



## **Managing the Unmanageable: An Analysis of the Punitive Turn & its Impacts on Marginalised Populations in Canada & the United States**

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### **ABSTRACT**

This paper considers the consequences and impacts of the Punitive Turn in the context of the experience of Aboriginal offenders in the Canadian criminal justice system. Looking at the presence of a sharp increase in prison populations among Aboriginal prison populations, the politicization of criminal justice matters, and the increased use of actuarial risk/need assessment under the New Penology<sup>1</sup> as indication of the existence of a “Punitive Turn” in the context of the experience of Aboriginal people in the Canadian criminal justice system. Additionally, the expansion of the prison driven by the prison industrial complex<sup>2</sup> and the discovery of the profitability of the prison is regarded as a motivating factor behind the emergence and continuation of changes in punitive practices since the 1970s. Historical injustices, the prison industrial complex and changes in punitive practices have all contributed to the considerable overrepresentation of Aboriginal individuals in Canadian correctional facilities and will be considered to be a part of an overarching strategy of management and control over this marginalised group.

**KEYWORDS:** *Punitive Turn, New Penology, Prison Industrial Complex, Aboriginal, Marginalisation, Risk*

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## Introduction

This paper will consider the evolution of punitive practices from the 1970s to the present day in Canada and the United States encompassed in the theoretical framework of Punitive Turn. Broadly, the Punitive Turn is primarily characterised by a significant increase in prison populations in Western nations, especially in the United States (Peeters, 2015). Along with a boom in prison populations, the Punitive Turn is also characterised by an expansion of management of populations deemed to be unruly beyond the confines of the prison walls through the development of risk assessment tools. Further symptoms of the Punitive Turn include the relocation of criminal justice matters into political and public spaces. This then brings about a rise in populist-informed penal policies (Carrier, 2010). Carrier (2010) argues that the presence the above symptoms, namely carceral booms, the long term management of populations deemed risky, and the politicization of criminal justice policy often lead scholars to argue for the presence of a Punitive Turn in a given society<sup>3</sup>. In Canada, the symptoms of the Punitive Turn may not necessarily be apparent in general criminal justice matters. However, I would argue that a Punitive Turn has emerged in recent years surrounding Aboriginal populations in Canada. Moreover, I will consider trends in criminal justice practices in order to highlight not only the characteristics of punishment that indicate the presence of a Punitive Turn with regards to Aboriginal offenders, but also the ways in which these changes in punitive practices have in turn negatively impacted Aboriginal populations both inside and outside of the prison. In addition, I will also consider the Prison Industrial Complex as a possible explanation for the emergence of the Punitive Turn both in Canada and in the United States. Punishment by way of incarceration has become an incredibly profitable entity and is used as a tool to extract cheap labour from prison inmates. It also keeps labouring classes in check in Canada and in the United States (Schlosser, 1998). Welch (2003) argues that the profitability of the prison has served as motivation to expand the prison population as a means to stimulate greater profits for corporations, governmental bodies and surrounding communities. This has aided in driving the emergence of a Punitive Turn in Canada. Changes in punitive practices, such as the turn towards using actuarial tools to determine the security classification of offenders and to allocate programming, along with the politicization of criminal justice policies and the expansion of the prison in pursuit of profit will

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<sup>1</sup>New Penology, according to Feeley and Simon (1992) is a component of the Punitive Turn in which the rehabilitation of offenders is overshadowed by the pursuit of efficient punishment and the minimization and management of an offender's risk of reoffending.

<sup>2</sup>The prison industrial complex is understood as an increased spending on imprisonment. It is driven by political and economic interest, which in turn has given rise to the expansion of the prison, regardless of its need (Scholsser, 1998).

<sup>3</sup>For the purpose of this paper, Carrier's work will be considered to contextualise and characterise the Punitive Turn, however his critiques of the Punitive Turn will not be adopted.

be developed in greater detail throughout this paper. Furthermore, changes in punitive practices will be considered as a part of an overarching strategy of systematic social control over Aboriginal populations in Canada and African Americans in the United States.

### **The Punitive Turn: Theoretical Framework**

Perhaps the most common symptom of the Punitive Turn is an exponential explosion in prison populations (Carrier, 2010). The American prison population rose significantly from 297 inmates per 100,000 adults in 1990 to 444 prisoners per 100,000 in 1997 (U.S Department of Justice, 2000), continuing to increase to a rate of 698 inmates per 100,000 adults in 2015/2016 (Reitano, 2017). However, the explosion in prison populations in the United States over the past few decades is not necessarily mirrored in Canada as the overall custody rate for adult offenders has increased at a much slower rate than that of the United States. In 1997-1998, the adult incarceration rate in Canada was approximately 109 inmates per 100,000 adults (Reed & Roberts, 1999), increasing to roughly 139 inmates per 100,000 adults in 2015-2016 (Reitano, 2017). Being that the overall incarceration rate in Canada has not seen a significant increase over the past few decades, one could easily argue that this would be an indication that the Canadian criminal justice system has generally not experienced the Punitive Turn in the same way the American justice system has. For example, the American criminal justice system has seen a considerable decline in the rehabilitative ideal where punishment has become the primary mandate of the prison in lieu of reformation and reparation (Benson, 2003). Additionally, the introduction of mandatory minimum sentences in Canada has not followed similar trends in the United States. In Canada there are fewer offences that are tied to mandatory minimums and these sentences do not appear to have the same severity as those in the United States (Meyer & O'Malley, 2009). However, Canada and the United States do have one thing in common with regards to the implementation of mandatory minimum sentences. In both countries they are often used by politicians as a tool to attract voters in claiming that they will make communities safer by locking up offenders for a set amount of time, despite evidence to the contrary (Doob & Cesaroni, 2001). The "war on drugs" in the United States has led to the imposition of mandatory minimum sentences for first time offenders under the Anti-Drug Abuse Acts of 1986 and 1988. Those convicted of possession with intent to distribute will face 5 to 40 years in prison without probation or parole (Mayer & O'Malley, 2009). The "war on drugs" in the United States and the resulting changes in sentencing drug offences has contributed to a significant increase in prison populations since the 1980s. In 1980, approximately 41,000 Americans were incarcerated for drug crimes. But with the introduction of the harsher sentencing policies under the Anti-Drug Abuse Acts, this number saw a 1000% increase in 2014 where roughly 488,400 Americans were serving custodial sentences for drug-related offences (Carroll, 2016). The Canadian criminal justice system has not undergone the same changes as that of the United States and therefore has not seen similar

trends in the general incarceration rate. However, considering incarceration trends for Aboriginal individuals from 2000 to 2016, it reveals that there has been a significant increase in the Aboriginal prison populations across Canada. In 2000-2001, Aboriginal peoples accounted for approximately 3.3% of the general population but consisted of 17% of the federal prison population (Roberts & Melchers, 2003). This number rose to approximately 25% of Aboriginal offenders in federal facilities in 2016 even though the number of Aboriginal individuals in the general population only rose to approximately 4.3% that same year (Office of the Correctional Investigator, 2016). Moreover, the presence of Aboriginal women in federal correctional facilities has grown substantially from 2001. Despite accounting for approximately 3% of the female population, Aboriginal women represent roughly 33% of the female federal prison population, a 90% increase from 2001 (Elizabeth Fry Society, n.d.). These findings provide little room to argue against the presence of a significant increase in Aboriginal prison populations, thus illustrating the possible occurrence of a Punitive Turn for Aboriginal populations in Canada.

The new Penology, as defined by Feeley and Simon (1992), is often considered as a component of the Punitive Turn where efficiency, the management of an offender's risk and the pre-emptive minimization of risk to the public overshadow the desire to reform an offender through appropriate intervention and rehabilitation programs. Within the context of risk management, crime is understood as a calculable and governable entity wherein criminals are deemed to be a part of the at risk populations and are thus subjected to state and non-state intervention and management (Hannah-Moffat, 2005). The emergence of risk assessment and related actuarial practices are argued to have brought about a decline in favouring the reformation of offenders through tailored intervention strategies. They have instead emphasised swift and efficient management of offender populations (Garland, 2001). While this may be apparent in punitive strategies and policies in the United States where the imposition of harsh mandatory minimum sentences, the introduction of three-strikes laws and the utilization of civil confinement for sex offenders have all led to the use of the prison to punish rather than to rehabilitate and prepare offenders for eventual release (Carroll, 2016; Larkin & Bernick, 2014; ATSA, 2010; Benson, 2003). The managerial logic of risk assessment is rather apparent in the nature of the second-generation risk assessment tools that emerged during the 1970s. This generation of risk assessment is often criticised for its strict reliance on static factors such as age, the number of prior convictions and histories of sexual and physical abuse to make predictions about the offender (Hannah-Moffat, 2005). Hannah-Moffat (2005) argues that the second-generation of risk assessment produced the logic that the risk classification for offenders was fixed and unchangeable consequently limiting the use of intervention strategies. Canada utilises a more multi-faceted approach to risk assessment in that, in addition to considering the static factors with regards to security classification, the offender's criminogenic needs are also incorporated in the

risk assessment process. Criminogenic needs, known as dynamic factors, include changeable variables such as employment and relationships are considered in order to determine and allocate programming (Martel, Brassard & Jaccoud, 2011; Hannah-Moffat, 2005). At the surface, the utilisation of a static and dynamic risk/need model in actuarial risk assessment appears to exempt Canada from following the discourses of the New Penology. Although it still utilises managerial logics of statistical calculations of risk, it alternatively utilises the information derived from risk assessment as a means to direct interventions in order to reform and rehabilitate the individual. However, in practice one could argue that this is only true for a certain subcategory of the Canadian prison population: non-aboriginal offenders. The nature of risk assessment requires a degree of uniformity. Risk/need assessment tools are presumed to be universally applicable to the majority of offenders. This is particularly problematic when considering the use of uniform risk/need assessment with Aboriginal offenders as it often results in higher security classifications. These stem from factors unique to Aboriginal populations such as substance abuse and mental illness stemming histories of cultural oppression and a limited access to social support services on Aboriginal reservations, as well as results limited access to rehabilitative programs (Martel et al., 2011). The effects of the use of actuarial risk assessment on Aboriginal offenders will be explored in greater detail in the following sections of this paper.

Another notable characteristic of the Punitive Turn is the politicization of criminal justice matters (Carrier, 2010). This has led to a rise in penal populism, wherein criminal justice matters have become a tool of political leverage. Essentially, politicians aim to reflect public opinions rather than empirical evidence when informing potential penal policy changes in order to secure votes and to advance their political agenda. It is important to note that the influence of public opinion on policy formation is an important element of a democratic system. However, it becomes problematic when such public opinions are widely misinformed or based on sensationalised cases that are lacking evidence. Roberts, Stalans, Indermaur and Hough (2003) argue that populist policies can emerge because of the exploitation of public anxiety surrounding a perceived increase in crime rates and fear of victimization as well as negative attitudes towards offenders. Additionally, such policies may be the result of a shallow attempt to respond to public views of crime and punishment, wherein policy makers fail to adequately examine all the factors that served to inform public opinion in the first place. Penal populism, although stemming from a variety of interactions between the public, policy makers and politicians, is at its core, a political tool wherein punishment and criminal justice matters become leverage for the advancement of political agendas. It is ultimately the development of penal policies that are aimed at attracting voters rather than at reducing crime or promoting fair and just responses to crime (Roberts et al., 2003).

Incarceration is perhaps the most central tool in the context of penal populism in that many populist narratives centre on the use of imprisonment as a primary response to crime (Roberts et al., 2003). Although populism alone cannot account for changes in penal policies, the increased politicisation of criminal justice matters has led to a hardening of sanctions and an increase in sentence lengths in the United-States and in the United-Kingdom (Roberts et al., 2003; Mason, 2006). Canada, however, is not excluded from nations that have seen a rise in the influence of penal populism over the formation of criminal justice policies. The development of mandatory minimum sentences in Canada is perhaps the most evident manifestation of penal populism in practice. In their campaign for the 2006 Federal Election, the Conservative party drew on public skepticism of the criminal justice system and with that promised greater certainty and accountability in judicial proceedings (Freiberg & Gelb, 2013). MacQueen (2010) illustrates the public's lack of confidence in the criminal justice system in drawing on sensationalised cases where the sentence was publicly viewed as too soft, thus calling into question the degree of judicial discretion in sentencing. In the case of John Virgil Punko, a 14-year sentence was reduced to 14 months following a series of judicial decisions. As approximately 62% of Canadians favour longer prison sentences as the most effective way to reduce crime (MacQueen, 2010). The results of this case, and of cases resulting in sentences of a similar nature serve to further aggravate public discontent with the criminal justice system. Regardless of whether public opinions surrounding crime and criminal justice matters are accurate and well informed, it is enough to draw the attention of political bodies and bring about a call for reform in the criminal justice system. We thus see the emergence of populism, wherein the public dissatisfaction with the current criminal justice policies are coupled with the public's desire for tougher sanctions to reduce crime and are used as catalysts for the advancement of one's political agenda. Political bodies are able to attract voters by tapping into their discontent and promising to take control of a justice system that is viewed as ineffective through the introduction of new penal policies (Freiberg & Gelb, 2013).

### **The Punitive Turn and Marginalised Groups**

This section will consider the principles and perspectives highlighted in the theoretical framework of the Punitive Turn and discuss how they have affected marginalised populations in the United States and in Canada. While the United States has seen a considerable amount of overrepresentation of African Americans in prison, Canada has experienced a similar phenomenon with its Indigenous population. Although there are similarities in the maltreatment of African Americans in the United States and Indigenous people in Canada, the effects of colonization in Canada have created an experience in the criminal justice system that is unique to Indigenous people. The marginalisation of African Americans in the United States is heavily rooted in a history of racism towards African Americans. However, the marginalisation of Aboriginal people in Canada stems not

only from racism and colonization, but also from the dispossession of traditional territories, cultural oppression, forced assimilation and the prohibition of traditional Indigenous responses to crime and wrong-doings (Martel et al., 2011).

### **Historical Context of Overrepresentation and Mass Incarceration**

Racial dividing lines in Canada and in the United States date back to the early existence of the two countries. North American history is heavily rooted in colonialism, beginning with the exploitation and extermination of Indigenous populations by European settlers. With countries founded upon such events, the continuation and perpetuation of division between white and non-white individuals is all but inevitable. While there has arguably been much progress over the past few centuries, racialized populations are still at a disadvantage when it comes to the opportunities they are presented with in society and are at an even greater disadvantage when it comes to crime and punishment. In mid-1999, approximately 800,000 African American men along with 68,000 African American women were housed in carceral facilities in the United States (Wacquant, 2001, p. 96). The significant portion of the African American population in incarceration is over representative of the population proportion in all of society and is a growing problem in the United States. Similarly, in Canada, the problem of overrepresentation exists. However, it is concerned predominately with Aboriginal peoples who account for approximately 4.3% of Canada's population as of 2016 and make up roughly 25% of the total federal prison population, with an even greater 35% accounting for the female prison population in federal facilities (Office of the Correctional Investigator, 2016). In his 2015-2016 report of the Office of the Correctional Investigator, Howard Sapers states "a history of disadvantage follows Indigenous peoples of Canada into prison and often defines their outcomes and experiences there" (Office of the Correctional Investigator, 2016). Histories of alcohol abuse, childhood maltreatment and a lack of education are rather prevalent among Indigenous populations in federal penitentiaries, and such histories are static risk factors that often yield higher risk scores. Thus placing Aboriginal offenders into higher security facilities to serve longer sentences due to the high risk of recidivism as determined by the risk calculations (Martel et al., 2011). With regards to conditional release, many Aboriginal offenders are not granted parole due to their high risk profile. However, those who are granted parole are faced with many conditions that are often difficult if not impossible to adhere to, thus resulting in one's readmission to prison (Aboriginal Justice Inquiry, 1999). One condition that is often attached to an Aboriginal person's conditional release is the prohibition of their return to a small community due to a lack of parole officers and correctional staff to oversee their parole period. Additionally, many Aboriginal individuals on parole are prohibited from consuming alcohol regardless of whether it was a factor involved in their original offence. This condition is imposed based not on whether alcohol was consumed at the time of the offence, but rather on a stereotypical assumption that most Indigenous people experience some degree of

alcoholism (Aboriginal Justice Inquiry, 1999).

The principle of management and control of deemed higher risk populations has contributed to the disproportionate supervision and eventual arrest in areas with higher concentrations of these ethnic groups. Ousey and Unnever (2012) state “punitiveness is harsher in areas where a dominant racial or ethnic group perceives greater threats from subordinate minority out groups [...] perception of threat –and therefore punitiveness- increase with the relative size of the ethnic out-group populations” (p. 566). This can be best understood as it pertains to incarceration of Indigenous Canadians in considering criminal justice trends across Canada. For example, approximately 16.7% of the population of Manitoba identified as Aboriginal and accounted for approximately 76% of offenders sentenced to custody in Manitoba’s provincial facilities (Statistics Canada, 2015a; Statistics Canada, 2015b). However, in Ontario only 2.4% of the population identified as Aboriginal and accounted for approximately 12% of offenders sentenced to custody that same year (Statistics Canada, 2015a; Statistics Canada, 2015b). These trends briefly demonstrate that provinces with higher concentrations of Aboriginal peoples also subsequently have a substantial population of Aboriginal offenders in prisons. This is not to say that Indigenous groups commit substantially more crime than other groups, but it does highlight the fact that they are much more susceptible to arrest and incarceration. The factors that contribute to the overrepresentation of Indigenous individuals in the Canadian criminal justice system are derived from early colonial practices. Justice LeBel in *R. v. Ipeelee* states:

To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples (2012).

This statement puts into perspective the historical factors that have led to the mass incarceration of Aboriginal people in Canada and are akin to the contributors of overrepresentation of African Americans in the United States. Wacquant (2001) argues that slavery, Jim Crow laws, the creation of Ghettos and the eventual Hyperghetto have all led to the systemic maltreatment and disenfranchisement of African Americans in the United States and have arguably contributed significantly to the disproportionate arrests of African-Americans throughout the United States. Furthermore, the changes in punitive practices brought about by the Punitive Turn have imposed systematic managerial strategies that coupled with their histories of disenfranchisement can in turn result in longer prison sentences, higher arrest rates and an increased chance of readmission for African Americans and Canadian Aboriginals alike (Office of the Correctional Investigator, 2016; Wacquant, 2009).



### **Commodification of Crime and Criminals**

Although not considered to be a primary aspect of the Punitive Turn, the commodification of prisons and prisoners is considered to be an explanation of the expansion of the prison and the explosion in prison populations under the Punitive Turn, especially in the United States. Punishment and crime control may be understood as industries wherein the generation of profit and the promotion of activities that promise economic growth have become underlying principles within these institutions. The notion of punishing for profit is largely embodied in the United States through the expansion of privatized prisons and the emerging changes within the prison system that serve to facilitate profit. This is understood as the prison industrial complex wherein there is an increased spending on imprisonment driven by political and economic interest. Which in turn has given rise to the expansion of the prison, regardless of their need (Scholsser, 1998). The privatization movement in the United States has arguably aided in increasing the use of incarceration as primary punishment and has facilitated the carceral boom of the Punitive Turn. Welch (2003) illustrates this in arguing that an increase in prison population generates financial opportunities not only for private investors. But also for the surrounding communities through the creation of jobs related to the construction of the facilities as well as within the prison itself. Essentially, by increasing the number of offenders housed in private correctional facilities investors and corporate heads can expand their opportunities to turn a profit, be it by extracting cheap labour from the inmates or by expanding the prison system by building more facilities regardless of the need (Welch, 2003). One could argue that the discovery of the profitability of the punitive system has served as motivation to continually expand the prison populations in order to ensure that there is a constant flow of capital in and out of the prison. Additionally, this serves to further profits by building more facilities to accommodate the booming prison populations, consequently furthering the Punitive Turn in the United States.

While the prisons in Canada are not privatized, the prison industrial complex is still present with respects to the utilisation of inmates as labourers and the expansion of the prison to stimulate economic growth in surrounding communities. Within the Correctional Service of Canada exists a rehabilitation program known as CORCAN that promises to contribute to safer communities by providing employment and employability skills training to offenders serving sentences in federal facilities. CORCAN's primary objective is to reform and rehabilitate offenders by providing them with the necessary skills to join the labour force upon their release and accomplishes this by providing third-party vocational training and employment in manufacturing, textiles, construction and services. The products and services produced by CORCAN can be purchased by the public, but are largely purchased by federal government departments. The revenue generated is used to continue to fund the program and purchase necessary materials and equipment (Correctional Service Canada, 2013). At the surface CORCAN appears to be a program that greatly benefits offenders both within and

outside of the prison. However, in reality it may actually do more harm than good, particularly for disenfranchised individuals such as racial minorities and individuals living below the poverty line as it perpetuates a cycle of financial insecurity resulting from low wage labour leading an individual to resort to illegitimate means of financial gain (Rymhs, 2009; Welch, 2003).

In 2012, prison inmates participating in CORCAN's programming were awarded an average of \$6.90 per day. This wage barely covers the purchase of canteen goods within the prison and will do little to help an individual upon their release into society (Kennedy, 2012). Offenders are not only at a considerable disadvantage financially when they re-enter society due to low-waged labour, but also are faced with rather limited opportunities to acquire employment that matches the training they received while incarcerated (Mackrael, 2013). Davis (1998) argues that prison labour power can actually be just as profitable as the labour extracted from third-world nations by large American corporations. As with labour extracted from third-world countries, corporations who utilise prison labour do not have to provide their employees with benefits, insurance or union fees, and are further able to cut costs through considerably low wages. CORCAN's revenue for the 2008-2009 fiscal year illustrates the profitability of prison labour in that approximately \$70 million was generated in sales and \$10 millions of which was derived from sales within the private sector (Kennedy, 2012). During the same fiscal year, only \$2.4 million, roughly 3.45 percent was allocated to paying the wages of approximately 4,800 inmates working in CORCAN workshops (Kennedy, 2012). Prisons are essentially optimal places to promote cheap labour with a constant and virtually unlimited supply of labourers. One could argue that the promise of profit derived from the prison has motivated the increased use of incarceration, thus bringing about the Punitive Turn. Following the logic of punishing for profit we can see how the labour programs would be favourable to rehabilitative programming as it drives profits and motivates the expansion of the prison populations in order to capitalise on financial opportunities. Although extracting cheap labour allows for the generation of profit within the prison, it is not the sole driving factor behind the expansion of the prison system in the pursuit of economic growth in the United States and Canada. Increased incarceration rates and issues of overcrowding in carceral facilities have brought about the perceived need to expand the correctional system by building more prisons. Rather than minimise the use of incarceration as a means to address overcrowding in prisons, there has instead been a movement to build more prisons and cells to accommodate for the growing number of prison inmates (Brosnahan, 2013). While minimising overcrowding in prisons may be grounds to continue to build prisons, it is perhaps only a small driving force behind such expansion. The construction of the Okanagan Correctional Centre in Oliver British Columbia demonstrates how the prison industrial complex extends beyond the extraction of labour as a means to generate profit and moves into the stimulation of economic growth within the community. The construction of the prison has stimulated the development of

the community surrounding the site and is projected to generate nearly 1,000 jobs both directly and indirectly (Burley, 2015). This demonstrates how the promise of economic growth can in turn contribute to the expansion of the prison system despite evidence suggesting that using incarceration as primary punishment does not reduce crime.

The prison industrial complex is not a singular entity. It is a part of a complex relationship between penal institutions, political stakeholders and private corporations (Sudbury, 2002). It is not only a manifestation of shifts in penalty brought about by the Punitive Turn but also a consequence of globalisation. As corporations began to relocate manufacturing facilities to the global south manufacturing jobs in the Western nations, such as the United States and Canada, subsequently began to disappear (Sudbury, 2002). This in turn had a substantial impact on the structure of the communities that were built up around the manufacturing facilities that were once in operation in urbanised areas of North America. Sudbury (2002) states that “[as] job cuts hit these communities, they were devastated by pandemic rates of unemployment, a declining tax base and resultant cuts in social, welfare, educational and medical provision” (p. 60). These communities were largely populated by marginalised groups such as Aboriginals, African-Americans and Latinos. The demise of jobs led to high rates of poverty, drug addiction and violence. All these are factors predominantly associated with higher rates of crime and criminalisation. This brings the prison industrial complex full circle in that individuals are left without jobs due to large corporations’ desire for cheap labour. The communities in which these individuals inhabit thus see an influx of criminalised activities, which then results in higher rates of incarceration. Higher incarceration rates ultimately call for the construction of new facilities to accommodate for the increasing number of prison inmates. Finally, corporations are able to further extract labour at a low cost from prisons, and are able to do so domestically rather than in the Global South. Punishment has ultimately become a lucrative business, where multinational corporations and political bodies are able to generate profit from incarceration. Within this logic lies the notion that in order to further expand economic growth the prison system itself must also expand. Thus motivating a shift towards increasing the use of incarceration as punishment and further advancing the emergence of the Punitive Turn.

### **Management of Disadvantaged Sub-populations**

The Punitive Turn has brought about a managerial logic of wherein the systematic identification and long-term management of populations deemed to be high risk now have become prominent components in directing criminal justice practices (Hannah-Moffat, 2005). In Canada “risk/need languages are now fully integrated into most youth and adult correctional narratives, including the National Parole Board and the Correctional Service of Canada’s policies and training manuals, which explicitly instruct practitioners on how to ‘govern through risk’ (Hannah-Moffat, 2005; p. 34-35).

More often than not, the populations that are viewed as high risk and thus deemed to be in need of increased management are those with greater economic and social deprivation. Thus the new punitiveness ultimately becomes a strategy of managing the poor. Moreover, the Aboriginal people in Canada, and the African American people in the United States have historically been excluded from social and financial mobility. They have been further separated from society with the creation of designated living areas and the exploitation of their labour.

Wacquant (2001) argues that the ghetto served as an enclosure for stigmatised populations. In this case, the population being African Americans who migrated to the northern states when the demand for semi-skilled manual labour grew between 1914 and 1968. However, when these ghettos became inoperative following the Civil Rights movement, the prison became a suitable substitute as it enabled the containment of segments of the African American populations that were “devoid of economic utility and political pull” (p. 101-103). Once the ghettos no longer served as a means of overt control over the African American populations, the prison became a prominent tool in maintaining such control. Assumptions about the criminality of African Americans have led to increased police presence in areas largely populated by African Americans. Leading to higher arrests and ultimately supplying prisons with a wealth of bodies to control and manage over long periods of time. Davis (1998) states:

The prison industrial system materially and morally impoverishes its inhabitants and devours the social wealth needed to address the very problems that have led to spiralling numbers of prisoners. As prisons take up more and more space on the social landscape, other government programs that have previously sought to respond to social needs - such as Temporary Assistance to Needy Families - are being squeezed out of existence. The deterioration of public education, including prioritizing discipline and security over learning in public schools located in poor communities, is directly related to the prison ‘solution.’ (p. 2)

We see in this statement the cyclical nature of the relationship between poverty and the prisons. Essentially, poverty sets up the conditions in which individuals are more likely to be arrested and the long-term incarceration of these individuals further deprives them of any chance of social mobility upon their release. A similar phenomenon exists in Canada, however, it is concerned largely with Indigenous populations. Where ghettos existed in the United States, Canada has Native reservations that are designated landmasses for Aboriginal peoples. The deterioration in political, economic, social and cultural elements in Canada’s Aboriginal communities has essentially created and perpetuated a series of hardships for Indigenous populations. Underemployment, limited education, social isolation and the trauma brought about by the residential schools are among some of the factors

that lead not only to an increased chance of criminality but also serve as risk factors that contribute to higher risk scores for Aboriginal offenders, thus impacting their experience in the criminal justice system (Martel et al., 2011).

The acquisition of employment outside of the prison proves to be a difficult task for those with criminal record, and even more so for those who spend a greater amount of time in prison and have a limited education. These factors are often prevalent among Aboriginal offenders (John Howard Society, 2009; Office of the Correctional Investigator, 2016). Moreover, the failure of prison labour programs to deliver their promise to prepare offenders for their reintegration into the community and provide them with skills that will help them enter the work force outside of the prison arguably places Aboriginals at an even greater disadvantage upon their release. Aside from the facts that the jobs acquired in prison are not as easily attained or are limited in availability in society, and that these jobs often pay lower wages. The employability of offenders decreases the longer they are incarcerated due to a lack of familiarity with new and emerging technologies and the weakening of social skills brought about by the isolating experience of incarceration (Mackrael, 2013; John Howard Society, 2009). Aboriginal offenders often serve longer prison sentences than their non-Indigenous counterparts. People with mental health and substance abuse problems who also have a limited education, are arguably subjected to inescapable and persistent forms of social control in that they are limited to acquiring low-wage employment. Thus keeping them within the labouring class in society with little to no chance of social or economic mobility. Should they fail to accept such employment, they face the possibility of returning to prison should they re-offend or breach the conditions of their release (Office of the Correctional Investigator, 2016). Thus seeing the realisation of one of the primary goals of the discourse of the New Penology, the maintenance of long-term social control over offender populations and how Aboriginal peoples are especially at risk to falling under the watchful eye of the punitive system. Although the actuarial logic under the New Penology is not solely focused on the determination of risk as it also aims to determine appropriate programming. The current risk management strategies have aided in subjecting Aboriginal populations to greater social control. Whether it is by direct supervision through longer prison sentences derived from high-risk scores for recidivism, increased surveillance in areas with higher populations of Aboriginals or through the imposition of additional conditions upon release from incarceration.

### **The Impact of Actuarial Justice and “Tough on Crime” Practices**

The emergence of populist-informed policies brought about by the Punitive Turn has in part contributed to the harshening of penal sanctions and the adoption of tougher crime control practices. Politicians drew on public dissatisfaction with criminal justice proceedings and the widely held perception that criminals were receiving punishments that were considered to be too light with

respects to their offence. Moreover, in an effort to propel their political agenda politicians advocated for and promised the deliverance of a “tough on crime” regime that would be consistent in its judicial proceedings for all offenders (MacQueen, 2010; Freiberg & Gelb, 2014). The implementation of mandatory minimum sentences, longer prison terms and the limitation of judicial discretion in sentencing have greatly impacted the criminal justice system and have played a considerable role in the growth of the incarcerated population and the expansion of the prison industry in Canada (Piché, 2015). Mandatory minimum prison sentences in Canada are largely used in sentencing crimes associated with firearms or violent crimes (Department of Justice, 2015). Chartrand (2001) argues that the mandatory minimums associated with firearms often results in a disproportionate conviction of Aboriginal peoples, as the use of firearms is more prominent amongst Aboriginal communities. Within these communities, firearms are widely available as they are used for hunting purposes and are a fundamental aspect of everyday life. However, parliament often fails to consider this due to strict sentencing regulations thus resulting in a higher rate of Aboriginal individuals receiving custodial sentences despite the fact that the *Gladue* ruling emphasises special consideration of Aboriginal traditions in sentencing and the utilization of the prison as a last resort (Chartrand, 2001; Hamilton, 2016). Smith (2015) states that receiving a custodial sentence results in the dislocation of Aboriginal offenders to facilities that are great distances from their communities. As a result, these individuals are deprived of the social support of their community and are “unable to heal along with their nations” (Smith, 2015, para. 11). Mandatory minimum sentences not only target crimes that are disproportionately associated with Aboriginals. They also result in the separation of the offender from their community and deprive them of the necessary supports to promote rehabilitation, reparation and reintegration due to the fact that Aboriginal communities are remote and often far removed from carceral facilities.

However, “tough on crime” practices are not solely responsible for the negative impact that the discourses and practices of the Punitive Turn have had on Aboriginal populations in Canada. Longer prison sentences adversely affect Indigenous offenders both in the prison with regards to the deterioration of one’s mental health and upon their release as they limit one’s social and financial mobility (John Howard Society, 2009). But it is perhaps the interplay between the populist-informed punitive practices and the use of actuarial risk-need assessment tools in criminal justice matters that has contributed to a higher prevalence of Aboriginal offenders in prison. Although the landmark rulings of *R. v. Gladue* in 1999 and *R v. Ipeelee* in 2012 advocated for special consideration of Aboriginals when sentencing and to consider all other available options before incarceration, the problem of overrepresentation continues to exist today (Hamilton, 2016). Historic injustices and failing social institutions are among factors that are largely responsible for the disproportionate presence of Aboriginals in carceral facilities. The increased use of actuarial risk instruments in

corrections also plays a role in informing decisions to require these individuals to serve the entirety of their sentence in prison.

Actuarial risk assessment tools consider a number of static and dynamic factors such as socioeconomic status, education and histories of substance abuse in order to calculate a risk score for a particular individual. Which is then used in to inform criminal justice practices such as sentencing, prison security classification and parole decisions (Hannah-Moffat, 2012). Although risk assessment has embodied a more transformative ideal in its consideration of modifiable dynamic factors to inform treatment, it still assumes that “risk markers are uniform across offending populations, and that objective risk-assessment tools are more accurate than subjective ones” (Martel et al. 2011; p. 239). As a large number of Aboriginal offenders are from communities characterised by considerable poverty, suffer from mental health issues and have histories of substance addiction and childhood abuse, they inevitably yield a higher risk score than non-marginalised groups (Gilmore, 2015; Office of the Correctional Investigator, 2012; Hannah-Moffat, 2012). Generally, higher risk and need scores are problematic as they are associated with custodial sentences and a larger number of bail conditions they must adhere to upon their release. The greater amount of conditions ultimately increases the offender’s chances of returning into the criminal justice system due to breach of conditions and subjects them to further surveillance and greater criminalization (Hannah-Moffat, 2012). The use of actuarial risk assessment can be more harmful with regards to Aboriginal offenders than with their non-Aboriginal counterparts as evidenced by the consistent classification of Aboriginal offenders as higher risk and need across various categories such as security classification and correctional programming. This is particularly problematic as correctional programming is much more prevalent in lower-security facilities. Being that a significant portion of Aboriginal offenders are housed in high-security institutions, they do not have adequate access to the programs that they need (Martel et al., 2011). Moreover, Martel et al. (2011) suggest that Aboriginal offenders are further disadvantaged by actuarial risk assessment because their higher scores tend to separate them into a category of offenders presenting high risk for recidivism and consequently do not meet certain criteria for access to correctional programs. Furthermore, Aboriginal offenders must adhere to a considerable amount of conditions upon their release. But due to the underlying social problems within their communities such as poverty, homelessness and the prevalence of drugs many of these individuals are unable to refrain from violating conditions. As a result, many find themselves back in prison (Macdonald, 2016). Perhaps the most notable ramification of the use of actuarial tools in criminal justice matters is that it once again further subjects Aboriginal populations to persistent supervision and management, rendering the criminal justice system yet another inescapable hardship for Aboriginal peoples in Canada.

## Conclusion

Throughout this paper, I have considered the symptoms of the Punitive Turn. Namely the explosion in prison populations, the increased reliance on actuarial risk/need assessment and managerial strategies, and the politicisation of criminal justice matters through populist-informed criminal justice policies in the context of the experience of Aboriginal Canadians and African Americans in the criminal justice system. In drawing parallels between the punitive practices in the United States and Canada as well as considering criminal justice trends surrounding Indigenous people in Canada, I argue that while there is a lack of presence of a Punitive Turn in general Canadian punitive practices, there is evidence to suggest the existence of a Punitive Turn in Aboriginal corrections. Changes in punitive discourses have affected Indigenous offenders in the sense that there has been a significant increase in Aboriginal prison populations brought about by a variety of factors such as historical maltreatment and systematic racism in policing practices leading to higher arrest rates in Aboriginal communities. Although the police presence in Aboriginal communities was not explored in great detail, it is important to consider in future research as it does impact the presence of Aboriginals in the criminal justice system. Histories of forced assimilation, dispossession of traditional territories and the failing social institutions in Aboriginal communities has led to problems of substance abuse, social isolation, and failing community support, which among other factors are often considered as static risk factors that subsequently increase one's risk score (Martel et al., 2011). Under the risk/need assessment higher risk scores often place individuals in higher security facilities, which often lack access to necessary rehabilitative programming as determined by the need scores yielded in risk/need assessment. Although risk/need assessment aims to consider dynamic factors along with static factors, its relative uniform application often yields higher scores for Aboriginal offenders. Thus placing them in maximum-security facilities where they serve longer prison sentences, have limited access to rehabilitative programs and must adhere to a greater number of conditions upon their release. I found that risk/need assessment could be considered to be a part of a strategy of long-term management of Aboriginal peoples that extends beyond the prison and is perpetuated through increased incarceration of Aboriginal offenders. Furthermore, I considered the role of penal populism in the expansion of Aboriginal prison populations in that the introduction of mandatory minimum sentences brought about by populist-informed policies has disproportionately targeted Aboriginal offenders. Conditions attached to firearm convictions have further contributed to longer prison sentences and an increase in incarcerated Indigenous peoples. Additionally, I considered the prison industrial complex as an explanatory factor behind the Punitive Turn as the discovery of the profitability of punishment. The prison industrial complex has facilitated the expansion of the prison and the consideration of incarceration as a first resort in punishing offenders. Although my analysis of CORCAN provided an illustration of the profitability of prison labour, I was limited in my ability to demonstrate how prison labour programs impact Aboriginal prisoners. However,



this would be important to consider in future studies. Essentially, the punitive policies under the Punitive Turn, the emergence of managerial logics encompassed in the New Penology and the desire to drive profits from the prison have been mobilised as a strategy of extending and perpetuating social control over marginalised populations such as African American populations in the United States and Aboriginal Populations in Canada. Political regimes and corporations appear to reap the benefits of punishment while the needs of those who are subject to it are all but disregarded. In a country founded on the exploitation of one group to benefit another it is easy to understand how the new penal practices are aimed at benefiting a few at the expenses of the masses. However, the pursuit of cost effective-efficient punishment may in fact present greater costs than it does benefits, especially when it concerns Aboriginal populations in Canada.

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