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Normative Democratic Deliberation and the Role of Argumentation in the Canadian Mandatory Minimum Sentence Debate

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By

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DECLARATION OF ORIGINALITY

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ABSTRACT

This paper explores the role of argumentation within the debates on Bill C-10, the *Safe Streets and Communities Act*, that came into force in 2012. Through examining Hansard transcripts, this paper aims to investigate how argumentation on mandatory minimums was utilized in this political decision making setting to legitimize and accomplish this policy initiative. I draw upon the concepts of normative democratic deliberation, new right ideology and the punitive turn to explore the Harper government's use of argumentation strategies and discuss their implications for the Canadian political process and the current direction of the administration of justice in Canada. This paper's goal is to contribute to literature on mandatory minimums and policy making through an exploration of the political deliberative process through which the C-10 provisions on mandatory minimums were adopted.

DEDICATION

First and foremost this thesis is dedicated to my amazing father who has been there for me through every step of this extraordinary experience. I appreciate all of your support and patience. Thank you for putting up with my frustrations and tears throughout this crazy journey. I would never have reached this place without all of your help. I love you.

Secondly, this thesis is dedicated to my precious Cat Cat who fell asleep after completing my thesis defense. Thank you for being by my side through all the ups and downs of this adventure. You will never know how much comfort you have given me. I love you and miss you immensely.

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TABLE OF CONTENTS

DECLARATION OF ORIGINALITY iii

ABSTRACT iv

DEDICATION v

ACKNOWLEDGEMENTS vi

LIST OF ABBREVIATIONS/SYMBOLS x

CHAPTER 1 1

INTRODUCTION 1

CHAPTER 2 6

LITERATURE REVIEW 6

Arguments for Mandatory minimum sentences 6

Goals. 6

Sentencing disparity. 7

Judicial discretion. 7

Incapacitation. 8

Deterrence. 8

Public protection and public opinion. 9

Arguments against Mandatory minimum sentences 9

Sentencing disparity. 10

Judicial discretion vs. Prosecutorial discretion. 10

Incapacitation vs. Increased prison population. 11

Deterrence. 11

Public protection and public opinion. 12

The Position of the Supreme Court of Canada (SCC) 12

Conclusion 16

CHAPTER 3 17

DESIGN AND METHOD 17

Data source 17
Analytic tools. 18
Political Discourse Analysis (PDA) and Critical Discourse Analysis (CDA) 18
Critical discourse analysis 19
Political discourse analysis. 19

CHAPTER 4 23

THEORETICAL FRAMEWORK 23
The Punitive Turn and the New Right 23
Restorative Justice 25
Normative Democratic Deliberation 26
Conclusion 27

CHAPTER 5 28

FINDINGS 28
Bill C-10's Expansion of Mandatory Minimum Sentencing 28
This Research 29
Political Discourse Analysis Step #1 – Identifying Normative Claims 32
Government claims. 32
Opposition claims. 37
Discussion – Step #1 findings. 44
Political Discourse Analysis Step #2 – Reconstructing the Arguments 45
Government goal premises. 45
Opposition goal premises. 49
Government values. 54
Opposition values 59
Discussion – Step #2 findings. 63
Political Discourse Analysis Step #3 – Evaluation 65
Critical questions for step #3. 66
Safety of Canadians. 66
Public opinion. 73
Prioritizing the rights of victims and law-abiding citizens. 79
Discussion – Step #3 evaluation. 85

CHAPTER 6 87

DISCUSSION 87

Conflicting Values and Divergent Goals 87

The Battle for Evidence 91

Who's Voice Counts? 95

Disproportionate Power Relations 99

CHAPTER 7 103

CONCLUSION 103

REFERENCES CITED 107

APPENDICES 113

Appendix A 113

VITA AUCTORIS 114

LIST OF ABBREVIATIONS/SYMBOLS

BQ = Bloc Québécois

CDA = Critical discourse analysis

CPC = Conservative Party of Canada

DJC = Department of Justice Canada

GP = Green Party of Canada

LP = Liberal Party of Canada

MP's = Members of Parliament

NDP = New Democratic Party of Canada

PDA = Political discourse analysis

SCC = Supreme Court of Canada

CHAPTER 1

INTRODUCTION

Crime policy and its creation, intentions, practice, effects, consequences, transfer, diffusion and many other processes have been studied across multiple disciplines ranging from sociology and criminology to political science and communication studies. Recently in Canada, crime policy has garnered significant attention in public, academic and political spheres due to the politicization of crime and justice by the Stephen Harper government, which has introduced numerous controversial crime bills under three successive mandates (2006-2008, 2008-2011, 2011-2015). Prominent among these is an omnibus crime bill, entitled The *Safe Streets and Communities Act* (Bill C-10), that came into force in 2012. Bill C-10 introduced additional and enhanced mandatory minimum sentences into the Canadian Criminal Code, among other changes. While little used in Canada and while widely viewed as an ineffective deterrent (Cook & Roesch, 2012), mandatory minimum sentencing has been incorporated into the Criminal Code since 1893, for offences against the legitimacy of public institutions such as stopping the mail with intent to rob (Crutcher, 2001; Department of Justice Canada, 2005). Scholars such as Cook and Roesch (2012), Doob and Cesaroni (2001), Mauer (2010), Odeh (2013), Roberts (2003), and Tonry (2009) are among those who document negative consequences of mandatory minimums throughout the Western world. Others including DeKeseredy (2009), Gelb (2009), Roberts (2003), Roberts & Sprott (2008), and Terblanche and Mackenzie (2008) address how mandatory minimums and other punitive policies are transferred across Western jurisdictions not withstanding evidence of their lack of effectiveness. Other scholars address how mandatory minimums and other punitive

policies are portrayed and perceived by the media and the public (Crutcher, 2001; Doob & Cesaroni, 2001; Fish, 2008; Mascharka, 2001; Roberts, 2003). To date, however, research has yet to address the question of how efforts to expand mandatory minimums are debated and argued within political decision making settings. As Fairclough and Fairclough (2011, 2012), Jenson (1997), Naughton (2005), Sawer and Laycock (2009), Webster and Doob (2007) and others emphasize, this is a context guided by norms of democratic deliberation and consultation, in which research evidence is a resource for legitimizing and de-legitimizing law and policy initiatives.

In light of the documented controversy surrounding the issue of mandatory minimums (Cassel, 2004; Luna & Cassel, 2010), this research will address how mandatory minimum sentences were debated in Parliamentary deliberations on Bill C-10 (Canada, 41st Parliament). This thesis analyzes how this controversial crime policy was framed and debated by parliamentarians and civil society stakeholders within the Canadian Parliamentary setting, and based on this, how the passing into law of Bill C-10 provisions fits with other perceived and promised changes to the justice system and to Canadian society.

This thesis research addresses the following research questions:

1. In the Bill C-10 deliberations, what claims did those who argued for and against mandatory minimums draw upon and deploy and what values and goals underlie their respective claims?
2. In terms of rhetorical devices and strategies, how was evidence utilized and incorporated into the argumentation process?

3. In terms of rhetorical devices and strategies, how did the public and/or academic and legal expertise factor into the argumentation process?
4. In terms of evaluating the above, how was practical argumentation utilized to assert or maintain power within this political debate on mandatory minimums?

It is important to distinguish between discourse and rhetoric. The term discourse is used specifically in the sense that "different discourses are different ways of representing aspects of the world" (Fairclough, 2003, p. 215), for example new right discourse or neoliberal discourse. On the other hand, rhetoric is often understood as "words without substance, spin, language intended to deceive and manipulate" (Fairclough & Fairclough, 2012, p. 56). This thesis focuses on the use of rhetorical language to persuade, and all discourses can be used persuasively.

At the level of theory, this thesis draws upon David Garland's observations on 'the punitive turn' (2000, p.350), and research on how the embrace of this turn is shaped by neoliberal rationalities and mechanisms of control and exclusion at play in contemporary Canada and other Western societies (e.g., Mann, 2014; Meyer & O'Malley, 2005; Rose, 2000; Webster & Doob, 2007). Recognizing the importance of democratic deliberation in the legislative process and drawing upon understandings of what this means on a normative level, as set out by Fairclough and Fairclough (2011, 2012), this thesis provides insights into how practical or reasonable argumentation loses its' assumed democratic character in the context of a 'new right' (Behiels, 2010, p. 118) majority government's curtailment and deployment of democratic deliberation to achieve what is arguably a broader transformative agenda.

At its most general level, the thesis analyzes the effects of power differences evidenced in 'practical' argumentation and deliberation on the institution of mandatory minimum sentences for drug offences and sexually based offences against children into the Criminal Code of Canada. Specifically, the thesis examines verbatim Hansard recorded Parliamentary debates on Bill C-10, focusing on those specific to mandatory minimum sentencing using strategies of critical discourse analysis outlined by Fairclough (2003) and Fairclough and Fairclough (2011, 2012). This analytic strategy places its emphasis on stronger and deeper examination of political discourse, focusing analytic attention on the role of 'practical' argumentation and deliberation. It is particularly appropriate for analysis of parliamentary deliberations in the context of a majority government. The thesis therefore addresses how argumentation on mandatory minimum sentencing speaks to other contested concerns addressed in these deliberations, including contestation over the salience of research evidence to crime policy and the consequences of shifts away from rational or evidence-based to values anchored policy making (Cook & Roesch, 2012; Goldson, 2010; Gregg, 2012; Mann, 2014; Naughton, 2005).

Important to note is that as of October 19th, 2015, the Harper government was defeated by the Liberal Party led by Justin Trudeau. The newly elected Prime Minister has since released his mandate letters to his newly appointed Ministers. Of significance to my analysis is Prime Minister Trudeau's letter to the new Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould (Trudeau, 2015). Most significantly he requested that she administer justice with an increased use of restorative justice processes in order to increase community safety and decrease the rate of incarceration. He also tasked her with making decisions based on evidence and the Canadian value of

inclusivity and emphasized protecting the rights of Canadians and respecting the rule of law (Trudeau, 2015). All of this stands in opposition to punitive justice strategies, including mandatory minimum sentences.

CHAPTER 2

LITERATURE REVIEW

As stated in the introduction, there is widespread controversy on the impacts of increased reliance on mandatory minimum sentencing on crime and on society. In order to effectively illustrate the divergence of opinion on this issue, the literature review will first review research and arguments in support of mandatory minimum sentences, and then review research and argumentation in opposition to mandatory minimum sentences.

Arguments for Mandatory minimum sentences

Before reviewing the arguments in support of mandatory minimum sentences, it is essential to note the difficulty I have had as a researcher in finding recent academic articles that support mandatory minimum sentences. Based on an internet search using academic search engines Scholars Portal and Google Scholar, a search of the available and current literature showed a majority of recent researchers are opposed to mandatory minimums. As Akwatu Khenti (2014) recently observed, mandatory minimum sentences were implemented in Canada in 2012 even though "social science research … has consistently demonstrated that MMS are ineffective, expensive and at times, unjust" (p. 192, quote from the Canadian Psychological Association, 2012).

Goals.

Writing nearly four decades ago, Petersilia and Greenwood (1978) outlined the goals of mandatory minimum sentencing. These include demonstrating that a government is committed to a 'get tough' on crime policy, and has two main principles. The first is that mandatory sentences help protect the public from crime, especially violent and serious crime, by incarcerating offenders for prolonged and extensive time periods. The

second is that mandatory sentences deter both the offender and other 'possible' criminals from engaging in criminal activities, sending the message that harsher and more severe penalties will be imposed for specific criminal behaviour. After describing the core principles behind mandatory minimums, it is now appropriate to discuss the core arguments in support of mandatory minimum sentences.

Sentencing disparity.

One of the most prominent and leading arguments in support of mandatory minimum sentences is that this rigid sentencing structure would eliminate, or at least minimize, disparities in sentencing across regions, offenders, and offences (Crutcher, 2001; Luna & Cassell, 2010; Mascharka, 2001; Petersilia & Greenwood, 1978; Schulhofer, 1993). To support this argument, proponents of mandatory minimums typically highlight vast differences in the sentencing of offenders in the United States who committed similar crimes and had similar criminal offence histories (Petersilia & Greenwood, 1978; Schulhofer, 1993). In Canada, Crutcher (2001) found similar concern over sentencing disparities across provincial jurisdictions, and noted that as in the United States 'it was felt that minimum penalties of imprisonment would resolve this problem' (p. 289). Thus proponents argued that predetermined mandatory prison sentences could 'ensure a more just penalty' (Schulhofer, 1993, p. 200).

Judicial discretion.

Early proponents of mandatory minimum sentences identified the primary cause of sentencing disparity as the 'wide latitude allowed judges under current sentencing statutes' (Petersilia & Greenwood, 1978, p. 604). Thus, under mandatory minimum sentencing regimes, a judge is bound by the law to impose a sentence of at least the

amount of time set as the minimum term of imprisonment, regardless of the circumstances. Everyone who commits the 'same' crime, would effectively receive the same sentence, and this would function as an effective deterrent which would reduce the crime rate (Crutcher, 2001) by incapacitating criminals.

Incapacitation.

Proponents of mandatory minimums argue that using this sentencing structure will enable the incapacitation of persistent and dangerous offenders and that this will substantially reduce crime, and thereby provide enhanced protection for the public (Gabor, 2001; Luna & Cassell, 2010; Petersilia & Greenwood, 1978). This argument is made on the common sense observation that the longer the sentence of an offender, the fewer crimes the offender will be able to commit; thus incapacitation can be expected to increase public safety. Supporters of mandatory minimum sentencing legislation draw upon research (see Gabor, 2001; Petersilia & Greenwood, 1978) to support their contention that mandatory minimums will effectively protect society from crime by keeping criminals away from citizens.

Deterrence.

As noted above, a key principle underlying arguments in favour of mandatory minimums is that mandatory minimums serve as an effective deterrent. Mandatory minimums send the message that crime, certain crimes in particular, will not be tolerated (Luna & Cassell, 2010). The principle that sanctions must deter 'would be' criminals, draws upon deterrence theory. There are two distinct forms of deterrence. The first is general deterrence, and 'involves punishing a guilty party in order to discourage the general community from engaging in future criminal behaviour' (Odeh, 2013, p. 210).

The second is specific deterrence, a strategy that 'aims to deter the individual criminal from committing future offences' (Odeh, 2013, p. 211). Decisions by the Supreme Court of Canada reviewed by Doob and Cesaroni (2001) document that in the past many appeared to believe in the power of mandatory minimum sentences to deter crime. More recently, Odeh (2013) found that Canadian proponents of mandatory sentencing argue that 'incapacitation is the strongest form of deterrence' (p. 233). Thus proponents' of mandatory minimum sentences view them as an effective way to 'fight' crime.

Public protection and public opinion.

Proponents of mandatory minimums contend that a 'tough on crime' or 'just deserts' perspective is consistent with the desires and views of the public. As recently as a decade ago, surveys indicated that the Canadian public supported mandatory minimum penalties, especially since they perceived mandatory minimums to be certain in their imposition (Crutcher, 2001; Roberts, 2003). Doob & Cesaroni (2001) similarly found that among some surveyed constituencies mandatory minimum sentences are 'seen as powerful forces that can be used to keep Canadians safe' (p. 291). While the researchers cited above are not among supporters of mandatory minimum sentences, and 'tough on crime' approaches generally, those who are argue that politicians need to react to public concerns and fears over criminal activity by legislating 'get tough' crime policies.

Arguments against Mandatory minimum sentences

Arguments against mandatory minimums largely mirror arguments in support of mandatory minimums. Thus I will present the 'against' arguments using similar categories.

Sentencing disparity.

Opponents of mandatory minimum sentences argue that rather than reducing disparities, mandatory minimum sentencing regimes have 'created unanticipated inequities in a significant number of cases' (Schulhofer, 1993, p. 214). Opponents cite multiple studies which have found that racial disparities persist or are intensified under mandatory minimum sentencing (Cook & Roesch, 2012; Doob & Cesaroni, 2001; Fischman & Schanzenbach, 2012; Jeffries & Bond, 2012; Khenti, 2014). Research (see Gabor, 2001; Mascharka, 2001; Schulhofer, 1993; Ulmer, Kurlychek & Kramer, 2007) strongly suggests that mandatory minimums do not provide a more 'just' or equitable sentencing structure. Rather as Mascharka noted close to fifteen years ago, research supports the counter-argument that 'mandatory sentencing has failed to alleviate sentencing disparities; [and] in certain areas, mandatory sentencing has even exacerbated the problem' (Mascharka, 2001, p. 943).

Judicial discretion vs. Prosecutorial discretion.

Opponents of mandatory minimum sentences draw on research that finds that limiting judicial discretion essentially transfers discretionary power to prosecutors, who are motivated by conviction rates and not necessarily justice (Fischman & Schanzenbach, 2012; Luna & Cassell, 2010). Doob & Cesaroni (2001) found that the introduction of mandatory minimums in Canada contributed to improper and inappropriate deals and agreements among the prosecution and defense, a finding that supports opponents' argument that prosecutors are influenced more by conviction rates than by justice goals, and that their choices can distort outcomes contrary to fundamental principles of the justice system. Thus, opponents of mandatory minimum sentences argue that judicial

discretion be maintained as judges are more 'impartial' than other actors, in particular prosecutors, whose role is 'adversarial' (Ulmer, et. al. 2007).

Incapacitation vs. Increased prison population.

A strong argument against mandatory minimum legislation is the substantial increase in prison populations evidenced in jurisdictions that impose mandatory minimum sentences, and the impacts of this on prisons and on society. This increase in prison populations has resulted in overcrowding in prisons, worsening prison living conditions, staffing issues, prison safety issues, and escalating economic costs associated with incarcerating a large number of people for longer periods of time (Cook & Roesch, 2012; Crutcher, 2001; Khenti, 2014; Odeh, 2013; Ulmer, et. al., 2007). Thus opponents of mandatory minimum sentences argue that an escalation of the prison population is a negative consequence of mandatory minimums and will essentially create more problems than it will solve.

Deterrence.

Lack of research evidence in support of deterrence is one of the strongest arguments against mandatory minimums. Opponents of mandatory minimums have long argued that 'more severe sentences do not proportionately add deterrence benefits' (Mascharka, 2001, p.946). In terms of general deterrence (deterring the general public), Crutcher (2001) argues that 'minimum penalties are ineffective because the public is largely unaware of them and therefore cannot be an effective deterrent' (p.303). In terms of specific deterrence (deterring the offender), research cited by Crutcher (2001) suggests that if the average lengths of prison sentences were tripled, the crime rate would barely be impacted. Work by Gabor (2001), Cook & Roesch (2012) and Luna & Cassell (2014)

evidenced the same and found that deterrent and incapacitation benefits show diminishing returns when sentence severity is increased. This supports opponent arguments that deterrence is not positively affected by mandatory minimum sentences, and can actually result in an intensification of crime, thus making our streets less safe than they previously were.

Public protection and public opinion.

Opponents of mandatory minimums draw upon research evidence to support the counter-argument that the failure of mandatory minimums to better protect the public is a major reason for not legislating mandatory minimums. Mascharka (2001) is among those who have conducted research that shows that the public's apprehension about crime is exaggerated. In addition to fear of crime being prevalent in areas with relatively low crime rates, Canadian statistics document the crime rate at what is now a 44 year low (Cook & Roesch, 2012; Odeh, 2013; Perreault, 2013). Doob & Cesaroni (2001) are among those who note that the public typically 'overestimates the amount of crime that involves violence, and they overestimate the likelihood that offenders will reoffend' (p.300), as is also noted in the Department of Justice Canada (DJC) commissioned surveys cited above (Latimer & Desjardins, 2007; 2009). This supports the proposition that crime is not a 'severe' problem that requires incapacitative measures. Challengers of mandatory minimums argue that such a sentencing structure can in fact increase crime and unsafety (Cook & Roesch; 2012; Perreault, 2013).

The Position of the Supreme Court of Canada (SCC)

The arguments for and against mandatory minimums reviewed above are relevant to this thesis to the extent they enter into argumentation in the Bill C-10 deliberations.

Writing in 2015, it is imperative to put these arguments into the context of the Supreme Court of Canada's decision, and argumentation, in R. *v.* Nur, 2015 SCC 15 (hereafter R. *v.* Nur). This ruling is on two cases, that of Nur and that of Charles, both of whom were convicted of possessing a loaded prohibited firearm contrary to section 95(1) of the Criminal Code. Nur was consequently sentenced to a three year mandatory minimum sentence under section 95(2)(a)(i) and Charles to a five year mandatory minimum sentence under section 95(2)(a)(ii), respectively. The accused appealed this ruling on the grounds that sections 95(2)(a)(i) and (ii) are unconstitutional as they violate section 12 of the *Canadian Charter of Rights and Freedoms* (hereafter the Charter), which is Part 1 of the Canadian Constitution (1982). Section 12 states that 'everyone has the right not to be subjected to cruel and unusual treatment or punishment'.

In the context of the R. *v.* Nur section 12 Charter challenge the court addressed two questions, firstly whether the provision constitutes cruel and unusual punishment to the individual before the court, and secondly, whether the provision's reasonably foreseeable application on other offenders would constitute cruel and unusual punishment. Neither Nur nor Charles argued that the mandatory minimums were grossly disproportionate in their individual cases; they instead argued that the sentence would be grossly disproportionate to others. The accused's representation provided a reasonably foreseeable case that convinced the SCC to rule that the mandatory minimum associated with section 95(2)(a)(i) could result is gross disproportionality for other offenders and thus violates section 12 of the Charter. In terms of section 95(2)(a)(ii), the SCC ruled that the five year mandatory minimum sentence goes far beyond what is necessary to protect the public or provide deterrence and denunciation. In fact during the R. *v.* Nur case the

Chief Justice stated "the government has not established that mandatory minimum terms of imprisonment act as a deterrent against gun-related crime" (Paragraph 113). Therefore, the SCC ruled that section 95(2)(a)(i) and (ii) are null and void under section 52 of the Constitution Act (1982), which states:

> 52(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

As Fish (2008) observes, previous Supreme Court of Canada rulings on mandatory minimums are important aspects of the context in which legislation is formed. The SCC first reviewed the constitutionality of mandatory minimum sentences in R. *v. Smith*, [1987] 1 S.C.R. 1045 (hereafter R. *v.* Smith), nearly thirty years ago. This case involved a seven year minimum sentence for importing or exporting narcotics. The test the court adopted to assess if section 12 was violated looked for circumstances of gross disproportionality, which is determined by considering the 'nature and gravity of the offence, the circumstances in which it was committed, and the character and criminal history of the offender, all with an eye to the primary purposes of punishment, rehabilitation, deterrence, incapacitation, and retribution' (paragraph 104). After careful review the SCC struck down the mandatory minimum sentence for importing or exporting narcotics, on the grounds that it was grossly disproportionate and thereby a section 12 violation of the constitution.

The implications of both R. *v.* Nur and R. *v.* Smith are significant in the context of this thesis, as both emphasize the seriousness and importance of the principle that

sentencing must fit within the parameters of fundamental justice as laid out in the *Canadian Charter of Rights and Freedoms*. These rulings lead me to question the constitutionality of the new and enhanced mandatory minimums introduced under Bill C-10. Thus, my analysis will attend to whether and how argumentation on constitutionality of mandatory minimums entered into the Bill C-10 debates and arguments.

Another key court case concerning a Bill C-10 mandatory minimum was R. *v.* Vu, 2015 ONSC 5834 (hereafter R. *v.* Vu). In this case an Ontario man, Duc Vu, was charged and pleaded guilty to production of marijuana contrary to section 7(1) of the *Controlled Drugs and Substances Act*. As a result he faced a three year mandatory minimum sentence based on the number of marijuana plants found and the aggravating factor of posing a potential public safety hazard under sections 7(2)(b)(i), 7(2)(b)(ii) and 7(3)(c). Vu challenged the mandatory minimum sentence under section 12 of the *Charter*, which again protects against cruel and unusual punishment.

As in the R. *v.* Nur ruling, Vu argued that the mandatory minimum sentence could result in grossly disproportionality to others convicted of the same crime. Vu's representation provided reasonably foreseeable circumstances that convinced the Ontario Superior Court to rule that the mandatory minimums associated with section 7(2)(b)(i), 7(2)(b)(ii) and 7(3)(c) could result is gross disproportionality for other offenders and thus violates section 12 of the *Charter*. Justice Durno concluded that the sentencing provisions were neither minimally impairing nor proportional, therefore ruling the mandatory minimums unconstitutional and declaring them null and void under section 52 of the Constitution Act (1982).

Conclusion

After reviewing the available literature surrounding mandatory minimum sentences, it is clear that the overwhelming majority of academic scholars do not support the use of mandatory minimums in the administration of justice, and that Canada's Supreme Court, as well as provincial courts, tend to view them as potentially disproportionate and therefore unconstitutional. Scholars' disapproval and resistance to using such rigid structures for sentencing is based on the substantial lack of evidence to mandatory minimum sentences effectiveness at managing crime. Likewise, the SCC has found several constitutional problems with various mandatory minimum sentences and in two instances have declared them null, void and of no force or effect, as authorized under section 52 of the Canadian Constitution, as well as in section 24(1) of the *Charter* which states 'anyone whose rights and freedoms, as guaranteed by the Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances'.

CHAPTER 3

DESIGN AND METHOD

After reviewing the literature on the debate over legislating mandatory minimum sentences and observing that both sides have used strongly isomorphic arguments to advance their position, this steered me, as a researcher to question *how* the opposition and the government argued their positions on the mandatory minimum debate in the context of the Bill C-10 deliberations. My research is therefore concerned with the rhetorical devices used and the strategy choices and types of arguments employed. It is also concerned with more specific questions, outlined in the Introduction to the thesis and at the beginning of the Findings chapter. In brief these research questions are concerned with claims, values, goals and rhetorical strategies and devices, including the use of evidence, expertise, and their utilization to maintain power.

Data source.

In order to investigate these research questions I imported the Hansard transcripts of all parliamentary deliberation on Bill C-10 into qualitative analysis software program Nvivo. These include House of Commons and Senate debates and committee hearings, constituting 46 days of debate and testimony beginning the 20th of September 2011 and concluding the 12th of March 2012. I also examined key Canadian government commissioned reports (n=5) and media articles on mandatory minimums (n=11) that are cited repeatedly in these deliberations. The purpose of examining these cited texts is that they provide insight into information and evidence that participants drew upon as 'reasons' for supporting or opposing the expansion of mandatory minimum sentences.

Analytic tools.

In order to identify main claims during deliberations I employed the use of NVIVO qualitative analysis software to aid in the collection, organization and analysis of Hansard transcripts. As a result of utilizing this software, I was able to organize all 46 Hansard transcripts by coding and tracking claims presented by both sides of Parliament. Through this process I identified certain claims as key or main arguments, based on the number of times they appeared during the debates compared to claims that appeared less frequently. Again, my analysis focuses on those 19 days of debate and testimony in which mandatory minimum(s) and the crimes these aim to reduce and deter were a key focus.

Political Discourse Analysis (PDA) and Critical Discourse Analysis (CDA)

My analysis of this body of data draws upon Fairclough and Fairclough's (2011, 2012) recent work on political discourse analysis (PDA), which builds on Fairclough's (2003) earlier work to integrate strategies of critical discourse analysis (CDA) with other social scientific methodologies.

Fairclough's 2003 book advances a form of CDA that contends 'language is an irreducible part of social life, dialectically interconnected with other [non-discursive] elements of social life, so that social analysis and research always has to take account of language' (p. 2). Thus CDA entails 'detailed linguistic analysis of texts' as part of a larger transdisciplinary approach to social research (p.215). As Fairclough (2003) notes, CDA is situated within historical realism which posits a 'real' reality shaped by social, political, cultural, economic, ethnic and gender institutions, whose structures and values have crystallized over time (p. 14). Epistemologically, like other critical researchers,

Fairclough views knowledge as transactionally and subjectively constructed and mediated by values (see Guba & Lincoln, 2008). Thus values are among the analytic concerns in analysis of governmental and social agencies discursive actions. However, CDA is centrally focused on power dynamics implicated in discursively constituted perceptions and actions that, Fairclough points out, in some instances function as causes of reality (see also Fairclough & Fairclough 2011, 2012). Based on this understanding Fairclough's CDA participates in a broader effort to advance possibilities of a more democratic and just society. Fairclough thus urges researchers to examine 'bodies of texts in terms of their effects on power relations' (2003, p. 9).

Critical discourse analysis.

As outlined by Fairclough (2003), discourse function in three main ways within social practice; that is, discourse has three major types of meaning (p. 27). First, discourse functions as a genre, or 'a way of acting in its discourse aspect' (p. 216), for example a way of speaking in a job interview versus a T.V. interview, or more salient to the thesis research, ways of speaking at a dinner party versus a political strategy session versus in the House of Commons or Senate. Second, discourse functions as ways of representing the world as in neoliberal discourses on globalization verses neo-Marxist discourses on globalization (Fairclough, 2009). And finally, discourse operates through styles that denote self-identity or personality, expressed through ways of dressing, acting and speaking, for example as a lawyer versus as a politician (2003, p. 27, see also p. 223).

Political discourse analysis.

Since this thesis research is most predominantly concerned with discourse as a way of acting in the deliberative arena of the Parliament of Canada, my analysis draws

upon political discourse analysis (PDA). Fairclough and Fairclough (2011, 2012) frame PDA as an innovative strategy that 'views political discourse as primarily a form of argumentation, and as involving more specifically *practical* argumentation, that is for or against particular ways of acting' (2012, p. 1). Politics is seen as first and foremost about making decisions on how to act in relation to specific circumstances and goals. Therefore, democratic politics is concerned with deciding what policies are the best options in a specific context, based on a process of practical argumentation that ideally aims to consider and choose the best options based on the best knowledge available. Thus, Fairclough and Fairclough contend that politics in essence is argumentative.

Recalling that Fairclough (2003) views discourse as functioning first as a genre or ways of acting discursively (e.g., in a dinner conversation versus in the House of Commons), Fairclough and Fairclough (2012) identify argumentation as a 'pre-genre'. They note that political argumentation contains the premise-conclusion structure of a practical argument. They claim that in the political realm practical reasoning factors into argumentation significantly (p. 13). Practical reasoning involves assessing or balancing the 'considerations for and against a proposed action' (p. 14).

The method that Fairclough and Fairclough (2011, 2012) advance for analysing deliberations of a political nature allows practical arguments to be evaluated through dissecting the individual elements of a claim or counterclaim to action including, in the case of a counterclaim, a claim that no action is the best action. To do this, it is necessary to identify a value premise and a goal premise so as to assess if the claim/counterclaim as a whole is sufficiently supported and/or sufficiently necessary.

The primary step in an analysis of this nature involves identifying the main normative claims that are made by both parties and the various types of reasons that support them (Fairclough & Fairclough, 2011, p. 251). For example, in my research one party, those representing or favoring the Harper government`s tough-on-crime stance make the normative claim that Parliament should pass the mandatory minimum provisions in Bill C-10 because more mandatory minimum sentences will enhance the protection of society by keeping criminals incapacitated for longer. Characterizing the normative claims made by both parties enables me as a researcher to identify the various formulations of these claims expressed in different places throughout the data and enables a rich description of the many claims.

The second step in a PDA is to reconstruct the argument in terms of the specific premises underlying a specific formulation of an argument. The specific premises contained within an argument vary from formulation to formulation, yet all reasonable and practical arguments have common characteristics. First, all practical arguments include a claim on why the action should be performed in terms of the goal (a goal premise). Second, all practical arguments include a definition of the initial situation or problem (a circumstantial premise). Third, all practical arguments indicate what values or concerns guide the choice of goals and action (a values premise). Lastly, all practical arguments specify a means for achieving the goal (a means-goal premise) (Fairclough & Fairclough, 2011, 2012).

The final step in PDA is to evaluate the reformulated arguments in terms of the normative question ‘what properties make an argument a good one?’ (Fairclough & Fairclough, 2011, p. 259). According to Fairclough and Fairclough, a good practical

argument conforms to specific normative criteria, namely, the premises must be acceptable, relevant and sufficient. Otherwise stated, researchers can evaluate the soundness of an argument by identifying the normative claims and reasons used to support them, and by reconstructing both parties' premises with respect to posited goal, problem to be fixed, values at stake, and means for achieving the goal. However, within the field of politics, assessing this is not an easily accomplished task. Thus Fairclough and Fairclough (2012) offer a set of critical questions to evaluate if the action called for is in fact sufficient to achieve the identified goal and whether the action is consistent with the values at play and the means proposed for achieving the goal.

Conducting a PDA enables the reasons behind a call for action to come to the forefront. One fundamental reason for action noted by Fairclough and Farclough (2012) is power itself, a reason they identify as not a good reason, but as a reason nevertheless. As they state, 'reasons for favoring certain lines of action rather than others may include such goals as holding onto power or increasing it, so power can be and often is itself *a reason for action*' (italics original, p.14).

By utilizing a PDA approach to CDA this thesis will explore the expansion of mandatory minimum sentences in Canada from an innovative perspective that focuses on the form and role that practical argumentation plays in processes of political democratic deliberation. This is a perspective that has previously been overlooked or disregarded in scholarship on mandatory minimums.

CHAPTER 4

THEORETICAL FRAMEWORK

At a theoretical level, the thesis builds upon scholarship on Canada's participation in what David Garland termed 'the punitive turn' (2000, p. 350), and links this to the ascendance of the 'new right' and changes in democratic practices, in particular practices of normative democratic deliberation. As part of this I contrast punitive criminal justice strategies with restorative criminal justice strategies.

The Punitive Turn and the New Right

As defined by Garland (2000), the 'punitive turn' is a trend occurring across many Western jurisdiction marked by increased reliance on punitive criminal justice measures. Garland asserts that the field of crime control has been reconfigured during the close of the 20th century and is now rooted within a 'new collective experience of crime and insecurity … structured by 20th century capitalism' (2000, p. 347). Fifteen years ago, Garland attributed this new field of crime control to historical high crime rates becoming a perceived social fact, and consequently the justice system being perceived as failing to protect society and provide sufficient security. Various researchers, such as Matthews (2005), argue that in the United States there has been no populist call for a punitive turn, suggesting this is politically engineered rather than a grass roots development. Moore and Hannah-Moffat (2005), Meyer and O'Malley (2005) and Webster and Doob (2007) are among those who argue that, at least until 2006, Canada, to a large extent, resisted or missed this turn, though as Mann (2014, p. 401) observes the Harper government is committed to Canada catching up.

Many researchers such as DeKeseredy (2009), Garland (2000) and Waquant (2010) have described the punitive turn most fundamentally as a shift from a 'welfare' or Keynesian state towards a 'penal' or Darwinian state (see also De Koster et. al., 2008). Canada's ongoing transition to a penal state has been attributed to the rise of what has been called the 'new right'. Behiels (2010) describes the Canadian new right as based on an ideology that combines fiscal conservatism and values conservatism. In the economic realm, Sawer and Laycock (2009) contend that new right policies emphasize economic liberalisation and welfare state downsizing, while Bennet (2008) maintains that the new right proposes 'a reduction in the public sector and the increasing commercialization of formerly State functions' (p. 462). In the values realm, De Koster et. al. (2008) describe the new right as striving to reaffirm traditional moral values, and Bennet (2008) defines the new right as 'viewing the world as being undermined by permissiveness and asserting a particular traditional … morality based upon the nuclear family' (p. 465). These characterizations speak to the dual importance to the new right of fiscal conservatism and traditional or conservative moral values.

Given that the new right ideologically aims to be fiscally and morally conservative, it is important to examine how it is accomplishing these aims in Canada, traditionally a socially progressive polity with a commitment to economic and social inclusion and a strong social safety net (Jenson, 1997; Webster & Doob, 2007). As various scholars outline (Behiels, 2010; Bennett, 2008; Darke, 2007; De Koster, Van Der Waal, Achterberg, & Hartman, 2008; Mann, 2014), the ascendance of the new right is marked by the embrace of neoliberal rationalities and mechanisms of control that depend

upon social exclusion which have implications for normative democratic deliberation (Fairclough & Fairclough, 2011, 2012; Jenson, 1997; Welsh & Doob, 2007).

Restorative Justice

In the context of this thesis, restorative justice stands in opposition to punitive turn strategies. Over the past two decades, theories and strategies of restorative justice have increasingly become a focus of the administration of justice in the Western world. Although there is no standard definition of restorative justice, it is viewed by scholars and legal practitioners as an umbrella term under which cases of restorative justice all center on 'a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future' (Shapland et al., 2006, p. 506). The restorative justice approach is widely viewed as an alternative to the traditional punishment oriented criminal justice system (Wenzel, Okimoto, Feather & Plawtow, 2008). Restorative justice strategies and goals vary on a case by case basis as the participants and circumstances in every case are unique. These strategies and goals can include 'communication, apology, talking about the future, rehabilitation, reparation, healing, restoration, reintegration and transformation' (Shapland et al., 2006, p. 512).

One key element of restorative justice is that the offender must acknowledge that the offence has occurred and that some level of harm has been inflicted upon the victim(s). Therefore restorative justice strategies center on offenders accepting responsibility and accountability for the harm done to the victim (Shapland et al., 2006; Wenzel et al., 2008). Restorative justice aims to reestablish justice through renewing a consensus of community values among participants with a strong focus on the offenders' future. Hence restorative strategies typically center on less traditional methods of

'punishment' and more creative methods of rehabilitation and prevention such as community services, education programs or doing something beneficial for the victim (Wenzel et al., 2008). The main outcome of restorative justice is intended to be meeting the needs of victims, therefore offenders are encouraged to apologize to the victim and to offer something positive or favorable to the victim such as offering to change their ways.

Restorative justice offers a different view of how justice can be administered and practiced. It includes victims within a process that typically excludes them, places more emphasis on rehabilitation and prevention than on punishment and prefers creative community based approaches to sanctions than the traditional sentencing based approach. Therefore, restorative justice stands as an alternative strategy to traditional punitive methods of justice. As noted in the Introductory chapter of this thesis, Prime Minister Trudeau specifically directed Canada's new Minister of Justice to increase the use of restorative justice processes as part of ensuring 'that we are increasing the safety of our communities, getting value for money, addressing gaps and ensuring that current provisions are aligned with the objectives of the criminal justice system' (Trudeau, 2015).

Normative Democratic Deliberation

Normative democratic deliberation is deliberation that presupposes an equality of access and freedom from various constraints among rational citizens to come to a decision on a course of action (Fairclough & Fairclough, 2012, p. 14, 30). The concept of deliberative democracy presumes that decisions are collective when they emerge from arrangements that establish conditions for free public reasoning among those affected by the decision, viewed as equals (p. 30). Thus normative democratic deliberation is a process where all participants advance and respond to reasons, propose problems and

solutions and support or oppose proposals for action. Decisions made through a process of democratic deliberation have the characteristic of appearing to be legitimate as they are the outcome of an assumedly 'fair' procedure in which everyone has the right to respond. However, politics is not usually conducted in ways that correspond with this democratic ideal. Multiple obstacles stand in the way of 'true' democratic deliberation including social inequalities and power asymmetries. Fairclough and Fairclough (2012) contend that although democratic deliberation remains mainly a normative ideal, given the undemocratic manner in which actual politics are often conducted, the concept of normative democratic deliberation continues to be an ideal against which actual practices can be assessed, as well as a goal for positive democratic social change.

Conclusion

In Canada at the present time crime rates have plummeted to more than a 40 year low, with the rate of police recorded crime in 2013 the lowest since 1969 (Boyce, 2015, p. 3). Given the above, it is hardly surprising that the Harper government's crime agenda faces continued resistance by opposition parties and stakeholders, or that critics link this agenda to a larger effort to transform Canada economically, socially and institutionally (see Behiels, 2010; Cook & Roesch, 2012; DeKeseredy, 2009; Harmes, 2007; Mann, 2014; Sawer & Laycock, 2009). My analysis of the Hansards therefore attends to whether and how argumentation on mandatory minimums speaks to this presumed larger transformative agenda, an agenda that critics in the Bill C-10 deliberations argued is placing democratic deliberation itself at the margins of governance.

CHAPTER 5

FINDINGS

As outlined in the Design and Method chapter, this thesis analyzes *how* the opposition and the government argued their positions for and against the expansion of mandatory minimum sentencing within the Parliamentary decision making context of the Bill C-10 deliberations on mandatory minimum sentencing. These deliberations took place in the House of Commons and Senate between 20 September 2011 and 12 March 2012, s recorded by Hansard. In all, 46 public meetings were held by committees of the House of Commons and the Senate, including hearings in which stakeholders gave testimony. The Hansard transcripts are posted on the Parliament of Canada website for this bill. In this chapter, I first briefly describe Bill C-10, in particular sections of this omnibus crime legislation that expand mandatory minimum sentences. I then analyze argumentation on this bill, utilizing the three step PDA strategy outlined by Fairclough and Fairclough (2011, 2012), as summarized in my Design and Method chapter.

Bill C-10's Expansion of Mandatory Minimum Sentencing

Bill C-10 combined nine previous crime bills that opposition parties and stakeholders broadly opposed, which were introduced during the government's previous minority mandate. As described in the legislative summary (Barnett et al., 2011) and a DJC backgrounder posted on the parliamentary website from which I retrieved the Hansard transcripts, and in media analyses (e.g., CBC News, 2011), Bill C-10 both expanded existing mandatory minimums and created new mandatory minimums.

Mandatory minimum sentences were a major focus of this omnibus crime bill with the term 'mandatory minimum(s)' being cited 1261 times throughout the

deliberations. Bill C-10 introduced or enhanced mandatory minimums via *The Protecting Children from Sexual Predators Act* (formerly Bill C-54) and *The Increasing Penalties for Organized Drug Crime Act* (formerly Bill S-10). The Protecting Children from Sexual Predators Act established new mandatory minimum sentence offences for seven existing offences related to child exploitation and increased the standing mandatory minimums for nine existing offences against children to better reflect the heinous nature of these crimes (CBC News, 2011; DJC, 2011). *The Increasing Penalties for Organized Drug Crime Act* created mandatory minimum sentences for specified drug offences including production, trafficking, importing, exporting and possession for the purpose of trafficking or exporting. The mandatory minimum is activated when the offence is committed in the presence of certain aggravating factors including the benefit of organized crime, involving the use or threat of violence or a weapon, and in or near a school or area frequented by children among others. In addition, it increased mandatory minimum penalties if a second set of aggravating factors is present. These aggravating factors are production constituting a potential security, health, or safety hazard to children and production constituting a potential public safety hazard in a residential area (Barnett et. al., 2011; CBC News, 2011; DJC, 2011).

This Research

As outlined in the introduction, the thesis addresses the following research questions:

1. In the C-10 deliberations, what claims did those who argue for and against mandatory minimum draw upon and deploy and what values and goals underlie their respective claims?

2. In terms of rhetorical devices and strategies, how was evidence utilized and incorporated into the argumentation process?
3. In terms of rhetorical devices and strategies, how did the public and/or academic and legal expertise factor into the argumentation process?
4. In terms of evaluating the above, how was practical argumentation utilized to assert or maintain power within this political debate on mandatory minimums?

In order to investigate these research questions, I examined the Hansard transcripts of all parliamentary deliberation on Bill C-10. Of these 46 days of debate, mandatory minimum sentencing was a major topic of discussion on 19 days. On each of these 19 days, the construct mandatory minimum was cited 15 times or more (see Table I in Appendix I). Therefore my analysis focuses predominantly on these days. To further my analysis I explored the amount of attention given to the two different types of crimes targeted by C-10's mandatory minimums – drug related crimes and sexual crimes against children. To examine the occurrence of deliberations focused on drug crimes I searched for the frequency of the term 'drug(s)' use on those 19 days, and for the occurrence of deliberations focused on sexual crimes against children I searched for the frequency of the use of the term 'sexual' on those days (see Table I in Appendix I).

The purpose of examining these texts is that they provide insight into information and evidence that participants in the debates drew upon as 'reasons' for supporting or opposing the expansion of mandatory minimum sentences. Since this thesis is predominantly concerned with discourse as a way of acting in this deliberative arena, my analysis draws upon PDA to assess and evaluate the argumentation on mandatory minimums. However, as Fairclough and Fairclough (2011, 2012) note, in some instances

political argumentation is more about the exercise of power than achieving the substantive policy objective that the argumentation is purportedly about. As Conley (2011) observes, this is especially important to bear in mind when analyzing parliamentary debates in the context of a majority government.

In this chapter I refer to argumentation advanced by Members of Parliament (MP's) representing or testifying in support of the governing Conservative Party of Canada (CPC) and also to argumentation by witnesses who supported mandatory minimums as government argumentation, and to argumentation advanced by members of the four opposition parties and witnesses who argue against mandatory minimums as opposition argumentation. The four opposition parties are the New Democratic Party (NDP), the Liberal Party (LP), the Bloc Québécois (BQ), and the Green Party (GP). It is interesting to note that the NDP was the official opposition, however when referring to the opposition, the government overwhelmingly referred to the LP, who were the rhetorical targets of the government's argumentation.

As outlined in the Design and Method chapter step one of PDA involves identifying the main normative claims that are made by both parties and the various reasons used to support these claims (Fairclough & Fairclough, 2011, p. 251). The second step in PDA is more analytical. It entails reconstructing the arguments of contending parties by identifying goal premises, circumstantial premises, value premises and the means-goal premise underlying their argumentation. The final step in PDA is to evaluate the reformulated arguments based on the normative question 'what properties make and argument a good one?' (Fairclough & Fairclough, 2011, p. 259).

Political Discourse Analysis Step #1 – Identifying Normative Claims

After examining the 46 Hansard transcripts of the Bill C-10 deliberations I identified four main claims as prevalent for the government and the opposition respectively. Again, as stated in the Design and Method chapter, I used Nvivo to focus my analytic attention on mandatory minimums and the crimes they were intended to deter. This resulted in 19 days where mandatory minimums were a significant topic of debate.

Government claims.

Government representatives and witnesses who supported the government's stance on mandatory minimum sentences advanced four arguments: 1) that mandatory minimums will better protect the safety of Canadians; 2) that public opinion supports the enhancement of mandatory minimums; 3) that mandatory minimums are part of getting tough on crime and this is what Canadian's need; and 4) that mandatory minimums are needed to protect and respect victims.

Mandatory minimums will enhance the safety of Canadians.

The government's main normative claim was that mandatory minimums will positively influence the safety of Canadians. A key reason was that mandatory minimum sentences incapacitate criminals. That is, while incarcerated a convicted criminals' ability to engage in further criminal behaviors' against law abiding citizens is disabled. Thus mandatory minimums increase the safety of the Canadian public – the government's identified key normative priority. The government claimed as well that mandatory minimum sentences will deter criminals as well as prospective criminals from engaging

in future criminal acts. That is, the government argued that criminals will rationally want to avoid the mandatory term of imprisonment associated with specific behaviors, and that this will contribute to their key priority – to protect the public.

The government advanced these claims from the beginning of the Bill C-10 deliberations right through to the passage of this legislation. The normative claim that public safety is a first priority and that public safety is dependent upon effective incapacitation and deterrence is exampled by the following statements. I have underlined key statements for emphasis:

> Mr. Robert Goguen (Parliamentary Secretary to the Minister of Justice, CPC, House Debate 21 Sept 2011): Once one is in jail, one certainly does not commit crimes. That is the way in which our streets and our citizens are protected.
>
> Hon. Robert Nicholson (Minister of Justice and Attorney General of Canada, CPC, Senate Committee 1 Feb 2012): One of the greatest responsibilities we have as a government, of course, is to protect Canadians and to ensure that those who commit crimes are held to account. Canadians deserve to feel safe in their homes, and that means that violent criminals need to be off our streets.
>
> Senator Marjory LeBreton (Leader of the Government, CPC, House Debate 1 Mar 2012): These offences [narcotics offences] will now carry higher maximum penalties, helping to keep Canadians safe by keeping criminals off of our streets and out of our communities for longer periods of time, as well as acting as a deterrent — and I think we overlook this fact, honorable senators; these penalties do act as a deterrent and there is evidence to prove it — for other would-be criminals.

Public opinion favours mandatory minimums.

The second most frequently cited normative claim was that public opinion supports mandatory minimums. Or, more specifically, the government claimed that the majority of Canadians want and support the toughening of sentencing which by implication includes the expansion of mandatory minimum sentencing. Thus, the

government argued that it was simply delivering what Canadians wanted. The reason government spokespersons drew upon to support this claim was first and foremost the 2011 federal election that resulted in a CPC majority. The government pointed out that their commitment to get tough on crime was a key part of the CPC election platform. Therefore, based on its 2011 majority the CPC claimed to have a strong mandate to enact this tough on crime legislation, which includes the two bills bundled into C-10 that expand mandatory minimums.

In addition to the election results the government drew upon opinion polls which they argued provide clear evidence that the public at large supports mandatory minimums. These included a 2011 Léger Marketing poll that was published in the Journal de Montréal. As cited in the Hansard (2 Dec 2011), this poll found that 77% of Quebeckers believe in toughening sentences. Another Hansard cited poll conducted by Policy Options found that 64% of Canadians supported the government's direction and objective (6 Dec 2011). Government representatives argued that these polls proved that the Canadian public's overall outlook on crime and sentencing was consistent with the Bill C-10 mandatory minimum provisions.

Claims that the Canadian public support tougher sentencing and therefore mandatory minimums ran throughout the debate, and are exemplified by the following statements:

> Ms. Candice Hoeppner (Parliamentary Secretary to the Minister of Public Safety, CPC, House Debate 21 Sept 2011): Does my colleague across the aisle not recognize that in the last election there was a very clear distinction given to Canadians? On one side, there was the Conservative government which would finally get tough on crime and finally reverse the damage that the Liberals did to our criminal justice system by being soft on criminals and ignoring victims? Does

> he [Mr. Sean Casey (LP)] not recognize that the Liberals were reduced to 34 seats? Canadians do not want the Liberal way of dealing with criminals. Could he recognize that, acknowledge it and get in touch with Canadians as they view the justice system today.
>
> Hon. Vic Toews (Minister of Public Safety, CPC, House Debate 22 Sept 2011): Canadians have spoken loudly and clearly about their expectations from day one as well. They have told us that law enforcement agencies must have the resources they need to make our communities safe; they want the rights of victims, law-abiding Canadians, to be considered first; they want serious offenders to be held accountable by serving sentences that reflect the severity of their crimes; and they want to see action that will help to prevent crimes before they happen.
>
> Ms. Kerry-Lynne D. Findlay (Parliamentary Secretary to the Minister of Justice, CPC, House Debate 29 Nov 2011): I do not know that one needs studies to know. I certainly heard it when I was knocking on doors during the last election campaign … I have been hearing for the last 30 years from members of the public that they do not understand why the punishment for certain crimes is not commensurate with the severity of the crime.

Mandatory minimums are part of getting tough on crime.

The third claim repeatedly utilized by the government was the claim that mandatory minimums are part of what the government was doing to 'get tough on crime' and this is what Canada needs. They argued this is what Canada needs for a multitude of reasons. These reasons include the need to increase the public's faith and confidence in the justice system. Related, the government argued that while crime rates are down, crime severity was not decreasing at an adequate rate and that getting tough on crime by increasing mandatory minimums was needed to correct this. They further argued that this was needed to protect law-abiding Canadian citizens from violent criminals, and that 'front line experts and victims' agree that mandatory minimums will contribute to this by better holding criminals accountable for their actions. This argumentation is evidenced by statements such as the following, made by government representatives and by victims' rights advocates and other stakeholders who supported the government's tough on crime stance:

> Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada, CPC, House Debate 27 Sept 2011): We will take a stand against violent criminals … The Hon. Member might want to start listening to that, because every time the Liberals keep championing their soft on crime approach, they keep going down. They might want to listen to the ordinary law-abiding Canadians and victims in this country.
>
> Hon. James Moore (Minister of Canadian Heritage and Official Languages, CPC, House Debate 27 Sept 2011): The public believes in governments that respond to and get tough on crime.
>
> Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada, CPC, House Debate, 27 Sept 2011): We are trying to crack down on violent crime in this country. We should all join together. We should all be against crime. We need to take steps and this is a step in the right direction.
>
> Mrs. Sharon Rosenfeldt (President, Victims of Violence, House Committee 18 Oct 2011): While it is true that overall crime rates are going down, the level of crime severity is not decreasing at such a rate, according to police-reported crime statistics from 2007. This means that while overall crime rates are steadily decreasing, crime rates for serious and violent crimes are not following that trend to the same extent. That is exactly why the Safe Streets and Communities Act is a necessary piece of legislation.
>
> Chief Dale McFee (President, Canadian Association of Chiefs of Police, House Committee 20 Oct 2011): We believe Bill C-10 provides appropriate consequences for serious criminal acts and will strengthen the public's faith in the justice system. Canadians need to have their confidence in the criminal justice system restored, perhaps reinvigorated. It is a critical element of Canadian life.

Mandatory minimums are needed to protect and respect victims.

The final government claim was that the mandatory minimum sentences will serve to protect and respect victims of crime. Government representatives claimed that mandatory minimum sentences are part of what is needed to ensure that victims of crime will be protected and their voices heard. They further argued that victims' rights should take precedence over the rights of criminals, and that instituting mandatory minimums helps ensure this. In addition they argued that the cost of crime is predominantly borne by victims, including the cost of pain and suffering, citing a 2008 study published by the

DJC which estimated that the annual cost of crime in Canada is over $99 billion, and that 83% of this cost is shouldered by victims. In addition, they reasoned that mandatory minimums protect and respect victims and that traditionally victims have not been significantly included in the justice system. They argued that victims' voices need to be considered in order to ensure justice for victims, and that mandatory minimums are an important element of ensuring this justice. The following statements exemplify these claims:

> Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada, CPC, House Debate 21 Sept 2011): I did indicate that in 2008 there was a Department of Justice study on the costs of crime. It estimated that approximately $99 billion is the cost of crime in this country … it is a priority for the Conservative Party that 83% of that cost is borne by the victims of crime. They are the ones that pay the price. I would hope that at some point in time those members [opposition] … realize that most of the cost continues to be borne by victims in this country, who are the ones we have to stand up for. Those are the ones we have to protect.
>
> Mr. Randy Hoback (CPC, House Debate 21 Sept 2011): I am kind of concerned why the Liberals all of a sudden, are starting to back criminals again? Why can they not get behind victims for a change? Why can they not recognize the importance of a victim and preventing victims? Could he member please explain to me why his party is in such great support of criminals?
>
> Mr. David Wilks (CPC, House Debate 27 Sept 2011): I am extremely proud that we are putting the rights of victims of crime before that of the people who commit the crime.
>
> Mr. Robert Goguen (CPC, House Committee 18 Oct 2011): Let's look at things from the victims' perspective. Many of the victims feel that their rights are being overlooked to the benefit of the accused and that the accused have greater rights.

Opposition claims.

The counterclaims made by the opposition and stakeholders who opposed mandatory minimums drew upon distinctly different discourses and reasoning. The opposition argued: 1) that mandatory minimums will undermine the safety of Canadians;

2) that mandatory minimums are financially irresponsible; 3) that mandatory minimums are ideological rather than evidence-based; that deterrence in particular does not work; and 4) that mandatory minimums violate the Charter of Rights and Freedoms and are therefore unconstitutional and contrary to the rule of law.

Mandatory minimums undermine the safety of Canadians.

As previously mentioned the most dominant claim utilized by both the government and the opposition was that of public safety and protection, yet the two sides relied on differing discourses and reasons to support their claim to action, or in the case of the opposition the claim that the proposed action should not be taken. The opposition claimed that the Bill C-10 expansion of mandatory minimum sentences would negatively influence the safety of Canadians because more severe sentences would socially harm those who are marginalized in society. Specifically, they argued that increased reliance on mandatory minimums would result in placing more Aboriginals and mentally ill persons into prison. As well, they argued that there was no focus on prevention or rehabilitation anywhere in the bill. Related, they highlighted stakeholder concern that rehabilitative programs were underfunded and inaccessible to those incarcerated. Further, they contend that increased use of mandatory minimums would exacerbate reintegration problems upon release, and that this would negatively affect communities and citizens by increasing recidivism, thus creating more victims. These and similar arguments against the C-10 changes were advanced throughout the deliberations, exemplified in the following statements:

> Mr. Jasbir Sandhu (NDP, House Debate 21 Sept 2011): I support changes to our federal corrections system that will result in more offenders being successfully

> rehabilitated and reintegrated into our communities upon their eventual release. This is the most effective way to promote public safety, to make our communities safer places for our citizens to live. However, the reality is that our federal prison system is lacking in the programs needed to get offenders to turn their lives around … This omnibus bill creates a paper obligation for prisoners to participate in non-existent rehabilitation programs and then sets out how to punish them for failing to get rehabilitated … The government is setting itself up for failure because this legislation will not achieve its stated objective. In fact, it will make things worse.
>
> Mr. Guy Caron (NDP, House Debate 22 Sept 2011): No studies demonstrate that tougher minimum sentences create a deterrent … And there will be absolutely no impact on reducing crime … That is why this bill is unacceptable.
>
> Mr. Jack Harris (NDP, House Committee 18 Oct 2011): There was a story last night on television interviewing officials in Texas who indicated that the result of increased spending in Texas on prisons in fact had the opposite effect to reducing crime. In fact, it said that if your goal is saving tax-payer dollars and making the community safer, it's the absolute wrong direction to go in. They were talking about drug offenders, and said that the more you did that the more you increased the level of crime in the community.

Mandatory minimums have unwarranted financial consequences.

The second counterclaim made by the opposition was that Bill C-10 would have serious negative financial consequences, in particular that it would increase the cost of administering justice. They argued that 'the house' should therefore not institute this legislation. The reasons the opposition draws upon to support this counterclaim are that introducing longer minimum sentences would significantly increase the prison population, in turn creating the need to build new prisons and cells to house the increase in the inmate population, at an enormous cost to Canadians. They emphasized that the majority of the costs would be downloaded onto the provinces and the provinces were clear that they could not afford this cost. Related, the opposition emphasized the issue of the government refusing to disclose the costs of its numerous crime bills to 'the house'. Prior to the election, this refusal had resulted in the 2008 elected Harper government being the first government in the history of Canada to be held in contempt of Parliament.

Throughout the C-10 deliberations opponents of mandatory minimums and other C-10 changes argued that the cost of Bill C-10 was irresponsible and that continued refusal to disclose these costs violated parliamentary principles, exemplified in the following statements:

> Mr. Joe Comartin (NDP, House Debate 21 Sept 2011): Conservatives are in complete denial over there about the serious financial consequences this is going to have to the budgetary process in our country, both provincially and federally. For instance, a single part of this bill will create several thousand plus additional people going into jail that we are going to have to pay for.
>
> Hon. Scott Brison (LP, House Debate 21 Sept 2011): Due to the Speakers ruling of contempt of Parliament by the Conservative government when the Minister appeared before the government operation committee … he responded to only 26% of the information requested by Parliament for the cost of the legislation.
>
> Mr. Joe Comartin (NDP, House Debate 21 Sept 2011): For the first time in the history of this Parliament, and perhaps of every Parliament in the Commonwealth, a government was found in contempt for adamantly refusing to provide material … The Minister of Public Safety repeatedly told the house that the crime bills would only cost $90 million, a figure which has now increased to $2.2 billion. These are the kinds of discrepancies we are seeing.
>
> Ms. Kirsty Duncan (LP, House Debate 22 Sept 2011): Correctional Service Canada estimates the system's operating cost will rise from $1.6 billion in 2006, when the Conservatives took power, to $3 billion this fiscal year.
>
> Ms. Elizabeth May (GP, House Debate 29 Nov 2011): In the view of every criminologist, expert, academic who appeared before the justice committee … believe they will drive up the cost of our system and impose on the provinces … there could be untold billions of dollars in the cost of new prisons.
>
> Mr. Jack Harris (NDP, House Debate 29 Nov 2011): The costs are enormous. The provinces do not want to bear these costs.

Mandatory minimums are ideological and regressive.

A third frequently utilized opposition counterclaim was that mandatory minimum sentences and other C-10 changes were ideologically driven, regressive and contrary to expert evidence. The reasons cited included the claim that Canada has historically valued rehabilitative and preventative techniques rather than punitive and retributive justice

strategies such as mandatory minimums. The opposition argued that the government was basing this legislation on a failed American ideology associated with efforts to manage drugs and drug crimes, and that research was clear this had produced multiple negative consequences. They argued that the government was motivated to use this 'tough on crime' ideology for cynical political reasons that had nothing to do with Canadian values or sound evidence , including evidence produced by the government's own Department of Justice.

A key element of the opposition's reasoning was that deterrence efforts, such as mandatory minimum sentences have been proven to be ineffective at reducing crime. Moreover, some experts suggest that mandatory minimums can actually produce the opposite effect, and increase recidivism. Citing statistics from other jurisdictions that have instituted mandatory minimum sentencing – namely the United States, Australia and Britain, they argued that the experience of these jurisdictions is clear that mandatory minimum sentences do not produce a general or specific deterrent effect.

The following excerpts exemplify opponent' use of this set of counterclaims in the C-10 deliberations:

> Mr. Joe Comartin (NDP, House Debate 21 Sept 2011): Not one study, not just in Canada, but any place in the developed world, any place in the democracy that we can go to and find a study, says deterrence works. We are about to spend an additional, depending on whose estimates we use, anywhere from at least $2 billion to $11 billion, $12 billion and $13 billion over the next five years on a philosophy, on an ideology on criminal justice that does not work.
>
> Ms. Kirsty Duncan (LP, House Debate 22 Sept 2011): Criminologists, judges and policymakers in Australia, Britain and the United States, whose systems for the most part mirror Canada's, have recognized that a jail-intensive approach is counterproductive in reducing crime.

> Mr. Alexandre Boulerice (NDP, House Debate 27 Sept 2011): Her [Ms. Françoise Boivin (NDP)] speech highlighted the absurdity of the Conservatives' omnibus bill and the underlying cynicism of this fundamentally ideological and political operation … The government is creating something that will not sit well with the majority of Canadians and Quebeckers. It is trying to shove this down our throats to score political points with its very conservative and ideological base, and it will try to say that the opposition, regardless of the party, is soft on crime and is on the side of the criminals. That is a very questionable political move.
>
> Ms. Libby Davies (NDP, House Debate 27 Sept 2011): The reality is that mandatory minimums do not deter organized crime. Instead, they almost exclusively affect small dealers, street level traffickers and non-violent offenders, while leaving the door wide open for organized crime to step in and fill the void created by the sweeps at the lower end. Even the Canadian Justice Department, in its report of 2002, concluded that mandatory minimum sentences were the least effective in relation to drug offences. The Minister of Justice has never been able to offer a shred of evidence that mandatory minimums are a deterrence, that they work.
>
> Ms. Elizabeth May (GP, House Debate 29 Nov 2011): There is much in the bill that changes the characteristics of Canada and the values of Canadians in ways that do not reflect the kind of country we are … This is not legislation that will work for Canadians. It will not make safer streets; it will make meaner streets. This is not a bill that deals with Canadian values. This speaks to some other country that I do not know. I do not want to live in a country that thinks it is better to impose stark mandatory minimums rather than have a criminal justice system rooted in the rule of law that recognizes the primacy of the value that goes back to the times of common law … we must not lose that.
>
> Mr. Dany Morin (NDP, House Debate 29 Nov 2011): Either the Conservative government does not read its own internal reports, or it ignores any reports that it does not agree with, stubbornly sticking to its ideology and forsaking all expert opinions that call for more emphasis on prevention and rehabilitation than on harsher sentences.

Mandatory minimums violate the Constitution and the rule of law.

The final opposition counterclaim was that mandatory minimums infringe upon and violate the Charter of Rights and Freedoms, which is to say the Constitution, and the rule of law. The reasons drawn upon by opponents to support this counterclaim included serious constitutional concerns that mandatory minimums are not consistent with

fundamental principles of justice – namely, proportionality and protection against cruel and unusual punishment. The Supreme Court in fact made it clear in the two SCC rulings and the Ontario Superior Court ruling reviewed earlier in the thesis that mandatory minimums violate these *Charter* principles (R. *v.* Smith, R. *v.* Nur, & R. *v.* Vu, 2015). Opponents emphasized proportionality as a fundamental principle of justice, citing the Criminal Code, section 718.1, which states 'A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender'. Opponents argued that mandatory minimums disregard this principle by neglecting to take aggravating and mitigating circumstances into account, thereby increasing the likelihood of grossly disproportionate sentences. Related, opponents of mandatory minimums highlighted instances of these penalties constituting cruel and unusual punishment as recognized by the SCC in R. *v.* Smith.

Opposition members and stakeholders also emphasized the disproportionate impacts of mandatory minimums on vulnerable populations and persons. Specifically, opponents argued that mandatory minimums negatively impacted aboriginal people, visible minorities, the poor, and the mentally ill. Their cited reasons included decreased access to public health services and the overrepresentation of incarcerated members of these groups. Therefore, opponents argued that Bill C-10 should not be introduced. The following statements exemplify these counterclaims:

> Ms. Kirsty Duncan (LP, House Debate 22 Set 2011): Criminal defence lawyer John Rosen predicts that there will be many constitutional and legal challenges, especially regarding mandatory minimum penalties. He explained that these penalties violate and accused person's right to fundamental justice. He believes the measures will be judged an inappropriate infringement on the case-by-case that has been mandated by the Supreme Court in sentencing cases.

> Mr. Irwin Cotler (LP, House Debate 27 Sept 2011): There was a serious problem of prison overcrowding, with some provinces already reporting 200% capacity. We know overcrowding leads to more crime within prisons and more crime outside prisons. The U.S. Supreme Court has found that overcrowding of 137% can even constitute cruel and unusual punishment. This legislation will only exacerbate the problem in Canada, both as a matter of policy and arguably even as a matter of the constitution.
>
> Mr. Chris Charlton (NDP, House Debate 27 Sept 2011): The association [The Canadian Bar Association] made a specific comment on the minimum sentencing provisions of the bill by pointing out that they fail the mentally ill, aboriginal people, visible minorities and the poor … As a result, the Bar Association is calling on the government to reverse course and to allow judges leeway in applying mandatory minimums so that they are not imposed when it would be cruel or inappropriate.
>
> Dr. Anthony Doob (Professor, Centre of Criminology, University of Toronto, House Committee 18 Oct 2011): Other jurisdictions have looked to … [make] sentencing more coherent and more fair … they have a sentencing system based on proportionality. Mandatory minimum penalties almost certainly violate or force the violation of the principle of proportionality.

Discussion – Step #1 findings.

Overall, during the course of the Bill C-10 deliberations the main normative claims produced and advocated for by the government drew upon discourses that stand in almost direct contrast to the discourses employed by the opposition. Specifically, normative claims made by the government drew significantly upon a discourse favoring retributive and repressive justice. The government used this discourse to advance the idea that toughening Criminal Code sentencing provisions will be effective at containing the problem of crime, and that instituting new and enhanced mandatory minimum sentences are therefore needed. Conversely, opposition counterclaims drew significantly upon a discourse prioritizing prevention and rehabilitation and therefore restorative justice strategies, and the Constitution, in particular the *Charter*.

Political Discourse Analysis Step #2 – Reconstructing the Arguments

The second step in the process of political discourse analysis involves reconstructing the major arguments presented during the Bill C-10 deliberations by outlining the arguments in relation to the premises that underlie specific formulations of the government's and the opposition's claims. As underscored in the Design and Method chapter, the particular premises contained within an argument vary from formulation to formulation, yet all practical arguments include similar premises in the sense that all contain a goal premise, a circumstantial premise, a values premise, and a means-goal premise.

For the purpose of this thesis and in respect to my research questions, my analysis will focus predominantly on the goal premise, which specifies what end is being pursued and the action required to achieve this goal; and the value premise, which specifies what values and/or concerns guide or inform the choices of goal and action. As with the first step of this PDA, I organize my findings according to goal premises of the government and the opposition respectively and then address the values premises of the government and the opposition.

Government goal premises.

A major goal premise in government argumentation is the goal of sending a message. In government argumentation various spokespersons were clear that as well as or even more than wishing to send a deterrent message to criminals, the government wished to send a message to victims and Canadians as a whole. They wanted to be clear that crime is something that the Harper government takes seriously and that those who engage in criminally immoral behaviors will be dealt with punitively. Mandatory

minimums are thus part of the government's larger tough on crime messaging. The premise underlying this 'send a message' goal is that Canadians want to hear that the government will deal seriously with offenders, especially those who engage in particularly immoral or heinous acts. Otherwise stated, the C-10 expansion of mandatory minimums is premised on the contention that mandatory minimum sentencing will help Canadians feel not only safer in their homes and communities, but also that their morals are protected.

This goal of sending a mandatory minimum message to criminals as well as the entire citizenry is evidenced throughout the C-10 debates in quotes such as the following. Again, I underline key phrases for emphasis:

> Mr. Robert Goguen (Parliamentary Secretary to the Minister of Justice, CPC, House Debate 29 Nov 2011): In Canada, we have the benefit of having one Criminal Code to send a resounding message to all Canadians that we will protect them from the criminal element, and that is what we are doing and we believe it will work.
>
> Senator Daniel Lang (CPC, Senate Committee 21 Feb 2012): I want to begin with the mandatory minimum sentences. Mr. Matas referred to the general concept of mandatory minimums as a message, I believe, and as guidelines. It seems to me that this type of legislation sets the moral standards or the moral compass for what society feels these offences should, at least at a minimum, bear from the point of view of the judiciary … For those who would choose to commit these types of offences, it would seem to me that they would be a deterrent for those individuals.

The second goal emphasized by the government is the goal of fixing or restoring the Canadian justice system from the damage inflicted upon it by the previous Liberal governments, which purportedly favoured criminals over victims and law-abiding citizens. The goal is to roll back the Liberal approach, which emphasized rehabilitative, preventative and inclusionary practices, and roll out a Conservative approach that

emphasizes putting victims and law-abiding citizens first by imposing punitive, retributive and exclusionary consequences on offenders.

Again, the premise underlying this argumentation is that victims and Canadians at large view the system as broken, and soft, that they agree with the Harper government that this is the fault of previous Liberal governments, and that they elected the Harper government specifically to fix this situation. Harper government representatives were explicit. Their government viewed mandatory minimums as part of what was needed to fix a 'broken system' designed by previous Liberal governments and this is what victims and Canadians want, deserve, and elected them to do. Mandatory minimums are part of an overall commitment to convert the justice system to one that is tough on crime, instead of soft on crime.

The goal to fix the broken Canadian justice system so as to fulfill the CPC's commitment to Canadians is demonstrated in the following excerpts:

> Ms. Candice Hoeppner (Parliamentary Secretary to the Minister of Public Safety, CPC, House Debate 21 Sept 2011): On one side, there was the Conservative government which would finally get tough on crime and finally reverse the damage that the Liberals did to our justice system by being soft on criminals and ignoring victims … Canadians do not want the Liberal way of dealing with crime. Could he [Mr. Sean Casey (Liberal)] acknowledge it and get in touch with Canadians as they view the criminal justice system today?
>
> Mr. Parm Gill (CPC, House Debate 27 Sept 2011): When talking to my constituents, I hear a common theme. They tell me that they want a justice system that actually delivers justice and a corrections system that actually corrects. I believe the legislation in front of us today is an important step forward in that regard. We will continue to reverse the shameful trend which began under the [Pierre] Trudeau regime where former solicitor general, Jean-Pierre Goyer, stated that the protection of society was a secondary objective to protecting the rights of criminals. Our Conservative government completely rejects that premise and will continue to work to return common sense to the correctional system.

> Mr. Kyle Seeback (CPC, House Committee 20 Oct 2011): I know that in my riding of Brampton West I continuously hear from people who say the justice system appears to be broken, and people are getting very soft sentences for very serious crimes.

A key component of the government's goal to fix the justice system is the goal of discrediting the previous Liberal government and its commitment to rehabilitation and crime prevention. This goal is advanced in the above quotes and throughout the Bill C-10 deliberations on mandatory minimums. This was part of making the protection of society a top government priority and a main campaign platform promise. A central premise is that previous Liberal governments had given Canadians a justice system that neither protects nor respects them, but that instead protects and respects criminals. The goal of protecting law-abiding citizens from crime and criminals is essentially one of the key goals of any government as it is a government's duty and responsibility to safeguard the public they are elected to represent. In stating that previous Liberal governments have failed in this regard, argumentation moved from discourses on the pros and cons of mandatory minimums, to a more purely political discourse aimed at discrediting the opposition. At the same time, the government ignored the fact that the official opposition in this Parliament was in fact the New Democrats.

The goal of portraying Harper's CPC as the sole party willing to hear the message that victims and law-abiding Canadians want their government to prioritize the protection and the rights of 'law-abiding citizens' rather than criminals is exhibited by the following extracts.

> Ms. Candice Hoeppner (Parliamentary Secretary to the Minister of Public Safety, CPC, House Debate 22 Sept 2011): No matter what party we are from, we all believe that victims should be protected and their rights should be top of mind. That is something that this legislation has done. It has done it very thoughtfully.

> We have tried as much as possible to take some circumstances into consideration … but never at the cost of protecting the communities and Canadians, and never at the cost of victims.
>
> Mr. Larry Miller (CPC, House Debate 27 Sept 2011): I consistently hear from my constituents, especially those with children, young children and grandchildren, is the lack of rights for victims in this country. We worry more about the rights of criminals than victims, which is a sad case.

In sum, the government endorsed three significant goals. These are: one, to send a message that the Harper government is tough on crime; two, to assure Canadians that the Harper government will fix the justice system that the Liberal's broke; and three, to convince the public that only the Harper government will protect law-abiding Canadians and victims over criminals. These government goals draw upon a discourse supporting a punitive and retributive approach to the management of criminal justice which is in line with the punitive turn as theorized by Garland (2000) and others, as reviewed in the Theory chapter. It is also consistent with the socially conservative moral social order advocated by the new right.

Opposition goal premises.

The first major goal advocated for by the opposition was the goal of preventing crime and reducing recidivism through evidence-based prevention and rehabilitative programming. According to studies that the opposition cited throughout the debates, which include a government suppressed study on deterrence commissioned by the Department of Justice (Hansard, 29 Nov 2011), mandatory minimum sentences have no positive significant effect on reducing crime or recidivism, and can actually exacerbate the problem of crime by increasing the likelihood of reoffending. In advancing this body

of evidence, the opposition argued that the government's championing of 'toughness' and dismissal of rehabilitation and prevention as 'soft' was regressive and ideological.

The argument that research evidence should guide law and policy and that mandatory minimum sentences are contrary to evidence underlies opposition argumentation against mandatory minimums. The explicit premise is that in ignoring, suppressing and discrediting evidence the government proved that it did not care about public safety. This premise that the government's championing of mandatory minimums was regressive, ideological and dishonest underlies opposition argumentation throughout the C-10 deliberations, and is exemplified in the following excerpts:

> Mr. Sean Casey (LP, House Debate 21 Sept 2011): There is absolutely no evidence in Statistics Canada nor in other jurisdictions that have taken this approach that it works. It is ideologically driven and it flies in the face of facts and evidence … it is a backward step.
>
> Hon. John McCallum (LP, House Debate 29 Nov 2011): First it is obvious that the government cares not a whit about policies to fight the ultimate cause of crime. Second, it does not care about deterrence. If it did, it would have paid attention to a recent study by its own Department of Justice that was released a week or so ago, which provided evidence that longer sentences are not an effective deterrent to crime. Indeed, the results from that study are consistent with international evidence on the topic … The notion of fighting the underlying causes of crime is not at all important to the Conservatives. At the same time … the principle of deterrence also seems irrelevant to the Conservatives. All that matters to them is the principle of retribution or revenge. In that sense, this bill takes us back to the Middle Ages.
>
> Ms. Isabelle Morin (NDP, House Debate 29 Nov 2011): I do not want the government to waste piles of money on a system that will not even reduce the crime rate. That has been proven. This money will come out of the taxpayers' pockets. Do we really want to live a society that is harsh for no reason, spends money unnecessarily and does nothing to prevent crime? We are debating this bill in order to make communities safer. Every member of the house agrees that we want to make our communities safer, but we will not do so by always putting people in prison. There is nothing in this bill to prevent and reduce crime.

A second central opposition goal was to convince fellow parliamentarians and the Canadian public that the Harper government's tough on crime regime is inconsistent with economic responsibility, which the Harper government also claimed was a key priority of the Canadian public and of their government. The opposition reminded the government that it is one of the most fundamental obligations of the Government of Canada to ensure that federal policies do not place an unnecessary financial burden on tax-payers, the provinces, or the justice system itself. Specifically, the opposition argued that mandatory minimums were economically irresponsible because they would require the building of new federal prisons and increase the costs to the provinces of administering justice, several of which had publically objected to C-10 precisely because of the increased costs of administering justice that would result from the passage of this legislation. The opposition also argued that mandatory minimums would cost society as a whole due to the negative exclusionary impacts of mandatory minimums on marginalized families and communities. In addition, the opposition argued that the government was being undemocratic and unconstitutional in its irresponsible refusal to provide the budget officer with full information on the projected costs of mandatory minimums and the larger package of reforms advanced in this bill.

The premise that justice policy must be reconciled with economic responsibility and that the government was therefore acting irresponsibly ran throughout the C-10 debates, exemplified in the following quotes:

> Mr. Thomas Mulcair (NDP, House Debate 27 Sept 2011): We do not know how much this would cost the provinces. This would be a massive transfer of expenses to the provinces … Not only are they [Conservatives] worse than the Liberals in terms of transfers to the provinces, they do not respect the basic parliamentary right to debate bills and to know the real costs.

> Ms. Isabelle Morin (NDP, House Debate 29 Nov 2011): It is his [the Minister of Finance's] party that is continuing to bring in bills such as the one before us, implement its Conservative agenda and cost Canadian taxpayers millions of dollars. We know very well that a number of provinces have already refused to pay the bill … The government is repeating history and not disclosing the cost of this excessively expensive program.
>
> Mr. Ryan Cleary (NDP, House Debate 29 Nov 2011): Experts say the omnibus crime bill will increase the country's prison population by untold thousands. As for the cost of housing that many more inmates, estimates range up to $5 billion a year. That is more than double the current expenditures for the corrections system alone. And that is a conservative estimate, not a Conservative government estimate. The Conservative government has not put a price on the omnibus crime bill, which makes no sense.

A third goal endorsed by the opposition during the deliberations on C-10 is that of preserving the historical principles and values of the Canadian justice system and Canadian values as a whole. The oppositions' goal is to protect and uphold not traditional small 'c' conservative values, but rather Canadian justice principles and values inscribed in the *Charter*. These include principles of proportionality in sentencing and respect for the rights of accused and convicted offenders, including their right not to be subjected to cruel and unusual treatment or punishment. The premise here is that only values that are consistent with the *Charter* are legitimate.

The opposition's contention that Bill C-10 is a political attempt by the government to move Canada away from traditional and constitutionally enshrined Canadian values is also political. The underlying premise that only values that are consistent with the *Charter* are legitimate therefore includes an implicit claim that Canadian values are opposition values, and that the values of the Conservative Party are in conflict with Canadian values and the Constitution.

The opposition's goal of preserving *Charter* protected principles and values of justice and as constructing these as under attack by the Harper government are evidenced throughout the C-10 deliberations, exemplified in statements such as the following:

> Mr. Gilles Ouimet (Former President, Barreau du Québec, House Committee 20 Oct 2011): One of the fundamental principles of our criminal justice system is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Only judicial discretion can adequately balance the various principles of sentencing and the circumstances of an offence, and can, as a result impose a just sentence.
>
> Hon. Irwin Cotler (LP, House Debate 29 Nov 2011): Is it fear-mongering to raise concerns about whether Bill C-10 comports with the Canadian *Charter* of Rights and Freedoms when the minister of justice, whoever he or she may be, has a constitutional duty to ensure that legislation comports with the *Charter* of Rights and Freedoms?
>
> Ms. Jean Crowder (NDP, House Debate 29 Nov 2011): The Canadian Bar Association went on to outline 10 reasons [why other countries that used similar strategies had negative outcomes] … In its conclusion, it said: Canadians deserve accurate information about Bill C-10, its costs and its effects. This bill will change our country's entire approach to crime at every stage of the justice system. It represents a huge step backwards; rather than prioritizing public safety, it emphasizes retribution above all else. It's an approach that will make us less safe, less secure, and ultimately less Canadian.

In sum, three key goals underlie opposition argumentation against mandatory minimums. These are: one, to clarify that the public is best protected through evidence based strategies that prevent crime and recidivism; two, to clarify that governments have a responsibility to ensure crime policies are economically responsible; and three, to clarify that crime policies must be consistent with the historically established and constitutionally enshrined principles and values of Canada as enshrined in the *Charter*. Underlying these goals, is the premise that anything else is illegitimate, irresponsible, and un-Canadian.

The opposition argumentation draws upon progressive discourses that value rights and freedoms guaranteed to all Canadians under the *Charter*. It also draws upon discourses that promote social welfare and restorative justice approaches, rather than evidence-refuted, regressive, ideological measures such as mandatory minimum sentences.

Government values.

The main value premise identified in my analysis of government argumentation is the value of promoting public safety. The government maintained that the protection of victims and law-abiding citizens is their top priority. The government contended that crime is increasing in volume and severity, despite statistical evidence that shows the opposite (Boyce, 2015). The government response to allegedly increasing crime severity involved argumentation that promoted new and enhanced mandatory minimum sentences as the most effective way to ensure the safety and protection of the public. This argument is premised on two government claims reasoning that crime severity is increasing and that incarcerating criminals for longer periods will keep criminals off the streets longer, thereby increasing public safety.

As part of this, the government contended that offenders need to be held more accountable for their crimes and that mandatory minimum sentences will achieve this. The government asserted that holding criminals accountable for their crimes will ensure increased public safety by guaranteeing criminals serve sentences that reflect the nature of their crimes. The value premise of promoting public safety informed the government's choice of action and goal of protecting victims and law-abiding citizens over criminals. Again, the government argued that mandatory minimums are the most effective way to

increase public safety by holding criminals accountable for their actions and ensuring they serve a fitting sentence. This position is exemplified in the following excerpts:

> Ms. Kerry-Lynne D. Findlay (Parliamentary Secretary to the Minister of Justice, CPC, House Debate 21 Sept 2011): The action plan to combat the production and distribution of illicit drugs contains a number of elements, including ensuring that strong and adequate penalties are in place for serious drug crimes. It is within this context that the drug-related amendments of this bill are to be viewed. Moreover, these amendments follow through on one of this government's key priorities, which is combatting crime and making our communities safer for all Canadians.
>
> Mr. Vic Toews (Minister of Public Safety, CPC, House Debate 22 Sept 2011): Statistics Canada indicates that the rate of reported crime is going down … the point is that many people have simply given up trying to deal with the justice system … Every individual should be entitled to walk down the street, not just during the day but 24 hours a day. It is our right as Canadians. We have a right to be safe from criminals.
>
> Mr. Dave MacKenzie (CPC, House Debate 29 Nov 2011): The bill proposes amendments to strengthen the Controlled Drugs and Substances Act provisions regarding penalties for serious drug offences by ensuring these types of offences are punished by an imposition of mandatory minimum terms of imprisonment. With these amendments we are demonstrating this government's commitment to improving the safety and security of communities across Canada.

Second, government argumentation espoused the value of respecting public opinion and keeping the Prime Minister's campaign promise to crack down on criminals. Otherwise stated, the election demonstrated that the public wants tougher crime policies and the government is simply responding. This argument is premised on the assertion that the public's will is expressed in the results of an election and that a governing party has a responsibility to keep its' promises.

The contention that the public favours severe punishment in the form of mandatory minimums for sex and drug crimes and that the government is simply delivering to Canadian what Canadians clearly want – at the same time honouring its

promise in the 2011 CPC campaign platform to pass tough on crime legislation. This position is exemplified in the following excerpts:

> Mr. Bernard Trottier (CPC, House Debate 27 Sept 2011): They [Canadians] have asked us to increase offender accountability and to hold offenders accountable by being made to serve sentences that reflect the seriousness of those crimes. We have delivered.
>
> Mr. Dave MacKenzie (CPC, House Debate 29 Nov 2011): Canadian's want a justice system that has clear and strong laws that denounce and deter serious crimes, including serious drug crimes. They want laws that impose penalties that adequately reflect the serious nature of these crimes.

The third major value premise endorsed by the government is that justice for victims is more important than the rights of criminals, and that therefore punishment, retribution and guaranteed incarceration are justified. Specifically, fundamental principles of justice enshrined in the *Charter* are not as important as ensuring victims' needs and rights are respected. As constructed by the government, justice must mean justice for victims of crime and punishment for those who harm victims. Moreover, the government asserted that when criminals who commit serious crimes receive a soft sentence, this is an injustice to victims. This is to say, the government contended that protecting the rights of victims is inconsistent with protecting the rights of criminals.

As part of this, and to counter opposition arguments on the economically irresponsible costs of mandatory minimums, the government contended that the costs of crime are highest for the victims of crime, especially when emotional costs of pain and suffering are included. They argued that mandatory minimum sentences are part of what is needed to reduce the emotional costs of crime to victims. In addition the government argued that mandatory minimums are the best way to provide justice to victims since

incarcerated offenders have access to rehabilitative programs that can, if the offender cooperates, decrease their chance of reoffending.

The value premise that justice must be redefined as justice for victims informed the governments' choice of action and goal of sending a message through mandatory minimums. Again, they argued that this will not only protect the safety of law-abiding Canadians and victims, but that it will provide confidence that the government is listening to the concerns of victims and citizens. This argumentation is exemplified in the following excerpts:

> Mrs. Stella Amber (CPC, House Debate 27 Sept 2011): Offenders must be prepared to take more responsibility for their conduct and pay the price if they break the rules.
>
> Mr. Bernard Trottier (CPC, House Debate 27 Sept 2011): It has been five years since our government first took office. In that time, we have worked to bring forward legislation that would hold criminals accountable, put the safety of Canadian families first and deliver the kind of justice that victims of crime expect.
>
> Mr. John Carmichael (CPC, House Debate 27 Sept 2011): It [Bill C-10] includes measures to increase offender accountability and provide stronger justice for victims.
>
> Mrs. Sharon Rosenfeldt (President, Victims of Violence, House Committee 18 Oct 2011): There are a few issues with these arguments [backlogs in the justice system]. First, the backlog that would incur from a higher number of trials is necessary to ensure that offenders are tried for the crimes they have committed, not lesser ones that do not truly reflect the crimes they have allegedly committed. This would do much to increase victim satisfaction with the criminal justice system.
>
> Mr. Brian Jean (CPC, House Debate 29 Nov 2011): We are going to ensure that Canadians and victims are listened to, and indeed, that the people who commit crimes, especially those who commit violent sexual offences, actually do the time and stay in jail where they will have the opportunity to be rehabilitated but will not have a chance to reoffend.

In this argumentation, the government repeatedly contended that the rights of victims and law-abiding citizens should take precedence over the rights of criminals. This

value premise is concerned with giving preference or priority to individuals who comply with the laws of Canada over those individuals who do not. Thus the value premise is that citizen rights are contingent upon of compliance with society's rules or laws.

Moreover, throughout the C-10 debates government spokespersons declared that previous Liberal governments had started a 'shameful' trend of prioritizing the rights of criminals over those of victims and law-abiding citizens. Their repeated denunciation of previous Liberal governments and their promise to repair the harm done by the Liberals speaks less to the goal to protect the rights and safety of victims of crime and more to the goal of discrediting the opposition and its values. This argumentation is exemplified in the following extracts:

> Mr. Larry Miller (CPC, House Debate 27 Sept 2011): The one thing that I consistently hear from my constituents, especially those with children, young children and grandchildren, is the lack of rights for victims in this country. We worry more about the rights of criminals than victims, which is a sad case. The pendulum has swung too far one way. I am proud to be part of a government that would straighten that out.
>
> Mr. Parm Gill (CPC, House Debate 27 Sept 2011): We will continue to reverse the shameful trend which began under the [Pierre] Trudeau regime ... [where] Jean-Pierre Goyer, stated that the protection of society was a secondary objective to protecting the rights of criminals.
>
> Mr. David Wilks (CPC, House Debate 27 Sept 2011): I am extremely proud that we are putting the rights of victims of crime before that of the people who commit the crime ... Hon. members will know that our government told Canadians, when it was first elected, that we would do things differently than the previous Liberal government ... I will end my speech by calling on the NDP to support this important legislation and stop its pattern of putting the rights of criminals ahead of the rights of law-abiding citizens.

Opposition values.

The first key value premise drawn upon by the opposition's is connected to the oppositions' emphasis on good policies being created and based on scientific or expert evidence and research. Over the past several decades, policy making in Canada has typically been made based on the best available evidence, thus the value premise of knowledge of policy making and being informed. The opposition stressed that Bill C-10 flies in the face of the evidence available to the government and therefore should not be put into effect. Specifically, the opposition argued that existing evidence on mandatory minimum sentences is clear that they are ineffective in preventing or deterring crime. Rather, the research they cited promotes preventative and rehabilitative techniques rather than regressive, ideological techniques that have been shown to exacerbate the crime problem. Therefore it is evident that this value premise of knowledge and being informed guided the oppositions' choices of action and their goal of reducing and preventing crime.

The oppositions' value premise that knowledge must be at the center of justice policy is evidenced in the following quotes:

> Dr. Anthony Doob (Professor, Centre of Criminology, University of Toronto, House Committee 18 Oct 2011): The idea that mandatory minimum sentences are going to keep us safe. The evidence that harsher sentences generally and mandatory minimum sentences will keep us safe is clearly absent. The evidence would suggest that it is going to have no positive impact.
>
> Ms. Elizabeth May (GP, House Debate 29 Nov 2011): In the view of every criminologist, expert, academic who appeared before the justice committee and who commented on this through the media and in learned articles and so on, no one who has an experience of mandatory minimums believes they work. They do not believe they will reduce crime. They believe they will drive up the costs of our system and impose on the provinces.
>
> Ms. Jean Crowder (NDP, House Debate 29 Nov 2011): Of course it [Bill C-10] flies in the face of any kind of evidence that is emerging from countries, like the

> United States, that have taken this approach and are now backtracking because it simply did not work.

This emphasis on evidence and expertise is related to the preference of the opposition for using more evidence-based rehabilitative and preventative approaches to the administration of justice over the use of incarceration or retributive approaches. Canada has a long-established tradition of being progressive when it comes to making social policy (DeKeseredy, 2013; Mahon, 2008; Muncie, 2005), and have long prioritized the incorporation of rehabilitative and preventative measures in criminal justice policies. In the C-10 deliberations on mandatory minimums, the opposition placed strong emphasis on the importance of rehabilitative and preventative measures because research evidence demonstrates that they work best to reduce reoffending. Throughout, the opposition reminded the government that evidence confirms that these types of approaches are much more effective than mandatory minimums in protecting society. That is, evidence-based rehabilitative and prevention strategies are essential to the long-term health and well-being not only of offenders, but of Canadian society. The opposition argued that by running preventative programs in communities, some crimes can be stopped before being committed and some would-be criminals can avoid becoming a criminal in the first place. This argument is exemplified in the following excerpts:

> Mr. Don Davies (NDP, House Debate 22 Sept 2011): <u>There is nothing in this bill that deals with prevention</u>. There is nothing in this bill that addresses the need for increased <u>resources to help prevent crimes from happening in the first place</u> ... There is not one iota in this omnibus bill, that takes in 10 separate acts that addresses that matter.

> Mr. Jack Harris (NDP, House Debate 29 Nov 2011): Incarcerating more people may keep those individuals out of society for a period of time, but people who go to jail get out. They do not stay there for the rest of their lives. The result of lengthy periods of incarceration will be full <u>prisons that lack the ability of</u>

> rehabilitation programs to better prepare people to return to society and be better members of society. That is one way we will have less safe streets.
>
> Ms. Elizabeth May (GP, House Debate 29 Nov 2011): To throw people in jail on mandatory minimums without the discretion of a judge who sees the person before him or her, without the opportunity of the criminal justice system to work toward restorative justice, without the opportunities that a compassionate justice system has to figure out if the person deserves jail time, or needs mental health facility where he or she can get the help needed, or is the victim of systemic racism or is someone for whom only criminal justice will work, needs revision.

The second major value premise endorsed by the opposition relates to maintaining and upholding the historic principles of the Canadian justice system with a specific focus on the *Canadian Charter of Rights and Freedoms* as well as safeguarding the traditional values of Canada. This value premise is concerned with protecting essential principles of the Canadian justice system such as the fundamental principle of criminal sentencing such that the sentence must be proportionate to the offence committed (Criminal Code, 1985, s 718.1), along with considering increasing or reducing a sentence based on the presence of aggravating or mitigating circumstances (s 718.2 (a)). This value premise is also concerned with preserving the legal rights guaranteed to Canadians under the *Charter*, especially section 12 which grants all Canadians the right not to be subjected to cruel and unusual punishment. Otherwise stated, a major value premise of the opposition was that the rule of law and human rights must not be jeopardized.

This value premise of protecting the rule of law and human rights was connected to preserving the values traditionally associated with Canada as a whole, such as being a progressive country which respects democracy and the individual freedoms provided under the *Charter*. The opposition asserted that the government's omnibus crime bill was taking a step away from these meaningful values that historically make Canada what 'we

are', and take Canada in a new punitive, regressive direction. Therefore, this value premise of protecting the rule of law, human rights and progressive Canadian values influences and informs the opposition's choice of action, or in this case non-action.

The opposition value premise that opposing mandatory minimums is part of protecting the rule of law, human rights and progressive values that are part of Canada's international reputation is exemplified in the following excerpts:

> Dr. Anthony Doob (Professor, Centre of Criminology, University of Toronto, House Committee 18 Oct 2011): Other jurisdictions have looked to ways in which they can structure sentences in a way that makes sentences more coherent and more fair when you look at sentences across the board, so that they have a sentencing system based on proportionality. Mandatory minimum penalties almost certainly violate or force the violation of the principle of proportionality.
>
> Ms. Elizabeth May (GP, House Debate 29 Nov 2011): There is much in the bill that changes the characteristics of Canada and the values of Canadians in ways that do not reflect the kind of country we are.

The third value premise underpinning opposition argumentation is concerned with how the political process is conducted – the value premise that democracy must be respected, in particular deliberative parliamentary democracy. The opposition asserted that the way the Conservative government conducted the Bill C-10 deliberations was inconsistent with the established principles and practices of normative democratic deliberation. Specifically, the opposition argued that by placing severe time limits on witnesses' statements and MP's speeches the government undercut needed analysis and discussion. In particular, they argued that the government's claim that it had promised to pass mandatory minimums and other opposition blocked crime legislation within 100 days of a majority victory ignored the voices of over sixty percent of voting Canadians who cast their ballot for an opposition MP.

The opposition's value premise that deliberative parliamentary democracy must be respected is evidenced within following extracts:

> Mr. Thomas Mulcair (NDP, House Debate 27 Sept 2011): We have yet another example of its [the government] contempt for our parliamentary institutions, since it is prepared to use the guillotine to stop debate at second reading ... Will we finally be able to take time to hear from experts and witnesses ... This is an exceptional situation where, at the beginning of a Parliament, in only the second week, the government is already using the guillotine to stop parliamentary debate ... Will the government be using closure, time allocation or other methods to restrain debate?
>
> Ms. Jean Crowder (NDP, House Debate 29 Nov 2011): This bill has bundled together a number of previous pieces of legislation that were before the House and much has made about the fact that they were before the House, but it is important to remind members that roughly one-third of the members currently sitting in the House today did not have an opportunity to engage in debate and discussion when those bills were previously introduced. Part of our role of being parliamentarians is to practice due diligence, as well as to scrutinize legislation that comes before us very thoroughly and ensure that Canadian interests are being broadly served.

Discussion – Step #2 findings.

Throughout the C-10 deliberations, three main value premises underpinned government argumentation. The first values premise is that a governing party has a responsibility to promote the safety of citizens. The second is that a governing party has a democratic responsibility to keep the promises it made during an election campaign, and more broadly that it has a democratic responsibility to respect public opinion and to deliver on its promises to the public. The third value premise is that victims' rights are more important than criminals' rights; and further, that punishment, retribution and guaranteed incarceration of serious criminals, therefore mandatory minimums constitute justice for victims. As a corollary, the government contended that previous Liberal governments had shamefully prioritized criminal's rights over the rights and needs of

victims and law-abiding Canadians, and that in correcting this the Conservatives were bringing justice back to Canada. Throughout, the government upheld the value of compliance with the criminal code, which Parliament has the power to amend, and downplayed the value of compliance with the *Charter*, which Parliament does not have the power to amend.

Similarly, three key values premises underpinned opposition argumentation. These were that sound policy is evidence-based and evidence is clear that mandatory minimums do not contribute to public safety, especially in the long-term; that respect for the rule of law and more specifically respect for *Charter* rights is an essential component of sound policy making; and third that the norms and practices of Canadian Parliament, which is to say deliberative democracy must be respected in order to ensure full citizen voice and sound policy.

In sum, the government claims and goals centered on reshaping Canada's justice system to ensure public safety is the paramount goal of sentencing and corrections, to ensure that the views of those concerned about public safety are honoured, and to ensure that the rights of victims and law-abiding citizens are prioritized over the rights of criminals. 'Tough on crime' measures such as mandatory minimum terms of imprisonment are part of what the government contended is necessary to achieve these goals and honour these values.

In sum, the key values expressed in government argumentation were:

1. Keeping Canadians Safe
2. Respecting public opinion and honouring campaign commitments

3. Prioritizing victims' rights over the rights of criminals, that is, ensuring justice

In contrast, the opposition's claims and goals concentrated on preserving Canada's decades-long established evidenced-based justice system, compliance with the rule of law and adherence to principles and practices of deliberative democracy. These opposition arguments draw upon progressive discourses that promote rehabilitation and prevention as the best way to reduce recidivism and active deliberative democratic practices that listen to and consider multiple views, perspectives, and types of evidence – with inclusionary impacts.

The key values expressed in opposition argumentation were:

1. Upholding evidence-based policy making, so as to ensure the long-term protection of society
2. Upholding *Charter* enshrined constitutional principles of equality for all and legal protections for all, including those charged with or convicted of a criminal offence
3. Upholding established principles and practices of deliberative (parliamentary) democracy, so as to ensure full citizen inclusion and sound-policy making

Political Discourse Analysis Step #3 – Evaluation

The third and final step in conducting a political discourse analysis of the Bill C-10 deliberations on mandatory minimums involves evaluating the reformulated arguments based on the normative question 'what properties make an argument a good one'? Fairclough and Fairclough (2012) contend that the only way to rebut an arguments claim is to inquire into consequences. They provide a list of critical questions to facilitate

this (p. 63-64). In this third step of PDA on the Bill C-10 deliberations on mandatory minimums I adapt this list of critical questions to address the goals and values premises that run through government argumentation for mandatory minimums, as summarized at the end of step 2. I draw upon the oppositions counter-claims and values premises in this evaluation.

Critical questions for step #3.

1. Will mandatory minimums really lead to achieving the goals of the government as advanced in the C-10 deliberations (promote public safety, respect public opinion, prioritize victims' rights over the rights of criminals)?
2. Are mandatory minimums likely to have other effects than the goals advanced in the government's argumentation?
3. Are the values that underlie the government's call to establish and expand mandatory minimums rationally acceptable?
4. Do the values advanced in government argumentation on mandatory minimums conflict with other values of the government advanced in these deliberations?
5. What alternative courses of action should the government consider if it hopes to achieve its stated goals (promote public safety, respect public opinion, prioritize victims' rights over the rights of criminals)?

Safety of Canadians.

The most frequently cited claim for action drawn upon by the government was that mandatory minimums are part of the law and order legislation needed to promote the

safety of Canadians. The argument was most typically constructed using the following premises:

> Claim for action: We need to keep our 'streets and communities safe by moving quickly to reintroduce comprehensive law and order legislation [Bill C-10]' (Hon. Vic Toews (Minister of Public Safety, CPC), 20 Sept 2011, House Debate, 1st reading).
>
> Circumstantial premise: [Implicit] The claim for action implies that the streets and communities of Canada are not safe from issues of crime.
>
> Goal premise: Protecting law-abiding Canadians, fixing the 'broken' justice system.
>
> Means-goal premise: The only way to ensure the safety of Canadian's is to pass this comprehensive law and order legislation [Bill C-10].
>
> Value premise: Regulation and control, prioritizing the safety of law-abiding Canadians.

1. Will mandatory minimums really lead to achieving the government's stated goal to promote public safety?

The government claimed that instituting new mandatory minimum sentences via Bill C-10 will protect Canadians and improve the safety of our streets and communities. This goal can be examined from two different time-oriented perspectives, short-term and long-term. The government contended that mandatory minimum sentences will keep the public safe by incarcerating dangerous offenders longer, and that knowing mandatory minimums are in place will make the public feel safer. Simply, if offenders are imprisoned they cannot immediately reoffend. On a short-term scale the action being advocated for will indeed advance the short-term goal of promoting the safety and protection of law-abiding citizens and of helping victims feel safe. However, when

considering the goal of safety and protection from a long-term perspective, mandatory minimums will arguably produce an opposite effect.

The opposition raised counter-claims that mandatory minimums will undermine the long-term safety of the public since offenders will inevitably be released back into society at the end of their sentence. The opposition further argued that unless offenders have access to rehabilitative programs while incarcerated, research suggests that upon release they tend to be more likely to reoffend. Thus, since mandatory minimums increase the cost of incarceration, there will predictably be fewer resources for rehabilitation and prevention. The result, the opposition argued, will be less safe streets for the public.

This opposition counter-claim can be summarized as follows:

> Main counter-claim: 'When criminals are in for an extra length of time, they are in prisons where there is no rehabilitation for them at all ... When they get out, the crimes they commit are more violent, and in fact the crime rate goes up' (Mr. Joe Comartin (NDP), 21 Sept 2011, House Debate), therefore we should not introduce Bill C-10.
>
> Circumstantial premise: The longer a prison sentence is, the more criminalized an offender becomes, thereby decreasing safety upon release.
>
> Goal premise: Reducing and preventing crime, upholding established principles of Canadian justice system.
>
> Means-goal premise: If we want to prevent and reduce crime, we must not support Bill C-10 as its mandatory minimum sentences will create more crime.
>
> Value premise: Health and well-being, preserving traditional principles of Canadian justice system.

Therefore, there are contradictions between the government's stated goal to ensure the public is protected and to ensure the public feels safe through the action of

establishing new and increasing existing mandatory minimum sentences. Especially if research evidence is recognized as valuable, it is reasonable to assert that this proposed action will generate the opposite effect. It will decrease public safety in the long term by increasing the likelihood of reoffending. Thus, in the long term it will not make Canadians safer, and it will not make them feel safer.

2. Are mandatory minimums likely to have other effects than promoting public safety?

The issue of 'other effects' than those intended was already addressed above. The intended goal of the government is to increase the protection and safety of Canadian society. However, it is reasonable to argue that they will have the opposite effect, since research confirms it.

The opposition raised concerns that mandatory minimums may have multiple unintended consequences. These include safety consequences, due to overcrowding of prisons to accommodate an increase in the size of the prison population and financial consequences for the provinces. As well, the opposition cautioned the government that there were anticipated legal challenges based on the *Charter*, based on precedents that identify mandatory minimum sentences as cruel and unusual punishment (R. *v.* Smith). Indeed, following the coming into force of C-10, the Supreme Court ruled that a previous CPC mandatory minimum law does indeed violate this *Charter* protected right (R. *v.* Nur). Thus, it is reasonable on multiple grounds to reject the government's contention that mandatory minimums are part of what is required to keep Canadians safe and to ensure that they feel safe.

3. Is the value of promoting public safety a rationally acceptable reason for expanding and establishing mandatory minimum sentences?

The question of whether the goal and value of promoting public safety is a reasonably acceptable reason for expanding and establishing new mandatory minimum sentences is addressed above. Again, however, some expansion is required if the claim that mandatory minimums will increase public safety is to be rebutted.

Underlying the government's contention that mandatory minimums will increase public safety is recognition that it is the duty of the government to regulate and control criminality. This in itself is a rationally acceptable value, as it is a key duty of Parliament to ensure the justice system effectively controls crime so that citizens can live in safety. What must be questioned is the government's claim that mandatory minimums provide a better means of controlling crime than the rehabilitative and prevention strategies prioritized by previous Liberal governments, and in the C-10 deliberations, by opposition MP's and most expert witnesses. The opposition raised many concerns that mandatory minimums constitute a cruel and ineffective expansion of regulation and control over already marginalized – especially aboriginals and other visible minorities and people with mental health issues.

4. Does the value of public safety as advanced in government argumentation on mandatory minimums conflict with other values of the government advanced in the C-10 deliberations?

As summarized at the end of step 2, three goal and values premises run through government argumentation on mandatory minimums: the goal and value of promoting

public safety in ways that make the public feel safe, of respecting public opinion by honouring campaign promises to get tough on crime, and of providing justice to victims by prioritizing the rights of victims' and law-abiding citizens over those of criminals. On the surface, these values are not in conflict with each other. However, they stand in stark contrast to the oppositions' goals and values: to uphold evidence-based policy making so as to ensure the long-term protection of the public, to uphold *Charter* protected rights and protections for all, and to uphold principles and practices of deliberative (parliamentary) democracy to ensure full citizen inclusion and sound policy making. As part of this, the opposition placed value on recognizing the need for special protections for those who are marginalized and who are victims of societal conditions – as the *Charter* has indeed established Canada has a responsibility to do (s. 15(b)). Simply stated, rehabilitation and prevention are also strategies of regulation and control. Their aim, however, is inclusion rather than exclusion.

The government's values of enhancing public safety, respecting and responding to public opinion and providing justice for victims are complementary. However, they effectively exclude those who come into conflict with the law from the category of citizen. This is not consistent with the *Charter*, to which criminal justice legislation must comply. It is reasonable, therefore, to question how the government's effective denial of the rights to one category of citizen serves its goal of enhancing justice for another category of citizen. If all people are equal and all are equally entitled to protection under the law, as is guaranteed by the *Charter*, no category of person can be excluded or denied rights. The opposition's aim to retain rehabilitation and prevention as key justice objectives aim not only to improve the health and well-being of criminals, as research

evidence confirms they do, but also, and arguably most importantly, to promote the long-term safety and well-being of the Canadian public. In its insistence that mandatory minimums must replace the 'shameful' and 'soft' rehabilitative and prevention aims lauded by the opposition, the government effectively turns a deaf ear to the need that to ensure the public is protected in the long-term. The government's short-term public protection focus raises questions about whether the goal of mandatory minimums is truly public safety.

5. What alternative courses of action should the government consider if it hopes to achieve its stated goal to promote public safety?

Alternative courses of action to achieve the government's goal to promote public protection and a sense among members of the public that their safety matters has largely been addressed above. The opposition advanced many evidence-based and expert endorsed alternatives that promote both public safety and confidence in the justice system. These alternative require enhanced funding not to expand prisons but rather to expand rehabilitation programs, prevention programs, and restorative justice alternatives. These evidence-based alternatives create an acceptable rationale for not expanding existing mandatory minimum sentences or establishing new mandatory minimums.

Overall, the government's claim that mandatory minimums sentences are needed to ensure the public is safe and that it feels safe is not a rationally acceptable argument. Multiple alternative strategies work better to achieve the goal of fostering public safety. As for making sure the public feels safe, surely it would be preferable to use the resources of government to educate the public on the recent and apparently ongoing

decline in crime rates and the effectiveness of established criminal justice strategies in reducing recidivism. Mandatory minimums send a different message – the message that danger lurks everywhere and that notwithstanding evidence, more punishment for longer periods of time is needed to deal with this danger.

Public opinion.

The second most frequently cited government argument for mandatory minimums was the claim that public opinion supports this strategy. The government claimed that the 2011 election gave them a majority government, and this majority victory was due to their clear campaign promise to crack down on crime. The argument was most typically constructed as follows:

> Claim for action: 'Does my colleague across the aisle not recognize that in the last election there was a very clear distinction given to Canadians? On one side, there was the Conservative government which would finally get tough on crime and finally reverse the damage that the Liberals did to our criminal justice system by being soft on criminals and ignoring victims. Does he not recognize that the Liberals were reduced to 34 seats? Canadians do not want the Liberal way of dealing with criminals' (Ms. Candice Hoeppner (Parliamentary Secretary to the Minister of Public Safety, CPC), 21 Sept 2011, House Debate).
>
> Circumstantial premise: The way Canada was previously dealing with crime, specifically under Liberal leadership is a problem and not what Canadians want. Canadians want the government to get tough on crime.
>
> Goal premise: Sending a message, reversing the Liberal damage to the criminal justice system.
>
> Means-goal premise: The only way to give Canadians what they want in terms of the administration of justice is to get tough on crime by introducing and enhancing mandatory minimum sentences in Canada.
>
> Value premise: Prioritizing the rights of law-abiding citizens over those of criminals by enhancing regulation and control over criminal elements. Respecting public opinion.

1. Will mandatory minimums really demonstrate that the government is responding to public opinion?

The government repeatedly claimed that the majority of Canadians want mandatory minimums and other tough on crime legislation and that they were simply delivering on their promise to pass such legislation. The opposition questioned the circumstantial premise that underlies this argument, the premise and claim that a majority of the Canadian population wants tougher justice policies and that the 2011 election proves this. The opposition repeatedly pointed out that the government only received 39% of the popular vote, while the other 61% was distributed amongst three more left leaning parties, which blocked a number of expert-opposed crime bills advanced by previous CPC minority governments. Thus, a crackdown on criminals through more mandatory minimum sentences did not appear to be what the majority of Canadians wanted. Accordingly, the proposed action may not produce the intended goal, to demonstrate to the public that the government of Canada cares about its' concerns. Indeed, sixty-one percent of voting Canadians were excluded from the government's calculation that it was simply delivering to Canadians what Canadians clearly want. Rather, the government was delivering to the minority of Canadians who voted for them that their concerns mattered.

This opposition counter-claim was most typically constructed as follows:

> Main counter-claim: 'The government should not be talking about a strong mandate and trying to shove this down Quebeckers' and Canadians' throats, because more than 60% of Canadian's rejected it after the Conservatives made it central to their election platform (Mr. Guy Caron (NDP), 22 Sept 2011, House Debate).
>
> Circumstantial premise: The majority of Canadian's do not support the governments get tough on crime initiative as the three ideologically left leaning parties received 61% of the vote.

Goal premise: Preserving the traditional principles of the justice system and Canadian values is what the majority of Canadians want.

Means-goal premise: If we do not introduce Bill C-10, we will give the majority of Canadians what they want, which is to protect the long-established principles of the justice system and maintain Canadian values.

Value premise: Safeguarding the traditional principles of the Canadian justice system and Canadian values.

2. Are mandatory minimums likely to have other effects than demonstrating respect for public opinion?

The claim that Canadian's want tough on crime legislation via Bill C-10 has the intended goal of sending a message that the CPC is tough on crime because this is what Canadians, or rather what CPC supporters, want. As part of this, the government proclaimed its commitment to reverse the damage that the Liberals inflicted on the Canadian criminal justice system. In response, the opposition and experts raised concerns that this course of action has the potential to create financial consequences, public safety consequences and social consequences that Canadians may ultimately be unhappy with, in particular the increased cost of administering justice.

3. Is the value of respecting and responding to public opinion a rationally acceptable reason for expanding and establishing mandatory minimum sentences?

The rational acceptability of the value of respecting and responding to public opinion has largely been addressed above. Yet to clarify, underlying the government's contention that the majority of Canadians want tougher crime legislation as evidenced by the CPC majority win in the 2011 election, is the recognition that the government has a

duty to respond to and respect the needs and wants of the public. What needs to be questioned is the premise that the majority of Canadians do in fact want to see tougher crime legislation through mandatory minimums. If the majority of Canadian's indeed want this, then the value premise is rationally acceptable. However, if only the minority of Canadians want this, namely those who voted for the CPC in 2011, then the value premise is not rationally acceptable.

The government rationalized this value by showing evidence from opinion polls in Léger Marketing stating that Quebeckers were in favour of a more repressive justice system (Hansard, 2 Dec 2011) and Policy Options stating the majority of Canadian's support the government's direction (Hansard, 6 Dec 2011). The government also manipulated evidence from research by the DJC to suggest that Canadian's clearly support tougher crime legislation, when the research shows that Canadian's more so support rehabilitation and prevention goals (Latimer & Desjardins, 2007 as cited in Mann, 2014). The government also relied on their 2011 majority win based on 39% of the popular vote to rationalize the value premise that the majority of Canadian's wanted tougher crime legislation.

On the other hand, the opposition used the same DJC research to show that rehabilitation was the highest ranked of seven sentencing objectives, with denunciation ranking last (Latimer & Desjardins, 2007). The same research showed that less than 40% of respondents saw tougher sentences as an effective way to increase public safety, reduce crime, increase confidence in the justice system, or increase victim satisfaction (Latier & Desjardins, 2007). Finally, the opposition also contended that the majority of Canadians' did not support the CPC tough on crime agenda based on the fact that in the

2011 election, 61% of Canadian's voted for an ideologically left-leaning party (LP, NDP, GP). This strongly suggests that the majority of Canadian's do not want tougher crime legislation. Thus the government value premise of respecting and responding to public opinion through mandatory minimums is not rationally acceptable under these circumstances.

4. Does the value of respecting and responding to public opinion conflict with other values espoused by the government?

Again, the three key values that run through government argumentation are the values of protecting the public and ensuring the public feels protected, respecting and responding to public opinion, and prioritizing the rights of victims and law-abiding citizens over those of criminals. As a corollary the government promised to reverse the damage to the justice system inflicted by previous Liberal governments. As the government pointed out, citing then Solicitor General Jean-Pierre Goyer's 1971 statement to this effect, for forty years previous government's had made rehabilitation of criminals and the prevention of future offending a sentencing and correctional priority. The government's stated commitment to reverse this so that public protection is prioritized is premised on the values of protecting the public, respecting that this is what the public wants, and prioritizing justice for victims rather than justice for criminals. Again, these government values are in agreement with each other, as long as one brackets the body of research evidence that shows rehabilitative and prevention strategies do a better job of protecting the public in the long-term, and as long as one ignores research that confirms the public supports rehabilitation as a justice objective far more than it supports

denunciatory sentencing objectives such as mandatory minimums (see survey by Latimer & Desjardins, 2007, cited in the C-10 hearings by Senator Cowan, 1 March 2012).

5. What alternative courses of action apart from mandatory minimums would demonstrate that the government cares about and respects the opinion of Canadians?

Throughout the debate on mandatory minimum sentences the opposition advanced many alternatives, as discussed in length above, that the sixty-one percent of the public who did not vote for the CPC in the 2011 election likely support. With respect to public opinion, an obvious alternative is to ensure that all voices within the Canadian public are heard and responded to. It is clear from the Hansard transcripts that the government viewed victims, victims advocate groups and front-line law enforcement personnel as worthy of being listened to, while criminologists, legal experts, child and youth advocates, advocates for the mentally ill and advocates for aboriginal offenders were not. Groups whose opinions were dismissed and who were at times actively disrespected by government spokespersons include the John Howard Society, the Elizabeth Fry Society, the Canadian Bar Association, the Canadian Drug Policy Coalition, the head of the Correctional Service of Canada and academic experts from a multitude of disciplines. The alternative is to listen to a wide variety of Canadian's and Canadian stakeholders, not just individuals and groups whose views are in accord with those of the government, and certainly not just those who voted for the government and will hopefully vote for this government again.

Overall, the government's claim that instituting new mandatory minimum sentences is the most effective way to give the majority of Canada what they want fails to meet a standard of rational acceptability. Canadians do not hold a unanimous opinion. Moreover, the majority arguably support the 'shameful' rehabilitative strategy that previous governments prioritized in sentencing and correctional programming.

Prioritizing the rights of victims and law-abiding citizens.

The third most commonly endorsed claim for action utilized by the government is that mandatory minimums prioritize the rights of victims and the law-abiding rather than the rights of criminals. The government claimed that previous Liberal governments prioritized the rights of criminals over the rights of victims and law-abiding citizens. They asserted that mandatory minimums were needed to reverse this 'shameful' trend to make victims' and law-abiding citizens' rights the priority. The argument was most typically constructed using the following premises:

> Main claim: 'I am extremely proud that we are putting the rights of victims of crimes before that of the people who commit the crime … we hope that the opposition will support this legislation as we work to deliver better tools to help victims seek redress from the crimes committed against them … it is our aim to protect the rights of victims and continue to take action to put the safety and security of Canadians, including victims at the forefront … I will end my speech by calling on the [opposition] to support this important legislation and stop its pattern of putting the rights of criminals ahead of the rights of law-abiding citizens' (Mr. David Wilks, CPC, 27 Sept 2011, House Debate).
>
> Circumstantial premise: The rights of victims and law-abiding citizens should take priority over the rights of criminals. Previous governments have created a pattern of prioritizing criminals' rights over law-abiding citizens' rights. Bill C-10 will provide the tools needed to protect the rights and safety of victims and law-abiding citizens.
>
> Goal premise: Reversing the Liberal damage to the criminal justice system, sending a message and protecting victims and law-abiding Canadians.

Means-goal premise: The only way we can reverse the damage to the justice system, send a message and protect victims and law-abiding Canadians is to prioritize victims' and law-abiding citizens' rights over the rights of criminals' with mandatory minimum sentences.

Value premise: Prioritizing the rights of law-abiding Canadians over those of criminals, justice and protecting Canadians.

1. Will mandatory minimums really prioritize the rights of victims and the law-abiding over those of criminals?

The government repeatedly claimed that previous Liberal governments had established a trend of prioritizing the rights of criminals over the rights of victims and law-abiding citizens. The government made it clear that they viewed this trend as 'shameful' and their goal was to reverse it so that victims' rights and the rights of law-abiding citizens' were prioritized. The government contended that mandatory minimums would help to reverse this trend by providing justice to victims by holding criminals accountable for their actions by ensuring an appropriate punishment was received, as well as giving criminals access to rehabilitative programs so that they could take responsibility for rehabilitating themselves. Thus demonstrating that the government was committed to listening to victims needs and would place them before the rights guaranteed to criminals and all Canadian's under the *Charter*.

The opposition repeatedly asserted counter-claims that mandatory minimums are unconstitutional and violate essential principles of the criminal justice system. They cautioned that specific mandatory minimums were previously found to result in grossly disproportionate sentences, as well as constituting cruel and unusual punishment (R. *v.* Nur, R. *v.* Smith respectively) and can therefore violate the rule of law in Canada, the

Charter. Thus the opposition argued that the rights guaranteed to all Canadian's must be protected and that all citizens should be treated as equals under the law.

The opposition counter-claim was most typically constructed as follows:

> Main counter-claim: 'Enhancing victims' rights is not about putting one set of rights ahead of or in opposition to another set of rights. The rights of victims, those of offenders and the rights of correctional staff are not things that need to be balanced off against each other. Constitutional and legal rights serve us all equally. Offenders do not have special rights. The Charter applies to all Canadians, including citizens who are temporarily deprived of liberty by the fact of incarceration' (Mr. Howard Sapers (Correctional Investigator, Office of the Correctional Investigator Canada), 23 Feb 2012, Senate Committee).
>
> Circumstantial premise: Prioritizing the rights of victims' and law-abiding citizens' over the rights of criminals creates an unconstitutional disparity between those who deserve right and those who do not. The *Charter* should apply to all Canadians, including criminals, equally.
>
> Goal premise: Preserving and upholding the traditional principles of the *Charter* and the justice system.
>
> Means-goal premise: We should not introduce Bill C-10 because it promotes inequality between specific groups of Canadians and is unconstitutional. If we do not introduce Bill C-10 we can uphold the *Charter* and long-established principles of the justice system.
>
> Value premise: Safeguarding the traditional principles of the *Charter* and the Canadian justice system and justice.

2. Will mandatory minimums have other consequences than prioritization of the rights of victims and the law-abiding over those of criminals?

Again, the issue of 'other consequences' of mandatory minimums has been largely discussed above. The government's intended goal is to provide justice to victims and prioritize victims' and law-abiding citizens' rights over those of criminals through mandatory minimum sentences. However, it is reasonable to argue that new and

enhanced mandatory minimums will result in the erosion of essential principles of the Canadian justice system including, but not limited to, proportionality being the fundamental principle of sentencing (Criminal Code, 1985, s 718.1) and taking aggravating and mitigating circumstances into account when sentencing (s 718.2 (a)). It is also likely that specific new or enhanced mandatory minimums will violate section 12 of the *Charter* and constitute cruel and unusual punishment, as they have in the past (R. *v.* Smith).

Reiteratively, other negative consequences of mandatory minimums could include social consequences, financial consequences and safety consequences for not only victims and law-abiding citizens, but also for criminals. Therefore it is reasonable to anticipate other negative consequences from mandatory minimum sentences.

3. Is the value of prioritizing the rights of victims and the law-abiding over those of criminals rationally acceptable?

The rational acceptability of the government' value premise was largely discussed above. To clarify, underlying the government's value premise of prioritizing the rights of victims' and law-abiding citizens over those of criminals, is the contention that the justice system is 'broken'. The government contends that previous Liberal governments have established a 'shameful' pattern of placing the rights of criminals before those of law-abiding citizens. Thus, fixing this trend requires placing victims' and law-abiding citizens' rights and needs before those of criminals through mandatory minimums.

What needs to be questioned here is the rational acceptability of placing a specific group's needs before the needs of other groups. The opposition contends that placing

victims' and law-abiding citizens' rights before those of criminals is unconstitutional and contrary to established principles of the justice system. The opposition warns that mandatory minimums can violate the fundamental principle of sentencing, proportionality (Criminal Code, s.718). The opposition also cautions that *Charter* rights apply to all Canadians, including criminals, equally. Therefore mandatory minimums that prioritize victim and law-abiding citizens' rights over those of criminals creates an unequal balance of rights between the groups. Thus the government value premise of prioritizing victim and law-abiding citizens' rights over the rights of criminals is not rationally acceptable.

4. Does the stated value of prioritizing the rights of victims and the law-abiding over those of criminals' conflict with other government values?

Again, the three key values that run through government argumentation are the values of protecting the public and ensuring the public feels protected, respecting and responding to public opinion, and prioritizing the rights of victims and law-abiding citizens over those of criminals. These values are, on the surface, complimentary to each other. The government's stated goal is to reverse the Liberal pattern of prioritizing criminals over law-abiding citizens' and to provide justice to victims. This goal implies that one group is more deserving of rights over another and thus effectively excludes criminals from the category of citizen. Therefore, it is reasonable to question how the government's effective denial of the rights to one category of citizen serves its goal of providing justice for another category of citizen. If all people are equal and all are equally entitled to protection under the law, as is guaranteed by the *Charter*, it is unjust to exclude or deny rights to a certain category of person. Opponents of C-10 furthermore

contend that justice is better served for all involved utilizing a rehabilitative and preventative approach over mandatory minimums. Therefore the government value premise of prioritizing victim and law-abiding citizens' rights over those of criminals' conflicts with the normative Canadian value of upholding the rights and freedoms guaranteed to all Canadians under the *Charter*.

5. What alternative courses of action apart from mandatory minimums would also lead to the goal of demonstrating to victims and the public that their rights matter and that the rights of criminals are not prioritized over their rights?

Throughout the debate on mandatory minimum sentences the opposition advanced many alternatives, as discussed in length above. With respect to the prioritization of victim and law-abiding citizens' rights over those of criminals the clear alternative advanced by the opposition is upholding established principles of the Charter and justice system by applying rights to all Canadians equally. The opposition also advances restorative justice approaches as a reasonable alternative. Opponents of C-10 contend that justice is better served for all by utilizing a restorative approach to the extent that all members are included throughout the restorative process with strong emphasis placed on the victim. They also point out that restorative justice approaches have the potential to enhance the voice of victims as the process sees victims' participation as essential.

Overall, the government's claim that instituting new mandatory minimum sentences is the most effective way to prioritize victim and law-abiding citizens' rights

over those of criminals, as well as provide justice to victims fails to meet a standard of rational acceptability. All Canadians hold equal rights under the law.

Discussion – Step #3 evaluation.

A key implication of the government's espoused values is increased regulation and control of law-breakers in society. The government's goals and values encourage repressive justice strategies and further the legitimacy of increasing regulation and control in society. The government made it clear that it values protecting law-abiding Canadians, respecting the public's want for mandatory minimum sentences and prioritizing the rights of those who abide by the rules and laws of society over those who do not. By implying that those who come into conflict with Parliament's laws are undeserving of the protections guaranteed to all Canadians under the Charter, the government essentially excludes offenders from the category of citizen and human. Legal rights are human rights. In prioritizing law-abiding citizens' rights over those of criminals the government not only denies offenders citizenship but arguably denies them humanity.

On the other hand, the opposition placed value in upholding principles of deliberative democracy and on protecting marginalized groups and victims of societal conditions by placing significant importance on the protection of *Charter* rights for all, especially the socially disadvantaged, thereby implying inclusivity as a core value. The opposition also placed value on evidence-based policy making, especially improving the health and well-being of criminals, instead of solely incapacitating them, implying increasing the overall health and well-being of Canadian society as another core value. Thus the government's values support each other, while they strongly conflict with the values of the opposition.

The government has a normative duty to help regulate and control social life to the extent that citizens can live agreeably amongst each other. Yet, there are issues with the rational acceptability of the government's values. The way the government utilized these values arguably increases disproportionate power relations within society by granting priority and privilege to law-abiding Canadian's while condemning and punishing criminals, thereby creating a society where exclusionary practices become acceptable.

In addition, the rational acceptability of the government's values has severe implications for the future state of Canadian society. The long-established Canadian *Charter* of Rights and Freedoms bestows certain rights and freedoms to all Canadian's including those who have broken the law, therefore implying that inclusionary practices are a part of Canada's traditional value system. Thus based on the historic traditions of Canadian society, I would argue that these goals and values are not rationally acceptable and stand in opposition to recognized inclusive Canadian values while prioritizing and celebrating 'non-Canadian' exclusionary ones.

CHAPTER 6

DISCUSSION

This paper explored how argumentation was used within the Bill C-10 mandatory minimum sentence debate. The following discussion firstly addresses the claims made during the debate as well as the values and goals that underlie these claims, secondly, how evidence was utilized during the debate in terms of rhetorical devices and strategies, thirdly, how public and/or academic and legal expertise factored into the argumentation process, and finally how practical argumentation was utilized to assert or maintain power within the mandatory minimum sentence debate. As discussed above, the rational acceptability of the claims made by the government and the values and goals underlying them are concerning from the perspective of normative democratic practices. At the same time the argumentation can be discussed in terms of the punitive turn (Garland, 2000) versus restorative justice, with a focus on the rise of the new right in Canada.

Conflicting Values and Divergent Goals

The first question this thesis addresses is:

> In the Bill C-10 deliberations, what claims did those who argued for and against mandatory minimums draw upon and deploy and what values and goals underlie their respective claims?

As this thesis has documented, the government and the opposition were in disagreement over the effectiveness and consequences of mandatory minimum sentence legislation. This disagreement was due to conflicting values and divergent goals.

The government's main claims were that mandatory minimum sentences were needed to enhance the safety of Canadian's, to respect public opinion, to get tough on crime, and to protect and respect victims. The goals underlying these claims included sending a message that the government is tough on crime, to fix and restore the justice system and to protect victims and law-abiding citizens over criminals. The values underlying the governments' goals included keeping Canadian's safe, respecting public opinion and prioritizing victims' rights over the rights of criminals. The government's claims and goal and value premises embody a new right ideology that can be realized through exclusionary neoliberal techniques associated with the punitive turn.

In contrast, the opposition's main claims were that mandatory minimum sentences undermine the safety of Canadians, have unwarranted financial consequences, are ideological and regressive, and violate the constitution and the rule of law. The goals underlying these claims were to ensure justice policy contributes to preventing crime and recidivism to ensure justice policy is financially and economically responsible and to ensure crime policy is consistent with the *Charter*. The values guiding these goals are prioritization of evidence-based policy making over ideology and public opinion, the importance of the rule of law, specifically *Charter* enshrined constitutional principles of equality and legal rights for all, and lastly the value of ensuring policy making proceeds through established principles and practices of deliberative (Parliamentary) democracy. These opposition claims, goals and values are grounded in a progressive ideology that prioritizes social inclusion, and therefore a preventative and restorative justice rather than a strict crime control approach to criminal justice.

The claims, goals and values of the government and the opposition conflict and are divergent as they advocate for different approaches to the administration of justice. The values drawn upon by the government adhere to a new right ideology, which researchers such as Behiels (2010), Sawer & Laycock (2009) and DeKeseredy (2009) have attributed to Stephen Harper. The new right politics and ideology combines fiscal conservatism and values conservatism (Behiels, 2010). In terms of fiscal conservatism, it seeks to increase economic liberalization and decrease the size of the welfare state and emphasizes the privatization of formerly state functions (Sawer & Laycock, 2009). In regards to values conservatism, it reaffirms traditional moral values including the value of being tough on crime and criminals. The new right views the world as 'being undermined by permissiveness and asserting a particular traditional … morality based upon the nuclear family' (Bennet, 2008, p.465). In addition, the new right adopts specific neoliberal rationalities in order to achieve socially conservative aims that promote the idea that the 'individual is fully responsible for its own fate and actions in an age of growing social insecurity' (De Koster et. al., 2008). In order to accomplish this, new right ideology endorses a flexing of the State's muscle 'in order to enforce upon certain individuals its particular vision of social order' while sending the message of 'clear consequences for crime and compassion for victims' (Barney, 2002, p.176).

The new right has traditionally advocated for the use of punitive measures in maintaining the social order such as removing judicial discretion, increased use of mandatory minimum sentences or indefinite sentencing for repeat offenders, and the promotion of prison as the prime weapon in the fight against crime (Barney, 2002; Bennet, 2008). In order to accomplish these socially conservative aims, the Harper

government implemented Bill C-10, which effectively limits judicial discretion within the system by instituting incapacitative mandatory minimum sentences. These measures are ways the Harper government could socially diffuse its ideological aims through embracing the punitive turn and passing Bill C-10 as a means to establish its preferred version of the social order (Bennet, 2008).

Many researchers such as Moore & Hannah-Moffat (2005), Meyer & O'Malley (2005) and Webster & Doob (2007) have argued that Canada, prior to the Harper government, had largely resisted the punitive turn occurring in other Western jurisdictions. However, in light of the passage of Bill C-10, it can be argued that Canada was catching up. It can be argued that the government was using punitive containment as a technique to manage social anxieties and to regulate and control those who do not fit within the vision of a new right social order which fits with the punitive turn theory (Waquant, 2010).

What is interesting to note about the Harper government's use of neoliberal rationalities to attain its socially conservative goals is that this ideology focuses on negative social irresponsibility instead of positive social responsibility (Bennet, 2008). Mandatory minimums advance and reflect neoliberal rationalities that frame personal responsibility and exclusion of the irresponsible as a benefit to society. The idea is that, forcibly "disappearing" the most irresponsible will make everyone safer (De Koster et. al., 2008; Wacquant, 2010).

As important as the new right's moral stance that criminals should be punished and excluded was, the goal of framing the justice system as broken and blaming this on

previous Liberal governments was central. It was not only criminals who are to be excluded, but progressives as well. By prioritizing the rights of victims' and law-abiding citizens' over criminals and by contending that the opposition favoured the reverse, the Harper government positioned itself as the sole protector of public safety. Hence, the Harper government's argumentation engaged in attempting to convert Canada from a progressive, social welfare oriented country to one concerned with control of the social through repressive penal techniques (Behiels, 2010).

The Battle for Evidence

The second question this thesis addresses is:

> In terms of rhetorical devices and strategies, how was evidence utilized and incorporated into the argumentation process?

After examining the Hansard's, it was evident that the government and the opposition held conflicting views on the salience of research evidence to crime policy and therefore utilized different types of evidence in distinct ways. The Harper government was both more likely to rely on emotionally persuasive or rhetorical evidence and to rhetorically denounce experts and expertise, while the opposition was more likely both to rely on research evidence and to rhetorically defend rational or logical evidence-based argumentation.

The government predominantly relied on specific types of evidence that supported their position on mandatory minimum sentences, namely opinion polls. For example, government spokespersons cited a poll published in the Journal de Montréal that showed 77% of Québéckers support the toughening of sentencing legislation (Hansard, 2 Dec

2011), as well as a poll from Policy Options that showed that 64% of Canadians supported the governments direction and objectives (Hansard, 6 Dec 2011). The government also utilized quotes from influential actors in society, such as Chief Dale McFee, the president of the Canadian Association of Chiefs of Police, as well as numerous victims' rights advocates. However, the government also employed considerable emotionally persuasive or rhetorical arguments, demanding, for example "Why can they [Liberals] not recognize the importance of a victim and protecting victims. Could the member please explain to me why his party is in such great support of criminals?" (Hansard, 21 Sept 2011).

In contrast, the opposition predominantly relied on research evidence that opposed mandatory minimum sentences, and scientific expertise. The opposition commonly cited, for example, government studies, Statistics Canada reports showing crime rates on a decline, articles and news reports on research conducted by academic experts, including studies on deterrence that show no positive significant effect on crime rates (see DOJ Canada, 2005; Perreault, 2013; Gregg, 2012; Cook & Roesch, 2012).

The Harper government's strong preference for the use of persuasive and rhetorical evidence that supported their position is significant to note. It holds serious implications for how it responded to alternative types of evidence such as the logical and rational evidence that the opposition presented in argumentation against mandatory minimum sentences. The C-10 deliberations on mandatory minimums largely confirm Alan Gregg's (2012) contention that the Harper government's 'use of evidence and facts as the bases of policy is declining, and in their place, dogma, whim and political expediency are on the rise'. This was demonstrated throughout the C-10 debate as the

government essentially disregarded and discounted logically based evidence presented by the opposition throughout all stages of the debate. In sum, the government engaged in selectively attending to evidence that served to support and enforce its definition of the crime problem and its proposed solutions. This furthered its broad new right agenda and determination to catch up on the punitive turn.

Despite overwhelming evidence presented by the opposition that the punitive turn has not achieved positive results in other jurisdictions, and that it is typically viewed as a failed approach (Meyer & O'Malley, 2005), with the Harper government's determination to catch up to the punitive turn makes sense in the context of a new right agenda. Mandatory minimums were part of the Harper government's determination to re-define crime as a moral rather than a social problem. This entailed repudiation of scientific evidence when evidence did not support this aim.

The government's preference for certain types of evidence is in line with its new right ideological leanings to the extent that Harper's new right also adopts market populist strategies and rationalities. Focusing on the Harper government's use of populist strategies, populism views society as divided between elites and 'ordinary people' and negatively targets what the new right terms 'special interest' groups who support the idea of 'maintaining a large welfare state at taxpayers' expense' (Sawer & Laycock, 2009, p. 134). In Canada, as in Australia the concept of 'special interest' groups has coincided with efforts to discredit university-educated elite who arguably share a class interest in maximizing redistribution from taxpayers and speak a language of public interest and equal opportunity while securing well-paid public sector jobs for themselves (Sawer & Laycock, 2009, p. 136). This can be seen as part of a new right 'deliberate attempt to

obliterate certain activities that were previously viewed as a legitimate part of government decision-making – namely, using research, science and evidence as the basis to make policy decisions. It also [amounts] to an attempt to eliminate anyone who might use science, facts and evidence to challenge government policies' (Gregg, 2012).

This battle over evidence was at the centre of the Harper government's effort to use its majority mandate power within the C-10 debate to essentially alter the process of democratic deliberation here in Canada. The government used their power to dominate the process of political decision-making by selectively taking evidence into account and taking action on the sole basis of its political interests. Fairclough and Fairclough (2012) suggest that even though deliberation ends in a vote determining what course of action will be taken, the deliberation process becomes inconsequential when a majority government is determined to simply impose its will. In these contexts democratic deliberation loses its assumed democratic character.

The government's approach to research evidence was put most clearly by Mr. Rob Nicholson, the Minister of Justice, in August 2010 during an interview with the Canadian Press where he stated 'We don't govern on the basis of statistics. We govern on the basis of what we hear from the public and what law enforcement agencies tell us' (Chiasson, 2010). The government's intense reliance on persuasive and rhetorical arguments makes sense in terms of the goal of political deliberation, which is to persuade others of your position, however it is rare to persuade MP's of one party to vote against party lines (Fairclough & Fairclough, 2012). Thus, this debate can be seen as symbolizing a governmental technique to operationalize a new right discourse in which ideology

becomes a new way of acting and interacting within the social realm (Fairclough & Fairclough, 2012; Naughton, 2005).

Who's Voice Counts?

The third question this thesis addresses is:

> In term of rhetorical devices and strategies, how did the public and/or academic and legal expertise factor into the argumentation process?

This question is a variation of the previous question on the role and nature of evidence. Again, the government and the opposition placed differing degrees of importance on the significance of different voices in the Canadian public. The government relied on what I term emotional voices (see Duran, 2009), whereas the opposition relied on what I term logical voices.

The government favoured attending to voices that supported its stance on mandatory minimum sentences, as one might expect. This included victims and victims' rights advocacy groups, the Canadian Police Association, and the RCMP. They also focused on prominent voices that supported mandatory minimum sentences such as the Mayor of Winnipeg and the New Brunswick Minister of Justice. I termed these types of voices as emotional voices as their testimony relied more on emotionally persuasive and rhetorical denunciations than on reliable fact. This was especially true of the voices of victims, victims' advocacy groups and various police associations seeing as these groups have typically experienced crime on a personal level.

In contrast, the opposition favoured attending to voices that opposed the government's position on mandatory minimum sentences, again as one might expect.

However, these voices included academic experts, legal experts from the Canadian Bar Association, correctional experts from the John Howard and Elizabeth Fry Societies, and judges among others. I termed these types of voices logical or rational as they presented rational and logical evidence such as government statistics, government reports and academic research, rather than emotionally charged anecdotes. It is important to note that most of these groups, especially academics and judges, have a certain responsibility to act in an unbiased manner and therefore the evidence they presented tended to be less emotional. The distinct ways the government and the opposition responded to and placed importance on different voices throughout the C-10 debates demonstrates government preference for selectively engaging with testimony that supported its position on mandatory minimums, while selectively ignoring and rhetorically rejecting testimony that did not support mandatory minimums.

The government's preference to engage with emotional voices while ignoring logical voices is significant in the sense that it privileges and serves the interests of this government, which are both to displace the social agenda of Canada's heretofore inclusive social welfare agenda. This selective engagement strategy speaks to power dynamics at play within the C-10 debates. Throughout the Bill C-10 debates, the government can be argued to have made a clear effort to limit the presentation of evidence and voices of dissent. The government made multiple time allocution motions that restricted the amount of time allocated for debate and witness testimony. During the committee stage, witness testimony was allocated a mere five minute statement and five minute question and answer period. This led to witnesses being refused the opportunity to complete their statements.

This strategy holds serious implications for the state of democratic deliberation in Canada. Within democratic deliberation, the public's preferences are expressed and transformed through public reasoning, in a 'process where everyone has the right to advance and respond to reasons, propose issues and solutions for the agenda, and justify or criticize proposals' (Fairclough & Fairclough, 2012, p. 30). By restricting members of the public and academic and legal experts assumed democratic right to react and counter the proposal for action from the government, the government effectively exercised its political power to adjust the process of democratic deliberation to serve its own interests.

The constraint on testimony by dissenting public voices as well as the expressed disdain towards academic and legal experts by the Harper government can be argued to follow from an adoption of the new right and market populist rationalities. As discussed above, this strategy incorporates contempt towards 'elites' and 'special-interest' groups (Sawer & Laycock, 2009). The ways in which academic and legal experts recommendations were restricted and dismissed is indicative of the anti-intellectual stance of the Harper government. Stephen Harper has been quoted stating that his rationale is based on 'democratic reform and the accountability of government to the people' (Harmes, 2007, p. 417), reflecting an alleged commitment to the 'ordinary' Canadian and consequently condemning special-interest groups.

The new right promotes maximizing its punitive civic power to effectively enforce its particular vision of the social order on those who threaten it in order to accomplish society's restoration to a mythologized 'golden age' when crime rates were even lower and when authority was respected (Barney, 2002; DeKeseredy, 2009; De Koster et. al., 2008). This ideology and myth explains Canada's embrace of the punitive

turn under the Harper conservatives, and consequently their embrace of mandatory minimums. Thus the government's constraint of expert voices of dissent throughout the C-10 debates served its new right political interests.

As previously mentioned in the battle for evidence section, the inclusion of dissenting voices regardless of whether the government heeded them or not, plays a significant role in legitimizing the outcome of the debate (Naughton, 2005). The selective management of voices within the C-10 debates was significant for manufacturing 'legitimate' authority to implement desired ideological reforms. Regardless of strict time restrictions on testimonies, including voices of public, academic and legal opposition within the C-10 debates served the purpose of portraying the deliberative process as a fair procedure. This effectively legitimized the passage of Bill C-10 despite obvious issues with the democratic process and provided the government with the legitimate authority to proceed with their reform agenda (Fairclough & Fairclough, 2012; Naughton, 2005).

By restricting the number of dissenting voices and by imposing strict time limits on deliberations over the message of these voices, the government facilitated the construction of a specific discourse that favors the operationalization of a new right social agenda and participation in the punitive turn, while at the same time constraining and reducing other competing discourses. By obstructing the presentation of alternative discourses, in what is arguably an attempt to maintain political power, the government encouraged Canadians to believe a certain script about crime. The government strategically framed its own description of crime in Canada in a rhetorically convenient way while blocking attempts to critically question and test the rational acceptability of these descriptions. Therefore, this silencing strategy enabled the government to tell a

specific story about crime in Canada through the lens of new right discourse. They depicted crime as an ever increasing problem in both severity and frequency, which promoted Canada's inclusion in the punitive turn and helped legitimize the exclusion of certain groups (DeKeseredy, 2009; De Koster et. al., 2008; Wacquant, 2010).

Disproportionate Power Relations

The final question this thesis addresses is:

> In terms of evaluating the above, how was practical argumentation utilized to assert or maintain power within this political debate on mandatory minimums?

As noted repeatedly above, there was a discernable difference in the amount of power held by the government compared to the opposition, a power differential authorized by the CPC's majority mandate. This disproportionate power advantage and the government's willingness to champion it fueled and exacerbated the conflict over mandatory minimum sentences, which in turn influenced the course and outcome of the C-10 debate.

There were several noteworthy ways the government utilized its' power to ensure the direction of the debate proceeded in their favor. Most obvious is the fact the CPC was elected with a majority. Research by Conley (2011) has shown that majority governments are more productive and successful than their minority counterparts, especially in relation to legislative productivity. The majority power held by the Harper government essentially ensured the passage of mandatory minimum sentences and Bill C-10 as typically MP's do not vote across partisan lines on key policy initiatives (Webster & Doob, 2007). Stephen Harper has been documented as being incredibly successful at maintaining party

discipline (Behiels, 2010; Conley, 2011; Harmes, 2007; Sawer & Laycock; 2009). The constraints placed on the opposition due to the government having a majority resulted in a 'tyranny of the majority' in relation to the policy outcome (Conley, 2011, p. 434).

Despite the 'guaranteed' passage of Bill C-10 due to the CPC's majority, the government engaged in numerous undemocratic methods of guaranteeing passage of this bill. As outlined above, these included engaging in rhetorical argumentation and ignoring or disregarding rational and logical evidence, limiting debate times for MP's, senators and public, academic and legal witnesses, and altering the character of democratic deliberation to privilege themselves. One of the most consequential ways the government performed in an undemocratic manner was their employment of rhetorical and persuasive argumentation to control the discourse of crime in Canada. This type of argumentation enabled the government to manipulate the story of crime the public perceives and understands, which was hoped would provide continued electoral support for the CPC.

The second main way the government exercised its power was by placing severe and strict time limits on the C-10 debate. They made multiple time allocution motions to restrict the amount of time allotted for witness testimony during the debate. Within the process of normative democratic deliberation, final decisions on the action(s) to be taken are seen as legitimate because they are the outcome of an assumedly 'fair' process where everyone is given 'the right to advance and respond to reasons and to understand … why a certain choice was made' (Fairclough & Fairclough, 2012, p. 31). However, in the context of the C-10 debates, this was not the case. By limiting the voices of MP's, senators and witnesses the government essentially imposed a 'temporal closure on the debate before all relevant views [were] considered' (Fairclough & Fairclough, 2012, p.

222). This action constrained the process of argumentation and the presentation of information and consequently violated the norms and practice of democratic deliberation.

Although it is normative for political deliberations to not end in consensus based on fundamentally different beliefs, values and goals, 'rushing things through without parliamentary scrutiny and without considering the other proposals will end in bad policy being adopted' (Fairclough & Fairclough, 2012, p. 222).This was illustrated earlier during the critical questioning of the governments' claims where alternative proposals and reasoning were disregarded by the government. This resulted in many of the government's claims not be rationally acceptable in light of critical questioning.

Research by Conley (2011) has shown that institutions matter, or more specifically the configuration of policymaking contexts matter. The government's alterations of long-established structures of policymaking hold serious normative implications for democratic deliberation. We need a normative standard by which to judge how 'badly particular institutions distort political behaviors and political decisions' (Conley, 2011, p. 433). By limiting debate and silencing dissenting voices of the Canadian public and academics, the government essentially forced the house into voting on a very significant issue without sufficient debate, thereby altering the form and function of democratic deliberation in Canada to the extent that it loses its democratic nature.

The reasons offered by the government for these unnecessary time restrictions focused on a promise made by the CPC as part of their election campaign, that if they were elected, they would pass Bill C-10 within 100 days (Hansard, 2 Dec 2011). The

government also argued that parts of Bill C-10 had already been debated in previous Parliaments and therefore did not require extensive review (Hansard, 22 Sept 2011). However, the provided reasons do not follow from a normative understanding of democratic deliberation. The purpose of democratic deliberation is to facilitate reasonable and legitimate outcomes in the absence of consensus through an established procedure (Fairclough & Fairclough, 2012). This was highly unlikely to be accomplished considering the restrictions placed on the argumentation process which can be criticized in terms of the negative consequences this action had on the meaning of democracy and Parliamentary deliberation in Canada (Fairclough & Fairclough, 2011; 2012). Therefore the government engaged in using argumentation to exercise its power to ensure the script of the debate favored the CPC's agenda. This was arguably an attempt to hold onto or increase the CPC's political power thereby implying that maintenance of power was a reason behind the proposed legislation (Fairclough & Fairclough, 2012; Conley, 2011).

In sum, the ways in which the government employed the process of argumentation during the Bill C-10 mandatory minimum sentence debate holds serious implications for the continued state of democratic deliberation in Canada. The thesis explored how the Harper government's use of the imbalance of power achieved through a majority mandate affected not just the policy outcome but the policy process. Within Parliamentary procedures, a non-democratic deliberative policy process resulted in irrational and unconstitutional policies becoming law. This thesis has demonstrated how Canada's traditional approach to the administration of justice and democracy had been, at least temporarily, transformed.

CHAPTER 7

CONCLUSION

This thesis research has examined the influence of the role of practical argumentation within the political decision making context of the Bill C-10 mandatory minimum sentence debate. Utilizing a combined method of CDA and PDA to examine Hansard transcripts, this research highlighted how argumentation was utilized in a political decision making setting to legitimize policy making decisions and accomplish policy initiatives. Following my political discourse analysis it is evident that due to fundamental differences between claims, goals and values drawn upon and deployed by the government and the opposition, the government used its majority power to limit and control the Bill C-10 debates. Through engaging argumentation as a mechanism to hold onto or maintain political power by attending to evidence of a primarily rhetorical and emotionally persuasive nature and restricting voices of dissent within debate, the Harper government ensured the discourse of crime in Canada 'reads' a certain way. It is also clear that the government did not engage in argumentation in a manner that rationally holds up in light of critical questioning. This supports the conclusion that this government's approach to practical argumentation was not based on rationality, but rather on new right values and ideology.

As noted earlier in this thesis, the Liberal government of Justin Trudeau has just come into power. The new Trudeau government was elected, in part, due to its promise to restore democratic decision making based on evidence and reason, a campaign promise reiterated in the mandate letter to the newly appointed Minister of Justice (Trudeau, 2015). It remains to be seen whether and how the Harper government's crime control

policies and its reconstitution of parliamentary practices are reversed. In the C-10 debates, however, the Harper government made a point of portraying crime as an increasingly serious problem which required an immediate moral solution, while refusing to seriously consider evidence and testimony to the contrary. The Harper government's actions were predicated on the hope that depicting a specific, alarming vision of crime in Canada would be highly beneficial in garnering public support to achieve the CPC's key political agenda – re-election with a majority. This hope has not been realized.

Also not realized is the Harper government's attempt or hope to displace rule of law concerns. This is made clear in numerous Supreme Court Canada decisions that have overturned or softened various Harper government tough on crime laws. It is also made clear in Trudeau's mandate letter to the Minister of Justice which twice makes reference, separately, to 'the *Charter*' and 'the rule of law'. Most salient to this thesis is the Supreme Court and Ontario Superior Court's ruling that mandatory minimum sentences as advanced in various Harper government crime bills constitutes cruel and unusual punishment (R. *v.* Nur, 2015 & R. *v.* Vu, 2015). As these rulings demonstrate, the *Charter* constitutes a significant constraint on punitive turn pressures in the Canadian context.

The implications this research holds for the continued state and function of Parliamentary deliberations and Canadian society are worrying, notwithstanding Supreme Court reversals of punitive legislation, and the Harper governments dramatic fall from grace on October 19, 2015, when Justin Trudeau, the son of the prime minister who brought us the *Charter,* won a majority. The dynamics at play in the C-10 deliberations call into question the role and function of the salience of research evidence to policy

making and political decision making, and which voices within the Canadian citizenry are accorded standing in what is supposedly a public decision making setting. Will the newly elected Trudeau government, as indicated in three mention of 'consultation(s)' in the mandate letter to the Minister of Justice, restore more authentic democratic deliberation to the policy making process, or will the new Liberal government or future Conservative and/or Liberal governments continue to undermine democratic policy making? Only time will tell.

With respect to criminology, this research highlighted a central issue within policy making; that changes in federal government are often accompanied by changes in criminal justice policy. Criminal justice policy has become increasingly politicized, a process in which political leaders attempt to use criminal justice issues to enhance their popularity and power. This thesis has shown not only that crime policy shifts, adjusts and transforms alongside changes in government; it has shown how practical argumentation works to accomplish what are inevitably temporal political gains. At the same time, it has called attention to the persistent and permanent relationship between criminal justice and politics. Notably, is that the contribution of this thesis is not to add to knowledge on what the Harper government did, rather it's contribution is that it shows how politically controversial changes to criminal justice policy were discursively accomplished, and how this accomplishment can be analytically and normatively evaluated. This is the value that Fairclough and Fairclough (2011; 2012) brings to the important interface between criminology and politics.

This research has attempted to fill a gap in the literature concerning how argumentation is used to debate controversial criminal justice legislation, with a focus on mandatory minimum sentences. Future research is needed to examine the way that argumentation is utilized to advance and oppose controversial legislation in Canada under post-Harper governments, and to examine how the processes addressed in this thesis are playing out in other jurisdictions. Finally, further research is needed to examine how argumentation is used to dismantle or to retain new right discourses within the political decision making contexts that manifest in the years ahead.

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APPENDICES

Appendix A

Number of times "mandatory minimum(s)", "sexual" and "drug(s)" was cited during C-10 debates.

Date	Mandatory Minimum(s)	Sexual	Drug(s)	Total
21 Sept 2011	30	26	110	166
22 Sept 2011	18	30	42	90
27 Sept 2011	95	103	93	291
18 Oct 2011	28	6	92	126
20 Oct 2011	15	23	42	80
23 Nov 2011	115	9	155	279
29 Nov 2011	76	59	96	231
13 Dec 2011	15	2	13	30
1 Feb 2012	70	25	47	142
2 Feb 2012	25	8	73	106
8 Feb 2012	41	13	30	84
15 Feb 2012	55	0	255	310
21 Feb 2012	51	310	8	369
23 Feb 2012	84	43	59	186
24 Feb 2012	89	24	38	151
27 Feb 2012	44	5	90	139
1 Mar 2012	133	39	171	343
6 Mar 2012	51	32	59	142
9 Mar 2012	28	14	56	98

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