

# **Criminalizing Terrorism: The Impact of Context and Cohort Effects on the Sentencing Outcomes of Terrorist Offenders**

by

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## **Abstract**

Despite the recent criminalization of terrorism specific offenses little is known about the legal processing of terrorist offenders, and even less is known about how the context that terrorist offenders are adjudicated in impact sentencing outcomes. Collectively, this dissertation explores how changing contextual environments related to legal responses, the timing of an offender's adjudication and perceptions of threat impact the sentencing outcomes of terrorist offenders by utilizing a sample of terrorist offenders convicted both recently, and historically, in Canada ( $n = 153$ ), and by further employing a sample of terrorist offenders recently adjudicated in the United Kingdom ( $n = 156$ ). Across studies the context that offenders are sanctioned in impact sentencing outcomes, and cohort effects are uncovered. Terrorism specific offenses are readily utilized, and the criminalization of terrorism offenses appear to have provided law enforcement with legal measures that assist in the proactive prevention of terrorist incidents. However, general criminal provisions still have a significant role to play in the adjudication of terrorist offenders as offenders sanctioned of general criminal provisions only, or both general and terrorism specific offenses, are sentenced more severely than offenders convicted of terrorism specific offenses alone. The timing of an offender's adjudication also impacts sentencing outcomes as offenders sanctioned in the latter stages of a terrorist campaign are generally sentenced more severely than offenders adjudicated at the onset for similar crimes, while variability in the sentence outcomes achieved throughout a terrorist campaign are characterized by cohort effects. Furthermore, being sanctioned in proximity to major terrorist incidents is found to affect sentencing outcomes as offenders sentenced following these events are punished less severely. Finally, offenders who are characterized by factors that are associated with increased perceptions of threat receive harsher punishments; however the impact of perceptions of threat on sentencing outcomes can be limited to specific time periods.

**Keywords:** Sentencing; terrorism; context; criminal justice model; cohort effects; extralegal factors

## **Dedication**

For my parents, family and friends. Your support has been remarkable.

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# Chapter 1.

## Introduction

The September 11<sup>th</sup>, 2001 attacks on the World Trade Centre and Pentagon were unprecedented in highlighting not only the potential for terrorist actions to cross national boundaries, making terrorism a reality in conflict free zones, but also the necessity of states to efficiently respond to terrorist incidents. In the wake of September 11<sup>th</sup>, the past thirteen years has seen the proliferation of numerous legislative initiatives enacted with the goal of proactively preventing terrorist incidents. The legal policies designed to counter terrorism have continued to develop over the past decade as criminal justice systems in both Canada, and abroad, seek to thwart terrorist activity. One of the most significant ways that State's have sought to pre-empt terrorist actions has been through the criminalization of offenses specifically related to terrorist activity (i.e. acts related to the preparation and financing of terrorist actions). Consequently, while these newly implemented legislations have impacted all aspects of the criminal justice system (police, courts, corrections), prosecutors now face increasing scrutiny to not only successfully convict terrorist offenders, but also to achieve the harshest sentences possible. However, despite the enactment of these new legal measures the extent that changing legal responses, and recent terrorist incidents have the potential to create contextual environments that impact sentencing outcomes in terrorism related cases remains unclear.

Terrorism has been described not only as a 'super-crime' (Fletcher, 2006), but also as 'criminology's third war' (LaFree, 2009). Despite this, until recently, criminologists' role in studying the etiology, prevalence and legal responses to terrorism has been minimal. This limited involvement has been primarily attributed to restricted data access, and the failure to settle upon an agreed definition of what constitutes terrorist activity (Farson, 1992; LaFree, 2010; 2009; LaFree & Dugan, 2009; 2007; 2004;

LaFree, Yang & Crenshaw, 2009). Notwithstanding these historical limitations, scholars have recently advocated the importance of criminologists' participation in the investigation of terrorism related issues (Rosenfeld, 2004; LaFree & Dugan, 2004; LaFree & Hendrickson, 2007). While LaFree and Dugan (2004) have identified some conceptual ways that terrorism and general criminal activities differ (i.e. the overt and innovative nature of terrorist incidents), LaFree and Hendrickson (2007) suggest that criminal events and terrorist incidents share many of the same methodological characteristics as both can be quantified, and both exhibit patterns in the nature of their execution that are commonly attributed to the context that they occur in and the characteristics of the offenders who perpetrate them.

Most significantly, LaFree and Hendrickson (2007) advocate that criminological research methods can facilitate a better understanding of the legal processing of terrorist offenders, and that criminology can help to establish the best means through which to respond to, and manage, terrorist offenders. To date, few studies have investigated the criminal justice processing of terrorist offenders (i.e. Bradley-Engen, Damphousse and Smith, 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields, Damphousse and Smith, 2006; Smith & Damphousse, 1998; Smith, Damphousse, Jackson and Sellers, 2002). However, this limited number of studies have identified some key differences in the court processing, and sentencing outcomes, between terrorist and general offending populations as offenders formally identified as being politically motivated are consistently found to be sanctioned more harshly than general offending populations for similar crimes. Furthermore, indictment data has also been used to investigate the changing nature of terrorist activities over time (Smith & Orvis, 1993; Damphousse & Smith, 2004). Despite their preliminary contributions, these studies focus on offenders prosecuted in the United States only, rely heavily on offenses committed in the 1980s and 1990s, and, with the exception of Damphousse and Shields (2007), fail to account for the context that offenders were sanctioned in, a factor that Johnson (2012) advocates is imperative to understanding the complexities that the legal system faces when processing terrorist offenders.

Given the increasing adoption of criminal justice models as the primary means to respond to terrorist activity it is imperative to investigate the impact that criminalizing

terrorism has had on the legal processing of this unique offending population. The following dissertation thus aims to fill a gap in the existent literature on the legal processing of terrorist offenders by examining the impact that contextual factors, changing legal responses and recent terrorist incidents have on sentencing outcomes in terrorism related cases. To do so, three studies are undertaken. Each study employs unique, but related, research questions pertaining to both the impact of legalistic responses to terrorism, as well as the context that these offenders are sanctioned in. The first study investigates the changing nature of terrorist activity in Canada and the impact that changing legal responses have had on the sentencing outcomes of terrorist offenders adjudicated between 1963 and 2010. While the prevalence of terrorist incidents in Canada is comparatively limited, significant terrorist incidents, including the bombing of Air India Flight 182 and the execution of Pierre Laporte (Charters, 2008), have been planned and executed on Canadian soil. While more information is known about the rates of terrorist incidents committed in Canada, little is known about the offenders who perpetrate these offenses, and of how the criminal justice system has responded to offenders who engage in terrorist acts. As such, Study 1 seeks to fill this void by not only investigating the impact that recent, and historical, legal measures implemented to respond to terrorist activity have had on the punishment of terrorist offenders, but also the changing demographic structure of this offending group, and nature of terrorist incidents in Canada. Data were coded from open source information where offenders who had been convicted of terrorist related activities in Canada were identified as extensively as possible in one of three ways. First, by consulting the website compiled and maintained by Canadian terrorism expert Dr. Leman-Langlois, second by undertaking keyword searches in three legal databases (CanLII, Best Case and Quicklaw), and third by consulting any relevant texts and news sources.

The second study applies a criminal career perspective to a case study of the Front de Liberation du Quebec (FLQ) to investigate the potential of a group-based recidivist sentencing premium. The recidivist sentencing premium perspective suggests that offenders who have been convicted multiple times have not been deterred by their involvement with the criminal justice system, and as such deserve to be punished more harshly. Given that many terrorist offenders are first time offenders the potential for a penalty to be applied to first time offenders who are adjudicated in connection with an

ongoing terrorist campaign remains unexplored. Accordingly, Study 2 investigates if terrorist offenders sanctioned in the latter stages of a terrorist campaign are sanctioned more severely than offenders adjudicated at the onset of the campaign for similar offenses. The data utilized in Study 2 was extracted from the data set described in Study 1.

Finally, the third study examines how, or if, being convicted under terrorism specific legislations, and in proximity to terrorist incidents, impacts sentence severity for recently adjudicated terrorist offenders. Due to Canada's limited experience in prosecuting terrorist offenders following the criminalization of terrorism specific offenses in 2001, Study 3 utilizes a sample of terrorist offenders convicted in the United Kingdom (UK) from 2006 to 2012. Offenders were identified by the Crown Prosecution Service of England and Wales, and all information was coded from open sources. Over the past thirteen years the UK has implemented six legal acts to criminalize offenses related to terrorist activity. Despite these efforts, the July 2005 bombings of the London transportation system represents one of the most lethal terrorist incidents to be successfully completed following September 11<sup>th</sup>. In light of this, Study 3 examines the extent that being convicted under specific legislations, and following the July 2005 bombings, impacts sentencing outcomes.

Collectively, each study explores how differing facets of context impact the sentencing outcomes, and legal processing, of terrorist offenders. Changing contextual environments stem not only from the criminalization of terrorism specific offenses, but the timing of an offender's adjudication both during the life cycle of a terrorist campaign and as a result of being sanctioned in proximity to major terrorist incidents. The most significant implication uncovered throughout this dissertation is that context plays a meaningful role in the sentencing outcomes and legal processing of both recently, and historically, adjudicated terrorist offenders. As such, in order to substantiate the research contributions of this dissertation it is first necessary to address the proliferation of criminal justice models of responding to terrorism and how these measures have been operationalized in Canada and the UK, to detail the differences in the legal processing and sentencing outcomes that previous investigations have uncovered between general and terrorist offending populations, and finally to consider how contextual, legal and

extralegal factors specific to terrorist incidents may serve to increase sentence outcomes for this unique offending population.

## **1.1. The Criminal Justice Model**

One of the most significant challenges in studying terrorism has been defining what constitutes terrorist activity, and how these behaviours differ from other violent criminal offenses. LaFree and Dugan rely upon the definition adopted by RAND in 1998 and articulated by Hoffman & Hoffman (1998 as cited by LaFree & Dugan, 2009):

Terrorism is defined by the nature of the act, not by the identity of the perpetrators or the nature of the cause. Terrorism is violence, or the threat of violence, calculated to create an atmosphere of fear and alarm. These acts are designed to coerce others into actions they would otherwise not undertake or refrain from taking actions that they desired to take. All terrorist acts are crimes. Many would also be violations of the rules of war, if a state of war existed. This violence or threat of violence is generally directed against civilian targets. The motives of all terrorists are political, and terrorist actions are generally carried out in a way that will achieve maximum publicity. The perpetrators are members of an organized group and, unlike other criminals, they often claim credit for their acts. Finally, terrorist acts are intended to produce effects beyond the immediate physical damage they cause; having long-term psychological repercussions on a particular audience.

While Hoffman & Hoffman provide a succinct definition of terrorism that emphasizes the criminal nature of these acts, Easson & Schmid (2011) have identified over 250 definitions of terrorism that have been constructed by academics, governmental and intergovernmental agencies. Despite the failure to arrive upon an internationally (United Nations) agreed upon definition of terrorism, in line with Hoffman & Hoffman (1998 as cited by LaFree & Dugan, 2009) this dissertation considers all terrorist incidents to be criminal acts. This notion is supported not only by the criminalization of terrorism specific offenses, but more importantly by the historical use of criminal law to punish terrorist offenders and the continued implementation of legal measures designed to quash terrorist activity (Roach, 2011; Walker, 2011)

Definitional disagreement has contributed to the enactment of numerous models to inform counter-terrorism strategies. Crelinsten and Schmid (1992) present that

counter-terrorism strategies typically adopt one or more of the following features and can either be short or long term, proactive or reactive, and can take into consideration either the political or coercive capabilities of terrorist organizations. Currently, state responses to terrorism center upon two key methods: the criminal justice and military models (Crelinsten, 2014; Forst, 2011; Klinger & Heal, 2011; LaFree & Ackerman, 2009; LaFree & Hendrickson, 2007; Rosenfeld, 2004). The criminal justice model calls for the identification of terrorist activity as a crime and the use of the law to punish terrorist offenders, while the military model recognizes terrorism as a unique type of war or 'low-intensity conflict' and as such counter-terrorism strategies are guided by the rules of war (Crelinsten, 2014; Crelinsten & Schmid, 1992; Klinger & Heal, 2011; LaFree & Ackerman, 2009; LaFree & Hendrickson, 2007).

According to Braithwaite (2005) the goal of a military model is not deterrence, but 'the extermination of terrorists.' Advocates of the criminal justice model suggest that while military models aim to eliminate the capacity of terrorist groups to perpetrate terrorist acts civilian populations are often unintentionally targeted as it is challenging to limit the scope of combat operations. This in turn can exacerbate conflicts by eliciting a backlash to military interventions (Braithwaite, 2011; 2005; Crelinsten, 2014; Klinger & Heal, 2011; LaFree & Ackerman, 2009; LaFree, Dugan & Korte, 2009; LaFree & Hendrickson, 2007). Conversely, a criminal justice model aims to identify, and punish, specific individuals for their participation in terrorist offenses, and as such its scope is more refined. The criminal justice model focuses on providing law enforcement with the necessary tools to disrupt terrorist activities, of protecting the civil rights of the accused and of deterring individuals from engaging in terrorist activities by applying harsh punishments to offenders convicted of terrorism related acts (Crelinsten, 2014; Klinger & Heal, 2011; LaFree & Ackerman, 2009; LaFree & Hendrickson, 2007). In this way, criminal justice approaches offer long-term solutions for the management of terrorists as this model recognizes that terrorism can never fully be eradicated, only minimized (LaFree & Hendrickson, 2007).

In the 13 years that have followed the September 11<sup>th</sup> attacks both the criminal justice and military models have been used to respond to terrorist incidents (Braithwaite, 2011; 2005; Crelinsten, 2014; Klinger & Heal, 2011; LaFree & Ackerman, 2009; LaFree



& Hendrickson, 2007). However, despite the use of both models the past decade has seen the proliferation, and increasing support, for a criminal justice model response to terrorism (Braithwaite, 2011; Crelinsten, 2014; 2002; Crelinsten & Schmid, 1992; Klinger & Heal, 2011; LaFree & Ackerman, 2009; LaFree & Hendrickson, 2007). One of the most significant ways that the criminal justice model has been employed is through the criminalization of terrorism specific offenses. While many state's had experience prosecuting terrorist offenders prior to September 11<sup>th</sup> few had enacted legislative policies that codified specific terrorist offenses into penal code; however, many states, including Canada and the UK, have now introduced legislations to criminalize acts specifically related to terrorist activities. Nonetheless, to date, the impact that these newly implemented offenses have had on the legal processing of terrorist offenders has not been investigated, a gap in the literature that the current dissertation seeks to fill.

## **1.2. Criminalizing Terrorism**

Prior to the criminalization of terrorism specific offenses terrorist offenders were commonly adjudicated using existing criminal code provisions such as: first degree murder, conspiracy, kidnapping, hostage taking, possession of explosives with the intent to discharge, possession of illegal weapons, accessory after the fact, threatening to murder an internationally protected person, and offenses related to forged passports, citizenship and naturalization certificates, as well as other false documents (LaFree & Dugan, 2004; Roach, 2002). However, following the September 11<sup>th</sup> attack it was believed that the general criminal provisions that had previously been used to prosecute terrorist offenders were no longer sufficient owing to the fact that they were predominantly reactive as opposed to proactive (Colter, 2001; Diab, 2013; Roach, 2011; 2005a). In Canada, terrorism specific offenses have been criminalized by way of the Anti-Terrorism Act (2001), the Public Safety Act (2004), the Combatting Terrorism Act (2013) and the Nuclear Terrorism Act (2013). For the first time, the Anti-Terrorism Act (ATA) legally defined terrorism in Canada, and collectively the four legislations have criminalized offenses related to participating in terrorist groups, financing terrorist activities, facilitating terrorist activities, travelling outside of Canada to participate in terrorist activities and engaging in terrorism related hoaxes.

While terrorist incidents in Canada have been somewhat infrequent, Canada has not been immune to terrorist activity (Charters, 2008; Crelinsten, 2012; Kellett, 2004; Kellett, Beanlands, Deacon, Jeffrey & Lapalme, 1990; Lemman-Langlois & Brodeur, 2005; Lemman-Langlois & Ouellet, 2009; Ouellet, 2009; Ross, 1994; 1988a; 1988b; Ross & Gurr, 1989; Rudner, 2004). While many terrorist events in Canada are best characterized as single incident attacks, others have been a part of longstanding campaigns. The Sons of Freedom (SOF) Doukhobors waged the first enduring terrorist campaign in British Columbia, and were most active between 1960 and 1962 (Charters, 2008; Crelinsten, 2012; Kellett, 2004; Lemman-Langlois & Brodeur, 2005; Lemman-Langlois & Ouellet, 2009; Ouellet, 2009). Kellett et al. (1990) attribute 143 terrorist incidents to the SOF Doukhobors, while Ross (1988a) reports 130 incidents signifying that the SOF Doukhobors committed a high frequency of incidents in a short time period.

On the heels of the declining SOF Doukhobors movement the FLQ was founded in Quebec in 1963. In what would become the most prolific terrorist campaign in Canadian history, the FLQ was active from 1963 until 1972, while the periods of greatest FLQ activity occurred in 1963, and in the period between 1968 and 1970 (Charters, 1997). Charters (1997) reports that between February 1963 and October 1970, 232 incidents of violence were perpetrated by individuals identifying themselves as members of the FLQ. Conversely, Ross (1988a) attributes 166 terrorist incidents to Quebec Separatists, while Kellett et al. (1990) indicate a total of 202. Despite the brazen bombing of the Montreal Stock Exchange in February 1969 it was the abductions of Pierre Laporte and James Cross in October 1970, and the execution of Laporte on October 17<sup>th</sup>, that represented the culmination of the FLQ campaign (Crelinsten, 2012; 2001; Charters, 1997; Fournier, 1982, Laurendeau, 1990; Stewart 1970, Tetley, 2007). The kidnapping of a political figure in Canada was unprecedented and both the provincial and federal governments struggled with how to respond. On October 16<sup>th</sup> 1970, Trudeau's federal government enacted the War Measures Act and Regulations, that allowed the police immense investigative powers concerning search, seizure and arrests without warrant, as well as the ability to preventatively detain suspects for up to 21 days without formally laying a charge against them and up to 90 days without setting a trial date (Crelinsten, 2001; Fournier, 1983; Munroe, 2009; Stewart, 1970; Tetley, 2007). The War Measures Act remained in effect until April 30<sup>th</sup> 1971, and to date

remains a hotly contested issue that serves as a reference point for how Canada has historically responded to acts of terrorism.

There were few terrorist incidents in the decade following the execution of Laporte and the termination of the FLQ campaign. This changed in 1982 when Direct Action, also commonly referred to as the Squamish Five, executed a series of bombings targeting hydro stations, industries and local businesses in British Columbia and Ontario (Crelinsten, 2012; Charters 2008; Ouellet, 2009). Following the arrests of the five members of Direct Action in 1983 the latter half of the 1980s were characterized by what Charters (2008) refers to as the 'importation of homeland conflicts,' what Leman-Langlois & Brodeur (2005) identify as 'revolutionary terror' and what Crelinsten (2012) recognizes as 'nationalist terrorism.' The Armenian Secret Army for the Liberation of Armenia (ASALA) and Justice Commandos for the Armenian Genocide (JCAG)/Armenian Revolution Army (ARA) were active between 1982 and 1985. As a means to bring attention to the Armenian genocide, the groups engaged in a series of attempted and actualized assassinations, hostage takings, and in one of their most notable incidents overtook the Turkish embassy in Ottawa in March 1985 (Charters, 2008; Crelinsten, 2012, Kellett et al., 1990; Smith, 1993). While the collective efforts of the ASALA and JCAG/ARA resulted in the deaths of two Canadian citizens it was the actions of Sikh extremists in June of 1985 that resulted in the most devastating terrorist attack in Canadian history. The bombing of Air India Flight 182 caused the deaths of 329 people, 279 of who were Canadian citizens.<sup>1</sup> Despite the fact that the plane was downed in Irish airspace the plot was conceptualized, prepared and executed on Canadian soil. To date, this incident remains the gravest terrorist incident in Canada, and prior to September 11<sup>th</sup> was the 'largest aviation terrorist attack in history' (Charters, 2008; Crelinsten, 2012; Leman-Langlois & Ouellet, 2009; Ouellet, 2009).

Terrorists incidents motivated by Sikh extremism continued throughout the 1980s with a series of attempted assassinations in British Columbia; however, the 1990s

<sup>1</sup> A second, and related, bomb also detonated at Narita airport in Japan on the same day that the Air India flight was downed (June 23, 1985). The second explosion killed two airport employees (Charters, 2008; Crelinsten, 2012; Kellett et al. 1990; Leman-Langlois & Bordeur, 2005; Ouellet, 2009).

saw a decline both in the incidents motivated by Sikh extremism, as well as the overall rate of terrorist incidents in Canada (Leman-Langlois & Ouellet, 2009). Crelinsten (2012) indicates that the 1990s were predominantly characterized by single-issue terrorism incidents motivated by anti-abortion, aboriginal and animal rights, and environmental concerns. Despite the varied nature of terrorist incidents perpetrated in Canada over the past fifty years the events of September 11<sup>th</sup> mark a turning point as the past thirteen years have seen a proliferation in the number of terrorist offenders motivated by an Islamic extremist ideology (Crelinsten, 2012; Mullins, 2013).

Despite significant terrorist incidents, Canada's legal response to terrorist activities has historically been limited. In 1988 the Emergencies Act was implemented as a means to revise the legal powers established under the War Measures Act (Charters, 2008; Stuart, 2001). The Emergencies Act concerns public order, international and war related emergencies; however, while it currently remains in effect it has never been employed (Charters, 2008; Stuart, 2001). Although the bombing of Air India called into question the roles and responsibilities of Canada's intelligence and policing agencies, and subsequently resulted in the implementation of the National Counter-Terrorism Plan in 1989, the Emergencies Act was the last security related legislation to be implemented before the ATA (Charters, 2008; Government of Canada, 2010). Despite the ATA's emphasis on criminalizing terrorism, Farson and Whitaker (2008) suggest that the ATA informally established a national security act as it amended five additional security legislations.

Similarly, the UK has taken a decidedly legalistic approach to preventing terrorist incidents, and was the only country to take proactive legal measures to combat terrorism prior to September 11<sup>th</sup>. The UK has a rich history of both enduring, and responding to, criminal acts motivated by political, religious and ideological extremists. Historically, the overwhelming terrorist threat has come from the political unrest in Northern Ireland where bombing campaigns have been undertaken dating as far back as the 1860s as a means to protest British rule (Hewitt, 2008; Staniforth, 2013; Taylor, 2002, Walker, 1992). The UK's adoption of a criminal justice approach of responding to terrorist activity can be traced to the implementation of the Prevention of Violence Act 1939, that was enacted in response to a series of Irish Republican Army (IRA) bombings (Hewitt, 2008;

Schiff, 1997; Walker, 1992). As a result of ongoing terrorist incidents the Prevention of Terrorism Act was revised in 1974, 1976, 1984 and 1989 and remained in effect until the implementation of the Terrorism Act 2000 (Hewitt, 2008; Schiff, 1997; Walker, 2011; 2009; 2006; 2000; 1992).

Over the past fourteen years the UK has implemented five major acts to improve its capacity to prevent, and respond to, terrorist activity. While the Terrorism Act 2000, was intended to create a stable and integrated mechanism for responding to political violence throughout the UK (Bamford, 2004; McCulloch & Pickering, 2009; Roach, 2011; Walker, 2011; 2006), following the events of September 11<sup>th</sup> the UK quickly introduced new legislations to address the perceived weaknesses in the Terrorism Act 2000. The Anti-Terrorism, Crime and Security Act 2001 was implemented in December 2001 and was subsequently followed by the Prevention of Terrorism Act 2005, the Terrorism Act 2006, the Counter-Terrorism Act 2008 and the Terrorism Prevention and Investigation Measures Act 2011 (Roach, 2011; Walker, 2011). The UK model of a justice approach to responding to terrorist behaviours, along with its generally wide-ranging definition of terrorism, have influenced the strategies adopted post September 11<sup>th</sup> by other states such as Australia, Israel, Singapore, South Africa and most importantly Canada (Roach, 2011).

One of the key goals of criminalizing terrorist related activity has been to proactively prevent terrorist incidents; however, the ability of these new criminal provisions to function as deterrents for terrorist activities has been questioned. It is commonly noted that the threat of long periods of incarceration would not dissuade individuals from committing terrorist offenses (Roach, 2005a; 2005b; Shaffer, 2001). Akin to this sentiment, Roach (2002) cites Canadian legal scholar Douglas Schmeiser who following the October Crisis in 1971 stated that, “the ordinary criminal law adequately covers dangerous conduct by insurgents.” In light of the criminalization of terrorism specific offenses, and the changing nature of terrorist activities, the extent that this holds true in the current climate remains unexplored, and the impact of these new legal designations on the legal processing of terrorist offenders has not been examined. Accordingly, this is one of the key gaps in the existent literature that the studies presented here seek to fill as they investigate how, or if, the criminalization of terrorism

specific offenses have resulted in harsher sanctions for terrorist offenders, and if general criminal provisions are still useful, or necessary, when adjudicating this unique offending population.

### **1.3. The Punishment of Terrorist Offenders**

The use of a criminal justice model to address terrorism, and its related issues, has important implications for all aspects of the criminal justice system – policing, courts and corrections. While strong investigative police work sets the foundation for successful prosecutions, the court system has come under increasing scrutiny to not only successfully prosecute offenders, but to obtain the harshest sentences possible. In light of the criminalization of terrorism specific offenses, some legal scholars have called into question whether or not terrorism is in fact a unique type of crime, or if it should merely be considered as an aggravating factor at sentencing (Diab, 2013; Wattad, 2006). While the length of an offender’s sentence is normally fixed within sentencing guidelines, legal and extralegal factors function to either increase or decrease sentence severity (Manson et al., 2000; Ruby et al., 2012).

Prior studies have investigated the importance of context in determining sentencing outcomes. This empirical research has uncovered that offenders sanctioned in different courtrooms, differing social contexts (i.e. political vs. conservative jurisdictions, communities with high crime rates and high proportions of minority offenders) and geographic locations (urban vs. rural) can be punished more or less severely depending on the context that they are adjudicated in (Crow & Johnson, 2008; Crawford, 2000; Johnson 2006; 2005; Johnson, Ulmer & Kramer, 2008; Johnson, Van Wingerden & Nieuwbeerta, 2010; Ulmer & Johnson 2004). Only one study has investigated how contextual differences can affect the legal processing and sentencing outcomes of terrorist offenders. Damphousse and Shields (2007) report that terrorist offenders prosecuted in the two years following a major terrorist incident were sanctioned less severely than those punished prior to it, and that prosecutors are more likely to approach these cases as conventional criminal offenses, as opposed to focusing on political motivation, as they often have more successful outcomes. However, while Damphousse and Shields (2007) offer preliminary insight into how contextual

environments can impact the sentencing outcomes of terrorist offenders the authors utilize the Oklahoma City bombing (occurring in 1995) and September 11<sup>th</sup> as their contextual markers, and, as such, do not account for terrorist incidents in the post 9/11 period, and following the rapid criminalization of terrorism specific offenses. Furthermore, they limit their analysis to American incidents. Accordingly, given that Crelinsten (2014) has identified September 11<sup>th</sup> as the most significant turning point in how perceptions of terrorist threat are constructed, and the measures that have been deemed necessary to counter terrorism, it is imperative to explore how the criminalization of terrorism specific offenses and being sanctioned in proximity to major terrorist incidents in the post 9/11 period impacts the sentencing outcomes of terrorist offenders. Examining these two facets of context is one of the most significant knowledge gaps that the studies presented here aim to contribute a better understanding to.

Numerous legal and extralegal factors have been identified as having the potential to increase or decrease the sentence severity of general and violent offending populations. These factors center upon several key themes: the race, gender and age of the offender, the offender's prior criminal history, and characteristics associated with the victim. The findings of prior studies examining the impact of legal and extralegal factors on the sentencing outcomes of violent and general offending populations indicate that being female, expressing remorse, targeting a known victim, being older and being adjudicated in an urban location can serve to reduce sentence severity. However, being black, being male, being young, being sanctioned in a rural location and victimizing a stranger can function to increase sentence severity (Crawford, 2000; Curry, Lee & Rodriguez, 2004; Daly & Tonry, 1997; Johnson, Van Wingerden & Nieuwbeerta, 2010; Steffensmeier, Ulmer & Kramer, 1998; Ulmer & Johnson, 2004; Wooldredge, 2010).

Despite the extensive research that has examined the role of aggravating and mitigating factors on the sentencing outcomes of general offending populations the bulk of these traditional legal and extralegal factors are often irrelevant to terrorist offenders as this unique offending population typically does not have extensive criminal backgrounds, are well educated and gainfully employed, have families and strong social ties to the community and are older than traditional offending populations (LaFree &

Ackerman, 2009; LaFree & Dugan, 2009). Very few studies have attempted to identify specific legal and extralegal factors that have the potential to increase or decrease the sentencing outcomes of terrorist offenders. One extralegal factor that has been found to increase sentence severity for terrorist offenders is having a political motivation as across studies political motivation has consistently been found to serve as the best predictor of increased sentence severity (Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002).

To date, only one study has attempted to investigate the impact of extralegal and legal factors on the sentence severity of terrorist offenders convicted in Canada following the implementation of the ATA. After reviewing the sentencing outcomes of Khawaja, members of the Toronto 18, and Namouh, Diab (2013) reports that the mitigating factors uncovered for these offenders are similar to those that are typical of general offending populations. As such, being younger, not having a prior record, accepting responsibility and expressing remorse, willingly participating in rehabilitation, entering a guilty plea, and having familial responsibilities were all found to decrease sentence severity (Diab, 2013). However, while some of the aggravating factors identified such as the use of firearms, planning to commit an offense and not expressing remorse are typical of general offending populations other aggravating factors identified are unique to terrorist offenses. Diab (2013) notes that having a leadership role, recruiting others, knowingly participating in a terrorist offense, planning an offense that would lead to mass murder, planning to execute a crime motivated by race, ethnicity or religion, and being known to have actively participated in online groups all functioned to increase sentence severity (Diab, 2013).

While Diab (2013) provides valuable insight into the impact of extralegal and legal factors on the sentence severity of terrorist offenders he relies on a review of case law for his analysis, and as such does not empirically test the impact of these factors on sentence outcomes. Given the dearth of information about the impact of aggravating and mitigating factors on the sentencing outcomes of terrorist offenders, a key research contribution that the studies undertaken here seek to achieve is to contribute a better understanding of how legal and extralegal factors that are specifically related to terrorism



cases impact sentencing outcomes, and whether or not these factors are consistent across differing contexts. Furthermore, although many terrorists are first time offenders the potential for a penalty to be applied to first time offenders who are adjudicated in connection with an ongoing terrorist campaign is unknown as this unique facet of context has never been empirically tested.

Though little is known about the role of terrorism specific legal and extralegal factors on sentencing outcomes, more is known about the legal processing of terrorist offenders. In one of the most recent studies to explore the case processing of terrorist offenders, Johnson (2012) reports that the intended target, and the number of counts an terrorist offender is charged with, are factors that are indicative of cases that are both 1) more likely to go to trial, and 2) more likely to result in a conviction. Further disparities between terrorist and general offending populations have indicated that being legally identified as a terrorist offender increases the likelihood of conviction and that terrorist offenders are more likely to be convicted at trial, while terrorist cases having an increased number of defendants are less likely to go to trial, or end in conviction (Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002). Finally, and perhaps most importantly, terrorism cases that were prosecuted under modern terrorism statutes, as opposed to general criminal provisions, have been reported as being less likely to end in a conviction and to achieve lesser sentence outcomes (Damphousse & Shields, 2007; Johnson, 2012).

A significant limitation of the previous studies investigating the legal processing of terrorist offenders is that they strictly rely on samples of offenders prosecuted in the US and predominately rely on cases that were processed in the 1980s and 1990s. Consequently, little is known about how, or if, the legal processing of terrorist offenders has been impacted by the adoption of a criminal justice model of responding to terrorism. While it is beyond the scope of these studies to investigate differences in the legal processing of terrorist offenders for individuals who were only arrested or charged with terrorist offenses, as this information is not readily accessible, it is possible to investigate how factors associated with the legal processing of convicted terrorist offenders such as the number of co-defendants and co-offenders, entering a guilty plea

and the number of counts that an offender was charged with effect sentencing outcomes. In this way the studies presented in the current dissertation contribute much needed information to better understanding how, or if, the legal processing of terrorist offenders has changed following September 11<sup>th</sup> and the criminalization of terrorist offenses. Although none of the papers explicitly evaluate the successes or failures of terrorism legislations they do explore variability in sentencing outcomes achieved under general criminal provisions and terrorism specific statues, and, as such, provide valuable information about the use, and outcomes, of these newly implemented legal measures.

#### **1.4. Theoretical Explanations for the Impact of Legal and Extralegal Factors On Sentence Severity**

Two theoretical explanations for the influence of legal and extralegal factors on sentencing outcomes are most relevant to the current dissertation: the recidivist sentencing premium and a conflict perspective. The basis of the recidivist sentencing premium suggests that offenders who have been sanctioned multiple times, for either the same or differing offenses, have not been sufficiently deterred from their previous encounters with the criminal justice system, and as such are less likely to be deterred by criminal justice interventions in the future (Roberts, 1997). Consequently, an offender's criminal career becomes an important aspect in criminal justice decision-making processes as the severity of their criminal participation can impact both decisions of whether or not to incarcerate the offender, and how harshly they should be sanctioned (Hogarth, 1971; King, 1989; Levesque, 2000; Maxfield, 2002; Meierhoefer, 1992; Roberts, 2008; 1997; Spohn & Welch, 1987; Welch, Gruhl and Spohn, 1984).

Prior studies investigating the impact of an offender's criminal career on sentencing outcomes have reported that an individual's prior criminal involvement is the second most important factor, following only their current charge, in determining sentence severity (Frase, 2010; Levesque, 2000; Meierhoefer, 1992; Roberts, 1997; Spohn & Welch, 1987; Welch et al., 1984). However, these studies have focused on the individual only, and to date the applicability of this construct to criminal groups has not been investigated. The 'collective career', as detailed by Tremblay, Laisne, Cordeau, Shewshuck and MacLean (1989), emphasizes the importance of understanding the

context that criminal events unfold in for entities like criminal organizations, and how differential experiences across cohorts impact criminal opportunities for members of the group. Recent studies that have investigated the life cycles of terrorist organizations indicate that, similar to the criminal careers of individuals, the life cycles of terrorist organizations are characterized by continuity and change, a specialization in offenses they commit, and are subject to cohort effects (Freilich, Chermak & Caspi, 2009; Gupta, 2008; LaFree & Dugan, 2009; Miller, 2012; Smith & Damphousse, 2009). To date, the recidivist sentencing premium has never been applied to a collective career; however, given the observed similarities between the life cycle of terrorist organizations and the criminal career perspective the recidivist sentencing premium is extrapolated to the collective career of the FLQ campaign to investigate if changing contextual environments impact sentencing outcomes. Specifically, this theoretical approach is utilized to examine whether or not offenders sanctioned in the latter stages of a terrorist campaign are sanctioned more severely than offenders adjudicated at the onset of the campaign for similar offenses. The recidivist sentencing premium is investigated in Study 2.

A conflict perspective proposes that extralegal factors are more relevant to sentencing outcomes to the extent that certain groups of offenders are constructed to be more threatening based on characteristics that they possess such as race, sex and age (Best, 2011; Conyers, 2011; Crow & Johnson, 2008; Lizotte, 1978; Heitzeg, 2011; Smith & Damphousse, 1996). Disparities in sentencing outcomes across ethnic groups have been well documented for both general (see Johnson, 2005; 2003; Steffensmeier and Demuth, 2000; Steffensmeier, Ulmer and Kramer, 1998; Ulmer and Johnson, 2004), and terrorist offending populations (see Bradley-Engen et al., 2009; Johnson, 2012; Smith and Damphousse, 1996) as offenders of ethnic minorities are often issued harsher punishments. Furthermore, Smith and Damphousse (1996) present that a conflict perspective is especially relevant for terrorist offenders given that terrorist offenders who are formally identified as such receive harsher sentence outcomes as they are perceived by the criminal justice system to pose an increased level of threat.

Following the September 11<sup>th</sup> attacks the past decade has seen the proliferation of terrorist offenders motivated by an Islamic extremist ideology. Given that terrorist offenders have been legally identified as an offending population that poses a unique

threat, and that offenders motivated by an Islamic extremist ideology have additionally been constructed as posing an even greater threat to the community (Pantazis and Pemberton, 2009), a conflict perspective offers an appropriate framework to explore the potential role that legal and extralegal factors specifically related to terrorism offenses have on sentencing outcomes. No prior studies have investigated how perceptions of threat that are associated with factors specifically related to terrorism offenses (i.e. attending a training camp, the use of explosive devices), and terrorist motivations (i.e. Islamic extremist ideology) may impact sentencing outcomes, and furthermore no studies have explored how these perceptions of threat, and their impact on sentencing outcomes, may change across contexts. In order to help fill this gap in the existent literature the conflict perspective is tested most explicitly in Study 3; however, the impact of terrorism specific factors on sentencing outcomes are investigated in each of the studies.

## **1.5. Research Contributions**

Despite the criminalization of terrorism specific offenses little is known about the legal processing of terrorist offenders, and even less is known about how the context that terrorist offenders are adjudicated in affects sentencing outcomes. As a result, there are several significant gaps in the existent literature pertaining to the legal processing of terrorist offenders, and consequently the current dissertation seeks to address these gaps by investigating how differing facets of context affect the adjudication of terrorist offenders in three unique, but related studies. One of the most significant contributions of this work will be to provide much needed information about how, or if, the criminalization of terrorism specific offenses has impacted the legal processing and sentencing of terrorist offenders, and if general criminal provisions are still useful in the adjudication of terrorism cases. Furthermore, while none of the three studies explicitly evaluate the effectiveness of these new legal designations they do shed light on the use of, and outcomes achieved under, these new legal measures.

The effect that the timing of an offender's adjudication has on sentencing outcomes is explored in two ways: first by investigating if first time offenders who are adjudicated in the latter stages of an ongoing terrorist campaign are punished more

harshly for similar crimes than those at the onset of the campaign, and second by investigating how being sanctioned in proximity to major terrorist incidents impacts sentencing outcomes. While some information is known about differences in how offenders were adjudicated following September 11<sup>th</sup> no information is known about any potential differences in how offenders were sanctioned following subsequent terrorist incidents in the post 9/11 period. Given that September 11<sup>th</sup> has been identified as the most significant turning point in how terrorist threat is constructed, and in the resources that are required to prevent terrorist incidents, it is imperative to better understand how the courts have responded to terrorist offenders in the post 9/11 period. Finally, as terrorist offenders have been identified as a specialized offending group that poses a unique threat it is necessary to better understand how legal and extralegal factors specifically related to terrorist offenses affect sentencing outcomes, and further to investigate if these indicators are consistent across time and space.

Collectively, the three studies presented aim to contribute much needed information about the legal processing of terrorist offenders and the role that context plays in their adjudication. Study 1 (*Criminalizing Terrorism in Canada: Investigating the Sentencing Outcomes of Terrorist Offenders from 1963 to 2010*) investigates three research questions: 1) to what extent have the demographic characteristics of the offenders who perpetrate terrorist offenses, and the nature of terrorist incidents, in Canada changed over time, 2) do the sentencing outcomes of terrorist offenders vary across time, and 3) how do factors specifically related to terrorism incidents impact sentencing outcomes? The main hypothesis in Study 1 is that in periods where law enforcement are provided with additional resources to disrupt, and respond to, terrorist incidents offenders should be less able to complete their offenses, and as a result offenders sanctioned for terrorism specific offenses should be sentenced less severely than those convicted of general Criminal Code provisions alone. Cumulatively, this study aims to contribute to a better understanding of how terrorist offenders have historically been adjudicated in Canada, and how this differentiates from the current legal processing of these offenders following the criminalization of terrorism specific offenses.

Study 2 (*A Group-Based Recidivist Sentencing Premium? The Role of Context and Cohort Effects in the Sentencing of Terrorist Offenders*) investigates the potential

utility of applying a criminal career perspective to the life cycle of a terrorist campaign and if there is evidence to support a group-based recidivist sentencing premium. Specifically, Tremblay et al.'s (1989) concept of the collective career is applied to a case study of the FLQ, in order to investigate two key questions: 1) is there evidence of cohort effects across periods of FLQ activity and 2) does the collective career of the FLQ result in a recidivist sentencing premium, and if so to what extent does it impact sentencing outcomes? The main hypothesis is that, in line with the recidivist sentencing premium, offenders sanctioned in the latter phases of the FLQ career should be sanctioned more severely than those at the beginning for similar offenses.

The final study (*Timing is Everything: The Role of Contextual and Terrorism Specific Factors in the Sentencing Outcomes of Terrorist Offenders*) examines the effect that being sentenced under differing legislations and in proximity to terrorist incidents has on sentencing outcomes and investigates two key questions: 1) does context matter, and if so how much, for offenders recently adjudicated for terrorist offenses, and 2) do perceptions of increased threat result in harsher sanctions for some terrorist offenders? Context is assessed in two ways: first by accounting for the offender's time of arrest and second by examining whether they were convicted under terrorism specific or general offending statutes. The main hypothesis here is that in line with a conflict perspective that offenders motivated by an Islamic extremist ideology will be punished more severely than offenders motivated by other ideological goals, that offenders convicted of terrorism specific offenses will receive longer sentences than those convicted of general offenses and that offenders convicted in the years immediately following the bombing of the London transportation system in 2005 will be punished less severely than those convicted prior to it.

## **1.6. Summary**

Collectively, this dissertation explores how changing contextual environments related to legal responses, and the timing of an offender's adjudication, impact the sentencing outcomes of terrorist offenders. By utilizing a sample of terrorist offenders convicted both historically and recently in Canada, and by further employing a sample of terrorist offenders recently adjudicated in the UK, this current work provides much

needed information about the legal processing and punishment of terrorist offenders in Canada, as well as the impact of the criminalization of terrorism specific offenses, and recent terrorist incidents, on sentencing outcomes. Across each of the three studies a common implication is that context plays a significant role in the sentencing outcomes of offenders. The type of legislation that offenders are convicted under, the timing of their adjudication during the course of a terrorist campaign and their proximity to major terrorist incidents all impact sentencing outcomes. Furthermore, this dissertation presents empirical evidence to support both the conflict and recidivist sentencing premium perspectives, and sheds light on role that legal and extralegal factors specifically related to terrorism offenses have on increasing and decreasing sentence severity. Finally, the implementation of terrorism specific offenses is found to differentially impact both the ability of offenders to complete their offenses, as well as the average sentence lengths achieved for offenders convicted of these offenses, highlighting that general criminal provisions still have a significant role to play in the adjudication of terrorist offenders. Together, as LaFree and Hendrickson (2007) advocate, this dissertation draws on criminological frameworks to provide much needed insight into the legal processing of terrorist offenders, and contributes to a better understanding of the important role that context plays in the adjudication of this unique offending population.

## Chapter 2.

# Criminalizing Terrorism In Canada: Investigating the Sentencing Outcomes of Terrorist Offenders from 1963 to 2010

## 2.1. Introduction

When contrasted to countries such as Ireland or Spain, Canada's experience with terrorist incidents is comparatively limited (Charters, 2008; Crelinsten, 2012). Despite this, Canada has endured ongoing terrorist campaigns (i.e. the SOF Doukhobors and the Front de Liberation du Quebec), witnessed the first political kidnapping and execution in North America (i.e. of James Cross in 1970), and in 1985 was the setting where the plot to bomb Air India Flight 182 was prepared and executed (Charters, 2008; Crelinsten, 2012; Kellett, 2004; Kellett et al., 1990; Lemman-Langlois & Brodeur, 2005; Lemman-Langlois & Ouellet, 2009; Mullins, 2013; Ouellet, 2009; Roach, 2008).<sup>2</sup> Due to differences in operational definitions, and inclusion criteria, estimates of the total rates of terrorist incidents in Canada differ. Charters (2008) presents that between 1960 and 1989, 366 terrorist incidents occurred in Canada, that equates to an average of 12.6 terrorist incidents per year over 29 years. Ross (1988a) suggests that between 1960 and 1985 approximately 500 'political terrorist events' were executed that results in an average of 20 terrorist incidents per year over 25 years. Lemman-Langlois & Ouellet (2009) indicate that between 1973 and 2006, 326 terrorist incidents occurred resulting in an average of 9.9 terrorist events per year over 33 years, while Kellett (2004)

<sup>2</sup> Prior to the September 11<sup>th</sup> attacks on the World Trade Center in New York, and the Pentagon in Washington, the bombing of Air India Flight 182 was the gravest aviation terrorist attack in history. For an overview of terrorism in Canada prior to 2001 see Charters, D. A. (2008). *The (Un)Peaceable Kingdom? Terrorism and Canada before 9/11. Institute for Research on Public Policy Matters, 9(4), 1-43.*



and Kellett et al. (1990) report that between 1960 and 1989, 428 terrorist events took place in Canada equalling an average of 14.8 terrorist incidents per year over 29 years.<sup>3</sup>

Despite enduring significant terrorist incidents, Canada's response to terrorist offenses has historically been limited (Colter, 2001; Roach, 2011; 2006; Stuart, 2001). However, in the wake of September 11<sup>th</sup> the Canadian Government implemented the Anti-Terrorism Act (ATA), and for the first time criminalized terrorism specific offenses. The events of September 11<sup>th</sup> marked a turning point not only in how terrorist threat is constructed globally, but also in the nature of terrorist activity in Canada. In the thirteen years following September 11<sup>th</sup> Canada has seen a proliferation in the number of terrorist offenders motivated by an Islamic extremist ideology (Crelinsten, 2012; Mullins, 2013). In 2004, Momin Khawaja, the first offender to be charged under the ATA, was arrested for his involvement in a terrorist plot that was intended to be executed in the UK. Khawaja was to provide the expertise that his counterparts needed to remotely detonate explosive devices. Two years later the Toronto 18 network was disrupted while plotting to detonate large-scale explosives targeting governmental offices and agencies, as well as media outlets. In 2007, Said Namouh was arrested, and eventually convicted, for his actions in connection with participating in an online group that was involved in the spreading of terrorist propaganda (Mullins, 2013; Roach, 2008).<sup>4</sup>

Although previous Canadian terrorist incidents have been motivated by imported grievances (i.e. conflicts that originate outside of Canada), the interconnectedness of offenders, and the accessibility of resources, in today's globalized world presents new challenges to law enforcement (Charters, 2008; Crelinsten, 2012; Leman-Langlois & Brodeur, 2005; Government of Canada, 2011).<sup>5</sup> The ATA impacted all aspects of the

<sup>3</sup> Of 428 events reported by Kellett (2004) and Kellett et al. (1990) 366 were domestic while the remaining 62 were international. Kellett et al.'s (1990) reported rates of terrorist incidents excludes 511 other events, as well as, 93 actions undertaken to support terrorist efforts.

<sup>4</sup> Hiva Mohammad Alizadeh, Misbahuddin Ahmed, Khurram Syed Sher, Matin Abdul Stanikzy, Mohamed Hershi, John Nuttall, Amanda Karody, Chiheb Esseghaier and Raed Jasser all remain in pre-trial custody for their alleged involvement terrorist plots inspired by Islamic Extremist (Mullins, 2013).

<sup>5</sup> For example, the bombing of Air India Flight 182 is one example of an imported grievance as the incident is believed to have been perpetrated by Sikh extremists in retaliation for actions carried out by the Indian Government in the Punjab state of India in 1984.

criminal justice system; however, following the criminalization of terrorism specific offenses prosecutors now face increasing scrutiny to not only successfully convict terrorist offenders, but also to achieve the harshest sentences possible. While one of the key goals of criminalizing terrorist related activity has been to proactively prevent terrorist incidents, the ability of these new criminal provisions to function as deterrents for terrorist activities has been questioned. It is commonly noted that the threat of long periods of incarceration would not dissuade individuals from committing terrorist offenses (Roach, 2005a; 2005b; Shaffer, 2001). Akin to this sentiment, Roach (2002) cites Canadian legal scholar Douglas Schmeiser who following the October Crisis in 1971 stated that, “the ordinary criminal law adequately covers dangerous conduct by insurgents.”<sup>6</sup> In light of the criminalization of terrorism specific offenses, and the changing nature of terrorist activities, the extent to which this holds true in the current climate remains unclear. Given that terrorist offenders have now been identified as an offending population that requires special legal provisions the current study investigates variability in the sentencing outcomes of terrorist offenders sanctioned in Canada between 1963 and 2010, and focuses on the potential impact that the implementation of the ATA has had on sentencing outcomes. Moreover, in order to garner a better understanding of the individuals who perpetrate terrorist offenses in Canada the demographic structure of convicted terrorists, and further how factors related to terrorist incidents affect sentencing outcomes are also investigated.

## **2.2. Legal Responses to Terrorism in Canada**

Similar to other countries (e.g. UK, United States), Canada has primarily adopted a legislative response to terrorism. The use of legal measures to respond to terrorist activity is referred to as the ‘criminal justice model’, whereby terrorist activity is identified as a distinct legal category of crime (Crelinsten, 2014; Crelinsten & Schmid, 1992). While many states had experience prosecuting terrorist offenders prior to September 11<sup>th</sup>, few had enacted legislative policies that codified specific terrorist offenses into

<sup>6</sup> The October Crisis refers to the abduction of James Cross, the British Trade Commissioner in Montreal, and the abduction and execution of Pierre Laporte, the Quebec Deputy Premier and Minister of Employment and Immigration, by the FLQ in October, 1970 (Fournier, 1982)

penal code. However, the past decade has seen a proliferation in the legal measures implemented to prevent, and prosecute, terrorist offenses (Braithwaite, 2011; Crelinsten, 2012; Crelinsten & Schmid, 1992; Klinger & Heal, 2011; LaFree & Ackerman, 2009; LaFree & Hendrickson, 2007).<sup>7</sup>

Canada's Anti-Terrorism Act (Bill C-36) was granted Royal Assent on December 18, 2001, ninety-eight days after the September 11<sup>th</sup> attack. Historically, Canadian responses to terrorist incidents have been tempered by the Canadian Charter of Rights and Freedoms – a factor that was also taken into account in the drafting of Bill C-36 (Colter, 2001; Roach, 2011; 2006; Stuart, 2001). For the first time in Canadian history the ATA legally defined terrorism, and established specific terrorism related crimes in the Canadian Criminal Code (CCC) (Colter, 2001; Roach, 2011; 2010a; 2006; 2005; 2002; 2001; Shaffer, 2001). The reason for the amendments to the CCC was the belief that offenses that had previously been used to prosecute terrorist offenders were no longer sufficient following September 11<sup>th</sup> owing to the fact that they were predominantly reactive as opposed to proactive (Colter, 2001; Diab, 2013; Roach, 2011; 2010; 2005a). As such, terrorism was defined under Section 83.01 of the CCC as:

<sup>7</sup> Historically, Canada's legal response to terrorist offenses and offenders has been limited. The Emergencies Act 1988 was implemented as a means to revise the legal powers established under the War Measures Act (Charters, 2008; Stuart, 2001). The Emergencies Act concerns public order, international and war related emergencies; however, while it currently remains in effect it has yet to be employed (Charters, 2008; Stuart, 2001). The aftermath of the Air India bombing called into question the roles and responsibilities of Canada's intelligence and policing agencies, and consequently Canada has had a National Counter-Terrorism Plan in effect since 1989 (Government of Canada, 2010). The Emergencies Act was the last security related legislation to be implemented prior to the ATA (Charters, 2008)

An act or omission, in or outside Canada,

that is committed (A) in whole or in part for political, religious or ideological purpose, objective or cause, and (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada

Along with providing a definition of terrorist activity the ATA introduced five new indictable offenses into the CCC with maximum punishments ranging from ten years to life imprisonment (Roach, 2002; 2001). Prior to its implementation terrorist offenders in Canada were prosecuted using existing Criminal Code offenses such as: first degree murder, conspiracy, kidnapping, hostage taking, possession of explosives with the intent to discharge, possession of illegal weapons, accessory after the fact, and threatening to murder an internationally protected person. The ATA established in the CCC the offenses of: participating in the activities of a terrorist group, facilitating terrorist activity, instructing the carrying out of terrorist activities, instructing activities for terrorist groups to enhance their ability to carry out terrorist activities, and harbouring or concealing terrorists (Roach, 2002). Furthermore, the ATA clarified issues of terrorism financing, and criminalized the actions of knowingly providing funds to carry out terrorist activities along with providing property, financial or other services knowing that they will benefit a terrorist organization (Roach, 2011). Unique to these offenses is the requirement for prosecutors to prove that their commission was motivated by either a political, religious or ideological belief (Roach 2011; 2010; 2002; Stuart, 2001).

In the years immediately following the implementation of the ATA prosecutors often continued to respond to terrorist threats by utilizing immigration law, as opposed to criminal law, and it was not until 2004 that the first terrorism-specific charges were laid (Roach, 2011; 2010; 2005a; 2005b). However, despite the emphasis of the ATA on proactive responses, as well as public safety and security, the ensuing changes made to the CCC were not without criticism. Legal scholars not only questioned the necessity of amending the CCC, but also the speed at which these changes were implemented (Roach 2011; 2005a; 2005b; 2005c; 2002; Shaffer, 2001; Stuart, 2001; Trotter, 2001).

One of the key criticisms was the inclusive definition of ‘terrorism.’ Roach (2002) noted that the definition of terrorism included in Bill C-36 was broader than those utilized by either the UK or the United States, and cautioned that this expansive definition, in conjunction with new investigative powers, offense classifications and strict punishments allowed by the Act, could be applied to citizens who were simply engaged in political protests (such as environmental issues, Aboriginal land claims, or anti-globalization protests).

Further terrorism specific offenses were added to the CCC in 2004 and 2013. Under the auspice of the Public Safety Act, committing a hoax related to terrorist activity was criminalized in 2004 (Roach, 2005c). In 2013, both the Combatting Terrorism Act and the Nuclear Terrorism Act were implemented. Reflective of the ATA’s goal of proactively preventing terrorist activity, the Combatting Terrorism Act criminalized offenses related to leaving Canada in order to participate in, or carry out, terrorist activity, as well as concealing a person who has, or is likely, to carry out terrorist activity (Government of Canada, 2013a).<sup>8</sup> The Nuclear Terrorism Act instituted four nuclear terrorism related offenses. In doing so this allowed Canada to ratify the “Amendment to the Convention on the Physical Protection of Nuclear Material and the International Convention for the Suppression of Acts of Nuclear Terrorism” (Government of Canada, 2013b).<sup>9</sup>

<sup>8</sup> Under the Combatting Terrorism Act the following offenses were added to the CCC: “the following offenses: leaving Canada to participate in the activity of a terrorist group, leaving Canada to facilitate terrorist activity, leaving Canada to commit an offense for a terrorist group, leaving Canada to commit an offense that is terrorist activity, concealing a person who carried out terrorist activity, and concealing a person who is likely to carry out terrorist activity,” (Government of Canada, 2013a).

<sup>9</sup> Under the Nuclear Terrorism Act the following offenses were added to the CCC: “making a device, or possessing, using, transferring, exporting, importing, altering or disposing of nuclear or radioactive material or a device, or committing an act against a nuclear facility or its operations, with the intent to cause death, serious bodily harm or substantial damage to property or the environment; using or altering nuclear or radioactive material or a device, or committing an act against a nuclear facility or its operation, with the intent to compel a person, a government or a domestic or international organization to do, or refrain from doing, any act; committing an indictable offence for the purpose of obtaining nuclear or radioactive material or a device, or to obtain access to a nuclear facility and threatening to commit any of these offences,” (Government of Canada, 2013b).

## **2.3. Sentencing Outcomes of Terrorist Offenders**

As indicated by the criminalization of specific terrorism related offenses, terrorist offenders have been identified as requiring special legal provisions. Despite this, few studies have investigated the legal processing of terrorist offenders. When comparing differences between the sentencing outcomes of terrorist and general offending populations previous studies report that when convicted of similar offenses that terrorist offenders are sentenced more severely, and that the most salient aggravating factor for terrorist offenders is having a political motivation (Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002). For individuals accused of terrorist offenses, having co-defendants both reduces the likelihood of going to trial and of being convicted (Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002). Furthermore, the timing of an offender's adjudication has been found to play a significant role in the sentencing outcomes of terrorist offenders. Damphousse and Shields (2007) report that terrorist offenders prosecuted in the two years following a major terrorist incident are sanctioned less severely than those punished prior to it citing that discrepancies in sentence outcomes can in part be attributed to changing prosecutorial strategies such as broadening the definition of terrorism and removing focus from the political nature of the crime.

Following the establishment of the ATA, in order to successfully prosecute offenders charged with terrorism related offenses, the Crown must prove that an offender was motivated by a political, religious or ideological motivation. In addition to this extra burden of proof, Section 718.2 of the CCC has deemed that where evidence exists to indicate that an offense was indeed a terrorism offense it should also be considered as an aggravating circumstance (Ruby et al., 2012). While some legal scholars have called into question whether or not terrorism is in fact a distinct type of crime, or if it should merely be considered as an aggravating factor at sentencing, it appears that in Canada participation in terrorism is both a legally distinct crime type, as well as an aggravating factor (Diab, 2013; Wattad, 2006).

To date, only one study has attempted to investigate the impact of extralegal and legal factors on the sentence severity of terrorist offenders convicted in Canada following the implementation of the ATA. After reviewing the sentencing outcomes of Khawaja, members of the Toronto 18 and Namouh, Diab (2013) reports that the mitigating factors uncovered for these offenders were similar to those of general offending populations. As such, being younger, not having a prior record, accepting responsibility and expressing remorse, willingly participating in rehabilitation, entering a guilty plea, and having familial responsibilities were all found to decrease sentence severity (Diab, 2013). However, while some of the aggravating factors identified, such as the use of firearms, planning to commit an offense and not expressing remorse, are typical of general offending populations, other aggravating factors identified are unique to terrorist offenses. Diab (2013) notes that having a leadership role, recruiting others, knowingly participating in a terrorist offense, planning of an offense that would lead to mass murder, planning to execute a crime motivated by race, ethnicity or religion, and being known to have actively participated in online groups all functioned to increase sentence severity (Diab, 2013).

## **2.4. The Present Study**

Canada has a storied history of terrorist incidents motivated by grievances originating both within, and outside, of Canada (Charters, 2008; Crelinsten, 2012; Kellett, 2004; Kellett, et al., 1990; Leman-Langlois & Brodeur, 2005; Leman-Langlois & Ouellet, 2009; Ross, 1994; 1988; 1988b; Ross & Gurr, 1989; Rudner, 2004). Despite the significance, and gravity, of terrorist incidents that occurred in the 1970s and 1980s it was not until the implementation of the ATA that terrorism specific offenses were criminalized in Canada (Colter, 2001; Roach, 2011; 2006; 2005; 2002; 2001; Shaffer, 2001). While much is known about the incidents themselves, less is known about how the criminal justice system has historically responded to terrorist offenders, and how the current response to this offending population compares to past reactions. While Diab (2013) presents a primary investigation of the sentencing outcomes of a selection of terrorist offenders prosecuted after the implementation of the ATA, he relies on a review of case law for his analysis, and, as such, does not empirically test the impact of legal

and extralegal factors on sentencing outcomes. Furthermore, Diab (2013) does not compare the sentencing outcomes of recently adjudicated terrorist offenders to cases historically prosecuted in Canada.

In light of this, the current study seeks to build on Diab's (2013) work by investigating variability in the sentencing outcomes of terrorist offenders sanctioned in Canada between 1963 and 2010, focusing on the potential impact that the implementation of the ATA has had on the legal processing of terrorist offenders. Accordingly, the present study investigates if there are discernable periods where offenders are sanctioned more punitively than others, and if offenders prosecuted after the implementation of the ATA are sanctioned more or less severely than those prosecuted prior to it. Furthermore, in order to garner a better understanding of the offenders who have perpetrated terrorist incidents in Canada the changing demographic structure of this offending population is examined, and further, given that terrorist incidents themselves have been identified as aggravating circumstances, the extent that factors specifically related to terrorist incidents function to increase or decrease sentence severity are explored.

## **2.5. Data and Methods**

In order to investigate the sentencing variability of terrorist offenders sanctioned in Canada a new dataset was created. The Officially Adjudicated Terrorists in Canada (OTAC) dataset is comprised of 153 offenders who were convicted of terrorist related offenses in Canada between 1963 and 2010. Offenders who had been convicted of terrorist related activities were identified as extensively as possible in one of three ways. First, the website compiled and maintained by Canadian terrorism expert Dr. Leman-Langlois (Terrorism and Counterterrorism Research Group (TCRG)) was consulted to acquire any names of terrorist offenders identified in the extensive list of Canadian terrorist incidents cited there. Second, keyword searches in three legal databases (CanLII, Best Case and Quicklaw) were undertaken, and, third, relevant texts and news sources were consulted. Once identified, offenders were subject to a name search in the three legal databases. Additionally, each legal database was searched using the keywords 'terrorism,' 'terrorist,' 'terror,' and 'political violence.' If an offender was



identified in one legal database a name search was then undertaken in the other two to ensure that all legal documents available pertaining to a specific case were located. The use of texts and news sources (e.g.. Canadian Broadcasting Corporation) was especially important for identifying historical cases. Lastly, a Google search was subsequently employed for each individual identified in order to collect any other relevant information.

A total of 279 legal documents, five texts and 227 news sources were consulted in the construction of the OATC. Of the 153 offenders, 70.6% ( $n = 108$ ) were convicted for their participation in FLQ activities. Legal documents were available for 30% ( $n = 46$ ) of the individuals, that was in large part due to the high proportion of FLQ members, and the limited availability of historical legal documents. News sources and texts were available for 91.5% ( $n = 140$ ) of the sample. For each case, 182 variables were coded pertaining to the offender's age, place of birth, religion, motivation, participation in the offense, charge counts, conviction counts, sentence issued, appeals undertaken by either the Crown or Defense, and the final sentence rendered.

As sentence outcome serves as the key dependent variable in these analyses only offenders for which a final sentence outcome could be identified were included. Initially, 183 cases were identified; however, 30 were excluded for the following reasons: sentence information could not be located, the offender was still in pre-trial custody or charges have been laid but the offender remains at large. Two offenders convicted in connection with the plot to bomb Air India Flight 112 were excluded given that their convictions were overturned in 1992, and that they were granted a stay of charges in 1996. Furthermore, Inderjit Singh Reyat (the only offender convicted in connection with the Air India bombings) has been tried on four separate occasions for his involvement in the incident. In light of this, only his final trial, concluding in 2010, is included. There were five offenders who were convicted twice, for separate offenses related to their involvement in the FLQ. However, given the small number of recidivists it was not possible to control for this in the multivariate models.

### **2.5.1. Dependant Variable**

Sentence Length. The key outcome variable of interest is sentence length, that was coded at both the end of the offender's initial trial, as well as following any appeals pursued by either the Crown or defense. Consequently, the final sentence issued is utilized, and in keeping with previous studies examining sentencing outcomes is measured in months (Bradley-Engen, Engen, Shields, Damphousse & Smith, 2012; Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Smith & Damphousse, 1996; Ulmer & Johnson, 2004). On average offenders were sentenced to 88.72 months. The shortest sentence issued was 2 months, while the longest was 300. All but 12 of the offenders ( $n = 141$ ) were incarcerated in prison. Of the remaining 12 offenders, 10 were issued suspended sentences and 2 were issued probation terms. Though we preserved the original sentence length meted out for these 12 offenders, a control was added for "suspended sentence/probation" in our multivariate models to account for the difference between these cases and the majority of others<sup>10</sup>.

### **2.5.2. Main Independent Variables**

Contextual Factors. In order to investigate how being arrested at different time points, and convicted under different sections of the Criminal Code, impacts sentencing outcomes, a series of contextual factors were coded. The forty-seven year observation period was divided into three periods: Period 1 (offenders arrested between 1963 and 1982), Period 2 (offenders arrested between 1983 and 2001) and Period 3 (offenders arrested between 2002 and 2010). For many of the historical cases it was challenging to consistently identify the offender's year of conviction. As a result of this year of arrest is utilized throughout. Period 1 is exclusively comprised of FLQ members ( $n = 108$ ). Although FLQ actions terminated in 1972, six members of the FLQ cell responsible for the kidnapping of James Cross fled Canada upon his release, and did not return until the late 1970s and early 1980s (1978 – 1982). Upon their return they were prosecuted for

<sup>10</sup> Dropping these cases entirely from the multivariate analysis was also a consideration. Doing so, however, did not substantially change any of the results. Given the small sample of Canadian cases available, it was best to preserve as many cases as possible, and simply control for differences in sentence dispositions issued in the statistical models.

their involvement in the October Crisis, and as a result of this the first period is extended to 1982, the year in which last FLQ member was arrested. With the exception of these residual FLQ members, no other terrorist offenders in our dataset were arrested between 1972 and 1982.

Period 2, ranging from 1983 to 2001, contains a large proportion of offenders motivated by political grievances and Sikh extremism, as well as the only two offenders motivated by eco-terrorism ( $n = 22$ ). For Period 2, the end date of 2001 was selected as it marks the implementation of the ATA, and the creation of new legal dispositions that could only be applied to offenders arrested from 2002 and onwards. Period 3 consists of offenders who were arrested after the implementation of the ATA from 2002 to 2010 and, as such, this period serves as a means to explore changing criminal justice responses to terrorist offenders after the implementation of this new legislation ( $n = 23$ ). The third period contains the eleven members of the Toronto 18 who were successfully prosecuted for their involvement in this terrorist plot, as well as Momin Khawaja. Each period variable was coded as 'offender not arrested' during period (0), or 'offender arrested' during period (1).

In order to investigate whether being convicted of terrorism specific offenses impacts sentencing outcomes, three variables were created to capture whether or not offenders were sanctioned under terrorism specific or general legal provisions. The first measures whether or not an offender was convicted of a *Terrorism Offense* only and was coded as 'not convicted of a terrorism offense' (0), or 'convicted of a terrorism offense' (1). Following the implementation of the ATA only 7.3% ( $n = 11$ ) of offenders were convicted solely of a terrorist offense. In contrast, 89.5% ( $n = 137$ ) of offenders were convicted of a *General Criminal Code Offense* only and were coded as 'offender not convicted of a general Criminal Code offense' (0), or 'offender convicted of a general Criminal Code offense' (1). Only 3.3% ( $n = 5$ ) of offenders were convicted of *Both a Terrorism Specific and General Criminal Code Offense*. This factor was coded as 'offender not convicted of both a terrorism and general offense' (0), or 'offender convicted of both a terrorism and general offense' (1).

Terrorism Specific Factors. A series of terrorism specific factors were coded in an effort to explore the changing nature of terrorist activity in Canada over the past forty-seven years, as well as the potential impact that factors unique to terrorism cases have on sentencing outcomes. Drawing on previous empirical investigations (Bradley-Engen et al., 2009; Diab, 2013; Shields et al., 2006; Damphousse and Smith, 2004; Smith & Damphousse, 1998; Smith et al., 2002) the current study examines eight terrorism related factors. The first considers whether or not the offender was able to complete their offense (*Completion*), and is measured as 'offense detected prior to completion' (0), or 'offense completed' (1). In total, 79.1% ( $n = 121$ ) of offenders were able to complete their offense. Next, a series of dummy variables were coded in order to capture varying offense severities. The first dummy variable accounts for whether or not the offender's actions resulted in the *Death* of a civilian (i.e. first degree murder, manslaughter) and was coded as 'actions did not result in the death of an civilian' (0), or 'actions did result in the death of an civilian' (1). Approximately one quarter of the offenders engaged in activities that resulted in the death of a civilian (23.5%). The second dummy variable considers offenders who engaged in an offense that posed an *Increased Threat* to human lives or resulted in the injury of civilians such as armed robbery, assault, attempted murder, participating in the actions of a terrorist group, facilitating terrorist activity and attempting to participate in terrorist activity. In total, 60.1% of offenders participated in such an offense and this factor was coded as 'no increased threat to human lives or civilian injury' (0), or 'increased threat to human lives or civilian injury' (1). Lastly, a third dummy variable was created to account for offenses that posed no threat to human lives such as perjury, accessory after the fact and sedition, and was coded as 'threat to human lives' (0), 'no threat to human lives' (1). The remaining 16.3% of offenders engaged in an offense that posed no direct threat to human lives.

*Motivations* were organized into seven categories 1) nationalism/separatism ( $n = 108$ ), 2) Islamic extremism ( $n = 14$ ), 3) political (e.g. the Israel/Palestine conflict, protest of the Armenian Genocide, capitalism) ( $n = 17$ ), 4) Sikh extremism ( $n = 6$ ), 5) personal (e.g. assistance of a family member, retaliation for personal grievance) ( $n = 5$ ), 6) eco-terrorism ( $n = 2$ ) and 7) financial ( $n = 1$ ). A total of five *Weapons* were utilized, or intended to be utilized, by the offenders: 1) explosive devices, 2) firearm, 3) arson, 4) explosive device and firearm and 5) no weapon utilized. The most commonly utilized

weapons were explosive devices (49.7%), while 15.7% of the offenders did not utilize a weapon in the commission of their offense. As terrorist offenses have the potential to cross international borders the *Location* of the completed, or planned, offense was also considered. Almost all of the offenders either completed, or intended to complete, their offenses in Canada (96.7%), while those who looked outside of Canada's borders either planned, or completed, their offense in the UK, the United States or Bosnia.<sup>11</sup>

The extent to which attending a *Training* camp affects sentencing outcomes for both historically and, recently, adjudicated offenders remains unclear. Participation in a terrorist training camp was coded as 'did not attend terrorist training camp' (0), or 'attended terrorist training camp' (1). In total, 21.6% of the offenders attended a training camp, or actively prepared for their involvement in terrorist activities in some way. Training camps and preparatory actions were undertaken in Quebec (60.6%), Ontario (21.1%), British Columbia (15.2%) and Pakistan (3%). Four offense variables were operationalized to investigate the changing nature of terrorist activity over time: Terrorism, Violence, Weapons and Other. For each offender convictions for the most serious offense only were recorded, and as such the variables are mutually exclusive. *Terrorism* offenses are those identified by Section 83 of the CCC (i.e. facilitating terrorist activity, training for terrorist purposes, instructing others to carry out an activity for a terrorist group) and were coded as 'no conviction for terrorism offense' (0), or 'conviction for terrorism offense' (1). *Violent* offenses included first-degree murder, attempted murder, assault and manslaughter, and was coded as 'no conviction for violent offense' (0), or 'conviction for violent offense' (1). *Weapons* offenses included possession of an illegal weapon, activating an explosive substance, and possession of an explosive with the intent to discharge, and was coded as 'no conviction for weapons offense' (0), or 'conviction for weapons offense' (1). *Theft/Other* offenses included auto theft, perjury, sedition, accessory after the fact and kidnapping, and was coded as 'no conviction for theft/other offense' (0), or 'conviction for theft other offense' (1). In total, 10.5% of

<sup>11</sup> One offender was convicted for his participation in the spreading of terrorist propaganda online. As a result of this the location of this offense was coded as "No specific location intended."

offenders were convicted of a terrorism offense, 34% of violent offense, 28.8% of a weapons offense and 26.8% of a theft/other offense.<sup>12</sup>

### 2.5.3. Control Variables

Demographic Characteristics. Four demographic characteristics were included. As terrorist offenders have been identified as typically being older than general offending populations, and given that Diab (2013) has identified that being younger serves as a potential mediating factor at sentencing, the offenders *Age* was included.<sup>13</sup> On average, offenders were 26 years old at the time of their arrest. Similar to general offending populations, terrorist offenders are predominantly male; however, in order to examine gender diversity in convicted Canadian terrorist offenders *Gender* was coded as 'female offender' (0), or 'male offender' (1). Only 8% of terrorist offenders arrested, and eventually convicted, were female. A previous study conducted by Johnson et al. (2010) investigating the sentencing outcomes of offenders adjudicated in a country not of their birth indicates that foreign offenders are sanctioned more harshly, and as such two variables were included to investigate the citizenship and place of birth of the offenders. Together, 96.1% of the offenders were *Legal Citizens* of Canada, and this factor was coded as 'offender a legal citizen' (0), 'offender not a legal citizen' (1). Almost one-fifth of the offenders had immigrated to Canada as 19.6% of the offenders were recorded as being an *Immigrant*, and was coded as 'not an immigrant' (0), or 'immigrant' (1). Offenders immigrated to Canada from 18 different countries with the greatest proportion emigrating from India.<sup>14</sup>

Extralegal and Legal Factors. In order to investigate changing legal responses to terrorist offenders in Canada four legal and extralegal variables are included. First, the

<sup>12</sup> See Appendix A for the offense types that terrorist offenders have been convicted of in Canada.

<sup>13</sup> If the offender's *Age* at sentencing was reported it was coded as such. However, often the offender's age was reported at the time of their arrest, but no formal date of birth was reported. In these cases the offenders reported age was subtracted from the year of arrest, onset ect. to approximate the offender's date of birth.

<sup>14</sup> Offenders emigrated from: Afghanistan, Algeria, Armenia, Belgium, Egypt, Hungary, India, Iran, Jordan, Kazakhstan, Lebanon, Morocco, Netherlands, Pakistan, Saudi Arabia, Somalia, Sri Lanka and Syria.

amount of time an offender spent in *Pre-Trial Custody* was considered. On average offenders served 2.21 years prior to being sentenced with a range of 1 to 6 years served. The amount of time spent in pre-trial custody is measured as a count variable. Previous studies have illustrated that for both general and terrorist offenders entering a *Guilty Plea* can serve to reduce sentence severity (Bradley-Engen et al., 2012; Bradley-Engen et al., 2009; Engen & Gainey, 2000; Shields et al., 2006). Just over one quarter of the offenders entered a guilty plea (27.5%), and it was coded here as 'no guilty plea' (0), or 'guilty plea' (1). In a recent study Johnson (2012) reports that terrorist offenders who have an increased number of co-offenders, and co-defendants, are both less likely to go to trial, and to be convicted. Approximately half of the sample (48.7%) were tried with *Co-Defendants*, and this factor was coded as 'no co-defendants' (0), or 'co-defendants' (1). On average offenders had 10.09 *Co-Offenders*, with a range of 0 to 23. The number of co-offenders is also included as a count variable.

## **2.6. Analytic Strategy**

In order to investigate how the sentencing outcomes of terrorist offenders convicted in Canada have varied across time, and the extent to which terrorism specific factors serve to increase or decrease sentence severity, the current study utilizes time-series plots, bivariate analyses and ordinary least squares (OLS) regression. The structure of the data presented a challenge as the convicted offenders were not only organized into three periods, but members of the FLQ were further grouped among their co-offenders. This created a differential structure within the data that was only characteristic of the FLQ. While there was no appropriate way to recode the remaining cases to control for their involvement with co-offenders, a null hierarchical linear model was run using a period indicator to explore the potential necessity of multilevel modeling. However, upon inspection it was found that the intraclass correlation was not significant indicating that multilevel modeling was not the best modeling strategy for the data (Garson, 2013). In order to explore the effect of each group of covariates on sentencing outcomes the variables were first entered into independent regression models (demographic characteristics, terrorism specific, extralegal and legal factors and

sentencing context). A final model was then run including all of the covariates in order to explore any mediating effects.

**Table 2.1. Demographic Characteristics**

	Total Sample	Period 1	Period 2	Period 3
Length of Period (In Years)	47	19	19	9
Number of Offenders	153	108	22	23
Average Age of Offenders	26 (18 – 61)	24 (18 – 48)	30 (21 – 59)	31 (20 – 61)
Male Offenders	92.2%	91.7%	90.9%	95.7%
Legal Citizens	96.1%	99.1%	90.9%	87%
Immigrants	19.6%	1.9%	54.5%	65.2%



**Table 2.2. Bivariate Associations**

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
1. Age	-												
2. Immigrant	.28**	-											
3. Completion	.15	-.11	-										
4. Death	-.17*	-.04	.29***	-									
5. Increased Threat	.16*	.10	-.22**	-.68**	-								
6. No Threat	-.03	-.09	-.03	-.2*	-.54***	-							
7. Training	-.01	.02	-.32***	.19*	.005	-.23**	-						
8. Guilty Plea	.003	.21**	-.04	-.03	.20*	-.23**	.21**	-					
9. Co-Defendants	-.23**	.01	.05	.29***	.02	-.36***	.28**	.10	-				
10. Co-Offenders	-.29**	-.27**	.08	.39**	-.41**	.08	.13	-.12	-.007	-			
11. 1963 – 1982	-.39**	-.69***	.16*	.23**	-.26**	.09	-.12	-.34***	.06	.41**	-		
12. 1983 – 2001	.31**	.36***	.21**	-.09	.18*	-.13+	.02	.17*	.23**	-.39**	-.64***	-	
13. 2002 – 2010	.20*	.53***	-.41***	-.19*	.16*	.01	.14+	.27**	-.30***	-.14	-.65***	-.17*	-
14. FSM	.06	.36**	.03	.29**	.07	-.44**	.29**	.31**	.17*	-.09	-.35**	.29**	.15

\* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$

## 2.7. Results

Table 2.1 provides descriptive information about the sample, while Table 2.2 provides measures of association among the covariates. The key finding throughout these analyses is that the periods are defined more by their differences than by their similarities, and the observed differences begin with the demographic characteristics of our offending sample. Over time, the average age of offenders convicted of terrorist offenses has increased as the lowest mean age was reported in Period 1 ( $M = 24$ ), and the highest mean age was reported in Period 3 ( $M = 31$ ). Being older was significantly associated with being an immigrant ( $Rho = .28, p < 0.01$ ) and participating in an incident that posed an increased threat ( $Rho = .16, p < 0.05$ ). Collectively, offenders convicted of terrorist offenses have been overwhelmingly male, and there has been little variability in the proportion of female offenders over time. The greatest amount of variability in the demographic characteristics across periods is evident in the number of offenders who are legal citizens and immigrants to Canada. While legal citizenship declines over time, the number of immigrants convicted of terrorist offenses increases. Only two members (1.9%) of the FLQ were immigrants; however, 54.5% of the offenders in Period 2 and 69.6% of the offenders in Period 3 immigrated to Canada.

**Table 2.3. Terrorism Related Factors**

	Total Sample 1963 - 2010 (n = 153)	Period 1 1963 - 1982 (n = 108)	Period 2 1983 - 2001 (n = 22)	Period 3 2002 - 2011 (n = 23)
<b>Offense Completed</b>	79.1%	83.3%	100%	39.1%
<b>Severity</b>				
Actions Resulted in Death	23.5%	29.6%	13.6%	4.3%
Increased Threat to Human Lives	60.1%	51.9%	81.8%	78.3%
No Threat to Human Lives	16.3%	18.5%	4.5%	17.4%
<b>Motivation</b>				
Nationalism/Separatism	70.6%	100%	0	0
Islamic Extremism	9.2%	0	0	60.9%
Political <sup>1</sup>	11.1%	0	54.5%	21.7%
Sikh Extremism	3.9%	0	22.7%	4.3%
Personal <sup>2</sup>	2.6%	0	13.6%	8.7%
Eco-Terrorism	1.3%	0	9.1%	0
Financial	.7%	0	0	4.3%
<b>Weapon</b>				
Explosive Device	49.7%	49.1%	31.8%	69.6%
Firearm	28.1%	30.6%	45.5%	0
No Weapon	15.7%	16.7%	9.1%	17.4%
Arson	2.6%	.9%	0	13%
Explosive Device/Firearm	3.9%	2.8%	13.6%	0
<b>Location of Offense</b>				
Canada	96.7%	98.1%	95.5%	91.3%
Other	2.7%	1.9%	4.5%	4.3%
No Specific Location Intended	.7%	0	0	4.3%
<b>Training Camp/Preparation</b>	21.6%	18.5%	22.7%	34.8%
<b>Offense Type</b>				
Terrorism	10.5%	-	-	69.6%
Violent	34%	39.8%	40.9%	0
Weapons	28.8%	31.5%	31.8%	13%
Theft/Other	26.8%	28.7%	27.3%	17.4%

<sup>1</sup>Political Motivations include: Protesting the Bosnian War; ASALA; Direct Action; Israel/Palestine Conflict; LTTE; capitalism

<sup>2</sup> Personal Motivations include: Retaliation for grievance, protest of gun control laws, assistance of family member

Significant variability in the ability of terrorist offenders to complete their offenses was found across periods. The offenders in Period 2 were all able to complete their offenses, while 83.3% of the offenders in Period 1, and only 39.1% in Period 3, were able to complete their offenses (See Table 2.3). At the bivariate level being able to complete an offense was negatively associated with posing an increased threat ( $\Phi = -.22, p < 0.01$ ), attending a training camp ( $\Phi = -.32, p < 0.01$ ) and being arrested in Period 3 ( $\Phi = -.41, p < 0.01$ ), and was positively associated with causing the death of a civilian ( $\Phi = .29, p < 0.01$ ), and being arrested in Periods 1 ( $\Phi = .16, p < 0.05$ ) and 2 ( $\Phi = .21, p < 0.01$ ). In a similar vein, there is an overall downward trend in the deaths of civilians over time as 29.6% of the offenders in Period 1, 13.6% of the offenders in Period 2, and 4.3% of the offenders in Period 3 were involved in an offense that resulted in the death of a civilian. Conversely, there is a general upward trend in the proportion of offenders who were involved in offenses that posed an increased threat to human lives as 81.8% of offenders in Period 2, and 78.3% of offenders in Period 3 engaged in these types of activities.

In total, seven primary motivations were identified. Again, as all of the offenders in Period 1 were participants in FLQ activity, 100% of the offenders in this period were motivated by nationalism/separatism. However, Period 2 saw a rise in terrorist incidents motivated by imported grievances. Over half of the offenders in Period 2 (54.5%) were motivated by political grievances as this period includes the members of Direct Action and the Armenian Secret Army for the Liberation of Armenia (ASALA), Justice Commandos for the Armenian Genocide (JCAG)/Armenian Revolution Army (ARA). The second most common motivation in Period 2 was Sikh Extremism (22.7%), and includes offenders who were involved in the attempted assassinations of Malkiat Singh Sidhu and Tara Singh Hayer.<sup>15</sup> The motivations change drastically in Period 3, as over half of the offenders adjudicated were motivated by Islamic Extremism (60.9%). In Period 3 political motivations included the Israel/Palestine conflict, support for the Liberation Tigers of Tamil Eelam and capitalism.

<sup>15</sup> As noted above Inderjit Singh Reyat (the only offender convicted in connection with the Air India bombings) has been tried on four separate occasions for his involvement in the incident. As only his final trial is included here he is a member of Period 3.

Offenders participated in training camps across all periods as 18.5% of offenders in Period 1, 22.7% of offenders in Period 2 and 34.8% of offenders in Period 3 engaged in activities to prepare for their involvement in terrorist events. Ironically, doing so does not facilitate offense completion, as we find that attending a training camp is negatively associated with being able to complete an offense ( $\Phi = -.32, p < 0.01$ ). Only one offender (in Period 3) went abroad to attend a training camp that was located in Pakistan.<sup>16</sup> Finally, in both Periods 1 (39.8%) and 2 (40.9%) offenders were most commonly convicted of violent related offenses. However, following the criminalization of terrorism specific offenses in Period 3 no offenders were convicted of violent offenses during this period, while 69.6% were convicted of terrorism specific offenses - a finding that highlights the criminal justice system's active use of these new legal provisions and the use of terrorism specific offenses in place of violent offenses.

**Table 2.4. Legal and Extralegal Factors**

	Total Sample 1963 - 2010 ( <i>n</i> = 153)	Period 1 1963 - 1982 ( <i>n</i> = 108)	Period 2 1983 - 2001 ( <i>n</i> = 22)	Period 3 2002 - 2010 ( <i>n</i> = 23)
Time in Pre-Trial Custody (in years) <sup>1</sup>	2.13 (1 – 6)	-	1.36 (1 – 6)	2.87 (1 – 5)
Guilty Plea	27.5%	17.6%	45.5%	56.5%
Co-Defendants	49%	50.9%	77.3%	13%
Number of Co-Offenders	10.09 (0 – 23)	11.80 (0 – 23)	2.33 (0 – 4)	9.13 (0 - 17)

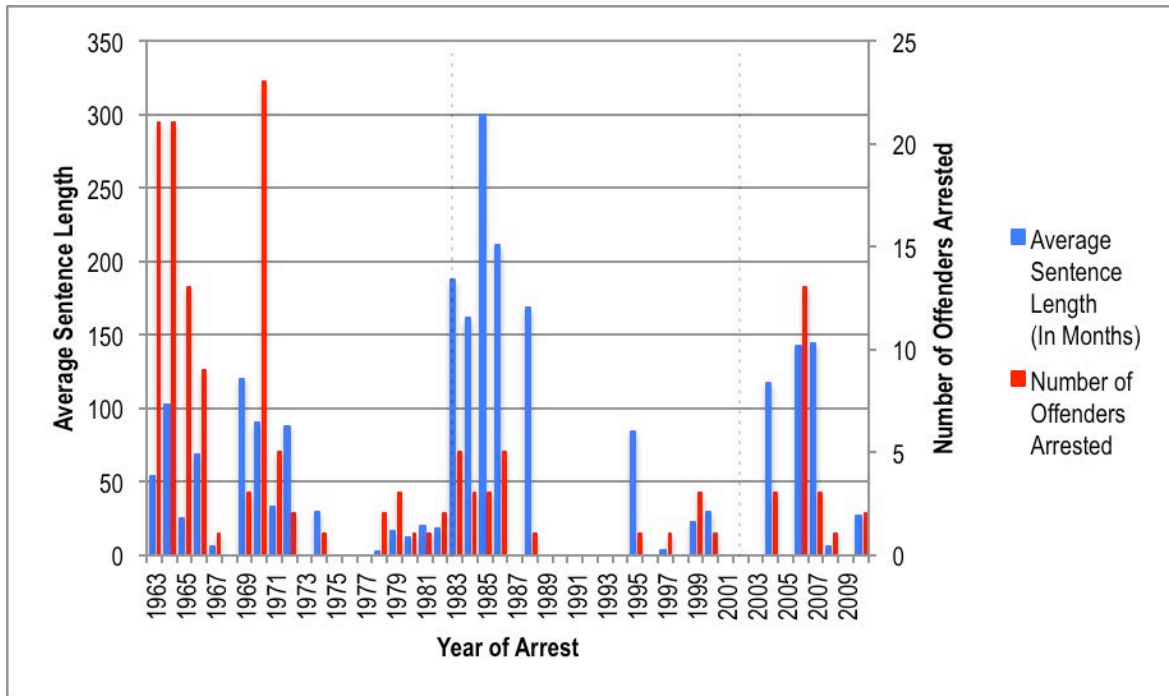
<sup>1</sup> It was not possible to consistently identify the amount of time that members of the FLQ spent in pre-trial custody and as such they have been excluded

As for the legal and extralegal factors, note that on average offenders sanctioned in Period 3 spent the longest time in pre-trial custody averaging 2.87 years, that is more than double the average time spent by offenders in Period 2 (See Table 2.4). The number of offenders who entered guilty pleas increased over time as well. More than

<sup>16</sup> Only four offenders plotted to execute, or executed, their offenses outside of Canada. The two members of Period 1 were involved in a plot to bomb the Statue of Liberty (Fournier, 1982, Morf, 1970; Stewart, 1970), the one member of Period 2 was involved in an incident that occurred while participating in the Bosnia War (Canada v. Ribic, 2002), and the one member of Period 3 was to provide the expertise necessary to utilize remote detonators in a plot that was intended to be executed in the United Kingdom (Mullins, 2013).

half of the offenders sanctioned in Period 3 (56.5%) entered guilty pleas, while only 17.6% of the offenders in Period 1 entered a guilty plea.

**Figure 2-1. Average Sentence Length and Number of Terrorist Offenders in Canada by Year of Arrest from 1963 – 2010**



### 2.7.1. Sentencing Outcomes

Figure 2-1 illustrates the average sentencing outcomes and number of offenders who were arrested from 1963 onwards. As a direct result of the FLQ campaign, the greatest number of offenders were arrested in Period 1. Yet, the average sentence length achieved in Period 1 ( $M = 66.23$  months) was the shortest among the three periods. Period 2 was characterized by the highest average sentence length at 168 months, an average that decreased to 119 months in Period 3. At the bivariate level being arrested in Period 2 ( $Rho = .29, p < 0.01$ ) was found to be significantly associated with an increased sentence severity, while being arrested in Period 1 ( $Rho = -.35, p < 0.01$ ) was found to be significantly associated with a decreased sentence severity. Furthermore, being an immigrant ( $Rho = .36, p < 0.01$ ) and attending a training camp ( $Rho = .29, p < 0.01$ ) were also found to be significantly associated with having an increased sentence severity.

**Figure 2-2. Average Sentence Length by Conviction Type and Period**

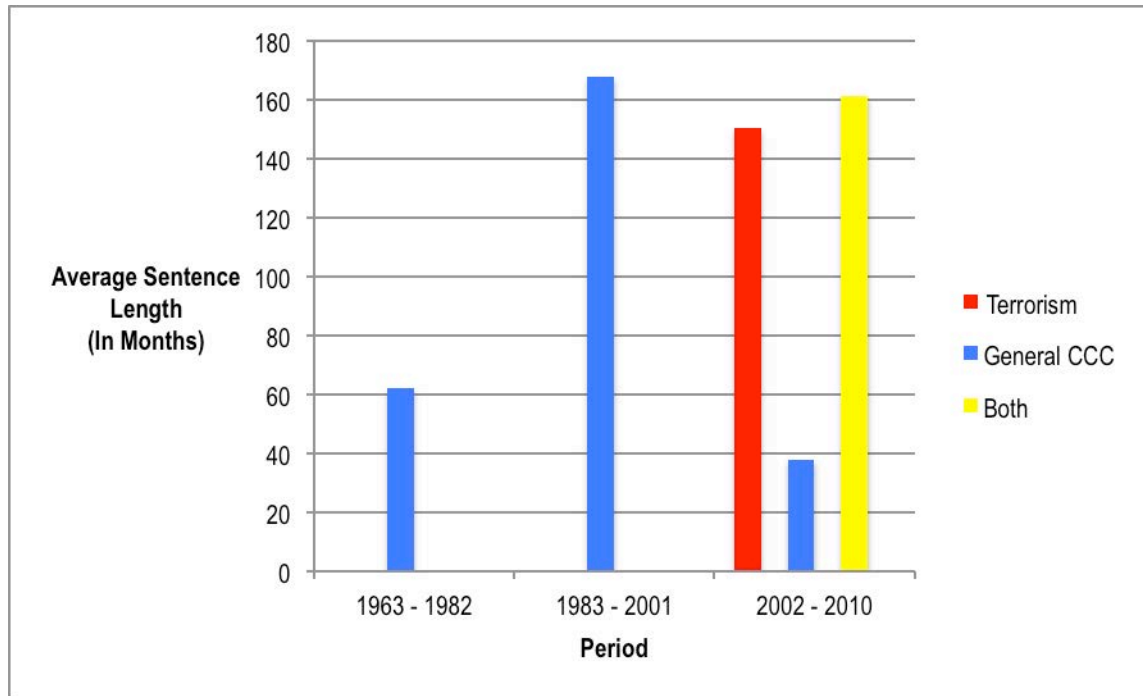


Figure 2-2 illustrates the average sentence length achieved by conviction type and period. As terrorism specific offenses were not criminalized until 2001, offenders sanctioned in Periods 1 and 2 could only be convicted of general Criminal Code offenses. Breaking down the sentencing outcomes achieved in Period 3 by conviction type helps to highlight the impact that the criminalization of terrorism specific offenses has had on sentencing outcomes. In Period 3 offenders convicted solely of terrorism specific offenses were sanctioned 3.9 times more severely ( $M = 150.27$  months) than those who were convicted of a general Criminal Code offense alone ( $M = 38$  months). However, offenders who were convicted of both offense types received the harshest penalties recording an average sentence length of 161.40 months.

**Table 2.5. OLS Regression Testing the Impact of Offender Characteristics, Terrorism Factors, Extralegal and Legal Factors and Sentencing Context on Sentencing Outcomes (n = 153)**

	Model 1 b (SE)	Model 2 b (SE)	Model 3 b (SE)	Model 4 b (SE)
<b>Extra Legal and Legal Factors</b>				
Age	5.87 (30.14)			-10.86 (31.03)
Immigrant	91.76 (18.82) <sup>***</sup>			52.37 (23.87) <sup>*</sup>
Guilty Plea	35.94 (17.05) <sup>*</sup>			6.20 (16.37)
Co-Defendants	17.86 (15.27)			-28.33 (16.34) <sup>+</sup>
Co-Offenders	-.98 (.89)			-1.26 (.95)
Disposition	-72.78 (28.13) <sup>*</sup>			-58.00 (24.81) <sup>*</sup>
<b>Terrorism Specific</b>				
Completion		12.61 (20.32)		-1.72 (21.29)
Severity <sup>a</sup>				
Increased Threat		-36.62 (19.14) <sup>*</sup>		-76.78 (20.37) <sup>***</sup>
No Threat		-86.08 (25.52) <sup>**</sup>		-113.20 (25.01) <sup>***</sup>
Training Camp		47.17 (19.99) <sup>*</sup>		36.68 (19.13) <sup>*</sup>
<b>Sentencing Context<sup>b</sup></b>				
Offender Arrested 1983 – 2001			101.77 (20.87) <sup>***</sup>	75.63 (26.30) <sup>**</sup>
Offender Arrested 2002 - 2010			52.29 (20.49) <sup>*</sup>	14.16 (30.01)
Adjusted R <sup>2</sup>	.14	.13	.14	.33

<sup>+</sup>p<.10, <sup>\*</sup>p < .05, <sup>\*\*</sup> p < .01, <sup>\*\*\*</sup>p<.001

<sup>a</sup>Offenders who participated in an activity that resulted in death are used as the reference group for severity

<sup>b</sup>Offenders arrested between 1963 – 1982 used as the reference group for sentencing context



Given the impact of many of the covariates on sentence length at the bivariate level an OLS regression was employed to test the impact of the covariates at the multivariate level (See Table 2.5).<sup>17</sup> To begin, each group of covariates was entered into an independent model. In the first model testing the impact of demographic characteristics being an immigrant was found to significantly increase sentence severity ( $b = 91.76$ ;  $p < 0.01$ ), while the offender's age was found to have no impact on sentencing outcomes. Given that Diab (2013) has identified age, and in particular being younger, as a potential mediating factor at sentencing the fact that age did not emerge as a significant predictor of sentence length may be attributable to the average age of the sample, which is higher than what has previously been reported as the average age of terrorist offenders (LaFree & Ackerman, 2009). Next, the terrorism specific factors were tested. When compared to offenders who participated in an offense that resulted in the death of an individual offenders who participated in an offense that posed an increased threat ( $b = -36.62$ ;  $p < 0.05$ ), and no threat ( $b = -86.08$ ;  $p < 0.01$ ) were both sanctioned less severely. Furthermore, attending a training camp ( $b = 47.41$ ;  $p < 0.05$ ) was found to be predictive of an increased sentence length. The only terrorism factor found to be unrelated to sentence outcomes was whether or not the offender was able to complete their offense.

In order to control for the 12 offenders who were issued suspended sentences or probation terms we add one additional factor to the series of extralegal and legal factors in the multivariate model to control for the disposition issued. Of the four extralegal and legal factors tested, the only factor to emerge as a significant predictor of increased sentence length was entering a guilty plea ( $b = 35.94$ ;  $p < 0.05$ ). This finding is contrary to prior studies that have found that entering a guilty plea serves to reduce sentence

<sup>17</sup>Due to methodological constraints not all covariates could be included in the OLS models. While it would have been desirable to include the offender's motivation in the OLS models, potential multicollinearity issues and the small occurrence of some of the motivations identified in the data presented challenges. Note, however, that the Nationalism/Separatism motivation (FLQ) is already controlled for when including the contextual indicator of Period 1, which is true but to a lesser extent when controls were introduced for Period 2 (i.e. Political motivation) and Period 3 (i.e. Islamic extremism). Furthermore, due to the high proportion of offenders who were legal citizens this factor could not be entered into the model. Finally, it also would have been desirable to include the conviction type that offenders were sanctioned of; however, terrorism specific offenses were only introduced in Period 3, which indirectly acts as an indicator for conviction type.

severity (Bradley-Engen et al., 2012; Bradley-Engen et al., 2009; Engen and Gainey, 2000; Shields et al., 2006); however, given that previous studies have further reported that terrorist offenders who have an increased number of co-offenders, and who are tried with co-defendants, often are subject to decreased penalties (Johnson, 2012) the effect of entering a guilty plea found here might be the result of the challenges the criminal justice system faces when prosecuting multiple terrorist offenders at the same time. Lastly, when exploring the impact of sentencing context on sentencing outcomes the regression model provides further support for findings that have already been uncovered in the descriptive and bivariate analyses. Being sanctioned in Period 2 ( $b = 101.77$ ;  $p < 0.05$ ) and Period 3 ( $b = 52.29$ ;  $p < 0.05$ ) was predictive of increased sentence outcomes compared to Period 1.

A final model was then run to explore any potential mediating effects among the covariates. When controlling for all covariates, being an immigrant ( $b = 52.37$ ;  $p < 0.05$ ), attending a training camp ( $b = 36.68$ ;  $p < 0.05$ ) and being arrested in Period 2 ( $b = 75.63$ ;  $p < 0.01$ ) all remain significant predictors of increased sentence length. Additionally, when compared to offenders whose actions resulted in death, posing an increased threat ( $b = -76.78$ ;  $p < 0.01$ ) and no threat to human lives ( $b = -113.20$ ;  $p < 0.01$ ) continue to be predictive of a decreased sentence severity. The impact of entering a guilty plea, and being arrested in Period 3 are lost, but the effect of being part of Period 2 on increased sentence lengths remains. The final model highlights the importance of controlling for not only legal and extralegal factors, but also demographic characteristics, terrorism specific and contextual factors when investigating the sentencing outcomes of terrorist offenders.

## **2.8. Conclusion and Discussion**

The current study sought to investigate variability in the sentencing outcomes of terrorist offenders adjudicated in Canada between 1963 and 2010. The findings indicate that offenders convicted of general Criminal Code offenses were sanctioned more harshly than those convicted of terrorism specific offenses alone, and that the period that offenders were adjudicated in significantly impacted sentencing outcomes. Further, across the observation periods there was a visible shift not only in the demographic

characteristics of offenders prosecuted for terrorism related offenses, but also in the motivations of these offenders, their ability to complete their offenses, and the severity of the crimes perpetrated. Together, these findings highlight not only the changing nature of terrorist offenses and offenders in Canada, but also how changing criminal justice responses have impacted both terrorist activity, and the sentencing outcomes of this unique offending population.

As noted by Charters (2008), Leman-Langlois & Brodeur (2005) and Crelinsten (2012), and further supported by the results reported here, imported grievances have served as the motivation for many terrorist incidents perpetrated in Canada. Across Periods 1, 2 and 3 the proportion of offenders who were legal citizens of Canada declined by 12.1%, while the percentage of individuals who were immigrants increased by 67.7%. As of 2011, 20.6% of Canada's total population were foreign born, and between 2006 and 2011 almost 1.2 million people immigrated to Canada (Statistics Canada, 2013). Immigrants were shown to receive longer sentences. This finding is consistent with what Johnson et al. (2010) have previously reported in that foreign offenders who are convicted in a country not of their birth are sanctioned more harshly. Given the small sample size and the absence of a matching control group, this study cannot provide the final word on whether these results reflect a systematic bias in the sentencing of immigrants, or whether the acts committed by these individuals were more serious overall. The effect of immigrant status was mediated (though not completely) by the inclusion of severity and contextual factors in our regression models. It is entirely possible that additional controls for case, and offender, characteristics would have further reduced the effect of immigration. While outside of the focus of this specific study, this result clearly deserves more attention from scholars.

Another finding that deserves greater attention relates to the variation in the ability of offenders to complete their offenses across periods. Over 80% of the offenders sanctioned in Period 1, and 100% of the offenders sanctioned in Period 2 were able to complete their offenses; however, following the perfect success rate recorded in Period 2, only 39.1% of offenders sanctioned in Period 3 were able to complete their offenses. There are different ways to interpret this result, depending on the role one attributes to counter-terrorist measures in preventing the completion of terrorist conspiracies. One

plausible interpretation is that increased resources invested in the detection and investigation of terrorism cases following 9/11 prevented these events from happening. One of the key objectives of the ATA was to provide law enforcement with the tools necessary to proactively prevent terrorist incidents (Colter, 2001; Diab, 2013; Roach, 2011; 2005a).

This study, and the nature of the data it uses, are not designed to systematically evaluate the effect of the ATA or specific counter-terrorism measures. We can only raise potential scenarios, and establish some of the research questions that should be tackled in future studies. One of these questions is: would all of the events detected prior to their completion have actually occurred without the intervention of law enforcement agencies? Seen the other way, how many terrorist conspiracies dissolve prior to their actualization without external intervention by law enforcement agencies? If we work under the assumption that close to all of the detected events of Period 3 would have been completed without the additional resources invested, the low completion rate of Period 3 suggests a diminished capacity for terrorist offenders to carry out their offenses in contexts where law enforcement are provided with additional resources specifically designed to prevent terrorist activity. A similar emphasis on counter-terrorist measures was also found in Period 1 as a response to the FLQ campaign. In 1964, the Combined Anti-Terrorism Squad, that consisted of the Royal Canadian Mounted Police (RCMP) and the Quebec Provincial Police, was implemented in Quebec as a means to actively suppress FLQ activities (Fournier, 1982). Additionally, as the FLQ continued their campaign in May 1970 the RCMP established a new 'G' Division whose sole purpose was to address 'separatist-terrorist' activities in Quebec (Fournier, 1982). In fact, the only context in which specialized task forces, or legislations specifically implemented to prevent terrorist activity, were not operational was the 1983-2001 period where our data indicate that no terrorist conspiracies were detected by law enforcement agencies. The absence of these specialized mechanisms in Period 2 was most likely the result of there being no perceived need for additional measures during this time period as no terrorist campaigns comparable to the FLQ's activities were being executed and 9/11 had yet to occur. As shown in Figure 2, the rate of terrorist events in Period 2 was also slower than in other periods, especially in the 1990s. In the end, at the very least, our data points to a careful separation of completed vs. non-completed events when analyzing trends in

terrorism in Canada. Research into the differences between these conspiracies, the offenders who participate in them, and the process that leads to detection is also needed.

The central focus of this study was on the variation in the sentencing outcomes following the ATA. Results reveal the ATA appears to not only have coincided with an increase in the number of terrorist plots that were uncovered prior to their completion, but also with changes in the ways that the criminal justice system processes terrorist offenders. Offenders sanctioned in Periods 1 and 2 were most commonly convicted of violence-related offenses. However, following the implementation of the ATA, none of the offenders sanctioned in Period 3 were convicted of violence-related offenses alone, and instead 69.6% of the offenders adjudicated in Period 3 were convicted of terrorism related offenses. As such, the criminal justice system has come to rely heavily on terrorism specific offenses, replacing their prior dependence on violent offenses when historically prosecuting terrorist offenders. Furthermore, changing legal responses are also evident in the number of offenders who entered a guilty plea, and the amount of time offenders spent in pre-trial custody. Over half of the offenders in Period 3 pled guilty, yet despite this Period 3 is also characterized by the highest average time spent in pre-trial custody. Increasingly, prosecutors are challenged by the necessity to balance the interests of intelligence and evidence agencies when preparing and trying cases. The difficulties that they face in doing this, and the delays that result because of it, have led to terrorism cases being referred to as 'mega-trials' (Government of Canada, 2011; Roach, 2010). This observed increase in the time spent in pre-trial custody may be an unintended consequence of the ATA.

Finally, in line with Damphousse and Shields (2007), we uncover that the context that offenders were sanctioned in significantly impacts sentencing outcomes. Across the three periods offenders sanctioned in Period 2 received the longest average sentence lengths, while offenders sanctioned in Period 1 received the shortest average sentence lengths. The observed differences between Periods 1 and 2 is in part attributable to the differences in the nature of the terrorist activities that were undertaken in the two time periods. The FLQ rarely targeted civilian populations, and the actions that they engaged in generally posed a lesser threat to human lives. As a result, their offenses were more

minor in nature, and accordingly the average sentence lengths achieved in Period 1 reflect this. Conversely, the offenders adjudicated in Period 2 engaged in actions that had the highest severity, and accordingly posed the greatest threat to human lives. While the increase in sentence lengths achieved in Period 2 may in part be the result of the high success rate at which these offenders completed their offenses, it is also reflective of the fact that these offenders engaged in more serious offenses. The seriousness of offenses committed in Period 2 may also account for the observed decrease in the average sentence outcome achieved in Period 3. Both September 11<sup>th</sup> and the implementation of the ATA serve as important contextual markers for Period 3, and while many of the offenders adjudicated during this time period posed an increased threat to human lives, in comparison to Period 2, offenders adjudicated in Period 3 perpetrated offenses that were less serious in nature.

Accordingly, Schmeiser's (as cited by Roach, 2002) sentiment that, "the ordinary criminal law adequately covers dangerous conduct by insurgents" is both confirmed, and contradicted, by the findings uncovered here. In support of this perspective, across periods the highest average sentence lengths were achieved in Period 2, when offenders were prosecuted using general Criminal Code provisions only, and prior to the implementation of the ATA. However, the results presented throughout further indicate that the criminalization of terrorism specific offenses may provide legal measures that result in an increased number of terrorist plots detected prior to completion. In this way, it appears that while general Criminal Code provisions offer adequate resources to punish terrorist offenders, the criminalization of terrorism specific offenses may have facilitated the proactive prevention of terrorist incidents. These can only be tentative conclusions. The data did not provide us with an opportunity to investigate the failed attempts that did not come to the attention of the police, nor did our research design allow us to make strong conclusions of the impact of the ATA on the success rates of terrorist offenders. Specialized legal measures, and task forces, may not reduce an offender's ability to successfully complete their offenses in all contexts, and we hope that future studies can be framed to systematically test the impact of counter-terrorism measures and legislations such as the ATA.

However, in line with the sentiments of Roach (2005a; 2005b) and Shaffer (2001), the evidence presented here also indicates that the implementation of these new legal measures, and the threat of harsher punishments, have failed to act as deterrents for offenders plotting large-scale terrorist incidents. While LaFree and Hendrickson (2007) offer that the criminal justice model of responding to terrorism acknowledges that terrorism can never fully be eradicated only controlled, states utilizing this model need to ensure that they do not implement legal measures that infringe upon the civil rights of their citizenry. In the wake of September 11<sup>th</sup> in addition to criminalizing terrorism specific offenses Canada, and countries such as the UK, implemented additional legal mechanisms designed to proactively prevent terrorist incidents such as preventative detentions and investigative hearings (Diab, 2008; Roach, 2005a; 2005c; Trotter, 2001). While the use of these mechanisms in Canada has been infrequent, the indeterminate detention of non-citizens in the United Kingdom was deemed to be a violation of the European Convention on Human Rights in 2004 (Roach, 2011). If it is true that terrorism can never be fully eliminated, and only managed, then repressive measures alone will never achieve the desired outcome of preventing all terrorist incidents. As such, although challenging, the Canadian Government must work to achieve a delicate balance between protecting the safety, and civil rights, of Canadian citizens and it must resist the temptation to implement wide sweeping repressive measures in the wake of terrorist incidents.

Although these findings provide important insight into the punishment of terrorist offenders in Canada some important limitations must be addressed. When assessing the changing nature of terrorist incidents and offenders, we do so only by examining offenders who have been officially adjudicated. As previous studies investigating the prevalence of terrorism in Canada have reported an average of 405 incidents, and the current study only includes 153 offenders, our sample is inherently characterized by a selection bias. Similarly, as sentence outcome was the key variable of interest in these analyses only offenders for whom this information could be located were included in the data set. Consequently, not all offenders who have perpetrated terrorist incidents are included here, and this is especially true for historical cases such as those pertaining to the SOF Doukhobors' campaign. Open source information was used to code the data utilized, and as such some important case details may be missing. Further, given the

historical nature of much of this data it was difficult to consistently locate information pertaining to the number of counts offenders were charged with and whether or not they were tried by a jury or a judge. As such neither of these legal factors are controlled for. Finally, although it is not possible to include a comparison group for offenders who were convicted of terrorism specific offenses it would have been beneficial to include a comparison group such that we could explore how, or if, the sentencing outcomes of terrorist offenders differed from general offending populations convicted of similar offenses during each of the time periods, and to what extent being prosecuted under this label served as an aggravating factor.

Notwithstanding these limitations the findings presented in this study provide much needed information not only about the sentencing outcomes of terrorist offenders prosecuted in Canada, but about the changing nature of the offenders who perpetrate these offenses. Over time imported grievances have become a key motivating factor for terrorist incidents, and offenders who have immigrated to Canada are punished more severely than those who were born in Canada. Following the implementation of the ATA, and the criminalization of terrorism specific offenses, the average sentence length of offenders convicted of terrorism related offenses has decreased; however, so to has the rate at which offenders are able to successfully complete their offenses. Accordingly, the observed decrease in the sentence outcomes of terrorist offenders prosecuted over the past decade is perhaps better characterized by the relative success of law enforcement in disrupting terrorist plots rather than by a failure in the new legislation to achieve harsher punishment.



## **Chapter 3.**

# **A Group-Based Recidivist Sentencing Premium? The Role of Context and Cohort Effects in the Sentencing of Terrorist Offenders**

### **3.1. Introduction**

The offending trajectories of individuals have long been a concern of criminologists, and much effort has been devoted to investigating the changing nature of criminal involvement over time. The criminal career paradigm has emerged as one of the most commonly used frameworks for measuring an individual's participation in criminal activities. Although it does not provide a theory of criminal involvement, it serves as a means to organize the changing nature of an offender's criminal participation over time (Blumstein, Cohen, Roth & Visher, 1986, Piquero, Farrington & Blumstein, 2003). While this perspective places emphasis on the individual, subsequent studies have explored the potential utility of applying this framework to groups. In what they have characterized as the 'collective career' Tremblay et al. (1989) emphasize the importance of understanding the context that criminal events unfold in for entities like criminal organizations, and how differential experiences across cohorts impact criminal opportunities for members of the group.

Recently, empirical studies have begun to investigate the life cycles of terrorist organizations seeking to identify factors that contribute to the onset, continuation and termination of terrorist campaigns (Gupta, 2008; LaFree & Ackerman, 2009; McCauley & Moskalenko, 2008; Miller, 2012; Miller, 2007). The results of these studies indicate that, similar to the criminal careers of individuals, the life cycles of terrorist organizations are characterized by continuity and change, a specialization in offenses they commit, and are subject to cohort effects (Freilich, Chermak & Caspi, 2009; Gupta, 2008; LaFree &

Dugan, 2009; Miller, 2012; Smith & Damphousse, 2009). This overlap in content not only facilitates the application of a criminal career perspective to terrorist organizations, but may lead to the development of new parameters to assess the evolution of many types of criminal collectives.

One of the key goals in investigating the criminal careers of individuals, and the life cycles of terrorist organizations, is to better understand how criminal involvement evolves over time. This in turn can aid law enforcement's ability to disrupt criminal participation. In line with this, prior studies have identified that the incarceration of key participants is an important component in the termination of terrorist organizations (Crenshaw, 1991; Cronin, 2009; Freilich et al., 2009; Gupta, 2008; LaFree & Miller, 2007; McCauley, 2008; Ross, 1995; Smith & Damphousse, 2009). Despite this, very few studies have investigated the sentencing outcomes of terrorist offenders (Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002), and changes in the sentencing patterns of offenders over the course of a campaign remains virtually unexplored. Furthermore, the potential for offenders sanctioned in the latter stages of a terrorist campaign to be sentenced more severely than those at the onset of the campaign for similar crimes has never been investigated.

One theoretical approach to understanding how sentencing outcomes change over time is what is referred to as the 'recidivist sentencing premium' (Bennett, 2010; Roberts, 2008; 1997; von Hirsch, 2010; Welch, Gruhl & Spohn, 1984). Drawing on the criminal career paradigm this perspective argues that offenders who continue to engage in criminal activities should be sanctioned more harshly as their career progresses. The justification for increased severity is attributed to the fact that offenders have not been deterred from previous sanctions, and, as such, stricter penalties are warranted. However, the extent to which a penalty is applied to first time offenders based on their involvement with a known terrorist group remains unclear. In this context, the sentences meted out for group members would increase as the group evolves over time – even if the offenders committing crimes are not actual “recidivists”. Accordingly, offenders who are sanctioned later in a terrorist campaign are sanctioned more severely not as a result of increasing offense severity, but as a result of a penalty applied for the collective's

combined criminal involvement. By developing a case study of the Front de Liberation du Quebec (FLQ), the longest standing terrorist campaign in Canada (1963-1972), the following study applies Tremblay et al.'s (1989) concept of the collective career to the ten year campaign of the FLQ in order to investigate two key questions: 1) is there evidence of cohort effects across periods of FLQ activity and 2) does the collective career of the FLQ result in a recidivist sentencing premium, and if so to what extent does it impact sentencing outcomes?

### **3.2. Cohort Effects and the Collective Career**

The criminal career paradigm offers a framework through which to examine the sequence of offenses committed by an individual over a period of time. This sequence of criminal involvement is characterized by four key periods: onset (the period in which individuals begin offending), persistence (the continuation of offending), escalation (increasing seriousness or specialization in offenses) and desistance (the process of reducing the rate of offending which leads to termination) (Blumstein et al., 1986; Piquero et al., 2003). However, while the criminal career approach addresses the nature of offending patterns over time it fails to properly take into account the context that criminal careers unfold in. The importance of context has been captured in a life-course perspective that advocates the significance of an individual's sociohistorical context on the development, and dynamic nature, of human lives (Elder, 1998, Elder, Kirkpatrick, Johnson & Corsnoe, 2003).

For the purpose of developmental and life-course criminologists, the term cohort refers to "a group of individuals experiencing the same event (often birth) during the same time period (often one year)" (Farrington, 1990. p. 370). The term 'cohort effect' is used to describe the differential experiences and contexts that result from cohort membership (Farrington, 1990; Francis, Soothill & Ackerly, 2004). Further, Farrington (1990) identifies 'period effects' that capture the ways in which context is specific to certain time periods. Empirical studies examining the impact of cohort effects on offending have found that successive cohorts have been differentially impacted by policy changes and that the nature, and seriousness, of the offenses committed by cohorts are impacted by the context that they find themselves in (Farrington & Maughan, 1999;

Francis et al., 2004; Menard, 1992; O'Brien & Stockard, 2008; Saner, MacCoun & Reuter, 1995).

While the criminal career perspective focuses on the individual, Tremblay et al. (1989) argued that this framework could be extrapolated to collective groups of offenders. In what they characterized as the 'collective career' Tremblay et al. (1989) investigated the life cycles of dozens of biker gangs active in Quebec, Canada in the 1970s and 1980s. The goal of applying this framework to a collective group was to remedy what the authors identify as a limitation of previous criminal career studies where cohort effects are examined not in the context of a larger social network, but as independent entities. Tremblay et al. (1989) advocate that cohort, and within-individual differences, must be understood within the context of the overall trajectory of the collective network; these contextual differences dictate the nature of criminal involvement and the opportunities available to individuals within them, the number of co-offenders across successive cohorts, the characteristics of the offenders (i.e. age), and the risks associated with their involvement. Tremblay et al. (1989) report that the average duration of the collective careers of the biker gangs was 10 years, and that an overall trend of desistance was observed across the groups investigated. According to the authors, the decrease in membership of biker gangs could be attributed to one of two things: 1) the risk of being the victim of violence became unacceptable and 2) the risk of being formally sanctioned became too high. These findings reflect not only the importance of cohort effects, but the significant impact that criminal justice interventions, and the threat of increasing penalties, can have on group behaviours.

### **3.3. The Life Cycle of Terrorist Organizations**

Akin to Tremblay et al.'s (1989) concept of the collective career, investigations into the life cycles of terrorist organizations place great emphasis not only on group processes, but also on the contexts that they unfold in. Failing to appreciate the complex social, political, economic and environmental constraints that give rise to terrorist actions often results in an inability to effectively disrupt terrorist campaigns, and may unintentionally serve to strengthen the participants resolve (Crenshaw, 1991; Cronin, 2009; Freilich et al., 2009; Gupta, 2008; LaFree & Dugan, 2009; LaFree & Miller, 2008;

LaFree et al., 2009; Miller, 2012; Smith & Damphousse, 2009). Comparatively, research into the life cycles of terrorist organizations shares many similarities to the criminal career perspective as terrorist campaigns are found to be characterized by continuity and change, to specialize in the tactics utilized, to be subject to cohort effects, and finally to enter into processes of desistance leading to eventual termination (Crenshaw, 1981; Gupta, 2008; LaFree & Ackerman, 2009; McCauley & Moskalenko, 2008; Miller, 2012).

Studies investigating the life cycle of terrorist organizations report that in general terrorist campaigns are short lived lasting approximately one year (Cronin, 2009; 2006; LaFree & Dugan, 2008; McCauley, 2008; Smith & Damphousse, 2009); however, it is further noted that terrorist groups that make it past the one year mark usually dissolve within 10 years (Rapoport 1992 as cited by Cronin, 2006). Cronin (2006) reports that terrorist groups motivated by 'ethnonationalist/separatist' goals (such as the FLQ) typically have the longest careers, and when comparing ten major terrorist campaigns Gupta (2008) reports that terrorist organizations generally rely on three main tactics such as suicide bombings, shootings and grenade attacks or vandalism, arson, incendiary devices and hijackings.<sup>18</sup> When taken together the life cycle of terrorist campaigns are characterized by many of the hallmarks of the criminal career perspective. Applying this perspective to the FLQ, will not only allow for the investigation of potential cohort effects across the campaign, but also to explore how the dynamic internal nature, along with external responses to FLQ actions, impacted behaviours over time, and if offenders sanctioned later in the campaign were sanctioned more harshly.

### **3.4. The Front de Liberation du Quebec**

Concerned with Quebec's economic disparity, and the longstanding issues of nationalism, the FLQ was founded in February 1963. While the campaign remained active until 1972 the periods of greatest activity were the year of 1963 and the period between 1968 and 1970 (Charters, 1997; Ross, 1995). The ten years in which the FLQ was active were characterized by nine identifiable waves of activity undertaken by fifteen

<sup>18</sup> The groups analyzed were: Hamas, Abu Sayyaf Group, al-Qaeda, ETA, FARC, LTTE, PIJ, IRA, PKK and Shining Path.

independent networks (Charters, 1997; Laurendeau, 1990). The structure of the FLQ was fluid, and as there was no official membership anyone inspired to act on behalf of the FLQ could do so. Unlike other terrorist organizations, the FLQ did not often intentionally target civilian populations; however, FLQ actions were directly responsible for the deaths of seven individuals (Fournier, 1982; Stewart, 1970). The FLQ relied predominantly on the use of explosive devices and while the FLQ bombing of the Montreal Stock Exchange in February 1969 represented one of the largest, and most destructive, efforts of the FLQ's bombing campaign it was their actions in the fall of 1970 that thrust the FLQ into the Canadian collective conscience and spurred the ensuing 'October Crisis'.

On October 5<sup>th</sup> 1970 James Cross, the British Trade Commissioner in Montreal, was kidnapped by seven members of the FLQ who dubbed themselves the "Liberation Cell." Five days later on October 10<sup>th</sup> 1970 Pierre Laporte, the Quebec Deputy Premier and Minister of Employment and Immigration, was abducted by a second four member cell of the FLQ who referred to themselves as the "Chenier Cell" (Charters, 1997; Crelinsten, 2012; 2001; Fournier, 1983; Laurendeau, 1990; Morf, 1970; Stewart, 1970; Tetley, 2007). The initial reaction of the Quebec population was one of sympathy with the FLQ members and their cause; however, following the execution of Pierre Laporte on October 17<sup>th</sup> public support for the FLQ drastically declined (Charters, 1997; Tetley, 2007). James Cross was eventually released unharmed on December 3<sup>rd</sup>, 1970; however, by then most of the remaining support for the FLQ had dissipated (Fournier, 1982; Tetley, 2007).

While the kidnappings of Cross and Laporte were intended to act as a catalyst for change, and further cultivate public support for FLQ activities, in reality they represented a tactical error that led to the rapid termination of all FLQ activity. Indeed, Crenshaw (1991, p. 84) notes that the most compelling factor leading to the termination of the FLQ campaign was in fact the murder of Pierre Laporte as she cites that, "the FLQ clearly made a strategic mistake in kidnapping Cross and Laporte and in murdering Pierre Laporte." Ross (1995) further attributes the demise of the FLQ campaign to six components: 1) the effective use of deterrence; 2) counter-terrorist measures; 3) the official sanctioning and incarceration of key members; 4) the movement towards

legitimate political means through the Parti Quebecois; 5) the disengagement of key figures and 6) the loss of public support.

### **3.5. The Sentencing of Terrorist Offenders and the Recidivist Sentencing Premium**

As Ross (1995) indicates, the official sanctioning and incarceration of key FLQ members served as an important facilitator of FLQ desistance. To date, the sanctioning of terrorist offenders remains an under-investigated area of criminological inquiry, while the possibility that first time offenders sanctioned later in the life cycle of a campaign are sentenced more severely for similar crime types than those sentenced at the onset of the campaign remains virtually unexplored. The limited studies investigating the sentencing outcomes of terrorist offenders have reported that, in general, terrorist offenders are sanctioned more harshly, and that political motivation serves as the best predictor of increased sentence severity for this offending population (Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002). Furthermore, being legally identified as a terrorist offender not only increases the likelihood of conviction, but terrorist offenders are more likely to be convicted at trial. Having an increased number of co-defendants also impacts the legal processing of these offenders as cases with more co-defendants are both less likely to go to trial, or to end in conviction (Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002). Finally, the context that terrorist offenders are sanctioned in also plays an important role in the severity of their punishment. Damphousse and Shields (2007) note that terrorist offenders prosecuted in the two years following a major terrorist incident were sanctioned less severely than those punished prior to it.

An individual's criminal career is also an important determinant in the sanctioning of offenders as the impact of prior convictions on future sentencing outcomes is referred to as the 'the recidivist sentencing premium' (Bennett, 2010; Roberts, 2008; 1997; von Hirsch, 2010; Welch et al., 1984). The basis of this perspective suggests that offenders who have been sanctioned multiple times, for either the same or differing offenses, have

not been sufficiently deterred from their previous encounters with the criminal justice system, and as such are less likely to be deterred by criminal justice interventions in the future (Roberts, 1997).<sup>19</sup> Consequently, an offender's criminal career becomes an important aspect in criminal justice decision-making processes as the severity of their criminal participation can impact both decisions of whether or not to incarcerate the offender, and how harshly they should be sanctioned (Maxfield, 2002; Meierhoefer, 1992; Roberts, 2008; 1997; Spohn & Welch, 1987; Welch et al., 1984). Therefore, the recidivist sentencing premium is predicated on the notion that offenders who have extensive criminal careers are rightly sanctioned more harshly at the end of their careers than at the beginning. However, the extent to which a group-based recidivist sentencing premium exists for a collective career, and the potential for first time offenders to be sanctioned more severely as a result of the collective's prior criminal activity remains unclear.

### **3.6. The Present Study**

The collective career of the FLQ was marked by continuity in the tactics utilized (bombings and armed robberies), changes in the motivations of the participants (nationalist/separatist to Marxist/socialist), as well as periods of onset, persistence, escalation and desistance. These factors are not only hallmarks of a traditional criminal career paradigm (Blumstein et al., 1986; Piquero et al., 2003), but also of the factors that characterize the life cycle of a terrorist organization (Cronin, 2009; Freilich et al., 2009; Gupta, 2008; LaFree & Dugan, 2009; LaFree & Miller, 2008; LaFree et al., 2009; Smith & Damphousse, 2009). The importance of understanding the context that waves of FLQ activity were executed in cannot be underestimated. Contextual changes were evident not only within the internal structure of the FLQ as changing leadership roles and motivations impacted the trajectory of the group and the rate of their offending participation, but also externally as law enforcement sought to disrupt the campaign. In

<sup>19</sup> One of the most recognized applications of this model is the use of 'three strikes laws' throughout the United States (Kovandzic, Sloan & Vieraitis, 2004).



light of this, the extent that the dynamic nature of the FLQ collective career impacted sentencing outcomes remains unclear.

As such, the current study seeks to investigate two questions. The first asks: is there evidence of cohort effects across periods of FLQ activity? In order to address this question we examine how the composition of FLQ membership changed over time, the rate at which offenses were committed and finally if there are discernable differences in the collective career of the FLQ across periods of onset, persistence, escalation and desistance. The second question asks: does the collective career of the FLQ result in a recidivist sentencing premium, and if so to what extent does it impact sentencing outcomes? By applying this construct to the collective career of the FLQ we explore if offenders who are sanctioned later in the campaign are sanctioned more severely not as a result of increasing offense severity, but as a result of a penalty applied for the collective's combined criminal involvement.

### **3.7. Data and Methods**

Open-source information was used to identify FLQ members as extensively as possible. The data collection process utilized here is similar to that outlined by Freilich, Chermak, Belli, Gruenewald and Parkin (2014) in the construction of the United States Extremis Crime Database (ECDB). Although Freilich et al. (2014) seek to identify terrorist incidents, as opposed to offenders, the ECDB is compiled from open-source information collected from existing terrorism databases, government and legal documents, academic and media sources, private watch-groups and relevant internet sources (i.e. online videos and blogs). Here FLQ offenders were identified in one of two ways: 1) by consulting academic and historical texts, and 2) by conducting keyword, and name searches, in relevant legal databases. Despite the varied texts written on the FLQ, the most comprehensive in their documentation, and identification, of both FLQ activities and participants are Louis Fournier's 1982 book entitled *FLQ: Histoire d'un Mouvement*

*Clandestin* and Marc Laurendeau's (1990) book *Les Québécois Violents*.<sup>20</sup> Fournier provides a detailed history not only of FLQ actions but also of the political, social and economic contexts that these events unfolded in. In doing this, his work provides a detailed timeline of how the complex interplay between political and economic grievances, the perceived success of socialist and nationalist movements occurring elsewhere during the same time period (i.e. Ireland, Algeria, Cuba, Vietnam), and cultural disparities fuelled the FLQ campaign. Laurendeau's account also details how the political climate in Quebec at the time motivated the FLQ campaign; however, he places greater emphasis on the individuals involved, and the actions perpetrated by the FLQ. Further, Laurendeau identifies both FLQ participants and the composition of specific networks, while also providing a timeline of major FLQ incidents. Together these two texts serve as the foundation for the construction of this dataset. Once identified offenders were subject to a name search in three legal databases (CanLII, Best Case and Quicklaw). Additionally, each legal database was searched using the keywords 'terrorism,' 'terrorist,' 'terror,' and 'political violence.' If an offender was identified in one legal database a name search was then undertaken in the other two to ensure that all legal documents available pertaining to a specific case were located. Finally, a Google search was subsequently employed for each individual identified in order to collect any other relevant information. A total of 6 texts, 6 legal sources and 37 news sources were consulted in the compilation of the dataset.

Initially, 243 individuals were identified as having some connection with the FLQ. Most of these individuals came to the attention of law enforcement as a result of their existing relationships with known members of the FLQ, and not as a result of their

<sup>20</sup> Fournier (1982) describes how key members of the FLQ were influenced by independence, and socialist movements, occurring in countries such as Ireland, Algeria, Cuba and Vietnam, and how these ideals functioned to inform the campaign. Fournier (1982) further provides extensive information about the political climate in Canada during this time period, and how political responses shaped FLQ activities. He also details the efforts undertaken by the Quebec Provincial Police and the RCMP as they attempted to disrupt the campaign. Finally, Fournier (1982) provides great insight into the offenses committed by the FLQ, their outcome and how the offenders involved were sanctioned. While Laurendeau (1990) provides some context about Quebec during this time period he focuses most of his efforts on describing the criminal involvement of FLQ members throughout the campaign. He provides a timeline of the major FLQ incidents perpetrated from the first graffiti in 1962 through to 1972, and further identifies nine periods of FLQ activities and the eleven networks that participated in the campaign.

participation in the FLQ campaign. While the authorities questioned a small proportion of these individuals, an even smaller percentage were ever arrested or convicted. Given that sentence length is the key outcome variable of interest in these analyses, only offenders who were convicted of an offense committed on behalf, or in support of the FLQ, were included in the dataset resulting in a final sample of 108 ( $n = 108$ ).<sup>21</sup> For each case, 114 variables were coded pertaining to the offenders age, participation in the offense, offenses of which they were charged with and convicted of, sentence issued, appeals by either the Crown or Defense, and the final sentence rendered. Offenders were convicted of offenses such as murder, armed robbery, assault, accessory after the fact, kidnapping, arson and sedition.

### **3.7.1. Dependant Variable**

Final sentence length is utilized as the key outcome variable of interest. The offender's sentence length was coded at the conclusion of the offender's trial and, further, following any appeals pursued by either the Crown or Defense. In light of this, the final sentence issued is utilized in all models, and consistent with previous studies investigating sentencing outcomes is measured in months (Bradley-Engen et al., 2009; Damphousse and Shields, 2007; Smith and Damphousse, 1996; Ulmer and Johnson, 2004). On average, offenders were sentenced to 66.21 months; however, there was marked variability across the FLQ campaign with sentences ranging from 4.5 to 300 months.

### **3.7.2. Main Independent Variables**

Criminal Career Parameters. In order to explore if the FLQ campaign is characterized by cohort effects, and to investigate the potential of a group-based

<sup>21</sup> There were five offenders who were convicted twice, each in different career periods, for their involvement in FLQ offenses. However, given the small number of recidivists it was not possible to control for this in the OLS regression models. Furthermore, there were several individuals identified during the acceleration phase from 1968 to 1970 who participated in FLQ activities, and who were convicted of offenses, but for whom sentencing information could not be located. Given that sentence length is the key outcome variable of interest here it was necessary to exclude these cases.

recidivist sentencing premium, the criminal career periods of the FLQ's collective career were coded. Career periods were coded based on their temporal ordering and their proximity to dynamic internal and external shifts (i.e. the implementation of the Combined Anti-Terrorism Squad, the adoption of a Marxist/Socialist ideology), as well as the nature, and rate, of offenses perpetrated and the offender's involvement in major incidents (i.e. bombing of the Montreal Stock Exchange and October Crisis).<sup>22</sup> Throughout the collective career of the FLQ distinct periods of Onset ( $n = 43$ ), Persistence ( $n = 23$ ), Escalation ( $n = 13$ ) and Desistance ( $n = 29$ ) were identified. Each of the criminal career phases were coded as 'offender was not active during this phase' (0), or 'offender was active during this phase' (1).

Terrorism Factors. Contemporary studies evaluating the impact of terrorism specific factors (i.e. motivation, tactic, attending training camps) on sentencing outcomes have reported the potential of these features to increase sanctions for politically motivated offenders (Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002). Drawing from these studies, five terrorism specific factors were included to investigate if the same effects exist in historical cases. The first factor considers whether or not the offender attended a *Training Camp* as a means to prepare for their participation in FLQ activities, and was coded as 'did not attend terrorist training camp' (0), or 'attended terrorist training camp' (1). Approximately one-fifth of the offenders identified had attended training camps ( $n = 20$ ). The FLQ relied heavily on the use of explosive devices, as this was their primary tactic throughout the campaign. As such, the second factor (*Explosive Device*) accounts for offenders who utilized this tactic and was coded as 'no or other weapon used' (0), or 'explosive device used' (1). In total 50.9% of the sample engaged in an explosive related offense ( $n = 55$ ).

In line with this the third factor measures whether or not the offender targeted, or had the potential to target an individual, and as such *Target* was coded as 'did not, or

<sup>22</sup> Although FLQ actions terminated in 1972, six members of the FLQ cell responsible for the kidnapping of James Cross fled Canada upon his release, and did not return until the late 1970s and early 1980s (1978 – 1982). Upon their return they were prosecuted for their involvement in the October Crisis. These offenders are included in the Desistance period.

had no potential to target an individual' (0), or 'targeted, or had the potential to target, an individual' (1). Approximately two-thirds of the offenders either targeted or had the potential to target individuals ( $n = 65$ ). Next, the impact that participating in activities that resulted in the *Death* of an individual were investigated and measured as 'activities did not result in the death of an individual' (0), or 'activities resulted in the death of an individual' (1). Almost 30% ( $n = 32$ ) of FLQ members participated in an offense that resulted in death. Finally, as the criminal justice system actively sought to thwart FLQ activities, the extent that offenders were able to complete an offense (*Completion*) was included and coded as 'offense detected prior to completion' (0), or 'offense completed' (1). Despite the implementation of the Combined Anti-Terrorism Squad 83.3% of offenders were able to complete their offenses.

### **3.7.3. Control Variables**

Offense Type. Four offense classifications were included in order to explore the dynamic nature of FLQ criminal involvement over time. For each classification convictions for the most serious offense only were recorded. *Violent* offenses included murder, manslaughter and assault and was coded as 'no conviction for violent offense' (0), or 'conviction for violent offense' (1). The second classification *Armed Robbery* was coded as 'no conviction for armed robbery' (0), or 'conviction for armed robbery' (1). *Weapons* offenses included possession of an illegal weapon, possession of explosives, planting explosive devices and detonating explosive devices, and was coded as 'no conviction for weapons offense' (0), or 'conviction for weapons offense' (1). Finally, *Theft or Other* offenses included conspiracy to kidnap, kidnapping, sedition, obstruction of justice, arson and being an accessory after the fact, and was coded as 'no conviction for theft or other offense' (0), or 'conviction for theft or other offense' (1). In total 21.3% of offenders were convicted of a violent offense, 18.5% were convicted of armed robbery, 27.8% of a weapons offense and 32.4% were convicted of a theft or other offense.

Extralegal and Legal Factors. In keeping with previous sentencing studies, we control for the extent that extralegal and legal factors impacted sentence severity. First, prior sentencing studies have indicated that an offender's age can serve as both an aggravating and mitigating factor when determining sentence lengths (Diab, 2013;

Meierhoefer, 1992; Roberts, 2008; 1997; Steffensmeier, Kramer & Ulmer, 1995; Steffensmeier, Ulmer & Kramer, 1998). As such *Age* was included here.<sup>23</sup> On average offenders were 24 years old at the time of their arrest. Next, entering a guilty plea has been found to decrease sentence severity (Bradley-Engen et al., 2009; Shields et al., 2006). *Guilty Plea* was measured here as 'no guilty plea' (0), or 'guilty plea' (1). Only 17.6% ( $n = 19$ ) of FLQ offenders entered a guilty plea. The *Number of Co-Offenders*, was included as a count variable, and the average number of co-offenders was 11.8 with a range of 0 to 23. Finally, 50.9% of the sample ( $n = 55$ ) were tried with co-defendants, which was coded as 'no co-defendants' (0), or 'co-defendants' (1). Contemporary studies investigating the impact of legal and extralegal factors on the sentencing outcomes of terrorist offenders have reported that cases with an increased number of co-offenders, and co-defendants, are both less likely to go to trial and less likely to end in a conviction (Johnson, 2012). However, the degree to which this holds true for historical terrorism cases remains unclear.

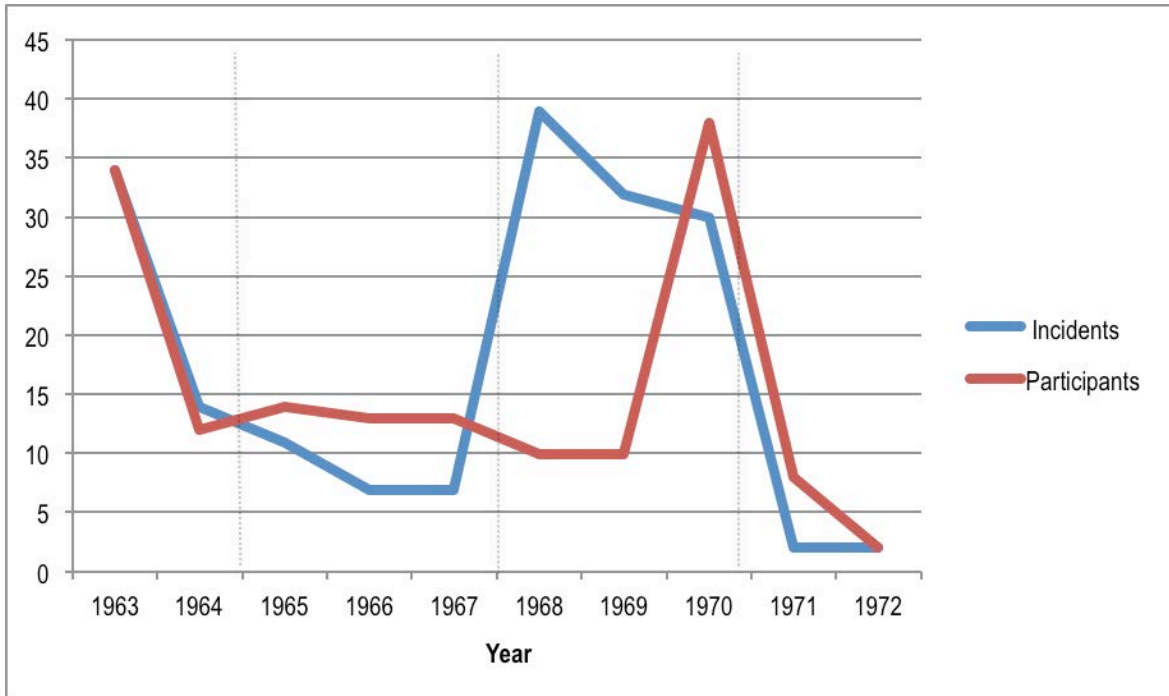
### **3.8. Analytic Strategy**

To investigate the potential of cohort effects, and a recidivist sentencing premium, ordinary least squares (OLS) regression was utilized to test the impact of extralegal and legal factors, terrorism factors and criminal career periods on sentencing outcomes. Given the apparent nested nature of the FLQ data (offenders convicted within successive waves of activity) a null hierarchical linear model (HLM) was employed to explore the potential necessity of multilevel modeling. However, upon inspection it was found that the intraclass correlation was not significant indicating that multilevel modeling was not the best modeling strategy for the data (Garson, 2013). Furthermore, given that one of the key objectives is to investigate how, or if, being adjudicated at different time points during the collective career of the FLQ impacts sentencing outcomes it is necessary to explicitly test the effect that being sanctioned in specific criminal career

<sup>23</sup> If the offender's *Age* at sentencing was reported it was coded as such. However, often the offender's age was reported at the time of their arrest, but no formal date of birth was reported. In these cases the offenders reported age was subtracted from the year of arrest, onset ect. to approximate the offender's date of birth.

periods has on sentencing outcomes, and as such it is not sufficient to simply control for these factors in an HLM model. Accordingly, in order explore the possibility of any mediating effects the covariates will be entered by blocks into the OLS model in the following way: extralegal and legal factors, terrorism factors and criminal career periods.

**Figure 3-1. Number of FLQ Incidents and Participants Per Year From 1963 to 1972**



**Table 3.1. Sample Description by Criminal Career Period**

	Total Sample (n = 108)	Onset 1963 – 1964 (n = 43)	Persistence 1965 -1967 (n = 23)	Escalation 1968 - September 1970 (n = 13)	Desistance October 1970 – 1972 (n = 29)
<b>Extralegal and Legal Factors</b>					
Age	24 (18 – 48)	22 (18 – 33)	23 (20 – 33)	27 (21 – 36)	26 (18 – 48)
Guilty Plea	17.6%	18.6%	26.1%	23.1%	6.9%
Co-Defendants	50.9 %	83.7%	73.9%	0	6.9%
Number of Co-Offenders	11.80 (0 – 23)	10.65 (1 - 22)	9.91 (0 – 19)	3.69 (0 – 5)	18 (1 – 22)
<b>Terrorism Factors</b>					
Training Camp	18.5%	11.6%	65.2%	0	0
Explosive Offense	50.9%	55.8%	95.7%	46.2%	10.3%
Target (Individual)	60.2%	62.8%	52.2%	84.6%	51.7%
Activities Resulted in Death	29.6%	46.5%	34.8%	0	13.8%
Offense Completed	83.3%	90.7%	47.8%	92.3%	96.6%
<b>Offenses Committed</b>					
Violent	21.3%	20.9%	52.2%	0	6.9%
Armed Robbery	18.5%	23.3%	8.7%	30.8%	13.8%
Weapons	27.8%	30.2%	34.8%	53.8%	6.9%
Theft or Other	32.4%	25.6%	4.3%	15.4%	72.4%
<b>Average Sentence Length (In Months)</b>	66.21 (4.50 – 300)	76.75 (4.5 – 300)	41.26 (6 – 110)	99.53 (6 – 300)	55.41 (6 – 300)



## 3.9. Results

### 3.9.1. Characteristics and the Evolution of the FLQ Collective Career

Figure 3-1 illustrates the number of FLQ incidents and participants per year over the 10-year collective career of the FLQ.<sup>24</sup> Upon inspection, phases of onset, persistence, escalation and desistance are evident across the campaign. The Onset period was characterized by the highest membership, and recorded the second highest incident rate across all criminal career phases. Subsequently, in order to investigate the potential for cohort effects, and how the collective career of the FLQ evolved in finer detail, Table 3.1 presents descriptive information for the criminal career periods of the FLQ campaign. The initial phase of the FLQ campaign demonstrates the greatest amount of cohesion in the nature of the offenses committed as 20.9% of offenders were convicted of violent offenses, 23.5% were convicted of armed robberies, 30.2% were convicted of weapons offenses and 25.6% of offenders were convicted of theft or other offenses. It was during the Onset period that the campaign focused most heavily on targeting Anglo-Saxon symbols (i.e. monuments, post office, military barracks). While the FLQ claimed its first life only two months after its inception, one of the most potentially lethal incidents of the entire FLQ campaign occurred on the evening of May 16<sup>th</sup> 1963 when ten explosive devices were left in residential mailboxes in the English speaking neighbourhood of Westmount.<sup>25</sup> Although no one was killed as a result of this strike, a police officer tasked with disassembling the devices was permanently injured (Fournier, 1982). While the Onset period was characterized by the FLQ's first bombing campaign, the organization readily participated in other criminal activities often as a means to acquire the supplies needed to undertake their operations.

<sup>24</sup> The number of participants was coded from Laurendeau's (1990) list of FLQ participants, while his timeline of major events served as the basis for the incidents coded. However, as Laurendeau only specifies key events incidents were coded as extensively as possible from Fournier (1982) and the other sources consulted (i.e. Morf, 1970; Stewart, 1970).

<sup>25</sup> Wilfred O'Neil a night guard at the Canadian Forces Recruiting Centre in Montreal was accidentally killed when an FLQ bomb detonated on April 21<sup>st</sup>, 1963

Despite the incarceration of the three FLQ founders, and key bomb makers, FLQ actions continued. The Persistence phase was characterized by a declining number of participants, a declining number of incidents and was further marked by the highest proportion of violent convictions (52.2%), and the smallest proportion of theft/other convictions (4.3%), across the collective career of the FLQ.<sup>26</sup> It was during this career period that Pierre Vallieres and Charles Gagnon joined the FLQ's efforts, and this eventually proved to be a turning point in the FLQ campaign. It was under their leadership that the group began to move away from a nationalist/separatist motivation towards a Marxist/Socialist ideology (Crelinsten, 2001; Fournier, 1982; Laurendeau, 1990; Munroe, 2009; Tetley, 2007). The impact of this directional change is evident in the Escalation phase as it was marked by a dramatic increase in the number of incidents perpetrated. This is so despite a decrease in FLQ membership for this period.

The rapid increase in offenses committed, and in the proportion of weapons related convictions (53.8%), in the Escalation phase was a direct result of the newly formed Geoffroy network. From August 1968 to March 1969, members of this FLQ cell were suspected of planting over seventy explosive devices in Montreal, Quebec City and Ottawa (Fournier, 1982; Laurendeau, 1990; Stewart, 1970). The cell was also responsible for the most remarkable bombing of the entire FLQ campaign when they detonated explosive devices at the Montreal Stock Exchange on Thursday February 13<sup>th</sup>, 1969. While over twenty people were injured no one was killed as a result of the blast (Fournier, 1982; Laurendeau, 1990; Stewart, 1970). This intense period of bombing stopped in March 1969 following Geoffroy's arrest, at which point the network was dismantled. Despite the potential for violent outcomes during this period, the Escalation phase is the only period in which violent convictions were not obtained.<sup>27</sup>

The Desistance phase is marked by the greatest level of offense variability where the proportion of theft/other offenses (72.4%) is the highest by far across all career phases, and is the only criminal career period where weapons offenses (6.9%) represent

<sup>26</sup> During the Persistence phase the remaining 8.7% of offenders were convicted of armed robbery offenses, while 34.8% were convicted of weapons offenses.

<sup>27</sup> During the Escalation phase the remaining 30.8% of offenders were convicted of armed robbery, while 15.4% were convicted of theft or other offenses.

the smallest proportion of all convictions.<sup>28</sup> The differences in the number of participants, and the type of offenses committed here, can be attributed to the fact that it was during this phase that the October Crisis occurred – arguably the defining incident of the entire FLQ campaign. Of the 29 individuals identified during this period, 10 of them were directly responsible for the kidnappings of Cross and Laporte, while 13 played accessory roles during the Crisis (such as housing and providing supplies to members of the Chenier Cell after the execution of Laporte, delivering communiqués and acting as contact points between the two cells). The remaining 6 offenders were involved in the resurgence efforts that followed the October Crisis; however, by this time the FLQ had lost much of its public support, and law enforcement had infiltrated the majority of resurgent groups. Primarily as a result of these two factors FLQ action terminated in November 1972.

<sup>28</sup> Only 6.9% of offenders convicted during the Desistance phase committed violent offenses, while the remaining 13.8% were convicted of armed robbery.

**Table 3.2. Bivariate Associations**

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
1. Age	-												
2. Plea	-.08	-											
3. Co-Defendants	-.32**	.26**	-										
4. Co-Offenders	.18	-.03	-.09	-									
5. Training	-.02	.16	.33**	-.03	-								
6. Explosive	-.17	.26**	.26**	-.17	.23*	-							
7. Individual	.41**	.23*	.03	-.40**	.09	-.12	-						
8. Death	-.18	.18*	.31**	.44**	.37***	.23*	-.05	-					
9. Completion	.21*	.01	-.09	.32**	-.24*	-.34***	.35***	.29**	-				
10. Onset	-.31**	.02	.53**	-.07	-.14	.08	.04	.30**	.16*	-			
11. Persistence	-.02	.12	.24*	-.17	.63***	.47***	-.09	.06	-.49***	-.42***	-		
12. Escalation	.25**	.05	-.38***	-.34**	-.18*	-.04	.19*	-.24*	.09	-.30**	-.19*	-	
13. Desistance	.17	-.17*	-.53***	.49**	-.29**	-.49***	-.11	-.21*	.22*	-.49***	-.32**	-.22*	-
14. FSM	.04	.19	.05	-.03	.26**	-.21*	.31**	.43**	.20*	.11	-.16*	.15	-.08

\* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .001$

Given the observed differences in the membership, incidents and proportion of convictions obtained across each of the criminal career phases Table 3.2 presents measures of association between the covariates. Across criminal career periods there is minimal variation in the average age of FLQ participants as there is a range of four years between the lowest average age reported in the Onset period ( $M = 22$ ) and the highest average age reported in Desistance period ( $M = 26$ ). The relative consistency in age across criminal career periods indicates that the FLQ continued to recruit new members throughout the duration of the campaign.

As the collective career of the FLQ progressed, the legal processing of its members by the criminal justice system also evolved. Over time there was a decline in the proportion of offenders who entered guilty pleas; however, only offenders in the Desistance phase were significantly less likely to enter a guilty plea ( $\Phi = -0.17, p < 0.10$ ). Further, evidence of the changing nature of the legal processing of FLQ members is found in whether or not offenders were tried with co-defendants. Offenders convicted in both the Onset ( $\Phi = 0.53, p < .01$ ) and Persistence ( $\Phi = 0.24, p < 0.05$ ) phases were significantly more likely to be tried with co-defendants than offenders tried in the Escalation ( $\Phi = -0.38, p < 0.01$ ) and Desistance ( $\Phi = -0.53, p < 0.01$ ) periods who were significantly less likely to be tried with co-defendants. In fact, only two offenders in both the Escalation and Desistance phases were tried with co-defendants.

Throughout their collective career, FLQ members were reasonably able to complete their offenses. Offenders in the Onset ( $\Phi = 0.16, p < 0.10$ ) and Desistance ( $\Phi = 0.22, p < 0.05$ ) periods were both significantly more likely to complete their offenses. Interestingly, the offenders who were least able to complete their offenses were also the offenders who attended training camps. While 65.2% of the offenders convicted in the Persistence period attended training camps only 47.8% of offenders in this phase completed their offenses, and they were significantly less likely to do so ( $\Phi = -0.49, p < 0.01$ ). The use of training camps, and the failure to complete offenses, may be the result of the implementation of the Combined Anti-Terrorism Squad in the period directly preceding the Persistence phase. Also, because training camps were often organized where offenders resided (Morf, 1970), offenders may have provided the

authorities with a greater opportunity to disrupt their actions as they remained immobile for periods of time.

Weapon offenses were the most consistent conviction type throughout the duration of the FLQ as the organization undertook a series of bombing campaigns throughout their collective career. Civilians were killed by FLQ actions in 1963, 1964, 1966 and 1970.<sup>29</sup> While the number of violent convictions diminished over time, the revival of the FLQ from 1968 onwards was a concern for the federal government, and in May 1970 the RCMP established a new 'G' Division whose sole purpose was to address 'separatist-terrorist' activities in Quebec (Fournier, 1982). The new division did not become fully operational until the fall of 1970, and not in time to stop the October Crisis. Despite the fact that FLQ actions resulted in deaths across all of the FLQ career periods, offenders active in the Onset period were significantly more likely to participate in an offense that resulted in death ( $\Phi = 0.30, p < 0.01$ ), while offenders active in the Escalation ( $\Phi = -0.24, p < 0.05$ ) and Desistance ( $\Phi = -0.21, p < 0.01$ ) phases were significantly less likely to participate in activities that resulted in death.

### **3.9.2. Sentencing Patterns Across the FLQ Career**

The sentencing outcomes achieved across the collective career of the FLQ are characterized by a high level of variability. Offenders adjudicated in the Persistence phase had the lowest average sentence length at 41.26 months, while offenders sanctioned in the Escalation phase experienced the highest average sentence length at 99.53 months. Further, attending a training camp ( $\rho = 0.26, p < 0.01$ ), participating in an offense that injured, or had the potential to injure, an individual ( $\rho = 0.31, p < 0.01$ ), and participating in an offense that resulted in the death of an individual ( $\rho = 0.34, p < 0.01$ ) were all found to be significantly associated with higher sentence lengths

<sup>29</sup> The execution of Pierre Laporte was by far the most highly publicized FLQ related death; however, a second FLQ related death occurred in the Summer of 1970 which preceded Laporte's execution. A bomb placed at the Ministry of National Defense in Ottawa detonated killing Jeanne d'Arc Saint-Germain. The death of d'Arc Saint-Germain occurred during an intense bombing campaign that was undertaken in the spring and summer of 1970 (Fournier, 1983). No offenders were identified as being convicted in relation to the death of d'Arc Saint-Germain.

at the bivariate level. Unexpectedly, committing an explosive related offense ( $Rho = -0.21$ ,  $p < 0.01$ ) was significantly associated with a lower sentence length.

**Table 3.3. Test of Group Differences Between Covariates and Sentencing Outcomes (n = 108)**

	Final Sentence ( $\bar{x}$ )	SD	t	df
<b>Extralegal and Legal Factors</b>				
Offender Entered a Guilty Plea	99.37	98.43	1.01	106
Offender did not Enter a Guilty Plea	59.13	78.48		
Offender Tried with Co-Defendants	69.91	78.68	-.48	106
Offender not Tried with Co-Defendants	62.38	84.97		
<b>Terrorism Factors</b>				
Offender Attended a Training Camp	111.10	109.14	-2.16*	22.76
Offender did not Attend a Training Camp	56.00	70.75		
Offender Involved in an Explosive Related Offense	49.84	48.84	2.14*	73.62
Offender was not Involved in an Explosive Related Offense	83.19	103.07		
Offender Targeted or had the Potential to Target Individuals	86.42	95.20	-3.84***	91.82
Offender did not Target or have the Potential to Target Individuals	35.66	39.20		
Offender's Actions resulted in Death	119.59	104.28	-3.88***	39.07
Offender's Actions did not result in Death	43.73	57.11		
Offense Completed	73.56	87.13	-4.29***	104.85
Offense Detected Prior to Completion	29.44	19.41		
<b>Criminal Career Parameters</b>				
Offender Active during the Onset Phase (1963 to 1964)	76.76	85.79	-1.09	106
Offender not Active during the Onset Phase (1963 to 1964)	59.23	78.48		
Offender Active during the Persistence Phase (1965 to 1967)	39.32	30.39	2.92**	97.79
Offender not Active during the Persistence Phase (1965 to 1967)	73.09	88.91		
Offender Active During the Acceleration Phase (1968 to September 1970)	98.43	107.77	-1.24	15.01
Offender not Active During the Acceleration Phase (1968 to September 1970)	61.41	76.46		
Offender Active during the Desistance Phase (October 1970 to 1972)	55.41	83.05	.83	106
Offender not Active during the Desistance Phase (October 1970 to 1972)	70.17	81.14		

\*p < .05, \*\*\*p < .001

Note. Only reference category means are reported.



Although participation in training camps was limited to only two criminal career periods offenders who did attend a training camp received sentence lengths that were double of those who did not attend a training camp ( $M = 111.10$ ,  $p < 0.05$ ) (See Table 3.3). Further, group differences were uncovered between offenders who targeted, or had the potential to target, an individual, and those whose actions resulted in death. As would be expected, offenders who targeted, or had the potential to target, individuals, received sentences that were 2.4 times longer ( $M = 86.42$ ,  $p < 0.01$ ) than those who did not, while offenders whose actions resulted in the death of another individual received sentences that were 2.7 times longer ( $M = 119.59$ ,  $p < 0.01$ ) than those whose actions in support of the FLQ did not result in death. However, somewhat unexpectedly, offenders who were sanctioned for an explosive related offense were punished less severely ( $M = 49.84$ ,  $p < 0.05$ ) than those who were convicted of another offense type. Next, offenders who were able to complete their offense received sentences that were 2.4 times longer ( $M = 73.56$ ,  $p < 0.01$ ) than those whose actions were disrupted prior to their completion. Finally, significant group differences were explored for each of the criminal career phases. Of the four phases tested the Persistence phase was the only one to emerge with significant group differences as offenders who were not convicted during this criminal career period were on average sanctioned 1.8 times more harshly ( $M = 73.09$ ,  $p < 0.01$ ) than those who were.

**Table 3.4. OLS Regression Testing the Impact of Extralegal and Legal Factors, Terrorism Factors and Criminal Career Periods on Sentencing Outcomes (n = 108)**

	Model 1	Model 2	Model 3
	b (SE)	b (SE)	b (SE)
<b>Extralegal and Legal Factors</b>			
Age	1.17 (1.57)	.84 (1.28)	.60 (1.26)
Guilty Plea	41.57 (21.45)*	47.57 (17.23)**	38.02 (17.39)*
Co-Defendants	1.58 (17.07)	-31.45 (13.59)*	-5.93 (17.69)
Co-Offenders	-.43 (.91)	-4.29 (1.00)***	-4.49 (1.27)**
<b>Terrorism Specific</b>			
Training		16.67 (18.61)	41.33 (22.18) <sup>+</sup>
Explosive Related Offense		-75.91 (13.82)***	-56.02 (15.56)**
Individual Targeted		13.92 (17.22)	14.81 (17.04)
Death		141.58 (19.42)***	145.32 (21.33)***
Offense Completed		-14.58 (23.26)	-34.17 (23.86)
<b>Criminal Career Periods</b>			
Onset			-42.14 (25.78) <sup>+</sup>
Persistence			-82.16 (31.65)*
Escalation			3.15 (25.82)
Adjusted R <sup>2</sup>	.005	.47	.50

<sup>+</sup>p<.10, \*p < .05, \*\* p < .01, \*\*\*p<.001

<sup>1</sup> Offenders active during the Desistance/Termination period was used as the reference category

Given the variability in offense characteristics across the criminal career periods, the factors associated with sentence length need to be assessed at the multivariate level. An OLS regression model was employed to investigate whether the collective career of the FLQ is characterized by a group-based recidivist sentencing premium (see Table 3.4). The first block of covariates entered into the model contained the extralegal and legal factors. Here the only factor to emerge as a significant predictor of sentence length was entering a guilty plea ( $b = 41.57$ ;  $p < 0.05$ ) as it served to significantly increase sentence outcomes. The next block entered into the model contained the terrorism specific factors. Of note is that with the inclusion of this group of covariates both being tried with co-defendants ( $b = -31.45$ ;  $p < 0.05$ ) and having an increased number of co-offenders ( $b = -4.29$ ;  $p < 0.01$ ) emerge as factors that significantly reduce sentence severity, while the effect of entering a guilty plea remains statistically

significant ( $b = 47.57$ ;  $p < 0.01$ ). The emergence of these two factors as significant predictors of sentence length indicates the necessity of taking terrorism specific factors into account when investigating sentencing outcomes for this unique population of offenders. Here we can see that the type of offenses these offenders perpetrated, as well as their outcomes, had a significant impact on their court processing. Of the terrorism factors included in the model, being convicted of explosive related offenses emerges as a factor that significantly reduces sentence severity ( $b = -75.91$ ;  $p < 0.01$ ), while participating in offenses that result in the death of an individual serves to increase sentence outcomes ( $b = 141.58$ ;  $p < 0.01$ ).

The final block entered into the model contained the criminal career phases. With the inclusion of the final block of covariates the previously significant effect of co-defendants becomes statistically insignificant, while the other results remain significant. Importantly, this model allows us to examine the possibility of a recidivist sentencing premium for the collective career of the FLQ. For each career phase a dummy variable was coded to represent an offender's membership in a given period, and in doing this we created four temporal indicators in which there was no overlap of membership. This allowed us to compare each of the criminal career phases to each other, to investigate if being sentenced in one period resulted in significantly longer sentences than being adjudicated in another, and to explore if a penalty is applied to offenders sentenced later in the campaign as a result of the collective's combined criminal involvement. We started by using the Desistance phase as the comparison group as it was the final career stage, and if a recidivist sentencing premium was to exist we would expect that sentencing outcomes in the Onset, Persistence and Escalation phases would significantly differ from this group. The results suggest the existence of a modest recidivist sentencing premium. Offenders who were sanctioned in the Onset ( $b = -42.14$ ;  $p < 0.10$ ) and Persistence ( $b = -82.16$ ;  $p < 0.05$ ) phases were sentenced significantly less severely than those in the

Desistance phase. No significant differences were found between the Escalation and Desistance phases.<sup>30</sup>

**Table 3.5. OLS Regression Testing the Group-Based Recidivist Sentencing Premium – Differences Between all Criminal Career Periods (*n* = 108)**

	Onset	Persistence	Escalation	Desistance
Onset	-	39.02 (22.23) <sup>+</sup>	-46.29 (25.22) <sup>+</sup>	-42.14 (25.78) <sup>+</sup>
Persistence	-39.02 (22.29) <sup>+</sup>	-	-85.31 (30.51) <sup>**</sup>	-82.16 (31.65) <sup>*</sup>
Escalation	46.29 (25.22) <sup>+</sup>	85.31 (30.51) <sup>**</sup>	-	3.15 (25.82)
Desistance	43.14 (25.78) <sup>+</sup>	82.16 (31.65) <sup>*</sup>	-3.15 (25.82)	-

<sup>+</sup>*p* < .10, <sup>\*</sup>*p* < .05, <sup>\*\*</sup>*p* < .01, <sup>\*\*\*</sup>*p* < .001

Note: Cells containing only (-) indicate the use of this group as the reference category

To investigate the recidivist premium further, we compared the sentencing outcomes between each of the other criminal career phases (See Table 3.5). Controlling for all of the covariates we ran three additional models each using a different criminal career phase as the comparison group. When comparing all phases to the Onset phase we find that offenders sentenced in the Persistence (*b* = -39.02; *p* < 0.10) period were

<sup>30</sup> Of the five offenders who were convicted twice for their participation in FLQ activities only three experienced an increase in sentence severity for their second conviction. However, of the three offenders who were sanctioned more severely only one was convicted for the same crime type twice (armed robbery). This offender experienced a 60% increase in the sanction he received for his second armed robbery conviction as he was sentenced to 96 months for the first offense, while receiving 240 for the second. The remaining two offenders who were sentenced more severely on their second conviction were arguably involved in more serious crimes the second time around as one offender was convicted of a weapons offense on the first conviction and kidnapping on the second, while the other offender was convicted of kidnapping, being complicit in a kidnapping, possession of an illegal weapon and assault on the first conviction, and of armed robbery on the second conviction. Similarly, for the two offenders who experienced a decrease in their sentence outcomes on the second conviction one went from armed robbery (which can result in some of the longest sentences) to a simple possession of dynamite charge, while the other went from manslaughter to auto theft. However, despite the fact that the five recidivists received both increasing and decreasing sentencing outcomes a group-based recidivist sentencing premium cannot be ruled out. Even when uncovering decreasing sentencing outcomes, the actual sentence meted out for the second conviction may still show signs of a group-based recidivist premium if the second sentence is higher than would be expected for that offense and/or for an offender with a criminal history. In line with the results presented across the OLS models these differing sentencing outcomes highlight the necessity of controlling for aggravating and attenuating factors before a group-based recidivist premium can be considered.

sanctioned less severely than those in the Onset period, while offenders sanctioned in the Escalation ( $b = 46.29$ ;  $p < 0.10$ ) and Desistance ( $b = 43.14$ ;  $p < 0.10$ ) phases were sanctioned more severely. Assuming that the controls for offense severity adequately capture the decrease in severity between the Onset and Persistence phases, this result may be attributable to the general decrease in momentum that followed the Onset phase: a decrease in membership and spectacular lethal incidents, and a much lower completion rate than in the Onset phase. Though speculative, this situation may have led criminal justice officials to believe that the FLQ campaign was diminishing, and that the counter-terrorist measures implemented at the end of the Onset phase were having the desired effect. When using the Persistence phase as a reference, we see that offenders sentenced in the Escalation ( $b = 85.31$ ;  $p < 0.01$ ), and Desistance ( $b = 82.16$ ;  $p < 0.05$ ) periods were sanctioned more harshly than those in the Persistence period; this supports a recidivist sentencing premium.

The evidence supporting the claim that the collective career of the FLQ resulted in a true group-based recidivist sentencing premium is modest. While offenders who were sentenced later in the campaign generally received longer sentences, we also noted a slight decrease in severity after the Onset phase. We do find evidence indicating that the sentencing outcomes of FLQ members were characterized by cohort effects, as offenders who were adjudicated in differing criminal career periods were sanctioned more or less severely depending on the context that they were sanctioned in.

### **3.10. Discussion and Conclusion**

Utilizing a criminal career perspective to investigate the collective career of the FLQ campaign, the current study sought to investigate two questions: 1) is there evidence of cohort effects across periods of FLQ activity and 2) does the collective career of the FLQ result in a group-based recidivist sentencing premium? The results support that the FLQ campaign was characterized by cohort effects as periods of continuity and change, varying offense severity and changing legal responses to FLQ participants were identified. Further, although only partial support for a group-based recidivist sentencing premium was uncovered the observed variability in sentencing outcomes across criminal career periods is characterized by cohort effects. Together the

results reported here illustrate the utility of applying a criminal career perspective to terrorist campaigns, and build on previous empirical work investigating the collective career of criminal organizations, and the life cycle of terrorist campaigns.

When examined in its entirety, the FLQ campaign shares many similarities with the life cycles of other terrorist organizations. The ten-year career length of the FLQ is in line with what has previously been identified as the average life cycle of terrorist movements that survive beyond the first year of activity (Rapoport 1992 as cited by Cronin, 2006), and what Tremblay et al. (1989) found to be the average career length of the biker gangs they examined. Furthermore, Cronin (2006) notes that terrorist groups motivated by 'ethnonationalist/separatist' goals are reported as having the most enduring careers, and this is consistent with the ideological motivations of the FLQ at its onset. Terrorist organization are also said to exhibit limited versatility in their offending as they typically rely on three main tactics (Gupta, 2008). This too is characteristic of the collective career of the FLQ as offenders relied predominantly on the use of bombing campaigns and armed robberies as a means to fund their efforts (Fournier, 1982).

If approached as a whole, the FLQ campaign appears to be relatively stable over time as similar tactics (i.e. bombing campaigns) and outcomes (i.e. the death of citizens or the potential to injure them) were utilized and achieved. However, when isolating the criminal career periods of the collective trajectory of the group cohort effects are uncovered. Indeed, the FLQ campaign is characterized by identifiable periods of onset, persistence, escalation and desistance, and the identification of these career phases serves to provide the framework from which to evaluate the changing nature of FLQ actions over time. Throughout, we see the importance of the context that these offenders acted in, a finding that is consistent with what prior studies investigating cohort effects for non-terrorist offenders have reported (Farrington & Maughan, 1999; Francis et al., 2004; Menard, 1992; O'Brien & Stockard, 2008; Saner et al., 1995). The results also support the use of Tremblay et al.'s (1989) conceptualization of the collective career as many of the facets of the criminal career paradigm that were identified to measure the career progression of individuals are directly applicable to the group processes detected here.

The Onset period was characterized by the highest level of membership, as well as the least variability in convictions across offense types. This changed as the FLQ's career progressed. The following career phases were marked by fluctuating membership rates, and a decrease in the versatility of offenses of which participants were convicted. In line with the characteristics noted for the escalation phase of individual criminal careers, in particular the increase in offense severity (Fournier, 1982; Laurendeau, 1990; Piquero et al., 2003) the Escalation phase of the FLQ's collective career was also marked by an increase in offense severity. The bombing of the Montreal Stock Exchange in February 1969 represented one of the most potentially lethal incidents of the entire FLQ campaign; however, despite the intense bombing campaign that characterized the Escalation phase, offenders convicted in both the Escalation and Desistance periods were convicted of fewer violent offenses, and more readily convicted of theft/other offenses. Further, we find that attending training camps was limited to offenders in Onset and Persistence periods. The break down in career periods helped us to uncover that the majority offenders who attended training camps did so on the heels of the implementation of the Combined Anti-Terrorism Squad, and despite their preparation offenders active in the Persistence phase recorded the lowest completion rate. Whether or not attending training camps made these individuals easier to disrupt is less important than the fact that participants stopped preparing for their involvement in FLQ actions in this way as it proved to not serve them well.

Similarly, not only did the criminal justice system's response to the FLQ change over time, but the increased efforts of law enforcement to disrupt their actions, combined with the changing structure, capabilities and motivations of the FLQ, led both the FLQ and law enforcement to evolve in parallel. The descriptive information presented here indicates that as the career of the FLQ progressed, offenders were less often tried with co-defendants and fewer entered guilty pleas. The results presented in the regression models further highlight not only the impact that these legal and extralegal factors have on sentencing outcomes, but the importance of controlling for terrorism specific factors. It was only when controlling for terrorism specific factors that the significance of changing legal responses emerged indicating that offenders tried with co-defendants, and who committed their offenses with more co-offenders, were sanctioned less severely. Somewhat unexpectedly we find that despite the decreasing proportion of

offenders entering a guilty plea, this factor results in an increased sentence severity. Contemporary studies examining the sentencing outcomes for terrorist offenders have reported that terrorist offenders are more likely to be convicted at trial, and that terrorist cases having an increased number of defendants are less likely to go to trial, or end in conviction (Bradley-Engen et al., 2009; Damphousse & Shields, 2007; Johnson, 2012; Shields et al., 2006; Smith & Damphousse, 1998; 1996; Smith et al., 2002). Accordingly, the finding of an increased sentence severity for those who pled guilty may be the result of the criminal justice system achieving lesser sentence outcomes for offenders who were tried with co-defendants, or who had an increased number of co-offenders. Thus, even when using a historical case study the findings presented here indicate that factors specific to terrorism related cases do have the potential to differentially impact sentencing outcomes.

Further studies investigating the contemporary punishment of terrorist offenders have highlighted the importance of understanding the context in which terrorist offenders are sanctioned (Damphousse & Shields, 2007). Context also plays a significant role in the sanctioning of FLQ offenders and while we only found modest evidence to support that the collective career of the FLQ resulted in a group-based recidivist sentencing premium we did find evidence of cohort effects. In general, after controlling for other factors, offenders sanctioned in the earlier phases of the FLQ career were sanctioned less severely for similar crimes than those who were sentenced in the latter career phases indicating that a penalty for the combined collective career of the FLQ was applied to these offenders. When comparing the sentencing outcomes across career phases we find that offenders sanctioned in the Persistence phase were sentenced less severely than those in the Onset phase, a finding that opposes a recidivist sentencing premium. However, just as context plays an important role in understanding the collective career of the FLQ, contextual differences may explain this disparity. The Persistence phase was characterized by both a declining membership, as well as an increased effort by law enforcement to actively prevent FLQ initiatives. Offenders in the Persistence phase were, in fact, the least successful in executing their offenses. Taken together these contextual differences may account for the offenders sentenced in this period being sentenced less severely than those in the Onset period.



Some important data limitations need to be acknowledged. The sample was constructed from open source information, and as such, some case details may be missing. Given the historical nature of this data it was not possible to consistently locate the number of counts offenders were charged with and consequently this legal factor was not controlled for. Further, there were several instances where convicted FLQ members were identified; however, the sentencing information for these individuals could not be located. Given that sentencing outcome is the key dependent variable in these analyses, these cases had to be excluded. Previous sentencing studies have indicated that offenders tried by a jury are often sanctioned more severely than those whose trials are heard by judges. Based on the information available, it was not possible to consistently identify whether an offender's trial was heard before a jury or a judge, and as such this factor could not be controlled for. It would have been beneficial to include a comparison group to explore how, or if, the sentencing outcomes of FLQ members differed from general offending populations convicted of similar offenses during this time period, but this data was unavailable. Finally, the FLQ campaign is unique in the Canadian context as there is no equivalent terrorist campaign in Canada. Accordingly, while it is not possible to explore the external validity of the results reported here by comparing the collective career and sentencing outcomes of the FLQ to other Canadian terrorist campaigns recent studies have investigated the trajectories and life cycles of numerous terrorist organizations (see Dugan & Yang, 2012; Freilich et al., 2009; LaFree et al., 2009). Although differing in scope, and duration, the collective career and group-based recidivist sentencing premium constructs could be applied to terrorist organizations such as the National Organization of Cyproit Fighters, the Kurdistan Workers' Party and the Irish Republican Army to explore if these constructs are characteristic of terrorist campaigns other than the FLQ.

Despite these limitations, the findings presented in this study highlight the usefulness of applying criminological frameworks to improve our understanding of the life cycle of terrorist campaigns. Building on the concept of the collective criminal career, cohort effects are uncovered across the FLQ campaign, and although only modest evidence of a group-based recidivist sentencing premium is found evidence to support the presence of cohort effects in the sentencing outcomes of the FLQ members is uncovered. Many of the concepts developed to measure within-individual changes in the

offending trajectories of individuals are directly applicable here as the FLQ campaign was characterized by periods of onset, persistence, escalation and desistance, and demonstrated changing rates of criminal involvement, offense specialization and versatility, and termination. The current study demonstrates not only the utility of applying this perspective to terrorist organizations, but the potential benefits of investigating criminal collectives through this lens.

## **Chapter 4.**

# **Timing is Everything: The Role of Contextual and Terrorism Specific Factors in the Sentencing Outcomes of Terrorist Offenders**

### **4.1. Introduction**

Despite the increasing implementation of legislations designed to criminalize terrorism specific offenses, the punishment of politically, religiously and ideologically motivated extremists remains predominantly unexplored. Prior studies have identified some key differences between terrorist and conventional offending populations pertaining to both case processing and sentence severity outcomes. In one of the most recent studies to explore the case processing of terrorist offenders, Johnson (2012) reports that the intended target and the number of counts a terrorist offender is charged with are factors that are indicative of cases that are both 1) more likely to go to trial, and 2) more likely to result in a conviction. In contrast, despite the fact that many terrorist incidents involve numerous participants, cases with more defendants are both less likely to go to trial, and less likely to result in a conviction. Further, and perhaps more importantly, cases that were prosecuted under modern terrorism statutes, as opposed to general offending statutes, were less likely to end in a conviction (Johnson, 2012).

Being legally identified as a terrorist not only increases the likelihood of conviction, but also has significant implications for sentence severity. Offenders who are investigated, and prosecuted, under a terrorist label receive harsher sentences than offenders who commit similar criminal acts, but who are not identified as terrorists (Bradley-Engen et al., 2009; Shields et al., 2006; Smith and Damphousse, 1998; 1996). Smith and Damphousse (1996) report that politically motivated offenders who went to trial were subject to sentences that were three times longer than those who pled guilty,

while their findings further indicate that political motivation was the best predictor of increased sentence severity as terrorist offenders spent approximately 167 months in jail, compared to the average 46 months that non-terrorists served for similar offenses.

The extent to which major terrorist incidents impact both the case processing and sentencing outcomes of terrorist offenders was investigated by Damphousse and Shields in 2007. The authors report that major terrorist incidents can function to change the behaviours of prosecutors as their results show that in the wake of a major terrorist incident (approximately two years following) prosecutors often broaden their definition of terrorism, which results in an increase in indictments. However, Damphousse and Shields (2007) further present that prosecutors are also more likely to approach these cases as conventional criminal offenses, as opposed to focusing on political motivation, as they often have more successful outcomes. Sentencing outcomes following terrorist attacks are also significantly impacted. Damphousse and Shields (2007) report that in the two years prior to the Oklahoma City bombing the average sentence length for convicted terrorist offenders was 234 months; however, in the two years after the attack the average sentence length for terrorist offenders was only 92 months. Similarly, in the two years prior to September 11<sup>th</sup> the average sentence length of convicted terrorists was 98 months, while in the following two years the average sentence length was only 54 months (Damphousse and Shields, 2007). Taken together, the results presented by Damphousse and Shields (2007) indicate that context (the timing of being prosecuted in relation to terrorist incidents) can affect sentencing outcomes for terrorist offenders.

Despite the aforementioned studies the punishment of terrorist offenders remains a relatively unexplored topic. Research on terrorist sentencing in the UK is of particular importance in light of the multiple changes made to terrorism-related legislations following the implementation of the Terrorism Act 2000. Further, as the July 2005 bombings, and attempted bombings, represent one of the largest successful terrorist attacks following September 11<sup>th</sup> the effects of this incident on the adjudication of terrorist offenders remains unclear. Finally, as motivation has been found to be one of the strongest predictors of increased sentence severity for terrorist offenders the extent to which operating under unique ideological motives has the potential to differentially impact sentence outcomes is a matter that warrants further investigation. In an effort to

address these limitations the current study seeks to explore the impact of legislative and incident based contextual factors, as well as, extralegal factors specific to terrorist offenses, on sentencing outcomes.

## **4.2. Legal Responses to Terrorist Incidents in the United Kingdom**

The UK has a rich history of both enduring, and responding to, criminal acts motivated by political, religious and ideological extremists. Historically, the overwhelming terrorist threat has come from the political unrest in Northern Ireland where bombing campaigns have been undertaken dating as far back as the 1860s as a means to protest British rule (Hewitt, 2008; Staniforth, 2013; Taylor, 2002, Walker, 1992). The use of new legislations to respond to terrorist events is not unique to the past decade as the UK has historically responded to terrorist incidents, and changing terrorist threats, by implementing legislations to address these criminal behaviours (Roach, 2011; Walker, 2011; 2009; 2006; 1992). When comparing the volume of counter-terrorism legislations implemented across countries Shor (2011) indicates that the UK is second only in the world to South Africa having enacted 51 laws while the latter has implemented 63.

The UK's adoption of a criminal justice approach of responding to terrorist activity can be traced to the implementation of the Prevention of Violence Act 1939, that was enacted in response to a series of IRA (Irish Republican Army) bombings (Hewitt, 2008; Schiff, 1997; Walker, 1992). Although initially constructed as a temporary measure, the Prevention of Violence Act remained in effect until 1954. After a period of declining activities, IRA actions again began to increase in severity in the late 1960s culminating in a series of bombings from 1972 to 1974, that targeted not only civilian populations, but also symbolic targets such as the Tower of London, Old Bailey Courthouse and the Houses of Parliament (Hewitt, 2008). However, despite the ongoing terrorist attacks it was the bombing of two Birmingham Pubs, which resulted in the deaths of twenty-one civilians, that acted as the catalyst for the implementation of the Prevention of Terrorism Act 1974 (Hewitt, 2008; Schiff, 1997; Walker, 1992). Initially, the 1974 Act was only a temporary provision and was required to be renewed every six months; however, following continued attacks by the IRA, and the emerging threat of international terrorist

organizations, the once temporary provisions were continually renewed and revised resulting in the passing of the Prevention of Terrorism Acts 1976, 1984 and 1989 (Hewitt, 2008; Schiff, 1997; Walker, 1992). The Prevention of Terrorism Act 1989 remained in effect until it was replaced in 2000 (Hewitt, 2008; Walker, 2011; 2009; 2006; 2000).

The Terrorism Act 2000 was intended to create a stable and integrated mechanism for responding to political violence throughout the UK (Roach, 2011; Walker, 2000). Among the many details of the 2000 Act, it provides the legal definition of terrorism, as well as creating offenses specific to terrorist activity and legally identifying proscribed terrorist organizations (Roach, 2011; Walker, 2011; 2009; 2006; 2000). The UK was one of the only countries to take such proactive measures to combat terrorism prior to September 11<sup>th</sup>. However, despite the prolific and continued use of violence in Northern Ireland over the past century the terrorist incident resulting in the largest number of British deaths occurred not on British soil, but as a result of the September 11<sup>th</sup>, 2001 terrorist attacks. The deaths of 2,973 individuals, sixty-seven of whom were British citizens, has marked a turning point in how terrorist threat is constructed and in the perception of resources that are required to proactively prevent terrorist attacks (Hewitt, 2008; Staniforth, 2013).

In the wake of September 11<sup>th</sup>, the British Government implemented new legislations to counter-terrorist threats. The Anti-Terrorism, Crime and Security Act 2001 provided amendments and additions to the Terrorism Act 2000, that remained the legal foundation for responding to terrorist offenses (Roach, 2011, Walker, 2011). Along with introducing new criminal offenses, and the potential for increased sentence severity, one of the key provisions of the 2001 Act was the reintroduction of the use of indeterminate detention for individuals who were not legal citizens of the UK, but who were believed to pose a serious terrorist threat and could not be deported due to political considerations (Fenwick and Phillipson, 2009; Roach, 2011; Walker, 2011, 2009a; 2009b; 2007; 2006; 2005). The use of indeterminate detention eventually became a matter of the courts and was deemed to be a violation of the European Convention on Human Rights (Roach, 2011; Walker, 2011; 2006). The Prevention of Terrorism Act 2005 was enacted in part to remedy the limitations of the 2001 Act. While the 2005 Act introduced revisions to the

definition of terrorism, and addressed issues concerning the use of secret information and evidence, it most importantly abolished indeterminate detention and introduced control orders that could be applied to both UK citizens and foreign nationals.

Against the backdrop of these legislative changes, in July 2005 a major terrorist incident motivated by Islamic extremist ideologies was executed in London. The bombings of the London transportation system on July 7, 2005 resulted in the deaths of fifty-two people, while a further 784 were injured by the blasts. Four British citizens perpetrated the terrorist attack, which marked the first incident of homegrown suicide bombings in the UK (Staniforth, 2013). Two weeks later, on July 21, five men again boarded the London transportation system with the intention of detonating explosive devices; however, while one offender abandoned his device prior to detonation, due to mechanical issues the remaining four bombs failed to detonate properly and there were no injuries as a result of this failed terrorist attack (Hewitt, 2008; Staniforth, 2013).

The Terrorism Act 2006 was established as a response to the July 2005 bombings, and attempted bombings. The 2006 Act made minor revisions to the 2000 definition of terrorism with regard to attempts to influence international organizations and governments (Roach, 2011; Walker 2011). A key aspect of the Act was the inclusion of a speech-related provision that, for the first time, criminalized speech that was either intended to, or could be perceived to encourage acts of terrorism (Roach, 2011; Walker, 2011; 2009). Following this, the Counter-Terrorism Act 2008 was instituted with the goal of aiding criminal investigations and prosecutions. Finally, as the use of control orders continued to be a contentious issue in 2011, the Terrorism Prevention and Investigation Measures Act was introduced. Just as the 2005 Act had abolished the use of indeterminate sentences, the 2011 Act revoked the use of control orders and established terrorism prevention and investigation measures, that serve to impose restrictions on individuals who are deemed to be a terrorist threat (Terrorism Prevention and Investigation Measures Act, 2011).

### **4.3. The Present Study**

As evidenced by the numerous legislative responses to terrorist activity the UK have taken a decidedly legalistic approach to combatting terrorism (Roach, 2011). Prior studies investigating the role of context in sentencing outcomes have found that offenders adjudicated in certain places and at certain times have led to differing sentence outcomes (Damphousse and Shields, 2007; Johnson, 2006; 2005; Kautt, 2002; Ulmer and Johnson, 2004). Further, Smith and Damphousse (1996) cite that when examining the influence of legal and extralegal factors on sentence severity for politically motivated offenders extralegal factors will be more relevant to sentencing outcomes. The reason for this being that following a conflict perspective certain groups of offenders are constructed to be more threatening based on characteristics that they possess. These characteristics, such as race or gender, are associated with increased perceptions harm, as well as having a greater potential to disrupt societal norms, and as such offenders possessing these characteristics are deemed to be deserving of harsher sanctions (Crow and Johnson, 2008; Johnson and Betsinger, 2009; Lizotte, 1978; Smith and Damphousse, 1996). Prior studies suggest that changing legal responses, recent terrorist incidents and perceptions of threat all have the potential to create contextual environments that impact sentencing outcomes. Two research questions are addressed in the following study: 1) does context matter, and if so how much, for offenders recently adjudicated for terrorist offenses, and 2) do perceptions of increased threat result in harsher sanctions for some terrorist offenders? Context is assessed in two ways: first by accounting for the offender's time of arrest and second by examining whether they were convicted under terrorism specific or general offending statutes. Perceptions of increased threat are explored by operationalizing a series of terrorism-specific extralegal factors such as being motivated by an Islamic extremist ideology and attending a terrorist training camp.

### **4.4. Data and Methods**

The Counter-Terrorism Division of the Crown Prosecution Service (CPS) of England and Wales maintains a publically available list of their successful terrorist prosecutions from the end of 2006 through to 2012 ( $n = 156$ ). For each offender, CPS



provides a brief synopsis of case specific details and sentencing outcomes. It is this open source information that serves as the basis of the data operationalized in the current study. In addition to the information provided by the CPS, legal documents were sourced from the British and Irish Legal Information Institute (BAILII) where name searches were conducted for each individual. News sources, predominantly from the British Broadcasting Corporation (BBC) were also consulted, and finally a Google search using the name of each offender was conducted to source out any other prevalent information. Legal documents were available for 33% of the sample ( $n = 60$ ), while news sources were identified for all but two offenders ( $n = 179$ ). In total 29 legal documents were utilized, while 555 news sources were compiled.

Offenders included in the dataset were arrested from 2004 through to 2012 and committed offenses such as preparation of terrorist acts, possession of explosives, providing and attending terrorist training camps and conspiracy to commit murder. For each convicted offender, variables were coded pertaining to the offender's age, place of birth, motivation, participation in the offense, counts of which they were charged with and convicted of, sentence issued, appeals by either the Crown or Defense, and the final sentence rendered. Finally, as the UK utilizes numerous legal Acts to respond to terrorist activity, the Act under which the offender was convicted was recorded. In total 218 variables were coded for each offender. A total of 25 cases were excluded from the original 181 identified by CPS because these individuals were either found to be not guilty, had the charges against them stayed or had their convictions overturned upon appeal resulting in a final sample of 156 ( $n = 156$ )<sup>31</sup>. All data were collected and coded between January and June 2013.

<sup>31</sup> Of the 25 offenders excluded nine were involved in major terrorist plots and were charged with such offenses as conspiracy to cause an explosion, conspiracy to commit murder, possession of a document for terrorist purposes and failing to disclose information about a terrorist incident. While the involvement of these offenders varied many of them had lessor or accessory roles in larger offense. Six offenders had their convictions overturned upon appeal.

#### 4.4.1. Dependant Variable

The outcome variable of interest is sentence length. Sentence length was coded at both the end of the offender's initial trial, as well as, following any appeals pursued by either the Crown or defense. Given this the final sentence length rendered for each offender will be operationalized in all models. In keeping with previous studies examining sentencing outcomes final sentence length is measured in months (Bradley-Engen et al., 2012; Bradley-Engen et al., 2009; Damphousse and Shields, 2007; Smith and Damphousse, 1996; Ulmer and Johnson, 2004). On average offenders were sentenced to 109.73 months with sentencing outcomes ranging from 7.20 to 360 months.

#### 4.4.2. Main Independent Variables

Contextual Factors. Two key contextual factors are considered. The first serves as a proxy not only for event based contextual changes, but legislative contextual changes as well. The year 2006 represents an important turning point following the July 2005 bombings, and attempted bombings in London, and the implementation of the Terrorism Act 2006 in response to these events. In order to capture any potential changes in the sentencing of terrorist offenders pre and post these events *Arrested in or After 2006* was constructed and coded as 'arrested in 2004 or 2005' (0), or 'arrested in 2006 to 2012' (1).<sup>32</sup> Over two thirds of the sample ( $n = 123$ ) were arrested in or after 2006.

Next, as the UK has implemented numerous legislations to combat terrorism, while continuing to utilize general criminal provisions to prosecute terrorist offenders, it is important to assess any differences in sentencing outcomes that may arise from being convicted under terrorism or non-terrorism based legislations. To model this, a series of variables were constructed and coded in the following way: 'being convicted under

<sup>32</sup> The Terrorism Act 2006 was implemented on March 30, 2006 and as such the arrest dates of all offenders arrested in this year were assessed to confirm their potential to be charged under this Act. Of the 34 offenders arrested in 2006 only 3 were arrested prior to the implementation of the Act; however, all three of these offenders were charged with offenses related to the Terrorism Act 2000. The offense classifications they were convicted under would not have been amended by the implementation of the Terrorism Act 2006. As such all offenders arrested in 2006 were eligible to be charged under this new legislation.

terrorism legislation only' (0); 'being convicted under both terrorism and non-terrorism legislations only' (1); and 'being convicted under non-terrorism legislations only' (2). Almost two thirds of the sample (56%,  $n = 88$ ) were convicted under terrorism legislations only, while 29% ( $n = 45$ ) were convicted under non-terrorism legislations only, and the remaining 15% ( $n = 23$ ) were convicted under both terrorism and non-terrorism legislations.

Terrorism legislations refer predominantly to the Terrorism Act 2000 and 2006, as only four convictions were issued under the Anti-Terrorism, Crime and Security Act 2001 and the Terrorism Act 2005. Non-terrorism legislations refer, but are not limited to, the Accessories and Abettors Act 1861, the Explosive Substances Act 1883, the Crime and Disorder Act 1998 and the Proceeds of Crime Act 2002. While the increased use of terrorism specific legislations is in part indicative of the changing nature of terrorist threats in the UK the selection of the statute that an offender is charged under is ultimately dictated by the offense that they have, or were planning to, execute. Prior to the implementation of the Terrorism Act 2006, offenses related to the preparation of terrorist activities were commonly classified as conspiracy or possession of explosives offenses. However, the introduction of Section 5 of the Terrorism Act 2006 was designed specifically to criminalize the preparation of terrorist acts and carries a maximum sentence of life-imprisonment. In creating new offense classifications, terrorism specific legislations now criminalize offenses that had previously been prosecuted under general offending statutes and as such, increase the potential for harsher sentences to be issued to offenders convicted of terrorism offenses.

Terrorism Related Factors. A series of terrorism specific factors were coded in an effort to explore the potential impact that factors unique to terrorism related cases have on sentencing outcomes. Drawing on previous empirical investigations (Bradley-Engen et al., 2009; Diab, 2013; Shields et al., 2006; Smith and Damphousse, 1998; Smith et al., 2002), the current study employs four extralegal terrorism related factors. The first factor is *Severity* which was coded as, 'no impact to human lives' (0), or 'impact to human lives' (1). This measure was constructed to capture offenses that either resulted in serious injuries or had the potential to do so such as conspiracy to murder, preparation of terrorism acts, attempted murder and possession of explosives for terrorist purposes.

While this is an imperfect measure of severity, it is highly associated with increased sentence severity indicating that it does accurately capture offenses that were more serious in nature.<sup>33</sup> The second factor is *Location*. As terrorist incidents often cross national borders this measure was constructed to explore the extent to which planning or perpetrating a terrorist offense inside or outside of the UK impacted sentence outcomes. It was coded as 'offense to occur outside of the UK' (0), or 'offense to occur in the UK' (1). In total 66.7% of offenders planned to execute their offense within the UK ( $n = 104$ ). Third, the extent to which attending a *Training* camp affects sentence outcomes was controlled for as a potential aggravating factor. Here, 18.6% ( $n = 29$ ) of offenders participated in a terrorist training camp, that was coded as 'did not attend terrorist training camp' (0), or 'known to have attended a terrorist training camp' (1). Next, given the proliferation of terrorist offenders motivated by Islamic extremism, and given that over half of the offenders examined (60.9%,  $n = 95$ ) were motivated by Islamic extremism, *Ideology* is included as a control. It is operationalized as 'not motivated by Islamic extremism' (0), or 'motivated Islamic extremism' (1).<sup>34</sup> Based on a conflict perspective, these four measures would be associated with individuals assumed to pose a greater threat to society and thusly deserving a harsher punishment.

<sup>33</sup> While it would have been desirable to include a measure of lethality it was not possible as only four deaths resulted from the actions of the offenders included in the dataset.

<sup>34</sup> Offenders were considered to be motivated by an Islamic extremist ideology if they indicated that their action were motivated by Jihad or for the benefit of Islam. The use of news sources, particularly from the BBC, were helpful in the coding of this variable as they provided details from testimony given court, and for some offenders provided video recordings detailing the offenders' motivation. Some offenders indicated that they were acting on behalf of Islam, but were not extremists; however, based on the severity of their offenses, court testimonies and offending affiliations it was clear that these individuals were using this as a justification for their actions, and they were subsequently coded as being motivated by Islamic extremism.

### 4.4.3. Control Variables

Extralegal and Legal Factors. Five extralegal and legal factors were included. The first is the offender's age at sentencing.<sup>35</sup> On average, offenders were 29.7 years old at the time of their sentencing. The second factor concerns whether or not the offender was a *Legal Citizen* of the UK as 21.9% ( $n = 34$ ) were not legal citizens. This factor was coded as 'legal citizen' (0), or 'not a legal citizen' (1). Previous sentencing studies have indicated that foreign offenders who are convicted in a country not of their birth are sentenced more harshly (Johnson et al., 2010), and given the UK's use of indeterminate detention, control orders and terrorism prevention and investigation measures to neutralize terrorist threats in non-legal citizens this measure was included. Next, previous studies have illustrated that for both general and terrorist offenders entering a *Guilty Plea* can serve to reduce sentence severity (Bradley-Engen et al., 2012; Bradley-Engen et al., 2009; Engen and Gainey, 2000; Shields et al., 2006). In total, just over half of the sample (53.2%,  $n = 83$ ) entered a guilty plea and it was coded here as 'no guilty plea' (0), or 'guilty plea' (1). In addition, 38.5% ( $n = 60$ ) of offenders had three or more counts filed against them and the number of *Counts* was coded as 'one or two' (0), or 'three or more' (1). Finally, whether or not an offender committed their offense with *Co-Offenders* was considered and was included as a count variable. On average the number of co-offenders was 4.63. While committing an offense with co-offenders typically indicates increased criminal involvement the effect in terrorism prosecutions remains unclear as previous studies have indicated that cases with numerous defendants are less likely to go to trial (Johnson, 2012).

Affiliation/Plot. Many offenders were embedded within larger group affiliations, and as such, offenders were often prosecuted in relation to the same criminal event. In light of this, offenders were coded to represent their association with specific events, while offenders who acted independently were similarly assigned a unique identification number resulting in the identification of 64 unique groups or offenders.

<sup>35</sup> If the offender's Age at sentencing was reported it was coded as such. However, often the offender's age was reported at the time of their arrest, but no formal date of birth was reported. In these cases the offenders reported age was subtracted from the year of arrest, onset ect. to approximate the offender's date of birth.

## 4.5. Analytic Strategy

In order to empirically address the research questions a hierarchical linear, or multilevel, modeling strategy will be employed. Hierarchical linear modeling (HLM) is necessary when cases operate at more than one level. Here offenders are nested within their networks of co-offenders, that serve as the level two grouping variable (Garson, 2013; Raudenbush and Byrk, 2002; Singer, 1998; Tabachnick and Fidell, 2007). Unlike other linear models, that assume that actors are independent from each other, HLM assumes that individuals who are similarly grouped will have some effect on each other and, as such, independence of errors is not necessary (Tabachnick and Fidell, 2007).<sup>36</sup> Failure to account for these interdependencies by using other regression strategies, such as ordinary least squares, can result in a bias of standard errors and subsequently statistical inference becomes problematic (Raudenbush and Byrk, 2002; Singer, 1998; Tabachnick and Fidell, 2007).<sup>37</sup> Furthermore, special consideration must be given when operationalizing continuous variables in mixed models, which here is a characteristic of the dependent variable. It is common to center variables, which can be done around the natural metric of X, the Grand mean or the Group mean (Raudenbush and Byrk, 2002). As the Grand mean is the most common, and given that previous sentencing studies have utilized this (Johnson, 2005; 2006; Johnson et al., 2008; Ulmer, Eisenstein and Johnson, 2010), Grand mean centering will be undertaken. Grand mean centering is achieved by subtracting the Grand mean from all data values, that subsequently makes the new mean equivalent to zero (Garson, 2013). All statistical models were run using SAS 9.3.

<sup>36</sup> Given the construction of our data (in that we only have one level 2 factor) and that our main focus is on individual effects the level 2 grouping variable is used as a means to correct for any potential inaccuracies in the standard errors and to remove the intra-class correlation by accommodating for the between-group variation. As a result of this we cannot explicitly test the impact of the level 2 variable (see Garson, 2013; Johnson, 2012)

<sup>37</sup> All of the covariates included in the models were tested for multicollinearity using OLS regression, which proved to not be a concern.

## 4.6. Results

**Table 4.1. Sample Description (n = 156)**

Terrorism Factors		
UK		66.7% (n = 104)
Training		18.6% (n = 29)
Islamic Extremist Ideology		60.9% (n = 95)
Severity (Increased Threat to Human Lives)		41.7% (n = 65)
Extralegal and Legal Factors		
Not a Legal Citizen		21.9% (n = 34)
Immigrant		40.6% (n = 63)
Age	29.7 (SD = 7.66; range = 18 – 58)	
Plea		53.2% (n = 83)
Counts (Three or more)		38.5% (n = 60)
Number of Co-Offenders	4.63 (SD = 4.06; range = 0 -11)	
Final Sentence Length (In Months)		
Full Sample	109.73 (n = 156; SD = 101.48; range = 7.20 – 360)	
Offenders Motivated by Ideological Extremism	138.16 (n = 95; SD = 110.43; range = 7.20 – 360)	
Offenders Convicted in 2006 or After	87.73 (n = 123; SD = 89.47; range = 7.20 – 360)	
Arrest Year		
2004	261.00 (n = 12; SD = 48.84; range = 180 – 312)	
2005	152.15 (n = 21; SD = 105.22; range = 22 – 300)	
2006	119.12 (n = 34; SD = 106.27; range = 7.20 – 300)	
2007	74.56 (n = 29; SD = 85.47; range = 16.50 – 300)	
2008	73.08 (n = 20; SD = 80.52; range = 13.20 – 300)	
2009	45.82 (n = 11; SD = 31.32; range = 12 – 120)	
2010	136.44 (n = 15; SD = 96.22; range = 13.20 – 360)	
2011	29.52 (n = 10; SD = 15.59; range = 13.20 – 63.60)	
2012	78.40 (n = 3; SD = 5.54; range = 72 – 81.60)	
Offenders Arrested 2004/2005	191.73 (n = 33; SD = 102.79; range = 22 – 312)	
Offenders Arrested in 2006 or after	87.73 (n = 123; SD = 89.47; range = 7.20 - 360)	

**Legislation Convicted Under**

Terrorist Legislation	81.35 (n = 88; SD = 80.96; range = 7.20 – 360)
Non-Terrorist Legislation	175.49 (n = 45; SD = 119.34; range = 13.20 – 312)
Both Terrorist and Non-Terrorist Legislation	89.43 (n = 23; SD = 79.05; range = 12 – 300)
Terrorism Sentence Lengths in 2004/2005	144.76 (n = 20; SD = 102.21; range = 22 – 300)
Terrorism Sentence Length in 2006 or After	62.79 (n = 68; SD = 61.69; range = 7.20 – 360)
Non-Terrorism Sentence Lengths in 2004/2005	264.00 (n = 13; SD = 48.00; range = 180 – 312)
Non-Terrorism Sentence Lengths in 2006 or After	139.54 (n = 32; SD = 121.26; range = 13.20 -300)
Both Terrorism and Non-Terrorism in 2004/2005	-
Both Terrorism and Non-Terrorism in 2006 or After	89.43 (n = 23; SD = 79.05; range = 12 – 300)

**Level 2 Factors**

Plots involving Linked Offenders

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The descriptive information presented in Table 4.1 highlights the variability observed in sentencing outcomes over time. Overall a downward trend in sentence severity is observed for offenders arrested from 2004 through to 2012. The highest average sentence length is found in 2004, the first year of observation, where an average sentence length of 261 months is recorded. Following this the reported average sentence lengths decreased until 2010, after which they decline once more.<sup>38</sup> The smallest average sentence length was observed for offenders arrested in 2009 where the average sentence length was only 45.82 months. Given the above reported average sentence lengths for year of arrest it is not surprising that offenders who were arrested in 2004 and 2005 had average sentence lengths (191.73 months) that were more than double than those reported for offenders arrested in 2006 through to 2012 (87.73 months).

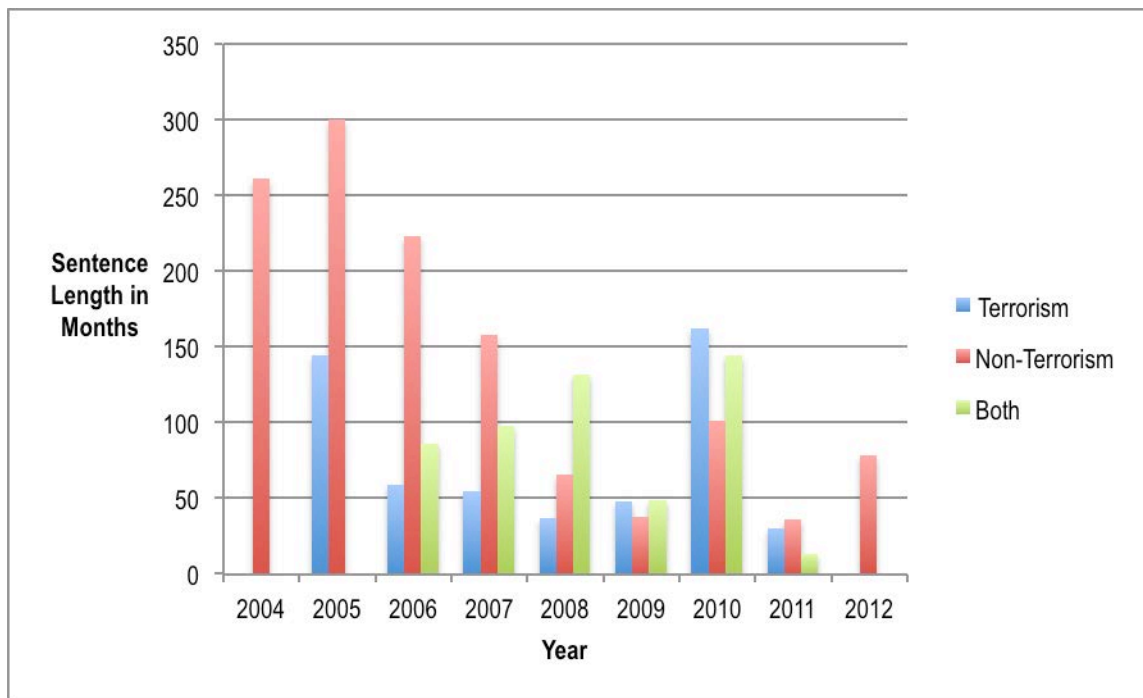
<sup>38</sup> The increase in average sentence lengths reported for offenders arrested in 2010 is attributable to two cases whose sentence lengths were 300 and 360 months. If these two cases are removed the average length of sentences issued to offenders arrested n 2010 is 75 months.



**Table 4.2. Average Sentence Length by Legislation Convicted Under and Year of Arrest (n = 156)**

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Terrorism	-	144.74 (n = 20)	58.81 (n = 19)	54.27 (n = 21)	37.09 (n = 11)	48.00 (n = 2)	162.23 (n = 8)	30.00 (n = 7)	-
Non-Terrorism	261.00 (n = 12)	300.00 (n = 1)	222.91 (n = 12)	158.10 (n = 4)	66.00 (n = 2)	38.00 (n = 3)	100.80 (n = 6)	36.00 (n = 2)	78.40 (n = 3)
Both	-	-	86.00 (n = 3)	97.50 (n = 4)	131.66 (n = 7)	49.00 (n = 6)	144.00 (n = 1)	13.20 (n = 1)	

**Figure 4-1. Average Sentence Length by Legislation Convicted Under**



The sentencing outcomes of offenders who were prosecuted under terrorism legislations differ greatly from those who were convicted under other legislations. Significant group differences were found for offenders who were sentenced under non-terrorism legislations ( $M = 175.49$  months,  $p < 0.01$ ) as these offenders received sentence lengths that were double those issued to offenders convicted under terrorism

legislations whose sentence lengths were significantly shorter ( $M = 81.35$  months). For offenders sentenced under both terrorism and non-terrorism legislations no significant group differences were found, and the average sentence length for these offenders was 89.43 months. In addition to the type of legislation used, as indicated above, the timing of arrest also appears to be an important determinate in sentence severity. Offenders who were arrested in or after 2006 had significantly shorter sentences ( $M = 87.73$ ,  $p < 0.01$ ) than those who were arrested in 2004/2005 ( $M = 191.73$ ). When considering the type of legislation that the offender was convicted under, as well as the time of their arrest, the average sentence outcome for those arrested under terrorism legislations in 2004/2005 was 144.76 months, that is 2.3 times longer than the average sentence length reported in or after 2006 (62.79 months,  $p < 0.01$ ). The average sentence outcome for offenders convicted under non-terrorism legislations who were arrested 2004/2005 is 1.8 times longer (264 months) than the average outcome for those arrested in or after 2006 (139.54 months).

Table 4.2 presents the average sentence length for both the legislation that offenders were convicted under and the year that they were arrested in, while Figure 4-1 illustrates the sentencing outcomes achieved for convictions under terrorism, non-terrorism and both types of legislations for offenders arrested from 2004 to 2012. In general non-terrorism legislations were the most consistently utilized as offenders arrested each year from 2004 until 2012 were sentenced under these statutes, while no offenders arrested in 2004 or 2012 were sentenced under terrorism legislations. Figure 4.1 further depicts that the average sentence lengths achieved when convictions were obtained under both types of legislations result in greater variability over time, that is consistent with finding no significant group differences.

**Table 4.3. Test of Group Differences Between Covariates (n = 156)**

	n	Final Sentence ( $\bar{x}$ )	SD	t	df
<b>Legislative Contextual Factors</b>					
Offender Convicted Under Terrorism Legislation	88	81.41	80.04	3.99***	114
Offender Not Convicted Under Terrorism Legislation	68	146.38	114.40		
Offender Convicted Under Non-Terrorism Legislation	45	175.49	119.34	-4.78***	60
Offender Not Convicted Under Non-Terrorism Legislation	111	83.07	79.55		
Offender Convicted Under Both	23	89.43	1.04	1.27	154
Offender Not Convicted Under Both	133	113.24	104.72		
<b>Event Contextual Factors</b>					
Arrested in 2006 or After	123	87.73	89.47	5.29***	45
Arrested in 2004/2005	33	191.73	102.79		
<b>Terrorism Factors</b>					
Plot planned to be executed in the UK	104	116.45	99.73	-1.17	154
Plot planned to be executed outside of the UK	52	96.30	104.58		
Offender Attended a Training Camp	29	177.32	123.66	-3.42***	34
Offender Did Not Attended a Training Camp	127	94.29	89.33		
Offender Motivated by an Islamic Extremist Ideology	95	138.16	110.43	-5.17***	153
Offender Not Motivated by an Islamic Extremist Ideology	61	65.46	65.01		
<b>Extralegal and Legal Factors</b>					
Offender Not a Legal Citizen of the UK	34	73.08	73.48	2.99*	75
Offender a Legal Citizen of the UK	121	120.49	106.27		
Offender an Immigrant	63	108.44	97.14	.17	153
Offender Not an Immigrant	92	111.22	105.24		
Offender Entered a Guilty Plea	82	85.59	84.79	2.85**	136
Offender Did Not Enter a Guilty Plea	73	134.24	110.93		
Offender Charged with Three or More Counts	60	107.28	100.85	.14	152
Offender Charged with One or Two Counts	94	109.56	101.54		
<b>Crime Severity</b>					
Offender Poses Increased Threat to Human Lives	65	189.43	109.09	-9.69***	154
Offender does not Pose Increased Threat to Human Lives	91	52.81	37.53		

\*p &lt; .05, \*\* p &lt; .01, \*\*\*p&lt;.001

In addition to the differences reported for offenders who were arrested and convicted under different legislations and at different time points, significant group differences were also found among several additional covariates (see Table 4.3). Offenders who attended a training camp received significantly longer sentences ( $M = 177.32$ ,  $p < 0.01$ ) than those who did not ( $M = 94.29$ ), while offenders who were motivated by Islamic extremism also received significantly longer sentences ( $M = 138.16$ ,  $p < 0.01$ ) than offenders motivated by other ideological goals ( $M = 65.46$ ). Finally, one legal and one extralegal factor were also found to have significant between group differences as offenders who were not legal citizens of the UK ( $M = 73.08$ ,  $p < 0.05$ ) received shorter sentences than those who were legal citizens ( $M = 120.49$ ), and offenders who entered a guilty plea ( $M = 85.59$ ,  $p < 0.01$ ) received shorter sentences than those who went to trial ( $M = 134.24$ ).

**Table 4.4. HLM Models for Sentencing Outcomes ( $n = 156$ )**

	Model 1	Model 2	Model 3	Model 4
	b (SE)	b (SE)	b (SE)	b (SE)
Intercept	-43.51 (31.99)	-94.05 (23.48)***	2.49 (26.66)	-58.43 (30.04)*
<b>Extralegal and Legal Factors</b>				
Legal Citizen	-21.64 (16.93)	-.17 (11.24)	-10.18 (11.19)	-.18 (10.84)
Age	.25 (.87)	.53 (.59)	.43 (.57)	.62 (.54)
Plea	-12.97 (15.88)	-.40 (10.23)	2.04 (9.29)	-5.80 (9.06)
Counts	14.30 (15.48)	4.87 (12.05)	4.53 (12.19)	12.18 (11.76)
Number of Co-Offenders	9.44 (4.31)*	1.65 (1.59)	1.22 (1.36)	1.11 (1.38)
<b>Terrorism Factors</b>				
Severity		93.79 (19.97)***	82.87 (18.58)***	76.71 (18.49)***
UK		11.52 (11.77)	-.39 (10.15)	12.45 (10.19)
Training		23.03 (12.51)+	18.28 (11.72)	13.48 (11.99)
Ideology		12.69 (11.92)	24.19 (10.23)*	148.78 (34.46)***
<b>Contextual Factors</b>				
Arrested in or After 2006			-64.05 (14.22)**	-18.76 (18.28)
Legislation Charged Under				
Terrorism Only			-43.90 (12.17)**	-22.56 (14.31)
Both Terrorism and Non-Terrorism			-26.16 (16.68)	-38.38 (17.98)
<b>Interactions</b>				
Arrested in or After 2006*Ideology				-107.46 (30.54)***
Terrorism Only*Ideology				-43.86 (22.25)*
-2LL	1751.2	1635.3	1613.3	1599.6
AIC	1771.2	1667.3	1647.3	1639.6

+ $p < .10$ , \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$

Next, a series of HLM models were employed to test the impact that each of the covariates had on sentencing outcomes. The results are presented in Table 4.4. The first block of covariates entered into the model contained the legal and extralegal factors, which function as the main control variables in these models. The only legal or extralegal factor to emerge as a significant predictor of increased sentence length was the number of co-offenders that an offender committed their offense with ( $b = 9.44$ ;  $p < 0.05$ ). The second block entered into the model contained the terrorism specific factors. Here the

effect of co-offenders was lost, while as would be expected, the crime severity indicator was found to be a significant predictor of increased sentence severity ( $b = 93.79$ ;  $p < 0.01$ ). The large effect of offense severity reported here is consistent with Smith and Damphousse (1996) who indicate that for terrorist offenders severity has a larger impact on sentencing outcomes. A second factor to emerge as moderately significant in Model 2 is attending a training camp ( $b = 23.03$ ;  $p < 0.10$ ). This may be attributable to the fact that offenders who attended training camps exercised greater premeditation, or in line with a conflict perspective, it may be associated with a perceived perception of increased threat.

The third block entered into the model contains both the event and legislative contextual factors. With the inclusion of these factors the impact of attending a training camp is lost; however, being motivated by an Islamic extremist ideology emerges as a significant predictor of sentence severity ( $b = 24.19$ ;  $p < 0.05$ ). This is an important finding as it indicates that an offender-based characteristic results in differential application of the law, and supports a conflict perspective that characteristics associated with perceptions of increased threat serve to increase sentence severity. Finally, both contextual factors serve to significantly decrease sentence lengths as offenders arrested in or after 2006 ( $b = -64.05$ ;  $p < 0.01$ ) and offenders convicted under terrorist legislations ( $b = -43.90$ ;  $p < 0.01$ ) were sanctioned less harshly.

**Table 4.5. HLM Models for Sentencing Outcomes and Subgroups of Offenders**

Offenders Motivated by Islamic Extremism Only (n =95)		Offenders Arrested in 2006 or After Only (n =123)	
	b (SE)		b (SE)
Intercept	110.21 (38.02)**	Intercept	-54.98 (20.42)
<b>Extralegal and Legal Factors</b>		<b>Extralegal and Legal Factors</b>	
Legal Citizen	9.73 (13.22)	Legal Citizen	-2.02 (9.46)
Age	.46 (.78)	Age	.19 (.48)
Plea	2.19 (12.48)	Plea	-12.59 (8.57)
Counts	26.33 (16.05)	Counts	10.52 (14.35)
Number of Co-Offenders	.54 (2.18)	Number of Co-Offenders	-.09 (1.53)
<b>Crime Severity</b>	<b>73.85 (26.20)**</b>	<b>Crime Severity</b>	<b>83.92 (20.09)***</b>
<b>Terrorism Factors</b>		<b>Terrorism Factors</b>	
UK	23.43 (16.35)	UK	10.76 (10.96)
Training	-2.93 (20.80)	Training	9.85 (12.04)
		Ideology	4.99 (11.35)
Arrested in or After 2006	-130.85 (24.04)***	<b>Contextual Factors</b>	
Legislation Charged Under		Legislation Charged Under	
Terrorism Only	-89.74 (24.62)+	Terrorism Only	-30.42 (12.39)*
Both Terrorism and Non-Terrorism	-67.94 (31.74)	Both Terrorism and Non-Terrorism	-12.71 (17.35)
-2LL	1021.1	-2LL	1226.1
AIC	1053.2	AIC	1260.1

+p < .10, \*p < .05, \*\* p < .01, \*\*\*p < .001

The results of Model 3 indicate that both contextual factors (the time at which the offender was arrested and being convicted under terrorism legislations) have important implications for offenders motivated by Islamic extremist ideologies. Following the inclusion of the contextual factors, ideology emerged as a significant predictor of increased sanctions, which indicates that an interaction effect might be at play. Accordingly, a fourth model was run testing the interaction effects between ideology and time of arrest ( $b = -107.46$ ;  $p < 0.01$ ), and ideology and being convicted under terrorism specific legislations ( $b = -43.86$ ;  $p < 0.05$ ). Model 4 shows that both interaction terms

emerge as negative and significant predictors of sentence length. Importantly, the two direct effects of context previously found in Model 3 disappear after the inclusion of these two interaction terms. Although somewhat speculative this suggests that: 1) the observed decrease in sentence severity for offenders arrested in and after 2006 is specific only to offenders motivated by an Islamic extremist ideology, and 2) that being prosecuted under a terrorist legislation only has a negative effect on sentencing for offenders motivated by an Islamic extremist ideology.

#### **4.6.1. Additional Analyses**

As a result of uncovering the significant impact that being motivated by an Islamic extremist ideology has on sentencing outcomes it was important to further investigate whether or not the covariates tested had a different impact on this sub-group of offenders. Furthermore, given the evidence supporting a temporal effect it was also important to examine the impact that the predictors had on sentencing outcomes for offenders who were arrested in and after 2006 only. For the offenders motivated by Islamic extremism only (see Table 4.5) no differences in the impact of covariates on sentencing outcomes were found as crime severity ( $b = 73.85$ ;  $p < 0.01$ ) remains a significant predictor of sentence length, while the effect of being sentenced under terrorism only legislations decreases ( $b = -89.74$ ;  $p < 0.10$ ). However, the effect of being arrested in or after 2006 on sentence length increases ( $b = -130.83$ ;  $p < 0.01$ ). Given this, and the interaction effect reported above, this finding might be indicative of two things. The first is that in line with Damphousse and Shields (2007) offenders convicted after a major terrorist incident are sanctioned less harshly, and that this finding is an effect of the July 2005 bombings. The second potential explanation could be that the further removed an offender is adjudicated from September 11<sup>th</sup> the less severely they are sanctioned.

The results of the model examining the predictors of sentence length for offenders arrested in and after 2006 only help to clarify this issue. As has been consistent across models the impact of offense severity ( $b = 83.92$ ;  $p < 0.01$ ) and being convicted under terrorism legislations remain ( $b = -30.42$ ;  $p < 0.05$ ); however, further support for a temporal effect is found as the effect of ideology is lost in this final model.



This finding might be taken as further evidence of a temporal effect in that, the further away from September 11<sup>th</sup> an offender is arrested, the less of an impact that being motivated by an Islamic extremist ideology has on sentencing outcomes. Consequently, if ideology has an effect on sentencing, it is likely to be found around major events, and to not necessarily be in the expected direction (e.g. Damphousse and Shields, 2007)

## **4.7. Discussion and Conclusion**

The current study sought to investigate two key questions: 1) does context matter, and if so how much, for offenders recently adjudicated for terrorist offenses and 2) do perceptions of increased threat result in harsher sanctions for terrorist offenders? The results presented throughout overwhelmingly indicate that context does matter, and that it is one of the most important factors in determining sentencing outcomes. However, this applies mostly to a single group offenders, those motivated by Islamic extremist ideologies. While an overall downward trend is observed in the sentencing lengths of offenders arrested from 2004 to 2012, offenders arrested during and after 2006 were found to have significantly shorter sentences than those arrested in 2004/2005. Despite this, the final models tested here indicate that being arrested later in the observation period only significantly impacts sentencing outcomes for offenders motivated by Islamic extremist ideologies.

These findings both confirm and challenge the results presented by Damphousse and Shields (2007) who examined how major terrorist incidents impact sentencing outcomes for terrorist offenders convicted in the US. In line with Damphousse and Shields (2007), the sentence outcomes of UK terrorist offenders arrested after the July 2005 bombing, and attempted bombings, were shorter than those achieved prior to this terrorist incident. However, Damphousse and Shields (2007) did not examine the impact of terrorist incidents on sentencing outcomes post September 11<sup>th</sup>. As such the increased average sentence length achieved in 2004 and 2005 is, perhaps, more reflective of a lingering September 11<sup>th</sup> effect wherein in the immediate years following this attack prosecutors sought to punish terrorist offenders motivated by Islamic extremism as harshly as possible. While the study sought to examine the importance of

the July 2005 bombing, and the legislative changes that were implemented in its wake, what it may have uncovered is a lingering 9/11 effect.

Conversely, the increased sentence lengths observed earlier in the observation period may also be the result of offenders being prosecuted under non-terrorism statutes, that is further in line with Damphousse and Shield's (2007) finding that following major terrorist incidents prosecutors are more likely to approach terrorism cases as conventional criminal offenses as they often have more successful outcomes. However, the increased sentence outcomes achieved in 2004 and 2005 may also be attributable to the fact that not all terrorism specific offense classifications were available for prosecutors to use at this time, and as a result they had to use general offending statutes, that have been proven to result in increased sanctions in the US (see Damphousse and Shields, 2007). Although Johnson (2012) did not explicitly test sentencing outcomes, this finding further builds on his results that indicate that cases that were prosecuted under modern terrorism statutes, as opposed to general offending statutes, were less likely to end in a conviction. Despite the increased availability of terrorism specific offenses, and the potential for offenders to be sanctioned more harshly under these statutes, offenders who were convicted under terrorism legislations received significantly shorter sentences across all years of arrest. However, once controlling for the interaction effect between the type of legislation that the offender was sanctioned under and ideology this effect was found again to only be a significant predictor of sentence length for offenders motivated by an Islamic extremist ideology.

An additional potential explanation for the discrepancies in sentence lengths achieved across legislations may lay in the fact that the offenses criminalized under terrorism statutes are in many instances designed to deal with criminal behaviours that were prevented, while the offenses criminalized under general offending statutes are intended to punish criminal behaviours that have already been executed. As such, the sentences meted out under non-terrorism statutes may be longer in length owing to the fact that they deal more often with offenses that are completed, or were spontaneous in their execution. However, while it is possible that some of the discrepancies in the sentence lengths reported for offenders convicted under certain legislations may be attributed to the types of offenses that are prosecuted under certain statutes, it should be

noted that the Terrorism Act 2006 criminalized offenses that would have previously been prosecuted under non-terrorism legislations. In light of this an increase in the sentence lengths achieved under terrorism related legislations following its implementation would have been expected.

Nevertheless, the findings of this study raise important questions about the true utility of terrorism specific offenses, and the potential that these legislations are being applied more readily to a subgroup of offenders as is suggested by the relationship between legislation use and Islamic extremists reported here. If non-terrorism statutes result in harsher sentencing outcomes for recently adjudicated terrorist offenders, then policy makers need to ask themselves if the continued implementation of terrorism specific offenses is necessary. Although harsher sentences are not necessarily better, or warranted in all cases, these findings suggest that for offenses with increased severity general statutes may already provide the resources necessary to respond to terrorist offenses. It is imperative that future studies investigating this issue consider the true utility, and necessity, of terrorism specific offenses and that they evaluate both their successes and failures in countering terrorism.

Accounting for the role of ideology on sentencing outcomes presents a greater challenge. To start, a positive effect of Islamic extremist ideology on sentence length was uncovered, and emerged even after controlling for a host of factors that included offence severity and the type of legislation used to prosecute offenders. However, evidence was also found to suggest that this effect was only temporary. The inclusion of the interaction terms in the final model indicates that the contextual factors that were investigated did not have significant implications for the sentencing outcomes of the entire sample, but only for offenders who were motivated by Islamic extremism for whom the timing of their arrest, and the statute that they were convicted under, did have significant implications on their sentence outcomes. As has been questioned throughout, this relationship leads us to wonder whether or not this temporary effect is indicative of a slow “wearing off” of the impact of the events of September 11<sup>th</sup> 2001 on sentencing practices in the UK.

While we were not initially intending to investigate disparities in sentencing outcomes across ethnic groups, the role of this extralegal factor as an aggravating condition for sentence outcomes has been well documented for both general (see Johnson, 2005; 2003; Steffensmeier and Demuth, 2000; Steffensmeier, Ulmer and Kramer, 1998; Ulmer and Johnson, 2004), and terrorist offending populations (see Bradley-Engen et al., 2009; Johnson, 2012; Smith and Damphousse, 1996). A possible explanation for the effects of an Islamic extremist ideological motivation on sentencing outcomes can perhaps be found in what Pantazis and Pemberton (2009) have described as the construction of Muslims as the new 'suspect community' within the UK. The authors suggest that following September 11<sup>th</sup>, in part due to the implementation of new terrorism legislations, that Muslims communities were constructed as the greatest terrorist threat to the UK (Pantazis and Pemberton, 2009). This process of attributing offender characteristics with increased perceptions of threat is consistent with a conflict perspective.

Following this, the authors further note that in 2007, under the newly installed Brown Government, that there was a notable shift in discourse away from, "connecting Muslims to terrorist attacks due to concerns about the undermining of community cohesion," (Pantazis and Pemberton, 2009). Perhaps then the temporal effect of Islamic extremism is not only the result of a September 11<sup>th</sup> wearing off effect, but also of additional contextual changes in the political discourse on terrorism threat in the UK that were not captured here. Regardless of these potential explanations for the observed decrease in sentence outcomes over time, and its relation to the offenders motivation, without the inclusion of sentencing data in the years prior to 2001, and in the years immediately following, it is impossible to conclusively determine whether or not the decrease in sentencing outcomes in the years following September 11<sup>th</sup> is evidence of a wearing off effect or not. Nonetheless, the consistent decline in sentence lengths throughout the time period examined here suggests that there is potential for a September 11<sup>th</sup> wearing off effect and that this connection should be formally tested in future studies.

Despite the contributions of this study, some important limitations need to be acknowledged. As the sample was constructed from the offenders identified by the CPS

it is unclear if all individuals convicted for terrorist offenses were cited here or if the list reflects only a selection of offenders. Further all information used in the creation of this dataset was coded from open source information, and, as such, some case details may be missing. It was not possible to interview prosecutors; however, doing so may have provided important insight into why certain offenders were prosecuted under specific statutes. Additionally, the CPS does not identify any prosecuted offenders prior to the end of 2006, and as such offenders arrested in 2001, 2002, and 2003 (and before) were not included in the sample. It would have been desirable to explore the sentencing outcomes of offenders adjudicated in the years immediately preceding, and following, September 11<sup>th</sup> to further investigate the temporal effect uncovered here. Finally, as all offenders included were terrorist offenders, and given the use of terrorism specific offenses, it was not possible to include a comparison group for these offenders. However, in light of the fact that offenders sentenced under non-terrorist legislations were sanctioned more severely it would have been interesting to investigate if these offenders were punished more or less harshly than general offending populations who committed similar offenses.

The findings of this study highlight the importance of understanding context and the significant role that it plays in the sentencing outcomes of terrorist offenders. Not only does the legislation that an offender is prosecuted under, but their arrest in proximity to major terrorist incidents, as well as their ideological motivations appear to function to differentially impact sentence outcomes. As we are now almost thirteen years removed from the September 11<sup>th</sup> attack, it is important to continue to work to better grasp how this international terrorist incident, the measures implemented in its wake to counter terrorist threats, and the terrorist incidents that have been executed since have created contextual environments that not only influence criminal justice responses to this offending population, but the perceptions of threat that are associated with the offenders who perpetrate these offenses as well.

## Chapter 5.

### Conclusion

The September 11<sup>th</sup>, 2001 attacks on the World Trade Centre and Pentagon mark a turning point in both constructions of terrorist threat, and the perceived necessity of specialized resources to proactively prevent terrorist incidents (Crelinsten, 2014). In the almost thirteen years that have passed since 9/11 many countries, including Canada and the UK, have adopted a criminal justice model of responding to terrorist threats. One of the most significant ways that this model has been operationalized is through the criminalization of terrorism specific offenses, and while many countries implemented specialized legal measures in the months immediately following 9/11, as a result of subsequent terrorist incidents terrorism specific offenses have continued to be criminalized. Despite this little is known about the legal processing of terrorist offenders, and even less is known about how the contexts that terrorist offenders are adjudicated in affect sentencing outcomes. As such, this dissertation presented three studies investigating how differing facets of context impact the sentencing outcomes, and legal processing, of terrorist offenders. Collectively, four main conclusions are drawn:

- 1) The legal provisions established by the criminalization of terrorism specific offenses are readily utilized and provide valuable resources to law enforcement; however, general criminal provisions still have a significant role to play in the adjudication of terrorist offenders
- 2) The timing of an offender's adjudication both during the life cycle of a terrorist campaign, and in proximity to terrorist incidents, have important implications for sentencing outcomes
- 3) Offenders who are characterized by extralegal factors that are associated with an increased perception of threat are punished more severely
- 4) Across contexts sentencing outcomes are characterized by cohort effects

### **5.1.1. The Criminalization of Terrorism Specific Offenses**

Firstly, the increasing adoption of criminal justice models as the primary means to respond to terrorist activity has resulted in the formal criminalization of terrorism specific offenses. Despite this little is known about the use of these legal measures, and their capacity to increase the sanctions levied against terrorist offenders. In both Canada and the UK terrorism specific offenses have been readily utilized, but with some differing results. In Canada, the limited number of offenders convicted of terrorism specific offenses in the ten years following the implementation of the ATA were issued sentences, that although were somewhat shorter on average, were comparable to the sentences issued to offenders who were sanctioned in the preceding time periods when only general CCC provisions were available. The drastic decrease in the proportion of offenders convicted of general criminal offenses in the post-ATA period is reflective of the criminal justice system's active use of terrorism specific offenses; however, the fact that offenders who were convicted of both terrorism specific and general CCC provisions were sanctioned the most harshly highlights the important role that general criminal provisions continue to play in the prosecution of terrorist offenders in Canada.

Across contexts the story is somewhat different. In the nine-year observation period (2004 to 2012) investigated for the UK, despite the fact that a greater proportion of offenders were convicted of terrorism specific offenses, offenders convicted only of general criminal provisions were sanctioned most harshly in all but three years. In fact, there is only one year where offenders convicted solely of terrorism specific offenses were punished most harshly, and in 2012 no offenders were convicted of terrorism specific offenses. This is despite the implementation of additional terrorism offense classifications in 2005, 2006, 2008 and 2011. One of the key criticisms of criminalizing terrorism specific offenses was the belief that general criminal provisions provide sufficient resources to successfully prosecute terrorist offenders (Roach 2011; Shaffer, 2001; Stuart, 2001; Trotter, 2001). Given that offenders convicted solely of general criminal provisions were sanctioned more harshly than offenders convicted of terrorism specific offenses in the UK, more so than in Canada, this sentiment appears to be true as the evidence presented illustrates the significant role that general criminal provisions continue to have in the adjudication of terrorist offenders. However, to simply conclude

that terrorism specific legislations have failed in providing legal measures that facilitate successful prosecutions, and suitable punishments, would be false.

Despite the fact that Farson (1992) suggests that one of the inherent roles of law enforcement is to proactively prevent crime, in both Canada and the UK one of the primary objectives of criminalizing terrorism specific offenses was to provide law enforcement with additional resources to proactively prevent terrorist incidents (Colter, 2001; Diab, 2011; Roach, 2011; 2005a). In doing so, offenses related to the preparation of terrorist activities, participation in terrorist groups and the facilitation of terrorist acts were created. Although the research designs utilized in the studies presented in this dissertation did not permit for the explicit testing of the impact of these legislations on either law enforcement, or the court systems, the evidence presented throughout does suggest that the shorter sentence outcomes achieved under terrorism specific offenses may be attributed to successful law enforcement interventions. In this way, offenders sanctioned of terrorism specific offenses often received shorter sentences not as a consequence of failed prosecutions, but because the offenders convicted of these offenses committed acts that were less serious in nature. For the UK sample the absence of a comparison period including the sentencing outcomes of offenders convicted of terrorism related offenses prior to implementation of the Terrorism Act 2000 precludes any tangible commentary on the impact that criminalizing terrorism specific offenses has had on law enforcement's ability to disrupt terrorist activities, or the court system's ability to successfully prosecute terrorist offenders. However, evidence uncovered in the Canadian context indicates that the criminalization of terrorism specific offenses appears to have increased law enforcement's capacity to preventatively disrupt terrorist incidents. Despite this, the limited number of offenders who have been convicted of terrorism specific offenses in Canada does not allow for any conclusions about how completing, or failing to complete, an intended offense impacts sentencing outcomes. Although the findings presented here in no way offer a definitive answer as to whether or not the criminalization of terrorism specific offenses has increased law enforcement's capacity to disrupt terrorist activities, or the true necessity of these specialized offense classifications, they do shed light, and provide much needed information, on the use of these new legal measures and the sentencing outcomes achieved as a result of them. Despite the aforementioned limitations the evidence



presented in Studies 1 and 3 does support that the criminalization of terrorism specific offenses have established useful legal measures for both law enforcement and the court systems as these specialized offense classifications have been readily utilized, and seemingly appear to provide the criminal justice system with useful legal measures for the prevention of terrorist incidents.

### **5.1.2. The Timing of an Offender's Adjudication**

The second major facet of context that was investigated explored how, or if, the timing of an offender's adjudication impacted sentencing outcomes. Collectively, the evidence presented in this dissertation indicates that the timing of an offenders sanctioning has important implications for offenders who have been both recently, and historically, adjudicated. The importance of timing was first investigated by applying the construct of the collective career to the life cycle of the FLQ terrorist campaign in order to explore the potential for a group-based recidivist sentencing premium. The results indicate evidence of a modest group-based recidivist sentencing premium as offenders who were sanctioned later in the FLQ campaign were generally sentenced more severely for similar crimes than offenders who were sanctioned at the onset of the campaign. This implies that despite the fact that these individuals were first time offenders a penalty for the collective career of the group was applied at sentencing. While support for a group-based recidivist sentencing premium was small the variability in sentencing outcomes found across the collective career of the FLQ campaign are characterized by cohort effects as offenders who were adjudicated in differing criminal career periods were sanctioned more or less severely depending on the context that they were sentenced in. The application of a criminal career perspective proves to be a useful tool in identifying variability not only in sentencing outcomes, but in the nature of FLQ activities as well.

Next, the timing of an offender's adjudication in proximity to major terrorist incidents was considered. When examining the sentencing outcomes achieved for terrorist offenders convicted in the UK from 2004 to 2012 evidence of cohort effects also emerge. The bombing of the London Transportation System in July 2005 represents one of largest terrorist incidents since the September 11<sup>th</sup> attacks. In line with the findings

reported by Damphousse and Shields (2007), offenders arrested in 2004 and 2005 were sanctioned more severely than offenders arrested from 2006 onwards; however, although Damphousse and Shields restrict their analyses to the two years following a major terrorist incident the increased sanctions observed for offenders arrested in 2004 and 2005 seemingly contradict their finding that offenders sanctioned in the wake of a major terrorist incident are punished less severely. Accordingly, the harsher sentence outcomes achieved for offenders arrested in 2004 and 2005 may be the result of two key factors: 1) in the years immediately following September 11<sup>th</sup> prosecutors sought to punish terrorist offenders as harshly as possible and 2) increased sentence lengths may be the result of offenders being prosecuted under general criminal provisions. As such, the offenders arrested in 2004 and 2005 may have been subject to a lingering September 11<sup>th</sup> effect.

Given that offenders arrested in 2001, 2002 and 2003 were not included in the observation period it is not possible to explicitly state one way or the other if the increased sentence outcomes of offenders arrested in 2004 and 2005 were the result of changing legal responses to terrorist offenders in the post 9/11 period. However, Damphousse and Shields (2007) investigate this phenomenon in the American context only, and given the magnitude of September 11<sup>th</sup> it is reasonable to expect that there would be some variability in the legal responses to terrorist offenders across contexts following this attack. This conjecture is supported by the fact that following the July 2005 bombings offenders arrested from 2006 onwards were sanctioned less severely, and were more readily convicted of varying offense classifications, which is in keeping with the findings reported by Damphousse and Shields (2007). It is important to note that not only do the July 2005 bombings serve as a key contextual marker, but that the continued criminalization of terrorism specific offenses following the bombings also impacted legal responses. Not all terrorism specific offenses were available in every year, and this reality may account for some of the variability observed in the sentencing outcomes achieved for offenders convicted of terrorism specific offenses. Despite this, the evidence uncovered here highlights the impact that being convicted in proximity to major terrorist incidents has on the legal processing of terrorist offenders. Evidence of cohort effects emerge as there is marked variability in the sanctioning of offenders who were adjudicated prior to, and following, the July 2005 bombings.

### **5.1.3. Changing Perceptions of Threat**

The final facet of context explored examines the extent that factors associated with increased perceptions of threat function to serve as aggravating factors for sentencing outcomes across time and place. In keeping with a conflict perspective across contexts perceptions of threat appear to result in differential sentencing outcomes as offenders who immigrated to Canada, and offenders motivated by an Islamic extremist ideology in the UK, were both punished more severely. A previous study conducted by Johnson et al. (2010) reports that offenders sanctioned in a country not of their birth are subject to harsher punishments. Evidence to support this notion was found within the Canadian sample as offenders who were immigrants to Canada were sanctioned more severely. Based on the models tested here it is not possible to ascertain whether or not these offenders received harsher punishment because they engaged in more serious offenses, or whether the increased sanctions issued were the result of biased perceptions of threat. Being a member of a minority ethnic group has consistently been found to serve as an aggravating factor for both general (see Johnson, 2005; 2003; Steffensmeier and Demuth, 2000; Steffensmeier et al., 1998; Ulmer and Johnson, 2004), and terrorist offending populations (see Bradley-Engen et al., 2009; Johnson, 2012; Smith and Damphousse, 1996). Accordingly, whether or not offenders who have immigrated to Canada are perceived to pose an increased threat, and the extent that this results in a prejudice in sentencing outcomes needs to be clarified by future studies.

Similarly, offenders adjudicated in the UK who were motivated by an Islamic extremist ideology were also punished more severely. However, this effect was found to be limited to offenders arrested in 2004 and 2005, which further confirms the presence of cohort effects in the UK sample. One potential explanation for the harsher punishment of offenders motivated by an Islamic extremist ideology stems again from a potential 9/11 effect. It would be reasonable to assume that offenders who were motivated by the same ideology as those who perpetrated the September 11<sup>th</sup> attacks would be perceived as posing an increased threat, and thus in line with a conflict perspective subject to harsher punishments. In fact, Pantazis and Pemberton (2009) cite that that following September 11<sup>th</sup> Muslim communities were constructed as the greatest terrorist threat to

the UK, which resulted in a 'suspect Muslim community'. This construction of threat was achieved not only through media outlets, but also resulted from the implementation of anti-terrorist legislations. However, in 2007 the British government made a conscious decision to separate discussions of terrorist threat from Muslim communities (Pantazis and Pemberton, 2009). This policy decision coincides with the disappearance of being motivated by an Islamic extremist ideology as a significant predictor of increased sentence length, and while it is not possible to attribute the loss of this factor as a predictor of increased sentence length to these policy changes it does serve to highlight the implications that anti-terrorist legislations can have on certain communities. Together, each of the studies presented in this dissertation highlight how changing contextual environments impact sentencing outcomes. Although the construct of cohort effects was most explicitly tested in Study 2, cohort effects also emerge in Studies 1 and 3 as the evidence presented in this dissertation illustrates that offenders who were sanctioned in differing time periods were sentenced more or less severely depending on the context that they were adjudicated in. This finding is perhaps the most significant contribution of this dissertation as it sheds light on how legal responses to terrorist offenders change over time.

## **5.2. Limitations**

A common limitation across each of the studies is the use of open-source information. Although the data collection process utilized here is similar to that outlined by Freilich et al. (2014) in the construction of the ECDB the exclusion of important case details as a result of this data collection process is a reality. The inability to consistently locate factors relating to the legal processing of terrorist offenders was particularly challenging for the historical cases included in the Canadian dataset utilized in Studies 1 and 2. Due to the limited availability of historical legal documents it was not possible to consistently locate the number of counts an offender had been charged with, and as such this legal factor had to be excluded. In both the Canadian and UK datasets information pertaining to whether the offender had been tried by a jury or a judge was not readily available, and despite the fact that prior sentencing studies have reported that being tried by a jury increases sentencing outcomes (King, Soule, Steen & Weidner,

2005; LaFree, 1985; Uhlman & Walker, 1980) this legal factor was not included in any of the three studies. Although it is unlikely that the inclusion of additional case details would have changed the substantive results uncovered, they may have mediated some of the reported effects. In particular, in Study 2 it was found that entering a guilty plea functioned to increase sentence outcomes, which is in contrast to previous studies that have reported that entering a guilty plea decreases sentence lengths (Bradley-Engen et al., 2009; Shields et al., 2006). While it is possible to speculate that this disparity was the result of the challenges that the court system faces when prosecuting politically motivated offenders, it also may have resulted from a failure to control for additional legal and extralegal factors.

Next, given that final sentence length was the outcome variable of interest in each of the three studies the datasets utilized in this dissertation are inherently characterized by a selection bias. For example, in Study 2 the sentencing information for five individuals convicted of offenses committed in connection with the FLQ could not be located, and as such these cases had to be excluded. More generally, it is reasonable to assume that the datasets do not capture all offenders who have been convicted of terrorism related offenses. Despite the fact that legal databases were searched using the key words 'terrorism,' 'terrorist,' 'terror,' and 'political violence' not all terrorism related offenses were necessarily recorded as such. Furthermore, the data used in the construction of the UK data set was drawn from a sample of convicted terrorist offenders identified by the UK's CPS. Other than the fact that these offenders were successfully prosecuted there is virtually no information available from CPS to confirm if the offenders they identify represent all of their successful convictions, or simply a sample of them. Akin to this, not all offenders who perpetrate terrorist offenses are officially adjudicated for their actions as some are questioned or arrested but never convicted, and others evade detection entirely. As such, these individuals were not included in these analyses. The exclusion of these cases could have meaningful implications for the demographic profiles, the historical trends of terrorist activity and the variability in sentencing outcomes reported. More significantly, the evidence presented here to support the success of terrorist legislations in proactively preventing terrorist incidents may be tempered if more information was available about the completion and failure rates of

terrorist incidents in the time periods preceding the implementation of these specialized legal measures.

Finally, one of the most significant limitations of this dissertation is the absence of comparison groups. Although the inclusion of comparison groups was beyond the scope of this dissertation each of the studies presented would have benefitted from the inclusion of matched groups to assess if terrorist offenders were punished more severely than general offending populations for similar crimes in each of the contexts examined. Prior studies have identified being formally labeled as a terrorist offender as the most salient aggravating factor in the sentencing of this unique population (Johnson, 2012; Smith & Damphousse, 1998; 1996; Smith et al., 2002); however, in the absence of comparison groups it is not possible to comment on whether or not being legally identified as a politically motivated offender served to increase the sentence outcomes for the offenders examined in this dissertation. As such any potential disparities in the sentence outcomes between terrorist and general offending populations convicted of the same crime type is unknown. While Study 1 does offer some insight as to how the sentencing outcomes of offenders convicted of terrorism specific offenses in post-ATA period compared to terrorist offenders convicted of general criminal provisions in preceding periods it is not possible to ascertain if the offenders convicted in previous periods were sanctioned more harshly because of their political motivations. In Study 2 it would have been interesting to investigate if as the collective career of the FLQ progressed there was an increasing disparity between the sentencing outcomes of offenders convicted in connection with the FLQ and general offenders convicted for similar crime types. Finally, in Study 3 the evidence presented suggests that the sentencing outcomes of offenders adjudicated in the UK are characterized by a 9/11 effect. The potential remains that the sentence outcomes issued to offenders arrested in 2004 and 2005 were less severe than the penalties applied to terrorist offenders in the pre-9/11 period, and as such in order to confirm this existence of a 9/11 effect it is necessary to compare the sentencing outcomes of offenders sentenced pre-9/11 to those achieved after the September 11<sup>th</sup> attacks. Collectively, the absence of comparison groups prohibits any inference about the potential for terrorist offenders to be sanctioned more severely than general offending populations across the contexts tested in this dissertation.

### **5.3. Policy Implications and Future Research**

The substantive findings of this dissertation have important implications for the continued criminalization of terrorism specific offenses. Across contexts the evidence presented suggests that the implementation of terrorism specific offenses has provided the criminal justice system with useful resources to proactively prevent terrorist incidents. However, in both Canada and the UK, the most commonly utilized terrorism specific offense classifications pertain to participating in terrorist groups, the preparation of terrorist acts, attending terrorist training camps and possession for terrorist purposes. As such, the concentrated use of a limited number of offenses has rendered many terrorism specific offenses superfluous, as there are numerous offense classifications that have never been utilized, or where only one offender has been convicted of a given offense. Despite this, as a consequence of Canada and the UK's individual, and collective, experiences with terrorist incidents over the past decade both countries have continued to criminalize terrorism offenses, while the court system has concurrently continued to rely heavily on the use of general criminal provisions.

In light of this, it is imperative to assess whether or not it is necessary to continue to criminalize terrorism specific offenses. In order to answer this question future research is needed to explicitly test the impact of anti-terrorist legislations on the criminal justice system. These studies need to systematically evaluate whether or not criminalizing terrorism specific offenses has truly provided law enforcement with the necessary resources to proactively prevent terrorist incidents, or whether the apparent success rate of preventing terrorist acts in the post 9/11 period can simply be attributed to an increased awareness of terrorist threats, a diversion of resources and better investigative practices during this time period. While the results presented in Studies 1 and 3 highlight the use of terrorism specific offenses, future studies must also investigate if the criminalization of terrorism specific offenses have facilitated more successful prosecutions by comparing the trial rates of offenders tried in the pre and post September 11<sup>th</sup> periods. Furthermore, it is unclear whether or not the sentencing outcomes achieved under these specialized offense classifications differ from those previously obtained for offenders who engaged in similar actions, but who were convicted of general criminal provisions (i.e. conspiracy related offenses). As no prior

studies have collected, and examined, data in a similar manner to what has been presented here it is not possible to comment on the true utility of these legal measures. However, now that this first step has been taken future studies can develop research designs to systematically investigate the impact that the criminalization of terrorism specific offenses have had on law enforcement and the court systems. This task becomes increasingly important in light of the continued criminalization of terrorism offenses.

In conjunction with criminalizing terrorism specific offenses anti-terrorist legislations in Canada and the UK established additional legal measures to facilitate the investigation, and prevention, of terrorist incidents. Both countries have established legal measures that allow for the preventative detention and monitoring of individuals who are deemed to pose a significant terrorist threat. For example Canada has implemented preventative detentions, investigative hearings and 810.01 orders, while UK has utilized indeterminate sentencing and control orders, which have both now been repealed, and currently utilizes terrorism prevention and investigation measures (Farson & Whitaker, 2008; Roach, 2011; Terrorism Prevention and Investigation Measures Act, 2011; Walker, 2011; 2006). The use of such orders in the UK has been the subject of much political and legal debate as the indeterminate detention of non-citizens in the UK was deemed to be a violation of the European Convention on Human Rights in 2004 (Roach, 2011); however, very little is known about the types of individuals that these legal provisions target. In order to be subject to any one of these legal measures evidence must exist to corroborate that these individuals pose a significant terrorist threat (Walker, 2011), but how they differ from offenders who are convicted of offenses such as preparing for a terrorist act or participating in a terrorist group has yet to be examined. Practically, individuals who are subject to these specialized legal measures must be inherently different from the offenders who are officially adjudicated by the criminal justice system, and consequently it is essential to garner an in depth understanding of the types of individuals who are subject to these specialized legal measures, how their involvement in terrorist activities differs from offenders who are formally sanctioned by the criminal justice system, the rate at which these specialized legal measures are utilized, as well as whether or not they are more or less effective in preventing terrorist incidents than formally prosecuting and incarcerating terrorist offenders. Understanding



the use of these additional legal measures have important implications for assessing the effectiveness of anti-terrorist legislations as the perceived success in preventing terrorist incidents in the post September 11<sup>th</sup> period may also be attributed to the increased capacity of the Canadian and UK governments to neutralize offenders who pose a significant terrorist threat before they commit a criminal offense.

Although it is not possible to attribute the disappearance of being motivated by an Islamic extremist ideology as a significant predictor of increased sentence length to changing governmental policies the simultaneous disappearance of this factor as a significant predictor of increased sentence length with the shift in UK governmental policy seeking to disaggregate constructions of terrorist threat from Muslim communities highlights the potential impact that anti-terrorist legislations can have on perceptions of terrorist threat and community engagement. The potential for anti-terrorist legislations to create distrust and fear in communities is a reality that policy makers need to be cognizant of as these mechanisms have the potential to target specific groups of individuals, which in turn can alienate communities. The implications of creating environments of suspicion and fear can have meaningful consequences for counter-terrorist strategies as community engagement has been identified as an important mechanism for preventing terrorist incidents (Spalek, 2013).

The same processes that contributed to increased perceptions of threat in the UK may also exist in Canada where being an immigrant was found to increase sentence outcomes. This finding needs to be clarified by future work as the current research design does not allow for any conclusions to be drawn as to whether these offenders are justly sanctioned more severely, or if this is the result of biases towards certain groups of individuals. One potential explanation that may contribute to immigrant offenders being associated with increased perceptions of threat is the use of security certificates. Although these designation fall outside of the criminal law, and are assumed under the *Immigration and Refugee Protection Act* (Government of Canada, 2014), they target foreign nationals and non-legal citizens of Canada who are deemed to pose a security threat to Canadian citizens and allow for the detention, and deportation, of the individuals who are subject to them. Although Public Safety Canada indicates that only twenty-seven individuals have been subject to security certificates, the use of security

certificates in the post September 11<sup>th</sup> period has resulted in a significant amount of media attention as they were declared a violation of the Charter of Rights and Freedoms in 2007. However, following legislative amendments security certificates were reinstated in 2008 (Government of Canada, 2014). The use of security certificates was the subject of a second Charter challenge that concluded in May 2014 where the Supreme Court of Canada upheld the use of these measures as constitutional (MacKinnon, 2014). The use of these legal measures, and the populations that they target, may very well contribute foreign born individuals being the target of increased perceptions of threat.

While great emphasis has been placed on the impact that the criminalization of terrorism specific offenses has had on law enforcement and the court system the prosecution of terrorist offenders also has important implications for the correctional system. The majority of offenders who are convicted of terrorism related offenses are incarcerated, some for extensive periods of time. The incarceration of ideologically motivated offenders poses a unique challenge as time spent in prison can help to both facilitate disengagement and deradicalization, and conversely can serve as an environment for recruitment and radicalization (Goldman, 2014; Horgan & Braddock, 2010; Loza, 2010; Murray, 2014). The presence of Islamic extremists ideologies, Al-Qaeda publications and attempts to convert inmates to Islamic extremism have been reported in prison populations in the US, France, Spain, Australia and the UK, and although the number of terrorist offenders currently incarcerated in the Canadian correctional system is small Islamic extremist ideologies have been identified among Canada's general prison population (Goldman, 2014; Loza, 2010; Murray, 2014). Accordingly, while law enforcement serve as the primary means to prevent terrorist incidents, and the court systems incapacitate individuals who have, or seek to, engage in terrorist activities the correctional system also has an important role to play in the prevention of terrorist incidents.

However, the correctional system faces a unique set of challenges when managing terrorist offenders. The past decade has been characterized by the proliferation of actuarial risk assessment tools, which allow for the statistical prediction of offender risk (Gottfredson & Moriarty, 2006). The application of these risk assessment tools to ideological extremists has been questioned, as similar to the traditional

aggravating and mitigating factors that have been found to increase sentencing outcomes for general offending populations, many traditional risk factors are inapplicable to terrorist offenders as the majority do not suffer from addictions, mental illness or personality disorders, do not come from disadvantaged backgrounds, are employed or have obtained some form of educational achievement and do not have prior criminal histories (Monahan, 2012; Pressman, 2009; Pressman & Flockton, 2014; Sageman, 2009; Silke, 2014). Assessing risk in politically motivated offenders is further challenged by the heterogeneity that characterizes these offenders; however, risk assessments must aim to capture how differing ideologies, affiliations, capabilities, grievances, moral emotions and disengagement factors (such as the aging process) impact deradicalization and are informative of recidivism risk (Monahan, 2012, Pressman, 2009; Pressman & Flockton, 2014; Silke, 2014). It is imperative to be able to accurately assess risk in terrorist offenders as risk classifications have important implications for identifying appropriate security levels while offenders are incarcerated, and further for offender management in the community.

Substantively, the effectiveness of deradicalization and treatment programs for terrorist offenders are underdeveloped and untested (Horgan & Braddock, 2010). However, for offenders motivated by an Islamic extremist ideology the guidance of religious leaders has been identified as one way to facilitate deradicalization as extremists can be receptive to reinterpreting their views on religious doctrine when they are able to engage with religious leaders (Braddock, 2014). Despite this, in 2012 the Canadian federal government cut the funding for all non-Christian prison chaplains (Brennan, 2012; CBC, 2012). Although budgetary considerations were the catalyst for the dismissal of non-Christian chaplains the ramifications of the removal of these religious leaders could potentially have negative outcomes that jeopardize community safety. While some terrorist offenders serve lengthy prison sentences, many are eventually returned to the community, and as such the correctional systems' management of terrorist offenders extends to the community as well (Pickering, 2014). Little is known about the potential for terrorist offenders to recidivate upon their return to the community; however, preliminary studies investigating the recidivism rates of terrorist offenders report that only a very small proportion of these offenders are reconvicted for terrorism related offenses (Silke, 2014). Like other specialized offending populations

such as sex offenders, convicted terrorists are perceived to pose a unique threat to community safety. As a result of growing concern about the threat that terrorist offenders pose upon their release in 2008, by way of the Counter-Terrorism Act, the UK government introduced terrorist notification provisions whereby offenders convicted of specific terrorism related offenses are compelled to register with their local police stations. Notification terms can range from 10 to 30 years depending on the offense classification that offenders were convicted of (Counter-Terrorism Act, 2008).

Similar notification systems have been implemented for sex offenders in Canada, the UK and the US. Studies evaluating the effectiveness of these provisions indicate negative consequences for both the offender's reintegration and increased perceptions of fear in the communities these offenders are released into (see Levenson, D'Amora & Hern, 2007). The potential for increased perceptions of fear in the community have even broader implications as recently community engagement has been identified as key resource for the prevention, and countering, of terrorist threats (Spalek, 2013). In Canada, although few convicted terrorist offenders have been released back into the community it was reported in September 2013 that Ali Dirie, an offender convicted in connection with the Toronto 18 who was released in 2011, was killed fighting with Islamic insurgents in Syria (CBC, 2013). Although this is only one case, and is in no way representative of a failure of CSC in deradicalizing or effectively monitoring Dirie, it does highlight the continued security risk that some adjudicated terrorist offenders pose. Accordingly, while it is imperative to systematically investigate the impact that the criminalization of terrorism specific offenses have had on law enforcement and the court systems, it is equally important to assess how the correctional system is managing terrorist offenders, how best to facilitate deradicalization, the rates at which this offending populations recidivate and the best community management strategies for terrorist offenders.

## **5.4. Summary**

The context that offenders are adjudicated in impacts sentencing outcomes, and the legal processing of terrorist offenders. Changing contextual environments stem from the criminalization of terrorism specific offenses, the timing of an offender's adjudication

and changing perceptions of threat. Across contexts sentencing outcomes are characterized by cohort effects. Terrorism specific offenses are readily utilized, and the criminalization of terrorism offenses appear to have provided law enforcement with legal measures that assist in the proactive prevention of terrorist incidents. However, general criminal provisions still have a significant role to play in the adjudication of terrorist offenders as offenders sanctioned of general criminal provisions only, or both general and terrorism specific offenses, are sentenced more severely than offenders convicted of terrorism specific offenses alone (Study 1 & 3). The timing of an offender's adjudication also impacts sentencing outcomes as offenders sanctioned in the latter stages of a terrorist campaign are generally sentenced more severely than offenders adjudicated at the onset for similar crimes, while variability in the sentence outcomes achieved throughout a terrorist campaign are characterized by cohort effects (Study 2). Furthermore, being sanctioned in proximity to major terrorist incidents is found to effect sentencing outcomes as offenders sentenced following a major terrorist incident are punished less harshly (Study 3). Finally, offenders who are characterized by factors that are associated with increased perceptions of threat receive harsher punishments (Study 1 and 3); however the impact of perceptions of threat can be limited to specific time periods illustrating the potential for constructions of threat to change quickly over time (Study 3).

Collectively, the evidence presented in this dissertation contributes to a better overall understanding of the sanctioning of terrorist offenders, and of how changing contextual environments impact sentencing outcomes. The three studies investigated provide a first step in assessing the impact that criminalizing terrorism specific offenses have had on the criminal justice system, of how the collective career of a terrorist campaign can contribute to variability in sentencing outcomes over time, the impact that being adjudicated in proximity to terrorist offenses has on the legal processing of terrorist offenders and of how perceptions of increased threat serve to increase sentencing outcomes. While the research designs utilized in the studies presented did not allow for the explicit testing of the impact that the criminalization of terrorism specific offenses has had on the criminal justice system it is imperative for future studies to investigate this in light of the continued criminalization of terrorism specific offenses and the implications

that these legal measures have for law enforcement, the court system and correctional services.

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## Appendix A. Criminal Code Convictions for Terrorist Offenders Arrested from 1963 to 2010

<u>Terrorism</u>		<u>Violent</u>	
- Participation in a terrorist group	- Facilitating terrorist activity	- First degree murder	- Capital murder
- Providing or making property or services available to terrorist purposes	- Commission of an offense for a terrorist group	- Manslaughter	- Attempted murder
- Training for Terrorist purposes	- Engaging in a Hoax regarding terrorist activity	- Armed robbery	- Assault
- Providing financial services knowing that they will benefit a terrorist group	- Attempting to participate in terrorist activity		
- Instructing others to carry out activity for a terrorist group	- Recruiting others to participate in terrorist group		
- Counseling to commit fraud over \$5000 for the benefit of a terrorist group			
<u>Weapons</u>		<u>Theft/Other</u>	
- Intending to cause an explosion	- Importing firearms	- Possession of stolen property over \$200	- Conspiracy
- Activating an explosive substance	- Possession of an explosive with intent to discharge	- Threatening to murder an internationally protected person	- Breach of recognizance to keep the peace and be on good behaviour
- Possession of a weapon for a dangerous purpose	- Making or having possession of explosives	- Auto theft	- Arson
- Possession of an unregistered firearm	- Careless storage of ammunition	- Breaking and entering	- Theft over \$200
- Possession of explosives	- Using explosives with the intent to cause property damage	- Perjury	- Mischief
		- Promotion of hatred	- Accessory after the fact
		- Uttering Threats	- Destruction of property
		- Criminal negligence	- Obstruction of justice
		- Intimidation	- Theft over \$5000
		- Kidnapping	- Being complicit in a kidnapping
		- Contempt of court	- Sedition
		- Burglary	- Forcible confinement
		- Attempted extortion	- Hostage Taking