

BOGEY MEN AND THE LAW: CRIME COMICS AND PORNOGRAPHY

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I. INTRODUCTION

It is against the law in Canada to sell crime comics. The relevant passages fall under the obscenity provisions of the *Criminal Code*¹ and lay down the law as follows:

159.(1) Every one commits an offence who

...
(b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation, a crime comic.

...
(6) Where an accused is charged with an offence under subsection (1) the fact that the accused was ignorant of the nature or presence of the . . . crime comic . . . is not a defence to the charge.

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

(a) the commission of crimes, real or fictitious, or
(b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene. . . .

...
161. Every one commits an offence who refuses to sell or supply to any other person copies of any publication for the reason only that such other person refuses to purchase or acquire from him copies of any other publication that such other person is apprehensive may be obscene or a crime comic.

In large part, this law stems from a private bill launched in the House of Commons in 1948 and given its final reading on December 5th, 1949. The author of this bill was E. Davie Fulton, lawyer, Rhodes scholar, Progressive Conservative member for Kamloops, later federal Minister of Justice, still later Justice of the British Columbia Supreme Court and, most recently, champion of the Lubicon cause. Paragraph 159(7)(b) was added in the 1953-54 session in response to problematic

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¹ R.S.C. 1970, c. C-34.

court decisions.² Subsection 159(8) and section 161 were introduced in 1959 to meet new challenges.³ There have been only four reported decisions to do with these sections.⁴ In addition, I have come across reference to three unreported cases.⁵

All of these cases were tried during the first half of the 1950s. Crime comics enforcement in this country then went into hibernation for more than thirty-five years. What has aroused my interest is the most recent campaign against pornography which, of course, also relies on the obscenity sections of the *Criminal Code*. I began my research in 1984, wrote up my original thoughts in 1985 and revised them for presentation before the Canadian Law in History Conference which took place at Carleton University in June 1987. This current revision aims at a format which will hopefully spark discussions of two questions:

1. What purpose is served by allowing some segment of the population to write its own personal view of morality into our major document of criminal sanction?
2. Can harm arise when such provisions remain on the books long after the social beliefs which informed them have faded from memory?

I would like to stress that I am not particularly troubled by moral beliefs that can be tied directly to demonstrable harm. For example, I have no problem whatsoever with sanctions attached to assault or murder and my qualms regarding the punishments meted out for property offences have to do with inequities of property distribution in this society, rather than with property offences as crimes, *per se*. I am, however, deeply troubled by the criminalization of human acts which, while perhaps repulsive, do no harm other than allowing or even encouraging people to indulge in anti-social fantasies. I may deplore their failure of nerve, their inability to deal with life in an honest, straightforward and productive manner, but I really need more evidence that they intend to turn their black thoughts into foul deeds before I will hail the passage into law of measures which have the effect of censoring the reading material of each and every one of us and of curbing the creativity of our artists. Clearly, advocates of these morality provisions are also troubled by a desire to back up their beliefs with evidence of harm or they would not go to such lengths to try to show that it exists. This was true no less of the anti-

² *Criminal Code*, S.C. 1953-54, c. 51, s. 150(7)(b).

³ *An Act to amend the Criminal Code*, S.C. 1959, c. 41, ss. 11, 12.

⁴ *R. v. Alberta News Ltd.* (1951), 101 C.C.C. 219, 2 W.W.R. (N.S.) 691 (Alta. Police Ct.); *Roher v. R.* (1953), 107 C.C.C. 103, 10 W.W.R. (N.S.) 309 (Man. C.A.); *R. v. Superior Publishers Ltd.* (1954), [1954] O.R. 981, 110 C.C.C. 115 (C.A.); *R. v. Kitchener News Co.* (1954), 108 C.C.C. 304, [1954] O.W.N. 424 (C.A.).

⁵ *R. v. Montreal Newsdealers Supply Co.*, *R. v. American News Co.* and *R. v. Benjamin News Co.* all tried before Cloutier J. in the Montreal Criminal Court, 6 June 1955. Cited in C. Sampson, *Abolishing Crime Comics* (November 1957) 18 FOOD FOR THOUGHT 74 at 74-76, 81.

crime comics reformers of mid-century than it is of the resurgent pro-censorship movement of today.

This paper will look, in turn, at the nature of crime comics, the public campaign against them and the legislation sparked by that campaign. In my conclusion, I would like to make some comparisons to the current campaign and to answer the questions I have posed above.

II. CRIME COMICS

What is a crime comic? Originally the definition was applied to gangster series such as *Crime Does Not Pay* and *Crime SuspenStories*. Typically, these would utilize the first fifty frames of the traditional comic format to portray the planning and carrying out of a crime. In the fifty-first frame the police would arrive. In the last frame, the criminals would be subjected to a lecture regarding the wages of crime and hustled off to justice. The criminals never won; they were not heroes in the strict sense but they did get the vast majority of air time.

The early censorship initiatives were aimed at these comics specifically, labelling them how-to manuals for would-be delinquents. In short order, comics giving the police a more clearly heroic role appeared and were also attacked by campaigners. Perhaps the most easily recognized example is *Dick Tracy*, which survived in bowdlerized form in even Canadian newspapers into the 1960s and was parodied by Al Capp in the Fearless Fosdick segments of *L'il Abner*. Not only did the criminals in *Dick Tracy* never win, they were also extremely ugly.⁶ Despite the lip service paid in these books and strips to the long-term advantages of being good over the short-term gains available through evil, campaigners still felt that the content of the majority of this material outweighed the moral moment tacked on at the end. *Dick Tracy*, itself, would be the subject of one of Canada's scarce crime comic prosecutions.⁷

By the time the anti-crime comic campaign really got rolling in the late 1940s, the campaigners' definition of crime comic had widened to the point where it included any type of material portraying acts which the campaigners themselves regarded as improper. Included were not only comics openly about crime but also the various superhero series such as *Superman* and *Wonder Woman*. These were thought to instill in children the Nietzschean belief that it was allowable to transcend societal structure, so long as you garbed yourself with the self-righteous cloak of vigilantism. Later in the campaign, horror comics would arise as alternatives and would in turn be vilified, and "true love" stories would be denounced for supposedly presenting girls with unsavoury options to their preordained roles of wives and mothers. Admittedly, some of the goings-on

⁶ C. Gould, *Dick Tracy* in M. Sheridan, ed., *CLASSIC COMICS AND THEIR CREATORS: LIFE STORIES OF AMERICAN CARTOONISTS FROM THE GOLDEN AGE* (Arcadia, Cal.: Post-Era Books, 1973) at 122.

⁷ *Roher v. R.*, *supra*, note 4.

in some of these comics were pretty unpalatable: there was violence, there was racism, there was sexism. Still, it was mild fare indeed, compared to what we all now quite uncomplainingly ingest daily through all sorts of media.

While it is true that many of the offending publications were American in origin, identified in a similar British campaign as "Yank Mags",⁸ Canada could not argue that such literature on its shelves was entirely the result of cultural imperialism. With the inception of a ban on American imports early in World War II, for economic not cultural reasons, a Torontonian named Cyril Vaughan Bell turned from sign painter to comic book publisher. At its peak, his company sold 100,000 comic books a week and employed sixty artists.

In these comics, quintessentially Canadian heroes such as the Brain, Johnny Canuck and Dixon of the Mounted saved themselves, large-breasted women and Canada from evil aliens. Bell's profitable business wound up in 1947 after the lifting of the embargo on the American product. Bell strictly forbade the use of horror for horror's sake: " 'If there was a mad scientist, . . . I wouldn't even let him plunge a hypodermic needle into anybody' ".⁹ In a situation of free competition, Canadian self-effacing niceness could not compete with American amiable warlikeness.

III. THE CAMPAIGN

This was the type of literature that caught the interest of a psychiatrist with the Lafargue Institute in New York City, Dr. Fredric Wertham. Wertham worked with juvenile delinquents and was convinced that many of their anti-social acts were caused by the crime comics. He began his public campaign in 1940, first in magazine articles and on radio, later expanding into television and books. By the late 1940s, Wertham's articles on the topic had begun to gain public attention and copies of several of them are preserved in the Fulton papers, deposited in the National Archives of Canada.¹⁰ His major work, however, a book called *SEDUCTION OF THE INNOCENT*¹¹ was not published until 1954, six years after Fulton introduced his first bill. This time lag demonstrates the hardness of the issue but it also demonstrates the early failure of the campaign to obtain the results expected.

Modern critics of the campaign have made a good case for the assertion that Wertham profited from the sensationalism of his topic —

⁸ See M. Barker, *A HAUNT OF FEARS: THE STRANGE HISTORY OF THE BRITISH HORROR COMICS CAMPAIGN* (London: Pluto Press, 1984).

⁹ A. Ross, "The Wild World of Wartime Comic Books" 77 *Maclean's* (19 September 1964) 27 at 30.

¹⁰ National Archives of Canada, E. DAVIE FULTON PAPERS, MG32, B11, vols. 15-17 [hereinafter E.D.F.].

¹¹ F. Wertham, *SEDUCTION OF THE INNOCENT* (New York: Rinehart, 1954).

that he took advantage of the process as much as he sought to shut it down. As evidence of his attraction to sensational subjects, his later book *THE SHOW OF VIOLENCE*¹² is cited.¹³ In it Wertham reproduced case studies of people who had perpetrated particularly violent or bizarre crimes, for example, a man who strangled and ate a ten-year-old girl after embedding twenty-seven needles in his own crotch. One of Wertham's complaints about crime comics series such as *Crime Does Not Pay* was that, while they purported to teach children about the immorality and unprofitability of crime, they really sold on the strength of the portrayal itself. It is possible to see how competent critical analysis could hoist Wertham on his own petard. *SEDUCTION OF THE INNOCENT*, however, was not subject to much critical analysis at the time of publication. Many of the reviewers were as convinced of Wertham's views as was Fulton, whose own review for *The Ottawa Citizen* is preserved in his papers.¹⁴

There can be no doubt that there was considerable violence for Dr. Wertham and other critics to discover in children's comics. One reviewer accurately described the excerpts Wertham used for *SEDUCTION OF THE INNOCENT*:

Grouped together in the middle are sixteen pages of illustrations taken from American children's comics. They include a front page showing with every realistic nuance an un-American type choking in a noose. Others include a motor-car dragging two living people to their death. A gloating face above rejoices in the fact that no one will be able to identify "the meat" after the faces are "erased". In other pictures a woman is having her eye put out with a needle; a man having his face crashed in with a nailed boot; girls are about to be raped, in one case with a red-hot poker. One blonde girl points delightedly to the hanging bodies of Negroes. A page is devoted to a chart showing how a man can best be hurt by having his eyes gouged out, his temple or stomach kicked, his throat or nose smashed with suitable blows and, indeed, how every vulnerable spot, except one, can be effectively attacked. This male figure wears trunks and the child is not instructed how to kick him in the groin.¹⁵

Wertham has since been accused of slovenly research and of editing his illustrations to gain unfair advantage.¹⁶ Nevertheless, there can be little doubt that many of the comics demonstrated neither literary merit nor good taste. However, simply because he makes telling criticisms about the poor values expressed in these works is no reason in itself to accept his own view as some sort of universal truth deserving of elevation

¹² F. Wertham, *THE SHOW OF VIOLENCE* (New York: Greenwood Press, 1969).

¹³ L. Daniels, *COMIX: A HISTORY OF COMIC BOOKS IN AMERICA* (New York: Outerbridge & Dienstfrey, 1971) at 87-88.

¹⁴ E.D.F., *supra*, note 10, vol. 18. For other Canadian opinions, see S. Katz, "What About the Comics?" 61 *Maclean's* (1 December 1948) 7 at 72; M. Shiell, *Crime Without Punishment* (May-June 1954) 14 FOOD FOR THOUGHT 19.

¹⁵ K. Martin, "Sadism for Kids" 48 *The New Statesman and Nation* (25 September 1954) 347.

¹⁶ See, e.g., Daniels, *supra*, note 13 at 88-89.

into law. For example, Wertham was particularly critical of *Wonder Woman* whom he believed frightened little boys and destroyed the future of American womanhood.¹⁷ According to Wertham, she had been conceived by a psychologist hired by the industry to come up with ways to bring girls into the comics market. The psychologist pointed out that women in these comics played no role except that of victim — either good girls harassed by bad guys or bad girls chastized by good guys — and suggested the woman with the golden lasso as a solution.¹⁸ It would seem that the women of that era were not particularly troubled by Wertham's views on the proper deportment of ladies. Many of them supported the legislation he proposed — legislation still left on the books to haunt women of very different conviction forty years later.

No matter what we may think of Wertham's notions today, we must realize that these arguments spoke directly to some need among a large group of adults at the time. His torch was picked up by various interest groups, most notably the American parent teacher associations in 1948.¹⁹ From there it seems to have travelled to the British Columbia PTA which in turn contacted Fulton. It is clear that the campaign was already known to other Parliamentarians by the time that Fulton introduced his bill and, in overwhelming part, they were as appalled as he was.²⁰ However, Fulton is clearly responsible for bringing legislative focus to the campaign. The ever-vociferous Right Honourable John G. Diefenbaker congratulated him on this in the House and remarked on the fact that the Canadian press was now taking the matter up seriously.²¹ Diefenbaker, also a lawyer identified with social reform movements, was no stranger to the crime comics campaign: his own papers contain references to crime comics from as early as 1946.²² However, the cause would in short order become almost totally identified with Fulton and the legislation known as the Fulton Bill.

All this would not happen right away. Fulton's first initiative in the House would fail, not because of any failure to take his proposal seriously but because the Minister of Justice, The Honourable James L. Ilsley, long-time dedicated politician and later Nova Scotia jurist, simply could not see how a provision could be drafted that could and would be enforced.

¹⁷ Wertham, *supra*, note 11 at 34, 64.

¹⁸ *Ibid.* at 234.

¹⁹ R.C. Reitberger & W.J. Fuchs, COMICS: ANATOMY OF A MASS MEDIUM (London: Studio Vista, 1972) at 135.

²⁰ However, Arthur Leroy Smith of Calgary West cried out in the course of debate: "Do not ban my blood spitters; I love them." Canada, H.C. *Debates*, 4th Sess., 20th Parl., [1948] vol. 5 at 5201 (14 June 1948).

²¹ Canada, H.C. *Debates*, 4th Sess., 20th Parl., [1948] vol. 5 at 4939 (9 June 1948).

²² Rt. Hon. J.G. Diefenbaker Centre, JOHN G. DIEFENBAKER PAPERS, 40-56 series, vol. 21 at 15089-106 [hereinafter J.G.D.].

IV. THE LEGISLATION

So far as Canadian legislation is concerned, the story starts on June 3rd, 1948. In the midst of a discussion in the House of Commons on juvenile delinquency in reference to a proposed amendment of the *Canada Evidence Act*, Fulton fired the first shot in his war against crime comics. During discussion of the phrase "does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent",²³ he rose to cite a figure of 15,000 crime comics per month sold in the city of Kamloops (which had a population of only 12,000) and asked the Minister of Justice how he felt about the difficulty of controlling such publications. Ilsley's reply sums up the problems inherent in statutorily controlling the reading tastes of the public, citing specifically the vagaries of "public opinion", the difficulties in defining "decency", and the problems in general of getting a conviction regarding such an "intangible thing". He proclaimed the legislation already sufficient to punish harmful acts and urged Fulton to lay charges under the provision being discussed if he felt "that the publication of certain crime comics contributes to juvenile delinquency".²⁴

Ilsley made it clear that his negative attitude did not stem from any desire to protect from prosecution the producers of such literature. He agreed with Fulton that these publications represented "a shocking instance of the abuse of freedom of the press" but insisted that they were nonetheless legal.²⁵ It is clear he felt the campaign would founder on the harm question. However, Ilsley was looking at the law from only one point of view, one under which there is no gain in passing laws whereunder you stand little chance of getting a conviction. But there are reasons other than punishment of individual perpetrators for enacting legal sanctions. One is to give minor justice officials, for example, policemen and customs officers, a stick to wave. Another is to publicize the existence of that stick and thereby scare off anyone hoping to avoid any hint of trouble in his or her daily existence. Much like *in terrorem* clauses in contracts, the legality of the threats is not at issue; what is wanted is to terrify people into submission. I suppose these could be termed preventative measures, although I find myself not entirely happy with either their intent or their method. Such measures serve to regulate our lives superstitiously, only rarely being put to proof before our courts.

It seems clear, however, that Fulton's efforts sprang from a sincere belief that crime comics committed harm. He was confident that the type of literature he was campaigning against was "one of the active causes of juvenile delinquency".

²³ *The Juvenile Delinquents Act, 1929*, S.C. 1929, c. 46, s. 33(1), as rep. *Young Offenders Act*, S.C. 1980-81-82-83, c. 110.

²⁴ Canada, H.C. *Debates*, 4th Sess., 20th Parl., [1948] vol. 5 at 4754 (3 June 1948).

²⁵ *Debates, supra*, note 21 at 4939.

I have spoken to people who have had experience in this type of thing and in dealing with juvenile delinquents in magistrates court and so on, and they say that, without any doubt, this type of magazine is printed in a form which is calculated to make the maximum impression on juvenile minds. They portray crimes of violence, in pictures, with a few words as a caption which are easily understood.

[I]t is difficult to prove that these magazines do actually increase juvenile delinquency, but one can say at least that two coincidences go together, that there is an increase in juvenile delinquency and an increase in the circulation of this type of magazine in Canada.²⁶

As the campaign proceeded, this unproven link between juvenile delinquency and crime comics would become, somehow, a rebuttable presumption which opponents were forced to try to deflate. Given the dearth of scientific fact and the variance of expert opinion, that would prove extremely difficult to do.

So what we have is a campaign demanding a legal solution to a perceived social problem which is difficult to define in legal terms. Ilsley would repeatedly plead difficulty in drafting an intelligent provision and, in the end, the wording settled upon lacks grace and style as well as definition. But that really was not Fulton's concern. The job he had taken upon himself was separate. It was the role of Parliamentary representative for a very vocal group of people who saw crime comics as a very serious threat to the ability of children to grow up without risk of criminal taint. For this group, no matter what the difficulties, a legal solution must at least be attempted. It is clear from Fulton's papers that he was recruited for the cause sometime around April 1948 by constituents from his Kamloops riding who were responding to a general write-in campaign initiated by the British Columbia Parent Teacher Association.²⁷

Under different circumstances, Ilsley might have been able to stick to his guns and refuse to comply with Fulton's demands. Private member's bills traditionally pack small clout and may spend years in the wilderness before finding a firm niche in the agenda. However, the Liberal government of which Ilsley was a member could not afford to ignore any volatile issue. There was an impending general election and it was soon clear that Fulton was not the only Progressive Conservative planning to use crime comics as an election platform.²⁸ On June 14th, 1948, Ilsley read out a draft amendment to be added to what was then subsection 207(1) of the *Criminal Code*. Under it, the law would read that everybody commits an offence who

(d) prints, publishes, sells or distributes any magazine, periodical or book which exclusively or substantially comprises matter depicting pic-

²⁶ *Debates*, *supra*, note 24 at 4932-33.

²⁷ E.D.F., *supra*, note 8, vol. 15.

²⁸ Evidence of press coverage, write-in campaigns and crime comics as an election issue can all be found in the correspondence from this period. *See ibid.*

torially the commission of crimes, real or fictitious, and thereby tending or likely to induce or influence youthful persons to violate the law or to corrupt the morals of such persons.²⁹

After reading the draft, Ilsley announced that he had no intention of introducing it for legislation. He gave five reasons for this decision. The first was that the amendment was "somewhat uncertain" and publishers would be unsure whether they were breaking the law. The second was that there were distinct possibilities for evasion: the phrase "exclusively and wholly" was felt necessary to allow newspapers to print photographs of actual crimes but it left the door wide open to abuse by magazines only partly, but still prominently, devoted to the portrayal of crime. Third, charges of discrimination could be levelled were horror movies not similarly prevented. Fourth, all the letters of support for the ban came from British Columbia whereas the Attorneys General of all provinces would have to enforce the ban if passed into law. Fifth, there was simply no evidence that such publications induced crime.

On this last point, Ilsley cited the opinions of top officials of the Canadian National Committee for Mental Hygiene, judges and top police officials. None of these people thought the comics were anything less than vulgar trash but none of them thought they were more, either.³⁰ Ilsley said there was simply not enough evidence to allow him to proceed: "I, as Minister of Justice, cannot lightly consider introducing amendments to the criminal code on the ground that a certain thing does not do any good and may do some harm. That would not be a responsible course to follow."³¹

Ilsley proposed that the matter be considered at the next session of Parliament.

If it can be established that crime comics are having the effect of an inducement to crime and are causing young people to set fires, stab and shoot and grow up into criminals, they ought to be banned entirely, and I would be fully justified in adding such a provision to the present sections of the criminal code, but in the absence of some agreement among those who have had an opportunity of judging this matter I do not consider that I would be justified in introducing legislation.³²

Fulton made a last attempt, arguing that it was parents and educators, the very people the anti-censorship faction said comic control should be in the hands of, who were lobbying for the ban. They apparently declared themselves to be flummoxed in their efforts to keep this literature from curious children. He furthermore felt the legal problems were not major. Juries could be trusted to sort out which magazines were exclusively or substantially devoted to crime and which were not, and those Attorneys

²⁹ *Debates, supra*, note 20 at 5200.

³⁰ *Ibid.* at 5200-01.

³¹ *Ibid.* at 5201.

³² *Ibid.* at 5202.

General who did not like the amendment need not enforce it.³³ He was, however, forced to accept his defeat philosophically. His correspondence from this period indicates that he had had doubts whether he could push the amendment through that year as he had started late in the session. He would introduce it again to the new House and in the interim work at getting evidence of the link between crime comics and juvenile delinquency.

The debate over direct harm is, as with pornography, the most important legal issue in the crime comics campaign. The fact that crime comics were offensive to possibly a large, certainly a vocal, segment of the Canadian population, could not be reason enough to create a new offence under the *Criminal Code*. To justify enshrinement in our major document of sanction for anti-social behaviour, some argument must be made to show that variance from the *status quo* is justified by an actual threat to "our way of life".

Clearly, the Canadian *Criminal Code* contains sections, the flaunting of which, would create something less than societal breakdown. Still, there must be some clear indication that allowing the type of activity proposed for elevation to criminal status would affect some citizen(s)' rights in a manner considered unacceptable by this society. Since creation of an offence also, by definition, restricts the activity of citizens, it may be necessary to argue that creating the offence causes less damage to civil rights than does allowing the activity to continue.

The conviction that harm must be shown by the opponents of crime comics is clear in Ilsley's first draft, cited above. Such literature was to be banned should it tend to induce or influence a youth to take up a life of crime or, less drastically, merely to corrupt his or her morals. Such clauses are common in laws dealing with portrayals of obscenity, be it literature, moving pictures, sculpture or other similar forms of expression, and are always a focus for contention. A good discussion, from the civil libertarian side, of the inequities of such a law can be found in an introduction by A.P. Herbert to a book dealing with the history of obscenity campaigns in Great Britain.

Herbert points out that anti-obscenity campaigns are, by nature, cyclical. His own earlier experience came in 1929 and his interest at the time of writing (mid-1950s) was sparked by a new general anti-obscenity movement of which the comic campaign was only the opening shot. Herbert admits he has not much sympathy for those whom he dubs the "dirt for dirt's sakers" but feels even they deserve a more clearly drafted law than the English stipulation banning literature tending "to deprave or corrupt". He says such vague language denies the pornographer defences given to the arguably more societally destructive murderer or robber.

³³ *Ibid.*

For one thing, some damage must have been done: someone must have been slain or robbed. For another, the accused person can give some explanation of his conduct: for it is a principle of the law that there can be no criminal guilt without a guilty mind. . . . But here there is no such distinction. The accused may be convicted without evidence or proof of a wrongful intention — or damage done. No father comes forward and says: "Look at my little Evie. She was a good girl till she read *Love and Destiny*."³⁴

Canada's solution to this drafting problem in the case of crime comics would be to drop the stipulation altogether that the comics be shown to influence violation of the law or corruption of morals! Parliament would also, after even longer debate, opt to erase the requirement that the purveyors of crime comics must have done so "knowingly and without lawful justification or excuse". To the contrary, it instead passed what is now subsection 159(6) with the express purpose of removing any defence of ignorance from the head officers of publishing companies and large retailers. What was passed in the end was a sanction against the purveying of crime comics under any circumstances whatsoever and a definition of crime comics broad enough to cover a wide range of pulp literature.³⁵

The most extensive official debates on the issue took place in the second session of 1949. Bill 10 was given first reading on September 28th, 1949. It proposed an amendment identical to Ilsley's of the year before, that is, it would keep in the "knowingly" stipulation already present in the section to which it was to be added and would require proof of corruption. The real debate would begin at the second reading of October 4th, continue extensively, when the schedule allowed, throughout that month and end with the third and final reading on December 5th, 1949.³⁶

It is a curious process to watch the amendment being torn to shreds not, as is so often the case, with the intention of emasculating the proposed law but with the intention of making it immeasurably stronger. Although there was the occasional passing reference to freedom of the press in particular and to civil liberties in general, no voice spoke out firmly for strong tests for intention to produce harm or, indeed, for proof of harm at all.

There are two reasons for the fact that the law emerged in its more abbreviated and more powerful form. One has to do with the fact that all along, everybody agreed there should be no censorship. This appears at first glance quite odd but research soon reveals that what was meant

³⁴ A.P. Herbert, *Introduction* in N. St. John-Stevas, OBSCENITY AND THE LAW (New York: da Capo Press, 1974) xi at xiv-xv.

³⁵ See the modern equivalents of these sections, *supra*, part I. They are virtually the same as those passed in 1949.

³⁶ Canada, H.C. *Debates*, 1st Sess., 21st Parl., [1949, 2d Sess.] vol. 1 at 317 (28 September 1949), 511-18 (4 October 1949), 578-89 (6 October 1949), 624-26 (7 October 1949), 1036-43 (21 October 1949); vol. 3 at 2687-99 (5 December 1949).

was that the solution was not to be an administrative one, that is, there was to be no censorship board with members chosen with a clear policy purpose in mind and who would be expected to develop that policy further. Rather, the matter was to be dealt with solely through the judicial route and decisions were to be left up to juries, the members of which were thought unlikely to be attuned to the legal niceties of intent and the psychological niceties of tendency to corrupt. These had previously proved stumbling blocks in getting convictions for obscene literature under the old section.

Under the proposed new legislation, all was to be made simple: it would now be against the law to purvey a crime comic and crime comic was defined as literature pictorially depicting crime.³⁷ This seems almost like an attempt to railroad enforcement of one faction's beliefs into the *Criminal Code* and one feels some kinship with Herbert's sympathy for even the "dirt for dirt's sakers". But the aura surrounding the passing of this law bespeaks nothing if not good faith. Parliament was not trying to legislate against the public interest. Instead, it was sincerely trying to give effect to what evidence it had of the public will.

This is the second reason for the blanket nature of the crime comic amendment. It would seem that public opinion was staunchly behind a bold approach. I am on somewhat thin ice here, as the only major documentary source I have consulted is the Fulton papers.³⁸ Diefenbaker's papers also contain a small amount of material but he was, similarly, in favour of the legislation. His papers do, however, contain some correspondence from the other side, the comics publishers themselves.³⁹ Fulton's, not surprisingly, were assembled from sources one-sidedly in favour of the amendment.

There exists, however, other evidence of a Canadian groundswell. One source is Canada's popular magazines of the period, notably *Maclean's* and *Saturday Night*. Another is secondary books on the history of comic books which refer to grassroots campaigns and their effectiveness in removing crime comics from the newsstands.⁴⁰ A third is the prevailing climate of conviction among the Parliamentarians discussing the Bill.

The anti-crime comic campaign was clearly perceived as a good bandwagon to be on. As one Member of Parliament pointed out, many of the new members of this new Parliament chose it as the topic for their maiden speeches.⁴¹ Those speaking gave various reasons for supporting a ban on crime comics. One was that they were un-Canadian and this

³⁷ See especially Fulton's speech, *ibid.* at 511-16.

³⁸ E.D.F., *supra*, note 10.

³⁹ J.G.D., *supra*, note 22.

⁴⁰ See SEVENTY-FIVE YEARS OF THE COMICS (Boston: Boston Book & Art, 1971); J. Robinson, THE COMICS: AN ILLUSTRATED HISTORY OF COMIC STRIP ART (New York: G.P. Putnam's Sons, 1974).

⁴¹ H.C. Green, *Debates*, *supra*, note 36 at 624.

country should be building its own culture.⁴² Another was that they tempted children away from better literature, although it was admitted that the country was woefully short of libraries.⁴³ A third was that the publishers of comics were direct contenders with parents and educators for control of the minds of children.⁴⁴ But the most common justification was that such literature led children into a life of crime, a belief voiced with great certainty.

That this was a deep-seated and sincerely held conviction is clear from all the sources I have consulted. The *Debates* provide all the arguments in capsule form. One member clearly laid out the underlying belief that the campaigners held in common: "I think we can start with the premise that crime comics are detrimental to youth and have a bad influence upon the moral standards of our young people."⁴⁵ From there the argument had to proceed to evidence that this led to actual criminal activity. That generally led to the recitation of what might be called "The Cases".

Fulton read the facts of "The Cases" into Hansard during his major speech at the second reading. He outlined the

trial of two boys aged eleven and thirteen for murdering James Watson of Dawson Creek, in Canada, in the fall of 1948. During the trial positive evidence was produced to show that the boys' minds were saturated with what they had read in crime comics. One boy admitted to the judge that he read as many as fifty crime comics a week, while the other admitted having read thirty. After the case was concluded, the presiding judge delivered a most direct and scathing criticism of crime comics, laying the blame for this murder almost directly upon their influence.

Many other cases could be cited. In Montreal a boy aged 12 years beat his mother to death with a bat while she was sleeping and at the trial said he had seen that sort of thing in the comics. In Philadelphia Symon Levin, aged 16 years, killed a 12-year-old boy with a pair of scissors. His room was found to be littered with crime comics. In Los Angeles a 14-year-old boy poisoned a 50-year-old woman. He said he had got the idea from a comic book as well as the recipe for the poison. In the same city a 13-year-old boy was found hanged in a garage with a crime comic illustrating that type of thing at his feet.⁴⁶

These and perhaps a dozen more similar stories constituted the evidence of direct harm done by crime comics. Those who were convinced of the direct link sometimes demonstrated a belief in the power of the illustrated word that transcends the wildest flights of Marshall McLuhan. One Member of Parliament worried that perhaps Parliament should not make such an issue of the whole thing as it only added to the sensa-

⁴² G.M. Murray, *ibid.* at 1043.

⁴³ R.R. Knight, *ibid.* at 585.

⁴⁴ J.W. Noseworthy, *ibid.* at 589.

⁴⁵ H.P. Cavers, *ibid.* at 580.

⁴⁶ Fulton, *ibid.* at 514. Wertham devotes a chapter to "The Cases". See *supra*, note 11 at 160.

tionalism. This in turn aroused the morbid curiosity of children. "That in itself has a deteriorating effect on the mind of the child, and a child is quite likely to be tempted to try some of the things he hears about such as skinning victims alive from their necks up or down."⁴⁷

The flaw in this logic is easy to pick out but it is one that has been repeated in innumerable moral campaigns. A current example is the conviction that television violence has a deleterious effect on the crime rate. Close to one hundred per cent of the population watches television. The percentage of criminals in the population is somewhat smaller. Yet, people still use the argument. For example, today's pro-censorship reformers make regular reference to the case of *Niemi v. National Broadcasting Co.*⁴⁸ which dealt with the pop-bottle rape of a young girl by two other girls. The two accused had allegedly been given the idea by a television program in which a woman was similarly violated with a foreign object. How many children saw that program? Why did it move these two and not others? Is this really the issue here? What is cause? What is effect? Would it be too cynical to suggest that these girls, or their lawyers, put forth a justification calculated to gain some sympathy from a court that clearly must have been cognizant of the debate over the effect of television violence on children? Was the television rape a legal red herring? Were the crime comics?

Everyone agreed that all children read crime comics. What significance could be attached to the fact that criminal children, by definition, also read them? Contemporary observers were not unaware of the presence of a dilemma. A cartoon in Fulton's own papers sums it up. A rather thick-looking (both physically and mentally) gaolbird sits in his cell with his arms crossed on his chest struggling to comprehend what his lawyer is proposing. That worthy gentleman (complete with striped pants, strapped briefcase and monocle) leans forward from his stool to say, "[m]y notion is this — we plead guilty, put the blame squarely on the comic books, and throw ourselves on the mercy of the court."⁴⁹ But this type of humour was a voice in the wilderness. Crime comics were considered no laughing matter and the campaign against them was deadly serious. Campaigners sincerely believed them to be the cause of much harm. In the end, it would be the public campaign inspired by Wertham and political followers such as Fulton which would shut down crime comics, not the enforcement by the courts of any broadly drafted statute.

V. THE END OF CRIME COMICS

The criminalization of comics in Canada was not followed by an immediate surge of bottled-up prosecutions and the few Canadian cases

⁴⁷ S.E. Low, *Debates*, *supra*, note 36 at 587.

⁴⁸ 74 Cal. App. 3d 383, 141 Cal. Rptr. 511 (1978).

⁴⁹ B. Tobey, [no citation given but it appears to be *The New Yorker* circa 1948-49] in E.D.F., *supra*, note 10, vol. 15.

reported do not reflect any strong desire to give the section teeth. The first case was heard in 1951 in the Alberta Police Court⁵⁰ where the definition of comic was read widely enough to include *Underworld Detective*, a twenty-five cent magazine containing the "heavier type of reading" (fewer pictures). The case also involved definition of what is now paragraph 159(7)(a) and found that "commission" included connected events before and after the crime. *Underworld Detective* had apparently tried to satisfy the ban by showing everything but the coup de grace. This finding would be enshrined in the 1953-54 amendment of the *Criminal Code* by the addition of what is now paragraph 159(7)(b). It also was upheld in a 1953 test case before the Manitoba Court of Appeal. Here, although the retailer lost at both levels, his only sentence was a fine of five dollars or five days.⁵¹ The next reported case came from Ontario where a conviction for selling crime comics was quashed due to technical reasons of duplicity in the way the charge was drawn up.⁵² A year later, the Ontario Court of Appeal quashed another conviction on the same grounds.⁵³

More satisfying for the campaigners was the first utilization of the section in Quebec in 1955. Three distributing companies were all found guilty and each fined \$1,000 plus costs. The head of the Bureau for Prevention of Juvenile Delinquency of the Montreal police force indicated that this was only the beginning of the use, six years after it was entered on the statute books, of "this simple and practical, yet brilliant piece of legislation".⁵⁴ But it was the decision of the Bureau to prosecute that was the engine behind the convictions, not the *Criminal Code* section itself. Fulton's bill had been constructed with the express purpose of providing citizens with a legal mechanism through which to attack these enemies of their children. But the fact was that such prosecutions were scarce as hen's teeth.

The failure in this regard is apparent from the Fulton papers. There is one striking clipping from *The Ottawa Journal*, shortly after the final reading of the Bill, which refers to a move on the part of publishers to remove all crime comics from Ontario newsstands.⁵⁵ However, this appears to have been an isolated incident and perhaps really represented wishful thinking in its portrayal of the law as the direct cause of publishers' concern. There were other indications that publishers wished to comply with public tastes in children's literature. The Association of Comics Magazine Publishers was formed in early 1948 and passed the following "Comics Code":

The Association of Comics Magazine Publishers, realizing its responsibility to the millions of readers of comics magazines and to the public

⁵⁰ *R. v. Alberta News Ltd.*, *supra*, note 4.

⁵¹ *Roher v. R.*, *ibid.*

⁵² *R. v. Kitchener News Co.*, *ibid.*

⁵³ *R. v. Superior Publishers Ltd.*, *ibid.*

⁵⁴ See Sampson, *supra*, note 5 at 76.

⁵⁵ E.D.F., *supra*, note 10, vol.16 [no date kept].

generally, urges its members and others to publish comics magazines containing only good, wholesome entertainment or education, and in no event include in any magazine comics that may in any way lower the moral standards of those who read them: *In Particular*:

- (1) Sexy, wanton comics should not be published. No drawing should show a female indecently or unduly exposed, and in no event more nude than in a bathing suit commonly worn in the U.S.A.
- (2) Crime should not be presented in such a way as to throw sympathy against law and justice or to inspire others with the desire for imitation. No comics shall show the details and methods of a crime committed by a youth. Policemen, judges, government officials, and respected institutions should not be portrayed as stupid or ineffective, or represented in such a way as to weaken respect for established authority.
- (3) No scenes of sadistic torture should be shown.
- (4) Vulgar and obscene language should never be used. Slang should be kept to a minimum and used only when essential to the story.
- (5) Divorce should not be treated humorously nor represented as glamorous or alluring.
- (6) Ridicule of or attack on any religious or racial group is never permissible.⁵⁶

This would be largely ineffective, however, as the Association represented only about one third of those putting comics out. It would disband in 1950.⁵⁷ The truth was that after this first flowering there was really little legal threat to the publishers. American state laws similar to Canada's were being struck down for unconstitutionality by that country's Supreme Court⁵⁸ and Canada's law did not produce the flood of prosecutions sparked by private interest groups that Fulton had predicted.⁵⁹

What, then, happened to crime comics? It is clear that something did and the answer seems to lie in industry deference to a concerted public campaign. It is odd on first perusal of the Fulton papers to note that the 1600 plus pages of documents are only one third exhausted by the time one gets to the passing of the 1949 amendment. Thereafter follows a period of euphoria filled with letters of congratulation, shortly followed by indications that the problem had not been solved.⁶⁰

In the mid-1950s, another vein appears, renewed interest clearly sparked by a new push in the United States and in Britain. The United States Senate undertook a major study of crime comics as part of its campaign against juvenile delinquency in 1955 and Britain passed a horror comic ban as part of broader anti-obscenity legislation the same year.⁶¹

⁵⁶ *Ibid.*, vol. 15.

⁵⁷ Reitberger & Fuchs, *supra*, note 19 at 135.

⁵⁸ E.D.F., *supra*, note 10, vol. 16.

⁵⁹ E.g., *R. v. Alberta News Ltd.*, *supra*, note 4, was initiated by the customs office. "Crime Comics: Alberta Case is Dismissed" 45 *Financial Post* (28 July 1951) 8.

⁶⁰ E.D.F., *supra*, note 10, vols. 15, 16.

⁶¹ See United States, Senate, Committee on Juvenile Delinquency, COMIC BOOKS AND JUVENILE DELINQUENCY (Washington: 1955). See also Barker, *supra*, note 8 at 16-17.

Canada's inclusion of horror comics, the substitute the industry had turned to as an equally sensational replacement for the censured crime comics, would not come until 1959. At the same time, it would pass the section banning tied sales, the controversial mechanism by which distributors forced a newsstand to take the comics if it wanted more legitimate literature such as *Time* and *Life*.⁶²

In back of this lay a steady public campaign. Many of the ideas again came from the United States and involved picketing of newsstands and attempts to upgrade children's libraries. An Alberta group acquired offensive literature from retailers and sent samples to the Attorney General.⁶³ Churches organized debates and lectures on the topic for their young parishioners and one at least, the Pontifical Association of the Holy Childhood in Vancouver, started an Anti-Crime Comic Club. The membership card read: "I,, promise not to buy, exchange or read any comics that would endanger the purity of my soul."⁶⁴

According to one source, there were public comic book burnings in the United States⁶⁵ but the closest I have come to finding evidence of a similar nature in Canada is a 1948 article in *Saturday Night* wherein a mother talks her four adorable offspring into chucking their reading material into the hearth. At one point, one of the children points out that the comics in reality belong to another child. The eldest sibling replies that that is all right, that he will "fix Freddie". The fact that at least this child has already been seduced into a life of theft and assault seems to escape the proud mother, who is herself counselling destruction of Freddie's property.⁶⁶

It would seem that the publishers were more affected by this public campaign than by any legislated or threatened law. On October 26th, 1954, an enlarged Comics Code was passed by a re-established Comics Magazine Association of America. It represented a very comprehensive attempt on the part of the comic magazine industry to provide self-regulation. Law enforcement was not to be held in disrepute, crime was to be depicted only as sordid, good was always to triumph over evil, restraint was to be used in the use of the word crime, evil was to be used only to illustrate a moral issue, respect for parents was to be fostered and love-romance stories were to emphasize the value of the home and the sanctity of marriage. And there was much, much more. By means of this Code, the Association hoped to forestall the effects of the proposed bans which were soon to be passed in thirteen American states.⁶⁷

⁶² This had been a problem for some time. See "Protest on Crime Comics Gets Attention in Ottawa" 45 *Financial Post* (7 July 1951) 1 at 1, 3.

⁶³ "Alberta Group Established To Combat Crime 'Comics'" *The Edmonton Journal* (23 November 1954) 1, in E.D.F., *supra*, note 10, vol. 16.

⁶⁴ E.D.F., *ibid.*

⁶⁵ Reitberger & Fuchs, *supra*, note 19 at 135.

⁶⁶ D. Carney, "What's Wrong With the So-Called 'Comics'?" 64 *Saturday Night* (13 November 1948) 32 at 32-33.

⁶⁷ E.D.F., *supra*, note 10, vol. 16.

There is no doubt that the Association effectively achieved censorship within the industry: within a short period, twenty-four of the twenty-nine comics firms Wertham had directly attacked ceased publication. As a side effect, many of those left improved in artistic quality due to the fact that the reduction of employment forced less talented artists out of the field.⁶⁸

Books on the history of comics are generally extremely critical of the campaign and put the blame squarely on Wertham as a single-minded troublemaker.⁶⁹ They feel he and the other campaigners took advantage of a post-war era marked by McCarthyism, fear of foreigners and, indeed, fear of anything but total conventionalism.

VI. CONCLUSION

The mechanism is more subtle. Public figures, be they politicians or psychiatrists or representatives of pressure groups, undoubtedly achieve power and prestige from spear-heading popular campaigns. But to see them as the sole, or indeed even the main, cause of such campaigns is to imbue them with an influence available to no man or woman. At the very least the potential for a wave must exist before one can ride on the crest of it; so much the better if there is already a full-blown cause in search of articulate leadership. This is not to level accusations of self-publicity at any cost at those who actively bear the front banner in popular campaigns. They have a desire, perhaps a vocation, to represent the public will. In turn, sections of the public need spokespersons to voice their will. Surely this lays the groundwork for a productive partnership.

But if we must avoid the naive (and sometimes nasty) temptation to dwell on the least attractive aspects of the relationship between band-wagons and their resident conductors, we are perfectly within our rights — and indeed have a duty — to subject the results achieved by such popular movements to critical analysis. Even assuming that the campaign would have failed to change the face of comics had the reformers not been able to point to sanctions right out there on the statute books (given the infrequent and not very successful application of the provisions, I do not believe this to be the case), I have grave difficulties with offences being created on the basis of transitory moral definitions of what is harmful to society as a whole or to certain segments of society. I am troubled because of the ability law can have to hold us in a time warp, to punish legally those unlucky enough to be caught doing something which, on a broad level, has ceased to be unacceptable. It may not even be a matter

⁶⁸ Reitberger & Fuchs, *supra*, note 19 at 136.

⁶⁹ See P. Couperie et al., *A HISTORY OF THE COMIC STRIP*, trans. E.B. Hennessy (New York: Crown, 1968); D. Thompson & D. Lupoff, eds, *ALL IN COLOR FOR A DIME* (New Rochelle, N.Y.: Arlington House, 1970); D. Thompson, *The Spawn of the Son of M.C. Gaines* in D. Lupoff & D. Thompson, eds, *THE COMIC-BOOK BOOK* (New Rochelle, N.Y.: Arlington House, 1973).

of bad luck: a party may find him or herself victimized by someone who has dug out an old, long-forgotten and obsolete club with which to lay low the perceived opposition.

Morality campaigns seem to keep a special place warm in their hearts for this type of tactic. Two recent events in Calgary, involving opposing sides in the current censorship issue, demonstrate the danger of writing emotionally-motivated sanctions into our statute books and of allowing them to dig in there, like little land mines waiting to go off long after anyone remembers what the war they were planted in was precisely about.

One event involved charges laid against the Alberta Coalition Against Pornography, a group whose fortunes waxed strong in Calgary about three years ago. In late October 1987, the Coalition offices were raided by police who confiscated forty-two slides of illustrations from literature such as *Raped and Beaten by Daddy* and *Breast Bondage*. The slides formed part of an educational kit which the Coalition presented to church groups, the city council, human rights groups, and others.⁷⁰ Within a few days, sanity prevailed and charges were dropped. It turned out that the complaint had been laid by Dr. Augustine Brannigan of the Department of Sociology at the University of Calgary,⁷¹ a severe critic of the earlier crime comics campaign and outspoken opponent of current censorship initiatives.⁷²

The other event involved charges laid against the owner of a comics store. Vice detectives seized ninety-two comic books described as obscene. They were acting on a complaint laid by a woman who told police her son had purchased comics she felt depicted too much violence. Another local comic bookstore owner reacted by removing "anything in my own mind that might be questionable" from his shelves.⁷³

Questionable or not, the publications seized were, of course, not crime comics, at least not within the original intent of the statutory provision.⁷⁴ Possibly a charge under crime comics was perceived as being easier to get a conviction under than the notoriously troublesome "obscenity" provision. At any event, the information laid was soon changed and the charges altered to those of distributing and selling obscene material.⁷⁵

⁷⁰ J. Ramondt, "Anti-Porn Group has Slides Seized" *Calgary Herald* (16 October 1987) A1 at A1-A2.

⁷¹ B. Bragg, "Issues Lost Amid Stereotypes" *Calgary Herald* (8 November 1987) A4.

⁷² A. Brannigan, "Porno-Bill Lobby Akin to Comic-Book Witchhunters" *The [Toronto] Globe and Mail* (12 June 1987) A7.

⁷³ R. Collins, "It Wasn't Funny; Police Seized Comic Books" *Calgary Herald* (24 September 1987) A1.

⁷⁴ J. Dickin McGinnis, "Police Wield Obscure Law in Comics Raid" *Calgary Herald* (27 September 1987) C6.

⁷⁵ M. Zurowski, "Pleas Reserved in Comic Books Case" *Calgary Herald* (18 November 1987) B3; D. Schuler, "Police Seizure of Comics Ruled Illegal" *Calgary Herald* (3 December 1987) B2.

Actually, it is simple to lay your hands on crime comics. Reprints may be ordered over the telephone from Eclipse Comics of Guerneville, California. They are not checked by customs, they are not halted by the post office. Neither would they provoke the ire of mothers whose children frequent comics stores. Their contents are mild in this violent age. In the meantime, the same anti-social acts they were thought to cause have not only survived but seem to have increased in ugliness as well as number.

To get to the first of the questions posed in my introduction, then, what purpose was served by passing a legal ban on crime comics? In the short run, there was undoubtedly a reaction on the part of publishers to "clean up their act" but, despite the continued presence of the sanctions in the *Criminal Code*, this spasm of social conscience has long passed. It has passed because there is money to be made (by publishers, toy makers, television networks, musicians and others) from pandering to the anti-social instincts of the immature but it has also passed because our own ideas of what is acceptable, or at least endurable, behaviour has shifted radically. Still, perhaps some would argue that the brief respite brought on by the Comics Code was worth it. Maybe so, but I think we should seriously question whether passing the proposed broader pornography provisions will have a similar effect on the much more hardened purveyors of pornography. They are likely to remain unmoved unless faced with the distinct probability of prosecution promising seriously expensive results. Given the feeble history of prosecution under the crime comics section, my advice to the pornography industry is not to get its tail in a knot.

In the meantime, we will have another shot-gun made available in our statutory arsenal which, like the crime comics section, can be used to restrict the lives of individuals, whether invoked in good will or bad. This addresses my second question. If it could be shown that such bans actually have a good effect such as preventing juvenile delinquency or violence against women and children, the answer would of course be that the ban is a success and that we will therefore just have to live with the less fortunate side effects. But it is clear that these provisions fail to do the job and maybe that is the greater harm in the long run. Are not we just chasing bogeymen in the dark while less identifiable villains are left free to roam through our days and our nights? This is always the danger of easy solutions. They do not, in the long run, answer difficult questions. I would suggest that we would better spend our time searching for root causes and attempting to come to broad social solutions rather than kid ourselves by writing ineffectual blanket prohibitions into our *Criminal Code*.



