

**A CIVILIZED SOCIETY?
THE CULTURE OF PUNISHMENT IN CANADA**

By

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ABSTRACT

Punishment is more than a response to criminalized behaviour; at its core, it is a reflection of the cultural, social, and political trends of a society. In Canada, our cultural and emotional sensibilities have long been recognized as producing a moderate and balanced penal system. However, a recent series of ‘tough on crime’ laws and increasingly harsh prison conditions contradict our global reputation for being civil and lenient, and suggest that a period of ‘penal intensification’ (Sim, 2009) is taking place in Canada.

This thesis explores Canada’s current penalty through a critical, qualitative content analysis of the *Safe Streets and Communities Act* (2012) legislation and a sample of online public commentary. Drawing on the de/civilizing process theories of Norbert Elias (1939/2000) and John Pratt (1998, 2002, 2011), it is argued that there is a noticeable dominance of de-civilizing discourses and themes found within the legislation and comment boards. While historical developments have arguably made us more “civilized”, the recent implementation of harsh punishments in Canada’s penal system suggests that we are experiencing a “de-civilized” penal intensification.⁷

INTRODUCTION

A (Re)Turn to Penal Punitiveness?

‘Tough on crime’ strategies are increasingly gaining traction as the primary tool for punishment and penal intervention in western correctional systems. In countries like the United States these initiatives have been well-established as the norm for many years (Garland, 2000, 2001; Hogan, Chiricos & Gertz, 2005; Pratt, 2002). However, even nations traditionally recognized as more moderate are witnessing a visible shift from community to prison sentences and from reparative and reintegrative practices to more punitive policies (Cook & Roesch, 2012; Mallea, 2010; Pratt, 2008a, 2008b). In most western societies today, individuals are subject to more intense and austere forms of punishment, including longer carceral sentences and penal sanctions for a greater number of (sometimes newly) criminalized behaviours.

In Canada, the rise of a tough on crime agenda coincided with the election of the Conservative Party, led by Prime Minister Stephen Harper, in 2006. Though only a minority government at that time, the Conservatives were able to propose and successfully enact several

pieces of legislation that created new mandatory minimum sentences, restricted parole release, and eliminated pre-trial credit in most instances, among many other changes. Notably, this new legislation was instituted despite a substantial body of research that demonstrates that such practices have a minimal effect on reducing crime; in fact, many have been shown to markedly exacerbate the likelihood of criminal activity (Andrews & Bonta, 2010; Cook & Roesch, 2012; Gabor & Crutcher, 2002; Zinger, 2012).

Then, in May 2011, the Conservative Party gained power as a majority federal government – the party’s first majority status since 1988¹ (Parliament of Canada, 2012). This significant political shift has underscored the country’s substantive penal changes since that time; namely, in the growing number of laws governing criminalized actions and the increasing punitiveness of subsequent sanctions. In September 2011, Justice Minister Rob Nicholson tabled Bill C-10, an initiative colloquially known as the omnibus crime bill. The bill was comprised of nine expansive measures, many of which had been previously defeated in Parliament when presented on their own. Its passage a few short months later as the *Safe Streets and Communities Act* (SSCA) (2012), created or extended over 30 new mandatory minimum sentences, restricted conditional sentencing options, increased prison sentences for criminalized youth, extended the ineligibility period for pardon applications, and granted new control over prisoners’ release to victims of crime.

Supplementing these legislative amendments, the Conservatives have also established or supported policies that worsen prison conditions and make community re-entry following incarceration increasingly difficult, including normalizing double-bunking practices, relying on

¹ This incarnation of the Conservative Party was formed in 2003 as a result of the merging of the Canadian Alliance and the Progressive Conservative Parties. The 1988 election was the last where the Progressive Conservatives won a majority, prior to this amalgamation.

solitary confinement for prisoners suffering from mental health issues, imposing conflicting parole and bail conditions,² and reducing prisoner wages. Paradoxically, programs and policies that have demonstrated considerable success have faced reduced funding or complete elimination, such as the prison farm program,³ chaplaincy program,⁴ LifeLine,⁵ and the Complex Needs Program.⁶ Preventative and harm reduction strategies, such as safer consumption sites or needle exchange programs, continue to receive little focus or are condemned as being ‘soft on crime.’⁷

² For instance, individuals can be released on parole or bail with a condition that requires them to avoid interacting with other individuals known to have a criminal record, yet also forces them to reside in a community residential facility that only houses individuals with a criminal record. As another example, some individuals on parole or bail are prohibited from traveling to certain areas of the city (‘red-zoning’), yet are also required to attend rehabilitative programming that may only takes place within that red zone.

³ The prison farm program operated in six federal prisons across Canada, offering prisoners the chance to gain valuable skills while also providing food and milk for prisoners and local food banks. The Conservative Party phased out the program during 2009-2010, contending that it did not provide employment skills relevant to today’s workforce (Parliament of Canada, 2010). Interestingly, a more recent article (Mackrael, 2013 January 7) condemned CSC’s employment program CORCAN as (still) failing to provide adequate job skills necessary for employment.

⁴ The prison chaplaincy program provides spiritual guidance, crisis intervention, workshops and counselling services for incarcerated individuals (CSC, 2013). In 2012, CSC reduced the federal chaplaincy program, removing 49 part-time (mostly non-Christian) chaplain jobs (Mackrael, 2012 November 5). In response to public backlash at the discriminatory policy, CSC restored some non-Christian chaplains’ positions in early 2013 (CBC, 2013 April 6).

⁵ The LifeLine program provided support for people facing a life sentence, and offered rehabilitation and reintegration resources for people on parole. In April 2012, CSC terminated the program, despite its multiple awards, positive evaluations and replication in other countries (NUPGE, 2012)

⁶ The Complex Needs Program was a pilot project implemented at the Regional Treatment Centre in British Columbia in 2010 that offered extra medical care and health attention to male prisoners who regularly self-harm - the only male-centered program to provide such service in Canada (Stone, 2013). In early 2013, CSC announced the closure of the program despite a recommendation by the Office of the Correctional Investigator (2012a) that permanent funding be awarded to the program.

⁷ Insite is a safe injection site that opened in 2003, the first and currently only site in North America. It provides individuals with equipment and space to consume drugs as well as offering health care services and access to treatment (British Columbia Centre for Excellence in HIV/AIDS, 2009). It has been globally recognized as a positive harm reduction program that prevents overdoses, limits the spread of HIV and other diseases, and reduces crime related to drug use. However, Insite has faced frequent court challenges from the federal Conservative government in attempts to shut it down. In 2011, the Supreme Court of Canada granted Insite permanent exemption status, contending that “the effect of denying the services of Insite to the population it serves is grossly disproportionate to any benefit that Canada might derive from presenting a uniform stance on the possession of narcotics.” (Canada [Attorney General] v. PHS Community Services Society, 2011).

Ironically, the popularity of tough on crime sentiments has gained considerable strength over the past decade (Mallea, 2010; Webster & Doob, 2012), despite occurring parallel to a steadily declining crime rate in Canada, which peaked in 1991. In the midst of enacting some of the harshest legislation and policies in recent Canadian history, it is striking that reported crime has diminished to a 40-year record low (Perreault, 2013). This persistent support for a tough on crime agenda also disregards countless research studies that not only detail the numerous and frequent failings of these measures, but also provide strong evidence of the benefits of so-called ‘soft’ measures. For example, proposals for safe injection sites in Ottawa and Montreal continue to face obstacles to implementation, regardless of empirical reports that have demonstrated the numerous successes of Insite in Vancouver, including local reductions in crime and overdose mortality (British Columbia Centre for Excellence in HIV/AIDS, 2009; Marshall et al., 2011). The prison in particular is bolstered by culturally entrenched justifications, including rehabilitation, correction, deterrence, and public safety, despite being regularly denounced within academic research for its inability to address any of these purposes (Bennett, 2008; Gendreau, Goggin & Cullen, 1999; Martinson, 1974; Mathiesen, 2006). Punitive incapacitation can easily be argued as the sole function of the Canadian penal system in late modernity; indeed, as tough(er) on crime ideations begin to eschew all other responses to social harm, it is evidently considered by many to be the most important function of the penal system.

These significant and diverse changes of late have produced a dramatic break between Canada’s past and present penalty (Doob, 2012; Webster & Doob, 2012). Moreover, this fragmentation has continued to widen with the Conservatives’ legislative developments subsequent to the SSICA, such as the bill extending parole ineligibility for life sentences from 25

to 40 years (*Bill C-478*, 2013), and the more recently amended sex work laws⁸ (*Protection of Communities and Exploited Persons Act*, 2014). Although harsh penal measures have arguably always existed, either openly or layered behind a “liberal veil” discourse (Moore & Hannah-Moffat, 2005) they were, until recently, minimally used or were at least modified to align with the higher shame thresholds of civilized society (Bain, 2011; Elias, 1939/2000; Foucault, 1977; Pratt, 2002). In contrast, the current magnification of openly punitive policies represents the visible and dominant return of penal sanctions that were previously discarded as barbaric and uncivilized. This project is situated within these layered and cyclical penalties, as it examines discourses about Canada’s current penalty and whether they are reflective of a punitive and de-civilized penal system.

Constructing Punitiveness Within A De/Civilizing Framework

This thesis consists of an exploration of punitiveness in Canadian penalty, through the lens of the civilizing process theory established by Norbert Elias (1939/2000) and expanded upon by John Pratt (1998, 1999, 2002, 2011) and others (Mennell 1990; Spierenberg, 1984, 2001; Wouters, 1986). Drawing on common explanations and definitions of punitiveness and the punitive turn theory (Carlen & Tombs, 2006; Garland, 2001; King & Maruna, 2009; Tonry, 2001), as well as the characteristics of de-civilization (Pratt, 1998, 2002, 2011; Spierenberg,

⁸ In December 2013, the Supreme Court of Canada (SCC) unanimously ruled that Canada’s laws related to sex work were unconstitutional. It argued that bans on public communication/solicitation, bawdy houses (brothels), and living off the avails of prostitution facilitate dangerous working conditions that violate sex workers’ rights to safety, security, and health (Canada [Attorney General] v. Bedford, 2013). The SCC decision also granted the government one year to amend then-current laws in response to the ruling before removing them from the CCC. In June 2014, Justice Minister Peter MacKay tabled Bill C-36 which strictly prohibits purchasing sexual services, advertising the sale of sexual services, and communicating in *any* place for the purpose of purchasing sexual services (*Protection of Communities and Exploited Persons Act*, 2014). Despite fact that this bill would impose harsher versions of laws already declared unconstitutional, MacKay argued that they would prevent exploitation of sex workers and would protect women, children and communities (Department of Justice, 2014 June 4). The bill received royal assent in November 2014.

1984), I propose that Canada's penal system can be defined as punitive if there is the strong presence of elements identified as part of the de-civilizing process.⁹ The concepts of de-civilization and punitiveness are justifiably linked due to their shared characteristics, which include an intolerance of difference and 'others', fear of crime and violence, the presence of visible public emotion, harsh penal sanctions, and long prison sentences, among others.

De-civilization and punitiveness are also linked by their discursive and fluid qualities. As is explored in greater detail in chapter two, the de/civilizing processes constantly fluctuate, assuming dominance in turn but never to the total exclusion of the other (Elias, 1939/2000; Spierenburg, 2001). I employ this conceptualization in order to explain changes in penalty, noting that while Canada can be defined as more or less punitive, both categories co-exist at any one time. Thus, while Canada currently appears to be in the throes of a return to a de-civilized and punitive penalty, policies, practices, and opinions that embody civilization and non-punitiveness do persist, albeit to a noticeably diminished degree.

Aim and Significance of the Research Project

For this project I conduct a critical, qualitative analysis of the *Safe Streets and Communities Act* legislation and a portion of online public commentary, in order to conceptualize if, and if so, how Canada's penal system can be understood as dominated by punitive sentiments. I examine both of these very different types of data, because measures of punitiveness are not only located within legislative changes but also reflect cultural and social sentiments (Brown, 2009; Doob & Webster, 2006; Garland, 1990, 2001; Strange, 2001; Tonry, 2001). It is important

⁹ Of course, by definition every penal system is punitive. The aim of this project is not to dispute this, but rather to highlight the nuances between a very punitive system and a more moderately punitive system.

to note that while the sentiments of online comments cannot be generalized to broader public opinion, they do highlight some of the moral and attitudinal patterns underpinning Canadian penal practices. I contend that the noticeable dominance of de-civilizing discourses and themes within the legislation and comment boards informs the Canadian penal system more broadly; in short, I argue that Canadian penalty is currently defined by de-civilizing and punitive discourses.

This research is significant because it is among the first of a few studies that suggest that the recent swell of ‘tough on crime’ legislation in Canada can be framed as evidence of significant “penal intensification” (see Sim, 2009). While most research in this area indicates that Canada has not experienced a punitive turn, especially when compared to other western nations (Doob & Webster, 2006; McMahon, 1992; Meyer & O’Malley, 2005), I argue that the prominent discourses and sentiments emerging from this project urge a re-evaluation of these conclusions. As a few more recent analyses (Doob, 2012; Webster & Doob, 2012; Zinger, 2012) have suggested, a possible transformation of Canada’s moderate penal stance is taking place. By utilizing the civilizing process theory, this thesis provides greater credence to these analyses and demonstrates that recent penal practices in Canada do indeed reflect a “penal intensification” (Sim, 2009).

Outline of the Thesis

In the first chapter, I explore the extant literature related to punitiveness and culture. I examine the work of scholars who have suggested that penal frameworks are reflective of, and facilitated by, broader changes in socio-cultural and political structures (Garland, 1990, 2001; Ratner & McMullan, 1983; Pratt, 2002; Strange, 2001). Building on this conceptualization, the

punitive turn movement has been grounded in neoliberal politics (Bell, 2010; O'Malley, 2009), a return of emotionalized penal discourses and sanctions (Loader, 2005; Karstedt, 2002; Pratt, 2000b), and the socioeconomic insecurity and fear that permeate late modern societies and engender an increased intolerance of others (Bauman, 2000; Cayley, 1998; Young, 1999). I also look at recent scholarship which suggests that Canada's long history of penal moderation has transformed (Cook & Roesch, 2012; Doob, 2012; Webster & Doob, 2012), while also noting that an appearance of leniency and civility can be a facade behind which unaccepted, and supposedly obsolete, punishments continue to be practiced (Carlen, 2008; Carlen & Tombs, 2006; Hannah-Moffat & Moore, 2005; O'Malley, 1999; Sim, 2008).

In chapter two, I provide a detailed overview of the theoretical concepts of the de/civilizing processes. In particular, I focus on how Norbert Elias' (1939/2000) original theory on social development has been applied more recently to explain the history of penal developments in the western world (Pratt, 1998, 2000, 2002, 2011; Spierenburg, 1984; Wouters, 1986). I detail the four central components of the civilizing process (structural processes, social habitus, cultural transformation, and modes of knowledge), and then demonstrate how these broad categories also offer an explanation for penal shifts. Relying heavily on John Pratt's (1998, 1999, 2000, 2002, 2011) overview of penal development, I describe how the history of penal change can be alternatively understood as 'civilizing' (as seen through such trends as the seclusion of violence/punishment from the public eye and the disappearance of the prison; ameliorated prison conditions; the development of community-based sanctions; and the rise of expert/scientific knowledge) and 'de-civilizing' (as seen through examples including the increase of visible prison riots; the rise of mutual disidentification between criminalized individuals and the public;

increasing incarceration rates; the collapse of a more rehabilitative ideal; the rise of austere prison conditions; and the dismissal of expert/scientific knowledge). Attention is also dedicated to the discursive and non-linear nature of the de/civilizing processes, as well as the ambiguities that are imbued in the key components of each process (Bauman, 1989; Keane, 2004; Mennell, 1990; de Swaan, 2001).

Chapter three details the methodological processes undertaken, including a discussion of the epistemological lens, sampling and data collection, ethical considerations and limitations of the project. I describe the conventional qualitative content analysis approach constructed by Hsieh and Shannon (2005), as well as identify the specific analytical procedures used for this project. I also examine the procedures of, and limitations with, using the Internet and online public commentary in qualitative research. Although the Internet is a relatively recent methodological tool, scholars from a broad range of disciplines have noted that it broadens possibilities for data collection, research topics, and goals of research (Freeman, 2011; Henrich & Holmes, 2013; Markham, 2008). The rich source of data generated by online comment boards is particularly useful in understanding public opinion, as well as enhancing debate and discussion amongst online news readers (Broad & Joos, 2004; Manosevitch & Walker, 2009), although it can also be overrun by negative and disrespectful responses that reinforce extremist opinions and skew the tone of comment boards (Aharony, 2012; Albrecht, 2006; Hlavach & Freivogel, 2011).

In the fourth chapter, I present the major findings of this research, which were divided into two broad categories: (1) themes reflecting the elements of the de-civilizing process; and (2) themes reflecting elements of the civilizing process. My analysis produced a total of eight themes, of which the overwhelming majority (referring to both range and depth of support)

provided evidence of de-civilizing discourses. I argue that the predominance of de-civilizing themes within the data indicates that Canada is experiencing a “penal intensification” (Sim, 2009) and can be defined as punitive.

In the conclusion, I sum up the major findings of this research, and discuss how the presence of the de/civilizing processes have continued to fluctuate within Canada’s penal system beyond the the passage of the SSCA. I then outline the limitations of the project, and conclude with some suggestions for future research.

CHAPTER 1: LITERATURE REVIEW

1.1 Penalty, Culture, and Emotions

Culture is frequently posited as having a significant role in conceptualizing and defining the purposes and consequences of penalty and penal institutions (Brown, 2009; Christie, 2000; Garland, 1990, 2001; Pratt, 2002; Strange, 2001; Tonry, 2001; Wacquant, 2010). As Garland (1990) argues, “the intensity of punishments, the means which are used to inflict pain, and the forms of suffering which are allowed in penal institutions are determined...by reference to current mores and sensibilities” (p. 196). This link between culture and penalty suggests that the social and moral attitudinal patterns of the dominant society frame how we define crime and the criminal, as well as guide the penal responses deemed appropriate for different forms of law-breaking. Offenders are recognized as having morally deviated from commonly accepted behavioural norms, and as such, as having *offended* cultural norms (Bauman, 2000; Garland, 1990). Punishment, as the response to these offences, must be aligned with cultural norms to be acceptable. As Tonry (2001) points out, modes of punishment are not simply “foisted upon a

society or an era, but [embody] aesthetic qualities that people value, or believe they value” (p. 153). Cultural contextualization thus offers a cogent explanation for why certain punishments are normalized and expected, while others are rejected as deviant, outdated, or barbaric.

At their core, punishment practices reflect a society’s level of tolerance for the pain and suffering of criminalized individuals (Bauman, 2000; Pratt, 2000b, 2002; Tonry, 2001). Bauman suggests that the limits of tolerance can be identified by comparing behaviours that are considered abnormal but otherwise acceptable and those seen as deviant, and in need of penal intervention. Both Tonry and Pratt add that a society’s tolerance for crime and criminals is subject to fluctuations, with many once non-criminal behaviours redefined as punishable (and vice versa). Tonry’s (2001) discussion of the acceptability of drug use clearly demonstrates these variations: where drug users were in the past acknowledged as ‘different’ but not penalized (i.e. abnormal), they are now heavily stigmatized and face severe penal consequences (i.e. deviant and criminal). Cultural interpretations suggest that greater intolerance of drug use implies a greater acceptance of punishment and pain directed at users (Pratt, 2002). Indeed, criminalized behaviour in general has faced greater levels of intolerance in recent years, with several scholars contending that intolerant and exclusive attitudes have especially manifested in late modern society (Bell, 2010; Garland, 1990; Young 1999).

These attitudes seem to stem from the inherent insecurity and disorder of late modern societies, characterizations that facilitate fear, increased social tolerance for the suffering of others, and encourage exclusion (often via prison) as a way to restore order (Bauman, 2000; Cayley, 1998; Garland, 2001; O’Malley, 2008). The accompanying neoliberal socio-political rationalities, marked by reliance on the free market economy and governing-at-a-distance

strategies, as well as the values of hard work, perseverance, personal safety, and individual responsibility, have produced a culture in which criminal behaviour is necessarily redefined as a choice, and in which crime is singularly responded to with punishment, rather than social assistance or treatment. Bell (2010) notes that offender responsibilization involves identifying and changing the individual's maladaptive underlying value system through sanctions designed to 're-moralize'. Thus, individuals are punished not just for their inappropriate criminal choices, but also for their inappropriate values and characteristics that are stereotypically associated with particular classed and racialized groups. At the macro-level, structural barriers of poverty and racism are interpreted as the consequences of individual decisions, rather than as symptoms of the broader social ills that contribute to criminality. Within this logic, criminalized populations are "the rejects and waste of globalization" (Bauman, 2000, p. 212), and punitive sanctions are deemed to be the appropriate (and sometimes only) response.

Late modern society is also marked by what Karstedt (2002) calls the "return of emotions" (p. 299), defined by a public discourse and new sanctions that explicitly highlight or seek to arouse affective emotions like disgust, anger, fear, shame, and vengeance. Other literature similarly suggests that recent legislations appear to emphasize emotional elements, and certain punishment practices seem intended specifically for emotional release (de Haan & Loader, 2002; Garland, 1990; Loader, 2005; Pratt, 2000b). Pratt (2000b) acknowledges that the inclusion of emotion in state responses to crime has been productive in some cases (for example, enabling the development of restorative justice initiatives¹⁰); however, emotions simultaneously underpin

¹⁰ It is important to note that other scholars have demonstrated how restorative justice practices can be utilized as punitive tools that further extend the carceral net (e.g. Piche & Strimelle, 2007), and thus could be perceived as 'de-civilizing'. Although restorative justice can be categorized as a 'civilizing' way of incorporating emotions when examined through the lens of Elias's (1939/2000) civilizing process theory, depending on their incarnation they may not be 'civilizing' (see Chapter 2 below for further discussion of technical vs. normative notions of civilizing).

penalties that seek to humiliate, degrade, or otherwise inflict pain on the offender. Emotions have undoubtedly played a significant role in the emergence of hate crime laws (Karstedt, 2002; Mason, 2014), but also in the increasingly tougher sanctions for drug offences and other ‘moral’ crimes (see for example, the Safe Streets and Communities Act, 2012), the use of victim impact statements (Stanbridge & Kenney, 2009), and the return of humiliating ‘shaming rituals’ as punishment (Sheeran, 2012).

The re-emergence of vengeful emotions in the penal sphere is in stark contrast to the long historical development of a bureaucratic penal system that increasingly exercised restraint and rationality (Elias, 1939/2000; Keane, 2004; Pratt, 2000b; Spierenburg, 1984). For Karstedt (2002), this speaks to the changing societal moral imagination, one formed around an emotionally-imbued culture:

Emotional practices in public reactions towards crime are obviously and decisively shaped by specific emotional cultures and their institutional settings (such as modal national character, specific models, or characteristic features of the legal and political system)...This suggests that criminal justice is not based on specific basic emotions that are ‘primordial’ to its existence, but, rather, that the specific institutional and cultural pattern in which these emotions are embedded constitute and define the emotional reaction (p. 305).

Thus, laws and penal policies that reflect an emotive response to crime are not so much based on universally felt emotions, but rather indicate a changing culture that *values* the affective responses found in anger, disgust, or fear. Where emotions were once considered unwanted and embarrassing in criminal justice proceedings (Pratt, 2000b), they are now encouraged and even expected to guide sentencing decisions and policy development.

The rise of victims’ movements and similar activist groups provides one example of the saliency of these new sentiments (Christie, 2010; Kenney & Clairmont, 2008; Stanbridge &

Kenney, 2009). Stanbridge and Kenney (2009) argue that while the political and cultural climate during the 1980s provided the baseline conditions for victims' movements to emerge, it was the work of emotions that personalized the victim experience for the broader public, facilitating sympathy and support. Emotions are a key component for defining and managing the victim label, for example by using this role to achieve specific goals (e.g. tabling and passing new legislation) and to deflect external criticism (Kenney & Clairmont, 2008). As the victims' movements in the 1980s gained legitimacy in the 1980s, victims were provided with the opportunity to issue victim impact statements, to demand notification of parole dates, and to be informed of judicial proceedings so that they may attend. The legitimacy of victims' groups was largely built upon tailoring their appearances to cultural norms, which required victims to engage in careful emotion work¹¹; this included restricting uncontrolled displays of grief and anger, while simultaneously making their anguish evident (Stanbridge & Kenney, 2009). The necessity of this balancing act reveals that while emotions had (and continue to) become more acceptable for public consumption, a certain level of restraint and composure is still required.

While modernity was in part defined by supposedly neutral and calculated responses to criminalized behaviour,¹² many scholars point out that intense, usually negative emotions are an integral part of evaluating undesirable behaviour (de Haan & Loader, 2002; Karstedt, 2002; Loader, 2005). As Karstedt (2002) suggests, a reaction of disgust, for example, can be helpful at motivating opposition to cruelty. Disgust works to help identify behaviour that should be punished, but also to showcase the immorality of certain punishments that should be abandoned,

¹¹ Arlie Hochschild first coined the term *emotion work* in 1979, which she used to describe how individuals induce or inhibit certain emotions, in order to render their presentation appropriate in a variety of situations.

¹² This characterization of modernity is somewhat of myth. Even so-called 'neutral' responses to criminalized behaviour typically rely on racist and classist stereotypes, and are grounded in the belief that structural issues like poverty are the fault of the individual not the state (see for example Bauman, 2000 and Bell, 2010).

such as public executions (Spierenburg, 1984; Strange, 2001). Anger, in contrast, is linked to a sense of injustice or unfairness, a common reaction from individuals who have been victimized. Loader (2005) argues that emotions like these should be used as a resource, rather than simply viewed as a threat, for developing better penal policy since they are “inescapably tied up with matters of crime and punishment” (p. 12). He suggests that an inclusive democratic process in which the public would be able to voice their concerns and feel autonomous has the best chance of mitigating public anxiety and minimizing the desire for individual vigilantism.

Whether intrinsic and necessary or not, basing state responses to crime upon largely negative personal emotions is almost uniformly linked with more punitive sanctions (Christie, 2010; Hartnagel & Templeton, 2012; Karstedt, 2002; Loader, 2005; Pratt, 2000b). Although the literature regarding victims’ participation in the criminal justice system is contradictory (see Roberts, 2009 for an overview), it has been suggested that their influence on sentencing outcomes should be limited for this very reason (Hall, 1991; Sanders, 2004). Arrigo and Williams (2003) argued that the negative emotions inherent in victim impact statements effectively inhibit the possibility of any positive emotions (like empathy or compassion) being felt towards the accused during sentencing. More recently, Paternoster and Deise (2011) found that American jurors who viewed victim impact statements were more likely to hold a negative perception of the accused, and in turn, were more in favour of imposing the death penalty. While victims provide a valuable counter narrative to the state adversarial system, the impact of their emotional response on outcomes for specific cases should be minimized to avoid infringing on the fundamental due process rights of the accused.

The positive association between negative emotions and increased levels of punitiveness can in part be attributed to another feature of late modernity: the distanced public spectacle of crime and punishment, where news is no longer passed directly between individuals or communities, but rather received through various forms of mass media to highly diffused spectators (Brown, 2009; Karstedt, 2002). The general trend of penal development over the past several centuries has echoed this desire to render the brutality of punishment invisible – while still maintaining that brutality – by shifting punishment from the public into the private sphere (e.g. abolishing public spectacles, isolating prison buildings from public view and thus scrutiny) (Pratt, 2002; Spierenburg, 1984).

Karstedt (2002) argues that this social distance means that our responses “become more fleeting and volatile. The objects of our compassion, anger and fear change quickly” (p. 304). This argument supports similar assertions that our penal system has become decidedly volatile and incoherent (Doob, 1996; O’Malley, 1999; Pratt, 2000b). The range of punishments available are expected to fulfill a slew of purposes and satisfy multiple groups of people, while new harsher punishments are proposed mere weeks after a crime ‘breaks’ in the news. These emotionalized responses, reminiscent of Cohen’s (1972) moral panics, are increasingly becoming law with little to no public debate. In Canada, this process is notably seen in the hurried passage of the *Cyber-Safety Act* (2013), which was tabled and passed in Nova Scotia just five weeks after the death of Rehtaeh Parsons,¹³ as well as the increasing parole ineligibility for life sentences, from 25 to 40 years (Bill C-478, 2013).

¹³ Rehtaeh Parsons was a 17-year-old woman who committed suicide in 2013 after suffering from several months of online bullying and humiliation from school peers, including having a photo of her rape at a party circulated on the Internet and around her school. Advocacy from her parents and community, as well as political support, led to the creation of the *Cyber Safety Act* in Nova Scotia later that year (Davison, 2013).

It is important to remember that the return of an emotionalized culture does not indicate an end to rationality in the punishment agenda. The ideals of evidence-based policy and civilized restraint are still powerful and public opinion is not uniformly punitive, also demonstrating support for rehabilitation and prevention efforts (de Haan & Loader, 2002; Loader, 2005; Pratt, 2000b, 2002). Pratt suggests that the penal system is comprised of both trends and counter-trends, which, based on the earlier work of Norbert Elias, he labels the de/civilizing processes that alternately assume the dominant position of structuring discourses about crime. The modern trend of rationality, scientific inquiry, and responsabilization has been dominant for several decades, but ultimately emerged out of the retreat of a more passionate and emotive discourse that is reappearing in late modern societies.

While neither of the de/civilizing trends occur naturally, after decades and centuries of use, they become the intrinsic, obvious response to crime. Since culture does not change quickly or easily, particular discourses naturalize over time and eventually come to be understood as ‘common sense’ (Garland, 1990). Bauman (2000) highlights this crystallization process while discussing the persistence of prison: “Spatial separation leading to enforced confinement was over the centuries almost a visceral, instinctual fashion of responding to all difference” (p. 208). This process also partially explains the recent return of pre-modern era punishment practices, such as physical torture, hard labour, and public humiliation; these ‘nostalgic throwbacks’ are easily recognized symbols of our cultural past, and as such we often fail to problematize their use because they appear as an intrinsic and normative component of governance (Bell, 2010; Pratt, 2002).

Indeed, the interlocking connection between penalty and culture offers a compelling explanation for the prison's continued existence, which remains tenacious even in the face of decades of empirical research indicating its massive failures at addressing many of its judicial purposes. In fact, while political and correctional rhetoric continue to espouse rehabilitation, reintegration, correction, and deterrence as goals that are fulfilled by the prison system, incapacitation is widely recognized as the only judicial function that is satisfied through incarceration (Bauman, 2000; Bennett, 2008; Carlen & Tombs, 2006; Gendreau, Goggin & Cullen, 1999; Martinson, 1974; Mathiesen, 2006).

However, Wacquant (2001) notes that the prison also performs non-judicial or “extra-penological” functions, among which include class and racial segregation, management and control of ‘deviants’, and offering a place into which the broader citizenry can lock away their fears and anxieties. These foster the prison's continued use regardless of its well-recognized flaws. Cayley (1998) argues that the triumph of prisons as culturally significant institutions overrides their failure at treatment or correction:

Examining only what prisons *do* throws us back on the apparent paradox of an institution that persists despite overwhelming evidence of its counterproductivity as a means of correcting offenders and protecting public safety. Examining what prisons *say* to society allows us to see that they also function on a symbolic level – and that on this level they may succeed all too well (p. 81, original emphasis).

Cayley's argument emphasizes that having knowledge of the prison's supposed functions (i.e., what purposes supporters claim they perform) does not provide insight into why they continue to exist; logically, if prisons fail at their stated goals, then they should be discarded in favour of another criminal justice response. Instead, the prison's staying power is tied to the culturally symbolic purposes it serves; namely, that it reinforces the morality of the ‘un-offending’ public

by physically separating the immoral and criminal from the rest of the population (Bauman, 2000; Brown, 2009; Carlen & Tombs, 2006; Cayley, 1998; Tonry, 2001). Consequently, the judicial functions of the prison do not allow us to fully understand the prison's symbolic value, and thus why this institution perseveres or how we might eventually move beyond it.

While the prison has become a particularly commonplace institution over the last century, most punishment patterns have changed, albeit gradually and over time, as they are both influenced by and influence shifts in the broader culture (Garland, 1990). Examples of this are numerous: the decriminalization of homosexuality was reflective of a broader cultural shift in western society's understanding and treatment of homosexual persons; and the criminalization of marital rape legally demonstrated society's new acknowledgement of women's rights. Current populist-driven laws and policies are similarly a manifestation of cultural change, reflecting the power of public opinion in developing penal policy, the delegitimization of academic knowledge, the resurgent acceptance of emotional responses to crime, and an increased focus on victims' rights (Bottoms, 1995; Loader, 2005; Pratt, 2000b, 2002). Garland (1990) aptly describes punishment as a "cultural performance" (p. 252), wherein discourses are accepted, modified, and rejected to fit prevailing socio-cultural attitudes. Indeed, a critical examination of punishment can reveal the type of values, beliefs, and emotional sensibilities a culture ascribes to. The presence of powerful punishment slogans such as 'get tough on crime', 'just deserts', and 'you do the crime you do the time' suggest a culture imbued with sensibilities of intolerance, retribution, insecurity, fear, and exclusion. These characteristics are widely accepted as the socio-cultural foundation for punitiveness (Carlen & Tombs, 2006; Garland, 2001; Gerber & Jackson, 2013; King & Maruna, 2009; Tonry 2001).

1.2 The Punitive Turn Thesis

Punitiveness is defined with varying degrees of specificity, but almost uniformly refers, at the very least, to the level or degree of austerity in punishment practices. King and Maruna (2009) define punitiveness as the “level of support for harsher sanctions and/or crime policies with an emphasis on increasing the quantity of people punished...as well as the intensity and length of punishments” (p. 156). Hogan, Chiricos, and Gertz (2005) similarly contend that punitiveness reflects “innovative attempts to control and punish criminals more severely” (p. 393). While many supporters of the punitive turn thesis suggest that punitiveness is primarily determined by incarceration rates, other scholars argue that punitiveness is more complex and should also be gauged by trends among police arrest rates, other mechanisms of control, judicial discretion, prison conditions, and periods of time served (Blumstein, 2007; Doob & Webster, 2006; Jewkes & Johnston, 2006; John Howard Society, 2002).

As suggested by several scholars, current cultural sentiments about punishment and penal intervention in most western democracies can be framed within the punitive turn thesis (Bauman, 2000; Bell, 2010; Bennett, 2008; Brown, 2009; Garland, 2001; King & Maruna, 2009; Pratt, 2002; Simon, 2000, 2001; Wacquant, 2001; Young, 1999). While many of the more draconian punitive practices, including physical torture, exile and capital punishment have more or less fallen by the wayside in many western states,¹⁴ comparatively moderate forms of punishment,

¹⁴ It should be noted that the easing of punitive conditions has not been a universal trend. This is particularly true in the U.S., where the death penalty remains in practice in 32 states (Death Penalty Information Center, 2013), and the practice of physical torture is well-documented within Guantanamo Bay (Bloche & Marks, 2005). Even in Canada, the conditions of our so-called ‘moderate’ prisons often evoke instances of violence, abuse, and otherwise inhumane treatment of prisoners that can be defined as torturous and punitive (see for example, John Howard Society, 2002; Marin, 2013).

such as incarceration, continue to flourish and have become increasingly more punitive in practice in recent decades.

This phenomenon, most easily attributable to the United States, is thought to have emerged out of the collapse of the welfare era (Beckett & Western, 2001; Garland, 2001; Simon 2000). Welfarism was a political and social framework most known for its social programs and relatively moderate penal practices that occurred from post-World War II to the late 1960s. Garland (2001) characterizes this time as a period of rapid social and cultural change, including new civil rights and freedoms and more relaxed social control measures. Minority groups achieved new levels of equality, social issues like poverty were considered to be salient state concerns, and government spending was high. As Beckett and Western (2001) contend, the prevailing belief was “government intervention could and should reform and integrate the socially marginal” (p. 45). This ideal is reflected in the war on poverty legislation introduced in the U.S. in 1964, and the proliferation of social assistance programming and funding that followed (Garland, 2001; Pratt, 2000a; Simon, 2000).

The values of aid and reform also influenced the penal system and structured state responses to crime and disorder during this time.¹⁵ Rehabilitation became the primary goal of punishment for street and property crime and community sentences were favoured over prison sentences, which were used more as a last-resort option when treatment measures were determined to be ineffective or inappropriate (Beckett & Western, 2001; Garland, 2001). The prominence of scientific rationalism and traditional criminological expertise supported the

¹⁵ It is important to remember that all political parties, not just those of the New Right, continually support prison and punishment over alternative responses to ‘crimes’. Although rehabilitation and reform policies were more visible during this time, even leftist politicians advocated for prison and punishment, though to a lesser degree than the Right.

emergence of these models of reform, with the explicit goal of understanding criminalized individuals and addressing any deep-rooted pathologies in order to prevent recidivism (Simon, 2000). Garland (2001) notes that penal welfarist practitioners attempted to “change the values and attitudes of offenders in ways that brought them into line with the prevailing normative codes” (p. 183). Thus, the polarizing definitions of good and evil were eclipsed by a continuum of classifications that indicated the sorts of assistance an individual needed (Pratt, 2000a).¹⁶ It was, in the words of Meyer and O’Malley (2005), the “‘golden age’ of penal modernism” (p. 201).

While it is perhaps correct to label this era of penality the least harsh in terms of punishment practices, as ‘punitive turn’ scholars typically do, it is problematic that this characterization has been conflated with the idealized notion that punitiveness was absent (Carrier, 2010; Matthews, 2005). As Carrier (2010) argues, this assumption is inaccurate and ignores the continuity of punishment that exists in the penal system over time. For example, while prison as a response to criminalized behaviour was relegated to a ‘last-resort’ option, the mere fact that it was still utilized as a viable response undermines the notion of non-punitiveness. Furthermore, other scholars have argued that even a hegemonic policy of rehabilitation and other moderately-punitive ideals does not eliminate the practice of harsh punishment, but instead acts

¹⁶ The rise of community-based rehabilitation and psychological treatment can be traced to the development of several new medications during the late 1950s that improved the conditions of individuals suffering from mental health issues enough that they could be treated outside of hospitals and asylums (Etter, Birzinger & Fields, 2008; Stall, 2013b). Unfortunately, the necessary community supports were absent, leaving many people without access to medication, housing, or employment. The unintended consequence of deinstitutionalization has been the rise of individuals with mental health issues facing incarceration for their ‘strange’ behaviour or minor criminal activity associated with their illness (Etter, Birzinger & Fields, 2008).

as a facade, or a ‘liberal veil’, behind which punitive practices continue unabated (Carlen & Tombs, 2006; Moore & Hannah-Moffat, 2005).¹⁷

A series of changes occurred in the late 1960s and early 1970s, signifying the end of the welfarist era. The dual shifts from a mixed economy to free market regulation and from a unilaterally-organized government to a fractured and decentralized government produced a society that was highly fearful, insecure, and anxious (Garland, 2000, 2001; Lee, 2001; Pratt, 2002; Ratner & McMullan, 1983). Previously taken-for-granted cultural norms like a nuclear family dynamic, a homogeneous moral code, and social distance from crime were transformed into a new social order that left much of the public apprehensive, increasingly exclusionary and punitive. As Pratt (2000a) points out, the cultural fragmentation occurring at this time disarmed the comfort inherent in a world that was previously certain and permanent. Although the new moral pluralism created a sense of freedom for many groups that were severely marginalized until that point, it also upset the balance and surety that had existed for years.

The fear and insecurity associated with crime and victimization is one of the primary driving forces behind increasing punitiveness. As several scholars have demonstrated, the more the public feels at risk of being victimized, the greater their demand for and support of harsher crime control measures becomes (Hogan, Chiricos & Gertz, 2005; Tyler & Boeckman, 1997; Young, 1999). Young (1999) argues that this insecurity manifests in attempts to exclude certain groups deemed different or ‘other’, often through penal interventions. More significantly, fear of crime is a concept easily susceptible to politicization. As Lee (2001) demonstrates, politicians as far back as the late 1960s were able to capitalize on the public’s anxiety about victimization in

¹⁷ Further discussion of the ‘liberal veil’ and the continuity of punishment can be found later in this chapter.

order to legislate harsh new measures of crime control. The rising crime rate and perception of growing lawlessness encouraged a number of western governments to re-establish their ability to manage and run the nation, a task most easily accomplished by targeting an issue that deeply resonated with the largest segments of the public – namely, crime.

The politicization of crime was heavily bolstered by new insecurities within the broader political economy. Ratner and McMullan (1983) trace the emergence of what they call “the exceptional state” (p. 31), comprised of the political shift to the Right and the development of law and order style crime policies. The authors contend that this new trend was largely due to the economic recession of the mid-1970s that was characterized by inflation, high rates of unemployment, and profit decline. Ratner and McMullan (1983) outline how governments in Britain and the United States took advantage of the public’s new fear of crime by emphasizing the increasing crime rates, focusing on the rise of violent crime, and expressing the ‘need’ for harsher penalties in order to avoid attention and public outcry over the failing economy – a crisis over which they had less control. In contrast, the crime problem was an issue that government officials could appear to actively manage in order to achieve some measure of successful governance; in short, governments used repressive penal tactics in order to re-assert their authority to the general public. Bell (2010) also notes this process, arguing that while neoliberal governments are largely powerless to address most social and economic insecurities, they can certainly attempt to address insecurities around crime. Blumstein (2007) argues that implementing harsher and longer prison sentences is the best and indeed the only way for politicians to demonstrate their toughness and by association their authority to the public. The

trend of increasing punitiveness and a shift to conservative politics during times of crisis is well documented (Bauman, 2000; Garland, 2000, 2001; King & Maruna, 2009; Mallea, 2010).

The combination of economic crisis and major social change during the 1970s meant that welfarist ideals of a moderate penal system were somewhat eroded, marked by the rise in the use of pre-modern practices. Social assistance was sharply curtailed and policy shifts were legitimated by reconceptualizing the impoverished as dangerous others rather than structurally disadvantaged people needing social assistance (Beckett & Western, 2001; Garland, 2001). Instead, individualism and responsabilization were emphasized; people were expected to make their own way in the world through hard work and perseverance, the hallmarks of both the neoliberal political model, as well as the ideology of the American dream that discursively blames the poor for their failure to prosper economically. Individual pathologies were still considered to provide partial explanations for social and criminal failures, but now with the caveat that responsibility for fixing those pathologies falls to the individual alone rather than to the state. This framework allows, indeed requires, the state to disregard the structural problems leading to inequality, instead relegating responsibility for social difference and deviance primarily to individual moral failures (Bell, 2010; Blumstein, 2007; Garland, 2001).

Ultimately, the 1970s came to be marked by what Garland (2000) labels “a new experience of crime” (p. 359), as the middle class felt increasingly vulnerable to victimization, and thus increasingly supportive of ‘tough on crime’ strategies (Hogan, Chiricos & Gertz, 2005). Rehabilitation efforts were limited and many were completely discarded as costly and

ineffective,¹⁸ while a new emphasis on deterrence through punishment surfaced (Garland, 2001). As a result, poverty was met with marginalization and harsh penal responses rather than the proliferation of a social safety net (Beckett & Western, 2001). Cayley (1998) contends that punitiveness has come to underpin society's response to crime, with the prison serving as a place into which we lock up the source of our anxieties – namely, the criminalized 'other.'

Pratt (2002) identifies how many of the new tough on crime responses that emerged at this time were in fact revamped pre-modern punishments that were previously abolished, such as the infamous 'chain-gangs' and labour camps common to the southern United States. Punishments emerging from the punitive turn incorporate both innovative and historical elements of responding to crime; therefore, to say that we are suddenly more punitive would "paint too rosy a picture of a past which is filled with examples of the infliction of extreme pain and suffering on the subjects of the criminal law" (Bell, 2010, p. 119). O'Malley (1999) forms a similar conclusion of the numerous and oftentimes contradictory categories of punishment, contending that while certain punishment schemes like the enterprising prisoner are innovative, others like austere incapacitation and strict discipline are nostalgic throwbacks. O'Malley determined that this contradiction in penalty exists because political rationalities are inconsistent. He argues that although current penal sanctions are typically linked to neoliberalism, they can find a far better explanation in the New Right thesis, which is comprised of neo-conservative social policies and a neoliberal view of the economy.

¹⁸ This shift away from rehabilitation can be traced to Martinson's (1974) well-known, though often misinterpreted, study on the failures of treating criminalized individuals. His paper effectively delegitimized traditional criminological expertise for much of the public, and served as the catalyst for the growth of administrative criminal justice in lieu of welfarist theories of criminality and reform.

Elsewhere, O'Malley (2010) distinguishes more clearly between the two political rationalities. In neoliberalism, offenders are defined as rational choice actors; while the government may promote certain programs and policies that are meant to guide citizens to make the right choices, an individual's actions are ultimately their own and the state is absolved from responsibility. The end goal of neoliberal politics is to maintain and improve state cost-effectiveness, which leaves an increasing number of areas of social life as subject to market forces. Conversely, neo-conservatism has specific moral views of offenders, who are distinguished from the law-abiding citizen as moral deviants. There is also an emotive aspect to crime control and punishment that is largely absent in neoliberal understandings of offenders but is quite visible in neo-conservative discourses about responsibility and the punishment of those who make immoral choices.

Features of both neoliberalism and neo-conservatism can be seen in the punitive measures of post-welfarist society, a pattern that O'Malley (1999, 2010) labels the 'New Right' thesis. Arguably, the New Right combines some of the worst elements of both these political rationalities: the largely invisible economically-stringent government who foists responsibility for crime prevention and criminal action on the individual, while assuming the authority to issue harsh punishment against those who commit crimes because their actions are deemed immoral. As O'Malley (2010) writes: "If criminals cannot demonstrably be corrected with any certainty, then at least risks could be reduced by incapacitating offenders in prisons" (p. 24). One need only look to the global phenomenon of rising incarceration rates to see evidence of this trend (Christie, 2000).

In terms of crime control, the sum of the massive social changes that marked the end of penal welfarism is widely referred to as the punitive turn, a phenomenon exemplified by an expanding prison population, longer sentences (especially for minor offences), and a divisive and disintegrative us versus them attitude directed at offenders (Bauman, 2000; Bell, 2010; Garland, 2000, 2001; King & Maruna, 2009; Pratt, 2000, 2002; Simon, 2000; Wacquant, 2001; Young, 1999). Indeed, the re-appearance of the prison (Pratt, 2002) tends to be the defining characteristic of increasing punitiveness, a conceptualization that has found uninterrupted support in the United States. Christie (2000) traced the trend of mass incarceration from the mid-1970s through to 2000. After remaining steady throughout the penal welfarist era, the American prison population grew an astonishing 600 percent in just twenty-five years (p. 7). The extremes of this growth are not replicated in any other country, although significant increases still occurred in Britain and Australia during this time (Bennett, 2008; Carcach & Grant, 1999).

Notably, the unparalleled growth of incarceration has not been accompanied by a matching increase in actual crimes committed. A punitive turn in this context might initially seem unnecessary, but as discussed above, punishment practices are inextricably linked to cultural beliefs and social shifts in mores and values. Although crime rates certainly play a role in a country's imprisonment rate, it is the social, political, and cultural structure that determines acceptable levels of punitiveness. As Tyler and Boeckmann (1997) argue: "For overall punitiveness...crime-related concerns are the least important factor" (p. 252). Similarly, in their exploration of the origins of punitiveness King and Maruna (2009) found that it is emotions such as general anxiety, financial dissatisfaction, and collective mistrust that heavily influence a punitive attitude, rather than actual victimization. It is only in conjunction with other social

concerns that crime-related issues have such heightened socio-political prominence. This fact led Christie (2000) to conclude that forms of punishment are cultural constructs that are founded on the values and morals guiding society at a particular time; thus, the recent punitive turn marks a return to formerly accepted punitive values, including retribution, vengeance, exclusion, and intolerance, that support harsh penal responses.

1.3 The Canadian Context

Canada, in contrast to other western democracies, is globally recognized as having a moderate penal system (Doob & Webster, 2006; Loader, 2010a; Meyer & O'Malley, 2005). Although Canada's cultural and geographic proximity to the United States means that it is often assumed to share the American trends of extreme punitiveness and accelerated prison growth (Doob & Webster, 2006), criminological scholars largely agree that despite the political and economic similarities, there have always been important divergences in the two countries' criminal justice policies.

Significantly, Moore and Hannah-Moffatt (2005) argue, "Canada has not experienced the punitive turn chronicled by Garland and others" (p. 87) (see also Cesaroni & Doob, 2003). While Canada's penal system has adopted some aspects of punitiveness, a range of rehabilitative programs has also been implemented. The authors reveal that the Correctional Service of Canada (CSC) underwent extensive restructuring in 1991 in order to bring renewed focus to therapeutic and rehabilitative programs. They add "nowhere in the organization is there any hint of interest in adopting the practices that have come to characterize the punitive model of punishment" (p. 89). Indeed, Canada's policy development in recent decades seems to indicate that many of the

social ideals associated with welfarism, including prevention, rehabilitation and reintegration support, continue to underpin Canadian penalty.

These ideals appear to reflect both judicial and public beliefs. Roberts, Crutcher, and Verbrugge (2007) argue that public opinion surveys demonstrate that populist support for punitiveness is significantly lower in Canada than it is in the United States. Doob and Webster (2006) note similar findings, and contend that despite the development of some punitive-based policies, Canadian penal practices remain distinct from those in the United States. Even when tough punishment is championed, its rhetoric is not always directly transferred into practice. Canadian judges maintain a significant degree of discretionary powers and appear reluctant to uniformly hand down punitive sentences; in fact, analyses of court decisions over time illustrate a stable number of convicted cases sentenced to incarceration (Doob, 1996; Doob & Webster, 2006; Strange, 2001). Numerous reports and commissions generated from CSC since the dawn of the penal welfarist era have urged the courts to utilize alternatives to prison where possible (Doob, 1996; Doob & Webster, 2006; Meyer & O'Malley, 2005).

Meyer and O'Malley (2005) contend that Canada has historically had a balanced approach to corrections, attempting to address rehabilitation, public safety, retribution, and deterrence in addition to strict punishment in its responses to crime. Doob (1996) and Moore and Hannah-Moffat (2005) also note this trend, arguing that while isolated policies do encourage incarceration, on the whole, Canada has maintained an inverse trend of relying on community-based sentences in lieu of prison sentences. Similarly, O'Malley (1999) argues that diverse sanctioning has long been a key characteristic of the Canadian criminal justice system, an effort that resulted in an incarceration rate that has remained relatively consistent since the 1960s, as

well as sentencing policies that give judges the discretion to be lenient. Doob and Webster (2006) point out that, “while there has been some fluctuation...there is no consistent upward trend in Canada’s imprisonment rate” (p. 331). Perhaps the most blatant example of this Canadian-American difference lies in Canada’s abolition of several mandatory minimum sentences for drug offences in 1987 (Doob & Webster, 2006). While the U.S. was busy creating some of the most repressive drug offence sanctions in its history, Canada was declaring its own drug sentencing requirements cruel and unusual.

Meyer and O’Malley (2005) conclude that a non-punitive penal system “taps into strongly valorized cultural images of Canada as a civilized and ‘peaceable kingdom’” (p. 214). Garland (1990) has similarly argued that penal trends are generally reflective of the broader cultural structure; in Canada, this has manifested in a well-recognized showing of restraint and compassion with regard to punishment (Doob, 1996; Loader, 2010a). Loader (2010a) suggests that Canada purposely creates a climate of penal moderation because Canadians take pride in being distinct from the United States in criminal justice matters.

This culture of distinction was noted earlier by Ratner and McMullan (1983), who argued that, “the ‘crime problem’ in Canada has not been a readily exploitable topic for diffusing public anxieties about the state of the economy” (p. 38). The absence of this punitive populism forced the Canadian government to seek legitimation via other avenues, namely, through strategies designed to reassert Canada’s centrist cultural values and a top-down application of state control. Rather than cultivating populist panic, as occurred in the U.S. and Britain, the Canadian government instead used what Ratner and McMullan (1983) call “brazen executive fiat” (p. 40), refusing to compromise Canada’s moderate stance to accommodate fleeting public outcries and

moral panics. However, the authors acknowledged that Canada was, at the time, experiencing increased support for conservative politics, and along with it, the potential for populist punitiveness.

Such a trend appears to be emerging in the current Canadian political and cultural landscape, suggesting that the shift to punitiveness may no longer be just a potentiality. While Canada experienced erosion to its welfarist structure largely within the same timeframe as the U.S. (Moore & Hannah-Moffat, 2005), it was not until more recently that its laws and socio-political climate became similarly aligned. Crime is now heavily politicized, and while Canada's laws cannot be equated with the scope and scale of the punitive policies in the U.S., there appears to be a gradual "withering away of support for non-punitive approaches" (Cesaroni & Doob, 2003, p. 436). Moore (2007) more candidly defines the present Canadian penal system as "post-rehabilitative," an institution that is "now capable of little more than basic warehousing and crude practices of control" (p. 5). Meyer and O'Malley (2005) presciently suggest that the delay to the punitive turn might be attributed to a cultural lag, one that could be expedited with a conservative government.

In light of these comments, it is important to consider that Canada has spent the last nine years under the leadership of a Conservative federal government, a significant change from the previous fifteen-year stretch of Liberal governance. Since Stephen Harper assumed power in 2006, the federal government has proposed and passed several 'tough on crime' justice reforms that showcase profound changes to Canada's penal culture. Chief among these changes are the *Tackling Violent Crime Act* (2008) (which increases minimum penalties for several firearm and impaired driving offences), the *Truth in Sentencing Act* (2009) (which eliminates 2-for-1 pre-trial

credit), the *Limiting Pardons for Serious Crimes Act* (2010) (which extends ineligibility periods for certain offences and renames pardons ‘record suspensions’), and the *Abolition of Early Parole Act* (2011) (which eliminates accelerated parole reviews). These laws seek to punish criminalized individuals more harshly and for longer periods of time, an approach that flies directly in the face of international research indicating that such reforms do not reduce crime, but rather exacerbate the likelihood of criminal activity (Andrews & Bonta, 2010; Blumstein, 2007; Carlen & Tombs, 2006; Cook & Roesch, 2012; Mallea, 2010; Stall, 2013b; Zinger, 2012).

Canadian penal practices have also expanded to target and control identified ‘terrorists’ (Monaghan, 2013). This shift has included the development of several punishment measures, beginning with the enactment of the Anti-Terrorism Act (2001), and more recently with lengthy prison sentences that have created a new class of high-risk, high-profile prisoners. The most recognized strategy to deal with terrorism in Canada has been the security certificate program, which uses secret evidence to imprison accused individuals without charges, often for years at a time. Monaghan calls this phenomenon “terror carceralism,” arguing that these individuals are subject to intensive surveillance and classified as dangerous and violent despite not having been found guilty of terrorist activity. The emergence of these practices comes as no surprise, given that our ever-increasing “risk avoidance culture” incarcerates even the most nonviolent and minor offenders before they are convicted (Webster, Doob & Myers, 2009, p. 101). The generalized anxieties associated with terrorism in the post 9-11 era, and with crime more generally, appear to be producing a new culture in Canada, wherein exceptional risk is redefined as normal and the danger of the other must be neutralized; in this paradigm, punishment and control become the only viable responses (Garland, 2001; Monaghan, 2013).

The pinnacle of these socio-cultural and legislative developments was the enactment of the *Safe Streets and Communities Act* (2012), an omnibus crime bill that encapsulates much of the federal Conservative party's tough on crime agenda. An amalgamation of several bills that were either previously defeated in the House of Commons under a Conservative minority government or that had yet to clear all voting stages in the previous Parliament, the legislation implemented a range of new punitive measures including mandatory minimum sentences for several offences, the abolition of the faint hope clause,¹⁹ restrictions on conditional sentencing, and an increase in lengthy prison sentences for youth offenders (*Safe Streets and Communities Act*, 2012). Mallea (2010) suggests that the federal government's focus on crime has enabled them to avoid public scrutiny of more sensitive and controversial concerns, such as the aftereffects of the global economic recession in 2008 and the continuing 'war on terror' (see also Ratner & McMullan, 1983). The few examinations of this legislation seem to indicate that Canada's reputation for restraint and leniency in its punishment practices has begun to fragment.

In particular, Webster and Doob (2012) argue that Canada's recent spike in incarceration suggests "a break with our tradition of stability" (p. 80), a phenomenon which is accompanied by the broader shifts to conservative politics, public demand for tougher sentences, and a renewed belief in the 'prison works' message. Similar to the American experience, a new stamp of expertise has been bestowed upon the Canadian public, while expert knowledge is rejected as irrelevant and out of touch. Ian Brodie, former Chief of Staff for Prime Minister Stephen Harper succinctly summed up this trend:

¹⁹ The faint hope clause, also known as judicial review, was a section within the life sentence laws that allowed for parole applications, in certain cases, to be considered at 15 years rather than at 25 years. The Conservative government abolished this clause in 2011 with the passage of the *Serious Time for the Most Serious Crime Act* (Correctional Services Canada, 2012).

Every time we proposed amendments to the Criminal Code, sociologists, criminologists, defense lawyers, and Liberals attacked us for proposing measures that the evidence apparently showed did not work. That was a good thing for us politically, in that sociologists, criminologists, and defense lawyers were and are all held in lower repute than Conservative politicians by the voting public. Politically it helped us tremendously to be attacked by this coalition of university types (in Cook & Roesch, 2012, p. 222).

The populist culture has encouraged supplanting the need for research and empirical evidence for an approach to justice that is hyper risk-averse and subject to moral panics, which results in an emotionally-charged and uninformed approach to punishment. Webster and Doob (2012) condemn this change as the primary driver of the successful passage of the *Safe Streets and Communities Act*. The dismissal of academic evidence and expertise can also be seen in the elimination of successful in-prison programs (Ruddell, Broom & Young, 2010; Stone, 2013), the continuing use of mandatory minimum sentences (Gabor & Crutcher, 2002), and the lack of government resources directed at prevention initiatives (Waller, 2006). Numerous other social welfare organizations and individual scholars have further criticized Canada's recent penal shifts as excessively harsh and punitive (Canadian Bar Association, 2011, 2013; Cook & Roesch, 2012; Flegel & Bouchard, 2013; Mandhane, 2012; Marin, 2013; Nguyen, 2012; Office of the Correctional Investigator, 2012a; UNCAT, 2012; UNCRC, 2012). Most troublingly, these changes are paving the way for a future of higher imprisonment rates, increasingly harsh conditions of confinement, and ever-expanding targets of criminalization.

1.4 Layered Penalties and the De/Civilizing of Punishment

The increase in legislative punitiveness is seemingly tempered by other penal discourses that offer rehabilitation and correction as alternatives to prison and punishment. But as

highlighted by Moore and Hannah-Moffat (2005), it is necessary to view punitive practices as continuing uninterrupted behind what they call the “liberal veil” of rehabilitation. Among these alternatives are the development of specialized courts for drugs and mental health (Fischer, 2003; Hannah-Moffat & Maurutto, 2012; Moore, 2007), community supervision sentences (Werth, 2013), and prison programs that address everything from alcohol abuse to poor attitude (Jewkes & Johnston, 2006; Pollack, 2009). These approaches claim to reduce crime by curing or fixing problematic populations, rather than simply warehousing their physical bodies. This is a popular ideal today as it coincides with westernized notions of civility and progressiveness (Pratt, 2011).

But as Carlen and Tombs (2006) point out, the aim of rehabilitation is undermined by a carceral logic that permeates the penal system, which “necessarily perverts” both community sentences and in-prison programming (p. 340). In the end, treatment and rehabilitation discourses largely serve to reinforce punitive ideals and extend the carceral net. Scholars have critiqued community-based sanctions as significantly contributing to the rise of imprisonment rates, by imposing overly-harsh conditions that appear to set individuals up to fail (Carlen, 2008; Carlen & Tombs, 2006; Hannah-Moffat & Maurutto, 2012). Non-custodial sentences also often rely on surveillance and the threat of imprisonment to keep individuals in line, an approach that reproduces punitive state control in the community (Cohen, 1985; Werth, 2013). In-prison programming is premised on the belief that offering treatment can negate prisoners’ suffering. The perspective constructs the prison as a place capable of “healing the socially and economically marginalized” (Sim, 2008, p. 139), through which the criminal can be reproduced as a law-abiding and docile citizen (Foucault, 1975/1977; Jewkes & Johnston, 2006). This rhetoric has taken such a hold within the sphere of criminal justice that prisons are now believed

to offer better and more effective resources for treatment than can be found in the community (Carlen, 2008; Carlen & Tombs, 2006). But this argument ignores that prison rehabilitation programs are often destined to fail, when incarceration forcefully disconnects people from family and community contacts, subjects them to abuse, illness and violence inside, and ensures that those we incarcerate are barred from employment and services post-release due to the stigmatization that flows from their criminal record. These characteristics are hardly conducive to treatment.

The fusion of punitive and rehabilitative rhetorics results in what Carlen (2008) calls an “imaginary penalty,” a powerful discourse that is unable to manifest in reality. Imaginary penalties combine elements of both substantive penalties (which target crime through systems of deterrence and punishment) and symbolic penalties (which indicate moral boundaries) to create a totalizing, risk-focused governance strategy that caters to public sensibilities. Since they are about more than punishment, imaginary penalties are often presented as a “tool for the reduction of social inequalities” (Carlen, 2008, p. 10). While politicians have long relied almost exclusively on the prison to secure crime control and public safety (Sim, 2008), it is increasingly also offered as the answer to issues of poverty (Beckett & Western, 2001), drug addiction (Carlen & Tombs, 2006; Fischer, 2003; Moore, 2007), and mental illness (Bill C-54, 2013; Etter, Birzer & Fields, 2008). By reducing the varied solutions to these complex problems to a single institution, governments have created a discourse that assumes all social problems can be dealt with via the criminal justice system. But imaginary penalties are unable to eradicate these problems because using punishment as the answer to social inequality merely criminalizes it (Carlen, 2008).

These new and imaginary penal logics are layered onto the parallel continuation of pre-modern punishments, in a way that frequently renders the latter invisible. Many supposedly obsolete punishments are modified as per the current tolerance thresholds of the culture, creating a more complex and layered system of penalty rather than a changed, improved or more progressive one. Carlen and Tombs (2006) argue that there are similarities between modern deportation policies and the pre-modern equivalents of transportation and banishment. The disappearance of public spectacles examined by Foucault (1975/1977) and Spierenburg (1984) has resurfaced through media representations of punishment that is distanced, but no less spectacular to viewers (Brown, 2009). For example, while physical torture is officially prohibited in most western nations, its practice can still be seen in the psychological and physical conditions of imprisonment (Foucault, 1975/1977; Sim, 2008). Rather than concrete or absolute abolition, punishments are reformed so as to layer innovative strategies with nostalgic tradition (Bain, 2011; Brown, 2009; Carlen & Tombs, 2006; Garland, 1990, 2001; O'Malley, 1999; Pratt, 2002).

This recycling of punishments is indicative of the non-linear movement of penal systems that experience cyclical shifts in discourse, rather than sequential stages of advancement. As penalties become more complex, discourses emerge and retreat over time, assuming dominance in turn. This pattern of ebb and flow between penal logics is mirrored in the counter-trends of the de/civilizing processes proposed by Elias (1939/2000) and expanded upon by Pratt (1998, 2002, 2011), Spierenburg (1984, 2001), and Mennell (1990). These scholars contend that punishment practices should be viewed as part of the broader trends of societal change – particularly shifts in state organization and culture. When the civilizing process is dominant, the public's shame threshold for violence and suffering is higher, resulting in punishments that are largely restrained

and privatized; conversely, when the de-civilizing process gains prominence, the public has a reduced shame threshold and punishments are more visible and volatile (Mennell, 1990; Pratt, 2002). At any one time, however, elements of both processes co-exist in a kind of semi-cohesion. The Canadian penal system, for example, includes closed sex offender registries, victim inclusion in criminal trials, rehabilitative correctional programs, no lethal sentences, restorative justice initiatives, and double (and even triple) bunking in prison. These varied approaches demonstrate the mixture of both de/civilizing processes in our responses to crime. However, the more recent shifts to emotionally-driven legislation and punishments that include longer prison sentences, reduced rehabilitative services, reduced use of community sanctions, and ever-harsher prison conditions in a climate that simultaneously delegitimizes academic research suggest that Canada's balance between the de/civilizing processes is devolving as de-civilizing trends increase.

In the next chapter, I examine the theoretical literature on de/civilization processes and conceptualize Canada as experiencing a 'de-civilizing break' in order to set the stage for the analysis of online public commentary surrounding the *Safe Streets and Communities Act* that is presented in chapter four.

CHAPTER 2: THEORETICAL FRAMEWORK

In this chapter, I explore Canada's progression to using harsher and less restrained forms of punishment through the lens of Norbert Elias' (1939/2000) civilizing process theory. In addition, I refer extensively to the work of John Pratt (1998, 2000, 2002, 2011), Stephen Menell (1990, 2007), Pieter Spierenburg (1984, 2001), and others who use Elias' work to explain shifts in criminal justice and punishment trends. Particularly, I focus on these scholars' suggestions that a parallel 'de-civilizing' process offers a powerful explanation for the growing punitiveness witnessed across western nations over the last half century. I use the trends of de/civilization to frame recent shifts in Canada's culture of punishment.

First, I provide an explanation of the key principles of Elias' de/civilizing processes, demonstrating how the components are discursively interconnected and subject to periodic reversals in progressive development. Then, I show how historic changes in penalty reflect de/civilizing processes, using the patterns of harsher punishment as an exemplar to showcase de-civilization tendencies at work. Finally, I conclude by examining the ambiguities within the

civilizing process that enable civility and incivility to coexist at the same time, which can be used to explain the layered penalties present in Canada today.

2.1 Discursivity and De/Civilization

Western nations frequently define themselves as ‘civilized,’ a characteristic that is typically related to their standard of living and denoted by organized systems of health care, education, and economic wealth, as well as cultural norms that differentiate between appropriate and inappropriate behaviour. The term can also refer to the sorts of punishments that are deemed acceptable to inflict upon the criminalized (Pratt, 1998, 2002, 2011). Citizens popularly adopt this commonsense notion of civility, albeit often in vague and contradictory ways, to claim a status of moral superiority in relation to lawbreakers (Pratt, 2011). For example, phrases like ‘Canada is a civilized society’ and ‘How can that happen in a civilized country?’ routinely appeared in public comment boards, but were not always followed by a concrete definition of what ‘civilized’ actually is or looks like to the commenters. There is an implicit assumption that Canada is civilized, even if no one explains why or how. Confusingly, individuals also condemned criminalized acts like murder as uncivilized, while simultaneously supporting that same act in different circumstances (e.g. state murder via the death penalty). In this way, killing an ‘uncivilized’ person is not only exempt from being labelled ‘murder’, but is offered up as a way to restore civility following an uncivil act (see Burkitt, 1996).

In contrast to these definitions, Elias’ use of the term is specific and technical, as he uses it to describe the historical process of structural and cultural development that emerges out of particular shifts in conduct and sentiment, the cumulative effects of which he defines as

‘civilizing’ (Elias, 1939/2000; Mennell, 1990). These shifts include state monopolization of the power to use violence, denser webs of interdependence, higher thresholds of shame, intolerance for others’ suffering, the privatization of emotion, and increasing internal/self-constraint. Although western nations are more likely to be described as civilized, these indicators are not only present in western nation states.

While the notion of ongoing social change is an undisputed fact, the significance of the civilizing process is that it reveals how these shifts “take the form of *structured processes* of change with a discernible – though unplanned – *direction* over time” (Mennell, 1990, p. 207, original emphasis). Broad transformations in state organization and socio-cultural standards are not the result of a progression of self-contained developments that occur in defined stages over time, but are part of a discursive, long-term project borne out of interconnected shifts in behaviour, sensibilities, and norms (Elias, 1939/2000; Wouters, 1986). Interspersing this general trend is the presence of “counter-spurts” (Elias, 1939/2000, p. 382), which are small and temporary changes that are at odds with the broader civilizing development (Elias, 1939/2000; Mennell, 1990; Wouters, 1986). Pratt (1998, 2002, 2011) accounts for these counter-trends by suggesting that there is a parallel de-civilizing process that is largely invisible, yet continuously running beneath the civilizing trends; the contradictory ‘spurts’ occur when the de-civilizing process becomes momentarily visible. This suggests that the civilizing process is not a linear, uninterrupted process, but is rather one that maintains the place as the dominant thread of social development *overall*, that is sequential over the long-term but unpredictable and contradictory in the short-term.

In contrast, a de-civilizing “break” may be understood as a long-term development akin to the civilizing process, but instead emerging out of the longer counter-movements of the many broad reversals that stall socio-cultural development. As the characteristics of de-civilization processes (for example, the re-emergence of violence, reduced emotional restraint, and the breakdown of socioeconomic links between groups of people) strengthen, by extension they weaken the civilizing transformation overall, although Pratt (2002) doubts that the whole of the civilizing process could be fully inverted. Scholars have noted that local contingencies and large-scale disasters such as a war or economic downturn can also play a role in providing the initial trigger to a de-civilizing process or accelerating its development (Elias, 1939/2000; Pratt, 1998, 2002; Wouters, 1986). When social, cultural, and political elements converge in manners that enable de-civilizing processes to emerge and become more visible, de-civilizing discourses are also shown to gain greater prominence in public sentiments and narratives.

Equally important as the directional characteristics of the de/civilizing processes is their lack of beginning or ending (Elias, 1939/2000; Spierenburg, 2001). A society experiencing more or less violence is fundamentally different than a fixed violent society or non-violent society, with the latter categories serving as markers for dystopian/utopian worlds that are unlikely to manifest. Similarly, low or high levels of emotional control, such as those taking form in feelings of shame, should not be assumed to have developed from a time defined by no control or no shame (Spierenburg, 2001). Instead, Elias’ notion of a process of civilization gains or loses by a matter of degrees rather than starting at a particular point in the past, as there is never a point in time during which some level of civility did not exist.

2.2 Key Themes of the De/Civilizing Processes

Both the civilizing and de-civilizing processes are comprised of four distinct but interconnected components: structural processes, social habitus, cultural transformation, and modes of knowledge (Elias, 1939/2000; Mennell, 1990). While the themes of the de/civilizing processes have been divided this way, social change does not occur in a vacuum and the components that make up the de/civilization processes influence one another. Therefore, the following explanations show some overlap.

2.2.1 Structural Processes

The structural processes component of the civilizing process refers to long-term state formation and development (Elias, 1939/2000; Mennell, 1990). Specifically, state formation within the civilizing process refers to the changes that lead to a centralized power apparatus, a secure state authority, and the suppression of violence and aggression. This was a significant departure from early pre-modern states, which were characterized by instability and prone to conflict and disintegration. People lived in small bands that lacked socioeconomic interdependence and displayed volatile and uncontrolled bouts of aggressiveness (Elias, 1939/2000; Mennell, 1990, 2007). Displays of violence were also essential to demonstrating the state's authority and power, which was continuously threatened by wars and religious or sovereign tyranny (Ratner & McMullan, 1983; Spierenburg, 1984).

In conjunction with the development of a more stable authority comes the taming of aggression, eventually to the point that only the state can claim legitimacy over the use of violence. According to Elias (1939/2000), this civilized state formation is largely driven by increases in the population, from which follows the growth of distanced trade, expanded social

functions, and a complex division of labour. Although such large-scale structural changes are often associated with greater freedoms for individual citizens, Elias is careful to point out that the dense webs of interdependence that are required in complex societies means that people are in fact further bound to each other, dependent on the labour and services of others for survival. This interdependence makes it less desirable to resort to violence when dealing with disputes (Elias, 1939/2000; Wouters, 1986).

Both structural state changes and strengthened interdependence amongst the citizenry facilitate the development of what Elias calls the “monopoly mechanism” (Elias, 1939/2000, p. 268). The monopoly mechanism describes the shift toward absolute state command over money (typically through taxation) and violence. It is not necessarily a civilizing characteristic, since pre-modern societies were also formed by some measure of this monopoly. But whereas early authorities were precarious and frequently challenged, the development of a central and stable state indicates the ability to effectively *administer* that monopoly (Elias, 1939/2000). This ability typically only emerges after an advanced division of social functions that necessitates interdependence between citizens and the state, making it increasingly difficult and risky for people to challenge the central authority (Elias, 1939/2000; Wouters, 1986). Thus, after the emergence of a centralized government, authority is more difficult to dismantle, the possibility for violence is diminished, and the state form becomes more secure.

2.2.2 Changes in Manners and Culture

The civilizing process is also reflected in the broad changes in the manners and culture of a society over time. According to Elias (1939/2000), the cultural transformation towards civility is primarily marked by a movement to privatization, wherein displays of violence and emotion

are largely removed from public viewing (Elias, 1939/2000; Foucault, 1977; Pratt, 2000b) and other behaviours (including eating practices, dress codes, and bodily functions) are subject to greater public restriction. For Elias, this shift represents the dispersion of the bourgeois class's strictly regulated code of conduct into the working classes, rendering visible emotion undesirable and facilitating the expectation that people should suppress their immediate emotional drives and desires.

Another important element of the civilizing cultural transformation is Elias' (1939/2000) notion of "diminishing contrasts, increasing varieties" (p. 382), which he uses to refer to the shrinking socioeconomic disparities between groups of people. He argues that this broad change serves to increase mutual identification between the members of these once-polarized factions, as people begin to develop emotional connections with others they previously had nothing in common with. Elias analyses the evolution of manners to demonstrate his point, arguing that the sharing of upper-class manners and lower-class regulated work schedules spread these groups' once-distinguishing characteristics throughout the wider society. The growth of mutual identification simultaneously establishes the brutality directed at "oppressed and poorer outside groups" (p. 382) as distasteful and unnecessary.

A more modern application of this idea can be seen in Wouters' (1986) discussion of the social changes that characterized the 1960s, a time during which citizens protested against a number of different civil inequalities that were interpreted as unjust and differences between people that were increasingly seen as acceptable. Wouters notes that prior to this era of social transformation, and despite increases in mutual identification and social interdependence, inequality was defined as either a natural difference or the result of bad luck and was thought to

be largely unchangeable. In contrast, the widespread activism of the 1960s condemned the discriminatory treatment of women, blacks, youth, and LGBT-identified persons, and fostered the expectation that the government would address economic inequalities. Although the economic separation between the upper and lower classes is still notable today, the improvement retrospectively witnessed over several centuries is significant (Elias, 1939/2000).

2.2.3 Changes in Social Habitus

Closely related to changes in privatization and mutual identification is the civilizing trend of higher shame and embarrassment thresholds, which is linked with stricter regulations on conduct. These culturally imposed limitations indicate the underlying sensibilities, values and norms regarding behaviour, emotional expression, and violence, drawing a firm line between acceptable and unacceptable, and producing an instinctive yet powerful fear of conducting social transgressions (Elias, 1939/2000; Pratt, 2002; Wouters, 1986). According to Elias, this anxiety is “heavily veiled to the sight of others; however strong it may be, it is never directly expressed in noisy gestures” (p. 415). It is the invisible yet palpable attitudes of others that elicit personal attitudes that are reflexively adopted as the framework through which to understand and interpret appropriate social behaviour. In other words, shame and behaviour avoidance are invoked as a result of how we feel others will view and respond to our actions.

Shame and embarrassment thresholds also underpin the legitimate responses that can be made to a person whose behaviour crosses accepted standards and is considered deviant or criminal. As Pratt (1998, 2002) argues, these responses are guided by two major sensitivities: distaste for brutal events and sympathy for the suffering of others. Societies with higher shame and embarrassment thresholds also demonstrate a greater aversion to violence and brutality and

have greater sympathy for others' pain; the opposite can be found in societies with lower shame thresholds. Spierenburg (1984) argues that the reduction and eventual abolition of public executions in the majority of western states was guided by the civilizing of emotional sensitivities, as "an original positive attitude towards the sufferings of convicts slowly gave way to a rising sensitivity, until a critical threshold of sensibility was reached" (p. x). Rather than feeling satisfaction or emotional gratification at a criminal's pain, citizens began to react with repugnance.

The civilizing of social habitus is also marked by increased self-restraint on behaviour and emotional expression. Pratt (2002, 2011) argues that the move from external to internal constraint coincides with the emergence of a strong and stable state, which demands that citizens self-regulate so that the state is not required to exert violence to maintain authority. Wouters (1986) adds that this move is located in the cultural belief that "giving into these tempting impulses would provoke social degradation, loss of respect and self-respect" (p. 2). This can be linked with the heightened socioeconomic interdependence of civilized states, because an inclination to restrain one's behaviour partially relies on the recognition that the behaviour can potentially impact or even disrupt the social functioning of society (Elias, 1939/2000). This interconnection, buttressed by thresholds of shame and embarrassment, produces a self-constraint that operates through a combination of "conscious self-control [and] automatic habit" (Elias, 1939/2000, p. 375).

An individual's ability to exhibit self-restraint with respect to their emotional drives and affects also advances the civilizing process by mitigating the need for external controls, which typically results in reductions of state violence (Elias, 1939/2000). However, Keane (2004) notes

that it is a mistake to confuse civilization processes with overall non-violence or peacefulness. He argues that a range of violent tendencies exist even in civilized societies, from “everyday rudeness” to “bodily harm to others” to “systematically organized violence” (p. 92). At times, these propensities can accumulate and degenerate into incivility; at the same time, well-established civilized societies maintain a comparatively limited scope for the display of strong feelings, as defined by prevailing levels of shame and embarrassment. Keane contends that stress, anxiety, and humiliation are generally “absorbed or sublimated into the social structures, and civility prevails” (p. 96). Elias and Dunning (1986) similarly note that civilized societies develop counter-measures for their citizens to deal with the stresses inherent in complex states, such as sports and other leisure activities that allow for subdued and heavily formalized expressions of violence.

2.2.4 Changes in Modes of Knowledge

The increased interdependence between citizens and heightened self-restraint that is characteristic of civilized states also influence the relative degree of detachment or involvement in people’s modes of knowledge (Elias, 1939/2000; Mennell, 1990). Civilized societies that boast greater distance between individuals are also marked by a decreased vested interest in news; this happens because people are no longer personally involved in or connected to the narratives they read or see (Keane, 2004). However, Elias draws a connection between attachment or detachment to knowledge and increased levels of perceived or real danger, indicating that even a detached response to news items can still indirectly affect people’s attitudes and behaviour. He argues that levels of danger are affected by the amount of control people feel over their lives, notably over natural (non-human) forces, social (interpersonal) forces, and psychological

(individual) forces (see also Mennell, 1990). Though detached, reading or seeing stories of violence and harm can still evoke feelings of danger in people, brought about by a perceived lack of control over the harms that may befall them.

The shift to knowledge detachment underpins the modern development of distanced forms of socialization and communication via the mass media (see Brown, 2009; Karstedt, 2002). Ever-expanding populations impede the ability to pass news or stories directly between individuals; instead, late modern societies have become increasingly dependent upon networked forms of communication that simultaneously broaden access to knowledge while also diminishing emotional attachment to that information by preventing earlier forms of communication that required personal connections and involvement (Keane, 2004).

The irony of this new reliance on networked media communication is that while individuals are largely unable to access or witness global events directly, which should theoretically leave them feeling safer, perceived levels of danger actually increase. Keane (2004) points out that although mass media distances personal experience from our knowledge of crime, it simultaneously expands the range of crimes we are made aware of. In particular, details about instances of violence are communicated and spread widely for greater public consumption, which contributes to a “violent feel” (p. 102) in society.

Some theorists argue that the public’s perception of these news reports and stories can be understood as a twisted form of entertainment, providing thrills and pleasure to viewers and readers, a phenomenon known as ‘infotainment’ (Jarvis, 2007; Kohm, 2009; Machado & Santos, 2009). As the name suggests, these sensationalist stories present news under the guise of informing the public, but with dramatic and emotional elements that often seem more suited to

fictional crime shows, rather than serious and quality journalism. Machado and Santos (2009) note that media take particular advantage of high profile crime stories and use techniques such as sensational headlines, exaggerated scientific ‘evidence’, and emotional reporting to engage the public as “mediated witnesses” (p. 150), which encourage self-identification with the victims (see also Katz, 1987). These crude manipulations echo the strategies of victims’ movements that seek to personalize their experiences for the public, while condemning the criminalized (see Kenney & Clairmont, 2008 and Stanbridge & Kenney, 2009).

Elias (1939/2000) offers a slightly different view on this phenomenon, suggesting that these mechanisms of distanced involvement relieve some of the tensions of complex societies, much the way sports do. He argues that the increasing restraints forced upon individuals in civilized societies can “lead to perpetual restlessness and dissatisfaction, precisely because the persona affected can only gratify a part of his or her inclinations and impulses in modified form, for example in fantasy, in looking-on and overhearing.” (p. 376). Thus, these ‘civilized’ people who are unable to experience the gratification of violence can receive some measure of satisfaction by reading about or watching it. Presdee (2000) makes a similar argument, suggesting that reality TV and other popular crime shows serve as a “bridge to a displaced world of irrationality and changes where our subjectivity runs riot” (p. 85). Like Elias, Presdee links our cultural attachment to infotainment-style news to the behavioural and emotional restraint demanded of the civilizing process.

Kohm (2009) argues that emotional gratification can also be achieved through online vigilantism, as people (particularly those with personal experience with victimization) find the acts of seeking out and humiliating ‘predators’ to be cathartic and empowering. Unable to seek

revenge and closure against their attackers, some victims have turned to media technologies to engage in the unrestrained emotional expression and violence that is otherwise unacceptable in society. Kohm adds that reality television and popular crime shows like *To Catch a Predator* and *CSI* further facilitate this emotional gratification through violence and humiliation, while simultaneously strengthening the stereotypes surrounding criminalized persons. Even the phenomenon of online news articles, particularly those discussing crime or punishment, which are viewed and commented upon by many different readers could be an indication of an innate desire to experience violence albeit in a more ‘civilized’ form (see Hlavach & Freivogel, 2011).

2.3 De/Civilizing Trends in Punishment

The history of penal change is mirrored in the trends of the de/civilizing processes. As Pratt (1998, 2002, 2011) has pointed out in extensive detail, the central de/civilizing components (including shifting cultural sensibilities, shame thresholds, the privatization of violence, and broader state organization) are all aspects that can be seen in the development of punishment practices over time. More importantly, however, is how these elements work together to produce a society in which certain forms of punishment are accepted and promoted at particular times. As Mennell (1990) notes, “it is not so much a matter of identifying single causal factors as of tracing how various causal strands interweave over time to produce an overall process with increasing momentum” (p. 208-9). Historically, these factors have coalesced into a process that civilizes penal practice. For example, the following penal developments contributed to the civilizing of punishment in western cultures: the movement away from public executions and then from executions altogether (with the U.S. as the lone exception amongst all western nation states)

(Christie, 2000); the development of prison as a more humane alternative (Foucault, 1977); the steady amelioration of carceral conditions and lengths of stay in prison; and the development of community-based sanctions (Cohen, 1985).

This civilization of western penal practices arguably reached its pinnacle towards the end of the 1950s and 60s (Garland, 2001; Pratt, 1998, 2002, 2011). Perceived levels of danger were relatively low, violent force used by the state was minimal, and high thresholds of shame were reflected in the rise of rehabilitation and treatment efforts over lengthy prison sentences (Beckett & Western, 2001; Garland, 2001; Pratt, 2002; Wouters, 1986). More recent penal developments, however, have seen the return of many of these de-civilizing elements: prisons have regained a more central focus in the penal system, as have other austere, pre-modern punishments (e.g. public viewing of criminalized via online databases, slave labour of prisoners, and physical abuse by prison guards); prison conditions are harsher, as demonstrated by increasingly overcrowded institutions, fewer available alternatives to incarceration, and fewer rehabilitative programs; and increasing sentence lengths for a variety of criminalized acts including nonviolent drug crime. These changes, like their civilizing counterparts, are borne out of broad socio-cultural and structural shifts (Pratt, 1998, 2002, 2011).

In the next two sections I trace the trends in penal development as they happened in most western states, in order to demonstrate how both civilizing and de-civilizing processes have been present in varying degrees. By drawing specifically on Pratt's coupling of the concepts of punitiveness and civilization, I frame instances of harsh punitiveness as 'de-civilizing' and instances of more moderate punitiveness as 'civilizing.'²⁰ While it is too early to determine if a

²⁰ Although Elias' initial theoretical exploration of de/civilization focused on general societal changes (such as shifts in decorum, table manners and dress), Pratt's application of the de/civilizing processes to penal practices (such as shifts in the location and type of punishment and prison food/attire) is most useful here.

new discourse of de-civilization has gained dominance, there is certainly evidence of its visibility and the increasing momentum of narratives that denote the de-civilization of punishment in the late modern era.

2.4 Civilizing Penal Development

Prior to the mid-nineteenth century, penal responses could be characterized as brutal, repressive, and frequently deadly (Keane, 2004; Pratt, 1998, 2002, 2011; Spierenburg, 1984, 2001). Physical torture and/or executions were common responses to criminalized or otherwise deviant behaviours, with punishments often performed in public for large audiences (Foucault, 1977; Spierenburg, 1984). Over time, these blatant spectacles of violence became less necessary and increasingly distasteful; indeed, the ability to maintain authority *without* visible violence came to be an important indicator of civility (Pratt, 2002).²¹ Spierenburg (1984) particularly emphasizes the changing emotional sensibilities during this time, specifically, a new aversion to physical punishment. While violence could still be legitimately used by the state, there was an increasing intolerance to witnessing it or the suffering of others more generally. As a result, the seventeenth and eighteenth centuries were a time of significant reduction in punitivity, witnessing less (and less painful) bodily torture and the privatization of public executions, as well as the rise of the use of imprisonment as punishment (Pratt, 2002, 2011; Spierenburg, 1984).

However, Spierenburg (1984) is careful to add that the waning of visible public forms of punishment was not absolute; in fact, he argues that repression and suffering still needed to be publicly realized in some way, albeit in a more indirect fashion. This led to execution daises

²¹ This shift in punishment practices which Pratt locates in rising levels of shame and discomfort about others' suffering, coincides with Elias' explanation of early changes in manners and decorum which he also links with increasing levels of shame.

being covered (but still recognizable), or prisons being built in a central location within the heart of the city. Indeed, prison became the primary response to crime throughout the eighteenth and nineteenth centuries, simultaneously fulfilling both the necessity for ‘hidden’ punishment and providing proof that lawbreakers would be punished (Spierenburg, 1984; Pratt, 2011).

Penal developments into the nineteenth and twentieth centuries further reflected increases of shame and repugnance toward the public spectacle of the punishment of criminalized persons, signified in particular by the disappearance of the prison (Pratt, 1998, 2002, 2011). This included a shift from the ostentatious, gothic architecture of the 1800s, to a nondescript facade, nearly indistinguishable from surrounding buildings. Additionally, prisons were no longer built in high-traffic areas, but in rural towns or on the outskirts of cities so as to reduce attention afforded to them. The conditions inside the institutions were also ameliorated: food became more nutritive and palatable, work and training programs were offered, restrictive chains were removed from prisoners’ hands and feet unless they were in transfer or subject to extra-disciplinary sanction, and prominent uniforms were increasingly switched out for civilian clothes, at least in the courtroom setting, thus ending the practice of parading criminals from court to prison in favour of anonymity during transportation (Pratt, 2002, 2011).

Penalty’s civilizing process was further augmented by the emergence a new penal spectrum that diminished the polarity of possible sanctions for responding to crime (Elias, 1939/2000; Pratt, 2011). As Pratt (2011) notes, “The contrasts were now between custodial and community sanctions, with increasing variations between them, rather than the more stark options of life or death” (p. 225). Punishments also became varied for different types of criminalized persons, such as youth or those labelled with mental illness, in addition to a variety

of community-based sanctions that were created throughout the twentieth century, including probation, suspended sentences, and conditional sentences (Pratt, 2002, 2011). Prison was re-situated as the punishment of last resort when other sanctions were deemed insufficient – typically because of the nature and severity of the crime.

Also significant was the rising influence of expert knowledge and scientific research throughout the 1950s and 60s (Pratt, 2002, 2011), which provided new ways of understanding criminal behaviour. Emerging criminological thought suggested that criminalized individuals were actually sick, socially isolated, and unskilled, rather than evil or incurable monsters; these theories underpinned many new humane, alternative sanctions that sought to heal rather than simply punish (Beckett & Western, 2001; Garland, 2001; Pratt, 2002, 2011; Simon, 2000). Broader social and political support for criminal justice expertise and scientific evidence in conjunction with greater emotional restraint also facilitated the establishment of a bureaucratic prison administration, which may be understood as an extension of the state's monopoly over violence (Pratt, 2002, 2011).

While recognizing the strides made in penal development over the centuries, Pratt (2011) cautions that, “while we can illustrate sociologically the effects of the civilizing process at work, this does not then mean that the penal arrangements it produced were normatively ‘civilized’” (p. 227). Prisons were not so much ‘civilized’, but rather, more palatable for the public than what had been previously practiced. Community sanctions like house arrest and probation strengthened punitive ideals and served to widen the carceral net (see Carlen & Tombs, 2006; Moore & Hannah-Moffat, 2005). Often, the brutality and suffering that laypeople found so repugnant was not eliminated, but veiled behind a new facade of self-proclaimed ‘civility.’

Below I detail how this facade has more recently been scaled back in Canada, resulting in a more visibly de-civilized penal system.

2.5 De-civilizing Penal Development

Even at the height of civility and moderation, markers of the de-civilizing process could be noted in the penal systems of the western world. As Pratt (2011) argues, the socioeconomic upheavals that began in the 1970s and continue today rendered penal civility impossible for most western nations; since then, trends toward de-civilization have become increasingly prominent.

Late modernity in western societies has been marked by a series of penal crises, as the prison became a “prominent site of disorder and disruption” (Pratt, 2002, p. 153). Violent riots and strikes became visible and even normalized features of the prison, while the collapse of the rehabilitative ideal reduced the prison’s function to mere warehousing (Mathiesen, 2006; Pratt, 1998, 2002, 2011). These crises served to return the prison to public attention and called into question the ability of prison authorities to manage criminal populations. In response, public lobby groups and victims’ movements were able to claim a new status of expertise over various penal issues and successfully demand harsher punishment measures (Kenney & Clairmont, 2008; Ratner & McMullan, 1983; Pratt, 2002, 2011; Stanbridge & Kenney, 2009; Webster & Doob, 2012).

The penal crisis also resulted in diminishing the public’s fragile tolerance of criminalized people. High crime rates and the appearance of a weak and incompetent penal authority produced pockets of aggression, vindictiveness and vigilantism when citizens, frustrated by the inability of the state to protect them, turn to their own measures of justice (Kohm, 2009; Pratt,

2011). As Elias (1939/2000) argued, the insecurity resulting from perceived danger produces an especially powerful fear:

The armour of civilized conduct would crumble very rapidly if, through a change in society, the degree of insecurity that existed earlier were to break in upon us again, and if danger became as incalculable as once it was. Corresponding fears would burst the limits set to them today (p. 532n).

This can explain the success of political campaigning, lobby groups and the victims' movement, all of which capitalize on the anxieties and vulnerabilities felt by the broader public in order to propose and enact more punitive criminal justice policies. Certain pockets of the victims' movement in particular work to personalize and extrapolate material experiences of violence and victimization to those fearing imminent victimization, a fear based in the increased perception of danger that accompanies state instability within the risk society (Elias, 1939/2000; Pratt, 2002, 2011; Stanbridge & Kenney, 2009).

The victims' movement, politicians, and lobby groups also relied on the return of publicized emotional expressions about violent victimization, enabling them to connect to the public on the level of primordial affect emotions and drives. By tapping into emotional fears and anxieties, they are able to connect with individual citizens by producing a mutually identifiable relationship based on similar emotional sensitivities; this simultaneously created an opposing relationship of mutual *disidentification* between criminalized persons and the always already innocent public and victims (Pratt, 1998, 2002, 2011). The juxtaposition between these groups shows the fracturing of interdependent links common to de-civilizing trends, and somewhat mirrors the separation between 'elites' and 'deviants' in pre-modern times (Elias, 1939/2000; Spierenburg, 1984).

When observed as a whole, the various themes of de-civilization as they appear today have produced a society increasingly marked by fear, intolerance, insecurity, violence, anxiety, and exclusion, the results of which can be seen most clearly in the penal system. Incarceration rates across western nations have increased dramatically during the rise of de-civilizing trends, causing the prison to ‘re-appear’ in socio-political and cultural discourses (Bennett, 2008; Christie, 2000; Pratt, 2002). The state’s unstable hold on its authority is compensated for through lengthy carceral sentences for even minor non-violent crimes, such as marijuana possession (Garland, 2001; Pratt, 1998, 2002; Webster, Doob & Myers, 2009). Lowered shame thresholds enable increasingly austere penal conditions that deny many prisoners access to rehabilitative programming and at times, to the basic human rights of life and freedom from harm (Pratt, 1998, 2002, 2011). These characteristics are most visible in the U.S., although they also permeate the U.K., Australia, and other western nations (Bennett, 2008; Pratt, 2002). Even Canada, long recognized as a civilized, more moderately punitive state, is beginning to show evidence of a de-civilizing discourse (Webster & Doob, 2012). While Canada’s limited inclusion of de-civilizing themes has thus far been layered within the still-dominant civilizing process (see Carlen & Tombs, 2006), recent legislative shifts have created the potential for a profound and contradictory socio-cultural transformation that will further demarcate important and more visible de-civilizing trends in Canadian punishment and penalty.

2.6 Ambiguities in De/Civilization

In light of the seemingly contradictory characteristics of the de/civilizing processes, it is noteworthy that there is a significant amount of ambiguity within the socio-cultural behaviours

and structures that are assigned to either category (Burkitt, 1996). Perhaps the most extraordinary of these is Bauman's (1989) contention that the Holocaust tragedy was able to occur in part due to elements of the civilizing process, specifically: the strengthening of a centralized power apparatus, the shift to 'hidden' punishment, and the growth of scientific knowledge and rationality. While the Holocaust was undoubtedly one of modern history's most barbaric and uncivilized tragedies, examining it through the lens of the civilizing process calls for further attention to be paid to the ways that the advancement of civility can actually "camouflage disciplinary and other violence without necessarily diminishing it" (Keane, 2004, p. 57).

de Swaan (2001) accounts for barbarity in otherwise civilized societies by proposing the existence of a third process, what he calls the *dyscivilizing* process. He argues that a dyscivilizing process, what he alternatively calls the "bureaucratization of barbarism", sees a reduction in violence in society overall, but with demarcated spaces where uncivil violence and barbarity are accepted or even demanded. This process provides a potential explanation for the Holocaust, where neither the civilizing nor de-civilizing processes offer a wholly appropriate explanation for the tragedy. de Swaan (2001) also suggests that dyscivilization can be applied to the modern prison, which operates as a recognized site of incivility yet is a staple institution in even the most civilized societies (see also Foucault, 1977).

Thus, while the state cannot arbitrarily perform violence against its citizens, it can select the groups against which and the spaces within which instances of violence are allowed. These spaces develop and are enabled through rational, calculated, and detached mechanisms that exempt the state from the public condemnation that such violence would otherwise receive (de Swaan, 2001; Keane, 2004). Indeed, by isolating these instances of targeted violence and

barbarity against specific populations that are deemed ‘inhuman’ (often distinctly demarcated along lines of race, ethnicity, indigeneity, or gender, in addition to criminality), the state is able to separate these acts from its otherwise civilized character (de Swaan, 2001).

2.7 Conclusion

The relevance of the de/civilizing processes for this thesis is in their simultaneous counter-trends. Canada’s apparent shift into punitiveness does not equate to the absolute removal of rehabilitation efforts as a response to crime, just as the resurgence of emotions and victims’ voices in criminal justice efforts does not signify that restrained rationality and due process rights have been repudiated. As Elias (1939/2000) and other scholars of the de/civilizing processes point out, there is never a point at which one process develops so fully that the possibility for contradictory shifts is eliminated. In suggesting that Canada is becoming more punitive, I do not suggest that alternative responses to crime no longer exist or operate, nor am I declaring that Canada’s moderate and restrained penal system has ended. Rather, I am suggesting that punitiveness has become a more dominant discourse in Canada today.

To determine this, I first examine the legislation of the *Safe Streets and Communities Act* (2012). If, as I propose, this legislation was the tipping point for Canada’s punitive turn, then the sentences and practices it outlines should be markedly different from previous laws. I then use the de-civilizing punishment literature to analyze a sample of public commentary collected from online news articles that discuss the changes implemented by the *Safe Streets and Communities Act*, as well as additional legislation that has been passed or proposed since 2012. I also examine the state of Canada’s prisons and analyze the data for any emotional content so as to document

the resurgence of emotions in penalty. It is not enough to claim that a new legislation is responsible for shifting Canada into a punitive turn (Doob & Webster, 2006, 2012): a punitive turn is also determined by supportive cultural sentiments.

In the next chapter, I provide a detailed description of the methodology, including a discussion of the critical epistemological stance adopted for this study, the analytic strategy of qualitative content analysis, and the specific analytic coding procedures I used to conduct this research.

CHAPTER 3: METHODOLOGY

In this chapter, I outline the methodology and epistemological stance that guide this thesis. I begin with a discussion of critical theory and the importance of reflexivity to my research. In the next two sections, I provide an overview of the literature on qualitative content analysis and on using the Internet as a methodological tool in qualitative research. In particular, I focus on the key concerns with using public comment boards as the primary source of data. Then, I describe the sampling method and the data sources, followed by a section detailing the specific analytical procedures undertaken for this research. I then discuss the potential ethical concerns of this research and in the final section I outline the study's limitations.

3.1 Epistemological Lens and Reflexive Practice

This thesis was conceptualized and carried out using a critical epistemological framework. The critical paradigm acknowledges that a reality exists, but that our knowledge of it is shaped by political, social, cultural, ethnic, gender, and economic values (Guba & Lincoln,

1994). Over time, these values “crystallize” (p. 109) and produce a dominant facade that is commonly accepted as truth. As a critical researcher, my goal with this thesis is to question the Canadian penal system as it is politically espoused and socially accepted, and to suggest an alternative way of understanding it. Specifically, I reframe the notion of punitiveness as a reflection of shifts in cultural sensibilities (Garland, 1990, 2001; Pratt, 2002), rather than being measured solely by changes in crime or incarceration rates. Through the de/civilizing theory proposed by John Pratt (1998, 2000, 2002, 2011) based on Norbert Elias’ classic work (1939/2000), I situate Canada’s penal trends within broader cultural structures.

Maintaining sensitivity to the structures of power and privilege in society is inherent in critical research (Bordieu & Wacquant, 1992). Wainwright (1997) contends that researchers who attempt to produce “value-free” knowledge end up engaging in a “passive legitimization of dominant ideology” (p. 3). By contrast, critical criminological research seeks not only to directly challenge these dominant norms, but also attempts to enact change in crime and penal policy (Martel, 2004). Similarly, I attend to the notion that dominant cultural and power relations dictate Canada’s penal trends and seek to examine how recent penal developments result from and are perpetuated by these power relations. Through uncovering this alternative truth, it is hoped that more productive means of responding to harm and criminalization may be recognized.

Critical theory posits that, “what can be known is inextricably intertwined with the interaction between a *particular* investigator and a *particular* object or group” (Guba & Lincoln, 1994, p. 110, original emphasis). Facts do not exist in a vacuum within which their realness can be known objectively; rather, the values and beliefs of the researcher influence how these facts are gathered, interpreted, and presented (Davies et al., 2004; Wainwright, 1997). Thus the

knowledge I produce in this thesis will inevitably reflect my subjectivity, biases, and privileges as a researcher. Conclusions cannot merely be stated, but rather must be recognized as having a particularly constructed interpretation and should include an explanation of how that interpretation came to be (Guillemin & Gillam, 2004). More simply referred to as *reflexivity*, the reflexive process comprises a significant ongoing component of this research.

Numerous scholars have acknowledged the necessity of reflexive practice when engaging in research, particular qualitative research (Davies et al., 2004; Guillemin & Gillam, 2004; Lincoln & Guba, 1985; Mauthner & Doucet, 2003). In short, it can be defined as a continuous exercise in critical reflection that occurs throughout the research project, from formulating the research question to explaining the final analysis (Guillemin & Gillam, 2004). Although reflexivity is important for all research, it is particularly crucial in critical research, informing the very foundation of the epistemological paradigm. Although eliminating my own biases and values is not possible, necessary, or desirable (Davies et al., 2004; Lincoln & Guba, 1985), practicing active reflexivity ensures that these subjective features are visible throughout the research process and are accounted for in the end product so as to provide greater rigour for the project overall.

Such practice demands constant attention to my social and political location, as both a researcher and activist (Bordieu & Wacquant, 1992; Guillemin & Gillam, 2004; Mauthner & Doucet, 2003). This means acknowledging my privileged economic and social position as a researcher at an established university, as well as my political stance as an abolitionist. As Mauthner and Doucet (2003) point out, reflexivity requires an appreciation that “knowledge and understanding are contextually and historically grounded, as well as linguistically

constituted” (p. 416). They argue that the so-called ‘neutrality’ of data is false, because *how* that data is acquired and interpreted is dependent on a researcher’s social context. In this project, my abolitionist stance permeates the coding phrases used and the analytic conclusions drawn. Specifically, I utilized language that challenges dominant state understandings of criminalization issues (for example, writing “criminalized individual” and “penal/punishment system” instead of offender and criminal justice system),²² drawing on the common abolitionist principle that seeks to avoid reproducing ‘state speak’ (see Hulsman, 1986). In addition, the presentation of current discourses and legislation as evidence of penal intensification can also be attributed to an abolitionist attitude, in which the penal system cannot be conceived as non-punitive but rather as varying in the intensity of its inherent punitiveness.²³

Engaging in reflexive practice also has a role in ensuring that research is ethically sound. Indeed, reflexivity provides a space in which researchers can both acknowledge ethical dilemmas that arise throughout the research process, as well as develop ways of responding to such issues (Guillemin & Gillam, 2004). Additionally, it can assist researchers in navigating through “ethically important moments” (Guillemin & Gillam, 2004, p. 265), spaces of unquestionable ethical importance, yet to which there is often no clear or obvious response. Using reflexivity to be aware of when these “ethically important moments” arise and to formulate appropriate responses can also work to forestall ethical crises before they develop (Guillemin & Gillam, 2004). In the next section, I examine the literature on qualitative content analysis, which was adopted as the analytic strategy for this project.

²² Instances where I use the latter language occur periodically in chapter four when I quote or paraphrase the arguments and specific wording utilized by commenters or within the legislation.

²³ To clarify, this is *not* an abolitionist project and I did not engage with abolitionist theory while conducting the analysis. However, I recognize that my abolitionist viewpoint has coloured the way I interpreted and discussed the data.

3.2 Qualitative Content Analysis

Qualitative content analysis can be defined as a research technique that involves the close examination of texts in order to infer themes and meaning (Berg & Lune, 2012; Elo & Kyngas, 2007; Hsieh & Shannon, 2005; Krippendorff, 2013; Neuendorf, 2002; Weare & Lin, 2000).

Researchers using this strategy engage in a non-linear and non-sequential process of reading, re-reading, re-interpreting, and revising their collected texts repeatedly, from which inferences are produced (Elo & Kyngas, 2007; Krippendorff, 2013). Through multiple readings, content analysts are able to challenge the surface meaning of texts by locating underlying (i.e. hidden or alternative) patterns and themes.

These multiple readings largely target the symbolic features of a text, rather than the physical data (Berg & Lune, 2012). Unlike quantitative content analysis, which focuses primarily on the manifest features of a text (e.g. counting words or phrases), the qualitative method examines the latent and nuanced conceptions that are not always immediately obvious (Berg & Lune, 2012; Elo & Kyngas, 2007; Hsieh & Shannon, 2005; Krippendorff, 2013; Neuendorf, 2002; Wainwright, 1997). Krippendorff (2013) further defines qualitative content analysis as the “rearticulation (interpretation) of given texts into new (analytical, deconstructive, emancipatory, or critical) narratives” (p. 23). Thus, this approach is compatible with the critical lens guiding this research. For example, one of this project’s central challenges is directed at the *Safe Streets and Communities Act* (2012): instead of viewing the act as a tool to increase public safety (the dominant political presentation), I argue that it is a set of overly harsh measures that seek to punish socially undesirable behaviour and heavily stigmatized populations.

Content analysis is a popular methodology that has a range of techniques and strategies that researchers may engage. For this thesis, I use a slightly modified version of Hsieh and Shannon's (2005) *conventional content analysis approach*, which is a multi-step process that is based in inductive reasoning. This type of research begins with immersion in the data to develop recognizable patterns, and later categories, that emerge from multiple readings and data coding (Berg & Lune, 2012; Elo & Kyngas, 2007; Krippendorff, 2013). Although analytic induction is often used to develop new theory as a result of these insights, it can also be a form of theory refinement. As Berg and Lune (2012) argue, "analysis of data is grounded to established theory and is also capable of developing theory" (p. 370). Grounding the analysis so as to establish the de/civilization theory underpinning the research does not limit the study to 'testing' the validity of the de/civilizing processes within the penal system, but rather reflects that my interpretations are rooted in the terms and concepts that emerge from that theoretical framework.

Thus, while Hsieh and Shannon (2005) advocate for both categories and the names of categories and themes to be revealed out of the raw data itself, I have formulated what Berg and Lune (2012) call *sociological constructs*, which are categories that "may be 'revealed' in the coding of the text, but do not necessarily reflect the conscious perspective of the speaker" (p. 357). This method ensures that I am capturing the general character of a category without being constrained by the specific wording used in the data. The sociological constructs used for the analysis were drawn from the key themes of the de/civilizing processes and from the extant literature on culture, emotions, punitiveness, and Canadian penalty.

This thesis is comprised of the close reading and analysis of two types of data: the *Safe Streets and Communities Act* legislation and online public comments that accompany relevant

news articles. By using these two related but distinct sources of data, I am able to provide a broader and more complete understanding of how Canadian penal issues are conceptualized, both in the legal realm and by laypersons (Krippendorff, 2013; Tobin & Begley, 2004). Unlike quantitative triangulation, which is typically used to prove the validity of the data obtained from each source, qualitative verification is a “means of enlarging the landscape of...inquiry, offering a deeper and more comprehensive picture” (Tobin & Begley, 2004, p. 393). My aim with this project is not to prove or disprove the existence of a specific penal trend, but rather to explore how multiple, contradictory penal discourses and practices have manifested in Canada today. In the next section, I explore recent scholarship on using the Internet as a methodological tool, and review the positive and negative factors related to using online public comments as a data source.

3.3 Internet Research

3.3.1 Using the Internet in Qualitative Research

The Internet is a relatively recent methodological tool that offers qualitative researchers a rich source of data (Broad & Joos, 2004; Holmes, 2009; Markham, 2008; Weare & Lin, 2000). As Holmes (2009) notes, many traditional methodologies are easily transferable to an Internet-mediated setting, including qualitative content analysis. The Internet also provides tools that widen the possibilities for data, topics, and goals of research (Markham, 2008). Markham (2008) offers three ways of utilizing the Internet for research: Internet as a tool for collecting and analyzing data; Internet as a site for observing social phenomenon; or Internet as a phenomenon in itself. Specific to this thesis, Internet research will refer to the “study of social phenomena that are mediated by, rely on or are interwoven with the Internet for their composition or

function” (Markham, 2008, p. 454). I examined public comment boards as a key source of data in order to gain an idea of the cultural sensibilities regarding legislative trends and prison conditions among readers and, with limits, as a reflection of the sensibilities among the broader Canadian population.

Markham (2008) argues that there are several features of the Internet that need to be considered when using it in qualitative research. First, she notes that the Internet is a *medium for communication*, providing new spaces for and of interaction and identity performance (see also Broad & Joos, 2004). This provides qualitative researchers with a new avenue for exploring the “construction, negotiation, and maintenance of human social practices” (Markham, 2008, p. 455). Public comment boards are a prime example of this new avenue of communication, enabling readers to communicate to the public in general, to other commenters, and to the news website itself; these forums also serve as a site for identity performance when commenters provide personal anecdotes and add display pictures to their account. Comments are seen by anyone who chooses to scroll down, so researchers are easily able to access these exchanges for analysis.

Markham (2008) argues that the Internet is also characterized by *geographic dispersement*, which enables these new methods of communication to take place in a global context. She adds, “the distance-collapsing capacity of the internet allows researchers to connect to participants around the globe. This increases and/or alters the available pool of participants and can enable questions and comparison that were previously less available” (p. 456). Given that the websites I used for this thesis were strictly Canadian news sources, it is doubtful that any of the commenters were posting from outside of Canada; however, nation-wide coverage and the

large-scale availability of the Internet indicates that the comments reflect the opinions of a wide range of the population interested in issues of criminalization and punishment, thus providing a rich source of data (see Henrich & Holmes, 2013).

A third characteristic of the Internet is *anonymity*. While the Internet creates a natural disconnect between people, there are also many online spaces that further facilitate anonymous exchanges, discussions, or rants (Markham, 2008). Broad and Joos (2004) argue that the Internet “erases barriers to social and political participation” (p. 925), and creates sites in which people are willing to discuss private matters with strangers. These environments are extremely useful for many qualitative projects, as they “allow participants to speak more freely without restraints brought about by social norms, mores, and conventions; [as well], this feature is useful in studies of risky or deviant behaviours or socially unacceptable attitudes” (Markham, 2008, p. 456). Alternatively, this open and often un- or lightly moderated space has been criticized for facilitating anonymous uncivil, disrespectful, and overwhelmingly negative discussions (Chmiel et al., 2010; Freeman, 2011; Henrich & Holmes, 2011; Hlavach & Freivogel, 2011).

Finally, the Internet is also described as *chrono malleable* (Markham, 2008, p. 457), as it allows for both synchronous and asynchronous communication. Internet users are able to communicate with multiple people at the same time or perform different tasks simultaneously; there are also instances of gaps or interruptions in communication when sending emails or participating in online comment boards discussions. Online communication also provides users with time to formulate a response and review their text for clarity before sending, time that is less available in face-to-face interactions (Markham, 2008). In discussion forums, acceptable gaps in

conversation can span hours or days, which also gives commenters time to locate sources to support their claims.

3.3.2 Using Online Public Commentary in Qualitative Research

Public comment boards and forums are a specific component of the Internet that open up a new avenue for communication; they have the potential to provide researchers with a new method of learning about and understanding public opinion (Henrich & Holmes, 2013). Although less methodologically rigorous, online comments are gaining attention as a valuable source of data for a range of studies (for example, Christensen & Christensen, 2013; De Kraker et al., 2014; Freeman, 2011; Henrich & Holmes, 2011).

Some scholars have suggested that their capacity for open and anonymous communication means that comment boards can be used to engage in democratic debate and enhance political discussion amongst citizens (Broad & Joos, 2004; Cavanaugh & Dennis, 2013; Manosevitch & Walker, 2009). Despite the recognition that participation on many sites frequently consists of purposely inflammatory messages, insults, and discriminatory language, Cavanaugh and Dennis (2013) contend that reputable news sites offer “more promising venues for the emergence of genuinely democratic and socially effective debate” (p. 3). Manosevitch and Walker (2009) add that by inviting readers to post comments, news sites encourage people to think about what they have just read and actively deliberate their opinions with fellow readers.

However, Dahlberg (2001) notes that while the combination of pertinent news and discussion forums provides for the possibility of critical and reasoned deliberations, this is not always the case. Rather than diversifying interactions, Dahlberg argues that people more often “seek out groups of like-minded others where member’s interests, values, and prejudices are

reinforced rather than challenged” (p. 618). Similarly, Albrecht (2006) asserts that the offline barriers (lack of interest or time, poor communication skills, lack of socioeconomic resources) that silence particular political discussions often constrain those same voices online. Viewed this way, the Internet as a communicative tool actually serves to limit individual voices and further polarize extremist opinions. To that end, it is important to recognize that while online comments offer a rich source of data for this thesis, there are likely many voices and points of view that are missing.

It is also necessary to recognize that readers are more likely to comment when they react negatively to an article or topic (Aharony, 2012; Chmiel et al., 2010; Freeman, 2011). As Freeman (2011) argues, “negative emotions motivate forum participants to express their opinion when writing a post and the most active users [are] those with negative views on events” (p. 364). On the other hand, Chmiel et al. (2010) suggest that the reason dissension into arguments occurs on comment boards is due to the offensive language of a previous post, rather than the actual opinion in the comment. Hlavach and Freivogel (2011) found that a string of disrespectful and uncivil comments can sometimes deter readers who may be more inclined to have a polite public discussion with logical, well-articulated comments, which further skews the tone of comment boards. Thus, it is important to avoid overstating the phenomenon of a ‘negative public’ or an ‘uncivil public’ in light of this limitation. In the next section, I discuss the sampling approach I used to collect the data for this project.

3.4 Sampling and Data Collection

This thesis makes use of two sources of data: the *Safe Streets and Communities Act* legislation and public commentary corresponding to online news articles that discuss (a) the changes brought about by the *Safe Streets and Communities Act*, (b) the new penal legislation that has been proposed or passed since 2012, and (c) changes in or discussion of conditions in Canadian prisons and jails. These topics were chosen because they reflect key themes from the literature on de/civilizing processes and the punitive turn thesis. Within these broader topics, smaller sub-topics emerged naturally into which articles were grouped.²⁴

News articles were sampled from three national news sites: cbc.ca, globeandmail.com, and nationalpost.com. These three sites were chosen because they are among the top-visited national news websites in Canada, and were also found to have frequent and varied comments, ensuring a broad range of opinions would be analyzed (Henrich & Holmes, 2013). Given the increasing shift to online news media, and the increase in public accessibility of news via online sources (Freeman, 2011; Henrich & Holmes, 2011), using news websites was a methodologically appropriate choice. Posting on comment boards is far easier for readers interested in discussion than the traditional letter to the editor; additionally, comment boards can be accessed in the weeks after a news article is posted. This was particularly useful when I began data collection, since I did not start saving articles and comments until midway through October 2012 and was still able to locate the relevant material from two weeks prior. This also proved helpful when gathering comments from globeandmail.com, which only allows users to access ten free articles per month. For the months with more than ten relevant articles, I was able to save the link and collect the comments at a later date.

²⁴ For a list of the sub-topics, see Appendix 2

Non-probability sampling was most appropriate because I wanted to select articles that fell into the topical categories listed above. The initial search for news articles was conducted via the search terms “Canada + prison” and “Canada + punishment + sentencing” at each of the three sites, followed by a superficial reading of the articles that emerged from those searches. This provided me with a vast selection of articles, far beyond the scope of this thesis. I chose three topics (i.e. *Safe and Streets and Communities Act* changes; new legislation; and prison conditions) that are central to determining Canadian punishment trends and cultural shifts, based on my reading of the de/civilizing literature, and then saved the relevant articles and corresponding comment sections.

This method of sampling can be more narrowly classified as purposive sampling, which excludes “the textual units that do not possess relevant information” (Krippendorff, 2013, p. 120). I did not need *all* the articles that discuss punishment in Canada, as most were not pertinent for this research (Berg & Lune, 2012; Krippendorff, 2013). Once data collection was complete, I re-read each article again to ensure that the content was satisfactorily applicable to its assigned topic as well as to the aims of the thesis as a whole. Public comments were also sampled purposively. As per Henrich and Holmes’ (2013) suggestions for comment inclusion criteria, I limited the sample of public comments by only including “comments that relate to the article or the topic of interest” (p. 3). I noted very early on during the data collection process that most comment boards contain some off-topic rants and personal attacks between posters. While an interesting topic in itself, these data are not relevant to this study, and thus were not collected. An additional inclusion criterion addresses the number of comments collected. While many of the news articles had only a handful of comments, a few had hundreds and even thousands of

comments. To accommodate for the time limitations of a Master's thesis, I selected up to the first 500 comments on each article (Henrich & Holmes, 2011).

Data collection covered a 12-month period, from October 2012 to September 2013. Several times a week during this time, I accessed the home page of the three news sites, entered my search terms, and skimmed through the articles that were retrieved. I then copied the relevant articles and corresponding comments into Microsoft Word documents and saved them to my hard drive. Stories were followed for two to three days to ensure that as many comments as possible, up to 500, were collected. I chose to save the articles and comments externally, rather than simply bookmarking the page, in light of the fact that comment boards and some articles are quickly deleted from the sites (Henrich & Holmes, 2013). The final analysis consisted of the 114-page *Safe Streets and Communities Act*, and 721 single-spaced pages of comments collected from 92 news articles.

3.5 Data Analysis Procedures

3.5.1 Open Coding

As per Hsieh and Shannon's (2005) conventional content analysis process, my research began with an open coding phase. Open coding is an important step because "no insights or theories can spring forth from the data without the researcher becoming completely familiar with them" (Elo & Kyngas, 2007, p. 109). Thus, although I had completed a surface reading of the comments during data collection, this step entailed a more in-depth read through in order to become fully saturated or immersed in the material (Elo & Kyngas, 2007; Hsieh & Shannon, 2005; Krippendorff, 2013). During the first reading, I coded all comments via the track changes

feature in each word document, and then made a note of all codes in a second “Ideas” document. The purpose of the “Ideas” document was to maintain consistency with my note-taking so that finding a particular idea later would be easier. For example, when a commenter wrote that prison was an effective punishment, I would use the code “prison is effective.” While other identifiers were added as necessary (e.g. “prison is effective - deterrence”, “prison is effective - public safety”), I used this standard phrase in order to locate all the comments that discussed the effectiveness of prison during the categorization phase.

As I read through more of the data I began to organize related codes from the “Ideas” document into like sets, which later became my sub-themes and themes. For example, comments related to victims of crime included ideas such as, “victims should have (greater) role in CJS”, “victims don’t have enough rights”, and “prisoners/criminalized have more rights than victims.” These codes were grouped together in the “Ideas” document and subsequently formed the theme “rise of victims’ roles and rights/agendas.” Because I was not at the stage of creating firm coding categories, some of these ideas were placed in more than one category in the “Ideas” document. As noted by Berg and Lune (2012), researchers should avoid formulating interpretations of the text or determining the presence of themes, as contradictions frequently occur at this stage; the task of open coding, they argue, is merely to take notes of meanings within the text.

3.5.2 Categorization and Coding Frames

After I completed the first round of coding all the comments, I did a second reading to ensure the codes I had assigned reflected the commenters’ ideas as accurately as possible and reviewed the preliminary coding groups I had created, selecting the most appropriate category for codes that were more fluid. For example, the code “who cares about criminals” was initially

grouped with other codes in the category “harsh punishment is deserved”; this reflected the content of these comments, which generally dismissed or denied criminalized individuals’ experiences of suffering because of their criminal label. However, upon closer examination, I determined that this code fit better within the category of “intolerance for others” since these comments seemed to build on the dichotomization of victim/criminal labels, wherein those who have been criminalized do not deserve care or empathy. The overlap between these categories, and throughout the rest of the themes, emphasizes the complex and affective nature of the features of de/civilization; cultural changes do not happen singularly, but in tandem with each other (e.g. in this case, intolerance for others facilitates support for harsher punishment and encourages notions of the deservedness of punishment). While the categories are all distinct, their presence is influenced by (and influences) the other categories, in much the same way components of the de/civilizing processes do.

I then created a series of concrete coding frames in order to organize the key ideas and categories that I had found into major themes and sub-themes (see Berg & Lune, 2012; Neuendorf, 2002).²⁵ As Hsieh and Shannon (2005) note, after a succession of readings and re-readings, broader categories become apparent that reflect more than one key idea; these broader categories form the schematic basis of coding frames. Coding frames also prevent the number of codes from becoming overwhelmingly large, and reveal how the various codes link or relate to one another (Elo & Kyngas, 2007; Hsieh & Shannon, 2005). My initial “Ideas” document quickly expanded to 35 pages of unique codes during the open coding phase; as I began to review the ideas and early groupings I had made, however, I found I was able to collapse the

²⁵ See Appendix 1 for an outline of the coding frames used

smaller groupings/codes into “broader, higher order categories” (Elo & Kyngas, 2007, p. 111).

This enabled me to condense the original 21 themes my analysis had produced, into a much more manageable number of eight major themes.

3.5.3 Organization of Themes

Once the major themes emerged, I organized the categories hierarchically and operationalized each one. This first entailed dividing the themes into civilizing process discourses (to which six themes were assigned) or de-civilizing process discourses (to which two themes were assigned). I then relied heavily the de/civilizing literature of Elias (1939/2000) and Pratt (1998, 2002, 2011) to explain how the key patterns and ideas of each theme demonstrated the existence of the de/civilizing processes in Canadian penalty. While this analysis does not and cannot result in a causal explanation for Canadian penal trends as they are currently presented (see Limitations, below), the categories and themes provide a greater understanding of the presence of civilizing and de-civilizing features within penalty as they exist in online discussions and the SSCA legislation.

3.6 Ethical Considerations

This thesis does not include direct interaction with human subjects, thus I did not need to gain approval from the university’s research ethics board to begin my project. However, as Guillemin and Gillam (2004) note, ethical concerns are a significant component of all types of research. The issues of harm and anonymity are particularly important for this thesis. Even with the recognition that public comments on most news sites are posted anonymously, Markham (2008) contends that protecting this form of anonymity in research can be complicated. She notes

that “some users have a writing style that is readily identifiable in their online community, so that the researcher’s use of a pseudonym does not guarantee anonymity” (p. 458). Although I attempted to maintain commenters’ anonymity (I do not include their user names in the analysis, and I removed individual names from responses to previous posts), I need to be mindful that identifying features of comments may compromise this.

Some scholars also argue that anonymous public comments invite harm, suggesting that they are ethically dubious themselves. Hlavach and Freivogel (2011) write “anonymity may enable a poster to freely write angry and harmful comments without having to face the social opprobrium normally attached to such behaviour” (p. 31). While newspapers are expected to produce evidence-based, unbiased information, readers are not held to the same standards and frequently post vitriolic comments that are not sourced and are unfounded. They conclude that, “ethical news organizations determined to ‘minimize harm’ must find a way to require a level of civility in readers’ postings” (p. 29). However, as I explore further in the next chapter, some news sites appear to be shirking this role of minimizing harm and maintaining civility in online spaces, given the many vicious and hostile comments that remain on comment boards without facing deletion. In documenting the presence of de/civilizing features in online comments, this thesis also reveals how online spaces themselves can be alternatively understood as de/civilized. In the next section, I discuss the main limitations of the research methodology crafted for this project.

3.7 Limitations

Generalizability is perhaps the most obvious limitation for any small-scale qualitative research project. As Wainwright (1997) argues, this is especially true of critical research, which

“starts from the assumption that society is in a constant state of flux, that the social world and our understanding of it are constantly changing” (p. 14). It is hardly possible to generalize results to other places or populations when the socio-cultural and political forces that dictate its appearance are continuously changing. This problem is particularly striking when using the Internet, whose “sheer size and chaotic structure...complicate efforts to select representative samples of messages for analysis (Weare & Lin, 2000, p. 273). It is suggested instead that qualitative researchers focus on providing thick rich description of a phenomenon and of their research decisions, including a clear explanation of the social conditions guiding the phenomenon’s existence (Lincoln & Guba, 1985; Wainwright, 1997).

Other scholars argue that generalization and replication should not be the goal of qualitative research, but rather that dependability should be the measure of rigour (Tobin & Begley, 2004). As LaCoursiere (2003) contends, qualitative research is more about “‘understanding particulars’ as opposed to ‘generalizing universals’” (p. 269). In other words, how can these specific data be understood through this theory and method, at this point in time? Consistency in the research process, facilitated by open dialogue and clear documentation, should be the extent of reliability sought in qualitative research, since results are so intertwined with an individual researcher’s own biases (Lincoln & Guba, 1985; Tobin & Begley, 2004). Wainwright (1997) also adds that while individual details (for instance, a specific population or location) may change, the power relations and social conditions are broader, and thus can be somewhat extrapolated between projects.

In order to provide as thick and rich a description as possible, I examined data from multiple sources, and immersed myself in as much information as possible given the time

restraints of a Masters' thesis. This totaled almost 800 single-spaced pages of data combined between the two sources. The broader scope of inquiry ensures a stronger, more comprehensive final analysis (Tobin & Begley, 2004), however, it is important to note that this more extensive scope of reader comments cannot be presumed to represent the general public; the data remain limited to individuals who have Internet access and to the individuals who are willing to post comments (Henrich & Holmes, 2011, 2013; Holmes, 2009). On the other hand, some scholars argue that for articles containing hundreds or thousands of responses, the comments *can* be expected to "reflect the perspectives of a large segment of the population" (Henrich & Holmes, 2013, p. 2). At the very least, these heavily discussed topics indicate the sorts of issues that resonate deeply with the broader public (Henrich & Holmes, 2013).

Given the inferential data that forms the basis of qualitative content analysis, validation of evidence is also difficult, if not impossible (Krippendorff, 2013; Wainwright, 1997). Again, several researchers have responded to this critique by suggesting that validity is an irrelevant characteristic for qualitative research, which should be concerned instead with *credibility*, or the fit between data and the researcher's representation of data (Elo & Kyngas, 2007; Lincoln & Guba, 1985; Tobin & Begly, 2004). Lincoln and Guba (1985) outline some key practices to ensure credibility, which include spending a sufficient amount of time with the data or in the field, drawing results from multiple data sources (triangulation), and fully discussing contradictory data that does not appear to fit with emerging trends.

To this end, I spent five months completing a thorough coding process. I first did a surface reading of all comments during data collection, followed by three rounds of intense coding and categorization on all the comments and legislation. I did multiple 'checks' to ensure

that data were coded in a consistent manner and that the codes accurately reflected the categories I had assigned them to. In response to the frequent accusations that qualitative research is ‘invalid’ and ‘unscientific’, I maintained hard copies of each coding phase, as well as copies of the full version of the legislation, every article for which commentary was collected, and all of the comments. By ensuring that the data and my individual analysis are accessible, I also increase the dependability and credibility of the project (Lincoln & Guba, 1985).

Berg and Lune (2012) also point out that the content analysis method is unable to produce a causal link in its data. They argue, “Causality may be suspected or suggested by the patterns of association among measured phenomena, but other means must be used to test that idea” (p. 376). The themes and patterns that were produced through the analysis enable me to draw inferences about punitiveness in Canada, but I cannot conclusively link my results to the information in the comments or legislation. Rather, my goal with this thesis is to provide a clearer picture of the penal climate in Canada today.

3.8 Conclusion

This chapter outlined the methodological considerations that were utilized for this thesis, including detailed descriptions of critical epistemology, the qualitative content analysis strategy, sampling and data collection techniques, the Internet as a methodological tool, the specific analytic procedures undertaken, and important ethical reflections. These discussions are critical to understanding how I produced this research as well as revealing the inherent limitations in the thesis; in short the methodological outline makes clear what information this project does and does not produce, and thus what arguments or theories can be contemplated in response.

In the next chapter, I identify and provide an in-depth examination of the major themes and sub-themes that emerged from my analysis of the *Safe Streets and Communities Act* legislation and the sample of online public comments related to penal matters in Canada. Divided into two sections, the first part of the chapter explores the themes and sub-themes that reflect de-civilizing discourses while the second part explores themes and sub-themes that reflect civilizing discourses. While the presence of both de/civilizing processes indicates that Canadian penalty is influenced by a variety of seemingly contradictory discourses, I conclude that the predominance of de-civilizing features within the data reveals a growing trend of de-civilized penalty.

CHAPTER 4: ANALYSIS

This chapter will discuss the analytic findings of this research.²⁶ Eight major themes were produced, which were subsequently divided into two broad categories: themes that reflect de-civilizing discourses, and themes that reflect civilizing discourses. Structuring the chapter this way demonstrates how recent legislation and online public comments related to penal concerns are comprised of, and thus indicate, various features of the de/civilizing processes in Canadian penalty. Furthermore, as evidenced by the predominance of de-civilizing elements in the emergent themes and sub-themes, I reveal the growing trend of a de-civilized penalty in Canada.

However, even with the visible coalescence of de-civilizing discourses, it is important to recall that contradictory opinions and laws also exist, as the presence or absence of civility is never absolute (Elias, 1939/2000; Spierenburg, 1984). Although, as it will become clear in part two below, these civilizing ‘contradictions’ often occur in hidden and punitively-informed ways

²⁶ As with so many qualitative research projects, the breadth and depth of data examined as well as the findings that emerged during this analysis were overwhelming, and would take far more time and space than is afforded for a Master’s thesis to explore in their entirety. Thus, the themes examined in this chapter are those that most closely reflect the framework of the de/civilizing processes. Other interesting themes that emerged, and will hopefully be explored in future research, include the distinct contradictions that exist in commenters’ definitions of justice and civility, as well as the economic concerns related to Canada’s shift to harsher punishment.

that can undermine their attempt to oppose or challenge more blatant de-civilizing trends.

Nevertheless, the strong presence of these contradictions serves to illustrate how shifts in penal culture are often ambiguous and layered (see Carlen & Tombs, 2006).

This thesis does not claim that the whole of Canadian penal culture is undergoing a de-civilizing process, but rather that elements of de-civilization (which align with understandings of punitiveness) inform the dominant penal discourse today. Therefore, I conclude that while Canada is often viewed as just, civil and lenient in regards to penal policy and practice, the creation of harsh new legislation over the past several years, as well as heightened public support and demand for these changes, indicate a de-civilizing and increasingly punitive trend in Canadian penalty.

Part 1: The Rise of De-civilizing Discourses in Canadian Penalty

The overwhelming majority of themes and sentiments emerging from this analysis reflect elements of the de-civilizing process outlined by John Pratt (1998, 1999, 2002, 2011) and others (see Mennell, 1990; Spierenburg, 1984, 2001; Wouters, 1986). For the purposes of this analysis, “majority” refers to both the range of arguments made (which give credence to all of the central tenets of de-civilization as discussed by Pratt), as well as the depth of support for each type of argument, evidenced by the dozens and in some cases even hundreds of comments that substantiate a particular theme.

The analysis of the data revealed six themes that support a de-civilizing framework: (1) Fear of crime and the crisis of penalty; (2) Weakened authority; (3) The rise of victims’ roles and

rights/agendas; (4) Visible and public emotion; (5) Intolerance for ‘others’; and (6) Development of and support for harsher punishment.

4.1 Fear of crime and the crisis of penalty

Many commenters’ expressed a fear of crime and support for punishment over rehabilitation, both concepts that John Pratt (1998, 2000, 2002, 2011) considers key indicators of a growing crisis in penalty. Commenters frequently lamented rising crime rates, or argued that crime rates are only dropping due to criminals avoiding conviction and sentencing. In response to an article on mandatory minimum sentencing, one commenter noted “Violent[sic] crime has quadrupled since the 1960s - do you[sic] own research and pass it on” (Reader comment re: CBC, 2013 February 19). On another article discussing the elimination of pre-trial detention credit, several commenters debated the increase or decrease in levels of crime. Following an argument that “crime rates have been dropping for decades” (which included a link to a Statistics Canada report), a second commenter replied, “Yes, crime rates. But not crime. Despite the crime rate dropping, there are more crimes being committed now than ever before.” A third added, “Crime rates are plummeting because half the time the offender is never charged.” (Reader comments re: CBC, 2013 April 11).

These sentiments suggest those commenters’ fear of crime stem from a perception of increasing lawlessness and disorder in Canada, a perception that persists even when they are presented with evidence demonstrating long-term reductions in crime. Instead, commenters insisted that crime is “out of control” and that citizens are at great risk of victimization.²⁷

²⁷ While beyond the scope of this analysis, it is important to note that unreported victimization is a real and important phenomenon.

Garland (2000, 2001) has noted that these fears are rooted in the structural changes of late modern society. Fundamental shifts in the socio-political and economic systems, such as Canada's recent economic recession, create an uncertain and fragmented society that becomes highly concerned about risk and victimization (Pratt, 2000a; Webster, Doob & Myers, 2009). Additionally, the near constant stream of crime and violence that citizens are exposed to via news and other media sources increases perceptions of danger and contributes to a misguided feeling that crime is 'everywhere' (Keane, 2004).

The public's efforts to ease their insecurities manifest in demands for more punitive and exclusionary measures against criminalized persons (Hogan, Chiricos & Gertz, 2005). With respect to an article about the proposed Victims' Bill of Rights, one commenter wrote, "Canadians are fearful and with very good reason. True, the crime rates are falling but there are still some unfair and much too lenient decisions being handed down in the courts. These Bills or amendments address this fact" (Reader comment re: CBC, 2013 April 25). As this comment suggests, fear of crime is perpetuated not only by the actual existence of crime, but also by witnessing moderate sentencing that allows criminals to 'get away' with unlawful behaviour.

In turn, commenters advocated almost singularly for punishment, particularly prison sentences, as being the only response to criminalized behaviour. One commenter replied, "If someone commits a crime, then they should be incarcerated accordingly. They forfeit their right to live in our society." (Reader comment re: Mackrael/Globe and Mail, 2013 February 8) Another added, "My personal experience and feeling says that any person who can behave violently against the public needs to be kept in a secure facility. Perhaps indefinitely." (Reader comment re: Fitzpatrick/CBC, 2013 June 5). Even individuals who are typically viewed with

more sympathy, such as youth or those suffering from mental illness, are increasingly subject to these punitive views. In a discussion on Bill C-54, one commenter wrote, “A head-case who is a danger to society should be locked-away forever...” (Reader comment re: Fitzpatrick/CBC, 2013 May 7). Despite the qualitatively different issues these responses are addressing (violent crime vs. all crime; appropriate approaches to individuals suffering from mental illness vs. mentally healthy individuals), commenters maintained strong support for punishment and incarceration, and rarely acknowledged the possibility of less punitive reactions. These sentiments suggest a growing intolerance of any measure of danger, and a desire to neutralize that danger in the most direct way possible, even at the expense of less punitive and more effective responses (Garland, 2001; Monaghan, 2013).

These commenters’ beliefs are mirrored in recent legislation passed under Stephen Harper’s Conservative majority government that simultaneously expands the reliance on prisons when responding to ‘crimes’ and reduces or outright eliminates community alternatives. With the passage of the *Safe Streets and Communities Act* (SSCA) (2012), over 30 mandatory minimum sentences were added to the *Canadian Criminal Code* (CCC), creating mandatory prison sentencing where previously none had existed, or extending the length of previously-existing mandatory sentences (see for example p. 9-11, 25-26). The SSCA also removed conditional sentencing (e.g. community punishments like probation or house arrest) as a potential response for several offences, including any of the 32 offences newly listed in the CCC as requiring a mandatory prison sentence (p. 20). These changes indicate that, at least within penal and political domains, lengthy prison terms are increasingly designated as the necessary and only way of

responding to criminalized behaviour while equally or more suitable alternative responses are explicitly dismissed.

Notably, the SSCA (2012) also concretized a shift away from the rehabilitative ideal, suggesting that not only is punishment necessary, but that the rehabilitation is no longer expected from its practice. For instance, the SSCA redefined one of the key principles of the *Youth Criminal Justice Act* as “*promoting* the rehabilitation and reintegration of young persons who have committed offences” (p. 88, emphasis added). This is a marked difference from the previous version of the Act, which stated that “the youth criminal justice system is intended to... (ii) rehabilitate young persons who commit offences and reintegrate them into society” (*Youth Criminal Justice Act*, 2002, s. 3(a)). Although rehabilitation is still a popular component of penal and political rhetoric, this discursive shift suggests that the penal system has no direct obligation to actively produce a rehabilitated prison population.

Similarly, most commenters rejected rehabilitation strategies, with several arguing they are costly and/or ineffective. One commenter noted, “Crime is out of control in Canada and it’s ever since we were convinced by our justice system that being “nice” and “rehabilitation” is what you do to violent offenders. It doesn’t work - it simply doesn’t” (Reader comment re: CBC, 2013 February 4) Another remarked, “We need to focus on the victim and restitution by the criminal, and stop this psychobabble[sic] about rehabilitation[sic]” (Reader comment re: Mackrael/Globe and Mail, 2013 February 4). Notably, these punitive views were also directed at more sympathetic populations, such as individuals suffering from mental illness. As one commenter,

responding to a discussion of Bill C-54,²⁸ noted, “[A longer prison sentence] is entirely appropriate, if they really are sick, then they can’t be rehabilitated” (Reader comment re: Fitzpatrick/CBC, 2013 June 5). These comments reflect the widespread collapse of the rehabilitative ideal (Moore, 2007), and suggest that biological and psychological understandings of criminality are gaining credence amongst segments of the general public. Founded in the widely disproven work of early criminologists like Cesare Lombroso and Raffaele Garofalo, such arguments indicate a renewed belief that some people are “born criminals” and cannot be cured of their innate criminality, which is a revival of de-civilizing notions that clearly demarcate ‘us’ from ‘them’, and ‘criminal’ from ‘law-abiding’ (Pratt, 2002, 2011; Spierenburg, 1984).

4.2 Weakened authority

The penal crisis is made possible, in part, by the presence of a weakened authority. The structural upheavals of late modernity not only facilitate the public’s fear and insecurity regarding crime, but also call into question the ability of the government to competently respond to such crime and other social harms (Pratt, 2011; Ratner & McMullan, 1983). In order to reclaim their authority, governments enact increasingly punitive measures, thus returning to de-civilized notions of sovereignty as a status to be achieved through violent force (Pratt, 2002, 2011; Ratner & McMullan, 1983).

²⁸ Bill C-54, also known as the *Not-Criminally-Responsible Reform Act*, is a bill currently being considered in Parliament. The bill calls for tougher sanctions against individuals who commit crimes while suffering from severe mental illness, including the ability to declare NCR individuals as high risk for violence in order to reduce their likelihood of release and to increase the involvement of victims in establishing these high risk designations (Bill C-54, 2013). Bill C-54 follows in the wake of several high profile cases of individuals (e.g. Vince Li, Guy Turcotte) who committed particularly gruesome murders while suffering a severe mental illness, and who were ultimately sent to a psychiatric facility under an NCR ruling, rather than serving a prison sentence.

The passage of the *Safe Streets and Communities Act* (2012) is an example of an overly punitive piece of legislation that represents an attempt by the Conservative government to appear in control and capable of addressing social problems, particularly following the economic recession of 2008. In the wake of an ‘out of control crime problem’, the Conservatives had a solution that was both easy to digest and echoed the fears of the public. As a justification for intensifying penalties against terrorist activity, the legislation states, “the challenge of eradicating terrorism, with its sophisticated and trans-border nature, requires enhanced international cooperation and a strengthening of Canada’s capacity to suppress and incapacitate acts of terrorism” (SSCA, 2012, p. 2). This reasoning reinforces that terrorism is a significant problem for Canadians while simultaneously attempting to reassure them that something is being done; in other words, the threat is significant but manageable, and more importantly, being managed. With the passage of this legislation, the Conservative government proclaimed they would gain control over crime and, in theory, regain the confidence of the public.

Interestingly, however, many online commenters seemed to recognize the current Conservative government’s punitive policies as a desperate attempt to recover credibility and support from the public – a realization that undermines this very goal. They suggest that much of the recently proposed legislation is premised on ideological beliefs, and is used to enhance the Conservatives’ political standing rather than actually address crime. One commenter responding to an article on mandatory minimum sentencing wrote,

I think harpers[sic] agenda is to build as many new prisons as possible- fill them up with non-criminal marijuana smokers- and then tell us the citizens that we cannot afford to employ the workers used to man the prisoners so therefore we must privatize the prisons and sell them for 10 cents on the dollar to harpers[sic] friends (Reader comment re: CBC, 2013 April 11).

Although the increase in mandatory minimum sentencing and the designation of more crimes is an attempt to demonstrate that the Conservative government will eradicate crime, it appears that the opposite has happened. Commenters frequently point out how these measures are creating new social problems, including more crime and victimization; several commenters suggested that “knee-jerk” reactions are simply an attempt to claim moral authority where none is deserved.

Relatedly, the ‘tough on crime’ approach also appears to have alienated a segment of the commenters who are critical of the government’s refusal to listen to evidence when responding to crime. With respect to an article about the war on drugs, one commenter noted,

Even before the Harper government went down the road of minimum sentencing, there was lots of evidence around that indicated minimum sentencing is bad policy. Now, we know that this government does not heed evidence. Case in point is the continuing resistance to safe drug injection sites (Reader comment re: *Globe and Mail*, 2013 August 14).

As I explore further in part two, the war on drugs is one area in which there is significant support for decriminalization, and many commenters make reference to empirical studies and reports to support their claims.²⁹ In a similar response following an article on the proposed *Not Criminally Responsible Reform Act* (Bill C-54), one commenter wrote, “This [is] another example of how our federal government forms policy around public opinion and media hype while completely ignoring the research evidence. It is policy based on ideology rather than empirical evidence. I find this scary indeed” (Reader comment re: *CBC*, 2013 March 24). Although the Conservatives

²⁹ Ironically, when these same studies demonstrate reductions in crime rates or propose alternatives to incarceration they are generally condemned by commenters as inaccurate or pro-criminal, as seen above in the first theme. While the outright rejection of research evidence is frowned upon, such evidence is apparently only accepted if it provides support for what the public already believes to be true.

openly reject academic scholarship as “committing sociology”³⁰ and claim to know “what Canadians want” without regard for research evidence, it is clear that many commenters disagree with this assessment, as they expressed distrust in the government to create effective and appropriate evidence-based penal policy.

Additionally, many commenters considered the steady stream of new legislation and policies as unnecessary and ideological, largely because existing laws already address the targeted behaviours. Following the passage of Nova Scotia’s new cyberbullying law, commenters noted that online harassment is already a crime in the *Criminal Code* and does not need a new law so as to be denounced. Others added that if the government does not enforce current laws, then simply passing new laws would not result in any significant change. For example, one commenter wrote, “Abridged version [of the article on the new cyberbullying law]: Politicians seek free publicity by passing new laws effectively identical to existing, unenforced, laws” (Reader comment re: Davison/CBC, 2013 August 12). Others suggested that recent legislation has diverted public attention from other, more important concerns. In response to the proposed *Victims’ Bill of Rights*, one commenter argued:

It’s just a ploy to distract voters away from the Conservative’s[sic] mismanagement of the economy, the environment, and overly high taxation that is crippling many households today. Maybe they should just start having gladiator games in the town square, it would cost less of my tax money than building more jails and making anti-Justin Trudeau TV commercials (Reader comment re: Hall/CBC, 2013 April 26).

Thus, despite capitalizing on Canadians’ fear of crime and victimization, it seems that the government’s attempts to shift attention away from more pressing social and economic problems

³⁰ In early 2013, in response to a question about studying and addressing the root causes of terrorist involvement, Prime Minister Stephen Harper replied that it is more important to express “utter condemnation” for crime, rather than “commit sociology” (Fitzpatrick, 2013 April 25).

that they have little direct control over have largely failed to distract some of the public. And while concern about and fear of crime may be ubiquitous in late-modern society, the public does not seem easily persuaded to disregard other serious issues that impact their lives.

4.3 Growth of victims' roles and rights/agendas

As citizens grow increasingly frustrated with the apparent inability of the government to respond to crime effectively, they sometimes begin to seek out their own measures of justice. This has resulted out of the neo-liberal ideal of governing-at-a-distance (Garland, 2001), whereby government leaders are but one out of several invested groups who claim authority over penal matters. For example, penal expertise is bestowed on (some) victims³¹ and victims' movements, as well as public lobby groups (Kenney & Clairmont, 2008; Stanbridge & Kenney, 2009; Pratt, 2011). Recent government administrations, especially Stephen Harper's Conservative party, appear willing to acquiesce to the opinions and desires of high-profile victims and related movements, whose agendas are favoured over experienced criminologists and penal experts when creating penal policy and laws.³² Pratt (2002, 2011) identifies this broad shift to decentralized authorities as a key marker of de-civilization.

³¹ Within this section, use of the word "victim" will refer to the commonly accepted definition of victim as noted in the *Safe Streets and Communities Act*: "'victim' means a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence" (p. 32). While this is a problematic and narrow interpretation of victimization (one that is unpacked and critiqued in greater detail below), legal definitions and online commenters' understandings of victimhood typically align with this definition. Calls for more victims' rights and a greater victim role in the criminal justice system typically do not consider criminalized persons as victims, while the legislative definitions are written in exact in opposition to 'criminals.' This is a useful definition for understanding who commenters and legislation are referring to (and simultaneously to whom they do not refer) when discussing victims' roles and rights.

³² Examples of the inclusion of high-profile victim narratives in legislative proposals include using Sheldon Kennedy, a victim of sexual abuse as a child, to promote a public sex offender registry (Connolly, 2014), and Rehtaeh Parsons, a teen who committed suicide following a sexual assault and online bullying, to create and pass the *Cyber-Safety Act* in Nova Scotia in 2013 (CBC, 2013 August 7).

Several portions of the *Safe Streets and Communities Act* (2012), as well as many online comments, indicate that victims deserve and should be given a greater role in criminal justice proceedings. Specifically, the SSCA broadens the type and amount of details of a prisoner's sentence that must be made available to victims, to include "any of the conditions attached to the offender's unescorted temporary absence, parole or statutory release and the reasons for any unescorted temporary absence" (p. 59). The legislation also extends the power a victim can have over a prisoner's release date, adding three new sub-sections that grant victims a significant role during parole hearings. Most notably,

A victim may present a statement describing the harm done to them or loss suffered by them as a result of the commission of the offence and the continuing impact of the commission of the offence — including any safety concerns — *and commenting on the possible release of the offender* (p. 58, emphasis added).

The new power accorded to victims through the SSCA represents a significant departure from previous versions of the *Corrections and Conditional Release Act*, which only discussed victims in relation to the limited types of information that could be disclosed to them. In particular, the ability of victims to provide an opinion on the release of an offender suggests a fundamental cultural shift, wherein the parole board no longer grants release when a prisoner has earned or proven their ability to function in society, but when they receive approval from the victim.

In some ways, this legislative amendment bears similarities to restorative justice processes, which seek to centralize victim and offender interests, and minimize the role of the faceless state, penal system, and parole board. However, it also misses a key component necessary for restorative systems; namely, the inclusion of direct dialogue and mediation between victim and offender in order to share experiences, gain understanding, and reach a

mutual agreement to move forward (Wenzel et al., 2008). Without this opportunity for interaction the new victim role encourages and perpetuates negative emotions, like anger and fear, towards criminalized individuals, which are recognized as fostering more punitive attitudes and sanctions (Karstedt, 2002; Pratt, 2000b).

Despite this, commenters seemed to agree with giving victims more power to determine offenders' sanctions. In response to recent changes in the pardon system, one commenter wrote, "I think [a criminal record] should be difficult to 'erase', because the victims of crime have no such option. How about the victim sets the 'fee' for the pardon?" (Reader comment re: CBC, 2013 March 10). Another suggested that the authority to determine an offender's punishment should be "taken right out of the judge's hands and give[sic] to a special sentencing panel made up of the victim themselves[sic] and a[sic] four or five others from a victim's rights group" (Reader comment re: Mackrael/Globe and Mail, 2013 April 26). Although the emergence of victims' movements in the 1980s created the much needed space and legitimacy for victims to discuss their experiences within the criminal justice process, this recent expansion of their role in the criminal justice system risks creating a system of vindictiveness and revenge that unnecessarily infringes on the accused's own right to be protected from unnecessarily harsh ("cruel and unusual") punishment.

As the victim's role within the penal process was expanded, increased attention was also paid to advocating for victims' rights. Specifically, many commenters argued that victims do not have enough rights, especially when compared to 'criminals'. This sentiment was particularly common on articles discussing the proposed *Victims' Bill of Rights*, which many see as a step in the right direction. On one such article, a commenter noted, "No sensible person should object to

victims' rights taking precedence over indulgence provided to the offenders. Only the mafia and lawyer lobby will object" (Reader comment re: Mackrael/Globe and Mail, 2013 April 26).

Another added, "Number of rights accused criminals have in Canada - many. Number of rights of Victims[sic]? Goose egg. One of the key principles of this situation is the desire by Victims[sic] for a balance of rights" (Reader comment re: Harris/CBC, 2013 July 11).

Other commenters lament that despite recent changes, victims' rights are still being disregarded in favour of the rights of the criminalized, a discourse that sets up a problematic and often mutually exclusive divide between victims and offenders. Many point to the 'endless' financial and social resources that are available for criminalized individuals, while their victims are left to fend for themselves. In agreement with the proposed publicizing of the sex offender registry, one commenter wrote, "The legal system always ensures there's money for lawyers and judges. Victims are always given the last thought." Another replied, "It seems that victims of crime get no support or help at all while criminals have government resources at their disposal and loads of social workers snuffling around their backsides" (Reader comments re: CBC, 2013 February 4). Some commenters also considered media coverage of the criminalized individual to be further indicative of the ignorance of victims' rights and suffering. In response to a CBC interview with a former prisoner about the trauma she suffered from being forced to give birth in a cell in the Ottawa-Carleton Detention Centre, one commenter noted, "I wonder if CBC would consider doing an interview with the folks who were traumatized by this criminal's crimes.....what about their rights?" (Reader comment re: CBC, 2012 October 12). A similar comment followed news coverage of the aftereffects of solitary confinement experienced by former prisoners: "So when will the Ombudsman and CBC do a story on the years of isolation

and solitude that many victims of crime suffer? I guess they aren't as important as the rapists and murders" (Reader comment re: Story & Desson/CBC, 2013 September 8).

Instead, many commenters suggest that implementing harsher punishment is a befitting way to indicate respect for victims, in addition to further condemning criminalized individuals. As one argued, "I don't care who you are, what your beliefs are, race, creed or religion. Victims have been penalized for too many years in this country and its[sic] time that we gave them the respect and attention they deserve" (Reader comment re: CBC, 2013 February 4). Regardless of the new policies for victims borne out of legislation like the SSICA, commenter perceptions are that these remain inadequate responses for victims' roles and rights and they demanded greater power for and protection of victims.

4.4 Visible and public emotion

A theme that is perhaps obvious given the comments already discussed herein is the return of public and visible displays of emotion in punishment. Aided by the socio-political and economic restructuring of late modern society, these comments reflect the "return of emotions" to public discourse and, increasingly, to penal policy (see Karstedt, 2002). While anonymous online comments arguably invite and amplify negative emotions (Aharony, 2012; Freeman, 2011), scholars have recently noted that vocal expressions of disgust, anger, fear and grief have more broadly enjoyed a renewed level of acceptance and are even encouraged in discussions of criminalization and punishment (Pratt, 2000b; Stanbridge & Kenney, 2009). The noticeable lack of criticism directed at commenters who submit highly emotionalized replies (either in replies from other commenters, or from the news organizations by removing violent or dehumanizing

comments) further emphasizes the increased acceptance of such affective responses.

Emotionalized comments were divided into three categories: (1) dehumanizing or derogatory language; (2) violent language; and (3) comments that made a joke about poor prison conditions.

Dehumanizing and derogatory comments frequently consisted of name-calling directed at criminalized persons or prisoners, including “scum”, “pathetic loser”, “monster”, “low lifers”, “animals”, and “waste of skin.” Similar name-calling comments were also directed at various social justice organizations that work with prisoners and former prisoners, accusing them of biased “bleeding heart” opinions and referring to the workers of such organizations as “criminal lovers” (Reader comment re: Blatchford/National Post, 2013 April 1; Reader comment re: CBC, 2013 February 4). Other commenters placed quotation marks around otherwise non-derogatory labels (e.g. this ‘woman’, these ‘humans’), suggesting that once a person has been criminalized they lose their humanity. In response to an article about the aforementioned Ottawa woman who gave birth in her prison cell, one commenter noted “Should this ‘woman’ have a child in prison? NO! Committing a crime while pregnant is just more proof that having children should not be a right.” (Reader comment re: CBC, 2013 August 13). As this comment indicates, criminalized persons are not only responsabilized for their actions, but their actions are also used to redefine them as non-human. This rationale represents a key de-civilizing pattern, facilitating a growing emotional disconnect between those deemed ‘criminals’ who are completely rejected and excluded from society, and the innocent and law-abiding public who maintain a sense of moral superiority.

This has been referred to as mutual disidentification (Pratt, 1998, 2002, 2011), a de-civilizing phenomenon that encourages unrestrained displays of violence and is increasingly

prevalent in online comment boards. Comments consisting of violent language supported various pains of imprisonment and often suggested that prisoners should be cruelly “disposed of”.

Following an article on a man convicted of aggravated sexual assault, one commenter wrote, “I think he should be incarcerated in the general prison population and since he apparently enjoys rape and torture, perhaps some kind, misguided soul on the inside can ensure he enjoys it on the receiving end.” (Reader comment re: Globe and Mail, 2013 June 21). With respect to an article about the first person sentenced to life without parole for 40 years, one commenter wrote, “I hope this mass murderer is the ‘boyfriend’ to many, many homicidal creeps in prison for the next 40 years” (Reader comment re: Purdy/Globe and Mail, 2013 September 11). These comments clearly reflect the ‘eye for an eye’ adage that is common in punitive rhetoric. While these violent sentiments were usually aimed at persons convicted of violent acts, such judgements were not spared for prisoners that committed suicide, who were abused by guards, or who suffer severe mental illness. Several commenters expressed support for prisoners killing themselves or inflicting self-injury; as one commenter wrote, “Depending on the nature of the crime that landed them in prison, I more than likely strongly support them killing themselves” (Reader comment re: Globe and Mail, 2012 October 23). Others succinctly noted that whatever form of abuse or trauma that a prisoner may have suffered, they deserved to “fkg[sic] rot” (Reader comment re: Perkel/National Post, 2013 June 11).

While these ideas represent the more extreme end of negative opinions found in anonymous comment boards, they also mirror the growing acceptance of such vengeful expressions in Canadian society, evidenced in part by the fact that site moderators do not deem these comments offensive enough to delete. According to CBC’s submission guidelines,

prohibited content includes hate speech, threats, harassment, personal attacks, insults and defamatory statements. Later, CBC added to its guidelines: “Be sensitive in ‘Your Content’ regarding the death or injury of private individuals, especially children” (CBC, 2013). Similarly, *The Globe and Mail* posts a disclaimer at the top of every comment board that states: “Personal attacks, offensive language and unsubstantiated allegations are not allowed” (see *Globe and Mail*, 2013 August 14 for an example). The *National Post*’s terms and conditions page reads:

You agree to not use any Service to post, e-mail, transmit, upload or otherwise submit any User Content that: (a) is offensive to the online community, such as Content that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual (National Post, 2012).

Given the many cruel responses that remain on comment boards, it is clear that promoting hatred and physical harm is only offensive when directed at non-criminalized and free citizens, whereas the permanently fallible criminal is exempted from such respect and dignity.

A third group of highly emotionalized comments made light of or joked about the harshness of prison conditions and the abuse suffered by prisoners through their criminalization and incarceration. With respect to an article about a case of food poisoning in a Quebec jail, commenters callously dismissed the incident with responses like “they only wanted to poison them - not kill them!” and “But...but...I got great deal of[sic] these meatballs at Ikea!” (Reader comments re: CBC, 2013 March 8). Similar derisive comments followed a discussion on the rise of double-bunking across Canada. As one commenter wrote, “‘Double bunking’ Is that what they are calling it now?” (Reader comment re: Crawford/CBC, 2013 February 6). These commenters not only neglected to recognize the seriousness of food poisoning and normalized and minimized the harms of prison rape, but also demonstrated a renewed insensitivity regarding the abuses and

harms suffered by criminalized and imprisoned populations. While not actively violent themselves, these comments reveal a tacit acceptance and approval of violence when directed at those deemed unworthy of basic humane treatment.

4.5 Intolerance for ‘others’

Building on the theme of unrestrained emotional expression, online comments and the SSCA legislation also facilitate and solidify an us vs. them dichotomy between those labelled criminal and those labelled law-abiding or victim, which indicates a loss of acknowledgement of the interdependent ties between citizens and can lead to an active disregard of the suffering of ‘others.’ Pratt (2002, 2011) and Garland (2001) attribute these changes, in part, to the same broad social shifts that led to the increased fear of crime and distrust of government authority. People are less dependent, and less willing to be dependent, on others, a significant change that encourages separation and eventually manifests in intolerance. These characteristics are identified as key characteristics of de-civilization (Elias, 1939/2000; Pratt, 2002, 2011; Spierenburg, 1984).

The polarization of victims and offenders is clearly defined within legislation (see above), and is obvious among online comments. Online respondents make it clear that criminalized individuals cannot be victims or, indeed, anything other than criminals; as one commenter wrote in response to the Ashley Smith inquest,³³ “she [Ashley Smith] was a criminal convicted of a very very serious crime. She was by definition not a victim but a[sic] offender, perpetrator and

³³ Ashley Smith was a troubled teenager who was first incarcerated in a youth detention facility at age 15 for throwing crab apples at a postal worker. While inside, she received a number of institutional infraction charges that extended her stay from 30 days to three years, and prompted her transfer to an adult federal prison. Ashley died in October 2007 after strangling herself in her cell while several guards watched outside and did not intervene until it was too late to revive her. A year-long coroner’s inquest was conducted and declared her death a homicide in December 2013 (CBC, 2013 December 19; Ombudsman & Child and Youth Advocate, 2008).

very serious criminal” (Reader comment re: CBC, 2012 October 31). The victim/offender dichotomy similarly appeared in discussions of commenters’ expressions of sympathy. While commenters’ frequently express sympathy for victims and frequently demand that more sympathy and resources be available for victims, their responses almost always simultaneously argued that criminalized individuals do not deserve any sympathy. Following an article on the rise of double-bunking across Canada, one commenter noted,

Why is it that in this country we always have more sympathy for the people who commit the crimes than the victims of crime? The victims bill of rights announced by the Minister of Justice the other day is exactly what we need in Canada. [...] The Conservative government will ensure that both victims and criminals finally get what they respectively deserve. In the case of victims, it is sympathy and support. In the case of criminals, it is a cold, hard prison cell where the Paul Bernardo’s and Russell Williams’ of Canada can rot in. Canadians shouldn’t tolerate anything less (Reader comment re: Mackrael/Globe and Mail, 2013 April 26).

As Pratt (1998, 2002, 2011) points out, the narratives underpinning these dichotomies enable the public to form an emotional connection to and identification with victims, while simultaneously hindering any such relationship with offenders. The juxtaposition between these distinct categorizations is a current example of the de-civilizing separation of elites (us) and deviants (them) (Elias, 1939/2000; Spierenburg, 1984).

These distinct and non-permeable categorizations feed the assumption that ‘they’ are fundamentally different from ‘us’ and lead to inaccurate generalizations that are applied to the whole criminalized population. Commenters often made sweeping categorical statements such as ‘*all* prisoners are manipulative’ or ‘*all* criminals are dangerous’; for example, in an expression of support for the elimination of prison chaplaincy programs, one commenter wrote “convicts use religion for personal selfish gain: Donuts[sic], visits from young females, music, time out of their

cells, and to try to gain sympathy from Liberal parole boards” (Reader comment re: CBC, 2012 October 24). Moreover, many commenters seemed particularly wary of claims about mental illness, suggesting that an accused will “hide behind the defence of mental illness” in order to receive a more lenient sentence (Reader comment re: Fitzpatrick/CBC, 2013 May 7). Scholars have noted that these sweeping statements are linked to discriminatory stereotyping and exclusionary attitudes, which can be alternatively viewed as de-civilized intolerance of difference (Bell, 2010; Elias, 1939/2000; Wouters, 1986).

Frequently, these generalizations and dichotomies of intolerance manifest in expressions of acceptance and support for the pain and suffering of criminalized ‘others.’ Commenters for nearly every article included in the data set dismissed criminalized individuals solely due to their criminal label, expressing disbelief in their narratives of suffering or noting that such narratives are irrelevant, because whatever suffering they experience in the penal system is deserved. One commenter’s brusque response to allegations of abuse at a youth detention centre read:

I’ve yet to meet a kid in their teens who has been in trouble with the law who has ever told the truth! They aren’t starving, they aren’t being beaten, they are being taught, accountability for your actions, compassion and empathy will come once accountability is learned. Forgiveness, that comes with rehabilitation and accountability. I am so sick and tired of the bleeding hearts who think they can save the world with hugs and cuddles for these punks. I’ve worked with many and I would sooner kick their butts than give them a cuddle (Reader comment re: Hildebrandt/CBC, 2013 August 7).

As would logically follow when a divisive hierarchy separates the population into distinct groups (us/them; offender/victim; criminalized/free citizen), the public experiences less shame or distaste when faced with the suffering and pain that criminalized persons experience as a result

of their involvement with different arms of the criminal justice system (Elias, 1939/2000; Pratt, 1998 2002, 2011).

Commenters also largely rejected any justifications or mitigating factors for crime, even extreme abuse and poverty, mental illness, or systemic discrimination; several added that refraining from criminal behaviour simply takes hard work and responsibility. As one commenter wrote:

Please stop citing impoverished, dysfunctional, abusive backgrounds as an excuse for criminal and bad behaviour. There are probably a great number of people on this site who have endured such and have never committed a crime in their lives. They have become model citizens through determination, self examination, and very, very hard work (Reader comment re: CBC, 2013 May 29).

The notion that people can attain financial and social success through individual hard work is reflective of both neoliberal rhetoric and the ideal of the ‘American dream’ (Bell, 2010; Garland, 2001). These social archetypes reframe poor and struggling individuals as lazy or lacking in determination to improve their lives, while failing to recognize the empirical data that indicates socioeconomic class structure is a static system within which upward mobility is largely a myth (Bell, 2010; Winn, 2000).

Efforts to combat systemic discrimination were also often met with derision, with many commenters critical of strategies like the Gladue Report³⁴ that seeks to counteract the disproportionate criminalization faced by Indigenous populations and other people of colour. Critiques of the overrepresentation of Indigenous people in particular sparked openly racist and

³⁴ A Gladue report is a type of pre-sentence report that offers recommendations on appropriate, community sanctions for Indigenous persons facing criminalization, taking into consideration relevant background information and mitigating circumstances that commonly affect this population. Gladue reports were developed in response to the crisis of overrepresentation and discrimination faced by Indigenous persons within the penal system (Native Women’s Association of Canada, 2012)

discriminatory responses that indicate an ignorance of (or refusal to acknowledge) the role that white settler colonialist structures and racial profiling have in criminalizing behaviour. As one commenter bluntly noted,

Here we go again. Oh, those poor aboriginals. How about the following from the mouths of the authors: “Aboriginals, as a group, have been disproportionately represented in our prison system.” Did they just happen to fall out of the sky into prison? Did they do nothing to contribute to their own downfall, things like staying in school, getting a job, staying away from booze and drugs.

There are many others with hard lives, raised in wretched circumstances who have picked themselves up and risen above the squalor. Ever driven through a reservation? Witnessed the mess that a few good hands and a lick of paint would do wonders to improve? Sorry, folks, we’re too busy getting blitzed to help ourselves. Enough bleating, already. Get a job or a backbone, whichever comes first! (Reader comment re: Bernstein & Drake/National Post, 2012 November 6).

These sentiments reflect the ideal of neoliberal responsibilization as well as a complete disregard for the ongoing traumatic experiences of Indigenous and First Nations communities, which are a direct result of colonialism and cultural genocide at the hands of white-European settlers.

Indigenous individuals are expected to first survive and then pull themselves out of a long history marked by the racist destruction of their spiritual and cultural practices, the forcible separation of their families, sexual and physical abuse, and day-to-day living conditions rife with disease and unclean water - seemingly with no assistance or acknowledgement from the population responsible for facilitating these atrocities in the first place (Adelson, 2005; Dickson-Gilmore & La Prairie, 2005; Martel, Brassard & Jaccoud, 2011; Woolford, 2009). Instead, a failure to succeed within this harsh reality is viewed as an individual failing or a lack of desire to improve their own quality of life, an attitude that eventually evolves (as seen in the comment

above) into the belief that their suffering is deserved (Bell, 2010; Dickson-Gilmore & La Prairie, 2005; Garland, 2001).

This dismissal of others' suffering, and outrage at efforts to reduce that suffering, are key indicators of de-civilization, as the level of shame associated with brutality and others' pain is diminished (Pratt, 1998, 2000, 2002, 2011).

4.6 Development of and support for harsh(er) punishment

The most substantial finding to emerge from this analysis is the significant depth of support expressed by online commenters for the myriad of harsh punishments being proposed and/or now utilized in Canada. The recent creation of several mandatory minimum sentences, the shift away from community sentencing, and stricter rules around early release and pardon applications bear witness to what is a new standard of harsh penalty in Canada. The passage of the *Safe Streets and Communities Act* (2012) in particular has been a key contributor to this change, representing a marked departure from Canada's reputation for leniency, moderation, and forgiveness.

And while consideration must be given to the role a Conservative majority government has played in the passage of these laws, it is notable that in some instances public support appears to largely favour these changes³⁵. Online commenters agreed with and advocated for harsher punishment because they claim it is effective and deserved. They also frequently demanded even harsher punishments, and showed little concern for the rapidly deteriorating

³⁵ As a recent example, an online poll was posted to Canada's Department of Justice website following the Supreme Court decision to strike down three sections of Canada's prostitution law. Results indicated that the majority of respondents supported the criminalization of purchasing sex, as well as criminalizing the people who financially benefit from sex work (Department of Justice, 2014 June 2)

prison conditions found throughout Canada or compassion for the prisoners living in those conditions.

4.6.1 Harsh punishment is effective

Despite numerous studies exposing the myth that harsh punishment, especially prison, is an effective response to criminalized behaviour (Carlen & Tombs, 2006; Gendreau, Goggin & Cullen, 1999; Martinson, 1974; Mathiesen, 2006), this myth was firmly demonstrated amongst online commenters. Commenters frequently relied upon traditional explanations for punishment practices, including deterrence, rehabilitation, prevention and protection of society as legitimate justifications for implementing harsher punishments and stricter prison conditions. In fact, commenters suggested that poor prison conditions including overcrowding, double-bunking, and a lack of access to health care services should be embraced and even encouraged, since they deter would-be ‘criminals’ and reduce recidivism. One commenter noted,

Let it be known to all criminals, convicted or not, that it is highly likely their health will diminish when or if they go to prison. It is simply more incentive for them to behave in the first place. Make our prisons a health and social club and it will defeat the purpose of laws and deterrents (Reader comment re: Harris/CBC, 2012 November 5).

Not only does this point of view fail to recognize that prison does not deter crime, there is also a lack of awareness of the dangers that are associated with unhygienic institutions, and the impact these dangers have on public health. For example, communicable diseases are more rampant in unsanitary prisons, and are subsequently foisted upon the public once prisoners are released (Lines, 2006; Reyes, 2007). Moreover, support for inadequate health care in prison does not acknowledge the limited health and social services that are available and accessible to individuals on the street who are most likely to find themselves incarcerated (e.g. the poor,

racial/ethnic minorities, and those lacking education or employment) (Marquart et al., 1996) As a result, prisons are disproportionately filled with individuals suffering from a range of health problems, including mental illness, chronic physical ailments, and addiction (Diamond et al., 2001; Marquart et al., 1996; Smith, 2000). One scholar has even suggested that prisoners should be entitled to a higher standard of care than free citizens due to the prison's concentration and exacerbation of these issues (Lines, 2006).

Many commenters seem to have no qualms about supporting particularly brutal punishments if the end result will be deterrence, including advocating for prisoner abuse by guards, the return of the death penalty, and social exclusion from the public. After an article about the then-proposed cyberbullying law, this commenter expressed support for the new law with reference to the Rehtaeh Parsons case³⁶:

Anonymous knows, or claims to know who the alleged rapists are (juveniles[sic] though they may be). Let their names be put out into the public sphere so they can either take some of the social ostracism that their victim experienced before her early death, and they too can be the victim of social shunning. Of course, if they aren't guilty of the crime, that's pretty wrong. *But it may well prove to be a warning to the other scum sucking slime out there* (Reader comment re: Selley/National Post, 2013 April 10) (emphasis added).

As this comment suggests, there appears to be a high threshold for the cruelty and humiliation that can be inflicted on criminalized (or even suspected criminalized) individuals, as long as such punishment is believed to deter crime. These practices also speak to the return of shaming rituals that emphasize the acceptance of emotional and affective-based responses to crime (Karstedt, 2002; Pratt, 2000b).

³⁶ Rehtaeh Parsons was a 17-year-old woman who committed suicide in 2013 after suffering from several months of online bullying and humiliation from school peers, including having a photo of her rape at a party circulated on the Internet and around her school. Advocacy from her parents and community, as well as political support, led to the creation of the *Cyber Safety Act* in Nova Scotia later that year (Davison, 2013).

Other commenters contended that harsh punishment is effective at protecting society. Prisons serve to separate and ensconce criminals away from innocent and vulnerable citizens who need protection. As one commenter wrote, “Society has the right to protect itself - by separation from people “proven” to have committed a crime” (Reader comment re: Seglins & Noel/CBC, 2013 January 23). Societal protection is also a guiding principle throughout sections of the SSCA, including those that enact changes to the *Corrections and Conditional Release Act* (CCRA), the *Youth Criminal Justice Act* (YCJA), and the *Immigration and Refugee Protection Act*. One significant change aimed at improving public protection is the creation of a clause within the YCJA that allows judges to lift the publication ban on accused youths’ names:

A youth justice court may order a lifting of the ban on publication if the court determines [...] that the young person poses a significant risk of committing another violent offence and the lifting of the ban is necessary to protect the public against that risk (p. 95).

While earlier versions of the YCJA emphasized publication bans as important for rehabilitation and public interest purposes, this new paragraph reflects characteristics of the modern risk society, as well as the de-civilizing process, which include an intense fear of crime and a greater intolerance for others (O’Malley, 2010; Pratt, 2002, 2011). As well, this shift further hints at the lack of confidence citizens have in government authorities to protect them from threats, which simultaneously intimates that by releasing the names of accused youths, citizens can seek out and neutralize risk or danger by themselves. Thus, despite widespread support for more punitive sanctions under the belief that the public needs to be protected, it is simultaneously acknowledged that the government is not really able to make us safer.

4.6.2 Harsh punishment is deserved

In addition to arguments that harsh punishment is effective, commenters also argued that harsh punishment is deserved. By far, this was the strongest and most common sentiment within public comment boards, with several responses on every article I examined arguing that harsh punishment is necessary and deserved, and that criminalized persons are unworthy of sympathy. The adage “you do the crime, you do the time” was popular amongst commenters, who used it even in reaction to prisoner abuse and negative experiences in solitary confinement. A similarly common saying was some variation of “no sympathy”; this is particularly notable, as commenters did not just express sympathy for victims (as seen above), but also vigorously expressed a *lack of* sympathy for criminals. One particularly disturbing comment along this vein was written in response to an article about suicide in prison:

Why are criminals always coddled by people? They are in jail because they are criminals, they do not deserve sympathy or anything else in jail other than time for self reflection. If they would rather spend this time cutting themselves rather than solve their own personal issues then they should be allowed to bleed to death in their cells (Reader comment re: Harris/CBC, 2012 October 23).

These sentiments exemplify a return to a more punitive and de-civilized penalty that reflects an active acceptance of brutal events taking place in prison and is indicative of an indifference towards the suffering of others (Garland, 1990; Pratt, 2002, 2011; Spierenburg, 1984).

The majority of commenters also suggest that if criminals do not like harsh treatment, then they should not commit crimes and not go to prison. This simplistic and dismissive attitude underpinned responses to a range of prison conditions, including inadequate and eliminated social and rehabilitative programs, double-bunking, and policy and legislative changes, such as the recent cuts to prison labour wages. One commenter succinctly noted, “if you want to have all the freedoms the rest of us enjoy, maybe shouldn’t[sic] have landed yourself in prison” (Reader

comment re: CBC, 2012 October 24). The responsabilization of criminalized persons was particularly common in responses to Indigenous overrepresentation in the penal system. One scornful reply read, “It all comes back to personal responsibility, being responsible for one’s actions, and accepting the punishment should those actions violate the law. Decisions and will power are and always will be individual choices” (Reader comment re: CBC, 2013 March 7). Interestingly, the notion of accepting responsibility for one’s actions does not appear to apply to the Canadian government, which while having offered an apology to former students of the residential school system (Aboriginal Affairs and Northern Development Canada, 2008), has failed to accept or respond to the continued effects that white settler colonialism has on the overrepresentation of the Indigenous population in the penal system. Instead, it has regularly dismissed reports revealing the vast over-representation of Indigenous persons under some form of penal supervision (Dickson-Gilmore & La Prairie, 2005; Office of the Correctional Investigator, 2012a, 2012b, 2013), as well as a recent report from the RCMP that noted almost 1200 Indigenous women have been murdered or gone missing since 1980 (RCMP, 2014). Perhaps the most tragic example is the Prime Minister’s recent denial that the hundreds of missing and murdered Indigenous women constitutes a serious social problem requiring a national response (Boutillier, 2014 August 21).

Similarly, commenters sarcastically suggest that prisoners should have thought of the consequences before committing a crime, which implies that their suffering is deserved because they chose to go to prison when they engaged in criminal behaviour. Responding to the aforementioned story of the Ottawa woman who gave birth in her cell when guards ignored her cries for help, one commenter wrote:

The woman in question obviously committed a crime to be put in prison, as well as committed certain actions that put her in a solitary cell. Perhaps the prison staff ignored her because of those very previous actions in the first place (Reader comment re: CBC, 2013 August 13).

This reflects what O'Malley (1999, 2010) calls the New Right political rationality framing punitive penal cultures today. This logic defines criminal behaviour as a choice, and situates the free public as having the moral authority to condemn criminalized persons as deserving harsh punishment and austere prison conditions; in this particular comment, this rationale is also used to legitimate the denial of basic health care rights. Although constitutionally protected, the argument portrayed here indicates that criminalized behaviour is reason enough to strip an individual of a fundamental human right.

4.6.3 Call for tougher punishment

In addition to supporting the harsh practices currently in existence or that were being proposed, many commenters argued that Canada's penal system remains too lenient. They demanded longer prison sentences, tougher conditions, and even the return of corporal and capital punishments. These calls for tougher punishment build upon the themes of fear, insecurity, violence and intolerance discussed above, and indicate that once the civilizing process is weakened by de-civilizing features, it can "very rapidly crumble" (Elias, 1939/2000, p. 532n).

Numerous commenters argued that current sanctions are not enough, even following a recent court decision that sentenced one individual to life without parole for 40 years. One wrote, "Life should mean exactly that. You only come out in a box." Another replied, "Why don't we just lock them up and throw away the key" (Reader comments re: Cohen/National Post, 2013 April 25). Commenters seemed particularly upset about prisoners serving multiple sentences

concurrently, rather than consecutively. Following an article condemning the mandatory minimum sentences passed through the SSCA, one commenter argued,

We wouldn't[sic] need this bill if our judges stop[sic] sentencing criminals at the low end of the sentencing scale which appears to be the case. For example when was the last time that any Canadian judge sentenced a convicted murderer to consecutive life sentences for multiple murders instead of the normal concurrent sentence being handed out? (Reader comment re: CBC, 2012 November 27)

Commenters made it clear that when individuals serve sentences concurrently they are able to 'get away' with doing extra crimes. Some even suggested that this system encourages instances of multiple offences, since individuals are not deterred to "stop after one." (Reader comment re: CBC, 2013 September 11).

Calls to reinstate the death penalty in Canada were also frequent. Commenters justified this call because of the high cost of imprisonment and the 'incurable evil' of criminals. In response to one article about an individual convicted of several murders, one commenter noted, "We need the death penalty to reduce jail costs and deter heinous crimes like this, when there is no doubt as to guilt" (Reader comment re: Purdy/Globe and Mail, 2013 September 11). Another added, "Bring back Capital Punishment, gas or injections, murderers have been getting a free pass in Canada for far too long!" (Reader comment re: Blatchford/National Post, 2013 April 1). While a few commenters acknowledged the danger of the death penalty given the existence of wrongful convictions and pointed to countries like the United States that practice the death penalty yet have a much higher homicide rate, these situations were justified as being worth it if the truly 'evil' criminals were killed:

Studies[sic] show that the death penalty costs more due to the process.... tha t[sic] said I am in favour of it on a few conditions...firstly the person needs to be found guilty beyond a reasonable doubt.....and in addition....

for the death penalty to be imposed the burden must then be beyond ANY doubt. The death penalty as it exists now kills innocents....on the other hand, sometimes its [*sic*] needed for murdering scum like this. The death penalty system needs to be fixed, not eliminated. its[*sic*] a very effective specific deterrent, dead people can't kill other people. (Reader comment re: CBC, 2013 April 25).

Such arguments are problematic in large part because absolute guilt cannot ever be guaranteed.

As the cases of individuals such as Guy Paul Morin or David Milgaard demonstrate, evidence that at one point seems ironclad and infallible enough to prove guilt beyond all reasonable doubt can later be proven erroneous.³⁷ The problematic instances of wrongful conviction, even with the advancements of DNA testing and other technologies, are a scathing indictment against the death penalty ever being an appropriate response.³⁸

Other commenters seemed to support the prison as an appropriate sanction overall, but contend that conditions are far too lenient, indicating acceptance of the recent overcrowding and double-bunking crises in several Canadian prisons and suggesting the elimination of programs and services currently offered inside to save cost. In response to the rise of double-bunking in Canadian prisons, one commenter wrote, “I say we make it quadruple bunking. Prison is supposed to be an unpleasant experience” (Reader comment re: Globe and Mail, 2013 February 28). Another replied, “It would be easy to give every prisoner their own bunk. Just make the standard prison cell 1 metre by 1 metre by 2 metres, stacked horizontally” (Reader comment re: Crawford/CBC, 2013 February 6). Some commenters even suggested sending prisoners to remote locations in the far north or exiling them to other countries: “... To me i think prisons

³⁷ Both Guy Paul Morin and David Milgaard were charged and found guilty of first degree murder, and subsequently sentenced to life in prison. Both were later exonerated (Morin after 3 years in prison, Milgaard after 23 years in prison) with the advancement of DNA testing (AIDWYC, 2013a, 2013b).

³⁸ The death penalty is problematic for many reasons other than wrongful convictions and state sanctioned execution, it is beyond the scope of this project to discuss these points in adequate detail.

should be contracted out to other countries that would keep each inmates for about 12 bucks a yr.then[sic] these piddly 3 yr[sic] sentences for murder would have some effect” (Reader comment re: Story & Desson/CBC, 2013 September 8). These calls for expatriation to places like China or Russia are made despite the countries’ reputations for torturous prison conditions and other human rights violations, which commenters again seem to brush off as “nothing more than they deserve” (Reader comment re: CBC, 2013 June 11). Pratt (2002) attributes support for these de-civilizing punishments to our past penal practices of banishment and ostracism; although supposedly obsolete, support for these pre-modern era punishments demonstrates how nostalgic throwbacks often seem like natural responses to shocking or deviant behaviour.

4.6.4 Deteriorating prison conditions and harsh treatment of prisoners

The second strongest sentiment among commenters was support for harsher prison conditions, with many commenters arguing that Canadian prison conditions are too lenient and that prisoners are given too many perks. Calls for greater austerity commonly made exaggerated reference to the supposedly resort-like features of Canadian prisons, calling them ‘hotels’, ‘summer camps’, ‘spa facilities’, ‘country clubs’ and even ‘Caribbean vacations’. As one commenter wrote, “I would rather the government put the prisoners back on the chain gang and not create a “Club Fed” luxury suite for drug dealers, rapists and murderers” (Reader comment re: Harris/CBC, 2013 August 6). Another added, “Double bunking makes perfect sense - prison is not supposed to be like a 4 star hotel, with fluffy towels, en suite bathrooms and room service” (Reader comment re: Crawford/CBC, 2013 February 6). Instead, commenters rely on the principle of less eligibility, demanding the bare minimum of resources and funding be

supplied to keep penal institutions operational.³⁹ The money that is then saved should be “given to better orgs[sic]” (Reader comment re: Mackrael/Globe and Mail, 2012 November 2), to assist with homelessness, health care, or education for free citizens.

To this end, excessively harsh prison practices (especially those that are believed to be cost-effective), including solitary confinement, double-bunking, hard labour, poor ventilation/heating and the elimination of all programming were widely supported by commenters. One suggested, “These convicts should be cold in the winter, hot in the summer and hungry all the time” (Reader comment re: Harris/CBC, 2013 August 6). Another wrote that prisoners should “work to earn their keep” by giving all wages earned for work to the institution to pay for their own imprisonment (Reader comment re: Brosnahan/CBC, 2013 October 1). This modern-day slave labour system is apparently a well-accepted myth of incarceration, as most commenters were shocked and outraged to learn that prisoners were actually paid for their work inside:

What ? They make \$3/day on average? That’s outrageous for convicted criminals. They are already costing taxpayers millions. They should be paying society and should get a 60,000/year bill for each year they spend in prison (Reader comment re: Brosnahan/CBC, 2013 October 1).

Commenters suggested that this money should instead be redirected to the victims of crime, struggling law-abiding citizens like the homeless, or to taxpayers in order to offset the burden of paying for the penal system.

Direct consequences of these harsh practices such as abuse and violence by guards, mental and physical illness, and instances of self-harm and suicide were also largely considered

³⁹ The less eligibility principle suggests that in order for a prison sentence to be an effective deterrent, prison conditions should be worse than conditions experienced by the most destitute free citizens (Sieh, 1989).

acceptable and normative within prisons; commenters argued that prisoners should expect inhumane treatment as part of being sent to prison:

As for the claim that “isolation ... can create anxiety, depression and sleep disorders” - but idealistically, that’s what a prison should create (with or without being put into an isolation unit). Prison is punishment for breaking the laws of society, it should not be a 1-star hotel (Reader comment re: Harris/CBC, 2013 August 6)

Notably, the support for inhumane conditions occurred despite widespread acknowledgement that solitary confinement, extreme temperatures, and lack of access to/inadequate health care violate international law and basic human rights (Human Rights Clinic, 2014; Mandhane, 2012; UNCAT, 2012; UNGA, 1990).

Several commenters further added that prisoners are in no position to demand fair treatment; instead, they should passively accept inhumane conditions without complaint. In response to a discussion of guard abuse against prisoners, one commenter dismissively wrote, “If this place is so terrible then these youth should smarten up and stay out of there. Nobody is forcing them to commit crimes and break the law. Accept the consequences of your behavior[*sic*]” (Reader comment re: Hildebrandt/CBC, 2013 August 7). Many commenters referenced the struggles of law-abiding citizens who lack access to food, shelter, or essential services, arguing that their needs take precedence over those of prisoners:

These supporters of inmates are sure barking at the wrong tree here. I know of a woman suffering from dementia who was moved 4 times before landing in the right institution!!! Give your heads a couple of shakes here, and do not start talking about their quality of life, I have 200 pages of a diary to print if you wish about the quality of life of some poor seniors with disabilities. I just had enough talk of prison and their inhabitants (Reader comment re: Harris/CBC, 2013 September 9).

The support for extremely harsh prison conditions and cruel treatment of prisoners is perhaps the primary marker of the de-civilizing process with penalty. As Pratt's (1998, 2002, 2011) work demonstrates, the common components of de-civilization (fear, intolerance, insecurity, anxiety, violence) coalesce to produce a punitive penal system that is barbaric and inhumane, with few redeeming qualities beyond satisfying immediate (and often fleeting) vengeful emotions (Karstedt, 2002; Pratt, 2000b). The sheer breadth and depth of de-civilizing features within recent legislation and related online public commentary signify the increasing dominance of the de-civilizing process in our society today. In the next section, I begin to unpack the second set of themes – namely, those that reflect ongoing civilizing trends in penalty.

Part 2: The Continuation of Civilizing Discourses in Canadian Penalty

A smaller group of themes and sentiments emerging from the analysis reflect components of the civilizing process developed by Norbert Elias (1939/2000) and expanded upon by Stephen Mennell (1990) and John Pratt (1998, 2002, 2011). Although there were far fewer and far less support for civilizing discourses, it is important to recognize the continued existence of these sentiments with regards to Canadian penal culture. As Pratt (2002, 2011) notes, *both* of these processes continue uninterrupted over time, fluctuating in terms of the degree of their presence in particular timeframes.⁴⁰ Overall, the analysis revealed two themes that support the existence of ongoing civilizing trends in public penal discourse: (1) Support for (some) ameliorated punishments; and (2) Tolerance for 'others'.

⁴⁰ It is important to note that while the themes and sentiments in this section are identified as civilizing (as per Elias' and Pratt's ideas) they are still part of a system defined by carceral control. For example, while discourses promoting rehabilitation and prevention are aligned with the civilizing process, they are also undermined by a carceral logic that supports punishment over alternative responses (Carlen & Tombs, 2006; Piche & Larsen, 2010).

4.7 Support for (some) ameliorated punishments

Amidst the overwhelming support for harsher punishments, a smaller segment of commenters criticized punitive practices as being largely ineffective and advocated for reduced sentences and more humane prison conditions. These comments were not only at odds with the majority of online responders, but also with the content and intent of much of the recent legislation. Criminalization and punishment related to the war on drugs received the most ire from commenters, many of whom expressed support for de-criminalization or legalization of marijuana and other illicit substances. Another small portion of online commenters suggested that responses to criminalized behaviour should be expanded to include a greater focus on community treatment programs, services, and prevention strategies. While prison is still generally supported as necessary for some crimes, these commenters suggested that community-based punishments are more appropriate for certain less serious crimes and cases.

4.7.1 Harsh punishment is not effective

Although recent legislation relies on traditional justifications for punishment (notably deterrence, prevention, rehabilitation), a segment of commenters were not convinced of their effectiveness. Indeed, many commenters pointed out that the new harsher sanctions and progressively worsening prison conditions inhibit the penal system's goals of deterrence, rehabilitation, and prevention. Responding to changes in the pardon system that make it extremely difficult (or even impossible) for many ex-prisoners to apply for a pardon, one commenter argued, "I would have thought that tough on crime, was meant to deter from future crimes..not make it harder for those who have paid for their crimes, to find gainful employment

and contribute to society..” (Reader comment re: Harris/CBC, 2013 July 17). Other commenters recognize that when someone is committing a crime to survive, simply increasing the severity of punishment will not be an effective deterrent: “Please understand that no punishment however severe will deter someone from committing a crime [...] If someone needs to commit[sic] a crime to put food on the table they will...regardless of the consequence” (Reader comment re: Harris/CBC, 2012 November 5). This argument echoes those made by countless scholars who have argued that crime is better resolved by addressing the structural root causes, like poverty and a lack of education, rather than more harshly punishing those who are the victims of systemic social dysfunction (Bell, 2010).

Others added that harsh punishments do not make victims safer or protect society, despite fervent government claims. In response to the then-proposed lengthening of Canada’s life sentence from 25 to 40 years, one commenter wrote, “And the dead victims’ right are better served if we put the murderer in jail for longer? Because that will benefit the victim in what way? Bring them back?” (Reader comment re: Cohen/National Post, 2013 April 25). Many victims do not support harsher policies made in their name, as the stories of Lori Triano-Antidormi and many others reveal.⁴¹ One commenter who identified as a victim similarly responded,

The fact that “tough on crime” does little by way of rehabilitation of inmates, is a glaring fact that it is therefore doing little for victims as well. As a victim of crime, I find this “tough on crime” notion specious, knee-jerk, and naive (Reader comment re: Greenspan & Doob/Globe and Mail, 2013 January 16).

⁴¹ Lori Triano-Antidormi’s 2-year-old son was killed by a woman suffering schizophrenia, but she is publicly opposed to Bill C-54 (the proposed *Not Criminally Responsible Reform Act*). She argues that victims and their families would be better assisted if money were directed toward improving the mental health care system, rather than creating a law that further stigmatizes mental illness (Fitzpatrick, 2013 June 5).

Instead, these commenters criticized harsh measures as leading to more crime and lawlessness, particularly when they occur in prison. Inhumane prison conditions are associated with worsening or even creating mental illness amongst prisoners, as well as leading to angry, bitter and vengeful ex-prisoners upon their release. As one commenter noted, “That is the key; we do not want people leaving our correctional facilities in worse mental and physical health than when they arrived...Vengeance puts us all at risk” (Reader comment re: Harris/CBC, 2013 September 9). By eradicating many well-established prison programs that have demonstrated success at rehabilitating or preventing criminalized behaviour (e.g. LifeLine, the prison farm program, and the canine program), the government has demonstrated its lack of care for protecting the public and its lack of investment in the rehabilitative and deterrent goals noted in the new legislation⁴², facts that a small portion of critical commenters acknowledged.

4.7.2 Call to end the war on drugs

The trend of commenters agreeing with harsher punishment was countered during discussions of the criminalization and punishment of drugs, particularly marijuana-related offences. Support for outright legalization was not overly popular, but most commenters rejected common justifications for harshly criminalizing use and possession of illicit substances. Many considered occasional and responsible drug use harmless; others noted that when drug use does descend into addiction, the problem is better addressed at a treatment facility rather than through

⁴² For example, the SSCA declares that the purpose of the *Justice for Victims of Terrorism Act* is “to deter terrorism by establishing a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters” (p. 3). Later, the SSCA notes that the purpose of prison correctional plans is “to rehabilitate them [prisoners] and prepare them for reintegration into the community, on release, as a law-abiding citizen.” (p. 34).

prison. Pratt (2002, 2011) notes that the shift in support from lengthy prison sentences to rehabilitative programming is a key marker of the civilizing process.

Support for the decriminalization and/or legalization of drugs was justified by a variety of arguments, including the impossibility of eliminating drugs, the existence of functional users, the high legal and social costs associated with criminalization, and the harms associated with legal substances. Many commenters referenced the high rates of death linked to alcohol or tobacco usage, which they argue “are so much greater than all other drugs combined it’s not even close” (Reader comment re: O’Neil/National Post, 2013 May 23). Others point to the failure of alcohol prohibition in the 1930s and suggest that legalizing and regulating all drugs is the only feasible way to lessen the drug problem. Empirical studies world-wide reflect these arguments and demonstrate the success of decriminalization campaigns in countries like Portugal, where drug usage has sharply declined and prison overcrowding has been reduced (Hughes & Stevens, 2010; Nutt, King & Phillips, 2010).

Some commenters argue that in lieu of criminalization, drug use should be redefined as a health issue and individuals who abuse drugs should be recognized as addicts in need of treatment not criminals in need of punishment. Instead, these commenters asserted that addicted individuals should receive treatment in a medical/therapeutic facility. As one commenter aptly wrote, “Addiction is a medical & social issue, not a criminal one. We don’t jail folks for gambling addiction” (Reader comment re: O’Neil/National Post, 2013 May 23). They add that sending individuals to medical or rehabilitative facilities for treatment is also less expensive than paying for a trial and prison stay:

The current government has a touch[sic] on drugs approach, regardless of the evidence. Rehabilitation makes them looks soft, even though its more

along the lines of 25 000 a year per person versus upwards of 150 000 depending on gender and security classification (Reader comment re: Harris/CBC, 2013 August 6).

As demonstrated earlier, studies that suggest ameliorating punishment practices were typically dismissed or criticized by commenters and the broader public unless they discussed the war on drugs. This contentious issue appears to be one that is at odds with the shift occurring throughout the rest of the penal system, as public discourse makes the inverse transformation from de-civilized notions of punishment and fear, to civilized notions of expert knowledge, treatment and de-carceration (Angus Reid, 2012; Pratt, 1998, 2002, 2011; Savas, 2001).

4.7.3 Alternatives to prison

Although incarceration was largely supported as the core response to crime, a small segment of commenters proposed alternative responses to crime, such as implementing crime prevention strategies and rehabilitation programs, and utilizing community-based punishments. Some added that the government should refocus spending away from the penal system, to strengthen the structures that aid in crime prevention, such as education and health care. These alternative measures reflect the civilizing features of reducing reliance on prison and easing the pains associated with criminalization (Pratt, 1998, 2002, 2011).

Commenters were particularly supportive of prevention initiatives, pointing to their cost-effectiveness and success with reducing crime:

I wonder how many inmates are suffering from untreated mental illness and addictions. Maybe it is time to rescue a lot of these people before they commit enough crimes to earn them a jail sentence. I think the majority of inmates are under the age of 30. Maybe it is time to provide some serious counselling[sic], psychiatric help and rehab for these people when they are a lot younger, Jail and prison should not be warehouses for the mentally ill and addicted. Prevention is what is needed, and in the

long run it will be less cost to the taxpayer (Reader comment re: CBC, 2013 July 28).

Such support is not without merit; initiatives like Circles of Support and Accountability (CoSA) and MAP Reintegration in Ottawa have demonstrated significant reductions in recidivism and success in preventing victimization at a fraction of the cost of imprisonment (Crime Prevention Ottawa, 2012; Wilson, Picheca & Prinzo, 2005).

Some commenters noted that the immense spending on the penal system is misplaced; instead, they cited issues that have been correlated with criminalized behaviour, such as child abuse and family violence, poverty, and a lack of education, as in need of greater resources. One commenter lamented,

We need to address effective reahbilitation[sic], root causes and prevention, and this has never gotten much focus from any government. There are other countries and socieites[sic] with far lower crime rates than ours. Why do our politicians never look elsewhere to see what works? (Reader comment re: CBC, 2013 April 25).

Although these sentiments were often paired with the caveat that prison or another form of punishment is still necessary in cases where prevention is unsuccessful or for particularly heinous and violent acts, they do represent a pattern of the civilizing process that encourages less punitive responses to criminalized behaviour (Pratt, 2002, 2011). As well, they mirror the evidence from numerous crime prevention scholars that have long advocated for such a shift in penal policy approaches (Farrington & Welsh, 2007; Waller, 2006).

4.8 Tolerance for ‘others’

A second, albeit less pronounced theme reflecting the continuing civilizing process were expressions of tolerance for ‘others’. Commenters with this view expressed sympathy and

distaste for the suffering of criminalized and imprisoned individuals, and advocated for steps to be taken to ensure the well-being of those incarcerated or under strict community conditions. Commenters defined some harsh punishments, especially solitary confinement, as torturous, barbaric or as cruel and unusual. Many echoed the sentiments expressed in a recent United Nations report (UNCAT, 2012) which states that extreme isolation frequently leads to a multitude of mental and physical illnesses and does not assist with rehabilitation. As one commenter wrote,

The toll on those in solitary confinement, in some cases, seem staggering, both psychologically and physiologically. This is an administrative cruelty, seemingly tossed onto individuals casually. And there seems no protocols to keep them under observation. Whether there be such, physical and psychological deterioration is often easily observed. White blindness? Obviously there are no regular medical check-ups. These things amount to wilful[sic] tortures (Reader comment re: Story & Desson/CBC, 2013 September 8).

Notably, most commenters still supported punishment and incarceration overall, but contended that practices like solitary confinement “go too far into the realm of abuse” (Reader comment re: Makin/Globe and Mail, 2013 March 21) and that prisoners should still be treated humanely.

Some commenters also argued that penal authorities, particularly guards and institutional medical staff, have a responsibility to care for criminalized and imprisoned individuals. One response read, “When our government takes away someone’s ability to seek care for themselves by throwing them in a cage it becomes our responsibility, our duty to care for them properly” (Reader comment re: Harris/CBC, 2013 September 9). A few even suggested that prison medical staff have a greater duty of care than doctors and nurses in the community, since prisoners cannot seek out alternative opinions or treatment if they desire. Although current prison conditions in Canada easily demonstrate a lack of sympathy or basic care for those within their

walls, pockets of the public seem supportive of a shift towards more civilized treatment (Pratt, 1998, 2002).

Part 3: Overview of Analysis

To sum up, the analysis of online public commentary related to SSCA revealed that while historical developments in penalty have arguably made Canada more civilized, the introduction of harsher legislation over the past several years, as well as increasing public support and demand for these changes, shows that Canadian penalty and some public attitudes toward it are punitive and de-civilized. As explored in part one of this chapter, this profound penal intensification is rooted in several de-civilizing discourses that populate online comments, which represent a microcosm of narratives in Canadian society. Commenters' de-civilizing views on criminalization and punishment included: a weak and insecure government authority, the increase of victims' roles in penal matters, the public acceptance of visible and vindictive emotional expression, a growing intolerance of 'others', and an intense fear of crime. Taken together, these socio-political factors contribute to the production of a culture in which a punitive penal system may thrive.

This is not to suggest that Canada's moderate and restrained penal system has entirely ended; but rather, that it has become densely layered with increasingly harsh punishments and de-civilizing sentiments. Indeed, as indicated in part two of this analysis there was a smaller but notable population of commenters that disagreed with the new legislation being proposed in Canada, especially regarding the ongoing war on drugs and the lack of investment in social resources and crime prevention strategies. Overall, these civilizing instances were in short supply

when compared to the volume of comments supporting an increasingly punitive penal system. While it might be easier to assume, as Vivianne Saleh-Hanna (2008) suggests, that “contemporary times are more civilized than the barbaric past” (p. 36), this thesis reflects a snapshot of the return of emotive and visible punitiveness to Canadian penal culture. Thus, upon reflection of the major themes that emerged from this analysis, I conclude that a de-civilized discourse is the dominant feature in Canadian penalty today.

CONCLUSION

In this final chapter, I provide an overview of the major findings and situate this research within the extant literature on the de/civilizing processes. I discuss how the dominance of de-civilizing features within current Canadian penalty have continued and further strengthened since the analysis for this thesis was conducted, noting in particular the extensive list of legislative bills that have been proposed and/or passed over the last two and a half years. In the final section, I present a few avenues for future research that could further address the intricacies of de/civilization, penalty and punitiveness in Canada.

This thesis explored trends and patterns that inform the current Canadian penal system. Guided by the civilizing process theory, I demonstrated how the *Safe Streets and Communities Act* legislation and online public comments contain a predominance of de-civilizing sentiments, including a growing fear of crime/violence, perceptions of a weakened government authority, increased roles and authority granted to victims, more visible and vocal emotional expression, an intolerance of criminalized persons, support for harsher penal sanctions, longer carceral

sentences, and austere prison conditions. The popularity and strength of these features in the data sample suggests that Canada may be experiencing “penal intensification” (Sim, 2009).

As I have noted throughout the manuscript, however, this heightened punitiveness is layered with the trend of moderation and emotional restraint that has historically defined Canada’s penal system. This is reflected in the continuation (albeit to a diminished degree) of policies and discourses based in civilizing sentiments, including support for some community-based sanctions and sympathy for the suffering of criminalized persons. The co-existence of these contradictory attitudes illustrates that penalty cannot be defined as entirely punitive/non-punitive or civilized/de-civilized, but rather must be understood as operating on a continuum of more or less punitiveness/civility.

The simultaneous presence of these contradictory discourses reflects Norbert Elias’ (1939/2000) original theory of the civilizing process, which he conceptualizes as a discursive and non-linear outline of social development that is interspersed with “counter-spurts” (p. 382). John Pratt (1998, 2002, 2011) clarifies counter-spurts as moments when a parallel de-civilizing process becomes visible, and argues that the concept provides an explanation for singular penal changes that conflict with an overall trend of civilizing development. He adds, however, that the continuation of these spurts over the long term can spiral into a de-civilizing break whereby features of de-civilization come to dominate socio-political and penal systems. In Canada today, the comparatively weaker and less frequent instances of civilizing attitudes indicates that support for a more moderately punitive penal system has somewhat eroded; coupled with the concurrent strengthening of de-civilized traits,

this research suggests that Canadian penalty is predominantly, although not *exclusively*, more harshly punitive.

A ‘Break’ From Civility?

The de-civilizing trends made evident in this project have continued in the year and a half since the data collection ended and show little sign of slowing, at least while the Conservative Party maintains its power in the federal government. Since Stephen Harper assumed the role of Prime Minister in 2006 and again in 2011, new bills have been regularly tabled and passed that further strengthen the trends of de-civilization; indeed, since the passage of the *Safe Streets and Communities Act* alone, over 45 bills related to criminalization and punishment have been tabled and/or passed into law. Many of these proposals create new criminal offences, such as Bill C-309 *Preventing Persons Concealing Their Identity during Riots and Unlawful Assemblies Act* (2013), which implemented a harsh penalty for individuals wearing a mask or face covering during riots and protests, or toughen sanctions for existing criminalized behaviours, such as the recent Bill C-12 (2014), which would enable parole boards to deny prisoners release if they produce a positive urinalysis test or fail to provide a urine sample while incarcerated. The following table outlines a few of the major de-civilizing changes these bills have been, or will be, implementing:⁴³

⁴³ All information in this table is available at the Parliament of Canada website: <http://www.parl.gc.ca/legisinfo/Home.aspx?ParliamentSession=41-2>. A search for the bill name or number provides information on the most recent activity regarding the bill, as well as a link to a summary and the full text of the current version of the bill.

List of Major Crime Bills Tabled Since the <i>Safe Streets and Communities Act</i>		
Bill/Title	Date of Latest Activity	Significant Changes
<i>Bill C-26: Citizen's Arrest and Self-defence Act</i>	June 2012 (royal assent)	Enables owners of property or other authorized people to arrest, within a reasonable amount of time, individuals found committing offences on or in relation to the property.
<i>Bill C-36: Protecting Canada's Seniors Act</i>	December 2012 (royal assent)	Adds vulnerability due to age as an aggravating factor for consideration at sentencing.
<i>Bill S-7: Combating Terrorism Act</i>	April 2013 (royal assent)	Creates new offences related to terrorism. Adds that sensitive evidence can be provided to the court in private. Establishes conditions that can be imposed on individuals to prevent the commission of terrorist activity (security certificates).
<i>Bill C-526: Cracking Down on Organized Crime and Terrorism Act</i>	June 2013 (first reading)	Adds offences committed in association with or linked to a criminal group as an aggravating factor for consideration at sentencing. Allows those actions that are considered terrorist offences to be deemed a serious aggravating factor in sentencing.
<i>Bill C-309: Preventing Persons Concealing Their Identity during Riots and Unlawful Assemblies Act</i>	June 2013 (royal assent)	Makes it an offence to wear a mask or otherwise conceal one's identity while taking part in riot or unlawful assembly.
<i>Bill C-54: Not Criminally Responsible Reform Act</i>	September 2013 (first reading Senate)	Makes safety of the public the paramount consideration in decision-making. Establishes mechanisms to define individuals found NCR as high risk for violence. Allows for such high risk designations to be imposed and reviewed by the courts, not a designated review board. Enhances involvement of victims establishing high risk designations.

List of Major Crime Bills Tabled Since the <i>Safe Streets and Communities Act</i>		
<i>Bill C-26: Tougher Penalties for Child Predators Act</i>	June 2014 (second reading)	Increases mandatory minimum penalties for sexual offences against children. Increases penalties for violations of prohibition and probation orders. Requires consecutive sentences in some cases. Requires an accused's spouse to testify in child pornography cases. Establishes the <i>High Risk Child Sex Offender Database Act</i> in order to create a publicly-accessible sex offender database.
<i>Bill C-32: Victims Bill of Rights</i>	June 2014 (second reading)	Establishes several new rights for victims of crime, including the right to information about the status of criminal investigations and proceedings, the right to convey their views about decisions made by the CJS, the right to present a victim impact statement and have it considered during sentencing, and the right to have a restitution order considered, in all cases. Establishes mandatory publication bans for victims under age 18. Provides that victims can request copy of probation and conditional sentence orders.
<i>Bill C-12: Drug-Free Prisons Act</i>	June 2014 (second reading)	Requires the National Parole Board to automatically cancel parole granted to individuals if, prior to release, they test positive in a urinalysis or refuse to provide a urine sample. Sets stricter conditions for UTA, parole release and statutory release regarding drug and alcohol use especially in cases where substances were identified as a risk factor in an individual's criminalized behaviour.
<i>Bill C-587: Respecting Families of Murdered and Brutalized Persons Act</i>	September 2014 (second reading)	Increases the parole ineligibility period from 25 to 25-40 years for individuals convicted of abduction, sexual assault and/or murder.

List of Major Crime Bills Tabled Since the <i>Safe Streets and Communities Act</i>		
<i>Bill C-13: Protecting Canadians from Online Crime Act</i>	November 2014 (referral to committee)	Creates an offence to prohibit non-consensual distribution of intimate images. Establishes warrants that extend investigative power regarding the collection of telecommunication data and enables tracking of transactions and individuals. Expedited process for obtaining warrants related to intercepting private communications. Requires accused's spouse to testify for the prosecution in cases of non-consensual distribution of intimate images.
<i>Bill C-2: Respect for Communities Act</i>	November 2014 (report to committee)	Places conditions on supervised areas for the consumption of illegal drugs. Outlines considerations for granting the exemption.
<i>Bill C-36: Protection of Communities and Exploited Persons Act</i>	November 2014 (royal assent)	Creates offences to prohibit the purchasing of sexual services, advertising the sale of sexual services, or receiving material benefits through the sale of sexual services. Prohibits communicating in any place for the purpose of purchasing sexual services. Prohibits communicating in any public place, or any place open to public view, for the purpose of selling sexual services.

Thus, while the *Safe Streets and Communities Act* was a significant and exceptional change in Canada's largely moderate penal system at the time of its introduction, the sustained wave of de-civilized penal changes subsequent to its passage suggest that the SSCA was not merely a "counter-spurt." The features of de-civilization that the SSCA epitomizes (e.g. a fear of crime, weakened authority, harsher punishment, and intolerance for others) are not unique to this one bill, but appear to have more severely influenced and weakened the civilizing features once characteristic of Canadian penalty. Only time will tell if this trend will continue and whether it

will eventually shift toward a full de-civilizing ‘break’ as conceptualized by Pratt (2002), or if civilizing trends will begin to strengthen once more.

Future Research

As a follow-up to this thesis, future projects could examine public opinion of legislation and penal policy changes beyond online comment boards, making use of surveys, polls, and interviews. As scholars have pointed out, anonymous online commenters are more likely to post when they have negative views and opinions, which skews the tone of comment boards and may provide an inaccurate representation of public opinions (Aharony, 2012; Freeman, 2011; Hlavach & Freivogel, 2011). While a ‘true’ representation of the Canadian public cannot be obtained through surveys or interviews, these varying methods would certainly aid in providing a glimpse of the opinions held by different segments of the population.

A comparative historical analysis would reveal the presence or absence of trends and patterns in Canadian penalty over time. For example, an examination of legislation and the related parliamentary debates prior and subsequent to the passage of the SSCA would indicate whether a ‘punitive (re)turn’ adequately describes Canada’s current penal situation; a longitudinal project that similarly explored online public comments made prior to the passage of the SSCA would help support and contextualize the claims made in this research.

APPENDIX 1: CODING FRAMES

Themes	Sub-themes	Codes
Part 1: De-civilizing discourses		
Fear of crime/crisis of penalty		-Fear of crime (crime (rate) has increased) -Loss of support for non-prison responses to crime (punishment is the only response; prison is the only response; ‘no other choice’) -Cannot be rehabilitated/treated (should not bother trying)
Weakened authority		-Political ideology/agenda (divert attention from other matters) -Unnecessary/populist laws (issue already addressed with other laws/policies) -Ignore facts/scientific evidence
Growth of victims’ roles and rights/ agendas		-Victims should have (greater) role in CJS -Victims don’t have enough rights (prisoners/ criminalized have more rights than victims) -“Victims deserve our sympathy/help, not criminals”
Visible and public emotion		-Name-calling/derogatory/dehumanizing language -Violent language (“offender should die”) -Joke at prisoners/prison conditions

Themes	Sub-themes	Codes
Intolerance for 'others'		-Dichotomy victims vs. offenders (assume 'criminal' is fundamentally different from 'us') -“All prisoners/criminalized are...” (dangerous, manipulative) -“Who cares about criminals” (criminals should suffer) -No justification for crime (mental illness, abuse, poverty) -Ignore systemic discrimination (disagree with efforts to combat systemic discrimination)
Development of and support for harsh(er) punishment	- Harsh punishment is effective	-Deters/prevents -Rehabilitates -Protects society
	- Harsh punishment is deserved	-“Just don't commit crimes” (don't go to prison) -“You do the crime, you do the time” -“No sympathy for criminals” -Responsibilization of criminalized (should have considered consequences before committing crime/going to prison)
	- Call for tougher punishment	-Longer prison sentences (life without parole, consecutive sentences) -Death penalty (reduce prison costs; deterrent) -Harsher prison conditions (no programs/ services; hard labour) -Remote prisons (exile of prisoners)

Themes	Sub-themes	Codes
	- Deteriorating prison conditions and harsh treatment of prisoners	-Prison conditions should be harsh(er) (support double-bunking; overcrowding; solitary confinement; elimination of programs; hard labour; no pay; violence/abuse; unsanitary environment) -Prison conditions are too lenient -Worsen prison conditions to reduce cost (suggest better way of spending money) -Prisoners should accept harsh treatment/ inhumane conditions (prisoners 'agree' to harsh treatment when they commit crime; prisoners should not complain; law-abiding citizens struggle without committing crime)

Themes	Sub-themes	Codes
Part 2: Civilizing discourses		
	- Harsh punishment is not effective	-Does not deter/prevent/rehabilitate (ignores root causes of crime) -Does not support victims (some victims don't want harsher punishment) -Harsh punishment leads to... (more crime; mental illness in prisoners; reduced public safety); "they are going to get out eventually"

Support for (some) ameliorated punishments	- Ending the war on drugs	-Support for decriminalization/legalization of drugs (reduce use rates; drugs have always existed; cost-effective; alcohol/tobacco is more harmful; functional users; reduce overcrowding in prison) -Addiction should not be a crime (addicts should receive treatment/should not be in prison; addiction is a health issue; more expensive to punish than treat) -War on drugs ignores evidence/facts
	- Alternatives to prison	-Support crime prevention -Suggest better way of spending money (health care; education; rehabilitative initiatives; homelessness; mental health care)
Tolerance for 'others'		-Harsh punishment = cruelty/torture -Support humane treatment of prisoners -Responsibility of care to prisoners (greater duty of care since prisoners cannot seek out alternative options)

**APPENDIX 2:
LIST OF TOPICS AND SUB-TOPICS**

Changes associated with the <i>Safe Streets and Communities Act</i>	New Legislation	Prison Conditions
(1) Tough on crime (general) (2) Mandatory minimum sentences (3) Pardons (4) Victims' rights (5) Early parole/pre-trial custody	(1) Cyberbullying law (2) Life 25-40 (3) Public sex offender database (4) Victims' bill of rights (5) Impaired driving (6) Bill C-54 (NCR reform) (7) Victims' fees	(1) Solitary confinement (2) Pregnancy in prison (3) Double-bunking (4) Abuse (5) Overcrowding (6) Prison programs/activities (7) Death in custody (8) Suicide/self-harm (9) Mental health issues (10) Prison labour/pay (11) Aboriginal incarceration

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