Countering Punitiveness: Understanding Stability in Canada's Imprisonment Rate

Anthony N. Doob Cheryl Marie Webster

Canada's imprisonment rate has not changed appreciably since 1960. This stability contrasts with the increased imprisonment rates experienced by Canada's most obvious comparators—the United States and England and Wales. We examine this divergence and propose several interrelated explanations for Canada's anomalous pattern. While Canada is shown not to be immune to pressure for harsher practices and policies, it has been able to counter or balance these trends with other more moderating forces. In particular, we suggest that Canadians have largely been able to escape several of the wider forces or "risk factors" at the root of higher incarceration in other countries. Further, we suggest that certain protective factors of a historical, cultural, and structural nature can also be identified that have limited the extent to which Canada has adopted the same punitive policies documented in the United States and England and Wales.

In response to the dramatic increases in U.S. imprisonment rates as well as more modest increases in several other nations, social scientists of all walks of disciplinary life have increasingly joined criminologists in attempting to explain the expansion of this criminal strategy. Recognizing that "... crime rates alone cannot explain the movements in prison populations" (Walmsley 2003:71), scholars have gone beyond simple criminological variables, searching for broader social, cultural, political, and historical explanations that may shed light on the recent increase of punitive policies and practices.

Not surprisingly, this approach has generated a number of explanations for growth in imprisonment in various countries (e.g., Garland 2000, 2001; Whitman 2003; Roberts et al. 2003; Ruth & Reitz 2003; Tonry 2004a, b). While clearly meritorious, their general focus on *change* in imprisonment rates—largely increases—is not without limitations. Specifically, they tend to either exclude or erroneously subsume countries such as Canada, which have

The writing of this article was supported by a Social Sciences and Humanities Research Council of Canada grant. Please address correspondence to Anthony N. Doob, Centre of Criminology, University of Toronto, Toronto, Ontario, Canada M5S 3H1; e-mail: anthony.doob@utoronto.ca.

Law & Society Review, Volume 40, Number 2 (2006)

experienced relative stability in levels of incarceration over the same time frame.[1]

Canada's anomalous imprisonment trend provides a contrast to patterns in nations generally considered to be similar in nature to Canada. The most obvious examples are England and Wales[2]—to which Canada is historically and institutionally tied—and the United States—to which Canada is geographically, culturally, and economically linked. Despite these close affinities, Canadian criminal justice policies as they relate to imprisonment have diverged from those of these two comparators.[3]

This article explores these divergences and attempts to provide several interrelated explanations for the stability in Canada's imprisonment rates since 1960. We argue that Canadians have largely avoided the "risk" factors (i.e., forces that increase a country's susceptibility to punitive trends) at the root of higher incarceration elsewhere. Furthermore, we describe certain historical, cultural, and structural "protective" factors (i.e., forces that shield a country from punitive pressures) that have limited the extent to which Canada has adopted the harsh policies documented in the United States and England. Indeed, by proposing that discussions of imprisonment rates be expanded to include nations that have resisted increases in incarceration, this article challenges present claims about the generalized emergence of more punitive societies.

Increasing Punitiveness: Canada Among Other Nations

The explanations that have been offered for growth in imprisonment (e.g., Garland 2000, 2001; Whitman 2003; Tonry 2004a) share the common starting point of a shift toward more punitive criminal justice responses to crime. Such policies as three-strikes sentencing, mandatory minimum penalties, habitual offender laws,

[1] Our examination of Canadian imprisonment rates focuses on the period 1960–2002/3, reflecting several limitations in existing Canadian data.

[2] Crime and imprisonment data do not generally distinguish between England and Wales, which share essentially the same law and legal procedures (Bottoms & Dignan 2004). For convenience, we will—with apologies to the Welsh—refer to "England and Wales" as "England."

[3] The irony of the Canadian reality would not be lost on those familiar with Blumstein and Cohen (1973). They proposed that stable incarceration rates in the United States and Norway in the half-century preceding the writing of their article reflected the natural state of equilibrium maintained by modern societies. Blumstein et alia (1977) extended this analysis by including Canadian data. Ironically, it would seem that unlike Americans, Canadians (and Norwegians; Lappi-Seppälä 2005) took this "stability hypothesis" to heart, providing unexpected support for a theory whose ability to fit U.S. data ended almost simultaneous to its publication.

and truth-in-sentencing are typically cited as evidence of increasing punitiveness, which is reflected in rising imprisonment rates.

Another commonality of these general theories of punishment is the inclusion of Canada as part of this wider punitive trend. The assumption appears to be that the affinities that Canada shares with other Western democratic nations that have experienced increased imprisonment rates naturally ensure the same punitive tendencies in Canada. For example, Roberts et alia tend not to differentiate among English-speaking countries in their provocative book on penal populism, referring to ". . . the emergence, over the 1990s, of increasingly punitive sentencing policies and practices in the English-speaking world" (2003:160).[4] Similarly, Pratt speaks of a "breakdown of the penal arrangements that had come to be associated with England and similar societies" (2002:145) and refers to "significant growth in imprisonment in [among other places] Canada" (2002:177).[5]

The tendency to generalize across countries is also reflected—at least at first glance[6]—in Garland's *The Culture of Control: Crime and Social Order in Contemporary Society* (2001). Although Garland focuses almost exclusively on the United States and the United Kingdom, the subtitle implies that the growth in punishment broadly applies (Zedner 2002). Further, the explanations offered for this trend—rising crime rates and loss of faith in penal-welfarism as well as structural and political changes in society—would also seem to be relevant to Canada (Cesaroni & Doob 2003).

Indeed, the similarities among Canada, the United States, and England are not only historical, cultural, economic, or geographic in nature. They are also criminological. Canada has experienced a crime culture similar to that found in the United States and England since the 1960s. Figure 1 shows both the (police-recorded)[7]

[4] Roberts et alia seem to include Canada among those nations experiencing a rise in punitiveness as measured by levels of incarceration. Although they suggest that "[p]enal populism has exercised a more muted influence on policy development in Canada" and that the federal government "has pursued a policy of restraint in terms of the use of imprisonment. . .." (2003:39), their overall conclusion—at least within the context of a discussion about sentencing reform—is that "Canada has witnessed an increase in the use and length of terms of imprisonment" (2003:41). Part of the divergences between the description offered by Roberts et alia (2003) and our own may relate to their reliance on incomplete court data.

[5] See also Haggerty, who suggests that "[i]n the 1970s, as the issue of crime became increasingly politicized, a 'race to the bottom' commenced, where politicians clamoured over one another to offer the most harsh and reactionary criminal justice policies. This process has been particularly marked in the United States, but continues to have spillover effects in the United Kingdom and Canada" (2001:197).

[6] For a brief summary of Garland's more nuanced argument, see footnote 24.

[7] We present only police-reported crime because Canada has thus far released only three national victimization surveys (1988, 1993, and 1999). While limited, these data show that the overall victimization rate has not changed appreciably (see Gartner & Doob 1994;

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

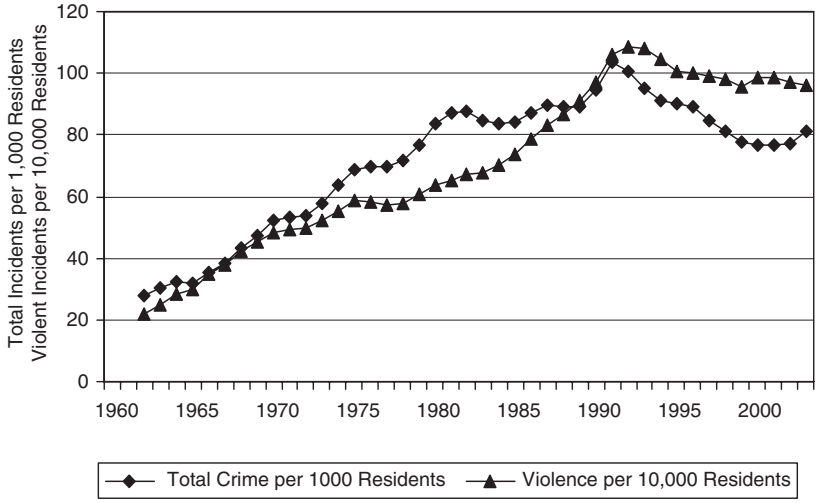

Figure 1. Police-Recorded Crime Rates, Canada (1962–2003).
Note: Total police-recorded crime rate is represented as the number of incidents per 1,000 residents. Violent crime is represented as incidents per 10,000 residents.
Source: Canadian Centre for Justice Statistics 1996, and other years in the same publication series.

total and the violent crime rates for Canada from 1962 to 2003,[8] depicting a substantial increase in reported crime beginning in the early 1960s and only leveling off in the early 1990s. This pattern is similar to that found in the United States and—at least until the mid-1990s—the trend in England.[9]

Even more convincing are the data on Canadian and U.S. homicide rates (Figure 2). By using the ratio of each year's homicide rate to each country's 1961 homicide rate (that is, by dividing each country's homicide rate for each year by its homicide rate in 1961), we can show the pattern for each nation on the same scale. Although Canada's homicide rate (in absolute terms) is approximately one-third of that of the United States during this period,[10] the shapes of the curves across time in the two countries are similar.

Besserer & Trainor 2000). This finding is relatively consistent with the official police data in Figure 1.

[8] Unless otherwise noted, all Canadian statistics reported in this article are from publications of the Canadian Centre for Justice Statistics, Statistics Canada (previously the Dominion Bureau of Statistics), or from Statistics Canada's Web Site, http://www.statcan.ca. Statistics Canada typically publishes annual reports on such matters as *Canadian Crime Statistics* or *Adult Correctional Services in Canada*. Rather than list each year that we accessed, we have listed a single illustrative instance of each series in the references.

[9] Figures for the United States and England and Wales are presented in Appendix 1.

[10] For example, the 1961 homicide rates for Canada and the United States were 1.28 and 4.8, respectively (ratio: 3.75). At Canada's highest point (1975), the rates were 3.03 and 9.6, respectively (ratio: 3.17), dropping in 2001 to 1.78 and 5.6, respectively (ratio: 3.14).

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

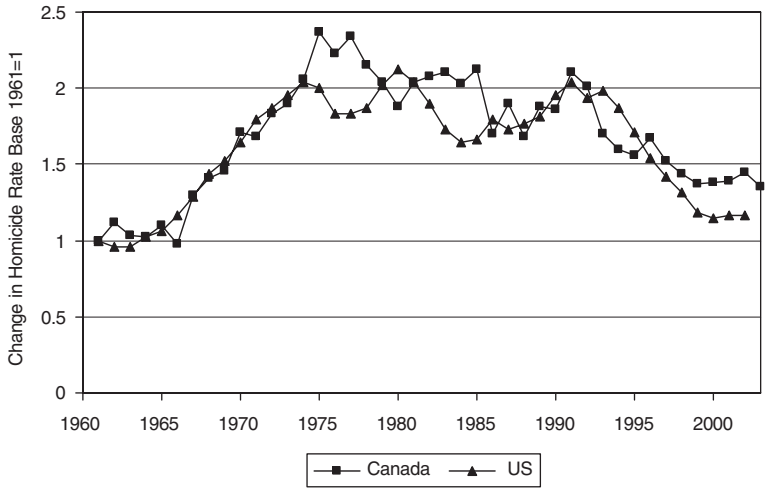

Figure 2. Change in Homicide Rates: Canada (1961–2003) and United States (1961–2002).

Note: For each country, the figure plots change from 1961. Each year's homicide rate (homicides per 100,000 residents) was divided by that country's 1961 rate (Canada, 1961 rate = 1.28; United States = 4.8).

Source: Dauvergne 2004 and *Sourcebook of Criminal Justice Statistics* 2004.

While the pattern of homicides in England differs to the extent that rates have not shown the recent decline evident in both Canada and the United States, the same general increase since the early 1960s is apparent.

Given these similarities, one might assume that the criminal justice responses of these countries would also be similar. Within this context, the lack of academic attention given to levels of imprisonment in Canada would not be surprising. It would seem that scholars have been content simply to note that Canada's imprisonment rate (e.g., 103 per 100,000 in the general population in 2002) is comparable to that in some European countries (e.g., 101 in the Netherlands, and 92 in an unweighted average of the European Union countries) and English-speaking nations (e.g., 116 in Australia), while it is lower than that found in other countries (e.g., 137 in England and Wales, 126 in Scotland, 144 in New Zealand, and [the most obvious difference] 702 in the United States) for the same year.[11]

[11] Cross-national comparisons are problematic in that different measures of the "prison population" are often available. These figures (with the exception of those of Canada) are taken from Home Office 2003:40. The rates of imprisonment presented by this source represent the number of people in prison on an average day per 100,000 residents. Similarly, our measure of the rate of imprisonment represents prison "counts"—that is, prison population or "stock"—rather than prison "admissions" or prisoner "flow."

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Indeed, the focus of recent discussions surrounding levels of incarceration has been on the dramatic increase in the United States over the past 30 years (Tonry 1999, 2001, 2004a; Whitman 2003; Ruth & Reitz 2003; Zimring 2001), as well as a similar—albeit less dramatic—rise in England (Tonry 2004b; Newburn 2002). While the recent increase in imprisonment rates in the Netherlands (Pakes 2004; Von Hofer 2003), the contrasting decreases in certain periods in other countries such as Germany (Weigend 2001) and Finland (Von Hofer 2003; Lappi-Seppälä 2000, 2001, 2005), and the relative stability—at least until very recently—in such nations as Denmark, Norway, and Sweden (Lappi-Seppälä 2005) have received sporadic attention, the United States and England continue to hold a near monopoly on scholarly inquiry in the English language academic literature.

A glance at Figure 3 and the increase depicted in American imprisonment rates since the mid-1970s justifies this focus. In striking contrast to the remarkable stability described by Blumstein and Cohen (1973) between 1930 and 1970, combined state and federal prison incarceration rates increased almost fivefold between 1970 and 2002. When the jail populations are included, the 2003 U.S. rate was 714 per 100,000 in the general population.[12]

England has also experienced increases in its imprisonment rates since 1960 (Figure 4). Although the rate of increase in the prison population changed strikingly upward in the latter part of the 1990s, a relatively steady increase is discernible since 1960. Taken as a whole, the level of incarceration in England increased from 59 per 100,000 in 1960 to 89 per 100,000 residents in 1990, reaching 139 per 100,000 residents in the general population in 2002.[13]

More precisely, the numerator of our measure is the number of people in prison on an average day and not the number of people who are admitted to prison each year. We have adopted this measure—as used by the Home Office (2003)—in part because it is considered to be the most common indicator of the use of imprisonment (Young & Brown 1993:3; Tonry 2004c:1187). More important, it constitutes—in our opinion—the most appropriate measure for our purposes. Specifically, it reflects the *overall* punitiveness of the criminal justice system—at the level of the police (e.g., policy shifts in apprehension and targeting of certain offenses), the courts (e.g., bail decisions, prosecutorial decisions to screen cases out of the formal court system, rates at which offenders are convicted and sentenced to prison as well as the length of custodial sanctions), and corrections (e.g., conditional release and parole recommitment). Indeed, the definition of *imprisonment rate* as the number of prisoners per 100,000 members of the general population has the powerful advantage of constituting a composite measure of all of these various factors that affect the levels of imprisonment in a given country. By concentrating on only one of these dimensions, one may miss other significant changes in punitiveness.

[12] Typically, those in custody awaiting trial and those sentenced to a year or less in custody are housed in jail facilities run by local, not state, governments. Because a different level of government administers these facilities, and until the 1980s reliable counts were not available in all states, they are not included in this figure.

[13] While this article focuses primarily on the comparison of Canada with its two closest comparators—the United States and England—imprisonment rates in other countries have also increased. Imprisonment rates (sentenced offenders as well as those on remand)

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

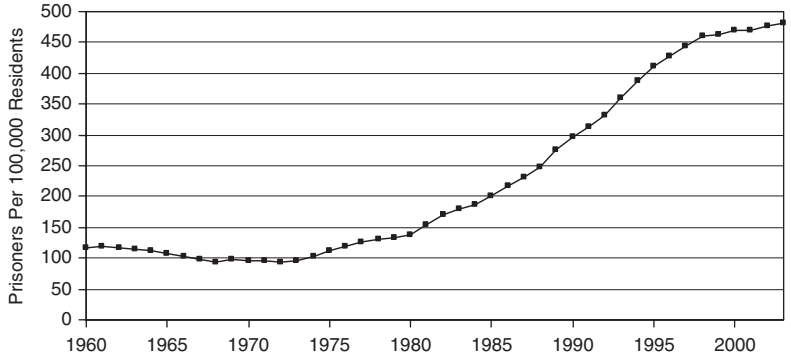

Figure 3. Imprisonment Rates (State and Federal), United States (1960–2003). Source: *Sourcebook* 2004. Jail counts (prisoners with short sentences and those awaiting trial) are not included. In 1983, the jail population was estimated as being approximately 100 per 100,000 residents, compared to approximately 237 per 100,000 residents in 2003.

In contrast, Canadian imprisonment rates (comprising sentenced and all other—largely pretrial remand—prisoners) over the same period look quite different. The level of incarceration in Canada has been relatively stable since 1960 (Figure 5). While there has been some fluctuation—with a low of 83 per 100,000 residents in 1974 to a high of 116 in 1995—there is no consistent upward trend in Canada's imprisonment rate. Using average daily counts of those in prison on any given night (including those not sentenced, largely those remanded in custody awaiting trial), this overall pattern is mirrored at both the federal and provincial levels.[14] The 2002/2003 incarceration rate was approximately 103 people in prison per 100,000 in the general population.

Clearly, the data depict Canadian blandness: imprisonment rates have not changed dramatically since 1960.[15] More important,

in New Zealand rose from 80 to approximately 126 per 100,000 total population between 1986 and 1996 (Government of New Zealand 1998) and—as noted in the text above—are reported (albeit from a different source) to have been more than 140 in 2002. In addition, the rate of imprisonment (sentenced plus remand prisoners) in Australia increased from 86 to 153 per 100,000 *adult* population between 1984 and 2003 (Australian Government 2004). Similarly, the imprisonment rate (sentenced as well as remand populations) increased in Scotland from 109 per 100,000 residents in 1994 to 129 in 2003 (Scottish Executive Online 2005). Finally, imprisonment has also risen in Ireland in recent years (O'Donnell & O'Sullivan 2003; O'Donnell 2004).

[14] In Canada, those receiving sentences of two years or more are housed in federal penitentiaries. Those sentenced to less than two years are provincial responsibilities.

[15] Obviously, this conclusion reflects the overall pattern of imprisonment across Canada for *all* offenders. Indeed, it is not our purpose to examine whether this stable trend is also descriptive of various subsets of the Canadian population. Clearly, a detailed study of the patterns of imprisonment across specific subgroups (e.g., female offenders, visible minority offenders, Aboriginal offenders) would be useful. An increase in the imprisonment of women has already been suggested (Boritch 1997). However, an in-depth examination of this hypothesis is difficult because there are presently no reliable estimates (for

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

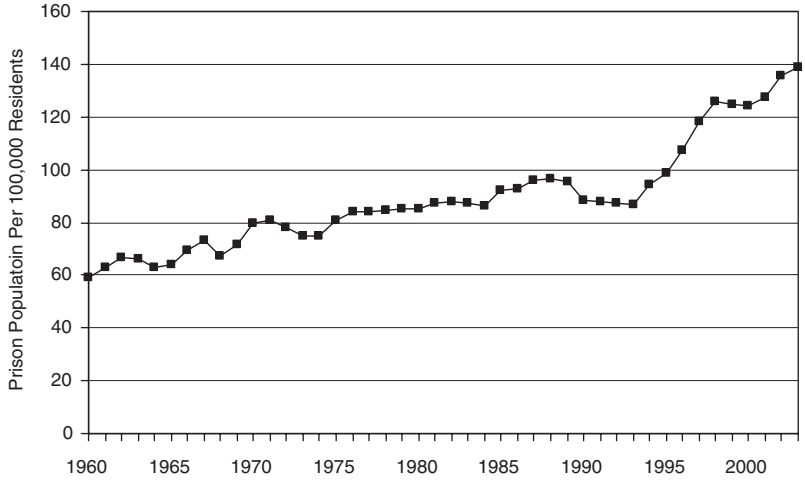

Figure 4. Imprisonment Rate, England and Wales (1960–2003).
Note: Imprisonment rates include remand populations.
Source: Home Office 2003, 2004a.

they provide an intriguing counter to the patterns found in nations considered to be very similar to Canada.[16] Indeed, the natural assumption on the part of many scholars that Canadians—like some other English-speaking citizens—have become more punitive in their response to crime (at least as reflected in levels of incarceration) has not been borne out by empirical evidence. On the contrary, despite experiencing forces similar to those that have led to an increase in imprisonment in other nations, Canada seems to have largely been able to resist or counter them.

Canadian Punitiveness: Talk Tough—Act Softly

The relative stability of Canadian imprisonment rates distinguishes this nation from its two closest comparators. However, it would be misguided to conclude from these data that Canada has been immune to pressure to adopt more punitive policies. On the contrary, an examination of several of the changes introduced in

the time period used in this article) of the average daily population of women in provincial institutions (Kruttschnitt & Gartner 2003)—the measure that we have argued to be most appropriate for the purposes of examining increased overall punitiveness within the criminal justice system. Similar difficulties arise in estimating the size of the Aboriginal Canadian imprisonment rate (Roberts & Melchers 2003).

[16] Although it is also important to note that while Canada's stability in imprisonment contrasts with the increases in both England and the United States, England's rate—in absolute terms—continues to be more similar to that of Canada and other European countries than to that of the United States.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

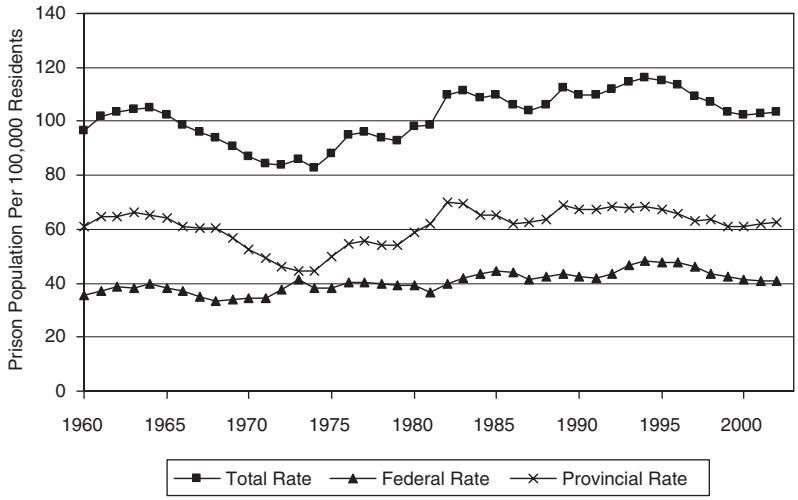

Figure 5. Imprisonment Rates (Federal and Provincial), Canada (1960–2002).
Note: Since 1980, data are reported by fiscal year. Provincial prisons include remand populations and other nonsentenced prisoners.
Source: Canadian Centre for Justice Statistics 2004, and other years in the same publication series.

Canadian policy and legislation suggests that many of the forces behind higher incarceration rates in other countries have also impacted Canada.

Most obviously, Canada witnessed the introduction, in 1996, of mandatory minimum sentences for offenders found guilty of any of 10 serious violent crimes with a firearm. Similarly, the maximum sanctions for certain offenses were increased during the 1990s. Paralleling, to some extent, these changes in the adult criminal justice system, the maximum sentences for youths convicted of murder in youth court were increased both in 1992 (from three years to a total sentence length of five years less a day) and again in 1996 (to 10 years). This change in the youth system was also accompanied by changes in the rules governing the transfer of young offenders charged with serious crimes to adult court, rendering this process easier to accomplish by creating "presumptive transfers" to adult court of those over 16 years old charged with a serious violent offense.

Harsher practices were also introduced outside of the immediate sphere of sentencing. A complex procedure for reducing the period of parole ineligibility for some offenders convicted of murder was made more restrictive in 1997 in response to a public outcry protesting the application of one of Canada's most notorious serial killers. Similarly, Ontario—Canada's largest province—claimed in 1999 to have succeeded in reducing the number of

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

offenders released on parole from provincial prisons (prisoners with sentences of less than two years).

Clearly, Canada has not escaped many of the broader forces propelling countries toward more punitive responses to criminal behavior. The difference—it would seem—resides in the extent to which harsher policies and practices have been allowed to affect the level of punitiveness. Indeed, while the mandatory minimum sentence for violent crimes carried out with a firearm (four years in prison) did, in fact, increase the sentences that *some* offenders received, it is likely that the "new" sanction would not significantly differ from that which would have been handed down under the prior legislation for most offenders. Given the seriousness of the offense and the fact that those offenders falling under these new mandatory minimum sentences would frequently have criminal records—often serious in nature—it is probable that they would already have received a four-year sentence.[17] Hence the legislation almost certainly contributed little to prison populations.

It is also noteworthy that previously legislated mandatory minimum sentences disappeared for drug offenses—a type of criminal activity responsible for a disproportionate proportion of the increase in the U.S. prison population during the 1980–1990s. Until 1987, Canada had a mandatory minimum sanction of seven years for importing narcotics. In that year, the Supreme Court of Canada ruled in *R. v. Smith* (34 C.C.C. (3d) 97) that this mandatory minimum penalty constituted cruel and unusual punishment under Section 12 of the Charter of Rights and Freedoms. As Friedland notes in discussing the implications of this case, "It is unlikely that the Canadian Parliament would have taken the American path [toward a high incarceration rate] but the Supreme Court [of Canada] would have made it constitutionally difficult to do so [had Parliament attempted to achieve this goal through very high

[17] Comprehensive sentencing data are not available for serious violent offenses with firearms. However, some sentencing data are available for nine of the then 12 provinces/territories. Unfortunately, even for these jurisdictions, including the three largest provinces, data are not available for the upper level of trial court that would be likely to be handing down the longest sentences. With these caveats in mind, we used robbery as an example and estimated that 38% of all robberies prior to the introduction of the mandatory minimums would have resulted in a sentence of at least two years. In 1995, an examination of more than 20,000 robberies found that 24% involved firearms (Canadian Centre for Justice Statistics 1996:46, Table 4.3). It is plausible to conclude from these two sets of data that most of the firearms-robberies would have received a sentence of at least two years and would, therefore, have served their sentences in a federal penitentiary. Correctional records show that 32% of all penitentiary admissions were facing determinate sentences of four years or more and that all robberies constituted only 20% of penitentiary admissions. Hence it is entirely plausible—though by no means certain—that most of the sentences for robbery with a firearm would have been four years or more before the mandatory minimum sentence of four years was instituted.

mandatory minimum sentences]" (2004:458). In fact, the government of Canada never attempted to legislate a more selective mandatory minimum sanction for this offense.

Similarly, increases in maximum penalties generally lack any real consequence for Canadian imprisonment rates. Canadian maximum sentences have seldom restricted sentencing judges, as the legislated maximums are typically considerably harsher than sentences handed down in court. The Canadian Sentencing Commission notes that it could find no evidence that the maximum sentence had ever even been used for some offenses. Based—to some extent—on these findings, this commission concluded that Canadian maximum sentences are unrealistically high, and consequently "[a]ny serious guidance they might give the sentencing judge or the public is lost" (1987:64). For example, the maximum penalty was raised in 2003 from six months to 18 months in prison for an adult who willfully fails to uphold an agreement into which she or he voluntarily entered to supervise a youth who has been released from custody awaiting trial. In the year when this increased maximum sentence was initially introduced into Parliament, Doob and Sprott found—on the basis of an analysis of available data—that "[i]t seems likely... that *no* adult was [even] *charged* with this offence..." (2004:231, footnote 13; emphasis added).

This pattern of the limited expression of more punitive provisions can also be found in the youth criminal justice system. The substantial increase in the maximum sentence for murder handed down in youth court under the changes introduced in 1996 appears to have had little impact. Indeed, the number of youths eligible for such sentences is exceedingly small across the country as a whole. For instance, a mere six youths were sentenced in youth court for murder in 1998–1999, 9 in 1999–2000, and 10 in 2000–2001.[18]

Further, this increased maximum sentence in youth court for murder could ironically serve to *decrease* the imprisonment period for youth found guilty of this offense. It is probable that this increase in the punishment in youth court has made it less attractive to prosecutors or judges (i.e., less necessary from a proportionality

[18] Long sentences in Canadian youth court are rare. In 1997–1998, the first full year after the second of the two increased maximum sentences for murder came into effect, 25,670 youths were placed in custody for criminal offenses. All of those found guilty of more serious charges (including household burglary, robbery, and serious sexual assaults) were eligible for three years in prison. Only murder cases were eligible for more than three years. Despite the fact that 74,528 youths were sentenced that year, and most of the 25,670 who were sentenced to custody were eligible for sentences at least two years in length, only 252 youths received sentences of between 13 and 24 months, and an additional 20 cases received sentences of more than two years (Canadian Centre for Justice Statistics 1999:15, Table 6).

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

perspective) to transfer these young offenders to adult court, in which the penalty (life in prison with a parole ineligibility period of up to 10 years) would be even more severe. Of the 49 youths facing murder as their most serious charge in 1999–2000, only 12 of them were actually transferred to adult court. Even more compelling are the results from recent studies (Doob & Cesaroni 2004; Doob & Sprott 2004:209, Fig. 4) that show that these provisions have had no discernible effect on the number of youths transferred.[19] While changes in the procedures for the transfer of youth to adult court[20] have been heavily criticized because of their apparent harshness in treating increasing numbers of youths as adults (e.g., Giles & Jackson 2003), the empirical evidence does not support these assertions. Rather, it seems that those who focus exclusively on the harsh language of the law or on public statements about it (e.g., Hogeveen 2005) appear incorrectly to equate public statements designed to sound harsh with actual treatment of youths.

The parole system also seems to show no exception to this (strategic?) use of more punitive measures. Legislation that came into effect in 1997 did, in fact, reduce the availability of a complex process permitting certain people serving life sentences for murder (e.g., serial murderers) to apply for parole before they would be normally eligible.[21] However, Roberts (2002) argues that this change in the law only succeeded in limiting the number of applications but did not affect the success rate of those who applied. Offenders (e.g., multiple murderers) who were no longer eligible for this process were likely to be those who would not have been successful had they been able to apply.

In contrast, a category of "accelerated parole reviews" was instituted in 1992 for most property offenders and other nonviolent offenses serving their first sentence of two years or more. For these

[19] Doob and Sprott (2004) examine the effect of the provisions that came into effect in 1996, creating "presumptive transfers" to adult court for any youth over age 16 who was charged with murder, manslaughter, attempted murder, or aggravated sexual assault. They estimate that in the four years after the change in law, no more than 14–17% of these cases were, in fact, transferred to adult court. This figure is remarkably similar to the proportion (10–19%) transferred in the five years before the "presumption" of a transfer was made law.

[20] These 1996 procedural changes for the transfer of youths to adult court were subsequently abolished in 2003. With the introduction of the new Youth Criminal Justice Act on April 1, 2003, youth transfers to adult court are no longer permitted. Rather, this criminal procedure was substituted with the allowance—under special circumstances—to hand down adult sentences within youth court.

[21] When capital punishment was abolished in Canada in 1977, the sentence for murder became a mandatory sentence of life in prison with a parole ineligibility period of 25 years for first-degree murder and 10–25 years (set by the judge) for second-degree murder. However, a prisoner with a parole ineligibility period of longer than 15 years was permitted to go before a jury of 12 citizens after serving 15 years to argue for a reduced parole ineligibility period.

offenders—who are likely to constitute a fairly large group[22]—the path to full parole was made easier by creating a presumption in favor of release on parole after serving one-third of the sentence. By 1995–1996, 83% of those eligible for this administrative provision were granted parole (Canadian Centre for Justice Statistics 1997:93).

Similarly, when a conservative Ontario government became "tough on parole decisions" shortly after it was elected in 1995—rendering it more difficult for provincial prisoners (i.e., those serving prison sentences of less than two years) to obtain conditional release—the effect on the size of the prison population was imperceptible. Given that the vast majority of offenders incarcerated in provincial prisons have very short sentences (and do not, therefore, come before the parole board), the potential impact of this new practice on imprisonment rates was substantially limited. Indeed, while the proportion of inmates being granted parole clearly dropped with the tighter restrictions—as did the overall number of offenders applying for conditional release—there was no discernible increase in the province's prison population.[23]

The pattern depicted in these examples is one of muted or limited expression of wider punitive trends. While Canada has obviously not been immune to the broader forces that compel other nations toward harsher responses to crime, it has been largely able to restrict or contain their impact. Indeed, the "Canadian case"—when contrasted with those of the United States and England—appears to suggest that nations are not powerless in the face of these pressures. On the contrary, countervailing forces can also be brought to bear on them, limiting their expression.[24] Borrowing from the language of developmental psychology, it would seem that Canada has not only been able to escape several of the forces—or "risk factors"—producing higher imprisonment rates in other nations. Rather, there also appear to be certain "protective factors" that have restricted the extent to which Canada has adopted the punitive policies at the root of the U.S. and English levels of incarceration.

[22] In 2002–2003, approximately 31% of penitentiary admissions would have been eligible in terms of their offense classification. However, it is impossible to estimate from existing published data the portion of these offenders who were serving their first penitentiary term.

[23] In 1994–1995, the year before the Conservatives were elected, the Ontario provincial prison population was 67 per 100,000 residents. Over the following eight years, it vacillated between 64 and 70 per 100,000 residents.

[24] Echoing this conclusion, Garland tempers his general theory of the growth in punishment by explicitly acknowledging that "a more extensive work of international comparison" would be needed to explain "how other societies, such as Canada . . . have experienced the social and economic disruptions of late modernity without resorting to [the] same [harsh] strategies and levels of control [as the United States and England]" (2001:202).

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

In brief, we argue that a number of historical, structural, and cultural factors may be identified as either aiding Canada in avoiding more punitive tendencies or limiting their expression within the Canadian context. However, it is important to note that these individual explanations are not intended to constitute a simple list of factors on which Canada is different from the United States and/or England. Nor is it likely that any single factor (or even the addition of several factors) can account for the difference in outcome between Canada and its two closest comparators. In fact, several similarities are also apparent among these countries. We argue that these country-specific cultures, histories, and political institutions combine in intricate ways. As such, the difference in imprisonment rates is more realistically the product of a unique and complex interaction of multiple factors whose overall or combined effect holds the key to (at least partially) understanding Canada's anomalous pattern.

Resisting Punitive Trends: Reduced Risk Factors

Not surprisingly, many of the recent explanations offered for increased imprisonment have focused on the specific realities of the United States (e.g., Tonry 2004a; Ruth & Reitz 2003) and England (e.g., Tonry 2004b; Newburn 2002). Given the close affinities between these nations and Canada, their lack of application to the Canadian context is noteworthy. Indeed, the value of these explanations—for our purposes—is that they underline the reduced exposure or experience that Canada has had with many of the identified risk factors or driving forces toward more punitive policies and practices.

First, Canada has avoided the volatility in the manner in which punishment has been allocated in the United States and England. Drawing from Ruth and Reitz's contention (2003) that the rising crime rates between the mid-1960s and mid-1970s in the United States coupled with a *relative* drop in punishment (per crime committed) were important in leading to a disillusionment with rehabilitation and an increased attractiveness of more-punitive sentencing policies, Canada's stability in sentencing over the past half century suggests an important way in which Canadians have avoided more punitive tendencies.

In contrast with the United States and England, Canada has never given primacy to any one specific sentencing purpose. Rather, Canadian sentencing policies have historically been guided by the notion that multiple (and presumably equally acceptable) purposes of sentencing exist and that judges are responsible for choosing the most relevant purposes for each case (Hogarth 1971;

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

R. v. Morrissette and two others, 1 C.C.C. (2d) 307 [1970]). Indeed, Canadian judges have had—for the most part—wide discretion to sentence within a range determined largely by practice and by guidance from appeals courts. In fact, courts of appeal have not only developed the notion that judges should choose among all of the standard purposes of sentencing (i.e., denunciation, individual and general deterrence, incapacitation, and rehabilitation), but they have also reined in individual outliers.[25]

Even when Parliament gave sentencing a legislated purpose and a set of principles in the Criminal Code in 1996,[26] these provisions did not challenge the guiding notions in place for decades as a result of judicial decisions. The legislation stated that sentences were supposed to

> contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: [denunciation, general and individual deterrence, incapacitation, rehabilitation, reparations to victim and community, promoting a sense of responsibility and acknowledgement of harm by offenders] (Criminal Code, Section 718).

While there was also a new requirement that "[a] sentence [be] proportionate to the gravity of the offence and the degree of responsibility of the offender" (Criminal Code, Section 718.1), we can find no important discernible changes or shifts in sentencing *practices* in Canada as reflected in imprisonment levels since 1996.[27]

Within this context, Canada—unlike the United States—has never experienced a crisis of principles in sentencing whereby disillusionment with one predominant objective leads to the wholesale adoption of another. Hence, the radical shift in American courts from an indeterminate model based on a rehabilitative paradigm to one of determinate sentencing rooted in principles of denunciation, deterrence, and incapacitation was averted. Similarly, Canada avoided England's sudden abandonment in the 1990s of previously moderate criminal justice policies and an apparent (full-scale) importation of American "tough on crime" (retributive and deterrent) approaches to crime characterized by harsher legislation and

[25] In *Morrissette*, trial judges were told that even when sentencing for deterrence purposes, it does not "necessarily follow that a long sentence is required to achieve the purpose . . . There must be a weighing of all of the factors and a sentence determined that gives a proper balance to each of them" (*R. v. Morrissette* 1970:310).

[26] References to the Canadian Criminal Code will use the section numbering established in the 1985 revision and currently (early 2006) in use. These amendments were part of a bill that received Royal Assent in 1995 as Chapter 22 of the Statutes of Canada, 1995, and were proclaimed into force on September 3, 1996.

[27] This lack of change may reflect the fact that the relationship between the proportionality principle and the various sentencing objectives was never clear.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

sentencing guidance and a large increase in the use of imprisonment by judges (Ashworth 2001:81; Millie et al. 2003).[28] Indeed, a former senior Home Office administrator—in describing the British government's change of direction in its policies on crime and criminal justice during the 1990s—referred to it as "probably the most sudden and the most radical which has ever taken place in this area of public policy" (cited in Newburn 2005:12). While Canada may not be able to claim that its stability in sentencing is the result of controlled or structured policy (Doob & Webster 2003), the effect has been to shield sentencing from one of the powerful driving forces in the United States and England toward more punitive responses to crime.

Second, Canada has lacked the enthusiasm of the United States and England (primarily since the 1990s)[29] toward harsher sanctions (Tonry 2004c). Indeed, the tough-on-crime movement adopted by the United States and England appears to have permeated and propelled a number of key players—the general public, the media, the politicians, and the judiciary—toward support for increased punitiveness (Garland 2000, 2001). While the causal relationships among these groups are unclear, the introduction of more punitive practices and policies has gone largely unchallenged in these countries. Indeed, politicians from the two main political parties in the United States and England have positioned themselves as tough on crime, neither wanting to be associated with "softer" responses (Millie et al. 2003; Beckett 1997)[30]. Similarly,

[28] A simple comparison of official statements in the 1980s with those in the 1990s underlines the radical shift in the role of imprisonment. For instance, a 1988 Green Paper reaffirms the view that "[I]mprisonment is not the most effective punishment for most crime. Custody should be reserved as punishment for very serious offences. . ." (Home Office 1988:1–2). In contrast, the 1993 Home Secretary, acknowledging that his criminal justice policy would lead to an increase in the use of custodial sentences, stated that "I do not flinch from that. We shall no longer judge the success of our system of justice by a fall in our prison population . . . Let us be clear. Prison works" (cited by Newburn 2005:12).

[29] Tonry (2004b) notes the increase between 1989 and 1996 in the proportion of the English public who were most likely to favor imprisonment when asked in a survey about the appropriate sentence for a recidivist burglar. While American rates rose from 53 to 56% during this period, the English increased from 38% (a rate well below that of the United States) to 49% (a rate approximating the Americans). Similarly, Millie et alia (2003) characterize the public climate of opinion in the 1990s in England as more punitive in nature—a phenomenon paralleled by the tough-on-crime stance adopted by both the government and the opposition.

[30] Beckett (1997) demonstrates that crime became a national political issue in the United States in 1964 and remained so into the 1990s. Most important, she demonstrates that while the tough-on-crime approach was first raised at the national level by the Republicans in 1964, the Democrats never seriously challenged it. Former U.S. President Bill Clinton is quoted as observing in 1994 that "I can be nicked on a lot, but no one can say I'm soft on crime" (Tonry 2004a:8). Similarly, Millie et alia note that in response to the perceived leniency of England's 1991 Criminal Justice Act and the subsequent bad press depicting it as "'liberal do-gooding' at a time when crime was out of control" (2003:378–9), the government began introducing numerous get tough policies with little challenge from

judges—either voluntarily or through increasingly punitive sentencing guidelines[31]—have begun showing a greater propensity to send more people to prison and for longer periods of time (Hurd 2004; Ashworth 2001; Millie et al. 2003; Blumstein & Beck 1999). Coupled with the "institutionalization" of the experience of crime through the mass media (Garland 2000) and an increasingly punitive public mood (Millie et alia 2003; Garland 2000, 2001), these countries have lacked powerful inhibiting forces that would challenge or moderate punitive enthusiasm.

In contrast, the tough-on-crime movement has not caught on to the same extent within the Canadian imagination. While the media and the general public have not been immune to calls for tougher policies and practices (Roberts et al. 2003; Doob 2000; Doob et al. 1998), recent research shows that most Canadians do not strongly support "get tough" strategies as a solution to crime (Public Safety and Emergency Preparedness Canada 2001). More important, the government and the opposition rarely make crime issues a central part of their political platform. Rather, the role of the governing party tends to be one of quiet acceptance of a more balanced response to crime (Meyer & O'Malley 2005). As an illustration, the federal ministry responsible for federal penitentiaries recently concluded on its official Web site that

> Most Canadians feel safe in their communities. Conveying these findings to the public is important to counter-balance media portrayals of crime as a pervasive problem. Compared to other issues, the majority of Canadians do not view crime as a priority issue for the government. This information is helpful in ensuring that the government's response to the crime problem is kept in perspective (Public Safety and Emergency Preparedness Canada 2001:2).[32]

the opposition. Both political parties "had positioned themselves as 'tough on crime'... [with] no front-bench politician from either of the main political parties ... unequivocally [advocating] the sparing use of imprisonment since Douglas Hurd" (2003:379). Scholars (e.g., Newburn 2005) have suggested that this new bipartisan consensus may be yet another powerful factor in the growth in punishment. Certainly in England, the recent occupation by New Labour of the law-and-order territory traditionally monopolized by the Conservatives has served to "force" the Conservatives toward even more punitive policies. Interestingly, Canada has seen a similar consensus established between its two principal political parties. However, the difference resides in the fact that both the (federal) Liberals and the Conservatives have followed—at least until 2005—a policy of restraint in the use of imprisonment.

[31] Ashworth notes that "[S]teadily, and with relatively little legislative encouragement, the [English] courts increased their use of imprisonment to the extent that between early 1993 and early 1997 the prison population rose by 50 percent" (2001:81). However, Millie et alia suggest that the tough-on-crime approach manifested by the judiciary also reflected pressure from politicians and the media for tougher punishment, as well as the perception —on the part of judges—of an increasingly punitive public mood (2003:381).

[32] A parallel example may be found with the treatment of sex offenders. Petrunik notes that while "Canadian media coverage uses sensationalist language in making claims

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Canadian judges have also demonstrated a lack of enthusiasm for more punitive responses to crime. Despite legislative freedom to increase the punitiveness of sentences, there was no notable change in the proportion of convicted cases sentenced to prison or in the overall mean prison sentence length handed down over the most recent 10-year period of available national data, from 1994–1995 to 2003–2004 (Thomas 2004:10). Further, court decisions—like legislation more generally—have resisted many of the exclusionary practices adopted by other countries toward offenders. Tonry (2004b) suggests that one of the forces that allowed for the growth in incarceration in England was the portrayal of the offender as no longer deserving of being considered (and, consequently, treated) as a full citizen with all of the rights guaranteed by this status. In contrast, the Supreme Court of Canada in 2002 gave the right to vote to prisoners while serving penitentiary sentences (*Sauvé v. Canada*), a result quite different from the disenfranchisement policies of the United States and England (Uggen & Manza 2002; Hurd 2004).[33]

Canada's response to issues of race and sentencing also differs from that of the Americans. In the United States, the "war on drugs" arguably reflected a period of intolerance toward African Americans who were labeled as "bad people" (Tonry 1995, 2004a)—a view rooted in the individual rather than in social forces that may have produced the original criminal behavior.[34] While Canada—and its justice system—have certainly not been immune to racist attitudes, with disadvantaged groups such as African Americans and Aboriginal Canadians continuing to be overrepresented in Canada's prisons (*Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* 1995), its response—at least in terms of its expression through laws related to imprisonment—has clearly been different. Indeed, the government of Canada has attempted, through targeted legislation, to *reduce* the incarceration level of its most disadvantaged and imprisoned group: Aboriginal Canadians. In particular, a sentencing principle was included in the 1996

about sex offenders and their victims . . . the use of language in policy forums has been more 'moderate'" (2003:57). In Canada, criminal justice initiatives focus on "high-risk offenders" as opposed to "sexually violent predators," as in the United States.

[33] Even murderers are perceived under Canadian criminal law as individuals who—for the most part—should eventually return to society. A procedure allows almost all of those with life sentences with parole ineligibility periods exceeding 15 years the possibility of going before a jury to request that the length of this period be reduced. Despite its controversial nature, juries in approximately 80% of the cases going to court agree to reduce the parole ineligibility period (Roberts 2002). Further, there have been no serious attempts in Canada to create the American-equivalent sentence of life without parole.

[34] One can find a similar phenomenon in England, whose "three strikes" provision for certain drug offenses introduced by the Home Secretary in 1997 was described by Ashworth as "symbolic"—"designed to create resentment of certain types of offender and at the same time to bolster the political fortunes of the Government" (2000:180).

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Criminal Code amendments requiring that "[a]ll available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders" (Section 718.2[e]).[35] Further, the constitutionality of this section was challenged and upheld by the Supreme Court of Canada (*R. v. Gladue,* 1 S.C.R. 688 [1999]). In fact, specialized courts in some locations deal exclusively with Aboriginal people in an attempt to give meaning to this provision.[36]

Resisting Punitive Trends: Coexisting Protective Factors

While Garland's (2000, 2001) general theory of the growth in punishment focuses on those forces that tend to lead to increased imprisonment, he also seems to suggest that other factors may simultaneously exist that keep this pressure in check. Similarly, we argue that it may not be sufficient simply to reduce the risk factors associated with increased punitiveness. Rather, it appears—at least in the Canadian case—that certain protective forces are also at work. More specifically, several historical, structural, and cultural factors can be identified that have limited Canada's prison population.

Historical Protective Factors

An examination of Canada's criminal law and numerous formal statements of criminal justice policy on the use of criminal sanctions since the late 1960s leaves little doubt about Canadian tradition

[35] When an equivalent section focusing specifically on young Aboriginal offenders was not included in Canada's most recent youth justice legislation (the Youth Criminal Justice Act [2003]), the (appointed) Senate of Canada (Canada's equivalent of England's House of Lords) amended the act to incorporate it. Given the rarity with which the Senate challenges the (elected) House of Commons and the possible confrontation that such an act may precipitate, it is clear that the Senate felt strongly about the need to include this symbolic and possibly protective clause in the legislation. Similarly, a confidential briefing book prepared by the Correctional Service of Canada for an incoming federal cabinet minister responsible for federal penitentiaries (and released as a result of a freedom of information request) listed as a "corporate priority" for the Correctional Service of Canada during 2002–2005 "[t]o contribute to the reduction of the incarceration rate of Aboriginal offenders" (Correctional Service of Canada 2002:23).

[36] We know of no studies that adequately assess whether these specialized courts are successful in this regard. However, there has been cautious support for extending the special consideration given to Aboriginal offenders to others. The Court of Appeal for Ontario noted that even though only Aboriginal offenders have a unique statutory status for the purposes of considering social circumstances, "[t]he principles that are generally applicable to all offenders, including African Canadians, are sufficiently broad and flexible to enable a sentencing court in appropriate cases to consider both the systemic and background factors that may have played a role in the commission of the offence and the values of the community from which the offender comes" (*R. v. Borde* 2003: Court of Appeal for Ontario, Docket C38189, 10 February, at paragraph 32).

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

vis-à-vis its imprisonment policies. The leitmotif running through these documents is that of an official culture of restraint in the use of incarceration. In striking contrast with the United States and England, Canada has shown deep skepticism about imprisonment as an appropriate response to crime.

Canada's caution in the use of imprisonment was written into legislation in 1996. Section 718.2 of Canada's Criminal Code states that "An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances," and "All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders. . .."

However, these statements constitute only part of a long history of recognition by the government and government-appointed commissions of the overuse of incarceration. In 1969, the Canadian Committee on Corrections stressed the importance of dealing with the offender in the community and explicitly suggested "changes in sentencing policy to provide for the use of alternatives to prison. . .." (1969:309). It noted that "through these measures a major decrease in Canada's prison population would prove possible, without increased danger to the public and with greater success in terms of rehabilitated offenders" (1969:309). Despite never succeeding in reducing incarceration levels, the committee's views set the tone and theme for the rest of the century.

The first report of the federal Law Reform Commission of Canada in 1976 also promotes restraint in the use of the criminal law generally and of imprisonment in particular. In fact, it urges Parliament to employ prison sentences "sparingly" as a penalty of last resort (1977:24–5). This recommendation is reiterated in the Government of Canada's 1982 statement of policy on criminal law. It concludes that "it seems justifiable and appropriate to endorse the general philosophy of restraint in criminal law. . .." (1982:51). In particular, it suggests that "[i]n awarding sentences, preference should be given to the least restrictive alternative adequate and appropriate in the circumstances" (1982:53).[37] This same sentiment was quoted with approval 20 years later by the then Minister of Justice. In a speech to the Canadian Bar Association, he reaffirmed that the criminal law should be used "only as a last resort" (Cauchon 2002:4) and that "there may be other ways to achieve positive social outcomes" (2002:2).

Similarly, a policy paper entitled *Sentencing* (Government of Canada 1984) notes that Canada's imprisonment rate "looks relatively restrained only in comparison to that of the U.S., and such

[37] Notably, this policy statement was released by the then Minister of Justice, Jean Chrétien, who became Prime Minister from 1993 to 2003—a period during which imprisonment increased dramatically in the United States and England.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

other countries as the Soviet Union and South Africa" (1984:8). Like its predecessors, this document recommends that judges consider prison only after rejecting other choices. Similarly, the Canadian Sentencing Commission (1987) notes under the subheading "An Over-Reliance on Imprisonment" (in a section on the "Effects of the Structural Deficiencies in Sentencing" (1987:71) that "much concern over the years has been expressed concerning Canada's level of dependence on incarceration as the "standard" penalty for criminal offences. In the submissions to this Commission, most groups and individuals called for restraint in the use of custodial sentences and advocated a greater use of community sanctions" (1987:77).

Although the recommendations of the Canadian Sentencing Commission were never adopted, they serve as another indicator of the degree to which the notion of restraint in the recourse to custody is entrenched in Canada's formal statements of criminal justice policy. Indeed, while the Commission had been established by a Liberal government, the report was submitted in 1987 to a (majority) Conservative government. In responding to the report, the Conservative-dominated House of Commons Committee on Justice and Legal Affairs suggested not only that "imprisonment should be used with restraint" (Daubney 1988:54), but that "greater use [should be made] of community alternatives to incarceration" (1988:6). In fact, it was concluded that the use of incarceration for nonviolent offenders "is clearly too expensive in both financial and social terms" (1988:49), and consequently "[e]xpensive prison resources should be reserved for the most serious cases" (1988:50).

The decade of the 1990s did not usher in any significant departures from the consistent culture of restraint characterizing Canadian criminal justice policy. In response to a 1995 request made by the federal, provincial, and territorial ministers responsible for justice to "identify options to deal effectively with the growing prison populations," proposals by deputies symptomatically focused on noncustodial measures (*Corrections Population Growth* 1996:i). Suggestions were made for the expanded use of diversion programs, the nonincarceration of low-risk offenders, and the increased use of restorative and mediation approaches. A screening mechanism to divert cases from the justice system as well as legislated principles encouraging nonprison sanctions were made part of the Criminal Code in 1996. As a direct attempt to respond to provincial concerns about their levels of incarceration, a "conditional sentence of imprisonment" was also introduced to reduce the use of custodial sentences of less than two years.[38]

[38] Roberts and Gabor (2004) provide some indications that this strategy has been minimally successful.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Clearly, the value of Canada's long history of official statements urging caution in the use of imprisonment does not reside in any real impact that it has had on the government's actions or in changing criminal justice practices. Indeed, there is no empirical evidence demonstrating any appreciable *reduction* in Canadian incarceration rates since 1960. Rather, this official culture of restraint would seem to be important in protecting Canada from some of the broader forces that have propelled other nations toward more punitive policies. Certainly in comparison with the United States or England, the simple maintenance of the status quo in imprisonment rates may be seen as an accomplishment.

Structural-Political Protective Factors

Popular punitiveness has been a reccurring theme in the 1990s as scholars note the increasing degree to which criminal justice issues have become politicized and influenced by public opinion in many countries. As Tonry remarks, "U.S. crime policy for nearly two decades has been driven much more by ideology, emotion and political opportunism than by rational analysis of options and reasoned discussion" (2001:179). Similarly, Millie et alia (2003) affirm that both English politicians and judges were influenced by the more punitive climate of public opinion characterizing the 1990s. The Lord Chief Justice at the time suggested that the escalation of the prison population resulting from an increased use of imprisonment by the courts reflected—to a large extent—the perceived increasingly punitive public mood (Ashworth 2001:82).

This politicization of crime policy has been identified (e.g., Beckett 1997; Roberts et al. 2003) as a powerful force in the trend toward more punitive approaches to criminal behavior. Hence, it is noteworthy that Canada has largely escaped this phenomenon. As a partial explanation, we suggest several structural factors. In particular, Canada's political and legal systems are structured in such a manner as to insulate or buffer government officials and judges from the wider forces of popular punitiveness.

Unlike England with its unitary criminal justice jurisdiction and the United States with its 51 separate criminal justice jurisdictions, the Canadian federal government is responsible for criminal law while the provinces have responsibility for the administration of criminal justice. Therefore, Canadian provincial governments have no direct power to modify the criminal law despite the fact that they play the largest role in the administration of justice. This distinction is crucial in creating and maintaining a two-tiered political structure that distances the federal government—with the power

to increase punitiveness within the criminal justice realm—from provincial and public demands.

Indeed, provincial governments, which tend to be susceptible to populist punitive talk, have no legislative power over sentencing. The federal government appoints all appeals court judges. Hence, no structural mechanism is available for local (grassroots) citizens' groups to create laws that have a direct impact on imprisonment policies, as has been the case in some U.S. states (e.g., California's three-strikes legislation; Vitiello 1997).[39] Combined with a broadly based disinclination by (federal or provincial) governments to support referenda on any subject (Lipset 1989), the issue of sentencing policies is clearly left in the hands of Parliament[40] and to federal governments through their appointments of judges. Indeed, Friedland argues that "the judiciary has–perhaps with the federal government's tacit approval–become the dominant player in the development of the criminal justice system" (2004:472).

Further, crises in crime tend to be local issues—although some high-profile crimes may, in fact, elicit questions in Parliament. Even with those criminal justice controversies receiving national attention (e.g., a plea bargain in one of Canada's most publicized murder cases), they have typically only raised questions of the administration of justice. In this way, the federal government can deflect concern back to the provinces, reducing pressure to change the law, while the provinces can criticize federal laws, knowing that it is unlikely that their protests will have any effect. Moreover, with maximum penalties far higher than sentences given out, the federal government can legitimately imply that it has no responsibility for lenient sentences. Similarly, because Canadian prosecutors have always had the right to appeal any sentence, the federal government has a simple response to concerns with lenient sentences: appeal them.

[39] Indeed, the Canadian government has generally limited the influence of citizens' groups or advocacy organizations on criminal policy. For instance, Petrunik notes that although both Canada and the United States established government-sponsored task forces on crime victims in the 1980s, the participation of victims' advocacy groups and the composition of these task forces were substantially different in the two countries (2003:59). The U.S. President's Task Force on the Victims of Crime was composed largely of victims' advocates and representatives of the religious and ideological right. In contrast, federal and provincial bureaucrats made up the Canadian Federal-Provincial Task Force on Justice for Victims of Crime (Roach 1999:281–3). The American victims task force took a punitive, confrontational approach—undoubtedly spurred on by a well-developed populist victims' movement—while the Canadian task force focused largely on "nuts and bolts" matters (Petrunik 2003:59).

[40] Lipset (1989) also suggests that because political party discipline is strong in Canada as compared to the United States, the vast majority of bills passed by Parliament originate with the government (and its civil servants) rather than with individual legislators.

This division of responsibility between the federal and provincial/territorial governments also ensures that changes to the criminal law require extensive consultation between the two "partners." Roberts (1998) has suggested that because of this shared responsibility, the federal government has been reluctant to legislate criminal justice policy without a consensus—at least among the largest provinces.[41] Not surprisingly, this process is typically time-consuming, virtually (albeit not entirely) eliminating the possibility of introducing quick-fix, politically motivated legislation in response to unusual circumstances that arise from isolated cases.[42]

Further, this concern with multilateral consultation has also enabled federal politicians to exploit differences among the provinces to resist policies that are not congenial to them. This "playing of one province against the other" tends to result in more moderate decisions. To illustrate, Quebec—which has typically urged the federal government to adopt youth justice policies that are less rooted in punishment—has frequently been used to temper more punitive demands from Ontario. Indeed, compromise between two opposing governments can be seen as an appropriate "Canadian" way of proceeding (e.g., Petrunik 2003).

Beyond these structural benefits of the two-tiered political system whereby the federal government is both insulated from public petitions for harsher sentences and strategically positioned to moderate provincial demands, many of the key players in the decisionmaking processes involving criminal justice issues also have the advantage of being insulated—to some degree—from swings in public opinion. Potentially most important is the fact that Canadian judges are appointed rather than elected, with no need for them to be confirmed or examined by any formal process. Consequently, they are less vulnerable to popular pressure for punitive sanctions. While there is evidence (Russell & Ziegel 1991) that judges often have ties to the particular government that appointed them, the political background of the Canadian judiciary is not typically known, discussed, or obvious to most observers. In fact, it

[41] The federal government tends to be seen as responsible for the financial—as well as other—ramifications of new legislation on the provinces (e.g., social and opportunity costs of increased imprisonment). Other governmental departments also can have input (either prior to or at the cabinet table) on the various impacts of the proposed bill. The consideration and harmonization of these multiple interests may be important in ensuring more moderate legislation.

[42] Certainly this was the case for reforms in Canadian sex offender policy over the last several decades. As Petrunik notes, rather than respond immediately to public and interest group pressure (as was the case in the United States), Canadian officials established a federal/provincial/territorial task force to study the issue of legislative and administrative reform (2003:56). Largely as a result of these interjurisdictional negotiations, reforms that were introduced within a few years in the United States took more than a decade in Canada.

is difficult to obtain any information (beyond simple biographical data) about judges who have been appointed in Canada (Russell & Ziegel 1991). As such, Canadian judicial decisions are less likely to reflect the party line of those in power or in opposition.

This selection process contrasts with that in the United States, whereby judges—like prosecutors—are more vulnerable to public sentiment as well as to the political parties that support their nominations (see, for example, Segal 2000). Similarly, Lipset notes that Canada and the United States differ "in the extent to which the two publics have insisted on the right to elect officials or to change appointed ones in tandem with the outcomes of elections" (1989:31). While judges and prosecutors in England differ in that they are not politically selected, Tonry (2004c) suggests that England's bureaucratic practitioners are still subject to nationalized policy control, also limiting their insulation from politics.

Further, criminal justice reforms in Canada are typically written by non-elected bureaucrats, civil servants, and nongovernmental experts—not politicians—who are less susceptible to public pressure, as they almost always remain in their positions independent of changes in government (Lipset 1989). Unlike citizens of the United States and England, Tonry notes that Canadians continue to demonstrate considerable confidence "in both the appropriateness and the competence of professionals to determine policy" (Tonry 2004c), entrusting these nonpartisan, non-elected authorities with significant power to guide criminal justice policy in Canada. Indeed, while the Minister of Justice and the federal cabinet ultimately determine any modifications of criminal law introduced into Parliament, specialists tend to define the need for changes, the nature of those changes, and the specific means of accomplishing them.

Clearly, the federal system, electoral procedures, and administrative organization all play a role in shielding Canada from wider punitive forces rooted in penal populism. However, this focus neglects one of the crucial structural issues central to the determination of imprisonment rates. Interwoven throughout each of these structural elements is the question of power. The distribution of power or the power dynamics among the various institutions involved in the sentencing process also exert a decisive influence on the degree to which custodial sentences are used.

In the United States and England, there has been considerable volatility in the division of power to those governing sentencing. In the United States, a fundamental shift in power occurred with the adoption of guideline systems. While an administrative body (parole authorities and judges) initially dominated the sentencing process, quasi-judicial bodies (sentencing commissions) and prosecutors—who could largely determine an offender's sentence

through the guidelines—subsequently took control. As a result, although judges are well-represented on sentencing commissions, sentencing judges are largely left out of the day-to-day process, as are appeals courts and even, to some extent, legislatures. These omissions simply perpetuate power conflicts already evident in prior periods (in the context of the U.S. Sentencing Commission, see Doob 1995).

Similar power struggles have raged in England. Indeed, Ashworth characterizes the 1990s as a "battleground between the government and the senior judiciary" (2001:81) in which "[t]he judiciary and the legislature . . . vie[d] for supremacy in sentencing" (2001:84). While the English Parliament had—for the most part—left sentencing to judges prior to the beginning of the 1990s, the 1991 Criminal Justice Act constituted a considerable departure from this practice.[43] In fact, the Lord Chief Justice of the time (Lord Peter Taylor) described the new sentencing provisions as forcing "sentencers into an 'ill-fitting straightjacket'" (cited by Wasik 1997:137). In retaliation, the new law was "reinterpreted" by judges, as if to announce "business as usual," despite "the small inconvenience of statutory intrusion" (Ashworth 2001:78).[44] As a result, the changes in sentencing laws that followed the 1991 Criminal Justice Act constituted nothing less than a "torrent of legislation" as the government attempted to outflank the judiciary by implying that their sentencing was too lenient in some spheres, making mandatory sentences a necessity.[45]

[43] In fact, the 1991 Criminal Justice Act, which sought to limit judicial discretion, was considered to constitute "a landmark in the development of English sentencing law" (Ashworth 2000:357). This affirmation would seem to be only strengthened with the numerous subsequent pieces of legislation imposed throughout the 1990s to further restrict judges, as well as with the introduction of the Sentencing Advisory Panel in 1998.

[44] To illustrate, Ashworth notes that the 1991 law's formula that a sentence "shall be . . .. commensurate with the seriousness of the offence" was reinterpreted by the Chief Justice of the Court of Appeal to mean "commensurate with the punishment and deterrence that the seriousness of the offence requires" (2001:78). Clearly, deterrence was written into the sentencing law by judges when it was obvious from previous government policy papers that it was meant to be excluded as a sentencing purpose. In fact, Ashworth (2000) argues that in many areas—not just with regard to the interpretation of the proportionality principle of the 1991 act—there was a considerable gap between sentencing policy and sentencing practice. While some of this lack of practical translation may reside in the vagueness of statutory or appellate guidance, another portion of it is undoubtedly rooted in the judicial practice of simply ignoring legislative guidelines.

[45] Newburn notes the introduction, during the second half of the 1990s in England, of such U.S.-based policies as "increased honesty in sentencing ('no more half-sentences for full-time crimes'); mandatory minimum sentences ('if you don't want to do the time, don't do the crime'); and, a variant on three strikes ('anyone convicted for a second time of a serious violent or sexual offence should receive an automatic sentence of life imprisonment')" (2005:12). This latter policy was expanded several years later to include several mandatory minimum prison sentences for third-time "trafficking" in specific types of drugs and for third-time domestic burglary.

In contrast with the American and English power struggles during the 1990s between sentencing judges on the one hand and governments and prosecutors on the other, sentencing power has always remained firmly in the hands of Canadian judges. Even when the Canadian Sentencing Commission recommended that the government of Canada adopt a system of very permissive presumptive guidelines that would be established by a permanent sentencing commission and confirmed by Parliament, the proposal was rejected—in part because guidelines of any kind were seen as a radical departure from traditional policy. Indeed, despite the fact that these presumptive guidelines would have left enormous power to sentence with the sentencing judge in particular, and with judges (including appeals judges) more generally, the historically entrenched model in which judges are given almost complete responsibility for sentencing prevailed (Doob & Webster 2003).

In fact, Canadian judges have almost exclusively determined the degree to which imprisonment is to be used as a criminal sanction. Legislated maximum penalties are almost always dramatically higher than normal sentences, giving judges wide latitude in their decisions. Furthermore, judges individualize sentences by, among other things, choosing from a broad range of sentencing purposes whereby almost any sentence can be justified. While Canadian judges have not completely escaped legislative restrictions on their power, the difference clearly resides in the degree of political interference experienced. In contrast to the United States and England, where such changes as the introduction of sentencing guidelines or mandatory minimum sentences have substantially curbed (or at least attempted to curb) the autonomy of judges in sentencing matters, the two major legislative modifications in Canada—mandatory minimum sentences for serious violent offenses carried out with a firearm and the inclusion of principles and purposes of sentencing in the Criminal Code—were likely seen as completely benign by most judges. Indeed, the former modification has affected few cases, while the latter has been largely perceived as legislating the status quo.

This concentration of power in sentencing matters, as well as the insulation of the judiciary from public opinion and independence from political interference,[46] has a number of important effects that directly relate to Canadian imprisonment rates. First, governments—particularly the federal government—need not

[46] As the current Chief Justice of Canada affirmed, when she was a member of that court, but prior to being named as Chief Justice, "The judges' right to refuse to answer to the executive or legislative branches of government or their appointees as to how and why the judge arrived at a particular judicial conclusion is essential to the personal independence of the judge. . ." (Justice Beverley McLachlin, quoted by Friedland 1995:13).

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

take responsibility for unpopular sentences. Nor can "judges" as a group be blamed for unpopular sentences, as there is broad deference to the trial judge. As the then Chief Justice of the Supreme Court of Canada noted in 1999, "Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit" (*M.[C.A.],* 1 S.C.R. 500, at 565 [1996]).[47] Thus, pressure to change criminal law can be avoided by attributing responsibility for unpopular decisions to the sentencing judge.

Second, sentencing decisions are left with individual judges rather than—as is the case in the United States and (to a lesser extent) England—with legislative bodies, sentencing commissions (or similar structures), or those voting in plebiscites. As such, not only do Canadian judges have more control over the actual sentence (versus simply imposing a sentence largely crafted by another body), but the severity of the sentence is determined in direct contact with the offender rather than in the abstract by those distant from the actual offenders (e.g., those sitting on commissions or in legislatures). This face-to face interaction may encourage judges to see the accused as a real person rather than an abstract (faceless) offender, rendering it more difficult to be excessively punitive. As more general studies have shown (Varma 2000; Hutton 2005), people who are encouraged to think about an actual offender rather than an abstract offender are less likely to recommend imprisonment. Assuming that judges react in the same way as ordinary citizens, the "human face" of Canadian sentencing may render imprisonment less attractive by making it more difficult for judges to view the accused as an "other" (Tonry 2004b).

Third, the dominant role of judges in sentencing appears—ironically perhaps—to have created a system that is more open and flexible. In contrast with the more restricted judicial power in England and the United States, Canadian judicial "freedom" may allow judges to respond creatively to problems elsewhere in the criminal justice system, ameliorating harsh policies that would have a direct impact on the level of overall imprisonment. To illustrate, a

[47] This same Supreme Court of Canada justice later noted that

> where the sentencing judge has had the benefit of presiding over the trial of the offender, he or she will have had the comparative advantage of having seen and heard the witnesses to the crime. But in the absence of a full trial. . . the argument in favour of deference remains compelling. . .. Perhaps most importantly, the sentencing judge will normally preside near or within the community that has suffered the consequence of the offender's crime. . . The discretion of a sentencing judge should thus not be interfered with lightly ([*R. v. Proux,* 1 S.C.R. 61, at 125-126 [2000]).

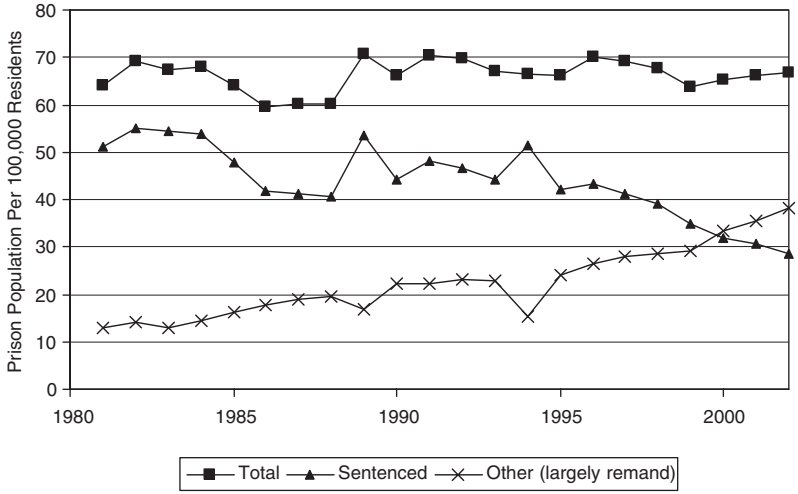

Figure 6. Imprisonment in Provincial Prisons, Ontario (1981–2002).

population of unsentenced prisoners—largely those awaiting trial—has been growing in some Canadian provinces. These inmates constituted approximately one quarter of all Canadian inmates in 2002–2003. In Ontario, Canada's most populous province, the rate of "other" provincial prisoners (nonsentenced, largely those on remand awaiting trial) has increased threefold since 1981 (Figure 6).[48]

Remarkably, the overall Ontario imprisonment rate shows little variation over this period. Indeed, the decrease in the sentenced population compensates for the increase in nonsentenced prisoners almost perfectly—a relationship that also holds for Canada as a whole and is enabled by the Criminal Code, where Section 719(3) instructs judges that they *may* take pretrial detention into account when sentencing an offender. In practice, judges have generally credited pretrial detention on the basis of two days' credit for each day served in pretrial detention (Manson 2001:210). Based on these data, it is difficult to escape the inference that judges have compensated for high pretrial detention rates by ensuring that these same offenders are credited—at sentencing time—with an appropriate amount of "time served."

[48] The explanations for an increasing number of people in pretrial detention are complex. Most obviously, the bail laws were changed in 1971, largely eliminating the former cash bail system. As Friedland (2004) has pointed out, the restrictions on the use of pretrial detention since 1971 have been relaxed and have created the situation that we see in Figure 6. Our measure of imprisonment purposefully includes these people because it could be argued that the only difference between them and sentenced offenders is that the former group is being punished before being found guilty.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Finally, Canadian judges—even in the face of (minimal) legislative restrictions—have also been less vocal than their American and English counterparts in expressing their views on sentencing legislation. Judges in Canada rarely voice either support or opposition to changes in the law. In fact, the Canadian Judicial Council, in an inquiry into criticisms of government policy raised by a superior court judge in British Columbia, concluded that if a judge feels it necessary to speak out against political decisions, he or she "should not speak with the trappings and from the platform of a judge but rather resign and enter the arena where he, and not the judiciary, becomes not only the exponent of those views but also the target of those who oppose him" (Canadian Judiciary Council Inquiry Committee, cited by Friedland 1995:99). Arguably, this discouragement of public displays of conflict between the judiciary and the government may be important in averting (or at least limiting) a decline in the public's faith or confidence in its legal and political institutions—another factor suggested to be associated with increased punitiveness (Lappi-Seppälä 2005).

Protective Factors: Cultural Values

Beyond historical and structural factors that appear to have shielded Canada from several of the wider punitive trends characteristic of other similar nations, Canadians also seem to possess cultural values that have limited enthusiasm for increased imprisonment. These beliefs have permeated both the political and popular culture. Indeed, Canadians appear to lack the moral taste for harshness—on an individual level—and faith—at the political level—regarding the effectiveness of more-punitive sanctions in solving the crime problem.

Unlike Canada, the United States and England (since the 1990s) have shown a belief in the possibility of legislating away the crime problem. The history of crime control in the United States reflects characteristically American optimism in the ability of the state to reduce crime rates through sentencing. Whether the solution resides in the belief that rehabilitation works or—more currently—that deterrence and incapacitation are effective in solving crime, the United States has been continually lured by the utilitarian purposes of sentencing (Doob & Webster 2003). England has also embraced—at least since the early 1990s—a more punitive strategy rooted in the belief that imprisonment is an effective means of reducing crime. Indeed, "Every Home Secretary from Michael Howard to the present has declared his belief that 'prison works'" (Tonry 2004b:64).

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

In contrast, Canadian politicians have shown skepticism about the effectiveness of criminal punishment in reducing criminal activity. The federal government's 1982 policy statement sets the tone of Canadian political culture related to sentencing by affirming that "[i]t is now generally agreed that the [criminal justice] system cannot realistically be expected to eliminate or even significantly reduce crime. . ." (Government of Canada 1982:28). Similarly, the Canadian Sentencing Commission (1987) recommended that judges hand down proportionate sentences, and that the "standard" set of utilitarian sentencing purposes be given minimal application. Sentence severity was to be determined by a proportionality principle rather than one of the standard utilitarian purposes of sentencing. Indeed, this commission was skeptical about the ability of a sentencing judge to protect society, suggesting that "[i]ntuitively, at least, one would rather resort to a security guard than to a sentencing judge to protect one's home" (1987:148).

This rejection of the "punishment stops crime" argument was reiterated a decade later in the political realm. The Canadian Minister of Justice affirmed publicly that just as "war is too important to be left to the generals . . .. Crime prevention is too important to be left to the lawyers, or the justice ministers, or even the judges. . . In the final analysis, crime prevention has as much to do with the [Minister of] . . . Finance, [the Minister of] . . . Industry, and [the Minister of] . . . Human Resources Development, as it does with [the Minister of] Justice" (Rock 1996:191–2). While this message has not always been expressed in such clear terms—as Canadian politicians have always had highly developed abilities to support both sides of a criminal justice policy issue—the lack of general endorsement from politicians of the notion that judges are well-placed to solve the problem of crime seems to have ensured ambivalence within Canadian political culture vis-à-vis tough-on-crime measures.

In contrast with adult sentencing, the Canadian Parliament has been more successful in the area of youth justice in promoting the idea that crime prevention will not come from the courts. The Youth Criminal Justice Act (2003) distanced itself from the utilitarian purposes of sentencing by establishing a proportionality model of an official response to crime. Further, this legislation completely removed deterrence from the sentencing principles and gave rehabilitation prominence only within the choice of specific sanctions (but not in the overall severity of the sentence). Explicit hurdles were also placed on the use of custody,[49] making few

[49] Section 39(1) of the Youth Criminal Justice Act (2003) indicates that a youth court "shall not commit a young person to custody" unless at least one of four reasonably explicit conditions is met. Once one of those conditions is met, the sentence must also meet the

promises in terms of utilitarian goals. Arguably, this rejection of the notion that criminal behavior can be eliminated by a simple flick of the (legislative) pen may also be an important contributing factor in the lack of enthusiasm for harsher sentences.

Clearly, Canadian political culture—at least with respect to the perceived role of sentencing in resolving the problem of crime—is distinct from that of the United States or England. Interestingly, it would seem that these differences are also important in further affirming Canada's cultural values. Indeed, some have suggested that Canadian identity is often constructed in opposition to its American neighbor. Lipset notes that "since the 18th century, most Canadians have felt that there is something not quite right with what the United States came to be" (1989:14). Certainly in the area of criminal justice, this suggestion would appear to find support. Many Canadian policy makers have shown a desire to shun an Americanized approach to criminal justice (Gartner 2004:16; Tonry 2004c). In particular, Canada has been especially vocal in its rejection of U.S. imprisonment policies and practices. As a Conservative-dominated 1993 Parliamentary committee noted, "[i]f locking up those who violate the law contributed to safer societies, then the United States should be the safest country in the world. In fact, the United States affords a glaring example of the limited impact that criminal justice responses may have on crime" (Standing Committee on Justice and the Solicitor General 1993:2). In contrast with the English endorsement of "American-style" imprisonment as a solution to crime (Newburn 2002), the importation of U.S. criminal practices would almost certainly be seen more as a liability than as an asset by those responsible for Canadian policy.

In fact, this rejection of American(ized) models appears to be important in defining both Canada's cultural identity and the country's policies in the political arena. To illustrate, a (federal) Liberal Justice Minister attempted to sell her youth justice bill (including its restrictions on the use of custody) by arguing, among other things, that Canada was incarcerating youths at a higher rate than that of the United States (Government of Canada 1998:7). While the veracity of her assertion was almost certainly restricted to custodial admissions for certain offenses rather than custodial populations, the similarity in imprisonment practices between Canada and the United States was seen as an embarrassment, requiring rectification.

However, it would be simplistic to argue that Canadian popular culture—like Canadian political culture—is derived purely in

requirement that "all available sanctions other than custody that are reasonable in the circumstances must be considered for all young persons. . .." (Section 38[2][d]), and it must be the "least restrictive sentence that is capable of achieving the purpose of sentencing [holding the youth accountable]" (Section 38[2][e][ii]).

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

opposition to the United States On the basis of extensive polling data, Adams (2003) suggests that the Canadian and American value structures are quite different. He characterizes Canadian values as demonstrating "openness to change and diversity [as well as] quality of life over material concerns" (2003:36). In contrast, underlying American values focus on "well defined norms and standards of behaviour" (2003:29), with emphasis placed on "material success and deference to traditional authority" (2003:28). Potentially more important, he notes that "[a]ttitudes toward violence are, in fact, among the features that most markedly differentiate Canadians from Americans" (2003:52). While Canada is characterized as less violent and more communitarian in terms of its core values, the United States distinguishes itself as more individualist in nature and more accepting of violence.

More interesting is the relationship between these underlying values and imprisonment rates. Adams (2003) creates a two-dimensional value structure on which individuals (or groups of individuals) can be located. Canadians are most likely to fall into the quadrant labeled as "idealism and autonomy"—a result based on findings that Canadians are more likely than Americans to hold such attitudes as a willingness to accept nontraditional views of the family or to consider oneself a "citizen of the world" before a "citizen of one's community and country." Adams also finds Canadians to be more likely than Americans to indicate that they are comfortable in adapting to the uncertainties of modern life and are not threatened by the changes and complexities of society today—another factor found to be related to the degree of punitiveness found in a society (Garland 2000, 2001).

In contrast, individuals who fall into the quadrant most unlike the preponderance of Canadians—characterized by Adams (2003) as a constellation of attitudes and values reflecting "status and security"—are more likely to endorse such views as the belief that "there are rules in society and everyone should follow them" (2003:164) or that "immigrants who have made their home in [this country] should set aside their cultural backgrounds and blend in. . ." (2003:167). He also finds that those least like Canadians are more likely to endorse "confidence that, in the end, people get what they deserve as a result of the decisions they make, both positively and negatively."

By comparing the various U.S. regions that fall into these most and least "Canadian" quadrants, we were able to relate "value structures" to imprisonment rates. More specifically, three U.S. regions (comprising 17 states)[50] were located in the same quadrant

[50] New England, Pacific, and Mountain States. Adams' polling data only allow for the characterization of regions, not states.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Table 1. Imprisonment Rates as a Function of Value Structure of the Region

	Number of States With Imprisonment Rates (Jail and State Prison, 1999) that are:			
	Low (≤530)	Medium (531–782)	High (783+)	Total
States in the Most Canadian-Like Regions	10 (59%)	6 (35%)	1 (6%)	17 (100%)
States in the Least Canadian-Like Regions	1 (7%)	4 (27%)	10 (67%)	15 (100%)

$\chi^2 = 15.06$, $df = 2$, $p < 0.01$

as the majority of Canadians and, as such, are described as the most "Canadian-like" regions in terms of underlying value structures. Three other regions (encompassing 15 other states)[51] fell into the opposing quadrant and are described by us as the least "Canadian-like." Comparisons showed that the states in the regions that are most Canadian-like in their value structure have lower imprisonment rates than the states in the least Canadian-like regions (Table 1).

This analysis of the impact of different value structures on imprisonment rates is obviously simplistic. Further, even the rates of the "low imprisonment" states are—in absolute terms—higher than those in Canada, suggesting that the differences between the two countries are not solely a function of simple cultural values. However, the variation across American states provides an intriguing analogy to the difference between the United States and Canada. This simple correlation provides some support for the notion that levels of incarceration are, in part, a function of underlying values. Specifically, Canadian culture appears to be rooted in more nonviolent, communitarian values that may not be as supportive of increasing punitive responses to criminal behavior.

Conclusion

In some sense, there is no need to explain Canada's stable imprisonment rate. Indeed, few social scientists spend much time exploring why something has *not* changed. However, particularly in light of the increases in the use of punishment in countries such as the United States and England and the high social, opportunity, and economic costs associated with rising levels of incarceration, the stability of Canada's imprisonment rate would appear to provide an important contrast against which growth of punishment in other nations may be understood.

[51] The Deep South, the South Atlantic region, and Texarkana.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

At least at first glance, the "Canadian case" can be misleading. Indeed, Canada appears to have many of the characteristics associated with increasing punitiveness. With the introduction of mandatory minimum penalties, increased maximum sentences, and more restrictive parole criteria, one would also anticipate the standard effects in terms of rising imprisonment rates. In fact, we find the opposite. Wider punitive trends from which Canada is clearly not immune have received only muted or limited expression, with little impact on levels of incarceration. Clearly, harsh words do not necessarily lead to harsh actions.

Canada's stability in levels of incarceration since 1960 seems to be the result of two interrelated processes. On the one hand, Canadians have managed to avoid several of the risk factors associated with higher imprisonment rates. Canada has not experienced volatility or crises in sentencing, which have produced shifts in other nations toward more punitive measures. Similarly, many of the key players in the criminal justice realm do not appear to have been caught up in the tough-on-crime approaches to crime and associated exclusionary policies and practices.

On the other hand, specific historical, cultural, and structural factors have largely shielded Canada from wider punitive forces. Canada's long-term policy of restraint in the use of imprisonment has clearly discouraged rising levels of incarceration. Similarly, Canada's federal system, electoral politics, and the central role of experts in the development and day-to-day management of criminal justice policies have rendered the politicization of criminal justice issues more difficult, significantly reducing any real impact of popular punitiveness on imprisonment rates.

Further, the nearly complete monopoly of power in sentencing held by judges has helped avoid power struggles among the various criminal justice institutions as well as introduced a certain degree of flexibility and openness into the sentencing model. It has also ensured a "human face" in the sentencing process, arguably rendering the process more humane. Finally, Canada has not displayed values and attitudes associated with increased punitiveness. In fact, Canadians have not only shown consistent skepticism about the effectiveness of criminal punishment in resolving the problem of crime, but they have also identified themselves—and have been identified—as more communitarian and nonviolent than their American counterparts.

While each of these factors exerts its own impact on the limited adoption of wider punitive trends in Canada, their importance seems to reside in their interwoven nature. Indeed, a lack of belief in the effectiveness of punishment in reducing crime supports—and reproduces—Canada's long history of government and commission endorsements of restraint in the use of imprisonment.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Similarly, the underlying values of Canadians that do not, on the whole, support punitiveness also permeate judicial circles such that judges' sentences reflect—as well as reaffirm and perpetuate—these same moral positions.

In this light, it would be misguided to suggest that any one of these factors could be simply transplanted into another context and expected to produce the same effect. Although we attempt to demonstrate that increasing imprisonment in modern society is not inevitable, we suggest that the explanations for stability in imprisonment are complex and interrelated. Said differently, the Canadian "solution" is—by no means—universally applicable.[52] In fact, several of the individual factors contributing to the stability in Canadian imprisonment rates since 1960 are—on their own—problematic and are only effective as part of a wider whole. Indeed, Canada has not found a magic formula for escaping recent punitive policies and practices. Rather, Canada has simply managed to balance these trends with other moderating forces.

Clearly, the inclusion of Canada in the cross-national study of imprisonment rates forces us to expand the discussion surrounding increased punitiveness in contemporary society. Just as social scientists of all disciplinary walks have brought to the debate a richer array of explanations, the "Canadian case" demands a focus that is no longer exclusively on the explanations for recent increases in some countries, but on these explanations in light of those nations that have not followed the same pattern. Imprisonment rates—like social phenomena, in general—show variation, not only over time but also over space. Theories of punishment would do well to address them both.

[52] Canada, despite its stability in imprisonment rates since 1960, continues to have a level of imprisonment that is high in comparison to many countries. Hence, its ability to serve as a model is diminished.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Appendix

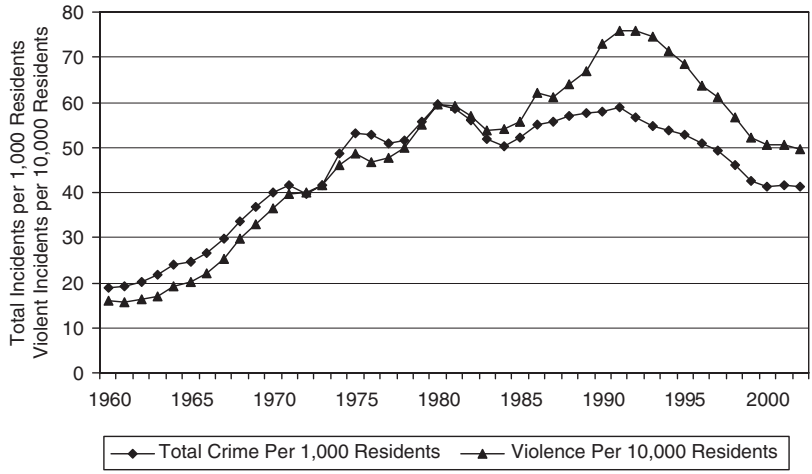

Figure A. Police-Recorded (Index) Crime Rates, United States (1960–2002).

Note: Total index crime per 1,000 residents and violent crime per 10,000 residents. Because of different definitions, comparisons of the *absolute values* among this figure, Figure 1, and Appendix Figure B should be avoided.

Source: *Sourcebook on Criminal Justice Statistics* 2004.

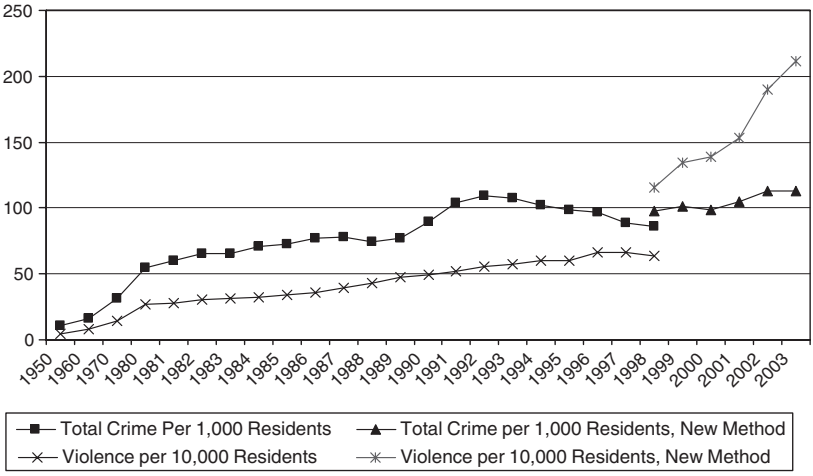

Figure B. Police-Recorded Crime Rates, England and Wales (1950–2003).

Note: Reported by decade until 1980; by year thereafter (fiscal years from 1997–1998). In 1998, new definitions came into effect.

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Increases from 1999 onward are not consistent with British Crime (Victimization) Survey data.

Source: Home Office 2004b.

References

Adams, Michael (2003) *Fire and Ice: The United States, Canada, and the Myth of Converging Values*. Toronto: Penguin Canada.

Ashworth, Andrew (2000) *Sentencing and Criminal Justice*, 3d ed. London: Butterworths.

——— (2001) "The Decline of English Sentencing and Other Stories," in M. Tonry & R. S. Frase, eds., *Sentencing and Sanctions in Western Countries*. New York: Oxford Univ. Press.

Australian Government (2004) "Australian Crime: Facts and Figures 2004," Figure 95 (and accompanying text). http://www.aic.gov.au/publications/facts/2004/fig095.html (accessed 29 April 2005).

Beckett, Katherine (1997) *Making Crime Pay: Law and Order in Contemporary American Politics*. New York: Oxford Univ. Press.

Besserer, Sandra, & Catherine Trainor (2000) "Criminal Victimization in Canada, 1999." Vol. 20, No. 10 of *Juristat*. Catalogue no 85-002-XPE. Ottawa: Canadian Centre for Justice Statistics, Statistics Canada.

Blumstein, Alfred, & Allen J. Beck (1999) "Population Growth in U.S. Prisons, 1980–1996," in M. Tonry & J. Petersilia, eds., *Prisons. Vol. 26 of Crime and Justice: A Review of Research*. Chicago: Univ. of Chicago Press.

Blumstein, Alfred, & Jacqueline Cohen (1973) "A Theory of the Stability of Punishment," 64 *The J. of Criminal Law and Criminology* 198–207.

Blumstein, Alfred, et al. (1977) "The Dynamics of a Homeostatic Punishment Process," 67 *The J. of Criminal Law and Criminology* 317–34.

Boritch, Helen (1997) *Fallen Women: Female Crime and Criminal Justice in Canada*. Toronto: Nelson.

Bottoms, Anthony, & James Dignan (2004) "Youth Justice in Great Britain," in M. Tonry & A. N. Doob, eds., *Youth Crime and Youth Justice: Comparative and Cross-National Perspectives. Vol. 31 of Crime and Justice: A Review of Research*. Chicago: Univ. of Chicago Press.

Canadian Centre for Justice Statistics (1996) *Canadian Crime Statistics, 1995*. Catalogue no. 85-205-XPE. Ottawa: Statistics Canada.

——— (1997) *Adult Correctional Services in Canada, 1995–1996*. Catalogue no. 85-211-XPB. Ottawa: Statistics Canada.

——— (1999) *Youth Court Statistics*, Catalogue no. 85-522-XPB. Ottawa: Statistics Canada.

——— (2004) *Adult Correctional Services in Canada, 2002–2003*. Catalogue no. 85-211-XIE. Ottawa: Statistics Canada.

Canadian Committee on Corrections (1969) *Toward Unity: The Report of the Canadian Committee on Corrections*. Ottawa: Queen's Printer.

Canadian Sentencing Commission (1987) *Sentencing Reform: A Canadian Approach*. Ottawa: Supply and Services Canada.

Cauchon, The Honourable Martin (Minister of Justice and Attorney General of Canada) (2002) Notes for an Address before The Canadian Bar Association, London, Ontario, August 12, 2002.

Cesaroni, Carla, & Anthony N. Doob (2003) "The Ddecline in Support for Penal Welfarism: Evidence of Support Among the Elite for Punitive Segregation," 43 *British J. of Criminology* 434–41.

Correctional Service of Canada (2002) *Briefing Book*. October 2002. Ottawa: Correctional Service of Canada.

Corrections Population Growth: Report for Federal/Provincial/Territorial Ministers Responsible for Justice (1996). Ottawa: Ministry of the Solicitor General.

Daubney, David (M. P.) Chairman (1988) *Taking Responsibility: Report of the Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release and Related Aspects of Corrections*. Ottawa: House of Commons.

Dauvergne, Mia (2004) "Homicide in Canada, 2003." Vol. 24, No. 8 of *Juristat*. Catalogue no. 85-002-XPE. Ottawa: Canadian Centre for Justice Statistics, Statistics Canada.

Doob, Anthony N. (1995) "The United States Sentencing Commission Guidelines: If you don't know where you are going, you may not get there," in C. Clarkson & R. Morgan, eds., *The Politics of Sentencing Reform*. Oxford, United Kingdom: Clarendon Press.

——— (2000) "Transforming the Punishment Environment: Understanding Public Views of What should Be Accomplished at Sentencing," 42 *Canadian J. of Criminology* 323–40.

Doob, Anthony N., & Carla Cesaroni (2004) *Responding to Youth Crime in Canada*. Toronto: Univ. of Toronto Press.

Doob, Anthony N., & Jane B. Sprott (2004) "Changing Models of Youth Justice in Canada," in M. Tonry & A. N. Doob, eds., *Youth Crime and Youth Justice: Comparative and Cross-National Perspectives*, Vol. 31 of *Crime and Justice: A Review of Research*. Chicago: Univ. of Chicago Press.

Doob, Anthony N., & Cheryl Marie Webster (2003) "Looking at the Model Penal Code Sentencing Provisions through Canadian Lenses," 7 *Buffalo Criminal Law Rev.* 139–70.

Doob, Anthony N., et al. (1998) *An exploration of Ontario residents' views of crime and the criminal justice system*. Toronto: Centre of Criminology, University of Toronto.

Friedland, Martin L. (1995) *A Place Apart: Judicial Independence and Accountability in Canada*. Ottawa: Canadian Judicial Council.

——— (2004) "Criminal Justice in Canada Revisited," 48 *Criminal Law Q.* 419–73.

Garland, David (2000) "The Culture of High Crime Societies: Some Preconditions of Recent 'Law and Order' Policies," 40 *British J. of Criminology* 347–75.

——— (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: Univ. of Chicago Press.

Gartner, Rosemary (2004) "Trends in Crime and Criminal Punishment in Canada and the United States in the Post-Charter Period." Presented at The Reddin Symposium XVII, The Canadian Studies Center, Bowling Green State University.

Gartner, Rosemary, & Anthony N. Doob (1994) "Trends in Criminal Victimization: 1988–1993," Vol. 14, No. 13 of *Juristat*. Catalogue no. 85-002. Ottawa: Canadian Centre for Justice Statistics, Statistics Canada.

Giles, Chris, & Margaret Jackson (2003) "Bill C-7: The New Youth Criminal Justice Act: A Darker Young Offenders Act?," 27 *International J. of Comparative and Applied Criminal Justice* 19–38.

Government of Canada (1982) *The Criminal Law in Canadian Society*. Ottawa: Government of Canada.

——— (1984) *Sentencing*. Ottawa: Government of Canada.

——— (1998) *A Strategy for the Renewal of Youth Justice*. Ottawa: Government of Canada.

Government of New Zealand (1998) "Table 8: Rate of imprisonment (including remands) per 100,000 total population by selected jurisdictions 1986–1995," http://www.justice.govt.nz/pubs/reports/1998/imprisonment/chapter_5.html.

Haggerty, Kevin D. (2001) *Making Crime Count*. Toronto: Univ. of Toronto Press.

Hogarth, John (1971) *Sentencing as a Human Process*. Toronto: Univ. of Toronto Press.

Hogeveen, Bryan (2005) "'If we are tough on crime, if we punish crime, then people get the message': Constructing and governing the punishable young offender in Canada during the late 1990s," 7 *Punishment and Society* 73–89.

Home Office (1988) *Punishment, Custody and the Community*. London: Her Majesty's Stationery Office.

Home Office (2003) *Prison Statistics, England and Wales, 2002*. Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, November. Cm 5996, £25.75. London: Home Office.

Home Office (2004a) "Offender Management Caseload Statistics, 2003. England and Wales (December 2004)." http://www.homeoffice.gov.uk/rds/hosbpubs1.html (accessed 23 May 2005).

Home Office (2004b) "Crime in England and Wales 2003/2004." Home Office Statistical Bulletin, July 2004.

Hurd, Right Honourable Lord Hurd of Westwell (formerly Douglas Hurd) (2004) "Are Prison Reformers Winning the Arguments? The 2004 Prisoners' Education Trust Lecture," 154 *Prison Service J.* 3–5.

Hutton, Neil (2005) "Beyond Populist Punitiveness?," 7 *Punishment and Society* 243–58.

Kruttschnitt, Candace, & Rosemary Gartner (2003) "Women's Imprisonment," in M. Tonry, ed., *Crime and Justice: A Review of Research*, Vol. 30. Chicago: Univ. of Chicago Press.

Lappi-Seppälä, Tapio (2000) "The Fall in the Finnish Prison Population," 1 *J. of Scandinavian Studies in Criminology and Crime Prevention* 27–40.

——— (2001) "Sentencing and Punishment in Finland: The Decline of the Repressive Ideal," in M. Tonry & R. S. Frase, eds., *Sentencing and Sanctions in Western Countries*. New York: Oxford Univ. Press.

——— (2005) "Punishment and Prisoner Rates in Scandinavia." Unpublished draft paper, National Research Institute of Legal Policy, prepared for and presented to the Conference on Penal Policy, University of Minnesota Law School, May 2005.

Law Reform Commission of Canada (1977) *Our Criminal Law*. Ottawa: Ministry of Supply and Services.

Lipset, Seymour Martin (1989) *Continental Divide: The Values and Institutions of the United States and Canada*. Toronto: Canadian-American Committee, C.D. Howe Institute.

Manson, Allan (2001) *The Law of Sentencing*. Toronto: Irwin Law.

Meyer, Jeffrey, & Pat O'Malley (2005) "Missing the punitive turn? Canadian criminal justice, 'balance', and penal modernism," in J. Pratt et al., eds., *The New Punitiveness: Trends, Theories, Perspectives*. Devon, United Kingdom: Willan.

Millie, Andrew, et al. (2003) "Understanding the Growth in the Prison Population in England and Wales," 3 *Criminal Justice* 369–87.

Newburn, Tim (2002) "Atlantic Crossings: 'Policy Transfer' and Crime Control in the USA and Britain," 4 *Punishment and Society* 165–94.

——— (2005) "Criminal Justice and Penal Policy in England and Wales." Unpublished draft paper, London School of Economics, National Research Institute of Legal Policy, prepared for and presented to the Conference on Penal Policy, University of Minnesota Law School, May 2005.

O'Donnell, Ian (2004) "Imprisonment and Penal Policy in Ireland," 43 *The Howard J.* 253–66.

O'Donnell, Ian, & Eoin O'Sullivan (2003) "The Politics of Intolerance–Irish Style," 43 *British J. of Criminology* 41–62.

Pakes, Francis (2004) "The Politics of Discontent: The Emergence of a New Criminal Justice Discourse in the Netherlands," 43 *The Howard J.* 267–83.

Petrunik, Michael (2003) "The Hare and the Tortoise: Dangerousness and Sex Offender Policy in the United States and Canada," 45 *Canadian J. of Criminology and Criminal Justice* 43–72.

Pratt, John (2002) *Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society*. New York: Sage.

Public Safety and Emergency Preparedness Canada (2001) "Public Fear of Crime and Perceptions of the Criminal Justice System," http://www.psepc-sppcc.gc.ca/publications/corrections/200111_e.asp (accessed 12 May 2005).

Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (1995). Toronto: Queen's Printer for Ontario.

Roach, Kent (1999) *Due Process and Victims' Rights*. Toronto: Univ. of Toronto Press.

——— (1998) "The Evolution of Penal Policy in Canada," 32 *Social Policy and Administration* 420–37.

——— (2002) "Determining Parole Eligibility Dates for Life Prisoners: Lessons from Jury Hearings in Canada," 4 *Punishment and Society* 103–13.

Roberts, Julian V., & Thomas Gabor (2004) "Living in the Shadow of Prison: Lessons from the Canadian Experience in Decarceration," 44 *British J. of Criminology* 92–112.

Roberts, Julian V., & Ronald Melchers (2003) "The Incarceration of Aboriginal Offenders: Trends from 1978 to 2001," 45 *Canadian J. of Criminology and Criminal Justice* 211–42.

Roberts, Julian V., et al. (2003) *Penal Populism and Public Opinion: Lessons from Five Countries*. New York: Oxford Univ. Press.

Rock, The Honourable Allan (1996) "Keynote Address: Crime, Punishment and Public Expectations," in J. M. Brisson & D. Greschner, eds., *Public Perceptions of the Administration of Justice*. Montreal: Canadian Institute for the Administration of Justice.

Russell, Peter H., & Jacob S. Ziegel (1991) "Federal Judicial Appointments: An Appraisal of the First Mulroney Government's Appointments and the New Judicial Advisory Committees," 41 *University of Toronto Law J.* 4–37.

Ruth, Henry, & Kevin R. Reitz (2003) *The Challenge of Crime: Rethinking Our Response*. Cambridge, MA: Harvard Univ. Press.

Scottish Executive Online (2005) http://www.scotland.gov.uk/stats/bulletins/00356-01.asp (accessed 4 June 2005).

Segal, Jennifer A. (2000) "Judicial decision making and the impact of election year rhetoric," 84 *Judicature* 26–33.

Sourcebook of Criminal Justice Statistics (2004) Available at http://www.albany.edu/sourcebook.

Standing Committee on Justice and the Solicitor General (1993) *Crime Prevention in Canada: Toward a National Strategy*. Twelfth Report of the Standing Committee on Justice and the Solicitor General." Dr. Bob Horner, M.P., Chairman, February. House of Commons, Canada.

Thomas, Mikhail (2004) "Adult Criminal Court Statistics, 2003/4." Vol. 24, No. 10 of *Juristat*. Catalogue Number 85-002-XPE. Ottawa: Canadian Centre for Justice Statistics, Statistics Canada.

Tonry, Michael (1995) *Malign Neglect: Race, Crime, and Punishment in the United States*. New York: Oxford.

——— (1999) "Why Are U.S. Incarceration Rates So High?," 45 *Crime and Delinquency* 419–37.

——— (2001) "Unthought Thoughts: The Influence of Changing Sensibilities on Penal Policies," 3 *Punishment and Society* 167–81.

——— (2004a) *Thinking about Crime: Sense and Sensibility in American Penal Culture*. New York: Oxford Univ. Press.

——— (2004b) *Punishment and Politics: Evidence and Emulation in the Making of English Crime Control Policy*. Devon, United Kingdom: Willan.

——— (2004c) "Why Aren't German Penal Policies Harsher and Imprisonment Rates Higher?," 5 *German Law J.* 1187–1206.

Uggen, Christopher, & Jeff Manza (2002) "Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States," 67 *American Sociological Rev.* 777–803.

Varma, Kimberly N. (2000) "Exploring Age and Maturity in Youth Justice," Ph.D. thesis, Centre of Criminology, University of Toronto.

Vitiello, Michael (1997) "Three Strikes: Can We Return to Rationality?," 87 *The J. of Criminal Law and Criminology* 395–481.
Von Hofer, Hanns (2003) "Prison Populations as Political Constructs. The Case of Finland, Holland and Sweden," 4 *J. of Scandinavian Studies in Criminology and Crime Prevention* 21–38.
Walmsley, Roy (2003) "Global Incarceration and Prison Trends," 3 *Forum on Crime and Society* 65–78.
Wasik, Martin (1997) "England Repeals Key 1991 Sentencing Reforms," in M. Tonry & K. Hatlestad, eds., *Sentencing Reform in Overcrowded Times*. New York: Oxford Univ. Press.
Weigend, Thomas (2001) "Sentencing and Punishment in Germany," in M. Tonry & R. S. Frase, eds., *Sentencing and Sanctions in Western Countries*. New York: Oxford Univ. Press.
Whitman, James Q. (2003) *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*. New York: Oxford Univ. Press.
Young, Warren, & Mark Brown (1993) "Cross-National Comparisons of Imprisonment," in M. Tonry, ed., *Crime and Justice: A Review of Research*, Vol. 17. Chicago: Univ. of Chicago Press.
Zedner, Lucia (2002) "Dangers and Dystopias in Penal Theories," 22 *Oxford J. of Legal Studies* 341–66.
Zimring, Franklin E. (2001) "Imprisonment Rates and the New Politics of Criminal Punishment," 3 *Punishment and Society* 161–6.

Cases Cited

M.[C.A.], 1 S.C.R. 500, at 565 (1996).
R. v. Borde, Court of Appeal for Ontario, Docket C38189 (2003).
R. v. Gladue, 1 S.C.R. 688 (1999).
R. v. Morrissette and two others, 1 C.C.C. (2d) 307 (1970).
R. v. Proux, 1 S.C.R. 61 (2000).
R. v. Smith, 34 C.C.C. (3d) 97 (1987).
Sauvé v. Canada (Chief Electoral Officer), 3 S.C.R. 519 (2002).

Statutes Cited

Criminal Code, R.S.C. 1985, Chapter C-46 (as amended).
Criminal Justice Act (England), 12 Statutes 1484 (1991).
Youth Criminal Justice Act (Canada), S.C. 2002, c. 1 (2003).

Anthony N. Doob *is Professor of Criminology at the University of Toronto. Much of his recent work has been in the area of youth justice. His coauthored book (with Carla Cesaroni),* Responding to Youth Crime in Canada, *was published by the University of Toronto Press in 2004. He has also carried out research on sentencing and the operation of the criminal courts, and on attitudes (of the public and judges) about various aspects of the criminal justice system. From 1984 to 1987, he was a member of the Canadian Sentencing Commission.*

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

Cheryl Marie Webster *received her Ph.D. in Criminology from the University of Toronto in 2003 and is currently Assistant Professor at the Department of Criminology, University of Ottawa. Her most recent research has focused on general deterrence as applied to sentencing, the structure of criminal courts and the processing of criminal cases, the role of the Superior Court in the administration of Canadian criminal law, and policies related to imprisonment.*

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press

https://doi.org/10.1111/j.1540-5893.2006.00266.x Published online by Cambridge University Press