

# US punitiveness 'Canadian style'? Cultural values and Canadian punishment policy

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## Abstract

From the mid-19th century until 2006, Canadian official policy statements (from both Liberal and Conservative governments) made it clear that offending was seen as largely socially determined and that it was the state's responsibility to try to reintegrate those who offend back into mainstream society. In this context, imprisonment was seen as a necessary evil, to be avoided wherever possible. The era since 2006 looks considerably more American than Canadian. The policy elite in Canada has taken the position that those who commit offences are inherently 'bad' people and qualitatively different from 'ordinary law abiding' Canadians. Exclusionary responses are privileged as those who commit offences are seen as having chosen to forfeit their rights of full citizenship. Several broader (cultural and political) ramifications of this punitive shift in the normative orientation expressed by policy-makers in Canada are discussed.

## Keywords

Canada, punishment, values

Imprisonment is expensive and it accomplishes very little, apart from separating offenders from society for a period of time. (Policy paper issued jointly by the

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Conservative Minister of Justice and Conservative Solicitor General of Canada, 6 July 1990)

Today...the Government of Canada is investing in the expansion of federal prisons...to better provide for the protection, safety and security of Canadians. (Press release, Conservative Minister of Public Safety, 29 November 2010)

## Introduction

Compared to other English-speaking nations, Canada's imprisonment rates are anomalous (Doob and Webster, 2006; Meyer and O'Malley, 2005). Specifically, Canada has had a relatively stable level of incarceration since the late 19th century (Webster and Doob, 2012: 81). While there has clearly been some fluctuation, no particular simple trend is discernible in Canadian overall imprisonment over this entire period. In fact, reliable data available since 1950 demonstrate that the incarceration rate has hovered around 100 (82–116) per 100,000 total residents for more than half a century. This trend becomes even more impressive when examined alongside Canada's two closest comparators – England/Wales and the United States – which witnessed dramatic increases in their levels of imprisonment over the past several decades. Assuming that levels of incarceration are a reasonable – albeit partial – measure of a nation's degree of punitiveness (Webster and Doob, 2007), the relative stability of Canadian imprisonment rates suggests that it has largely been able to resist the wider forces compelling other countries towards more punitive responses to crime (Webster and Doob, 2007, 2012).

Within this context, the title of this article in which US-style punitiveness is associated with the Canadian reality may seem contradictory. In fact, it reflects growing concerns that the Canadian punishment landscape may be changing (Webster and Doob, 2007, 2012). Particularly since 2006 when the Conservative government took power, several policies and practices linked to increased punitiveness elsewhere have appeared in Canada. Specifically, Canadians have recently seen signs of the politicization of crime, the reduction in reliance on expert advice as an informed and moderating voice and growing promotion of prison as an effective solution to crime (Webster and Doob, 2012). Further, it has been noted that the Conservative government has introduced unprecedentedly harsh criminal justice legislation characterized by greater use of imprisonment, increased reduction in judicial discretion and a more punitive philosophy of corrections (Healy, 2013).

It may be too early (in 2015) to draw a definitive answer surrounding the interpretation and, by extension, the punitive impact of the multiple structural, administrative, legislative and political changes that Canada is currently undergoing. As Tonry (2009) reminds us, harsher sanctions – even once legislated – are not invariably enforced. Further, not all of the recent criminal justice legislation is likely to increase incarceration, particularly those laws whose purpose is arguably

more symbolic in nature (Webster and Doob, 2012). Even in the case of (harsher) legislation which will likely impact Canadian imprisonment rates, their effect may not be felt for some time.

Our current concern resides elsewhere. Specifically, our uneasiness surrounding the present direction of Canadian punishment policy is not so much a reflection of any particular change in criminal justice legislation, political practices or administrative roles per se. Rather, we argue that it is precisely *behind* these realities which lurks a potentially much deeper and more profound change. Since 2006, Canadians have been governed by a Conservative Party whose self-concept of government appears to be radically different from that of prior administrations. Specifically, we suggest that this government has introduced into its discourse a completely different set of criminal justice values as part of its vision of Canada. This article explores this hypothesis.

To this end, the first section lays out the methodology of our analysis. The next section describes Canada's long-standing value system as it relates to offenders and appropriate responses to them. This normative frame forms the backdrop for understanding changes since 2006. By juxtaposing new criminal justice values with those of the past, the third section illustrates the magnitude of the change in Canada's normative orientation as expressed by central policy-makers. The final section discusses the broader significance of this shift for Canadian punishment policy.

## Methodological issues

This study finds its origins in two different sets of sociological/criminological research. On the one hand, it borrows from public opinion research (broadly defined) the notion that public attitudes towards offenders and appropriate state responses to crime tend to follow the lead of politicians (Adams, 2014; Beckett, 1997; Ramirez, 2013). As such, the discourse of policy-makers is rendered especially salient in influencing public views. On the other hand, it incorporates the sociological concept of cultural embeddedness (Melossi, 2001) which underlines the overarching effect of core values on punishment policies. Specifically, a nation's value system not only directly influences criminal justice policy but also indirectly helps to shape those factors which contribute to it.

Within this context, we have chosen to examine changes in criminal justice policy discourse in Canada following the rise to power of the Conservative Party in 2006. While political rhetoric does not necessarily translate into implemented policy, its impact on public opinion (and, by extension, public attitudes vis-à-vis punishment) cannot be minimized. By repeatedly valorizing different core values, the underlying normative structure of Canadian society may begin to change. The repercussions of such a cultural shift on Canadian punishment policy would arguably be broad and long-term.

The temporal division of (pre- and post-) 2006 was chosen more as a matter of convenience than as an absolute marker of change. In exploring variation in

Canadian imprisonment trends and policies over the past decade (Doob and Webster, 2006; Webster and Doob, 2007, 2012), we have noted substantial shifts in Canada's criminal justice landscape in the years surrounding the (relatively recent) rise of the Conservative Party of Canada.<sup>1</sup> This historical period incorporates the years immediately prior to their federal electoral success in 2006 during which the Liberal Party was in power but was governing with a loss of moral and political authority (rooted in several serious political scandals and a minority government). Similarly, this temporal division also encompasses the initial years following the Conservatives' rise to power during which they formed an unstable minority government before winning a majority of seats in 2011.

Within this context, this study should not be thought of as having adopted a formal pre–post methodology. Rather, it reflects our preliminary assessment of seemingly dramatic and meaningful changes in policy-makers' discourse surrounding punishment policy between the late 20th century and the post-2006 period. Our method is similar to that of Campbell (2014) in his study of policy change in California. Most notably, we relied on several different types of data. Our starting point was to examine the more than 20 formal statements of criminal justice policy addressing the issue of criminal sanctions over the past century. These documents provided an initial picture of how governments and government-appointed committees and commissions saw the criminal law and the role played by the criminal justice system. They were particularly important as comprehensive, holistic snapshots across time of the various ways in which Canadian policy-makers thought about the nature of crime and how best to respond to it. In this sense, these statements provide a first glimpse into the core values guiding criminal justice policy during this era.

This picture was complemented by a survey of the legislative bills related to crime/criminal justice introduced prior and subsequent to 2006. This legislative framework helped identify the government's priorities in terms of what it felt it politically had to respond to as well as the forms which this response should take. Further, we incorporated related archival material and secondary sources into our analysis. In particular, press releases by the government describing (and justifying) legislative bills, political party electoral platforms, internal ministerial correspondence<sup>2</sup> and the debates in Parliament were consulted. These sources identified not only the ways in which the government wanted offenders and punishment proposals to be seen but also how the opposition responded.

Finally, we conducted semi-structured interviews with 12 key informants—senior civil servants and elected officials responsible for criminal justice policy who were chosen because of their involvement in pivotal legislative initiatives. Specific questions were formulated relating to each person's knowledge and experience with particular policies, proposals or laws. We purposely selected several individuals whose careers in criminal justice policy spanned both time periods of interest. These interviews often provided valuable insights into the ways in which issues were viewed, the reasons for the development of specific policies and especially how attitudes changed from one era to the next. In effect, they served as a final point of

triangulation in our attempt to capture the underlying values or ‘theories’ that guided criminal justice policy development in Canada.<sup>3</sup>

Undoubtedly the most difficult task was identifying various indicators of the normative framework which shaped the ways in which the policy elite – defined as those senior government officials, participants in groups developing policy proposals and politicians and political staff who are responsible for criminal justice policies – thought about punishment. To this end, we focused on two broad measures for comparing values. First, we examined policy-makers’ attitudes towards offenders. Specifically, we attempted to identify their views of the causes of crime as well as the legal and moral character of the offender. Second, we explored policy-makers’ attitudes towards appropriate state responses to crime. In particular, we attempted to identify their views of the principal role/purpose of prison as well as the proper severity of punishment. The corresponding core values underlying these attitudes were based loosely on a model developed by Tonry (2012) who schematically mapped out the various factors shaping sentencing policy.

## Canadian punishment policy until 2006

Perhaps the key distinguishing feature of the roughly 75 years prior to 2006 is the remarkable consistency in the value statements about Canada’s broad orientation towards offenders and appropriate responses to them as expressed by the policy elite. Arguably their clearest expression is found in the numerous comprehensive assessments of the criminal justice system conducted by government or government-appointed committees/commissions over this period. In fact, several of these official statements of criminal justice policy addressing the issue of criminal sanctions made specific reference to their role in reflecting as well as guiding Canadian values. When releasing Canada’s first ‘comprehensive and fundamental statement concerning its view of the philosophical underpinnings of criminal law policy’ (Canada, 1982, Preface), the Minister of Justice (later prime minister, 1993–2003) declared that this report ‘offers the foundation for a credible and effective criminal law, reflecting the needs and values of Canadian society’ (press release, 1982: 3).

The attitudes of policy-makers throughout this period regarding the causes of crime are fundamental in understanding their criminal justice responses. Most notably, crime was repeatedly seen as largely socially determined whereby offenders were perceived as socially disadvantaged and in need of assistance. As early as 1914, the Report of the Royal Commission on Penitentiaries noted that attention should be paid to those who have the ‘misfortune to get into prison’ (p. 26). This document further commented – *disapprovingly* – on the view ‘that the prisoner is a creature apart, differing from other human beings’ (p. 26). Compassion and inclusion were promoted as the appropriate responses to those who commit crime.

These communitarian values are reiterated even more clearly by the Liberal Justice Minister in 1995 when he reminded his cabinet colleagues that *they* were equally, if not more, responsible for crime prevention than he was (Rock, 1995). As the causes of crime are socially rooted, the solutions to it do not reside

exclusively, or even predominantly, with the criminal justice system. This message echoes sentiments expressed in the Conservative Party's 1993 election platform:

If we don't get to the root causes of crime, we cannot make our streets and communities safe. True safety and security are based in caring homes, good schools, shared values and communities where people care about and reach out to one another. (Progressive Conservative Party of Canada, 1993: 26)

Policy-makers' attitudes towards offenders reflect the same value of inclusiveness. As the causes of crime were not viewed as inherent to them, offenders' moral character was not called into question. As one Conservative Parliamentarian commenting on legislation related to pardons suggested in 1970:

We have always held that a person is innocent until proven guilty. In this country we do not draw a distinction between good people and bad people. They are all people, but they may have been convicted of an offence. (Gordon Aiken, House of Commons, 30 January 1970: 3040)

As an extension of this expression of inclusion, offenders – despite their crimes – continued to be perceived as citizens. As the Solicitor General of Canada noted in 1971:

An inmate is always a citizen who, sooner or later, will return to a normal life in our society and as such, is basically entitled to have his human rights as a citizen respected by us to the largest possible extent. (Jean-Pierre Goyer, House of Commons, 7 October 1971: 8504)

Within this context, the reintegration of offenders was seen by policy-makers as paramount. This core value was pursued through two different yet interrelated strategies. First, the policy elite promoted restraint in the use of imprisonment. The belief that prison should be used only as a last resort constitutes a dominant leitmotif throughout this entire period in Canadian criminal justice history. Symptomatically, after examining more than a century of criminal justice policy reviews, the Canadian Sentencing Commission (1987: 165) reminded Canadians that its own endorsement of a policy of restraint in the use of imprisonment was consistent with 'the recommendation of almost every group that has examined the criminal justice system from the Brown Commission in 1848 to the Neilson Task Force in 1986'. Further, it emphasized that: 'In the submissions to this commission, most groups and individuals [continued to call] for restraint in the use of custodial sentences and advocated a greater use of community sanctions' (1987: 77).

This value of restraint was repeatedly justified by the belief in the destructive nature of imprisonment vis-à-vis the goal of offenders' reintegration. In fact, the Law Reform Commission of Canada based its 1976 recommendation to Parliament of employing prison sentences 'sparingly' as a 'punishment of last

resort' (1976: 24–25) on the recognition of the 'negative and uncreative warehousing of prison' (1976: 25). This same theme was reiterated in a 1977 Parliamentary report on penitentiaries. It reminded Canadians that 'Society has spent millions of dollars over the years to create and maintain the proven failure of prisons' and advised that 'before entering into a multi-million dollar construction program, less costly, and more productive alternatives should be introduced' (House of Commons, 1977: 35). In fact, the over-reliance on imprisonment in Canada, with its detrimental effects on offenders, was strongly criticized in another government policy statement on sentencing in 1984. This document noted – *with disapproval* – that Canada's level of incarceration 'looks relatively restrained only in comparison to that of the United States, and such other countries as the Soviet Union and South Africa' (Canada, 1984: 8).

However, it was not just the failure of prison in contributing to the rehabilitation of offenders that was pointed to by policy-makers when calling for restraint in the use of incarceration. Rather, it was also rooted in the belief that the state had shown itself unable to guarantee even the inmate's minimum right to his/her non-debilitation. As a 1938 Royal Commission reminded Canadians:

The undeniable responsibility of the state to those held in its custody is to see that they are not returned to freedom worse than when they were taken in charge. This responsibility has been officially recognized in Canada for nearly a century but, although recognized, it has not been discharged. The evidence before the Commission convinced us that there are very few, if any, prisoners who enter our penitentiaries who do not leave them worse members of society than when they entered them. (Canada, 1938: 100)

As a corollary of the strategy to successfully reintegrate offenders back into society, the policy elite also promoted rehabilitation. To this end, non-custodial sanctions were emphasized. A high profile 1969 report recommended 'changes in sentencing policy to provide for the use of alternatives to prison as much as possible' (Canadian Committee on Corrections, 1969: 309) in large part to further reintegration. A similar view was expressed almost two decades later in a Conservative Government Task Force which denounced the over-use of incarceration in Canada and promoted alternatives to incarceration as not only 'less costly' but also 'less debilitating' (Task Force on Program Review, 1985: 322–323).

In fact, policy-makers saw non-custodial sanctions as not only more rehabilitative but also less harsh. Moderation in punishment was also promoted. This core value was enshrined in legislation in 1996. Section 718.2 of Canada's Criminal Code<sup>4</sup> provides that '[a]ll available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders'. In addition, it stipulates that for those cases in which consecutive sentences are imposed, 'the combined sentence should not be unduly long or harsh'. However, calls for moderation were heard long before 1996. For example, the 1969 report warned of the 'danger of overestimating the necessity for and the value of long terms of

imprisonment except in special circumstances' (Canadian Committee on Corrections, 1969: 190). Similarly, the 1985 Task Force voiced doubts about the social value of prison after recognizing that: 'Correctional administrators consistently report that a large proportion of persons in their jails do not belong there' (Task Force on Program Review, 1985: 322–323).

Clearly, the numerous formal statements of criminal justice policy throughout the 20th century set the tone and, more importantly, the normative framework of the entire period. However, the policy elite who developed these official documents were not the only players in the policy game. Equally important, this value system went largely unchallenged by other political leaders. Notably, the various political parties of this era not only accepted this normative framework but also promoted it. Rather than expressing different – and often opposing – political views regarding offenders and appropriate responses to crime, the two dominant political parties showed remarkable accord in the core values underlying Canada's punishment policy. As an obvious case in point, the *Conservative* government specifically stated in 1990 that it endorsed the principles contained in the 1982 and 1984 *Liberal* policy statements (Canada, 1990: preface). In fact, the 1982 Liberal document was re-released by the Conservative government in 1989, with only the Preface containing the Liberal Justice Minister's signature removed. Particularly given that this 1982 document is widely considered as one of the most comprehensive and fundamental formal policy statements about criminal law in the last half century (Mosely, 2014), its full endorsement by both major parties reflects their agreement on core values of this era.

Of similar note, the senior civil servants who were responsible for the development of specific punishment policy during this period also not only accepted this value system but also adopted and promoted it. Indeed, it framed their thinking. As one senior public servant told us about these reports:

We would read them. We would understand them... Those reports were... basically... research tools. We had them on the shelves in our offices. We talked to people about them. Not to understand them almost intimately was professional negligence as far as I'm concerned... They influenced our thinking... They were in our consciousness; they were in our discussion; they were in our cabinet discussions; they were in our consultation documents.

Indeed, it was government policy that these documents guide policy. Illustratively, the Justice Minister wrote to each of his cabinet colleagues soon after the release of the 1982 document, reminding them that this statement expressed the government's policy and that each department should review 'all existing federal statutory provisions creating offences' that it administered to ensure that 'such provisions are not inconsistent with the government's [new] policy respecting the criminal law' (letter from Jean Chrétien, Minister of Justice, to all federal ministers, 25 August 1982).<sup>5</sup> The potential importance of this dissemination cannot be over-estimated. All of the estimated 20,000 existing federal offences were to be brought in line with

this policy of restraint in the use of the criminal law and imprisonment. As the Minister of Justice reminded his cabinet colleagues, they had agreed to 'be guided by that policy in the future development of proposals, regulations, and administrative procedures'.

Given that Canada's Constitution divides the responsibility for criminal law between the federal and provincial/territorial governments, it is equally relevant that the value system promoted at the federal level also remained fundamentally unchallenged at the provincial/territorial level of government during this era. While the federal government is responsible for all criminal law legislation, the provinces/territories have responsibility for the administration of justice. As such, they have authority over the police (with the exclusion of rural policing which is contracted out to the (federally controlled) Royal Canadian Mounted Police in most provinces/territories), the administration of the courts, the prosecution of most criminal offences and part of the correctional system: community corrections and prison sentences of < 2 years (which represent approximately 60 percent of all prisoners in Canada).

Within this context, it is notable that the Federal/Provincial/Territorial Ministers responsible for justice and corrections produced and released four papers between 1996 and 2000 (Federal/Provincial/Territorial Ministers Responsible for Justice) summarizing their views on controlling growing prison populations. They showed unanimity in the undesirability of the recent growth in imprisonment. The first document noted that although the different Canadian jurisdictions might approach policy issues differently, 'there are many principles and objectives that are held in common' (1996: 7). Unsurprisingly, a statement of restraint in the use of imprisonment, with a focus on alternatives, is found among them. Equally foreseeable, the 11 recommendations endorsed by all deputies and ministers included 'greater use of diversion programs and other alternative measures', decarceration of 'low-risk offenders' and 'increased use of restorative justice and mediation approaches' (1996: 8–12). Perhaps more noteworthy is the inclusion of a recommendation in the 1997 report for an '[e]valuation of diversion programs to include a component on net-widening' (1997: 25) reflecting concern with not only imprisonment but also increased social control more generally.

Finally, even the legislation passed during this time period largely promoted the same core values. One defining characteristic of criminal justice legislation of this era is the non-trivial number of rather large, comprehensive legislative reforms made to the criminal law, including the following:

- a comprehensive review of bail laws in 1972 (largely eliminating 'cash bail' systems and placing the onus for detaining a suspect on the prosecution);
- the 1977 abolition of capital punishment (subsequently reaffirmed by a unanimous Supreme Court of Canada (*United States v. Burns* [2001] 1 SCR 283) decision in 2001 which refused to allow two people charged with murder in the USA to be extradited for trial until the state gave an undertaking that they would not face execution if convicted);

- two complete changes in youth justice law (1984 and 2003) (containing, particularly in the latter case, explicit statements restricting the use of custody);
- the 1992 changes to legislation regulating the operation of federal prisons and conditional release from prisons (to facilitate rehabilitation and reintegration);
- the 1996 comprehensive scheme for the registration of firearms (and criminal punishment for those who did not comply with the new law);
- the 1996 Controlled Drugs and Substances Act (creating an integrated set of laws governing drug prohibition);
- the 1996 comprehensive sentencing legislation (elevating restraint in the use of imprisonment to an explicit legislated principle).

More importantly, these broad legislative reforms shared many of the same characteristics: enhancement of civil liberties for those who come into contact with the criminal law, moderation in the severity of criminal punishment, reaffirmation of restraint in the use of imprisonment and a focus on offender rehabilitation and reintegration. Nonetheless, examples of more punitive legislation during this era can still be found. However, they are few in number, sporadic, and generally affected relatively few offenders. Further, they did not challenge the broad orientation towards offenders and appropriate responses to them as expressed by the policy elite. As an illustration, one of the highest profile legislative changes made during this period which might be categorized as reflecting increased punitiveness is the 1996 enactment of mandatory minimum sentences (of four years in prison) for offenders committing certain serious violent crimes with firearms. Notably though, these provisions were introduced by the Justice Minister as part of a firearms registration bill (as a means of placating rural and right-wing voters) and not part of the large sentencing bill which was being considered by Parliament simultaneously. Further, we estimated that it had little effect on actual sentences (Webster and Doob, 2007: 317).

In sum, we have no argument with the Law Reform Commission of Canada when it reminded Parliament in 1976 that criminal law not only ‘serves to throw light on the present – by underlining crucial social values’ (1976: 3) but also ‘is fundamentally a *moral* system...[that] serves to underline those values necessary, or else important, to society’ (1976: 16, emphasis in original). Until 2006, there was broad consensus among all levels and types of policy-makers about these underlying values. To borrow Tonry’s (2012) terminology, compassion, inclusion, reintegration, restraint, rehabilitation and moderation were the central values being promoted by the policy elite of this era. Indeed, their attitudes towards offenders and appropriate state responses to crime were clear. Crime was seen as being largely socially determined and those who commit criminal acts continued to be perceived as citizens – albeit ones who had temporarily fallen and in need of assistance. Reintegration was the principal goal. By extension, high imprisonment rates were perceived as problems to be addressed. Indeed, prisons were seen as necessary but unproductive parts of society whose use was to be minimized to curtail their damaging effects.

## Canadian punishment policy since 2006

Certainly for Canada's closest comparator – the United States – Canadian policy-makers' longstanding attitudes towards punishment would be reminiscent of a long-lost past. Ironically, the most recent decade of policy elite discourse in Canada regarding the offender and appropriate state response to crime may be considerably more familiar to Americans. The remarkably consistent core values in 20th-century policy discussions in Canada faced a serious challenge after 2006. In fact, the Conservative government's attitudes are more punitive in nature, promoting a value system which has little to do with the past.

This attitudinal shift has not occurred in a vacuum. Rather, the entire landscape within which Canadian policy-makers act has changed in Canada since the early 21st century. Most notably, the legislative process has changed such that new legislative proposals have largely been designed without the benefit of advice from those knowledgeable in criminal justice policy. Not only have experts outside of government been marginalized, empirical evidence has often been disregarded. As one senior public servant whom we interviewed described the policymaking environment at this time, '[with the new government], the openness to evidence that was narrowing over time [effectively]... shut-off'. Symptomatically, when declining (reported) crime rates contradicted the government's affirmation that crime was increasing, the Justice Minister simply dismissed the data with the following explanation: 'We don't govern on the basis of statistics. We govern on the basis of what we hear from the public and what law enforcement agencies tell us' (Canadian Press, 2010).

Further, Canada has seen an increase in political-style personal attacks on experts appearing before the legislative committees, including civil servants whose role as subject matter experts has also been devalued. In fact, the very nature of civil servants working in criminal justice policy development has changed. As another senior civil servant whose work experience spanned 30 years (including the post-2006 period) explained:

the staff of [the] ministers' offices [are] far less educated [now]. They're far less expert... They're far less tuned in... less thoughtful... [In the past], I could have a real debate with [political staff], but [they] knew [their] stuff, and we had a common basis on which to talk. That basis doesn't exist anymore, and the conversation doesn't exist anymore.

Or as another senior policy-maker recounted:

I have heard from former colleagues about the nature of the process [under the Harper government]. The effect has been demoralizing for those who can remember the way it was. It is sad to [hear] that there is a new generation who have no understanding of how it was done before or exposure to the foundation [consultation] documents.

By extension, policy development has also undergone significant change. Most notably, although comprehensive studies of policy were frequently undertaken

before 2006, none have taken place since this time. The only arguable exception might be a 2007 review of the operations of Correctional Service Canada. However, we would argue that it lacks the defining characteristics of prior official documents which studied criminal justice policy issues in their larger historical context, in light of research as well as extensive public policy analysis and debate, and aided by expert independent policy and research staff with no obvious political or partisan influences.<sup>6</sup> In fact, one senior civil servant described post-2006 policy development to us as lacking any desire to reform, not forward-looking and with a direction that is almost exclusively top-down.

Equally notable, the legislative process has witnessed a significant reduction in meaningful debate and thorough examination (particularly wide consultation but also inquiry into relevant issues such as costs) in Parliament. There have been no broad legislative reforms (nor any discussions for such legislation) since 2003. Moreover, legislative initiatives have lacked the comprehensive, principled nature of those enacted in the previous era. Recent legislation has been piecemeal and often disjointed, with no obvious underlying rationale. Illustratively, the presumably rarely occurring offences of committing bestiality in the presence of a child or inciting a child to commit bestiality had – until 2008 – a maximum sentence of 10 years in prison and no mandatory minimum. The maximum age of a child for this offence was raised from 14 to 16 in 2008 in the Tackling Violent Crime Act. As part of the Safe Streets and Communities Act, the majority Conservatives added mandatory minimum penalties of six months or one year in 2012. In 2014, the same government tabled the Tougher Penalties for Child Predators Act which – if passed – creates a uniform mandatory minimum of one year and an increased maximum penalty of 14 years. Given that we are unaware of any publicized cases of these offences, it is difficult to imagine the logic behind these changes, with the Acts' titles as the only attempt to justify them.

Within this context, the attitudes of the policy elite towards offenders and appropriate state responses to crime have also changed. Crime is now seen as individually determined – the result of rational choice by the offender. In fact, the Liberal Party's focus on the social causes of crime during the 2011 federal election was described by the Conservative Party as 'an out-of-touch ideology that makes apologies for criminals' (Conservative Party of Canada, 2011, p. 50). As an extension of this perception of crime causation, the current government changed the provisions related to a 'surtax' on fines ostensibly designed to pay for victims' services. Until 2013, those who were fined in criminal court were required to pay a 15 percent 'victim surcharge' and those not fined were required to pay a minimum of \$50–\$100 (depending on the charge) into this fund unless the trial judge waived the surcharge because paying it would cause 'undue hardship to the offender or dependents' (Criminal Code of Canada, section 737(5)). In 2013, these amounts were raised in the Increasing Offenders' Accountability for Victims Act (Bill C-37, 41st–1st)<sup>7</sup> to 30 percent or \$100–\$200. Most importantly, judges can no longer waive surcharges.<sup>8</sup> For Conservatives, poor offenders are apparently poor by choice and have the money to pay if forced to do so. In explaining how

indigent offenders might pay these fines, the Minister of Justice – in a statement vaguely reminiscent of ‘let them eat cake’ – was clear in his rejection of the view that many offenders are disadvantaged:

Two or three hundred dollars? Really? Disproportionate? Out of step? Cruel and unusual punishment? What about the victim that in some cases has to pay hundreds if not thousands of dollars as a result of being an innocent in the system who becomes a victim. . . . [S]ometimes [offenders] might even have to, God forbid, sell a bit of property to pay and make compensation to their victims. (Seymour, 2013)

Clearly, compassion for offenders has been replaced by ambivalence.

Within this ‘rational choice’ model of crime causation, Conservatives have unsurprisingly prioritized the sentencing objectives of deterrence, denunciation and incapacitation. By extension, we have witnessed an obvious surge in the severity of legislated (but not necessarily judicially imposed) criminal sanctions – the principal mechanisms used by governments in an attempt to achieve these sentencing purposes. Illustratively, existing mandatory minimum sanctions have been raised (e.g. on certain violent offences carried out with handguns from four to five years) in order to ‘restore confidence in the justice system, and make our streets safer’ (press release, 4 May 2006). Further, new mandatory minimum sentences have been introduced. Until 2012, there were no mandatory minimum penalties under the Controlled Drugs and Substances Act (Library of Parliament Legislative Summary, Bill C-10, 41st–1st). With the Safe Streets and Communities Act (Bill C-10, 41st–1st), the maximum penalties were increased and a non-trivial number of mandatory minimum sanctions were introduced.

More broadly, one notes an almost complete absence of any moderating forces to this type of ‘tough-on-crime’ legislation. Specifically, the crime legislation produced since 2006 is all in one direction: an unprecedented hardening of responses to criminal behaviour.<sup>9</sup> Equally relevant, tough-on-crime platforms were adopted by all three national political parties during the 2006 and 2008 federal elections. Though the separatist Quebec Party – Bloc Québécois – continued to view crime as the consequence of broader societal forces, the crime policies of the other (national) political parties were largely distinguishable only in their details. All three national parties (the Conservatives, Liberals and the slightly-left-of-centre New Democratic Party) supported – some for the first time – the toughening of penalties through mandatory minimum sentences and the introduction of new criminal offences. While Canadian political parties continued to demonstrate general consensus surrounding the use of imprisonment, the significant change is that they no longer promoted moderation or restraint.

Indeed, the Justice Minister’s mantra that ‘[w]e are changing the focus of the justice system so that serious crime will mean serious time’ (CBC News, 2006) characterized not only the vast majority of this government’s sentencing changes but also the general emphasis of the political platforms of the other parties. Harsh punishment was viewed (and justified) as an effective and appropriate strategy to

increase public safety against offenders. The new message was that ‘prison works’ in reducing crime. Incarceration was no longer perceived as a problem to be minimized. Instead, it was heralded as the primary vehicle to minimize criminal behaviour. By extension, the use of alternatives to incarceration was curbed. Most obviously, restrictions on the use of the ‘conditional sentence of imprisonment’ – essentially a form of suspended sentence introduced in 1996 by the Liberals and designed to reduce the use of imprisonment – were passed in two separate bills (2007, 2012). Equally notable, none of the 2006 and 2008 political platforms of any of the national parties contained references to community or alternative sanctions for minor or first-time offenders. Similarly, crime prevention was generally only raised with respect to youth. Even the correctional concepts of rehabilitation and reintegration were generally absent. Rather, simple punishment dominated the rhetoric concerning offenders.

One might argue that we are witnessing the withering of Canada’s historically entrenched belief in a culture of restraint in the use of imprisonment and a challenge to long-standing core values. Restraint was largely replaced with excess; moderation with severity. The long-standing inclusionary philosophy of Canadian crime/criminal justice policy was inverted: offenders were intentionally separated from society. In its extreme, a 2012 change in the law made it easier for the government to block transfers of Canadian citizens convicted abroad to Canada to serve their sentences. These ‘international transfers’ were previously seen as sensible and humane, allowing prisoners to benefit from both Canadian correctional programs and controlled release into the community rather than being deported back to Canada after serving their full sentence abroad without assisted reintegration.

Indeed, reintegration has ceased to be the focus of criminal justice intervention. Notably, we have seen significant cutbacks in prisoners’ abilities to prepare themselves for release. Accelerated parole review – presumptive parole for certain penitentiary prisoners – was abolished in 2011. Further, prior legislation prohibiting the publication of youths’ identities (a key component of youth justice legislation since 1908, designed to avoid stigmatizing youths) was weakened in 2012. Courts now must consider lifting the publication ban on the names of young offenders convicted of violent offences. Ostracism rather than rehabilitation is now promoted as an appropriate response to crime.

In fact, the very notion of citizenship appears to be changing whereby ‘offender’ is increasingly seen as a permanent identity, distinct from ‘law-abiding citizens’. Symptomatically, in a press release introducing one of its crime bills, the government stated that: ‘The interests of *law-abiding citizens* should always be placed ahead of those of *criminals*’ (15 March 2012, emphases added). More blatantly, a 2014 law (C-24, 41st–2nd) allows the Minister of Citizenship and Immigration to revoke the citizenship of a Canadian dual-citizen who has been found guilty of certain offences, even if these offences took place in foreign countries decades before the bill was introduced.

Equally notable, the government has also made it more difficult to shed a ‘criminal’ label. In two separate bills (Limiting Pardons for Serious Crimes Act (C23A,

40th–3rd); Safe Streets and Communities Act (C-10, 41st–1st)), it restricted the availability of pardons by requiring longer waits before applications can be made, changing the criteria slightly and excluding those convicted of certain offences. Further, the application fee was raised, first from \$50 to \$150, and later to \$631. The Public Safety Minister defended this decision by differentiating the ‘good’ from the permanently ‘bad’: ‘We believe that ordinary Canadians shouldn’t have to be footing the bill for a criminal asking for a pardon’ (CBC News, 2011). Notably, ‘criminals’ in this case refers to those who have lived law-abiding lives for at least five to 10 years after the end of their sentences. We estimate that 23.2 percent of male and 4.3 percent of female Canadians over the age of 12 have criminal records. Finally, the term ‘record suppression’ symbolically replaced the word ‘pardon’ because – as one Conservative politician explained – the latter ‘suggests that everything is now okay because the offender has waited 3–5 years and stayed clear of the justice system for that time’ (House of Commons, 7 June 2010). Apparently ‘everything’ will never be ‘okay’ as ‘once an offender, always an offender’.

Within this exclusionary perspective, policy-makers perceive it as morally justifiable to impose harsh sanctions to protect the virtuous ‘us’ from the dangerous (and permanent) ‘them’ – particularly by separating ‘them’ from society for as long as possible. Indeed, criminal activity is now to be understood as a reflection of offenders’ amoral character. As Canada’s Public Safety Minister matter-of-factly stated, ‘when the bad guys are kept in jail longer, they are not out committing crimes’ (Moore, 2012). However, the ramifications of this dichotomy are even more extensive. In the Conservative Party’s 2011 political platform entitled ‘Here for Canada’, the section dealing with crime was labelled ‘Here for law-abiding Canadians’. The government is, apparently, not ‘here’ for all citizens. Even more blatant, the government would like to remove an offender’s ability to participate fully in society. In its 2006 election platform, it promised to ‘[w]ork for a constitutional amendment to forbid prisoners in federal institutions from voting in elections’ (Conservative Party of Canada, 2006: 22). Offenders – the government believes – have forfeited their claim to have their interests or rights taken into account. Criminals are now perceived by policy-makers as (social, legal and physical) outlaws.

However, it is not just an offender’s civic rights which are threatened. Rather, criminals are perceived to have largely lost their ability to benefit from change. Indeed, punishments that are so severe as to ignore the possibility of redemption and deny offenders any hope for a better future are now seen as morally justifiable as a reasonable consequence of committing a serious crime. Certain offenders are currently perceived as beyond hope. Symptomatically, discretionary parole for all but murderers has almost disappeared from use (Doob et al., 2014). More blatantly, the 2011 repeal of the ‘Faint Hope Clause’ by the Serious Time for the Most Serious Crime Act (Bill S-6, 40th–3rd) removed a provision that allowed those serving sentences for murder with long parole ineligibility periods (15–25 years) to have their parole ineligibility period reduced. Similarly, the Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act (Bill C-48,

40th–3rd) opens the possibility – for the first time in Canada – for *consecutive* parole ineligibility periods (<25 years) for multiple murderers. Until 2011, Canada has had nothing equivalent to the US life without parole. However, in March 2015, the government introduced a bill (C-53, 41st–2nd) which, if passed, would make life-without-parole mandatory in some cases and available in some others.

In sum, the message to Canadians from the Conservative policy elite about how to view offenders and the appropriate state responses to them has radically changed. These new attitudes reflect a very different normative framework. To again borrow from Tonry (2012), ambivalence, exclusion, ostracism, denunciation and severity are seemingly the central values being promoted by federal Canadian politicians since 2006. Crime is now viewed as the result of rational decision making by immoral or ‘bad’ individuals who are considered not only beyond hope or redemption but also unworthy of compassion or even tolerance. Consequently, appropriate punishment must be severe enough to deter others and protect law-abiding citizens. Exclusionary tactics are privileged, elevating the value of imprisonment. Offenders are seen as ‘lesser’ beings who have forfeited their claims to full citizenship and are fittingly outlawed from society.

### **Broader ramifications**

For anyone following the US (paradigmatic) shift towards greater criminal justice punitiveness, the underlying values expressed by Canadian policy-makers towards offenders and appropriate state responses to them since 2006 would be familiar. For those knowledgeable about Canadian punishment discourse throughout the 20th century, the recent attitudes of Canada’s policy elite would be seen as a radical departure from our long-standing past. If discourse is any indication of the present course of Canadian criminal justice policy, it may be that the very values which have defined Canadians for decades are at risk of hardening, ironically potentially leading Canadians down the punitive path from which Americans are currently trying to retreat.

Optimistically, the value system currently being promoted in the attitudes of Canada’s policy-makers may not ultimately permeate the general public’s core normative beliefs. As Tuohy (2007: 518) reminds us,

If [a policy package] is to endure partisan change and periodic shifts in the balance of interests, it must resonate broadly with Canadians. Accordingly, it needs to be tied together by a national narrative that reflects the ways in which Canadians understand themselves as Canadians.

Given that cultural values change slowly and the Conservatives’ message has, by 2015, been (loudly) heard for only nine years, it is possible that it will not ‘resonate’ enough to erase long-standing beliefs and attitudes. Although data on Canadians’ views of punishment and the justice system are limited (temporally, and in scope),

**Table 1.** Proportion of Canadians reporting that the courts, sentencing and parole are doing a 'poor job'

Year	Courts helping victim: % bad job	Courts determining guilt: % bad job	Courts protect accused rights: % bad job	Severity of sentences: % too lenient	Parole: releasing offenders not likely to commit another crime: % bad job	Parole: supervising offenders on parole: % bad job	Sample size
1988	32.9	16.5	8.7	65.0	–	–	9870
1993	41.9	21.4	11.6	71.5	–	–	10,385
1999	34.7	19.8	10.9	–	32.5	32.6	25,876
2004	27.5	15.1	7.9	62.5	30.8	31.9	23,766
2009	25.7	14.7	7.5	60.3	24.8	25.3	19,422

Note: – = No data available.

little evidence exists suggesting a dramatic change over the past one to two decades. Based on polling data collected in the past 20 years on Canadian value structures, Adams (2014) concluded that the core values of Canadians have not become more conservative. Further, an (albeit somewhat superficial) exploration of Canadian views of the criminal justice system (Table 1) based on the most reliable data available – Statistics Canada's General Social Surveys on Victimization<sup>10</sup> – appears to suggest that from 1993 onwards, the proportion of Canadians who indicated that the system was operating badly *decreased* over time.

Specifically, there is seemingly no evidence on any of the six dimensions presented in Table 1 that Canadians became more dissatisfied with the operation of their criminal justice system. In particular, the percentage reporting that the system was operating badly in 2009 – three years after the Conservative Party assumed power – was lower than in previous years.

Further, Canada has witnessed pockets of resistance to the currently proclaimed values. In particular, judges have shown signs of creatively 'interpreting' new legislation as to contain/restrict its punitive bite. Illustratively, the Truth in Sentencing bill (C-25, 40th–2nd) intended to reduce sentencing credit for time spent in pre-trial custody in a manner that was patently unfair (Doob and Webster, 2013). Numerous judges interpreted it so as to minimize its impact – an approach approved by the Supreme Court of Canada (in a 7–0 decision) in 2014.<sup>11</sup> While clearly promoting completely different values, the Conservative government constitutes only one voice among many.

Within this context, it is noteworthy that Canadian imprisonment rates have increased only marginally since 2006 – from 110 adult prisoners per 100,000 residents in 2006/2007 to 114 in 2012/2013. Conceivably, the government's piecemeal changes have not (dramatically) affected actual practice. Indeed, some new legislation is clearly only symbolic. Illustratively, the Protecting Canada's Seniors Act (C-36, 41st–1st) did no more than list vulnerability due to age of the victim (among other factors) as an aggravating factor in sentencing. Largely a restatement of

current law and practice, it is unlikely to have any impact. Similarly, the abolition of the 'Faint Hope Clause' affects only about four to five people per year. And finally, Canada has a long history of successfully resisting wider pressures towards increased punitiveness. This equilibrium has been attained through the interaction of several different mechanisms of which cultural values are but one (Doob and Webster, 2006; Webster and Doob, 2007, 2012).

More pessimistically, it is equally conceivable that the accumulation of many small but harsher changes in policy – as a reflection of the Conservative punitive rhetoric – may, over time, increase overall imprisonment rates in Canada. This lag effect may especially result from the importance of the administration of justice in determining levels of incarceration (Webster and Doob, 2014). As an institution with its own established working culture, changes will occur at a considerably slower rate than government policy.

Additionally, the notion that the Canadian public will resist the current underlying values being expressed by the Conservative policy elite may be unfounded. While political leaders frequently justify punitive policies as simply responding to the demands of the public, the direction of influence may actually be the inverse (Ramirez, 2013). Certainly the data in Table 1 provide no evidence that the current government is following public concerns. In fact, Adams (2014) suggests that public opinion in recent decades in Canada seems to have followed – rather than led – elite opinion in a number of seminal issues (including capital punishment).

Within this context, it is notable that the message from policy-makers has largely been consistent – not only within the governing political party but also across parties. Indeed, Canada has witnessed a significant change in the politics of crime control since the 20th century when crime hardly featured in political platforms and governments quietly endorsed or encouraged a more balanced/moderate response to crime (Meyer and O'Malley, 2005). In contrast, the 2006 federal election politicized crime to a degree new to Canadians. Responding to the public's 'deep-seated and probably universal' urge to punish offenders (Freiberg, 2000: 268), all three national political parties promulgated the view – contradicted by crime rate data – that crime was increasingly a significant public safety threat. Further, harsher measures were promoted as the solution. During the minority Conservative period (2006–2011), opposition parties were unwilling to be seen as 'soft-on-crime'. While they occasionally tried to moderate extreme proposals, more typically they supported harsh policies (Doob and Webster, 2013: 382).

This situation has changed only slightly since 2011 when the Conservatives formed a majority government. Neither national opposition party pushed crime as an important issue in that election. Further, both of them have argued against some recent punitive crime legislation. Symptomatically, there are hints that the Liberals are interested in exploring a more balanced approach to marijuana (Graveland, 2014). However, these timid overtures hardly constitute a compelling alternative message for Canadians.

Furthermore, while Canada has maintained many structural, historical and administrative factors which have traditionally protected it from wider punitive

forces (Webster and Doob, 2007, 2012, 2014), a shift in cultural values – particularly if it permeates not only the policy elite but also the general public – may have a particularly powerful effect. In discussing the 1993–1997 decarceration in the province of Alberta, Webster and Doob (2014) suggested that wider core cultural values not only had a direct impact on this jurisdiction’s punishment policies but also helped to shape other factors which also influenced these policies. If normative beliefs are ultimately embedded not only in criminal justice policy but also in its various contributing factors (Melossi, 2001), any changes to Canadian value systems will have broad and long-term repercussions.

Finally, one cannot exclude the more sinister possibility that harsher Canadian criminal justice policies are not, in fact, the Conservative party’s ultimate goal. Changes in these policies may be part of a larger political agenda. Analogous to Simon’s (2007) suggestion that western governments often ‘govern through crime’, Canadian Conservatives may be using crime policy as a mechanism to reinforce conservative values related to individual responsibility in *all* aspects of life. As Canada’s Conservative Prime Minister stated (quoted in Wells, 2013: 58–59):

Serious conservative parties simply cannot shy away from values questions... On a wide range of public policy questions – including foreign affairs and defence, criminal justice and corrections, family and child care, and health care and social services – social values are increasingly the really big issues.

Within this context, punitive punishment policies may be a way of reinforcing – or shifting – Canadian values about those who are less than fully self-reliant, ‘good’ members of society. If those who ‘fail’ (educationally, economically, etc.) are seen as ‘bad people’, ‘good’ Canadian citizens need not be concerned with them precisely because those ‘unsuccessful in life’ are understood as having chosen their particular ‘lifestyle’. In the end, responsibility for (social, economic, criminal justice) failure is shifted from the state to the individual.

As Wells (2013: 11) noted:

Every day [Prime Minister Harper] stayed in office, he would make the decisions only a prime minister can make, knowing few would be noticed, almost none would be contested, and that together they would add up... In the Conservative prime minister’s own words to his staff, ‘the longer I’m prime minister... the longer I’m prime minister’.

In this scenario, the adoption of US punitiveness ‘Canadian style’ may signal much more than an attempt to create harsher punishment policies.

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## Notes

1. This 'new' Conservative Party – emerging in 2003 – is fundamentally distinct from the long-standing Conservative Party which was born at the time of Confederation in 1867 and – with the Liberals – dominated Canadian politics for over a century. While the historic Conservatives were generally centre-right in their political ideology, the new Conservatives are often described as hard-right on the Canadian political spectrum. Formed from a merger of the Canadian Alliance Party (which derived from the Reform Party) and the Progressive Conservatives, the current Conservative Party of Canada is characterized predominantly by its populist and social conservative roots and represents a completely different 'breed' of conservatism than Canada has ever seen.
2. Post-2006 documents of this kind are not available for 20 years (Privacy Act, RSC, 1985 (s. 70(1)).
3. We used the interviews primarily as a modified form of confirmatory validity whereby we could ensure that the descriptions of the pre- and post-2006 eras that we had garnered from the various other sources of data were consistent with the recollections of those who experienced them directly. In this sense, the interviews informed our analysis even though – because of imposed brevity – most of them have not been quoted directly in this article.
4. All Canadian laws are available at: <http://laws.justice.gc.ca/eng/>
5. Obtained as part of a freedom of information request to the Department of Justice, Canada.
6. For a similar criticism of the 2007 Review, see Jackson and Stewart (2009).
7. Canadian bills are identified by the chamber in which they were introduced (Commons or Senate) and by the Parliament and session numbers. All bills are available at: <http://www.parl.gc.ca/Legisinfo>.
8. Notably, some judges imposed small fines when they would normally not impose them. In this way, the otherwise mandatory \$100–\$200 would not apply. In one case, a judge imposed a fine of \$5 on each of two counts which incurred a surcharge of \$3 (rather than \$400) on an Aboriginal offender on welfare with no assets. *R. v. Cloud* 2014 QCCQ [Cour de Québec] 464 (CanLII). Available at: <http://canlii.ca/t/g30fx> (accessed 16 March 2014).
9. Notably, the number of crime/criminal justice bills proposed by the Conservative government is non-trivial. During their five years as a minority government (2006–2011), they introduced 62 bills. Twenty became law. Between June 2011 and May 2015, they tabled another 29 bills, 15 of which had been passed by May 2015.
10. This survey is administered usually every five years. Telephone interviews are conducted throughout the year to minimize the impact of single incidents of crime. With weights (incorporated into our analysis), samples can be considered to be representative of non-institutionalized Canadian adults aged 15+ in the 10 provinces (excluding the territories). In each question presented in Table 1 (other than that about sentence severity), respondents were asked: 'Do you think that Canadian courts [or the 'parole system'] are [is] doing a good job, an average

job, or a poor job at...?’ For the ‘standard’ severity question, respondents were asked: ‘In general, would you say that sentences handed down by the courts are too severe, about right, or not severe enough?’ For this analysis, we present the proportion of Canadians who indicated that they believed that the system was doing a bad job on each dimension. Because ‘not knowing’ the answer is, in fact, a legitimate response to all of these questions (arguably the only defensible answer), we present the percentage with negative responses as a proportion of the full sample (including those not negative and non-responders).

11. In other areas – for example parole – changes in the law may have little effect because, effectively, it has been abolished administratively (Doob et al., 2014).

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