, have been brought into the territories in great quantities. Our people in the community have said that this is wrong under our laws, whether a border exists or not....Neither the community nor the Iroquois Confederacy supports smuggling (Richardson, 1989, 130).

The clear evidence of two decades of highly profitable and conspicuous cross-border traffic in contraband suggests that the unanimity of position implied by the preceding statement may not be quite as widespread as some community members would wish. Since it first came to public attention in the early 1980s, the trade in tax-free cigarettes, known colloquially as “buttlegging”, has now expanded to include a range of commodities such as liquor, drugs, weapons, gemstones, and, most recently, human migrants. Caught up in debates around aboriginal and treaty rights, enduring Mohawk nation sovereignty and patriotism, economic self-determination and the politics of resistance, the community of Akwesasne has been riven by smuggling and a growing national reputation as the epicentre of “aboriginal organized crime”.

While there are a range of law enforcement strategies attuned to the task of monitoring, apprehending and controlling the activities of those directly involved in the illicit trade moving through Akwesasne, there is a need to fashion alternative strategies for addressing the range of victims and harm which flow both directly and indirectly from the trade. One source of such alternatives resides in the relatively recent field of restorative justice. It is the primary purpose of this paper to engage in a preliminary exploration of the potential of restorative responses to meeting the challenges posed to Akwesasne by smuggling, with a focus upon the development of a larger, longer-term research project on this subject. Prerequisite to such an exploration is discussion, first, of the state of knowledge of the trade in contraband as one type of aboriginal organized crime generally, and in Akwesasne in particular. From here, the paper will shift its focus to an exploration of the potential viability of restorative responses to the harms created by smuggling. This portion of the study will look to the nature of the challenges which restorative

programming might expect to face and, considering these, what types of programs might prove viable in this setting; it will draw upon extant literature and information gathered from a small, select sample of persons with knowledge of smuggling in Akwesasne and its impacts.

Anticipating that this preliminary inquiry will raise important issues about restorative responses, the study will conclude with suggestions for a larger research project which could shed light on the implementation of such responses in Akwesasne and, potentially, other aboriginal communities facing similar problems of crime and disorder.

The Current State of Knowledge: Aboriginal and Other Organized Crime In Canada

Any attempt to profile the ‘state of the artifice’ of organized crime in Canada in general, and of aboriginal organized crime in particular, must be prefaced with a consideration of the nature of the research and literature in the field. For purposes of the present study, wide searches were made across a range of resources, including traditional scholarly sources, popular press/media writings and internet, government and law enforcement sources. The results of these searches were sifted and prioritized such that those resources with a Canadian focus and those concentrating on aboriginal organized crime, especially the trade in contraband and the trade as it exists in Mohawk communities, were given greatest attention. Secondary priority was given to organized crime as a theoretical or conceptual construct, with additional attention given to non-aboriginal field studies or documentation which provided pragmatic grounding for the theoretical discussions. While the limited time frame of this study necessarily means that a comprehensive canvass and critique of the literature is not yet complete, the work accomplished to date is sufficient to permit the drawing of some careful, preliminary conclusions about the literature with respect to aboriginal organized crime in Canada.

The Literature on Organized Crime Generally and in Canada

The literature and research consulted ranges from the theoretical (Lippens, 2001, 319-331) and historical (Haller, 1990, 207-235) to more grounded efforts to describe the field of study and the phenomenon of organized crime (Beare, 1998). Much of these resources focus upon particular instances of organized crime, i.e., drug trafficking, the mafia or ‘family crime businesses’, or prominent historical players in organized crime. In addition to these academic sources were those originating with state or law enforcement organizations, such as the Criminal Intelligence Service Canada, and a wealth of media reports, which must always be approached with some measure of caution and mindful of the goals and limitations of media research.

Notwithstanding the preliminary nature of the present study, there are a number of difficulties with the resource base informing research on organized crime in Canada. The literature consulted revealed divisions in the field concerning many core elements of organized crime, including debates over its magnitude and structures (Schloenhardt, 1999, 214), and uncertainty and disagreements around attempts to define it both as a phenomenon and an object of study (Beare, 1998, 1). While such debates can signal healthy intellectual struggle and contribute much to the quality and depth of the field, with limited exceptions this does not seem to have been the case in organized crime research. Even a brief canvass of the extant research reveals a quite remarkable variation in overall quality of work, stemming from methodological problems, through inadequate conceptual development, to a more basic failure to carry through analyses to their fullest extent. This is far from the first or an isolated instance of such criticisms of the field- as noted by one social scientist,

the field of organized crime research, to say it modestly, suffers from “intellectual atrophy”. Little is written that deserves our attention, and that which is written often does not reflect reality (Martens, 1993, 35).

The uneven quality in the work is made worse by the relatively small quantity of organized crime research. Beare suggests that these failings may be due at least in part to the difficulties implicit in studying an activity shrouded in secrecy (Beare, 1998, 20-21). She notes that data collection is inhibited by the reality that those involved in organized criminal activity have

nothing to gain by talking to researchers. She observes that

...when it comes to locating the data, organized crime research involves convincing others to give you entry into their highly protected working environments, where they enjoy a near-monopoly on the flow of information (Beare, 1998, 22).

These shortcomings are clearly evident in the research collected and analysed for the present study. There is very little uniquely or specifically Canadian research available, and what is accessible reflects the uneven quality of the research field as a whole.¹ Inasmuch as little attention seems to have been paid to the phenomenon in Canada, even less has been directed toward the particular manifestations of organized crime within aboriginal contexts.

The Literature on Aboriginal Organized Crime

Within the criminological literature, only three papers focussed directly on smuggling as one manifestation of aboriginal organized crime and refer directly to the trade in contraband in Akwesasne (Jamieson, 1999, 259-272; Jamieson et al., 1998, 245-272 ; Jamieson et al., 1998, 285-319). Elsewhere authors such as Beare give brief attention to the subject, but rarely develop it to a significant degree (Beare 1998, 77). This research can be supplemented by attention given to smuggling in works dealing specifically with the Mohawk communities of Kahnawake, Kahnesatake, or Akwesasne, such as Hornung's *One Nation Under the Gun: Inside the Mohawk*

¹ This tendency is most evident in the study prepared for the Law Commission by Beare and Naylor which, while pursuing a stated goal to "position and contextualize the old debates, clarify the new concept and indicate the evolution of our understanding of the range of criminal activities which should be viewed through the same prism-and those which should be seen and responded to separately" (*Major Issues Relating to Organized Crime...*, p.1), the reader is often confronted by inadequate development of key concepts and insufficient grounding to permit full understanding of their arguments. While one often looks to Law Commission work to provide basic foundational information and discussion of policy development, this paper is symptomatic of the larger difficulties in this field of research.

Civil War (1991), York and Pindera's *People of the Pines* (1991), or Pertusati's *In Defense of Mohawk Land* (1997). With the exception of the latter text, which is the product of the author's doctoral dissertation, these sources are the culmination of the experiences of journalists chronicling conflicts and political activism in the Mohawk communities. While the books produced by those active in the media are often informative and compelling, it is important to remember they contain little or no clear statements of the methods by which the research was designed or carried out. To the degree that details of modes of data collection, interview structures and so on are absent, we cannot say with certainty how reliable the findings are, or to what degree they can be generalized, and thus use of these sources must be cautious and qualified. It is also important to qualify any use of journalistic sources by noting that the research agenda informing such sources is quite distinct from that which should characterize a social science method of inquiry. That being said, careful use of media-based books can provide one additional resource to complement the very small field of academic work. These can be further expanded by newspaper and magazine articles, which are relatively numerous but, like the popular books which emerge from the media, can serve only limited research functions. More reliable, if often too brief and de-contextualized, are the updates on "monitored and emerging issues" offered by CISC in their Annual Reports.

Taken together, there appears to be only limited scholarly attention paid to the phenomenon of organized crime in Canada in general; attention paid to the smuggling within aboriginal groups appears to be almost non-existent. In contrast to the plethora of attention directed to aboriginal conflict with the law generally, and most notably their over-representation in the Canadian Criminal Justice System, aboriginal organized crime is simply not a subject which has been studied to any significant degree either as one element of the larger experience of aboriginal conflict with the law, or as a contributor to over-representation.² And while restorative justice

² Indeed, it is interesting to note that while research interest in the subject of over-representation has really only emerged in the last 25-30 years, it has produced a remarkably large field of data and analysis - admittedly with little in the way of productive prescriptions for ameliorating this compelling and, so far, intractable problem. At the same time, research in organized crime has been deemed to find its origins in the 1960s, and has produced remarkably

has a remarkably robust positioning in the aboriginal justice research field, there does not appear to have been any consideration of restorative responses to organized crime. This may be due at least in part to the tendency of restorative justice programs to be restricted to crimes of a relatively minor nature, which most organized crime activities are not. It is undoubtedly also one manifestation of the overall lack of attention to aboriginal organized crime as a topic of study. From this, it is clear that there is a pressing need for greater research attention to be directed to the growing phenomenon of aboriginal organized crime in Canada, as well as to the potential for more creative program responses offered by restorative and community justice initiatives.

Defining the term “organized crime”

Notwithstanding the limitations of the extant research, a necessary precursor to any discussion of organized crime, whether perpetrated by aboriginal people or others, is assigning definitional boundaries to the term (Beare & Naylor, 1999, 2; Van Duyn, 1996, 343; Stamler, 2000, 430). What is it that we are referring to when we speak of “organized crime”, especially in the Akwesasne Mohawk context? The task of constructing a single, overarching definition which can encompass all forms of organized crime has proven elusive and, given the range of endeavours which appear to fall logically within the term, may do more to obscure the nature of such illicit activity than illuminate it as a category of criminal behaviour. At least part of the difficulties around conceptualizing the term resides in the tendency in the research to focus on what may be deemed sub-categories, and a resulting propensity to define the larger concept of

little Canadian data and analysis. Even in this era of aboriginal issues as a “pop topic”, there has been virtually no in-depth research into specific forms of deviance which might be defined within organized crime categories, or coherent analysis of activities such as smuggling within an organized crime paradigm. This is more remarkable when one considers that smuggling has become conspicuous in places like Akwesasne in the same juncture in which interest in the research field of aboriginal people, crime and conflict with the law has grown so significantly. How is it that this aspect of the larger field has been overlooked, and what are the implications it holds for issues like over-representation or the future of criminal justice policy in relation to aboriginal peoples?

organized crime according to the specific sub-category under study, such as the old-style mafia or “family business”. As a result, researchers have tended to craft definitions of organized crime by drawing on the characteristics granted to a range of different and particular organized crimes. While there is nothing in itself problematic about knitting together a definition of a total category of acts or behaviours by taking common strands of the definitions given to its constituent sub-categories, the risks inherent in doing so in the field of organized crime are exacerbated by the uneven nature of much of the research. In other words, one must be cautious about which definitions are included in crafting the larger meaning for the field of organized crime generally.

While acknowledging that the task of definition has proven difficult, the research generally suggests that organized crime must be understood less as a specific type of crime than as a process or method by which specific types of crimes are committed (Beare, 1996, 14-15; Stamler, 2000, 431-432). Central to that process would seem to be some form of organization across those involved in perpetrating the illegal activity—the debates, however, are very much around the degree and direction of organization evidenced across different types of organized crime. Generally speaking, the debates seem grounded at either end by those who view the phenomenon from a corporate model perspective, and those preferring a network model (Schloenhardt, 1999, 214). Those who support a corporate model view organized crime as manifesting a corporate structure that is centralized, hierarchical and bureaucratic (Schloenhardt, 1999, 214). While this view seems to have dominated much of the early work in the field, more recent research suggests that the top-down, highly rigid organizational structures assigned to such traditional organized crime groups as the Cosa Nostra or Mafia may not be accurate.³ This position is consistent with a network model of organized crime, wherein the structures of organized crime groups are characterised as diverse, decentralised associations in which relations between core actors are defined horizontally (Schloenhardt, 1999, 214). Here, scholars such as Haller have suggested that much of what might be referred to as organized crime is less

³ The notion of the highly organized, rigidly regulated crime family is most often associated with Donald Cressey in his work *Theft of the Nation* (New York: Harper and Row, 1969).

like complex organizations than a series of partnerships (Haller, 1990, 229). Albinì appears to concur with Haller, noting that while the organized or syndicated crime group certainly has “rational” characteristics, it is more accurately portrayed as a “loosely-knit system of patron-client or network relationships than as the manifestation of a rigidly organized, bureaucratic one” (Albinì, 1998, 350).

Beare’s Canadian work also suggests that a horizontal organization is increasingly more likely than a hierarchical one, but she qualifies this position with a perception that organized crime structures will tend to vary depending upon the activities to which they are directed (Beare, 1996, 15). Notwithstanding those distinctions, however, Beare observes that organized criminal operations will generally share three central characteristics:

- a structure that allows individual criminals to be removed and substituted without jeopardizing the viability of the criminal activity
 - criminal activity committed via continuing criminal conspiracies (i.e., ongoing, repetitive criminal activity rather than one or two criminal acts committed for profit)
 - the capacity to operate through political corruption and/or the potential for violence
- (Beare, 1996, 15)

While these theoretical characteristics can really only be fully assessed through attempts to ground them in the real world, there are a couple of corollaries which might be mentioned prior to focussing Beare’s model on Akwesasne. Beare suggests that one shared characteristic of most modern organized crime groups is the ability to remove and substitute personnel in relationships that involve repetitive criminal activities. Insofar as the action is repetitive and, especially within a small community like Akwesasne and in a field such as “buttlegging” of contraband cigarettes where potential partners are somewhat limited in number, it seems likely that there will be a limited selection of substitutes, and the tendency to remove and replace may be a questionable business practice (albeit one which is less so from the point of view of obscuring one’s activities). To the degree that commentators like Haller or Albinì are correct, it seems logical to

suggest that at least some of the partnerships or patron-client relationships that make the organization work will be to some degree personality-dependent; that is, people will enter into “criminal conspiracies” with those they feel they know and can trust.⁴ If a particular relationship is dependent upon the perception of the partners, it stands to reason that if one of the partners is “removed and substituted”, the relationship and the dealings it permits may be endangered. The risks of substitution may assume interesting dimensions in a context such as that of Akwesasne, where the trade in contraband appears to function internally through networks which are simultaneously dependent on kin obligations or constraints, and non-kin partnerships based on unity of economic interests and, to varying degrees, strategic or political positions central to a successful partnership. The degree to which these conspiracies and the activities they permit and promote involve the complicity of political and/or law enforcement personnel is unlikely to be an element of Beare’s model which will receive significant illumination in the present study.

Aboriginal Organized Crime In Context: The Akwesasne Mohawk Nation

The Mohawk Nation Community at Akwesasne is home to roughly 12-13,000 Mohawks, the descendants of a small group of Mohawks who were historically residents of the community at Kahnawake. The progenitors of Akwesasne are believed to have split off from the Kahnawake community around 1755, owing to exhaustion of land, factionalist conflict and possibly the desire of the French to establish an additional post on the upper St. Lawrence (Fenton & Tooker, 1978, 473; Reid, 1981, 118). Given these origins, the Akwesasne splinter group necessarily shares much of its history-and its present situation-with Kahnawake. Central to this joint history is a tradition of trading which was one part of the motivations which originally inspired some Mohawks to relocate out of their southern homeland in upper New York State to the shores of the St. Lawrence River. For those who followed an economic motivation north, the strategy behind these northern communities was clear: locating a community on one of the trading

⁴On trust in organized crime relationships, see also: Dick Hobbs and Colin Dunnighan (1998, esp. 292-293).

superhighways permitted the Mohawks to monopolize the middleman role in the fur trade. From their riverine village sites the Mohawks could intercept groups of fur harvesters coming down to Montreal to trade, purchase or steal their pelts, and divert these to the more lucrative markets in New York via the “Mohican Channel”.

While many authorities believe that the north-south trade was a post-contact development in the Mohawk economy⁵, it is one part of a strongly held belief on behalf of modern Mohawks that trading is a significant element of their culture and history. That international, provincial and state borders came to supercede their own borders and those of their indigenous neighbours and trading partners has done little to undermine that belief or its related assumption of rights of free movement and trade within their traditional territories.

There is little doubt that the Mohawks who relocated to Akwesasne, the “place where the partridge drums”, understood the economic value of life on the river; it is less likely, however, that they could have anticipated just how strategic or contested their community and its boundaries would become today. As it currently exists, Akwesasne is split by the Canada-United States border, and the Quebec, Ontario, and New York State borders, with the result that as a distinct aboriginal group, they are subject to a remarkable array of provincial, state, Canadian and U.S. federal laws and policed by at least seven different law enforcement agencies.

The impact of this division on what the Mohawks consider to be their home, and an important part of their remaining traditional tribal territories, cannot be underestimated. As a nation of which Akwesasne is merely one part, the Mohawks generally do not recognize the Canada-United States border nor do they acknowledge any sovereignty within their lands other than that of their own nation. However, at the same time that the borders are clearly the source of considerable inconvenience for many Mohawks, the irony is not lost that the presence of these borders not only contributes to the fervent nationalism which is a large part of modern Mohawk

⁵A quick and relatively accessible summary of the history of Mohawk trade practices may be found in Mitchell v. M.N.R., op.cit. See also: Jennings (1998).

political culture, but also to internal economic prosperity as. While they rail against the borders, those boundaries have provided a significant source of illicit economic activity and relative prosperity in a context where legitimate options are often blocked and sometimes non-existent.⁶ With regard to the latter, Jamieson has observed that Akwesasne is one of the single most polluted places in North America, and this has a clear impact on the practice of traditional subsistence within the territories. It also removes much possibility of developing a tourist economy, or any of the forms of economic development which have become common in First Nations. The choices in Akwesasne seem clear and circumscribed: Out-migration in search of education and employment; waiting and hoping to gain employment in one of the industries currently contributing to the degradation of the environment, or with the Mohawk Council in a limited number of local government jobs; or participation in the illicit, smuggling economy at admittedly greater risk, but with far greater monetary rewards and in an exciting, politicized context of aboriginal activism. In the absence of opportunities to engage in legitimate economic development, it is not terrible surprising that many Mohawks choose to participate in vice. As will be seen, the larger political and economic context of smuggling poses one of the greatest challenges to restorative responses to the harms created by the illicit economy in Akwesasne.

While the “Mohawk nationalists” or “traditionalists” such as those active in Warrior Societies and Longhouse groups are the most vocal in promoting Mohawk sovereignty and the politics of smuggling, the sentiments the “radicals” articulate are certainly not limited to these groups. Indeed, there are remarkable consistencies among Mohawk citizens concerning sovereignty and aboriginal rights, notwithstanding often highly divisive, internecine conflicts they engage in regarding the proper use to which those rights may be directed.⁷ Whether or not outsiders agree

⁶In a perfect world, policy choices to ameliorate the underground economy in places like Akwesasne would focus on revitalization of the physical environment and increased access to legitimate economic development; but the world is not perfect, and we must work with what is before us.

⁷This is my observation as a person who lived in Kahnawake in the past and who remains actively involved with this community and, to a lesser degree, Akwesasne; it is echoed by Jamieson (1999) in her very good article.

with these positions-and as will be seen, external disagreement is clear, cogent and the defining element of state policies - any agency wishing to implement policy into Akwesasne must be mindful of Mohawk positions and the tenacity and passion with which they hold to them. This is especially true in regard to community-based initiatives-if one ignores key elements of the community, one can hardly expect the community to support the policy or the projects it promotes.

Akwesasne Mohawk Positions on Cross-Border Rights

In the realm of the cross-border trade and smuggling, the arguments articulated by Akwesasne Mohawks fall predominantly into three non-mutually exclusive streams, those of (1) sovereignty rights, (2) treaty rights, and (3) aboriginal rights. While we might distinguish these for purposes of discussion here, they are clearly linked in Mohawk minds and often blend and overlap in the rhetoric which typifies debates around “contraband” in this community.

Cross-border trade as a right based upon enduring Mohawk sovereignty

While pressing a position that their rights have been recognized in a series of treaties (discussed below), the Mohawk Nation does not view those treaties as creating those rights. Rather, in their view all cross-border rights emerge from their status as a nation with enduring sovereignty which has never been conquered by any colonial power, nor ceded any of its rights. There is a clear rejection of the Canadian state position that any Mohawk sovereignty has been superceded by Canadian sovereignty. There is also no acceptance of the concept of “merged sovereignty” articulated by the Royal Commission on Aboriginal Peoples, which suggests that “aboriginal and non-aboriginal Canadians *together* form a sovereign entity with a measure of common purpose and united effort” (emphasis in the original) (Mitchell, 2001, 35). As a community of a sovereign nation, the only borders recognized by the Mohawks of Akwesasne are those of their own territories and communities.

With regard to the specific matter of cigarettes, at least some Mohawks embellish their right to this aspect of the trade with a perception that they reserve the right to transport and trade duty-free tobacco as part of “First Nations’ spiritual ownership of tobacco” (Jamieson, 1999, 263). Such a claim is, in some respects much more controversial than those based on nationalism and enduring sovereignty. For while there was no technical separation between ‘church and state’ in historical Mohawk Iroquois political culture, to make an essentially religious or spiritual claim to tobacco, and then exploit that claim for profit, does not sit well with at least some people. As noted by Jamieson, participants in the cross-border trade make their own moral choices (Jamieson, 1999, 267); that they make these based upon their own, sometimes peculiar views of Mohawk culture and history, is an important part of the factionalism inspired by clashes over such views and the trade itself.

Cross-border trade as a treaty right

It is the position of the Mohawks that their right of free passage and free trade over the Canada-U.S. border—a right which is rooted in their sovereignty and their status as a First Nation, is recognised and preserved within the series of colonial treaties made in the sixteenth and seventeenth centuries. According to the Mohawks, these treaties, specifically the Treaty of Utrecht of 1713, Articles II and III of the Jay Treaty of 1794, and Article IX of the Treaty of Ghent of 1815, recognize the right of free border passage for the Mohawk Nation. The Jay Treaty is most commonly cited in this regard, as Article II recognizes the right to free movement of aboriginal peoples for trade and diplomacy, while Article III directs that they not be charged duties on imported goods for individual or community purposes (Jamieson, 1999, 263; Leslie, 1979; Salisbury, 1977). Taken together, these treaties are viewed by Mohawks as delivering them from the payment of duties or excise taxes on goods which they purchase and carry over the border—in effect, for them the border simply does not apply. While the Canadian government has granted some latitude on the matter of certain personal goods, there is no support for the Mohawks’ position beyond that point (Mitchell, 2001).

Cross-border trade as an aboriginal right

The Mohawks of Akwesasne have been denied cross-border rights as part of their aboriginal rights, most recently by the Supreme Court of Canada in a test case concerning importation of goods for purposes of trade brought by a former Grand Chief of the Akwesasne Mohawks (Mitchell, 2001). In this case, former chief Mike Mitchell argued that the Mohawks of Akwesasne possessed an aboriginal right to bring goods into Canada from the United States for “collective use and trade with other First Nations without paying customs duties” (Mitchell 2001). The position of the federal government was that no such right existed because, first, there is no evidence to support it, and second, that such a right is incompatible with Canadian sovereignty. The Supreme Court concluded that the evidence supporting the aboriginal rights claim was not established, and rejected the Mohawks’ claim; the issue of sovereignty was addressed only indirectly in the Court’s reference to, and confirmation of, shared sovereignty. In the Court’s view, “aboriginal people do not stand in opposition to, nor are they subjugated by, Canadian sovereignty. They are part of it” (Mitchell, 2001). That the highest Canadian court took this position, however, cannot be seen as making it so in the hearts of the Mohawks of Akwesasne.

Notwithstanding the legal realities which stand against the Akwesasne Mohawks’ position on their cross-border rights, many Mohawks, whether directly involved in the trade or not, continue to assert that the maze of borders which dissects their territories have no relevance to them, and that they retain a legal right to cross those borders freely and without penalty. Any effort to mobilize the community in a restorative response to the harm of smuggling will need to account for the reality that many of the people who stand firmly opposed to the smuggling of illicit or contraband commodities will also often hold precisely the same positions on nationhood, sovereignty and cross-border rights as those who engage in smuggling. Here, as in many factionalised communities, the conflicts are less over rights themselves than how those rights are construed or vindicated or, stated another way, they are more over means than ends.

Aboriginal Organized Crime In Akwesasne: “The State of the Artifice”

Historians have aptly summarized the Mohawks’ historic genius as residing not just in the ability to recognize advantage, but in their considerable capacity to act upon and maximize it. This is certainly an accurate description of their approach to the myriad of borders, regulations and restrictions that characterize their lives at Akwesasne. There are mildly conflicting opinions regarding the moment and motivations impelling the Mohawks’ decisions to act upon the strategic advantage implicit in their geographical position. Depending upon the commodity involved, cross-border activity may be seen to have originated in the early 1980s with the incipience of “buttlegging”, which has been directly linked with gaming developments in both Akwesasne and Kahnawake, or slightly later, in the importation of contraband weapons. With regard to the latter, Beare states that some of the earliest smuggled commodities were weapons to support militant activities in Mohawk communities (Beare, 1996, 77), yet it seems equally likely that the cigarette trade was a primary source of funds for both the gaming activities and the weapons which appear to be a standard complement to both cross-border activity and, increasingly, acts of aboriginal activism. Indeed, internal RCMP sources note that immediately following the closure of the crises at Oka and Kahnawake, the importation of contraband weapons appears to have intensified, and high-powered weapons remain an important lubricant of the trade. It is also worth noting that these same sources suggest that the summer of 1990 was a catalyst not only for contraband activities across Canada in aboriginal communities situated at or near the Canada-U.S. border, but also for the trend toward increasingly intense activism in many First Nation communities.

It seems likely, then, that the cigarette trade preceded the contraband weapons trade, or at least arose almost simultaneously, as the trade in weapons had to be financed as well as protected, and it is unlikely that much money was available in the absence of the tobacco trade to support other illicit-and legitimate-economic developments. This is certainly the case with regard to high-stakes bingo and gambling operations, which will be discussed briefly later in this paper.

While some commentators suggest the 1980s was the era of cross-border activity, Jamieson

argues for a much earlier initiation of the “Mohawk free trade zone”, observing that it has been an active part of the Akwesasne economic and political landscape since “at least since the 1950s” (Jamieson, 1999, 265). In fact, it seems logical that such a zone has been in effect since the moment the borders came into effect, and that the matter has entered the public consciousness as part of a greater awareness of “First Nationalism’ generally, concerns over “porous borders”, and the perceived potential for crime and disorder implicit in both of these phenomenon.

Regardless of the time line one wishes to apply to smuggling in Akwesasne, it is clear that what was probably initially a relatively small-scale transnational movement of personal goods has exploded into a very significant-and profitable-trade in contraband and illicit commodities. According to Beare, this trade arose and assumed the shape it did less out of Mohawk initiative than opportunity:

Aboriginal organized crime centres on “opportunistic” crimes. In the initial stages of operation, a significant profit-making opportunity is taken advantage of rather than sought out and developed. However, once the infrastructure of a distribution network is in place, alternative commodities can and will be substituted (Beare, 1996, 77).

Thus the illicit importation of contraband cigarettes and restricted weapons within and between Mohawk communities has grown to include alcohol, drugs and, perhaps most troubling, the transnational smuggling of migrants (Beare, 1996, 77; Jamieson, 1999, 265-267; CISC, 2001). Government sources suggest that it is unlikely that this list is exhaustive (Personal Communication, March 2002). The magnitude of the trade is staggering and the amount of profit -estimated in the millions-is staggering, especially given the relative size of the communities and number of Mohawks directly involved in it. If we focus only on the trade in tobacco, the importance of this activity for the Mohawks and the governments on their borders is clear. Jamieson suggests that at the height of the cigarette trade in 1993-94, the Federal Government estimated that approximately 40 percent of the Canadian tobacco market was

comprised of “smuggled smokes” (Jamieson, 1999, 265). The tax loss associated with that portion of the market was suggested to fall in the vicinity of 12.4 billion dollars.⁸ While these cigarettes entered the market through a variety of sources, it is unquestioned that much of them came through Akwesasne.

Within Akwesasne the trade tends to be run predominantly by older men who organize and oversee the operations, and employ younger men and women as runners (Jamieson, 1999, 266)- the people who perform the actual physical transportation of the cigarettes across the borders via a wide range of land and water routes. As observed above, those involved in smuggling range from entire families to individuals acting alone or in small groups composed of trusted individuals; they engage in these activities as both on-going businesses which are “well-organized, computer enterprises”, as well as “spur of the moment” acts of “opportunism” (Jamieson, 1999, 22; Hornung, 1991). The process was-is-relatively straightforward. Many of the smuggled cigarettes were actually manufactured in Canada and exported to the United States, where they were purchased from U.S. wholesalers and spirited back across the border via Mohawk channels, where they can be sold at greatly reduced prices untouched by duties or taxes (Jamieson, 1999, 266). There is a range of both land and riverine routes through which the borders are circumvented, and a variety of strategies for doing so. In some cases, smugglers would load a car with a small number of cases of cigarettes and direct a more junior runner to run the border-the smugglers would then call in an anonymous tip to Customs, which would direct its activities to apprehending and processing the reported runner and his or her illicit cargo. While the authorities were thus diverted, the real load would be smuggled across the border. Another practice involved sending a car by night to a cross-border point, followed a short distance behind by a truck carrying a full cargo of contraband and driven at speed and without the benefit of headlights to attract attention. In either or any case, a successful cross-border dash would be followed by a high-speed run to Kahnawake, where the cigarettes would be distributed

⁸ Jamieson, 1999, 265. Beare adds to these monetary costs of smuggled cigarettes to those “costs to public health from their consumption” as well as those related to law enforcement, additional border controls, and so on. See *Major Issues Relating to Organized Crime...*, Part E.

and sold in any of the 70 “smoke shops” which dotted the community’s landscape at the height of the trade. Although the cigarette trade has diminished since alterations to taxation structures were introduced in 1994 by the Federal Government in an effort to combat the trade,⁹ the losses have been attenuated somewhat through the expansion of the trade into other commodities, such as alcohol or illegal drugs.

It is unlikely that a similar attenuation has occurred in the case of the very substantial contribution to the local legitimate economy made by the trade. At the height of the cigarette trade, smugglers were known to purchase cars and boats with cash in the Ontario community of Cornwall, only to abandon them after use or while being pursued by authorities, to escape detection. Police have discovered the remains of boats sunken in the St. Lawrence—in one case, cushions from a speedboat were discovered, packed with ammunition for high-powered, automatic weapons. Here we observe an important factor in the success of organized crime generally, namely, the co-operation between operators of legitimate and illicit activities. In the context of cigarette smuggling, legitimate car and boat dealers located in non-Mohawk communities adjacent to the reserve are complicit in the cross-border trade, insofar as they apparently knowingly supply commodities necessary to sustain the trade. In this light they are as much participants in the trade as are cigarette wholesalers and manufacturers. A diminution in “buttlegging” undoubtedly hit many of these “legitimate” business people hard, and it is unclear the degree to which those losses have been redressed by the expansion of the trade into other commodities. Insofar as cars and boats are still required to smuggle alcohol or migrants, there may be some market share to be exploited.

The complicity of legitimate businesses in organized crime (Haller, 1990, 228; Jamieson et al., 1998, 298-299) assumed much larger dimensions in the mid-1990s when it became apparent that

⁹ House of Commons, Routine Proceedings, Tuesday, February 8, 1994. CISC’s Annual Report 2001 notes that a new tax structure was introduced in April 2001 which introduced tax increases on tobacco in five low-tax provinces (Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island). The implications of these changes for the illicit trade in tobacco are not yet clear (Contraband Smuggling. Tobacco. *Annual Report 2001*, p.3).

such co-operation extended far beyond the piecemeal involvement of local small businesses and wholesalers to major corporations such as R.J. Reynolds. In 1998, Northern Brands, a subsidiary of R.J. Reynolds, was convicted and fined following confirmation of its relationship with cigarette smugglers. The essence of this relationship was to move Northern Brand cigarettes manufactured in Canada, which were exported to the U.S. under the guise of an intended export to the eastern Europe, back into Canada through Akwesasne, allowing the company to avoid paying significant amounts of Canadian and U.S. fees and taxes.¹⁰ This incident is undoubtedly the most conspicuous manifestation of corporate complicity with organized crime, but it is distinct only by degree-legitimate businesses remain important players in the smuggling marketplace, as do “law-abiding citizens” who do not view the purchase of smuggled cigarettes as a form of tax evasion or supportive of organized criminal activity.

The involvement of non-criminal elements in illicit endeavours lends an additional degree of challenge to fashioning effective law enforcement responses to organized crime, and raises interesting issues for those considering the possibility of restorative responses to its harm. The complicity of “innocent citizens” in such illicit activity sends contradictory messages to perpetrators of illicit activities. When “regular people” support criminal activities, for example through the purchase of smuggled cigarettes, the status of the smuggler as criminal is challenged, as is the act of smuggling as a “real crime”. The implications of those crimes are similarly obscured. Lost in the relatively banal transaction between the seller of contraband cigarettes in Akwesasne or Kahnawake and the outsiders, who enter the reserves solely to benefit from the smuggling economy, are the consequences of the trade for those who live on the reserve. While it may be possible for outsiders to dismiss the consequences of the cigarette trade as involving only a small number of ‘deserving victims’-an overtaxing government through its loss of tax dollars, and those who choose to smoke-such platitudes become less palatable when, for

¹⁰ *CBC Newsworld*, December 22, 1998; *Associated Press*, Tuesday, December 22, 1998; Tobacco Affiliate Pleads Guilty to Role in Smuggling Scheme, *Washington Post*, Wednesday, December 23, 1998; Tobacco Company Affiliate Pleads Guilty in Smuggling Trade, *Los Angeles Times*, December 23, 1998; RJR Subsidiary Pleads Guilty to Smuggling, *New York Times*, December 23, 1998.

example, smuggled cigarettes become forms of currency in much more insidious criminal activities¹¹, or when attention turns to other forms of trade. If smuggled cigarettes or alcohol occupy one end of a continuum of perceived criminality as activities created by governments with an over-enthusiasm for taxation, the average Canadian may be expected to be less indifferent about the smuggling of drugs, weapons or human beings. That the negative implications of such activities can expand beyond the borders of communities like Akwesasne, to include a much wider constituency of potential victims, may assist law enforcement agencies to mobilize a broader public support for moving beyond traditional crime control models, to engage a restorative justice paradigm of social control through community empowerment.

There is little doubt that what Beare defines as the constituent elements of organized crime are present in the cross-border trade in Akwesasne, albeit with some modification. Certainly there is a broad structure to cross-border activities in both Akwesasne and Kahnawake, and some interchangeability of participants is permissible, if only to a degree. For example, the primary participants in the trade in both communities remain consistent, although to the extent to which these people limit their activities to cigarettes, their level of participation may have diminished. As well, insofar as some of these are family businesses, substitution and sacrifice of participants may not be as easy or common as Beare's model appears to assume. It is also clear that smuggling is made possible through ongoing networks of criminal conspiracies, but that in addition to those who are engaging in "repetitive criminal activity", a percentage of the trade functions through the activities of those who perpetrate one or two criminal acts essentially for profit. There can also be little doubt that the trade, which appears highly organized and supported by the same corporate technologies that make legitimate businesses successful, also demonstrates a significant potential for violence and threats to lubricate the mechanisms of their activities (Beare, 1996, 77). There is little doubt, then, that from a theoretical standpoint, cross-

¹¹ Beare refers to a "recent investigation [which] revealed evidence that cocaine traffickers within the Edmonton Vietnamese community were using smuggled cigarettes as the medium of exchange for cocaine" (*Criminal Conspiracies...*, p.77). Acknowledging that Beare is one of the researchers who bemoaned the unreliable nature of much information on organized crime, one hopes that she repeats only that which she deems to be reliable. As she offers no comment regarding the authenticity of this statement, readers may accept it accordingly.

border activity in Akwesasne is consistent with organized crime activity.

Within the community, however, there is far more ambivalence about both the status of the trade as a crime and the type and magnitude of harm associated with it. A number of factors appear to influence Mohawk perceptions of the trade, including the nature of the commodities being smuggled, individual positions on sovereignty and aboriginal rights, and opinions about the costs and benefits of the trade to the community. For example, while many Mohawks profess much more ambivalence about the trade in tobacco than about other smuggled commodities such as drugs, that position can shift mightily when the implications of the trade are discussed. On the one hand, there are those who praise the trade and the smugglers for their contributions to legitimate economic development in Akwesasne and Kahnawake. In the latter community in particular, a “levy” was paid by all but a single smuggling family into a central fund which was administered by one of the local Longhouses in the form of interest-free loans to start businesses or build homes.¹² The situation in this regard appears somewhat different in Akwesasne. While there are reports of a similar tithing system in Akwesasne, there are also reports that much of the money “went into somebody’s purse” and when attempts were made to access the funds, it had disappeared and could not be accounted for in acceptable terms.¹³ This failure to establish a good system for accounting has been blamed by some with knowledge both of the trade in Kahnawake and Akwesasne for at least part of the conflict which surrounds the Akwesasne activities in particular¹⁴. That being said, while it was clearly not terribly systematic, some participants in the trade in Akwesasne were known to be very generous with their profits, providing cars and homes to those in need, and earning thereby a special place in the hearts of many community members.

It seems likely that a greater source of conflict over the trade stems from the association of cigarette money with the establishment of gaming on the American side of Akwesasne and high-

¹² Interview with source “A”, Kahnawake Mohawk, notes in researcher’s possession.

¹³ Interview with source “B”, Kahnawake Mohawk, notes in researcher’s possession.

¹⁴ Ibid.

stakes bingo in Kahnawake, and concomitant perceptions of the spectre of traditional crime organizations which hang over such establishments (Jamieson, 1999, 266; Hornung, 1991, 1-25). Feeding in with political tensions around the perceived exploitation of sovereignty and spiritual traditions in support of illicit activities, are fears of many Mohawks that their people are entering unholy alliances with increasingly unsavoury characters. Many Mohawks are troubled by the ever more common reports that suggest the trade in which some of their people engage as a right carries with it responsibilities for a wide range of social harm. The reality that smuggled cigarettes may play a role as a commodity of exchange in the drug trade, and that drug smuggling involves liaisons with Hell's Angels¹⁵ or ethnic-based drug groups, or that the smuggling of human migrants requires linkages with Asian organized crime groups, brings a dimension to local smuggling which frightens many Mohawks and mobilizes them against the contraband trade. Living with the anxiety implicit in such perceptions, and the reality that conflicts over the trade in general, and competition between traders in particular, can lead to violence, are one part of the harm which restorative responses might be required to redress.

Defining the Harm of Aboriginal Organized Crime in Akwesasne: The Challenge of Determining the Targets of Restorative Initiatives

There can be little doubt about the degree to which the community of Akwesasne has been deleteriously affected by the rise of the contraband economy within its borders. Determining the nature of those impacts and their direction is crucial to the development of restorative responses, insofar as restorative justice programs seek to resolve conflicts between victims and offenders, thereby restoring some balance to their relationship and the lives of those touched by that conflict. Identification of harm, location of victims and definition of the communities affected, are thus necessary precursors to any consideration of possible restorative responses to organized crime activities in Akwesasne. It is important to acknowledge as a considerable qualification on the discussion that follows that it is based largely on the researcher's perceptions of the situation

¹⁵ Personal communication with Akwesasne resident, March 2002.

in Akwesasne formed by research and a few select interviews; should an initiative be taken at some point to implement a restorative justice project in Akwesasne to apply directly to the harms related to smuggling, a crucial component of that project would be extensive community consultations on local perceptions of harm, victims and the nature of the victimizations-in-essence, of the problems to be solved by a restorative justice project. Such consultation is the route to projects which are truly responsive to community needs (as opposed to external perceptions of those needs) and which are constructed and owned by the community they serve.

The harm implicit in the presence of aboriginal organized crime in Akwesasne is experienced at a range of levels. It resides, writ large, at the level of the community as a whole, which over a relatively brief historical period of no more than 50, but no less than 20 years, has assumed a reputation as the epicentre of aboriginal organized crime in Canada. The weight of such a mantle cannot be easily dismissed; it intertwines with a reality of racism and anti-aboriginal sentiment which is well-documented in research¹⁶ and acknowledged by Canadian courts (*R. v. Williams*, 1998), and which further feeds into stereotypes of the criminogenic natures of aboriginal communities and people. This does little to empower and encourage new generations of Mohawk youth in Akwesasne. For example, one informant in Akwesasne recently told me that, especially at the height of the cigarette trade, if anyone “Mohawk-looking” were to go to a car lot in Cornwall, the salesperson would invariably ask whether the sale would be in cash demonstrating an assumption that all Mohawks are smugglers, and therefore criminals.¹⁷ The impact of this sort of behaviour on children who might have accompanied their parents to look at cars or similar big purchase items cannot be underestimated, especially in terms of the messages it sends to children about their parents, cultural background, and community. When external perceptions of criminality are intertwined with the lack of legitimate opportunities within the community and the lure of rather spectacular wealth offered by smuggling, it is not difficult to understand why some impoverished, marginalised Mohawk youth might seize illicit opportunities. In addition,

¹⁶ See, for example, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, 1998, esp. Vol.1, pp.247-249.

¹⁷ Interview with source “C”, Akwesasne, March 2002.

and as will be discussed below, when those opportunities become rationalised not as criminal activities, but as means for articulating a stand on Mohawk sovereignty and aboriginal rights, many of the remaining reasons not to participate fall away.

If associations between the community and smuggling render life outside Akwesasne difficult, the challenge of living with smuggling internally can make life almost unbearable. Sources in the community spoke of a variety of such harms, some more tangible than others. Tangible harm includes the impact of easy money on vulnerable youth and families, the constant threat of violence implicit in the presence of smugglers, their ambiguous loyalties to anything other than profit, and the arsenals and thuggery which are the language through which they articulate their struggles over routes and suppliers. The presence of illicit commodities is no less harmful, contraband drugs and alcohol place as many-if not more-Mohawk children and youth at risk as they do the outsiders who form the bulk of the willing customers of such commodities. In addition, concomitant with dependencies on drugs and alcohol are the multiplicity of criminal activities associated especially with drug culture, including property crimes perpetrated to support drug consumption, and the range of person offences which tend to arise when people are under the influence of drugs or alcohol. This harm is often direct and specific, and has a tangible impact on the quality of everyday life in Akwesasne.

Similarly, while the trade in contraband cigarettes and other commodities has brought unprecedented wealth into the community, it has also in many cases contributed to a severely skewed socioeconomic structure. While some Mohawks have experienced almost obscene levels of personal wealth, others remain mired in desperate poverty, blocked from “contraband charities” by the absence of involved relatives or friends in the trade. The resentment and frustration implicit in denied opportunities is common to most aboriginal reserves in Canada, but it is especially poignant in Akwesasne, as some residents are impeded not only from accessing legitimate avenues to wealth, but to non-legitimate ones as well.

Harm has also entered as a partner of the prosperity which has accrued to some Mohawks, but not to others. Those who have taken a stand against smuggling have too often seen their position

rewarded by poverty and hardship, while smugglers access apparently copious quantities of easy money. Honesty may have its own rewards, but the gratification is rarely immediate nor of the magnitude generated by dishonesty. In short, there appears to be little direct reward in taking the high road around cross-border activities in Akwesasne.

The challenges faced by those who are morally opposed to the trade are profound, especially when that morality was gained through direct experience with smuggling activities. One source, who is clearly still emotionally distraught over her involvement in the trade, spoke of working as a runner on a few occasions as a teenager just out of high school.¹⁸ She spoke of the sensation implicit in counting out one million dollars in twenty and fifty-dollar bills, and the seduction of that magnitude of wealth was apparent. At the same time, she was troubled by the “macho” mentality manifested especially by the young men to whom she delivered the cigarettes in Kahnawake following a late-night mad dash from the border in Akwesasne. Having a machine gun pointed at her face and a “bag of money” tossed her direction was offensive and exacerbated the sense of shame and guilt she suffered from her brief experience with the trade. While the fact that this person may no longer be classified as an “offender” may be considered a victory for law enforcement and general deterrence (although her turn-around seems more internally than externally motivated), she clearly remains a victim of the trade as evidenced by the extreme emotions she demonstrated in the interview. Because her crimes were undetected, she cannot hope to access the potential benefits of the restorative programming linked in with the extant justice system in Akwesasne, and yet her need is clear.

While this source turned away from smuggling, its hold on her life and the community as a whole is suggestive of the scale of the victimization implicit in the trade. Participating in smuggling, even briefly, created a strong dislocation for this person. At the same moment that her estrangement from “white society” was reinforced by the police and customs agents who pursued her, her sense of place within her own people was shaken by the young Mohawk men whose shared community and ethnicity did not defer them from pointing high-powered guns at

¹⁸ Source “C”, March 2002.

another Mohawk. Living in a place such as this, devoid of community, leads to an individualized approach to life which cannot help but undermine the human connections and unity of action or purpose which is central to communal living. It seems, from appearances in Akwesasne, that many Mohawks have lost touch with the concept of their community in precisely this kind of fashion.

The “hangover” from smuggling for those who were participants in the past is profound, and certainly not limited to those who left the “field” by choice. Sources speak of youth in the community whose parents were participants in cigarette smuggling, but whose competitive edge has been removed by alterations to Canadian tax structures. Falling from wealth to very modest circumstances, these families now find themselves attempting to relate to children who cannot understand why the \$200 they used to take weekly to the mall is now down to a monthly \$20, and who are angry and resentful at their reduction in circumstances.¹⁹ These youth, who have known only the comparatively easy prosperity which accompanies illegal activities, have no frame of reference for accessing legitimate channels to wealth, or any motivation to seek them out. Their alienation is profound, and their ideas of prosperity warped; the challenges they will present to the community are likely to be profound. These young people are another category of victims created by smuggling, who have no access to extant restorative programs because they have not yet engaged in acts of crime and disorder. That they will do so in the future is likely-it is unfortunate that programming which could benefit them now functions only in a reactive context; the need for proactive restorative options is clear and pressing.

Feeding every aspect and articulation of the trade are the profound political tensions which accompany debates over smuggling as a legitimate expression of Mohawk sovereignty and aboriginal rights, and which have fueled an internecine factionalism of stunning depth and durability. So reportedly widespread and diverting is this factionalism that it is not an overstatement to suggest that it is the most compelling and damaging community effect of smuggling. Its impact is that much more troubling given that the ambivalence around cross-

¹⁹Source “C”, Akwesasne, March 2002.

border activity factionalism is easily exploited by smugglers, and thus facilitates the very activities which create this harmful effect in the first place.

Challenging this ambivalence may hold significant potential to undermine smuggling and restore the community. The difficulty, however, is that these very same political tensions are also a primary stumbling block to the sort of restorative programming which might hold some promise of facilitating that healing and shifting ambivalence in the direction of community empowerment. The reality is that the same disagreement amongst Mohawks over linkages between sovereignty and smuggling also colours perceptions of victims, offenders and assessments of harms associated with the trade. Among those who perceive their right to import cigarettes or any other commodity as based on sovereignty (or who adopt this position publicly as it is to their benefit to do so), their actions are not *criminal*, they are *political*. And it is only because their actions are political that the state chooses to criminalize them, as states have always done with those who challenge the existing order of things. It is a compelling and romantic view of crime, and one which is that much more attractive to communities like Akwesasne which already perceive themselves as historically residing on the margins of society.

Smugglers, in their own view, are therefore standing up and for their rights as Mohawks-a thus denying their label as “criminals” and, by extension, their fellow Mohawks as among their “victims”. That denial rings rather hollow in those cases where smugglers clearly have no intention of sharing the wealth, and thus the mantle of “offender” or “criminal” is perhaps easier to assign and more appropriately borne. However, there is clearly a greater unease among some community members when it comes to assigning that label to those who have used profits from smuggling to help out fellow Mohawks and support community-building activities.²⁰

Technically, these smugglers are still breaking laws and enlisting Mohawk rights as a prop for that illicit activity, but they also present a challenge to local conceptions of smugglers as criminals, and thus also to those who might qualify as victims. Is a crime less so if those who are harmed by the act are balanced off by those who gain from it? Is it less damaging if those

²⁰Interview with Source “C”, Akwesasne, March 2002.

harmful are the same people who also benefit, indirectly if not always directly? If I am a Mohawk who rejects smuggling as a fundamental violation of my culture and history, but money from a relative or friend who smuggles pays my heating bills, or enables me to buy a house when no bank would give me a mortgage, I am probably likely to engage in some careful qualification of my view of the “criminals” who provide me with options that legitimate sources either cannot or will not provide. Who will be cast as victims, and who as offenders in such a context? And insofar as most restorative justice programming requires some clarity around the definitions and occupants of these roles of victim and offender, not to mention around ideas of harm, how might such programming respond to the challenges of smuggling? How would British peasants have responded to a suggestion that Robin Hood acknowledge his “crimes” and participate in a restorative justice program?

The First Steps: A Proposal for Research and an Enhanced RCMP Role in Restorative Justice in Akwesasne

It must be observed at the outset that Akwesasne appears to be a community which is quite well-stocked with “restorative options”, albeit all of which have a direct connection with the formal justice system and are framed around traditional definitions of victims and offenders. That is, the programs involve an individual or individuals who have been criminally charged with an offence and, depending upon the program, determined guilty. The victims are those who have felt a direct impact on their lives from the crime, i.e., these are the people whose property was damaged or stolen. Programs in Akwesasne dealing with the restoration of relationships within this classic dyad include an “Old Ways Program”, which functions similarly to a community conferencing structure. This program accepts offenders at the post-determination stage as part of a sentencing option, and involves bringing the offender, victim and their communities of care together with a trained facilitator to communicate about the offence they share and how best to respond to, and heal from, its harm. While there is generally a reluctance to enlist such restorative responses in cases involving serious crimes against the person, the Old Ways

Program has handled matters as serious as sexual assault.²¹

In addition to the Old Ways Program, the Cornwall Provincial Court has a history of supporting sentencing circles through Akwesasne's Community Neh-Kanikonrii Council, especially in cases involving Mohawk youth.²² Recently this practice has been threatened owing largely to changes in the Bench which have impacted negatively on community efforts to continue the circles. These changes do not appear to have had a similar impact on the Akwesasne Court worker Program, which also functions as an aboriginal-specific adjunct to the Provincial Court.

There can be little question that Akwesasne is well-equipped with restorative options, and yet even a brief brush with the community reveals a great depth of need and dysfunction, much of it linked in with the smuggling activity for which the Mohawks have achieved considerable notoriety. This reality raises questions of whether restorative options are good program choices for the community given the as-yet unclear nature of their ameliorative impact, and why yet another restorative option should be considered. These questions are especially apt in light of the rather grand claims by restorative justice advocates of the potential of their programs to contribute to an improved sense of community wellness and agency²³, a result which is conspicuously absent in Akwesasne. Current programs do not appear to be healing the community, and it is unclear whether and to what degree they may be healing individual victims and offenders.

²¹ Interview with Rena Smoke, Community Justice and Native Courtworker Program Coordinator, Akwesasne Justice Department, March 26, 2002.

²² The researcher was an observer at the Community Neh-Kanikonrii Council, Family Conference Tribunal (Circle Sentencing), Akwesasne Mohawk Territory, Cornwall, Ontario as well as a consultant to Provincial Court, November 22 1996 on the consistency of restorative options to Mohawk Iroquois traditions and the propriety of such options in the case at bar.

²³ Stuart is especially passionate about the promises of restorative justice in these regards, asserting that sentencing circles in particular have the ability to, among other things, "...remove the causes of crime, build a sense of community and create safe communities" (Barry Stuart, 1996).

There is probably little to be gained by adding to these system-appended programs, yet it is unquestionable that the community remains the passive recipient of a considerable degree of harm arising from the trade in contraband, and the political, social and personal implications of this harm is considerable. Clearly, there is a large component of harm stemming from illegal cross-border activities which are not detected or targeted by current programs. This is due to a range of factors, including the limited definitions of community which appear to be at work in much of the extant programming (i.e., victim-offender dyads or victim-offender and select communities of care), as well as the restrictions on program access, which usually include a criminal charge and a determination of guilt. The reality that most restorative justice programming is intimately linked with the criminal justice system renders them essentially a reactive mechanism for crime prevention, as opposed to a proactive one. That there is nothing currently in place in the community to respond to those conflicts or harm which elude the detection of the system (or which cannot be easily or readily translated into criminal charge) translates into a significant gap in community justice programming. More importantly, the inability to respond effectively to those experiencing harms may undermine other crime prevention efforts and thereby feed into exacerbated conflict with the law. It seems clear that, in Akwesasne, something more is needed.

Restorative approaches may offer something more, but these approaches will have to be devised mindful of two considerable challenges. First, the definitions of those to be served by a program must be broadened and reconfigured. Careful attention must be given to the wide range of harm, categories of victims and challenges of defining offenders, and must move beyond a simple dyadic approach; definitions of “community” must be granted a greater complexity. Second, programs must be devised which respect these more complex understandings of the community to be served, and the challenges of political factionalism, internal conflicts and traditional schisms which will stand in the way of more far-reaching community restorative justice projects.²⁴ These are not simple obstacles, nor will they be easily overcome.

²⁴ To some degree the dimension of the challenges facing any program will be consistent with how the project defines the community it will serve. For example, in the oldest form of restorative justice program, Victim-Offender Mediations (also known as Victim-Offender

The “community of conflict” to be served in Akwesasne clearly involves a much more complex configuration of victims and offenders than the traditional dyad associated with much restorative justice programming. There is a wide range of harm implicit in smuggling, and its victims are everywhere. These victims are not limited to those who fall in violent clashes between smugglers, those whose lives are ravaged by the drugs and alcohol imported, or wounded or killed by contraband weapons. These are not the desperate and vulnerable migrants who are smuggled across the border like so much baggage and dumped at the first opportunity by the smugglers, only to be detected cold and starving by community members or police, or worse. These are arguably the silent or silenced victims of smuggling as a form of aboriginal organized crime; they will never take a seat in a sentencing circle or a community conference. They are unlikely ever to benefit directly from an “Old Ways Hearing”. But they may benefit indirectly if restorative responses can contribute to the development of a unity of position in Akwesasne about the not inconsiderable harm to the community implicit in its status as a “corridor of criminal activity”.

Even within the confines of the present, very brief study of cross-border activities in Akwesasne, it has become apparent that community ambivalence around cross-border activities constitutes a significant factor in both facilitating the trade and minimising the effectiveness of state sanctions

Reconciliation Projects), the “community” served by the project was limited to that of the victim and the offender-if an agreement was reached, kept and respected, the “community” had been restored. In Family Group Conferencing, the “community” served is far bigger, and includes the victim(s), offender(s) and their respective ‘communities of care’ comprised of persons attending the Conference to support the parties or to communicate their feelings or perceptions of harm resulting from the conflict or dispute which has led to the holding of the conference. A similar approach is seen in sentencing circles, wherein all those who feel a direct link to the crime at issue, as well as the victim, offender, judges and other court personnel will participate. While all these programs can benefit the larger community by healing victims and encouraging offenders to become ‘better citizens’, thereby reducing recidivism and crime in the community, it is probably a bit of a reach to say, as Stuart does above, that the larger community is rebuilt through these programs. A brick wall may be made of bricks and every brick might be integral, but if the whole is crumbling, adding a few rebuilt bricks at a time may not repair the wall fast enough to meet the needs of those who live within it, or before they tire of making the repairs. This is not a suggestion to abandon the making of bricks, but rather a request to be realistic about the repair plan and to encourage the continued search for better building techniques.

against it. This is so largely because ambivalence around smuggling originating from the politicized nature of the trade is a primary means by which smugglers render their activities if not entirely legitimate, then less patently criminal, in the minds of many Mohawks. It seems logical, then, that an ability to effectively reduce that ambivalence could equate with a significant community mobilization against smuggling as a fundamentally harmful activity.

Insofar as reactive policing strategies at a range of levels have had important, but piecemeal impact on the trade—having demonstrated in effect an ability to fell a number of trees without really reducing the size of the forest—it may be time to consider adopting a rather different proactive focus. If ambivalence is as central an issue as it appears to be, a possible productive proactive policy must be based upon two things; first, a clear understanding of the nature and depth of the ambivalence within the community, and second, a well-developed strategy for challenging that ambivalence by constructing a community consensus around the wide range of harm and forms of victimization implicit in the trade. That strategy must be devised mindful of the greater complexity of the community to be served by it, as discussed earlier in this paper.

The essence of the challenge is to create in the population a renewed sense of ownership of their community, instilling a responsibility for taking action against those who would harm it. Historic approaches premised upon external exhortations about cross-border activities as criminal or harmful have proven to have little moral sway with many community members would similar statements, articulated by a significant proportion of the community within a paradigm of restorative justice have more impact? If the very limited reports currently available describing the effects of restorative programming on the feelings of agency and healing of those participated hold, it seems very likely that such a greater impact could be realized.

If the community could be supported to engage a meaningful dialogue around these issues, and possibly reach some consensus around the concept especially of the victims in the trade, it may go a long way to mobilizing the community against smuggling activity. The key is how to initiate that mobilization. The first step must be to engage a community survey around smuggling, victimization and perceptions of harm, which may permit the determination of the

depth of the ambivalence and possible means of challenging it. In essence this survey will assist in understanding not only the nature and boundaries of the community to be targeted by a restorative program, but also what it is that the community as a whole is thinking about cross-border activities, which can in turn provide the basis for the second step: Constructing a restorative program which can facilitate and support community discussions around aboriginal organized crime in Akwesasne, with a specific goal of challenging local ambivalence concerning smuggling and its harms. The key is to provide a structured context in which the community can challenge the view of some of its membership that smuggling is a “victim less crime”, replacing it with an understanding that this is not at all true, and that its primary victim may well be one of the last remaining communities of the Mohawk Nation.

On the basis of the present study and the observations it contains, it is recommended that the RCMP expand their commitment to restorative justice in aboriginal communities beyond the current level of the essentially reactive restorative programming, to include much broader-based, proactive programming aimed at mobilizing community toward crime prevention. This movement is entirely consistent with the RCMP’s current activities, most notably in regard to Community Justice Forums, and a larger commitment to community crime prevention. As articulated below, a demonstrated commitment to such research and program development will not only expand the RCMP’s reputation in the field of restorative justice, but will also permit the RCMP to promote its role in crime prevention and, especially in an aboriginal context, community development as a means of preventing crime and disorder. It will also enhance the reputation of the Force in a research capacity, as the research project defined below includes a commitment to full and thorough program evaluation—an element which is conspicuously absent in much program and research activity in the field of restorative justice.

The research and development toward the establishment of a broad-based community restorative justice project will consist of two parts; these are outlined very briefly below, costings for the project will be provided upon request.

PHASE ONE/Year One: Community Attitudes Surveys/interviews

Tasks:

- Production of a research instrument in the form of a survey questionnaire designed to elicit responses from community members regarding perceptions of smuggling; smuggling activities; harm; offender and victim profiles; political, social and economic contexts of cross-border activities.
- Survey to provide basis of interviews conducted by a group of research assistants who will engage in house-to-house interviews; interviewing to continue until a sample size is generated which is sufficient to enable confident conclusions about community opinion regarding cross-border activities in Akwesasne.
- Interview data to be coded and analysed using standard tests; it is anticipated that the surveys will produce both quantitative and qualitative data.

Deliverables:

- Research Report documenting community opinions/perceptions of cross-border trade in Akwesasne and proposals for possible restorative response program options. Related deliverables to be discussed, as per “fit” of data within other research needs of contractor.

PHASE TWO/Year two: Community education, development and implementation of project

Tasks:

- A series of community meetings held to inform of results of the survey and propose restorative options; report to be submitted to those local authorities deemed appropriate by researchers.
- Move to development and implementation of Primary Deliverable to community:
Broad-based Community Restorative Justice Project
- Engage Project Evaluations: Formative evaluations at four and eight months; summative evaluation at one year.

Deliverables:

- Research Report on project implementation; Formative and Summative Evaluation Reports.

It is likely that the data generated by the survey will have value beyond its ability to shape and inform a community justice project related to perceptions of harm and larger healing needs, as opposed to those of specific victims and offenders. Such a program, despite its precise form, would engage crime prevention through community healing writ large, and would take restorative justice away from the criminal trial process and into a true community context. In addition, if a broad-based community initiative can shift the ambivalence in the community around smuggling by clearly identifying harm and victims, offenders will find themselves increasingly isolated and their activities increasingly under scrutiny by their own community. A mobilized and on-side community is an invaluable asset to police; if a community restorative justice project can assist in mobilizing and unifying the Akwesasne community against smuggling, the potentially positive impact for the community and crime prevention is significant.

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